

**BALKANS
ACT
NOW!**

SITUATION ANALYZES OF HUMAN TRAFFICKING

Bosnia and Herzegovina, Croatia, FYR of Macedonia and Serbia



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BALKANS ACT NOW!

The following comprehensive analyzes of trafficking in human beings situation in Bosnia, Croatia, FYR of Macedonia and Serbia were conducted within the "**Balkans ACT (Against Crime of Trafficking) Now!**" project which focuses on CSO capacity building in the Western Balkans region. The project is supported by the European Union and implemented by NGO ASTRA – Anti Trafficking Action (Serbia), International Forum of Solidarity – EMMAUS (Bosnia and Herzegovina), Partnership for Social Development (Croatia), Open Gate - La Strada Macedonia (FYR of Macedonia), Netherlands Helsinki Committee (the Netherlands), Comité Contre L'Esclavage Moderne - CCEM (France) and Association ALC - Accompagnement, Lieux d'Accueil, Carrefour éducatif et social (France).

The project aims to contribute to democratization and EU integration processes in the Western Balkans through improving civil activism environment, capacity, commitment and influence of civil society networks in debate on human rights and the rule of law related to the issue of organized crime, specifically human trafficking. It is designed to enhance capacities of CSOs for independent and objective analysis and monitoring, legitimacy, accountability and influence over policy. Through realization of the "Balkans ACT Now" project, justice sector policies and anti-trafficking efforts in Serbia, Croatia, Bosnia and Herzegovina and FYR Macedonia are to be aligned with standards and values of EU.

One of the first activities carried out within the project was the implementation of in-depth analyzes about the current situation in the field of anti-trafficking in four Balkans countries – Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia. Analyzes also address the rights of victims and the contribution CSOs can have in strengthening democratization processes and the rule of law. All countries analyzed share a number of problems burdening their efforts to combat human trafficking and provide comprehensive assistance to its victims. These include insufficient protection of victim's rights, not securing their right to compensation and protection of their personal data. Trafficking survivors are being detained and prosecuted for offences they committed as a direct result of them being trafficked. In addition, the need to examine the role that corruption plays in facilitating trafficking and preventing the prosecution of traffickers remains present in all four countries.

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TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA

**SITUATION ANALYSIS CONDUCTED BY INTERNATIONAL
FORUM OF SOLIDARITY – EMMAUS**



TRAFFICKING IN HUMAN BEINGS

SITUATION ANALYSIS IN BOSNIA AND HERZEGOVINA



POLITICAL AND SOCIO ECONOMIC SITUATION IN THE COUNTRY

Bosnia and Herzegovina is post conflict and country in transition located at a crossroad between Eastern and Western Europe. Its proximity to the European Union, its complex political structure, bad economic situation, high number of refugees and internally displaced persons, young migration management structure, porous borders, visa regimes, and limited resources have made it a source, destination and transit country for human trafficking. It is a crossroad country that lies between Croatia, Serbia and Montenegro. It is 51,129 sq km and has 4,025,476 inhabitants. The capital is Sarajevo. The main groups are Bosnians (48%), Serbs (37%), and Croats (14%). In relation to Croatia and Serbia-Montenegro, religion plays the most important role in the daily lives of the inhabitants of Bosnia & Herzegovina. Many different religions are present: Muslim (40%), Serbian Orthodox (31%), Roman Catholic (15%), other (14%). Second only to FYR of Macedonia, Bosnia & Herzegovina was the poorest republic in the old Yugoslav Federation, excluding the Kosovo as Autonomous Region. The GDP is US\$26.21 billion and the GDP per capita is US\$6,500, the real growth rate is 5% and inflation is 1.1%. The unemployment rate is officially 44%; however, a grey economy exists that may reduce actual unemployment to near 20%. The major industries are mining, vehicle assembly, textiles, tobacco, wooden furniture, tank and aircraft assembly, domestic appliances, and oil refining. Most of the industries are heavily damaged or shut down because of the 1992 war, started in Bosnia & Herzegovina as a result of a disputed vote for independence. The war devastated the country's infrastructure and the already deflated economy, leaving refugees numbering in the millions. The war officially ended in December 1995, but the country is still dealing with the effects of the war. Risks involve unexploded landmines and petty crime brought on by the high unemployment rate. In 1995-96, a NATO-led international peacekeeping force (IFOR) of 60,000 troops served in Bosnia & Herzegovina to implement and monitor the military aspects of the agreement. IFOR was succeeded by a smaller, NATO-led Stabilization Force (SFOR) whose mission was to deter renewed hostilities. European Union peacekeeping troops (EUFOR) replaced SFOR in December 2004; their mission was to maintain peace and stability throughout the country. Bosnia & Herzegovina is still in transition and is an emerging democratic state.

Politics of Bosnia and Herzegovina takes place in a framework of a parliamentary representative democratic republic, whereby the Council of Ministers of Bosnia and Herzegovina is the head of government, and of a multi-party system. Executive power is exercised by the government. Legislative power is vested in both the government and parliament. Members of the parliament are chosen according to a proportional representation system. Bosnia and Herzegovina is divided into two *Entities* - the Federation of Bosnia and Herzegovina and the Republic of Srpska, which each have largely autonomous political power, as well as the district of Brcko, which is jointly administered by both. Each of the Entities has its own constitution. The three members of the Presidency are elected directly by the people with Federation voters electing both the Bosniak and the Croat, and Republic of Srpska voters electing the Serb. The Presidency is the head of state and it is mainly responsible for the foreign policy and proposing the budget. The Chairman of the Council of Ministers of Bosnia and Herzegovina is nominated by the Presidency and approved by the House of Representatives. He is then responsible for appointing a Foreign Minister, Minister of Foreign Trade, and other ministers as appropriate. The Council is responsible for carrying out various policies and decisions in the fields of diplomacy, economy, inter-Entity relations and other matters as agreed by the Entities. Each of the Entities has its own Governments, which deal with internal matters not dealt with by the state Council.

The Parliamentary Assembly is the main legislative body in Bosnia and Herzegovina. It consists of two chambers: House of Peoples and National House of Representatives. Bosnia and Herzegovina did not have a permanent election law until 2001, during which time a draft law specified four-year terms for the state and first-order administrative division entity legislatures. The final election law was passed and publicized on 9 September 2001.

Bosnia-Herzegovina is a member of the Organization for Security and Co-operation in Europe (OSCE). The OSCE mission to Bosnia-Herzegovina supports the efforts of the Bosnia-Herzegovina authorities to streamline and coordinate their anti-trafficking activities, including seconding a full-time staff member to assist the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia-Herzegovina, a position which was established in 2003 and tasked with overseeing the State Action Plan and any other anti-trafficking activities of the government of Bosnia-Herzegovina

Position of women in BH

Bosnia and Herzegovina is not ranked under the Global Gender Gap Index. Article 2 of the Constitution of Bosnia and Herzegovina explicitly prohibits all direct or indirect discrimination, whether on the grounds of sex, race, language, politics, religion or national or social origin. A Law on Gender Equality has been in place since 2003, and comprehensive legislation on anti-discrimination was introduced in July 2009. The Alternative Report is the result of joint action of women's NGOs in BiH, under the coordination and support of the NGOs *Helsinki Citizens' Assembly* Banja Luka and *Rights for All* from Sarajevo, who jointly collected data, analyzed the situation and defined the key recommendations in the areas that require urgent, continuous, systematic and system-related actions by government institutions at all levels in BiH in order to improve the actual situation and provide women of BiH a

nondiscriminatory approach to exercising their rights. Bosnia and Herzegovina made a significant progress with the adoption of the Gender Action Plan in 2006, and the adoption of strategies and action plans at the state and entity levels aimed at promoting and realizing gender equality, and combating violence against women. These measures are supposed to lead to real changes in the status of women, and realization of their basic human rights in BiH. Stereotyped gender roles continue to be the determining factor in choice of profession and employment of women, and there is a growing trend for women to get educated and employed in the services sector. A large number of women in BiH is employed in the informal economy in catering, tourism, and trade industries, and have a limited access to managerial and other well-paid positions on the labor market.

However, despite the progress that has been realized in regards to development of the formal and legal framework and public policies in the field of promoting and protecting women's human rights, women in BiH do not have equal opportunities to participate and are underrepresented in political decision-making within the legislative, executive and judicial authorities at all levels. The State has failed to ensure the harmonization of the BiH Election Law with the Law on Gender Equality in BiH.

Position of Children

The Committee for Human Rights stated a concern for the fact that child rights are still being neglected and that there are insufficient funds for the child protection policy. According to World Bank data, the overview of public expenditure and institutions of Bosnia and Herzegovina from 2006 has shown that the expenditure for social welfare (in relation to gross national income) is at the average level when compared to new EU member states.

Bosnia and Herzegovina: non-implementation of laws, non-existence of budget for children, lack of data about children, insufficiently developed cooperation between NGOs and ruling authorities, increase in violence against children, juvenile delinquency is at growth, schools are being equipped but very few investments are contributed for the training of teachers and development of programs, while the level of children's participation is quite low. The one and only continuous monitoring of child rights in was conducted by the organizations "Our children" from Sarajevo and "Hi neighbor" from Banja Luka, in cooperation with 18 schools and with the support of the Save the Children Norway.

The Country Report did not record promulgation of the new Law on Birth Register in Republic of Srpska in October 2009, while in Federation of Bosnia and Herzegovina the new Law was adopted in July 2011. The new Law on Bosnia and Herzegovina Citizenship has not been enacted yet. Bearing in mind the size of the problem – the number of unregistered children in Bosnia and Herzegovina, we could say that the government institutions showed inertness in resolving this problem. The Bosnia and Herzegovina Ministry for Human Rights and Refugees, in collaboration with the UNHCR and UNICEF, has formed mobile teams who have registered over 2 000 of these children in birth registries.

Position of persons with disabilities

Bosnia and Herzegovina ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 12 March 2010. In the reporting period, i.e. from 2004 to 2010, amendments to the legislation which has improved the position of the victims of torture and civilian war victims, and persons with disabilities in general have been adopted. This particularly applies to camp detainees and victims of sexual abuse and rape. However, the existing legal framework has significantly extended discrimination among people who have already achieved the status of disabled persons, particularly, between disabled war veterans, civilian victims of war, disabled civilians and disabled workers, whereby the latter are placed in the worst position. An analysis of the situation, as a whole, shows that the entitlements granted on the basis of employment (to pensioners, disabled workers, etc.), pursuant to pension and disability schemes are lower than the entitlements granted on the basis of social welfare schemes (disabled war veterans, civilian victims of war, disabled civilians) in FBH.

Position of national minorities

The Law on the Protection of National Minorities recognizes and protects the position of 17 national minorities in Bosnia and Herzegovina. They are: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Slovaks, Slovenians and Ukrainians. The Law ensures that, besides enjoying the rights that all other citizens of Bosnia and Herzegovina enjoy, the minorities enjoy extra protection and rights in the fields of history, culture, customs, tradition, languages, script, education and religious freedom. According to this Law, a national minority shall be a part of the population-citizens of BiH that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics. The fact is that Bosnia and Herzegovina has made a progress in improving the status of minorities, especially Roma in BiH. A census is expected to be conducted in 2013, which will provide indicators of where people belonging to national minorities live and what their numbers are. This will enable better assessment of the needs of national minorities, including the use of minority languages in BiH.

Problem of corruption and connection to THB

Trafficking in human beings is globally considered to be one of the most serious of criminal offences. It constitutes a violation against human rights and is a modern form of slavery. Trafficking in human beings was identified as a phenomenon in 1999. In the period to 2004, Bosnia and Herzegovina has primarily been a country of transit and destination for victims coming from countries of Eastern Europe, mainly Republic of Moldova, Romania and Ukraine. As of 2004, especially since Romania and Bulgaria entered the European Union (making it easier and financially more feasible for traffickers to transport victims to the EU from the former Soviet bloc countries) Bosnia and Herzegovina has increasingly become an origin country of BiH nationals - women and girls, but also boys and men, trafficked for purposes of sexual and

labor exploitation to Western European countries and other countries of the region, as well as a transit country for trafficking routes from the Middle East towards the European Union. In addition, BiH is increasingly experiencing internal recruitment of BiH nationals for purposes of both sexual and labor exploitation in other parts of the country. The government of Bosnia and Herzegovina has taken significant steps to reduce trafficking in human beings by allocating/establishing responsible Ministries (BiH Ministry of Security responsible for foreign victims and BiH Ministry of Human Rights and Refugees responsible for BiH national victims), actors (Office/State Coordinator for Anti-trafficking and Illegal Migration, now Department of Anti-trafficking headed with the State Coordinator within the Ministry of Security), BiH State Prosecutor's Office responsible for trafficking offenses, legislation (Rulebook on the Protection of Foreign Victims of Trafficking, etc.), which did lead to certain improvements in the decrease of foreign nationals trafficked to BiH. However, the number of domestic victims seems to be on the rise. The majority of victims are trafficked for the purpose of sexual exploitation. In addition, there have been reports of trafficking for the purpose of forced labor. Cases of organized begging and forced marriages, as well as forced servitude practices have been reported on a limited basis. According to the UN, trafficking in children in Bosnia and Herzegovina can be divided in trafficking in teenage girls for sexual exploitation and trafficking in both boys and girls under 12 years of age, mainly for begging and related forms of labor.

Trafficking in Bosnia and Herzegovina has not been eradicated; it only changed its modus operandi since 2004: it was shifted underground – sexual exploitation now takes place in motels, private houses and residences, victims are taken abroad for same purposes, or victims are forced into labor and other forms of exploitation. Additional difficulty for the prevention of trafficking is also uncoordinated legal framework that regulates this matter, and the fact that the State failed to establish a system of effective prosecution of criminals responsible for trafficking. Trafficking in persons and corruption are closely linked criminal activities, whose interrelation is frequently referred to in international forums.

Corruption is probably the most important factor in explaining human trafficking and countries that make the least effort to fight human trafficking also tend to be those with high levels of official corruption. Yet, the correlation between the two phenomena, and the actual impact of corruption on trafficking in persons, are generally neglected in the development and implementation of anti-human trafficking policies and measures. This lack of attention may substantially undermine initiatives to combat trafficking in persons and prevent the customization of responses as needed.

Corruption among the international community, such as UN members taking part in the trafficking, paved the way for corruption among the local government, leaving no safe-haven for the trafficked women. Corruption among local police also contributes to the trafficking infrastructure in Bosnia and Herzegovina. For instance, local police officers sometimes moonlight as employees of establishments that maintain trafficked women and girls. Local uniformed police officers accept bribes or sexual services in exchange for protecting brothels and tip off nightclub owners before police raids occur. Only after recognizing the existence and the effects of corruption in the context of human trafficking, can the challenges posed by it be met. It is thus important to examine how corruption plays a role in human trafficking and actually contributes to the growth of the phenomenon. Taking into account that the corruption, in its widest definition, implies any abuse of entrusted power, in private business and/or

public sector, for private and/or the gain of the group, we can draw a logical conclusion that the corrupted person is considered to be every official who, for the sake of private benefit and/or benefit of the group he/she belongs to, ignores the general interests that he/she is required to protect by means of the official position and powers assigned to it. A citizen, who offers or agrees to provide the requested bribes, is also considered to be corrupt.

In a separate strategic measure within the document: “Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013-2015” it is necessary to specify the SOP chart for investigations of trafficking crimes in which the corruption behaves as the factor whose absence would make the execution of the activities much harder. In this line, it is necessary to define and establish such a measure.

If we said that corruption is PROBABLY the most important factor in explaining human trafficking we can confirm that the bad economic situation is TRULY the most important factor in explaining human trafficking in Bosnia and Herzegovina. The Gross Domestic Product (GDP) in Bosnia and Herzegovina was worth 4.55 billion US dollars in 2011. The GDP value of Bosnia and Herzegovina represents 0.01 percent of the world economy. GDP in Bosnia and Herzegovina is reported by the World Bank Group. Historically, from 2000 until 2011, Bosnia and Herzegovina GDP averaged 2.8 USD Billion reaching an all time high of 4.6 USD Billion in December of 2011 and a record low of 1.0 USD Billion in December of 2000. The gross domestic product (GDP) measures of national income and output for a given country's economy. The gross domestic product (GDP) is equal to the total expenditures for all final goods and services produced within the country in a stipulated period of time. Unemployment Rate in Bosnia and Herzegovina increased to 44.54 percent in December of 2012 from 44.38 percent in November of 2012. Historically, from 2007 until 2012, Bosnia and Herzegovina unemployment Rate averaged 42.69 percent reaching an all time high of 44.93 percent in February of 2007 and a record low of 39.03 percent in May of 2008. In Bosnia and Herzegovina, the unemployment rate measures the number of people actively looking for a job as a percentage of the labor force. (BH Labour Force Survey 2012: Unemployment rate 2010-2011-2012: females 23%; males 26%).

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LEGAL ANALYSIS

Criminalization of THB

Before discussing the specific legislation governing the area of criminalization of trafficking and protection of victims, it is important to briefly present the basics of the constitutional and legal system of Bosnia and Herzegovina. In accordance with its Constitution, Bosnia-Herzegovina is organized as a complex state consisting of two entities (the Federation of Bosnia and Herzegovina and the Republic of Srpska) and the territory of Brcko, which has the status of condominium (joint management) which form the District of Bosnia and Herzegovina. This means that at the moment there are four legal systems, one at the state level, two at the entity level and one at the Brcko District. The four legal systems have developed on largely autonomous lines over the past two decades. Due to the autonomous nature of

legislative procedures at the Entity and Brcko District levels, their legal orders vary in many areas of substantive and procedural law. In addition, since each Entity, the Brcko District and the Bosnia and Herzegovina has its own judicial system, differences arise in the interpretation and the application of similar or even identical legal provisions (European Commission for Democracy through Law, 2011). Such condition is also present in the criminal justice system, both in the normative and institutional plan. Within each of the four legal systems there are rules of criminal law and the institutions responsible for their implementation. It can be said that the emergence of trafficking in some extent is regulated within all four of legislation in Bosnia and Herzegovina.

- *At the state level for the purposes of this analysis are relevant Criminal Code¹ and Criminal Procedure Code of Bosnia and Herzegovina.²*
- *At the entity levels there are Criminal Code³ and Criminal Procedure Code⁴ of the Federation of Bosnia-Herzegovina and the Criminal Code and Criminal Procedure Code of Republic of Srpska⁵, so as the Criminal Code and the Criminal Procedure Code of the Brcko District.⁶*
- *Other legal instruments within these four legal systems in areas of health, social care and education, and other areas are not treated explicitly with respect to the trafficking, although in their provisions can be found some tools that allow direct or indirect assistance to victims of trafficking.*
- *In accordance with the provisions of the Criminal Code of **Bosnia and Herzegovina** under the trafficking implies use of force or threat of use of force or other forms of coercion, of abduction, of fraud or 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, recruits, transports, transfers, harbors or receipts a person, for the purpose of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or similar status, servitude or the removal of organs or of the other type of exploitation (Article 186).⁷ Proscribed sanction is at least three years of imprisonment. If crime of trafficking is committed toward the person less than 18 years old, proscribed sanction is at least five years of imprisonment.*
- *Beside this core incrimination of human trafficking, Criminal Code of BiH also consist crime named “International Procuring in Prostitution”, which can be committed when “a natural person procures,*

¹ Official Gazette of BiH, 3/03, amended by: 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10.

² Official Gazette of BiH, 3/03, amended by: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09.

³ Official Gazette of FBiH 36/03, amended by 37/03, 21/04, 69/04, 18/05, 42/10

⁴ Official Gazette of FBiH 35/03, amended by 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13.

⁵ Official Gazette of RS, 49/03, amended by 108/04, 37/06, 70/06, 73710, 01/12, 53/12

⁶ Official Gazette of BD, 44/10 and 47/11,

⁷ It is worth to mention that there is not any kind of formal hierarchy between Criminal Code of BiH and those criminal laws in the entities. It is evident that certain level of mutual harmonization exist but without any formal obligation to do that. In order to avoid any collisions between certain jurisdictions in prosecution of human trafficking it was decided at strategic level to harmonize criminal codes with respect to crime of human trafficking in order to put BiH level in charge for cases with the international dimension and entities institutions and those in Brcko District for domestic cases of human trafficking.

entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen” (Article 187). This article is intended to prosecute cases of human trafficking with the international dimension when it comes to the procuring of humans for purposes of prostitution. This doesn’t criminalize prostitution itself as criminal offense.

- Criminal offense of Organized crime is proscribed under article 250 of Criminal Code of BiH and it is general incrimination which is then connected with other crimes which are committed under specific circumstances and with special purposes as it is proscribed by law. For better understandings integral parts of relevant legal instruments on trafficking for each jurisdiction will be incorporated into the analysis:

Trafficking in persons

Article 186

(1) Whoever, by means of use of force or threat of use of force or other forms of coercion, by abduction, fraud or deception, the abuse of power or influence or a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, hands over, harbors or receives a person for the purpose of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or similar status, servitude or the removal of organs of human body or of other types of exploitation, shall be punished by imprisonment for a term **not less than three years**.

(2) Whoever recruits, incites, transports, transfers, hands over, harbors or receives individuals under 18 years of age for the purpose of the exploitation referred to in paragraph (1) of this Article, shall be punished by imprisonment for a term not less than five years.

(3) In the event that a criminal offence under paragraphs (1) and (2) of this Article is perpetrated by an official exercising his official duty, the perpetrator thereof shall be punished by imprisonment for a term not less than five years.

(4) Whoever forges, obtains or issues a travel or personal document, or uses, retains, seizes, alters, damages, destroys a travel or personal document of another person for the purpose of facilitating trafficking in persons, shall be punished by a prison sentence between one and five years.

(5) Whoever organizes or in any manner leads a 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 not less than ten years or a long-term imprisonment.

(6) Whoever uses the services of a victim of human trafficking shall be punished by a prison sentence between six months and five years.

(7) In the event that the perpetration of the criminal offences under paragraphs (1) and (2) of this Article resulted in a serious health damage, bodily injury or death of the persons referred to in paragraphs (1) and (2), the perpetrator shall be punished by a prison sentence of minimum five years or long-term imprisonment.

(8) The objects and means of transportation used for the perpetration of the offences shall be seized, while the facilities used for the purpose of human trafficking may be temporarily or permanently closed.

(9) Whether a person consented to the exploitation is of no relevance to the existence of a criminal offence of trafficking in persons.

International Procuring in Prostitution

Article 187

(1) Whoever procures, entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen, shall be punished by imprisonment for a term between six months and five years.

*(2) Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment, shall be punished by imprisonment for a term **between one and ten years**.*

(3) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

Organized crime

Article 250

(1) Whoever perpetrates a criminal offence prescribed the law of Bosnia and Herzegovina as a member of a group for organized crime, unless a heavier punishment by is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than three years.

(2) Whoever as a member of a group for organized crime perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of five years or a more

severe punishment may be imposed, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than five years.

(3) Whoever organizes or directs at any level a group for organized crime which by joint action perpetrates or attempts to perpetrate criminal offence prescribed by the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment.

(4) Whoever becomes a member of a group for organized crime which by joint action perpetrates or attempts to perpetrate criminal offence prescribed by the law of Bosnia and Herzegovina, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than one year.

(5) A member of a group for organized crime referred to in paragraph 1 through 4 of this Article, who exposes that group, may be released from punishment.

- On other hand, Criminal Code of **Federation of Bosnia and Herzegovina** situated crime of trafficking under title “Enticing into Prostitution”, which is committed when someone entices, incites or lures another into prostitution, introduces a person to another for the exercise of prostitution or takes part in organizing or managing prostitution (Article 210). Aggravated form of this crime is proscribed in paragraph 2 of the same article which stipulates “whosoever, in order to achieve material gain, introduces another into prostitution by force or threat of infliction of harm, or by deceit”. It is clear that currently at the level of Federation BiH, Republic of Srpska and Brcko District criminal legislation offers possibilities of prosecuting of human trafficking only in cases of sexual exploitation (prostitution).

Article 210

Pandering

(1) Whoever, for gain, induces, incites or lures another in offering sexual services or in another way enables turning another over to a third person for offering sexual services, or in any way takes part in organizing or managing of sexual services offering, shall be punished by imprisonment for a term between one and five years.

(2) Whoever, for gain, by use of force or by threat to use force or to inflict greater harm, coerces another or by deceit induces another into offering sexual services, shall be punished by imprisonment for a term between one and ten years.

(3) The punishment referred to in paragraph 2 of this Article shall be imposed on whoever, for gain, in the manner referred to in paragraph 2 of this Article, by abusing a difficult situation of a person residing in a foreign country, coerces or induces that person into offering sexual services.

(4) Whoever perpetrates the criminal offence referred to in paragraphs 1 and 3 of this Article against a child or juvenile, shall be punished by imprisonment for a term between three and fifteen years.

(5) The fact whether the person who is induced, incited, lured or coerced has already been engaged in prostitution is of no relevance to the perpetration of criminal offence under this Article.

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- *There is also a crime of abusing of children or juveniles for pornography in Federal Criminal Code, which can be seen as form of human trafficking:*

Article 211

Abuse of a Child or Juvenile for Pornography

(1) Whoever photographs or films a child or juvenile with an aim of developing photographs, audio-visual tapes or other pornographic materials, or possesses or imports or sells or deals in or projects such material, or induces such persons to play in pornographic shows, shall be punished by imprisonment for a term between one and five years.

(2) Items meant or used for the perpetration of criminal offence referred to in paragraph 1 of this Article shall be forfeited and the items produced by the perpetration of criminal offence referred to in paragraph 1 shall be forfeited and destroyed

Article 212

Introducing Pornography to a Child

(1) Whoever sells, shows or renders available through a public display or in any other way writings, pictures, audio-visual and other objects containing pornography to a child, or whoever shows him a pornographic show, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) The items referred to paragraph 1 of this Article shall be forfeited.

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- **Republic of Srpska** in its Criminal Code has proscribed criminal offence under the title “*Trafficking in Human Beings for the Purpose of Prostitution*”, which is committed when someone in order to achieve material gain, entices, incites or lures another into prostitution or whoever, in any way, enables turning a person over to another for the exercise of prostitution or whoever, in any way,

takes part in organizing or managing prostitution (Article 198). Moreover, Criminal Code of Republic of Srpska contains specific incriminations of child abusing on internet:

Trafficking in Human Beings for the Purpose of Prostitution

Article 198

(1) *Whoever, in order to get financial benefit, entices, incites or lures another into prostitution or whoever, in any way, enables turning a person over to another for the exercise of prostitution or whoever, in any way, takes part in organizing or managing prostitution, shall be punished by imprisonment for a term between six months and five years.*

(2) *Whoever, in order to get financial benefit, forces another into prostitution by employing force or threatening to use the force or by inflicting serious harm or deceiving another into prostitution, shall be punished by imprisonment for a term between one and five years.*

(3) *The punishment referred to in Paragraph 2 of this Article shall be also applied to anyone who, in order to achieve financial benefit, has forced or incited a person into prostitution in the manner described in Paragraph 2 of this Article by using the difficult situation the person has been in as a foreigner in the country, or who professionally engages another person to do so.*

(4) *Whoever commits the criminal offence referred to in Paragraphs 1 and 3 of this Article against a child or a minor, shall be punished by imprisonment for a term between one and twelve years.*

(5) *The history of prostitution of the person who has been enticed, incited, lured or forced into prostitution shall not have any bearing on the criminal offence referred to in this Article.*

Abuse of a Child or Juvenile for Pornography

Article 199

(1) *Whoever photographs or films a child with a view to developing photographs, audio-visual tapes or other pornographic materials or incites such persons to play in pornographic shows, shall be punished by imprisonment for a term between six months and five years.*

(2) *The items referred to in Paragraph 1 of this Article shall be forfeited.*

Production and Screening Child Pornography

Article 200

(1) *Whoever sells, shows or renders available through a public display or in any other way writings, pictures, audio-visual and other items containing child pornography or whoever produces, purchase,*

keeps or screens a child pornographic show for the same reasons, shall be fined or punished by imprisonment for a term not exceeding one year.

(2) If the offence referred to in Paragraph 1 is committed against a minor who is under 16, the perpetrator shall be punished by imprisonment for a term of three years.

(3) If the offence referred to in preceding Paragraphs is committed through the mass media or internet, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(4) Child pornography in terms of this provision shall be understood to mean any pornographic material that visually shows:

(a) a child or a minor involved in an obvious sexual act, and

(b) realistic photographs that show a child or a minor involved in an obvious sexual act.

(5) The items referred to in Paragraphs 1 and 2 of this Article shall be forfeited.

Criminal Code of Brcko District situated crime of trafficking under title “Enticing into Prostitution”, which is committed when someone entices, incites or lures another into prostitution, introduces a person to another for the exercise of prostitution or takes part in organizing or managing prostitution (Article 207). Aggravated form of this crime is proscribed in paragraph 2 of the same article which stipulates “whosoever, in order to achieve material gain, introduces another into prostitution by force or threat of infliction of harm, or by deceit”.

Enticement into Prostitution
Article 207

- (1) A person who entices, induces or persuades another person to engage in prostitution or in some other way facilitates the prostitution of that person for the benefit of another person, or in any other way organizes or manages prostitution, in order to acquire material gain,
shall be sentenced from six months to five years of prison.
- (2) A person who, by use of force or threat to use force or inflict large-scale damage, forces or deceives and induces another person to engage in prostitution in order to acquire material gain,
shall be sentenced from one to ten years of prison.

The punishment from paragraph 2 of this Article shall be imposed on a person who forces or induces another person to engage in prostitution, in the manner referred to in paragraph 2, taking advantage of her/his difficult situation while residing in a foreign country, in order to acquire material gain.

A person who commits criminal offence referred to in paragraph 1 through 3 of this Article against a child or a minor, shall be sentenced from three to fifteen years of prison. The fact of whether a person induced, enticed, persuaded or forced to engage in prostitution was previously engaged in prostitution or not shall not interfere with the criminal offences referred to in this Article.

There is also a crime of abusing of children or juveniles for pornography and Showing Pornographic Material to a Child in Brcko District Criminal Code, which can be seen as for of human trafficking:

Abuse of a Child or a Minor for Pornographic Purposes
Article 208

- (1) A person who abuses a child or a minor for taking photographs, audio-visual material or other material with pornographic contents, or possesses, or imports, or sells, or distributes, or presents such material, or induces such persons to take part in a pornographic performance,
shall be sentenced to prison from one to five years.
- (2) Items that were intended to be used or were used in committing the criminal offence referred to in paragraph 1 of this Article shall be confiscated, and the items produced as a result of the criminal offence of paragraph 1 of this Article shall be confiscated and destroyed.

Showing Pornographic Material to a Child
Article 209

- (1) A person who sells, shows, or presents to the public, or in some other way makes available documents, photographs, audio-visual and other pornographic material, or shows a pornographic performance to a child, shall be fined or sentenced up to one year of imprisonment.
- (2) Items referred to in paragraph 1 of this Article shall be confiscated.

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- *The main problems connected with the application and interpretation in practice of such provisions of criminal codes from all four legislations is jurisdiction, coordination and adjustment of institutional actions. In many cases differences in legal definitions within four criminal codes causes conflicts of jurisdictions between state, entity and Brcko District prosecutor offices. There is no formal hierarchy between these four jurisdictions. It is crucial question how to ensure criteria's for prosecution of certain cases. Internal harmonization could offer solutions for this problem. According to the State Strategy and Action plan, it is planned to conduct internal harmonization in order to ensure that state prosecutor office should be in charge for international cases of human trafficking, while entities and Brcko District would be responsible for domestic cases of human trafficking. Moreover, coordination between police and prosecution institutions is not adequate since they have different interpretations of their jurisdictions over human trafficking cases. Typical examples of such conflicts of jurisdictions are for instance, when initial suspicions about sex or labor trafficking are brought before State prosecutor office, which usually decides that case belong to entity prosecutors since there is no enough evidence about trafficking and case should be prosecuted as negligent parental custody (for case of children being exploited on the streets) or unlawful deprivation of liberty or enticing into prostitution.*
- *Legal solutions from Criminal Code of Bosnia and Herzegovina in the area of human trafficking criminalization are harmonized with the relevant international standards, especially Palermo protocol, and CoE THB Convention. The most important elements of this criminal offence (act, the means and the purpose) are in line with legal standards established under these instruments from international law. On other hand, entity and Brcko District criminal codes are still not completely harmonized with the international standards in this field. First and foremost, they do not acknowledge the vulnerable position of children and still require proof that offenders have incited, lured or coerced the child. Moreover, they are indifferent to the ways in which the suspect has acted to achieve his or her purpose. With an emphasis on prostitution, other elements of the purpose behind exploitation are ignored. This ambiguity of the elements of the offence is further corroborated by the fact that it is enlisted within the chapters protecting sexual integrity, freedom and morals (OSCE, 2009). It is only possible to prosecute cases of trafficking committed for purposes of prostitution according to the current provisions of criminal codes in Federation BiH, Republic of Srpska and Brcko District.*

Currently, the process of amending the criminal legislation in the entities and Brcko District is in place, in order to comply specific provisions of their criminal codes in the area of human trafficking with the state Criminal Code. This should result in a harmonization of all four of legislation with international standards and to provide a clear separation between jurisdictions and allow better coordination between institutions. According to the State Strategy and Action plan, it is planned to conduct internal harmonization in order to ensure that state prosecutor office should be in charge for international cases of human trafficking, while entities and Brcko District would be responsible for domestic cases of human trafficking. This is ongoing process that should be ended by the end of 2013.

- *Beside criminal codes in all four legislations in Bosnia and Herzegovina, there are not other legal instruments that allow sanctioning for human trafficking. It is worth mentioning that slavery and transport of slaves in general is criminalized within state Criminal Code, so whoever, in violation of the rules of international law, places another in slavery or in a similar status or keeps him in such a status, buys, sells, hands over to another person or mediates the purchase, sale or handing over of such a person or induces someone else to sell his freedom or the freedom of the person he provides for or takes care. The concept of slavery is defined in this provision of Criminal Code, and it is fully harmonized with the international definitions of the slavery since this incrimination falls under the group of criminal offences against international law. Sanction for crime of slavery is between one and ten years of imprisonment (Article 185). Legislation in the area of labor relations, foreigner's regulations and other sources do not provide necessary definition that would allow prosecution and sanctioning for trafficking.*

Rights of human trafficking victims in law and practice

As it was case in criminal prosecution beside criminal codes in all administrative levels in Bosnia and Herzegovina there are not specific legal instruments that would allow victims of trafficking to enjoy some exclusive rights during or outside of criminal proceedings.

It is only possible to identify some general rights that are proscribed for any person who is participating in proceeding.

Right of information is allowed as a general rule for any person who is subject or participant in criminal proceeding. Any person which suffered some kind of damage from criminal act has right to be informed about status of criminal procedure and actions of prosecutor.

According to the Criminal Procedure Code, the "injured party" is a person who's personal or property rights have been threatened or violated by a criminal offense (Article 20.1.h). This right to receive information from any official authorities is regulated by Freedom of Access to Information Act, which also exist in all administrative levels in Bosnia and Herzegovina. According to this law, every natural and legal person has the right to access this information to the greatest extent possible consistent with the public interest, whereby public authorities have a corresponding obligation to disclose this information. One of the obligations of the prosecutor is to inform injured parties (victims) about current state of the proceeding, their rights, and in certain cases victims are active subjects of the certain acts of the prosecutor (e.g. when it comes to the plea bargaining injured parties are consulted about intention to sign plea bargaining agreement).

With respect to the issue of right not to cooperate with law enforcement, it is worth to say that the injured parties in criminal proceeding have certain rights, but this specific issue is not strictly regulated within relevant legal acts. It can be stated that injured party cannot be forced to participate in criminal proceeding. With respect to the testifying in front of the Court, domestic Criminal Procedure Codes imposes general obligation to testify to all persons when there is likelihood that their statements may

provide information concerning the offense, perpetrator or any other important circumstances. On the other hand, should the witness fail to appear, or justify his absence, the Court may impose upon him a fine in the amount of up to 2.500 or 15.000 EUR (depends under which jurisdiction) , or may order the apprehension of the witness. Victim's access to supporting services doesn't depend on level of cooperation with the law enforcement.

All data and information collected during the criminal procedure are protected on two different levels. The first one is connected with the **protection of personal data**. According to the Law on the protection of personal data any personal data processed by public authority must be adequately protected. On other hand, Law on protection of secret data also provides certain type of protection of data collected and processed within criminal procedure.

Separate issue of **exclusion of public** during the criminal proceeding is regulated by the relevant criminal procedure codes. In general, public can be excluded from the trial if it is necessary to protect the personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness (Article 235 BiH CPC). Court decision to exclude the public is not determined by the nature of the offence or specific victim profile. It means that trafficking cases are not especially stipulated as reason for imperative exclusion of the public from the trial.

As it was stated before main problem of all these legal instruments is that they do not recognize specific categories of victims including victims of trafficking.

Protection of witnesses in criminal procedure regardless of type of crime in case is regulated by special Law on protection of witnesses under threat and vulnerable witnesses and Law on witness protection program in Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republic of Srpska and Brcko District. These legal instruments are also dedicated to the protection of **physical integrity** of witnesses in criminal procedure and are applicable to victims of trafficking in human beings. Victims' protection programs are mainly implemented for war crimes cases, and organized crime including trafficking of human beings. Within State Investigation and Protection Agency-SIPA specially designed department for witness protection was established and it is working under strong support of international partners from law enforcement.

Protection of witnesses out of criminal procedure, irregardless of the type of crime in question is regulated by the Law on Witness Protection Program of Bosnia and Herzegovina. This legal instrument is also dedicated to the protection of victims of trafficking in human beings.

Any injured party in criminal procedure in Bosnia and Herzegovina can put **property claim** during the procedure. In case of witnessing injured party being examined as the witness shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings (Article 86.10 BiH CPC). A claim under property law may pertain to reimbursement of damage, recovery of items, or annulment of a particular legal transaction (Article 86.10 BiH CPC). There are rare cases when this provision was applied in practice. Generally, asset forfeiture laws and their provisions are still weak point of law enforcement and rule of law in BiH. Even in those cases when Court had brought decision to

confiscate property of traffickers such decisions haven't been enforced due to the lack of efficient capacities of domestic institutions in area of asset confiscation and its management.

Victims of trafficking as witnesses in criminal proceeding cannot be **prosecuted and punishment** since they enjoy rights of injured party. This also includes issue of **detention of the injured parties** which is not allowed. Victims of trafficking as any other subjects who have status of injured party are generally not excluded from prosecution for committed criminal offences unless they are granted with the immunity from General prosecutor. On other hand, the witness who has been granted immunity and is testifying as a result of the granted immunity shall not be prosecuted except in case of false testimony.

Victims of trafficking are recognized within the Law on Movement and **Stay of Aliens and Asylum**, which allows temporarily stay of foreigners in Bosnia and Herzegovina on the basis of humanitarian reasons. These categories of foreigners can be granted with the temporarily residence permit if they are victims of organized crime or trafficking, with the aim of providing protection and aid in the recovery and return to the country of origin, of habitual residence, or to the country that shall accept them (Article 54). Temporary residence on humanitarian grounds is issued for a minimum period of a month (Reflection period) and can last for a maximum of 6 months, but it can be extended on the basis of request from person who is granted with temporary residence. Procedure for long term residence is proscribed by the Law and it is not allowed to persons who were granted with temporary residence on humanitarian grounds to receive permanent stay in Bosnia and Herzegovina.

All identified potential victims have the right to assistance services and for those who are willing to cooperate with competent authorities during the investigation, detection and prosecution of criminal offenses of trafficking in human beings, a temporary residence permit shall be granted and prolonged as long as they cooperate. Assistance services available for all identified potential victims include: adequate and secure accommodation, food, clothing, hygienic supplies, complete medical care and hospitalization if needed, psychological support, legal assistance during the whole assistance process, including criminal and other proceeding, reintegration services (rehabilitation, repatriation for foreign victims and reintegration for domestic victims), access to the labor market (even for foreign victims under the conditions that apply), as well as access to education and training, including work occupational therapy, on the job training, professional education etc.. It is obvious that cooperation with the law enforcement authorities is quite connected with the enjoyment of such rights of trafficking victims. A child who has been granted temporary residence as a victim of trafficking has access to education. Foreigner victims of trafficking also have the right to work under the same conditions that apply to a stranger, and will receive basic education under the same conditions as BiH nationals. Under same Law, foreign victims of trafficking who do not possess a valid passport will be provided with assistance in obtaining the needed travel documentation to return to his/her country of origin or country who accepts them.

Guaranties of non-deportation are also provided in this Law. Foreign victims of trafficking can stay on the territory of Bosnia and Herzegovina even without a legal basis for this, if it is in the interest of criminal proceeding, and if this person collaborates with authorities in revealing crime or the perpetrator (Article 92).

Obligation to testify in criminal proceeding is general rule in Bosnia and Herzegovina (Articles 81-91 BiH CPC). Victims of trafficking are not recognized by the Law as special category which has the right to refuse testimony. In cases when they are afraid for their safety special laws on witness protection can be applied.

The system of **free legal aid** in Bosnia and Herzegovina is still in phase of establishment. In certain parts of the country free legal aid centers were established. They are focused to providing of free legal assistance regardless of nature of proceeding and legal status of users. This means that victims of trafficking are not in any favorable situation when it comes to the free legal assistance. Most of the legal assistance for victims of the trafficking is provided through activism of civil society organizations which are funded from international and partly from domestic institutions budgets. Quality of their services in the area of free legal assistance is matter of in depth analysis for certain number of cases. Key problems are connected with the lack of permanent sources of financing and sustainability of implemented projects in this area.

Status of the injured parties, including victims of trafficking is strictly proscribed by relevant legal acts. **Treatment of the victims** within criminal procedure is a very sensitive issue and all potential complaints are treated seriously. It is important to stress that complaints about the outcome of criminal procedure should be treated separately from the issue of victims status and behavior of the court, prosecution and police officials. It is matter of professional codes of conduct of police, prosecutors and court officials when they work with the trafficking victims. It is a general obligation to respect dignity, human rights and freedom of each crime victim including those who were trafficked. Repetition of the interviews are not prohibited by the Law, they just can be avoided if they are unnecessary. If a victim was granted with the status of the protected witness, no direct confrontation with the offender probably will be allowed. Questions about previous witness life, including sexual history are strongly prohibited by the Law. The second issue is matter of disciplinary proceedings which is treated by separate legal acts. For instance High Judicial and Prosecution Council are in charge for disciplinary complaints in regard to judges and prosecutors. The Office of Disciplinary Prosecutor conducts internal investigation for each of the complaints in case. For police institutions internal affairs units are in charge for investigation on non-professional and illegal activities of police officers.

In this moment **the biggest issue is the assurance of certain rights** for the victims of trafficking is connected with the free medical care, work, right on social assistance, housing and re-socialization in general. There are several laws, including those on state and especially entities level that have to be amended and improved in order to ensure comprehensive protection for the victims.

In criminal proceedings victims are still expecting prompt and efficient outcome, punishment of the perpetrators and adequate compensation for their suffering. These are chronically problems of judiciary system in Bosnia and Herzegovina which is still not providing adequate efficiency and rule of law for all citizens, not only victims of trafficking.

ANTI-TRAFFICKING MECHANISM IN BOSNIA AND HERZEGOVINA

Bosnia and Herzegovina has invested significant efforts even from 2001 to establish comprehensive system of anti-trafficking mechanism in country, so called National Referral Mechanism (NRM). This includes strategic planning of anti-trafficking actions, improvements/amendments/changes in legislation, training and capacity building of domestic institutions and creation of efficient coordination mechanism with the Department of Anti-trafficking and the State Coordinator as the key actor for coordination, policy and strategic activities in this field.

With respect to strategic planning, Bosnia and Herzegovina has adopted and implemented three strategic documents: Action Plan I (2001-2003), II (2005-2007), and III (Action Plan for Prevention of Trafficking in Human Beings in Bosnia and Herzegovina 2008-2012). Currently, the first Strategy on Anti-trafficking in BiH and related Action Plan for the period 2013-2015 have been developed and are in the process of implementation. This strategic document has been composed around four pillars (system of support, prevention, prosecution and partnership), and involves a large scale of institutions and subject from public and private sector that should deal with the problem of human trafficking.

BiH has established a composite institutional framework to design and co-ordinate anti-trafficking policy and action, which includes the State Coordinator for Anti-trafficking, the State inter-ministerial group, as well as the Strike Force and four (4) Regional Monitoring Teams (RMTs). State Coordinator acts on strategic level of implementation of anti-trafficking measures, Strike Force has dominantly operative role while investigating specific cases and RMTs are doing implementation and information exchange on anti-trafficking activities at the local level. Weak point of such structure is the State inter-ministerial group, which was designed to act on more political level.

National Coordinator for combating trafficking in human beings and illegal immigration and State Group

The post of National Coordinator for combating trafficking in human beings and illegal immigration was created by decision of 17 July 2003 of the Council of Ministers of Bosnia and Herzegovina (CoM).⁸ The National Coordinator is appointed by the Council of Ministers upon a proposal made by the State Minister of Security. The National Coordinator's role is to ensure co-ordination of the activities related to combating trafficking in human beings of relevant stakeholders, to take the lead on anti-trafficking activities and to establish contacts with competent ministries at the levels of the state, the entities, the Brcko District and the local authorities. State Coordinator for human trafficking is in charge for oversight and coordination of implementation of these strategic documents and has following is tasked:

⁸ Decision on the procedures and ways of co-ordination of the activities to suppress trafficking in human beings and illegal migration in Bosnia and Herzegovina and appointment of the function of National Coordinator for Bosnia and Herzegovina, adopted by the Council of Ministers on 17 July 2003

1. To prepare and suggest measures to the BiH Council of Ministers in relation to activities suppressing trafficking in human beings and illegal immigration.
 2. To prepare, follow up and implement NPA to suppress trafficking in human beings in BiH, as well as to propose any changes, amendments and measures to the CoM of BiH for its better implementation.
 3. Continues reporting each three months to the CoM of BiH on the situation in the area of trafficking in human beings and illegal immigration.
 4. Preparation of annual reports, information and financial plan for the implementation of planned activities.
 5. Harmonization of programs and projects aiming to implement the goals set by the NPA to suppress trafficking in human beings in BiH.
 6. To organize and hold on each third month national referral meetings with all domestic and international institutions involved in the activities on suppressing trafficking in human beings and illegal immigration in BiH.
- *The aforementioned decision of the Council of Ministers also provides that the competent ministries appoint officials responsible for co-ordination in order to assist the National Coordinator in fulfilling his role, thus creating the so-called "State Group" which is chaired by the National Coordinator. The State Ministry of Security (MoS) appoints two officials for this purpose, while other state ministries (Human Rights and Refugees, Justice, and Foreign Affairs) appoint one each. The State Prosecutor also appoints a representative who is responsible for monitoring THB cases. The State Group's meetings are convened by the National Coordinator. The State Group follows the implementation of the State Action Plan, each ministry and agency carrying out activities in their respective fields of competence.*

Strike Force for combating trafficking in human beings

The Strike Force for combating trafficking in human beings was set up in 2003 with a view to coordinating the application of criminal legislation in trafficking cases. The Strike Force is composed of representatives of law enforcement agencies, in particular the State Information and Protection Agency (SIPA), which is the official state police agency of Bosnia and Herzegovina, the Border Police, the tax agency, public prosecutors (two from the State Prosecutor's Office, two from the Prosecutor's Office of the Federation of Bosnia and Herzegovina, one from the Prosecutor's Office of the Republic of Srpska, and one from the Prosecutor's Office of Brcko District), as well as two representatives of the entity law enforcement agencies (Federation of Bosnia and Herzegovina, two of Republic of Srpska, and one of the Brcko District). As of 2010, a representative of IFS-EMMAUS has been invited to join the Strike Force as an associate member, needed on behalf of the NGO sector for better coordination and planning of operational activities related to anti-trafficking. This is predominantly initiated due to the fact that IFS-

EMMAUS manages one of the largest shelters in the world for the protection and assistance of victims of human trafficking, and has been entrusted for the assistance to both foreign and domestic victims by the two responsible Ministries.

The Strike Force functions as an operational team coordinated by the State Coordinator. When there are reports of suspected trafficking in human beings, the Strike Force sets up a mixed team comprising the prosecutor and law enforcement officers so as to optimize actions and coordination. Within the framework of the Strike Force, police officers and prosecutors discuss all THB cases and decide who should take the lead in the investigation and prosecution in order to avoid any conflicts of competence.

Regional Monitoring Teams

Pursuant to the operational plan for the implementation of the State Action Plan for 2008-2012, four Regional Monitoring Teams (RMTs) were set up in Banja Luka, Mostar, Tuzla and Sarajevo, with a view to improving co-ordination in the implementation of the measures contained in the State Action Plan at local level. The aim of the RMTs is to formalize links between stakeholders at local level in order to optimize the exchange of information and provide better protection to victims. RMTs include representatives of the central and local authorities, the state and local prosecutor's offices, law enforcement agencies (SIPA, Border Police, entity Ministries of Internal Affairs and Brcko District police), as well as Service for Foreigners Affairs, NGOs, health and social service representatives, as well as educational institutions. Each RMT is coordinated by the representative of the BiH Ministry of Security in co-operation with a representative of the regional SIPA office. The RMTs meet on a by-monthly basis. The heads of the four RMTs should meet at least twice a year, but in practice such meetings are more frequent, as all heads are SIPA officials and have regular contacts.

New Strategy and Action plan on combating human trafficking (2013-2015) in Bosnia and Herzegovina has been recently adopted and initial activities on its implementation have been conducted. In this moment there are not enough reliable information's on implementation of these strategic documents. According to the content of the strategy and action plan, both of the documents are founded on recent international standards and instruments, especially on CoE *Convention* which has been ratified by relevant state institutions. Composition of the strategy and action plan, number and nature of the concrete strategic programs and actions reveal that Bosnia and Herzegovina has very comprehensive, precise and concrete strategic framework in area of combating of trafficking of human beings.

There are different **sources of financing** of anti-trafficking activities in Bosnia and Herzegovina. Different international organizations are providing funding for the implementation of various types of projects and activities in order to provide support to anti-trafficking efforts. Most of those supportive funds are being implemented through non-governmental organizations, which are operating in this field. Shelter assistance services are funded partially by the state (responsible Ministries: BiH Ministry of Security for foreign victims and BiH Ministry of Human Rights and Refugees for BiH national victims), partially through international donors, and partially from NGO funds (only some NGOs). There is a continuous lack of funding for anti-trafficking activities in the country over the years. Moreover, rules and

procedures for victim assistance were developed and enforced in order to ensure minimal standards of assistance. However, the state provides very limited funding for the maintenance and running of safe houses/shelters for victims of trafficking that these services have become unsustainable and often transferred to the NGOs themselves to ensure the needed funding.

ROLE OF CIVIL SOCIETY

More recently, Robert D. Putnam has argued that even non-political organizations in civil society are vital for democracy. This is because they build social capital, trust and shared values, which are transferred into the political sphere and help to hold society together, facilitating an understanding of the interconnectedness of society and interests within it. Civil society actors should watch how state officials use their powers. They should raise public concern about any abuse of power. They should lobby for access to information, including freedom of information laws, and rules and institutions to control corruption.

NGOs, in Bosnia and Herzegovina, similar to other actors in the anti-trafficking field, are to a large extent dependent on the environment they work in. There are a number of NGOs in Bosnia and Herzegovina working to combat human trafficking. Among them are: International Forum of Solidarity-EMMAUS (IFS-EMMAUS), “Medica” Zenica, “Buducnost” Modrica, “Zena BiH” Mostar, “Novi put” Mostar, Association XY Sarajevo, “Nova generacija” Banja Luka, “Lara” Bijeljina, “Otaharin” Bijeljina, “Novi pocetak” Derventa, Foundation of Local Democracy Sarajevo, Criminal Policy Research Center Sarajevo, “Zemlja djece” Tuzla. Numerous external factors contribute to human trafficking, which NGOs cannot change or affect, including changes in the social, economical and political situation. Moreover others actors – governments and donors might set the rules and specific criteria for their support or funding on the role of NGOs, on which actions to take or on how to run a shelter. They might not see the need for, or not recognize, the role of NGOs. NGOs also lack funding – besides lacking donors or funding opportunities there is competition amongst NGOs for funding. Most of aforementioned NGOs are not sustainable in terms of anti-trafficking actions and assistance provided to victims.

Trafficking is a profitable crime, where a key investment is made into building a functional infrastructure to facilitate the success of a criminal enterprise, frequently with the help of corrupt public officials. On the other hand, in the past ten years large amounts of money have been invested in anti-trafficking interventions. Civil society organizations have been the major recipients of such funds in the area of assistance to victims of trafficking. Within the anti trafficking field, NGOs in BiH should play the role others do not play. Cooperation among all stakeholders is essential. NGOs need cooperation with all actors in the anti-trafficking field and can offer their support to other actors. NGOs can support identification of trafficked persons and adequate support, including legal, psycho-social and basis support & (Safe) referral and (re)integration of trafficked persons. They can also help trafficked persons in making a decision on cooperation with the authorities. Due to their direct social support services and direct contact with trafficked persons, NGOs can win the confidence of their clients, which often leads to the willingness to testify and better witnesses in court.

While, like in the case of the public officials, the vast majority of non-governmental organizations would be genuine, honest and achieve significant results in a cost-effective manner, there have been cases of bogus “NGOs” that are set up purely for gaining funding opportunities in the area of anti-trafficking. A series of questions, which relate to maximum activity of civil society organizations, are necessary to be solved. Specifically, a number of the issues are pertinent to reintegration and rehabilitation of trafficking victims. It is necessary to establish a system of mandatory **compensation** to victim within the proceedings before the court, where the payment is made upon the judgment is passed, instead of the practice that the victim be referred to civil litigation to claim the compensation. Nowadays, thanks to the impressive activities of the civil society organizations in the region, it is possible to recommend that the standard operating procedures for reintegration and inclusion in all countries of the Western Balkans be upgraded and standardized by application of the best models. At this stage, we can also talk about activities on establishing the **Fund for the victims**, which would be utilized for victims’ compensation purposes but also as the resource of means needed for their full reintegration, while the financial means for the Fund would be provided from the assets seized as proceeds of crime.

Very often, it is emphasized that Bosnia and Herzegovina has achieved significant results in combating human trafficking, which made it a recognizable entity in the region in regards to this issue. Nevertheless, it should be noted that the efforts of local institutions exerted in achieving these results were, to a large extent, supported by numerous international organizations present in Bosnia and Herzegovina for many years. It is difficult to summarize in one place the scope, the intensity of the action, and the support of each of these organizations.

The **independency of NGOs** in Bosnia and Herzegovina is vital and should be respected. Bosnian NGOs should be able to raise a critical voice – regardless their funding - and be supported to implement activities based on the grass roots experience (field work) and not dictated from above. NGO should not just follow instructions of donors and governments.

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PREVENTION

In the past, prevention and awareness raising activities were conducted mostly by international organization (including funding) with the assistance of a few NGOs active in such activities. Prevention and awareness raising activities represent key factors in the efforts to decrease the scope and intensity of THB in Bosnia and Herzegovina. However, during the period 2004 – 2012, very sporadic and uncoordinated efforts have been excerpted to implement small scale street activities on awareness raising, not focusing on identified gaps and needs of the general public and specific target groups. In 2012, new projects were set up on comprehensive awareness raising and prevention of new trafficking modes in BiH, implemented by a group of NGOs active in this field and the BiH Ministry of Security.

In 2005, the Council of Ministers adopted a State Action Plan for 2008-2012. This plan was the main governmental strategy for combating trafficking and contained a comprehensive range of activities and commitments to be undertaken by the authorities. This plan further developed goals of the previous plans and establishes responsible institutions, identifies partners from governmental and non-

governmental sectors, as well as partner international organizations, sets timeframes, and indicates recognized sources of finance. As part of planning, the Office of the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration was established in 2003. The Coordinator monitors and coordinates anti-trafficking activities. State Action Plan to Combat Trafficking in Bosnia and Herzegovina for the period 2008-2012 (in further text referred to as to the SAP), within this strategic chapter, contained several specific objectives and measures for their fulfillment. Thematically, those related to protection of particularly vulnerable groups, supporting similar strategic efforts for combating domestic violence and violence against children, protection of the Roma minority, and enhancing overall socio-economic situation in the country, and awareness rising on the THB issue of the professionals and general public.

The analyses of the implementation of the aforementioned plan, which was undertaken with the aim to identify gaps and ways for improvement, as well as devise a Strategy on anti-trafficking for BiH, revealed that the measures planned have been unequally implemented, which can be seen from in-depth reviews on implementation of the individual measures:

The first strategic objective, relating to prevention of human trafficking in Bosnia and Herzegovina, has been anticipated to, by means of its fulfillment, reduce the risks of trafficking among vulnerable categories. In order to fully achieve this goal it has been planned that, through the research, we gather certain data on the etiology of this phenomenon and what are the factors that influence the increased risk of human trafficking in Bosnia and Herzegovina. Unfortunately, the anticipated researches has not been conducted in the previous period, thus the design of specific prevention programmes, that match the state of play on the ground, remains to be resting on unconfirmed conclusions on causes of the issue.

The next strategic measure within this objective relates to children exposed to the risk of begging on the street. In that line the SAP provides for multidisciplinary and multi-sector approach in supporting children working on streets and including them in formal system of education, so as to reduce potentials that these children who, due to having been deprived from attending classes, are under special risk would become the THB victims, and to ensure their safer future. Children begging on streets at majority of Bosnia and Herzegovina towns are burning socio-pathological issue demanding for separate strategic treatment. This issue has been somewhat tackled within the scope of combating the THB and child-begging suppression actions, primarily through establishing certain capacities, such as daily centers for children working on streets.

However, the main issue of concern with such initiatives is the fact that those are primarily partial efforts, of *ad hoc* nature, implemented unilaterally and unevenly, and their sustainability is dependent on a good will and capacity of international donors to financially support them. Specifically, in BiH there are five-day care centers for the children who are believed to live and work on the streets and the children who are at risk of becoming so, that are operative in Tuzla, Sarajevo, Banja Luka, Mostar and Zenica. Based on the positive experiences from Tuzla Day Care Centre that provides support to children who live and work on the street and who are potential victims of trafficking, this model has been recognized by international donors as efficient in comparison to the repressive model. Consequently,

thanks to interdisciplinary approach and cooperation, the model nowadays enables children - as beneficiaries – to receive the much needed assistance and therewith exercise their human rights. Some time afterwards, based in this model, a day care centre for children opened in Sarajevo, and, in only three years, provided some form of support for over 350 children.

