PROACTIVE INVESTIGATION, EFFECTIVE PROSECUTION AND ADJUDICATION OF CASES OF TRAFFICKING IN HUMAN BEINGS WITH FOCUS ON MIGRANTS AT RISK FROM TRAFFICKING IN HUMAN BEINGS

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Abbreviations

Bureau for Public Safety **(BPS)**

State Labour Inspectorate **(SLI)**

European Convention on Human Rights **(ECHR)**

European Court of Human Rights **(ECHR)**

Unit for Human Trafficking and Migrant Smuggling **(UHTMS)**

Victim of Human Trafficking **(VHT)**

Criminal Procedure Law **(CPL)**

Criminal Code **(CC)**

International Organization for Migration **(IOM)**

Ministry of Health **(MH)**

Ministry of Education and Science **(MES)**

National Unit for Suppression Smuggling of Migrants and Trafficking in Human Beings **(the Task Force)**

Organization for Security and Co-operation in Europe **(OSCE)**

Basic Public Prosecutor's Office for Prosecution of Perpetrators of Organized Crime and Corruption **(BPPO OCCC)**

Organized Criminal Group **(OCG)**

Special Investigative Measures **(SIM)**

Presumed Victims of Human Trafficking/Children **(PVHT/C)**

Standard Operating Procedures **(SOP)**

Southeast Europe Law Enforcement Centre **(SELEC)**

1. POLICE ACTION IN CASES RELATED TO HUMAN TRAFFICKING

1.1 ROLE OF THE POLICE

The Ministry of Internal Affairs of the Republic of North Macedonia, as other ministries of internal affairs in the region and Europe, has specialised police officers to respond to specific types of crime or to prevent them. In this context, within the framework of the Bureau for Public Safety (BPS) the Department for the Suppression of Organised and Serious Crime has been set-up, which includes the Sector for Criminal Investigations with specialised units such as the Unit for Human Trafficking and Migrant Smuggling (UHTMS).

UHTMS is responsible for operations across the entire country and its scope of work includes:

- Conducting proactive and reactive police investigations related to crimes such as "Human Trafficking", "Child Trafficking", "Migrant Smuggling", "Organizing a Group and Encouraging the Commission of Human Trafficking, Child Trafficking, and Migrant Smuggling", and "Facilitating Prostitution" (when facilitation occurs in organised forms of the crime). In this regard, UHTMS officers:
  - Identify perpetrators of these crimes (individuals or members of organised criminal groups),
  - Identify how the crime was committed, that is, the modus operandi,
  - Identify presumed victims of human trafficking/children (PVHT/C) and make a referral,
  - Ensure protection for PVHT/C,
  - Secure evidence (by the police officers themselves, or following guidance and orders from the competent public prosecutor from the Basic Public Prosecutor's Office for Prosecution of Perpetrators of Organized Crime and Corruption (BPPO OCCC)),
  - Conduct financial investigations (in terms of securing basic data from open sources, such as property records of movable and immovable property, lifestyle, etc). For investigation of organised criminal groups (OCGs), the team includes a police officer from the Financial Investigation Unit, who investigates accounts, vaults, etc.
  - Cooperate with relevant international police units either directly or through international police organisations or initiatives such as Interpol, Europol, SELEC (Southeast Europe Law Enforcement Centre), as well as through liaison officers in the country and international organisations (OSCE, UNODC, IOM, UNHCR, UNICEF). UHTMS is the only organisational unit within the Ministry of Internal Affairs with a

- mandate to conduct international investigations (reactive and proactive/parallel or joint investigative teams) for perpetrators of the crimes of "Human Trafficking/Child Trafficking", as well as "Migrant Smuggling", committed by organised criminal groups (OCGs), or when perpetrators are organisers, members, collaborators, or facilitators of organised criminal groups as part of international criminal networks. For this purpose, in accordance with the Criminal Procedure Law (CPL), UHTMS works closely with competent prosecutors from BPPO OCCC.[1]

- UHTMS actively participates in "Joint Action Days" planned and organised by Interpol, Europol, and SELEC. Additionally, UHTMS officers also engage in preventive campaigns to raise awareness among citizens about the risks of human trafficking/child trafficking, about its perils and the consequences of committing human trafficking/child trafficking and migrant smuggling crimes. It also strengthens the resilience of vulnerable groups to resist these crimes.
- Certain UHTMS officers are active members of the working groups of Europol and Interpol (ISON Group, Western Balkan Task Force, Trilateral Group, etc.), where strategic or operational decisions are made regarding joint activities for specific international investigations and operational data exchange.

- Some officers are also involved in trainings targeting inspectors and uniformed police personnel on discerning elements of "Human Trafficking/Child Trafficking" and "Migrant Smuggling" crimes, as well as on preliminary identification of PVHT/C. They also participate in multi-institutional trainings organised by international organisations and mandatory trainings for diplomatic-consular representatives before assuming their posts abroad.

- UHTMS cooperates with domestic NGOs and international organisations in the country to protect and assist identified and presumed victims of human trafficking, and vulnerable categories of smuggled migrants.

- UHTMS prepares responses to questionnaires from police and other international organisations, embassies and journalists within its scope of work. It also participates in workshops and seminars on preventing and combating human trafficking/child trafficking and migrant smuggling, where both positive and negative practices are shared.

[1] Official Gazette no.150/2010, no.100/2012 and no. 198/2018

Such a volume of obligations certainly entails significant challenges, especially considering the number of police officers in UHTMS, their level of expertise and the technical equipment at disposal of UHTMS.
In this context, it is worth noting that in the early years of the new millennium, the Unit had about 20 police officers, a number that decreased over years (due to employees' separation or their reassignment to other duties in other organisational units of BPS). From 2013 to 2017, the number of police officers decreased to 8. Since 2017 only 5 vacancies are filled in this Unit, out of 19 positions according to the staffing table. This reduction in the number of police officers interfered with the effectiveness of UHTMS, as the remaining 5 officers could not adequately respond to:

1. the increasing number of sophisticated OCGs specializing in migrant smuggling from Greece through North Macedonia to Serbia, and

2. adequate detection of "Human Trafficking/Child Trafficking" crimes and identification of VHT and discovery of the perpetrators of these crimes.

As a result, in 2017, 1 VHT was identified, and 1 OCG for migrant smuggling was dismantled.

The poor effectiveness was further impacted by:
- a complete lack of co-operation regarding information and data sharing from other state institutions (Ministry of health, educational institutions, State Labour Inspectorate (SLI) for presumed VHTs),
- non-compliance with the Standard Operating Procedures (SOPs) for treatment of VHTs, which are mandatory for all anti-trafficking actors. SOPs are brought by the National Commission for the Fight against Human Trafficking and Illegal Migration and adopted by the Government,
- inadequate staffing policies,
- presence of corruption in key state institutions, and
- association of some police officers (at various levels in the Ministry of Internal Affairs) with members of criminal gangs.

To address this situation, the Strategy and Action Plan for Combating Human Trafficking (2017-2020) prioritised the establishment of the National Task Force as a transitional solution until the UHTMS is adequately staffed, or the job classification of BPS is amended. At the 39th Government Session (November 17, 2017), the Information on the Need for the Formation of a Task Force - National Unit for the Suppression of Smuggling of Migrants and Trafficking in Human Beings (the Task Force) was adopted. With the signing of the Memorandum of Cooperation between the Ministry of Internal Affairs and the Public Prosecutor's Office of North Macedonia on Investigation of Organised Forms of Human Trafficking and Migrant Smuggling (signed on January 3, 2018), the Task Force

was established. Its initial mandate was three years with a possibility of extension.

Soon after, the Head and the Deputy Head of the Task Force were appointed - both public prosecutors from BPPO OCCC, as well as the Assistant Head (a position held by the Head of UHTMS), the Deputy Assistant Head (appointed from the ranks of border police), police officers from UHTMS and internal affairs sectors - 16 at the central level and 16 as detached police officers at the local internal affairs sectors, and contact points (21 representatives from various organisational units of BPS). The tasks and responsibilities of the Task Force remained the same as those of UHTMS.

The formation of the Task Force has strengthened the co-operation with BPPO OCCC, and thus, positive effects were felt in 2018. In particular, 9 VHTs were formally identified and 2 OCGs smuggling migrants were dismantled. However, certain problems remained unresolved. The working conditions, including offices, computer equipment, and especially vehicles, remained below the required standard for an effective work of the Task Force. While all police officers from UHTMS were reassigned to the Task Force, there were new police officers from local internal affairs sectors assigned to the Task Force. These police officers, transferred to the Task Force, lacked the needed competencies, as they had no experience with human trafficking, some of whom remained indifferent to its operations.

The poor staffing policy of assigning unsuitable police officers to the Task Force, without a prior consultation with the leadership of the Task Force, continued in the subsequent period, and it had demotivating effects on the staff that tried hard to achieve positive results. While donations from the OSCE Mission to Skopje and US Embassy covered some needs in terms of equipment, the problems with the available vehicles for the Task Force's operations remained.

In terms of education, various international organisations provided support to the capacity building efforts, targeting the police officers without prior experience. However, no action has been taken by the relevant authorities within the Ministry of Internal Affairs regarding the new modus operandi of perpetrators of human and child trafficking, which have intensified especially following the COVID pandemic.

The new *modus operandi* involves individuals (predators) who use modern information and communication technology and misuse various applications, by creating fake profiles and by using VPNs to recruit potential victims. Victims are often children aged 7 to 13, who are brutally exploited (often sexually). The content created from their sexual exploitation is then shared on various websites.

The fight against this type of crime, committed by use of ICT, remains largely in the hands of the MoI Sector for Computer Crime and Digital Forensics. This Sector is understaffed, and it is overwhelmed by forensic analysis of seized ICT equipment, some of which takes years to get finalised. Cooperation with other institutions remains at a very unsatisfactory level, giving the impression that the Task Force, prosecution and social workers are left alone to combat human trafficking. As a result, there is a higher percentage of reactive investigations into trafficking cases compared to proactive ones.

1.2 HOW TO MAKE INVESTIGATIONS PROACTIVE IN ORDER TO CONDUCT SUCCESSFUL CRIMINAL PROCEEDINGS AND IMPOSE SANCTIONS ACCORDING TO EUROPEAN STANDARDS

The initial step was made with the formation of the National Team for Combating Human Trafficking and Child Exploitation. However, more efforts must be invested in this regard.

- First of all, changes are needed regarding staffing:

  - At the Public Prosecutor's Office for Organized Crime and Corruption (PPOOCC). The Head and the Deputy Head of the Task Force are appointed from the prosecutors working for PPOOCC. No doubt, the Head and the Deputy Head need to focus exclusively on the cases handled by the police officers of the Task Force, as stipulated by the above Memorandum. They should not be burdened with other cases under the jurisdiction of PPOOCC. The current practice whereby the writs prepared by the police officers from the Task Force and submitted to the Head of the Task Force are dealt with by on-duty prosecutors from the PPOOCC must cease. This practice does not align with the goals of the signed Memorandum. This Memorandum states that criminal reports prepared by the police officers of the Task Force should be submitted to its Head, and only in case of her absence or unavailability, to her Deputy, as they are the only ones who can act on them. The above practice must be abolished, considering that neither all prosecutors from PPOOCC have sufficient experience, will, or interest in conducting investigations into crimes such as human or child trafficking and "migrant smuggling," nor do they possess the sensitivity needed to deal with and protect victims.

In light of above, a specialisation of the prosecutors from the PPOOCC is a must, this especially refers to the Head and the Deputy Head of the Task Force.[2]

[2] See in this regard case no. 3 and case no. 4 from the Analysis of cases of trafficking in human beings and child trafficking in the Republic of North Macedonia: challenges for effective prosecution and sanctioning of perpetrators, UNODC, 2022, pp. 18-25

Practice confirms that the Head and the Deputy Head of the Task Force must be trained and sensitised to work with victims and have a prior experience of dealing with human trafficking cases before being selected for these positions.[3] Furthermore, at least two additional prosecutors from PPOOCC must be trained to deal with human or child trafficking cases, in cases of unavailability of the Head and the Deputy Head of the Task Force, or of an urgent request. The PPOOCC must be staffed in accordance with its staffing table.

