JOINT PROGRAMME OF UNHCR, UNODC AND IOM TO COMBAT TRAFFICKING IN HUMAN BEINGS IN THE REPUBLIC OF SERBIA

COMPREHENSIVE STUDY ON THE CRIMINAL JUSTICE RESPONSE AND JURISPRUDENCE IN THE AREA OF ANTI-HUMAN TRAFFICKING IN SERBIA

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Comprehensive Study on the Criminal Justice Response and Jurisprudence in the Area of Anti-Human Trafficking in Serbia

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REVIEW OF

the Comprehensive study on the criminal justice response and jurisprudence in the area of anti-human trafficking in Serbia

The Comprehensive study on the criminal justice response and jurisprudence in the area of anti-human trafficking in Serbia, has been developed by a group of experts composed of Prof. Milan Žarković, PhD; Radmila Dragičević-Dičić, Snežana Nikolić Garotić, spec. Gordana Jekić-Bradajić, Miodrag Majić, PhD, and Mioljub Vitorović, under the Joint Programme of the United Nations To Combat Human Trafficking to the United Nations High Commissioner for Refugees, International Office for Migrations, and United Nations Office on Drugs and Crime, and under the auspices of the *United Nations Global Initiative* to Fight *Human Trafficking*. Taking into consideration efforts and achievements so far, as well as the objectives under the National Action Plan to Combat Human trafficking that also refer to the necessity to strengthen the criminal legal system, the authors have provided an in-depth analysis of the existing normative framework of response and of the practice of public authorities, supported by a series of concrete recommendations.

The introductory considerations draw attention to the severity of human trafficking and consequences of drastic violation and disregard of core values, and even of human lives, as well as to the demand for an unambiguous, strong and synchronised response from the international community to this form of usually organised criminal activity in an overwhelming majority of cases.

Having in mind that inappropriate legislation results in a decreased efficiency in terms of prevention and suppression of human trafficking, while at the same time contributing to additional violation of victims` human rights when there is a lack of understanding of the human trafficking phenomenon, the authors have dedicated the second part of the Study to international documents and national regulations of importance for proceeding in this area. The solutions under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organised Crime, and those under the *Council of Europe Convention Against Human Trafficking, have been analysed with particular attention. The normative framework established by the aforementioned documents has served the purpose of conducting an analysis of the previous and of the existing response of the national criminal legislation of the Republic of Serbia to the human trafficking phenomenon. At the same time, certain particularities of defining of human trafficking in national legislations of the neighbouring countries have also been pointed out.*

After reviewing a number of examples of inadequate evaluation of key elements of human trafficking in the practice of national courts presented at the end of the second part of the Study, the authors have conducted an analysis of human trafficking

and similar criminal acts such as human smuggling on one and mediation in prostitution, on the other hand.

In an effort to point out the importance of a comprehensive response of the authorities to criminal acts in general and therewith to different forms of human trafficking, in the fourth part herein the authors have considered issues related to accountability of legal entities, as well as to those associated with proceedings with assets gained by committing a crime. The aforementioned served as a purpose not only to shed light on solutions contained in relevant international legal documents, but also to draw attention to the consideration of the position of human trafficking victims in criminal proceedings and of the existing solutions present in the national legislation in terms of decision making as to a victim's claim as a part of prpoerty law and compensation of damages.

In the subsequent part of the Study, the authors have tackled the aspects of undisputed significance for monitoring, analysis and improvement of criminal justice response to the human trafficking phenomenon pertaining to information on the scope and structure of human trafficking in the territory of the Republic of Serbia. Taking into account that it is somewhat difficult to have a comprehensive perspective of the situation and trends as to human trafficking in the territory of the Republic of Serbia due to lack of a comprehensive methodology of gathering, processing and classification of information on human trafficking, perpetrators and victims thereof, the authors have pointed out common trends, which are contained in reports drafted by various institutions.

The part dedicated to identification of human trafficking victims served as a means utilised by the authors to call attention not only to the significance, but also to problems pertaining to the recognition of human trafficking and victims thereof by police officers, as well as to initial measures and risk assessment that must be carried out.

The part related to providing evidence of human trafficking has been singled out within the seventh part of the Study. The authors have specifically pointed out the fact that insufficiently thorough pre-criminal proceedings result in the failure of overall efforts put in the suppression of this form of criminality. Negative consequences are mirrored in the loss of a victim`s trust in institutions, i.e. in a de-stimulation of a victim in terms of their more active inclusion in the proceeding, thus influencing the establishment of the truth, their own protection and sentencing the perpetrator in a manner that the sentence would reflect the gravity of the criminal act to a significant extent. Along with the presentation of the model, procedures and tactics as to the implementation of concrete measures and actions during the reactive and pro-reactive investigation of human trafficking on both national and international level, this part of the Study draws attention to the necessity and advantages of timely conduct of a financial investigation.

With regard to distinctive features of the position of human trafficking victims as witnesses, the authors have provided an in-depth analysis of procedures and measures reflecting a victim`s readiness to testify in a proceeding, and quality of their statement, in relation to their protection at the process and out-process level. Along with drawing attention to examples of good and poor practice, the authors have presented concrete

measures to significantly improve the existing condition, not only in terms of protection of victims as witnesses, but also of other participants in criminal proceedings. What followed next in the ninth part was tackling particularities of protection measures of minors, not only pertaining the aspect related to the establishment of a special mode of criminal justice accountability of perpetrators of human trafficking involving minor victims, but also with regard to their process role.

The two subsequent parts of the Study include considerations on the coordination and co-operation between the police and other institutions and organisations in combating human trafficking, while pointing out the requisite, achievements and directions of education of personnel employed with the mentioned institutions and organisations.

Finally, the authors have systemised and presented recommendations aimed at the improvement of efficiency of criminal legal repression measures in combating human trafficking in the Republic of Serbia. The aforementioned has been effectuated through recommendations pertaining to a further upgrade of the normative definition of the basic form of human trafficking and a number of qualifying circumstances. Efforts to single out human trafficking of minors as an independent criminal act, as well as to foresee possibilities of recovery of assets, possessions and transport means used for the perpetration of human trafficking (of minors), and temporary or permanent closure of facilities, should also be regarded in this context. Moreover, the authors have stated their views on amendments to the Criminal Procedure Code (introduction of the term victim, i.e. of particularly vulnerable witness and consequential recognition of a series of particularities related to the position and rights of this category of persons).

The present Study is not only tremendously informative and significantly helpful to the scientific and expert public, but it also undoubtedly provides a clear and invaluable contribution to the harmonisation of a formal response to the human trafficking problem in our country with relevant international standards, in terms of both prevention and suppression of this severe criminal act, as well as in terms of protection of victims, since it envisages a comprehensive overview and an in-depth analysis of the existing normative response framework and practice of public authorities in respect of combating human trafficking in the Republic of Serbia, along with specific recommendations for the improvement thereof. The significance and quality of this Study embodied in a comprehensive approach to a very serious problem, brilliant expertise and innovative solutions contained in the Study, account for a strong recommendation for its publishing. Its precision, well structured text and clarity of the style will greatly contribute to making it comprehensible and helpful to both the scientific and expert public, wherein it will most certainly be excellently received.

Belgrade, 02 February 2011

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INTRODUCTION

This *Comprehensive study on the criminal justice response and jurisprudence in the area of anti-human trafficking in Serbia* has been developed in the framework of the Joint Programme (JP) of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) in Serbia. This Joint Programme (JP) has been established under the auspices of the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), and is funded by the Government of Belgium and Government of Switzerland, as well as by the UN.GIFT. The initiative for this Joint Programme was a response to all the requirements formulated in broad consultation with all relevant national and international counterparts, with the aim of creating a programme based firmly on the needs of the NRM in the Republic of Serbia. This Joint Programme is designed to provide support to the Serbian authorities in implementation of their obligations from the UN Convention against Transnational Organised Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as well as other relevant international conventions and national regulatory framework. The Programme will build on the existing achievements in this area, and on the partnership with the Government of Serbia, which will enable creation of a sustainable system to suppress human trafficking and to protect victims.

The overall objective of the Programme is to operationalise the National Action Plan to Combat Trafficking in Human Beings, especially its specific objectives:

1) To strengthen national capacities to implement NAP and to improve coordination within NRM;

2) To create a sustainable framework for systematic prevention of trafficking in human beings among particularly vulnerable groups;

3) To strengthen the criminal justice and police responses so as to improve investigations, trials and adjudication of human trafficking cases;

4) To improve mechanisms for protection and (re)integration of potential and actual victims of human trafficking (children and adults), including those identified within the asylum channels.

To this end, the overall objective of the *Comprehensive study on the criminal justice response and jurisprudence in the area of anti-human trafficking in Serbia* (the Study) is to assist the JP in planning further activities aimed at strengthening the response of criminal justice to trafficking

in persons in Serbia. Based on the Study, the JP will be in a position to draw preliminary conclusions on: 1) legislative framework and judicial practice taking into account the trends noticed in the last 4 years (as of January 1, 2006) concerning AHT in the criminal justice system of the country; 2) mapping of the thus far applied legislative and judicial practice's anti-trafficking activities in the country and their impact; 3) methods proposed for amending appropriate anti-trafficking legal instruments based on statistics and trend analysis identified.

The Study shall be a result of a desk review analysing legislative framework and judicial practice in Serbia in period 2006-2010 with an emphasis placed at: a) legal basis – overview of relevant AHT national legislation vis-à-vis regional and international legislative standards and practices; b) statistics - providing information on investigated, prosecuted and adjudicated HT cases (in all its forms) and c) trends – analysis of statistical data, defining patterns and trends, as well as possible future challenges in the criminal justice sector. The desk review shall comprise of, *inter alia*, analysis and cross-checking of the statistics and reports from different sources e.g. Ministry of Justice, Ministry of Interior, Statistical Office of the Republic of Serbia, High Court Council, State Prosecutors' Council, academic institutions, NGOs, IOs, etc. The desk review may be supported with interviews and/or focus groups with criminal justice practitioners and other relevant stakeholders (AHT National Coordinator, specialized units of the police and border police, prosecutors and judges, representatives of the Ministry of Justice, the Agency for the coordination of the protection of victims, NGOs etc.), case studies, comparative legal analysis etc.

The Study shall include an analysis, comprising the identification of gaps and issues, and mapping of thus far applied anti-trafficking legislative and judicial practice in the country including: a) level of implementation of national legislation vis-à-vis international and regional standards (with a special focus on UN/EU/CoE's legislative standards); b) analysis of national AHT jurisprudence in relation to international and regional judicial practices and experiences being implemented.

In addition to the above, this Study shall also focus on: a review, including gap identification, of the division of tasks and responsibilities among relevant criminal justice actors (law enforcement and judiciary) in investigating and prosecuting HT cases; and how the criminal justice sector relate itself and works together with the NGO sector; an assessment on the use of special investigative techniques (including financial investigations, forensics etc.) in HT cases; and an overview and gap analysis of the witness protection system as applied to victims of human trafficking in Serbia.

The Study should propose measures for amending and harmonizing AHT legal instruments (laws and by-laws) based on statistics, trends and gap analysis identified with the aim to improve efficiency in investigating, prosecuting and sentencing HT cases.

Based on the findings and recommendations of the Study, the Programme will develop Guidelines containing recommendations for criminal justice system and related training programmes for professionals from judicial system and law enforcement agencies.

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In the course of the Study development, in addition to authors, Prof Dr Milan Zarkovic (professor at the Academy of Criminalistic and Police Studies), Radmila Dragicevic-Dicic (acting Chairperson of the Appeal Court in Belgrade), Snezana Nikolic Garotic (judge at the Higher Court in Belgrade – Special Chamber for War Crime), spec. Gordana Jekic-Bradajic (deputy Prosecutor for Organised Crime), Dr Miodrag Majic (judge at the Appeal Court in Belgrade) and Mioljub Vitorovic (deputy Prosecutor for War Crime), the project was assisted by Nevena Dicic and Jovana Zoric from Belgrade Centre for Human Rights.

INTRODUCTORY CONSIDERATIONS

It is worrying that even nowadays, in this modern era, despite general civilisation advancement and development of awareness about the necessity to improve and protect individual rights and freedom, the unscrupulous practice of drastic violation and annihilation of basic values, even human life – human trafficking – is still present. Among many forms of human rights violation and organised crime delicts, human trafficking[1] is distinguished by the amount of illegally gained asset, and unfortunately by the deleteriousness of harmful consequences. The existing modes of canvassing, recruitment, control and exploitation of victims are being modified and adapted to newly formed situations and circumstances, while new modes, as a rule way more perfidious, but also more inhuman, brutal and cruel ones, are being invented and applied with more difficult consequences for victims and community in general. The reason for concern, significantly more serious consideration of measures to oppose this crime and stronger engagement in the area, is also the fact that human trafficking is one of illegal activities with fastest and highest growth rate.

This is a global phenomenon which strikes all the regions and countries of the modern world in various ways and to various extents. Human trafficking, as such, also implies an unambiguous, strong and synchronised response from the international community. Otherwise, the nature of this delict, complexity of the cause, insufficient level of awareness about the existence of this problem, together with insufficiently harmonised criminal and other relevant regulations of vulnerable countries, will result in reduced efficiency of prevention and suppression measures. Not only is inappropriate legislation causing and not only will it cause reduced efficiency in prevention and suppression of human trafficking, but it will also contribute to new violations of victims' human rights in case of non-understanding of the overall situation of human trafficking development. The consequences of such status will be visible through absence of victims' trust in state authorities, absence of cooperation of victims throughout criminal-operational and criminal-processing procedures, as well as through administrative and criminal prosecution of victims. This will simultaneously reduce chances for successful criminal prosecution and appropriate punishing of human traffickers[2].

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[1] Human trafficking is crime against humanity. It is declared and treated so in certain international documents (e.g. Rome Statute of the International Criminal Court – it was introduced in our legal system in 2001, Official Gazette of FRY, no. 5/2001) by certain theroteticists and practitioners

[2] *Regional norm for police training in human trafficking suppression in SEE, Manual,* International Centre for Migration Policy Development, Vienna, 2003, p. 35

INTERNATIONAL DOCUMENTS AND NATIONAL REGULATIONS IMPORTANT IN COMBAT AGAINST HUMAN TRAFFICKING

Definition of human trafficking in the international documents

Tending to change cruel reality of various exploitations and slavery of people, wider social community, including the international institutions, more commonly initiates and implements different measures and activities aimed at prevention and suppression of human trafficking. The efforts made for this purpose are also reflected in definition of legal basis and normative environment, which should make them more effective. The interest of the international community subjects to confront human trafficking and similar activities is inseparable and recognisable in a number of international documents. As most referent ones, the following documents are stressed: The Slavery Convention from 1926; The Forced Labour Convention from 1930; The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others from 1949; The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery from 1956; The Abolition of Forced Labour Convention from 1957; The International Covenant on Civil and Political Rights from 1966; The Convention on the Elimination of All Forms of Discrimination against Women from 1979; The Convention on the Rights of the Child from 1989; The Worst Forms of Child Labour Convention from 1999; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict from 2000; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography from 2000; The EU Council Framework Decision on Combating Trafficking in Human Beings from 2002; The UN Convention against Transnational Organised Crime (hereinafter referred to as: the UN Convention) and the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol); The EU Council Regulation on resident permits for third-country nationals with long-term residence from 2003; The Council of Europe Convention on Action against Trafficking in Human Beings from 2005 (hereinafter referred to as: the CoE Convention).

"Palermo Protocol", paragraph 3 (subparagraph a) defines that human trafficking shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Moreover, exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The same Article (subparagraph b) stipulates that the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth in the first subparagraph have been used. The

recruitment, transportation, transfer, harbouring or receipt of a child (any person under eighteen years of age) for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in the first subparagraph of Article 3.[3]

Taking into account, *inter alia*, the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, and in order to provide for better protection stipulated through these acts and improve standards established by these documents, the Council of Europe Parties and other countries signatories to the Council of Europe Convention on Action against Trafficking in Human Beings have agreed upon and have defined in Article 4 that "trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The CoE Convention, likewise the "Palermo Protocol", has taken the standpoint that the consent of a victim of "trafficking in persons" to the intended exploitation shall be irrelevant where any of the means set forth in the first subparagraph have been used (of the threat, of force or any other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, of giving or receiving of payments or other benefits to achieve the consent of a person having control over another person for the purpose of exploitation).

On the other hand, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in the first subparagraph ("child" shall mean any person under eighteen years of age).

Article 4 of the CoE Convention has defined that "victim" shall mean any natural person who is subject to trafficking in human beings as defined in this Article.

Article 23 of the CoE Convention stipulates that each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences are punishable by effective, proportionate and dissuasive sanctions (when committed by natural persons, penalties shall involve deprivation of liberty which can give rise to extradition, while when committed by legal persons, such penalties shall also comprise non-criminal sanctions, including monetary ones).

Article 2 of the CoE Convention clearly states that provisions thereof shall apply to all forms of trafficking in human beings, whether national or transnational, whether

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[3] The definition stresses and particularly protects persons under eighteen years of age, focuses on different forms of exploitation and recognises various means (manners of denial of victims' freedom to decide and their behaviour) and ways of involvement in trafficking in women and men, both in international and national terms.

or not connected with organised crime. When determining penalties, each member state shall ensure that the following circumstances are regarded as aggravating circumstances: the offence deliberately or by gross negligence endangered the life of the victim, the offence was committed against a child, the offence was committed by a public official in the performance of her/his duties, as well as the offence was committed within the framework of a criminal organisation (Article 24).

In addition, the CoE Convention stipulates that each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty (Article 25).

With regard to the obligation of a country to conduct the effective investigation in compliance with all the mentioned international documents, respecting the right to life, it is interesting to mention the following judgement decided by the European Court of Human Rights:

On 7 January 2010, the European Court of Human rights decided the first judgement for trafficking in human beings, which found Cyprus guilty under several indictment points for failing to protect Oxana Rantseva, citizen on Russia, who died under mysterious circumstances in March 2001.

Twenty-year-old Russian, Oxana Rantseva, had been trafficked from Russia to Cyprus, where under the "*artiste*" visa scheme, she was subjected to sexual exploitation in a cabaret in Limassol. Oxana Rantseva was found dead in March 2001, below the balcony of an apartment belonging to an employee of the cabaret, having been taken there from a police station by the cabaret's owner.

The Court found that Cyprus, the state of destination in this case, had not only failed to protect Oxana Rantseva from being trafficked or from being unlawfully detained prior to her death, but it had also failed to adequately investigate her death. As for the state of origin, the Court found that Russia failed to adequately investigate the way in which Oxana Rantseva had been trafficked from its borders. The Court ordered the Cypriot Government to pay Oxana Rantseva's father the sum of Euro 40,000 in damages and the Russian Government to pay a sum of Euro 2,000. In its judgment, the Court clarified the obligations of states in relation to suppression of trafficking, whether states of origin, transit or destination, noting the importance of cross border coordination.

Noting that, as a relatively modern phenomenon, human trafficking is not mentioned in the 1950 European Convention on Human Rights, the Court found that it fell within the scope of Article 4 of the Convention (prohibiting slavery and forced labour). In its judgement, the Court stated on the positive obligations of states in the context of Article 4 with respect to trafficking, stressing that there is a positive obligation on states to adopt appropriate and effective legal and administrative frameworks, to take protective measures, and to investigate already occurred trafficking cases. The Court deems "indisputable" that the latter obligation involved the need for a full and efficient investigation covering all aspects of trafficking allegations, from recruitment to exploitation. The Court noted that these positive obligations applied to the various states potentially involved in human trafficking as states of origin, states of

transit and states of destination. Given the cross border nature of trafficking, the Court emphasised the importance of cross border cooperation in investigating incidents of trafficking.

As for Cyprus, the Court found that the regime of "*artistes*" visas did not afford practical and effective protection against trafficking and exploitation. The Court also found that the Cypriot police had failed to make appropriate enquiries of Oxana Rantseva in a situation which gave rise to a credible suspicion she had been trafficked. Accordingly, the Court found that Cyprus had failed to comply with its positive obligations under Article 4. Having previously found a violation by Cyprus of its duty to investigate Oxana Rantseva's death under Article 2 (the right to life), the Court found it did not need to deal with the procedural obligation under Article 4.

As for Russia, the Court found there was a failure to efficiently investigate the trafficking in which Oxana Rantseva was a victim under Article 4 of the Convention. The judgement stated that there had been no investigation into how Oxana Rantseva had been recruited, and no steps to identify those involved in her trafficking or their *modus operandi*. Furthermore, it is stated that Russia had the possibility to investigate the individuals and networks responsible for Oxana Rantseva's trafficking; however, it had failed to do so. Accordingly, the Court found Russia guilty for violation of its procedural obligations under Article 4.

Definition of human trafficking in the national legislation

Over the past several years, the Republic of Serbia has been making efforts to combat human trafficking as efficiently as possible.[4] The genesis of human trafficking incrimination[5] introduced in the national legislation through the Law on Amendments of the Republic of Serbia Criminal Code from 2003[6], is related to signing and ratification of the Palermo Protocol[7], as well as to the adoption of recommendations contained in the provisions of the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN Office of the High Commissioner for Human Rights.

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[4] The Republic of Serbia Constitution, Article 26, prescribes that no person shall be held in slavery or in position similar to slavery, as well as that any form of human trafficking shall be prohibited. The same provision prohibits forced labour (forced labour shall also include sexual or economic exploitation of vulnerable persons).

[5] In certain provisions of the Law on Criminal Proceedings (Official Gazette of FRY 70/2001), the issue of conditions and limits for the exercise of certain powers was related to proceedings in criminal activity defined as "human trafficking" even before the introduction of this criminal act into the national legislation (Article 232 for surveillance and telephone or other communication tapping and optical imaging of persons, i.e. Article 535 for the obligation of the entity conducting criminal proceeding to submit data on criminal act and perpetrator to Ministry of the Interior without any delay, and first-instance Court to decide *res iudicata*), and even before for "white slavery" (Article 521 of the Law on Criminal Proceedings from 1977, Official Gazette of SFRY 4/77).

[6] Official Gazette of the Republic of Serbia no. 39, dated 11 April 2003

[7] Introduced into the national legislation through the Law on Ratification of the UN Convention against Transnational Organised Crime and Related Protocols, dated 26 June 2001. Official Gazette of FRY – International Agreements, no. 6/2001.

The observed deviations from the principles proclaimed by international conventions initiated different normative definition of trafficking in human beings as criminal act in the Republic of Serbia Criminal Code.[8] Determination expressed by the Republic of Serbia state authorities to combat trafficking in human beings as efficiently as possible was confirmed through amendments made to the Criminal Code which was adopted by the National Assembly of the Republic of Serbia on 31 August 2009 (Official Gazette no. 72/2009).

Title XXXIV, which defines criminal acts against humanity and other resources protected by international law, with latest amendments from 2009, Article 388 stipulating criminal act of trafficking in human beings, stipulates liability for those who, applying force or threat, practicing or maintaining deception, abusing powers, trust, position of a depending person or person in difficult position, retaining personal documents or giving or receiving payments or other benefits, recruits, transports, transfers, hands over, sells, purchases, mediates in sale, harbours or holds other person for the purposes of exploitation of their labour, forced labour, commitment of criminal acts, prostitution or other forms of sexual exploitation, beggary, use for pornography purposes, slavery or similar practices, removal of organs or parts of the body or for the involvement in armed conflicts shall be sentenced to three to twelve years imprisonment.

Regulatory provision which pertained to persons under fourteen years in age (children) contained in Article 111b, paragraph 4 of the Republic of Serbia Criminal Code, has been extended in the Criminal Code (compliant with the provisions of the "Palermo Protocol") to all minor persons (persons under eighteen years in age). Accordingly, Article 388, paragraph 2, prescribes that penalty prescribed for criminal act referred to in paragraph 1 of this Article committed against minor person shall be applied to a perpetrator even when they have not applied force, threat or any other mentioned method.