In 2010 The Institution of Ombudsman for Human Rights in Bosnia and Herzegovina issued a special report on child begging in Bosnia and Herzegovina, which, among other things, recognizes approach to supporting this category of children through the daycare centre model, recommends that the day centers service become one of services of social protection system, and that the model needs to be replicated in other areas, primarily in Mostar, Zenica, Banja Luka, Prijedor, Gradiska etc

Second strategic objective related to prevention of the THB builds upon initiative to support and facilitate implementation of: Strategy for Combating Domestic Violence, Gender Action Plan, Strategy to Combat Violence Against Children, Strategy for Enhancing Position of Roma People, Strategy for Social and Economic Development, and Programme for Return of Refugees and The Displaced Persons, as well as other activities that directly influence the prevention of trafficking in humans and socio-economic empowerment of the vulnerable groups in society.

It is the objective, which is rather abstractly set and the ponder ability of its implementation success is almost impossible. The only way to evaluate the success of this strategic goal's implementation is to briefly point out the essence of each of the five measures that had been planned, and to estimate the scope of the implementation of each respectively.

The first from this group relates to organizing coordination meetings aimed to support harmonization of multiparty activities and the bodies responsible for implementation of content of the aforementioned documents. According to the information available, it is evident that such meetings are not organized on a regular base but exclusively when certain multiparty actions are to be launched and implemented. The next measure is thematically focused on completion of the activities on integrating topic of combating the THB in curriculums of elementary and high schools, thus making it an integral, systematic, and continuous element of the formal education system.

As mentioned earlier, these activities have been finalized in six cantons and in Brcko District, in cooperation with the international partners.

The next measure anticipated that the Manual for students on prevention of the THB be designed and used in schools, as well as in work with children not attending school. Data available shows that the measure was the joint project of the MoS' Department for Combating Trafficking and the CRS, successfully implemented within the SUSTAIN project.

Last two measures within this strategic objective are mainly focused on Roma population as a target group under a significant risk of becoming the THB victims. These measures relates to developing programmes to provide education on prevention of the THB for children who are not in schools, and in communities - like Roma community, that are particularly in risk. It also relates to measures for registration of all unregistered person in the registries, with special focus on registration of children in to

Registry of Births. Some activities on registration of Roma children in Registry of Births are already in progress within the Ministry for Refugees and Displaced Persons and their international partners' joint project, which maintain detailed records on number of children registered.

In regards to educational programmes for children not attending school and for Roma children, which would provide for training on the THB issue, it is not yet possible to determine and evaluate the exact scope of this strategic measure's implementation.

The last one from the group of prevention objectives in this module of the SAP is focused on the decrease of the demand for sexual services provided by trafficking victims. It is a rather complex measure that demands for significant engagement in the field of awareness rising on negative consequences of the THB on the society. So far, besides the incriminating this act by means of criminal Code of Bosnia and Herzegovina, there was no awareness raising campaigns implemented in support to the implementation of this strategic measure. There are no official data on prosecuted cases for use of services of human trafficking victims. At the end, we can make some kind of *Recommendations for improvements of preventive measures related to THB in Bosnia and Herzegovina*:

- Comprehensive use of capacities in research institutions with the aim of conducting the research and identifying the real factors that support and facilitate the THB in Bosnia and Herzegovina, and identifying recommendations for the actions of all the actors involved in combating human trafficking;
- To programme and implement specific measures which would approach issues of child begging and begging of other vulnerable categories from two different standing points; a) suppressing begging as a form of crime (by means of detection and prosecution of the organizers and their accomplices), and b) suppressing begging by means of provision of support and protection to children exploited in this purpose (establishing new and maintaining the existing Daily Centers for children identified in begging);
- To adopt minimum standards on work of Daily Centers, and to develop minimum standards on outreach work with the beneficiaries;
- To draft obligatory standard on work of safe houses and provision of assistance to the THB victims;
- To work continuously on education and awareness rising for general population, especially children and youth, vulnerable and marginalized groups, and groups under a particular risk (such as Roma people, children not attending school, children in dysfunctional families, children in domestic violence affected families, children in poverty stricken families) on forms and negative consequences of the THB;
- To establish better coordination mechanisms among larger number of governmental institutions and organizations of civil society with purpose to adopt annual calendar on participation in public campaigns tackling the THB issue, and to create recognizable contents (such as TV or radio

broadcastings, and other media content) which would be used for awareness rising, and the promotion of human rights within the scope of these campaigns;

- To create specific and targeted preventive programmes to implement awareness raising campaigns for users of sexual services that would reveal the background of the packages presented as voluntary provision of sexual services and which would put the light on the background processes behind these offers, all in order to enhance so called consumers' awareness;
- To work on design and implementation of specific public campaigns to point out to the forms, connections, and negative impact of migrations and the THB for purposes of labor exploitation;
- To work on establishing crises centers and shelter host cells that compensate for the inability of day care centers to provide temporary accommodation and protection for children who are determined or suspected to be the THB victims, and children who do not have a place of residence. Day centers are institutions of daily-care type, thus unable to meet the requirements for providing children with lodging.

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PROSECUTION

Prosecution in numbers

Source of information:	2007	2008	2009	2010	2011	2012
State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina; High Judicial and Prosecutor Council						
No. of prosecutions	8	21	10	16	6	15
No. of final judgments						15
No. of non-final judgments						
No. of suspected perpetrators reported to the Prosecutor's Office/State Attorney	65	53			38	19
No. of suspected perpetrators charged by the					9	19

Prosecutor's Office/State Attorney						
No. of convictions	6	14	20	19	4	11
No. of prison sentences					4	5

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- *Even in preliminary view it is evident that system of criminal justice statistics in Bosnia and Herzegovina didn't provide enough reliable data on prosecution of all kind of criminal offences including those related to human trafficking. The main obstacle was issue of very complex organization of judiciary system in the country which was unable to collect, analyze and public unique crime statistics for all prosecutor offices, courts, and law enforcement agencies. This is general observation that indicate how difficult was to have reliable data source in order to answer to all questions in this part of the report. In 2012 it was possible to have comprehensive and precise data on prosecution of trafficking in human beings in the country. This is result of functioning of modern Court Management System (CMS) which allows very reliable data on registered crime including human trafficking. That is main reason why is almost impossible to have comparative analysis for suggested period since most of the important data and facts are missing.*
- *For those data which are available for number of prosecutions it is visible that this number was very oscillating and average number of the prosecutions was 12,6 per year. Reasons for such instable numbers in comparative review are not so clear, they can be caused by the different methodology in crime data collection before CMS started, or some others.*
- *With respect to number of verdicts for analyzed period, it also evident that these figures are also instable, and very similar to those data relating to number of prosecutions. In an absolute numbers it is 76 prosecutions toward 74 verdicts for analyzed period, with average number of 12.3 of verdicts per year. It is not possible to analyze specific relations and content of the each verdict and prosecution either, due to the data missing reasons.*

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Prosecution in practice

- *It is general perception of the public about very weak criminal justice response to crime, and such observations are similar toward penal policy. With respect to concrete sanctions for some of the most frequent crimes it is general practice of courts to impose such sanctions which are close to their minimum in relevant criminal codes. This is also a case for human trafficking penal policy which is quite sawn as commensurate in relation to proscribed sanctions for such serious crime such as human trafficking. Traffickers do not receive imprisonment sanctions in all cases, plea bargaining is sometimes applied and effective confiscation of illegally obtained property is not so effectely used. This is summary of penal policy toward trafficking of human beings in the country.*

- *Most of the problems connected with the effective prosecution of human trafficking are connected with the diametrical different interpretations of human trafficking criminal offences in criminal codes which lead to differences in practical actions of prosecutors at all levels of criminal justice system. It sometimes results in initiation of the criminal investigation by state prosecutor as human trafficking crime on the basis of the state Criminal Code, and this case then would be transferred to entity or cantonal prosecutors who will continue with case under charges for forcing to prostitution. There are not clear criteria for taking or leaving competences between different prosecutor offices which leads to certain level of legal insecurity and discrimination toward potential victims. Consequences for victims could be very serious, especially since prosecutors don't have same standards and level of expertise in prosecution of human trafficking cases which leads to the certain level of discrimination for victims.*
- *Forced labor is still unknown form of human trafficking for domestic judicially system, especially in cases of child begging on the streets, so that cases are being often prosecuted as minor offences with children as offenders.*
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Overview of recommendations concerning prosecution from international reports

GRETA

- identify gaps in the investigation procedure and the presentation of cases in court, inter alia, with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions;
- take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to avoid undue delays in criminal proceedings;
- strengthen their efforts to proactively investigate THB offences, with a special emphasis on cases involving trafficking for the purpose of labor exploitation and trafficking of children.
- further, GRETA considers that the knowledge and awareness of judges, prosecutors, investigators and lawyers about THB needs to be improved, including as regards specific elements of the offence, the rights of victims and access to compensation. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to effectively assist and protect victims of trafficking, and to ensure traffickers receive adequate convictions. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

TIP

- Vigorously investigate sex and labor trafficking cases and aggressively prosecute and punish trafficking offenders;
 - continue efforts to harmonize state and sub-state laws to explicitly criminalize all forms of trafficking;
 - vigorously investigate and prosecute trafficking-related complicity;
 - ensure identified victims, including Bosnian children older than 14 and children subjected to forced begging, are not punished as a direct result of being trafficked;
 - empower and institutionalize support for monitoring teams, as well as other front-line responders in Bosnia, to increase detection and referral of trafficking victims, including victims of forced begging and adult men;
 - continue steps to intensify partnerships with NGOs and formalize their role in the Anti-Trafficking Strike Force;
 - ensure adequate funding for NGOs to facilitate their ability to provide critical care and assistance, including specialized legal assistance, for domestic and foreign victims;
 - ensure potential trafficking victims arrested for prostitution are identified and referred for care;
 - carry out anti-trafficking training to sensitize law enforcement, the judiciary, and social workers to victims of this serious human rights abuse; and
 - develop national campaigns to educate Bosnian officials and the public about all forms of trafficking, and to reduce demand for commercial sex.
- *As it was stressed in national Strategy and Action plan in area of prosecution it is also possible to improve current situation. Basic recommendations will be:*
- To continuously enhance utilization of special investigative actions for detection, clarifying, and proving all forms of trafficking in Bosnia and Herzegovina, and to work on an adequate selection, training, and provision of material-technical equipment and support to the professionals who implement these actions in practice;
 - To harmonize practices and experiences of the institutions involved in combating human trafficking with the aim to enhance their capacities for recognition of this crime;
 - To continuously enhance and promote all forms of international police cooperation in the region in order to enhance exchange of information on trafficking, and to conducting joint operations and other forms of cooperation;
 - To constantly locate new sources of information about the modus operandi in trafficking, with the aim to monitor on the dislocation of these phenomena;

- To improve the capacities and the procedures of the inspections (inspection of labor, catering, markets, tourism, forestry, construction, transport, agriculture, etc) for the appropriate treatment of human trafficking for purposes of labor exploitation in the broader context of illegal employment and the demand for cheap labor;
- To Work on the identification of the most common forms of corruption related to the trafficking in order to disburden the practice of criminal prosecution of traffickers from the weight of corruption of individual officials who allow trafficking;
- To continuously promote the practice of confiscation of proceeds acquired by trafficking, and work at all levels of the government on establishing of the capacities necessary to manage seized assets;
- To qualitatively upgrade programmes for the THB victim protection by introducing specific contents such as psychological support, and to provide necessary material and technical resources and professional technical training of officials who are directly involved in the protection of this category of witnesses.

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Compensation

In Bosnia and Herzegovina, pursuant to Article 112 of the state Criminal Code, victims of human trafficking may claim compensation from the offenders in criminal proceedings. However, such claims are discouraged in practice, as their examination would imply establishing the damage sustained to evaluate compensation, which in turn would delay the delivery of the judgment on the human trafficking case. As a consequence, victims are reportedly advised to claim compensation through civil proceedings. However, in practice, very few victims do so because of the length of the civil proceedings and the fact that the burden of proving the damages sustained lies on the victim. According to representatives of the judiciary, the current legislation does not provide sufficient possibilities to decide on compensation of victims by the offenders in criminal proceedings. The main obstacle for such situation is lack of efficient asset forfeiture legislation in general, asset management capacities of state institutions and low level of awareness about importance of criminal asset confiscation for more efficient prosecution of organized crime including human trafficking.

The relevant provisions in Criminal Code of Bosnia and Herzegovina in regard to financial compensation of material and/or immaterial damages are following:

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- *Protection of Injured Party*

- *Article 112*

- *(1) If criminal procedure has resulted in awarding property claims to the injured party, the court shall order the confiscation of material gain if it exceeds the awarded property claim of the injured party.*
- *(2) The injured party who has been directed to initiate civil litigation in the course of criminal proceedings regarding his property claim, may demand that he be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day when the decision by which he has been directed to litigate took effect and if he demands to be compensated from the confiscated value within three months from the day when his claim was legally established.*
- *(3) An injured party who did not report a property claim during the course of a criminal proceedings may demand compensation from the confiscated value, if he has begun litigating his claims within three months from the day when he found out about the judgment which confiscates a material gain, but no longer than within two years from the day when the decision on the confiscation of material gain took effect, or if within three months from the day when the decision by which his claim was established he demands compensation from the confiscated value.*
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It is important to stress GRETA recommendations with respect to the issue of victim compensation:

- review the existing legislation on compensation with a view to ensuring that victims of human trafficking have an effective possibility to obtain compensation from the perpetrators, including by providing effective access to legal aid and information in this respect;
- set up a state compensation scheme, such as a compensation fund, accessible to victims of trafficking in order to resolve the current difficulties for them to receive compensation from the perpetrators.

Material and/or nonmaterial damages can be paid for (medical, physical, psychological or psychiatric treatment required by the victim; physical and occupational therapy or rehabilitation required by the victim; transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence; lost income and due wages; legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process; non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; any other costs or losses incurred by the victim as a direct result of the crime).

Court administration is responsible for the execution.

- *Compensation through civil proceeding is prevalent way of compensating the victims. In criminal procedure, injured party has right to put a claim under property law, which may pertain to reimbursement of damage, recovery of items, or annulment of a particular legal transaction (Article 193.2 BiH CPC).*

- *Direct compensation of the victims is almost impossible due to the legal solutions in domestic law. Most of the victims were directed to civil proceedings to get their compensation. There are no available and reliable data on real number of the compensated victims. There are not available data on specific cases where victims were effectively compensated in criminal or civil proceedings. There are no available and reliable data on real number of the compensated victims. There are no available and reliable data on real number of the compensated victims. There is no State Fund for financial compensation of victims. It was idea to establish State Fund for these purposes but it was never implemented in the practice.*
- *The main obstacles for efficient compensation of the trafficked victims are based in domestic law which doesn't make any distinction between different kinds of crime victims. In relevant codes, especially Criminal procedure Codes in all four jurisdictions. "Injured party" is general term used n domestic law and issue of material and non-material compensation of these categories traditionally belongs to civil procedure. This means that in future period, necessary amendments to some laws should be made in order to allow direct compensation of the victims of human trafficking.*
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ASSISTANCE AND PROTECTION

Statistics

Data from the authority in charge of identification		2007	2008	2009	2010	2011	2012
Total no. of identified victims		41	33	69	25	35	39
Domestic citizens		30	31	58	21	29	27
Foreign citizens	Legally residing	11	2	11	4	5	12
	Undocumented					1	
Adults		23	5	46	5	16	20
Minors		18	28	23	20	19	19
Sex	Female			64	21	28	36
	Male			5	4	7	3

Type of exploitation	Sexual				8	18	23
	Labor/in other industries						
	Forced begging				17	11	13
	Forced marriage					5	3
	Coercion to petty crime						
	Illegal adoption						
	Other					1	

- *Relevant data on human trafficking in Bosnia and Herzegovina could be found only in Annual reports of State coordinator for Anti-trafficking and Illegal Migration. This report is a summary of all delivered data from police, prosecutors and NGO subsets in entity and local levels of administration. Methodology of data collection and analysis is still improving and at this moment it is not possible to provide comprehensive data set as it is requested in this part of the query. Not all segments of the requested data are available in Annual reports and this is one of the priority areas for further actions in order to have reliable, comprehensive and accurate data on human trafficking in the country.*

In the national legislation, the establishment of shelters for victims of trafficking is provided for in the Residence Act in Article 67: Movement of Foreigners and Asylum and Article 15: Regulations on the Protection of Foreign Victims of Trafficking.

The rights and obligations of NGOs involved in the provision of accommodation and care for victims of trafficking in shelters is governed by a Protocol signed in cooperation with the Ministry of Security of BiH (for foreign victims of trafficking) and the Ministry for Human Rights and Refugees of Bosnia and Herzegovina (for BiH national victims). Relevant ministries are responsible for defining the standards and quality of services that NGOs must provide to the victims during their stay in their shelters and consult with NGOs on this basis.

Although the current shelter services that NGOs provide to victims vary in capacity, target audience, quality and range of activities, there is a basic set of services that each of the signatory NGOs, as authorized organizations, must provide each potential victim of trafficking receiving care at their shelter:

- safe accommodation and protection;
- daily meals in accordance with the prescribed nutritional value;
- basic clothing, shoes and toiletries needed during residence;

- general and specialized medical services, including possible hospitalization;
- psycho-social support and counseling;
- legal counseling/legal aid;
- reintegration services (rehabilitation, repatriation and re-socialization), where rehabilitation involves the measures taken toward recovery and inclusion in everyday life, repatriation implies the return of a foreign trafficking victim to his/her country of origin, or the return of a BiH national from the country he/she has been trafficked to, to BiH as his/her country of origin, and re-socialization that involves the return of a victim to his/her community with the capacity to live a socially balanced life and successfully engage in social activities.

NGOs with the necessary capacity and trained staff can provide additional services to trafficking victims housed in their shelters, including psychiatric help, drug rehabilitation and various types of services related to the socialization of victims. The availability of these services is conditional upon each NGO's capacities and means.

In an effort to ensure that all government institutions and non-governmental and international organizations operate more efficiently and with mutual cooperation in matters related to human trafficking, procedures have been established to deal with victims of human trafficking in Bosnia and Herzegovina. These procedures set out ways of achieving mutual cooperation and coordination of activities between the relevant institutions in Bosnia and Herzegovina and NGOs when dealing with victims of trafficking.

Costs of medical, psychological or psychiatric treatment required by the victim can only be calculated approximately, for overview purpose, as they depend on the specific needs of individual victims: according to IFS-EMMAUS data, the cost for general (basic) treatment per victim amount to at least 400.00 BAM (approx. 200 EUR) per victim/per month; these costs do not include hospitalization, which can only be calculated on a needs basis and differs from one individual to another. In addition, costs of psychological support, or psychiatric treatment vary as well, but the basic psychological support provided to each victim (individual and group therapy) amounts up to 250.00 – 300.00 EUR; the necessary transportation costs of a victim from and to the shelter during the provision of rehabilitation and reintegration services are estimated to 500.00 BAM (250.00 EUR) per victim, unless these include regular school education, whereby the costs are increased. Education is provided both within the shelter and in regular schools, both primary and secondary, depending on the age of the child victim. In case of indoor education, a mentor is provided. Additional/professional education is also provided to adult victims, through courses, practical training and capacity building, on-the-job training, language and PC courses, and related education that raise the capabilities and skills of each victim on the labour market following the re-socialization process.

Existing systems of social protection partially meet the required standards for the provision of specific social support and protection for trafficked citizens of Bosnia and Herzegovina and foreigners, which

enables their de-traumatization and socialization. Programs to assist victims must be adapted in order to provide the long-term reintegration services necessary for victims.

Currently, the majority of organizations offering help to victims of trafficking require financial support from the state, foreign or private donors – none are financially independent. It is necessary to provide additional support to other government agencies that could fund the provision of these services through existing organizations or assume the provision of certain forms of assistance to victims of trafficking if the need arises.

- *Due to the decentralization of the health care system, the state will be forced to organize a model for providing care at all levels, from municipal to state, in order to create a mechanism for financing the provision of health services to victims of trafficking. Medical services for victims of trafficking in Bosnia and Herzegovina - both foreign as well as domestic - are currently provided by relevant institution as well as donors. This approach is not sustainable. It is necessary to develop a system of providing free medical care to victims of trafficking and their children, both foreign and national. Also proposed is the formation of a special state fund for reintegration programs for victims of trafficking, given that the long-term provision of financial resources for the implementation of the reintegration program remains the biggest problem in the protection of victims of trafficking and that, depending on the area they come from, victims of trafficking have the same opportunity to receive assistance and protection.*

Human trafficking is often a form of organized crime and a flagrant violation of human rights and freedoms that almost all countries are faced with, especially those undergoing economic and political transition, which therefore includes Bosnia and Herzegovina too. High unemployment, poverty, and lack of opportunities and choices are the reasons why a certain number of people become victims of trafficking. Looking for a better life, victims of trafficking get conjured by stories on financial independence, jobs which are paid better and better living conditions, which traffickers skillfully deliver. Deceived, people take in to such offers, thus become victims of exploitation that usually comes together with the harsh physical and mental abuse.

Most common forms of trafficking in humans registered in Bosnia and Herzegovina in last few years are labor exploitation, especially cases of exploiting children in begging, and exploitation of persons in sexual industry, which is usually an exploitation of persons in prostitution and provision of sexual services. Comparison with records from previous years shows that there is a trend of continuing **increase in number of domestic victims being internally trafficked**, along with stagnating number of foreign THB victims identified.

During the 2012th year and beyond, as in previous years, as the most common purposes for which the bonds people in Bosnia and Herzegovina are: labor exploitation, especially of children for begging and exploitation of another person in prostitution or prostitution and selling of minors for the purpose of concluding forced or arranged marriage. It is also evident trend of a slight increase in the number of identified domestic trafficking victims, as well as the stagnation in the number of foreign victims identified in relation to the previous year.

With respect to labor exploitation, a new identified form is construction industries abroad, whereby mostly BiH nationals, men, are trafficked for purposes of forced labour on construction sites.

The identification of victims of trafficking who are nationals of Bosnia and Herzegovina is regulated by the Rules on the protection of victims and victims witnesses nationals of Bosnia and Herzegovina.⁹ Pursuant to Article 4 of these Rules, any institution, NGO, physical or legal person who suspects that a person might be a victim of trafficking (potential victims of trafficking) should immediately inform the State Information and Protection Agency (SIPA) and the State Prosecutor's Office. The information can also be submitted to the Prosecutor's Offices or police departments of the entities or the Brcko District. Further, Article 4 of the Rules indicates that victims of THB can self-report themselves (self-identification through performing of interview with possible victim by respective professional who shall – based upon the story of the individual – perform a possible identification). Pursuant to Article 7 of the above-mentioned Rules, the procedure for the identification of victims who are nationals of Bosnia and Herzegovina is based on information gathered by the competent authorities (police and prosecution) and a “voluntary interview” with the possible victim of trafficking. In the case of children, the interview should take place in the presence of a parent, legal guardian or representative of a social welfare centre protecting the interests of the child.

Formal identification of a victim of THB in the sense of the criminal definition is performed by the State Prosecutor's Office, SIPA or courts, when there are sufficient elements to initiate a criminal case for THB. Nonetheless, possible victims identified by the police or other actors are entitled to receive assistance even if no criminal proceedings are initiated.

The identification of foreign national victims of THB is regulated by the Rulebook on protection of alien victims of trafficking in persons.¹⁰ The main authority performing the identification of such victims is the State Service for Foreigners Affairs and the State Ministry of Security. Article 8(2) of the Rulebook lays down indicators for the identification. A responsible officer of the Service for Foreigners Affairs conducts an interview with the possible victim to verify the presence of indicators. According to the authorities, these officers have received special training on interviewing victims of THB. Should the suspicion that the person concerned may be a victim of THB prevail, he/she will be provided with accommodation in a shelter and entitled to assistance measures.

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Relevant recommendations from international reports (TIP, GRETA)

- *TIP 2012*

Recommendations for Bosnia and Herzegovina: Vigorously investigate sex and labor trafficking cases and aggressively prosecute and punish trafficking offenders; continue efforts to harmonize state and

⁹ The Rules on the protection of victims and witnesses of THB nationals of Bosnia and Herzegovina, adopted by the Council of Ministers of Bosnia and Herzegovina in 2007.

¹⁰ The Rulebook on protection of alien victims of THB, approved by a decree of the State Security Minister in 2004

sub-state laws to explicitly criminalize all forms of trafficking; vigorously investigate and prosecute trafficking-related complicity; ensure identified victims, including Bosnian children older than 14 and children subjected to forced begging, are not punished as a direct result of being trafficked; empower and institutionalize support for monitoring teams, as well as other front-line responders in Bosnia, to increase detection and referral of trafficking victims, including victims of forced begging and adult men; continue steps to intensify partnerships with NGOs and formalize their role in the Anti-Trafficking Strike Force; ensure adequate funding for NGOs to facilitate their ability to provide critical care and assistance, including specialized legal assistance, for domestic and foreign victims; ensure potential trafficking victims arrested for prostitution are identified and referred for care; carry out anti-trafficking training to sensitize law enforcement, the judiciary, and social workers to victims of this serious human rights abuse; and develop national campaigns to educate Bosnian officials and the public about all forms of trafficking, and to reduce demand for commercial sex.

- *GRETA 2013 recommendations relevant to assistance and protection of victims of trafficking are following:*

Identification of victims of trafficking in human beings

16. GRETA urges the authorities of Bosnia and Herzegovina to:

- disconnect the formal identification of victims of human trafficking from the initiation of criminal proceedings;
- establish a multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all frontline staff who may come into contact with victims of trafficking;
- provide specialized training on the identification of victims of THB to all frontline staff who may come into contact with possible victims (including law enforcement officials, staff of social welfare centers, staff of child drop-in centers, labor inspectors, medical staff and NGOs);
- ensure that law enforcement officials, social workers, labor inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify possible victims of trafficking, regardless of the possibility of initiating criminal cases;
- avoid unnecessary repetition of interviews with victims of trafficking;
- improve the identification of child victims of trafficking, subjected to forced begging and other forms of exploitation targeting children.

Assistance measures

17. GRETA urges the responsible authorities in Bosnia and Herzegovina to take further measures to provide victims and possible victims of THB with adequate assistance and protection, and in particular to:

- ensure that all assistance measures provided for in law are guaranteed in practice; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- ensure that social welfare centers and other public bodies involved in the provision of assistance to victims have the necessary human and financial resources to ensure their unhindered and effective functioning;
- facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing vocational training and access to the labor market for victims who are lawfully resident in the country;
- improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;
- provide specialized training to all persons responsible for the provision of assistance to victims of trafficking.

Recovery and reflection period

18. GRETA urges the authorities of Bosnia and Herzegovina to review the regulations in order to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law.

19. Further, GRETA urges the authorities to ensure that trafficked persons are systematically informed of the possibility to use this recovery and reflection period and are effectively granted such a period.

Residence permit

20. GRETA considers that the authorities of Bosnia and Herzegovina should ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit in compliance with Article 14 of the Convention, including those who were identified but whose case did lead to any criminal prosecution.

Repatriation and return of victims

22. GRETA considers that the authorities of Bosnia and Herzegovina should take further steps to ensure that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of the person and the status of legal proceedings; this includes protection from retaliation and re-trafficking.

Non-punishment of victims of human trafficking

23. GRETA urges the authorities of Bosnia and Herzegovina to take legislative or other measures, such as issuing guidance to investigating and prosecuting authorities at state and entity level, allowing for the

possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

Protection of victims and witnesses

26. GRETA urges the authorities of Bosnia and Herzegovina to take legislative and practical measures to ensure the effective protection of victims of THB, especially children, during the investigation and to **prevent their intimidation during and after court proceedings.**

Specific recommendations relevant to assistance and protection of the victims of trafficking could be extracted from recent **Strategy and Action plan on combating of human beings in Bosnia and Herzegovina (2013-2015)** which are systemized as follows:

Protection of the victims and the witnesses

- *To constantly enhance methods for identification of the THB victims with special focus to discover and utilize methods of proactive conduct so that the police, prosecutors, centers for social work, other accountable institutions and the NGOs, can individually detect the THB victims;*
- 1. Continuous efforts are to be made in order that the THB issue and its victims are recognized at local level, by the police, cantonal prosecutors' offices, prosecutors' offices at level of districts in RS, and in Brcko District, as well as by the other institutions who may have some information about the THB victims;
- 2. To conduct the researches on typical forms of labor exploitation in order to create and constantly upgrade list of indicators of labor exploitation with characteristics of trafficking;
- 3. To implement all necessary action to assist victims of trafficking and provide all possible help available in the form of legal aid, housing, psychosocial care, medical care, education, job training, mediation for employment, etc.;
- 4. To continuously implement projects and programs for economic empowerment of trafficking victims by providing grants for self-employment, employment support, and other forms of economic reintegration tailored to fit this population;
- 5. To establish effective mechanisms for protection, assistance and rehabilitation of vulnerable categories of trafficking victims, especially drug addicted ones and persons in need of additional care;
- 6. To proceed with the implementation of the repatriation programme, and trans-national referral mechanism for trafficking victims.

Positive and negative examples

Just as the law “on the books” varies in terms of its adherence to the established definition and prohibition of trafficking in human beings, the practice evinces similar shortcomings. Some judgments demonstrate proactive stances in favor of the victims of trafficking. However, fact-like circumstances are not always treated in the same manner. Conduct that is principally the same is sometimes regarded as trafficking in human beings, while at other times it is qualified under the Entity legislation as being primarily an offence related to prostitution.

By example, the case of *Nezirovic Nedim and Zlatija* was processed at the State level. It concerns a mother and son who kept a group of women who could not support themselves, and coerced them to provide sexual services. Some were single mothers of small and sick children; others lived with an unresolved legal status in Bosnia and Herzegovina. The appellate panel reasoned that because the mother and son had harbored the women in their apartment, threatened them and abused their vulnerable position for an exploitative purpose, they had committed the crime of trafficking in human beings under the State Criminal Code. During the deliberations at the first instance court, the indication of consent among the women became an important circumstance for acquittal. However, the appellate panel of the State Court held that the question of ‘consent’ to provide the sexual services was of no relevance. This case sets a benchmark for the consent of victims.

Conditions similar to what the Nezirovics had subjected their victims to were also prevalent in the case of *Gvozdencovic and Subosic* case. In that instance, the court found that two men had deceived a woman to believe that she owed money with interest to a third person. In order to return the debt, they incited her to engage in sexual intercourse with an unidentified number of men in the apartment of the two accused. The victim delivered almost the entire amount of money that the services brought in, before she succeeded to escape with the assistance of another person. However, this case was instead qualified as the crime of trafficking in human beings for the purpose of prostitution under the Criminal Code of Republic of Srpska.

More so, in the *Mehic* case, the accused had abused the romantic relationship with the victim and ordered her, using physical force, to engage in sex with other men for money, which the accused collected. Despite all indications of trafficking in human beings, the conduct was qualified as Enticing into Prostitution under the Criminal Code of the Federation of Bosnia and Herzegovina.

Different treatment of fact-like circumstances becomes all the more apparent and problematic with regards to the qualification of crimes against underage victims. A prime example of this is the *Cupina and Salcin* case. The accused were charged and found guilty under the State Criminal Code of forcing minor girls into prostitution as form of human trafficking in Mostar and Sarajevo. The State Court argued correctly that due to the victims’ age, the question of coercion or abuse did not have to be considered in order to secure a conviction.

By contrast, in the *Gataric* case, which also relates to the exploitation of persons below the age of eighteen, the accused was charged under the Criminal Code of Republic of Srpska. The court found that the accused had abused the vulnerable situation and lack of means of two runaway girls. He provided

them with accommodation and lured the minors to provide sexual services to two men in exchange for money. This money was collected by the accused, and only a small portion of it was delivered to minors. Following these events, he transported the girls to another location and offered several men to engage in sexual intercourse with them for profit.

Other cases involving minors have been classified as Enticing into Prostitution under the Federation Criminal Code. The *Rustemovic* case, for instance, concerns two accused that confined two women and two minor girls and abused their difficult financial situation. The couple ordered the women and the girls to be with the couple's customers, either in a bar where they worked or in other locations to which they were transported. Although the court established the presence of all relevant elements of trafficking in minors under the State Criminal Code, it was nonetheless qualified as Enticing into Prostitution.

Similarly, in the *Pusilo* case, the court dealt with offences against a young woman who worked as a waitress in a cafe owned by the accused, where she was forced to provide men with sex for money, which he collected. When not at work, the minor was harbored and locked in a room of an apartment near the cafe. The conduct was determined as Enticing into Prostitution under the Federation Criminal Code and not referred to the State Court for review.

Hence, conduct amounting to trafficking in human beings is often undercharged, especially in cases concerning underage citizens falling victims to the crime. Victims in these cases did not decide to engage in sexual activity. Rather, their vulnerable position was exploited in other ways for profit. Force, threat and physical violence were often used while the victims were deprived of their freedom of movement. Some were literally confined to a closed area. Other cases involve victims with such strong bonds with the accused that they had no realistic opportunity to leave.

Although improper qualification of such conduct might be the result of a general lack of understanding of the elements of the criminal offence, it nevertheless means that many perpetrators have gone through trials which fail to consider the full extent of their exploitative and abusive actions. Considering the severe nature of the human rights abuses, including arbitrary deprivation of liberty, forced labor or even slavery-like treatment, the practice deserves notice. Different approaches from prosecutors and judicial system in general would probably lead to the certain level of discrimination for victims.

On a positive note, however, most indictments for trafficking-related conduct have resulted in convictions. The ratio between the number of indicted and convicted persons before State and entity courts can be demonstrated in the following way.

As of the beginning of 2008, the State Court has pronounced final verdicts in ten cases of trafficking in human beings. These cases involve indictments raised against some thirty-five persons out of which twenty-seven have been convicted. Eighteen of the defendants concluded plea agreements.

There are at least eight cases consisting of conduct amounting to trafficking in human beings which have been qualified under other names in the Entity Criminal Codes. As regards the Federation, which accounts for five of them, seven defendants were found guilty under Enticing into Prostitution, two of

which concluded plea agreements. In Republic of Srpska, at least three cases convicting four persons under the Entity Criminal Code contain strong elements of trafficking in human beings. In addition, two cases in Republic of Srpska resulted in acquittals.¹¹

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Recovery and reflection period

Pursuant to Article 11(2) of the Rulebook on the protection of alien victims of trafficking in persons, a person presumed to be a victim of trafficking is granted the status of a protected person for at least the period of 30 days (Reflection period). This period serves the purpose of giving the person time to recover to a certain extent and decide whether to file a request for residence permit in accordance with Article 6 of the Rulebook. The 30-day period is for recovery and reflection purposes. During this period possible victims of trafficking are entitled to all the rights envisaged under the domestic legislation.

Residence permits

Pursuant to Article 54(1-a) of the Law on the movement and stay of aliens and asylum, an alien who has become a victim of organized crime and/or trafficking in human beings may be granted a temporary residence permit on humanitarian grounds for the purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence, or another country which will admit the alien. The duration of the residence permit issued on humanitarian grounds is six months and may be extended if the grounds on which it was issued persist.

In practice, a temporary residence permit is granted only to those victims of trafficking who are identified as such within the meaning of the criminal law definition. In other words, granting a temporary residence permit depends on the initiation of a criminal case for the offence of human trafficking. NGO representatives have referred to cases where after a possible victim of trafficking had provided testimony to a prosecutor, the prosecutor decided not to initiate a case for THB, following which the person concerned had to leave Bosnia and Herzegovina because no temporary residence permit could be issued. However, it has to be noted here that all potential victims identified by any of the actors described above and referred to the shelter for assistance shall be treated as victims of trafficking and provided with needed assistance, including repatriation to home country, as quite often the judicial process exceeds the length of stay/assistance the victims receive.

10 foreign victims of trafficking received a temporary residence permit in the period 2008-2012. The residence permits entitled victims to safe accommodation, medical assistance, access to information about their rights and legal assistance during criminal and other proceedings.

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¹¹ OSCE Mission to Bosnia and Herzegovina 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 Light of Core International Standards, 2009

Repatriation and return of victims of THB

According to Article 56 of the Law on movement and stay of aliens and asylum, the State Ministry of Security is responsible for providing protection and assistance to victims of THB for the purpose of their rehabilitation and repatriation to the country of their habitual residence. The procedure for repatriation of foreign victims of trafficking is set out in Article 18 of the Rulebook on protection of alien victims of trafficking, which states that the State Ministry of Security, together with the State Ministry of Foreign Affairs, are in charge of carrying out the repatriation of foreign victims of THB. According to the authorities, risk assessment is always carried out when deciding upon the return of a victim of trafficking.

In practice, foreign victims of trafficking are returned to their countries of origin through a repatriation procedure organized and conducted by the Service for Foreigners Affairs and the NGO in question, providing assistance to the victim. This procedure can also be performed by the IOM, through a Protocol on co-operation concerning the protection of trafficking victims and their return on a voluntary basis to their home countries or countries of residence which was concluded between the IOM and the Ministry of Security of Bosnia and Herzegovina on in 2005, but – due to lack of funding to perform this procedure in the past few years, the Ministry of Security shifted this responsibility to NGOs who have the needed means and capacity to do so (through recent Protocol of Understanding between the MoS and authorized NGOs. No victims of trafficking have so far been repatriated from Bosnia and Herzegovina against their will. As regards repatriation of child victims, it is organized in co-operation with Social Protection Services.

As regards the return to Bosnia and Herzegovina of nationals identified as victims of trafficking abroad, the country's consular offices have a duty to assist them in the process. The return is organized in co-operation between the Ministry of Security and the Ministry of Human Rights and Refugees, which are responsible for preparing the reception of the victim. Such victims, once returned, are entitled to assistance and protection measures envisaged for victims of THB in Bosnia and Herzegovina.

RECOMMENDATIONS

- *GRETA report from 2013 has identified following gaps between laws and practice in Bosnia and Herzegovina and the standard of CoE THB Convention:*

Definition of trafficking in human beings

1. GRETA urges the competent authorities to ensure that the offence of human trafficking is incorporated in a consistent manner in all criminal codes applicable on the territory of Bosnia and Herzegovina.

Comprehensive approach and co-ordination

2. GRETA urges the authorities of Bosnia and Herzegovina to ensure, in close co-operation with the authorities of the entities and the Brcko District, that anti-trafficking legislation and policies are coherent and are effectively implemented and assessed. Particular attention should be paid to preventing and combating trafficking within Bosnia and Herzegovina. The responsible authorities should also pursue regular exchanges of information concerning all aspects of THB and aim for a greater co-ordination of their activities.

3. GRETA considers that the authorities should ensure that meetings of coordinating bodies (especially the State Group) take place regularly, and should increase the effectiveness of participation of all public bodies involved in the implementation of anti-trafficking measures at the state and entity levels. GRETA encourages the National Coordinator to intensify efforts for greater co-ordination of activities with the Regional Monitoring Teams.

4. Further, GRETA considers that the authorities of Bosnia and Herzegovina, the two entities and the Brcko District should effectively involve NGOs working in the anti-trafficking field in the discussion and elaboration of anti-trafficking policies and promote their participation in the work of the anti-trafficking public bodies.

Training of relevant professionals

5. GRETA considers that the authorities at the state, entity and cantonal level in Bosnia and Herzegovina should increase their efforts, including through funding, to provide regular training on THB-related issues to all relevant professionals. Training programmes should be designed in a manner providing practical knowledge and skills for the identification of victims of trafficking, the assistance and protection of victims, and the prosecution of traffickers (see also paragraphs 92, 106, 115 and 159).

Data collection and research

6. GRETA considers that the authorities of Bosnia and Herzegovina should conduct and support research on trafficking-related issues as an important source of information for future policy measures. Areas where research is particularly needed to shed more light on the extent and nature of the problem of trafficking include child trafficking, internal trafficking, and trafficking in groups particularly vulnerable to trafficking.

7. GRETA also considers that when collecting statistical information from all main actors, the authorities of Bosnia and Herzegovina should take all the necessary measures **to respect the right of data subjects to personal data protection**, including when NGOs working with victims of trafficking are asked to provide information for the official database.

International co-operation

8. GRETA considers that the authorities of Bosnia and Herzegovina should enhance international cooperation in the investigation and prosecution of human trafficking cases, as well as the assistance of victims of THB.

Measures to raise awareness and discourage demand

9. GRETA considers that the authorities, be it at state or other levels, should launch a comprehensive campaign for the general public as well as targeted initiatives for groups vulnerable to THB, in order to raise their awareness of the risks of human trafficking.

10. GRETA considers that future action in the area of awareness rising should be designed in the light of the assessment of previous measures and be focused on the needs identified. Prevention within the Roma community should be strengthened through specific campaigns, using the materials readily understood in these communities. The authorities of Bosnia and Herzegovina should also increase their efforts to raise awareness of THB among the general public, with special attention to children and young people.

11. GRETA considers that the authorities of Bosnia and Herzegovina should take further measures to discourage demand for services of victims of trafficking, including through raising awareness among the general public. In this context, GRETA considers that the state-level offence of the use of services of a victim of human trafficking should be incorporated into the criminal codes of the entities and the Brcko District.

Social, economic and other measures for groups vulnerable to THB

12. GRETA stresses that absence of registration of children is often one of the aspects making this group particularly vulnerable to human trafficking and urges the authorities of Bosnia and Herzegovina to strengthen their efforts to ensure the registration at birth of all children.

13. In view of the number of children living in great poverty and at risk of human trafficking, GRETA urges the competent authorities to ensure that drop-in centers for children need to be provided with sufficient resources to stay open and provide adequate assistance.

14. Given that forced marriages of children leading to exploitation have been on the increase in the country (see paragraph 11), and considering that Roma children are a particularly vulnerable group, GRETA urges the competent authorities to take all necessary measures to ensure that they have effective access to education as a measures for preventing human trafficking.

Border measures and measures to enable legal immigration

15. GRETA therefore considers that the authorities of Bosnia and Herzegovina should make further efforts to:

- detect and prevent THB through border control measures;

- ensure that training on THB and the identification of victims is provided for frontline Border Police staff, immigration officers as well as diplomatic and consular staff, on a regular basis. Such training should underscore the difference between human trafficking and the smuggling of migrants;
- introduce a checklist to identify THB-related risks during the visa application system.

Identification of victims of trafficking in human beings

16. GRETA urges the authorities of Bosnia and Herzegovina to:

- disconnect the formal identification of victims of human trafficking from the initiation of criminal proceedings;
- establish a multi-agency involvement in victim identification by introducing a national referral mechanism which defines the roles and procedures of all frontline staff who may come into contact with victims of trafficking;
- provide specialized training on the identification of victims of THB to all frontline staff who may come into contact with possible victims (including law enforcement officials, staff of social welfare centers, staff of child drop-in centers, labor inspectors, medical staff and NGOs);
- ensure that law enforcement officials, social workers, labor inspectors and other relevant actors adopt a more proactive approach and increase their outreach work to identify possible victims of trafficking, regardless of the possibility of initiating criminal cases;
- avoid unnecessary repetition of interviews with victims of trafficking;
- improve the identification of child victims of trafficking, subjected to force begging and other forms of exploitation targeting children.

Assistance measures

17. GRETA urges the responsible authorities in Bosnia and Herzegovina to take further measures to provide victims and possible victims of THB with adequate assistance and protection, and in particular to:

- ensure that all assistance measures provided for in law are guaranteed in practice; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs;
- ensure that social welfare centers and other public bodies involved in the provision of assistance to victims have the necessary human and financial resources to ensure their unhindered and effective functioning;

- facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing vocational training and access to the labor market for victims who are lawfully resident in the country;
- improve the system for providing assistance to child victims of trafficking, both in terms of accommodation and as regards medium and long-term support programmes tailored to the needs of the children;
- provide specialized training to all persons responsible for the provision of assistance to victims of trafficking.

Recovery and reflection period

18. GRETA urges the authorities of Bosnia and Herzegovina to review the regulations in order to ensure that the recovery and reflection period provided for in Article 13 of the Convention is specifically defined in law.

19. Further, GRETA urges the authorities to ensure that trafficked persons are systematically informed of the possibility to use this recovery and reflection period and are effectively granted such a period.

Residence permit

20. GRETA considers that the authorities of Bosnia and Herzegovina should ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit in compliance with Article 14 of the Convention, including those who were identified but whose case did not lead to any criminal prosecution.

Compensation and legal redress

21. GRETA urges the authorities of Bosnia and Herzegovina to:

- review the existing legislation on compensation with a view to ensuring that victims of human trafficking have an effective possibility to obtain compensation from the perpetrators, including by providing effective access to legal aid and information in this respect;
- set up a state compensation scheme, such as a compensation fund, accessible to victims of trafficking in order to resolve the current difficulties for them to receive compensation from the perpetrators.

Repatriation and return of victims

22. GRETA considers that the authorities of Bosnia and Herzegovina should take further steps to ensure that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of

the person and the status of legal proceedings; this includes protection from retaliation and re-trafficking.

Non-punishment of victims of human trafficking

23. GRETA urges the authorities of Bosnia and Herzegovina to take legislative or other measures, such as issuing guidance to investigating and prosecuting authorities at state and entity level, allowing for the possibility of not imposing penalties on victims of THB for their involvement in unlawful activities to the extent that they were compelled to do so.

Investigation, prosecution and procedural law

24. GRETA urges the authorities of Bosnia and Herzegovina to:

- identify gaps in the investigation procedure and the presentation of cases in court, inter alia, with a view to ensuring that crimes related to THB are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions;
- take measures to ensure that crimes related to THB are investigated and prosecuted promptly and effectively, in order to avoid undue delays in criminal proceedings;
- strengthen their efforts to proactively investigate THB offences, with a special emphasis on cases involving trafficking for the purpose of labor exploitation and trafficking of children

25. Further, GRETA considers that the knowledge and awareness of judges, prosecutors, investigators and lawyers about THB needs to be improved, including as regards specific elements of the offence, the rights of victims and access to compensation. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to effectively assist and protect victims of trafficking, and to ensure traffickers receive adequate convictions. During the training, particular attention should be paid to overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking.

Protection of victims and witnesses

26. GRETA urges the authorities of Bosnia and Herzegovina to take legislative and practical measures to ensure the effective protection of victims of THB, especially children, during the investigation and to prevent their intimidation during and after court proceedings.

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- *Moreover, specific recommendations could be extracted from recent **Strategy and Action plan on combating of human beings in Bosnia and Herzegovina (2013-2015)** which are systemized as follows:*

A. Systems of support

- *To harmonize the substantive criminal law in the Entities and Brcko District with: the Revised Provision of the Criminal Code of Bosnia and Herzegovina in the art. 186, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), the Convention on Action Against Trafficking in Human Beings, as the first European agreement on the issue, and the new EU directive (2011/36/EU);*
 - *To establish a consistent model on provision on free health care social assistance to the THB victims through developing of a normative framework and adoption of harmonized procedures of conduct of the competent authorities in Bosnia and Herzegovina;*
1. To establish the necessary capacities to combat human trafficking as part of cyber crime;
 2. To revitalize, strengthen the role, capacities and operability of the State Group for Combating Trafficking in Human Beings, and include representatives of nongovernmental organizations in its structure;
 3. To enhance cooperation between the Strike Force and Regional Monitoring Teams;
 4. To enhance and improve Regional Monitoring Teams' mechanisms for coordination and monitoring of the relevant institutions on the local level;
 5. To ensure uniform standards for education of professionals involved in combating the THB through institutionalizing educational activities and cooperation with civil society organizations, and academic institutions. Education and training of professionals should be done as joint training of representatives from all institutions, focused on current manifestations of trafficking (such as the elite prostitution, labor exploitation). Furthermore, it is necessary to have it as integrated theoretical and practical knowledge, interdisciplinary in character, which deals with issues of particular modes of conducting investigations of proof (e.g. special investigations), legality of the conduct, cooperation of prosecutors, police, and centers for social welfare, etc.);
 6. To continuously promote system for collecting, processing, protection and utilization of the THB data by means of maintaining different databases, connecting them into a networking, and utilizing those for the strategic management, operations and for purposes of scientific researches on the causes and forms of trafficking, and to improve cooperation with the Agency for protection of personal data;
 7. To work intensively on the recognition of the trafficking problem in order to ensure sustainable sources of funding from all sources available (public budgets, international donors and other sources);
 8. To improve mechanisms for coordination and monitoring on implementation of strategic measures and activities, while making the process transparent and with full participation of civil society organizations;

9. Competent institutions in Bosnia and Herzegovina should, as soon as possible ratify, the Council of Europe Convention on the Protection of children against sexual abuse and sexual exploitation, and implement its provisions, which entails the harmonization of legislation with the requirements of this Convention;
10. Competent institutions in Bosnia and Herzegovina should adopt the proposal for amendments and harmonization of criminal laws (entities, Brcko District and State level) that address the protection of children from sexual abuse and exploitation through information and communication technology, which the Department for combating the THB within Ministry of Security, with the support of Save the Children International, has developed in cooperation with other relevant ministries at the level of the state and the entities;
11. To ensure sustainability of the established SOS lines for assistance and reporting abuse of children through information and communication technologies, and to establish systemic and formalized cooperation between the SOS helpline and police to whom these information are being forwarded;
12. To enhance the cooperation with international organizations dealing with the prevention of abuse of information and telecommunication technologies for purposes child pornography.

B. Prevention

1. Comprehensive use of capacities in research institutions with the aim of conducting the research and identifying the real factors that support and facilitate the THB in Bosnia and Herzegovina, and identifying recommendations for the actions of all the actors involved in combating human trafficking;
2. To programme and implement specific measures which would approach issues of child begging and begging of other vulnerable categories from two different standing points; a) suppressing begging as a form of crime (by means of detection and prosecution of the organizers and their accomplices), and b) suppressing begging by means of provision of support and protection to children exploited in this purpose (establishing new and maintaining the existing day centers for children detected in begging);
3. To adopt minimum standards on work of day centers, and to develop minimum standards on outreach work with the beneficiaries;
4. To draft obligatory standard on work of safe houses and provision of assistance to the THB victims;
5. To work continuously on education and awareness rising for general population, especially children and youth, vulnerable and marginalized groups, and groups under a particular risk (such as Roma people, children not attending school, children in dysfunctional families, children in domestic violence affected families, children in poverty stricken families) on forms and negative consequences of the THB;

6. To establish better coordination mechanisms among larger number of governmental institutions and organizations of civil society with purpose to adopt annual calendar on participation in public campaigns tackling the THB issue, and to create recognizable contents (such as TV or radio broadcastings, and other media content) which would be used for awareness rising, and to promote human rights within the scope of these campaigns;
7. To create specific and targeted preventive programmes to implement awareness rising campaigns for users of sexual services that would reveal the background of the packages presented as voluntary provision of sexual services and which would put the light on the background processes behind these offers, all in order to enhance so called consumers' awareness;
8. To work on design and implementation of specific public campaigns to point out to the forms, connections, and negative impact of migrations and the THB for purposes of labor exploitation;
9. To work on establishing crises centers and shelter host cells that compensate for the inability of day care centers to provide temporary accommodation and protection for children who are determined or suspected to be the THB victims, and children who do not have a place of residence. Day centers are institutions of daily-care type, thus unable to meet the requirements for providing children with lodging.

C. Protection of the victims and the witnesses

1. To constantly enhance methods for identification of the THB victims with special focus to discover and utilize methods of proactive conduct so that the police, prosecutors, centers for social work, other accountable institutions and the NGOs, can individually detect the THB victims;
2. Continuous efforts are to be made in order that the THB issue and its victims are recognized at local level, by the police, cantonal prosecutors' offices, prosecutors' offices at level of districts in RS, and in Brcko District, as well as by the other institutions who may have some information about the THB victims;
3. To conduct the researches on typical forms of labor exploitation in order to create and constantly upgrade list of indicators of labor exploitation with characteristics of trafficking;
4. To implement all necessary action to assist victims of trafficking and provide all possible help available in the form of legal aid, housing, psychosocial care, medical care, education, job training, mediation for employment, etc.;
5. To continuously implement projects and programs for economic empowerment of trafficking victims by providing grants for self-employment, employment support, and other forms of economic reintegration tailored to fit this population;

6. To establish effective mechanisms for protection, assistance and rehabilitation of vulnerable categories of trafficking victims, especially drug addicted ones and persons in need of additional care;
7. To proceed with the implementation of the repatriation programme, and trans-national referral mechanism for trafficking victims.

D. Prosecution

1. To continuously enhance utilization of special investigative actions for detection, clarifying, and proving all forms of trafficking in Bosnia and Herzegovina, and to work on an adequate selection, training, and provision of material-technical equipment and support to the professionals who implement these actions in practice;
2. To harmonize practices and experiences of the institutions involved in combating human trafficking with the aim to enhance their capacities for recognition of this crime;
3. To continuously enhance and promote all forms of international police cooperation in the region in order to enhance exchange of information on trafficking, and to conducting joint operations and other forms of cooperation;
4. To constantly locate new sources of information about the modus operandi in trafficking, with the aim to monitor on the dislocation of these phenomena;
5. To improve the capacities and the procedures of the inspections (inspection of labor, catering, markets, tourism, forestry, construction, transport, agriculture, etc) for the appropriate treatment of human trafficking for purposes of labor exploitation in the broader context of illegal employment and the demand for cheap labor;
6. To Work on the identification of the most common forms of corruption related to the trafficking in order to disburden the practice of criminal prosecution of traffickers from the weight of corruption of individual officials who allow trafficking;
7. To continuously promote the practice of confiscation of proceeds acquired by trafficking, and work at all levels of the government on establishing of the capacities necessary to manage seized assets;
8. To qualitatively upgrade programmes for the THB victim protection by introducing specific contents such as psychological support, and to provide necessary material and technical resources and professional technical training of officials who are directly involved in the protection of this category of witnesses.

E. International cooperation

1. To continuously participate in all initiatives for multilateral and bilateral cooperation which anticipate for mutual and harmonized actions in combating trafficking;
 2. To utilize and improve capacities of international legal assistance in criminal matters (joint investigation teams, and other institutes) to ensure the effective prosecution of the THB perpetrators;
 3. To take regular participation in the meetings of representatives of the regional-level operational bodies who are involved in operational activities, with permanent participation of professionals directly involved in investigations of trafficking crimes as our representatives should be enabled;
 4. To regularly utilize instruments of the Transnational Referral Mechanism in order to protect victims of trafficking in cross-border cooperation in Southeast Europe;
 5. To establish an efficient system for exchange of intelligence on trafficking among all operative police agencies;
 6. To continuously strengthen cooperation with border police for identification of trafficking victims;
 7. To encourage cooperation with civil society organizations for their more efficient participation in the rehabilitation and reintegration of trafficking victims ;
 8. To establish reliable mechanisms of regional cooperation with goal to identify and prevent the labor exploitation for purposes of trafficking.
- *Bosnia and Herzegovina is not an EU Member States and is not obliged to implement EU Directive on trafficking (2011/36/EU of 5 April 2011), EU Directive temporary residence (2004/81/EC of 29 April 2004) and EU Directive on sanctions against employers of illegally staying third country nationals (2009/52/EC).*

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TRAFFICKING IN HUMAN BEINGS IN THE REPUBLIC OF CROATIA

**SITUATION ANALYSIS CONDUCTED BY PARTNERSHIP FOR
SOCIAL DEVELOPMENT**



TRAFFICKING IN HUMAN BEINGS

SITUATION ANALYSIS IN CROATIA



INTRODUCTION

Croatia signed the Stabilization and Association Agreement on 29 October 2001 and it is in force as of 1 February 2005. Decision of the European Council to grant status of candidate for EU membership was taken on 17/18 June 2004 and Accession Negotiations started on 3 October 2005. This presented a wind in the back for Croatian legislation and institution to get adapted to the EU system and was a basis for the development of framework for human rights protection at all levels, including the trafficking in human beings. The accession process was completed on 30 June 2011 and full accession expected in July 2013. This would mean that the reforms have ended and that mechanisms for human rights protection are completely in place and operative. However, this is not the case concerning the THB. The table above shows the concrete numbers and immediately detects the most serious problem that Croatia is dealing with when it comes to THB; identification of victims.

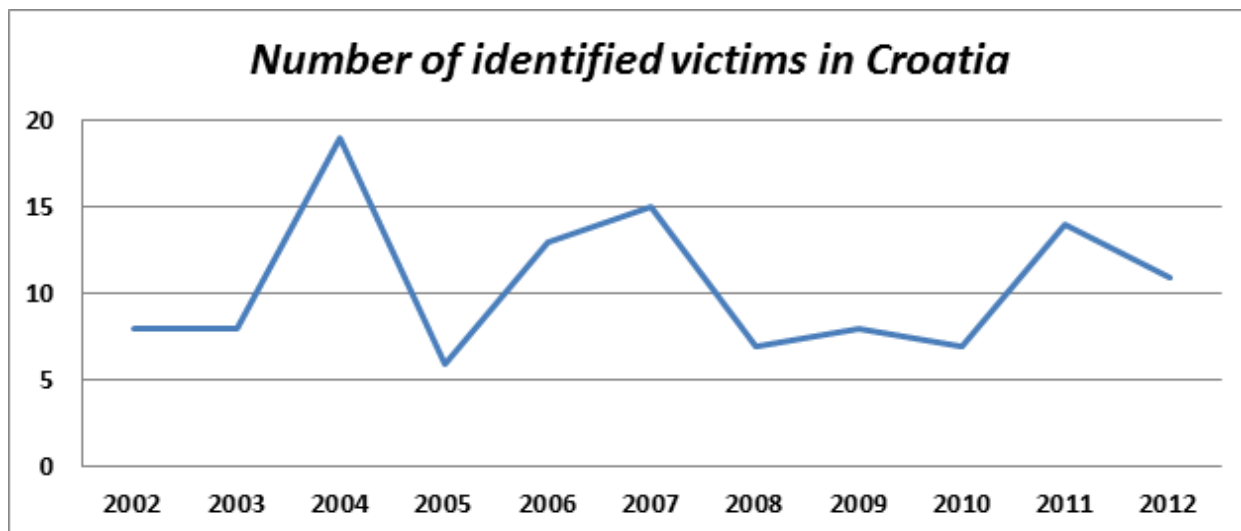
Overall number of victims according to citizenship¹²

Citizens of:	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Croatia	2	2	5	3	3	9	4	4	4	13	8
Bosnia and Herzegovina	-	1	3	1	1	2	2	1	1	1	-
Cameroon	-	1	-	-	-	-	-	-	-	-	-
Morocco	-	-	1	-	-	-	-	-	-	-	-
Moldova	3	1	2	-	-	1	-	-	-	-	-
Romania	-	-	3	1	1	-	-	-	1	-	2
Russian Federation	-	1	-	-	-	-	-	-	-	-	-
Slovakia	-	1	-	-	-	-	-	-	-	-	-
Serbia	-	1	3	-	1	3	1	-	1	-	-
Ukraine	2	-	2	-	3	-	-	3	-	-	-
Bulgaria	-	-	-	1	3	-	-	-	-	-	-
Albania	-	-	-	-	1	-	-	-	-	-	-
USA	-	-	-	-	-	-	-	-	-	-	1
Without citizenship	1	-	-	-	-	-	-	-	-	-	-
OVERALL 102	8	8	19	6	13	15	7	8	7	14	11

These numbers are quite low and do not reflect the real situation, especially considering the fact that Croatia is a transit country and is a part of the Balkan trafficking route. Following the Croatian accession negotiations, Croatia has signed international treaties dealing with trafficking prevention and has

¹² MINISTRY OF INTERIOR (2013) [online] Available from: <http://www.mup.hr/31.aspx> [Accessed 20/02/13].

reformed its legal and institutional framework. However, the number of detected trafficked persons per year remains the same or lower in comparison with the period 2002-2006, as seen from the chart below.