- At the Task Force:

The police officers who do not produce satisfactory results in their work, who are not interested in human trafficking and who keep changing their positions should not be kept in the Task Force. The selection of new employees in the Task Force should be done exclusively in coordination and with a prior consent from its Head, Deputy and Assistant heads. Furthermore, in line with the new trends in THB, trainings must be delivered on using modern IT tools to monitor open profiles on social media that may be used by predators - traffickers of adults/children for their recruitment or exploitation. The Task Force must be provided with the appropriate technical equipment, vehicles, and financial resources as a prerequisite for on-going, regular, and effective execution of duties.

- At the basic public prosecutor's offices:

Although basic public prosecutors do not have jurisdiction to process human trafficking cases, they must be provided with a continuous education on this phenomenon. Such training will help them easily recognise the elements of the crimes of human or child trafficking, instead of qualifying human trafficking as another similar or related criminal act. They should take necessary steps to protect victims and provide material evidence. Furthermore, if a case is qualified as human or child trafficking, it must be referred to the Head or Deputy Head of the Task Force from the PPOOCC. This approach will not only prevent the re-victimisation, but will also ensure timely steps to be taken for victims' protection, accommodation and support.

- The setting-up of the Mobile Teams for Dealing with Vulnerable Categories of Individuals, including victims of human trafficking represents a further step towards proactive investigations and early identification of human trafficking victims. Mobile teams are a good example of inter-institutional co-operation, involving also civil society organisations. Each mobile team is composed of a social worker, a police officer from the Task Force and a representative from a civil society organisation working with vulnerable groups. They work on prevention and early identification of potential victims. Early

[3] Ibid

- identification of potential victims is crucial for initiating a proactive investigation, as it depends on timely received and shared information, or on data obtained from the mobile teams and furnished to the Task Force and PPOOCC. A solution must be found for the sustainability of the mobile teams.

- The next step requires a proactive approach by other relevant state institutions such as the State Labour Inspectorate (SLI); the Ministry of Education and Science (MOES) – educators, school psychologists and pedagogues and the Ministry of Health (MOH) – medical personnel. The above bodies should share information and data about potential victims or suspected perpetrators of human or child trafficking with the Task Force or PPOOCC in favour of a proactive investigation. Numerous trainings have been delivered to representatives of the above institutions, but more visible results are lacking. Research may shed a light on the reasons behind this. The reason may be that one or two trainings are not sufficient to train the representatives of these institutions on human trafficking, so a continuous education may be required in this regard. Or, the reason may be that the participants are not engaging enough with the trainings, treating it as a duty, without the desire to apply the acquired knowledge in practice. This would indicate insufficient awareness and sensitisation, both about the dangers and the consequences of human trafficking for society as a whole, as well as for individuals, especially for victims.

- Full and consistent application and adherence to the Standard Operating Procedures on treatment of trafficking victims (SOPs). SOPs apply to all actors that are directly or indirectly involved in the fight against human trafficking. In this context, particularly for police officers in the local police stations, any non-compliance with the SOPs should result in appropriate disciplinary or, in severe cases, criminal responsibility for the police officer and their immediate supervisor, as failing to share information or data about victims, perpetrators, or criminal offences constitutes a separate criminal offence "Failure to Report a Crime or Perpetrator" under article 364 of the Criminal Code (CC).[4]

- Organising continuous informational campaigns through the media and social networks about useful applications and hotlines where citizens can inform about or report perpetrators or victims.

[4] Official Gazette no. 37/96 with amendments

Why is the above emphasised? Appropriate selection of staffers, supply of material and technical equipment, delivery of adequate trainings along with established inter-institutional, inter-sectoral co-operation and collaboration with civil organisations, trade unions and the private sector, as well as consistent application of SOPs and laws, are prerequisites for initiating and successfully conducting proactive investigations. Evidence for suspected perpetrators can be more easily collected and secured. Based on this, successful criminal proceedings can be conducted, resulting in convictions for perpetrators of human trafficking. The positive practice of the PPOOCC not to enter into a plea bargaining with perpetrators of human trafficking crimes is commendable and should continue.

2. IMPROVED AND SECURED STATUS AND RIGHTS OF DOMESTIC AND FOREIGN VICTIMS OF HUMAN AND CHILD TRAFFICKING FROM THE START OF PROCEDURE UNTIL THE JUDICIAL CONCLUSION

Improved and secured status and rights of victims of human trafficking (VHT) from the early stages of the procedure are closely linked to the victim's identification at the earliest stage of the procedure, as well as with the principle of non-punishment. Professionals who have been trained on human trafficking, with awareness, and a sense of responsibility, who have been sufficiently sensitised and dedicated to combat human trafficking will surely apply the indicators and identify VHT in good time. At the earliest stage, they will take actions to protect VHT and their beloved, and will respect VHT's rights and dignity. This, of course, also means that they will not take steps that would violate the victim's rights (as envisaged in various international conventions, directives, recommendations), put them at risk of re-victimisation, or punish the victim for a minor or criminal offence that they were forced to commit and which are directly related to their status as a victim. It is also important to inform the victim, a duty foreseen for all responsible according to the SOPs, about their rights, the next steps, and procedures planned in view of ensuring their protection, assistance and support. It is necessary to obtain informed consent from the victim, thereby restoring the victim's self-confidence, the feeling of being respected and start building confidence. This ultimately represents a key foundation for the victim's further co-operation with investigation authorities.

To ensure that the procedure, aimed at respecting the rights of VHT, is carried out from the earliest stages, the following are needed: a continuous training for all first responders, awareness raising initiatives, fostering a sense of personal responsibility, and sensitising all anti-trafficking actors. Regular public outreach campaigns are also needed, not only on the occasion of marking anti-trafficking days, to raise public awareness and encourage responsible action of every citizen to engage in the fight against human trafficking to protect basic human rights and freedoms.

In this regard, it is also very important to strengthen international co-operation, given the large number of foreign nationals transiting through the territory of North Macedonia. Many of them show indicators for VHT, which requires action according to all international standards, primarily to avoid re-victimisation and to observe procedures for providing help and support. Of course, there are cases where a foreign VHT may refuse the offered protection, assistance and support simply because their goal is not to stay in the Republic of North Macedonia as the final destination, but to continue their journey to the economically developed

countries in Western Europe. The same goes for foreign VHTs exploited within the country. They may also refuse protection, help and support, because they do not consider themselves as victims, they do not trust relevant institutions, they want to return to their country as soon as possible as they feel embarrassed, or they refuse help as they have been severely traumatised by the exploitation. International co-operation is also significant in cases where a foreign VHT in the Republic of North Macedonia has been given protection, shelter, assistance and has undergone rehabilitation. Namely, when the VHT decides to return to the country of origin, the international co-operation is important for assessing the risk for safe return, and to inform the appropriate services of the country of origin about the steps taken towards victim's rehabilitation to ensure further assistance for resocialisation and integration into family and social life.

It is also of no less importance to involve civil organisations specialised in working with vulnerable categories, especially with VHTs, from the earliest stages of the procedure.

2.1 CASE ANALYSIS

Since the introduction of the criminal offences 418-a "Human Trafficking" and 418-d "Child Trafficking" into the Criminal Code, the most dominant form of exploitation is sexual exploitation of children and women, forced marriages of underaged girls with domestic and foreign men (there is only one case of forced marriage with an adult female foreigner); begging, or a combination of the aforementioned forms of exploitation.[5]

[5] Article 418-a - Human trafficking
(1) Everyone who by use of force, a serious threat, a deceit or other forms of coercion, abduction, fraud, by abusing their position or pregnancy, powerlessness or physical or mental incapacity of another, or by giving or receiving money or other benefit for the purpose of obtaining the consent of a person who has control over another person or in another way recruits, transports, transfers, buys, sells, shelters or accepts persons for the purpose of exploitation by means of prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriage, forced fertilization, illegal adoption or relationship similar to adoption, or illegal transplantation of parts of the human body, will be punished with imprisonment for at least four years.
(2) He who takes away or destroys an identity card, passport or other identification document for the purpose of committing the crime referred to in paragraph (1) of this Article shall be punished by imprisonment of at least four years.
(3) He who uses or enables another person to use sexual services or other type of exploitation by persons whom they knew or was obliged to know was a victim of human trafficking shall be punished by imprisonment from six months to five years.
(4) If the offence referred to in paragraphs (1), (2) and (3) of this Article is committed by an official whilst performing his/her duties, he/she shall be punished by imprisonment for at least five years.

What characterises sexual exploitation of children is that most child victims come from asocial or very poor families, where family ties and values almost do not exist. Victims are identified among children from all ethnic communities. They are without adequate education for their age and indulge in various vices. In certain cases, the exploiters of the child victims are their own parents, who force their children into begging or prostitution, using force and serious threats, or by

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(5) The consent of the victim of human trafficking for the purpose of exploitation provided for in paragraph 1, is not of importance for the existence of the criminal offence set out in paragraph 1.
(6) If the criminal offence from this Article is committed by a legal entity, it will be fined.
(7) The assets, the proceeds of crime and means of transportation used for the execution of the crime shall be confiscated.

Article 418-d-Child trafficking

(1) Whoever who instigates a child to perform sexual acts or enables sexual activity with a child or recruits, transports, transfers, buys, sells or offers for sale, acquire, provide, shelter or accept a child in view of its exploitation for monetary gain or other compensation for sexual exploitation, or its other forms, pornography, forced labour or servitude, begging or exploitation for illegal activity, slavery, forced marriages, forced fertilization, illegal adoption or extortion of consent as an intermediary to adopt a child, illegal transplantation of body parts, shall be punished by imprisonment of at least eight years.
(2) Whoever who commits the offence set out in paragraph 1 by force, serious threat, by deceit or other form of coercion, abduction, fraud, by abusing his/her position or pregnancy, powerlessness or physical or mental incapacity of another, or by giving or receiving money or other benefits for the purpose of obtaining the consent of a person who has control over another person, or if the offence is committed against a child who has not reached the age of 14, shall be punished by imprisonment for at least ten years.
(3) Whoever who uses or enables another to use sexual services or subjects a child to another type of exploitation that he knew or was supposed to know that the child was a victim of trafficking in human beings, shall be punished by imprisonment of at least eight years.
(4) The user of sexual services of a child who has not yet reached 14 years of age, shall be sentenced to imprisonment of at least 12 years.
(5) Whoever who takes away or destroys an identity card, passport or other identification document whilst performing the service, will be punished by imprisonment of at least four years.
(6) If the offence referred to in paragraphs (1), (2), (3) and (4) of this Article is committed by an official whilst performing his/her duties, he/she shall be punished with imprisonment of at least ten years.
(7) The consent of the child to the actions provided for in paragraph 1 shall not be relevant for the existence of the criminal act from paragraph 1.
(8) A child victim of human trafficking shall not be punished in the cases in which the law provides for the punishment of a child, when the perpetrator of the crime forced him/her to commit a crime, if his/her such behaviour is a direct consequence of his/her position as a victim.
(9) If the crime from this Article is committed by a legal entity, it will be fined.
(10) The asset, the proceeds of crime and means of transportation used to commit the crime are confiscated

punishing them (for example, by locking them in substandard rooms with minimal food, without conditions for maintaining personal hygiene). In other cases, their intimate friends act as recruiters or exploiters by manipulating the victims pretending to be in love, making them addicted to drugs and alcohol, and thus, keeping them in a state of dependence, and forcing them to provide sexual services as arranged by the manipulators.

Recently, several cases have been registered where child victims are recruited by use of information and communication technologies. Predators, using fake profiles and profile photos, pose as peers and start conversations aimed at gaining the child's trust. They encourage the child to reveal as much information as possible about their family relationships, desires, problems or fears, looking for weaknesses that can be exploited. Gradually, the victims are asked to send a photo, which is followed by flattery and false promises. Eventually, they are pressured to share more revealing photographs, showing parts of their body or intimate clothing. The next step is a blackmail, threatening the victim with public sharing of photos or videos, and thus, pushing the child deeper into the chain of online exploitation.