Qualified form and more serious sanction (minimum five years imprisonment) have been set forth in paragraph 3 if the act referred to in paragraph 1 has been committed against minor person. Qualified form of human trafficking as criminal act, set forth in paragraph 4, is related to those act situations referred to in paragraphs 1 and 3, which include serious physical injury of a person (the perpetrator shall be sentenced to five to fifteen years imprisonment). If the commitment of act referred to in paragraphs 1 and 3 resulted in death of one or more persons, the perpetrator shall be sentenced to ten years imprisonment minimum (paragraph 5). Sentence of minimum five years imprisonment has been prescribed for perpetrators committing crime referred to in paragraphs 1 to 3, i.e. acts committed by a group (paragraph 6), while paragraph 7 stipulates sentence of minimum ten years imprisonment if criminal act has been committed by an organised criminal group.

From the aspect of criminal justice prevention of human trafficking, very important amendments of the national legislation have been made in Article 388,

[8] "Official Gazette of RS", no. 85/2005, 88/2005, 107/2005.

paragraphs 8, 9 and 10, which are the example of a direct and efficient application of the CoE Convention. They have stipulated liability for those who knew or might have known that a person was a victim of human trafficking, who then abused such position or enabled third persons to abuse such position for the purpose of exploitation referred to in Article 388, paragraph 1. The person who has committed such human trafficking crime shall be sentenced to six months to five years imprisonment (Article 388, paragraph 8). If the crime referred to in paragraph 8 of this Article has been committed against a person for whom the perpetrator knew was minor, the perpetrator shall be sentenced to one to eight years imprisonment (Article 388, paragraph 9).[9]

More efficient prosecution of human traffickers, hence the prevention of human trafficking, will be contributed by a provision referred to in Article 388, paragraph 10, which prescribes that the consent of a person to the intended exploitation or slavery or similar practice referred to in paragraph 1 of this Article shall not affect the occurrence of criminal act referred to in paragraphs 1, 2 and 6 of this Article.[10]

The amendments from 2009 also increased a particular minimum (from two to three years imprisonment) and a particular maximum (from ten to twelve years imprisonment) for basic form of human trafficking crime referred to in Article 388, paragraph 1. Retaining the absolute maximum of twenty years, the particular minimum was increased from three to five years in the case that basic form of the crime was committed against minor person (Article 388, paragraph 3). The particular minimum was increased from three to five years in the case that due to crime referred to in Article 388, paragraphs 1 and 3 caused serious physical injury (paragraph 4), while maximum is prescribed at 15 years imprisonment.

Article 389 of the Republic of Serbia Criminal Code defines Trafficking in children for adoption as a separate criminal act. Within this regulation, a solution from 2009 stipulates the following liabilities: for the one who takes a person under fourteen years in age for adoption, for the one who adopts such person or mediates in such adoption, or the one who purchases, sells or hands over, transports, harbours or conceals the person under fourteen years in age for that purpose. A sentence of one to five years imprisonment has been prescribed for this crime.

For the qualified form of criminal act referred to in Article 389 (the person who commits crime referred to in paragraph 1 of this Article, or the crime has been committed in organised way, by more than one person), paragraph 2 stipulates a sentence of minimum three years imprisonment.

Amendments made to criminal legislation in 2009 are reflected in the extension of protection to persons up to sixteen years in age. The provisions expressing more stringent penalty reaction are related to cases in which criminal act has been committed by an organised group. Instead of three years imprisonment as minimum, the perpetrator shall be sentenced to minimum five years imprisonment (Article 389,

[9] These amendments meet obligations referred to in Article 19 of the CoE Convention, which stipulates criminalisation of victim's services exploitation.

[10] The consent of a victim to the exploitation may be irrelevant, as also stated in the UN Convention (Article 3) and CoE Convention (Article 4)

paragraph 3). More stringent sentencing (minimum three years imprisonment) has been introduced through the amendments for the cases where crime has been committed by a group (Article 389, paragraph2).

It may be said that solutions contained in relevant national legislation in place in terms of human trafficking as criminal act are compliant with the recommended principles of investigation and prosecution of human trafficking. The contents of the amendments contained in new incriminations, are certainly contributed by the activities implemented in compliance with the standpoint which stresses that successful and realistic strategies to combat crime must be based on accurate and current information, experience and analysis. The same can be said for sanctions, as well. Yet, although recognising proportionally higher sanctions for persons found guilty for human trafficking in difficult circumstances, including trafficking in children, current criminal law still does not stipulate more stringent sanctions for those forms of human trafficking as crime in which perpetrators are public officials.[11]

The importance that is given in the national legislation to find a way for adequate sanctioning of perpetrators in general, including those who committed human trafficking, is also visible in changes of provisions pertaining to limits of imprisonment sanction reduction. First of all, the legislator has introduced a new limitation if a sentence of ten or more years imprisonment has been prescribed as the lowest sanctioning measure for a criminal act. In such case, the sanction can be reduced only up to seven years imprisonment (Article 57, paragraph 1, point 1). Even in such more stringent conditions for sanction reduction, the legislator has excluded the possibility to reduce sanctions for certain criminal acts, including human trafficking (Article 57, paragraph 2).

Some of the specifics in definition of human trafficking as criminal act in the national and legislation of countries in the region

In order to avoid unnecessary repetition, the following text will contain only those solutions contained in legislations of those countries that can serve as illustration of more or less adequate normative responses to human trafficking phenomenon, hence as an additional argumentation for finding more adequate responses in the national legislation to certain disputable issues related to human trafficking crime. It is necessary to stress that illogicality of certain legal solutions contained in criminal legislation of the Republic of Serbia, in terms of sanctions prescribed for trafficking in minor persons, is recognisable in certain provisions contained in the Criminal Code of Montenegro.[12] This is also visible with a qualified form of human trafficking as crime, namely in cases when serious physical injury of a person has occurred due to the act

[11] In many cases, people hesitate to report on human traffickers because they do not have confidence in police or judicial system. These problems are becoming more complex when law enforcement officers are involved or are associates in human trafficking cases. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, the UN Office of the High Commissioner for Human Rights, 2002, p.14

[12] Criminal Code of Montenegro (Official Gazette of RM, no. 70/03, 47/06, 40/08 and 25/10).

referred to in Article 444, paragraphs 1 and 3 of this Article, for which a sentence is prescribed of one to twelve years imprisonment (paragraph 4). Minimum of ten years imprisonment shall be pronounced to a perpetrator if acts referred to in paragraphs 1 and 3 resulted in death of one or more persons (paragraph 5). The legislator has prescribed a sanction of one to twelve years imprisonment for crime qualified by serious physical injury of a victim, who could also be a minor person, which is opposite to previously accepted logics to stipulate more stringent sanctions for perpetrators who committed human trafficking crime against minor persons. This was done so that the legislator defined shorter imprisonment sanction as a particular minimum for crime followed by a serious conseqence than the one stipulated for basic form of crime committed against the minor person (one versus three years). On the other hand, a particular maximum has been limited, at the level of twelve years imprisonment for the qualified form of crime, while in the case of a basic form of crime committed against the minor person such particular maximum is related to the general one, and it amounts to twenty years.

Inconsistency in stipulation of a special protection regime is recognisable in Criminal Code of the Republic of Croatia, which *inter alia* stipulates liability of the one who, knowing that a person as a victim of human trafficking is exploited for forced labour, servitude, sexual exploitation, slavery or similar practice, prostitution or illicit transplantation of human body parts, abuses the victim's position or enables third persons to abuse such position. For the committed act, a sanction of three months to three years imprisonment can be pronounced (Article 175, paragraph 3).[13] The legislator is hence not consistent with previously accepted logics of more stringent sanctioning of human traffickers whose victims were minor persons, and does not stipulate more stringent sanctioning for the cases in which victims are under eighteen years in age, even not for those who are under fourteen years in age. In addition, there is no special protection of minor persons in Article 175, paragraph 3, which, as more serious forms of acts referred to in paragraphs 1 and 2, separates acts committed by a group or criminal organisation, those committed against several persons, i.e. those that resulted in death of one or more persons. In the mentioned cases, the perpetrator shall be sanctioned to minimum five years imprisonment or long-term imprisonment. The amendments from 2008 introduced an additional qualification circumstance, which is not prescribed by the Republic of Serbia legislation (along with the one related to an act committed against several persons), which pertains to the situation in which criminal act has been committed by a public official. A sanction of minimum five years or long-term imprisonment is prescribed for such criminal act (Article 175, paragraph 3).

Criminal Code of Bosnia and Herzegovina, Title XVII – Criminal acts against humanity and values protected by international law, stipulates human trafficking as independent criminal act (Article 186). The solution that was accepted in Criminal Code of Bosnia and Herzegovina from 2003 was to a great extent amended with regard to

[13] Official Gazette, no. 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 71/06, 110/07 and 152/08

sanctions in 2010.[14] Article 186, paragraph 3 stipulates that sanction of minimum five years imprisonment shall be pronounced to a public official who committed crime referred to in paragraphs 1 and 2 while performing official duties. Just to remind, current Criminal Code of the Republic of Serbia does not recognise this qualified form, although it used to prescribe it, and it stipulates it nowadays for criminal acts of illicit border crossing and human smuggling (Article 350, Criminal Code of the Republic of Serbia). Criminal Code of Bosnia and Herzegovina also contains another solution which is not adopted in Serbia in such comprehensive manner. This solution pertains to incrimination of forgery, obtainment or issuance of travel or personal identification document, as well as use, retention, withdrawal, changing, damaging, destruction of personal or travel identification documents so in order to enable human trafficking crime. For this act referred to in Article 186, paragraph 4, a sanction of one to five years imprisonment has been prescribed.

Criminal Code of Macedonia was amended several times between 2002 and 2009.[15] Doing so, there is no any amendment made to the Criminal Code which did not pertain to human trafficking, wherat the amendments were primarily aimed at the extension of liabilities of perpetrators for various forms of exploitation, more extensive than those prescribed by the Palermo Protocol (2004) and special protection of minor persons. The country's resolution to combat human trafficking more decidedly is visible in prescription of ever more stringent sanctions, especially for qualified forms. After the amendments from 2008, trafficking in minor persons has been separated as a particular criminal act in Article 418g, and from September 2009, public officials who commit crime of human trafficking shall be sanctioned with minimum eight, i.e. ten years imprisonment (if victim is a minor).

Criminal legislation of the Republic of Slovenia has recognised human trafficking crime since 2004.[16] Amendments of the current law introduced changes in Article 387-a which stipulates liability for the one who purchases another person, takes possession of them, harbours, transports, sells, delivers or disposes with such person in any other way, or acts as a mediator in such operations, for the purpose of prostitution or other form of sexual exploitation, forced labour, enslavement, servitude or trafficking in organs, human tissues or blood. For such defined basic form of criminal act, it is just enough to commit some of the mentioned operations with the purpose to achieve any of the aims stipulated by the law. The law stipulates one to ten years imprisonment as a sanction (paragraph 1). More stringent sanctions are stipulated for perpetrators who commit crime against persons under eighteen years in age, as well as for those who committing the crime used force, threat, deception, or abuse of a subordinate or dependent position, i.e. for acts committed with the purpose of forcing towards pregnancy or artificial insemination. For such defined qualified form of human trafficking referred to in paragraph 2, a sanction of minimum three years imprisonment

[14] Official Gazette of BaH, no. 3/03, 32/03, 37/03, 54/04,61/04,30/05,53/06,55/06,32/07 and 8/10
[15] Official Gazette of the Republic of Macedonia, no. 04/02, 43/03, 19/04, 60/06, 7/08, 139/98 i 114/09
[16] Criminal Code (Official Gazette of the Republic of Slovenia, no. 95/2004)

has been prescribed (although the law recognises imprisonment sanctions of twenty or thirty years, a general legal maximum of imprisonment is fifteen years – Article 37). The sanction referred to in paragraph 2 shall be pronounced to the one who committed crime referred to in paragraphs 1 and 2 as a member of criminal group, i.e. the one who gained huge assets committing the crime. The same solutions in terms of criminal justice protection of victims and sanctioning of perpetrators, in Article 113, are stipulated of the Criminal Code from 2008.[17]

Some examples of inadequate assessment of key elements of human trafficking crime in the national courts practice

Looking through the national court practice, it was observed that in certain cases, and applying the existing legal regulations, the decisions made on the basis of doubtless facts, were unsuitably weak. The examples related to crime committed against minors are particularly illustrative, whereat such cases included abduction as a form of commitment, as well as cases committed by public officials. The Trafficking in Persons Report of the US Department of State dated on 14 June 2010 also states that the Republic of Serbia Government did not completely meet minimal standards for suppression of human trafficking, but it made efforts to do so, as well as that the Republic of Serbia Government has made substantial progress in its activities aimed at suppression of human trafficking in 2009, but sanctions pronounced to the convicted traffickers and their associates who were civil servants still remained weak.

The indictment initiated in 2008 accused a group of four persons that they, as an organised group, had committed human trafficking crime referred to in Article 388 paragraph 6 related to paragraph 1 of the Criminal Code (minimum five years imprisonment). When pronouncing the verdict (K-270/08), first instance court, omitting the wording "as an organised group", qualified this act as an act referred to in Article 388 paragraph 1 in complicity related to Article 33 of the Criminal Code (two to ten years imprisonment) and pronounced the sanction of two years and six months imprisonment for each of the convicts. Doing so, the court qualified the criminal act of qualified form falling under competence of District Court as a basic form falling under competence of the 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 convicts because, although defining the convicts an organised group in the rationale of the verdict, the court omitted this qualification in the verdict pronouncement. During the procedure, the injured parties spoke in details and precisely described actions of every single defendant, exposing themselves to ultimately uncomfortable questions from barristers, even from the defendants themselves. The court also confronted the witnesses with the defendants (although law stipulates the possibility of confrontation between defendants and witnesses, the court does that regularly as if confrontation was the obligation prescribed by law).

[17] Criminal Code (Official Gazette of the Republic of Slovenia, no. 55/08, 66/08, 39/09)

In another case, in which the initiated indictment accused two persons of committing human trafficking (Article 388, paragraph 6 related to paragraphs 3 and 1 of the Criminal Code of RS, minimum five years imprisonment) as an organised group in complicity with persons already convicted by Special Court in Podgorica, the court convicted the principal defendant (verdict K-1891/08), sanctioning him with four years imprisonment, while secondary defendant was sanctioned with two years and six months imprisonment, explaining its decision to pronounce sanctions below the legal minimum that principal defendant was a younger person, while 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 the minor victim, expressed a particularly strong persistence in the commitment of crime, bearing in mind that he had spent two months in a hotel in the minor injured party's town convincing her and her parents of his fake promises – he would get married with the minor victim, he was a foreigner (person of Albanian nationality from AP Kosovo and Metohia), he wanted to take her to the sea, fulfilling her wish to see the sea (the taped material obtained in phone tapping clearly showed that he was arranging the price for the girl, intending to sell her in AP Kosovo and Metohia). The court also found no aggravating circumstances on the side of the secondary defendant either – a retired police officer – stating in the rationale that his role in this specific case in the organisation was only to arrange for transport for the defendant and the injured party between Subotica and Kosovska Mitrovica, obtaining certain fee for such service.

The following example serves as illustration of the need for improvement of normative framework in terms of stipulation of a special regime of sanctions for public officials, showing the acting of judicial bodies in the case in which police officers from Vrsac police department were accused. Although this crime was committed at the time when our legislation did not recognise human trafficking as criminal act, but the bases for prosecution and sanctioning of perpetrators were provisions pertaining to liability for illegal deprivation of liberty, establishment of slavery and transport of enslaved persons, it is obvious that certain practitioners did not recognise the overall tragedy of the act of sale and exploitation of persons in general, especially in the cases which involved public officials. Police officers were convicted at the District Court of Pancevo in 2006 (K129/02) for criminal act of taking bribe referred to in Article 245, paragraph 1 of the then Criminal Code of RS, because in 2001, as police officers belonging to border police section did not escort two female citizens of Romania, to whom residence in Serbia had been prohibited, to the Romanian border; instead, they took the girls to Belgrade, delivered them …… and got 1,000 DEM from …… who, as the owner of …… club, had purchased the girls earlier and had exploited them, and brought them back to the club. The act was discovered in November 2001, when the girls gave their statements in the investigation procedure. The indictment was initiated in 2002, and only in April 2006, a first degree decision was made, finding the defendants guilty, and pronouncing sanctions of six months imprisonment each, without the obligation to return the assets illegally gained in the act. The court decision was confirmed in the second degree procedure in November 2006 (Kž 1958/06).

The following example also serves as the foothold for the statement about the prevailing mild penalty policy towards human traffickers. The verdict (K 756) was pronounced for criminal act in which a …… was convicted because he had created and abused dependant and debt position established in the way that he had been lending money for heroin to the injured party in order to, once the debt increased, persuade her to prostitute herself for him in Italy, transported her to Croatia and hiring a person from this country provided her with fake documents with Croatian name, then transported her back to Italy and involved her into street prostitution, imposing the obligation that she had to earn 500 Euros a day. After her first return to Serbia, the injured party was transported back to Italy and forced into prostitution. The defendant also threatened her mother, who lives in Serbia. When the injured party returned to Serbia again, the defendant visited her and her mother and assaulted them physically. For the criminal act which included exploitation of the injured party through prostitution for a year and a half (from May 2003 to November 2004), the perpetrator was sanctioned with 9 months imprisonment, i.e. the sanction below the legal minimum, while the verdict stated usual factors as mitigating ones.

HUMAN TRAFFICKING AND RELATED CRIMINAL ACTS

Human trafficking – human smuggling

The UN Convention on Transnational Organised Crime and related protocols stress the need to distinguish the phenomena of human trafficking and migrant smuggling.[18] In the part about trafficking in women, it is reasonably emphasised that traffickers manipulate and distort migration process in order to achieve their criminal goals, but it is also stressed that it is necessary to remember that some people leave their homes voluntarily (legally or illegally), looking for better life, so it would be wrong to assume that every person who is either illegal migrant or is under suspicion of illegal migration at the same time a victim of human trafficking. Although it is pointed out that human trafficking is a special form of abuse of migration, and it is stressed within guideline 2 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking that trafficking means more than organized movement of persons for profit, while presence of force, coercion or deception throughout or in a part of the process is emphasised as an additional factor that separates human trafficking from immigrant smuggling, whereat deception, force or coercion is used for the purpose of exploitation.[19]

A potential migrant is, as a rule, the one who contacts the smuggler and he/she know that they are smuggled at the border, unlike the person selected by traffickers as

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[18] *Regional norm for police training in human trafficking suppression in SEE, Manual,* International Centre for Migration Policy Development, Vienna, 2003, p. 20

[19] *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, adopted by the High Commissioner for Human Rights, 2002, p. 9.

their victim, who at that moment usually knows nothing about his/her destiny as human trafficker's victim.[20]

Looking through the prism of object protection, human smuggling is a delict against a country whose border and migration regulations are violated, while human trafficking is a serious delict against victims, and it includes a sort of exploitation after crossing the state border legally. In addition, unlike illegal migrations which imply illegal international borders crossing based on voluntarily made decision, and hiring of a smuggler who, upon the advanced payment (in large majority of cases), helps the migrant to illegally enter the country of their choice, human trafficking does not have to imply border crossing (in cases of interior human trafficking).

Doubts that emanated from legal redaction of illegal border crossing and human smuggling as criminal acts referred to in Article 350 paragraph 2 of the Criminal Code (Official Gazette of RS, no. 85/2005, 88/2005, 107/2005) and interpretation present in doctrine in terms of who could be a passive subject, resulted in court decisions which directly affected the efficiency of combating perpetrators of this criminal act. This is also indicated by the decision made by the Supreme Court of Serbia (Kzz no. 141/07), which states that indications contained in request for protection of legality of the Republic Public Prosecutor are groundless since the request indicated that rulings made by the Municipal and District Courts in Subotica violated Criminal Code in terms of Article 369, paragraph 1, point 1 in relation to Article 274, paragraph 1, point 1 of the Law on Criminal Proceedings, in relation to Article 350, paragraph 2 of the Criminal Code, taking into account that other person to whom it is enabled to cross the state border illegally, to obtain illegal residence or illegal transit, cannot be the citizen of the Republic of Serbia, i.e., such person is a passive subject who can only be a foreigner (foreign citizen or the so-called *apatride*, i.e. person without citizenship).

Amendments of the Criminal Code from 2009 (Official Gazette 71/09) made in Article 350 specified precisely the wording of the law in terms of passive subject, since it does not mention citizenship of a smuggled person. This made a significant progress towards more efficient prevention and suppression of smuggling of all persons (including national citizens), hence of all harmful phenomena related to this criminal act, as well as of consequences it may cause (including exploitation of previously smuggled persons). At the same time, conditions and circumstances that surround smuggling as criminal act coincide with those surrounding human trafficking. For example, potential victims of human trafficking, as well as other smuggled persons, are required to pay for illegal transfer over the border, although the perpetrator's real intention is to establish exploitation over the smuggled persons in the destination country. The money is taken to conceal such intention and control the victim more easily. On the other hand, decision to exploit the smuggled person may be made by the perpetrators even after contacting the smuggled person in some of the phases of transfer or during their hiding in the destination country, using all the advantages of risk and difficult position of the

[20] *Regional norm for police training in human trafficking suppression in SEE, Manual,* International Centre for Migration Policy Development, Vienna, 2003, pp. 42 and 44.

smuggled persons. It is possible, and happens in the practice, that the same transfer routes are used, i.e. the same perpetrators are hired for transfer, transport and hiding of smuggled persons, as well as for transfer, transport and hiding of victims of human trafficking.

Human trafficking – intermediation in prostitution

Dealing with disclosure and prosecution of perpetrators committing this type of crime in practice, it was observed that earlier legal solutions extended the already large space for classification of human trafficking with other criminal act with milder sanctions prescribed, including qualification of the act of intermediation in prostitution (Article 184 of the Criminal Code of RS). Such practice is present even nowadays, resulting in fragmentised criminal prosecution for certain acts, i.e. for one or more less serious criminal acts, which are not observed as a whole or in their mutual relations. Therefore, opportunity to pronounce sanctions adequate to seriousness of the committed acts and deleteriousness of their consequences is not used. This is also corroborated by data on the pronounced sanctions which are unsuitably mild and below the particular legal minimum for the basic form of criminal act of human trafficking. As for criminal act of intermediation in prostitution, not only is the prescribed sanction milder, but this qualification also excludes the possibility to apply a range of efficient measures against perpetrators (special evidence collection activities, asset recovery).

Although human trafficking is legally recognised in the Republic of Serbia as a form of organised crime as well, it still has not been completely recognised in practice in an adequate way; therefore, it is necessary to define elements through new legal solutions so as to distinguish this from the other, in certain elements, related criminal acts. Failure to distinguish intermediation in prostitution and exploitation of victims through forced prostitution, is most commonly reflected through absence of recognition of coercion, deception or abuse indicators expressed by traffickers who control and exploit the victims.

More generally, sanctioning for intermediation in prostitution stipulated in the national legislation is related to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, New York, 2 December 1949, ratified by our country in 1950. Article 1 of the Convention stresses that the parties agree to punish any person who, to gratify the passions of another recruits, entices or leads away, for purposes of prostitution, another person, even with the consent of that person, i.e. to punish person who exploits the prostitution of another person, even with the consent of that person.

According to the national legislation, intermediation in prostitution implies inducement or instigation of another person for purposes of prostitution or participation in delivery of a person to another one for prostitution, as well as promotion and advertising of prostitution through media and other similar means. Sanction of six months to five years imprisonment and a fine has been stipulated for this act. If the act is committed against a minor, the perpetrator shall be sanctioned with one to ten years imprisonment and a fine.