Source of data: MINISTRY OF INTERIOR

According to the Report on the implementation of the National Plan for Combating Trafficking in Humans 2009-2011, in the period 2002-2010, 18% of identified victims were men and 82% were women.¹³

Ministry of Interior data		2007	2008	2009	2010	2011	2012
Total no. of identified victims		15	7	8	7	14	11
Domestic citizens		9	4	4	4	13	8
Foreign citizens		6	3	4	3	1	3
Adults							
Minors ¹⁴			0	1	2		
Sex	Female ¹⁵		4	5	4		
	Male						

¹³ GOVERNMENT OFFICE FOR HUMAN RIGHTS (2011) Report on the implementation of the National Plan for Combating trafficking in Humans 2009-2011 for the year 2010.

¹⁴ Data from the GRETA 2011 report on Croatia.

¹⁵ Data from the GRETA 2011 report on Croatia.

Type of exploitation	Sexual		4	5	1	11	
	Labour		3	3	5	1	
	Forced begging						
	Forced marriage						
	Coercion to petty crime						
	Illegal adoption						

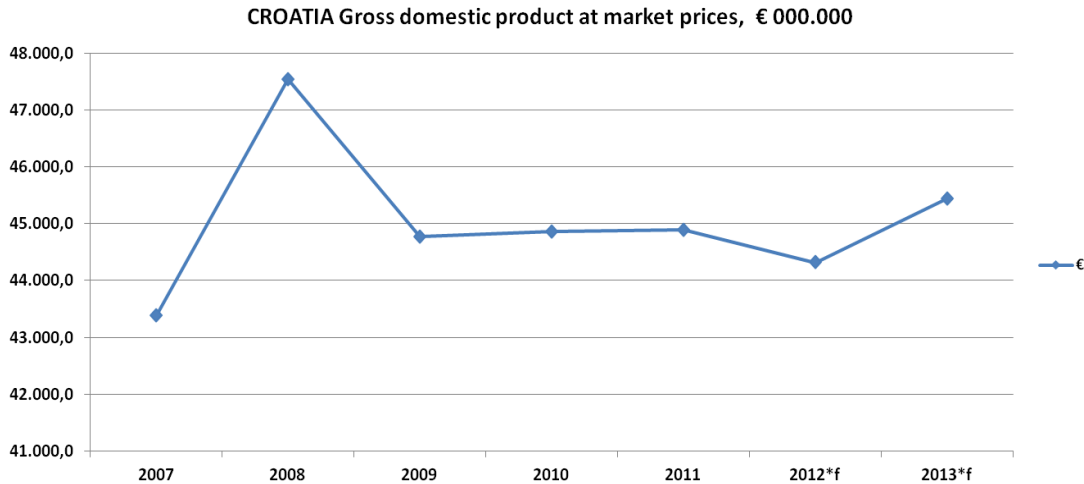
*NGO data does not differ from official numbers

Overview of the current situation in the area of trafficking in human beings in Croatia by GRETA¹⁶ in the end of 2011 showed that, according to the Government's reports, due to its geographical situation, Croatia is affected by trafficking in human beings mostly as a country of transit and destination, and to a lesser extent as a country of origin. Statistics shows very low number of identified victims of trafficking in Croatia, but regardless of the official statistics, it is commonly acknowledged by representatives of public bodies and NGOs that the actual extent of THB in Croatia could be considerably higher. There are however, some indications that Croatia is increasingly becoming a country of origin for victims of trafficking, with national THB (i.e. within Croatia) and trafficking for the purpose of labour exploitation being on the rise.

POLITICAL AND SOCIO ECONOMIC SITUATION IN THE COUNTRY

The 2008 world economic crisis reflected also on Croatia. The majority in the Government momentarily holds Social Democratic Party, but due to external debt and effects of the economic crisis, they are constantly adopting measures that negatively affect the standard of citizens. Current GDP for Croatia is approx. **44.527.460** EUR. The chart below shows the changes from year to year which actually follows the trends of the crisis in the region and in the world.

¹⁶GRETA Group of Experts on Action against Trafficking in Human Beings (2011)*Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].



According to the data of Croatian Bureau of Statistics from the 2011 Census, Croatia numbers 4.284.889 inhabitants.¹⁷ Out of that population Croatian Employment Service counts 374 473 unemployed persons Croatian registered unemployment rate being 21.9%.¹⁸ In April 2013, Croatian Employment Service registered 355.598 unemployed persons, of which 186.880 were women¹⁹.

In such an environment, in which the consumer basket is getting more expensive every day and the bills are constantly increasing, the standard of citizens is decreasing. Due to non-proportional number of job openings and unemployed persons, fruitful ground is created for corruption and people are more prone to work unregistered or even conduct illegal activities in order to make some money.

The above described situation is not helping in the fight against corruption. Connection of trafficking and organized crime with corruption has been elaborated a few times by the Partnership for Social Development. Namely, corruption provides space for the development of the organized crime groups who enter the field of trafficking and are motivated by profit. By analyses of data, it was concluded that in Croatia trafficking in humans has exclusively *organized character*.²⁰

So the basic link of corruption and human trafficking in the legislative and/or theoretical sense is the abuse of power and/or position of power, so that a person acts and/or refrains from action prescribed by law and/or other standards and regulations, or influencing the work of public officials.

According to the Annual Report of the State Attorney in 2011²¹, during 2011 USKOK received 1184 complaints, adding 114 complaints from previous years, with total number of 1298 complaints. USKOK

¹⁷ CROATIAN BUREAU OF STATISTICS. (2013) [online] Available from: <http://www.dzs.hr/> [Accessed 20/02/13].

¹⁸ CROATIAN EMPLOYMENT SERVICE. (2013) [online] Available from: <http://www.hzz.hr/default.aspx> [Accessed 20/02/13].

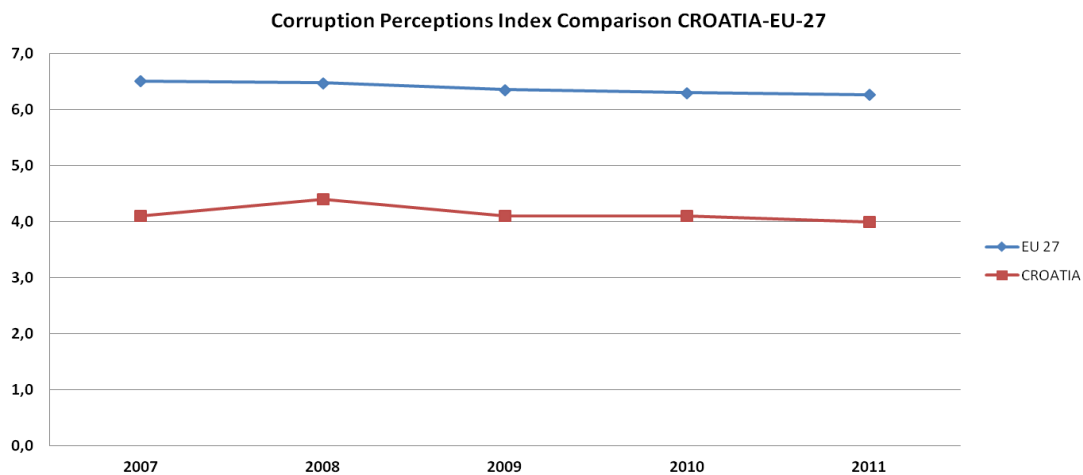
¹⁹ CROATIAN EMPLOYMENT SERVICE. (2013) [online] Available from: <http://www.hzz.hr/> [Accessed 16/05/13].

²⁰ Podumljak, M (2008) *Corruption and trafficking*. [online] Available from: <http://integrityobservers.eu/UserDocsImages/2008.%20Korupcija%20i%20trgovanje%20judima.pdf> [Accessed 20/05/13].

²¹ MINISTRY OF JUSTICE {2011} *Annual Report of the State Attorney for 2011* [online]. Available from: <http://www.antikorupcija.hr/Default.aspx?sec=508> [Accessed 17/05/13].

decided to reject 716 complaints²², raised immediate indictment against 58 persons and issued an order on conducting the investigation against 419 persons. Only 37 complaints of the total number of dismissals to organized crime were dropped. For corruption offenses USKOK rejected 661 complaints, of which 587 for the crime of abuse of office and authority. These charges are mainly against judges, prosecutors and officials of the administration. Citizens who are dissatisfied with a decision made regarding their complaint often submit complaints for the abuse of office, believing that the dispute should be resolved in their favor, and since it is not, conclusion is that they are dealing with corruption.

Issues like tolerance of illegal enrichment of persons or advertising suspicious cross-border jobs, or directly being involved in providing false travel documents (mostly members of intelligence community have resources to provide such a “service”) or facilitating illegal border-crossing are real and serious issues that are the very essence of the link between corruption and trafficking. The graph below shows the state of corruption in Croatia in relation to the EU 27:



The 2012 Corruption Perceptions Index²³, released by Transparency International, ranks countries and territories according to the perceived level of public sector corruption. Countries are marked on a scale from 0-100, with 0 being the highest perceived level of corruption, and 100 being the lowest. Scores are aggregated from a number of different data sources.

The table shows that TI Perception Index for Croatia is stagnating since 2007 and that is way below EU average. Such Index is indicating dissatisfaction of the Croatian Public with the impact of the Anti-Corruption measures in Croatia.

Indicators are clearly showing that countries’ progress did not match the objectives of the reforms, in the case of Croatia as well where the objectives of the EU accession were to have a functional democracy that can deal with the problems of corruption at all levels.

²² Reason for the large number of rejections of the complaints for the crime of abuse of office or authority is the structure and content of the complaint

²³ TRANSPARENCY INTERNATIONAL {2013} [online]. Available from: <http://cpi.transparency.org/cpi2012/results/> [Accessed 20/05/13].

According to the data of the Ministry of Interior²⁴, in 2011 the number of illegal border-crossing facilitation was 88 and in 2012 184, which is an increase of 109, 1%. In 2011, the total number of illegal border-crossing was 3.824, of which 1.396 came from Afghanistan. In 2012, the Ministry of Interior registered an increase of 78, 8% with total number of 6.839 illegal border-crossing, of which 1.618 came from Afghanistan. In 2012, organized crime has increased by 14. 2% in regard to 2012, but the number of persons reported for these crimes decreased by 5. 8%. The average number of crimes per suspect was increased from 1.3 to 1.6 compared to the year 2011. In 2012, 788 crimes were reported and most of them were: illegal transfer of persons across the state border with 23.4%, counterfeit money with 19.3%, extortion with 13.6%, Illegal Possession of Arms with 13.3% and racketeering with 10.7%. Other offenses constitute 19.8 % of organized crime.

Thus, if efforts would be made to combat corruption and to revive the Croatian economy as well employment rate, this should have a positive impact on combating trafficking in humans.

According to the 2011 EU Progress report for Croatia, human rights continued to be generally well respected. Overall, legal protection for economic and social rights is widely guaranteed. Croatia has made some progress in the area of economic and social rights. However, implementation of women's and children's rights and protection against all forms of discrimination demand further attention. The protection of women against all forms of violence needs to be strengthened. The number of registered cases of domestic violence has decreased slightly. Victims of family violence continue to have insufficient access to information on their rights and entitlements. There has been limited progress with children's rights. There has been some progress on advancing the social inclusion of socially vulnerable persons and/or persons with disabilities, notably through the adoption of a new Social Welfare Act.

According to the response that Partnership for Social Development received from the Ministry of Social Policy and Youth, **there is no specific definition of socially vulnerable persons**. The Ministry delivered criteria on which a person can be the user of social care, prescribed by the Social Welfare Act:

- A single person, family members or family who do not have sufficient resources to meet their basic needs and they were not able to accomplish their work, income from property, alimony payer or otherwise,
- A child without parents or parental care, young adult, a child victim of family, peer or other type of violence, a victim of human trafficking, child with disabilities, children and young adults with behavioral problems (with the risk of disorder or behavioral problems and social integration), an unaccompanied child who is caught outside their place of residence without the supervision of a parent or other adult who is responsible to take care of him and the child who is a foreigner and caught on Croatian territory without the consent of their parents or other adult who is responsible to take care of him,
- Pregnant woman or a parent with a child under one year of age with no family support and adequate living conditions,

²⁴MINISTRY OF INTERIOR {2013} [online]. Available from: http://www.mup.hr/UserDocImages/statistika/2013/statistika_2012_3.pdf[Accessed 20/05/13].

- A family which is due to disturbed relations or other adverse circumstances required to professional assistance or other support, as well as persons who were in a marriage or common-law marriage and have children,
- An adult with disabilities or persons with other temporary or permanent changes in health status that make her/him unable to meet their basic needs, a victim of domestic or other violence, and victim of human trafficking,
- A person who, because of age or disability cannot independently take care of their basic needs,
- A person addicted to alcohol and drugs, gambling and other forms of addiction, people with socially unacceptable behavior, a person who is serving a prison sentence or is released from the punishment,
- Homeless and other persons who meet the requirements of this Act.

The capacity of the Office of the Ombudsman for Persons with Disabilities has been strengthened. There is low public awareness of the rights of people with disabilities, especially in rural areas.

According to the National Strategy of Equalization of Opportunities for Persons with Disabilities²⁵ persons with disabilities are at greater risk of victimization. The Strategy reads: "People with disabilities are, to a greater or lesser extent, suitable for abuse and therefore more frequently subjected to violence, which increases the risk of multiple victimization."

Regulations ensuring physical access to public buildings for people with disabilities are not adequately enforced. Discrimination against people with disabilities continues on the labour market. The quotas laid down in the Professional Rehabilitation and Employment Act for people with disabilities are not met by the public sector. Marginalization is even greater in the private sector with employers lacking information, in particular on the incentives that are available. There has been no significant change in the position of women on the labour market. The percentage of unemployed women remains high and wage differences due to gender persist. Fixed-term contracts for women on the labour market remain widespread. Women remain under-represented in economic and political decision-making bodies. Conditions for the employment of women are still unfavorable.²⁶

LEGAL ANALYSIS

In order to harmonize Croatian legislation with existing international standards in 2004 in the Criminal Code of the Croatian legislation was incorporated a provision of the criminal offense of trafficking under the title "Human trafficking and slavery" (Article 175 of the old Criminal Code) and thus was fully respected the definition of trafficking from the UN Convention and its Protocol to Prevent, Suppress and

²⁵NATIONAL STRATEGY OF EQUALIZATION OF OPPORTUNITIES FOR PERSONS WITH DISABILITIES. Official Gazette no. 101/98, 15/00, 117/01, 199/03, 30/04. Available from: <http://narodne-novine.nn.hr/clanci/sluzbeni/298398.html>[Accessed 20/05/13].

²⁶EUROPEAN COMMISSION (2011) *CROATIA 2011 PROGRESS REPORT*. Brussels, 12 October.

Punish Trafficking in Persons. Article 106 "Human trafficking and slavery" got into force on 1 January, 2013, when the new Criminal Code²⁷ was adopted. In the old version of Criminal Code there was no chapter under the name "Trafficking". Instead, there was a chapter named "Establishment of slavery and transport of slaves".

This through changes to the Croatian criminal legislation is in its entirety taken the name and the characteristic of a criminal offense of trafficking in persons in accordance with the provisions of Article 3 of the so-called Palermo Protocol. As a part of accepting international standards Croatia ratified the UN Trafficking Protocol, as well as the CoE Trafficking Convention.

The existing legal framework²⁸ that covers the issues of trafficking in human beings is as follows:

- The Criminal Code (Official Gazette no. [125/11](#), [144/12](#))
(OLD: Official Gazette no. 110/97, 27/98, 129/00, 51/01, 105/04, 84/05, 71/06 and 152/08)
- The Criminal Procedure Act (Official Gazette no. 110/97, 27/98, 58/99, 112/99, 62/03, 58/02, 143/02, 115/06, 152/08)
- Law on USKOK (Official Gazette no. 88/01, 12/02, 33/05, 48/05, 76/07)
- Law on Juvenile Courts (Official Gazette no. 111/97, 27/98, 12/02)
- Law on Liability of Legal Persons for Criminal Offences (Official Gazette no. 151/03)
- The Witness Protection Act (Official Gazette no. 163/03)
- Aliens Act (Official Gazette no. 79/07, 36/09)
- The Law on the Prevention of Money Laundering (Official Gazette no. 69/97, 106/97, 114/01, 117/03, 142/03, 189/03)
- Act on Mutual Legal Assistance in Criminal Matters (Official Gazette no. 178/04)
- Asylum Act (Official Gazette no. 79/07, 88/10)
- Law on compensation for victims of criminal actions ("NN" br.80/08) - comes into force on the day of Croatian accession to the EU.

²⁷CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html[Accessed 24/05/2013].

²⁸ MINISTRY OF INTERIOR (2013) [online] Available from: <http://www.mup.hr/31.aspx> [Accessed 20/02/13].

Concepts of coercion, servitude, slavery and forced marriage are defined in The Criminal Code²⁹.

Article 23 of the Croatian Constitution³⁰ prohibits forced or compulsory labour but it does not offer a definition.

Coercion is defined in the in Article 138 entitled “Coercion” of The Criminal Code³¹ which reads: *“Whoever, by force or threat, makes someone to do something, do nothing or makes person suffer, shall be punished with imprisonment up to three years”*.

Concept of coercive work is not legally specified. There are two laws that deal with worker’s rights and protection and safety of workers at work. However, none of them defines concepts of coercive work, slavery or servitude. Article 5 „Fundamental rights and obligations that are arising from employment” in the Labour Act³² prohibits discrimination of any kind and obliges employer to safeguard the dignity of workers during work, to provide the worker conditions for safe work and to pay the salary for the work. Article 130 „Protection on worker's dignity”³³ elaborates harassment and sexual harassment at work and provides measures for the protection of employees from harassment and sexual harassment. The second is Protection at Work Act³⁴ and its purpose is the introduction of measures to encourage improvements in the safety and health the workers, prevent injury, occupational disease, other diseases related to the operation and protection of the environment.

Concepts of slavery and servitude are defined in the Article 105 of The Criminal Code³⁵ which reads: *“Whoever violates the rules of international law, places another in slavery or similar status or holding it in such a relationship, buys, sells, conveys or interferes in the purchase, sale or delivery of such person or encourages another to sell his freedom or the freedom of the person who is maintained by or on its care, shall be punished by imprisonment for one to ten years”*.

Concept of forced marriage is defined in the Article 169 of The Criminal Code³⁶ which reads: *“Who coerces another person to enter into marriage shall be punished by imprisonment of six months to five years”*.

²⁹CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html[Accessed 14/05/13].

³⁰CROATIAN CONSTITUTION. Official Gazette No: 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10. Available from:http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_85_2422.html[Accessed 14/05/13].

³¹CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html[Accessed 14/05/13].

³²LABOUR ACT. Official Gazette No: 149/09, 61/11. Available from:http://narodne-novine.nn.hr/clanci/sluzbeni/2011_06_61_1353.html[Accessed 14/05/13].

³³LABOUR ACT. Official Gazette No: 149/09, 61/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_06_61_1353.html[Accessed 14/05/13].

³⁴PROTECTION AT WORK ACT. Official Gazette No: 59/96, 94/96, 114/03, 100/04, 86/08, 116/08, 75/09, 143/12. Available from:http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_143_3037.html[Accessed 14/05/13].

³⁵CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html[Accessed 14/05/13].

³⁶CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html[Accessed 14/05/13].

As can be seen below, the Criminal Code and the Law on Offences against Public Order and Peace regulate penalties for the persons who are indulging in prostitution and the persons who are coercing or inducing the provision of sexual services. Clients for now remain outside the law.

Article 157 of the Criminal Code reads³⁷:

(1) Whoever, with the purpose of profit or other benefit entices or encourages another person to provide sexual services or organizes or assists another person to provide sexual services, shall be punished by imprisonment of six months to five years.

(2) Whoever with the purpose of profit, by force or threat, deceit, fraud, the abuse of authority or difficult situation or dependent relationship, coerces or induces the provision of sexual services, or who charges the use of such sexual services, knowing or should have known about the described circumstances, shall be punished by imprisonment for one to ten years.

(3) Whoever through the means in public Information and other similar ways advertises prostitution shall be punished with imprisonment up to three years.

(4) Regarding the existence of the criminal offense under this article, there is no impact on the fact that the person who is being enticed, encouraged or exploited for prostitution, whether they agreed to it or they have already been involved.

Article 12 of the Law on Offences against Public Order and Peace³⁸ reads: “**Who indulges in prostitution**, shall be fined the equivalent of local currency 50-200 DEM or imprisonment not exceeding 30 days”.

The **Article 106** of the new Criminal Code prohibiting THB reads:

“(1) Whoever, by the use of force or threat to use force or by fraud, kidnapping, abuse of position of authority or defenselessness or dependent relationship by giving or receiving financial benefit or any other benefit for giving consent of a person that is in control of another person or in any other way solicits, transports, transfers, hides or accepts a person or exchanges or transfers the supervision over a person for taking advantage of its work through coercive work or servitude, by establishing slavery or similar relationship, or for its use for prostitution or other means of sexual exploitation, including pornography, or for illegal or forced marriage, or for taking parts of a person’s body, or for its use in armed conflicts or for committing any wrongful act, will be punished with a sentence from 1 to 10 years.

(2) By punishment from the Paragraph 1 of this Law will be punished anyone who solicits, transports, transfers, hides or accepts a child, or exchanges or transfers the supervision over a child with the purpose of taking advantage of its work through coercive work or servitude, by establishing slavery or similar relationship, or for its use for prostitution or other means of sexual exploitation, including

³⁷ CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html[Accessed 21/05/13].

³⁸ LAW ON OFFENCES AGAINST PUBLIC ORDER AND PEACE. Official Gazette No: 5/90, 30/90, 47/90, 29/94. Available from: <http://narodne-novine.nn.hr/clanci/sluzbeni/260696.html>[Accessed 21/05/13].

pornography, or for illegal or forced marriage or illegal adoption, or for taking parts of its body, or for its use in armed conflicts or for committing any wrongful act.

3) If a criminal act from Paragraph 1 of this Article is committed towards a child, or the criminal offence from Paragraph 1 or 2 of this Article was committed by an official person in execution of its duty, or was committed in relation to multiple number of persons or was consciously put in danger the life of one or more persons, the perpetrator will be punished with 3-15 years in prison.

4) By punishment from the Paragraph 1 of this Article will be punished a person whoever knows that a person is a victim of trafficking and uses its services as a part of its exploitation stated in the Paragraph 1 and 2 of this Article.

5) Whoever with the purpose of enabling the commitment of the actions from Paragraphs 1, 2 and 3 contains, deprives, hides, damages or destroys a passport or identity card of another person will be punished with up to 3 years in prison.

6) For an attempt to commit a criminal act from Paragraph 5 of this Article the offender will be punished.

7) The acceptance for taking advantage of a person to whom the damage the trafficking was committed is without any influence on committing the criminal act.³⁹

(A/N: This means that the committed criminal act is still punishable, regardless of victim's consent.)

From the definition of THB can be concluded that the concept entails all elements required by the international and European law. As regards the Criminal law, GRETA⁴⁰ noted in 2011 that “the offence of trafficking in human beings, as defined by the Convention, has been integrated into Croatian legislation. However, the conducts relating to travel or identity documents such as their retaining, removing, concealing, damaging or destroying for the purpose of enabling trafficking are yet to be criminalized.” This was taken into consideration in drafting the new Criminal Code and the paragraph was added (Article 106, Paragraph 5).

Forced begging is not included in the definition of trafficking. Yet, begging is mentioned in the Criminal Code in the context of violation of children’s rights. The article “Violations of children's rights” reads:

³⁹Article 106 of the Croatian CRIMINAL CODE (Official Gazette no. 125/11, 144/12 Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html [Accessed 20/02/13]

⁴⁰G R E T A Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

(2) Who abuses a child or forces it to excessive work or work that does not match its age, forces it to beg or leads it to other behavior that is harmful to its development or otherwise harshly violates the rights of the child, shall be punished by imprisonment of six months to five years.

(3) If the offense under paragraph 1 and 2 of this Article persuaded a child to engage in begging, prostitution or other forms of socially unacceptable behavior, or serious body injury to a child, the perpetrator shall be punished by imprisonment of one to eight years.

Forcing the commission of crime is included in the definition of trafficking in the article 106 which reads: *Whoever, by the use of force or threat to use force or by fraud, kidnapping, abuse of position of authority or defenselessness or dependent relationship by giving or receiving financial benefit or any other benefit for giving consent of a person that is in control of another person or in any other way solicits, transports, transfers, hides or accepts a person or exchanges or transfers the supervision over a person for taking advantage of its work through coercive work or servitude, by establishing slavery or similar relationship, or for its use for prostitution or other means of sexual exploitation, including pornography, or for illegal or forced marriage, or for taking parts of a person's body, or for its use in armed conflicts or for committing any wrongful act, will be punished with a sentence from 1 to 10 years.*

The Criminal Code does not have punishment for someone who has reason to know that a person is a victim of trafficking. This situation is defined by the Law on the Office for the Suppression of Corruption and Organized Crime⁴¹ and refers to the obligation of the police to report suspicions of trafficking. However, there is no punishment in this Law for the police officer who does not act according to the Law.

Articles 94 – 114 of the Chapter 16 “Responsibility for Violations of official duties” of the Police Code⁴² regulate the official procedure for the treatment of the police officer who caused damage while performing their duties.

Free legal aid

Pursuant to the Article 16 of the Legal Aid Act⁴³, asylum seekers, foreigners under subsidiary protection, foreigners under temporary protection and victims of trafficking have access to free legal aid, with confirmation of the competent authority of their status.

A person who requests to use the right to free legal aid has to fill in Application Form for the approval of free legal aid⁴⁴. Information on the possibilities and terms of utilizing legal aid, as well as the application

⁴¹LAW ON THE OFFICE FOR THE SUPPRESSION OF CORRUPTION AND ORGANIZED CRIME. Official Gazette No: 76/09, 116/10, 145/10, 57/11, 136/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_136_2882.html [Accessed 22/05/13].

⁴²POLICE CODE. Official Gazette No. 34/11, 130/12 [online]. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_34_762.html [Accessed 22/05/13].

⁴³LEGAL AID ACT. Official Gazette No: 62/08, 44/11, 81/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_07_81_1721.html [Accessed 15/05/13].

forms, must be made available to the parties by the first instance judicial bodies, first instance administrative bodies, legal persons vested with public authority, legal aid providers and competent state administration offices in charge of approving legal aid.

Attorneys, associations, trade unions and law faculties are providers of the free legal aid and each can render specific legal aid services to the extent defined in the Free Legal Aid Act. In order to monitor the legal aid system The Republic of Croatia established the Legal Aid Commission⁴⁵ as an advisory body to the Ministry in charge of legal affairs.

Act on Compensation for Victims of Crime⁴⁶ provides a right to compensation for direct and indirect victims of violent crimes committed with intent. The direct victim is entitled to reimbursement of health care costs in the value of health standards established by regulations of mandatory health insurance in Croatia and to compensation for loss of earnings, which is included in the lump sum of up to 35,000.00 HRK.

Treatment of victims by the criminal system (police, prosecutors, judges)

Treatment of victims in the criminal system⁴⁷ is defined by the Criminal Procedure Act⁴⁷.

Article 43 reads:

(1) The victim of a criminal offense has:

- 1) The right to effective psychological and other professional assistance and support to the body, organization or institution to help victims of crime in accordance with the law,*
- 2) The right to participate in criminal proceedings as the injured party,*
- 3) Other rights provided by law.*

(2) In accordance with relevant regulations, the victim of a criminal offense which carries a prison sentence of five years or more is entitled to:

- 1) to counsel at the expense of budget funds before testifying in criminal proceedings and in submitting associated action for damages, if they suffer from more severe psycho-physical damage or serious consequences of a criminal offense,*
- 2) the pecuniary and non-pecuniary damages from the state fund under the conditions and in the manner determined by a special law. If the victim previously made property claims its amount will be taken into account and will proceed in court if the victim previously recorded compensation from the state fund.*

⁴⁴MINISTRY OF JUSTICE {2011} [online]. Available from: <http://www.antikorupcija.hr/download> [Accessed 15/05/13].

⁴⁵MINISTRY OF JUSTICE {2011} [online]. Available from: <http://www.mprh.hr/the-legal-aid-commission> [Accessed 15/05/13].

⁴⁶ACT ON COMPENSATION FOR VICTIMS OF CRIME. Official Gazette No. 80/08, 27/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_03_27_558.html [Accessed 15/05/13].

⁴⁷CRIMINAL PROCEDURE ACT. Official Gazette No. 34/11, 130/12 [online]. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_10_121_2386.html [Accessed 23/05/13].

(3) The court, public prosecutor, investigator or police are required to inform the victim about:

- 1) The rights under paragraph 1 and 2 this Article and Article 44 this Act;*
- 2) The rights they have as injured person.*

Article 44 reads:

(1) A child or a juvenile victim of a crime, except for the rights of a victim of Article 43 and other provisions of this Act, has the right to:

- 1) Representative at the expense of budget funds,*
- 2) The confidentiality of personal data,*
- 3) The exclusion of the public.*

(2) The court, prosecutor, investigator and the police have to treat a child or younger juveniles victims of crime, especially considerately and keep in mind the age, personality and other factors in order to avoid adverse consequences for the upbringing and development of the child or young juveniles.

Article 45 reads:

(1) The victim of a criminal offense against sexual freedom and sexual morality, under Article 43 and 44 this law has the right:

- 1) prior to the interrogation to talk to a counselor at the expense of budget funds.*
- 2) to be investigated by the person of the same sex in the police and State Attorney's Office,*
- 3) refuse to answer questions that relate to strictly personal life of the victim,*
- 4) require to be interrogated through an audio-video device under Article 292 Paragraph 4 this Act;*
- 5) the confidentiality of personal information,*
- 6) require the public be excluded from the trial.*

(2) Prior to the first interrogation, the court, prosecutor, investigator and police must warn the victim of their rights under this article.

Right to Information

Article 5 of the Access to Information Act⁴⁸ reads that the user of the right of access to information and re-use of information is any domestic or foreign natural and legal person.

Article 6 of the same law reads that "Information is available for each domestic or foreign natural or legal person in accordance with the terms and limitations of this Act."

⁴⁸LAW ON FREEDOM OF INFORMATION. Official Gazette No: 25/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_25_403.html [Accessed 11/06/13].

Article 8 of the same law reads:

(1) The right of access to information and re-use of information belongs to all users in the same manner and under the same conditions. Users are equal in its implementation.

(2) Public authorities should not put people at a disadvantaged position, particularly in the way that individual users provide information before others, or in the way in which they are particularly suitable.

Article 18 of the same law reads:

(1) The user is entitled to access to information by submitting an oral or written request to the Authority.

(2) If the request is made in person or by telephone an official record shall be made, and if it is filed by electronic communication, it shall be considered as a written request.

(3) The written request shall contain the name and address of the public authority to whom the request is made, the data that are important for identifying the requested information, the name and address of the natural person as an applicant, the company and the name of the legal entity and its seat.

(4) The applicant is not obliged to give reasons for requesting access to information, nor is it obliged to refer to the application of this Act.

Right not to cooperate

Criminal Procedure Act⁴⁹ regulates the legal framework that defines victim's right not to cooperate.

Article 45 reads:

"Victim of a crime against sexual freedom and sexual morality, under the Article 43 and 44 of this law has the right to: 1. prior to the examining, to talk to a counselor at the expense of budget funds; 2. to be interrogated by the person of same sex in the police and State Attorney's Office; 3. to refuse to answer questions that relate to personal life of the victim; 4. to require to be examined through an audio-video device under Article 292 Paragraph 4 this Act; 5. to the confidentiality of personal information; 6. to require the public to be excluded from the trial."

In case of victim being witness of a criminal activity, Article 291 of the same Act is relevant.

Article 291 reads:

(1) If a duly summoned witness fails to appear and does not justify the absence, or without permission or valid reason moves away from the place where he/she needs to be tested, he/she can be ordered to forcibly summoned.

(2) If the witness appears and after being informed of the consequences of not testifying without legal cause, following the proposal of the public prosecutor, the investigating judge can fine him/her up to 50,000.00, and if the witness then refuses to testify he/she can be imprisoned. Imprisonment lasts until

⁴⁹CRIMINAL PROCEDURE ACT. Official Gazette No: 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_56_1142.html [Accessed 11/06/2013]

the witness agrees to testify or until his/her testimony becomes unnecessary or until the criminal case is over, but no longer than a month.

Protection of privacy & safety and protection of physical integrity

All victims have access to all the necessary psychosocial, medical and legal assistance on the basis of pre-made individual programs of assistance and protection. Individual program of assistance and protection for victims who are Croatian citizens, regardless of age, is created by civil society organizations, which has authorization from the Operations Team of the National Committee in cooperation with the competent social care center.

Beside the individual program of assistance and protection, the victim has access to a shelter - a form of secure accommodation in which the victim resides upon acceptance of assistance and protection to its return to the country of origin, i.e. until the reintegration in society. The victim can reside in the alternative safe accommodation - a form of secure accommodation in which the victim resides or lives if he/she cannot be placed in a safe-house due to justifiable reasons, and there is no immediate danger to her physical integrity. In the alternative safe accommodation victim will be granted the same type of assistance and protection as well as in a shelter.

Protocol on the Voluntary Return of Victims of Trafficking⁵⁰ states that the Ministry of Interior carries out the procedure to return the victims and cover the costs of return.

Article 4 reads:

“In the process of identification of the victim to her return to the country of return the risk assessment will be implemented to determine the degree of safety of the victim and her family in the country of origin. Risk assessment and safety is conducted by the Ministry of Interior in cooperation with the national authorities, international and non-governmental organizations and the Croatian Red Cross. If the victim is a child safety and risk assessment is conducted by government authority responsible for Social Welfare.”

Article 5 reads:

Through the risk assessment and security Bodies under Article 4 this Protocol shall determine:

- 1. Possibility of safe returning to the place where the victim wants to return,*
- 2. Person's name or the name of the organization that will take a victim to the country of origin,*
- 3. Family and social situation of victims,*
- 4. Possibilities of safe accommodation (shelter or alternative accommodation),*
- 5. Circumstances related to the offense and the offender*

⁵⁰MINISTRY OF INTERIOR {2012} [online]. Available from: http://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/Protokol%20povratak.pdf [Accessed 28/05/13].

6. *If necessary, other circumstances relevant to the return of victims.*

Article 6 reads about the situation where Ministry has appraised that it is not safe for the victim to return to the country of origin. The Article reads: *“If required by the risk assessment, the victim can be placed in third country, with their consent, under condition that the Republic of Croatia has signed the appropriate contract with that State or in the country of origin, if the conditions are appropriate.”*

Usually, victims stay in the shelter as long as it is not safe for them to return to their country of origin. Regarding to the Protocol for Identification, Assistance and Protection of Victims of Trafficking, victims of THB are being placed in the shelters right after the Ministry of Interior identifies them as the victims.

As it is stated in the Information Package for Asylum Seekers⁵¹, the procedure for receiving the asylum can last from a few days or weeks to several months. Until they get the asylum, foreigners are accommodated in the Reception Center Ježevo.⁵²

Protection mechanism for children is regulated by the Protocol for Identification, Assistance and Protection of Victims of Trafficking which reads: *“If the victim is a child, in the process of identification the Ministry of Interior will cooperate with the body competent for social welfare and civil society organizations”*. Reception accommodation for children is organized as part of the national shelter for child victims of trafficking. The ministry in charge of social affairs will provide special accommodation for the children who are 3 years old or younger.

Regarding the safety of personal data of the victim, the Government Office for Human Rights is responsible for keeping a database of identified victims of THB in cooperation with the Ministry of the Interior. This database contains all the necessary information on identified victims including personal information (code name for the victim; age; gender; nationality; education), family information (marital status; children; employment; etc.), trafficking experience (trafficker, if known; means of recruitment; type of exploitation; etc.), help and assistance (how the victim was identified; placement in a shelter; medical help; psychological assistance; legal aid; etc.). The data is stored on a computer which is not connected to the internet and is password-protected. Only the person responsible for the database and his/her substitute, both of whom are appointed by the National Coordinator for Combating THB, have access to this database. The information is exchanged with relevant agencies (Ministry of the Interior, Ministry of Health and Social Welfare, Prosecutor’s Office, etc.) upon the submission of a formal inquiry to the Office for Human Rights. Further, the Ministry of the Interior operates its own database concerning identified victims of trafficking and perpetrators. Only the person responsible for the database and his/her substitute, both of whom are appointed by the National Coordinator for Combating THB, have access to this database.

⁵¹ INFORMATION PACKAGE FOR ASYLUM SEEKERS {2008} [online]. Available from: <http://www.azil.com.hr/page.aspx?PageID=83>[Accessed 28/05/13].

⁵² UNHCR {2009} [online]. Available from: <http://www.unhcr.hr/eng/news/unhcrs-asylum-unit-visit-jezevo-reception-detention-centre-for-illegal-migrants.html>[Accessed 28/05/13].

GRETA⁵³ notes that the database contains information only on formally identified victims of THB within the meaning of the Protocol on Identification, Assistance and Protection of Victims of Human Trafficking. GRETA considers that in order to follow changing trends in the area of THB, the National Coordinator should also regularly examine statistical information in other areas relevant to THB, such as asylum seekers, irregular migrants and foreign employees.

Witness protection

Witness Protection Act⁵⁴ regulates the conditions and procedures for providing protection and assistance to vulnerable and persons close to them, which are exposed to a serious threat to life, health, physical integrity, freedom or property of considerable value because of their testimony in criminal proceedings for offenses under this Act.

Article 1 reads:

For inclusion in the protection program the consent of affected persons is required.

Implementation of measures under this Act in relation to endangered minors cannot be taken without the consent of a parent or guardian. Persons who are partially or completely unfit for business skills consent will be approved by the person authorized to represent vulnerable persons by law or by the legal guardian.

Article 11 reads:

General State Attorney may, on the proposal of the competent State Attorney or vulnerable person submit application to the Commission for inclusion of vulnerable person in the protection program, if they otherwise would not be able to provide free testimony of witnesses in criminal proceedings.

If there is still a need to protect those involved in the Program after its expiry, the General State Attorney will submit the request for an extension of the program.

Beside the legal framework of witness protection, Croatia has been engaged in the international project WINPRO⁵⁵ since 2010, which aims to improve the efficiency and effectiveness in the fight against transnational organized and serious crime, and corruption. Specific objectives of the project are to

⁵³GRETA Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 23/05/13].

⁵⁴WITNESS PROTECTION ACT. Official Gazette No: 163/03, 18/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_02_18_312.html [Accessed 11/06/13].

⁵⁵MINISTRY OF INTERIOR {2013} [online]. Available from: <http://www.mup.hr/155941.aspx> [Accessed 11/06/13]

strengthen cooperation in the fight against organized crime and corruption at regional and European level through strengthening the institutional capacity of the Witness Protection Unit and other relevant agencies and to provide protection of witness and collaborators of justice to beneficiaries before, during and after the trial within and/or outside their territory.

Compensation

In order to establish an effective guarantee of the right to compensation and redress for the victims of THB according to international and European commitment of the Western Balkan countries, the specialized compensation system should be established within the legal framework and monitoring institutions.⁵⁶ According to the Ministry of Interior, the Law on Financial Compensation for Victims of Criminal Activities (Official Gazette 80/08) will be in force after the Croatian EU Accession – 1 July, 2013.

- *According to the Protocol on the Integration / Reintegration of Victims of Trafficking⁵⁷, each person who is classified as a victim of trafficking on the territory of the Republic of Croatia has the right to access compensation defined by the Social Welfare Act⁵⁸. Victim who has temporary residence is entitled to safe accommodation in a shelter for victims of human trafficking, health care, financial assistance, education and work. The amount of financial assistance for the victim who is unemployed and has no incomes is determined by the body responsible for social affairs.*
- *Criminal Procedure Act⁵⁹ also regulates right to compensation for victims of THB. Article 16 reads: "The victim of a serious crime of violence shall be entitled to compensation from the State Budget. Funds are raised from fines and confiscated assets gained from crime in a separate fund."*

Reflection period; temporary residence permit; humanitarian residence permit/asylum; non-detention

Croatia has concluded bilateral agreements in the social security area with 18 European countries. According to the GRETA Report, these agreements refer to the health care rights of foreign nationals, including eventual victims of THB. In theory, Croatian authorities engage when there are reasonable grounds to believe that a person is a victim of THB, prior to being officially identified by police officers from the Organized Crime Department, he/she is provided with the necessary medical and psychological assistance. The protection takes place at two shelters; one for adults, one for children.

⁵⁶MINISTRY OF INTERIOR (2013) [online]. Available from: <http://www.mup.hr/31.aspx> [Accessed 05 April 2013].

⁵⁷MINISTRY OF INTERIOR (2012) [online]. Available from: http://www.mup.hr/UserDocImages/nacionalni_programi/trgovanje_ljudima/2012/PROTOKOL%20O%20INTEGRACIJI%20-%20konacno.pdf [Accessed 27/05/13].

⁵⁸SOCIAL WELFARE ACT. Official Gazette No: 33/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_03_33_798.html [Accessed 27/05/13].

⁵⁹CRIMINAL PROCEDURE ACT. Official Gazette No: 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_56_1142.html [Accessed 27/05/13].

The reflection period is limited to 60 days, which ensures qualitative protection, once it becomes frequently applicable, and is applicable to both foreign and domestic victims, according to the Article 67 of the Foreigners Act⁶⁰.

Chapter 5 of the Asylum Act⁶¹ governs the rights to temporary protection of foreigners. Article 83 reads: *Temporary protection has the emergency and temporary character granted in extraordinary procedure, in cases of mass influx or imminent mass influx of displaced persons from third countries who cannot return to their country of origin, especially if there is a risk that, due to the mass influx is not possible to carry out the procedure for granting asylum, to protect the interests of displaced persons and other persons seeking protection.*

Displaced persons from paragraph 1 of this Article shall be considered foreigners who were forced to leave the area or the country of their origin or who were evacuated, especially if they were invited by the international organizations, and who cannot return to permanent safe living conditions due to the situation prevailing in the country, including persons referred to in Article 1A of the Geneva Convention or other international or national legislation which provides international protection, in particular:

- *People who have left the armed conflict or local violence,*
- *People who are in serious danger of, or were victims of, systematic or general violation of their human rights”.*

Article 84 reads: “Temporary protection is granted for a period of one year. Temporary protection can be automatically extended for a period of six months, but not longer than one year. Except from paragraph 2 this article, temporary protection can be extended for up to one year if the European Council decides to extend the temporary protection.”

Article 89 reads:

Foreigner who has been granted temporary protection in the Republic has the right to:

- *Residence*
- *Basic livelihood and accommodation,*
- *Health care,*
- *Primary and secondary education,*
- *Information on rights and obligations,*
- *Work,*
- *Family reunion,*
- *Freedom of religion and religious education of children.*

⁶⁰ FOREIGNERS ACT. Official Gazette No: 130/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_130_2600.html [Accessed 27/05/2013]

⁶¹ ASYLUM ACT. Official Gazette No: 79/07, 88/10. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_88_2462.html [Accessed 28/05/13].

Victims also have a right to apply for long term residence on humanitarian ground / asylum after they accept the Program of Assistance and Protection. Article 65 of the Foreigners Act⁶² reads:

Temporary residence on humanitarian grounds shall be granted to a foreigner in the following cases:

- 1. If a victim of trafficking in persons (hereinafter the victim) accepted the Program of Assistance and Protection,*
- 2. If the minor has been abandoned or is a victim of organized crime or for any other reason without parental care, custody or unaccompanied,*
- 3. If the foreigner has for at least 10 years the refugee status to the date of application or who is covered by the rehabilitation or returning program or housing of the refugees from the Republic of Croatia, as evidenced by a certificate of the competent national authority for refugees,*
- 4. If it cooperates with authorities and his participation is necessary in criminal proceedings brought against an employer who is illegally employed,*
- 5. From serious justified humanitarian reasons.*

Article 71 reads:

(1) Temporary residence on humanitarian grounds stops if the victim:

- 1. lost the status of the victim,*
- 2. is found to be abusing the status of the victim,*
- 3. it is necessary for the protection of public order, national security and public health.*

(2) When deciding on termination of temporary residence to victims-minor the opinion of the competent authority for social welfare will be requested.

(3) Temporary residence on humanitarian grounds under Article 65 Paragraph 1 Items 2, 3, 4 and 5 this Act stops if the purpose for which the foreigner was granted temporary residence stops it is necessary due to the protection of public order, national security and public health.

(4) Appeal may be lodged against the decision of the police administration or police station in paragraph 1 and 3 this Article, which shall be decided by the Commission.

Non-prosecution/non-punishment/non-repetition

Given that in Croatian criminal legislation (both substantive and procedural) there is no explicit provision that protects victim of THB from being subjected to criminal / misdemeanor prosecution / punishment, it seems that Croatian system adopts the **model of coercion**.

Specifically, in the case of prostitution, the Penal Code⁶³ reads that there is **no criminal offense** if the offender acted under the influence of irresistible force. Article 20 reads: *(1) There is no offense when the*

⁶²FOREIGNERS ACT. Official Gazette No: 130/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_130_2600.html [Accessed 28/05/2013]

offender acted under the influence of irresistible force. (2) If the offender committed the offense under the influence of the force that could have been resisted, or under the influence of threats, the provisions of Article 19 Paragraph 2 this Act will be applied, taking the force or threat as an imminent danger.

In Croatian criminal legislation there is no explicit provision that protects victim of THB from being subjected to repetition of victimization.

According to MUP⁶⁴, in order to construct an effective system for combating trafficking in humans, the Republic of Croatia adopted a number of strategic and operational documents in the field of combating trafficking out of which is necessary to stress the **National Plan for Combating Trafficking in Humans in 2002, National Program to Combat Trafficking in Humans 2005 - 2008** (with associated operational plans), the **National Plan to Combat Trafficking in Human Beings for the period 2009 - 2011**. Concerning the combating of child trafficking, the **National Plan to Combat Trafficking in Children** was in force for the period 2005 – 2007.

New **National Plan to Combat Trafficking in Human Beings for the period 2012 - 2015**⁶⁵ was adopted in February 2012 and pays special attention to further strengthening the cooperation in criminal proceedings in cases of trafficking between the State Attorney's Office and the Croatian Ministry of Interior, improving methods of identifying victims of trafficking and ensuring the best interests of the victims of trafficking.

The areas covered by the new National Plan are as follows:

1. Normative framework
2. Identification of victims of trafficking
3. Detection, prosecution and punishment of perpetrators of the crime of trafficking in human beings
4. Assistance and protection of victims of trafficking
5. Prevention
6. Education
7. International cooperation
8. Coordination of activities.

The National Plan to Combat Trafficking in Human Beings for the period 2012 – 2015 prescribed three measures that pay attention to children.

Action 3 - Ensuring continuity of shelters for children and adult victims of human trafficking,

⁶³PENAL CODE. Official Gazette No: 107/07, 39/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_04_39_728.html [Accessed: 28/05/13]

⁶⁴MINISTRY OF INTERIOR (2013) [online]. Available from: <http://www.mup.hr/31.aspx> [Accessed 20/02/13].

⁶⁵MINISTRY OF INTERIOR (2012) [online]. Available from: http://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/NACIONALNI%20PLAN%20FINALNO.pdf [Accessed 21/05/13].

*Action 9 - Continue training of educators and students on combating trafficking in human beings,
Action 10 - Education of social workers, children and young adults in children's homes without parental care and homes for children with behavioral problems.*

Several normative acts adopted by the Croatian Government deal specifically with the provision of assistance to victims of trafficking according to which the institutions proceed

1. The Protocol for the Identification, Assistance and Protection of Victims of Human Trafficking (2009)
2. Protocol on Proceeding during the Voluntary Return of Human Trafficking Victims (2009)
3. Protocol on the Integration / Reintegration of Victims of Trafficking (2012)
4. Directive of the Minister of the Interior on the Regulation of Stay of Victims of Human Trafficking

Croatia has, by adoption of a Protocol for the Identification, Assistance and Protection of Victims THB unified the data on THB victims under the coordination of the Ministry of Interior, thus hindering identification by the NGOs assigning the PETRA network in protection and assistance segment.

According to the written response from NGO Center for Women War Victims - Rosa, the identification of victims is performed exclusively by the Ministry of Interior and NGOs can only point to a case, but further proceedings and investigations are conducted by the Ministry of Interior. *“Within the Ministry there are Mobile teams in which, among the Police, there should be representatives of NGOs but they were not invited to participate for years. Our cooperation with judicial authorities is reduced to the representation of victims who have accepted the system of support and were referred to our organization, but that is also very rare.”*

The rights of a victim related to the permission of having their personal data stored are regulated by the Law on Protection of Personal Data⁶⁶.

Article 7 of the Law on Protection of Personal Data

Personal data may be collected and processed exclusively:

- With the consent of the individual only for the purposes for which the data subject has given consent, or*
- In cases prescribed by law, or*
- In order to perform the legal obligations of personal data collection coordinator, or*
- For the conclusion and execution of contracts in which the party is subject, or*

⁶⁶LAW ON PROTECTION OF PERSONAL DATA. Official Gazette No: 103/03, 118/06, 41/08, 130/11, 106/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_09_106_2300.html [Accessed 23/05/13].

- *In order to protect the life or physical integrity of the respondent or any other person when subject is physically or legally unable to give consent, or*
- *If data processing is necessary for the fulfillment of a task carried out in the public interest or in the execution of public authorities given to the personal data collection coordinator or the third party that the information is being provided to, or*
- *If data processing is necessary for the lawful interests of personal data collection coordinator or a third party to whom the data are disclosed, except when the prevailing interests of protection of fundamental rights and freedoms of subject's data under Article 1 Paragraph 2 this Act, or*
- *If the subject discloses that information.*

In the case referred to in paragraph 1 subparagraphs 1 and 8 of this Article, the respondent has the right to revoke his consent at any time and to stop further processing of his personal data, except in the case of data processing for statistical purposes when personal information is no longer a matter of the identification of the person to whom they relate.

Personal data relating to minors may be collected and processed in accordance with this Act and the special protection measures prescribed by special laws.

Article 28 of the Asylum Act⁶⁷ regulates the procedure of collecting personal data of persons who seek asylum. The Article reads:

The Ministry (of the Interior) and the Administrative Court may, for the purpose of applying the provisions of this Act, collect personal data of asylum seekers.

The Ministry and the Administrative Court may, without the consent of the asylum seeker, collect data from paragraph 1 this article from the public authorities and the legal and natural persons in the Republic of Croatia if it is:

- *In the interests of asylum seekers,*
- *Law or otherwise permitted, or*
- *Necessary to check the data on asylum seekers.*

Bodies and persons referred to in paragraph 2 this article, which have data relating to asylum seekers, are required to provide this information at the request of the Ministry and the Commission.

Authority will not collect data on asylum seekers from the country of its origin, if the collection of such information could jeopardize the physical integrity of the asylum seeker and his family members who also applied for asylum, or liberty and security of the family members who live in the country of origin.

⁶⁷ASYLUM ACT. Official Gazette No: 79/07, 88/10. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2010_07_88_2462.html [Accessed 23/05/13].

Personal and other information collected during the asylum procedure, in particular the fact that the asylum application was submitted, the official unpublishable information and may not be delivered to the country of origin of asylum seekers or other bodies that do not participate in the proceedings.

Except from paragraph 4 this Article, a foreigner whose application for asylum ended with negative decision the country of origin or another country that agrees to accept his asylum application may be given the information on the first and last name, date of birth, sex, citizenship, family members, documents issued by the country of origin, the recent address in the country of origin as well as fingerprints and photographs.

Collection and use of data in this section shall be conducted in accordance with the regulations governing the protection of personal data.

Article 206 of the Foreigners Act⁶⁸ reads:

Personal information contained in the records referred to in Article 204 and 205 of this Act shall be collected, stored and processed in accordance with a special regulation on the protection of personal data if it is in the interest of foreigners, and it can be assumed that she/he would not be opposed or if it is necessary for checking data on foreigner.

The information is exchanged with relevant agencies (Ministry of the Interior, Ministry of Health and Social Welfare, Prosecutor's Office, etc.) upon the submission of a formal inquiry to the Office for Human Rights.

ANTI-TRAFFICKING MECHANISM IN CROATIA

Overview of the institutional framework for action against trafficking in human beings

a. National Committee for Combating Trafficking in Human Beings (Government Office for Human Rights)

The Committee was formed in 2002.⁶⁹ The Committee is envisaged as an institutional platform for policy coordination. The work of the Committee is under the supervision of the Government Office for Human Rights. It is an umbrella body which determines the national policy in the area of preventing and combating THB. Its main task is to adopt guidelines and strategies for combating THB, in particular the National Plans. It is supposed to meet once or twice a year, depending on the need to adopt a policy

⁶⁸ FOREIGNERS ACT. Official Gazette No: 130/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_130_2600.html [Accessed 23/05/13].

⁶⁹ MINISTRY OF INTERIOR (2013) [online] Available from: <http://www.mup.hr/31.aspx> [Accessed 20/02/13].

decision or initiate a counter-THB action of the Government. The National Committee has an obligation to report to the Government at least twice a year.

The Committee is composed of representatives of:

- the Ministry of the Interior
- the Office of the Prosecutor General
- the Ministry of Foreign Affairs and European Integration
- the Ministry of Justice
- the Ministry of Health and Social Welfare
- the Ministry of Family, War Veterans and Intergenerational Solidarity
- the Ministry of Finance
- the Ministry of Science, Education and Sports
- NGOs (two representatives)
- the media (one representative).

On 5 April, 2012, Croatian Government⁷⁰ issued a regulation that governs the scope of work of the Office for Human Rights and Rights of National Minorities. The Office consists of several specialized Units and one of them is Unit for Human Trafficking and International Relations which performs the following tasks:

- Creating drafts of national documents in the area of combating trafficking in human beings;
- Creating proposals of operational plans for the implementation of the objectives and measures defined by the national documents for combating trafficking in human beings;
- Coordinating, monitoring and evaluating the implementation of measures and activities of national documents and operational plans to combat trafficking in human beings;
- Preparing an annual report on the implementation of action plans;
- Coordinating the activities of the State Administration in the field of combating trafficking in human beings;
- Monitoring and supporting the work of civil society organizations which are active in the field of combating trafficking in human beings;
- Implementing measures to combat trafficking in persons within the jurisdiction of the Office;

⁷⁰REGULATION ON THE HUMAN RIGHTS AND THE RIGHTS OF NATIONAL MINORITIES. Official Gazette No: 150/11, 42/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_04_42_1065.html [Accessed 14/06/13].

- Preparation of sessions of the Operational Team and the National Committee for Combating Trafficking in Human Beings;
- Providing a preliminary opinion on legislative proposals and laws related to the issues of human trafficking;
- In collaboration with the Ministry of Interior runs a unified database of identified victims of human trafficking in the Republic of Croatia;
- Developing preventive activities and implementing public campaign on the issue of trafficking in persons;
- Organizing seminars and roundtables for the education of target groups on the phenomenon of trafficking in persons;
- Cooperating with international institutions in the field of combating trafficking in human beings and preparing reports on the implementation of the international instruments to combat trafficking in persons that the Republic of Croatia ratified;
- Implementing projects and programs within the decentralized implementation of EU programs;
- Coordinating professional activities of the program of the European Union PROGRESS - program for employment and social solidarity;
- Thorough preparing, developing and updating the data regarding the Unit, on the official website of the Office;
- Performing other duties entrusted by the Director of the Office.

The web page of the Government of the Republic of Croatia – Office for Human Rights has been changed due to the Parliament elections in 2011 and newly elected Government. Since then, the web page has been regularly updated with the activities of the Office.

Recent activity of the Office for Human Rights and Rights of National Minorities was the opening ceremony of the twinning project "Strengthening the identification of victims of trafficking"⁷¹ in February, 2013, funded under the European Union Programme for Croatia IPA 2010. This project aims to strengthen the capacity of relevant stakeholders in the fight against human trafficking, which will contribute to increasing the level of protection of victims of trafficking in the Republic of Croatia. The expected results of this project are: research on the major trends related to human trafficking in the Republic of Croatia, the determination of the effectiveness of the system of identification of victims of trafficking in Croatia and make recommendations for its improvement, development of guidelines related to the identification, assistance and protection of victims of trafficking, increased capacities of key stakeholders in the identification of human trafficking and prepared public campaign to raise public awareness of trafficking.