Similarly, children are often blackmailed with explicit photos and videos recorded by close acquaintances, persons with whom they had a relationship or intimate interactions, threatening them to send the above content to their parents, neighbours or friends. Thus, they are forced to provide sexual services to men.

Regarding the sexual exploitation of adult victims of human trafficking, it mostly takes place in hospitality venues in the western part of the country. The most common method of recruiting victims is by deception. Perpetrators can be employment agencies, individuals posting short-term ads on social networks, or owners of hospitality establishments who promise favourable working conditions, salary, and accommodation. However, upon arrival in the venue, victims discover the deceit and are forced to entertain or accompany guests, dance, sing, and the girls are pressured to provide sexual services to the owner, his close friends, and certain guests. In other cases, victims, believing that the owner truly wants to help and protect them from the previous employer, arrive at the next place of exploitation, where, after a while, living conditions worsen. Control is maintained through threats, corporal punishments or multiple rapes, accompanied by the confiscation of identification documents and threats of withholding payment for their work.

In all cases of sexual exploitation, sufficient evidence has been secured, besides the victim's testimony which enabled successful criminal prosecution and proportional prison sentences. In two cases, property used for the exploitation was confiscated. However, the use of Special Investigative Measures (SIM) as

provided in Article 252 of the Criminal Procedure Code is limited. The limitations involve the type, timing, and extent of their use.

Forced marriages mostly occur in the Roma and Yuruk populations. In the Albanian community they occur to a lesser extent. The centuries-old tradition of marrying off children as young as 11 years old is now evolving into a means of financial gain through a "marriage", which is not registered officially, sometimes to a much older person. There is no concern at all for the child's physical and psychological development or her readiness to fulfil marital duties. These children are used for domestic servitude, for agricultural labour unsuitable for their physical strength, for forced begging or for committing crimes. The perpetrators in these cases are the child's parents, often assisted by immediate family or friends acting as intermediaries between the families. Rarely, acquaintances of the victims use deceit, abduction, force or threats to secure a "marriage partner".

The control over the victims is similar to the one used for other forms of exploitation: physical force (beating with hands, feet, or hard objects), threats of force against the victim or their next of kin, various punishments, restriction of freedom of movement, prohibition of communication with persons other than the perpetrator's family, food deprivation, etc. Many of successful criminal prosecutions resulting in effective prison sentences, were not followed by freezing and confiscating assets because many perpetrators either do not own property of negligible value. In a recent case, funds were seized from the perpetrator to compensate the victim. By punishing these acts, a clear message is sent that “the customs” are punishable when they conflict with the interest and a well-being of the child or with the clearly expressed individual’s will.

In a case, SIM was applied in order to document the preparatory activities and execution of the crime, proving the intent to commit trafficking in human beings, but the perpetrator was stopped before committing the exploitation. The case had a judicial conclusion with an effective sentence for the perpetrators (the child's parents and the paedophile—foreign national).

Begging as a form of exploitation is most prevalent among the Roma population. The parents either directly abuse their children of various ages or "rent" them to others to exploit for a financial compensation. Babies and toddlers (under 1 or 2 years of age) are often given sedatives or certain narcotics to control their behaviour, making them quiet, sleepy and not asking for food or water. This increases the risk to their health, especially when exposed to extreme weather conditions in the street at intersections and get exposed to extremely hot or cold weather. The parents’ behaviour not only deprives children of an opportunity for a better life (accessing education, growing up in a healthy environment into productive citizens) but also ruthlessly endangers their lives, health, and

psychological and physical development.

There are few cases where third parties exploit the victim's vulnerability or developmental disabilities for begging. There are not many criminal prosecutions for the crime of human/child trafficking for begging, as in most cases the perpetrators are the children's parents. Therefore, they are criminally charged and prosecuted by the Basic Public Prosecutor's Office under Article 201 of the Criminal Code - "Neglect and Abuse of a Minor".[6] In this respect, attention is drawn to the second paragraph of the above article, where the use of force or coercion to gain financial or other material benefit are part of the characterisation of the above criminal act, and thus, pointing out to *mens rea* - the existence of intent of the perpetrator to commit the crime, that is to exploit the child by forced begging. This action cannot be classified is neglect, that is, failure to take care of the child. As a consequence, children are not identified as victims of child trafficking. Without the status of victim, these children are denied the right to safe accommodation, assistance and support.

In each and every case, the anti-trafficking institution fails to undertake additional measures to verify the parental status of those claiming to be the parents of the children exploited for begging in the streets. This does not refer to identity checks, but to DNA tests, which are especially important for individuals the so-called "phantoms" without papers.

When it comes to labour exploitation, it can exist together with sexual exploitation or forced marriages. So, the victims are subjected to a dual exploitation. Only in 2021 was a case of pure labour exploitation registered, when an organised criminal group (OCG) from the Republic of China - Taiwan was exploiting its compatriots for their labour in the territory of the Republic of North Macedonia. However, no criminal proceedings were initiated, because a deal was reached with the judicial authorities of Taiwan to try the perpetrators in Taiwan, where they would be charged not only with the crime of "Human Trafficking," but

[6] Article 201 - Neglect and Harassment of a Minor
(1) A parent, adoptive parent, guardian or other person who, in gross neglect of his/her duty of care and upbringing, neglect a minor or harass him/her shall be punished by an imprisonment of at least five years.
(2) The penalty in paragraph 1 shall be imposed on a parent, adoptive parent, guardian or other person who forces a minor to perform any work that does not correspond to his/her age and physical strength, or out of personal gain forces the child to beg or to perform other actions that are detrimental to its development.
(3) If, as a result of the offences referred to in paragraphs 1 and 2, a serious bodily injury or a serious impairment of the health of the minor has occurred; and he or she has been involved in prostitution, begging, or other forms of antisocial behaviour, the offender shall be sentenced to at least 10 years of imprisonment.

also with "Fraud" and "Money Laundering."

Foreign workers in North Macedonia work in agriculture, construction and hospitality. Due to a lack of human trafficking indicators, corruption or a complete lack of accountability from local institutions, these individuals are not identified as victims of human trafficking. Instead, they are often subjected to misdemeanour proceedings, followed by deportation and entry bans into the country, which violates the principle of non-punishment. In this way, not only do these individuals not receive appropriate care, assistance and support, but they also experience secondary victimisation.

Citizens of North Macedonia have been identified as victims of human trafficking abroad in economically developed European countries. They are promised well-paid jobs with accommodation and food provided. In reality, they are paid below the minimum for the work they perform compared to the local population, housed in substandard conditions, share their accommodation with many other workers, without facilities for personal hygiene. They have to eat whatever given, cannot leave the premises and buy food. They are banned from outside communication (partly due to being far from populated areas). Their travel documents are kept by the employer or supervisor "for safety reasons", and they often work unregistered, without a signed employment contract or with a contract in a language they understand, and thus being prevented from exercising their labour rights.

2.2 EVIDENCE COLLECTION AND TYPES OF EVIDENCE

Every police investigation aims to gather material evidence that can substantiate the suspicion that a person or an organised criminal gang has committed a specific crime. From the police's perspective, evidence is defined as a material or psychological change that occurs in connection with the commission of a criminal offence, which holds information about the crime, the perpetrator and about other relevant facts, which has been contained in a form and a manner prescribed by the Criminal Procedure Law (CPL). Evidence is distinguished from the "source of evidence," which is the carrier of the evidential information and can be of material nature (trace, object related to a crime, criminal proceeds) or a statement by a witness.

Given the above, evidence is secured by way of victim statements, testimonies from the suspect or a witness, searches (of persons, vehicles, luggage, premises), expert witness examination or crime scene reconstruction (CSR), preparation or seizure of photo/video materials or other electronic evidence, documents, accounts and transactions or by undertaking investigative measures provided in Article 252 of the CPL.

Every police officer faces certain challenges, when collecting evidence, such as: 1. the time interval since the occurrence of the crime, especially in reactive investigations (which is why obtaining timely information is crucial); 2. whether a reactive investigation is being conducted for the specific case (where securing evidence is difficult) or a proactive investigation (where investigative measures can be used); 3. the (non) co-operation of the victim (due to a lack of trust in institutions, life threats, blackmail with publishing material which is harmful or shameful to the victim or next of kin, dependency on perpetrators, stigma, trauma, etc.); 4. properly and lawfully securing evidential material and its handling/storing; 6. securing evidence for a crime facilitated by ICT and securing electronic evidence.

Electronic evidence, in particular, poses challenges, considering its:

- Volatility – data can easily be manipulated, altered, deleted, or damaged. It does not last for a long time. For example, self-destructing messages can be sent that after a certain period or after being viewed by the intended recipient will disappear.
- Location – data were previously stored on floppy disks, CDs, players, USB drives, but now, with the development of technology, they are stored on various streaming services or "clouds," often located outside the jurisdiction of the country. This raises numerous challenges regarding requests for international legal assistance, or requests for information from private companies like META or application operators such as Telegram, Signal, Skype, Viber, WhatsApp, Twitter.
- Regulation - since digital or electronic evidence is material evidence in which data and information (photos, videos, audio recordings, text and all other forms of information) are stored, received and transmitted in a binary form through electronic devices, the drafting of written rules represents a challenge. This especially refers to procedures for the method of collection, protection from external influences, appropriate storage / storage, processing for the needs of the criminal procedure and their interpretation, in view of the rapid development of communication technologies.
- Additional challenges – they encompass the insufficient number of materials, the need of a continuous and advanced training of police officers, as well as the lack of appropriate technical equipment.

Although the (non-physical) presence of electronic evidence and its location cannot be dealt with easily, what can be done is to insist on the clearly written rules and procedures for handling electronic evidence. All police officers must be acquainted with it. Police officers will also have to undergo appropriate trainings for the application of these rules and procedures. It is the responsibility of the leadership of the Ministry of Internal Affairs to provide appropriate technical

equipment for handling and storing electronic evidence.

It is also recommended to train at least two to three police officers, who are employed in analytical services, such as the Departments of Internal Affairs, the regional centres for border affairs, the Department for Suppression of Organized and Serious Crime and the Criminal Police Department on how to extract the electronic evidence from various technical devices and to provide appropriate devices and software in this regard, following the orders of the Public Prosecutor's Office.

Considering the mandate of the Task Force, it is extremely important to train at least three police officers from the Task Force, who, in addition to the training for extracting electronic evidence, will also undergo training for detecting and identifying persons who misuse the internet and the ICT and perform "grooming". For these police officers, it will be necessary to provide information technology with appropriate software and tools that enable searching by certain phrases, or words.

It is necessary to analyse the existing regulation on the possibility of proactively detecting persons who perform "grooming" on the Internet by creating fake profiles by trained police officers from the Task Force. If the law does not allow it, legislative changes will have to be introduced, taking into account the increasingly frequent use of ICT for the recruitment and exploitation of trafficking victims, among which the largest number are children starting from the seven years old to thirteen years old.

3. ACTIONS OF THE PUBLIC PROSECUTOR'S OFFICE IN CASES RELATED TO HUMAN TRAFFICKING

3.1 THE ROLE OF THE PUBLIC PROSECUTOR

The public prosecutor, in accordance with Article 39 of the CPL, has the right and a duty to prosecute perpetrators of criminal offences that are prosecuted *ex officio* or upon reporting. For this purpose, the public prosecutor conducts investigations. The investigation begins with an Order to Conduct an Investigation, which is issued pursuant to Article 39, Paragraph 2, line 3, and Article 292 of the CPL. This formal decision signifies that, following a collection of evidence, the initial suspicion that unidentified individual has been possibly involved in a criminal incident, is replaced by a reasonable suspicion that the identified suspect has 1. committed a crime punishable by the Criminal Code within 2. a specific time period, 3. at a known location.

The investigation conducted by the public prosecutor can be reactive or proactive. When the data and findings indicate that a criminal act was committed at a specific place and time, with the perpetrator, actions, and consequences known, the public prosecutor immediately takes measures to collect evidence as prescribed by the CPL in relation to the incident. The formal investigation begins with the issuance of the investigative order against the alleged perpetrator, including a brief description of the incident and the qualification of the criminal offence, for which there is a well-founded suspicion that has been committed. In short, the prosecutor, by taking procedural actions described in the CPL, reacts immediately after the occurrence of the incident. The aim is to successfully uncover the truth, leading to a successful judicial outcome in the shortest possible time, while ensuring all defence rights and protecting the interests of the victims, the injured parties, or the state, if harmed in any way.