Intermediation in prostitution activities are stipulated alternatively, as inducement, enticement or instigation, then as assistance in exploitation of prostitution through participation in the delivery of a person to another one for purposes of prostitution. The act can be committed through promotion or advertising through public media and other similar means. It is emphasised with a particular reason that, when it is about inducement of prostitution, especially when it is about abusing of a situation specifically created so as to induce or entice another person to prostitution, one should be cautious because it may happen that such act is actually act of human trafficking referred to in Article 388 of the Criminal Code of RS. If coercion or inducement were performed in one of the ways defined in Article 388 of the Criminal Code of RS, or against a minor, that would be a criminal act of human trafficking, not intermediation in prostitution.[21] The criminal act of intermediation in prostitution could be talked about e.g. in a situation which implies relating a client to a prostitute free of charge, or with a charge, type and value of which would be defined dominantly and in free will by a person who prostitutes her/himself, who in the case of previous arrangement retains the option to choose and reject clients, to define a way, type and manner of hiring, to make a decision on termination of prostitution, etc.

When participating in delivery of a person to another one for prostitution, it is also necessary to define criteria to distinguish criminal acts of intermediation in prostitution and human trafficking. In principle, intermediation in prostitution could not be possible if a person who is supposed to be delivered to another one has not agreed with such act. Of course, even a voluntarily assent does not have any importance if it is obtained in any of the ways stipulated by Article 388 of the Criminal Code of RS, i.e. if a person delivered for purposes of prostitution is exploited.

A special problem is related to the fact of negligence of provisions stipulating that for the existence of criminal act of human trafficking through exploitation of minors it is not necessary to prove use of force, threat or other forms of commitment, but only the commitment of any of the acts stipulated by law committed for purposes of exploitation of minors. Taking into account that the most common motive for the commitment of criminal act of intermediation in prostitution is profit, i.e. exploitation of prostitution, criminal act which has minors as passive subjects virtually does not exist in practice. Theoretically, such situations are possible as well, e.g. if the goal of a person who induces a minor to prostitution or assists that minor in such their intention to revenge parents, brother, sister or another person close to the passive subject who cares about keeping reputation of the passive subject and closely related persons thereof. In addition, it may happen that perpetrator is the person who prostitutes her/himself, so inducement or assistance is done with the aim to find adequate company in joint venture. If it is about inducement or assisting in prostitution aimed at exploitation of prostitution, which in practice happens regularly, and passive subject is a

[21] For more information: Delibašić V., *U kandžama prostitucije, krivičnopravni aspekt prostitucije,* Čigoja, Beograd, 2010, str. 52 – 64. (Delibašić V., *In Prostitution Claws, criminal justice aspect of prostitution,* Čigoja, Belgrade, 2010, p. 52-64)

minor, this would not be qualified as a form of criminal act of intermediation in prostitution, but as human trafficking. This is because terms "induces or entices" (Article 184 of the Criminal Code) basically correspond to term "recruits" (Article 388 of the Criminal Code), while term "delivery" is used in descriptions of commitment of both intermediation in prostitution and human trafficking as criminal acts.[22]

As an illustration of wrong assessment, here is the standpoint of the District Public Prosecutor Office in Belgrade, expressed in the draft legal qualification of criminal act in the indictment Kt no. 1170/08 dated 19 September 2008, which states that the defendant induced a minor to prostitution in the period May – June 2008 in Belgrade, supporting her wish to prostitute herself and promised her certain benefits from prostitution, as well as protection against aggressive clients, in order to gain material benefit in the form of major part of assets earned by the injured party by providing sexual services, which meant that he had committed criminal act of intermediation in prostitution referred to in Article 184, paragraph 2 of the Criminal Code o RS.

An example of inadequate legislative solution in terms of distinguishing criminal acts of human trafficking and intermediation in prostitution is also found in the Criminal Code of the Republic of Croatia. Article 195 which prescribes sanctions for criminal act of pandering, paragraph 3, states the following "Whoever, for profit, by force or by threat to use force, or by deceit forces or induces another to offer sexual services." It is more than obvious that this specific case means human trafficking which includes force or threat and exploitation.

LIABILITY OF LEGAL ENTITIES AND DEALING WITH ASSETS GAINED IN HUMAN TRAFFICKING

In order to understand normative framework of combat against human trafficking at the international legal instruments level, it is necessary to bear in mind other numerous provisions, primarily those contained in the UN Convention against Transnational Organised Crime, supplemented by Palermo Protocol, making its constituent part. Hence, provisions about e.g. criminal, civil, i.e. administrative liability of legal entities are significant ones. Moreover, each State Party shall ensure that legal entities held liable in accordance with this Article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (Article 10 of the UN Convention). The provisions about the need to introduce liability for legal entities are also contained in the CoE Convention (Article 22).

Both UN and CoE Conventions pay attention to the issue of confiscation and seizure of proceeds and assets gained in criminal acts treated by these conventions. Article 12 of the UN Convention stipulates that issue of confiscation and seizure is

[22] *Ibidem*

related not only to the proceeds derived from acts treated by this Convention, but also to the property value of which corresponds to the value of such proceeds; property, equipment or other instrumentalities used in or intended for use in acts treated by this Convention. At the same time, if the proceeds derived from crime have been transformed or converted, in part or in full, into some other property, such property shall be liable to measures referred to in this Article, instead of the mentioned proceeds. If the proceeds derived from crime have been intermingled with property acquired from legitimate sources, such property shall be, without prejudice to any powers related to freezing or seizure, liable to confiscation up to the assessed value of the intermingled proceeds. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted, or from property with which proceeds of crime have been intermingled, shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.

The UN Convention stipulates that State Parties shall adopt all necessary measures so as to enable identification, tracing, freezing or seizure of any of the items referred to in Article 12, paragraph 1 for possible confiscation. For the purposes of this Article and Article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that banking, financial or commercial records are made available or seized. State Parties shall not decline to act in accordance with the provisions of this paragraph on the basis of bank secrecy. States Parties may consider the possibility of requiring that a perpetrator demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their national laws and with the nature of the judicial and other proceedings.

It is necessary to mention that respecting of recommendations and guidelines which should improve efficiency of combating human trafficking implies such legislative activity that will enable freezing and confiscation of property of private and legal entities involved in human trafficking. Recommendations to use confiscated property, as much as possible, to provide support and compensation to victims of human trafficking are in accordance with this idea.

In order to achieve the proclaimed aims, the CoE Convention (Article 23, paragraphs 3 and 4) also stipulates that each State Party shall adopt legislative and other measures so as to be able to seize or otherwise recover assets or proceeds derived from crime stipulated by the Convention, or property the value of which corresponds to such proceeds. In addition, each State Party shall adopt legislative or other measures that will enable temporary or permanent closure of each establishment used for human trafficking, without prejudice to the rights of third parties who acted in good faith (*bona fide* parties), or to deny the perpetrator, permanently or temporary, the exercise of the activity in the course of which the act was committed.

With regard to the mentioned, it is necessary to stress that the Republic of Serbia has adopted two very important laws: Law on Liability of Legal Entities for Criminal Offences (97/08) and Law on Criminal Assets Forfeiture. In the way which transposes recommendations contained in the mentioned UN and CoE Conventions, the

Law on Liability of Legal Entities for Criminal Offences more closely defines conditions, i.e. bases and limitations of liability of legal entities for criminal offences. Article 6 stipulates that a legal entity shall be held accountable for criminal offences which have been committed for the benefit of the legal person by a responsible person within the powers thereof. The liability of legal entity shall also exist where the lack of supervision or control by the responsible person allowed the commission of crime for the benefit of that legal entity by a private entity operating under the supervision and control of the responsible person. Liability of legal entities shall be based upon culpability of the responsible person. Under the conditions referred to in Article 6 of this Law, a legal entity shall be held accountable for criminal offences committed by the responsible person even though criminal proceedings against the responsible person have been discontinued or the indictment refused.

With regard to the Law on Criminal Assets Forfeiture, it can be said that no sanction, not even a long-term imprisonment one, has provoked such reactions as asset forfeiture. This, as well as the fact that financial gain is one of the basic motives for commitment of serious crime, including human trafficking, makes the relying on this instrumentality to combat crime so necessary. Scope of the intervention and effects of measures undertaken compliant with Article 17 of the Law on Criminal Assets Forfeiture is seen in the fact that only the prosecutor for organised crime initiated financial investigation against more than 250 persons since 1 March 2009, while value of temporary seized property exceeds 300 million Euros.

In the context of position of the victims of human trafficking in criminal proceedings, it is necessary to observe legislative solutions and existing practice in terms of decision making related to the victim's claim under property law and compensation for damages. This is also seen through a prism of international documents ratified by the Republic of Serbia, which relate compensation mechanisms and suppression of organised crime through seizure and forfeiture of illegally gained assets (Article 25, paragraph 2 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism[23]). International legal documents stipulate that compensation should be awarded to victims of violent crime even in cases when perpetrator cannot be prosecuted or sanctioned (European Convention on the Compensation of Victims of Violent Crimes, Articles 2 and 3, adopted in Strasbourg on 24 November 1983). Obligation prescribed in Article 6, paragraph 6 of the Palermo Protocol should be taken into account since it stipulates that each State Party shall ensure that its national legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

At the national level, the issue of compensation of persons injured in certain crime has been regulated primarily by the Criminal Procedure Code and Law on Criminal

[23] Introduced into the national legal system in 2009 (Official Gazette 19/09)

Assets Forfeiture.[24] Article 201 of the Criminal Procedure Code stipulates that a claim under property law occurred due to commitment of crime shall be considered upon the motion of authorised persons, provided that this does not considerably delay the proceedings. In addition, the claim under property law may consist of a request for the compensation of damages, return of an object or the annulment of a certain legal transaction. The motion to assert claim under property law in criminal proceedings is submitted to the authority to which criminal report is filed, or to the court conducting the proceeding, prior to the conclusion of trial before the court at first instance, at latest. The person authorised to submit the motion shall specify the claim and submit the supporting evidence (Article 203 of the Criminal Procedure Code). The court conducting the proceeding shall hear the defendant with respect to the facts set out in the claim and explore the circumstances which are of relevance for the decision on the claim under property law. Even before such a claim is submitted, the court shall be bound to collect evidence and carry out inquiries into the circumstances necessary for the adjudication of the claim. If an inquiry into a claim under property law would considerably delays the criminal proceedings, the court shall limit its actions to collecting only the information determination of that would be impossible or considerably impeded at later stage (Article 205 of the Criminal Procedure Code). The court shall decide on claims under property law. In its verdict finding the defendant guilty as charged, the court may award the entire claim to the authorised person, or it may award it partially and refer the authorised person to a civil action for reminder. If data established in the criminal proceedings provide no reliable grounds for either full or partial award, the court shall refer the authorised person to a civil action to pursue the entire claim under property law (Article 206, paragraphs 1 and 2). Unfortunately, despite the existing legal options and efforts made to provide quality destination of claims under property law for victims of human trafficking, adjudication of those claims in criminal proceedings almost do not exist.

Law on Criminal Assets Forfeiture sets forth the conditions, procedure and authorities responsible for detection, recovery and management of illegally gained assets. Compliant with Article 49 of the Law, upon the deduction of costs for recovered assets management and settlement of claims under property law filed by an injured party, the moneys obtained through sale of permanently confiscated assets shall be paid to the Republic of Serbia budget, and are allocated in the proportion of 20% for operation of courts, public prosecutor office, Unit and Directorate each, while the remaining funds are used to finance social, health, education and other institutions, in compliance with the Government act. This provision of the Law opens a possibility to establish a special Fund for victims, similar to those already existing in a number of European Union member states. [25]

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[24] Official Gazette 97/08

[25] As a kind of lead towards the solution for compensation of victims, there is a solution contained in the Criminal Procedure Code of the Republic of Croatia. Article 202 of this Law defines that "victim of a crime shall be a person who, due to the committed crime, suffers physical and mental consequences, material

The issue that must not be forgotten is that rehabilitation and reintegration of victims cannot be spoken about in absence of means for coordination of victims' protection. Article 12 of the CoE Convention emphasises that each State Party shall adopt legislative and other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness. Article 15 of the CoE Convention stresses that each Party shall provide in its national law for the right to legal assistance and to free legal aid for victims under the conditions provided by its national law, as well as for the right of victims to compensation from the perpetrators. In addition, it is particularly stressed that each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its national law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 of the CoE Convention.

To this end, the Government of the Republic of Serbia is making great efforts in order to separate certain funds out of the recovered assets and allocate them for rehabilitation and reintegration of victims and provision of assistance for them. At the initiative of the expert team involved in the development of this Study, a proposal was made on 17 November 2010 to the Working Group for amendments of the Criminal Assets Forfeiture Law, suggesting that Article 49 is extended with a stipulation of the establishment of funds of recovered assets in compliance with the CoE Convention, which would be used to finance assistance for victims.

Improvement of the efficiency of prosecution should be contributed by provisions contained in Article 21 of the UN Convention which stipulates that States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution. To this end, it should be noted that Republic of Serbia has adopted the Law on Mutual Legal Assistance in Criminal Matters.

The importance that is given to the activities of the Republic of Serbia authorities in procedures of asset recovery and collaboration between police and judicial authorities at national and international levels, especially in the segment related to

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damages or considerable violation of basic rights and freedom"; this is followed by numerous provisions which define specific position of a victim in a criminal proceeding. Article 16, paragraphs 3 and 4, *inter alia*, stipulates that "victim suffering serious psychic-physical injuries or serious consequences of a crime shall be entitled to obtain professional help of an advisor, free of charge, so as to enable testifying in criminal proceeding", as well as that "victim of a serious violent crime shall be entitled to compensate for damages from the state budget" (the money is collected from fines and recovered assets through a special fund).

combating human trafficking, is supported by the fact that numerous questions contained in the European Commission Questionnaire delivered by the Commissioner responsible for enlargement and European neighbourhood policy to the Prime Minister of Serbia on 24 November 2010, pertain to this topic.

DATA ABOUT THE SIZE AND STRUCTURE OF HUMAN TRAFFICKING IN THE REPUBLIC OF SERBIA

One of the key prerequisites for finding optimal responses to human trafficking is availability of valid data about the size, structure and characteristics of this type of crime in certain area and in certain period of time. In addition, we can hear more and more often that it is necessary, in the course of development of a strategy to combat human trafficking, to pay attention to the improvement of coordination between key players in those activities and to flexibility which should accompany changes in trends of this crime, existence of which has been confirmed on the grounds of valid indicators,[26] but also to the analysis of legislation and judicial practice with regard to all forms of human trafficking. Recommendations emanated from the 54th Session of the Committee for the Rights of the Child held on 22 June 2010, which pertain to the Republic of Serbia, emphasise the need to centralise and further develop mechanisms for systematic data collection so as to enable effective analysis, monitoring and assessment of the effects of laws, policies and programmes for the areas of trafficking in children, children prostitution and pornography, especially about the perpetrators and victims. Moreover, data should be classified, *inter alia*, according to nature of crime and age, sex, ethnicity or social status, urban/rural area, particularly paying attention to children that are most likely to become victims of the mentioned crimes.

Overview of the situation and trends of human trafficking in the Republic of Serbia is difficult due to different baselines of procedures in certain situations of those national institutions which are involved in prevention and suppression of human trafficking, identification of victims thereof and their strengthening through provision of assistance and protection, whose reports on this crime have been used. In addition, various methodologies of collection, processing and classification of data related to human trafficking, perpetrators and victims were applied by these institutions. In some of them, starting point was classification of specific behaviour of individuals and groups into the current regulations of the national criminal law in place, which had been changed twice since the introduction of human trafficking as crime – in 2005 and 2009, while others applied criteria which were recognised as key ones for recognition of human trafficking in international regulations, but they applied them only to persons

[26] Interview with Barbara Limanowska on Prevention Activities, September 2005. human trafficking.org

who they contacted, who needed assistance and protection. The third ones recognised potential victims together with those already involved in human trafficking chain.[27]

The result of different methodological approaches is visible in terms of numerous circumstances, including data about the detected victims of human trafficking. For example, criminal reports made by the MoI of the Republic of Serbia between 1 January 2002 and 31 December 2009 contained 383 persons victims of human trafficking, in 2006 – 56; in 2007 – 96; in 2008 – 55; in 2009 – 85. The Agency for coordination of protection of human trafficking victims in the period 1 March 2004 – 31 December 2009 identified 395 victims (the Agency recognises and reports data about potential victims – involved into human trafficking by traffickers, but without the intended exploitation), out of which in 2006 – 62; in 2007 – 60; in 208 – 55; in 2009 – 127. Between March 2002 and 31 December 2009, ASTRA identified 314 victims of human trafficking. Different data about the identified victims of human crime, as well as the fact that there are other cases, in addition to those disclosed, that still have not been detected, imply the only general characteristics of the situation and trends of this crime in the Republic of Serbia, as a country of origin, transit and destination of victims of human trafficking crime.

The constant found in the reports from all institutions sources of which were used, there is a permanent increase in presence of the national citizens among victims of human trafficking identified in the Republic of Serbia between 2002 and 2009. For example, although the annual proportion of domestic and foreign citizens fluctuated significantly over the past seven years, it had increased from 30% of presence during the nineties to an average of 72% for the period 2002-2009. According to data provided by ASTRA for the period 2005-2009, 74.26% of identified victims come from Serbia. Moreover, presence of Serbian citizens in the overall number of identified victims reached 88% in 2007. In the same year, all minor victims (10 persons) were citizens of the Republic of Serbia. According to data provided by the Agency for coordination of protection of human trafficking victims, out of 60 persons 48 (74%) were citizens of Serbia in 2006; in 2007, 48 of 60 (80%); in 2008 49 of 55 identified victims or 89%; in 2009 90% or out of 127 identified victims, 114 were citizens of the Republic of Serbia.[28] According to data provided by MoI of RS, out of 96 victims, there were 69 (72%) with the citizenship of the Republic of Serbia; in 2008, out of 55 identified victims, 48 or 87% were citizens of the Republic of Serbia. In 2009, out of 85 identified victims, 79 or 93% had domestic citizenship.

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[27] Data bout number of persons involved in human trafficking crime are provided only in the reports made by Ministry of the Interior of the Republic of Serbia. In a number of discovered cases there were proofs about the involvement of larger number of people in human trafficking, but due to the fact that those perpetrators committed their crime (recruitment, transit or exploitation) in other countries, and due to limited possibility to determine identification data of those persons, they were not covered by criminal reports submitted to competent prosecutor offices in the Republic of Serbia.

[28] In the identification process, the Service for coordination of victims of human trafficking recognises data on potential victims in its staring data, expressing them in their reports (involved into human trafficking by traffickers, but without the intended exploitation). In 2008, out of 55 identified there were 18 persons identified as potential victims. In 2009, out of 127 identified, there were 20 potential victims.

The unchanged constant, recognisable in all the reports, is significantly higher presence of female persons among the victims of human trafficking in the Republic of Serbia. According to data provided by ASTRA for the period 2002 and 2003, victims were only females, while in 2004 and 2005, proportion of female victims was 91.8%. In 2006 and 2007, again according to ASTRA data, proportion of female victims was 88.4%. Overall, in the period between 2002 and 2009, out of 302 victims, the share of female persons was 94% (284). According to data of the Service for coordination of protection of human trafficking victims, out of 62 victims identified in 2006, 60 of them were females (app. 96.7%); in 2007, out of 60, 51 were females (85%); in 2008, 48 out of 55 (87.3%), in 2009, 104 out of 127 (app. 82%). According to data provided by the Ministry of the Interior of the Republic of Serbia, out of 96 identified victims in 2007, 34 (35.4%) were females; in 2008, 46 women (83.4%) and 9 men (16.6%); in 2009 out of 85 victims 79 were women (93%).

The constant that characterises the majority of annual reports in the observed period, there is an increase in presence of minors mong victims of human trafficking. According to data provided by ASTRA, out of 314 identified victims in total – in 39.8% of cases (125) were minor victims of human trafficking (in 2002-2003 that share was 10%, in 2004-2005 that share is considerably higher – 44%, being particularly high in 2004 – 63.07%, in 2006 – 47.7%, in 2007 – 40%, in 2008 – 50%, in 2009 – 34%). According to data provided by the Agency for coordination of protection of human trafficking victims, the situation was the following: in 2004 – 47.4% ; in 2005 – 20.7%; in 2006 out of 62 victims, 34 (54.8%); in 2007 out of 60, 28 (43.3%); in 2008 – 54.5%; in 2009 – 47%. According to data provided by the MoI of the Republic of Serbia, presence of minors among victims of human trafficking was the following: in 2004-2005 it was 51.7%, while in 2006-2007 it was 36.4%. Data for 2008 state that out of 55 identified victims there were 12 children (22%), while 15 (27%) victims were minors. Out of 27 (49%) victims under eighteen years in age, there were 18 female persons, and 9 male ones. In 2009, out of 85 victims there were 15 (18%) were under fourteen years in age, while 33 (38%) were minors, i.e. 48 (56%) victims were under eighteen years in age in total (33 female and 15 male persons).

As most vulnerable categories of persons, there are minors and younger women, among whom there are street children, children from orphanages or specialised institutions (forced withdrawal of victims from orphanages or specialised institutions for persons with psychically changed behaviour was also recorded). Due to the absence of adequate system of social assistance and support to these vulnerable groups, it is not a rare case that these persons once they exit human trafficking chain, become victims again. In addition, increase in number of victims from Roma population exploited through forced beggary is obvious, whereat such persons are exposed to sexual exploitation and abuse.

The most common type of exploitation of victims is performed through sexual exploitation, there are more common cases of labour exploitation, as well as exploitation of victims for forced beggary. According to data provided by the Agency for coordination of protection of human trafficking victims, out of 55 identified victims in 2008, 22 of them (40%) were exposed to sexual exploitation, 5 (9%) to labour, 5 (9%)

were exploited through beggary, 3 (5%) through forced marriage, 1 was forced into crime. There was 1 case recorded in which trafficking was committed for adoption. In 2009, among 127 victims, 66 of them (51%) were sexually exploited, 16 (12.6%) were exploited through labour, 14 (11%) through beggary, 6 (4.1%) through forced marriage, 2 were forced into crime. 1 attempt of adoption was also recorded. According to data provided by MoI, in 2009, out of 85 victims, 53 of them (62%) were sexually exploited (27 minors and 26 adult female persons). Labour exploitation was imposed on 12 persons (14%), out of whom 4 minors and 3 adult male persons, and 1 minor and 3 adult female persons. Three persons were forced into crime (2 minors and 1 adult male person). 14 victims were exploited through beggary (16%), out of whom 9 minor male persons, 4 minor and 1 adult female persons. 6 female persons were forced into marriage (2 minor and 4 adult persons). In one case victim was exploited sexually and through labour, in another sexually through labour and forced marriage.

Making efforts in prevention and suppression of human trafficking, Ministry of the Interior of the Republic of Serbia filed 37 criminal reports in 2006, and 34 in 2007 (included a total of 74 perpetrators – 73 domestic and 1 foreign citizen); the same year, three reports for crime referred to in Article 389 of the Criminal Code of RS (Trafficking in children for adoption). In 2008, 32 criminal reports were filed for human trafficking (included 81 perpetrators, 62 men and 19 women; 78 domestic citizens and 3 citizens of Bosnia and Herzegovina), and three reports were filed for crime referred to in Article 389 of the Criminal Code. In 2009, police officers of MoI RS filed 51 criminal reports. These reports included 94 persons (73 men and 21 women), out of whom two were citizens of Macedonia (a man and a woman), while one of the perpetrators was Turkish citizen.

New occurrence in human trafficking as crime in the Republic of Serbia, especially after 2004-2005, is reflected through changes in traffickers' *modus operandi*. For example, along with the already existing manners of recruiting performed by close persons (boyfriends, friends, relatives), there is offering of attractive business and other options, and human traffickers more and more commonly use already exploited victims to recruit new ones (through coercion or provision of fake promises that they would be set free afterwards), and abuse of touristic agencies' offers is also present. Recruiting is, although to a smaller extent, performed through channels that are difficult to trace, such as Internet or SMS.[29] Changes in control mechanisms applied by traffickers to the victims have also been noticed in the observed period. Instead of dominating methods of physical abuse and threatening (brutal beating up) applied earlier, there are more common cases with perfidious approaches of conditioning, manipulation and control.