⁷¹ THE OFFICE FOR HUMAN RIGHTS AND THE RIGHTS OF NATIONAL MINORITIES {2013} [online] Available from: http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=139%3Ajaanje-identifikacije-rtava-trgovanja-ljudima-sveanost-otvorenja-projekta&catid=2%3Anovosti&Itemid=2 [Accessed 14/06/13/]

However, according to the Decision on the Establishment of the National Committee for Combating Trafficking in Human Beings⁷², there is no punishment foreseen if the Committee does not fulfill its duty.

b. Operative Team of the National Committee for Combating Trafficking in Human Beings (Government Office for Human Rights)

The Operative Team of the National Committee has been established as a referral mechanism with the task of coordinating the provision of assistance and protection to victims of THB. It should meet at least once a month and more frequently, if necessary.

The members of the Operative Team are representatives of the agencies that are the members of the Committee for Combating Trafficking in Human Beings. In addition, representatives of the Croatian Red Cross, other specialized NGOs- NGOs specialized in THB are members of PETRA network: Autonomous Women's House (Zagreb), Centre for Civil Initiatives (Poreč), Centre for Women victims of war "Rosa" (Zagreb), Dolphin (Pakrac), Organization for the Integrity and Prosperity (OIP) (Split), SOS hotline (Virovitica), Women's Association (Vukovar), Women's Group (Split), Women's Association Brod (SlavonskiBrod), Women's Room (Zagreb). The International Organisation for Migration (IOM) in Croatia is also a member of the Operative Team. Further, the International Centre for Migration Policy Development (ICMPD) is invited to attend meetings of the Operative Team as an observer.

In addition to coordinating day-to-day anti-trafficking activities, the Operative Team is responsible for supervising the mobile teams, granting the status of a victim of THB, and monitoring a national SOS telephone helpline which operates on a 24-hour basis and enables trafficked persons to ask for assistance and other persons to report possible cases of THB.

However, SOS line has not been running for 24 hours for the last two years, as NGO Centre for Women War Victims – ROSA, PETRA member organization, explained to PSD.

SOS line is part of the National Plan for Combating Trafficking in Persons 2003 and proceeds through the lines free for callers 0800 77 99, every day from 10 to 18 hours, including weekends. Up to two years ago, the line was running for 24 hours and it was managed by three organizations. Reports of citizens as well as any suspicions of trafficking or related offenses are being submitted to the department of organized crime in the Ministry of Interior and they are the only agency that can officially identify the victim. The Office for Human Rights and National Minorities operates national team coordinated by the director's office and the body is made up of representatives of relevant institutions and non-governmental organizations which meet at least once a year, and smaller and more operational body - Operations Team, which is responsible for specific support victims, meets at least once a month and argues what kind of support does identified victim need, who will provide it and how (housing, health care, social care,

⁷²DECISION ON THE ESTABLISHMENT OF THE NATIONAL COMMITTEE FOR COMBATING TRAFFICKING IN HUMAN BEINGS. Official Gazette No: 42/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2012_04_42_1067.html [Accessed 23/05/13].

psycho-social and legal assistance, repatriation, etc.). Our organization provides non-institutional support for victims who are Croatian citizens and do not need placement in a shelter and it does not matter whether the victim is officially identified or not and if she/he needs help, we are trying to provide her/him with everything within our capacity (psychological, psychiatric and legal aid, mediation institutions, guidance and support in dealing with everyday problems, etc.).

c. National Coordinator for Combating Trafficking in Human Beings and Government Office for Human Rights

The National Coordinator is the Head of the Government Office for Human rights⁷³, which is responsible for coordinating the activities of state institutions relevant to the protection of human rights. As THB is considered a human rights violation, the competences of the Government Office for Human Rights cover activities in the field of combating THB. The National Coordinator chairs the meetings of the Operative Team.

The Department for Combating Trafficking in Human Beings and International Co-operation of the Government Office for Human Rights provides the Secretariat of the National Committee and the Operative Team. The Department employs five staff members in charge of preparing documents in the field of combating THB and coordinating the work of public administration bodies and NGOs. The work of the Team is under the supervision of the Government Office for Human Rights.

d. Mobile teams

At the local level, victims of THB are assisted by mobile teams composed of specially trained representatives of the social services, the Croatian Red Cross and NGOs active in the area of combating THB. The latter have received an authorization from the Office for Human Rights, the Ministry of Health and Social Welfare, and the Ministry of the Interior to work with victims of THB. Each mobile team consists of four persons: a representative of the local social welfare centre, a representative of the Croatian Red Cross, and two representatives of NGOs. There are four mobile teams based in Zagreb, Rijeka, Split and Osijek, which cover the entire territory of Croatia.

Obligations of the mobile teams are defined by the Protocol for Identification, Assistance and Protection of Victims of Trafficking:

1. Arriving to a place of identification and provision of the first aid and protection of newly identified victims of trafficking;
2. An initial interview with a victim immediately after the identification and informing about the assistance and protection program;

⁷³GOVERNMENT OF THE REPUBLIC OF CROATIA. OFFICE FOR HUMAN RIGHTS (2013) [online] Available from: <http://www.ljudskaprava-vladarh.hr/Default.aspx?sec=31> [Accessed 20/02/13].

3. Transportation and accommodation of victims in temporary reception accommodation, provision of assistance and protection of the victim until setting at the reception center;
4. Transportation of victims to the safe official accommodation if they decided to accept the assistance and protection program.

Immediately after the identification of the victim, Ministry of Interior shall call head of the mobile team.

Obligations of the head of the mobile team are:

1. To inform the members of the authorized local mobile team in accordance with section 6 of the Protocol;
2. To monitor the work and activities of the mobile team in the provision of the first aid assistance and protection to victims of trafficking;
3. To report Ministry of Interior on the activities in providing assistance and protection to victims of trafficking.

After the head of the mobile team calls-up, the mobile team is required to immediately initiate the provision of assistance and protection in accordance with the obligations defined by the Protocol. Head of the mobile team is obligated to report the Operational Team of the National Committee in written form on all activities carried out related to the provision of the first aid assistance and protection of newly identified victims of trafficking.

Social service representatives are being trained by the experts on THB from the Ministry of Health, Ministry of Social Policy and Youth, Ministry of Interior, the Croatian Red Cross and NGOs.

According to the Protocol for Identification, Assistance and Protection of Victims of Trafficking⁷⁴, Ministry of Interior is the only body authorized for identification of victims of trafficking.

e. NGOs

The PETRA Network of 10 NGOs, active in the field of combating THB, is providing assistance to the victims and they are obliged to report the victims to Ministry of Interior, thus take part in the creation of a single data base under the Protocol on Identification, Assistance and Protection of Victims of Human Trafficking, which sets out the normative and procedural framework for the identification of victims of THB.

⁷⁴MINISTRY OF INTERIOR (2012) [online]. Available from: http://www.mup.hr/UserDocImages/nacionalni_programi/trgovanje_ljudima/2012/NACIONALNI%20PLAN%20FINALNO.pdfhttp://www.mup.hr/UserDocImages/nacionalni_programi/trgovanje_ljudima/2012/PROTOKOL%20-procisceni%20tekst.pdf[Accessed 24/05/13].

The criteria for admission to the network are accepting the mission, vision and network platform, the activities in the area of women's human rights, and the willingness and motivation to work on the prevention and elimination of trafficking in women and girls, as well as direct support to women victims.

Identification

In accordance to the Protocol for the Identification, Assistance and Protection of Victims of Human Trafficking, the Ministry of Interior is responsible for the identification of trafficking victims. In the process of identifying victims the Ministry of Interior will cooperate with civil society organizations. If the victim is a child, the Ministry of Interior will cooperate with the body responsible for social welfare and civil society organizations. The competent authority is obliged to immediately notify the National Coordinator for Combating Trafficking in Human Beings about the executed identification.

After identifying victims, coordinator for combating trafficking police informs the competent managers about the identified victim to coordinate the work of the mobile teams, without delay. National Coordinator for Combating Trafficking in Human Beings will then appoint heads of mobile teams in cases where the victim is a child and the head of the mobile team in the event that the victim is an adult.

After identification, mobile team will transfer the victim of a foreign nationality into competent reception accommodation where they will stay until the final decision on the adoption of the program of assistance and protection is made, on which it will notify the mobile team. Until final decision on the adoption of the program of assistance and protection is made, victim of Croatian nationality can stay in accommodation in their own organization and in the reception centre.

The acceptance of assistance and protection to victims must be decided within 60 days of identification. If the victim is a child, the adoption of the program of assistance and protection, with the previously expressed views of the child, shall be made by a guardian with the consent of the social care within 90 days of identification.

Program assistance and protection covers medical and psychosocial care, secure accommodation, translation and interpretation services and legal aid. The process of assistance and protection requires urgency and confidentiality in procedure.

However, due to a very low number of victims identified there is a space for conclusion of the ineffectiveness of the policy on THB. The identification of THB victims is still low and based on NGO information, border police and hotline information.

According to the National Plan for Combating Trafficking in Humans 2012 - 2015⁷⁵, border police is also active in the identification process. One of the aims of the National Plan is to continue education of

⁷⁵MINISTRY OF INTERIOR (2012) [online] Available from: http://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/NACIONALNI%20PLAN%20FINALNO.pdf [Accessed 24/05/13].

target groups on human trafficking at the national and international level. Measure 1 “Training of police officers, judges, employees of the State Attorney and representatives of civil society organizations working on cases of trafficking” provides the activity for the border police. The activity reads: “Holding seminars for 27 border police officers who are involved in combating trafficking. Implementation Indicators: Meetings for 27 border police officers in charge of identification of victims of trafficking were held”. As can be seen from provided activity, border police is active in identification process of the victims of THB and it is planned to ensure them further education on this issue.

Concerning the financial means spent for combating trafficking, the table below shows the numbers available (in HRK).

Year	GOVERNMENT	PETRA NETWORK
2010	6.000.942,74	215.401,88
2011	6.919.316,42	465.788,00
2012	N/A	N/A

The EU Progress Reports (as seen from the table below) are also showing the efforts of Croatia in combating THB in a positive sense, noting **progress** made in the field from year to year. And the progress is evident in a sense of establishing legal and institutional framework, however, from observing the concrete indicators, the numbers, no improvement is visible from 2002 until today and that is the puzzling data which puts into question the efficiency of the system as such.

Year	2005	2006	2007	2008	2009	2010	2011
EU Progress Reports	<p>The Criminal Code was amended in October 2004 to define trafficking in human beings as a criminal act. In December 2004, the National Programme for Suppression of Human Trafficking 2005-2008 was adopted, as well as an operational plan for 2005. Since 2004, four temporary residence permits have been granted to victims of trafficking under the Law on Foreigners.</p> <p>The Criminal Code criminalizes trafficking in human beings and slavery and makes these offences punishable by up to 10 years' imprisonment.</p> <p>No problems have been reported in the implementation of these provisions.</p>	<p>Further efforts are needed to tackle human trafficking. regional cooperation should be further promoted in order to tackle various illicit trafficking offences such as trafficking in human beings, firearms, drugs and goods in a joint approach by Governments and all relevant law enforcement agencies, state prosecutors and judicial authorities.</p>	<p>As regards trafficking of human beings, the Criminal Code has been amended, expanding the scope for penalties. An accommodation centre for children was set up during the reporting period. Specialized training on trafficking in human beings has been made part of the curriculum at the police and judicial academies. In June 2007, Croatia ratified the Council of Europe Convention on Action against Trafficking in Human Beings.</p> <p>Further efforts are needed as regards human trafficking.</p>	<p>Croatia remains a country of transit and destination for female victims of trafficking. Good progress has been made with regard to the trafficking of human beings. An Action Plan to combat trafficking in persons was adopted by the Government in December 2007. A new standard operating procedure (SOP) has been jointly elaborated by the Ministry of Interior, the State Prosecutor, and Ministry of Social Services. A new protocol has also been drawn up and signed between the Ministry of Interior, the Ministry of Social Services and their NGO partners. Several workshops and awareness initiatives were organized over the period, including at regional level.</p> <p>Croatia has made some progress in this chapter, particularly as regards the fight against drugs and dealing with trafficking of human beings.</p>	<p>Good progress has been made with regard to the trafficking of human beings. In November 2008, the government adopted a protocol for the identification of, assistance to and protection of victims of human trafficking which sets out in detail the national referral mechanism and the obligations of the various responsible authorities. A three-year programme to combat trafficking in persons was adopted by the government in March 2009. As part of the implementation of the protocol on cooperation between the various Croatian authorities involved in the system of suppression of trafficking (adopted in June 2008), training was given to police officers, employees of the social welfare system and of family centers, health care staff, workers in tourism and representatives of civil society organizations (450 persons in total).</p> <p>Further efforts should be made in terms of identifying potential victims of trafficking and developing a protocol for the return of victims of trafficking.</p> <p>Croatia has made some progress in this chapter, particularly as regards the fight against drugs, dealing with trafficking of human beings, and the management of external borders</p>	<p>Some progress has been achieved in the fight against trafficking of human beings. The Protocol on proceedings during the voluntary return of human trafficking victims has been adopted. Amendments have been made to the Protocol on identification of, help to and protection of victims of trafficking in human beings to harmonize it with the Aliens Act and the Protocol on proceedings during voluntary return of victims.</p> <p>Efforts to identify victims of labour exploitation need to be intensified. Training of police officers, judges, labour inspectors and health employees has been organized.</p> <p>Regional cooperation with neighboring countries and interdisciplinary cooperation to prevent and identify victims of human trafficking need to be intensified.</p>	<p>Some progress can be reported in the fight against trafficking of human beings. A Protocol on the integration of victims of human trafficking has been adopted in May 2011. A multidisciplinary approach, involving all relevant actors across all policy areas including the private sector, needs to be further developed. Identification of victims needs to be improved, especially of children victims of trafficking.</p> <p>Efforts to identify victims of labour exploitation and to tackle trafficking need to be intensified.</p> <p>Training sessions delivered by police officers, judges and labour inspectors to judicial academy and health employees continued. Training sessions for State attorneys would be beneficial in prosecuting cases of labour exploitation.</p> <p>Regional cooperation with neighboring countries and interdisciplinary cooperation to identify victims of human trafficking should be stepped up. Preparations in the area of police cooperation and fight against organized crime are advanced.</p>

THE ROLE OF CIVIL SOCIETY

As already stated, the PETRA Network of 10 NGOs, active in the field of combating THB, is providing assistance to the victims and they are obliged to report the victims to Ministry of Interior, thus take part in the creation of a single data base under the Protocol on Identification, Assistance and Protection of Victims of Human Trafficking, which sets out the normative and procedural framework for the identification of victims of THB. The Organized Crime Department of the Ministry of the Interior is responsible for the identification of THB victims.⁷⁶

Regarding the process of identification of a victim of THB, PSD received a response from the Women's Association Vukovar (Udruga žena Vukovar) which states:

“Each person (victim of THB) has the right to determine whether they want or does not want to receive help. Individuals should be consulted about their needs before the intervention. The aim of identification is to ensure that the person reaches the appropriate support service in the safest possible way.

The identification is the first stage in the transnational referral mechanism. It includes activities related to criminal procedures and protection measures. This stage can be divided into two phases - preliminary identification and official (formal) identification that include the following:

a) Preliminary identification

1. Initial reference: possible victim of trafficking is being addressed to the body responsible for the initial referral or went for help by itself;
2. Introductory information exchange: providing basic information and inquiries about the emergency needs of potential victims; response to the expressed concerns and/or emergency needs;
3. Early risk assessment: consideration of potential risk and ensuring the safety of emergency of the possible victims;
4. Language and Translation: ensuring communication
5. Reflection and recovery: Providing the time and resources to ensure that people can make a firm decision on the next steps.

b) The official (formal) identification

1. Identification interview (to determine the status of the victim): asking questions and considering the circumstances to identify the person officially recognized as victim of trafficking;
2. The exchange of information after the identification so to ensure decision-making and consent.

⁷⁶ Adopted by the Conclusion of the Government on 14 November 2009

Officials can find out about the event or come into contact with victims of trafficking in persons in different ways, including citizens, law enforcement authorities, immigration authorities, the victim itself, the other victims of THB, family and acquaintances, labour inspectors, NGOs and international organizations, health care professionals, embassies, consulates, transport carriers, etc.”

All components of this phase are evaluated after making a possible victim or victims, and having people actively agrees to provide assistance.”

Regarding the process of identification of a victim of THB, PSD received a response from Centre for Women War Victims - ROSA (Centar za žene žrtve rata - ROSA):

“Since the identification of the Republic of Croatia is performed exclusively by the Ministry of Interior, based on the merits of the answer to these questions you need to ask them. NGOs can possibly point to a case, but further proceedings and investigations are conducted by the Ministry of Interior. Within the Ministry there are Mobile teams in which, among the Police, there should be representatives of NGOs but our representatives were not invited to participate for years. Our cooperation with judicial authorities is reduced to the representation of victims who have accepted the system of support and were referred to our organization, but that is also very rare.”

Representatives of the PETRA network are members of the above-mentioned National Committee, the Operative Team and the mobile teams. They are consulted during the preparation of all national documents in the field of combating THB.

MEMBERS OF THE PETRA NETWORK:

- Autonomous Women’s House, Zagreb
- Centre for Civil Initiatives, Poreč
- Centre for Women victims of war “Rosa”, Zagreb
- Dolphin, Pakrac
- Organisation for the Integrity and Prosperity (OIP), Split
- SOS hotline, Virovitica
- Women’s Association, Vukovar
- Women’s Group, Split
- Women’s Association Brod, SlavonskiBrod
- Women’s Room, Zagreb.

Therefore, the anti-trafficking framework in terms of legislation and institutional mechanisms is quite satisfactory. However, due to extremely low number of trafficked victims identified, GRETA⁷⁷ considers that “the Croatian authorities should improve the practical application of the existing anti-trafficking framework. In particular, better use should be made of this framework to ensure that no trafficked persons remain unidentified. The public bodies responsible for the detection and identification of victims should take a proactive approach and NGOs working in the area of action against trafficking in human beings should be encouraged to participate more actively in the activities of the mobile teams, including the identification of victims.”

PREVENTION

In terms of **prevention** most of the anti-THB activities, including those implemented by NGOs, are financed from the state budget. This includes preventive measures, victim identification, assistance and protection measures, and training for all THB actors. By doing this, sustainability is ensured within a stable framework, including Police and Judicial Academy in training its officials and beneficiaries. Furthermore, Croatia participates actively in international, regional and bilateral projects, as well as implementing projects on national level.

GRETA⁷⁸ report from 2011 stressed the need for more robust and systematic preventive measures, reflecting a gender-sensitive approach, with a view to increasing public awareness and developing a better understanding of trafficking in human beings and the situation of its victims: “Research should be carried out as regards the trends of trafficking, including national trafficking (i.e. within Croatia) and trafficking for the purpose of labour exploitation. Practical measures should be taken to ensure that male victims of trafficking are effectively identified and provided with the necessary assistance and protection. Further, legislative and practical measures should be adopted to facilitate and guarantee access to compensation for all victims of trafficking, irrespective of their nationality and residence status.”

⁷⁷ GRETA Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

⁷⁸ GRETA Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

In the latest National Plan for Combating Trafficking in Humans 2012-2015⁷⁹ is stressed that is still necessary to dedicate great attention to measures aimed at the prevention of trafficking and to raise public awareness about the issue, because preventive work, together with the education of the target groups, presents an essential part in the approach of combating THB. The new Plan envisages the continuation of the implementation of education for all target groups, and special attention should be given to education of judicial officials (judges and prosecutors) - this was recommended by GRETA⁸⁰ in 2011 and is now incorporated in the new Plan.

According to the Plan, experts from the Ministry of Interior, the Judicial Academy and the State Attorney of the Republic of Croatia will train judicial officials for the effective prosecution of the crime of trafficking in human beings. Namely, the constant training of judicial staff is necessary for the effective prosecution of the crime of trafficking in human beings but also for understanding the psychological impact of trauma on victims of trafficking in persons as potential witnesses in the proceedings.

Due to the fact that THB belongs to the field of criminal law, judges who conduct court proceedings are specialized in criminal law. As it is defined by The Criminal Procedure Act⁸¹ criminal cases are being conducted in Municipal Criminal Courts, County Courts, High Criminal Court and the Supreme Court of the Croatia. The Criminal Procedure Act reads that "territorial jurisdiction belongs to the court in whose territory the offense was committed or attempted"⁸².

As a new target group, this National plan introduces the Croatian Employment Service as a very important group in the reintegration of the victims, according to the measures of the Protocol for the integration / reintegration of victims of trafficking.

The awareness-raising campaigns should be addressed to potential victims, but also to a wider public and government bodies. Therefore, the new National Plan puts accent on measures and activities aimed at implementation of the research in the area and the latest trends, and to conducting awareness-raising **campaigns** on the issue of human trafficking. As it is written in the Plan, campaigns will be organized by the Office for Human Rights and National Minorities, aimed at raising public awareness of the various forms of exploitation of trafficking victims. Through the campaigns TV spots within previously conducted public campaigns to combat human trafficking will be running.

⁷⁹GOVERNMENT OF THE REPUBLIC OF CROATIA. NATIONAL COMMITTEE FOR COMBATTING TRAFFICKING IN HUMAN BEINGS (2012) *National Plan for Combatting Trafficking in Humans 2012-2015*. [online] Available from: http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=113&Itemid=83 [Accessed 20/02/13].

⁸⁰G R E T A Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMckJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

⁸¹CRIMINAL PROCEDURE ACT. Official Gazette No: 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_56_1142.html [Accessed 14/05/13].

⁸²CRIMINAL PROCEDURE ACT. Official Gazette No: 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_56_1142.html [Accessed 14/05/13].

PROSECUTION

Regarding the prosecution of traffickers, The Criminal Procedure Act⁸³ elaborates the rules governing the evidence in criminal proceedings in Croatia.

Article 64 reads: *“Defendant has the right to review, copy, record files and objects which have to serve as evidence in accordance with this Act. The defendant has the right to propose evidence, participate in the evidentiary and other procedural actions in accordance with this Act and the right to participate in the hearing and the taking of evidence”.*

Article 208 reads: *“If the police subsequently learns of new facts, evidence or reveal traces of the crime, the necessary information shall be collected and immediately reported to the prosecutor”.*

Article 306of the Criminal Code⁸⁴ reads: *“Anyone who attempts to specify the false testimony or to prevent or hamper proving the supposed witness, witness or expert in the previous criminal proceedings, proceedings before a court, an international court whose competence Croatia accepts, in arbitration, misdemeanor proceedings, administrative proceedings, proceedings before notary public or in disciplinary procedure uses force, threat, or any other form of coercion or promises, offers or gives them a gift or any other benefit, shall be punished by imprisonment of one to eight years”.*

Number of prosecutions for a criminal activity under the article 175 of the old Criminal Code⁸⁵

	2007.	2008.	2009.	2010.	2011.	2012.
ACCUSATIONS	1	9	5	9	2	N/A

Number of convictions for a criminal activity under the article 175 of the old Criminal Code⁸⁶

	2009.	2010.	2011.	2012.
CONVICTIONS	3	4	3	N/A

⁸³CRIMINAL PROCEDURE ACT. Official Gazette No: 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_56_1142.html[Accessed 15/05/13].

⁸⁴CRIMINAL CODE. Official Gazette No: 125/11, 144/12. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html[Accessed 15/05/13].

⁸⁵MINISTRY OF INTERIOR. Statistical data dealing with trafficking in human beings 2008-2011.Sent to Partnership for Social Development on 20 June 2012.

(Criminal Code Official Gazette no. 110/97, 27/98, 129/00, 51/01 and 105/04, 84/05, 71/06 and 152/08)

⁸⁶MINISTRY OF INTERIOR. Statistical data dealing with trafficking in human beings 2008-2011.Sent to Partnership for Social Development on 20 June 2012.

(Criminal Code Official Gazette no. 110/97, 27/98, 129/00, 51/01 and 105/04, 84/05, 71/06 and 152/08)

GRETA report on Croatia in 2011 states that representatives of the prosecution and judicial authorities confirmed that prosecutions for the offence of THB have been rare and indicated that the charges are usually difficult to prove: "...one of the most important reasons for the low number of successful prosecutions for THB cases is the difficulty to find victims of THB who are willing to provide evidence against the traffickers. In some cases, victims who initially co-operated with the investigation later stepped out of the proceedings and were no longer willing to participate as witnesses."⁸⁷

As a solution, one of the measures suggested in the Programme is the provision of increased training to judges and public prosecutors on the legislation concerning THB. Head of Office for Human Rights reacts on GRETA's observations and Republic of Croatia has increased the trainings provided to judges, prosecutors and other relevant professionals on the issue of THB in the new proposal of the National Plan for Combating Trafficking in Humans 2012-2015.

The Witness Protection Act⁸⁸ regulates protection mechanisms for victims during prosecution. Article 11 reads: *"The State's Attorney may, on the proposal of the competent public prosecutor or vulnerable persons, submit application to the Commission for inclusion of vulnerable persons in the protection program, if they otherwise would not be able to provide free testimony of witnesses in criminal proceedings"*.

Article 17 regulates protection mechanism for vulnerable persons: *"Measures to protect vulnerable persons are: 1. Physical protection, 2. Relocation, 3. Measures to conceal the identity and ownership, 4. Change of identity"*.

Article 19 regulates relocation of vulnerable persons: *"Relocation of vulnerable person from Article 17 Paragraph 1 Item 2 this Act is a temporary or permanent relocation of the place of residence or place of residence affected person to another location designated by the Protection Unit. Relocation is possible on Croatian territory or outside the territory, based on the Croatian international agreements"*.

Article 42 regulates international cooperation regarding the transfer of vulnerable persons outside of Croatia. *"International cooperation is realized on the basis of assumed rights and obligations under international treaties signed by the Republic of Croatia. International agreements may provide the transfer of vulnerable persons outside Croatian territory or admission on Croatian territory"*.

Criminal Procedure Act⁸⁹ regulates rights of a victim of THB during the trial. Article 45 reads: *"Victim of a crime against sexual freedom and sexual morality has the right under Article 43 and 44 this law right: 1.*

⁸⁷ GRETA Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

⁸⁸ WITNESS PROTECTION ACT. Official Gazette No: 163/103, 18/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_02_18_312.html [Accessed 24/05/2013]

⁸⁹ CRIMINAL PROCEDURE ACT. Official Gazette No: 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2013_05_56_1142.html [Accessed 24/05/2013]

prior to the examining, to talk to a counselor at the expense of budget funds; 2. to be interrogated by the person of same sex in the police and State Attorney's Office; 3. to refuse to answer questions that relate to personal life of the victim; 4. to require to be examined through an audio-video device under Article 292 Paragraph 4 this Act; 5. to the confidentiality of personal information; 6. to require the public to be excluded from the trial”.

Some measures were taken to develop more proactive investigation methods by the police as of the main goals of the new Plan are strengthening the proactive identification procedures for victims of trafficking. Measures are aiming to perfecting the use of proactive methods of detection and identification of trafficking. Planned activity is applying the standard operating procedures in the procedures for combating human trafficking and applying a proactive approach based on a model of police practice managed by criminal intelligence information in order to improve the identification of victims of trafficking and detection of offender under Article 175 of the Criminal Code (i.e. Article 105 and Article 106 of the new Criminal Code).

Another goal is to continue education of target groups on human trafficking at the national and international level. Measures are aiming to training the police officers, judges, employees of the State Attorney of the Republic of Croatia and representatives of civil society organizations working on trafficking cases. Planned activities is to hold seminars for 25 police officers who work on organized crime dealing with human trafficking, 15 state attorneys specializing in issues of human trafficking, 5 County Court judges and members of civil society organizations.

ASSISTANCE AND PROTECTION

In regard to protection measures, Croatia has developed institutional framework in line with other European trends, like the Netherlands using the local approach. The Operative Team of the National Committee has been established and a referral mechanism for protection and assistance to victims of THB. Four Mobile Teams have been created for local approach by authorized NGOs, IOs and relevant state authorities. Taking into account the Protocol for Integration of Victims of THB, the unique database exists in terms of identified victims in Croatia, within the Ministry of Interior.

Assistant services regarding the protection of THB victims are defined in the Protocol on the Integration / Reintegration of Victims of Trafficking.⁹⁰

Article 2 reads: *“The victim has the right to health care. Health care considers the right to services in primary care, specialist care, hospital care, the right to use drugs that are assessed through the primary and additional list of the Croatian Institute for Health Insurance, the right to dental prosthetic care and dental prosthetic restorations, right to orthopedic and other aids. Under the conditions stipulated by the Law on Compulsory Health Insurance, victims are entitled to health care abroad”.*

⁹⁰MINISTRY OF INTERIOR (2012) [online]. Available from:http://www.mup.hr/UserDocImages/nacionalni_programi/trgovanje_ljudima/2012/PROTOKOL%20O%20INTEGRACIJI%20-%20konacno.pdf[Accessed 27/05/13].

Article 4 reads: *“The victim may be entitled to social welfare benefits prescribed by the Social Welfare Act. The Center for Social Welfare, founded in the area where the victim has a permanent or temporary residence, is obliged to decide on the implementation of social welfare in accordance with the provisions of the Social Welfare Act”.*

Article 5 reads: *“The Center for Social Welfare provides counseling to the victim aimed to overcome the difficulties and inclusion in society. Consultations are conducted by the appropriate experts in the Center. Consulting services include assistance in finding a job, solving the housing problem and the creation of conditions for the development of personal abilities and responsible attitude towards themselves and society. The victim is entitled to compensation in accordance with the conditions prescribed by the Social Welfare Act”.*

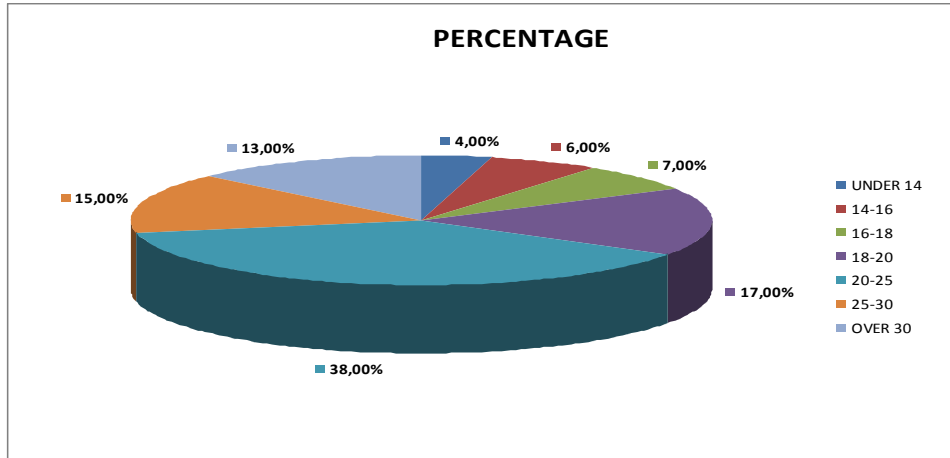
Article 6 reads: *“In accordance with legal requirements victim will be allowed to integration / reintegration into the regular system of primary and secondary education. If the victims are Croatian citizens older than 15 years without primary education, they will have the opportunity to complete the same project through 'Literacy: The Path to a Better Future - Literacy 2003-2012". The foreign victim will be enabled to the inclusion of regular secondary education on the basis of the “Decision of the elements and criteria for selection of candidates for admission to secondary schools” of the Ministry of Science, Education and Sports.”*

Article 7 reads: *“By applying in the database of unemployed persons at the Croatian Employment Service (CES), the victim will be ensured to the right to information and technical assistance in accordance with the Employment Mediation and Unemployment Insurance Act.”*

Article 8 reads: *“Obligation of the CES is to offer information about the state of the local labor market, to include victims in the workshops for the unemployed to increase their competence, motivation and active job seeking skills and assist in the development of a professional job plan. Professional job plan defines the tasks that the victim can perform according to established professional, occupational and personal opportunities to the list of activities that will be implemented for the purpose of employment. The obligation of the employment advisor is to inform the victim of the advertised vacancies that suit them, according to the qualification and professional conditions and her previous working experience. The employment advisor has an obligation to help the victim in establishing contact with potential employers.”*

The table below shows the percentage of identified victims of THB according to age for the period 2002-2009.⁹¹

⁹¹ GOVERNMENT OFFICE FOR HUMAN RIGHTS (2010) Report on the implementation of the National Plan for Combating trafficking in Humans 2009-2011 for the year 2009.



Concerning the financial means spent for combating trafficking, the table below shows the numbers available (in HRK):

Year	GOVERNMENT	PETRA NETWORK
2010	6.000.942,74	215.401,88
2011	6.919.316,42	465.788,00
2012	N/A	N/A

According to the statistical data concerning the trafficking in humans 2008-2011 by the Ministry of Interior⁹², concerning the assistance and victims protection, over the period 2008-2011, the Croatian Red Cross sheltered 28 grown-up victims of THB, and Organization for Integrity and Prosperity sheltered 6 under-age victims of THB, which means that overall 34 victims of THB have been sheltered in the observed period.

According to the National Plan for Combating Trafficking in Humans 2012-2015⁹³, in Croatia is in place a system that is primarily concerned with the interests of victims of trafficking. For this reason all the activities of the relevant institutions from the moment of identification are aimed at providing adequate assistance and protection to victims of human trafficking, which includes the work of **two national shelters**, providing medical, psychological, social and legal assistance and protection as well as ensuring the safe and voluntary return to the country origin.

⁹² MINISTRY OF INTERIOR. Statistical data dealing with trafficking in human beings 2008-2011. Sent to Partnership for Social Development on 20 June 2012.

⁹³ GOVERNMENT OF THE REPUBLIC OF CROATIA. NATIONAL COMMITTEE FOR COMBATTING TRAFFICKING IN HUMAN BEINGS (2012) *National Plan for Combating Trafficking in Humans 2012-2015*. [online] Available from: http://www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=113&Itemid=83 [Accessed 20/02/13].

Article 3 of the Protocol for Identification, Assistance and Protection of Victims of Trafficking regulates accommodation for Croatian victims of THB. *“Beside the reception center, Croatian victims can self-organize accommodation to their final decision on the adoption of the program of assistance and protection.”*

In the document entitled *“The Rules of staying in the Centre for Foreigners”*⁹⁴ Article 8 reads: *“The rooms to accommodate males can accommodate up to 12 people, and rooms for females up to 4 people. In the same room foreigners who are not of the same sex cannot be accommodated, except in the case of a family that is accommodated in the room for the family.”*

Protocol on the Voluntary Return of Victims of Trafficking⁹⁵ states that the Ministry of Interior carries out the procedure to return the victims and cover the costs of return.

Article 4 reads: *“In the process of identification of the victim to her return to the country of return the risk assessment will be implemented to determine the degree of safety of the victim and her family in the country of origin. Risk assessment and safety is conducted by the Ministry of Interior in cooperation with the national authorities, international and non-governmental organizations and the Croatian Red Cross. If the victim is a child safety and risk assessment is conducted by government authority responsible for Social Welfare”.*

Article 5 reads:

“Through the risk assessment and security Bodies under Article 4 this Protocol shall determine:

- 1. Possibility of safe returning to the place where the victim wants to return,*
- 2. Person's name or the name of the organization that will take a victim to the country of origin,*
- 3. Family and social situation of victims,*
- 4. Possibilities of safe accommodation (shelter or alternative accommodation),*
- 5. Circumstances related to the offense and the offender*
- 6. If necessary, other circumstances relevant to the return of victims”.*

Article 6 reads about the situation where Ministry has appraised that it is not safe for the victim to return to the country of origin. The Article reads: *“If required by the risk assessment, the victim can be placed in third country, with their consent, under condition that the Republic of Croatia has signed the appropriate contract with that State or in the country of origin, if the conditions are appropriate”.*

Usually, victims stay in the shelter as long as it is not safe for them to return to their country of origin. Regarding to the Protocol for Identification, Assistance and Protection of Victims of Trafficking, victims of THB are being placed in the shelters right after the Ministry of Interior identifies them as the victims.

⁹⁴MINISTRY OF INTERIOR {2008} [online]. Available from: <http://www.policija.hr/mup.hr/main.aspx?id=10213>[Accessed 28/05/2013].

⁹⁵MINISTRY OF INTERIOR {2012} [online]. Available from: http://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/Protokol%20povratak.pdf[Accessed 28/05/13].

As it is stated in the Information Package for Asylum Seekers⁹⁶, the procedure for receiving the asylum can last from a few days or weeks to several months. Until they get the asylum, foreigners are accommodated in the Reception Center Ježevo.⁹⁷

Particularly in the area of providing assistance and protection to victims, civil society organizations have an important role. Due to the complexity of the issues and traumatic nature of experiences the victims are going through, making **individual programs** requires a high level of expertise and cooperation between the authorities and civil society organizations in dealing with this sensitive part of the national system for combating trafficking. This National Plan dedicates special attention in the field of helping and protecting the victims and ensuring an individual approach to securing and protecting the best interests of the victims of trafficking.

GRETA⁹⁸ considers that the Croatian authorities should take further measures to:

- ensure that law enforcement agencies and other relevant actors adopt a proactive approach and increase their outreach work to identify victims of THB;
- implement targeted policy measures, including outreach work, for the identification of trafficked children;
- develop and implement measures necessary to detect THB for the purpose of labour exploitation, including through the provisions of training to staff of labour inspectorates, and carrying out regular inspections in areas where THB for the purpose of labour exploitation may occur;
- strengthen partnerships with NGOs to enhance their involvement in the identification of victims of THB.

Overview of the current situation in the area of trafficking in human beings in Croatia by GRETA⁹⁹ in the end of 2011 showed that, according to the Government's reports, due to its geographical situation, Croatia is affected by trafficking in human beings mostly as a country of transit and destination, and to a lesser extent as a country of origin. GRETA stresses the need for more robust and systematic preventive measures, reflecting a gender-sensitive approach, with a view to increasing public awareness and developing a better understanding of trafficking in human beings and the situation of its victims.

⁹⁶ INFORMATION PACKAGE FOR ASYLUM SEEKERS {2008} [online]. Available from: <http://www.azil.com.hr/page.aspx?PageID=83> [Accessed 28/05/13].

⁹⁷ UNHCR {2009} [online]. Available from: <http://www.unhcr.hr/eng/news/unhcrs-asylum-unit-visit-jezevo-reception-detention-centre-for-illegal-migrants.html> [Accessed 28/05/13].

⁹⁸ G R E T A Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

⁹⁹ G R E T A Group of Experts on Action against Trafficking in Human Beings (2011) *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 15/05/13].

Research should be carried out as regards the trends of trafficking, including national trafficking (i.e. within Croatia) and trafficking for the purpose of labour exploitation.

Although the main purpose of trafficking was sexual exploitation, there have also been cases of persons trafficked for the purpose of labour exploitation (four in 2008, three in 2009), exploitation of begging (one in 2010) and being forced to commit minor criminal offences (one in 2010). Regardless of the official statistics, it is commonly acknowledged by representatives of public bodies and NGOs that the actual extent of THB in Croatia could be considerably higher. There are indications that Croatia is increasingly becoming a country of origin for victims of trafficking, with national THB (i.e. within Croatia) and trafficking for the purpose of labour exploitation being on the rise.

GRETA notes that one of the activities included in the National Plan for 2009-2011 is to carry out research on trends in the area of THB. A research on the current trends in THB in Croatia, with a special focus on labour exploitation, has already been conducted under the ICMPD project “Targeting niches in the anti-trafficking efforts: customized support for Croatia”¹⁰⁰. As part of this project, a list of indicators for detecting cases of THB was developed and distributed to all relevant institutions. Government officials and representatives of NGOs confirmed that the ICMPD project revealed important gaps to be addressed. Other than this project, the GRETA delegation was informed during the country visit to Croatia that no research on THB has been carried out since 2007. GRETA understands that a research project entitled “Enhancing identification of victims of trafficking in human beings” has recently been approved by the European Commission.

Following the assessment carried out by the ICMPD, the Croatian authorities are becoming increasingly aware of the problem of THB for labour exploitation. The assessment highlighted in particular the need for sector-specific research (in the areas of tourism, agriculture and construction), improved training of labour inspectors and other relevant actors, improving the exchange of information and streamlining co-operation among national institutions. According to the information obtained during GRETA’s country visit to Croatia, measures to identify victims of trafficking for the purpose of labour exploitation remain largely insufficient. In this context, GRETA notes that no specific activities are included in the National Plan for 2009-2011¹⁰¹ on improving the identification of victims trafficked for labour exploitation.

The Ministry of Interior approved the new National Plan to Combat Trafficking in Human Beings¹⁰² which was adopted in February 2012 and pays particular attention to further strengthening cooperation in criminal proceedings in cases of trafficking between the Croatian State Attorney's Office and the Ministry of the Interior, improving methods of identifying victims of trafficking and ensuring the best interests of victims of trafficking. The new National Plan covers all areas of the previous national

¹⁰⁰ The ICMPD project “Targeting niches in the anti-trafficking efforts: customized support for Croatia” {2010} [online]. Available from: <http://www.icmpd.org/Trafficking-in-Human-beings-in-Croatia-An-assessment-focusing-on-labour-exploitation.1832.0.html> [Accessed 15/05/13].

¹⁰¹ OFFICE FOR HUMAN RIGHTS OF THE REPUBLIC OF CROATIA {2013} [online]. Available from: <http://www.ljudskaprava-vladarh.hr/Default.aspx?art=474&sec=173> [Accessed 15/05/13].

¹⁰² MINISTRY OF INTERIOR {2012} [online]. Available from: http://www.mup.hr/UserDocsImages/nacionalni_programi/trgovanje_ljudima/2012/NACIONALNI%20PLAN%20FINALNO.pdf [Accessed 21/05/13].

documents dealing with the topic of combating trafficking in human beings and in the proposed measures and activities it has incorporated experience of all relevant government bodies, civil society organizations, NGOs and international organizations.

GRETA also considers that “a better balance should be struck between the need to place victims of THB who have obtained residence permits in a shelter, which has a special regime, and the need to achieve their recovery and rehabilitation through access to education, vocational training and employment. Greater awareness is necessary among staff working with victims of trafficking as regards the need to respect the confidentiality of victims’ personal data and victims’ privacy. Any limitation of the personal liberty of victims of THB should always be proportionate to the objectives aimed at by such limitation.”¹⁰³

During the visit to one of the shelters, the **GRETA delegation** came across an example of disrespect for the privacy of victims and the confidentiality of their personal information by some of the shelter’s employees, and was concerned by what seemed to be an excessive limitation of the personal liberty of victims. GRETA considers that a better balance should be struck between the need to place victims of THB who have obtained residence permits in a shelter, which has a special regime, and the need to achieve their recovery and rehabilitation through access to education, vocational training and employment. Greater awareness is necessary among staff working with victims of trafficking as regards the need to respect the confidentiality of victims’ personal data and victims’ privacy. Any limitation of the personal liberty of victims of THB should always be proportionate to the objectives aimed at by such limitation.

Access to shelter is not contingent on residency permit. However, victims have to accept the Program of Assistance and Protection before they can get access to shelter.

A shelter is a form of secure accommodation in which the victim resides upon acceptance of assistance and protection to its return to the country of origin, i. e. until the reintegration in society. In the shelter, each victim has access to all the necessary psychosocial, medical and legal assistance on the basis of pre-made individual programs of assistance and protection. Individual program of assistance and protection for victims who are Croatian citizens, regardless of age, is created by civil society organizations, which has authorization from the Operations Team of the National Committee in cooperation with the competent social care center.

Considering the **compensation and legal redress** Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid.

¹⁰³GRETA Group of Experts on Action against Trafficking in Human Beings (2011)*Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia*. [online] 30 November. Available from: http://ec.europa.eu/anti-trafficking/download.action;jsessionid=gzYqRMcKJNWh9Tx9Thjv69Cs9mmWpwLvgX38LkPQFG51ssv11Th3!1062222535?nodePath=%2FPublications%2FGRETA+Report+Croatia+2011_en.pdf&fileName=GRETA+Report+Croatia+2011_en.pdf [Accessed 20/02/13].

Pursuant to the Legal Aid Act¹⁰⁴, asylum seekers, foreigners under subsidiary protection, foreigners under temporary protection and victims of trafficking have access to free legal aid, with confirmation of the competent authority of their status.

A person who requests to use the right to free legal aid has to fill in Application Form for the approval of free legal aid¹⁰⁵. Information on the possibilities and terms of utilizing legal aid, as well as the application forms, must be made available to the parties by the first instance judicial bodies, first instance administrative bodies, legal persons vested with public authority, legal aid providers and competent state administration offices in charge of approving legal aid.

Attorneys, associations, trade unions and law faculties are providers of the free legal aid and each can render specific legal aid services to the extent defined in the Free Legal Aid Act. In order to monitor the legal aid system The Republic of Croatia established the Legal Aid Commission¹⁰⁶ as an advisory body to the Ministry in charge of legal affairs.

The Act on Pecuniary Compensation of Damage to Crime Victims regulates the right to State compensation to victims of violent criminal offences committed with an intent, which includes victims of THB. Under this Act, the victim has the right to compensation when the perpetrator is not known or has no assets. A special Committee whose members are appointed by the Government decides on the compensation claim. However, GRETA is concerned that this Act only applies to victims who have suffered serious bodily injury or impairment of health. Furthermore, the Act will only enter into force when Croatia becomes a member of the European Union and the application of its provisions will be limited to victims of THB who are nationals of EU member states.

RECOMMENDATIONS

- A multi-disciplinary approach, involving all relevant actors across all policy areas including the private sector, needs to be further developed.
- Identification of victims needs to be improved, especially of children victims of trafficking.
- Practical measures should be taken in order to improve co-operation and communication between the police at local level and NGOs, especially as regards the identification of victims of THB.
- Concerning the identification problem concerning the labour exploitation, the labour inspectors are not actively involved in the process as an important institutional element for overseeing the labour practices, which causes the lack of identification of labour exploitation.

¹⁰⁴LEGAL AID ACT. Official Gazette No: 62/08, 44/11, 81/11. Available from: http://narodne-novine.nn.hr/clanci/sluzbeni/2011_07_81_1721.html [Accessed 15/05/13].

¹⁰⁵MINISTRY OF JUSTICE {2011} [online]. Available from: <http://www.antikorupcija.hr/download> [Accessed 15/05/13].

¹⁰⁶MINISTRY OF JUSTICE {2011} [online]. Available from: <http://www.mprh.hr/the-legal-aid-commission> [Accessed 15/05/13].

- Administrative management of cases, and different register of in-take offices in police, prosecution offices and courts, makes it difficult to follow the case prosecution and court proceedings. Namely, the statistics of reported THB cases is so low that challenges the existence of the established mechanisms for combating THB (institutional ineffectiveness and inefficiency). Especially the cases of THB for labour exploitation are almost invisible for the systems, which presents a barrier for testing the efficiency of institutional structures and further improvements.
- Training sessions for State Attorneys would be beneficial in prosecuting cases of labour exploitation.
- Regional cooperation with neighboring countries and interdisciplinary cooperation to identify victims of human trafficking should be stepped up.
- In order to establish an effective guarantee of the right to compensation and redress for the victims of THB according to international and European commitment of the Western Balkan countries, the specialized compensation system should be established within the legal framework and monitoring institutions.
- It would be useful to introduce a periodic independent evaluation of the National Plan as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB.

TRAFFICKING IN HUMAN BEINGS IN FYR OF MACEDONIA

**SITUATION ANALYSIS CONDUCTED BY THE OPEN GATE –
LA STRADA MACEDONIA**



TRAFFICKING IN HUMAN BEINGS

SITUATION ANALYSIS IN FORMER YUGOSLAV REPUBLIC OF MACEDONIA



POLITICAL AND SOCIO ECONOMIC SITUATION IN THE COUNTRY

Present general political, economic and social situation in the country

- *The Republic of Macedonia gained its independence from the former Yugoslavia in 1991 and has achieved a considerable degree of political and economic stability in recent years. The Social Democrats called for early parliamentary elections in June 2011, and Prime Minister Nikola Gruevski maintained control of his seat in a coalition with the Democratic Union for Integration. FYR of Macedonia has fulfilled NATO's Membership Action Plan, but Greece has unilaterally blocked its accession to the alliance because of a dispute between the two countries over Macedonia's constitutional name. This dispute is expected to delay Macedonia's accession to the European Union as well.*
- *The political situation in the FYR of Macedonia has become more difficult and complicated since the publication of the 2012 European Commission Progress Report for the country recommending opening EU accession talks with the FYR of Macedonia for the fourth year in a row. In December 2012 the EU commission declined to open accession talks and informed the Macedonian government that FYR of Macedonia is given time until Spring 2013 to promote good neighborly relations with Greece considering the "name issues" and with Bulgaria considering the "history issues".*

Position of women, children, people with disabilities and national minorities

According to the report of the State statistical office in the FYR of Macedonia¹⁰⁷ the percentage distribution of women and men in the total population of FYR of Macedonia is equal, 49.9% of the population are women, while 50.1% are men. In the IV quarter of 2012, the labour force in the Republic of Macedonia numbered 948 125 persons, of which 657 849 were employed, while 290 276 were unemployed persons. From the unemployed 59.3 % are men while 40.7 are women. The activity rate in this period was 56.7; the employment rate was 39.3, while the unemployment rate was 30.6.

The present traditional role of women in the FYR of Macedonia explains occupational segregation whereby women dominate in the health care, social work and the education sector and men are mostly employed in construction, mining, transport, as well as in the energy and water supply sectors in the case of the FYR of Macedonia. Occupational segregation leads to undervaluing of work typically done by women. In addition skills considered as “female” such as manual dexterity and caring often required in the health sector are undervalued or even overlooked compared with traditionally “male” skills such as heavy lifting. From the point of view of vertical segregation within sectors, managerial and senior positions in work places are in most cases occupied by men, while women are asked to perform lower-paid jobs.

There is existence of gender discrimination, next to the high percentage of all kinds of violence, especially domestic violence¹⁰⁸ among women that indirectly contributes to the increased number of trafficked persons.

Today, one in ten children is not enrolled in primary education, and every fifth child is not enrolled in a secondary education institution, even though it is compulsory (State Statistical Office, Women and Men in Macedonia, 2012).

The Ohrid Framework Agreement, from 2001, provided a range of legislative and policy measures to ensure equality and minority protection. As a result, constitutional changes were made and legislation introduced or amended. This package of decentralized power, gave official status to a minority language in areas where at least 20 per cent of the population speak it, adopted proportional representation, strengthened education in the Albanian language, and improved participation and employment of minority peoples in public life and state institutions. At the municipal level, Committees for Inter-ethnic Relations are being established in areas with more than 20 per cent minority population; if given a meaningful role, these could be an important mechanism for participation. A key problem with the

¹⁰⁷ <http://www.stat.gov.mk/Publikacii/Gender2012.pdf>

¹⁰⁸ Survey about the dark figures of domestic violence, 2000 (psychological 61,5%, physical 23,8 and sexual 5% ; Research Life in shadow, 2007 (psychological 56,4%, physical 17,7% and sexual 10,6%) and survey carried out for the needs of this shadow report, 2010 (psychological 64.80%, physical 27.70%, and sexual 13.80%) all conducted by the Association ESE. In the period 2006 -2011, as result of domestic violence 12 women were killed by their male partners in the period, which illustrates the seriousness of the consequences suffered by the victims of domestic violence. In the same period Ministry of interior has registered 9 criminal acts “attempt to murder”

Ohrid Framework Agreement is that it focuses on the ethnic Albanian and Macedonian communities, marginalizing smaller minority communities. Whilst comprehensive legislative changes have been made, implementation of the laws, policies and programs has varied.

On the other hand Roma continue to face discrimination and exclusion in all spheres of life, including access to basic services such as education, electricity and health care. The community suffers extreme poverty, and Roma are excluded from the labour market for a range of reasons including discrimination. Many Roma children do not complete primary education. Roma are discriminated by officials within a range of state institutions and many have problems obtaining personal documents and citizenship. Police abuse of Roma is common, and the government has been lax in investigating reports of abuse. Roma women face multiple discrimination and particular problems; for example, there are high rates of domestic violence and the police often fail to respond when incidents are reported. Politics are dominated by ethnic Albanian-Macedonian relations, and Roma barely participate. They are likewise almost unrepresented in employment in state institutions. A National Strategy for the Roma was adopted in 2005, but has not been successfully implemented. The Decade of Roma Inclusion provides a framework for a range of activities to try to improve their situation.

It took many years, but disabled citizens in the FYR of Macedonia now legally have the right to equal treatment under the law. The change came in 2011 when the Assembly of the FYR of Macedonia ratified the U.N. Convention for the Rights of Persons with Disabilities, a set of government commitments to give full rights to disabled persons rather than treating them as objects of charity and institutionalization. Macedonia's ratification of the convention resulted from a long-term advocacy campaign led by a disability rights group that overcame considerable political and institutional obstacles to see its goal realized.

The problem of corruption and the connection of this issue to trafficking in human beings

Corruption presents a major barrier to combating trafficking in FYR of Macedonia. FYR of Macedonia takes the 69 place with a sum of 43 points, which means that the country is again situated in the group of countries that have grade under 50 according to Transparency International's Corruption Perception Index for 2012. US TIP report for 2012 reported concerns of complicity among local officials and police, specifically involving bars and nightclubs in western Macedonia. In April 2011, the Skopje Court of Appeals upheld a conviction and sentence of a police officer to 8.5 years in prison for facilitating the sex trafficking of children. It also investigated two other local police officers for trafficking-related complicity during the year.

Other relevant economic indicators and other factors influencing THB situation in the country

FYR of Macedonia currently faces some major challenges. Unemployment rates are very high (above 30%). Long-term unemployment is widespread among youth, the rural population, national minorities (especially ethnic minority women) and lower educated people.

According to the World Bank, half of Macedonia's population suffers from various types of poverty. Particularly vulnerable groups include: people with incomplete primary education, the long-term unemployed, national minorities, children without parental care, single parents, street children, victims of domestic violence, the homeless, people who use and abuse drugs, and the elderly.

Trafficking in persons in FYR of Macedonia started to ascent during the nineties. The transitional processes that appeared in the country as in other former socialist countries in Central, Eastern and South-eastern Europe, caused an enormous movement of the population in search for work and better life, which resulted with the creation of favorable conditions for the development of trafficking in persons. During that period, the country was characterized with political instability, also accompanied by armed conflict in 2001, refugee crisis, increased presence of the international community and foreign peace keeping missions and forces. All these factors contributed to FYR of Macedonia becoming a transit and destination country for the victims of trafficking in persons. The slow and painful transition, which FYR of Macedonia had with all its characteristics, such as: corruption, rise of organized crime, high level of unemployment and poverty and the migration of highly educated individuals¹⁰⁹, were the main reasons for the creation of fruitful grounds for trafficking in persons.

FYR of Macedonia is a source, destination, and transit country for men, women, and children subjected to sex trafficking and forced labor. Macedonian women and children are trafficked within the country. Foreign victims subjected to forced prostitution or forced labor in FYR of Macedonia originate in Albania, Bulgaria, Serbia, Ukraine, and Kosovo; and Macedonians are subjected to forced labor and sex trafficking in Europe. Children, including ethnic Roma, are subjected to forced begging in streets and public markets. During the year, authorities reported an increase in undocumented foreign migrants in the country, a group vulnerable to trafficking. A 2011 labor sector assessment found the prevalence of labor exploitation to be greatest in Macedonia's textile sector, mostly in southeast Macedonia, and significantly prevalent in civil engineering, tourism, catering, and agriculture. Trafficking offenders increasingly used false marriage, particularly among the ethnic Roma population, as a tactic to lure victims into forced prostitution.

LEGAL ANALYSIS

Criminalization of THB

Relevant laws and documents on THB and victim protection

¹⁰⁹ Typical and common for poor and undeveloped countries

1. Law on ratification on the Convention for protection of children from sexual exploitation and sexual abuse (“Official Gazette of the Republic of Macedonia” No.135/2010)
2. Law on ratification on the Convention on the rights of the child (“Official Gazette of the Republic of Macedonia” No.150/1993)
3. Law on children protection (“Official Gazette of the Republic of Macedonia” No. 98/2000, 17/2003, 65/2004, 113/2005, 98/2008, 107/2008, 46/2009, 83/2009, 156/2009, 51/2011, 157/2011)
4. Law on family (“Official Gazette of the Republic of Macedonia” No.86/1992, 9/1996, 19/2000, 29/2001, 38/2004, 60/2005, 33/2006, 84/2009, 112/2009, 67/2010, 156/2010, 39/2012, 44/2012)
5. Law on social protection (“Official Gazette of the Republic of Macedonia” No. 79/2009 from 24.06.2009, 36/2011, 51/2011)
6. Law on primary education (“Official Gazette of the Republic of Macedonia” No. 44/1995, 24/1996, 82/1999, 29/2002, 40/2003, 63/2004, 67/2004, 48/2009, 33/2010, 116/2010, 156/2010, 6/2011, 18/2011, 51/2011)
7. Law on secondary education (“Official Gazette of the Republic of Macedonia” No. 24/1996,34/1996,35/1997, 82/1999, 29/2002, 52/2002 – revised version, 40/2003, 42/2003, 67/2004, 55/2005, 113/2005, 35/2006, 30/2007, 49/2007, 81/2008, 92/2007, 49/2007, 81/2008, 92/2008, 33/2010, 116/2010, 156/2010, 18/2011, 42/2011, 51/2011)
8. Law on health protection (“Official Gazette of the Republic of Macedonia” No. 17/1997; 15/2002; 7/2004; 3/2005; 19/2005; 26/2005; 16/2006; 11/2007; 12/2007; 16/2008; 27/2008; 29/2009, 88/2010, 44/2011, 53/2011)
9. Criminal Code (“Official Gazette of the Republic of Macedonia” No. 37/1996; 80/1999; 4/2002; 43/2003; 19/2004; 81/2005; 60/2006; 73/2006; 7/2008; 139/2008, 114/2009, 51/2011, 135/2011, 185/2011)
10. Law on Criminal Code Procedure (“Official Gazette of the Republic of Macedonia” No. 15/1997, 18/1999, 44/2002, 27/2004, 74/2004, 75/2006, 83/2008, 53/2009, 67/2009, 53, 54, 55/2010)
11. Law on juvenile justice (“Official Gazette of the Republic of Macedonia” No. 87/2007, 103/2008, 161/2008, 145/2010)
12. Law on health insurance (“Official Gazette of the Republic of Macedonia” No. 25/2000, 34/2000, 96/2000, 50/2001, 11/2002, 31/2003, 84/2005, 37/2006, 18/2007, 36/2007, 82/2008, 65/2012-revised version)
13. Law on protection of the rights of the patients (“Official Gazette of the Republic of Macedonia” No. 82/2008, 12/2009, 53/2011)
14. Law on citizens’ protection from transmitted diseases (“Official Gazette of the Republic of Macedonia” No.66/2004, 139/2008, 99/2009)
15. Law on witness protection (“Official Gazette of the Republic of Macedonia” No. 38/2005, 58/2005)

16. Law on separate registry for convicted persons for criminal acts sexual abuse of minors and pedophilia (“Official Gazette of the Republic of Macedonia”No.11/2012)
17. Law on broadcasting (“Official Gazette of the Republic of Macedonia”No.100/2005, 19/2007, 103/2008, 6/2010, 145/2010, 97/2011, 13/2012)
18. Law on police (“Official Gazette of the Republic of Macedonia” No.114/2006, 6/2009)
19. Standard operative procedures for working with victims of trafficking in human beings
20. National Action Plan for fight against trafficking in human beings 2009-2012
21. Action plan for prevention and management of the sexual abuse of children and pedophilia 2009-2012
22. Program for re-socialization and reintegration of children victims of trafficking in human beings - Ministry of Labor and Social Policy

Definition of the criminal act of human trafficking from the national Criminal Code

Article 418-a

(1) Any person who uses force, serious threats, leads to delusion or uses other forms of coercion, abduction, deceit, with abuse of the person’s position or state of pregnancy, incapacity or physical or mental inability of another person or by giving and receiving money or other benefit in order to receive the consent of a person that has control over another person, or in other manner¹¹⁰ recruits, transports, transfers, purchases, sells, harbors or receives persons for the purposes of exploitation by means of prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriages, forced fertilization, illegal adoption or other similar relations or illicit transplantation of parts of the human body, shall be sentenced to prison for at least four years.