When the public prosecutor, based on field information, comes to know of evidence suggesting that a certain group of people (often unidentified and undefined in terms of their position within the group) are engaging in criminal activities within a specific time period, he or she acts to determine exactly who, when, where, and what actions were taken. The prosecutor undertakes proactive measures to identify the perpetrator and document the incident before the formal start of the investigation by the investigative order. Procedural actions are taken to discover and collect evidence leading to the identification of the

perpetrators and documenting the crimes. If evidence cannot be collected in any other way, special investigative measures are used as prescribed by Article 252 of the CPL. They include:

- monitoring and recording of telephone calls and other electronic communications;
- monitoring and recording in a home, closed or fenced space belonging to the home, or business premises marked as private, or in a vehicle, and entering these premises to create conditions for monitoring communications;
- covert monitoring and recording of individuals and objects with technical means outside the home or business premises marked as private;
- covert access and search of a computer system;
- simulated purchase of items; simulated giving and receiving of a bribe;
- controlled delivery of persons and items;
- use of individuals with concealed identities to monitor and gather information or data that leads to evidence that cannot be obtained otherwise, with the aim of identifying the members of the group, determining each member's role and position within the group, and documenting certain events in which actions with the characteristics of the relevant criminal offences are taken.

Certainly, during the pre-formal start of the investigation, the prosecutor may also collect publicly available evidence to prevent compromising the pre-investigation itself. When the perpetrators of the criminal offences are known, the events are documented to determine different roles and positions within the organised group/gang and what actions were taken, when, and where, and when those behaviours can be qualified as a crime under the Criminal Code, the process moves into the phase of an open investigation by the investigative order issued against a known perpetrator for whom there is a documented reasonable suspicion that his behaviour is punishable by CC.

The Public Prosecutor's Office for Prosecuting Organized Crime and Corruption, based in Skopje, has jurisdiction over the entire territory of North Macedonia for investigation of crimes committed by organised criminal groups. It has competence to investigate complex crimes, such as human trafficking, prohibited by Article 418-a of the CC, child trafficking prohibited by Article 418-d of CC, and organizing a criminal gang and inciting human and child trafficking, and migrants'

smuggling, prohibited by Article 418-c of CC.[7] The Public Prosecutor's Office for Organized Crime and Corruption conducts proactive investigations whenever sufficient evidence is gathered in the pre-investigation phase to open criminal investigation.

During the pre-investigation phase, and afterwards during the criminal investigation, if deemed necessary, the competent public prosecutor contacts prosecutors from other countries when some criminal acts took place in their territories, or if the consequences of the crime were felt in their territory. The aim is to gather intelligence in operational meetings.

For more complex cases, involving several countries, meetings are held under the auspices of the Eurojust, based in The Hague. Possibilities for greater, more frequent and more subtle co-operation are considered, which may result in a parallel preliminary investigation that simultaneously or subsequently is happening in two to three countries. So, a joint investigation team is formed. The joint investigation team is formed by an agreement concluded between the prosecutors of the affected countries, depending on the location where the crime was committed, on the consequences that were felt (there are injured parties/victims, or on the state budget that was embezzled) and on the compensation requests submitted. The prosecutor then shares data and evidence collected in accordance with the law of the country where evidence was obtained with the country where the defendant will be tried by the competent court.

The beginning of the investigation is marked by a formal written act - Order for investigation against identified perpetrators for whom there is a reasonable suspicion that, in a defined period of time, they undertook certain actions with

[7] Article 418-c - Organizing a group and aiding and abating trafficking in human beings, trafficking in children and smuggling of migrants
(1) Whoever who organises a group, gang or other association for committing crimes referred to in Articles 418-a, 418-b, 418-c and 418-d of this Code shall be punished by imprisonment of at least eight years.
(2) Whoever who becomes a member of a group, gang or other association referred to in paragraph 1 or otherwise helps the group, gang or association, shall be punished with imprisonment of at least one year.
(3) A member of the group referred to in paragraph 1 who will denounce the group before he commits a crime as part of the group or on its behalf shall be released from punishment.
(4) Whoever who initiates, instigates or supports the commission of the crimes referred to in Articles 418-a, 418-b, 418-c and 418-d, shall be punished by imprisonment between one to ten years.

the characteristics of criminal acts provided for in the Criminal Code. The public is informed about the opening of the investigation by the Basic Public Prosecutor's office against a defined group of persons, being the members of a criminal gang. If a pre-investigation took place in several countries in parallel, then in all affected countries investigations are opened, with an intense international exchange of the results of the investigation and evidence.

During the investigation, material and written evidence is collected. As a rule, when an investigation is opened, searches of homes, premises and persons are performed in accordance with an order of a judge of a preliminary procedure. The objects or material evidence found during the search are temporarily confiscated and, if necessary, orders are issued for the expert witness examination of the confiscated objects. Verbal evidence and evidence by use of PIM are collected, and an inspection and search of data from the phones that were seized during the search is carried out. Evidence is also collected by submitting a formal Request for International Legal Assistance in Criminal Matters in accordance with the Law on International Legal Assistance in Criminal Matters[8], based on the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocols that refer to close and direct co-operation.[9]

During opened investigation, a financial investigation is also carried out, aiming to collect incomes from criminal activities that took place during a certain period of time, to examine where the incomes from the crimes were invested, whether and where property was purchased (in a home country or abroad), in whose name, etc. If such property is identified, the public prosecutor has the right to request a decision from the judge of a preliminary procedure for temporary freezing and confiscation of objects and property, which according to the Criminal Code should be confiscated. During the investigation, the public prosecutor has the right to request confiscation measures, or other necessary temporary measure in order to prevent the use, transfer or disposal of the suspicious property or objects.

At this stage, the public prosecutor issues orders for the preparation of expert witnesses' reports on certain cases. For example, for the preparation of a financial expert witness report on collected documentation, and in case of the crimes of human trafficking (418-a and 418 -d of the Criminal Code), orders are issued for physical and psychological examination for the victim, but also sometimes for the suspect, for instance, for blood sampling and for other medical procedures. At this stage of the proceedings, the prosecutor issues an order for

[8] Official Gazette no. 124/10

[9] ETS nos. 030, 099 и 182

an expert witness' opinion to determine how the crime and its consequences affect the victim in view of making a decision for awarding damages regarding their type and amount set by the court. The prosecutor issues an order for examination, autopsy and identification of a corpse. The public prosecutor also appoints technical advisors from the ranks of expert witnesses, if he or she deems it necessary to establish facts or gather evidence that require specific expert knowledge.

In the investigation phase, examination of the site of the crime is carried out. If necessary, an expert witness attends it. In certain cases, a reconstruction of an event is carried out in order to verify evidence or establish facts. If it is necessary to identify a person, at this stage, if this has not been done in the preliminary investigation, the procedure of identification is carried out. This measure, which is undertaken by the public prosecutor, is attended by the defence and the official who performs the identification. Minutes from the identification are drawn up and the identification is recorded. The minutes and the recording of the identification are used as evidence in the criminal proceedings before the court.

As part of the investigation, there is an initial hearing of the victim of human trafficking or child trafficking. Before starting the investigation, the public prosecutor submits a request for procedural protection of the victim to the judge of the preliminary procedure with a justification. After the public prosecutor receives a formal Decision on procedural protection of the victim, he or she can proceed with hearing the victim. Hearing if the victim is a complex procedural action, requiring thorough substantive and formal preparation of all participants attending it. In coordination with the psychologist who follows and assists the victim from the very beginning of the detection of the crime and the victim, the public prosecutor sets the most optimal date for the hearing. The date set for the hearing of the victim in the prosecution is the day when the victim is ready and willing to give a statement, with an understanding of his or her role and rights set out in the criminal procedure.

A psychologist, legal representative and social worker prepare the victim to ensure that he or she should speak the truth, understand the meaning of giving a credible statement and the importance of the statement for the court proceedings. The abovementioned professionals are present at the victim's hearing in the prosecutor's office, with their presence being recorded in the minutes of the hearing. The presence of the psychologist, the legal representative and the social worker is not only due to a formality, but they are all active actors who, each from their own aspect, contribute towards the victim's feeling of being

safe, calm and with a clearly manifested will to give a statement.

The competent prosecutor should develop a relationship of trust with the victim, while retaining professionalism. While maintaining a balanced and professional relationship with the victim, the prosecutor shall explain to the victim the importance of telling the truth, while abiding by the procedure stipulated in the CPL. When the victim witness understands the meaning of her credible statement, she has a clearly defined position and understanding of her contribution to the legal conclusion of the proceedings. When she is well informed, she can approach giving a statement.

All those present at the act of giving a statement by the victim must have respect for what was said about the event without judgment and suggestions. They must respect the victim's personality, and certainly not condemn, pity, insult the victim or promise something that cannot be easily fulfilled. In such an atmosphere of trust and mutual assistance, the victim can be expected to give a maximum effort when testifying about the events. The importance of a good credible and comprehensive statement of the victim is of a particular importance to the success of the investigation, because it can lead to new evidence or possibly undetected victims. Of course, the importance of a well-prepared act of hearing the victim stems from the fact that the victim must not be heard multiple times in order not to be subject to secondary victimisation.

The designated legal representative of the victim must be present during the investigation. He/she represent the victim with a due respect and dedication to her needs. The legal representative must maintain a professional and balanced relationship in the best interest of the victim. The legal representative supports the victim to obtain compensation, during or after the conclusion of criminal proceedings. He/she will submit a claim for damages, based on an expert opinion regarding the circumstances of the case, that is, how the criminal act affected the victim in every way, her health and mental balance, but also on how the crime will affect the future life of the victim depending on the intensity of the consequences.

If it is a case of labour exploitation, it should be examined how the consequences of the event will affect the victim's ability to work in the future. If the victim is a person with special needs, a psychiatrist must be invited to the hearing, who will assist in the victim’s interrogation in order to establish the truth as far as possible. The questions will be asked with the help of the psychiatrist. He will make sure that the victim understands what has been asked about and that she gives a credible statement. The interrogation of the victim is recorded and a copy

of the recording is handed over to the judge of the preliminary procedure who issued the Decision on procedural protection of the victim. After completion of the investigation, a copy of the recording is given to the defence attorney together with the record made during the interrogation of the victim. If there is a large number of defendants, a recording with a transcript of the hearing of the victim is given to each of the defendants and to their defence attorneys in order to be able to prepare the best possible defence.

According to the CPL, the investigation is closed with a written notification to the defence attorney that all the evidence has been collected for the crime that was investigated and that the case file has been handed over to the prosecutor's office. There the defence team, together with the accused, can proceed to perform inspection and request a copy of all the evidence that has been collected. Scanned copies of all the written evidence, or copies that are in the prosecutor's office, and also a copy of the minutes from the hearing of the witnesses and the victims, are handed over to the defence. The defence team within 15 days, from the moment of receiving notification about the completed investigation, can inspect the case file and the evidence collected by the prosecution and propose the collection of additional evidence that the defence cannot collect (or cannot collect within a legal deadline). The defence team has the right to independently obtain evidence and examine witnesses, as well as submit such evidence to the public prosecutor. This can be done either during the investigation or after its completion, when evidence is submitted to the court by attaching the list of evidence of the defence.

When the defence is notified that the investigation has been completed, and if there are no strong counter arguments leading to an acquittal, the defence (the defendant and his lawyer) can propose to plead guilty and make an agreement with the prosecutor. This written draft agreement with enclosed evidence is submitted to the judge of the preliminary procedure. He/she examines whether or not evidence was collected in a legal manner, whether it is sufficient and convincing to lead to a conviction, whether the penalty that was agreed upon is proportional according to the law. The court will check whether the accused is aware of the consequences of admitting guilt, whether he is under the influence of alcohol, drugs and whether he was forced by someone to admit guilt, that is, whether the given confession is in accordance with the will of the accused. When the parties waive the right to appeal, which is explicitly stated in the agreement, the judge of the preliminary procedure, in the presence of the accused, the prosecutor and the defence, delivers a judgment on the merits based on the abovementioned agreement. It becomes immediately final and enforceable. If the defendant is sentenced to a prison sentence, he is immediately sent to serving

a prison sentence. The convicted person should pay the compensation for the damage document by appropriate expertise, pay for the legal representative of the victim, as well as pay for the administrative costs. Proceeds of crime according to CC, must be compulsorily confiscated. So, the case is promptly concluded in an earlier stage of the proceedings.