[29] For more information: N. Ilić, *Human Trafficking (Trafficking in Children), look through the Internet window,* ASTRA, Belgrade, 2006.

IDENTIFICATION OF THB VICTIMS

Recognition of human trafficking as crime and victims thereof by police officers, first measures and risk assessment

The first contact with potential victims, i.e. those who have already become victims, is made in the course of a planned activity, and actions aimed at prevention and suppression of this crime in certain territory, i.e. within the systematic collection and processing of data about individuals and groups recorded as perpetrators of this or some of the similar or related crimes. Victims are also found in the course of police activities aimed at some other objectives (collection of notices and reacting upon information and reports important for prevention and suppression of other crimes or certain offences, border crossing control and control of movement and residence of foreigners, public law and order, traffic control and control of facilities). The existence of victims and traffickers' activities in the stages of recruiting, transport and exploitation, is also found out from potential or already dominated or exploited victims, other individuals or institutions.

Discovery and rescuing of potential victims of human trafficking, i.e. those who are already the victims, during their movement from one location to another within the country, i.e. from those locations abroad (routes towards border crossing points, at border crossing points, or in vicinity thereof), imply the observation of the fact that traffickers in this stage of criminal activity undertake numerous precautionary measures (changing routes and manners of transfer and situation control, they lie to victims, drug, threaten and abuse them, confine them, keep them in conditions that endanger health and life, use local contacts and connections, corrupted law enforcement members). Quite commonly, persons that are transported or transferred collaborate with human traffickers, sometimes due to lack of knowledge or hoping that they move towards better life, sometimes due to fear of traffickers. Unfortunately, circumstances of human trafficking as crime are such that even those victims involved into a whirlpool of evil and exploitation, in large number of cases, do not dare to communicate with police officers[30] and cooperate in such manner which could result in criminal processing and prosecution of human traffickers.[31]

Identification of victims is contributed by paying attention to circumstances that point out to threat, limitation of freedom and traces and consequences of suffered violence and exploitation. The situation of a victim may be observed through the following: the person does not have personal documents or they are possessed by other persons or are forged; the person entered the country illegally, or resides illegally in it;

[30] Because of the fear of police (as a consequence of the awareness or belief that they themselves have committed some crime), and sometimes because of bad experience with certain irresponsible and corrupted police officers

[31] Even after disclosure by the police and arrest of human traffickers, victims most commonly just want to go back to their families, without involving themselves into a long-term and exhausting court procedure.

comes from a country, area or region recognisable as the country, area or region of origin; does not know the address of residence or work; gets into the buildings of residence and interior of such buildings is under surveillance and control; the buildings have secret exits, passages and rooms; transport or transfer of persons is or has been performed under unusual circumstances (concealed, with the unknown persons, considerably older persons, those who have criminal history, do not speak language in which they could communicate although they are allegedly friends, allegedly sleep or are not communicative because they are pretendendly very tired or under the influence of drugs, they have poor outfit, which is not adequate for the conditions of travel or for their social or ethnical origin or status, and so on); lack of luggage, money, telephone, keys, etc. adequate for the situation circumstances; the person cannot speak language or does not know other characteristics of a country of local community of their personal documents; the person is found in a place or in the vicinity of a place where presence of such person cannot be logically explained by the person him/herself; injuries, wounds or bruises, other traces of physical abuse, signs of fear or depression; mistrust in civil servants; avoidance of conversation; behaviour and communication under learnt patterns, reserved because of presence of third persons.

When contacting persons who are smuggled, border police officers intensifying their efforts to detect persons who organise and perform illegal transfers across the border, also ask questions which can help in identifying potential victims of human trafficking. The following questions are recommended: What is the purpose of your travel? Who has organised the travel? Who arranged for the documents? Who bears costs? Are the costs already paid or the payment will be effected upon the arrival to destination country? What will be the manner of payment? Are your documents confiscated? Where is your contact and who is he/she? What promises were you given? What promises have been fulfilled so far? What do you do for a living? Are you paid for the job you do? Are you forced to do that job? Are you or your family threatened or blackmailed? Can you leave your job whenever you want? Are you kept locked or under surveillance?[32]

Making efforts to realise their criminal intentions and exploit victims in long run with lowest possible risk and maximal gain, traffickers do their best to contribute to situation controlling. Among the mechanisms of subduing, control and suppression of disobedience and escape, those subtle and not so violent should be noted, as well as those ultimately cruel and dangerous for health and life (commitment due to indebtedness, isolation, threat with violence and application of violence to a victim or other persons, long-term isolation, deprivation of food and water and other methods of

[32] A part of the mentioned questions are contained in the annex of the Mandatory instruction on treatment of smuggled persons (01 no. 10734/08-3) adopted by the Minister of Interior of the Republic of Serbia on 7 April 2009. The instruction contains a list of indicators for recognition of actual or potential victim of human trafficking and trafficking in children for adoption among the smuggled persons: use of forged documents by minors, younger female persons who cannot explain circumstances of their travel, reasons of travel and final destination; finding a group of younger female persons or children in illegal transfer over the border with one or more male persons; travel of minors without parents or tutors, etc.

torture and physical punishment, forced consummation of alcohol and administration of psychoactive substances, threats with humiliation, threats of reporting a victim for crime or offence, and so on).[33] Quite commonly, human traffickers manage to create dependant position which is more based on psychological manipulation than on violence. In some of the cases, it was established that victims were paid a salary which was allegedly satisfying for them (500 Euros on average per month), although that amount is negligible compared to large amounts earned by traffickers through exploitation of victims. In order to intensify confusion and disorientation of victims, some traffickers allowed the victims some, but very efficiently controlled freedom (with regard to contacting their families, availability of a part of money they earned through exploitation and so on). This causes additional difficulties in recognising victims of human trafficking, especially in cases in which victims involved in trafficking chain do not understand to what extent they are exploited, so they do not consider themselves as victims.

Mechanisms of control and manipulation applied together result in factual and psychological capture, so it is not a surprise that victims remain in the imposed situation and do not try to escape or report the crime to the police. The dissuasive factor for a lot of them is that certain police officers participated in human trafficking, and more commonly they were "privileged users of services". One deputy district attorney was pronounced a probation sanction for misuse of office, because he had failed to react in the case of trafficking in a young woman, "using her services" while knowing the victim's position.

During the contact with police and prosecutor, the victims quite often avoid to talk simulating fatigue, mental distraction, lack of interest, avoiding eye contact, stating what they had been taught by traffickers, etc. They do that because they have low opinion of themselves, low self-esteem, shame and fear of harmful consequences for the victim or persons close to them.

Indicators used to recognise victim being exploited through forced prostitution are: freedom to return home is limited or completely prohibited to a person, the person is under surveillance (even if the person has a mobile phone, that phone is used for surveillance) and is escorted; the person has been raped or beaten up to make her accept mastering; does not have freedom to decide about what, when or how long will work, and when and how will have a break; is threatened by revenge in case of escape (the person is given notice about possible violence against her or person close to her); has limited availability of own earning (money is confiscated partially or in whole); the person has visible hurts and other signs of physical abuse or illness (wounds, livid, scars and so on); has tattoos or other signs that indicate control imposed by certain group of people; wears clothes typical for persons involved in sexual exploitation; if she is foreign

[33] A victim may become obedient and permissive for trafficker's orders and fulfil them so as to avoid violence. In case of sexual exploitation through prostitution, there is a pattern in which the victim behaves in such manner to "satisfy" a client and earn enough money to satisfy the trafficker. Victim's behaviour equalising with the behaviour approved by the trafficker is reflected through rejection of cooperation with the police.

citizen, she speaks only a few words, out of which are those related to sexual services; faces numerous health risks (unprotected sexual intercourses with numerous clients can result in sexually transmitted infections, infections of reproductive tract, unwanted pregnancy, etc.); access to healthcare services is prohibited or very limited; self-infliction (usually cuts and cigarette burns on hands); suicidal attempts (administration of sedatives, vein cutting or intentional poisoning with chemicals are quite common parts of a victim's escape plan); drug addiction is also noticed (to be examined whether such addiction was acquired during the exploitation or before it).

As for forced labour (in industry, construction, agriculture, catering, cleaning services etc.) the indicators are the following: a person lives and works at the same place in degrading and inhuman conditions; working conditions are very different from those agreed upon by the worker; negotiations about working conditions are not possible; the worker has not passed training for the specific activity; working clothes and equipment used are below the prescribed standards; working area is not marked with warnings about hazards to human health and safety risks; the food is always the same and of low quality; the worker operates highly difficult and dangerous activities with extremely low salary (lower that the prescribed minimum or below reasonable and rightful charges for the performed activity); does not have life insurance; salary obtained for the activity performed throughout the day, every day, is unsuitably low; the worker does not retain the salary because he/she has to pay back a debt to the employer; he/she is strictly punished for alleged and actual mistakes; there is no written record about the payments effected to employees; the worker cannot terminate labour relation and leave his/her working position; freedom of movement and communication with others are limited (especially with representatives of state and public services); he/she is kept under control through threats of being reported to the authorities; is/was exposed to physical violence or threatening. [34]

The example of non-recognition of a phenomenon is visible in a case initiated by one of the first criminal reports for labour exploitation filed by Zajecar police. The report was rejected by the prosecutor although criminal investigation established that two foreign citizens, whose residence and employment had not been registered to competent state authorities by the owner, worked in a travelling circus; their personal documents were held by the owner, he did not pay the salary to them although their previous agreements included salary as well, but he provided them with food, cigarettes and accommodation instead.

Along with the mentioned, the signals for trafficking in children (minors) are the following: beds, clothes, equipment or other items in their nature or size suitable for children were found on the premises of exploitation; they are hired for the activities not suitable for their age; they do not have friends of their age outside the environment they are found in; they are intimate and free in behaviour which is not typical for persons of their age; they do not attend school; they do not have time to play; live with

[34] *Law Enforcement Manual for Combating Trafficking in Human Beings*, International Centre for Migration Policy Development (ICMPD), United Nations Development Programme (UNDP), 2006, p. 34

adults who are not their parents; they eat separately from other persons on the premises; the found clothes fit them in terms of size, but such clothes are typical for sexual exploitation; they have phones with memorised numbers of only few people or e.g. taxi services; they move in groups with presence of adult persons (in the street, through the market, in train, etc.); they change locations and travel long distances in a day; they have been hired in several countries; they are forced to beg in public places or in public transport; to steal or sell narcotics etc.

When there is a presumption, or it is likely that victim is a minor[35], police officers are obligated to take measures: [36] to establish the identity and citizenship of a child; to find his/her family (if this is in their best interest); to locate them into a shelter; to contact the service that provides guardians so as to designate guardians.[37] In order to create conditions for more suitable treatment and protection of children injured in criminal acts, Guidelines for standard operational procedures for treatment of THB victims[38] stipulate that if none of these measures assist in reliable establishment of victim/likely victim's age, the Agency assumes that such person is minor, and provides him/her with relevant protection and assistance measures compliant with that, until final proofs about the age of the person are found. Further measures aimed at the establishment of a person's age may involve medical examination, initial contacts with the Embassy and state authorities of the supposed country of origin. The mentioned

[35] Constitution of the Republic of Serbia stipulates that children shall enjoy human rights suitable for their age and spiritual maturity, that they shall be protected against psychical, physical, economic or any other exploitation or abuse (Article 64), that parents shall have right and duty to support, upbring and educate their children, that rights can be withdrawn from one or both parents only if decided so by the Court, if this is for a child's best interest, in compliance with law (Article 65), that children under 15 years in age cannot be employed or, if under 18 years in age, hired for the activities harmful for their health or morale (Article 66). It may be therefore concluded that compliant with the Constitution, child is considered any person under 18 years in age. This is also in compliance with the definition contained in the Convention on the Rights of the Child (20 November 1989), but also in the Palermo Protocol and CoE Convention. The Criminal Code of the Republic of Serbia precisely defines that child shall be any person under 14 years in age, while minor shall be any person under 18 years in age (Article 112, pp. 8 and 10).

[36] Every institution, or practice in which one or both parents or guardians, or person of trust in general, deliver a child or person under 18 years in age to another person, free of charge or with certain charge, in order to enable exploitation of such child or minor, or exploitation of work thereof, shall be contrary to regulations and punishable (Human Rights Education Associates 2000, go to http://www. hrea. org/learn/guides/slavery. html).

[37] When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be assumed to be a child and shall be provided with special protection measures pending verification of his/her age (CoE Convention, Article 10, paragraph 3). When establishing the age of a victim, the following shall be taken into account: physical appearance of a child and psychical maturity, victim's statements, documentation, checks in the Embassies and other relevant authorities, medical check, with the consent, and medical doctor's opinion.

[38] Agreement on cooperation between the Ministry of Interior, Ministry of Finance, Ministry of Justice, Ministry of Health, Ministry of Education and Ministry of Labour and Social Policy, in the area of combat against human trafficking, was entered into on 12 November 2009. Guidelines for standard operational procedure for treatment of THB victims makes inseparable part of this Agreement.

measures, however, must not be undertaken until a person is appointed to guard the minor in his/her best interest.

As soon as it has been established that minor is a likely victim of human trafficking, or that there are reasonable doubts to believe that certain minor person is a victim of human trafficking, it is necessary to designate a person to look after him/her in their best interest and monitor them throughout the whole process until permanent solution has been found, which will be in the best possible interest of a minor. If possible, that guardian should be the same person for the whole process.

Prerequisites, principles and rules for conducting an identification interview, provision of information to a victim, hiring professionals and other relevant issues are specially treated in the document Guidelines for standard operational procedures for treatment of THB victims.

PROVING

Human trafficking is one of the crimes proving of which is in majority of cases very difficult, not only in the Republic of Serbia, but everywhere else in the world. Although new Criminal Procedure Code provides options to apply various investigation techniques, this does not guarantee a complete success. Low quality performance, especially in pre-trial proceedings, eliminates chances for the success of overall efforts in tackling this type of crime. This also happens because certain participants in already complex process of collection and assessment of proofs are not fully familiarised with the complexity and particularities of human trafficking. Unfortunately, there are also those who are still burdened with prejudice and opinion that such situation is victims' "own fault". Such attitudes result in exhausting, long proceedings, loss of victim's trust into institutions, which results in lack of stimulation to get involved more actively into the proceedings, devaluation of efforts made by those motivated with a wish to, understanding the complexity of situation, contribute to determination of truth, protection of a victim and sanctioning of a perpetrator.

On the other hand, professional approach and officers' dedication and readiness to tackle the core of each specific case, i.e. to "look under the surface", to see the situation in that context from a victim's position resulted in proceedings in which the victims recognised the decisiveness of the state to protect them, while perpetrators were pronounced sanctions which to great extent reflected the severity of the committed crimes.

Among a number of positive examples, there is a proceeding that was finalised by a verdict at the beginning of 2006 (KP 4/05), sanctioning the perpetrators with eight, six, four and three years imprisonment, who as members of an organised criminal group had contacted two foreign citizens, deceiving them and abusing their difficult position promising to find jobs for them abroad, and transferring them to the Republic of Serbia. The real intention of the perpetrators to transfer the girls to Italy and exploit them through forced prostitution was discovered and counteracted by specialised MoI services and Prosecutor's office, and perpetrators were sanctioned on the grounds of

evaluated found and derived evidence, whereat the sanctions were equivalent to the nature and severity of the committed act of human trafficking.

Human trafficking, recognised in practice as a form of organised crime, is characterised by a range of different behavioural models, manners of commitment, perpetrators and goals, thus involving large number of individuals into a human trafficking chain (starting from organisers via mediators, to exploitators, i.e. owners of bars, night clubs, companies, hotels and similar facilities). Specifics of conduction of pre-trial proceedings are quite commonly conditioned by geographic, structural and economic components are intermingled in human trafficking as crime, hence there is a number of specifics in terms of provision of operational intelligence and evidence.

The options available in conduction of pre-trial proceedings are defined as follows:

- reactive investigation – conducted after discovering the existence of crime during exploitation and is largely based on victim's statements,
- proactive investigation – conducted in planned manner before the beginning of exploitation and is based on timely obtained operational intelligence.

Reactive investigation

Reactive approach includes reaction based on the victims or citizens reports or similar. This approach has been the basic one for long time, and is characterised by unprotected position of a victim and persons close to them. Moreover, there is a big challenge of the establishment and development of a contact, also of trust, as well as creation of conditions under which certain victim will be capable and ready to cooperate primarily with the police, then with judicial bodies.

Discovery of e.g. forced prostitution is additionally impaired because traffickers manipulate victims by using the "carrot and stick" tactic. Although their attitude to women is based on disparagement and humiliation, victims are sometimes "awarded" with money, and they hesitate to cooperate and accept help. Moreover, bearing in mind high revenues, no wonder the traffickers do not hesitate to use all the possible ways of intimidation, blackmailing, manipulation, fake promises, even creation of addiction to narcotics, with the aim to exploit the victim to greater extent and putting them in dependant position and a sort of slavery.

It has been shown that understanding of a situation, fears and needs of a victim are prerequisites for acquiring trust and readiness of a victim to cooperate throughout whole prosecution process. It is obvious that chances that a victim sustains all that are higher when they are explained at the very beginning how and how much they can contribute to prosecution and what they will be exposed to during and relating to the prosecution.

In addition to those victims who refuse any form of cooperation, the practice experienced also victims who accept to provide confidential data and do not want to give statement or testify at Court of Law, as well as those who accept to give statement and testify during the Court procedure.

Refusal of cooperation is mainly caused by fear for own life and life of their families, and this fear is reasonable. Victims who are ready to cooperate to certain extent, i.e. victims who want to provide confidential intelligence but refuse to give

statement or to testify at Court of Law, do that being aware of the existence of risk to be discovered as source due to specifics of data disclosed, but also due to the fact that national legislation do not provide full protection of identity in criminal proceedings. Even when victims are completely ready to cooperate, risk assessment is necessary in the context of importance of their testimony. Making a decision not to insist on a victim's statement at all costs does not mean giving up from prosecution of traffickers. The success can be contributed by the obtained operational intelligence, as well as evidence obtained through other evidence collection processes.

It has been proved in a number of cases that quality of information collected through the interview conducted with a victim is a crucial point of evidence gathering process. Recognised relevant pieces of information are those related to manner of recruiting, transport, transfer, acceptance and harbouring of a victim, then specifics of the manner and means of repression, control and exploitation. Details about circumstances related to age, manner in which the victim got into contact with traffickers, their description, communication means, initial agreement, fact that somebody from the victim's family received money or other benefit in exchange for the victim, whether there are witnesses of the subject events, data, time and point of departure from the country of origin and entrance into the transit or destination country, whether the journey took legal or illegal routes, who travelled with the victim, description of a transport vehicle, are also important ones. As one of the prerequisites for quality primary identification of victims involved in forced prostitution, the following details are also recognised as important: those related to aspect of prostitution through which the victims was exploited (street prostitution, in private apartments, in restaurants, etc.), whether she worked alone or with other girls and with whom, how many hours she worked a day, what services she had to provide to her clients, if she was forced to have sexual intercourses without contraception and other sorts of protection, who translated/interpreted her conversations with clients (if she could not speak the language of a country she worked in), whether she had any extra costs, if she had known about that before she left her country, at what point she found out that she would prostitute herself, whether she was under control and if yes, who controlled her, what extent of freedom of movement she had, if she could leave the premises, if she met police or other law enforcement members on the occasion, if she was checked for identification, arrested or prosecuted, and if yes, when and under which identity, whether she had the opportunity to escape or seek help and whether she tried to, and if not, why she did not try, whether she was drugged, and if yes, with what narcotics, in what period of time and in what manner, whether there were any witnesses in any stage of the process and who they were.

Details that are also important are those related to various forms of abuse, which is related to physical evidence which could be obtained, e.g. visible injuries should be photographed, medical checks should be carried out, as well as laboratory analyses, etc. Written evidence can also have significant proving potential, such as diaries maintained by the victim, advertisements, visa forms, customs declarations, boarding passes, hotel receipts, and so on. Taking into account the importance of financial investigation, very important thing that deserves attention in the course of evidence

gathering is evidence related to financial transactions, so it is necessary to gather data that the victims might know about with regard to such sort of proof.

It is obvious from the above mentioned that the victim plays an important role in evidence and information gathering in pre-trial proceedings, and later during the investigation and criminal proceedings, thus it is necessary to strengthen and encourage them to cooperate, continuously taking care about his/her safety and safety of persons close to them. To this end, it may be said that it is ultimately unsuitable that the Court insists on the victim's direct participation throughout the proceedings, including victim's testimony in presence of the perpetrator, even their confrontation.

Proactive investigation

Proactive approach implies the police initiative and operational activities on information collection, reaction on the grounds of such information through surveillance and control of individuals, as well as areas, premises and institutions if there is a doubt that human trafficking is carried out by them or there, i.e. they serve as cover for such criminal activity. Furthermore, proactive option implies actions to prevent human traffickers involving a person into a human trafficking chain in making that person a victim of human trafficking, but they also include pre-trial proceedings, deprivation of liberty, investigation, trial and adequate sanctioning of traffickers without relying on the victim's readiness to cooperate and testify. It is a complex intervention which involves a combination of gathered operational intelligence through special evidence collection techniques (surveillance, optical and audio recording, undercover operations) and standard investigation techniques aimed at identification of traffickers, their prosecution and sanctioning.

Bearing in mind that THB victims commonly face insuperable difficulties when they decide to testify against the person who exploit them, that they are quite commonly secondary victimised, this option is the safest one. On the other hand, it is also more requiring in terms of collection of numerous proofs in compliance with law, whereat careful analysing and interconnecting thereof does not allow even for the smallest mistake. Due to that reason, proactive operations are time consuming and very expensive. However, if we bear in mind the effect that human trafficking makes to victims, and if we take into account strategic risks in economics and social life, the allocated funds are minimal in comparison to the benefits gained in quality proactive investigations.

It has been experienced that in the context of selection of most adequate response to criminal intentions and activities of human traffickers, it is very important to select best location, as well as the moment for an open action aimed at deprivation of liberty of perpetrators against whom such quantity of evidence has been gathered that will enable interruption of the intended exploitation of victims, i.e. that will lead to efficient prosecution. When proactive investigation is conducted at international level, option to form joint investigation teams is also considered, as well as multi-agency approach which includes employment of border police services, customs, national and regional organisations specialised to tackle human trafficking, Ministries of Foreign

Affairs, consular offices, social services, as well as other national and international governmental and non-governmental organisations.

Practice has shown that financial investigation is necessary in majority of human trafficking cases in the course of detection, clarification and proving this crime. In other words, when clarifying a case of human trafficking, it is particularly necessary to concentrate on money flows, tracing of which can lead towards crucial material evidence which connect all the players in human trafficking – different persons participating in different stages of criminal act, who equally or otherwise participate in share of money gained in exploitation of victims (e.g. money transfers via Western Union, from the place or country of exploitation – to the countries where recruitment was carried out, or to transit countries).

Manners of intelligence and information collection

Collection of data is carried out at two equally important levels – strategic and tactical one. Quality strategic intelligence enable precise assessment of size, methodology and severity of crime at local, national, regional and international levels, followed by planning of adequate measures to tackle the crime, including media and public awareness raising about the problem and influence on political will to solve the problem, to amend legislation, to develop necessary international cooperation, as well as the strategy related to prevention, education campaigns and so on.

The importance of tactical intelligence is related to the fact that collection and delivery of intelligence can lead to salvation of victims. They provide for "raw" material and make the basis for reactive, proactive or investigation aimed at hindering and interruption of the activities carried out by organisers and human traffickers at local, national, regional and wider international level, including implementation of joint operations.