(2) Any person who seizes or destroys a national identity card, passport or another type of identification document that belongs to another person in order to commit the crime referred to in paragraph (1) of this Article, shall be sentenced to prison for at least four years.

(3) Any person who uses or enables others to use sexual services or otherwise exploits persons for whom he/she knew or was obliged to know that they are victims of trafficking in persons, shall be sentenced to prison from six months to five years .

¹¹⁰ **Other manners** means with any other action otherwise recruits, transport etc ... (eg. With blackmail, intimidation, or threatening recruits) this expression is a legal form that can’t be changed and with this formulation the charges persist strongly and can’t be attacked and challenged by the defendants as vague.

(4) If the crime referred to in paragraphs 1, 2 and 3 of this Article is committed by an authorized person during the performance of official service, that person shall be sentenced to prison for at least eight years.

(5) Any consent by the victim of trafficking in persons for the purpose of exploitation as referred to in paragraph 1, shall bear no relevance to the existence of the crime referred to in paragraph 1.

(6) If the crime referred to in paragraph 1 is committed by a legal entity, it shall be punished with a pecuniary fine.

(7) Any real estate involved and any objects and means of transportation used in the commission of the crime shall be seized.

Problems related to the definition of trafficking in the national Criminal Code and its application in practice

Article 418-a, besides offering an extended list of forms of exploitation in comparison to the ones prescribed in the Palermo protocol, clearly indicates that the consent of the victim is irrelevant, thus eliminating one of the dilemmas that presented itself during the court procedures in recent years. Namely, the consent of the victims to be exploited (if the victim knew that he or she was expected to provide sexual or other types of services) in the practices of the court was treated as a mitigating circumstance in the determination of the sentence for the perpetrators of crimes of Trafficking in persons. This practice of the court, encouraged a discussion into whether it would be possible for the victims, who are in a state of constant intimidation, coercion, deception and other similar circumstances, to give a valid consent for the condition in which they have been placed.

The changes and amendments made to the Macedonian Criminal Code entered into force in January 2008 and Article 418-d "Trafficking in juveniles" was added. This provided a clear distinction between trafficking in children and the general term of the trafficking in persons crime. This distinction was also emphasized with the difference in the range of sentences, which are twice as strict for the first crime, i.e. with a statutory minimum of eight years imprisonment provided for this crime.

3. Identify gaps and deviances from European standards (CoE THB Convention and, for EU Member States online Dir 2011/36/EU) and indicate what changes are needed in order for the law to be fully harmonized with the CoE THB Convention and, for EU Member States, with EU THB Directive

In several reports, dedicated to the issue and problem of trafficking in persons in the Republic of Macedonia, it is pointed out that the legislative framework in the Republic of Macedonia for fighting against trafficking in persons is in accordance with the international standards, and if fully implemented, it is sufficient on its own. The CoE was signed on 17.05.2005 and Ratified on 27.05.2009 and entered in to force on 01.09.2009.

Laws and sanctions that define crimes related to THB

Smuggling migrants. The Law on Amending the Criminal Code of 30.03.2004 (OG No. 19/04) adds Article 418b, which refers to smuggling of migrants. With the addition of Article 5, this refers to a perpetrator – official who shall commit the act while carrying out his/her official duty.

Organizing a Group and Inciting the Perpetration of Acts of Trafficking in Human Beings, Trafficking in Juveniles and Smuggling of Migrants. Article 418 c was added to the Criminal Code on 30.03.2004 (OG No. 19/04) and refers to the perpetrator of the criminal act of trafficking in human beings, smuggling of migrants or trafficking in juveniles who shall organize a criminal group, who shall join a criminal group, gang or other association, and who shall call for, incite or support the perpetration of these acts. At the same time the law sets forth exemption from punishment

Mediation in prostitution - Article 191 of the Criminal Code of the Republic -for the past 7 years, often happened reclassification of criminal act Trafficking in human beings to Mediation in prostitution because of the similarities in the legal definition of these two crimes and because of the lack of evidence. Therefore the new amendments to the Criminal Code, O.G no.139 from 04.11.2008 reinforced the law by imposing higher sentences for the crime Mediation in prostitution. According to Article 191, anyone who recruits, encourages states entices a person to prostitution or in any way participate in the transfer of another person for prostitution will be punished according to the law. The legislator does not matter who he is, whether sexual partner, roommate, etc. The legislator predicted categorization of this article. If anyone who uses force or threat or induces another person to prostitution will be punished rigorously.

The prostitutes are not criminally charged in Macedonia but they are charged for misdemeanor, usually with fine. However according to the NGO that works on right protection of sex workers in Macedonia, the governmental policy in the last years has tendency to criminalize the persons involved in sex work trough conducting organize police raids that has a purpose to diminish prostitution. These NGOs reports¹¹¹ cases where sex workers were arrested and kept in prison for 24 hours and tested for HIV, Hepatitis C and other STD without permission. Namely, against 7 women (sex workers) that were positive on Hepatitis C in 2009 were raised criminal procedure for transmitting serious diseases ,and they were sentenced provisionally(probation sentence) without any proof for actual transmission of the diseases or damaged person that is contrary to the CC that regulate this act.

Rights of trafficking victims in law and practice

Rights guaranteed to human trafficking victims by law

- *Right to information*
- *Right not to cooperate with law enforcement*

¹¹¹ <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=1428>

- *Right to protection of privacy and safety*
- *Right to witness protection and to be treated with respect and dignity*
- *Right to protection of physical integrity*
- *Right to compensation*
- *Non-prosecution and non-punishment of trafficked persons*
 - a. *Non-detention of trafficked persons*
- *Reflection period, temporary, permanent and humanitarian residence permit*
- *Repatriation & guarantees of non-repetition*

Additionally, the Macedonian legal framework, with the changes and amendments to the Law on Criminal Procedure (LCP), was harmonized with the provisions of the Palermo Protocol, in relation to the rights of victims of trafficking in persons and more specifically, the right of **protection of privacy** and identity and the right for **compensation** of damages.

Namely, when the victim is placed in danger by giving a statement during the criminal procedure, special measures for protection of victims/witnesses are provided through the Law on witness protection, which entered into force in 2005. This law prescribes special measures for protection that consist of:

- *guarding the secrecy of the identity,*
- *providing personal protection,*
- *change of address or place of residence and*
- *change of identity.*

Additionally, the latest changes and amendments of the LCP further develop and elaborate the manner of protection of an endangered witness, and there are also provisions that provide for an examination of an endangered witness under pseudonym, i.e. use of special technical devices for audio and video transfer.

A significant component of the efficient detection and prosecution of traffickers of human beings is the readiness of the victims to act as witnesses, having in mind the fact that their testimony is considered as the most important evidence. The appropriate assistance and support to the victims before, during and after the completion of the trial in a criminal procedure by the legal representative – Lawyer engaged by NGOs and by the team from the shelter in charge of providing psychosocial support, encourages the victims to testify and protects them for repeated trauma throughout the entire process.

The victim-witness is **informed** about his or her rights by the legal representative, about the right not to give any personal information, the right to an interpreter, the right to have a trial where the public shall be excluded, the right to an authorized counsel who shall represent him or her, the right to elaborate

any property or legal claims, as well as about the possible removal of the defendant during the main hearing. It is prohibited to the victim and the witness to be asked questions pertaining to their sex life and sexual preferences, political and ideological orientation, racial, national and ethnic origin, and their moral criteria especially personal and family circumstances, except unexceptional cases where answers to such questions directly and obviously related to the necessary clarifications of important characteristics of the offense which is the subject of proceedings.

In the Macedonian legislation, **the protection of witnesses is regulated with the Law on witness protection from 2005**. The protection of witnesses, collaborators of justice and victims is also regulated in a separate chapter of the Law on Criminal Procedure¹¹². The Law provides that the prosecutor, investigative judge or the trial judge can undertake measures for protection if the witnesses or victims are exposed to any intimidation, treats, retaliation and other risks towards their lives.

In accordance with Article 303 from the Law on Criminal Procedure (LCP)¹¹³ the main hearing is open to the public. Article 304 provides that the trial chamber can *ex officio* at any given time during the main hearing **exclude the public**, but this can ONLY be done after the parties have been heard¹¹⁴ and if that is necessary to preserve and protect public order, to protect the moral, the personal and private life of the defendant, witness or injured party. For any such exclusion of the public, the trial chamber shall deliver a decision, which must be PUBLICLY declared and elaborated.

According to Article 310 of the LCP, no **television and movie recordings** can be made inside a courtroom. Upon exception, the President of the Supreme Court can permit such recording of a specific main hearing. If the media have the need to record and photograph inside a courtroom, they must request permission from the President of the Supreme Court of the Republic of Macedonia, who is the only authorized entity to issue such a permission or authorization. In spite of the permission or authorization by the President of the Supreme Court, the trial judge is the one, who decides which portions of the procedure can be recorded or photographed. If the parties object refuses to be recorded or photographed, despite the permission from the Supreme Court, the media workers are not going to be allowed to record the proceedings.

There are certain exceptions from this provision, in the case of parties who at the time of the trial perform certain state functions, if they are civil servants, representatives of the local self-government or other public officials, elected or appointed persons. It is not mandatory to acquire their consent for recording or photographing.

The Trial Chamber proceeding in a specific criminal case may exclude the public at any given time, i.e. from the very beginning of the session until the very end. The court can do this *ex officio* or upon a proposal by the parties. The exclusion of the public (the journalists) can apply to the entire court process or only to certain parts, as decided by the Trial Chamber. In all these kinds of cases the judge must

¹¹² According to the new Law on Criminal Procedure, from November 2010, this issue is regulated in Articles 226-233. This law should enter into force in 2012.

¹¹³ According to the new LCP, this area is regulated in Articles 353, 354, 355 and 356.

¹¹⁴ The parties are already heard during investigation process behind closed doors.

deliver a decision for exclusion of the public, which shall be publicly declared and the judge must elaborate the reasons for its adoption, after which the judge shall ask everybody to leave the courtroom, except for the defendant and the injured party and their legal counsels or authorized representatives. The Trial Chamber can permit certain official persons to remain inside the courtroom, including scientists or other interested parties even when the rest of the public was excluded, but they shall be warned by the court that whatever they hear and learn about inside the courtroom has to be kept secret. Any disclosure of details from inside the courtroom when the trial is closed to the public is a crime, which is prosecuted ex officio.

If a **juvenile** stands trial, the proceedings shall always be confidential and the public is to be excluded. The only present parties inside the courtroom are the juvenile as a defendant, other defendants or injured parties, the guardian of the juvenile, his or her legal counsel and a representative from the institution which is responsible for the guardianship – the Center for social work. In procedures where juveniles are on trial, the Trial Chamber may also permit the presence of individuals that are engaged in the education of young persons, of researchers of juvenile crime and other science workers. The obligation not to disclose any details from the court proceedings is valid and applicable to all of them. The media can report on such procedures using information and data received from the participants in the procedure, but they are not allowed to reveal the identity of the juvenile under any circumstance or to disclose information about his or her address, nickname, education, social status or other information, which can lead to his or her identification.

The Law on Criminal Procedure has been changed also in the part that refers to the claim for **compensation** made by the victims - injured parties as a result of the crime of Trafficking in persons.

The change is that so far, victims were exercising their right to compensation in a separate civil procedure, while now they can request compensation directly as part of the criminal procedure, i.e. with the judgment for conviction of the defendant, the court may also rule and pass a full or partial decision regarding any property or legal claims. (see details in the part “COMPENSATION”)

The new **Law on foreigners** that was adopted in 2008 allows for a certain decision making period, in order for the victims to recuperate, to receive appropriate help and to decide if they are going to cooperate with the Macedonian authorities and testify against the traffickers. According to the law, this period to make a decision for the foreign victims is up to two months, while juvenile victims are offered a decision making period of two months, which can be additionally extended. For domestic victims, this period is 30 days from the day of accommodation at the shelter, as regulated in the standard operative procedures for dealing with victims of trafficking in persons (the same shall be elaborated further down in this text). The provision on the reflection period and the temporary residence permit has been applied in several cases.

After the expiry of the decision making period, the victim (a foreign citizen) shall be issued a temporary residence permit, valid for six months, which may be extended if the court proceedings are still ongoing. All provisions for assistance are assessable for foreigners as victims of trafficking. The provisions of Macedonian law for temporary residence permits are highly questionable in a sense of victims’ free will

to testify. The provision of temporary residence permit is conditional and subject to the cooperation of victims with authorities.

“If the foreign national victim decides to cooperate with the competent authorities, this victim may be issued a temporary residence permit after the reflection period. Temporary residence permit may be issued to victims of trafficking in human beings if:

- *Their presence in the country is necessary for conducting the court proceedings;*
- *They demonstrate a clear intention to cooperate with the competent authorities in the efforts to uncover the criminal offences and the perpetrators, and if they have terminated their contacts with the people who are reasonably suspected of having been involved in the commission of the crime of “trafficking in human beings”.*
- *According to the **Law on personal data protection**, not all personal data enjoy equal protection. There is a **category of special, sensitive personal data**, which receives special protection. This would be any personal data that might reveal the person’s racial or ethnical origin, political, religious, philosophical or other convictions and beliefs, membership in syndicate organizations and data that refers to people’s health, including genetic data, biometrical data or data related to the person’s sexual life. The concept of “importance of the information” is especially important in this case.*

The Law on personal data protection prohibits the processing of the special categories of personal data, except in extraordinary circumstances as prescribed by law.

The court, prosecution and other institutions with special provisions, under this law, collect, process and store personal data for the purposes of criminal proceedings, taking into account the nature and scope of data to be appropriate to the needs in this case. The personal data collected for the purposes of criminal proceedings can be revealed to the authorities and other legal and natural persons only if it is allowed by law.

The personal data referred to in paragraph(1) of this Article may be used in accordance with the law in other criminal proceedings, in proceedings of international cooperation in criminal matters and international police cooperation and other litigation may be used only if the subject in other litigations directly related to the subject of criminal proceedings. The personal data collected solely on the basis of determining the identity, physical examination or molecular-genetic analysis after completion of the criminal proceedings may be used in accordance with the law, only to detector prevent crime.

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Separate provisions protecting the rights of underage victims

- *“The procedure for a criminal act where a victim is minor, courts, prosecutors and officials of the Ministry of Interior can proceed only if they have adequate education, special knowledge and experience in the field of child rights and criminal-law protection of minors.” (Article 137 of the Law on Juvenile Justice)*

- *In terms of hearing victims are provided special provisions that protect the victim from possible harmful consequences for her and her health. According to Article 138 of the LJJ (Law on Juvenile Justice)*
 - *"1) For all offenses in the Criminal Code that has legal characteristics of crime, and juvenile occurs as a victim of crime, courts and other bodies involved in the procedure are obliged to take measures to assist and protect and act in ways that will avoid possible harmful effects on his personality and development.*
- 2) The proceeding for offenses under paragraph 1 of this Article, in which the minor is the victim, is urgent.
 - 3) The minor victim can be heard as a witness only if it does not adversely affect on his physical and mental development. A juvenile can be heard up to two times as a witness, and notwithstanding the third time if required by the particular circumstances of the case.
 - 4) During the hearing of a juvenile as a witness or damaged, the court shall take into account the personal traits and characteristics of juvenile, to protect its interests and its proper development.
 - 5) The hearing of a juvenile, depending on their age and development is carried out in the presence of a psychologist, pedagogue or other expert.
 - 6) if it considers it necessary, given the characteristics of the offense and the characteristics of the person of the minor, the judge will order a hearing by the use of technical means for transferring image and sound. The hearing is conducted without the presence of the parties and other participants in the procedure, in a separate room and asks questions through the pedagogue, psychologist or other expert.
 - 7) When the minor is heard in accordance with paragraph 6 of this Article, the trial will read the minutes of his statement, that will be released recording of the hearing."

Protection of minors as witnesses-victims of trafficking is envisaged in Article 143 of the LJJ and ensures compliance with the provisions of the Law of Criminal Procedure and LPW (Law on Protection of Witnesses). If necessary court will order the application of specific measures to protect the integrity of psychophysical the minor.

The process of guardian appointment is regulated by the Family Law. In each Center for Social Work a guardianship service – the unit of custody is responsible to appoint a guardian.

Victims' ability to freely/willingly decide whether or not they want to testify in the process against their traffickers

According to the law any person that is invited to be a witness has the obligation to appear to the court and give testimony, this also applies to domestic victims. There are exceptions from the law which are stated in the in the law for criminal proceedings, article 213 and 214.

Access to legal aid for victims of human trafficking

Procedure for obtaining free legal aid is long and time consuming, for this period the court trial usually starts and trafficked persons do not get the required legal assistance on time. The other obstacle that appears is that the victim should file quest for free legal aid with written statement signed by her and if there are members of his/her family in Macedonia also to sign and to allow the inventory of the entire movable and immovable property and have to give permission for inspection at all data for the assets they have available at that moment. If the applicant is a foreigner he/she must submit confirmation of their status by the competent national authority and the documentation should be sent by mail or in person at the Ministry of Justice.

Treatment of victims by the judicial system

- *Generally we can conclude that the identified victims of trafficking are treated with dignity and respect by the law enforcement authorities. However there is still space for greater sensitization and improvement of capacity of prosecutors and judges in treatment of victims during criminal procedures.*

Problems related to protection of rights of human trafficking victims in the legislation

Practice

Criminal Court of the Republic apply the provisions on the rights of victims, but when it comes to special **measures of procedural protection** to which the victim has the right, *in certain cases*, the Court prevents their application. This is because these measures are determined by the court or upon the proposal of the Public Prosecutor, or the proposal of the victim or his own evaluation. So, in many cases, where the Court on its own assessment finds that they are not required to impose the same, even if there is reasonable grounds, mainly because that would make the act more complicated and it will last longer than expected. In generally special protective measures are accepted, but if the court considers that there is no need of provision of these special measures, the proposition from the lawyer of the victim for applying of special measures can be rejected by the court. However, usually the court accepts proposition of special measures.

Regarding the **right to exercise the legal property claim**¹¹⁵, the victim may exercise in criminal proceedings together with the judgment which advertised defendants guilty, but sometimes the court deprive this right to the victim with adoption of additional judgment because the Court does not want to perform additional evidence in favor of the victim since this will prolong the whole procedure.

¹¹⁵ Example: Since in the moment of court proceedings the victim is "potential victim", her lawyer should give evidences for damage, such as forensic examination and psychiatric examination which sometimes makes the procedure very long. For that reasons the court decides with additional verdict on compensation.

In terms of **compensation for non-material and material damage**, the victims should be compensated from the state fund under the conditions and manner prescribed by special law. If the fee of damages cannot be provided by the defendant, also in this case the rights of the victims have been denied since the state fund is not functioning¹¹⁶.

Anti-trafficking mechanism in Macedonia

INSTITUTIONAL FRAMEWORK

The **National Committee to Combat Trafficking in Persons and Illegal Migration** (NC) was established at a national level in 2001. The task of the Committee is to coordinate the work of all institutions involved in the process of prevention, protection and investigation of trafficking in persons cases. The Committee is headed by a **National Coordinator**.

A **Secretariat** was established as a part of the NC in 2003 – a body that is responsible for accepting and implementing any decisions made by the National Committee and this body includes representatives of international organizations, nongovernmental organizations, embassies and governmental bodies¹¹⁷.

Another part of the NC is the **subgroup for children – victims of trafficking**, established in 2003, in order to adjust the work of the Committee towards the needs of this sensitive category of victims and to place special emphasis on the prevention of trafficking of children and the improvement of the protection of juvenile victims.

The work of the National Committee is much more structural than practical and mostly consists of preparation of policies and strategies, such as the National Action Plan. At the same time, the Committee has the obligation to monitor the implementation of these strategies, to prepare reports¹¹⁸ and suggest any further activities.

As envisioned in the National Action Plan, the National Committee should have much more solid coordinative role, while the Secretariat should strengthen the executive capacities. The subgroup for the fight against trafficking of children should provide for much better coordination and harmonization of its activities with those of the National Committee.

¹¹⁶ The compensation should be gain from the assets of the trafficker or from the RM state budget. The verdict should be submitted to an “enforcement agent” who should collect money from the trafficker. Usually the traffickers do not have any assets on their name and the state budget provision still is not functioning for compensation of victims. For that reason all the verdicts for compensation are not realized (the victims did not get any money).

¹¹⁷ The following institutions are represented: Ministry of Interior, Ministry of Labor and Social Policy, Ministry of Education, Open Gate - La Strada, Happy childhood, UNICEF, International Organization for Migration, OSCE, International Centre for development of migration policy, NGO Semper, the Embassy of the USA, the Embassy of the United Kingdom, MARRI, the Red Cross, Centre for civil initiatives, the Coalition “All for fair trials” and the Women’s Association.

¹¹⁸ The Reports of the Committee are prepared by the Secretariat and published on annual bases. However these reports are more informative (containing quantitative data of implemented activities) rather than analytical and critical. The reports are prepared up on the information gathered from all relevant actors in fight against trafficking.

Furthermore, in 2009, a new body was established – **National Reporter**¹¹⁹, whose primary role is to oversee the overall activities¹²⁰ in the fight against trafficking in persons. This body, as envisioned by the National Action Plan, is responsible for collecting and analyzing data¹²¹ (qualitative and quantitative information) for wider topics related to trafficking in persons in the context of prevention, protection and criminal prosecution. At the same time, one of the roles of this function shall be to oversee and monitor the implementation of standard operative procedures.

The **National Referral Mechanism (NRM)** is functioning as a part of the Sector for equal opportunities at the Ministry of Labor and Social Policy (MLSP) from 2005, in order to provide for identification, assistance and protection of victims of trafficking in persons, regardless of whether the victim is a juvenile or an adult. NRM consists of a Coordinative office with a legal advisor, field work coordinator and a coordinator.

The primary goal of this office is to coordinate the work of 58 professionals (social workers) from 27 Centers for social work (CSW) throughout the territory of the Republic of Macedonia and to cooperate with all other services involved in the process of protection of victims. It is important to mention that this mechanism works solely with domestic victims, but it can also get involved in cases with foreign juvenile victims¹²².

Additionally, Republic of Macedonia is part of the **Transnational Referral Mechanism (TRMU)** that connects the entire process of referral; starting from the initial identification to the safe return and assistance in transit countries, destination countries and countries of origin, including the cooperation among various governmental institutions and nongovernmental organizations.¹²³

Anti-Trafficking Strategy and NAP

Overall, there is a general positive assessment of the extent of implementation of activities planned under the National Strategy and Action Plan to Combat Human Trafficking and Illegal Migration and Action Plan to Combat Trafficking in Children. On the other hand, there are findings that indicate that some of the key activities or are elderly or implementation process is at an early stage.

Gaps and departures from the CoE THB Convention and other relevant European documents of the national Anti-Trafficking Strategy and the NAP

¹¹⁹ Body established under the Ministry of Interior (MOI employee and member of the Secretariat).

¹²⁰ National Rapporteur has prepared and published three reports for, 2010, 2011 and 2012, which differ in content that are publicly accessible containing recommendation. <http://www.nacionalnakomisija.gov.mk/mk/godishni-izveshtai/godishni-izveshtai-na-nacionalniot-izvestuvach>.

¹²¹ The role of the National Rapporteur can be improved if there is a research team in the frame of this body.

¹²² For foreign minors NRM office is involved in coordination and assistance. For adults, mainly Ministry of Interior is involved in coordination and assistance.

¹²³ http://www.icmpd.org/fileadmin/IIMS-documents/ICMPD/TRM/Programme_Description_01.pdf

In terms of supporting frame objective 1 Improving the structure and coordination, although the primary bodies are in place and functioning to some extent, still it is not achieved adequate coordination between bodies (such as the Secretariat , Sub groups and Committee) and between members from various institutions and organizations. In addition the cooperation activities between central and local government in relation to the implementation of the strategy and NAP at the local level, again with the exception of certain initiatives of the CSOs was not fully realized and was also noted by the independent evaluation of the NAP and strategy.

With regard to strategic objective 2, and normative legal / regulatory framework, a big step in the improvement of legislation was noted, but the establishment of the fund to compensate victims - unfortunately does not exist and is not operational. Also in relation to the law on foreigners was noted that the measure *temporary residence permit* was granted only to two victims of trafficking in October 2012, a measure that is directly influenced by the cooperation with the law enforcement and according to testimony. Hence, there is a need to pay more attention to illegal immigration, which has an increasing trend, and to actively identifying potential victims and trafficking between migrants and providing access to appropriate programs and services.

Moreover, a revision of SOP was made, but still there is a need for additional changes. This is especially true for the *Form for identifying victims of human trafficking*, which are not properly applied by the institutions responsible for identification. It is necessary to underline and change the parts related to juvenile victims of trafficking, especially for typical situations of exploitation and payment (if it is a minor, you should not ask questions about payments, agreed amount, etc.). Moreover, in the application of measures of SOP concerning transnational cooperation, the established procedure for the exchange of information is not clearly stated, despite some good practices.

The operationalization of the database for offenders and litigation is conducted by Ministry of Interior, prepared with the support of ICMPD, but the application has softer problem when entering the data. MOI keep records / statistics of the perpetrators of the crime of human trafficking. The second database for victims of human trafficking, hosted by MLSP-NRM, is made without any protocol for data collection, and without proper form for collecting data in respect of the Law for protection of personal data. For systematic collection of data it is necessary to develop a protocol that would allow systematic monitoring, collection and exchange of data with respect to the legal obligation to protect personal data.

The identification of potential victims and victims of human trafficking, and creation of conditions for reintegration with decentralized services, is activity and measure that is poorly implemented and is a process that needs to be strengthened.

Worrying fact is that for implementation of reintegration programs there is absence of financial estimation or allocation of state funds. No reintegration program for adult victims of human trafficking exists, while the MLSP program for reintegration of child victims of trafficking are not actually implemented and should be revised

Financing of anti-trafficking activities

NGOs have the opportunity to receive financial resources from the General Secretariat of the Government, through the published calls for application. The Secretariat published a call once a year for civil society organizations working in the field of prevention and protection of victims of trafficking. The call is worth 5000 Euros for an organization, a total of 5 organizations can be supported. However, these funds are not sufficient enough for covering expenses for reintegration activities so mostly the CSOs generate their fund through international foundations.

ROLE OF CIVIL SOCIETY

The CSOs in the fight against trafficking in persons

On a national level, the CSOs are **lobbying for better protection and represent the interests of the victims**. Through its membership in the Secretariat and in the subgroup, the civil sector is actively participating in the creation of policies for fighting against trafficking in persons in Macedonia and contributes to the implementation, adoption and supplementation of the national legislation and the National Action Plan (NAP). This sector continuously monitors the implementation of national and international measures for protection of victims of trafficking in persons and provides specific recommendations for their improvement¹²⁴.

The activities conducted by the CSOs are mostly aimed towards the **prevention** of trafficking in persons. Namely, the NGOs conduct preventive and educational activities in primary and secondary schools and at the universities on a regular basis (workshops, peer to peer education and forum theaters), in order to raise the awareness of young people about the problem of trafficking in persons and to reduce any risks of their possible involvement. Besides working with young people, who were recognized as the most vulnerable population, the NGOs are also working on building and developing the capacities of the professionals (police officers, social workers, professors and journalists), on how to identify the victims and how to prevent the potentially vulnerable groups from falling into the trap of trafficking in persons.

The activities of the CSOs in the area of prevention and education also include the production and distribution of educational and preventive material for the wider public, the professionals and groups at risk. NGOs are raising public awareness about the problem of trafficking in persons, by using the power of printed and electronic media.

¹²⁴ There are few positive examples of inclusion of recommendations by Open Gate/La Strada Macedonia in the National Rapporteur report and these recommendations are translated in to activities in the new NAP. Those are related to free legal aid, compensation and health protection.

Since 2002, in the Republic of Macedonia, there is a national **SOS telephone helpline** for assistance in the area of trafficking in persons¹²⁵, which offers the following: basic information on trafficking in persons; information and advice about the risks related to working abroad; discussion and counsel from an expert; assistance in the process of repatriation; accommodation in a shelter; referral to other services and establishing contacts with appropriate competent institutions¹²⁶.

The vast number of studies and research, conducted by CSOs in relation to the issue of trafficking in persons, represents the basis for undertaking appropriate measures and activities at a national level.

The long-lasting experience of NGOs in dealing with the problem of trafficking in persons, their direct contact with the victims and vulnerable groups places the CSOs in the group of experts, when it comes to the issue of trafficking in persons, with appropriate knowledge and capacity to respond to victims' needs and to assist them.

Organized crime - trafficking in persons, requires a multidisciplinary approach, in order to coordinate the activities and to improve the cooperation both among the CSOs sector and also between nongovernmental organizations and government institutions. Namely, the creation of networks on a national¹²⁷ and international level allows for synchronization of the efforts for prevention of trafficking in persons.

PREVENTION

Prevention activities within the National strategy and action plan for the period 2009-2012 have predicted 4 strategic objectives:

- *identify the causes of human trafficking and illegal migration,*
- *strengthening the capacity to implement prevention activities,*
- *public awareness and*
- *education and reducing vulnerability.*

The main actors, identified for its implementation were Ministry of Interior, Ministry of Education and Science, Ministry of Labour and Social policy and CSOs. However during the years beside the general strategy and action plan there was no specific annual operational plan for prevention. Hence prevention

¹²⁵As part of the structure of the Open Gate-/La Strada Macedonia.

¹²⁶ Open Gate-/La Strada Macedonia is the leading service providers for trafficked persons and only CSO which provide comprehensive protection and reintegration program (shelter, food, medical help, legal help, psycho-social counseling etc.).

¹²⁷ On a national level there is an informal network of 10 NGOs (lead by Open Gate) that coordinate their effort against trafficking especially regard prevention and reintegration of trafficked persons.

activities were conducted separately by each actor depending on funds and very little by the institutions themselves hence the effect was very small.

The large portion of the overall preventive activities in the country was implemented by the CSO's. Open Gate/ La Strada Macedonia has a leading role in prevention from trafficking aiming to empower potential victims. Due to the increased number of identified children being trafficked, Open Gate/La Strada Macedonia has specifically addressed children in their prevention work over the last years. Winning of the first prize of ERSTE Foundation –Social Integration 2009 with the project Prevention campaign from trafficking in children “ represents international recognition of Open Gate effort to increase youth awareness for trafficking in human beings and to improve their capacity as peers educators.

In addition, Open Gate directly work with “at risk” groups trough visiting schools, holding preventive lectures, forum theaters, distributing educational and informative materials as well as training of professionals (professors, social workers, journalists, police officers, CSOs etc). Moreover, information and advices are also provided through the Open Gate SOS Line. Since 2010, Open Gate has developed cooperation with the trade union and started activities for prevention among workers in at risk sectors.

Although at national level preventive activities implemented by Open Gate/ La Strada Macedonia have been highly recognized by the National Commission and the Ministry of Education and Science, as an important tool to reach children as a particular vulnerable group for trafficking in human beings, still these activities are without any financial contribution by the institutions.

In general, substantial media campaign for awareness rising concerning human trafficking from the National commission and institutions were missing in Macedonia. In 2010 IOM's conducted “Buy Responsibly” campaign as part of a campaign to target client demand for products produced by forced labor.

Although the National commission in 2008 announced National anti- trafficking week to take place annually between 2nd and 9th of December with the idea to sensitize general public and to give more publicity to the problem, still this campaigns are mostly done by the CSO's and international organizations. Small part of the prevention activities are taking place in rural areas, there is no uniformity in the implementation of training and workshops nor standardized form for identifying target groups and monitoring the effects.

Although the , economic empowerment of vulnerable groups as specific action in NAP was intended to reduce vulnerability and to facilitate access to the labor market of victims and other vulnerable groups, still its implementation lacked concrete results. in order to Namely the Employment Agency has programs for active employment measures for the parents of street children, victims of domestic violence, single parents, but the result of these activities and their use by the vulnerable group is unknown. No single victim of trafficking ever benefited from this program, and courses for qualification and inclusion in education available to them are provided with the financial support of NGOs.

In relation to CEDAW the Committee has noted the improvement of legal and institutional measures and policy measures in fight against human trafficking, including the adoption of the National Strategy for combat human trafficking and illegal migrants (2009-2013) and the National Mechanism reference. However, the Committee remains concerned about the large number of girls who are victims of trafficking for sexual exploitation and lack of preventive measures to address the root causes of trafficking, particularly in relation to Roma women. The Committee among other recommends government to deal with the root causes of trafficking and exploitation of women and girls by increasing efforts to combat trafficking in all women and girls, including Roma women and girls.

PROSECUTION

Source of information	2007	2008	2009	2010	2011	2012
No. of prosecutions	2	7	2	1	3	2
No. of final judgments					2	
No. of non-final judgments		3			1	3
No. of suspected perpetrators reported to the Prosecutor's Office/State Attorney		25	15			
No. of suspected perpetrators charged by the Prosecutor's Office/State Attorney				5	13	22
No. of convictions				1	3	2
No. of prison sentences					13	8

Prosecution in numbers

- ** The presented data could not be considered as official due to lack of cumulative interagency reports, as well automated case management system in court to produce final trafficking case statistic including data on jailed convicted offenders*
- *Average sentence is 6 years for crime trafficking in persons –adults damaged parties and if there are minors damaged parties than the average punishment for the perpetrators of the crime is 8 years. The lowest penalty is 9 months and the highest 10 years maximum.*

Prosecution in practice

- *For years it seems that the judicial practice tends to punish offenders with sentences that are close to the minimum, and occasionally under the minimum. Thus, the changes in the Penal code and adding article on trafficking in minors where minimum sentence is 8 years are not useful at all.*
- *Also there were changes in the increase of penalties for the crime of mediation in prostitution. This stiffening the penalties seem to only lead to a reduction in the number of identified cases of mediation in prostitution.¹²⁸*
- *For effective prosecution of perpetrators of human trafficking firstly there is a need of frequent police raids and actions, and secondly greater use of Pre Investigation Measures in detecting this type of criminal acts for greater success in convicting judgments. Additionally the border control should be on a high level.*
- **Recommendations TIP report¹²⁹:**
- *“Proactively improve victim identification efforts to locate potential domestic and foreign trafficking victims in Macedonia;*
- *ensure that victims are not deported and punished as a result of their trafficking;*
- *ensure that foreign women entering the country on entertainment visas receive information on trafficking and their rights in Macedonia;*
- *pursue potential cases of trafficking that involve non-physical forms of coercion;*
- *institutionalize and increase funding to ensure comprehensive care, sustainability of the shelter, and reintegration services for victims;*
- *continue to build the anti-trafficking expertise of social workers to ensure their engagement in reintegration;*
- *follow through on plans to establish local commissions to decentralize and improve victim identification throughout the country;*
- *provide more incentives, including not detaining potential victims in the transit shelter, for foreign trafficked children and adults to stay in Macedonia long enough to assist in bringing their traffickers to justice;*

¹²⁸

Source: http://www.all4fairtrials.org.mk/Main_files/lzvestaj_2011_MKD.pdf

¹²⁹

Recommendation from the latest TIP Report

- *streamline interagency reporting and advance the use of an automated case management system in courts to produce final trafficking case statistics, including data of jailed convicted offenders; and*
- *continue to use the National Rapporteur report as a tool for centralized reporting, including more self-critical analysis and making clear distinctions between trafficking and migrant smuggling.”*

COMPENSATION

Compensation for damages may include payment for or towards:

- *Costs of medical, physical, psychological or psychiatric treatment required by the victim;*
- *Costs of physical and occupational therapy or rehabilitation required by the victim;*
- *Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;*
- *Lost income and due wages according to national law and regulations regarding wages/ the money the victim earned for the trafficker;*
- *Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;*
- *Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her;*
- *Any other costs or losses incurred by the victim as a direct result of the crime.*

According to the Law of criminal proceedings, the trafficked person or “any individual- a victim of a criminal offence who has suffered damage, including physical or mental assault, emotional pain, material loss or other pain or violation of their fundamental human rights and freedoms as a result of the crime inflicted upon them”¹³⁰ is entitled to claim restitution and compensation.

According to the newly adopted Criminal Procedure Code, a trafficked person or “a victim of human trafficking is any individual who has suffered damage, including physical or mental assault, emotional pain, material loss or other pain or violation of their rights and interests as a result of the crime inflicted upon them”¹³¹ and as such is entitled to claim restitution and compensation.

¹³⁰ Source: Criminal Law Amendment Act (The Public Enterprise Official Gazette of the Republic of Macedonia, No. 83 from 10th October, 2008), Article 130, paragraph (5).

¹³¹ Article 21, item 4 of the Criminal Procedure Code, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 150 from 18th November, 2010, which will be implemented exactly 2 years from the day of its enforcement.

Trafficked persons are entitled to compensation - remuneration or non-monetary damages. Generally, a trafficked person can use two main methods of obtaining compensation: through criminal proceedings or through civil action.

The **Criminal Procedure Code**¹³² governs the following issues: which individuals can claim compensation and restitution, the conditions and the way in which this can be done, as well as to whom they should submit their claims. A new paragraph has been included, concerning the trafficked person. More specifically, when a trafficked person is the one who submits the claim for restitution, they should specify whether they have been awarded compensation or they have submitted a claim, accordingly Article 43, paragraph 1 of the amended Criminal Procedure Code¹³³. In the criminal proceedings, **compensation for under - aged trafficked persons** has been regulated separately, with the Law on Juvenile Justice (LJJ)¹³⁴. Its amendments¹³⁵ on the other hand, offer legal remedies for compensating the under-aged individual as a victim of violence and other criminal offences, the crime not being specified as trafficking in human beings. All this is stipulated in Article 141, and the monetary compensation awarded to the victim should be provided from the budget of the Ministry of Justice.

Should the trafficked person not receive the compensation through the criminal proceedings, or the court feels the criminal proceedings cannot decide on compensation¹³⁶, the trafficked person should claim compensation through **civil action**.

Claims on compensation are governed by the Contract Law¹³⁷. Namely, in a civil lawsuit, the trafficked person is entitled to pursue a civil claim for compensation. This legal action is known as 'Just Monetary Compensation'. Practice shows that courts in R. Macedonia seldom rule on confiscating the procurer's property and money, which actually means that there is no source of compensation.

Types of compensation

The legal regulations of the R. Macedonia envision two types of repartition: material and non-material damages.

Material damages include monetary compensation for physical or mental harm inflicted on the trafficked person;

¹³² The Public Enterprise Official Gazette of the Republic of Macedonia, No. 15/97, 44/2002 and 74/2004. Further information: Chapter 10, Restitution and Compensation, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 15/97; 74/2004.

¹³³ Article 111, paragraph 2 of the Criminal Procedure, passed on 18th November, 2010. It becomes effective 2 years from the day of its enforcement.

¹³⁴ Effective as of 20th July, 2007.

¹³⁵ Effective as of 13th November, 2010. Provisions of Article 141, 142, 146, concerning the sources of compensation (providing the finances) for under-aged trafficked persons, shall become effective on 1st January, 2012.

¹³⁶ Further information in the section entitled Procedure.

¹³⁷ Passed on 11th July, 2008, Article 189, Paragraphs 190 and 191.

Non-material damages are non-monetary damages awarded for incurred physical or mental harm, fear, or when the individual has been physically or mentally incapacitated as a result of such victimization. In a civil action, the victim-the damaged party may claim a just monetary compensation for future non-material damages.¹³⁸

Procedure

The procedure of claiming compensation, in which the trafficked person is the damaged party, starts with submitting a claim for restitution (compensation).

Individuals who can submit the claim are: the trafficked person - if the person is of full age (and do not have layer), but if it's a minor, this is done either by the agent appointed by power of attorney or the victim's parents/guardians. The claim is submitted to the court that leads the procedure.

The aforementioned right to restitution can be claimed in two processes:

Criminal proceedings

The individual appointed to submit the claim can do so at the very beginning of the procedure, when the reports that crime was filed to the relevant institutions. The Public Prosecution reviews the reports and should decide whether there is an evidence of a felony, if so it submits a request for conducting a pre-trial investigation to an investigative judge.

If the individual appointed to submit the claim for restitution has not announced the claim in the reports, they can do that during the investigation to an Investigative Judge. The judge then conducts the investigation and returns the case to the Public Prosecution, which, in turn, files charges against the offender.

The individual appointed to submit the claim can do so either at the very beginning of the procedure, when the charges are filed by the relevant institutions. The Public Prosecution reviews the charges and should it decide that there is evidence of a felony, it submits a request to an Investigative Judge to conduct a pre-trial investigation.

If the individual appointed to submit the claim for restitution has not announced the claim during the criminal proceedings, they can do so during the investigation and to an Investigative Judge. The judge then conducts the investigation and returns the case to the Public Prosecution, which, in turn, files charges against the offender.

¹³⁸ "The Court, upon request from the claimant, can decide on awarding a just monetary compensation for future non-material damages, should it be certain that the damages are of long-term nature", Article 192, of Amendments in the Law on General Administrative Procedures.

If the claim has not been announced to this stage of the procedure, the Court is obligated to inform the victim of their right to do so during the main hearing at the Criminal Court, but no later than the end of the main hearing at the Court of First Instance- Criminal Division.

When the offender is pronounced guilty, the Court decides on a full or partial award of compensation. If the evidence presented at the trial does not present enough grounds for a full or partial award of compensation, and further investigation for stronger evidence may present unduly delay of the proceedings, the Court may rule only on the criminal offence or the offence and a partial compensation. Additionally, the court will subsequently rule on compensation or the remaining part of the restitution. If the compensation amount cannot be defined with other evidence or if providing such additional evidence would imply considerable delay of the proceedings, the Court shall decide upon the compensation amount or the rest of the compensation in an additional ruling¹³⁹.

The benefit of the criminal proceedings is that the Court executes its ruling on both the criminal charges and the compensation for the trafficked persons in one single procedure. Therefore, the legal proceedings are fast and cost-saving.

This type of proceedings has its downsides too: should the trafficked person be awarded a very small compensation or should the Court find the accused innocent, the trafficked person does not have the right to appeal - this can be done only by the Public Prosecution.

The Court can refer the damaged party/the trafficked person to a civil action.

Civil proceedings

The individual appointed to submit a claim for compensation in a civil action does so by filing a lawsuit in a Civil Court, claiming just monetary compensation for the trafficked person, based on neuropsychological evaluation conducted by an expert appointed by the Court. "In deciding whether or not to award compensation, the Court shall consider the intensity of the injuries and how long it had been inflicted upon the victim such as physical pain, emotional pain and suffering. The Court shall also consider the aims of the restitution, ensuring that the awarded compensation does not go counter to its character and social purpose"¹⁴⁰.

The appointed person, who has submitted the claim, suggests an arbitrary, unspecified amount when seeking non-material damages.

Starting from the fact that giving arbitrary amounts when filing the application for non-material damage represents a deficiency of our legislation and therefore we propose to the legislator to amend this law with the new provisions.

¹³⁹ Article 101, Paragraph 2 of the amended Criminal Procedure Code, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 74/04.

¹⁴⁰ Article 189 of the amended Law on General Administrative Procedure.

The advantage of this procedure is that the victim has the right to regular and extraordinary legal remedy in case of a negative ruling. The negative side is that the procedure is often long lasting and costs are high and bear by the trafficked person.

Asset seizure and confiscation

Asset seizure and confiscation in cases of trafficking in human beings is a very significant institute in our legislation.

The measure of confiscating property and money acquired through a criminal offence has been amended and supplemented with additional articles in the Criminal Procedure Code¹⁴¹.

The procedure implies that the State confiscates all assets and money which the perpetrators have illegally accumulated in the course of the unlawful act. In terms of trafficking in human beings, the overall sum generated by the activity is of key importance.

The seizure of criminal gains and assets is a fundamental tool in punishing the perpetrator and, in certain cases, can have as a stronger corrective effect than incarceration.

Practice has shown that victims are facing problems while attempting to practice their right to compensation of damages, because any compensation for non-material damages should be paid by the trafficker, i.e. the convicted person and quite often it happens that the convicted individual does not have any property or even a bank account under his or her name, thus, preventing the victim to effectuate the property or legal claim for years.

- *A juvenile victim of the crime – trafficking in persons, has the right to be compensated from the Fund for Compensation which still is not functional.*

ASSISTANCE AND PROTECTION

Statistics

¹⁴¹

Further information: from Article 486 to Article 493-b of the amended Criminal Procedure Code, 2004.

Data from the authority in charge of identification		2007	2008.	2009.	2010.	2011	2012
Total no. of identified victims		6	12	7	12	11	8
Domestic citizens		6	10	6	12	9	4
Foreign citizens	Legally residing	/	/	/	/	/	/
	Undocumented	/	1	1	/	2	4
Adults		3	1	/	/	5	3
Minors		3	11	7	12	6	5
Sex	Female	6	12	7	12	11	6
	Male						2
Type of exploitation ¹⁴²	Sexual		8	2	6	9	5
	Labor/in other industries		12	3	1	3	7
	Forced begging		1			/	/
	Forced marriage		1	4	5	/	1
	Coercion to petty crime		1			/	/
	Illegal adoption		/	/	/	/	/

NGO data	2007	2008	2009	2010	2011	2012
Total no. of identified victims	26	12	9	9	10	7
Domestic citizens	26	12	9	9	10	4
Foreign citizens	/	/	/	/	/	3
Adults	19	/	2	/	1	3
Minors	7	12	7	9	9	4

¹⁴² The numbers are higher because one victim is exploited sexually and also for labor purposes and it is putted twice in the table.

Sex	Female	26	12	9	9	10	6
	Male	/	/	/	/	/	1
Type of exploitation ¹⁴³	Sexual	26	11	9	9	10	5
	Labor/in other industries	13	6	9	9	10	5
	Forced begging			1			
	Forced marriage	4	3	1	1	2	
	Coercion to petty crime		1				1
	Illegal adoption						

Police	2007	2008	2009	2010	2011	2012
Total number of criminal reports filed by the police under the Criminal Code or other law which criminalizes THB.		9	7	3	6	3
Number of suspected perpetrators covered by the above criminal reports		25	18	25	35	6
Number of victims- injured parties covered by the criminal reports filed against suspected traffickers	6	12	7	12	11	8
Number of underage injured parties/victims	3	11	7	12	6	5
Number of injured parties/victims who are nationals	6	10	6	12	9	4
Injured parties/victims - female	6	12	7	12	11	6
Injured parties/victims - male						2

¹⁴³ The numbers are higher because one victim is exploited sexually and also for labor purposes and it is putted twice in the table.

Services are available for trafficked persons; access to them and conditions

The physical, psychological and social consequences that victims are faced with, which are caused by the abuse and exploitation during the process of trafficking in persons, impose the need to create and develop programs for their protection and support.

These sorts of programs exist in Macedonia and they allow the victims to overcome the trauma and reintegrate back in the family, home and the local community.

At this moment, in FYR of Macedonia, there are two shelters that offer accommodation to victims of trafficking in persons. One of them is under the management of the Ministry of Interior, while the other is being established by the Ministry of Labor and Social policy and managed by the CSO Open Gate -/La Strada Macedonia.

The shelter managed by the state (Reception center for foreigners) is intended to receive foreign victims of trafficking in persons and illegal migrants. In the reception center there is social worker and psychologist which are entitled to give counseling to foreign victims of trafficking. The shelter is mostly used for placement of illegal migrants, since there is large number of migrant transiting through FYR of Macedonia. The number of accommodated foreign victims is the same as stated in the table above (table 1).

As of 2005, the only shelter for Macedonian citizens who are potential and/or true victims of trafficking in persons has been functioning as part of the CSO Open Gate/La Strada Macedonia. In 2011 Ministry of Labor and Social Policy decided to put more efforts in assistance of the victims of trafficking. Therefore, it was found a state facility and Open Gate was invited to continue with implementation of the Social assistance program in the state shelter. Open Gate in the state shelter took responsibility for managing the state shelter.

The accommodation is on a voluntary basis and the potential and/or true victims can stay there up to six months with possibility for another 6 months extension. Professionals (social workers, psychologists and pedagogues) are engaged in the work process at the shelter and in the provision of services. From 2005 until now, 88 victims, most of them citizens of the FYR of Macedonia¹⁴⁴, have been accommodated at the shelter and provided with the following services:

- *Medical assistance - medical examinations were provided for the victims through visits by general practitioners or specialists, depending on the needs;*
- *Appropriate psychotherapy (individual or group sessions);*
- *Basic and specialized legal assistance or referral to other legal services; Establishing contact with the family;*
- *Material means to satisfy the basic needs (food, clothing and products for personal hygiene);*
- *Assistance in obtaining personal identification documents; Contacts with local and foreign nongovernmental organizations for referral and safe return.*

¹⁴⁴ Foreign victims with regulated temporary residence permit can stay in the shelter.

Besides the emotional and psychosocial support, the programs for reintegration of the CSO Open Gate /La Strada Macedonia also include the following:

- *inclusion in the educational process;*
- *vocational courses;*
- *assistance in finding work;*
- *assistance in obtaining appropriate accommodation after leaving the shelter.*

The reintegration plan is drafted only if the victim wants additional assistance and help. If the victim is a child, the plan for reintegration is compulsory.

The social assistance services are offered and provided by CSO Open Gate/La Strada Macedonia for all victims included in the Reintegration program, meaning the victims which are officially identified and referred to the program. The services provided by the Open Gate are financed by the foreign donors.

In regard to the **domestic victims** of trafficking in persons, in FYR of Macedonia, there is neither a shelter intended exclusively for juvenile victims of trafficking in persons, nor a special shelter for male victims of trafficking in persons. Additionally there is no separate shelter for foreign minors victims.

In majority of the cases, the referral of the potential and true victims of trafficking in persons to these shelter centers is done by the Ministry of Interior (MOI) and the NRM/ CSWs, and a smaller number of victims are referred via the SOS – emergency telephone line and by local and foreign nongovernmental organizations.

In accordance with the SOPs, in practice, the identification of victims is done by the Unit for fighting against trafficking in persons and smuggling of migrants at the MOI. The same is also valid for the border police, which have an active role and participation in the identification process at the border crossing points. On a local level, the centers for social work and the social workers also have their own share in the identification process of victims of trafficking in persons, especially children.

Related to cooperation with the authorities officially the victims do not have obligation to cooperate on the criminalization of the case. However the authorities do persuade victims to cooperate even before coming to shelter. Especially this situation encounters with the foreign victims of trafficking.

Situation in FYR of Macedonia in regard to (access to) support services for victims of trafficking

- *Generally in FYR of Macedonia there is a problem of identification of the victims of THB. There is very low number of victims officially identified by the state authorities. The Ministry of interiors does not undertake any proactive measures to discover and prosecute cases of THB in the country. Consequently, there is a certain persons – victims of THB which are not recognized/identified and do not receive any social assistance support.*

- *The foreign victims of trafficking who are identified generally receive accommodation and food in to Reception center for foreigners run by Ministry of Interiors. There is limited access and information on the situation with this center to the NGO's that provide social assistance to the victims of THB.*
- *Further, the activities related to successful reintegration of victims of THB are left to the CSOs to be implemented. During the stay in the shelter the victims receive variety of recovery and reintegration services, but the problems appear in the place of living of the victims. Namely, the community resources for reintegration are very limited or non-existing. The local structure of support is not developed, so the victims do not have any available help during process of reintegration.*
- *Another challenge that the victims are facing is a durable solution for residence. For some of the cases simply there is no place to be returned. The reasons may be different for this situation, such as: the parents are involved in the act of trafficking, the parent do not have capacity to accept them and to take care of the best interest of the child etc. Usually the solution for further residence in these cases is found in the wider family of the victim, which is not always appropriate solution. The Ministry of Labor and Social Policy as a responsible institution should find other appropriate responses for proper placement of the children victims of THB. Also adults' victims are facing with the problem of long-term accommodation.*

The most important human trafficking trends in the period 2007-2012

The continued existence of trafficking in persons, despite all the measures that are being undertaken, both on a national and international level, can be attributed to the constant modification of the trends.

Trafficking in persons in FYR of Macedonia started to ascent during the nineties. The transitional processes that appeared in the former socialist countries in Central, Eastern and Southeastern Europe, caused an enormous movement of the population in search for work and better life, which resulted with the creation of favorable conditions for the development of trafficking in persons. During that period, the Balkan region was characterized with political instability, also accompanied by war and post war conflicts, refugee crisis, increased presence of the international community and foreign peace keeping missions and forces. All these factors contributed to FYR of Macedonia becoming transit and destination country for the victims of trafficking in persons.

The slow and painful transition, which FYR of Macedonia had with all its characteristics, such as: corruption, rise of organized crime, high level of unemployment and poverty and the migration of highly educated individuals¹⁴⁵, were the main reasons for the creation of fruitful grounds for trafficking in persons.

Up until 2004, FYR of Macedonia was mostly used as a **transit country** for illegal crossing of the borders, but also used as a **destination country** for victims of trafficking in persons, mainly women from Eastern

¹⁴⁵ Typical and common for poor and undeveloped countries

Europe, who were primarily trafficked for sexual exploitation. The majority of the victims in the 2000-2004 period were from Moldova, Romania, Ukraine, Bulgaria, Russia and Belarus. For some of them, FYR of Macedonia was the final destination, while the rest of them were transported via FYR of Macedonia, Serbia, Kosovo and Albania into the countries of Western Europe.

According to IOM¹⁴⁶ statistics, during the 2000-2004 period there were 778 registered foreign victims of trafficking in persons, out of which 743 were women. The vast majority of them (681) was trafficked for the purpose of sexual exploitation and was between 18-25 years of age. During the 2000-2004 periods, 26 female Macedonian citizens were assisted as victims of trafficking in persons.

As of 2004, the number of foreign female victims of trafficking in persons rapidly decreases (2003-135; 2004-15). The expansion of the European Union and the accession of Bulgaria and Romania to the EU and the introduction of the non-visa (visa liberalization) regime influenced and changed the routes of movement of the victims of trafficking in persons, who, instead to FYR of Macedonia, started heading towards destinations in Western Europe.

Trafficking in persons is not a static and immobile phenomenon and it is constantly changing under the influence of various factors. After being only a transit and destination country, the FYR of Macedonia has now become a **country of origin** for victims of trafficking in persons.

According to the report of the US Department of State – Trafficking in persons for 2010¹⁴⁷, the FYR of Macedonia is:

„...country of origin, transit and destination for women and children that are subjected to trafficking in persons, especially for forced prostitution and forced labor. Macedonian women and children are being trafficked internally, within the borders of the country. Women and children from Albania, Bulgaria and Kosovo were forced into prostitution and forced labor in Macedonia in 2009. Macedonian victims and victims who are transiting through Macedonia are subjected to forced prostitution and forced labor in South, Central and Western Europe“

During the time period from 2005 until 2012, there is an apparent tendency of internal trafficking in persons occurring in the FYR of Macedonia, as compared to the transnational and trafficking of juveniles, as well as a change in the *modus operandi* of the traffickers¹⁴⁸. The traffickers in persons, faced with the new situation in the region, turned towards the local market and the internal trafficking in persons, using the deficiencies in the national strategies and the legislation that covers trafficking in persons, which, at that period, were primarily focused towards the suppression of the transnational trafficking in persons.

¹⁴⁶ Second annual report on victims of trafficking in Southeastern Europe – 2005, http://www.iom.hu/PDFs/Second_Annual_RCP_Report.pdf

¹⁴⁷ In the US Department of State reports, countries are evaluated in accordance with the TIER classification for their efforts in dealing with trafficking in persons. The TIER 1 group means that the country meets the minimum prescribed standards for elimination of trafficking in persons. TIER 2 includes the countries that are being placed on the watch list and TIER 3 includes the countries that completely fail to meet the minimum required standards, but are working in that respect or the countries that do not meet the standards at all.

¹⁴⁸ Utilization of new methods and means of entrapment and control over the victims by the traffickers in persons

The Emergence of Internal Trafficking In Persons

This refers to the so-called internal trafficking in persons, where Macedonian female citizens¹⁴⁹, mostly juvenile, are trafficked from one end of the FYR of Macedonia to another, mainly in Western Macedonia.

The majority of the victims come from the less developed parts of the country, where they are recruited under the excuse of a phony employment in the catering industry and are later transferred to the Western parts of the FYR of Macedonia, where they are being exploited for sex or work.

In general, there are no differences in the reasons that affect the emergence of internal or transnational trafficking in persons. The increased incidence of internal trafficking is a result of poverty and the high level of unemployment in the country, as well as of the poor socioeconomic conditions.