If an agreement is not reached, or the defence believes that there are enough evidence and arguments to oppose the evidence of the prosecution, and will fight for an acquittal, the case progresses to a further stage of criminal proceedings. The public prosecutor submits an indictment to the competent court with all the evidence, documenting that the evidence was collected according to law. The evidence that the prosecution claims to have been collected in order to prove the allegations of the indictment is contained in the List of evidence that will be presented before the court, and in the attached Inventory of all the documents, including the evidence documenting that the evidence was lawfully collected during the investigation. The indictment evaluation council, consisting of three judges, acting *ex officio*, evaluates the strength of the evidence, its legality, its sufficiency, and evaluates the allegations of the defence stated in the written objection to the indictment.

If the council for evaluating the indictment receives a statement of admission of guilt from the defence during the evaluation phase of the indictment, the case with the evidence is returned to the prosecutor's office where the parties, the public prosecutor and the defence team, negotiate the punishment. If agreed, the proposed punishment will be submitted to the Council for evaluation of the indictment. Then, a draft agreement is being evaluated. If the Council accepts the agreement between the parties to the proceeding. Afterwards, it delivers a judgment based on the admission of guilt, which becomes immediately final and enforceable. The defendant is a convicted person with a final judgment.
When there is no admission of guilt, and the objection of the defence raised against the indictment is not accepted, the Evaluation Council examines the indictment and decides whether to approve it. In that case, all the evidence that has been assessed as illegal is separated in a separate folder and kept with the judge of the preliminary procedure, and the verbal evidence is returned to the prosecutor's office. The Council brings a decision to approve the indictment. The council for evaluation of the indictment can also approve the indictment by using a clause, provided that there is no objection from the defence and no hearing was held after the evaluation by the council. With this decision of the evaluation council, the indictment becomes final and it is submitted to the criminal council, which will schedule the main hearing.

The role of the public prosecutor during the main hearing is to first present the opening speech, where he will present his theory of the case. Then the defence highlights and presents its view of the event with an introductory speech that is not mandatory for them.

Next, the evidence collected by the prosecutor during the investigation is presented in a way that in a direct examination the court will hear the witnesses, the experts, the injured parties and the victims, as well as the state attorney in case of damage to the State Budget. Material evidence and evidence collected by applying PIM will also be presented. After the prosecution's evidence is presented, the defence's evidence is presented, which directly examines the proposed witnesses, and the public prosecutor examines the defence's witnesses in cross-examination. Additional evidence is also proposed that represents an answer to legal or material issues raised during the trial. In the closing arguments, the prosecutor will convince the court of his theory of the case by explaining the evidence supporting the fact that the defendant committed the crime he is charged with and his assessment in the context of the nature of the crimes for which he is seeking a conviction. In its closing arguments, the defence presents their theory of the case and explains the reasons for which it considers that the court should make an acquittal. At this stage, the victim's attorney submits a claim for damages in the name and on behalf of the victim, in an amount that corresponds to the expert findings regarding the consequences of the crime that the victim suffered and will suffer in the future.

3.2 HOW TO MAKE INVESTIGATIONS PROACTIVE TO CONDUCT SUCCESSFUL CRIMINAL PROCEEDINGS AND IMPOSE SENTENCES ACCORDING TO EUROPEAN STANDARDS

A major step in the direction of proactive investigations with the aim of conducting successful criminal proceedings and sentencing in accordance with European standards was made in 2018 with the establishment of the Task Force within the Ministry of Internal Affairs. The Task Force is primarily in charge of proactive investigations. When it was established, it was planned that a public prosecutor would manage it and work with a group of prosecutors who are educated and specialised in working on this type of crime. The practice so far has shown positive results, as a greater number of criminal acts were discovered where victims of human trafficking/child were also identified. A large number of criminal proceedings involving a large number of perpetrators of "Trafficking in people/children" have been completed with successful court outcomes.

The punishments against the perpetrators are imposed according to the Criminal Code and are significantly higher compared to the previous court practice. In the criminal proceedings that have been carried out in recent years, the new highlight is that service users, persons who in the previous time period were often presented as witnesses in the criminal proceedings, were announced as guilty. Account is also taken of the impunity of the victims of human trafficking/children who, if during the period when they were in the state of victims, were forced to commit a crime by the suspects, they should not be criminally responsible for the acts of execution in the moments of dependence and under the pressure of criminals.

There is room for improving the results by improving the working conditions of the Task Force managed by a public prosecutor, in terms of strengthening material and human resources. It appears that the European standards have been complied with in the police and criminal procedures and with the continuous education of the judges and public prosecutors dealing with THB. The next generation of judges and public prosecutors also shows interest to work on THB cases as a special challenge. The focus should be on the new generations, who should be educated by explaining and making analysis of concluded criminal cases, in terms of where and why mistakes were made in the cases, and how to improve the future response to this crime. It is also of great importance to face the current challenges brought by the migrant crisis, which has been on-going for more than ten years. The police and prosecution should strengthen their capacities to more easily recognise presumed victims of human trafficking / child trafficking, among migrants in the state territory.

The Task Force faces several problems. There are no sufficient material resources for the care of the victims of trafficking and their assistance and resocialisation. Unfortunately, it has been recognised that a previously identified victim who participated in criminal proceedings and who had the status of a victim, after a certain period of time was re-victimised. This was a consequence of the absence of continuous protection and assistance from competent state institutions. The above case was perceived as a total defeat of the anti-trafficking stakeholders. The society and the competent state institutions have failed to prevent and protect the victim. Therefore, the capacities of the services that are in charge of prevention and further protection of the victims must be constantly upgraded with continuous educations and adequate resources.

The greatest procedural challenge and problem at this moment is the impossibility during prosecutor’s investigation to ensure active participation of the defence. Absence of special rooms adapted for physical distancing of and

disguising a victim giving a statement from the defence, makes it impossible for the defence team to prepare the defence in an adequate way. If the defence is given the opportunity to follow the hearing of the victim, by way of use of appropriate technical support, this would enable a faster conclusion of the case, if the defence considers the victim's statement powerful credible, and thus, difficult to disprove before the court.

3.3. PROSECUTOR'S PERSPECTIVE: IMPROVED AND SECURED STATUS AND RIGHTS OF VICTIMS OF HUMAN AND CHILD TRAFFICKING, AS WELL AS FOREIGN VICTIMS FROM EARLY STAGES OF THE PROCEEDING TO THE FINAL ADJUDICATION

The victim, including the child victim, as a witness in the investigation proceedings receives a formal - procedural protection based on the CPL. The child victims are also protected according to the Law on Justice for Children.[10] When the public prosecutor assesses that the application of procedural protection to the victim/ child victim is needed, then according to the CPL he addresses a reasoned request for victim's procedural protection to the judge of a preliminary procedure, in accordance with Article 53 and Article 54 of the CPL.

Only after the judge reaches a decision on the determination of special measures of procedural protection, the victim may be heard. Before the examination begins, the victim (including the child victim) is informed about his/her rights, in accordance with Article 53 paragraph 1 of the Civil Procedure Code. This is recorded in the minutes. The victim is informed that he /she has the right to 1. participate in the proceedings as a victim by joining the criminal prosecution or 2. to submit a civil claim for compensation, 3. to special care and attention by the authorities and by subjects participating in the criminal proceedings and 4. To effective, psychological and other necessary help and support by authorities, institutions and organisations with a mission to help victims of crimes.

Pursuant to Article 53 of the Criminal Code, the victim of a crime for which a prison sentence of at least four years has been prescribed, has the right to free legal aid before giving a statement or submitting a civil claim for compensation, if he /she has suffered severe physical and mental damage or other serious consequences from the crime. The victim has the right to compensation for pecuniary and non-pecuniary damage from the state fund under conditions and in

[10] Law on the justice for children, Official Gazette no. 66/24

a manner prescribed by a special law.

According to Article 55 paragraph 1 of the Criminal Code, the child as a victim of a crime against sexual freedom and sexual morality, humanity and international law, in addition to the rights set out in Article 53 of the Criminal Code, also has the right during the examination to get supported through a free legal aid mechanism, if he /she participates as an injured party; to be heard by a person of the same gender at the Public Prosecutor's Office; not to answer questions about her/his personal life, or question unrelated to the crime; and to request to be examined with the help of audio-visual means as determined by law. Pursuant to Article 53 paragraph 2 and Article 55 paragraph 2 of the CPL, the victim confirms with her /his signature that he / she has been instructed about his/her rights according to the CPL. The victim is advised about the right to testify in a language she /he understands, due to a lack of language skills of the official language of the court.

The victim, in accordance with Article 219 paragraph 3 of the Criminal Code, is warned that he /she is obliged to notify the public prosecutor of a possible change of address, that he /she is obliged to speak the truth and that he/she must not keep anything from the judicial bodies. The victim is warned that giving a false statement is a crime, that he /she is not required to answer certain questions if it is likely that she / he would expose herself/himself or the loved ones to a severe embarrassment, to a significant material damage or to criminal prosecution.

If the victim is related to the perpetrator of the crime in accordance with Article 214 paragraph 1 item 2 of the Criminal Code, he / she is informed that he / she is exempt from the duty to testify and does not have to testify.

The child victim, before giving a statement, is informed of the rights provided for by Article 166 of the Law on Justice for Children. The child victim is informed that it should be treated with respect, be protected from any discrimination, be informed of its rights in understandable and age-appropriate language and that it has the right to privacy. Furthermore, the parents or guardians must be informed about all issues related to the crime (about the suspect, the accused and the convicted), about the right to participate in criminal proceedings as a victim/s by joining criminal prosecution and /or to request damages. The child should be informed about the right to special protection of its safety and the safety of its family, about due care and attention owed by the authorities and parties to the criminal proceedings, about the right to special protection from secondary victimisation or re-victimisation and about the rights to psychological and other

professional help and support by authorities, institutions and organizations, helping child victims.

In the minutes of the examination it must be recorded that the child victim is informed about the right to legal assistance – to a lawyer when giving a statement, or for claiming a compensation for pecuniary and non-pecuniary damages, and to a representation during its examination in accordance with article 232 paragraph 2 of CPL. The child victim – witness is instructed that the statement will be recorded by the audio-visual recording devices, and shall be kept in accordance with Article 94 of the CPL.
After the victim-witness has been informed about all these rights that are provided for by the CPL and the Law on Justice for Children. Then, in the presence of a social worker, attorney and psychologist, the personal data of the witness/child victim is first taken, followed by the explanation of the above mentioned rights, as well as informing that they are obliged to speak the truth. Then, after giving the instructions, the victim is asked if he/she knows the reasons for the summons. Afterwards, the examination is started, whereby everything the victim will say is recorded on a record for examining the victim (including a child victim). After the end of giving the statement, the victim, as a witness, signs the minutes, and all the others present also sign. Instruction is given on the declaration of the damage claim, as well as on the fact that he /she has the right, according to Article 92 of the CPL to have the minutes read aloud and, if he/she believes that something was recorded that was not said or was said incorrectly, to request that it be corrected.

The beginning and end of the minutes are noted, and the recording of the entire course of the hearing is not interrupted. Each interruption of the victim's hearing is noted in the minutes, and then the continuation of the testimony is noted.

The recordings of the hearing, in accordance with the above cited legal provisions, are delivered to the judge of the preliminary procedure who decided to provide the procedural protection of the victim. The recordings are kept in the court as long as the case files are kept.