Currently, the most efficient way of intelligence collection is seen in special investigation techniques. According to the Criminal Procedure Code of the Republic of Serbia, these are the following: 1. Wiretapping and optical and audio recording of suspects (504e-504z); 2. Provision of simulated business services (504i-504k); 3. Undercover agent (504m-504nj); 4. Cooperating witness (504o-504ć).

The most effective measure in disclosure and prosecution of human traffickers is seen in wiretapping of suspects. The analyses of derived evidence have enabled establishment of connection between the perpetrators, their contacts and arrangements, intentions, roles and actions of each of them. During 2006, the measure or wiretapping and recording to phone and other conversations or communication was implemented on the grounds of orders from competent investigative judges in the cases of human trafficking referred to in Article 388 of the Criminal Code against 11 persons, in 2007 against 20 persons, in 2008 against 37 persons, in 2009 against 23 persons. In 2006, none of the measures of surveillance referred to in Article 504e was initiated by operatives from the Service for Combating Organised Crime specialised for prevention and suppression of illegal migrations. In 2007, 6 persons were subject to measure referred to in Article 504e, on the grounds of the initiative coming from this service, in

2008 there were 20 such persons, and in 2009 10 such persons. At the same time, between 2006 and 2009, specialised department of Service for Combating Organised Crime filed six criminal reports and deprived 35 persons of liberty.

The factors that significantly affect the efficiency of the undertaken measures, as selected by judges of the Special Department of Belgrade High Court, are the following: diligence and discernment of officers who implement the surveillance; often change of phones and SIM cards by perpetrators; more and more common encoded communication; denial of participation in communication; high price of expert judgement of audio recordings; exhaust as a result of checking of communications contents of which are irrelevant in a specific case.

Deployment of officers as "fake clients" and undercover agents belongs to most dangerous techniques, since the risks are here constant and acute due to unscrupulous and violent behaviour characteristic for groups active in human trafficking, so basic issue and basic responsibility of those making a decision to apply this technique are related to risk assessment. For example, when the main task is to establish the existence of human trafficking for sexual exploitation, deployment of a female officer as a potential victim or a prostitute looking for a job is tactic that surely can provide significant evidence, but it is also very risky one, so it should not be applied if any other option for collection of evidence is available.

According to provisions of the Criminal Procedure Code that regulate the proceedings for organised crime, corruption and other extremely severe crimes, Public Prosecutor can propose to the Court to hear (providing certain advantages to) a member of the organised criminal group (a cooperating witness) who admitted the affiliation to the group, against whom proceeding is conducted for crime referred to in Article 504a, paragraph 3 of the Criminal Procedure Code, provided that he/she had admitted the committed crime to the full extent, and if the importance of such testimony for detection, proving or prevention of other criminal acts of that organised crime group prevails against the consequences of crime he/she had committed.

Deprivation of liberty

Generally, deprivation of liberty is carried out upon the collection of enough evidence that will enable successful prosecution of human traffickers. However, taking into account the nature of this crime, it is possible that arrest will have to be performed in short period of time, e.g. immediately upon the analysis of surveillance or pursuing data, or upon a sudden increase in the level of risk for victims. Whether enough evidence has been gathered for deprivation of liberty or not will be assessed in consultations and cooperation between the police and the prosecutor, and at this point the role of a prosecutor in pre-trial proceeding is the crucial one, as well as defining of a moment and manner for efficient fulfilment of three goals:

1. simultaneous deprivation of liberty of maximal number of suspects,
2. salvation of maximal number of victims, and
3. collection of quality evidence upon the arrest.

Police officers who perform arrests, getting into contact with perpetrators of human trafficking, can find victims and clients at the same location, who according to provisions of the Criminal Code of RS in place may also be perpetrators of one of the forms of this crime. In addition, it should not be forgotten that there is a possibility that THB victims have also violated certain legal norms (e.g. those pertaining to residence, labour permitting, accountability for possession and sale of narcotics, prostitution, etc.). Yet, it should be borne in mind at this stage of proceeding that victims are primarily the victims and potential witnesses against human traffickers and they should be treated as such, protected and removed from the location as soon as possible, accommodating them in a safe place. The practice has shown that only such approach can contribute to the development of trust between the victims and police officers, in later stages between the victims and prosecutors and judges.

Whenever possible, entrance of a team that enters the premises with the aim to deprive the suspects of liberty should be recorded with a camera, and during the search absolutely everything that can serve as evidence should be seized, to the extent allowed by law (e.g. advertising material, money, ledgers, amounts of money written in handwriting, all the papers related to visa and passport issuance, guarantee letters, contracts on labour, contracts on labour in agencies, forms, list of services provided to customers, text that is read to clients on the phone, papers pertaining to office rent, apartment renting, papers on manner of payment, all the communication and information equipment such as computers, mobile phones, faxes, personal organisers and similar gadgets, expensive vehicles, jewellery, technical goods and other items that will illustrate the fact that perpetrators had spent huge amounts of money, keys that are found on th spot and should be checked in all relevant addresses, and similar).

Hearing of the suspects

Taking into account the character of human trafficking as crime, a number of facts are checked and determined when suspects give their statements. A professional approach implies definition of those facts, and identification of a list of priority questions, as well as identification of a starting procedure tactics. If conditions allow, a detailed analysis of all the seized items should be carried out before the hearing, and if possible and if the victim agrees, an interview should be conducted with him/her as well.

The suspects should be questioned so as to collect as many data as possible about themselves, about how long they have known the victim/victims, how, where and when they met, what kind of relationship exists between them, which is followed by questions about the crime, activities performed, accommodation, associates, income, organisation of work, life style and so on. The suspects should be presented the evidence having been collected, and asked to express their opinion about the evidence; they should also be given th opportunity to admit or deny their involvement. In practice, the suspects most commonly opt to “remain silent”. This is because they want to buy some time, most commonly to consult their lawyers, and because they expose “their story” at the end, when they get to know all about the evidence they are charged with.

Actually, the experience gained in practice shows that suspects opt to "remain silent", the proceeding starts, evidence is collected through interviews with witnesses and other persons involved in crime, associates, those who helped in concealing the crime, and as investigation develops, the lawyers are fully familiarised with contents of the file, available to them in all the stages of the proceeding, or they are present in all hearings and interviews, being entitled to ask questions, thus becoming able to "build the defence" for their defendant. At that point, they cease to "remain silent" and accept to expose their defence, completely familiarised with contents of the investigation file, denying the commitment of crime and their involvement in it.

Due to this fact which is most common in everyday practice, cooperation between the police and prosecutor should be as close as possible, as many valid and undeniable pieces of evidence as possible should be collected, so that the "built" defence of a defendant or defendants cannot jeopardise them, and which will inevitably result in conviction of human traffickers once the court procedure is finalised. Due to these reasons, pre-trial procedure usually takes long time, even several months, especially when it includes international cooperation and different jurisdictions.

International cooperation

Regardless the overall complexity and potential risks, international cooperation is of great importance for a successful combat against human trafficking. Multi-agency approach and joint operations are most efficient manner for organising combat against this form of crime, especially if it has international character in one of its segments (victims and perpetrators are foreign citizens, certain activities are performed in another state, domestic citizens are exploited abroad, some pieces of evidence can be found only with the assistance of other countries, etc.). If human traffickers commit crime in several countries, the best result will be obtained through an arrangement made in advance and a synchronised (preferably maximally proactive) operation of the police services, prosecutor offices and courts of all those countries for a simple reason – perpetrators and victims, information and evidence are present in all of them.

At the national level, the "golden rule" of procedure implies a meeting of police members with the prosecutor, where they agree upon a strategy before initiating any joint international operation. At this meeting, a review of all the available material is done, operational aims are identified, legislative compliance and procedural conditions are checked for procedure and collection and use of evidence with respect to every country participating in joint operation. A prerequisite for the success is also a timely establishment of contact with counterpart unit or liaison officers in the countries in which joint operations are implemented. It has been proved one of key roles in the realisation of direct operational contacts and information exchange belongs to the national police liaison officers located in other countries (there are 26 liaison officers from 19 countries located currently in the Republic of Serbia, and our 4 liaison officers are located abroad).

An inseparable part of international cooperation planning is consideration of possible investigation outcomes. It is defined what is a desired outcome and whether it is necessary to ask for mutual legal justice assistance in order to achieve such outcome.

The practice has shown that certain procedure which was effective in one case does not have to be by definition the most adequate one for all situations which are always characterised by numerous specifics. Therefore, it is necessary, when sending a motion for mutual legal assistance, to provide all relevant data thus avoiding additional submission of data about important specificities. Being precise is necessary with regard to the nature of the required measures and activities, as well as information and evidence that should be collected. In any case, even in maximally correct communication and eagerness, limitations posed by different jurisdictions in certain countries should be borne in mind.

Interests of all the international community subjects to tackle human trafficking (and similar activities) is inseparable and recognisable part of a number of international documents, so when collecting evidence through MLA, or when providing or asking for mutual criminal justice assistance to and from another country, it is necessary to refer to international legal instruments on MLA. There is a range of system solutions to which we may refer because they have become a part of internal legislation of the Republic of Serbia through ratification, which are: the European Convention on Mutual Legal Assistance in Criminal Matters, Additional Protocol to the mentioned Convention, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the UN Convention against Transnational Organised Crime and related Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Council of Europe Convention on Action against Trafficking in Human Beings, Law on Mutual Legal Assistance in Criminal Matters of the Republic of Serbia, as well as numerous bilateral and multilateral agreements.

VICTIM AS A WITNESS

Specific position of a victim/witness and protection measures

Experience has shown that the interviews with the victims of human trafficking are among the most complex and most stressful official interviews. For this reason, and because of the importance of the victim's testimony in the process of clarifying and proving the criminal activities of traffickers, the choice of the officials who will contact and talk with the victim should be made very carefully. Priority should be given to the officials who have already participated in similar criminal procedures and who are able to properly inform the victim on their position, rights and obligations in the criminal proceeding.

The complexity of the event that essentially changes the victim's life, its duration, a multitude of specific acts of brutality, the number of participants, as well as the importance of seemingly unimportant details and the need to "extract" as much information as possible from the chronology of events, will require much time. In some cases, frequent repetition of the interviews will be required. Their number and duration will be also decided depending on the circumstances of the case, psychophysical

condition of the victim and severity of the traumatic events discussed[39]. It is important that the chronology of the events that should be clarified is established in a logical and consistent manner. This not only helps the victim to recall the events, but also makes the testimony easier to understand for those officials that will join the proceeding later. It is necessary to make time to record the chronology and the main points of the story so that it can take a logical sequence. These initial notes can be used as a framework for some more complete statements (obtained by an interview or hearing).[40]

It is very important that, with an explanation provided, and from the beginning to the end of the proceeding, the victim is aware of the need, and obligation, to tell the truth and hide nothing from the officials. In other words, the victim needs to understand that, in order to determine the facts, and as an unavoidable part of the proceeding, the official will have to investigate the circumstances of the victim's past, and that it will be inevitably done by the lawyers of the accused. For these reasons, it is important that the victim understands that every lie, half-truth or suppression of some facts, at any stage of the proceeding, will be discovered and that it would diminish the victim's credibility as a witness and therefore, jeopardize the proceeding.

Special attention must be paid to the documentation of the interview with the victim. For many practical reasons, it is recommended to use sound-film method for recording the interview together with an obligatory, law-provided form of documenting the interview as faithfully as possible by making official notes or records,. This approach is tactically advantageous because dictation and re-reproduction, with the aim of literal recording, emphasise the official tone of the interview, slow its pace and have a discouraging effect on the victim who has, in an atmosphere of trust and familiarity, made a decision to tell all the details of the crime committed against him/her. The importance of this type of documenting comes to the fore because: the official does not have to focus on taking notes of the statement given, but they can be fully devoted to the process of monitoring, analysing and directing the flow of the conversation; it enables a faithful reproduction of the contents of the statement (especially if the statement is taken from children, minors, persons with a mental disorder or mentally retarded persons, if an interpreter is engaged in the process, if explanations of great operational and procedural importance are given); by this type of documenting, not only the voice of the person giving testimony is recorded, but also the entire atmosphere in which the conversation takes place, the questions, voice and behaviour of the official, psychophysical condition of the victim and changes that occurred in the victim during the interview.

In general, and in the case of human trafficking victims, an important and sometimes even crucial and decisive role of the witness in the process of obtaining evidence and passing sentence often makes their personal situation very complex and

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[39] It is recommended to respect the opinion of a psychologist (advisor) on the optimal duration of the interview.

[40] Moreover, it is important to establish a chronological order regarding specific events and dates that the victim remembers. Other significant events may be placed in the context of "before" and "later" the dates specified. *Ibid.,* p. 72-78.

delicate. Furthermore, both their personal interest in the outcome of the proceeding and their insecurity and vulnerability have to be taken as facts. It is especially important to recognize a need for specific features in the proceeding and in the choice and application of protective measurements according to the particular categories of vulnerable or endangered witnesses. These features are primarily conditioned by the characteristics of committed crime, conditions and circumstances of the witness.

It is a fact that many human trafficking victims do not want to give evidence against traffickers because they fear for the safety of themselves and their family, mostly for a reason. Experience from many countries has shown that the traffickers use threats, blackmailing and even physical violence in order to prevent victims to contact the police and report what happened to them. In addition, as the perpetrators are usually a part of the organised criminal groups, their imprisonment does not automatically mean that victims and their families are safe, because the other members of the group are still free. If the victim helps the police and judicial authorities in identifying the perpetrators and agrees to testify, it is certain that they and their family will be exposed to various forms of threat. If this is coupled with the obvious corruption of certain members of police and judicial services, the victim's great fear to collaborate with the authorities becomes clearer. Negative examples recorded in many countries contribute to this. In this context, it can be concluded that every witness protection system for the victims of human trafficking should primarily focus on the physical safety of the victim and their family.

Besides the above mentioned, there are many other reasons why victims of trafficking do not want to appear as witness. In fact, the victims are usually afraid of stigmatization, and, moreover, they are often afraid that they themselves will be accused of being illegal immigrants working without a work permit or any other punitive action.[41] Victims sometimes think that they are to blame for what happened to them, or they are ashamed of that.[42] They believe that the process of convicting the perpetrators will be long and they just want to go back to their homes and families, without a lengthy judicial procedure in which they could suffer new embarrassment and humiliation because of the repeated encounters with the people who have abused them and for necessary recalling and presenting the details of the traumatic experience.

Victims also worry about the alleged "debt" to the trafficker that has not been settled yet. One of the primary mechanisms for control of the victim is to obligate them because of the debt, which implies that the victim is asked to return an increased amount of money, which is apparently caused by bringing the victim into the destination

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[41] For more information: B. Simeunović-Patić, *Recognition of human trafficking victimization*, Temida, no. 4, Belgrade, 2008, p. 69-86.

[42] In case of sexual exploitation, shame is a very important control mechanism for the victim. Traffickers often record sexual intercourses in which the victim is involved, and they use the recordings to secure the obedience of the victim, with the constant possibility of the victim's humiliation and intimidation by showing the recordings to their family and close friends and to the people from the environment in which they want to resume "normal" life.

country. Even for the victims who have no debts, the economic reality is such that they return home with no money and unable to support their families. These people will probably feel the need to go abroad again in order to earn money for themselves and for their families. They have almost no motivation to spend months or even years without a job in the destination country, only to testify against the traffickers. The obligation to uphold the victim's privacy rights, the preservation of their dignity and prohibition of questions that would violate these rights should be especially envisaged in the area of human trafficking.

The Council of Europe recommendation Rec (97) 13[43] broadly defines vulnerability of witnesses as "any direct, indirect or potential threat to a witness, which may lead to interference with his/her duty to give testimony free from influence of any kind whatsoever". This also includes intimidation resulting either from the mere existence of a criminal organisation having a strong reputation of violence and reprisal, or from the mere fact that the witness belongs to a closed social group and is in a position of weakness therein.[44] The above mentioned Recommendation of the Council of Europe particularly emphasizes the fact that in some spheres of criminality, such as organized crime and other serious crimes, also including crime within the family, there is an increasing risk of vulnerability of witnesses, so that, accordingly, it recommends measures of protection of potentially vulnerable witnesses in these spheres of criminality, which should provide the necessary balance between the prevention of disorder or crime and the preservation of right of the accused to have a fair trial.[45]

The Rome Statute of the International Criminal Court (ICC), Article 68, states the duty of Court to take the appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors of victims and witnesses, including age, gender, health and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. It also provides that the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in

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[43] Council of Europe*, Recommendation No. R (97) 13 on Intimidation of Witnesses and Rights of the Defence*, Adopted by the Committee of Ministers on 10 September 1997, at the 600th Meeting of the Ministers' Deputies.

[44] Council of Europe*, Recommendation No. R (97) 13 on Intimidation of Witnesses and Rights of the Defence*, Adopted by the Committee of Ministers on 10 September 1997, at the 600th Meeting of the Ministers' Deputies.

[45] By suggesting the measures for the protection of the vulnerable witnesses to the member states, this Recommendation R 97-13 refers to other relevant documents of the Council of Europe, which treat the similar problem: Recommendation no. R 85-4 on violence in the family, Recommendation No. R 85-11 on the position of the victim in the framework of criminal law and procedure, Recommendation No. R 87-21 on assistance to victims and the prevention of victimization, Recommendation No. R 91-11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, Recommendation No. R 96-8 on crime policy in Europe in a time of change.

the case of a child or an elderly person being a victim or a witness. According to the rule 88, Chamber may order special measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence. It is particularly determined that a counsel, a legal representative, a psychologist or a family member can be permitted to attend during the testimony of the victim or the witness.

The practice of the *European Court of Human Rights* is based upon the view that there must be a clear and serious threat of vulnerability before the protection reaches the level at which the restriction of the rights of the accused is possible. According to the interpretation of the mentioned court, the nature and the degree of the witness protection depends on the individual circumstances. However, the Court allows the following means of protection in particular situations: a trial without the audience and/or media; reading the witness's statement out of his presence; testimony of a disguised witness in the court; non-identification of a witness in the court, or revelation of the selected details concerning his/her identity; deformation of witness's voice in the trial; testimony from a different room, by means of video-conferencing , and revelation of the witness's identity in the last stages of the process.

A particularly important means of protection refers to the position of the victims who appear as witnesses in the criminal procedure. This is also specified in the article no. 24 of the UN Convention, which implies taking appropriate measures against potential retaliation or intimidation of witnesses, even when the victims of human trafficking are involved. Article 6, p. 1 of the Palermo Protocol emphasises the importance of the protection of privacy and identity of the victims of human trafficking, which, among other things, includes confidential legal proceedings relating to such trafficking.

The development of the national criminal procedure law in regard to the protection of victim-witness during the criminal procedure shows an endeavour to follow all the modern tendencies in the legislative solution and application of legal provisions in the process of the very protection. The protection of victims and witnesses is provided in the Criminal Procedure Code and the Law on the Protection Programme for Participants in Criminal Proceedings. Furthermore, the laws which regulate procedures for organized crime and war crimes provide the possibility of hearing witnesses and injured parties by video-conferencing or international criminal legal aid. They also provide the possibility for the court to decide upon the protection of victim's/witness's personal data, at the justified request of an interested person.

Particular measures of the procedural protection of a minor include special evidentiary rules and adjustment of the process solutions so that the minors are protected from the secondary and tertiary victimization.

Procedural protection of victims and witnesses was developed by introducing new solutions to only one regulation of the Law on the Criminal Procedure, article 109. This article states that the court is obliged to protect witnesses from insults and threats or any other attack, and that, on the suggestion of the Investigative Judge or the President of the Chamber, the President of the Court or the Public Prosecutor may demand from the police to take special measures for protection of witnesses and injured parties (this regulation still exists in the valid Criminal Procedure Code). In a part

of Criminal Procedure Code which refers to the questioning of witnesses, the protection of witnesses is regulated by five regulations.

In the development of the witness protection in the criminal proceedings, the regulations of the Criminal Procedure Code from 1st June, 2006 (which came into force and were applied only in this part, and which refer to the special rules of questioning particularly vulnerable witnesses and other participants in the proceedings), are also very interesting.

In addition to the measures of the witness and the injured party protection from insult, threat, or any other attack, the valid system in Serbia also provides that the President of the Court or the Public Prosecutor, on the suggestion of the Investigative Judge or the President of the Chamber, may demand from the police to take special measures for protection of witnesses and injured parties (CPC, Article 109, paragraph 3).

For the purpose of the witness protection, there are also regulations which provide a temporary removal of the defendant from the courtroom during the trial, if the witness refuses to give statement in his/her presence, or if the circumstances show that the witness would not tell the truth in his/her presence. (CPC, Article 324) This legal solution has limited domain in regard to the protection of human trafficking, which is supported by the fact that the testimony may be read to the defendant when he returns to the courtroom, the defendant has the right to question the witness, and if needed, he/she may confront the witness.

The provisions that indicate the need and possibilities of commitment to secrecy and exclusion of the public during the performance of actions in the procedure also serve to protect the personal or family life of the victim Among other things, Article 261 of the CPC stipulates that, if it is in the interest of morality, public order, protection of the interests of minors or the private lives of the involved participants, the official investigator shall order the persons questioned or examined or who attend the investigation or inspect the documents on the investigation to keep certain facts or information learned secret, and shall inform them that disclosure of such information is considered a crime. This order shall be recorded in the minutes of investigative actions, i.e. it shall be recorded in the inspected documents with the signature of the person warned.

At the same time, Article 292 of the CPC stipulates that from the opening of session to the end of the trial, the Council may at any time, ex officio or at the motion of the participants, but always after taking their statements, exclude the public from the entire main trial or a part of it, if it is in the interest of morality, public order, protection of the interests of minors or the private lives of the involved participants.

In an effort to protect the victims of human trafficking, the solutions present in the provisions on measures to ensure the presence of the defendant and for the undisturbed conduct of criminal proceedings may be observed. Thus, paragraph 2 of Article 136 of the CPC provides that it may be prohibited for the defendant to leave their home or place of residence without the approval and that they may also receive restraining order from certain persons. Among other things, the above measure, and measure that involves the application of electronic surveillance to control compliance with the limitations imposed on the defendant, may be ordered as stand-alone

measures, if it is necessary to protect the victim or witness, or if there is a danger that the defendant may finish the initiated criminal offence, repeat it, or commit the offence they threaten to commit.

Protection of the victims of human trafficking, who participate in criminal proceedings as a witness, from the trauma caused by the re-examination may be achieved with the implementation procedural options provided for in paragraph 2 of Article 309 of the CPC. This provision stipulates that the Council from paragraph 6 of Article 24 of the CPC may decide to decide to read the minutes of the examination from a previous trial, if it determines that due to time constraints, protection of witnesses or other important reasons, it is justified that the certain witnesses and experts are not re-examined. The general rule given in paragraph 1 of Article 309 stipulates that, when the main trial that was postponed is starting again because the council members have changed, the council may decide, after taking statements from the participants, that witnesses and experts shall not be re-examined, and instead, their statements given at the prior main trial shall be read. It is evident from cases in paragraph 5 of Article 309 that the attention is paid to the protection of witnesses, when the appeal against the decision of the reading of the minutes was rejected.

Article 109a of the CPC stipulates that the court may decide to approve measures to grant special protection for the witness (protected witness) when there are circumstances indicating that public testimony may put in danger the life, health, physical integrity, freedom or property of the witness or persons close to them, and especially in cases of criminal acts of organized crime, corruption and other severe crimes.

Special protection measures include the examination of witnesses under the terms and conditions that ensure that their identity is not revealed and physical security measures during the procedure. The court may issue the decision on the measures of special protection of the witness ex officio or at the motion of the participants or the witness. The request shall be submitted in a sealed envelope with the indication "the witness protection - official secret" and shall be provided to the investigating judge during the investigation, and after the indictment entering into the legal force, to the Head of the Council (paragraphs 1 and 3 of Article 109b of the CPC). In addition, if a witness does not provide information about themselves, the answers to certain questions or testimony as a whole during the examination by the investigating judge, with the explanation that the conditions from paragraph 1 of Article 109 of the CDC exist, they shall be considered to have filed the request for special protection measures, after which, the judge shall, if he or she determines that the risk exists, invite the witness within three days to submit a formal request. If the investigating judge decides that there is no basis for not providing information, answers or testimony, or if the witness does not act on judge's recommendation in due time after being warned about the consequences of not testifying without legal basis, they may be fined with up to 100,000 dinars, and if they refuse to testify again, they may be fined with the same amount once again (paragraph 4 of Article 109b of the CPC).