There were 88 victims accommodated in the shelter managed by the NGO Open Gate, in the time period from 2005 until 2012. All of them were women (except of one boy), Macedonian citizens who were internally trafficked, but of various ethnicities. Most of the assisted persons, 89%, were trafficked in order to be sexually exploited; 61% of the sexually exploited also experienced labor exploitation, working as waitresses as well. According to the analysis, out of the total number, 62 persons come from families that were in poor economic state, 51 persons previously experienced some sort of violence in the family, which can be considered as one of the main reasons for the entrapment in trafficking in persons. Most of the victims, 72 of them, have a very low level of education, i.e. they have not completed elementary education.

According to age the most of the victims are minors, from the total number of 88, there are 57 minors from the age from 10 till 18 years of age. The fact that victims of trafficking in persons are becoming younger and younger is truly horrifying. Generally, children are an easy target for the traffickers because they have reduced capacity to recognize and identify risks and to take care of themselves on their own. They depend on adults and do not fully understand the consequences from their behavior.

The internal trafficking in persons was invisible for a longer period of time. The basic reason was the absence of identification of these persons by the competent authorities. Namely, the police, in the downpour of female foreign citizens was overly focused on the obvious indicators for identifying the victims of trafficking in persons, such as: confiscated travel documents, illegal residence, visible traces of physical violence, restricted freedom of movement and unfamiliarity with the Macedonian language. These indicators are not typical for Macedonian or domestic victims and for the internal trafficking.

¹⁴⁹ There are cases of young boys labor exploited in the mountains as a shepherds.

National referral Mechanism in FYR of Macedonia

Ministry of Labor and Social Policy

In accordance to the interests and efforts for joint activities and eradication of human trafficking and implementation of the National Program on the fight against human trafficking and illegal migration, Ministry of labor and social policy (MLSP) has intensified, upgraded and widened the measures and activities for prevention and protection of the victims of the human trafficking, especially women and children.

National Referral Mechanism (NRM) was established in 2005 within the MLSP, Sector for Equal Opportunities in the Unit for gender equality. The overall aim of the NRM is to strengthen the capability of the country to provide adequate identification, assistance and protection, based on international human rights standards, to all victims of human trafficking, particularly minors and regardless of nationality, ethnicity, age, or gender. The NRM formalizes and facilitates the cooperation between the Governmental agencies and non-governmental groups dealing with trafficked persons... This is done by interlinking all relevant partners in order to ensure a referral system without gaps.

Main partners includes the National Commission to Combat Human Trafficking and Illegal Migration (including its Subgroup to combat trafficking in children); Ministry of Interior, Ministry of Foreign affairs, Centers for Social work, Public prosecution, Local institutions, the informal Anti-Trafficking NGO Network, and Union of organizations of social workers in the FYR of Macedonia

Trafficking victims can be discovered by different actors: Police, NGOs, Social workers, Embassies. Than the National Referral Mechanism acts in 5 steps:

I step: Assessment of the Initial Needs

II step: Referral of victims to the organizations / institutions, persons responsible for direct assistance to victims

III step: Coordination of protection

IV step: Information for the victims about their status and their rights

V step: Supervision of the assistance process

Since the victim identification is complex process which is usually done by the police and based on evidence or statements by the victim, many potential victims are inappropriately or wrongly identified. From the other hand, having in mind that the Centers for social work are functional institutions, which perform numerous tasks in order to fulfill the preventive activities in the social protection, they meet a variety of different categories of citizens, particularly women and children, who might be potential victims of human trafficking. Therefore, they are included in the process of prevention and protection of the victims of the human trafficking, particularly children. The Centers for social work perform their activities by teamwork, in which the social workers represent the most important part.

The Centers perform their work by:

- Detection and recognition of the victims of the human trafficking
- Giving aid and protection;
- Creating a network of cooperation on a local basis;
- Upgrading the public conscientiousness about preventive activities;
- Cooperation between NRM office with the MLSP.

The structure of NRM is well established. The responsible social workers passed numerous trainings related to THB and are sensitized to the issue. However, there is a need of financial support by the government related to implementation of the activities with the victims of THB. In numerous cases the state social workers complained that they do not have any resources for implementation of reintegration activities, such as lack of official vehicles, lack of fuel, lack of financial means to support the families of the victims etc.

Ministry of Interior

- *Specialized unit for combat trafficking in human beings and illegal migration is involved in the pre-trial procedure during the process of identification of victims. The responsible police officer is pointing out all available rights, including the right to compensation. In terms of compensation, police officers' advices on the ways of claiming the same in future proceedings.*

This unit also performs accompanying of the trafficked person when giving testimony in the investigation procedure along with the legal agent, during which the police officer, "reminds" the trafficked persons of their rights and the right of compensation in the criminal proceedings.

Helpline for Help in Human Trafficking

- *As one of the most effective methods of prevention of human trafficking, the NGO Open Gate opened the SOS hotline, which began its work on October 1, 2002 as the only phone service that offers information, prevention and counseling for citizens, victims of human trafficking and their families in FYR of Macedonia.*

*There are two SOS help lines numbers available for callers: a fixed number 0038922777070 for calls from abroad and **0800 11111**, which is toll-free number for all calls from FYR of Macedonia. Both lines run every day, from 8 A.M to 8 P.M. The goal of the SOS hotline is to reduce the risk of human trafficking by raising awareness and providing information and assistance to the SOS clients. All services of the SOS hotline are available by e-mail and are open to all, regardless of gender, nationality and ethnicity.*

On the SOS hotline the callers can get different types of assistance:

- * Emotional support

- * Psycho-social assistance
 - * Information for safe departure or work abroad
 - * Basic legal advice
 - * Information and assistance in trouble
 - * Assistance in establishing contacts with relevant institutions
 - * Contact and accommodation in a shelter
- *As far for **international organizations** in FYR of Macedonia, the most active on the field are IOM office in Skopje, ICMPD office and OSCE mission in Skopje. The international organizations mainly support the process of changes in the Laws, supports the process of creation of the strategies and National Action Plans, organizing different conferences and other events. Additionally, IOM office supports the process of returning of some of the victims and unaccompanied children from abroad.*

Positive and negative examples

Examples of good practice

The following case takes place in a provincial town in FYR of Macedonia. The victim, who is now full of age, was a minor (16 years old) at the time the crime was committed.

At the fragile age of 16, she met a boy who proposed marriage and offered her a better life abroad. Her boyfriend, promising a wonderful life in Germany, talked her into stealing €6,200.00 from her parents-money which they would allegedly need for passports and visas. She left her home and run away with her boyfriend. From that moment onward, her life turned into a nightmare: hardship, trafficking, sexual exploitation. She was taken to various locations around FYR of Macedonia, where she was forced to give sexual favors for as much as 20 hours per day. She was physically abused, drugged and intoxicated. After a long ordeal, she was taken abroad by her the boyfriend's father. This was done illegally and without her consent. She was first taken to Kosovo and then to Germany and Norway, where she was locked in brothels, molested, and forced to consume large quantities of alcohol, drugs and various other stimulants. During a police raid in Norway, she got arrested and spent some time incarcerated. A few months later, she was transferred to Germany, to a reception centre.

The German officials contacted the Macedonian authorities and the girl was deported to her home country. Immediately upon her repatriation, the Ministry of Interior together with the NRM, took over the case and all safety measures were implemented. Considering that the girl's safety and the safety of her family were at high risk, the victim was placed at the Shelter for Domestic Victims of Human Trafficking, part of the CSO Open Gate/La Strada Macedonia.

The victim stayed at the shelter 18 months. During her stay, she demonstrated visible signs of trauma. She was not herself, claiming she kept reliving the nightmare- kept seeing the images of the hell she endured, feeling afraid of every noise or touch. She would not be sleeping well, would wet her bed at night. She kept having vivid nightmares and had troubles focusing. She was constantly feeling restless and empty. She felt she had destroyed her life, having no future plans. Worst of all was the feeling of

shame she had brought to herself and her family, whose good name and dignity she had forever destroyed. During her stay at the shelter, she was provided with the necessary psychosocial support, medical attention, and the proper medicine prescribed by a psychiatrist.

The Witness Protection Unit from the Ministry of Interiors was included in the protection and, along with a staff member from Open Gate, they would accompany her at all times- court hearings, at the Police or the Public Prosecution, and during meetings with her family, which took place at safe locations. During her stay at the shelter, the victim had frequent meetings with the Public Prosecutor. As a witness and the damaged party, the victim worked closely with the Public Prosecution, and when the criminal charges were filed, she was the crown witness. During the pre-trial period and in the preparations for the hearing, the victim received support not only from the Public Prosecutor, but also from the entire personnel from Open Gate. The victim appeared before an Investigative Judge. During the pre-trial period, her lawyer - appointed by power of attorney - announced her claim for compensation. However, it was announced that the amount of compensation would be specified after the expert witnesses stated their professional opinion, i.e. during the main hearing.

The victim was present in the courtroom at the main hearing from its beginning to its end- during the presentation of all evidence (material and verbal), i.e. during the hearing of the witnesses.

The victim was accompanied by staff from Open Gate and the Witness Protection Unit - the Ministry of Interior.

On the main trial the victim, being the crown witness, gave her testimony. She gave detailed answers to all questions asked by the Court, the Prosecution and the Defense party. During the entire proceedings, her demeanor was impeccable. She was composed, never hesitated in answering the questions, nor did she feel intimidated by the threats issued by the perpetrators. She had the full support of the professionals from Open Gate, the Witness Protection Unit, and the Prosecution and from her family. At the main hearing, the Court asked for expert witness opinion provided by relevant institutions. The School of Medicine in Skopje prepared a lengthy written report which stated that the victim had been examined and she sustained visible bruises, inflicted at least a month before the exam. Furthermore, expert opinion was provided by the Forensic Institute and the Psychiatric Hospital in Skopje. Based on these expert witnesses, the victim, via her appointed agent, claimed the right to compensation.

The Court found 7 people guilty of felony according to Article 418a of the Criminal Code of the Republic of Macedonia and the trafficked person was awarded compensation. Furthermore, the Court awarded the claimed compensation amount, by which the perpetrators were ordered to pay the victim material damages in the amount of 16,337.00 denars (around €270) and non-material damages in the amount of 216,666.00 denars (€3,500.00). According to Article 220 of the Criminal Procedure Code, the Court issued a temporary seizure of assets of the two of the perpetrators.

This case is listed as a textbook example of the crime of trafficking in humans- Article 418a of the Macedonian Criminal Penal Code and it is treated as one of the most serious criminal offences in our legislation.

After the trial, the victim resumed her stay at the shelter, and was included in the Open Gate reintegration programme. She received vocational training for hairstylist and cosmetician. A few months later, the victim expressed her wish to leave the shelter and return home. While living at home she received constant threats from the trafficker's family and the trafficked person was faced with the fact that she can't live in her birthplace because of threats, decided to permanently leave the state and continue her life in another country. Open Gate explored NGO network connections and enabled the victim a one-month stay abroad. In cooperation with the Witness Protection Unit, Open Gate helped the victim obtain a passport. The trafficked person was resettled in other country and continues her life there supported by foreign NGO and she managed to rebuild her life abroad.

Examples of bad practice

- *The case is about a minor, 10 years of age which is Macedonian citizen. The boy was sold by his father for working as a shepherd in the mountains in the west part of FYR of Macedonia. The boy was living with his father and his four siblings. The family of the boy was completely dysfunctional; the mother has left the children several years ago and has remarried. The father of the boy was alcohol addict and all the children were suffering violence from him.*
- *The boy was working for a two years in the mountain, living together with the sheep's in very bad conditions as an animal. The only person he was seeing was the exploiter which was visiting him once a month. One day the boy escaped in a closest village and asked for a help from the local people and they reported the case to the local Police.*
- *The Police took the child from the village to the Police station. Afterwards, the police informed Center for social work to take the child. The Police discovered that the child is not registered in the data base as a Macedonian citizen, there is no any evidence of his existence. The Center for Social work took the child and faced the problem of accommodation. In FYR of Macedonia there is no facility in which this category of children could be placed. Due to the fact that no other institution can accommodate the child without any documents, the child was returned to the family. Actually, his uncle was appointed as a guardian but he was living in the same house with his father. Consequently the child was returned in the same environment as before trafficking situation. The Ministry of Interiors put efforts to issue ID documents for the child and faced the problem that the whole family was not officially registered.*
- *In relation to social assistance the Center for Social work except of appointing a guardian did not provide any other services. In addition, there was no NGO that was provided with information about the case and did not have any access to the child to be provided with reintegration activities.*

RECOMMENDATIONS

Identify gaps between the laws and practice in your country and the **European standards** (CoE THB Convention and for EU Member States also **EU Directive on trafficking (2011/36/EU of 5 April 2011)**, **EU Directive temporary residence (2004/81/EC of 29 April 2004)** and **EU Directive on sanctions against employers of illegally staying third country nationals (2009/52/EC)** and provide conclusions and recommendations for changes in anti-trafficking field in your country.

- *The planning and provision of technical, human and financial resources at a state institutional level in order to provide an adequate social support to the victims of human trafficking in compliance with their individual needs;*
- *Financing of NGOs that implement activities against the trafficking in human beings, provided by the Government. Besides the support of international donors, the financial means should also be provided from own, internal resources.*
- *Preventive activities should be undertaken concerning the family which is a risk factor for the person to become a victim of human trafficking, including: overcoming of no functionality, conflicts between spouses/parents, domestic violence, alcoholism, criminality, and improvement of the family's financial situation.*
- *A more intense effort should be made for the purpose of detecting exploitation, especially labor exploitation which is in increasing tendency, by finding a more sophisticated access for the detection of victims of human trafficking and the persecution of trafficker.*
- *The partnership in the planning and realization of these activities shall be mandatory, and the interest and needs of the persons/children should always be a priority in the provision of direct assistance and protection. A long-term and more intensive treatment of the victim itself should be developed for the purpose of overcoming the situation of the victim of human trafficking.*
- *Considering the fact that most of the victims return in the same environment and face the same problems they had had before becoming victims, a greater support should be provided by the CSWs, NGOs and the community members for the purpose of their efficient reintegration in society.*
- *To develop new forms of providing care and reintegration of the victims, and as far as the immediate return in the natural family is concerned, it should be realized only if it is in the interest of the victim.*
- *The reintegration processes should be enhanced at a local level. The citizen sector may also contribute to the partnership with the Centers of Social Work.*
- *Although the cooperation between the civil society and the state is at a satisfactory level, there is still a need of a better recognition of the NGOs' role in this problem and the important stakeholders in the reintegration process.*

- *The enhancement of the role of the available SOS lines within the identification and referral process of the victims of human trafficking by promoting the telephone number and the services that are provided to the public.*¹⁵⁰
- It is necessary to elaborate the specific legal provisions of Contract Law in a special way for determining the amount of compensation especially non-material indemnity for the trafficked persons.
- Preparation of legal amendments in the Law of Succession in terms of adopting new provisions that will be related to the method, the deadlines for the transfer of property from the testator to the heir (trafficker), as the trafficked persons would easier realize the compensation.
- Establishment of a state fund for restitution where trafficked persons would receive compensation through activation of assets from the budget of the Ministry of Justice and other state bodies, and the state will then create the conditions for "recovery" from the offender/trafficker, i.e. by selling his property.
- Greater financial involvement of the governmental sector to monitor this type of crime in order to provide a database of information regarding the compensation of trafficked persons.
- More common use of the provisions of the Criminal Code on confiscation of property or proceeds obtained by crime due to easier, faster compensation to the trafficked persons from confiscated property to the perpetrator of this act.
- There is a need of substantial changes in the Law for free legal aid to enable its practical implementation form which the victims of trafficking will benefit.

¹⁵⁰ Open Gate in 2011 made a research on the available social assistance and cooperation between the responsible institutions. Above are stated recommendations related to social assistance of victims of THB.

TRAFFICKING IN HUMAN BEINGS IN THE REPUBLIC OF SERBIA

**SITUATION ANALYSIS CONDUCTED BY ASTRA – ANTI
TRAFFICKING ACTION**



TRAFFICKING IN HUMAN BEINGS

SITUATION ANALYSIS IN THE REPUBLIC OF SERBIA



POLITICAL AND SOCIO ECONOMIC SITUATION IN THE COUNTRY

Present general political, economic and social situation in the country

Over the last decade, Serbia experienced two significant territorial changes. Montenegro, the other federal unit of the Federal Republic of Yugoslavia and later of the State Union of Serbia and Montenegro, declared its independence on 21 May 2006¹⁵¹, while on 5 June the National Assembly of Serbia declared Serbia a legal successor of the State Union¹⁵². Two years later, on 17 February 2008, the Kosovo Assembly unilaterally declared the independence of this province, which was soon recognized by the majority of world forces¹⁵³. Kosovo had been under the international protectorate since the end of the NATO bombing of Serbia in 1999. The Republic of Serbia still treats Kosovo as its inseparable part and does not recognize declared independence, putting enormous energy and resources in lobbying worldwide in order to prevent further recognitions and to maintain parallel administrative structure in the parts of Kosovo with larger concentration of Serbian population¹⁵⁴. After the eight rounds of negotiations, the agreement between Serbia and Kosovo on normalization of mutual relations was finally signed in April 2013. Although not greeted with enthusiasm, the signing of the agreement has not generated massive protests among the citizens of Serbia. It is ironic that the agreement was concluded by the nationalist government known so far for obstructing and criticizing any attempt of normalization of relations made by the former government, labeling all those negotiating with Kosovo officials as traitors and accusing them of recognizing Kosovo's independence. Unfortunately, the status of Kosovo, being presented as the ultimate state and national interest of Serbia, is often used as an excuse for the stagnation of reforms and for neglecting essential problems that bother people in Serbia, such as high unemployment rate, poverty, inefficient judiciary and the like.

Serbia has made some progress towards EU membership, signing a Stabilization and Association

¹⁵¹ Official Gazette of the Republic of Montenegro, no. 36/2006 of 5 June 2006.

¹⁵² The Decision on the Obligation of State Authorities of the Republic of Serbia in Realization of prerogatives of the Republic of Serbia as a Legal Successor of the State Union of Serbia and Montenegro, Official Gazette of RS, no. 8/2006.

¹⁵³ <http://www.assembly-kosova.org/?cid=2,128,1635>

¹⁵⁴ <http://www.kolikoskostakosovo.info/>

Agreement with Brussels in May 2008, and with full implementation of the Interim Trade Agreement with the EU in February 2010, gained candidate status in March 2012. New Government of the Republic of Serbia established in July 2012 continues to work towards EU integration of the country. The date for starting accession negotiation is expected this summer and the agreement on normalization of relations with Kosovo was actually signed to that end.

Position of women, children, people with disabilities and national minorities

The 2006 Constitution of Serbia guarantees equality of men and women and development of equal opportunities policy. Article 21 provides that all are equal before the law and prohibits direct and indirect discrimination. However, until the passage on the Law on Prohibition of Discrimination in 2009, neither the Constitution nor other laws in Serbia contained explicit prohibition of discrimination against women, nor did they specify what discrimination should mean. It seems that gender equality is achieved most in the area of education, in particular primary education, where there is almost no difference in the number of boys and girls who complete primary school. What may be observed in younger population is that difference in the level of education has been growing in favor of women from generation to generation¹⁵⁵. On the other hand, women are more often illiterate than men. They constitute 82.1% of the total illiterate population¹⁵⁶, but these are mostly women from older age groups¹⁵⁷.

Women also constitute the majority of unemployed, both according to the National Employment Service and to the Labor Force Survey. Research findings show that women are as much as 1.7 times more likely to be unemployed than men¹⁵⁸. They are faced with discrimination, open and hidden, when finding employment and at work. Other problems women face at work include sexual harassment, obstacles in promotion, not holding top positions in companies, earning less than men (on average 17% less), etc.

Domestic violence is a topic that has been more openly and more frequently discussed in the last ten years, above all thanks to the pressure of women's NGOs and change in the political climate after 2000. The violence rate is high and according to the Statistical Office of Serbia, the number of reporting cases of family violence at the beginning of 2013 was 10% higher than in the previous years. According to research done by number of NGOs constituting network *Women against Violence*, almost every second one woman is subjected to psychological violence, whereas every third woman experiences physical attack by one of her family members.

When it comes to the rights of the child, the Republic of Serbia is a signatory to many UN documents on human rights, the most important of which is the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution

¹⁵⁵ Puzigaća M., *Stanje i izazovi za rodnu ravnopravnost u Jugoslaviji*, SCAN Novi Sad, 2002; quoted according to Blagojević M., *Položaj žena u zemljama Balkana – komparativni pregled*, GEEP Gender jednakost i ravnopravnost u BiH, Gender centar Vlade RS i Gender centar Vlade FBiH, Bosna i Hercegovina, 2004., p. 89.

¹⁵⁶ Statistical Office of Serbia, <http://webzrs.stat.gov.rs>

¹⁵⁷ *Women and Man in Serbia*, 2005, Statistical Office of Serbia and UNDP.

¹⁵⁸ Marina Blagojević Hughson, *Gender Barometer in Serbia: Development and Everyday Life, summary*, Belgrade, March 2013, p. 9.

and child pornography. Yet, a department solely responsible for children's rights does not exist within the system. Instead, the ministries perform activities related to the rights of the child separately, according to their scope of work. The only coordinating body for the rights of the child at the level of government - the Council for Child Rights is not active for 2 years, showing there is still no understanding of the need for effective coordination and management of activities in the field of the rights of the child. Pursuant to the Rules of Procedure of the National Assembly of the Republic of Serbia, the Committee on the Rights of the Child was established as a special permanent working body. The Committee has held six meetings and one public hearing so far.

In last couple of years, significant progress was made in the area of legislation relevant for the improvement of the position of children. In 2006, three important laws came into force: the *Family Act*, the *Criminal Code* and the *Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles*.

A large number of children in Serbia are poor, without elementary health and social care. According to the EU criteria, one third of all children in Serbia live in poverty. What is notable is that the issue of children's rights in practice is always in the background of still predominant political questions. As far as sexual abuse of children is concerned, it is estimated that every third girl and every seventh boy have suffered this form of violence. The number of reported cases is far smaller than actual incidence of sexual abuse of children.

Children in Serbia are victims of other forms of violence, too, but there is no precise data on the size of the problem. When it comes to human trafficking, following types of exploitation are known to have happened to children in Serbia: sexual exploitation, forced begging, coercion to petty crime, forced marriage, labor exploitation and illegal adoption. Among identified victims, percentage of children is very high – around 40% in the last five years.

A lot of effort has been put in recent years in building a legal framework which would enable the improvement of status of persons with disabilities. The *Law on the Prevention of Discrimination against Persons with Disabilities* was introduced in 2006, followed by the *Law on the Prohibition of Discrimination* and the *Law on Professional Rehabilitation and Employment of Persons with Disabilities*. Still, their position in Serbia is characterized by low employment rate (13% according to the World Bank), the absence of equal opportunities for access to education, physical environment and communications and adequate support services¹⁵⁹. This applies to the position of children with disabilities, too.

The problem of corruption in connection to trafficking

Connection between the corruption and human trafficking has never been seriously approached in Serbia. Instead of ending up at court, most of known cases of corruption in police and judiciary related

¹⁵⁹ Leerentveld H.(et al) *Feasibility Study on Employment and Professional Rehabilitation of People with Disabilities in Serbia, Final Report*, HTSPE Limited UK (The European Union's Programme for Serbia), 2006, p 11.

to trafficking were handled in internal administrative procedures, with disciplinary sanctions as the only consequence for the perpetrators. The Analysis of Case Law in the Republic of Serbia conducted by ASTRA in 2011 and 2012 shows that people employed at the police, courts or other public institutions were mentioned as witnesses but did not take part in the proceedings. One case of public officials put to trial for their involvement known to us was processed in the District Court in Sombor. Among other offenders in this case were a deputy prosecutor and two police officers from Novi Pazar (although they were not convicted of human trafficking, but of the abuse of office). Both the police officers and the prosecutor got a year-long suspended sentence¹⁶⁰.

Other relevant economic indicators and other factors influencing THB situation in the country

Milosevic-era mismanagement of the economy, an extended period of international economic sanctions, civil war, and the damage to Yugoslavia's infrastructure and industry during the NATO air strikes in 1999 left the economy only half the size it was in 1990¹⁶¹. The situation was further aggravated by the global economic crisis that shook the country. Serbia is still struggling with its consequences. The economy now is transitional, mostly dominated by market forces. Nonetheless, the state sector remains much bigger than needed and many institutional reforms are needed, both in terms of quantity and efficiency. The economy relies on manufacturing and exports, driven largely by foreign investment.

According to the Statistical Office of the Republic of Serbia, GDP decreased in 2012 by 1.7%¹⁶² compared to 2011 when the economy grew (1.6%). Also, gravid economic problems are high unemployment rate (23.7% 2011 est. and 25.9% 2012 est.¹⁶³) and a large trade deficit (EUR 788.8 m in February 2013¹⁶⁴). Out of around 700,000 unemployed, 43% have less than 30 years of age¹⁶⁵.

Although certain progress had been recorded in the field of poverty reduction until 2008, the number of citizens who are under risk of poverty is still deplorably high (20.6% in 2010¹⁶⁶). The profile of the poor remains almost unchanged: citizens under the highest risk are those who had primary or lower education, unemployed and economically inactive population, children, households with higher number of members and households in rural settlements¹⁶⁷.

Unemployment, poverty, lack of education, gender discrimination and violence may be conclusively marked as discriminatory and downside factors “pushing” someone into migration for work, thus exposing him/her to risks of human trafficking. Further influencing people’s motivation to leave are

¹⁶⁰ Sombor District Court, K. 110/07, 18 June 2008

¹⁶¹ http://www.indexmundi.com/serbia/economy_profile.html

¹⁶² <http://bif.rs/2013/03/srbija-pad-bdp-u-2012-17>

¹⁶³ http://www.indexmundi.com/serbia/economy_profile.html

¹⁶⁴ Statistical Office of Serbia, <http://www.tradingeconomics.com/serbia/balance-of-traden>

¹⁶⁵ Nenad Borovčanin, State secretary in the Ministry of Youth and Sports, in a press statement to Tanjug, 19 March 2013. (video available at <http://www.tanjug.rs/videoDet.aspx?gallID=89111>)

¹⁶⁶ <http://www.inkluzija.gov.rs/files/Pracjenje%20stanja%20socijalne%20isključenosti,%20Avg%202012%20SRP.pdf>

¹⁶⁷ The First National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, overview and state of social inclusion and poverty for the period 2008 – 2010, including the priorities for the following period, The Team for Social Inclusion and Poverty Reduction with the Cabinet of the Deputy Prime Minister for European Integration, March 2011.

general circumstances in transition countries, discrimination in the labor market paired with high rate of violence against women and children and other aggravating social conditions. These are coupled with “pull” factors that make potential victims easily susceptible to the “baits” of human traffickers, namely proposed advantages of life in better-off Western societies and the expectations of employment and better earnings.

LEGAL ANALYSIS

Criminalization of THB

Relevant laws and documents on THB and victim protection

Law on Ratification of the UN Convention against Transnational Organized Crime and Protocols Thereto

Law on Ratification of Council of Europe Convention on Action against Trafficking In Human Beings

Law on Ratification of the Convention on High Technology Crime

Law on Ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Law on Ratification of Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism

Law on Ratification of the UN Convention on the Rights of the Child

Law on Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Law on Ratification of Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

Constitution of the Republic of Serbia

Criminal Code of the Republic of Serbia

Criminal Procedure Code of the Republic of Serbia

Law on Public Order and Peace

Law on Aliens

Social Protection Law

Healthcare Law

Law on Seizure and Confiscation of the Proceeds from Crime

Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles

Law on the Protection Program for Participants in Criminal Proceedings

Law on Personal Data Protection

Law on Prohibition of Discrimination

Definition of the criminal act of human trafficking from the national Criminal Code

Human trafficking

Article 388

(1) Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person aimed at exploiting such person's labor, forced labor, commission of offenses, prostitution, other forms of sexual exploitation, begging, pornography, establishing slavery or slavery-like relation, the removal of organs or body parts or service in armed conflicts,

shall be punished by imprisonment of **three to twelve years**.

(2) When the offense specified in Paragraph 1 of this Article is committed against a minor, the offender shall be punished by the penalty prescribed for that offense even if there was no use of force, threat or any of the other mentioned methods of perpetration.

(3) If the offense specified in Paragraph 1 of this Article is committed against a minor, the offender shall be punished by imprisonment of **not less than five years**.

(4) If the offense specified in Paragraphs 1 and 2 of this Article resulted in grave bodily injury of a person,

the offender shall be punished by imprisonment of **five to fifteen years**.

If the offense specified in Paragraph 3 hereof resulted in grave bodily injury of a minor,

the perpetrator shall be punished by imprisonment of **not less than five years**.

(5) If the offense specified in Paragraphs 1 and 3 of this Article resulted in death of one or more persons,

the offender shall be punished by imprisonment of **not less than ten years**.

(6) Whoever habitually engages in offenses specified in Paragraphs 1 to 3 of this Article or if the offense is committed by a group,

shall be punished by imprisonment of **not less than five years**.

(7) If the offense specified in Paragraphs 1 to 3 of this Article is committed by an organized group, the offender shall be punished by imprisonment of **not less than ten years**.

(8) Whoever knew or could have known that a person is the victim of trafficking, but nevertheless made use of her/his position or facilitated another person to make use of her/his position for the purpose of exploitation referred to in Paragraph 1 of this Article,

shall be punished by imprisonment of **six months to five years**.

(9) If the offense referred to in Paragraph 8 of this Article was committed against a minor of which fact the offender was or could have been aware,

such offender shall be punished by imprisonment of **one to eight years**.

(10) The consent to exploitation or to the establishment of slavery or slavery-like relation referred to in paragraph 1 of this Article has no bearing on the existence of criminal offense referred to in Paragraphs 1, 2 and 6 of this Article.

Trafficking in Minors for Adoption

Article 389

(1) Whoever abducts a child under 16 years of age for the purpose of adoption contrary to laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under 16 years of age or transports such a person, provides accommodation or conceals such a person,

shall be punished by imprisonment of **one to five years**.

(2) Whoever habitually engages in activities specified in paragraph 1 of this Article or if the offense is committed by a group,

shall be punished by imprisonment of **not less than three years**.

(3) If the offense referred to in Paragraph 1 of this Article is committed by an organized group, the perpetrator shall be punished by imprisonment of **not less than five years**.

Due to the lack of knowledge on the part of prosecutors or judges and sometimes because of the lack of evidence, it sometimes happens that the prosecutor gives up on trafficking charges, but accuses the trafficker for facilitation of prostitution. This means that the trafficker will get less strict penalty – not necessarily prison sentence, while the victim will not be identified as victim, but labeled as prostitute and will not have access to assistance and enjoy other rights. It may even happen – although rarely in

recent years - that victims are not recognized, but, instead of being identified, sent to the magistrate court where they are sentenced up to 30 days for prostitution.

In December 2011 two victims of trafficking were not identified by the public peace and order police department. Instead the girls were sent to the magistrate court, which sentenced them to the imprisonment of 30 days. At the same time the Police Department for Organized Crime arrested the persons who forced the girls to prostitution and they were accused for trafficking in human beings under article 388. The victims were brought from prison to testify when the defense lawyer asked the judge: "If they are victims, why aren't they in the safe house but jail?"

The examples of inadequate application of key elements of the definition of human trafficking in the practice of Serbian courts can be found below¹⁶⁸

- In an indictment issued in 2008, a group of four persons was accused of having committed human trafficking as an organized group (minimum five years imprisonment). When pronouncing the judgment (judgment K-270/08), the first instance court, omitting the wording "as an organized group", qualified this act as a basic form of human trafficking (two to ten years imprisonment) and sentenced each of the accused to two years and six months imprisonment. Doing so, the court qualified the criminal act of qualified form falling under jurisdiction of the then District Court as a basic form falling under jurisdiction of the then Municipal Court with far weaker prescribed sanction, hence pronouncing a sanction slightly exceeding the legal minimum. The court therefore provided far better position for the accused because, although defining the accused an organized group in the rationale of the judgment, the court omitted this qualification in the pronouncement of the judgment.
- Two persons were accused of having committed human trafficking as an organized group (minimum five years imprisonment). Their accomplices were already convicted by the Special Court in Podgorica. The principal defendant was sentenced to four years imprisonment and the secondary defendant to two years and six months imprisonment. The Serbian court (judgment K-1891/08) based its decision to pronounce sanctions below the legal minimum on the fact that the principal defendant was a younger person, while the secondary defendant was a family man, retired police officer. The court found no aggravating factors on the side of defendants, although the principal defendant, abusing difficult life circumstances of a minor victim, expressed a particularly strong persistence in the commitment of the crime, bearing in mind that he had spent two months in a hotel in the town where the minor victim lived, convincing her and her parents of his fake promises. The court also found no aggravating circumstances on

¹⁶⁸ The complete text under question 2 (b) is taken from the *Comprehensive Study on the Criminal Justice Response and Jurisprudence in the area of Anti-Human Trafficking In Serbia*, UNGIFT Study, Belgrade, 2011, <http://www.ungiftserbia.org/?studiesresearch=comprehensive-study-on-the-criminal-justice-response-and-jurisprudence-in-the-area-of-anti-human-trafficking-in-serbia>

the side of the secondary defendant either – a retired police officer – stating in the rationale that his role in this specific case in the organization was only to arrange the transport for the defendant and the victim between Subotica and Kosovska Mitrovica, obtaining certain fee for such service.

This example also serves as an illustration of the need for improving normative framework in terms of stipulation of a special regime of sanctions for public officials. The following example also serves as a foothold for the statement about the prevailing mild penalty policy towards human traffickers.

- The Municipal Court in Pancevo found the accused guilty (judgment K 756/2005), stating that he had created and abused victim's dependant position – he fostered her drug addiction and, by lending her money for heroin, put her in the position of indebtedness, in order to persuade her to work as a prostitute in Italy for him. Once the debt increased, he transported the victim to Croatia, hired a person from this country to provide her with fake documents with Croatian name, transported her back to Italy and forced her into street prostitution. The victim was obliged to earn 500 EUR a day from prostitution. After her first return to Serbia, she was transported back to Italy and forced back into prostitution. The defendant threatened her mother, who lived in Serbia. When the victim returned to Serbia again, the defendant visited her and her mother and assaulted them physically. For the criminal act which included exploitation of the victim through prostitution for a year and a half (from May 2003 to November 2004), the trafficker was sentenced to 9 months imprisonment, i.e. the sanction below the legal minimum, while the judgment stated usual factors as mitigating ones – that he was a family man, father of two children without prior criminal records.

Gaps and deviances from European standards and changes needed in order for the law to be fully harmonized with the CoE THB Convention and, for EU Member States, with EU THB Directive

- Serbian law still does not recognize non-punishment and non-prosecution clause.
- Serbia signed the European Convention on the Compensation of Victims of Violent Crimes¹⁶⁹ that was adopted on November 24, 1983, but the document is still not ratified.
- Term “victim” is not recognized by the Serbian law.

Ongoing/announced legislative changes

- The adoption of the Law on Free Legal Aid is announced.
- Implementation of the new Criminal Procedure Code is postponed until October 1st, 2013.

Laws that define crimes related to THB

Criminal Code of the Republic of Serbia:

¹⁶⁹ European Convention on the Compensation of Victims of Violent Crimes, European Treaty Series – No. 116

- Pimping and procuring (Article 183),
- Facilitation of prostitution (Article 184),
- Showing, obtaining and possession of pornographic material and using a minor in pornography (Article 185),
- Inducement of a minor person to witness sexual acts (Article 185a),
- Use of a computer network or other technical communication solutions for the commission of crimes against sexual freedom of minor persons (Article 185b),
- Prosecution of offences against sexual freedom (Article 186),
- Illegal crossing of state border and people smuggling (Article 350) and
- Holding in slavery and transportation of enslaved persons (Article 390).

Pimping and Procuring

Article 183

- (1) Whoever pimping a minor for sexual intercourse or an equal act or other sexual act, shall be punished with imprisonment of three months to five years.
- (2) Whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment up to three years.

Facilitation of Prostitution

Article 184

- (1) Whoever causes or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with a fine or imprisonment up to three years.
- (2) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment from one to ten years.

Showing, obtaining and possession of pornographic material and using a minor in pornography

Article 185

- (1) Whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a child or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months.
- (2) Whoever uses a child to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, shall be punished with imprisonment from six months to five years.

(3) Whoever sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting from offences specified in paragraph 2 of this Article,

shall be punished with imprisonment up to two years.

(4) Items specified in paragraphs 1 through 3 of this Article shall be confiscated.

Inducement of a minor to witness sexual acts

Article 185a

(1) Whoever induce minor person to attend upon rape, or an equal act or some other sexual act, shall be punished with imprisonment of six months to five years and with fine.

(2) If offence specified in paragraph 1 of this Article is committed by use of force or threat, or against the child, offender shall be punished with imprisonment of one to eight years.

Use of a computer network or other technical communication solutions for the commission of crimes against sexual freedom of a minor

Article 185b

(1) Whoever with intent to commit criminal offence specified in Articles 178, paragraph 4, 179, paragraph 3, 180, paragraphs 1 and 2, 181, paragraphs 2 and 3, 182, paragraph 1, 183 paragraph 2, 184 paragraph 3, 185, paragraph 2 and 185a of this Code, by using computer network or communication with other technical devices makes appointment and appears on the place of the appointment, shall be punished with imprisonment of six months to five years and with fine.

(2) Whoever commits criminal offence specified in paragraph 1 of this article, against the child, shall be punished with imprisonment of one to eight years.

Prosecution for Criminal Offences against Sexual Freedom

Article 186

Prosecution for criminal offences specified in Article 178 and 179 hereof committed against a spouse and for the criminal offence specified in Article 182 paragraph 1 hereof is initiated by public prosecutor's office¹⁷⁰.

Illegal crossing of state border and people smuggling

Article 350

(1) Whoever without a required permission crosses or attempts to cross the border of Serbia, under arms or by use of force,

¹⁷⁰ Rape (Article 178), sexual intercourse with a helpless person (Article 179), sexual intercourse with a child (Article 180), sexual intercourse through abuse of position (Article 181)

shall be punished by imprisonment up to one year.

(2) Whoever enables another illegal crossing of the Serbia's border or illegal sojourn or transit through Serbia to a person who is not a citizen of Serbia with intent to acquire a benefit for himself or another

shall be punished by imprisonment of three months to six years.

(3) If the offence specified in paragraph 2 of this Article is committed by an organized group, by abuse of authority or in a manner endangering the lives and health of persons whose illicit crossing of the Serbia border, sojourn or transit is being facilitated or if a larger number of persons is being smuggled

the perpetrator shall be punished by imprisonment from one to ten years. The means intended or used for commission of the offence specified in paragraphs 1 through 3 of this Article shall be impounded.

Holding in slavery and transportation of enslaved persons

Article 390

(1) Whoever in violation of international law enslaves another person or places a person in similar position, or holds a person in slavery or similar position, or buys, sells, hands over to another or mediates in buying, selling and handing over of such person or induces another to sell his freedom or freedom of persons under his support or care,

shall be punished by imprisonment of one to ten years.

(2) Whoever transports persons in slavery or other similar position from one country to another, shall be punished by imprisonment of six months to five years.

(3) Whoever commits the offence specified in paragraphs 1 and 2 of this Article against a minor, shall be punished by imprisonment of five to fifteen years.

RIGHTS OF HUMAN TRAFFICKING VICTIMS IN LAW AND PRACTICE

Rights guaranteed to human trafficking victims by law and extent to which are these provisions applied in practice

Regulations directly pertaining to victims of trafficking, like the *Instruction on Conditions for Approving Temporary Residence to Foreign Nationals Trafficking Victims* and the *Instruction on the Procedure for Approving Temporary Residence to Foreign Nationals Trafficking Victims in human beings*, are rare in Serbian legislation. Victims' rights are mostly guaranteed for in general statutory provisions in the national law. In addition Serbia has ratified most of the relevant international documents, primarily the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*

(hereinafter UN Trafficking Protocol) and the *Council of Europe Convention on Action against Trafficking in Human Beings* (hereinafter CoE Convention). This is important, because under the *Constitution of Serbia*, the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and applied directly (Art. 16 (2)). In addition, Article 18 prescribes the direct application of human and minority rights guaranteed by the generally accepted rules of international law and ratified international treaties. The Constitution, however, includes a disputable provision that places international treaties above laws but below the Constitution in the hierarchy of legislation as it stipulates the compliance of the ratified international treaties with the Constitution (Art. 16 (2) and Art. 194 (4)).¹⁷¹

Right to information

a. International documents:

* UN Trafficking Protocol – Art. 6 - Assistance to and protection of victims of trafficking in persons

* CoE Convention – Art. 12 - Assistance for victims of trafficking and Art. 15 - Compensation and legal redress

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Constitution of the Republic of Serbia – Art. 32 - Right to a fair trial and Art. 199 - Language of proceedings

* Criminal Procedure Code – Art. 9 - Prohibition of Torture, Inhumane Treatment and Coercion

* Healthcare Law – Art. 27 – Right to information

* Police Law – Art. 189 – Cooperation, protection of rights and providing legal assistance to individuals

Practice:

ASTRA has conducted the *Analysis of Case Law in the Republic of Serbia - Standing of Victims of Trafficking in Human Beings in Court Procedures*¹⁷² for years 2011 and 2012. The analysis of data collected through the monitoring of court proceedings and judgments analysis shows that the exercise of victims' rights to counseling and information continues to depend completely on the involvement of non-governmental organizations such as ASTRA, which secured not only legal aid but also psychological

¹⁷¹ For more information: *Human rights in Serbia 2011*, Belgrade Center for Human Rights, Belgrade, 2012, page 45

¹⁷² <http://www.astra.org.rs/wp-content/uploads/2011/11/LegalAnalysisASTRA.pdf>

assistance and support and escort to trials whenever the victims were required to attend these (27 trials in total). In this way, the victims were provided with assistance in exercising their rights to timely information about the course of the proceedings.

Despite improvements of the legislative framework, the system of institutional support and assistance to the victims in the domain of counseling and providing information continues to be far below the minimum standards.

Right not to cooperate with law enforcement

a. International documents:

* UN Trafficking Protocol – No

* CoE Convention – No

- b. National legislation – No

Practice:

According to domestic law trafficked persons are not allowed to refuse to cooperate with law enforcement and testify in court proceedings (*Criminal Procedure Code*, Art. 96, Art. 92). Regardless of her/his reason, if the victim decides not to press charges or act as witness, this decision is not respected.

In regards to the victim, i.e. the witness, an expert witness can determine that the victim is not capable to give testimony. The victim's mental health condition is evaluated based on this expertise. Everybody else is obliged to report a criminal act, which is stipulated in the Criminal Procedure Code (Art. 223. Item 1). A failure to report a criminal act is a criminal act in itself (*Criminal Code of Serbia*, Art. 332).

We know of cases where victims were called to testify more than a decade after they were exploited.

In 2005, ASTRA was contacted by a mother of a 16-year old girl who was sexually exploited in the territory of Serbia. The girl attempted suicide right after she got out of the trafficking chain and two more times in 2006. Having in mind her poor psychiatric condition, the court allowed the girl not to come to town where she was exploited and where the proceedings were conducted. Instead, she gave her testimony in the presence of a neuropsychiatrist in the town where she lived.

For some time she lived in a foreign country in order to distance herself from the trial and all the things connected with her trafficking experience.

Her psychological condition deteriorated dramatically in November 2011, when the Court of Appeal returned the case to the Higher Court for new trial and when she was summoned to testify again, seven years after the proceedings began.

This time, she did not want to take part as a witness, but changed her mind later when she learned that in such case there was a possibility that she would be charged with perjury. She also became afraid that the traffickers would try to find her and take revenge if she gave up because earlier she had been intimidated by a wife of one of the accused who had come to her home address and threatened her and her family.

The psychiatrist called as an expert witness gave his opinion that she was fit to give a statement.

(Vranje Higher Court K.88/11)

ASTRA Database, ID number 925

In the case prosecuted before the Vranje Basic Court, a trafficked person, identified in 2008, who was a key witness, refused to keep participating in the proceedings for human trafficking because of constant threats she was exposed to. As a result, the Public Prosecutor filed an indictment for perjury against her.

In the mid-2010, after the inspection, the Prosecutor decided to drop charges for perjury. However, the accused from the trafficking case decided to take over and in the end the victim got a suspended sentence of 6 months over 2 years. On December 8, 2011 an appeal was lodged against this judgment (K 573/10) to the Court of Appeal in Niš, but no final decision has been made to date.

As for the initial trafficking proceedings, the first-instance judgment has not been issued yet.

Vranje Basic Court K - 573/10 and K-1222/12

ASTRA Database, ID number 2638

Right to protection of privacy and safety

a. International documents:

* International Covenant on Civil and Political Rights – Art. 17

* UN Trafficking Protocol – Art. 6, Para. 1 - Assistance to and protection of victims of trafficking in persons

* CoE Convention – Art. 11 – Protection of privacy

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Constitution of the Republic of Serbia – Art. 32 - Right to a fair trial

* Criminal Procedure Code – Art. 109a, Art. 109b, Art. 109v, Art. 109g, Art. 109đ, Art. 292, Art. 293 and Art. 324

* Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles – Art. 55

* Police Law – Art. 74 – Protecting confidential information on identity

* Healthcare Law – Art. 30 – Right to privacy and confidentiality of information

* Law on Personal Data Protection

Practice:

According to ASTRA’s Case Law Analysis, the existing institutes for the protection of victims and injured persons in the proceedings for human trafficking are not implemented to a sufficient degree in practice. This is particularly surprising bearing in mind that, according to the Criminal Code of Serbia, the crime of trafficking in human beings is categorized as a particularly serious crime.

The Criminal Procedure Code has provisions on the protection of witnesses, where it recognizes two categories of vulnerable witnesses: an especially vulnerable witness and protected witness and provides measures for their questioning and protection. These measures are currently applied on cases prosecuted before the Special Court for Organized Crime, but should expand to all criminal cases in October 2013.

The absence of adequate implementation of legal provisions that would ensure protection of identity, privacy and security of the victims is largely a consequence of lack of appreciation for the vulnerable position of victims of human trafficking by judges and prosecutors (for example full names and surnames of victims were used in all the observed proceedings, meaning that there was no protection of identity and privacy at all despite the fact that a large number of victims were minors when exploited; the legal analysis also showed that the address of victims’ permanent or temporary residence was disclosed in 7 trials; victims were questioned about their past life; the public was rarely excluded from the trials when victims were called to testify, etc)¹⁷³.

One of the rare examples of good practice is described in the text box below.

Victims have the right to be heard in a way that does not jeopardize their privacy, safety and security. A good example is the decision of the Zrenjanin Higher Court to hear the victim in the absence of the defendant, which is allowed if the witness refuses to testify in defendant’s presence or if it may be concluded that the witness will not be telling the truth in defendant’s presence (Criminal Procedure Code, Article 324). The defendants were temporarily removed from the courtroom since the victim had

¹⁷³ <http://www.astra.org.rs/wp-content/uploads/2011/11/LegalAnalysisASTRA.pdf>

refused to testify in their presence. This was supported by the report of a psychologist, stating that the victim was in a poor psychological state, together with the recommendation for the victim to testify without the presence of the defendants. The victim testified freely and without psychological pressure. The problem with the application of this legal provision was that upon the defendant's return into the courtroom, the victim's testimony was read, and the defendant was entitled to pose questions to the victim. However, the victim had already given a detailed testimony, so she was able to give short replies to the defendant's questions, or to say that she would stick to what she had already said.

Zrenjanin Higher Court K.238/2010

Right to witness protection and to be treated with respect and dignity

Right to witness protection

a. International documents:

* UN Convention against Transnational Organized Crime – Art. 24 – Protection of witnesses

- * *CoE Convention – Art. 30 – Protection of victims, witnesses and persons cooperating with judicial authorities*

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Criminal Procedure Code – Art. 109, Art. 109a, Art. 109b, Art. 109v, Art. 109g, Art. 109d and Art. 109đ

* Law on Protection Programme for Participants in Criminal Proceedings – Art. 109a

Right to legal representation and fair trial

a. International documents:

* UN Convention against Transnational Organized Crime – Art. 25, Para 3 – Victims assistance and their protection

* UN Trafficking Convention – Art. 6, Para. 7 - Assistance to and protection of victims of trafficking in persons

* CoE Convention – Art. 15 - Compensation and legal redress

b. National legislation (within provisions that do not address victims of human trafficking

specifically):

* Constitution of the Republic of Serbia – Art. 67 - Right to legal assistance

* Criminal Procedure Code – Art. 65 and Art. 66; Art. 60

Practice:

Victims are entitled to the protection of their dignity, as well as to the respect for their personality. The Criminal Procedure Code¹⁷⁴ stipulates the explicit obligation of the court to protect the injured party from insults, threats and any other assault. This is not a possibility but the court's duty. The court would warn or fine any party and any other person who insults, threatens or jeopardizes the safety of the witness or injured party before the court. However, we have no knowledge of cases where the parties to the proceedings (especially defendants or their attorneys) were fined for insulting victims.

Victims have the right to be questioned in a manner respectful to their personality. However, cases in which judges disrespectfully address victims by their first name, while simultaneously being respectful in addressing the others – defendants, prosecutors, attorneys, are common. Victims are posed inappropriate questions concerning their lifestyle and the reasons for choosing such lifestyle. This problem is especially evident during investigation, and investigating judges are usually the ones that act like this.

It may be concluded that domestic legislation contains all the necessary institutes to safeguard protection of privacy and identity of victims of human trafficking in court proceedings, and so this aspect of protection of victims is yet another example of inconsistent application of the current legal regulations.

Right to protection of physical integrity

a. International documents:

* UN Trafficking Protocol – Art. 6, Para. 5 - Assistance to and protection of victims of trafficking in persons

* CoE Convention – Art. 30 – Court proceedings

b. National legislation (within provisions that do not address victims of human trafficking specifically):

- * *Police Law – Art. 11 – How and why law enforcement functions are to be performed and*

¹⁷⁴ Article 109 of the Criminal Procedure Code currently in force in regular criminal courts, Article 102 of the Criminal Procedure Code that will be in force in regular criminal courts as of October 2013.

Art. 189 - Cooperation, protection of rights and providing legal assistance to individuals

* Criminal Procedure Code – Article 109, Article 136 and Article 298

* Law on Protection Programme for Participants in Criminal Proceedings - I General provisions, Art. 1 and Art. 2

Practice:

Despite the obligation to ensure a functioning system of safety and protection measures to victims of human trafficking, in the observed court proceedings, special measures to ensure security of victims were taken only sporadically. The fact that the response of the court and prosecutor's office was not adequate in cases when victim's security was threatened at the very trial causes gravid concerns. The security of the victim may be threatened not only by the defendant, but also by other actors in the proceedings and most often by family members or friends of the defendant.

According to ASTRA's Case Law Analysis, i.e. reports from the monitoring of trial, defendants had been detained for the entire duration of the monitoring only in 8 out of 19 court proceedings that were observed. Protection of victims provided by the police improved significantly as compared to 2011. Thus, it was recorded that special measures to ensure security of victims were taken in 5 trials, in the form of police escort or escort by the Police Department for Combating Organized Crime. Court security was present at one trial only. Threats, pressure and intimidation of victims by the defendants or their friends and family just before or during the trial were recorded in 4 cases. Neither the court nor the prosecution responded adequately to any of these threats.

When it comes to protection of medical data and informing the victims about their health and related rights, a case study illustration from the Higher Prosecutor's Office in Pancevo is provided in a text box bellow.

In February 2012 Higher Prosecutor's Office in Pancevo sent an official letter to ASTRA in regard to preparatory proceedings for prosecuting a person identified as human trafficking victim that was ASTRA's client at the time for the criminal act of illegal possession of narcotics (Criminal Code of Serbia, Article 246).

In the letter, ASTRA was asked to provide the court with HIV test results of the client done in a clinic in Belgrade, and which, according to the Prosecutor's best knowledge, were not taken by the client.

ASTRA informed the Prosecutor's Office that only the person tested could get HIV test results, and that, due to the confidentiality of data, ASTRA did not have these results in the records. Concerning this case, ASTRA had also consulted the Office of the Commissioner for Information of Public Importance and Personal Data Protection.

Communication No Ktm br. 5/11

ASTRA Database, ID number 2327

Right to compensation

a. International documents:

* UN Convention against Transnational Organized Crime – Art. 25 - Victims assistance and their protection

* UN Trafficking Protocol – Art. 6, Para. 6 - Assistance to and protection of victims of trafficking in persons

* CoE Convention – Art. 15, Para. 3 and Para. 4 – Compensation and legal redress

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Criminal Code – Chapter VII Confiscation of Material Gain – Art. 91 - Grounds for Confiscation of Material Gain, Art. 92 - Conditions and Manner of Seizure of Material Gain, Art. 93 – Protection of the Injured Party

* Criminal Procedure Code – Art. 60, Art. 103, Art. 156, Art. 188, Art. 191; Chapter XV Indemnification claims, Art. 201 – 212

* Law on Seizure and Confiscation of the Proceeds From Crime¹⁷⁵, General provisions – Art. 1, Art. 2 and Art. 49

Practice:

Although the issue of compensation is included in the minimum standards of protection and regulated by domestic law, there is hardly any case law in this area.

According to ASTRA's analysis, only one court proceedings in 2012 pertained to compensation of damages which the victim initiated following the completion of criminal proceedings wherein she had been referred to litigation. In all the cases monitored, the criminal courts did not decide on victims' compensation claims, but referred them to litigation. The fact that trafficking victims are instructed to exercise their right to compensation in civil proceedings, and that compensation claims are hardly ever decided on in the criminal proceedings despite the normative possibilities, represents an additional obstacle to exercise of full rights of victims of this crime.

¹⁷⁵ Official Gazette of RS, 97/2008.

Non-prosecution and non-punishment of trafficked persons

a. International documents:

* CoE Convention – Art. 26 - Non-punishment provision

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Criminal Procedure Code – Chapter I General Provisions – Art. 1, Art. 2 - No punishment without (proven) guilt

Practice:

Similar to 2 (h) Rights of victim to non-detention, when it comes to the rights to non-prosecution and non-punishment, cases of victims being prosecuted for actions they committed whilst exploited or under coercion have been recorded.

This is particularly pressing issue when new forms of human trafficking emerge and the authorities in charge – e.g. courts, the police, etc. - do not recognize them as human trafficking.

One such case, awaiting its epilogue before the European Court of Human Rights, is briefly described in the text box bellow.

A young man trafficked for the purpose of criminal activity was prosecuted in 2011 before the Higher Court in Sremska Mitrovica for robbery he committed under coercion and was sentenced to one year in prison.

The Court of Appeal in Novi Sad confirmed the judgment even though the panel had recognized that the convicted person was a trafficking victim, which was stated in the reasoning of the judgment (Kž I3923/11). At the same time, this person appears as a witness/victim in the trial for human trafficking that is conducted before the Higher Court in Belgrade. This case pertains to the same event and the time period as the one for which he was convicted for robbery.

Since the former judgment became final, ASTRA's lawyers were working on extraordinary legal remedies. However, all available legal remedies were exhausted in December 2012, when the Supreme Court of Cassation rejected the request for the protection of legality. This meant that the judgment of the Novi Sad Court of Appeal became enforceable. After rejecting it three times, the Sremska Mitrovica Higher Court finally allowed the victim to serve his sentence in home detention.

In July 2012, victim's lawyer filed an application to the European Court of Human Rights and expects that it would be accepted.

Court of Appeal in Novi Sad Kž I3923/11

ASTRA Database, ID number 2588

Non-detention of trafficked persons

a. International documents:

* International Covenant on Civil and Political Rights

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Criminal Procedure Code – 6. Detention – Art. 141 and Art. 142.

Practice:

For many years, i.e. until bylaws on victims' status of residence were adopted, foreign victims in Serbia were accommodated in closed-type shelters and banned from leaving these premises. An excuse - offered by both institutional representatives and NGOs which ran such shelters - for keeping the victims captive in such way was unregulated residential status of foreigners. On the other hand, they claimed victims of Serbian nationality were kept in such shelters for safety reasons, i.e. to avoid dangers of traffickers.

After the bylaws were adopted, the situation improved significantly, but this overlaps with the fact that currently number of foreign citizens among victims identified in Serbia is extremely low.

What remains unchanged is the fact that visits to the reception centers for asylum seekers or to detention centers for irregular migrants are not within the regular activities of NRM actors, although this could contribute to proactive victim identification among this vulnerable group.

Reflection period, temporary, permanent and humanitarian residence permit

a. International documents:

* UN Trafficking Protocol – Art. 7 - Status of victims of trafficking in persons in receiving States

* CoE Convention – Art. 10, Para. 2 – Identification of victims, Art. 13 - Recovery and reflection period and Art. 14 – Residence permit

b. National legislation (within provisions that do not address victims of human trafficking specifically):

* Law on Aliens – IV Residence of Aliens, Art. 24 – Types of Residence, Art. 25 - Stay up to 90 Days, Art. 26 - Purpose of Temporary Residence, Art. 27 - Application for Temporary Residence

and Competence, Art. 28 - Conditions for Issuing of Permit, Art. 29 - Duration of Temporary Residence, Art. 30 - Temporary Residence for Work, Employment or Performance of Other Activity, Art. 31 - Temporary Residence for Educational and Studying Purposes, Art. 32 - Temporary Residence for Family Reunion, Art. 33 - Extension of Temporary Residence, Art. 34 - Temporary Residence of Minor Alien Born in the Territory of the Republic of Serbia, Art. 35 - Rescind of Residence and Prohibition of Entry into the Republic of Serbia, Art. 36 – Termination of Residence, Art. 49 - Determination of Stay in the Shelter, Art. 52 - Accommodation of a Minor Alien in the Shelter, Art. 58 - Procedure with Persons with Special Needs; Instruction for the Enforcement of the Law on Aliens (regulating in detail conditions and procedure for approving temporary residence for trafficked persons).

- * *Law on Travel Documents – Art. 4 - The right of a citizen to enter the country without having a travel document*

* Strategy for Suppression of Illegal Migrations for the 2009-2014 period¹⁷⁶

* Guidelines for Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings¹⁷⁷

Practice:

Reflection period is mentioned only in the Instruction for the enforcement of the Law on Aliens (this instruction contains the provisions of the former Instruction on Conditions for Approving Temporary Residence to Foreign Nationals Trafficking Victims and parts of the former Instruction on the Procedure for Approving Temporary Residence to Foreign Nationals Trafficking Victims) and the Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings within the regulation of the issue of temporary residence. In that context, reflection period is envisaged for foreign victims only. In these documents, it is stated that foreign victims of human trafficking will be granted residence permit for duration of three months. During that period victims are not obligated to cooperate with law enforcement. Right to reflection period for victims who are the nationals of Serbia – and who constitute the majority of victims identified in the country - is not regulated by any document.