The above refers to procedural protection of the victim during the investigation. The court is also implementing measures to protect the victim. Calling a child victim to testify in the court, after given a testimony to the prosecutors is an exception to the rule. For that reason, the testimony given before the public prosecutor is of great importance for the court deliberation in the criminal case. In this sense, the preparation of the victim for testifying and giving a statement

to the prosecutor is very important.[11]

According to current practice, the standards for the protection of the victim are observed and respected. Victims in any case receive formal procedural protection , meaning that the judge of the preliminary procedure brings a decision addressed to all participants who are dealing with the victim to have a higher standard of awareness on the fact that the person in front of them is in a vulnerable state, who must be respected and helped.

The prosecutor usually works with the victim before they are heard formally in a way that explains to them the meaning of giving a true statement that should be supported by other material and verbal statements that are collected. It is a rule to be examined by a prosecutor of the same sex and a prosecutor who is educated on dealing with victims. The balance and professional relationship must be present and respected. There should not be a disproportional strictness that will make the victim vulnerable and which may make her/him refuse to give a statement. Promises which cannot be fulfilled should not be made. The prosecutors must not get too close emotionally to the victim, which may encourage the victim to testify falsely in order to get more attention or more damages. So far, no such irregularities have been noted, which is the result of constant education of the prosecutors. The importance of education for prosecutors is complemented by the need for specialization of prosecutors. They will have to be trained to work only on THB, in order to be more skilled in the investigation, in the interrogation and when dealing with victims. They must be professional, with a balanced and calm approach towards the victim, when she / he is supported before giving a testimony and in the course of interrogation.

The prosecutor at the early stage of the opened investigation, must assess the right moment to question the victim in the context of his/her health condition, perception of the event and the evidence collected. This is a very important question, because it will not be possible to interrogate the victim again in order to avoid his/her re-victimisation. So, the evidence that will be collected after the victim’s statement will not be commented by the victim. This can create a problem related to verifying the credibility of the victim's statement, an issue that is often debated in the courtroom, and has been highlighted by the defence.

[11] See cases no. 2 and 3 in the Analysis of cases of trafficking in human beings and child trafficking in the Republic of North Macedonia: challenges for effective prosecution and sanctioning of perpetrators, UNODC, 2022 pp. 13-22. The cases provide good practice concerning procedural protection of the victims

Regarding the issue of a victim who is a foreigner, especially in the context of the current migrant crisis, prosecutors are dealing with them under the crime of "Smuggling of migrants" according to Article 418-b of CC.[12] During the hearing of migrants who are most often witnesses in the investigation, in an attempt to check the possible existence of grounds for suspicion of the crime "Trafficking in human beings/child" according to Article 418-a and d of the CC, that is, whether the witnesses are possibly victims, several problems arise. First of all, the language barrier appears as a problem. Migrants who are found in the territory of North Macedonia, which is on the very path of the migrant route that leads to Western Europe, mostly come from Asia, namely Syria, Pakistan, Afghanistan, Bangladesh, India, as well as from Africa, namely Libya and Egypt. These people speak in languages for which there are usually no court interpreters, and at the same time they also speak in dialects of their languages, which are difficult for interpreters to understand. This problem of interpretation with a person who needs to be heard is easily overcome if that person is heard as a witness. However, if it were a victim of human trafficking, then the importance of the correct translation of what was said is of crucial importance. The second challenge is the attitude of migrants towards certain forms of exploitation. Arranged marriages, which are part of the tradition in the above-mentioned countries, for the professionals, are defined as forced marriage, and thus representing a form of exploitation. The irregular migrants sometimes stay illegally in a certain place for a long period of time, where for their livelihood, or in order to have money to continue their journey often work. In their statements before the prosecutor testify that they worked in a factory or fruit

[12] Article 418-b - Smuggling of migrants
(1) Whoever who, by force or by serious threat of assault upon life or body, by abduction, deception, out of greed, by abusing his official position or by taking advantage of the impotence of another, smuggles migrants or makes, procures or possesses a false travel certificate for such purpose shall be punished by imprisonment of at least four years.
(2) Whoever recruits, transports, transports, buys, sells, shelters or accepts migrants shall be punished by imprisonment from one to five years.
(3) If the life or health of a migrant is endangered in the commission of the offences referred to in paragraphs 1 and 2, or the migrant is treated particularly humiliating or cruel, or preventing the migrant from exercising his rights under international law, the offender will be imprisoned for a minimum of eight years.
(4) If the offence referred to in paragraphs 1 and 2 involves a minor, the offender shall be punished by imprisonment for not less than eight years.
(5) If the part of the paragraphs (1), (2), (3) and (4) of this section if an officer in the performance of the service is committed, shall be punished by imprisonment of not less than ten years.
(6) The objects and vehicles used to commit the offence shall be confiscated.

plantation where they were either not paid at all or the daily wage they were given was so small that they barely had enough to feed themselves.

The problem is the fact that the migrants experiencing such abuse do not feel like victims of labour exploitation. They rather express satisfaction that they had the opportunity to rest for a short time, that they had a roof over their heads and the opportunity to feed themselves. Most of the time, migrants cannot testify where these events took place, what were the names of their bosses, etc.. In the contrary this information could be collected and provided to the prosecutors of the countries where the exploitation took place. A problem in detecting victims of human trafficking/children among migrants is the fact that their interest is to go to their final destination as soon as possible and therefore uninterested in co-operation with the prosecutors in our country. For these reasons, they do not need to give a statement that would be of sufficient quality to start an investigation on a reasonable suspicion that a crime "Trafficking in human beings/children" has been committed.

The above problems are aggravated by the fact that the exploitation took place in another country, the perpetrators are not citizens of North Macedonia, or under its jurisdiction, or they are foreigners with undefined identity. In the countries of origin such as Afghanistan or Pakistan, there are no register records in order to confirm the identity of the perpetrators and of the victims, especially if they are on the verge of adulthood. International co-operation with these countries is almost impossible or too long time lapses before a response is received, which complicates the investigation that has legally set deadlines, as per the European standard – to complete the proceeding speedily.

The "Leyla" case should be noted as an example from the court practice. It has been adjudicate as a more serious form of migrants smuggling. It represents a borderline case, but human trafficking was not proven.[13]

[13] For detailed description see case no. 1 from the Analysis of cases of trafficking in human beings and child trafficking in the Republic of North Macedonia: challenges for effective prosecution and sanctioning of perpetrators, UNODC, 2022, pp.10-13

4. MODUS OPERANDI IN CASES OF TRAFFICKING IN HUMAN BEINGS IN PRACTICE

The Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption in Skopje, is the only competent body in the entire territory of North Macedonia to investigate and prosecute trafficking in human beings/children. According to its record, the most common *modus operandi* of trafficking in human beings/children in the territory of North Macedonia is reflected in forced marriages and sexual exploitation. The victims of this type of crime usually belong to the vulnerable category of children from the Roma population who are easy prey for criminals, but they are very often victims in their own homes. In fact, the perpetrators of the crimes are often the parents or close relatives who force their children, especially girls aged 12-13, to marry unknown adults. The motive is a certain income which is justified by the alleged needs for organising the wedding ceremony as part of their customs. Children who are married, are sent to other countries. In order to bring the unaccompanied children out from the country, forged documents are prepared. In the documents, the birth dates are falsified so that victims are represented older than their actual age.

Child begging - the use of children from the family to beg even in the most extreme weather conditions, outside in the open air, is very noticeable. In order to stop children from crying and not to impede the begging, small children and babies are given tranquilisers, which negatively affect their health. In order to deal with this type of crime, the police, the prosecution and the court have the capacity to process the documented criminal act. However, there is a question of who will take care of the children who would be left without parental care, in which facilities these children would be kept, and who is responsible in the state to take care of them. This negative phenomenon has a negative impact on children's physical growth and mental development. It is noted that one of the reasons for this mass phenomenon is the lack of prevention, which is due to the weak capacity in terms of finances and staff in social services across the country.

Unfortunately, the form of labour exploitation is an almost unaddressed topic. Its victims remain in the realm of the grey number of undeclared workers, who work in extremely miserable conditions, for very little wages. The victims fail to not report such situations, aware that they could not find a better solution. There is awareness that in certain factories across the country, working conditions and wages are minimal, but none of the workers report it for fear of losing their hard-

to-find job. Strengthened inspections are needed, as well as good preparation and education of labour inspectors to recognise labour exploitation.

The form of action of the perpetrators of the crime "Trafficking in human beings /children", which refers to the illegal transplantation of organs from the human body, has so far been unrecognised in our country, and not a single criminal case involving this type of exploitation has been prosecuted.

In a criminal-legal incident, where several migrants were found in a vehicle abandoned by the smuggler, a 19-years old boy, originally from Afghanistan, was identified among the transported migrants. He had his kidney removed. In the further course of the pre-investigation proceedings, it was established that the migrant, while he was in the Turkish territory (six months before he was discovered), in order to be able to continue to his final destination, agreed to have his kidney removed. Unspecified criminal gangs took advantage of this young man's vulnerability and had his kidney surgically removed for an illegal transplantation. According to the medical staff at the Kumanovo hospital, the removal was carried out in a professional manner, which undoubtedly indicates the fact that a well-organised criminal group is operating in the Turkish territory, dealing with this highly profitable crime. The migrant recovered in the Kumanovo hospital, and ran away. The operational team identified him as the very first victim of human trafficking among migrants. The case was not processed due to the fact that the migrant did not give an official statement to the prosecutor's office, as he needed to recover in the hospital.

Sexual exploitation, as a form of human trafficking, is very common in the night clubs in the western part of North Macedonia. Victims are citizens of the countries of the Western Balkans, as well as from Moldova, Ukraine, etc. To prove this crime in the court, the statements of the victims are needed. Their lack of interest in giving a statement appears as a problem. The victims lack a recognition of their situation of human trafficking, covered by pretended illegal prostitution.

5. PROCEDURE OF THE COURT IN CASES RELATED TO TRAFFICKING IN HUMAN BEINGS

5.1 ROLE OF THE COURT

Challenges that arise in practice, in the part of court proceedings in the main hearing phase are: technical staffing, status/rights of the accused - especially a foreigner, duration of the proceedings and the development of good practice. Moreover, the duration of the proceedings depends on the volume of evidence on which the public prosecutor based the indictment, on the theory of the case that the defence presents, on whether the defendant will admit his/her guilt. In the latter, if the court accepts the confession as being given voluntarily, without coercion and with a full awareness of its legal consequences, then only the evidence for deciding on the penalty, for the confiscation of the proceeds of crime and for confiscation of property will be examined.

The role of the court in the main hearing is perceived primarily in the evaluation of the legality of the prosecution's evidence, on which the indictment s based. Namely, what is particularly significant from a judicial point of view in relation to the prosecution's evidence, is the collection of the evidence, i.e., the way in which the prosecution proceeds to collect evidence. The legality of the actions taken during the pre-investigation and investigation proceedings must be carefully and sensitively observed. The legality of the way in which they were obtained is then subject to judicial control, which the court pays attention to *ex officio* and at the request of the parties.

Also, the way the court examines the victim in the main hearing is important. Article 232 of the Criminal Code indicates that the victim must not face the accused, which must be also observed during the preliminary investigation and investigation. At the same time, extremely high involvement and sensitivity of the judge-President of the council is required when taking this evidence.

Article 232 of the Criminal Code regulates the examination of a special category of vulnerable victims and witnesses, including children- victims of human trafficking. The state of health of the victim, the mental and physical health of the victim, the nature of the crime and its consequences, as well as other circumstances of the case that make the victim particularly vulnerable, are taken into account. Regarding the circumstance whether it is a question of a vulnerable

victim and who appears as a witness, the authority that conducts the proceedings decides. In the phase of the investigation, it is the public prosecutor's decision. After raising an indictment, it is the court's decision. In relation to this, the authority leading the procedure does not make a special decision. The main reason why these persons are singled out as a special category is to avoid their secondary victimisation during criminal proceedings.

Article 54 of the CPL, enumerate the special rights of vulnerable categories of victims. It is of essential importance for the protection of the child victim of human trafficking that the court decides on the video and audio recording of the hearing of the child, to be used as evidence in the court proceedings. In exceptional cases, only due to new circumstances of the case, the court may order a re-examination of the child victim, but only once more. In that case, the examination is carried out by using technical means of communication.