The decision on the measures of special protection of the witness shall be passed during the investigation by the investigating judge, and after the entry into force of the

indictment by the Trial Council if it is in session, or the Council from paragraph 6 of Article 24 of the CPC if the Trial Council is not session, or if the investigating judge does not agree with the request. The Council shall pass the decision within three days from the receipt of the documents. The Trial Council shall exclude the public from deciding on the measures of special protection of the witness. If the investigating judge or the Trial Council accept the request referred to in Article 109b of this Code, the decision that contains the following shall be adopted: the code that will replace the name of the witness, the order to delete the names and other information that can be used to determine the identity of the witness from the files, the manner the trial will be conducted in and measures to be taken to prevent disclosure of the identity, residence and place of temporary stay of the witness or persons close to them. The participants and the witness may file an appeal on this decision, and the council from paragraph 6 of Article 24 of the CPC shall rule on it during the investigation, and after the entry into force of the indictment, the appellate court shall rule on it. The Council shall pass the decision on the appeal within three days, and the appellate court within eight days from the receipt of the documents (paragraphs 1 to 3 of Article 190 of the CPC).

When the decision on special protection measures becomes final, the court shall, via a written order that represents an official secret, notify the participants and witness in a confidential manner on the day, hour and place of examination of the witness. Before the start of the examination, the witness shall be notified that they will be tested under the special protection measures, they will be notified on what the measures are and that their identity will not be revealed to anyone else other than judges working on the case, and the participants and the defender, at least a month before the main trial starts. Examination of protected witnesses may be conducted a certain manner: excluding the public from the trial, concealing the appearance of the witness, testifying from a separate room with altered voice and appearance of the witness using technological means for transmission of sound and images.

The investigating judge or the Council shall enclose all Information on the identity of the witness and persons close to them and other conditions that may lead to the disclosure of their identity in a separate envelope seal it and deliver for storage unit for witness protection. The sealed envelope may be opened only by the appellate council that decides on the appeal against the verdict. The date and time of opening and naming of the Council members who are familiar with the information shall be indicated on the envelope, and then the envelope shall be resealed and returned to the Witness Protection Unit (paragraphs 1 to 4 of Article 109c of the CPC).

The court is required to warn all persons present during the examination of protected witness to keep the information about them or persons close to them, their place of residence, place of temporary stay, their transferring and guarding and the place and manner of examination of a protected witness secret and that its disclosure is considered a criminal act (Article 109h of the CPC). Criminal Procedure Code contains a specific restriction in that the provision of Article 109d provides that the verdict may not be based solely on the testimony of protected witnesses.

In practice, there is a big question on how to reach the verdict in case of, e.g. a rape, if there is no material evidence, no witnesses and the only evidence is the testimony of

the victim, and that this may be limiting to such an extent that practically prevents the court from reaching a fair, righteous and the only logical and possible verdict. With the crime of human trafficking, it is possible for more victims to be granted the necessary protection, that there is no other evidence, neither material evidence nor the other witnesses because the nature of the offence is such, so in this case, this measure might actually be in favour of the defendant to avoid prosecution and the appropriate conviction and sentence. However, this is not pleading to abolish the provision, because the reliance on a single proof in criminal proceedings is wrong and legally impossible in any case.

On the other hand, the law requires that in cases where protection is required, the facts and evidence are submitted, that prove that there is a serious and real threat to life, health, physical integrity, freedom or property of the witness or person close to him in the case of the public testimony. These facts and evidence, in practice, in cases where the witnesses were granted one or more protection measures, were not adequately explained, there is no information whether such allegations were investigated and checked, and how and who checked them. Often, and even in many cases, the stated reasons for seeking protection measures are the sense of fear and vulnerability of the witness - victim has due to testifying, but without any concrete facts, or threats delivered in person, by telephone or other facts or events that may constitute threats to the witness or close persons. Obviously in case of the criminal acts of human trafficking, particularly when the procedure largely relies on the testimony of the witness as one of the key evidence, the allegations in the request for determining the dimensions of the feeling of fear and vulnerability must be approached in a much different way, and for some of these cases, due to the importance of the testimony, the decision of the court to provide witness protection may be justified, even though no concrete evidence and facts that indicate that there is a serious danger exist. This way, the key evidence was actually provided, and therefore, providing protection in such cases, without serious evaluation or real threat might have been considered justified.

On the other hand, granting the protective measures without accurate and detailed explanation of the facts and evidence of threats or danger to the witness and persons close to them that justify their granting may result in protection being easily granted and thus to calling into question the seriousness of the proceedings, seriousness of the measures designed for extraordinary cases where the protection is necessary, and to some extent, the position of the defendants in the proceedings. Should it be considered for victims of the criminal act of human trafficking who are being questioned as witnesses, that the danger to life and health exists due to the nature of the act itself and the testimony, fewer tests shall be needed to grant the protection to the victim, although it must not be a rule.

The dilemma about revealing the identity of the witness to the participants in the proceeding exists in practice, both domestic and international. The problem is seen in the light of a fair trial and the possibility of the participants to examine the witness and challenge their credibility. On the other hand, a solution that requires disclosure of the identity of the victim before the trial is presented as problematic in the aspect of realistic and effective protection of victims. It seems reasonable that for the case being

particularly difficult circumstances, which include real and justified fear of violating the integrity and life of the victim, the CPC shall provide for the possibility of the entire concealing of the identity of the victim. Such solutions already exist in comparative law, and the practice of the European Court of Human Rights provides a basis for exceptional cases where it may be allowed. The verdict on the case Van Mechelen and Others v. the Netherlands, and following the verdict based on the testimony of police officers who have been examined in the process as anonymous witnesses, "the Court has noted as a general principle, that, if the identity of the witness is concealed, the defence is faced with difficulties that criminal proceedings should not include in ordinary circumstances. This requires that the difficulties in the preparation of the defence be sufficiently superseded by a procedure that the judicial powers implement. Such balancing of the interests of the defence and request for concealing the identity of witnesses leads to particular problems, if the witnesses in question are members of state police forces. The Court has observed that their position is to some extent different from the position of impartial witnesses or victims. They have a general duty of obedience to the state executive authorities and are usually associated with the prosecutor's side. For these reasons, they should be used as anonymous witnesses only in extraordinary circumstances".

It should be noted that in proceedings for the criminal act of human trafficking that took place before the special department of the District Court in Belgrade, the victim-witness has been granted protection during and after the process, although, at that time, no provisions on protected witness existed, but only those of general character .

Beside the general provisions on protection of all participants in the criminal proceeding, and those provisions that refer to the criminal act of organized crime, the current national legislation includes the special regulations on the protection of all participants in the criminal proceeding. This matter is regulated by the Law on Protection Programme for Participants in Criminal Proceedings. This Law shall regulate the terms and procedure for providing protection and assistance to participants in criminal proceedings that are facing danger to life, health, physical integrity, freedom or property due to testifying or giving information significant as evidence in criminal proceedings, and without that testimony or information it would be considerably more difficult or impossible to prove in criminal proceedings for the following criminal offences: against the constitutional order and security; against humanity and other values protected by international law; organized crime (Article 1 and Article 5). Suspect, defendant, witness-collaborator, witness, injured party, expert witness and expert person shall be considered participants in criminal proceeding, and close person is a person for whom the participant in criminal proceedings demands to be included in the Protection Programme (Article 3). [46]

The Protection Programme may be implemented, before, during and after the effective conclusion of criminal proceedings and comprises of measures with the

[46] Official Gazette of the Republic of Serbia, No. 85/2005.

objective to protect the life, health, physical integrity, freedom or property of the protected person (Article 2 and Article 4). Information related to the Protection Programme is confidential and constitute an official secret. In addition to officials, such data may not be disclosed by other persons to whom it becomes available. An official is obliged to inform another person that such information constitutes an official secret (Article 6). The decision on inclusion, extension, suspension and termination of the Witness Protection Programme shall be passed by the three-member Commission for implementation of the Witness Protection Programme. One member of the Commission shall be appointed by the president of the Supreme Court of Serbia from the ranks of judges of the Supreme Court of Serbia, the second member shall be appointed by the Republic Public Prosecutor from the ranks of their deputies, and the Head of the Protection Unit shall be a member of the Commission by virtue of the post held. Members of the Commission shall each have a deputy (Article 7).

In implementing the Protection Programme the Protection Unit shall provide the protected person with the required economic, psychological, social and legal assistance. All government bodies, organisations and services are obliged to render assistance to the Protection Unit, and at the request thereof undertake activities within their purview as required for implementing the Protection Programme (paragraph 2 of Article 12). Within the protection Programme the following measures shall be applied: physical protection of persons and property; change of place of residence or relocation to another prison institution; concealing of identity and ownership information; change of identity In the implementation of the Protection Programme one or more measures may be applied, where the measure of change of identity may be applied only when the purpose of the Protection Programme cannot be achieved otherwise (Article 14). The decision determining the type of some of the three measures specified shall be taken by the Protection Unit, and the decision on change of identity shall be taken by the Commission following the recommendation of the Protection Unit (Article 15). If the protected person is summoned to appear before the court as a suspect, defendant, witness-collaborator, witness, injured party, expert witness and expert person for a criminal offence committed prior to change of identity, the protected person shall participate in the criminal proceedings under their original identity. In other proceedings before a court or other government authority where use of original identity is necessary, the protected person may participate only with the consent of the Protection Unit. If the Protection Unit does not give consent, the protected person exercises their rights in the proceedings through proxy. Summoning of the protected person is done through the Protection Unit that provides their arrival (Article 23).[47]

[47] The Protection Unit shall independently apply the measures from paragraph 1 of Article 14 of this Law. The Protection Unit shall apply these measures to the protected person in cooperation with the Ministry of Interior. When the measures from paragraph 1 of Article 14 of this Law cannot apply in any other way, the Protection Unit may conceal the identity of their members and the ownership information for property that is used in implementation of a certain measure.

The relevant public prosecutor, investigative judge or president of the court panel may, *exofficio* or at the motion of a party in the criminal proceedings, submit a request to the Commission to include a party in criminal proceedings and close persons into the Protection Programme. After effective conclusion of criminal proceedings, the request specified in paragraph 1 of this Article may be submitted also by the Protection Unit (Article 25). If the competent public prosecutor, the investigating judge or the Head of the Council finds that there is an imminent danger to life, health, physical integrity, freedom or property of the witness or persons close to them, they shall inform the Protection Unit of the need to take urgent measures and the Head of the Protection Unit shall orders application of urgent measures, with prior consent of the party in criminal proceedings and/or close person. For a juvenile or legally incompetent person the consent shall be given by a legal representative or guardian (Article 27).

Special agreement shall be made on the Protection Programme that shall, beside the information about the parties and other information, include the statement of the protected person on voluntary inclusion in the Protection Programme, list of obligations of the protected person, obligations of the Protection Unit, duration of the Protection Programme and terms and conditions for termination of the Agreement (Article 30). International cooperation in implementing the Protection Programme provided under this Law shall be realized on basis of international agreement or reciprocity (Article 39).
It can be concluded from the above that the domestic legal system includes two basic forms of protection of witnesses involved in criminal proceedings that may be of importance when it comes to applying these measures to the victims of human trafficking. The first is commonly referred to as procedural and other as non-procedural protection. In the first case, it is about all the safeguards that can be taken together with the criminal proceedings in which a need to take special measures appeared. The second form of protection denotes special measures that competent authorities undertake "outside the courtroom", to protect the witness and persons close to them against the possible consequences of statements they will give or have given to the proceedings.

When it comes to the procedural protection, the current CPC provides for several options. Primarily, it is a general obligation of the court that each witness and victim is protected from insults, threats and any other attack. Having in mind the nature of the stipulated reactions (warning, fine, and in most severe cases, reporting to the Public Prosecutor), it is obviously a mechanism that is designed for situations where the even more lenient reaction would be enough to protect the witness.

However, in subsequent articles, the legislator has stipulated the possibility of application of special measures of protection that are undertaken in such cases with the aim of concealing the identity of the witness and their physical security during the proceeding. The basis of such special measures of protection consists of different forms of concealing the identity of the witness (from excluding the public from the trial, to concealing the appearance of the witness by altering the voice and image). A number of controversies is present among the professionals regarding the provisions that stipulates that the identity of the witness must be revealed to the participants and the defender at least a month before the main trial starts. It is a solution that reflects the

different and sometimes irreconcilable tensions that exist between the need for witness protection and the right to defence, which may be seriously questioned if the identity of the witness was permanently concealed.

Such legal solution could also, in drastic cases, tempt the court itself to choose between two options - the application of safeguards and automatic "lock" of the evidence or dismissing the measure with all the risks that it would carry, in order to preserve the probative force of testimony. Finally, it should be also noted that as a whole, the section of the Law that regulates this matter to a certain extent, gives the impression of incompleteness. In addition to the stylistic and linguistic ambiguities, the systematic definition of various measures that can be applied to the general public on the one hand and the participants in the proceedings on the other, is lacking.

On the other hand, a general impression is that the new Draft Criminal Code regulates the aforementioned area in a more systematic manner. Hence, there are several forms of protection under the Draft Code, the most important of which refers to the obligation of the public prosecutor or the court itself to protect an injured party and witness from insults, threats and any other attacks. [48]

The Draft Code pays special attention to the protection of "a particularly vulnerable witness", which refers to persons who have been assessed as particularly vulnerable in view of their age, experience, lifestyle, gender, state of their health, nature, manner or consequences of the criminal offence or other circumstances of the case[12]. The court passes a ruling on assigning of such status which implies special rules of the examination of the mentioned person (examination at his/her apartment, assistance of a psychologist, implementation of special technical measures, prohibition of confrontation etc.)[49]

In the end, a separate set of rules pertaining to the protection of a witness from intimidation, i.e. rules on examination of the so-called protected witness[50,] are also stipulated. The most significant difference in comparison to the current solution is mirrored in the removal of a provision under which a verdict cannot be based solely on the statement of the protected witness. Besides that, a clear distinction has been made between special protection measures of the broader public and those parties focused primarily on the defendant and his/her defence solicitor.

Bearing in mind the previously mentioned observations, we can conclude that the new Draft Criminal Code introduces better solutions with regard to human trafficking victims. Principally, the aforementioned refers to the institution of a particularly vulnerable witness that can be particularly appropriate for the said actions. Namely, the determination of such status can be carried out in accordance with the procedure that is largely facilitated in comparison to the one relating to the protected witness. With regard to the previously mentioned, we are of the opinion that the said procedural possibility, if adopted, would significantly facilitate testimonies of

[48] Article 106 of the Draft.
[49] Articles 107 and 108 of the Draft.
[50] Articles 109-116 of the Draft.

particularly vulnerable persons who are subject to intensive secondary trauma due to their testimony, even though they may not be directly life-threatened.

We regard the proposed solution to be of utmost importance for procedures of this kind, since it does not foresee a procedural obstruction to base the verdict exclusively on the statement of the protected witness. We have previously put forward our position on the current solution which makes the mentioned impossible, hence at this point we would only like to stress that in this sense it would be utterly important to implement the change in the procedural legislative as soon as possible.

The programme and non-procedural protection measures have been established as a very complex and costly mechanism intended by the legislator only for the most difficult cases in which the safety of any participant in the criminal procedure is endangered to the extent that it is reasonable to assume that other "conventional" measures would not be sufficient in the case in question. Therefore, the application of the programme is additionally limited to participants in criminal procedures for criminal acts of violation of constitutional order and safety, humanity and other assets protected under international law and organised crime. Since human trafficking is one of the criminal acts pertaining to acts against humanity and other assets protected by international law, criminal procedures in these cases may also lead to the activation of this particular mechanism of protection of witnesses and injured parties.

The Law on the Protection Programme for Participants in Criminal Proceedings stipulates several different protection measures that are possible to undertake in the mentioned cases. First of all, that would refer to physical protection of persons and property, which envisages the prevention of an unlawful endangerment of life, health, physical integrity, liberty or property of the protected persons by use of physical-technical means.[51]

Moreover, it is possible to change the residence or relocate to another prison institution depending on whether the person has been deprived of liberty or not.
A special measure would account for concealing of identity or ownership information, which comprises issuing and use of personal identity documents or ownership documents of a protected person in which the original data has been temporarily altered. [52]

The most complex of the measures is change of identity, which constitutes a complete or partial change of personal data of the protected person. This measure may also include the change of physical characteristics of the protected person. [53]

The analysis of legal provisions, as well as their implementation up to this point, indicate that this is a highly efficient legal framework when it comes to the special protection programme for participants in criminal proceedings. The law envisages a procedure and protection measures which are common in comparative legislation in this area. However, having in mind the complexity and expenditures of the overall

[51] Article 16 of the Law
[52] Article 18 of the Law
[53] Article 20 of the Law

system, the programme has been designed as a mechanism to implement only when other measures are not sufficiently effective to eliminate danger to which the participants in the procedure are exposed. In that sense, when it comes to both witnesses and injured parties in proceedings relating to human trafficking and adjacent criminal acts, we believe that the basic mechanism of their protection in an overwhelming majority of cases would include procedural protection measures that have not been previously discussed, thus imposing a necessity to adequately profile the mechanism and adjust it to particular requirements of such procedures.

The implementation of the Law on the Protection Programme of Participants in Criminal Proceedings has demonstrated serious shortcomings. Witnesses/victims are often both isolated unjustifiably and for too long when implementing protection measures conducted by the Unit for the protection of victims and witnesses. Therefore, the strictest measures which encompass a complete relocation from a victim's residential environment to another location, or residing in special accommodation and places intended for that purpose without a contact with the family or close persons should be applied restrictively and only when there is a justified cause.

There is either a lack of contacts with close persons or family members who might provide support or they are strictly monitored and limited in terms of time, and they take place in such places where victims and persons close to them cannot relax, therefore there are no benefits from these meetings for victims. This is quite traumatic for victims and there is a lack of extremely important contacts for further recovery of victims, between them and their family and close persons which are essential for victims of violence and especially for victims of human trafficking who were also victims of sexual exploitation.

Instead of the encouragement of a victim, other protection measures provided for by the Unit, such as escort, security of the building where the victim or close persons thereof reside, disturb the victim, if implemented robustly. On the other hand, victims benefit from the financial support which often strikes them as insufficient, while the same financial support seems excessive to the members of the Unit who still do not have their own budget, even though it is stipulated by law, hence payments are often either commented in the manner that might insult the victim or are followed by glances or gestures that might also cause pain. Furthermore, entering the Protection programme is often associated with incompetently handled interviews by prosecutors or the Unit members, causing victims' disappointment and even self-initiated abandoning of the Programme, once they have been insured that for instance they would not be transferred abroad or that they would not be provided with assistance promised by any party.

Unit for the Assistance and Support to Victims and Witnesses

Experience of the Office for the Assistance and Support with the High Court in Belgrade, Department for War Crimes, might be of significant importance in terms of finding an adequate normative and organisational response to the problem of efficient human trafficking victims protection. The Unit was founded in 2006, as part of the District Court in order to provide various forms of assistance to witnesses and victims: expert advice

and support, adequate safety and security, suggestion of measures and undertaking of actions aimed at the protection of witnesses which testify or are about to give their testimony before the Tribunal, informing of witnesses in the proceedings and their rights, performing duties related to travelling, accommodation, expenditures and other logistic and administration work for witnesses and their escorts, keeping close contacts with investigation teams as per all aspects of appearance of witnesses before the Tribunal. The Unit comprises three sections: the section for protection, which coordinates activities related to security requirements; the section for support, which provides social and psychological counselling and assistance; and the operational section, which is responsible for logistics and administration work related to witnesses.

After the 2009 amendments to the Law on Organisation and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes ("Official Gazette of the RS" 67/03, 135/04, 61/05 and 101/07, 72/09), Article 11 stipulates the establishment of a Department for the assistance and support to injured parties and victims, which in charge of administrative-technical work, work related to assistance and support to injured parties and witnesses, as well as work on the provision of conditions for the implementation of procedural provisions of this Law. Apart from maintaining a contact with matching departments in the neighbouring countries or other countries or departments with the International Criminal for the former Yugoslavia, the task of the Department when it is necessary that a witness comes from any of the mentioned countries, is also to undertake the following:

- establish a contact with witnesses and victims upon their summons to the trial before an investigative judge,
- submit a written leaflet along with the summons to witnesses and victims, on the work of the Department and possibilities for the provision of technical support relating to their arrival and testimony,
- establish a contact with witnesses and victims and upon a consultation with the judge, acquaint them with possibilities of protection during the proceedings when a victim states that he/she is facing difficulties or danger relating to the testimony, while jointly assessing whether the issue in question includes fear or real danger, and if the victim states that the issue is related to fear, they provide support
- provide technical support related to the arrival, accommodation, transportation, arrival to the court premises,
- tend to make the victim or witness as comfortable as possible on the court premises, show them the court room, explain the course of the trial and examination and make sure victims are refreshed and relaxed during breaks

Interviews that the Department has with victims are of extreme significance to both the victim and the proceedings. Typical discomfort associated to the presence in court and participation in the proceedings is additionally increased by victims` reminiscence of events, while at the same time they are requested to recall details which they might not have considered relevant or that they might have suppressed for any reason. Rape victims and victims of sexual harassment are additionally burdened by

shame, as well as by the fact that quite often they are the only witnesses of the event, apart from the perpetrator. The examination of such victims is difficult and complex. According to experience, those victims who previously contacted and spent certain time in conversation at the Department for assistance and support to witnesses and with the staff before entering the court room, managed to get hold of the situation, since they were acquainted with the court room, place where they would sit, they also saw and were explained where the parties and the judge would be, and they knew that they might ask for water, a short break or say that they were not feeling well, since the staff would wait for them.

Work of the Department has had a positive effect on the quality of statements given by victims and witnesses in war crime proceedings. The court has also been enabled to obtain information whether a victim is ready or in a poor mental state before the examination, so that the pace of the examination may be adjusted. Talks at the Department for assistance significantly encourage female witnesses, and they come when it is explained to them that it is not a big deal, that everyone knows that they will testify about a rape, that nobody would mind their education or vocabulary, that there would be some uncomfortable questions, that they may say everything, and on several instances it even occurred that victims talked about something for the first time since, as they explained, they knew at that time that they could say everything. Apart from the aforementioned, the court has relevant information on health condition that might be of importance during the testimony (for instance, if a victim has a disease and has been taking medicines for a chronic disease or if a victim has a disease that might get worse during the testimony, such as hypertension and similar). On the other hand, when it comes to witnesses whose information has been concealed (for instance, witnesses under aliases) or who have been questioned under circumstances implying protection measures in accordance with the Criminal Code or the Law on the Programme of Protection for Participants in Criminal Proceedings, doubts of defence solicitors and defendants on instruction of witnesses by the prosecution are eliminated, since it is familiar that the Department is in contact with victims and witnesses.

The support provided for by the Department for Assistance and Support to Injured Parties and Witnesses would be of extreme importance for both victims and witnesses in human trafficking proceedings, especially when it comes to sexual exploitation. Experiences gained during the course of work of the Department and needs of human trafficking victims, especially when it comes to sexual exploitation, but also to victims of other criminal acts with elements of violence, absolutely justify the establishment of the Departments also with other courts.

SPECIFICS OF MINOR THB VICTIMS PROTECTION

Special reason to care and appeal to undertake more adequate measures of prevention and suppression of THB is given by the fact that very often victims of this form of organized crime are children, i.e. minors. Necessity for special and intensified protection of this category of population, both at national and international levels, springs from their specific vulnerability and inexperience. Also, due to the fact that

consequences of slavery and exploitation are much more severe when concerns children and minors.