In practice victims are not informed about this possibility, i.e. their right to reflection and recovery period. The needs of investigation, the efficiency of the proceedings, emergency and the importance of perpetrators' arrest are usually used as an excuse for requesting the victims to take part in the

¹⁷⁶ Official Gazette of RS, 59/2009

¹⁷⁷ Guidelines for standard operating procedures for treatment of victims of trafficking in human beings is an Annex to the Agreement on cooperation between Ministry of the Interior, Ministry of Finance, Ministry of Justice, Ministry of Health, Ministry of Education and Ministry of Labor and Social Policy in the anti-trafficking field, signed on 12. November 2009. The text of the Agreement with the Annex has been published in Belgrade in March 2010. The Guidelines were prepared in the framework of the Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, supported by USAID and implemented by ICMPD during 2006-2009.

investigation and for not informing them about the right not to cooperate (see section 2. (b) right not to cooperate with law enforcement).

When it comes to residence permits issued to trafficking victims, to our knowledge they were used to condition victims to cooperate with the police and judiciary. However, it is pretty clear that victims are not informed about their right not to cooperate with the police or judiciary in the first three months, even though the right to reflection period for foreign victims is directly mentioned in two official documents.

Instruction for the enforcement of the Law on Aliens regarding temporary residence for trafficked persons:

T-3

Trafficked person may be granted temporary residence for humanitarian reasons for the period of three months aimed at providing protection and assistance in recovery and return to the country of origin or to the country of previous residence.

T-6

Trafficked person may be granted temporary residence for the period of six months if she/he cooperates with the authorities in investigating criminal offences or the perpetrators.

T-12

Trafficked person may be granted temporary residence for the period of one year if she/he actively participates in the court proceedings as a witness as well as when this is necessary for the reasons of her/his personal safety.

Finally, regarding subsidiary protection and right to asylum for trafficking victims, it is important to point out that the Law on Asylum was adopted in 2007. However, even before this law, there were bylaws in place which regulated the issue of residence permit to foreign victims. According to information we have, since 2007 there was only one request for asylum made by juvenile siblings who were identified as victims of trafficking in human beings. It is ASTRA's belief that the existing support mechanism for trafficking victims is much better compared to the support available to asylum seekers. The procedure of issuing residence permits is much more efficient for trafficking victims, too.

Repatriation & guarantees of non-repetition

a. International documents:

*UN Trafficking Protocol – Art. 8 - Repatriation of victims of trafficking in persons

* CoE Convention – Art. 16 - Repatriation and return of victims

b. National legislation (within provisions that do not address victims of human trafficking

specifically):

* Law on Aliens – Art. 13 – Exit

* Law on Travel Documents – Art. 4 - The right of a citizen to enter the country without having a travel document

Practice:

With regard to aliens, until recently the Serbian legislator was generally not dealing enough with repatriation, including repatriation of trafficking victims. However, the harmonization of migration policies with the EU standards and Serbia's will to join the visa-free Schengen regime have changed significantly the Serbian legislator's stance on this problem in a normative sense.

There is no special program on repatriation, but the issues referring to reintegration and social rehabilitation of trafficking victims are spelled out in the Migration Management Strategy and the Strategy for Suppression of Illegal Migrations for the 2009-2014 period. The funds for these activities should be assured from the state budget for every year, which is not the case in practice.

Since at this moment we do not have national Anti Trafficking Strategy in effect, we cannot reflect specifically on this document. Also, in the last couple of years, the number of foreign victims identified in Serbia is very small (see tables under section 7 – Assistance and protection), which makes it difficult to establish practice and draw quality conclusions pertaining to the implementation of international standards.

Nonetheless, one conclusion can be made even though based on such small number of cases identified: repatriation expenses are covered by NGOs ever since IOM involvement in voluntary return of victims stopped. In addition, we do not have knowledge of the police conducting the risk assessment in any repatriation case.

General position of trafficking victims in court proceedings

In regard to the rights of THB victims listed in this section, Ministry of Justice adopted a Special Protocol on actions of judicial bodies to protect victims of human trafficking¹⁷⁸ in 2012. This document highlights the role of the judiciary and particularly of the prosecutor's office in observance and exercise of rights of the victims in criminal proceedings. The Protocol provides for the duty of the public prosecutor to build a relationship of confidence with victims, to provide them full information about the proceedings, to advise the victims about their rights, obligations and their role in the proceedings, as well as to assess the need for professional psychological, psychiatric or medical assistance while talking to them, and at

¹⁷⁸ www.mpravde.gov.rs/images/POSEBNI_PROTOKOL_eng.pdf

the same time to inform them about the non-governmental organizations involved in provision of support to victims of human trafficking. Compliance with this Protocol would considerably improve the standing of victims in criminal proceedings for human trafficking.

The effects of the Protocol remain to be seen, and ASTRA will include this in its institution monitoring activities.

Assessment of separate provisions protecting the rights of underage victims

Alongside previously listed provisions related to the rights of all human trafficking victims, the following laws, international conventions and protocols pertain to the rights of children who fall victim to trafficking (similarly to the regulation of the rights of adult victims, there are no special regulations applied specifically to trafficked children; instead their rights are stipulated by a number of general provisions):

- *a. International documents:*

* Law on ratification of the UN the Convention on the Rights of the Child

- * *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*

* Optional Protocol on the Involvement of Children in Armed Conflicts

- *b. National legislation (within provisions that do not address victims of human trafficking specifically):*

* Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles (hereinafter: Law on Juveniles)

* Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect¹⁷⁹ (hereinafter Special Protocol)

* Instruction on the Conduct of Police Officers towards juveniles and young adults¹⁸⁰ (hereinafter Instruction)

According to experts monitoring the implementation of international standards in the field of children's rights in the Republic of Serbia, police officers are usually acting in compliance with the Special Protocol and the Instruction.

¹⁷⁹ Ministarstvo unutrašnjih poslova Republike Srbije (izmenjeno i dopunjeno izdanje iz 2012. godine):

<http://www.mup.gov.rs/cms/resursi.nsf/protokol1.pdf>

¹⁸⁰ Ministarstvo unutrašnjih poslova Republike Srbije, Uprava Kriminalističke policije 01 broj 4898/06, 1. maj 2006. godine:

<http://www.mup.gov.rs/cms/resursi.nsf/prdeca.pdf>

When a police officer determines that a crime against sexual freedom, human trafficking, trafficking in minors for the purpose of adoption, or a crime with an element of violence was committed against a minor, he/she informs the authorized public prosecutor (who obtained specific knowledge in the area of child's rights and legal protection of juveniles) and files criminal charges or a report.¹⁸¹

Gathering information from a minor as a citizen, pertaining to a crime which must be prosecuted *ex officio* – including the crime of human trafficking – is performed exclusively by an authorized police officer, i.e. a specialized officer who obtained specific knowledge in the area of the rights of the child and legal protection of juveniles, in the presence of a parent, adoptive parent, or a guardian, if the minor is under guardianship, or in the presence of temporary or collision guardian (in cases where the parents, adoptive parents, or guardians are prevented from attending the hearing, unavailable or under a reasonable suspicion of committing a crime against the minor, or when this is in the minor's best interest).

The competence and composition of the court that tries adult perpetrators of crimes against minors is determined in accordance with the general provisions of the Criminal Proceedings Code. In cases pertaining to adult perpetrators of 27 crimes specified in Article 150(1) of the Law on Juveniles, including human trafficking, trafficking in children for adoption, holding in slavery and transportation of enslaved persons and if the injured party is a minor, it is expressly envisaged that the action has to be taken by presiding judge, public prosecutor, investigating judge, injured party's attorney (in case he/she is appointed by the president of the court) who have special knowledge in the area of children's rights and legal protection of juveniles. The aim of this measure is special protection of children and juveniles.

The specialized public prosecutor may bring action against adult perpetrators of crimes envisaged by the Criminal Code of Serbia, in accordance with the provisions of the third part of the Law on Juveniles, if he/she assesses that this is necessary for the purpose of special protection of the minor injured party.

Minor as an injured party must have an attorney since the first hearing of the person accused of one of the mentioned 27 crimes, human trafficking included. If the minor does not have an attorney, the attorney is appointed by the decision of the president of the court. Only a lawyer who obtained specific knowledge in the area of children's right and legal protection of juveniles may be appointed. The minor and his/her legal representative have to be informed of this right. The costs of representation in these cases are paid from the State budget, as stipulated by the Law on Juveniles.

When the interests of an underage injured party are in collision with the interests of his/her legal representative, the guardianship authority shall appoint temporary guardian to such child (collision guardian) in accordance with the Family Law (Article 132, Para. 2 Item 3). In such an event the child shall be heard in the presence of his/her collision guardian and not of his/her legal representative.

¹⁸¹ Anđelković, M. et al. 2012. *Trafficking in human beings – Manual for Lawyers*. ASTRA.

The Law on Juveniles also contains provisions on the prohibition of a confrontation between a juvenile injured party and the defendant in the legally prescribed conditions, but it does not expressly prohibit the possibility of such confrontation (Law on Juveniles, Article 153).

Hearing of a minor is always conducted with the help of a psychologist, pedagogue or other professional, and in cases when the minor injured by one of the 27 mentioned crimes is being heard, the hearing may be conducted two times at the most. More than two times is only allowed in exceptional cases, when additional hearings are necessary for to complete criminal proceedings, in which case the judge is obliged to pay particular attention to the protection of the minor's personality.

The Law on Juveniles provides for, among other things, the usage of audio and video testimonies as evidence, since they can be used repeatedly and help avoid additional testimonies that may cause stigmatization and retraumatization of the trafficked minor.

As previously said, when it comes to trafficking victims *en général*, a conclusion may be drawn that even in cases involving children, the implementation of the legislative framework for prosecuting human trafficking in practice is problematic. Like the adults, children victims are expected to take a stand before the court, with unresolved issues of their safety and protection. Even in cases involving exploitation of minors, trials are lengthy and victims are summoned to give statements over a long period of time, which is a serious obstacle for their recovery, stopping them from putting trafficking experience behind and moving on. Very often, trials are postponed because of the absence of the defendants or their lawyers or because the judge could not attend the session. Finally, sentences for traffickers are around prescribed minimum.

Victims' ability to freely/willingly decide whether or not they want to testify in the process against their traffickers

Once summoned by the court, victims cannot refuse to take part in the proceeding and give their testimony. According to the Criminal Procedure Code, victims as the injured party witness must come and testify¹⁸².

A minor who, because of age and psychological development, is not capable of comprehending the significance of the right to exemption from duty of testifying, cannot be examined as witness, except in the case when the accused has requested it.

The witness/injured party may request to not answer certain questions, if it is likely that answering them would incriminate him/her or his/her relatives or exposed them to severe disgrace or considerable material damage. This is also the only possibility for exempting the victim from duty of testifying in the case of all human trafficking victims. However, in the specific case of children, the possibility of exempting minors from testifying is almost never applied, according to information that ASTRA has.

¹⁸² Criminal Procedure Code, Art 94, stipulates who can be exempted from duty of testifying: 1) person who is the spouse of the accused, or is cohabiting with the accused in any permanent form; 2) a relative of the accused, in consanguinity and lineally, as well as collaterally up to thrice removed inclusive, and in-law up to twice removed inclusive; and 3) adoptee and adopter of the accused.

Criminal Procedure Code envisages that the witness who refuses to testify can be fined up to 150,000.00 RSD, and if after that s/he refuses to testify again, s/he can be punished with the same penalty again.

Victims' access to legal aid

The fundamental prerequisite of the Constitution of the Republic of Serbia, as stated in this document, is the rule of law which is based on inalienable human rights. The Constitution further guarantees that everyone shall be guaranteed right to legal aid under conditions stipulated by the law. Legal aid shall be provided by legal professionals, as an independent and autonomous service, and legal aid offices established in the units of local self-government in accordance with the law. The law shall stipulate conditions for providing free legal aid.

Although the option of free legal aid is contained in the Constitution, this issue is not dealt with systematically. At the moment, free legal aid is based on normative framework that consists of regulations from laws that deal with some aspects of legal aid. For example, the Law on Local Self Government (Article 20, Item 31) stipulates that a municipality shall organize, as needed, legal aid services for citizens. The Law on Attorneys (Article 25) provides that bar associations shall organize the provision of free legal aid in accordance with law.

In the field of criminal justice protection, free legal aid provided by the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles. With regards to civil proceedings, the legal basis for free legal aid could be found in the provisions of the Law on Civil Proceedings and Family Law Act. According to the Law on Asylum, asylum seekers and refugees have right to free legal aid.

The Government of Serbia adopted the Strategy for the Development of the Free Legal Aid System¹⁸³ and designed a Draft Law on Free Legal Aid which provoked large criticism in subsequent public hearings. This Draft Law has not been passed yet.

On the normative level, Serbian legislation does not contain any criteria based on the type of litigation that would limit availability of free legal aid. To be relieved of obligation to pay for the costs of the proceedings, a party shall supply the court with a certificate or some other proof of financial status. In any specific proceedings, a written proposal shall be submitted to the acting judge, who decides on such a proposal. Due to such normative framework, whether or not a person gets free legal aid mostly depends on political structures on the local level (budget, priorities and capacities of each municipality) and their awareness of how important free legal aid is for normal functioning of the judicial system as a whole.

The situation regarding free legal aid in the country further aggravates the position of human trafficking victims, bearing in mind that they cannot exercise their right not to participate in court proceedings

¹⁸³ Official Gazette of RS, 74/2010.

and/or not to cooperate with law enforcement. Ever since cases of human trafficking were processed before courts in Serbia, free legal aid to victims depended on NGOs (mostly ASTRA) financed through foreign donations. Just in the last 19 months ASTRA paid 32,000€ to attorneys representing human trafficking victims in court. In addition, supported through MATRA program, between 2011 and 2013 ASTRA trained 30 lawyers to work with human trafficking victims.

Sporadically, the Agency for Coordination of Assistance to Victims of Human Trafficking covers the costs of legal aid.

Treatment of victims by the judicial system

Various international instruments, in particular the UN Trafficking Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings, as well as the Serbian Criminal Procedural Code (CPC) contain provisions in regard to the position and the treatment of victims of trafficking before, during and after criminal proceedings. However, according to ASTRA's Case Law Analysis¹⁸⁴ despite considerable progress in the legislative and institutional field, the position of victims still does not meet the basic standards laid down in key international instruments. Existing provisions aimed to protect victim's identity and safety are rarely applied, whereas the length of the proceedings, direct confrontations with the suspect(s), the treatment of victims during hearings and the lack of sensitivity to the vulnerable position of the victim, including the exertion of direct threats and intimidation by the suspect(s) and their associates, contribute to their secondary victimization. In none of the cases compensation for damages was awarded in criminal proceedings, despite the legal possibilities to do so. Access to qualified legal aid and other support services is almost completely dependent on NGOs, which on their turn are dependent on (temporary) project funding.

Judges only sporadically intervene when public insults or threatens victims or in case of posing questions to them that were unnecessary or unrelated to the case. The attitude of judges and prosecutors towards the victim varies from highly sensitive to being offensive, disrespectful and insolent. However, the prosecution started taking a considerably more active role in protecting the rights and interests of the victim recently (since 2012), both in the course of the trial and after the completion of hearings.

Perhaps the greatest improvement in the past ten years was achieved within the Ministry of the Interior whose representatives attended numerous education trainings. Naturally, this pertains to those organizational units that have fight against human trafficking in their scope of work (Department for Suppressing Human Trafficking and Illegal Migrations within the Border Police Directorate and the Counter-Organized Crime Service under the Criminal Police Directorate). However, the capacities of other MOI representatives (e.g. traffic police officers, officers from local police departments, etc.) to identify trafficking victims and their attitude towards such victims remain uncertain.

The existing legislation leaves room for improving the position of victims in judicial proceedings (e.g. hearing through a video link, recording of the testimony etc.), but this would require the will and

¹⁸⁴ <http://www.astra.org.rs/wp-content/uploads/2011/11/LegalAnalysisASTRA.pdf>

understanding on the side of the prosecution and the court as well as full and consistent enforcement of procedural laws.

Other problems in the legislation related to protection of rights of human trafficking victims

Areas which need improvements in Serbian legislation pertaining to human trafficking are as follows:

- * The lack of legal definition of “victim”, instead of which terms “witness”/“injured party” are used, in particular in the law enforcement and justice areas;
- * The sanctioning of public officials who are involved in human trafficking need to be improved as the abuse of office is not foreseen as one of the means for committing this crime;
- * The freezing and confiscation of assets gained through human trafficking should be improved both in terms of legal framework and of its implementation in practice. Assets confiscated in this manner should be utilized for support and compensation to victims, to the greatest possible extent;
- * In the context of victims’ rights, it is necessary to improve the existing legislation and practice when it comes to decision-making on the victim’s request regarding damage claim and compensation;
- * The lack of Free Legal Aid Act which should contain, inter alia, provisions pertaining to legal aid to especially vulnerable witnesses, among which are human trafficking victims;
- * Victims are not given legal right not to cooperate with the police and judiciary and their right to reflection period is not legally defined.

For the time being, there has been no initiative in the Republic of Serbia to introduce counter-trafficking measures which would have negative effects on migration policy and the position of (irregular) migrants.

Problems in practice in regard to the position of victims of trafficking in criminal proceedings

The main problems are:

- * Hearings are postponed often, as a result of the absence of the defendants and defense counsel or the unavailability of the judge. Postponement of hearings presents a serious problem, especially when this means that the victim has to come again to give testimony.
- * In all proceedings the victims’ full names are given and their identity revealed, despite the fact that a large number of victims are underage at the time of the crime or the trial. Despite the fact that intimidations and threats to victims’ security intensify during the trial, their address is still revealed in most cases.
- * Provisions of the Criminal Procedure Code allowing the exclusion of the public from (part of) the hearings for the protection of the privacy of the victim/witness are hardly ever used; the same is true for those pertaining to protected witness status.

* Victims and/or their families are not provided with professional assistance of a guardianship authority, psychologist or social worker by the state; the Agency for Coordination of Protection of Victims provides such assistance only sporadically. Usually, NGOs take care of escorting the victim to the court and supporting him/her throughout the proceedings.

* In the majority of cases the defendants are in custody during proceedings. However, this does not prevent them or their relatives from threatening or intimidating their victims. Also in cases of threats and intimidation of the victim immediately before or after the hearing, in the court building or in front of the courtroom, the court and the prosecution largely remain passive. Measures to protect the victim's safety are rarely taken despite the fact these are stipulated by provisions in the Criminal Procedure Code (to protect witnesses and/or the injured party against insults, threats and other assault). Upon reporting such incidents, victims are usually being told by the prosecutor's office to file a criminal complaint with the help of NGOs.

Also, provisions allowing defendant's temporary exception from the courtroom if a witness refuses to testify in his/her presence or where there are indications that the presence of the defendant will inhibit the victim/witness to tell the truth are scarcely applied.

Finally, whereas the law prescribes that the defendant will be heard with decency and respect for their integrity, similar provisions for the hearing of the victim/injured party do not exist.

* The Criminal Procedure Code envisages various possibilities to prevent the (repeated) confrontation of the victim with the defendant, e.g. by reading or using recordings of the victim's testimony or by applying the protected witness provisions. However, judges tend not to use these provisions in spite of the effects on both the physical and mental condition of the victim and the process of truth finding.

ANTI-TRAFFICKING MECHANISM

Structure of the anti-trafficking mechanism in Serbia

Strategic level

On the strategic level, there used to be the Council of Ministers for combating trafficking in human beings, together with the National Team coordinated by the Coordinator for combating trafficking in human beings. At the time when this report is prepared, the institutional framework of the Republic of Serbia for combating human trafficking is in a phase of transformation.

In the previous period, the two basic strategic documents in this area were the Strategy to Combat Trafficking in Human Beings in the Republic of Serbia adopted in December 2006, and the National Plan of Action to Combat Trafficking in Human Beings 2009-2011, adopted in May 2009. The new Strategy, which will be complemented with the new National Plan of Action, is currently in the making.

The structure of the future strategic level of the NRM proposed by the new Strategy envisages that the coordination will be done by the Council appointed by Government's decision. The Interior Minister

presides over the Council, which consists of Government members in charge of key areas of Strategy implementation. Alongside the president, vice president and members, the Council also has a secretary who is simultaneously the national coordinator of activities on prevention and combating human trafficking and protection of human trafficking victims. The national coordinator is appointed by the Government at the proposal of the Council.

The Council is in charge of deliberating on and evaluating the progress in the implementation of the Strategy and the Action Plan, as well as of initiating the engagement of resources needed for the implementation. The Council convenes at least once a year. For operative realization of the Action Plan, the Council will form a Strategy Implementation Team consisting of the representatives of ministries (Ministry of the Interior, Ministry of Justice and State Administration, Ministry of Finance and Economy, Ministry of Foreign Affairs, Ministry of Regional Development and Local Self-government, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Culture and Information, Ministry of Labor, Employment and Social Policy, Ministry of Youth and Sports), Office for Human and Minority Rights and Security Information Agency.

On behalf of the Council, the Implementation Team will be managed by the National Coordinator and will consist of representatives of authorities in charge of the implementation of the Strategy, who possess expertise in the areas of significance for the implementation of the Strategy. Civil society organizations will only be enabled to attend the meetings of the Implementation Team. The composition, tasks and deadlines for the execution of tasks as well as the mode of financing the Implementation Team will be defined by Council Rules of Procedure. Civil society organizations will be involved in monitoring and evaluation of the implementation of the Strategy. It has not been specified in which manner this will be realized.

Operational level

Reform of the national referral mechanism - In the process of ongoing reform of the Serbian social protection system the Agency for Coordination of Protection of Trafficking Victim underwent major transformation in 2012. Namely, a whole new agency has been established named the Centre for the Protection of Victim of Trafficking which operates its activities through two organizational units: the Agency for Coordination of Protection of Trafficking Victims and the Emergency Shelter (for details, see section 7, Assistance and Protection, question 5 – National Referral Mechanism).

Since this is a new body, it should yet develop its procedures, protocols and standards of work. However, some improvements are already visible. For example, the entire work of the Centre is transparent and visible on its websites¹⁸⁵, from monthly information on the number of persons finally identified as victims, number of persons who were not identified as trafficking victims (potential victims who were preliminary identified, but did not fulfill criteria for final identification) and their demographic,

¹⁸⁵ <http://www.centarzztlj.rs/>

and the number of referrals to victim assistance providers to information on the sources of finance and financial operation of the Centre.

Evaluation of the Anti Trafficking Strategy and NAP

Serbia still does not have new Anti Trafficking Strategy and the National Action Plan.

In the course of 2011, the then Anti Trafficking Strategy was thoroughly analyzed within the Joint Programme of UNHCR, UNODC and IOM to Combat Human Trafficking in Serbia and the Report on the implementation of activities from the National Action Plan to Combat Trafficking in Human Beings of the Republic of Serbia for the period 2009 – 2011 was made.

It was said in the Report that “the Strategy has considerable shortcomings, starting from the fact that it does not have clearly defined validity period and is not time-bound through considerable substantial weaknesses further analyzed in this Report”¹⁸⁶. Among the recommendations given in this document are

- the new Strategy should have clearly defined purpose of the document with the description of the situation in the subject social area and should be harmonized with other strategic documents;
- it should clearly define strategic directions and
- it should be accompanied by an action plan as a part of the strategy and a monitoring and implementation plan.

In the analysis of the National Action Plan it is recommended that, when drafting the new NAP¹⁸⁷, it should be considered nominating and appointing a Coordinator coming from the Ministries included in the work of the Ministerial Council, establishing an efficient mechanism for continuous collection and analysis of data on trafficking and regular reporting, establishing a clear mechanism for membership and work of the National Team to Combat Trafficking in Human Beings Define and harmonizing the criteria for the identification of victims of all forms of trafficking.

After the analyses of the effects of the Strategy and the National Action Plan were conducted in 2011, work on drafting the new strategic documents that should cover the period 2013-2018 started in 2012. Two workshops and several meetings were organized for the purpose of drafting these documents. The draft versions were completed by the Interior Ministry, Border Police Directorate and Interior Ministry’s Strategic Planning Bureau and the documents were placed on the Interior Ministry’s website¹⁸⁸ for the purpose of public debate; public debate sessions were also organized for experts.

¹⁸⁶ <http://www.ungiftserbia.org/?studiesreserach=strategija-izvestaj>

¹⁸⁷ <http://www.ungiftserbia.org/?studiesreserach=nap-izvestaj-o-sprovedenim-aktivnostima>

¹⁸⁸ http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/nacrt-strategije-prevencije-suzbijanja-trgovine-ljudima.h
<http://www.astra.org.rs/eng/wp-content/uploads/2008/07/palermo-2010-ENG-web.pdf> page 286.

As opposed to the previous Strategy¹⁸⁹ adopted in 2006, which had been drafted without any participatory process, the drafting of the new Anti Trafficking Strategy and the accompanying National Action Plan was organized in a much more participatory and transparent manner. However, NGOs have much more modest participation compared with institutions this time too. Namely, it was initially planned that only two specialized anti-trafficking NGOs that operate in Serbia be involved in the process with one representative each. ASTRA insisted that two representatives per NGO should be included – the formula applied for every state actor included in the process, which was finally accepted. ASTRA also insisted that more NGOs should be invited to take part in the process, but the leaders of the process (Interior Ministry/Border Police Directorate and Interior Ministry’s Strategic Planning Office) refused. On the other hand, around 25 representatives from 10 ministries and two state agencies¹⁹⁰ participated in the meetings and workshops, in which way the priority was by all means given to state institutions, while NGO participants were marginalized.

NGOs are also marginalized with regard to the implementation of the Strategy and NAP. Namely, the Strategy Implementation Team – to be formed by the Government Anti Trafficking Council – shall include the representatives of various ministries, the Office for Human and Minority Rights and Serbian Intelligence Agency. NGOs will not be included as members, but will be allowed to be present at the meetings of the Implementations Team. Such marginalization may seem surprising having in mind the major and decisive role which NGOs have played in building Serbian anti-trafficking mechanism and their role as a sole specialized victim assistance provider for years.

Although the process was seemingly broadly participatory, the fact that the last drafts of both documents contained certain tasks, i.e. activities that were not either discussed or agreed at the joint meetings speaks for itself.

Public debate on **the new Anti Trafficking Strategy and the National Action Plan for 2013-2015** is finished and adoption of these two documents is expected soon (the last NAP expired in 2011).

Gaps and departures from the CoE THB Convention and other relevant European documents of the national Anti Trafficking Strategy and the NAP

For the needs of drawing up a new Strategy and accompanying National Action Plan, the strategic framework is defined through analysis that encompassed SWOT, PESTEL and stakeholder analysis, the analysis of problems and analysis of human and material resources. Furthermore, also utilized were analyses and conclusions of European Commission Progress Report on Reforms in Serbia, State Department’s TIP Report, Questionnaire for evaluation of implementation of European Council Convention on combating human trafficking among contractual parties (GRETA 2011), Directive of the

¹⁸⁹ <http://www.astra.org.rs/eng/wp-content/uploads/2008/07/Anti-Trafficking-Strategy-of-Serbia.pdf>

¹⁹⁰ Office of Human and Minority Rights, Ministry of Education and Science, Ministry of Labor and Social Policy, Ministry of the Interior, Ministry of Economy and Regional Development, Ministry of Health, Ministry of Youth and Sport, Ministry of Culture, Information and Information Society, Ministry of Justice, Centre for the Protection of Trafficking Victims, BIA (national intelligence agency); besides representatives from NGOs and institutions, an OSCE representative was also present during the process, as well as the representatives of IOM and UNCHR as a part of the Joint Programme.

EU Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, which replaces Council's Framework Decision 2002/629/PUP (European Commission, 2010), EU Strategy for eradication of human trafficking 2012-2016 (2012) and Report with Recommendations on Research concerning Child Begging in Serbia (Ombudsman, 2011), while in the later phase use was also made of the USAID document from 2012, *Counter-trafficking in persons policy*¹⁹¹.

The process of drawing up the strategic document was facilitated by the Strategic Planning Bureau of Serbian Interior Ministry (hereinafter: the Bureau). Representatives of the Bureau defined the concept and structure of both documents, the Strategy and NAP, guided by the existing Strategies of this Ministry which were accepted and adopted by the Government of Serbia.

As already mentioned above, all relevant international documents were consulted for drawing up the Strategy, above all UN Palermo Protocol and CoE Convention on Action against Trafficking in Human Beings. Additionally, in their work on the Strategy, team members largely relied on EU Anti-trafficking Strategy, but also anti-trafficking strategies of some other EU countries. The EU Strategy towards the eradication of human trafficking recognizes the following areas of priority:

- A. Identifying, protecting and assisting victims of trafficking
- B. Stepping up the prevention of trafficking in human beings
- C. Increased prosecution of traffickers
- D. Enhanced coordination and cooperation among key actors and policy coherence
- E. Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

In the Strategy of Republic of Serbia, five objectives have been defined, as follows:

1. Systemically strengthened partnership in responding to human trafficking on a local, national and international level
2. Improved prevention and reduced impact of root causes of human trafficking in accordance with the dynamic of new challenges, risks and threats
3. Improved proactive system of detecting human trafficking cases, efficient court proceedings against persons and legal entities as well as legal protection of human trafficking victims
4. Improved system of identification, protection, assistance and support for human trafficking victims through long term and sustainable programs of social inclusion
5. Children are protected from human trafficking and its consequences by way of special participatory programs which are carried out in their best interest

In both mentioned documents, especially priorities/objectives connected to prevention, prosecution and protection are treated in a similar manner. Additionally, in both strategies one priority/objective pertains to cooperation among relevant actors. Whereas, in EU Strategy, increased knowledge of and

¹⁹¹ http://pdf.usaid.gov/pdf_docs/PDACT111.pdf

effective response was singled out as a particular priority area, in the Strategy of Republic of Serbia, activities and tasks in this area are allocated to the section which relates to prevention.

Based on recommendations of the UN Committee on the Rights of the Child, an objective has particularly been singled out which relates to children and in which all areas of work are listed separately: prevention, protection, prosecution, cooperation, increasing knowledge and research.

The dilemma remains, and before drawing up the final version of the documents, there was extensive polemic on whether it is necessary to draw up and adopt a separate strategy for children or it should be part of this Strategy. Because of various opinions, attitudes and inputs from different spheres of interest, it was decided to single out a special objective for children in this document, whereas it is later to be decided on adopting a separate strategy for children (a version of such a document has already been prepared).

As the document is very short and contains basic chapters, its analysis could not be carried out without also keeping in mind the accompanying National Action Plan. What certainly draws attention is illogical time frame of these two documents. Namely, the Strategy is limited to five years, whereas the NPA implementation deadline is two years. It would have been much more logical for the Strategy deadline to be defined as four years, to include two two-year National Action Plans.

Furthermore, while drawing up the National Action Plan, representatives of institutions approached the preparation and formulation of the activities and tasks with a certain dose of self-censorship, keeping primarily in mind the lack of resources and fact that the republican budget lacks allocations which pertain to human trafficking, while the transition from so-called linear budgeting to program budgeting is expected in two years.

Although the results of the public debate are not known yet (June 2013), it can be observed at first glance that these two latest strategic documents are much clearer, tangible, methodologically more sound than their previous versions, which had had lots of shortcomings. What is certainly very significant for ASTRA as a civil society organization is the fact that the Strategy vision is defined as:

„Provided respect and protection of human rights as a response to human trafficking.“ or rather that combating human trafficking is placed i.e. viewed in the context of human rights protection of (potential) human trafficking victims.

Sources of financing of anti-trafficking activities

Serbia still does not have a separate budget line for financing anti-trafficking actions and victim assistance. This means that country's potentials to provide adequate response to the problem of human trafficking come down to *ad hoc* allocations and donations from foreign governments and international donors. For the first time this year, certain amount of money was allocated from the republican budget for victim assistance services as part of the budget of the newly-founded Centre for the Protection of Victims of Trafficking (around EUR 172,320). However, the major portion of this amount is intended for

salaries and costs of Centre's staff and for the costs of running the Centre (only 3,560,000 RSD i.e. EUR 31,800 of this allocation is intended for victim assistance).

The new Strategy proposal contains the chapter "Financial effects of the Strategy and Action Plan" in which it is estimated that for realization of strategic objectives in the upcoming period, allocations from the Republic of Serbia budget will be necessary. The Ministry of Labor, Employment and Social Policy will propose to the Government that a budget fund be formed for the protection of human trafficking victims. Resources from this fund will enable the carrying out of victim protection programs that cannot be realized from existing budgetary funds.

For the implementation of the Action Plan, no particular allocations have been made in the budget for 2013, but having in mind that it is a two-year plan and activities are yet to be introduced and carried out after forming the envisaged organizational structure, until the budget rebalance, i.e. adopting the 2014 budget, state authorities in charge will utilize the regular resources. The possibility will be considered for expenses not envisaged as part of regular expenses of ministries to be financed from resources acquired by donations.

ROLE OF CIVIL SOCIETY

Current role of CSOs in relation to policy making/legislation processes and monitoring

Specialized CSO are generally included in the policy making/legislation processes and monitoring – even if they are not directly invited to take part in certain processes, they are generally not forbidden to get involved. However, it should be borne in mind that broad participation and cooperation are not the choice of the Serbian government, but more of a way to look good in the eyes of international community.

CSOs have been involved in the creation of the Anti Trafficking Strategies and NAPs – both the old one and the one that is expected to be adopted soon. However, both times the final version of strategic documents differed from what has been agreed in participatory process. Broader range of CSOs was included in the previous strategic planning process. In the ongoing process, only two CSOs were invited to take part although ASTRA lobbied for broader participation. CSOs were noticeably marginalized in relation to state institutions, in spite of the role CSOs played in building and maintaining the entire anti-trafficking work in Serbia.

Regarding participation in the legislative process, some laws, e.g. the Law on Social Protection, were made with broad participation of CSOs in an inclusive process; others, e.g. the Criminal Code could be influenced only indirectly, by lobbying the working group in charge of proposing amendments. Many times ASTRA was invited to give an opinion on some legislative proposals by individuals who were appointed to make such proposals, but this was not a formal process.

In 2010, ASTRA published “Human Trafficking in Serbia – Report for the Period 2000-2010” as the first report evaluating Serbia’s compliance with the UN Palermo Protocol and Council of Europe’s Convention, with regard to both legal framework and practice.

Regarding National Coordinator and the National Team for Combating Trafficking in Human Beings (as dysfunctional and informal as it might be), NGOs have had full membership status from the beginning. Putting aside unclear membership rules, it may be said that 7 NGOs were members of the National Team last time it officially met. Of these figure, three NGOs are either not operational any longer or have stopped dealing with this issue.

Capacities and role of CSOs in providing assistance to victims and protection of their rights

There are several CSOs that provide assistance to trafficked persons in Serbia:

- ASTRA is the oldest and biggest one with SOS Hotline service and wide range of individualized assistance options for all stages of recovery and reintegration.
- NGO Atina runs the reintegration shelter with the capacity to accommodate 5-7 persons. A few years ago they were in the centre of the scandal, when it was discovered that the woman who managed the shelter – former victim was abusing the beneficiaries for months. We have no information about measures taken – either by NGO Atina or by competent state authorities – to make sure that such incidents will not happen again, especially having in mind that for long periods of time this was the only shelter in Serbia.
- In the last two years, some assistance services were delivered or coordinated by the Novi Sad Humanitarian Centre, a CSO which was awarded a grant by IOM for providing direct assistance to trafficked persons without any prior experience in this area (or in working with victims of any violence for that matter). After the expiry of the IOM’s project, they managed to raise some other funds and they are still present in the anti-trafficking field on a project-to-project basis.
- Another CSO that conditionally work with trafficked children is the Youth Integration Centre which manages the drop-in center for street children, among whom there are children at risk or actual survivors of human trafficking and exploitation, but to our knowledge they do not provide specialized services to such children.

Since the first anti-trafficking initiatives and the identification of the first victims in Serbia, victim assistance has been predominantly provided by CSOs supported by foreign donors. This is not too different today. However, the question is how all these organizations perceive victims’ rights and their protection.

Role of CSOs in prevention activities

Like in the previous question, CSOs and the Red Cross of Serbia have always had the main role in trafficking prevention activities, but their work depended on donors’ support. Probably for this reason, these activities were always *ad hoc* and project-based, and not systematic. State authorities recognize

this role of CSOs and are sometimes much more willing to cooperate by attending some awareness raising events and educative activities than to exchange information regarding actual trafficking cases. If we put aside the Red Cross of Serbia, which is not a real CSO, trafficking prevention activities have always been dependent on foreign funding, i.e. no budgetary allocation has ever been made for CSOs' prevention effort in this area.

Difficulties encountered by civil society organizations

CSOs are faced with several problems. First of all, they are still burdened with bad image associated to them during the 1990s. Institutions treat them as a necessary evil and cooperate with them because they are required to, without really understanding the significance and role of CSOs. On the other hand, cooperation is sometimes treated as absolute agreement and any criticism, or even the activity in which state actors are not invited to directly participate, is considered to be a betrayal and "stabbing in the back". State funding is also seen as the reason for CSOs to be uncritical to the government, for which reason there are many government's CSOs in Serbia – not only that these "friendly" CSOs are always chosen to receive state funding, but some of them are founded for the sole reason of inter-sector cooperation. This was especially dangerous having in mind that some donors insist on such cooperation in order to accept to support certain project.

Because cooperation between state institutions and CSOs is for the major part informal, the division of roles is not clear. Thus, it happened once that the police/National Coordinator was deeply engaged in the promotion of one feature movie about human trafficking, while a CSO was working with one foreign police on catching a trafficker.

State services/agencies included in the national referral mechanism are not transparent in their work. This means that it is impossible for CSOs to really monitor the quality of assistance provided to victims and victim assistance process generally. In particular, it is impossible to determine whether victims' rights are respected and whether the victims are informed about all CSO assistance providers, i.e. where they could go for different forms of assistance. We expect such situation to further deteriorate as the state started allocating funds for victim assistance and the Center for Victims' Protection as a central point in the NRM is now in position to completely exclude CSOs. To overcome this, cooperation should be formalized and the roles of all actors clearly defined.

It is very difficult for CSOs to formalize cooperation with institutions. Although ASTRA's signing the Memorandum of Understanding with the Republic Prosecutor's Office is encouraging, we have met reluctance in other state bodies to formalize cooperation with NGOs and thusly contribute to more effective battle against human trafficking:

- Although ASTRA tried to initiate the signing of MoU with Serbian Ministry of the Interior that would define cooperation in missing children cases reported to us via the European Missing Children Hotline 116000 in late 2011, to this date, the Ministry failed to provide a response.
- Lack of cooperativeness was also encountered when ASTRA tried to invite Serbian Ministry of Foreign Affairs to help us secure adequate help and treatment of victims by creating and

enforcing procedural rules regarding cases of trafficking of Serbian citizens to all Serbian diplomatic and consular representations. Although we contacted them a number of times for this purpose, we never received a reply.

With regard to financial operations, CSOs in Serbia are treated as corporations, i.e. they do not enjoy any tax reliefs. Until recently, they were in even worse position than corporations having in mind different and contradictory interpretation of laws that govern financial operations. Namely, since the autumn of 2006, local tax authorities in certain Serbian municipalities have started the examination of financial operations of CSOs and fining those who did not pay a 2.5% gift tax, as they treated donors' funding as gift. Some CSOs had to close their offices. This questionable regulation was finally revoked at the end of 2010. However, nothing changed regarding the taxation of work of CSOs nor regarding incentives for individuals or entities that make donations to them.

PREVENTION

Main activities in the field of prevention for 2007-2012

The majority of anti-trafficking awareness raising activities and campaigns has been conducted by NGOs with financial support from foreign donors and/or international organizations. State institutions became involved or initiated these activities only in the last couple of years. However, even then prevention campaigns were not part of a broader program designed and planned based on the analysis of needs, but these were *ad hoc* activities carried out thanks to personal initiative and individual determination and commitment. Unfortunately, this has not served as an example to higher levels of government to take organized measures in this area, but everything stayed at the level of what has been done as a sufficient argument that can be used for the needs of various international documents on human trafficking situation and anti-trafficking activities carried out in specific states.

Most prevention activities are concentrated around October 18 or take place in October, which the Interior Ministry marks as the Anti Trafficking Month, when a lot of actors, including high-profile ones, gather around some public actions, but it does not spread throughout the year.

So far, ASTRA conducted eight anti trafficking media campaigns - four since 2007 to date: "Naked Facts" in 2008, "STOP Trafficking in Children" in 2010/11 and "Stop Labor Exploitation" and "Human Trafficking. Labor exploitation. Serious and Organized Crime" in 2012, the latter two focusing on the problem of labor exploitation. These are the only larger scale campaigns in Serbia addressing this topic.

The largest investment in human trafficking prevention in Serbia is film "Sisters" produced in cooperation of the Monte Royal Pictures production company, Serbian Ministry of the Interior and Ministry of Culture, with support of the European Union and IOM. The film had its premiere in Belgrade in April 2011. After the premiere, it was screened a few more times in Belgrade. Over the next few months, the Interior Ministry and IOM organized screenings and panels in several Serbian towns. The film was aired on a TV station with national coverage in June 2011. The promotion of this movie soon became the main activity of the Serbian National Coordinator. It was publicly screened with special

intensity during October 2011 and 2012. Namely, local police officers are sent to primary and secondary schools in local communities to show the movie. Although it can have positive preventive impact since for the first time we have a story of two Serbian girls from “average” family who were recruited into sexual exploitation through a job offer, it contains many scenes of explicit sex and brutal violence. This fact was rarely taken care of when choosing target groups of children to watch the movie, because it came with direct recommendation from the Interior Ministry.

A visible actor in the field of human trafficking prevention is the Red Cross of Serbia, which implements plenty of activities through its broad network of youth volunteers throughout Serbia. They mostly conduct workshops for different vulnerable groups and street actions to mark October 18. In 2010, they designed very interesting board game “Trafficedo” (modeled on “Cluedo”) to supplement their peer education activities. The work of the Red Cross of Serbia generally has very strong and sustainable financial support from the state budget and lottery games

Besides the campaigns, we would like to take a look at another activity that we find very illustrative for the anti-trafficking situation in Serbia.

* After the visa liberalization, in 2010, the Ministry of the Interior created a leaflet titled “*Travel to Europe – Safely!*”. The leaflet contains information about the necessary documentation for the road, safety, health, etc. One paragraph is dedicated to human trafficking. The leaflet can be found at border checkpoints.

* In the autumn of 2007, the Interior Ministry in cooperation with the office of the Council of Europe in Belgrade¹⁹² and the Anti Trafficking Council announced a painting competition with the theme “Modern Slavery”¹⁹³ for primary and secondary school pupils in Serbia. The best work was printed on the charity postage stamp which was mandatory during one period. It was planned to direct all resources collected through the sale of this postage stamp into direct victim assistance. Although government’s initiative to collect funds for the assistance to trafficking victims is generally praiseworthy, in our opinion this was not the best approach and in no way did it represent direct financial budgetary support.

As far as demand is concerned, measures for effectively discouraging demand for sexual services of trafficked persons were introduced into the Serbian criminal legislation in August 2009. Apart from this, special campaigns, researches or preventive measures to discourage demand leading to THB have not been conducted. In civil education classes, primary and secondary school pupils learn about gender equality and unacceptable nature of discrimination based on sex and its consequences, but this is still not a part of systematically planned anti-trafficking activities.

Until ASTRA’s campaign “Naked Facts” from 2008, anti-trafficking campaigns were not followed by the subsequent evaluation of effects, i.e. how much the public got acquainted with this problem, how much the perception of target groups changed, whether the message of the campaign targeted the citizens in

¹⁹² Within Serbian Presidency in the Committee of Ministers the Council of Europe between May and November 2007, pursuant to Government’s conclusion 05 no:018-2119/2007 of 26 April 2007, by which the Platform for Republic of Serbia’s Presidency over the Committee of Ministers of the Council of Europe, October 2007 was designated as the months of fight against human trafficking.

¹⁹³ <http://www.mup.sr.gov.yu/domino/arh2007.nsf/11oktp07likkon>

the countries of origin, transit and destination. An important question is whether target groups, especially groups at risk, have been informed and empowered and not scared by the messages of the campaign¹⁹⁴ and whether the messages have been appropriate, without containing a bunch of all the same information.

Overview of recommendations concerning prevention from international reports (TIP, GRETA, CEDAW, etc.)

The only foreign report that has addressed the prevention of human trafficking is TIP Report, although none of the recommendations referred to this area. Progress made by the Government of Serbia until 2010 had been assessed as modest, but in the last two years the Government (including Interior Minister personally) was praised for significantly improving its prevention efforts and taking new steps. However, all the actions mentioned in TIP Reports are the activities conducted by the police/National Coordinator, sometimes in cooperation with other actors, on October 18 or during October. An emphasis is put on National Coordinator’s personal effort to make some actions happen, which again reveals the absence of planned and systematic approach.

PROSECUTION

Prosecution in numbers

(a) Statistical data regarding trafficking prosecution

Public Prosecutor’s Office data	2007	2008	2009	2010	2011	2012
Unresolved reports from the previous period (by person)	11	/	7	7	7	10
Number of suspects reported	78	94	55	75	50	71
Number of suspects processed	89	94	62	82	57	81
Rejected criminal reports (by person)	5	4	2	2	2	5
Ongoing investigations from the previous period (by person)	34	39	40	47	31	49
Investigations requested by Public Prosecutor (by person)	66	63	50	71	45	69

¹⁹⁴ For example, that traveling abroad is dangerous, that violence occurs somewhere else and similar messages on the wave of rather widespread xenophobia among the citizens of Serbia.

Number of suspects against whom Public Prosecutor decided to raise charges	60	57	36	46	48	57
Number of convicted persons	12	18	31	15	28	33
- Number of persons convicted to a prison sentence	9	18	28	15	27	29
- Number of persons convicted to a suspended sentences	3	/	/	/	1	3
- Number of persons convicted to a security measures	/	/	2	/	/	/
- Number of persons freed of charges	/	/	1	/	/	1
Suspension of procedures after charges were raised (by person)	1	/	/	1	/	/
Judgments dismissed by the second-instance (by person)	/	/	/	/	/	1
Acquittals (by person)	3	/	/	2	3	7
First instance judgments in total (by person)	16	18	31	18	31	41
Number of appeals filed by a public prosecutor (by person)	10	21	29	28	38	45
- appeals against the ruling on the sentence (by person) - total	7	11	22	24	27	29
- appeals against the ruling on the sentence (by person) - accepted	4	/	/	/	5	3
- appeals against the ruling on the sentence (by person) - rejected	3	/	/	7	7	12

(b) Average punishment; the lowest and the highest punishment in the period under consideration

Average: 22 months of imprisonment

Minimum suspended sentences and 45 days of imprisonment

Maximum: 15 years (in absence, not final yet)

Prosecution in practice

Penal policy

Penal policy is weak in general and this applies on human trafficking cases, too.

Problems encountered in practice

- Prosecutors who are not proactive, but rather reactive
- Non-sensitized and non-educated judges
- Victims are treated only as regular witnesses and no injured parties who have rights and who should be treated sensitively
- Violation of right to privacy and protection
- Victims are prosecuted for what they have done in the context or as a result human trafficking
- Either due to the lack of proof or because of ignorance, trafficking cases are sometimes prosecuted as facilitation of prostitution, robbery or other criminal acts, while victims themselves are charged with trafficking other persons.

Overview of recommendations concerning prosecution from international reports (TIP, GRETA, CEDAW, etc.)

GRETA visited Serbia on April 15-19, 2013, the report is expected in the first quarter of 2014.

TIP 2012:

- implement pending legal reforms to ensure victims receive institutionalized support during judicial proceedings and sex trafficking victims are not prosecuted for prostitution offenses;
- take steps to ensure trafficking victims are not jailed or punished for crimes committed as a direct result of their trafficking;
- vigorously prosecute, convict, and punish sex and labor trafficking offenders including any officials complicit in trafficking;

EC Progress report 2011

- Further efforts are needed to ensure full implementation of policies in this area and a specific monitoring mechanism has not yet been set up.
- The strategy and associated action plan need to be updated in order to tackle current trends better and improve cooperation between law enforcement and judicial bodies.
- Better protection of victims, including provision of assistance or shelter and reintegration, is needed.
- An age- and gender-specific approach should be developed. Cooperation with and support for civil society active in this field should be improved.

EC Progress report 2012

- However, the strategy and associated action plan remain to be updated.
- A uniform database for criminal reports and proceedings and a specific monitoring mechanism in this area have not been established.
- The effective compensation and social inclusion of victims, through a special fund, in line with existing EU standards remains to be ensured.
- Overall, Serbia is moderately advanced in fighting trafficking in human beings.

COMPENSATION

Compensation for damages may include payment for or towards:

- *Costs of medical, physical, psychological or psychiatric treatment required by the victim;*
- *Costs of physical and occupational therapy or rehabilitation required by the victim;*
- *Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;*
- *Lost income and due wages according to national law and regulations regarding wages/ the money the victim earned for the trafficker;*
- *Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;*
- *Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her;*
- *Any other costs or losses incurred by the victim as a direct result of the crime.*

Relevant provisions in Serbian Criminal Code and/or Criminal Procedural Code in regard to financial compensation of material and/or immaterial damages

Criminal Procedure Code

Chapter XV

INDEMNIFICATION CLAIMS

Article 201

(1) Indemnification claims arising out of the commission of a criminal offence shall be considered in criminal proceedings on a motion of authorized persons, unless it would unduly prolong the proceedings.

(2) Indemnification claims may relate to compensation of damage, recovery of objects or annulment of a certain legal transaction.

Article 202

(1) Motions for asserting indemnification claims in criminal proceedings may be submitted by persons authorized to realize such claims in civil litigation.

(2) Where damage occurs due to the commission of a criminal offence to state-owned or socially-owned assets, the authority authorized by law to look after the protection of such assets may participate in criminal proceedings in accordance with the powers he possesses under that statute.

Article 203

(1) Motions for asserting an indemnification claim in criminal proceedings shall be submitted to the authority to whom the criminal complaint was submitted or to the court conducting the proceedings.

(2) Motions may be submitted no later than the conclusion of the trial before a court of first instance.

(3) Persons authorized to file the motion shall specify the claim and submit supporting evidence.

(4) Where authorized persons have not submitted motions for asserting indemnification claims in criminal proceedings by the issuance of the indictment, they shall be notified that they are entitled to file such claims by the end of the trial. Where the criminal offence resulted in damage to state-owned, or socially-owned assets, and no motion has been filed, the court shall notify thereof the authority referred to in Article 202 paragraph 2 of this Code.

Article 204

(1) Authorized persons (Article 202) may until the conclusion of the trial withdraw their motions for asserting indemnification claims in criminal proceedings and assert them in civil litigation. Where such a motion has been withdraw, it may not be submitted again.

(2) Where an indemnification claim has after the filing of the motion and before the conclusion of the trial been transferred to another person, pursuant to the rules of property law, the said person shall be summoned to declare himself on whether he still intended to pursue his claim. Where a duly summoned persons fails to appear, it shall be deemed that she has abandoned his action.

Article 205

(1) The court conducting the proceedings shall question the accused person on the facts specified in the motion and explore the circumstances for determining the indemnification claim. The court is required to collect necessary evidence and explore actions necessary for deciding on the motion even before such a motion has been filed.

(2) Where exploration of indemnification claims would substantially prolong criminal proceedings, the court shall limit itself to the collection of facts whose establishment would not be possible at a later date, or would be much more difficult.

Article 206

(1) Indemnification claims shall be decided by courts.

(2) In a judgment convicting the accused person, the court may satisfy the authorized person's property law in full, or in part, and refer the authorized person to civil litigation for the remainder. Where the data of criminal proceedings provide no reliable basis for full or partial adjudication, the court shall direct the authorized person to assert his indemnification claim in full in civil litigation.

(3) Where a court acquits the accused person of charges, or issues a judgment dismissing the charges, or issues a ruling discontinuing the criminal proceedings, it shall direct aggrieved parties to pursue their indemnification claims in civil litigation.

(4) Where a court declares itself incompetent for conducting criminal proceedings, it shall direct authorized persons to file their indemnification claims in the criminal proceedings which will be instituted or continued by a competent court.

Article 207

Where indemnification claims concern recovery of objects, and the court determines that an object is the property of an aggrieved party and is currently held by the accused person or another participant in the criminal offence or a person to whom they had given it for safekeeping, in its judgment the court shall order the object handed over to the aggrieved party.

Article 208

Where indemnification claims relate to annulment of certain legal transactions, and the court finds a claim justified, it shall pronounce in its judgment a full or partial annulment of that legal transaction, with the consequences deriving there from, without affecting the rights of third parties.

Article 209

(1) Courts may alter final judgments in criminal proceedings in which it was decided on an indemnification claim only in connection with the reopening of criminal proceedings, a request to protect legality or a request for examining the legality of the final judgment.

(2) Except for the case referred to in paragraph 1 of this Article, accused persons or their heirs may only demand in civil litigation the alteration of a final judgment of a criminal court in which an indemnification claim was decided, and if there exist the necessary circumstances for reopening the proceedings according to the provisions applying to civil litigation.

Article 210

(1) On a motion of authorized persons (Article 202), temporary measures for securing indemnification claims arising out of the commission of a criminal offence may be ordered in criminal proceedings pursuant to provisions which apply to enforcement proceedings.

(2) The ruling referred to in paragraph 1 of this Article shall during the investigation stage be issued by the investigating judge. After the issuance of the indictment, the ruling shall be rendered by the president of the chamber outside the trial, and at the trial by the chamber.

(3) Rulings against chambers' decision on temporary security measures are not appealable. In other cases decisions on appeals shall be rendered by the chamber referred to in Article 24 paragraph 6. Appeals do not stay execution of rulings.

Article 211

(1) Where objects are concerned that are indubitably the property of the aggrieved, and have not been entered as evidence in criminal proceedings, they shall be delivered to the aggrieved even before the completion of the proceedings.

(2) Where several aggrieved parties are in dispute in connection with the ownership of one or more objects, they shall be referred to civil litigation, and in the criminal proceedings the court shall only order the objects to be safeguarded as a temporary security measure.

(3) Objects serving as evidence shall be seized and returned to their owners at the conclusion of the proceedings. If such an object is urgently needed by the owner, it may be returned even before the completion of the proceedings, and the owner shall declare an obligation to bring in the object when necessary.

Article 212

(1) Where an aggrieved party has a claim against a third party because that person holds objects acquired by the commission of the criminal offence, or has acquired material gains by the commission of the criminal offence, the court may in criminal proceedings, acting on a motion by authorized persons (Article 202) and pursuant to provisions applicable to enforcement proceedings, order temporary security measures against such third person. The provisions of Article 210 paragraphs 2 and 3 of this Code shall also apply in this case.

(2) In judgments convicting accused persons, the court shall revoke the measures referred to in paragraph 1 of this Article, if they had not repealed earlier, or shall refer aggrieved parties to civil litigation, with the proviso that the measures will be repealed if civil litigation is not initiated within a time limit determined by the court.

Application in practice

As far as **compensation** is concerned, since the criminalization of human trafficking until today no trafficked person in Serbia got compensation of damages. Although it is permitted by the law, criminal judges are reluctant to make a decision on victims' compensation claims in criminal proceedings, but referred them to civil litigation. However, litigation is, as a rule, lengthy, expensive and requires victim's presence, in spite of the statements made in criminal proceedings. This compromises victims' safety, adding to secondary trauma and creating a setback in their recovery and reintegration. Moreover, even in rare cases when the compensation was awarded, none of the victims have ever been able to collect it.

Claim of financial compensation for material and/or immaterial damages as part of the criminal proceedings

Financial compensation can be claimed in criminal proceedings, but judges are not obliged to decide on it and they almost never do in practice. Execution could be done through the court (which is slow) and through the private executors (new possibility in the law).

Claim of financial compensation for material and/or immaterial damages through civil proceedings

It is possible to claim financial compensation for material and/or immaterial damages through civil proceedings. In practice, civil proceedings last too long and victim needs to face the perpetrator again. Execution could be done through the court (which is slow) and through the private executors (new possibility in the law).

Execution of the judgment represents the greatest problem in practice. This is caused by the fact that offenders, required to pay the victim for damages s/he suffered, usually declare that they do not have means and that they are unemployed, making the pursuance of the court ordered enforced collection impossible. In practice, this means that after years of litigation and expenses that victim as a plaintiff has to cover (costs of the litigation and enforcement proceedings), neither the compensation nor the amount necessary to reimburse the costs of the proceedings are awarded to the victim.

Sometimes, judges accept to free the victim of obligation to cover court expenses, but this only refers to court fees, whereas fees of expert witnesses and of an attorney have to be covered by the victim.

In civil proceedings, first instant judgments are more frequently abolished than in criminal proceedings, and cases are returned to trial all over again. Proceedings leading to second instance judgments are also more lengthily than those in criminal proceedings.

Number of trafficking victims that were awarded financial compensation for material and/or immaterial damages between 2007 and 2012

None.

Number of the cases the victim de facto received the awarded compensation

None.

Existence of State Fund or any other State-run scheme to which victims can apply for financial compensation for material and/or immaterial damages

There is no State Fund or any other State-run scheme to which victims can apply for financial compensation for material and/or immaterial damages. Although a Working Group of Experts formed by OSCE Mission to Serbia in 2010 to work out the best compensation model for Serbia has suggested setting up a compensation fund for the victims of violent crimes, including trafficking victims, this proposal has not been considered by decision and policy makers yet.

Main obstacles in practice for victims to obtain compensation for damages

Although it is possible, compensation is never awarded in criminal proceedings where victims are required to appear and give statements as witnesses. For compensation, they are referred to litigation, which means paying for the attorney, expert witnesses and court fees, which is too expensive for victims who are usually without means. In addition litigation lasts too long and requires from victim to appear in court over and over again, to repeat her statement and confront the trafficker. Statements made in criminal proceedings are not used. Even if the compensation is awarded, it is not a guarantee that the victim will get anything – the system of execution of court judgments is weak, especially having in mind that traffickers declare that they have no means.