In connection with the provision of procedural protection of the child victim, the Law on Justice for Children foresees special measures of their procedural protection. With this purpose, screens to protect the victim from the view of the accused can be used, their identity or appearance can be disguised, they can give a statement via video conference, judges can remove togas, public will be excluded, video and audio recording of the statement that will be used as evidence will be made, a statement will be given with a mediation of an expert with the use of special technical means for communication and protection of the privacy of the child and his family (Article 170-175 of the Law on Justice for Children). The court decides which of these procedural measures of protection will be determined in each specific case.

When the authority leading the proceedings (the public prosecutor's office or the court) determines that there is a vulnerable victim, it must appoint a representative for the victim. The victim's attorney is present during her/his examination.

When dealing with a vulnerable victim, during his/her examination, the authority conducting the proceeding shall treat the victim with special attention, in order to avoid any stemming from the criminal proceedings and on the victim's physical and mental health. At the same time, the law enables a greater protection for this category of victims. Namely, questions can be asked to them via the authority that is leading the proceedings. The above is of particular importance for the victims examination in the course of the main hearing, because in principle the examination of the main hearing is carried out in the presence of both parties in the procedure.

Also, during the examination of vulnerable victims, the help of a professional, a psychologist, a pedagogue can be used. Whether such professional assistance will be used at all and by which professional, is decided by the authority leading the procedure. The right of the attorney of the vulnerable victim is not limited, as well as the right of the parties to the procedure to propose assistance from an expert during the examination of the vulnerable victim.

The examination of the vulnerable victim at the main hearing is usually carried out in such a way that the vulnerable victim is physically separated from the parties and the defendant, from the defence counsel in a separate room. The questions are asked through the authority leading the procedure, as well as through the mediation of the expert present.

This way of questioning of the vulnerable victim is important for the interrogation at the main hearing. As a rule the victim is questioned in the course of trial proceedings in the presence of the defence. So, this way of questioning the vulnerable victim is an exception.

The court can decide, and it often happens in practice, to exclude the public during the examination of the vulnerable victim, if it deems that it is in the interest of the victim. This measure is especially important when there is the child victim (Article 147 of the Law on Justice for Children). This legal provision also stipulates that the vulnerable victim must not face the accused, which is aimed at preventing any visual contact of the victim with the accused.

5.2 JUDICIAL PERSPECTIVE: IMPROVED AND SECURED STATUS AND RIGHTS OF THE VICTIMS OF TRAFFICKING IN HUMAN BEINGS/CHILDREN, AS WELL AS OF FOREIGN VICTIMS AT THE EARLY STAGES OF THE PROCEEDINGS UNTIL THE END OF THE JUDICIAL PROCEEDINGS

In the practice so far, in the part of judicial proceedings, the biggest challenge that has been appealed by the defence is their absence during the questioning of the victim by the public prosecutor. The question is how to establish the right balance between the protection and respect of the rights of the victim on the one hand, and the rights of the defence, to equality of arms and the right to a fair trial, on the other hand. The right to free trail is crucial in the court proceedings. The defence has the rights to oppose the evidence of the prosecutor, to object and to present its evidence in support of their theory of the case.

The rights of the victim are regulated in Article 53 of the CPL. The special rights of vulnerable categories of victims are regulated in Article 54 of the CPL, which clarifies the terms "victims at risk" and "particularly sensitive victims", of importance for applying special measures of procedural protection for the victims. The court first finds out about the status and rights of the victims during preliminary proceedings, when the public prosecutor, in accordance with Article 54 paragraph 2 of the CPL, submits a proposal to the court - to the judge of the preliminary procedure to decide on application of special measures of procedural protection. The law foresees the possibility to determine the measures of procedural protection at the proposal of the victim. In the previous court practice, the determination was based on the proposal of the public prosecutor. When such a proposal is submitted during investigation, the court decides on the request with a formal decision.

What is particularly significant in Article 54 of the CPL is paragraph 5, which states that in the cases referred to in its paragraph 4e, the court must determine, individually or together with another special measure of protection, a video and audio recording of the statement and of the questioning of the child which is to be used as evidence in the proceedings. In exceptional cases, due to new circumstances of the case, the court may order re-examination of the child victim at most once more through the use of technical means of communication. Paragraph 6 of Article 54 establishes that the implementation of special measures of procedural protection of child victims is governed by a special law.

Article 54 of the CPL, especially paragraph 5 thereof, is highlighted due to the fact that in the previous judicial practice there is a case in which the public prosecutor examined the child victim in compliance with the provisions of Article 53 and Article 54 of the CPL, in the presence of all necessary professionals as the psychologist, social worker, guardian, and representative, and recorded the victim's statement on the video and audio device. However, before taking the action, the prosecutor did not submit a proposal to the judge of the preliminary procedure in this regard. In consequence, there was no formal court decision based on Article 54 paragraph 5 of the CPL, requiring that the court must approve the video and audio recording of the statement and that such recording of the questioning of the child victim may be used as evidence. During trial, the court considered that without the approval of the judge of preliminary procedure to record the questioning of the victim, this evidence could not be used. The public prosecutor, accepting that such a victim’s statement has formal and legal deficiencies, withdrew the proposal for the presentation of the video and the audio recording of the statement of the child victim given before the public prosecutor. Both, the defence attorney of the accused and the attorney of the

injured child victim agreed the video recording of the statement not to be shown in the court, due to the above procedural errors. This implied summoning the child victim to the main hearing for questioning. It must be ensured that the questioning of the child victim at the main hearing is ordered only as an exception, due to new circumstances. Another challenge was to summon the child victim who remained unavailable to the court. The police could not find her address. She actually attained adulthood and started a new life. The victim did not participate in the proceedings, she did not give a statement at the main hearing, but was represented by a lawyer. The lawyer claimed a compensation on her behalf. The defendant was found guilty on the basis of the rest of the evidence (case KOK. no. 141/21, previously KOK. no. 20/18). The defendant was also unavailable to be summonsed. The first judgment KOK. no. 20/18 was delivered *in absentia*, whereby she was sentenced to imprisonment of 12 years. Following the approval of the request for retrial, the judgment KOK. no. 141/21 was delivered whereby sentencing her to imprisonment of 10 years. This prosecutor appealed the judgment in the part of the sentence. The defendant appealed it, alleging a violation of the right to fair trial right. She claimed, in particular, that the court did not have the victim's a statement for such a serious crime.

The Court of Appeal - Skopje, considered that the reasons given in the judgment for the existence of the decisive facts that the criminal act prohibited by Article 418-d paragraph 2 in conjunction with paragraph 1 of the Criminal Code was committed was not fully supported by the submitted evidence. This represented an essential violation of the procedure in the sense of Article 415 paragraph 1 item 11 of the CPL. The court considered that the element of the crime of child trafficking the "use of force and the threat of use of force and coercion" was not proven. i.e. that the question remained unanswered by which behaviour the accused was found to have "used force and has threaten the victim with the use of force", while forcing her to perform sexual acts and enabling men to have an intercourse with the child for a monetary compensation. In the retrial, the prosecutor sticked to the same indictment. The court examined the same evidence, while giving a more detailed reasoning as to the characterisation of the committed crime. The trial court convicted the accused and sentenced her to a prison sentence of 8 years (judgment KOK.no.212/22), which was again appealed by the defence. This time, the first instance judgment was confirmed in its entirety by the decision of the Court of Appeal-Skopje (KOKŽ.no .45/23 dated 15.05.2023).This shows the importance of presenting credible and sufficient evidence, even when there is no statement from the victim.

In the context of victims' rights, it is important to mention Article 55 of the CPL,

which regulates the special rights of victims of crimes against gender freedom and gender morality, humanity and international law. Procedural protection measures according to this provision can also be determined at the court's discretion, when it is necessary to protect at risk and particularly sensitive victims. In practice, this is most often the case during the main hearing. The trial judge, or the judicial panel may decide on such measures, if the measures of procedural protection have not been previously determined, or a new victim was identified. The court determines the procedural protection measures during the main hearing or before its beginning, whereby the court applies the provision of Article 232 of the CPL. The court makes a procedural decision based on the proposal of the prosecution.

Regarding the rights of the victims, it is worth mentioning Article 56 of the CPL, which contains provisions regarding the victim who was not notified of his/her right to participate as a victim in the proceedings.
Regarding the rights of the victims, a positive trend is noticeable in recent years, especially in the period from 2020 to 2023, towards a more comprehensive respect of the rights of the victims. During court proceedings: their attorney is appointed, decisions are made for procedural protection, there is an increased vigilance when summoning the victims in court, measures are taken to prevent a direct and visual immediate contact of the victim with the accused, and with their family members in order to avoid indirect pressure on the victim.[14]

The victims claim fair monetary compensation for the detriment to their personal rights to physical and mental health. The claim for pecuniary and non-pecuniary damages is submitted in criminal proceedings, so that it can be awarded in criminal proceedings, in accordance with the provisions of Article 110 -114 of the CPL. The claim for compensation must be specific in terms of the legal basis and the amount claimed. It should contain specific claims, i.e., on what legal basis and for what the compensation is specifically claimed, and in what amount, supported by appropriate evidence. If pecuniary damage is also claimed, for medical treatment etc, there should be evidence-for the spent amounts. For non-pecuniary damage, appropriate expert witness report should be submitted on the type and intensity of the damage suffered and its consequences on the victim in the present and possibly in the future, as well as the percentage of disability and its consequences. The claim and evidence are submitted to the court by the victim or another authorised person in accordance with the law, i.e. her/his

[14] See case no. 3 of the Analysis of cases of trafficking in human beings and child trafficking in the Republic of North Macedonia: challenges for effective prosecution and sanctioning of perpetrators, UNODC, 2022, pp. 13-17

guardian or attorney.

Considering that non-pecuniary damage requires expert witness report, the court practice shows the most expedient way, which does not cause additional traumas and costs to the victim. So, there should be no new expert witness report made, but the expert witness report ordered by the public prosecutor for the investigation should also contain a section identifying the consequences suffered by the victim, their duration and intensity. This expert witness findings and opinion can be used by the victim and her attorney to claim compensation.

With the entry into force of the Law on Payment of Monetary Compensation to Victims of Violent Crimes (Official Gazette of the Republic of North Macedonia, no. 247/2022 of 17.11.2022, which entered into force on 25.11.2022, and began to be applied as of 25.05.2023), in accordance with Article 111 of the CPL, the victim should inform whether he/she has received a compensation or submitted a claim in accordance with Article 53 of the CPL.

If the claim for compensation is submitted during criminal proceedings, if it is properly argued and supported by evidence, the criminal court, referring to Article 110 paragraph 1 of the CPL will decide on the claim. If the criminal court assesses that proving the claim for compensation will delay the proceedings, it will refer the victim to submit a claim in the civil proceedings. In the last 3 years, there has been a trend of awarding the civil claim for compensation in the criminal proceedings, and enforcement of the awarded compensation.[15]

It is especially important in these cases, during the investigation, to conduct a financial investigation, to make efforts to find out if the perpetrators own any property, to secure the property, so that subsequently, the victim can be compensated from the confiscated assets during trial.

It is particularly important that legal representatives of victims (they are often appointed *ex officio* by the court, or by the social work centres, or by the prosecutor's office) be actively involved during the proceedings. Article 118 and Article 120 of the CPL regulate the temporary confiscation to secure payment of the compensation for the victim and for third parties. These measures are ordered, upon a proposal of the prosecution and other authorised persons in the criminal proceedings, including the legal representatives of the victim.

[15] Ibid

6. STATISTICS OF CASES RELATED TO TRAFFICKING IN HUMAN BEINGS

The number of cases related to trafficking in human beings/children (Article 418-a of the Criminal Code and Article 418-d of the Criminal Code) annually is not big. The child trafficking cases for sexual exploitation and forced marriages are prevailing. The Basic Criminal Court Skopje, in the Specialized Court Department with a sole jurisdiction to trial offences of organised crime and corruption, in the time period from 2020 to November 2023 there are the following statistics on the received approved indictments, resolved cases and final judgments:

In 2020 and 2021, in relation to the crime "Trafficking in human beings" set out in Article 418-a of the Criminal Code, there are no cases received, adjudicated or declared final.