Exploitation of children and minors appears in several forms of which two are mostly concerned dominant – exploitation of child labour and sexual exploitation. However, the fact is that certain forms of exploitation are less known, since most of researches refer to sexual exploitation. This document, pointing out results of certain researches, will briefly indicate forms of victimization of children and young by THB.

One of recent researches on trafficking in children performed by UNICEF[54] indicates complexity and dynamics of this problem. Interviewed children and young people – victims of THB – were from different environments. Interviews results have shown that violence in family and maltreatment most often appear as rejection factor, as well alcohol abuse by parents. Related to this, results of some other researches show that traffickers use abduction or kidnapping of children more and more for illicit adoption or trafficking in organs. As an example, the Report of UN Secretary General points out that, although there are no decisive evidences related to trafficking in children for the purpose of organs taking, fact is that bodies of many abducted or missing children, later found dead, were massacred and certain organs removed, as well that medically it is possible to transplant organ of a child into the body of an adult.[55]

Even if it is about sexual exploitation, there is a problem of boys' identification when they are THB victims as such. Report of the State Department for 2008 quotes that 2% of boys – victims of sexual exploitation, as it is according to data of International Labour Organization (ILO) and UNICEF, is not the right reflection of state, primarily due to social condemnation referring to sex with boys.[56] Transition in former communist states has also brought more problems referring to sexual exploitation of children.[57] In these states this phenomenon is most often linked to tourism, presence of military bases or peace-keeping operations.[58] Moreover, children forced to beg or commit

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[54] Sample for this research was 31 children from Southeast Europe. Dottridge M., Young *People's Voices on Child Trafficking: Experiences from South Eastern Europe,* UNICEF, Innocenti Research Centre, December 2008, available at: www.unicef-irc.org/publication/pdf (address visited on March 5, 2009).

[55] *Report of the Secretary – General to the Commission on Crime Prevention and Criminal Justice on preventing, combating and punishing trafficking in human organs* (E/CN.15/2006/ 10). Available at: www.unodc.org/unodc/en/commissions/CCPCJ/session/15.html

[56] State Department Report on Trafficking in Human Beings for 2008, available at: www.state.gov/tip (address visited on March 10, 2009).

[57] Vučković-Šahović N., *Prava deteta i međunarodno pravo (Child Right and International Law)*, Jugoslovenski centar za prava deteta (Yugoslav Centre for Child Right), Belgrade, 2000, p. 238.

[58] In relation to this it is important to establish the role of UN peace-keeping operations.

criminal offences,[59] belong to so-called "hidden population", difficult to research because its members are hard to identify or find.[60]

Forcing children to commit criminal offences is also linked to trafficking in drugs. Having in mind the fact that they cannot be criminally accountable for committed criminal offence, children are used for illicit production and trade in narcotic drugs. Exactly this indicates touching point between organized trafficking in drugs and trafficking in human beings, i.e. organized criminal groups can deal with both activities. In such situations children – victims suffer from multiple victimization. Exploitation of such victims means their use in trafficking in drugs, while it is possible that this is not the only form of THB exploitation to which they are forced. Also, very small percentage of such children stays out of drugs world, i.e. entering into drugs addicts world is one more form of their victimization.

The goal of Worst Forms of Child Labour Convention adopted by International Labour Organization and its additional protocols is ban and elimination of the worst forms of child labour (Article 1 of the Convention). For the purpose of the Convention, expression „the worst forms of child labour" encompasses: all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (article 3).

The recommendation No. 190 on ban and urgent action to eliminate the worst forms of child labour, within action programme, indicates the need for urgent concept and implementation of the programme which should, among other issues, have as goals: (a) identifying and denouncing the worst forms of child labour; (b) preventing the engagement of children in or removing them from the worst forms of child labour, protecting them from reprisals and providing for their rehabilitation and social integration through measures which address their educational, physical and psychological needs; (c) giving special attention to: (i) younger children; (ii) the girl child; (iii) the problem of hidden work situations, in which girls are at special risk; (iv) other groups of children with special vulnerabilities or needs.

How much attention is given to ban and eradication of child labour illustrates the fact that article 12 of Recommendation 190 stresses that parties need to establish following forms of child labour considered as criminal acts: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage

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[59] Sample in this research was 31 children from Southeast Europe. Dottridge M., *Young People's Voices on Child Trafficking*: *Experiences from South Eastern Europe*, UNICEF, Innocenti Research Centre, December 2008, available at: www.unicef-irc.org/publication/pdf (address visited on March 5, 2009).
[60] Ibidem.

and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; and (c) the use, procuring or offering of a child for illicit activities (in particular for the production and trafficking of drugs) or for activities which involve the unlawful carrying or use of firearms or other weapons.

Preamble of the CE Convention on Trafficking in Human Beings,[61] stresses that actions and initiatives against trafficking in human beings have to be non-discriminating, to take care of gender equality, as well approach based on child right. It is visible that this document also underlines child rights and protection of children from different forms of abuses and exploitation in the fact that Council of Ministers has adopted the Convention relying on, among other things, Recommendations of Committee of Ministers to Council of Europe member states, and even Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution and trafficking in children and adolescents; Recommendation (2001) 16 on protection of children from sexual exploitation.

Article 5 of CE Convention foresees that each party need to undertake special measures in order to diminish exposure of children to THB, including creation of a climate favourable to children protection. Recommendation of measure discouraging demand instigating all forms of human exploitation and leads to trafficking in human beings (particularly women and children) needs to be understood in that context, as well. To that end, each party need to adopt or improve legislative, administrative, education, social, cultural or other measures (article 6).

Specifics of actions having as main goal protection of child welfare and child protection are also discussed in provisions of CE Convention dealing with issues of victims' privacy protection (article 11). In this segment treating issues of residence permits, it is specifically pointed out that residence permits for children victims of THB are issued in the best interest of a child, if stipulated by the law, and when needed, extended under the same terms (article 14, para. 2). Special attention in children treatment is also required for measures having as goal repatriation or return THB victims (article 16, para. 5 and 7).

What is of special significance for THB tackling practice and criminal legal protection of children – THB victims is contained in provisions of article 24 of CE Convention. Speaking of aggravating circumstances, it stresses that parties need to secure that, among other things[62], fact of criminal offence against child is stipulated when determining the sentence for criminal offences defined in accordance to article 18 of the Convention.

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[61] Adopted on May 16th, 2005 in Warsaw, and introduced into our legal system in 2009, Official Gazette No. 19/09

[62] Criminal act by which life of a victim is endangered consciously or for severe negligence; criminal offence committed by state official in performance of his/her duties; criminal act committed within criminal association.

Special attention of child protection is given in the segment dealing with protection of victims, witnesses and persons collaborating with judiciary. It is pointed out that a child – THB victim will get special protection measures which will take care of its best interests (article 28, para. 3). It is, also, stressed that, in accordance to the Convention for Protection of Human Rights and Fundamental Freedoms, particularly by article 6, each party needs to adopt legislative or other measures in order to provide following during trial proceedings: a) protection of victims privacy and, when necessary, its identity; b) security of victim and protection from intimidation, in accordance to conditions prescribed in national law and, in the case when victims are children, paying special attention to needs of children and providing them their right to special protection measures (article 30). Pointing out children as category of victims deserving special attention is also present in article 33 of the Convention. This provision deals with measures referring to the most endangered or missing persons and need to consider options to strengthen co-operation in search for missing persons (if it can be concluded it is THB victim on the basis of available information).

Speaking of specifics of criminal law protection of THB victims of younger age, Republic of Serbia has made one step ahead in relation to incrimination from 2003[63] which has introduced this criminal offence for the first time into our penal legislation, determining special protection regime for persons younger than fourteen years. Since 2005, protection regime is extended to minors, i.e. persons still under eighteen.

Remark can be addressed also in relation to qualified form of criminal act which requires severe body injury of damaged person - victim. Legislator has stipulated imprisonment of minimum three years in provision of article 388, para. 4. This solution in relation to criminal law protection of a minor, in the context of stipulated sanction, did not follow logic applied in foreseeing sanctions for commission of basic form of criminal act. Namely, the situation when criminal act is committed against a minor with severe body injury is made equal to the situation when there is no such consequence, which certainly cannot be the same. Same logic should be followed when prescribing sanction for more serious forms in a way to determine minimum sanction higher than three, even higher than five (ex. eight years) for committed criminal offence in more serious form, against victim who is minor and also having as consequence severe body injury. Current solution is logical in the case when victim is an adult, because specific sentence minimum as well maximum are set in a way enabling more serious sanction for criminal offence followed by more serious consequence. In any case, conclusion is that such solutions are not appropriate response to the trend present in criminal offences of THB, indicating that perpetrators commit this criminal offence more often against minor persons, i.e. children and juveniles. To make the absurdity deeper, in this case the legislator prescribed also fifteen years imprisonment as special maximum for more serious form of offence (maximum is not stipulated for basic form of offence committed against minor, but general maximum of twenty years is applicable). Step ahead to the

[63] Official Gazette of Republic of Serbia, No. 39, since 11th of April 2003.

right direction was made by increase of special minimum of ten years for criminal offence of THB having as a consequence death of victim (hence, there is also no distinction in the case the victim is minor) in comparison to the solution from 2003.

The Law on Minor Criminal Offence Perpetrator and Criminal Law Protection of Minor Persons[64] (hereinafter referred to as: LMCOP) contains provisions referring to protection of minor victims of THB. The third part of LMCOP has the title: Special Provisions on Protection of Minor Persons as Damaged Persons in Criminal Proceedings. Among other criminal offences, criminal offences of trafficking in human beings, trafficking in children for the purpose of adoption and establishment of slavery relation and transport of a person in slavery relation are listed as offences in article 150 of LMCOP, to which these special measures on juvenile persons protection are applied. Namely, in order to avoid harmful consequences to a minor and its development, it is required that all stakeholders of proceedings have specific knowledge from the area of child right and criminal law protection of juvenile persons. In the proceedings for criminal offences committed against juvenile persons, public prosecutor, investigative magistrate and judges in the council will act in a way avoiding harmful consequences against minor person (articles 152 and 153 of LMCOP). Article 152 of LMCOP, among other things, foresees that hearing of a minor person is going to be done with the assistance of psychologist, pedagogue or other professional expert.

Hearing of minor person damaged by a criminal act referred to in article 150 of this Law can be performed maximum two times, and extremely more times if that is necessary for the purpose of criminal proceedings, but in that case the judge is obliged to specially take care of protection of personality and development of minor person. Paragraphs 3 and 4 of this article foresee option of special hearing methods for minors under certain conditions. So if judge assesses that it is necessary to order hearing of a minor person by use of technical means for transmission of image and sound, the hearing will be performed with no presence of parties and other participants in the proceedings, and these parties and persons entitled to that will ask questions via judge or professional experts. Criteria for application of this provision are features of criminal offence and features of the minor itself. Having in mind features of criminal offence of trafficking in human beings or trafficking in children for adoption, as well psychological consequences left by victimization to the personality of juvenile, wide application of these provisions should be expected in such cases. Also, minor person can be heard as witness-victim in its apartment or other premise, i.e. authorized institution, organization, professionally trained for minors' hearing. Here we need to mention also special provisions related to confrontation (face to face) as an evidentiary act, as well when speaking of recognition of defendant by minor. If interviewed minor person is particularly sensitive due to nature of criminal offence, consequences or other circumstances, is interviewed, i.e. is in particularly severe psychological state, it is

[64] Law on Minor Criminal Offence Perpetrator and Criminal Law Protection of Minor Persons („Official Gazette of RS", No. 85/2005).

forbidden to confront it with the defendant (article 153 of LMCOP). Also, when recognition of the defendant is done by damaged minor person, the court will act with high precaution, and such recognition will be done in all stages of the proceedings in a way which completely disables defendant to see this person (article 155 of LMCOP).

In its overview of existing solutions in Penal Code, the Committee for Child Right, in its recommendations for 2010, supports amendments of Penal Code, but expresses considerations that enforcement of the law in practice is still a problem and that sale of children is still not incriminated in Republic of Serbia in accordance with articles 2 and 3 of Optional Protocol on Sale of Children, Child Prostitution and Child Pornography, where it is stressed that sale of children means any act or transaction by which any person or group give any child to anyone else for monetary or any other reimbursement. These provisions also foresee that each state party, in the context of sale of children incrimination, will provide, as minimum, that following actions and activities are totally encompassed by its criminal or penal laws, regardless the fact are those offences committed in the country or trans-nationally, i.e. individually or in organized manner: offering, delivery or takeover, by any means, of certain child for the purpose of sexual exploitation of a child, transfer of child organs for the purpose of profit, use of child for forced labour, inappropriate induction by an intermediary to accept adoption of certain child infringing enforceable international legal instruments on adoption. The same refers to attempt to commit any of listed acts, as well to co-perpetration or participation in any of mentioned offences, while state party will apply appropriate sentences to these offences, taking into account their serious nature.

In the segment referring to protection of child rights, concern of the Committee it is pointed out that children - victims of infringements of rights guaranteed in Optional Protocol are often not considered and not treated as victims, so it is less done to avoid their marginalization and stigmatization, for what it is recommended to Republic of Serbia to enable protection to children – victims and witnesses in all stages of criminal proceedings and to follow for this purpose Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Annex to the Resolution 2005/20 of Economic and Social Council).

Therefore, already the title “trafficking in minor persons for the purpose of adoption” as separate criminal offence, and specific attitude towards commission of offence against minor persons in criminal offence of trafficking in human beings might not be the best solution. Besides, separation of age limit of sixteen, not known to the Convention on Child Rights, is not necessary, although the fact is that child of sixteen can express its opinion on adoption in adoption procedure. Introduction of this limit in elements of criminal offence is superfluous. Situation in valid legal regulation is as such that it is possible to solve by this criminal offence only cases of trafficking for purpose of adoption, while possible situation of sale of children could be solved only by criminal offence of trafficking in human beings. Insisting on having separate paragraph about act of organized criminal group is worrying, while on the other side insisting on such definition of acts of criminal offence which could cause problems with evidence gathering.

COORDINATION AND COOPERATION OF POLICE AND OTHER INSTITUTIONS AND ORGANIZATIONS IN THB TACKLING PRACTICE

One of the priorities in the work of MoI Republic of Serbia is fight against organized crime, especially in segment of trafficking in human beings. Having in mind mentioned priorities, besides organizational units acting in all cases of criminal offences and by this also those linked to trafficking in human beings (24/7 service, criminal, border, traffic and uniformed police), within the Criminal Police Directorate, in the Service for Combating Organized Crime, Section of THB Suppression was formed, and within Border Police Directorate – Department for Suppression of Cross-border Crime and Criminal Intelligence with its Section for Suppression of Illegal Migrations and THB.

Police officers who are not specialized for THB suppression and who gather findings about criminal offence of THB inform on this their direct superiors who further contact special teams or units for fight against THB.

On the other hand, policing in cases of THB often means co-operation with criminal police services of other countries (when gathering initial data, during police investigation and even latter – among other for the purpose of assessment of risk levels to victims giving testimonies, or to provide their save return to the country of origin). Reasons for this are simple: traffickers deal with criminal acts in several countries, so joint proactive operations and coordinated actions increase efficiency of tackling; joint operations enable collection of evidences in countries of origin, transit and destination about recruitment, transport and exploitation (this means not only agreement on what to focus criminal investigation to, but also decisions on methods of coordination, evidences' gathering tactics, monitoring of criminal offences and best location for criminal prosecution).

International police co-operation goes primarily via NCB Interpol. This form of co-operation encompasses: mutual assistance between law enforcement authorities for the purpose of intelligence gathering, i.e. providing operational assistance through databases and intelligence capacities in relation to criminal activities; joint proactive operations; requests for operational assistance like surveillance, controlled delivery, interception, etc. Contacts between criminal services are established respecting the fact that providing evidences means respect of provisions regulating rules and procedure of mutual legal assistance. On the contrary, validity of evidences can be questioned if obtained out of regulations and provisions of agreements on mutual legal assistance.

International police co-operation functions also on regional level and through occasional or regular contacts with competent authorities of other states (most often neighbouring, but not only those). In order to create conditions for as more direct and more qualitative as possible co-operation, Republic of Serbia has concluded large number of multilateral and bilateral agreements in area of police co-operation with neighbouring countries and certain EU countries.

Article 19 of UN Convention foresees also option for joint investigations, but state parties will consider conclusion of bilateral or multilateral agreements or

arrangements according to which, related to issues which are subjects of investigations, criminal prosecution or court proceedings in one or more countries when interested competent authorities can form joint investigative organs. In absence of such agreements or arrangements, joint investigations can be undertaken on the basis of agreement for each individual case. Subject signatory parties will take care to fully respect sovereignty of signatory party in territory of which investigation will be undertaken.

Necessity for a special approach and deployment of adequate measures in investigation is visible also in provisions on special investigative techniques (article 20). These techniques include use of controlled delivery and, where it is assessed as appropriate, use of other special investigative techniques, such as electronic surveillance or other forms of surveillance and covert operations, by competent authorities in its territory for the purpose of efficient fight against organized crime, both in national and international levels.

In the segment referring to international assistance and co-operation, the Committee for Child Rights recommends to Republic of Serbia to reinforce its bilateral, regional and international judicial and police activities and activities oriented to victims with other states and organizations with the aim to prevent and suppress sale of children, child prostitution and child pornography.

TRAINING

Building of more efficient mechanism of criminal law reaction to criminal offence of trafficking in human beings means also design, development and implementation of adequate programmes of trainings intended for members of relevant services, primarily police officers, prosecutors and judges. In the context of measures intended to prevention and suppression of all forms of criminal offences encompassed by UN Convention, article 29 recommends also goals and contents relevant for building and improvement of training programmes for tackling trafficking in human beings. It is expected to pay attention to: methods used in prevention, discovering and control of all criminal offences, and particularly those appropriate to specifics of criminal offence of trafficking in human beings; overview of complexity and severity of THB criminal offence; methods of exploitation; situation, problems and needs of victims; typology of perpetrators personalities and delinquency tactics for recruiting, subordination, exploitation and control over THB victims; methods of criminal offences and victims disclosure; initial measures after findings of preparation of criminal offence, i.e. commission of criminal offence; gathering of evidences by use of conventional and special investigative techniques; identifying and tracing crime profits, property, equipment or other means and methods used for transfer, hiding or disguising of such proceeds; application of methods, means and techniques used in fight against money laundering and other financial criminal offences; victims and witnesses protection measures; international criminal police co-operation and legal assistance.

Cooperation between states in planning and implementation of research and training programmes intended to exchange of professional knowledge. When necessary, use regional and international conference and seminars to improve co-operation and to

stimulate discussions on problems worrying all, including also specific problems and needs of certain states and regions.

Provisions of article 10 of „Palermo“ Convention's Protocol dealing with information exchange and training are also in the function of more efficient tackling of THB. Authorities in charge of law enforcement, of immigration issues and other relevant authorities in signatory states will, when needed, co-operate mutually by information exchange, in accordance with its national legal regulations, in order to establish in this way: (a) are individuals who have crossed or are trying to cross an international border with travel documents belonging to another person, or have no documents, perpetrators or victims of trafficking in human beings; (b) types of travel documents used by individuals or tried to use in order to cross an international border for purpose of trafficking in human beings; and (c) means and methods used by organized criminal groups for the purpose of trafficking in human beings, including recruitment and transport of victims, routes and links between individuals and group engaged in the trafficking, and possible measures for their disclosure. Signatory parties will provide or reinforce training of personnel working in law enforcement, immigration and other relevant officials working on prevention of illicit trafficking in human beings. Training should be directed to methods used in prevention of this illicit trafficking, to prosecution of their perpetrators and to protection of victims' rights, including also protection of victims from trafficking perpetrators. Training should also take into account need to consider human rights and issues of sensitive nature related to children and gender, and need to encourage co-operation with NGOs, other relevant institutions and other elements of civil society. Signatory party receiving information will respect each request of sending party, which refers to limited use of this information.

CoE Convention also, in its article 5 referring to prevention, co-operation and other measures, pays attention to establishment and strengthening of national coordination of different bodies competent for prevention and suppression of THB, by: research, information, campaigns intended to awareness raising and education, social and economic initiatives and training programmes, especially for persons exposed to trafficking in human beings and experts dealing with problems of THB. Training of competent officials in charge of prevention and fight against THB is particularly stressed, including also training in the area of human rights. The training can be organized only for certain sectors and, where needed, can focus to: methods used for prevention of THB, criminal prosecution and protection of victims' rights, including also protection of victims from human beings traffickers.

In the same context, it is also necessary to observe provisions on specialized professional organs and coordination bodies. Recommendation is adoption of measures by which certain persons or entities will specialize for fight against trafficking in human beings and victims protection. Presumption for more efficient performance of duty is providing financial means for the work of such organs, but also to design and implement proper training programmes. Training can be organized only for individual sectors, and where needed, focus to: methods used for prevention of THB, criminal prosecution and protection of victims' rights, including also protection of victims from human beings traffickers.

At the national level, attention is focused to the issue of training and co-operation also in the Agreement on Co-operation between the Ministries of Interior, Finances, Justice, Health, Education and Labour and Social Policy in the Area of Fight against Trafficking in Human Beings concluded on November 12th, 2009. Integral part of the document is guidelines for standard operational procedures in acting with THB victims.

Training programmes designed and implemented up to now for members of state authorities oriented to criminal law reaction to criminal offence of trafficking in human beings have been organized by national institutions and associations and with the assistance of international organizations (OSCE, ICMD; UNDP; IOM). MoI has organized seminars for members of specialized MoI teams for fight against trafficking in human beings (two-day seminars), i.e. members of border police (one-day seminars). Association of Serbian Judges and OSCE have held 40 two-day seminars in previous period for police officers, prosecutors and judges, and in organization of Association of Public Prosecutors 5 one-day seminars during 2010 intended to primarily bearers of public prosecution functions).

RECOMMENDATIONS

The normative definition of human trafficking and trafficking of minors

1. In terms of conditions for the existence of human trafficking, the elements of the crime shall be associated with alternative actions, objectives and means of execution, when particular conditions concerning the characteristics of means and manner of execution, for the characteristics of victims or perpetrators, or consequences, shall be considered as qualifying.
2. Extortion and abuse of indebtedness shall also be provided for as the possible acts of commission.
3. In addition to the existing actions, more actions concerning the obtaining of the identification and travel documents in order to facilitate human trafficking shall be provided for (forgery of identification and travel documents or their withholding, or altering, destroying or withholding the real documents). The relevant international conventions on human trafficking draw attention to the necessary protection and control of identification and travel documents. In addition, Article 20 of the convention of the Council of Europe emphasizes that each member state shall adopt the legislative or other measures required to qualify the following acts, if committed intentionally and in order to facilitate trafficking, as a crime: a. forgery of travel or identity documents; b. acquisition or production of such documents; c. withholding, seizing, concealing, damaging or destroying a travel or identity document of another person.
4. Forced marriage or the establishment of other communities shall be explicitly provided for as one of the goals of human trafficking.