ASSISTANCE AND PROTECTION

1. Statistics

Data from the authority in charge of identification - Agency for Coordination of Protection of Trafficking Victims	2007	2008	2009	2010	2011	2012
Total no. of identified victims	60 ¹⁹⁵	55 ¹⁹⁶	127 ¹⁹⁷	89 ¹⁹⁸	88 ¹⁹⁹	79 ²⁰⁰

¹⁹⁵ Out of 60 identified persons, 49 were recognized as human trafficking victims and 11 as potential victims of THB.

¹⁹⁶ Out of 55 identified persons, 37 were recognized as human trafficking victims and 18 as potential victims of THB.

¹⁹⁷ Out of 127 identified persons, 107 were recognized as human trafficking victims and 18 as potential victims of THB.

¹⁹⁸ Out of 89 identified persons, 61 were recognized as human trafficking victims and 28 as potential victims of THB.

¹⁹⁹ Out of 88 identified persons, 76 were recognized as human trafficking victims and 12 as potential victims of THB.

²⁰⁰ Out of 79 identified persons, 67 were recognized as human trafficking victims and 12 as potential victims of THB.

Domestic citizens		48	49	114	85	73	72
Foreign citizens ²⁰¹	Legally residing	12	6	13	4	15	1
	Undocumented						6
Adults		34	25	68	47	62	46
Minors		26	30	59	42	26	33
Sex	Female	51	48	104	80	56	61
	Male	9	7	23	9	32	18
Type of exploitation	Sexual	26	22	66	34	36	34
	Labour/in other industries	9	5	18	4	22	12
	Forced begging	9	5	14	12	7	12
	Forced marriage	2	3	6	9	4	4
	Coercion to petty crime	1	1	2	1	2	5
	Illegal adoption	2	1	1	1	3	
	Other	-		-	-	2	

NGO ASTRA data	2007	2008	2009	2010	2011	2012
Total no. of identified victims	25	16	38	37	40	29
Domestic citizens	22	14	27	36	38	27
Foreign citizens	3	2	11	1	2	2
Adults	15	8	25	28	30	20
Minors	10	8	13	9	10	9

²⁰¹ Agency for Coordination of Protection to the Victims of Human Trafficking can not provide information about residence status of foreign citizens identified as human trafficking victims for the period 2007-2011. Not only that such data probably was not recorded, but also documentation from this period belongs to the Institute for Children and Youth from which the Agency branched out in 2012 and now can not use its documentation.

Sex	Female	24	14	29	23	27	29
	Male	1	2	9	14	13	/
Type of exploitation	Sexual	21	5	25 ²⁰²	18	24 ²⁰³	22
	Labor/in other industries	2 ²⁰⁴	3 ²⁰⁵	9	14	13	/
	Forced begging	2	1	/	3 ²⁰⁶	/	2 ²⁰⁷
	Forced marriage	/	5	4	/	2	2
	Coercion to petty crime	/	/	/	/	1	1
	Illegal adoption	/	/	/	/	/	/
	Other	-	2	-	2	-	2

Police ²⁰⁸	2007	2008	2009	2010	2011	2012
Total number of criminal reports filed by the police under the Criminal Code or other law which criminalizes THB	34	32	51	47	32	36
Number of suspected perpetrators covered by the above criminal reports	74	81	94	99	52	68

²⁰² In one case sexual exploitation was paired with labor exploitation.

²⁰³ In one case sexual exploitation was paired with labor exploitation.

²⁰⁴ In both cases of labor exploitation victims were also exploited sexually.

²⁰⁵ In one case of labor exploitation, the victim was also exploited sexually.

²⁰⁶ All three cases of forced begging involved sexual exploitation too.

²⁰⁷ In one case of forced begging the victim was coerced to petty crime.

²⁰⁸ Data quoted from the annual reports of the Coordinator for combating human trafficking.

Number of victims-injured parties covered by the criminal reports filed against suspected traffickers	96	55	85	76	74	63
Number of underage injured parties/victims	35	27	48	33	23	28
Number of injured parties/victims who are Serbian nationals	69	48	79	73	72	58
Injured parties/victims – female	34	46	66	6	52	52
Injured parties/victims - male	62	9	19	70	22	11

Services are available for trafficked persons; access to them and conditions

As far as assistance to trafficked persons is concerned, Serbia lacks resources and specialized victim assistance providers. One of the most pressing issues certainly is the absence of sustainable and long-term funding from the state budget. Specialized assistance to trafficking victims is provided almost exclusively by CSOs supported by foreign donors. This means that country's potentials to provide adequate response to the problem of human trafficking come down to ad hoc allocations and donations from foreign governments and international donors. Support from the Republic of Serbia is rather sporadic and non-systemic for which reason assistance and programs are not designed to respond to ever-changing trafficking trends and actual needs of trafficking survivors; initiatives and innovations are accepted very rarely, and when so, the motive is not to secure better position of victims, but to fulfill certain political goals and ambitions.

The main victim assistance providers are CSOs – ASTRA – Anti Trafficking Action and Atina. The Novi Sad Humanitarian Centre joined the anti-trafficking scene as a project-based victim assistance provider in the territory Vojvodina during period August 2011- October 2012.

Although Serbia does not have a separate budget line for financing anti-trafficking actions and victim assistance yet, for the first time this year, certain amount of money was allocated from the republican budget for victim assistance services as part of the budget of the newly-founded Centre for the Protection of Victims of Trafficking (around USD 223,000). However, the major portion of this amount is intended for salaries and costs of Centre's staff and for the costs of running the Centre (3,560,000.00 RSD which is USD 40,450.00²⁰⁹).

²⁰⁹ <http://www.centarzztlj.rs/images/download/Finansijski%20plan%202013.pdf>

On 17 February 2011, the Mayor of Belgrade allocated 4 million RSD (around 35,000 EUR) from the city budget for the Agency for Coordination of Protection of Trafficking Victims. This sum was intended for the costs of emergency care to human trafficking victims. However, this fund was not available to all victims because of unclear criteria for approval and lack of transparency in spending these resources. Since the Agency was not independent, but existed as an organizational part of the Institute for Children and Youth in Belgrade at least until July 2012, the director of the Institute was in charge of making the decision whether the funds – and in which amount – would be approved for a specific form of assistance to victims. Thus, for example, out of three requests for funds which ASTRA made to the Agency, only one has been (partially) approved.

To this date, ASTRA has not received any explanation for either rejection. In one case, we received a long list of documents which should be submitted to the Agency in order to get the funds. ASTRA decided not to submit required documents for several reasons, the first one being that there were no legal grounds for making such a requirement. In addition, some of required documents fall within the jurisdiction of the social protection system and a CSO cannot provide them, while others cannot be required from the victim assistance provider for confidentiality reason. Finally, some documents that were required from us were in contradiction to the entire concept of recovery and reintegration.

Pursuant to the Law on Access to Information of Public Significance, in the autumn of 2011 a request was sent to the Treasury²¹⁰ asking for information on how the money from this donation was spent. However, only data on total allocations made by the Ministry of Labor and Social Policy for the overall work of the Institute for Children and Youth was available. Since the data refers to the Institute as a whole, it was not possible to establish what are the total revenues and expenditures of the Agency for Coordination of Protection of Trafficking Victims as the organizational unit of the Institute based on this information.

ASTRA Database, ID no. 2423

With regard to criminal proceedings in which trafficking victims appear in the capacity of witnesses/injured parties, or sometimes even as the accused, they are generally provided - usually by CSOs - with **legal counseling and representation**. ASTRA was the first to insist on representation of victims in court. Since trafficked persons are not a party to the proceedings, they are not required to have a lawyer, although they may hire one; however, they are not entitled to court appointed attorney.

To make sure that every victim has quality representation, ASTRA has developed a network of lawyers who are trained to deal properly with trafficking victims avoiding their secondary victimization. In addition to representation by professional lawyers, ASTRA's clients also enjoy support provided by ASTRA's consultants throughout the proceedings both in and outside the courtroom.

²¹⁰ The Treasury is in charge of the preparation and execution of the state budget, budget accounting and reporting, public payments, management of the Republic of Serbia public debt, as well as other issues related to government finances.
<http://www.trezor.gov.rs/index.php?language=en>

In addition to helping them cope with very stressful questioning and reliving the trauma of trafficking, ASTRA also insists on **physical safety** of victims which is usually threatened during the trial. Physical protection is provided by the police, but it is not always sufficient and it is based on the good will of specific police officers and their motivation to help rather than the duty of legal authority to provide such protection. On few occasions, the Agency for Coordination of Protection of Trafficking Victims covered the costs of victims' representation; still ASTRA provides funds for legal aid to most of the clients.

Interpretation is theoretically provided when needed; the costs are covered by the Agency or by the court if interpretation is needed for criminal proceedings. Whenever these and other institutions fail to provide interpretation, ASTRA secures this service for its clients. On several occasions in the past, when there were more foreign victims exploited in Serbia, they were often either denied or not even offered interpretation with the excuse that "all of them understand Serbian".

In order to strengthen their capacities for dealing with PTSD consequences and to improve their psychological health, victims are provided, mostly by CSOs, with long-term **psychological assistance**. It includes psychotherapy - counseling provided by psychologist/therapist and/or psychiatrist. However, not all actors involved in providing assistance to trafficked persons are aware of significance and necessity of supervision of their work.

Also, victims sometimes do not have physical access to psychological assistance, or such assistance is not provided by adequate professionals. For this reason, in October 2012 ASTRA held two seminars for 50 psychotherapists of different orientations from 30 different Serbian towns focusing on therapeutic work with victims of trafficking. The seminars' objective was to develop a new model of providing systematic and comprehensive psychological support to trafficking survivors and help establish a network of psychotherapist specialized in providing assistance to trafficking survivors. The group of trained experts can provide better quality of psychological aid in the reintegration process, supporting the victims to make responsible choices, free them of guilt and other complex emotions which dramatic experiences such as human trafficking bring and surpass the trauma they survived. ASTRA's psychotherapist network also provides its members with an opportunity to share important information about human trafficking, exchange knowledge and experiences and further improve their expertise in working with victims of human trafficking.

When it comes to **medical assistance**, it is very difficult to ensure victims' access to public health care services in practice. Many institutions are not aware of the Health Ministry's Communication²¹¹ and refuse to act upon it. Further, staff employed at public health institutions is not sensitized enough to handle trafficking victims without exposing them to secondary victimization. Very often it is not possible to ensure prompt reaction from the public healthcare system: it is usually necessary to wait for several days or even several months for an appointment, which is unacceptable when the victim is in acute state. For this reason, ASTRA is more prone to use the services of private hospitals for our clients and pay for medical examinations and treatments from foreign donations.

²¹¹ Communication of 28 July 2006 (filed under 531-01-239/2006-02 at the Ministry of Health)

Concerning **accommodation** of THB victims, there is one reintegration shelter for trafficked women in Belgrade, but with rather small capacity. There is no shelter accessible to male victims of trafficking in Serbia. Regularly, staying in the reintegration shelter lasts for about one year, but sometimes beneficiaries stay longer or, when needed, use this form of accommodation on several instances. Additional two shelters – in Niš and Novi Sad – were launched in October 2011 on a project basis supported by foreign donors but with funding ensured for only six-month period. These shelters used to work within social welfare centers in these towns. However, these did not function as separate shelters, but were incorporated into the existing shelters for domestic violence. In addition, there were no night shifts in either of these shelters and victims could not receive urgent assistance or support during the night. This was a very gravid shortcoming in the organization of the shelters, since trafficking victims usually suffer from sleep disorders or change in the sleeping rhythm in the course of exploitation and therefore cannot sleep at night. Specifically, the shelter in Novi Sad was managed by the employees of the Novi Sad Social Welfare Centre; they were engaged in the shelter alongside their regular duties, but after their working hours, i.e. in the afternoon. Overnight, the staff was reduced to one security guard who was supposed to provide physical protection of the facility. The shelter in Nis had only one person engaged who worked only one shift, while additional staff and support was engaged if and when necessary. To our knowledge, staff at the shelters was not required to pass any specialized training or education programs held by local and/or international experts in the field of identification, urgent assistance and (re)integration. Moreover, direct work with victims in the shelter was not supervised either by the project managers or in the form of monitoring the quality of provided services; thus, there was a plenty of room left for procedural errors and oversights in psychosocial work with victims.

In September 2011, ASTRA placed a 19-year old girl who is a multiple victim of human trafficking in the shelter for victims of human trafficking in Nis. Since she was a drug addict, she underwent detoxification in Belgrade, after which she was brought to the shelter in Nis for safety reasons. Although unstable, the victim received blocking agents (medications often use in treating various addictions). It is well known that blocking agents, if taken in any combination with the drugs, could lead to cardiac arrest. She decided to leave the shelter already after 48 hours. It was due to her unstable psychological and physical condition; yet, conditions at the shelter also contributed to her decision. Shelter's staff bought her one-way ticket to Belgrade, without organizing someone to accompany her and without informing ASTRA or anyone else about her arrival. At that moment, victim's safety was seriously compromised, because the trafficker was trying to discover her whereabouts; however, her health and life were even more compromised because of the blocks treatment which started too early.

Services provided by shelters for trafficking victims are often not adjusted to the needs of victims and shelters often do not provide adequate conditions for their recovery. Namely, in shelters in Nis and Novi Sad, like in the shelter in Belgrade which was shut down in the autumn of 2010, victims were normally not allowed to leave the shelter for longer periods of time. Although this was justified by the need to reduce safety risks, physical isolation violates their right to free movement and has negative impact on their psychological state and the overall course of recovery and reintegration, especially because it reminds them of the movement restrictions during their exploitation. It is not uncommon that victims do

not have coffee and cigarettes at the shelter, which additionally intensifies their anxiety and makes their stay in the closed space even more difficult.

ASTRA Database, ID no. 2327

In some cases, victims are provided with alternative accommodation (renting a flat), while costs are borne either by CSOs or by the Agency. ASTRA advocates alternative accommodation as an option that is much better for victims than shelters, but we were never granted any state funding to support the clients in that respect.

Children victims who are Serbian citizens are often accommodated at the City Shelter for Abused Children (within the Institute for Children and Youth in Belgrade), homes for children without parental care and in foster families. This shelter and homes do not provide specialized assistance for children victims of trafficking and do not have programs intended designed to foster their recovery and reintegration.

For this reason, ASTRA has created and accredited training program titled “Foster Family as a Place of Recovery and Reintegration of Trafficking Victims” and so far has conducted two trainings intended for foster parents and professionals working at the Foster Care Center who are responsible for support for foster families. The aim of this program is to encourage the development of specialized foster care which could respond to the needs of children who survived human trafficking. What aggravates the recovery of such children is that their movement is restricted, i.e. when they are accommodated in the close-type shelter and not allowed to leave. Thus, on more than one occasion, children used the incautiousness of staff to run away from the shelter. The very fact that this shelter was locked up had negative impact on clients’ motivation to stay there.

According to the Agency for Coordination of Protection of Trafficking Victims, in 2012, 80% of children victims were accommodated in child care institutions, 15% in shelters for adults and only 5% in foster families, although foster families represent a good model of care for trafficked children.

Finally, **vocational trainings and education, information, support and resources** are mostly provided by CSOs, but trafficked persons do not enjoy any special treatment nor are there measures devised to encourage their return to school. In the process of (re)integration, ASTRA organizes activities aiming to promote economic potentials and employability of clients, ranging from support and help in starting or continuing schooling, selection of alternative educational programmes for acquiring specific knowledge and skills, help in searching for employment, etc.

Overall, sustainable (re)integration and social inclusion programs for trafficking victims still do not exist. After they get out of the trafficking ring, victims may join *ad hoc* programs that depend on available financial resources; moreover, what is offered to them often does not correspond to their needs and pace of their recovery and (re)integration.

Situation in Serbia in regard to (access to) support services for victims of trafficking

Apart from the problems outlined in the question 2 under this section, many other issues remain to be solved when it comes to support services available to trafficking victims and their accessibility.

For example, there are differences in the assistance and protection measures for victims of human trafficking that depend on whether the victim is a Serbian national (either identified in Serbia or repatriated after identification in some foreign country) or a foreign citizen identified in Serbia. Although CSOs' assistance programs are available to all victims of trafficking, some legal measures differ for **foreign victims and victims who are Serbian nationals**. One should bear in mind that in the national legislation the position of trafficking victims is not regulated only by specific provisions pertaining to THB phenomenon and THB victims' rights. On the contrary, their position is mostly regulated by general provisions.

Both domestic and foreign victims have access to emergency medical care free of charge if provided by public healthcare institutions. This right is granted to foreign victims explicitly by the Healthcare Law, while domestic victims are entitled pursuant to general provisions of this law that guarantees access to emergency medical treatment to all citizens of Serbia.

Domestic victims' access to health care other than emergency medical treatment is regulated by a Communication of 28 July 2006 (filed under 531-01-239/2006-02 at the Ministry of Health) signed by the then Assistant Health Minister. This Communication provides that trafficking victims are entitled to primary health care; they have access to secondary care upon the referral by the primary care doctor providing that they have the certificate issued by the Agency that they are trafficking victims.

The Agency for Coordination of Protection to Trafficking Victims may issue a certificate of identification, which is supposed to ensure access to medical treatment to trafficking victims. Not many foreign victims of trafficking were identified in the previous years so we are not sure about situation in practice and whether they need this certificate for emergency medical assistance. On the other hand, it happened more than once that a victim who is a Serbian national could not obtain regular medical assistance on the basis of this certificate. In practice, health care institutions are not familiar with this procedure and with the contents of the said Communication. This means that domestic citizens who are identified as trafficking victims can ask for assistance in public health institutions only if they have medical insurance, but the majority of services are not free of charge even then. Foreign nationals are forced to go to private clinics for medical assistance because they do not have effective access to public health institutions for administrative reasons.

Further, it could be heard quite often that victim assistance could be provided within the existing social welfare and public health systems. However, such assistance is often inadequate, inappropriate and not always available to all victims. Social welfare centers operate at the municipal level; their involvement is mandatory if the trafficked person is underage. They are generally in charge of providing social services, but they lack specialized programs, skills and sensitivity to work with trafficked persons.

At social welfare centers, victims may get one-time financial assistance; the procedure for longer-term

financial aid is rather complicated and not always available. Victims – domestic nationals, who do not have proper documents (related to the victim's place of residence, ownership of real estate, birth certificate of victim/victim's family, victim's income etc.) which are the condition for enjoying any rights in the field of social welfare and public health (except for emergency assistance), are faced with the greatest obstacles.

Free legal aid for trafficked persons that is funded by the government, local government or the like, still does not exist in Serbia.

The Agency for Coordination of Protection of Trafficking Victims shall **inform in detail all identified victims about their rights and available services** which are offered by CSOs and other state institutions. However, this is not always done in practice under the excuse that victims decline assistance. We know of several cases where the victims found out about ASTRA through the Internet, while the Agency failed to mention our organization and types of assistance we provide to trafficking survivors. It is clear that these victims, having been denied information on all service providers, would not be supported if they themselves did not take the initiative and searched for the necessary help.

Victims' assistance in Serbia is not seen as a basic right of the trafficked person, but something s/he should be grateful for, so the possibility to choose types of assistance and assistance providers is rarely offered.

Accommodation of trafficked person has been problematic in Serbia for years. Apart from the lacking capacities, there is a serious problem in terms of who gets accommodated in these shelters and who is being denied such an option. For example, victims with addiction diseases or with psychologically altered behavior/psychological disorders cannot be admitted in shelters because programs for support to such victims have not been developed nor cooperation with specialized institutions established. The former is necessary to enable involvement of specialized institutions in victims' assistance, particularly in urgent situations without ample red tape.

Also, victims sometimes do not have access to **psychological assistance**, or such assistance is not provided by adequate professionals. In an example provided in the text box below, one can see that psychological wellbeing of the victim and the need for therapy are carelessly disregarded.

The victim who lived in the shelter was having therapy with a therapist who had many years of experience in working with the victims of torture. This psychological assistance was not organized by the shelter, but by another CSO. Although the therapist and the victim expressed their satisfaction with the progress made, the manager of the Shelter informed the Agency for Coordination of Protection of Trafficking Victims that the victim did not want to continue the therapy and that she failed to build a good relationship with the therapist. After several sessions, it seemed that the victim changed her attitude towards therapy and soon they stopped it. Not sure whose decision to stop the therapy this was – victim's or Shelter's manager, the officer of the Agency asked the victim to make a written statement that she did not want to continue with the therapy. This was the first time that the Agency

took such statement from the victim. To our knowledge, the therapeutic work with the trafficking victim might be continued by one volunteer at the shelter.

ASTRA Database, ID no. 2755

In the past, identification by the **Agency for Coordination of Protection of Trafficking Victims was a condition** for trafficking victims to have access to any form of assistance except for the assistance provided by ASTRA. There was no distinctions in the levels of identification²¹² existed – and no other anti-trafficking actor could conduct primary/preliminary identification of trafficking victims. Since the capacities of this body were hardly sufficient to cover the territory of the whole country 24 hours a day, it is very likely that there were victims who remained unidentified, and thus remained deprived of their constitutional and basic human rights.

With the establishment of the **Center for Victims' Protection**, situation changed, as they abide by the amendments to the existing rulebooks on minimum standards in the social care system according to which the identification and coordination of support services starts with the preliminary identification of the victim. It means that in practice (potential) victims will be assisted from the moment they are discovered and they will be treated as victims even if their victim status cannot be confirmed at that moment. The final identification shall be done within three months after the first direct contact with the victim and it is not condition for assistance.

The most important human trafficking trends in the period 2007-2012

In the period 2007-2012, ASTRA SOS Hotline received a total of **12,200** calls from more than **2,000** clients, and of this figure **1,694** were first time callers. The most frequent are calls directly related to human trafficking – **66%** of total received calls, and then preventive-educational calls – 20%.

Related to the second groups of calls, persons who call SOS hotline to get information that would ensure safe travel to a foreign country usually were planning to leave the country to work, study (through professional development programs, student exchange programs and alike) or as tourists. In related period, ASTRA's clients were interested in offers of **80** employment and tourist agencies that were offering a wide range of jobs in the country and abroad: construction jobs, babysitting, modeling, hospitality jobs (ocean liners, hotels in Dubai, waitress/waiter etc.), "work and study abroad" programs and the like. It is important that only 20% of them were registered as employment agency. All the others were registered as tourist or other agencies or were not registered at all. The fact that there are so many of them indicates that it is a rather lucrative business and that there is a great demand for such services in Serbia. On the other hand, this data suggests that the competent authorities have no control

²¹² First level is primary/preliminary identification of the victim, which may be performed by a wide range of actors. Final identification of the person as trafficking victim is based on information provided by all authorities, institutions and organizations involved, within three months after the first direct contact with the victim.

over these agencies and that, persons who pay for their services are at great risk of financial frauds and, sometimes, human trafficking.

In the same period, from 2007-2012, 185 **persons were registered as the victims of human trafficking** through ASTRA SOS Hotline, of whom 161 **(87%) Serbian nationals**. Foreign nationals identified as trafficking victims in this period were from Bosnia and Herzegovina, Romania, Czech, Montenegro, Slovenia, Russia, Ukraine, Croatia, Moldova and Uzbekistan.

Another trend is internal human trafficking. Namely, the most frequent destination for trafficking victims was **Serbia (93 persons – 50%)**. Additionally, number of cases of internal trafficking is increasing in time (2012 - **55%**, 2011- **42.5%**, 2010 - **51%**, 2009 - **42%**, 2008- **25%**, 2007 – **36%**). Of 185 persons identified in period 2007-2012, Serbia was at the same time the country of origin and destination for 83 **(45%)** of them.

Other countries that were frequently destinations for the exploitation of trafficking victims include: Azerbaijan (21), Italy (16), Germany (13), Russia (10) and Kosovo (6). Destination countries were also Bosnia and Herzegovina, Croatia, Austria, France, Chechnya, FYR of Macedonia, Hungary, Spain, France and Hungary. For the first time in ASTRA statistics, Azerbaijan appeared in 2009 as a destination country for numerous **male victims of labor exploitation** from Serbia, Bosnia and FYR of Macedonia. Other destinations typical of human trafficking for the purpose of labor exploitation were former republics of USSR and Middle-East region states. Some cases of labor exploitation were recorded in Western Europe as well. Most of the victims were exploited in the construction industry.

The recruitment for human trafficking was more often done through job offers and by persons the victims did not know well. In some cases recruitment was done by close persons: husbands, parents or relatives.

Among total number of identified victims, 39 **(21%)** persons were male, while 146 **(79%)** were female. **60 (32%)** victims were children. On average they are around 15 years of age.

Victims were trafficked most often for the purpose of sexual exploitation 121 **(65.4%)**, which was in 8 cases conducted simultaneously with some other form of abuse – labor exploitation, forced begging or forced marriage. 38 persons were exposed for labor exploitation and, with the exception of one woman, they were male. These are men who were exploited on construction sites in Azerbaijan, Russia and Chechnya.

NRM in Serbia

The anti-trafficking mechanism in Serbia is still relatively new and developing. Its central operating point was the Agency for Coordination of Protection of Human Trafficking Victim, which is now transformed into the **Centre for Protection of Human Trafficking Victims**. This major change happened in 2012, in the process of ongoing reform of the Serbian social protection system. The Centre operates its activities through two organizational units: the Agency for Coordination of Protection of Trafficking Victims and

the Emergency Shelter, which is not established yet

The Centre for the Protection of Trafficking Victims was formed with an idea to settle the deficiencies of the previous national referral mechanism and of the Agency as its central point which had been set out too ambitiously, but without adequate support and capacities. The operation of the Centre is based on the amendments to the existing rulebooks²¹³ on minimum standards in the social care system. These will be additionally widened in scope by the adoption of the ***Rulebook on the minimum standards of protection for human trafficking victims in social care***. The Rulebook shall establish structural minimum standards for the material and human resources and the management process in the Centre, and will set functional standards for admission, ways and methods of assessment, planning and activities during the service provision, and the termination of services.

According to the Rulebook, the identification and coordination of support services starts with the preliminary identification of the victim, which may be performed by a wide range of actors, including, CSOs, police, service providers and diplomatic and consular missions. After the Centre for the Protection of Trafficking Victims is informed, employees of the Agency are obliged to directly contact the person presumed to be a trafficking victim within 24 hours, and to initiate an admission assessment. This process may last up to seven days after the initial reporting, and is followed by the drafting of an individual protection and support plan. Final identification of the person as trafficking victim is based on information provided by all authorities, institutions and organizations involved, within three months after the first direct contact with the victim.

Although many issues remain to be handled, some results of this reform are already visible. For example, transparency of the Center's functioning, financing, statistics, etc. is much greater now. Also, the new management of the Centre has made visible progress regarding the protection of victims' personal data and protection of databases which the Centre is in charge of. Earlier the Agency for Coordination of Protection of Trafficking Victims was also in charge of the database containing personal data of all victims ever identified in Serbia. Not only that this data base was not sufficiently protected in physical sense, but also there were no strict official rule (or control) on who has the access it.

ASTRA has great expectations of the Centre as this looks like a serious attempt to properly organize the national referral mechanism. The Centre has the central role with regard to identification of victims and coordination of victim assistance. A great portion of its work is yet to be formalized. On the other hand, there is a danger that once they have their own resources that could be used for victim assistance, the Centre could start acting as direct victim assistance provider and marginalize CSOs that have long-lasting expertise in this field.

However, at the moment it seems that the Centre's management is determined to put right things that were wrong for years, something they are already facing resistance from certain anti-trafficking actors.

The only SOS hotline service specialized for direct assistance to trafficked persons in the process of

²¹³ Specific points that are not included in the Draft of the Rulebook on the minimum service provision standard in social care, nor in the Rulebook on counseling/therapeutic and socio-educational services.

recovery and (re)integration, as well as for support to families and communities, has been operated by ASTRA since 2002. Services available to trafficking survivors and their families through ASTRA SOS Hotline and Direct Victim Assistance Program include counseling and support in the process of search, identification, recovery and reintegration; psychological assistance, legal assistance, medical assistance, transportation and other forms of support according to individual needs of victims. ASTRA has established the Network of lawyers and Network of psychotherapist, in order to enable provision of adequate and timely assistance all over Serbia. The reintegration program is additionally developed through ASTRA Day Centre which was launched in January 2007. It is intended primarily for victims who do not live in shelters and who are thus left outside any victim assistance scheme. In the process of reintegration, the activities aimed at improving clients' economic potential and employability (formal and informal vocational and adult education programs, economic empowerment trainings, courses and job search counseling support) are also of great importance.

NGO Atina has been running currently the only shelter for victims of human trafficking. Atina operates through three programs: Temporary Home (shelter), Open Club and Field Support Team. The Temporary House was launched in Belgrade in April 2004 as an open type of the shelter and its capacity is seven persons. Besides accommodation and food, it provides basic and alternative services in the process of reintegration: medical and psychological assistance, legal counselling, family mediation and counselling, assistance in formal and alternative education and job hunting, and assistance in solving problems from immediate environment. NGO Atina's clients are women and girls, the citizens of Serbia and foreigners who have temporary residence permits, victims of human trafficking and sexual exploitation.

In addition to these service providers, victim assistance is also provided through social welfare centers. Social welfare centers are generally in charge of providing social services, but they do not have any specialized programs, skills and often lack sensitivity to work with trafficked persons. Besides short-term financial assistance, their support to adult victims of trafficking is usually insignificant. Moreover, it is not rare that victims do not want to be in contact with representatives of the centers because they tend to interpret their behavior as manipulative and to underestimate difficulties in the reintegration process. Involvement of social welfare centers is obligatory when it comes to children victims of trafficking. However, they often fail to involve CSO service providers in cases related to minors and to use their resources, even when it means the absence of needed assistance (see third text box in question number 7 in this section).

Observing the functioning of Serbian NRM and its parts in practice reveals a number of other problems. For example, all actors in the field of victim protection in the phase of recovery and reintegration should abide by generally accepted standards based on international practice, documents and recommendations that are accepted in Serbia, too. However, this is quite challenging for all actors in terms of persistent implementation of the principles of working with victims, respect for their needs and rights and the provision of appropriate support, especially having in mind that victim assistance in Serbia is not provided following any written procedures, not to mention monitoring and quality control.

Positive and negative examples

Examples of good practice

ASTRA began supporting a minor victim at the end of 2012. An individual assistance plan was made in cooperation with the competent social welfare center, the Agency for Coordination of Protection to Trafficking Victims, CSOs Novi Sad Humanitarian Centre and Atina, police officers who were working on the case and client's family.

To secure her safety, the whole family had to be relocated from the town that used to be their place of residence. Competent social welfare center and the Agency supplied the family with the necessary material aid in the form of food packages, and additional food and hygienic supplies secured by the Red Cross through the Agency.

The social welfare center was involved in finding an appropriate accommodation, whereas ASTRA covered the moving costs and the rent for the following three months. Further, ASTRA provided to the family psychological support in the form of family therapy for a period of time, whereas the social welfare center assigned its premises for therapeutic sessions and they made an agreement with ASTRA regarding covering the costs of psychotherapy for the whole family. In the social welfare center they also tried to help victim's father find a job, but he declined the job offer they found for him.

The case manager from the center arranged medical examinations for the victim and monitored her health condition. She also assisted the family in the process of obtaining documents and following certain institutional procedures.

The case manager was very opened for cooperation with all the actors involved in individual plan of recovery and reintegration and search for adequate solutions in this client's best interests. Namely, the client and her family encountered some problems in the process of adaptation to the new environment. They faced increased feeling of isolation and insecurity, particularly due to absence of stable income source and being dependant on the support provided to the minor human trafficking victim that is a member of this family. For these reasons, the family developed great expectations from competent institutions and non-governmental organizations. However, inter-sectoral collaboration, good communication, maximum commitment and cooperativeness of all actors involved in the case secured success in the victim's reintegration process so far.

ASTRA Database, ID no. 2983

In 2011, ASTRA was actively involved in search and emergency care for a victim from Serbia who was sexually exploited in Italy. Thanks to timely response and cooperation with an Italian NGO, we were able to locate her and take her away from the streets within 24 hours. After that, her return to Serbia

was arranged and ASTRA provided psychological and legal assistance to her (an attorney who is member of ASTRA's network of lawyers was hired to represent her in court for the trial of the group of criminals who exploited her).

The court proceedings started in the beginning of 2012 and after a year, Special Department of the Higher Court in Belgrade issued first-instance judgment finding four persons guilty as co-perpetrators of trafficking in human beings. Members of the group were accused of recruiting girls from Serbia on several occasions during 2011, transferring them to Italy, where they were kept against their will and sexually exploited. For less than a year, six girls, including two who were underage, fall victim to human trafficking in this way. The court sentenced the accused M.M to prison term of 15 years, Ž.S to 13 years, P.T. to 10.5 and V.Đ. to 10 years in prison. If the judgment becomes final and enforceable, they will also be required to pay the amount of EUR 55,000 to the budget of the Republic of Serbia on the account of gain acquired through committing the offence. This is one of the strictest penalties rendered to human traffickers in Serbia so far.

Work on this case is an example of successful cooperation of the Prosecutor's Office for Organized Crime, Counter-Organized Crime Service and Higher Prosecutor's Office in Belgrade. Since appropriate penalizing of perpetrator is necessary in order to combat human trafficking, we hope that this judgment will be affirmed by the higher court. This is the first human trafficking case accepted by the Prosecutor's Office for Organized Crime after long time. In addition to that, the victim assisted by ASTRA was awarded status of a particularly vulnerable witness and adequate measures were taken to minimize her secondary victimization. It is also worth mentioning that the proceedings did not last long and there were no unnecessary prolongations. However, the court failed to award compensation to the victim, but referred her to litigation.

ASTRA Database, ID no. 2565

Examples of bad practice

ASTRA SOS Hotline received a call reporting case of potential human trafficking victim – foreign citizen suspected of being exploited through forced marriage at the end of 2012. Based on information provided by ASTRA, the police and competent social welfare centre were able to locate the girl and get her out of the exploitation. She was accommodated in the Institute for Children and Youth's shelter in Belgrade. ASTRA was then informed by the Agency for Coordination of Protection to Trafficking Victims that repatriation of the girl was planned to be done as soon as possible, so our involvement and assistance (medical, psychological, legal or other) was not necessary. An individual assistance plan was created by the representatives of social welfare centre and the Agency, excluding employees of the shelter, ASTRA and other services. For that reason, it remains unknown what types of support were planned or offered to her.

Due to administrative problems, the girl stayed in the shelter for about a month and a half. Bearing in mind that she was accommodated in a facility that is not specialized for trafficking victims, ASTRA

offered help and all types of assistance available at the organization on many occasions and suggested to the Agency and social welfare centre that needs of the girl were to be assessed and assistance provided accordingly.

After the girl was returned to her home country, ASTRA was contacted by the competent institution that took over her case and provided for her needs upon return. They told us that the girl was not in a good psycho-physical condition and that having stayed at a collective accommodation facility, she suffered from hygienic neglect. Additionally, the child said that she was never taken to the doctor, nor was she under any psycho-social counseling during her stay in Serbia.

This case proves serious deficiencies of Serbian NRM and that CSOs' capacities to help human trafficking victims are not being fully used. CSOs cannot work with minor victims without the consent and collaboration of competent social welfare centers. They, obviously, do not have the necessary capacities to create and implement adequate assistance plans. In this case shortcomings were evident in the work of the Agency for Coordination of Protection to Human Trafficking Victims too.

ASTRA Database, ID no. 3015

In February 2012, ASTRA got in touch with a trafficking victim on request of a public prosecutor from Pancevo . The victim was exposed to sexual exploitation twice in the period between 1997 and 2006 on the territory of Serbia, Germany, Denmark, Greece and Belgium. As the exploitation started before 2003, i.e. before the crime act of trafficking was introduced in Serbian national legislation, the prosecution could not raise a charge for the crime act of trafficking.

At the time ASTRA got involved, court proceeding K-95/11 was coming to an end after an appeal to the first instance judgment, convicting ASTRA's client to 17 years of imprisonment for murder. As ordered by the Court of Appeal, the trial was led by Higher Court of Pancevo.

The Court of Appeal in Novi Sad ordered for a second instance procedure to start due to inconsistencies and omissions identified in the first. Also, a request was made for examination of all forensic evidences and circumstances leading to the crime. The murder was committed in Germany. The person killed was using sexual services the victim was forced to provide, and he was killed by the trafficker. Under threat and in fear of him, she took responsibility for the crime. Indications that she was trafficking victim appeared in the first instance proceeding, and the victim herself changed her statement later on, explaining the circumstances under which the murder happened and who actually committed the crime.

Lawyers request to examine evidences showing the defendant was a human trafficking victim was rejected by the Higher court in Pancevo, under the excuse that the defendant changed her statement before the court on several occasions. For these reasons, it is probable the Higher court of Pancevo is going to confirm the convicting judgment.

This is one of four recently recorded cases of human trafficking victims being convicted for a crime act that happened during the period of their exploitation. What is more, the victim got in touch with trafficking survivors service providers as late as six years after she managed to get out of the trafficking ring. During that time, she was going through murder trial all alone, without psychological and legal assistance, or any support helping her to process the trafficking trauma.

ASTRA Database, ID no. 2848

Definition of recovery and reflection period in Serbia's internal law

The recovery and reflection period are not explicitly defined in the Serbian law. It is mentioned only in the Instruction for the Enforcement of the Law on Aliens, which incorporates former Instructions on Conditions and on Procedure for Approving Temporary Residence to Trafficked Persons. The Instruction specifies that a trafficked person may be approved temporary residence for humanitarian reasons in the duration of 3 months for the purpose of protection and assistance in recovery and return to the country of origin or of previous residence. Temporary residence is obtained on the basis of the identification by the Agency and it is the Agency that submits a request for temporary residence on behalf of the victim.

Although this can indirectly be interpreted as the recovery and reflection period, it has remained at the level of a bylaw, together with the entire subject of temporary stay for trafficking victims. This means that according to the Law primary reason for granting temporary residence to a trafficked person is that such residence is in the interest of criminal proceedings and cooperation with judicial authorities.

In practice, the reflection and recovery period is rarely respected, i.e. soon or even immediately after the identification, trafficked person is required to give an official statement to the police about what happened to her/him for the purpose of filing a criminal report.

Grounds for issuing residence permits to victims of THB

The conditions for issuing residence permits to foreigners identified as trafficking victims are regulated by the Law on Aliens, which provides that a foreign citizen identified as a trafficking victim may be granted a temporary residence permit in the Republic of Serbia if it is in the interest of criminal proceedings for the criminal act of human trafficking. Accordingly, trafficking victims will be granted temporary residence only if it is in the interest of criminal proceedings and cooperation with judicial authorities and not based on their personal situations. This temporary residence lasts as long as it is in the interest of the persons in criminal proceedings. Once the police have information that the victim is not needed in the proceedings any longer, residence permit will not be extended.

Temporary residence permits for trafficking victims were introduced for the first time in 2004 based on two bylaws of the Interior Minister - Instruction on Conditions for Approving Temporary Residence to Foreign Nationals Trafficking Victims and the Instruction on the Procedure for Approving Temporary Residence to Foreign Nationals Trafficking Victims. According to these Instructions, the victim may be issued a temporary residence permit on humanitarian grounds with the validity of 3 months, for the

purpose of providing protection and assistance in the recovery and return to the country of origin or previous residence. If, after the expiry of the recovery period, the victim decides to cooperate with the authorities in identification of criminal acts and their perpetrators, he/she may be granted a temporary residence lasting for 6 months, which can be perceived as conditioning of the victim to participate in the court proceedings. If the victim of human trafficking actively participates in the court proceedings (criminal and civil) as a witness or injured party, he/she may be granted temporary residence for a year.

After the Law on Aliens came into force in 2009, these two instructions were incorporated into the Instruction for the Enforcement of the Law on Aliens and nothing changed regarding the duration of residence permits and conditions which the victim has to fulfill in order to be granted such residence. However, this matter is still regulated at the bylaw level, although it could have been addressed in the Law.

Since the introduction of the Instruction on Conditions for Approving Temporary Residence to Foreign Nationals Trafficking Victims until the end of 2011, **31 humanitarian residence permits were issued** to the same number of foreign nationals identified as victims of trafficking. For nine victims, the permits were subsequently extended. According to the Agency for Coordination of Protection of Trafficking Victims, the procedure indicated in the Instruction for the Enforcement of the Law on Aliens is applied in practice. The procedure is sometimes not respected, but all such cases were in favor of the victims.

Procedure established under internal law for the repatriation and return of victims of THB

Until the passage of the Instruction on the Conditions for Approving Temporary Residence Permits for Trafficking Victims in 2004, trafficked persons who were foreign nationals were treated as illegal migrants, i.e. they were deported by competent law enforcement authority to the border of the state from which they entered Serbia (i.e. FR Yugoslavia) regardless of whether they were the citizen of that country or not.

The state left the entire process of repatriation of trafficked persons, in organizational and financial terms, to the International Organization for Migrations (IOM). At the beginning, foreign nationals were, together with Serbian citizens, placed in at that time the only shelter for trafficking victims that was supported by IOM. This shelter stopped their program for victims of trafficking in October 2010. The victims would stay in the shelter pending the preparation of emergency travel document and other documentation. For safety reasons, the victims were **kept locked in this shelter** and they were not allowed to go out. In some cases, this lasted too long, thus putting the victim back to the position of powerlessness and being controlled by others.

As for the safety of victims upon their return, the assessment of safety in the country of origin (or return) was barely done. Many shortcomings were observed in the past which seriously compromised victim's safety after her return. Because of the scarce funds, the cheapest and not the safest means of transportation were used, thus putting the victim in danger of being found and caught by her trafficker all over again.

In several cases, ASTRA borne the costs and organized the whole repatriation of its clients.

It is difficult to assess to what extent the situation is different today because very small number of foreign nationals are identified as trafficking victims in Serbia in recent years.

Serbia does not have formal procedures for repatriation of foreign nationals to their home countries and for the return of domestic nationals identified abroad formally. The only document dealing with this issue are obscure Guidelines for Standard Operating Procedures for dealing with Victims of Human Trafficking, which specifies that the safety of trafficking victims in the process of repatriation must be ensured, which is done, depending on specific case, by the case manager (it is not stated from which institution/organization), the Agency for Coordination of Protection to Trafficking Victims or in collaboration with the Ministry of the Interior". It is also specified that "minors should never be unaccompanied during their repatriation and return".

RECOMMENDATIONS

Gaps between the laws and practice in Serbia and the European standards (CoE THB Convention and for EU Member States also EU Directive on trafficking (2011/36/EU of 5 April 2011), EU Directive temporary residence (2004/81/EC of 29 April 2004) and EU Directive on sanctions against employers of illegally staying third country nationals (2009/52/EC); conclusions and recommendations for changes in anti-trafficking field

General recommendations

- Adopt a new Strategy and National Action Plan for combating trafficking in human beings
- Establish the institute of the National Rapporteur on human trafficking
- Plan and allocate a budgetary line in the budget of the Republic of Serbia for the protection of victims, the prosecution of perpetrators and the prevention of human trafficking.

Prosecution

- Article 388 of the Criminal Code of Serbia should explicitly provide that the consent of a trafficking victim to exploitation, actual or intended, shall be of no relevance where any of the means specified in this Article has been used.
- Article 388 of the Criminal Code of Serbia should explicitly include "non-punishment" clause.
- Amend the Criminal Procedure Act so that it envisages that trafficking victims may claim for compensation only in criminal proceedings in which way the need for civil suit will be eliminated.
- Article 389 of the Criminal Code of Serbia should provide protection to all underage persons, in accordance with the standards set out in the UN Convention on the Rights of the Child, which defines a child as any person younger than 18 years of age.
- The incrimination of Article 388 should include the following elements: abduction and fraud should be

established as means of committing the offence; the fact that the offence of human trafficking has been committed by a state official performing official duties, or when the victim's life has been exposed to danger deliberately or by gross negligence during the committing of the offence should be envisaged as aggravating circumstances; the offences committed in an extremely brutal or degrading manner should be criminalized, so that the offence might be considered as "endangering the life", and the demand set forth by the CoE Convention regarding the definition of endangering the victim's life deliberately or by negligence might be met.

- Improve and formalize cooperation between NGOs and police;
- Standardize the operation of the professionals involved by adopting protocols;
- Provide for the obligation of the court to act on the victim's request for asset rights and compensation;
- Continuously monitor judicial practice and the implementation of existing legislation; coupled with regular independent reporting on problems observed in practice to the competent authorities;
- (Additionally) train the judiciary staff and encourage a proactive approach of the Prosecutors' Office;
- Establish a Compensation Fund.

Assistance and protection of victims

- Define indicators for the identification of children and adult victims in all phases of human trafficking and design new methods that would facilitate self-identification of (potential) victims.
- Adopt a document on minimum standards in the provision of assistance to trafficking victims in all phases of assistance provision and on procedures for the operation of relevant actors that would be based on the principles of respect for victim's will, her/his best interest and non-discrimination. Based on those standards and procedures, all anti-trafficking actors should sign a memorandum of understanding.
- Ensure that NGOs with a history of providing victim care in Serbia are included and integrated in the system of direct victim care, in order to ensure effective care and reintegration assistance.
- Develop and establish special programs for child trafficking victims that will include continual care, from identification to reintegration phase and that would be based on UNICEF Guidelines for Protection of the Rights of Children Victims Trafficking In South-Eastern Europe and empower professionals to apply these measures and new legislation in the field of the rights of the child.
- Systematically solve the problem of urgent care for children victims of trafficking, including the training of foster families and the identification of trainings and work on the sensitization of employees at child-care institutions, and develop specialized reintegration programs for children.
- Define the term "victim" in the Criminal Procedure Code;
- Persistently enforce legal possibilities and court and other proceedings in order to prevent revictimization of trafficking victims.
- Introduce provisions on victims' right not to cooperate with law enforcement as well as on reflection

period.

- Specify the duration of reflection period, i.e. the period necessary for the first stabilization of the victim after she/he has survived a traumatic experience, and apply it persistently.
- Design a procedure for regulating personal documents for domestic nationals in cases when they do not have permanent residence, with full respect of privacy and protection of victim's identity.
- Within the Criminal Procedure Code provide for the possibility that the identity of victim in particularly difficult and dangerous circumstances for the victim remains secret throughout the criminal proceedings, with prospective limitation of the potential evidence of their statement.
- Amend the existing Law on the Protection Program for Persons Participating in the Criminal Proceedings, adopt appropriate measures aimed at protecting the integrity of trafficking victims and train members of the Witness Protection Unit for work with trafficking victims.
- Provide for the obligatory video and audio recording of the testimony of victim and interrogating the victim via a video link or conference call.
- Ensure that trafficking victims are not jailed or punished for crimes committed as a direct result of their trafficking.
- Victims of trafficking shall, without delay, be provided with legal counsel, and in accordance with the role of victim in the proceedings, a legal representative for, among other things, compensation claims.
- Consistently apply the recently adopted Special Protocol on Actions of the Judicial Authorities to Protect Victims of Trafficking.
- Introduce procedures for mandatory collection of information on safety and reintegration possibilities in the country of origin, i.e. introduce procedures based on which feedback information would be received on assistance provided after victim's return to the country of origin.
- Establish a system of free and qualified legal aid for victims of trafficking.
- Develop and implement state-run programs of long-term reintegration for trafficking victims, adjust them to existing reintegration programs and make them available in all mixed/combined cases.

Prevention

- Design and implement policies aimed at reducing poverty and social exclusion, and consequently at reducing vulnerability to human trafficking among the unemployed women, Roma women, unregistered and undocumented women, women with disabilities, women – refugees and IDPs who are exposed to multiple discrimination.
- Start with the implementation of the recommendations of the CEDAW Committee to the Republic of Serbia, in particular:
 - a. Provide training and retraining to unemployed women, including marginalized groups of

women, credit to women entrepreneurs and to those who wish to set up their own business and social security benefits for unpaid family helpers.

b. Prevent systemic indirect discrimination against women in the area of employment.

c. Work intensively on the elimination of all forms of violence against women and children, in particular family violence.

d. Design and implement anti-trafficking activities through a human rights-based and gender-based approach.

- Aim prevention activities at groups of children at risk and at factors that lead to trafficking and exploitation of children, through information-sharing, peer education, economic empowerment, registration of children, education, improvement of basic living conditions of vulnerable groups, as well as through the improvement of decision-making skills and capacities of children and adolescents.
- Include Roma community and Roma non-governmental organizations in all mechanisms of operation aiming at suppressing and preventing trafficking in people.
- Work systemically on child trafficking prevention, preferably through formal education system, intensify efforts to raise awareness of both parents and children about the problem of human trafficking; work on the awareness raising and capacity building of persons who work with children, first and foremost in the area of human trafficking prevention.
- Examine a correlation between human trafficking and sex work and initiate a public debate about sex work that would include all relevant actors.
- Within trainings on the problem of human trafficking for police officers, pay special attention to differentiating between human trafficking and similar offenses, as practice so far shows that, due to lack of experience and insufficient education, as well as due to the lack of evidence, the police and the prosecutor's offices sometimes raise charges for other offenses, but not for human trafficking.
- Design programs for prevention and assistance to the victims of labor exploitation.
- In the field of labor and employment, sign bilateral, i.e. multilateral agreements on employment between Serbia and other countries aimed at human trafficking prevention.
- Trafficking in human beings for the purpose of labor exploitation must be recognized as a problem which results from the situation on the labor market and which does not affect only one industry. In that respect, it is necessary to build and promote such labor market in which labor legislation will be persistently enforced with small share of unregistered labor.
- Establish permanent and proactive cooperation of experts and the media and joint work in the best interest and aimed at protection of integrity of trafficking victims, as well as aimed at informing the public for the purpose of human trafficking prevention.
- Conduct participative analyses and surveys aimed at timely identification of trends, recruitment methods and causes of human trafficking.

- Conduct the analysis of effects and quality of prevention activities carried out to date, as well as the analysis and research of causes and hot spots for human trafficking in the Republic of Serbia, alongside with defining target groups and their needs, for the purpose of designing as effective as possible prevention programs.
- Create a political climate in which it would be possible to implement measures for strengthening an independent civil society.
- Design the indicators for monitoring the implementation of projects in the field of human trafficking by the state and mechanisms for the monitoring and evaluation of effects and cost efficiency of these projects.

LEGISLATION

- Law on Ratification of the UN Convention against Transnational Organized Crime and Protocols Thereto - Official Journal of FRY, International Treaties, 6/2001
- Law on Ratification of Council of Europe Convention on Action against Trafficking In Human Beings - Official Gazette of RS, International Treaties, 19/2009
- Law on Ratification of the Convention on High Technology Crime - Official Gazette of RS, International Treaties, 19/2009
- Law on Ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime - Official Journal of FRY, International Treaties, 7/2002 and Official Journal of SCG, International Treaties, 18/2005
- Law on Ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime - Official Journal of FRY, International Treaties, 7/2002 and Official Journal of SCG, International Treaties, 18/2005
- Law on Ratification of Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism - Official Gazette of RS, International Treaties, 19/2009
- Law on Ratification of the UN Convention on the Rights of the Child - Official Journal of SFRY, International Treaties, 15/90 and Official Journal of SRY, International Treaties, 4/96 and 2/97
- Law on Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography - Official Journal of FRY, International Treaties, 7/2002
- Law on Ratification of Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse - Official Journal of RS, International Treaties, 1/2010
- The International Covenant on Civil and Political Rights - Official Gazette of RS, 7/71
- Constitution of the Republic of Serbia - Official Gazette of RS, 98/2006
- Criminal Code - Official Gazette of RS, 85/2005, 88/2005 – corrections, 107/2005 – corrections, 72/2009, 111/2009 and 121/2012

- Criminal Procedure Code - Official Gazette of RS, 72/2011 and 101/2011
- Law on Civil Proceedings - - Official Gazette of RS, no. 129/2007
- Law on Public Order and Peace - Official Gazette of RS, 51/92, 53/93, 67/93, 48/94, 101/2005 – other law and 85/2005 – other law
- Law on Aliens - Official Gazette of RS, 97/2008
- Social Protection Law - Official Gazette of RS, 24/2011
- Family Act - - Official Gazette of RS, no. 18/2005 and 72/2011 – other law
- Healthcare Law - Official Gazette of RS, 107/2005, 72/2009 – other law, 88/2010, 99/2010 and 57/2011
- Law on Seizure and Confiscation of the Proceeds from Crime - Official Gazette of RS, 97/2008
- Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles - Official Gazette of RS, 85/2005
- Law on the Protection Program for Participants in Criminal Proceedings - Official Gazette of RS, 85/2005
- Law on Personal Data Protection - Official Gazette of RS, 97/2008, 104/2009 – other law, 68/2012 – Constitutional Court decision and 107/2012
- Law on Prohibition of Discrimination - Official Gazette of RS, 22/2009
- Police Law - Official Gazette of RS, 101/2005 i 63/2009 – Constitutional Court decision
- Law on Travel Documents - Official Gazette of RS, 90/2007, 116/2008 and 104/2009
- Law on Asylum - Official Gazette of RS, no. 109/2007
- The Law on the Prevention of Discrimination against Persons with Disabilities - Official Gazette of RS, no. 33/2006
- Law on Professional Rehabilitation and Employment of Persons with Disabilities - Official Gazette of RS, no. 36/09
- Law on Local Self Government - Official Gazette of RS, no. 129/2007
- Bar Law - - Official Gazette of RS, no. 31/2012

SUMMARY AND CONCLUSIONS

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TRAFFICKING IN HUMAN BEINGS

SITUATION ANALYZES IN BOSNIA AND HERZEGOVINA, CROATIA, SERBIA AND FYR OF MACEDONIA

SUMMARY AND CONCLUSIONS



INTRODUCTION

The joint project “Balkans ACT NOW” of ASTRA – anti trafficking action (Serbia), Partnership for Social Development (Croatia), Open Gate – La Strada (FYR Macedonia), International Forum of Solidarity - EMMAUS (Bosnia and Herzegovina), in cooperation with the Netherlands Helsinki Committee, Association ALC and the Comité Contre l’Esclavage Moderne in France, aims to address the situation of trafficking, the rights of victims and the contribution NGOs can have in strengthening democratization processes and the rule of law. A detailed analysis of the situation in the four countries shows that they share a number of problems. These include the overall need to improve the protection of victim’s rights, including their access to compensation and the protection of their personal data, and the need to examine the role that corruption plays in facilitating trafficking and preventing the prosecution of traffickers. Other problems are the detainment of victims and the prosecution of victims for offences they committed as a direct result of their being trafficked.

FAILURE TO SECURE VICTIMS’ RIGHTS

All countries have laws in place to ensure the prosecution of traffickers and the protection of the rights of victims. In practice, however, there are serious gaps in the implementation of these laws. Victims’ rights are often violated in terms of respectful treatment during criminal investigation and trial, the right to protection of their privacy and safety and their access to adequate legal aid. In all countries, there is a lack of resources and specialized service providers available to trafficking victims. In some cases, prosecutors choose to prosecute traffickers for lesser offences such as mediation in prostitution. This not only prevents traffickers from being adequately punished, it also adds to the disrespectful treatment

of victims, as a result of the stigma on prostitution and the widespread idea that prostitutes do not need to be treated with respect.

LACK OF ACCESS TO COMPENSATION

Although the law in all countries allows for the possibility to claim compensation as part of the criminal proceedings, in practice not one victim received compensation, either from their traffickers or from the State. Nor did any victim receive compensation through civil proceedings. In practice, victims are severely discouraged from claiming compensation. In criminal proceedings any claims are, as a rule, rejected or not decided upon on the argument that this would prolong the proceedings. In civil proceedings claims for compensation are prohibitively long and difficult to prove, apart from the fact that victims do not have the financial means to conduct long and expensive legal proceedings. But even if claims are awarded, they are extremely difficult or impossible to enforce because traffickers generally ensure that they have no assets in their own names. States funds for compensation of victims of serious crimes do not exist or are dysfunctional.

DATA PROTECTION

Given the nature of trafficking, the serious risk of reprisals, the prevalence of corruption and the social (and sometimes even criminal) consequences it may have if the predicament of victims become known, especially when they were exploited in the sex industry, careful protection of personal data of victims is imperative. Also, to ensure access to assistance it is key that victims can trust that their data are kept fully confidential by their assistance providers, be it social workers, psychologists or medical staff. This is contrary to the tendency to create and maintain databases with personal data of victims without their knowledge or consent, without it being clear what purpose they serve and who has access, to make access to assistance conditional of sharing victims personal data with the authorities or to oblige social workers to share data about their clients with state authorities, including the police.

DETAINMENT OF VICTIMS

In some cases victims themselves, including children, are detained. They may be detained as irregular or undocumented migrants, as a result of their engagement in illegal activities, such as prostitution, petty crimes or unauthorized work, or because they are unwilling or unable to cooperate in criminal investigations. Another form of detention is the placement of victims in closed shelters or other welfare facilities under conditions akin to detention. This is in violation of their right to freedom of movement and puts victims in a situation in which their being deprived of their freedom by traffickers is only replaced by deprivation of their freedom by the State.

NON-PUNISHMENT OF VICTIMS

Despite international standards that victims should not be prosecuted or punished for offences they were compelled to commit as a direct consequence of their being trafficked, there are several cases where victims themselves have been prosecuted and punished, e.g. for prostitution, begging or petty crimes. This is not only in violation of the principle that one should not be held responsible for a crime one was compelled to commit, it also acts as a serious barrier for victims to come forward and denounce their traffickers.

RELATION BETWEEN TRAFFICKING AND CORRUPTION

Corruption is a major problem throughout all four countries and, unless properly addressed, hinders any effective anti-trafficking efforts. This problem is exacerbated by the economic crisis. Reports include the involvement of police officers or prosecutors in trafficking and criminal investigations or prosecutions that miraculously come to a halt. Also there are instances where fraudulent NGOs have been set up for the sole purpose of receiving funds dedicated to the fight against human trafficking.

CONCLUSION

The above-mentioned problems are of a serious nature and highly complicated. Identification and understanding of these issues are an integral part of the process of improving anti-trafficking responses throughout the region. The detailed analyses of the situation in the four countries have laid the basis for defining the priorities in the implementation of the project. They also confirm the crucial role of NGOs in monitoring and evaluating State responses to trafficking.

IMPRESSUM

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