5. The meaning of the term exploitation of someone's labour shall be specified with a view of better identification of a criminal act. Criminal Codes of some countries, such as Germany, Belgium and France, include such definition, and we believe that the inclusion of such definition into our Criminal Code will significantly contribute to better prosecution, and sanctioning of human trafficking. Having recognized the existing parallel solutions, we believe that a good definition would be the one that associates the exploit of one's labour with “the set of circumstances and conditions which indicate that the work is performed under conditions that are contrary to the principle of respect for human dignity, bodily and psychological integrity, health, and which are disproportionate to the conditions of other persons that perform the same or similar jobs”. Such definition would be added to Article 112 of the Criminal Code that interprets the term. The Directive of the European Parliament and the Council for prevention and combating the human trafficking and protection of victims, adopted on December 14, 2010 in Strasbourg (hereinafter: the EP Directive), also deals with the necessity for precise definitions of terms used in the laws. "Begging under duress shall be regarded as a form of forced labour or services, as defined in ILO Convention No. 29 (International Labour Organization, 1930) and concerns forced labour. Therefore, the misuse of begging, including the use of dependent people that are trafficked for begging, falls within the definition of trafficking only when all the elements of forced labour or services are present. "
6. The first group of qualifying conditions shall be associated to the criminal act of kidnapping in a cruel or particularly humiliating manner committed by a group performing official duties by taking advantage of physical disability or disease, mental illness or mental retardation and other mental disorder or concerning more than one person and resulting in pregnancy. The second group shall be associated to the occurrence of serious bodily injuries among victims, severely impaired health and other serious consequences. The third group shall be associated to the organized crime group committing the criminal act. The fourth group shall be associated to the death of one or more persons. The EP Directive deals with the necessity to establish a special regime of responsibility for particular situations "When the crime is committed in particular conditions, for example, against particularly vulnerable victims, the penalty would have to be more severe. In the context of this Directive, all children shall be included in the group of particularly vulnerable persons. Other factors that may be taken into account when determining vulnerability of the victims include, for example, gender, pregnancy, health status and disability. When the offence is particularly serious, as when, for example, the victim's life is in danger or if the crime involves serious violence such as torture, forced use of drugs/medicines, rape or other serious forms of psychological, physical or sexual violence, or otherwise causes extremely serious injury among victims, it shall be punished particularly severely." Article 4 of the Directive highlights that the member states must take necessary measures in order to secure that criminal acts from Article 2 are be punished with maximum sentences or no less than 5 years or prison, and that criminal acts committed in some of the following conditions are punished with maximum sentences or no less than 10 years

or prison: a) was committed against victims who are particularly vulnerable, which in context by the Directive means that it is at least a child; b) was committed by a criminal organization, in the meaning of Council's Framework Decision 2008/841/JHA from October 24, 2008 on combating Human Trafficking; c) has intentionally or by negligence endangered the life of the victim; d) was committed using severe violence or caused serious injury among victims.

7. Confiscation of property, vehicles and other items used in committing the criminal act of temporary or permanent closing of the object shall be provided for. The decision on confiscating property has been introduced in Criminal Code of the Republic of Macedonia in 2008 ("the Official Gazette No. 7/2008, paragraph 7 of Article 418-a) Asset recovery in cases of organized crime offences is recommended in Article 12 of the UN Convention (States Parties shall, to the extent feasible, and allowed by their legal system, adopt the necessary measures to enable confiscation of: (a) the profit acquired by committing crimes covered by this Convention or property whose value corresponds to the value of such profit; (b) property, equipment or other instruments used or intended for use in the criminal acts covered by this Convention. Here, the term property means the assets of every kind, whether tangible or intangible, movable or immovable, whose value can or cannot be determined, and legal documents or instruments to prove entitlement or interest in such property (Article 2 of the UN Convention). On the other hand, in accordance to paragraph 4 of the Article 23 of the CE Convention, the property used for purpose of human trafficking may be temporarily or permanently closed.
8. As major problems appear in practice of discovering, prosecuting and providing evidence regarding the identification of differences between the criminal act of Mediation in prostitution from Article 184 of the Criminal Code and human trafficking from Article 388 of the Criminal Code, it is essential for the text of the Code to be unambiguous on what is considered sexual exploitation which includes prostitution, to the extent that it is human trafficking. This problem can be solved by a high-quality training programme, which would involve the construction of legal practice, concerning international standards and recommendations and highlighting the fact that fraud as a means for the criminal act of trafficking involves misrepresentation or concealment of facts, as well as deception with respect to important circumstances related to the provision of sexual services (primarily for working conditions, work methods and types of services, ability to leave the place of work or particular kinds of work, to leave the place of permanent or temporary accommodation, which is related to the provision of sexual services).
9. Trafficking of minors shall be treated as an independent criminal act and it should incorporate all provisions relating to minor victims provided for in Articles 388 and 389 with improvement of the normative response adequate to the particular characteristics of minors. The proposed solution is in accordance with the recommendations contained in international legal documents, and is already present in the national legislation of certain countries (e.g. the Republic of Macedonia). This solution would also be in accordance with the Optional Protocol on the child trafficking, child prostitution and child pornography with the UN

Convention on the Rights of the Child, and would be a step towards realising the recommendations from the fifty fourth session of the Committee on the Rights of the Child relating to the Republic of Serbia from June 22, 2010. [6566]

10. With the established criminal act of trafficking of minors, the acts of commission should include all sales and purchases, regardless of whether the perpetrators are related to victims and to which degree they are related and regardless of the purpose. The purpose such as adoption or sale for inclusion in begging or theft may be sanctioned as a separate act, but in any case all it would have to be described in a more general formulation, and the purposes shall be specified only for an example, because otherwise, some actions committed for the purpose that is not defined may remain unsanctioned.

It is recommended that the following criminal acts be established as follows:

Human trafficking
Article 388

(1) Anyone who recruits, transports, transfers, delivers, sells, buys, mediates in the sale, harbours another person by force or threat, blackmail, fraud or deception, abuse of power or of a position, trust, dependence, indebtedness, the difficult circumstances of the others, forging false identity documents or withholding, alternating, damaging or destruction of real documents or giving or receiving money or other benefits and for the purpose of exploitation of their labour, forced labour, committing criminal acts, prostitution or other forms of sexual exploitation, begging, use in pornography, establishment of slavery or similar relationship, forced marriage or other communities, other forms of exploitation, for taking away organs or body parts or for use in armed conflicts,

shall be punished with imprisonment from three to twelve years.

(2) If the offence referred to in paragraph 1 of this Article is committed by kidnapping in a cruel or particularly humiliating manner committed by a group performing official duties by taking advantage of physical disability or disease, mental illness or mental retardation and other mental disorder or concerning more than one person and resulting in pregnancy,

the perpetrator shall be punished by imprisonment for not less than five years.

(3) If the consequences of any act referred to in paragraph 1 of this Article include the occurrence of serious bodily injuries among victims, severely impaired health and other serious consequences,

the perpetrator shall be punished by imprisonment for not less than eight years.

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[65] Adopted by the resolution of the General Assembly of the UN on May 25, 2000. Entered into force on November 10, 2002. (the Official Gazette of the FR Yugoslavia – international treaties No. 7/2002).

[66] Adopted on November 20, 1989 on the 44th session of the General Assembly of the UN in New York. Entered into force on September 2, 1991(the Official Gazette of the SFR Yugoslavia – international treaties No. 15/90; the Official Gazette of the FR Yugoslavia – international treaties No. 4/96, 2/97)

(4) If the act referred to in paragraph 1 of this Article is committed by an organized criminal group, the perpetrator shall be punished by imprisonment for not less than ten years.

(5) If any act referred to in paragraph 1 of this Article resulted in death of one or more persons,

the perpetrator shall be punished by imprisonment for not less than ten years or imprisonment from thirty to forty years.

(7) Anyone who knows or could have known that the person is a victim of human trafficking, and uses their position or allows another person to use their position for exploitation referred to in paragraph 1 of this Article,

shall be punished with imprisonment from six months to eight years.

(8) The consent of a person to exploitation or establishment of slavery or similar relationship from paragraph 1 of this Article shall not affect the existence of crime from paragraphs 1 to 7 of this Article.

(9) Transport vehicles and other means used to commit a criminal act referred to in paragraphs 1 to 6 may be confiscated, and the property may be confiscated or temporarily or permanently closed.

Trafficking of minors

Article 389

1. Anyone who recruits, transports, transfers, delivers, sells, buys, mediates in the sale, harbours a minor for exploiting their labour, forced labour, for adoption contrary to applicable legislation, transfer to another family, committing criminal acts, prostitution or other forms of sexual exploitation, begging, use in pornography, the establishment of slavery or similar relationship, forced marriage or other communities, other forms of exploitation, taking away organs or body parts or for use in armed conflicts,

shall be punished with imprisonment from five to fifteen years.

2. Anyone who commits acts from paragraph 1 of this Article by force or threat, blackmail, deception or maintaining deception, abuse of authority, trust, dependence, indebtedness, the difficult circumstances of the others, forging false identity documents or withholding, alternating, damaging or destruction of real documents or giving or receiving money or other benefits,

shall be punished by imprisonment for not less than five years.

3. If the act referred to in paragraph 1 of this Article is committed by kidnapping in a cruel or particularly humiliating manner committed by a group performing official duties by taking advantage of physical disability or disease, mental illness or mental retardation and other mental disorder or concerning more than one person and resulting in pregnancy, the perpetrator shall be punished by imprisonment for not less than five years.

4. If the consequences of any act referred to in paragraph 1 of this Article include the occurrence of serious bodily injuries among victims, severely impaired health and other serious consequences, or if it is committed by an organized criminal group, the perpetrator shall be punished by imprisonment for not less than 10 years.

6. If any act referred to in paragraph 1 of this Article resulted in death of one or more persons, the perpetrator shall be punished by imprisonment for not less than ten years or imprisonment from thirty to forty years.
7. Anyone who knows or could have known that the minor is a victim of human trafficking, and uses their position or allows another person to use their position for exploitation referred to in paragraph 1 of this Article,

shall be punished with imprisonment from one to ten years.

8. The consent of a person to exploitation or establishment of slavery or similar relationship from paragraph 1 of this Article shall not affect the existence of crime from paragraphs 1 to 7 of this Article.
9. Transport vehicles and other means used to commit a criminal act referred to in paragraphs 1 to 7 may be confiscated, and the property may be confiscated or temporarily or permanently closed.

Improving the provisions of the Criminal Procedure Code and the status and protection of victims in criminal proceedings

1. Introduce the concept of victim in the Code of Criminal Procedure. The solution is already present in national legislations of countries in the region and result in a series of features related to the status and rights of this category of persons (including a special regime of giving testimony, security, compensation, etc.).

2. Support the proposal of a new version of the CPC that shall regulate and re-introduce the category of vulnerable witnesses, with reserve in respect of the obligation of disclosure of identity of the particularly vulnerable witness one month before trial. The paragraph 7 of Article 11 of the EP Directive also states that the member states shall take care of victims with special needs that arise in cases or as a result of pregnancy, health condition, disability, mental or psychological disorder, or severe forms of psychological, physical or sexual violence.
3. 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.
4. Create the possibility of using evidence collected in other countries, especially those obtained by the special investigative techniques.
5. The prosecution shall, in case of this type of criminal acts, always insist on interrogating the victim via a video link or conference call.
6. Provide for the obligatory video and audio recording of the testimony of victim due to the fact that they often are not available for the trial and that their court appearance contributes to the new victimisation and makes the process of integration more difficult. This method of documentation should be considered in the context of the changes in the victim's testimony due to some of the many possible motives, including fear.
7. Prohibit the confrontation of the victim (without exception for minors), except on their specific request and only in cases where it is assessed that the confrontation is

purposeful. The necessity of adopting and respecting special rules of dealing with trafficking victims in criminal proceedings is described in paragraph 4 of Article 12 of the EP Directive "regardless of the rights of defence, and in accordance with the individual assessment of the competent authorities of the personal circumstances/conditions of the victim, the member states shall ensure that victims of trafficking receive special treatment in order to prevent secondary victimization by avoiding, as much as possible, and in accordance with the defined outlines of the national legislation and the rules of legal discretion, practices or guidelines, the following: unnecessary repetition of interviews during the investigation, prosecution and trial; visual contact between victims and defenders, even when giving testimony/evidence in an interview or cross-examination - with the appropriate resources that include the use of communication technologies; providing evidence/testimony at trial; unnecessary questions concerning their private life. "

8. In terms of safeguards provided for in Article 109 of the CPC, it is necessary to explicitly state the measures that can be determined together because when applying the current provisions, the interpretation that determining one measure of protection makes the other superfluous appears.
9. Specify the responsibility for making assessments and giving reasons for the adoption of the decision on the application of protective measures and their changes.
10. In a separate paragraph or Article of the CPC, the criminal act of trafficking, as well as for criminal acts with elements of sexual violence shall be allocated the protective measures from the beginning of the procedure in cases where the victim believes that they are in danger or that they will be exposed to danger due to the testimony.
11. Establish the Service for Support and Assistance to Victims and Witnesses in the basic and/or higher courts under the guidance of experts of the corresponding professional profile (primarily lawyers and psychologists).
12. Provide for the obligation to inform the victim about the outcome of the proceeding, as well as about the placement into custody, release of the offender to freedom (from custody, on parole, leave, upon the completion of sentence, any reduction of sentence, pardon...) if the victim shows a legitimate interest to be informed.
13. Establish a unique way of storing data for all the witnesses that have been granted the protection from the moment of the introduction of this provision in the procedural law.
14. Regulate in which cases, by whose order or decision, and to which authority, the authority that the stores the data (Protection Unit) can be provide them, with a due warning stipulated by the law.
15. Further regulate issue of methods for storing the data about protected witnesses. With the provision on the data being given to the Protection Unit in a sealed envelope for safekeeping, the CPC has created doubts about the witness protection in the proceeding that does not necessarily mean that the Unit is involved in

protection. Transitional and final provisions do not solve issue of storing the previously gathered data on protected persons (as per the current CPC they were stored by the investigating judge), so there is no single record of the implementation of protective measures. In practice, the data protection can prove to be more complex in many situations, e.g. when protection is granted to a number of witnesses on the basis of the previous and not the current legislation, with trials on revoked verdict, when it is necessary to find the witnesses for questioning and the police service is provided with the identity, which, according to Law, the Protection Unit may not do, nor is it clear how the court may do it.

16. Introduce the option that the person supporting the victim (a psychologist, person from the Office for coordination of protection of the victims of human trafficking, expert from another relevant the institution that enjoys the confidence of the victim) stays with the victim during their appearance at all stages of the operation of the criminal proceedings.
17. Introduce the option or obligation of accommodating a victim of trafficking of minors in a special institution (during the time of the proceeding, even after its completion) and provide deadlines for the completion of the procedure.
18. In proceedings where minors are the victims of human trafficking, the procedural provisions and safeguards contained in the Law on Juvenile Offenders and Criminal Protection of Minors shall be consistently applied.
19. Provide for the obligation of the court to act on the victim's request for asset rights and compensation (similar to the solution provided for in paragraph 2 of Article 101 of the CPC of the Republic of Macedonia). This is because the decision on the request of property rights of trafficking victims is not just an issue of exercising the right to protect the victim by the state, but also the issue of the adequate response of the government to pain and suffering of victim and their willingness to testify and relive it again and so contribute to making adequate judicial decisions in the criminal act that stained their life with pain The difficulties encountered when such matter is resolved in the criminal proceedings, and there is no doubt that they are present, are neither of the quality nor with such side effects and consequences, such as those seen already felt by traumatized, newly wounded victim in the public courtroom and in the presence of the offenders, who will be directed to a litigation by a court decision. This way, the criminal court shall further contribute to the undermining of victim's self-esteem and prolong their agony, instead to repay them and preserve the honour of all those on whose behalf they adjudicated in a situation where they helped "the state in dealing with those who violated the criminal law norms". The completion of the trial is not in the general interest if it is not in the interests of the victim. Only in case of awarding legal claims (compensation for the victim) will every action performed by the police, prosecution, courts and other government and non-government organization have a full meaning and increase the chances of success in caring about victim, their protection and recovery.

20. 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, claims for compensation (from the EC Directive).
21. Encourage active participation and development of regional witness protection programme through the establishment of the normative framework and institution building in a manner that is compatible with those existing in other countries in the region and the EU. The programme shall also include the capacity building for transferring the victim and the witnesses, as well as meetings that will contribute to the exchange experiences.

Asset recovery

1. Conducting financial investigations along with the criminal, where the proposals for the asset recovery may constitute a separate count of the indictment, with the retention of evidentiary standards of such quality that the obtained and executed proof is being eligible for the procedure of asset recovery. Since the acquisition of financial gain is one of the main motives for committing serious crimes, and the proceeds of illegal activities are used to finance new criminal activity or laundered in order to enter into legal economic flows, asset recovery is one of the most powerful instrument in the combat against the organized crime and other criminal acts where considerable material benefit is gained.
2. Define and develop mechanisms that will further enable the realisation of the recommendations contained in the relevant international instruments on liability of legal persons, the recovery of assets and the compensation to victims of criminal acts (in this case, the victims of human trafficking).
3. Through legislation and good practice, use the recovered assets to support and compensate victims of criminal acts (human trafficking). Establish a special state fund to compensate victims (of human trafficking), which would be supplemented by funds received from the assets recovery.
4. In combating human trafficking, the existing instruments of asset recovery shall be fully implemented, such as the UN Convention on Transnational Organized Crime and its Protocols, the Council of Europe Convention from 1990 on money laundering and assets recovery, Council's Framework Decision , 2001/500/JHA from June 26, 2001 on money laundering, identification, tracing, freezing, seizure and confiscation of assets and proceeds from crime, Council's Framework Decision 2005/212/JHA from February 24, 2005 on asset recovery. The use of recovered assets mentioned in this Directive for support in assisting and protecting victims shall be encouraged, including compensation to the victims and the activities of the joint cross-border law enforcement activities against trafficking (from EC Directive).

Monitoring of the phenomenon

1. A more detailed study of this complex social phenomenon and other various closely or remotely related phenomena is implied with regard to the improvement of the existing concept to oppose human trafficking in the territory of the Republic of Serbia and the increase in the level of efficiency of the undertaken measures

relating to the prevention of the mentioned criminal act, as well as to undertaking appropriate measures to provide assistance to victims.

2. Drawing attention to the existing condition, along with emphasising distinctive features recognized during the course of work of institutions engaged in opposing human trafficking and providing assistance and support to victims thereof, also implies the defining and development of more distinctive criteria and methodology of record keeping and updating of data on all relevant aspects related to perpetration of human trafficking, including data on manners and means of perpetration, forms of exploitations, perpetrators, victims, protection and assistance measures etc. All the aforementioned would represent a materialisation of the recommendations referred to in Article 28 of the UN Convention, prescribing each State Party to analyse in consultation with the scientific and academic communities, trends in organised crime in its territory, the circumstances in which organised crime operates, as well as the professional groups and technologies involved, and the development and sharing of analytical expertise concerning organised criminal activities with each other and through international and regional organisations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate. At the same time, each State Party should consider monitoring its policies and actual measures to combat organised crime and make assessments of their effectiveness and efficiency.
3. Apart from the introduction of a single database for human trafficking, it is necessary to introduce an obligatory joint record keeping of the database for criminal acts of human trafficking and human smuggling. The aforementioned is of extreme importance due to the fact that it has been determined in the judicial practice and the practice of prosecution authorities that the determination of the difference between human trafficking and human smuggling is often rather difficult. Moreover, smuggled persons in the destination countries become victims of human trafficking, while perpetrators of the mentioned criminal acts are quite often those engaged in human trafficking, for the purposes of which they even use the same routes.
4. Establishing mechanisms for monitoring of each concrete case of human smuggling from the moment of pressing criminal charges by the police, through engaging of the public prosecutor`s office and sentence passing by courts. Experience of the Republic of Montenegro in this respect might be useful, since the police of Montenegro established a register for files which is used to record built cases under appropriate CR number, and which is, in accordance with the procedure development, related to numbers of registers that obtain the initial material from the prosecutor`s office, i.e. from the court. The problem that exists in practice could be solved by the extension of the electronic system for files management based on the system of an integrated file number in the manner that enables the information exchange and preparation and drafting of statistic data. In accordance with a good practice described in the UN Manual for the Development of A System of Criminal Justice Statistics, it is necessary to consider the issue of drafting and introduction of

a unique identifier for the whole judicial system in the Republic of Serbia, and subsequently, for all other judicial authorities as well.

5. Structuring and keeping special records on victims and perpetrators of human trafficking in the manner that will enable more quality monitoring of the phenomenon and its more effective prevention and suppression.

Multi-agency approach and coordination of activities

1. Creating joint investigation teams and support teams.
2. Data on procedures and contacts should be made available at any police precinct and any prosecutor`s office with the purpose of creating conditions for an undisturbed and timely communication with teams and police units specialised in combating human trafficking, and with other state and non-governmental organisations dealing with human trafficking.
3. Allocation of budget resources for expert staff who participate in the assistance and protection of victims, as well as for officials of the national coordinator`s office.

International cooperation

1. Conducting an assessment of effects of the existing regulations and practice directed towards prevention and suppression of human trafficking and towards victim protection and support through regional meetings, reporting, and analysis.
2. Participation in international projects aimed at the prevention of transnational organised crime in general, and in particular at human trafficking as one of its forms.
3. Creating joint investigation teams and support teams on the country level in the region and beyond, in ad hoc cases, and the selection of contact persons with representatives of other countries' institutions in charge of monitoring and coordination of activities related to prevention and suppression of human trafficking.
4. Setting up technical preconditions and a relevant information exchange network as well as providing assistance with the identification, protection, assistance, support and repatriation and reintegration of human trafficking victims, as well as with the provision of evidence and deprivation of liberty and prosecution of perpetrators on the regional level and with the engagement of the transition and destination countries.
5. Coordination of the investigation and prosecution of cases of human trafficking should also be facilitated by improved cooperation with Europol and Eurojust through the creation of joint investigation teams, as well as through the implementation of the Council Framework Decision of 30 November 2009 on prevention and settlement of conflict of exercise of jurisdiction in criminal proceedings (under the EP Directive)

Training

1. Raising capabilities for the recognition of cases involving human trafficking by all persons in contact with the criminal side of human trafficking, its perpetrators and victims through the organisation of activities, definition of roles of executors and their training. This would create conditions to overcome the existing problems relating to identification of victims, not just in terms of exploitation through prostitution and beggary, but also in terms of labour exploitation and other forms thereof. The aforementioned is due to the fact that the possibility and efficiency of criminal prosecution of human traffickers is conditioned by the quality of legal provisions and the manner of their materialisation in the criminal and criminal justice practice.
2. Developing readiness and capability of police officers, public prosecutor`s office and courts to recognise human trafficking as a drastic form of human rights violation, as well as a serious and yet complex criminal phenomenon that needs to be appropriately responded to. Training should be directed towards improvement of professional skills and performance of justices, prosecutors and police in the manner that is already in place in OSCE and Serbian Association of Magistrates. Putting efforts into work on updating and drafting of manuals currently used at seminars dedicated to the improvement of knowledge and skills necessary to combat human trafficking, together with the drafting of a comprehensive training programme appropriate for distinctive features of human trafficking and the role that the police, prosecutor`s office and courts have in its prevention, disclosure, solving, provision of evidence, trialling and passing of sentences, as well as in securing and provision of protection to victims. The 2010 recommendations of the Committee on the Rights of the Child call for the Republic of Serbia to allocate appropriate special-purpose resources, to continue with and improve training, including the development of the programme and drafting of training material for experts such as medical staff, social protection officers, police, public prosecutors, justices, media and other expert groups in all areas under the Facultative protocol.
3. Making an analysis and providing comments of significance for the improvement of understanding of provisions of the Criminal Code, Criminal Procedure Code and other regulations and the improvement of prevention, suppression, providing evidence, trialling and passing of sentences for human trafficking.
4. Raising awareness through education programmes for the police, prosecutors and justices, of possibilities and advantages of use of special investigation techniques, increasing their application, contributing to the quality and lawfulness of such evidence so that they could be used in trial as legally valid evidence in human trafficking proceedings.
5. Attention should be paid also to the improvement of handling of cellular telephones and personal computers found on persons suspected of human trafficking i.e. their repossession, submission to court and expertise.

6. Drafting training programmes especially designed for the police, prosecutor`s office and court relating to the primary contact, check lists and treatment of the victim in compliance with international and national legal instruments, on the measures of assistance, protection support, special provisions on conducting interviews with victims and their treatment in criminal proceedings, on the treatment of perpetrators, on the significance, relevance and rules of conducting of a financial investigation, on asset recovery and illegally obtained assets.

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