In 2022, 4 cases were received, 1 of was adjudicated and became final the same year. Three of the perpetrators who pleaded guilty at the main hearing were convicted as follows: the first defendant for the crime - "Trafficking in human beings" set out in Article 418-a paragraph 1 in conjunction with article 22 and article 45 of the CC with a sentence of imprisonment of 3 years and 6 months, modified by a decision of the higher court to a prison sentence of 5 years; the second accused of the crime "Trafficking in human beings" from Article 418-a paragraph 1 of the Criminal Code with a sentence of imprisonment for 4 years, increased to 4 years and 8 months; and the third defendant for "Trafficking in human beings" from Article 418-a paragraph 3 of the Criminal Code (a user of the services of THB victim with a suspended sentence) was sentenced to 2 years imprisonment suspended for 5 years, which sentence was modified by the higher court to a prison sentence of 10 months.

Regarding the remaining 3 defendants in the same case who pleaded not guilty, the proceedings ended with a conviction for the crime of "Trafficking in Human Beings" from Article 418-a paragraph 1 in conjunction with article 22 and article 45 of the CC. One defendant was sentenced to 6 years imprisonment, and the other two to 5 years imprisonment. This judgment was modified in the section of criminal sanctions by the higher court: the 6 – year imprisonment was increased to 8 years, and the remaining two sentences of 5 years imprisonment each were increased, to 7 and 6 years, respectively.

In 2023, 1 case was received, 4 cases were adjudicated, 2 of became final.

in 2020, in relation to the crime of "Trafficking in children" from Article 418-d of the Criminal Code, 1 case was received, 6 cases were adjudicated, and 5 cases became final.[16]

In 2021, 2 cases were received, the same number were adjudicated, and 3 became final.

In 2022, 7 cases were received, 6 cases were adjudicated, 1 case became final. Case in which the judgment was passed in 2022 against 2 accused of a crime "Child Trafficking" from Article 418-d paragraph 2 in conjunction with paragraph 1 in conjunction with article 22 and article 45 of the Criminal Code, on forcing a child who has not reached the age of 14 to beg. The perpetrators were sentenced to a prison terms of 7 years and 6 months each. The sentence became final in 2023, when it was confirmed by a decision of the Skopje Court of Appeal. In this case, the court of first instance during the initially conducted procedure, considering that it is a criminal case of "Child neglect and abuse" from Article 201 of the Criminal Code, amended the legal qualification of the crime and declared itself not competent to deal with the case. After a public prosecutor's appeal, the case was remitted for a retrial. The first-instance court accepting the legal qualification from the indictment, and adjudicated the case under the crime of "Child Trafficking". A first-instance judgment was passed, for which appeal proceedings are pending. The above case is mentioned to remind about the importance of the correct qualification of the case. In particular, the jurisdiction of the court and prosecution dealing with human/child trafficking are different, as they are specialised for organised crime and corruption. While, other crimes, including the crime from Article 201 of the Criminal Code, are under the jurisdiction of the basic local competent courts and prosecutor's offices (according to the place where the crime was committed).

In another trafficking case for sexual exploitation and forced marriage, involving a long-term user of the victim’s services, proceedings were started against 3 perpetrators. At the very beginning, one of the perpetrators, the father of the child victim, died and the proceedings were stopped. Regarding the mother - perpetrator, the proceedings ended with a conviction for the crime of "Child Trafficking" from Article 418-d paragraph 2 in conjunction with paragraph 1 in

[16] Some of the final cases have been described in the Analysis of cases of trafficking in human beings and child trafficking in the Republic of North Macedonia: challenges for effective prosecution and sanctioning of perpetrators, UNODC, 2022, pp. 13-17, 18-22 and 38-41.

conjunction with article 45 of the Criminal Code. The mother admitted her guild and was sentenced to a 15-year prison sentence. The sentence was confirmed after the appeals of both parties were dealt with by the higher court. In relation to the offender – he user of the services, who was charged with a crime "Child Trafficking" from Article 418-d paragraph 4 in conjunction with paragraph 3 in conjunction with article 45 of the CC and for the crime "Rape" from article 186 paragraph 5 in conjunction with paragraph 2 in conjunction with paragraph 1 of the Criminal Code committed against another victim, who pleaded guilty, a single prison sentence of 18 years was imposed on him for both crimes. The appeal court reduced it to 16 years' imprisonment.

In 2023 until November 10, 2023, 5 cases were received, 4 cases were adjudicated, and 4 cases became final, as follows:

One case deals with a forced marriage, Article 418-d paragraph 1 of the CC. 2 perpetrators were convicted based on a guilty plea. One was sentenced to 5 years and 6 months imprisonment, while the other one was sentenced to 4 years imprisonment. This judgment was confirmed in its entirety by the Skopje Court of Appeal. For the other 2 accused, also based on a guilty plea, were sentenced to a prison sentence of 4 years each. Considering that the convicts are foreign citizens, they were also sentenced to expulsion of a foreigner from the country for a period of 5 years counted from the day of expulsion from the territory of the state, and after serving the prison sentence.

In another case, of "Child Trafficking" from Article 418-d of the Criminal Code, for the defendant who pleaded guilty, the proceeding was separated and ended with a conviction of 6 years' imprisonment for the crime of "Child Trafficking" from Article 418-d paragraph 2 taken together with paragraph 1 in conjunction with Article 45 of the CC, He was convicted for Child Trafficking for the purpose of sexual exploitation with the use of force, threat, psychological coercion and blackmail by sharing video materials with intimate content on social networks and enabling the use of sexual services by the child victim to third parties. The public prosecutor appealed against the duration of the imposed sentence, but the Court of Appeal rejected the appeal and confirmed the first-instance verdict.

7. PENAL POLICY

In the period from 2020 to 2023, there is a trend of increased duration of the sentences imposed by the first-instance court. Even in the case of a guilty plea at the main hearing, the court imposed a prison sentence of 18 years as the only prison sentence for the criminal offence "Child Trafficking" against the user of the child victim's services.

The court of appeal, unlike previous years when it increased the penalties, in the specific case, it confirmed the penalty for the mother – trafficker of 15 years' imprisonment, and reduced the prison sentence imposed on the user from 18 to 16 years imprisonment.

8. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING MIGRANT PERSONS AT RISK OF TRAFFICKING IN HUMAN RIGHTS

8.1 INTRODUCTION

Migrants are a category of people who belong to a particularly vulnerable and underprivileged group in need of special protection. There is a broad consensus on the need for special protection of the mentioned category of persons at the international and European level. At the same time, precisely their particular vulnerability contributes to their being additionally exposed to an increased risk of human trafficking. The analysis of the case-law of the European Court of Human Rights (ECtHR) on human trafficking cases, shows that the applicants are mostly persons who are not citizens of the respondent state. In particular, migrants appear in the role of applicants.

The European Convention on Human Rights (ECHR) is the most important European treaty on human rights, which guarantees the rights and freedoms of every person in the territory under the jurisdiction of the member states of the Council of Europe. Based on the ECHR and its protocols, the ECtHR has delivered a significant number of judgments and decisions regarding cases involving migrants at risk of trafficking, i.e., migrants who have been identified as victims of trafficking, despite the fact that the ECHR does not include specific provisions in that regard.

Namely, there are provisions in the ECHR that are applicable to ensure protection against human trafficking and the protection of the rights of migrants who are running a higher risk of human trafficking. The ECtHR has an extensive case law in this field. The most significant provision that provides the basis for their protection is Article 4 of the ECHR (prohibition of slavery and forced labour). Precisely on the basis of the interpretation and application of this provision, the ECtHR has developed standards and principles aimed at ensuring protection for migrants at risk of human trafficking, or migrants who have been identified as victims of human trafficking. Apart from this provision, within the ECtHR case-law related to the protection of migrants from human trafficking, the ECtHR applies other relevant provisions, such as: Article 2 (right to life), Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 13 (right to an effective legal remedy).

The absence of an explicit reference to human trafficking in the ECHR is not surprising. The ECHR was inspired by the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, which does not specifically mention human trafficking. In its Article 4, the Declaration prohibits: "( ) slavery and the slave trade in all their forms." However, in assessing the scope of Article 4 of the ECHR, one should not lose sight of the special features of the ECHR. It is a living instrument that must be interpreted in the light of modern day's conditions. Standards that are required to be implemented in the area of protection of human rights and fundamental freedoms accordingly and inevitably require greater rigor in assessing possible violations of basic values of democratic societies. In this sense, the Palermo Protocol of the United Nations in 2000 and the Convention on Action against Trafficking in Human Beings of the Council of Europe in 2005 point out the necessity to apply measures to prevent and combat human trafficking.

8.2 INTERPRETATION AND APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS.

The ECHR is a relatively short document and does not contain guidelines and rules regarding the interpretation of its provisions by the ECtHR. However, considering that the ECHR is a multilateral international treaty, it should be interpreted according to the rules of international law for the interpretation of treaties. In this sense, the ECHR can be interpreted in accordance with the 1969 Vienna Convention on the Law of Treaties, as part of customary international law.[17]

There is a set of interwoven principles and standards arising from the context of international law and the protection of human rights, which is characteristic of the ECHR. In doing so, the goal of the ECtHR is to establish certain minimum international standards. Namely, the ECtHR does not aim to determine the most appropriate way to protect human rights, given the diversity of national law among the contracting parties, but rather identifies the minimum protection of human rights defined in the ECHR, which should be achieved by a certain legal system.

The ECtHR has developed numerous principles of interpretation of the provisions of the ECHR. The principle of autonomous interpretation is closely related to the purpose and meaning of the ECHR. This means that the ECtHR, in certain circumstances, will give an autonomous meaning to a term within the framework of the ECHR, regardless of the meaning that term has at the national level. With this, the interpretation of a term, such as disciplinary proceedings, does not

[17] The Vienna Convention only applies to states as parties to a treaty, article 3

depend on the domestic law of the member states, but depends on the essential characteristics of the procedure and the punishment that resulted from it.

The principle of subsidiarity is characteristic of the protection of the rights guaranteed by the ECHR in relation to the national systems for the protection of human rights. This means that the ECtHR is not a final court of appeal or "fourth instance", rather ECtHR is a supervisory authority for the application of the ECHR. It plays a subsidiary role in relation to the systems for the protection of human rights at the state level, which are primarily responsible for the protection of the rights given in the ECHR to all who are in the territory under the jurisdiction of the state.

Another important principle is the rule of law principle, as one of the basic principles for applying the substantive law of the ECHR. This principle should ensure the exercise of all public powers within the conditions stipulated by law, in accordance with democratic values and fundamental rights, while being controlled by an independent and impartial court. Among the principles and standards arising from the principle of the rule of law are: legality, which implies: a transparent, responsible, democratic and pluralistic process of enacting laws; legal certainty; prohibition of arbitrariness by the government; independent and impartial courts; effective judicial review, which includes respect for fundamental rights and equality before the law.

The doctrine of the margin of appreciation represents another aspect of the principle of subsidiarity. This doctrine of the ECtHR was developed in order to allow states some discretion in fulfilling their obligations arising from the ECHR, as well as to determine the boundary between issues that deserve to be resolved by the state at the local level and issues that affect such essential interests. Regarding the latter, the same standards must apply to all countries, regardless of the specificities of their history, tradition and culture. In this way, a minimum level of human rights protection is ensured in all contracting parties of the ECHR, while at the same time a certain space for manoeuvring and differentiation is enabled due to the peculiarities of each contracting party of the ECHR.

This doctrine does not apply to all rights protected by the ECHR. Thus, the ECtHR does not use it when evaluating the absolute rights guaranteed by the ECHR, that is, the rights guaranteed by Articles 2-4 (right to life; prohibition of torture and prohibition of slavery and forced labour) and Article 7 (*nullum crimen sine lege*). Absolute rights require a higher degree of supervision by the ECtHR and in terms of their protection no limitation must be allowed. The doctrine is most often used in relation to the so-called "qualified rights" protected by the ECHR, given that a certain degree of restriction is allowed in relation to these rights, in accordance with certain conditions. These are mostly the rights protected by Article 8-11

(right to privacy; freedom of thought, conscience and religion; freedom of expression and freedom of assembly and association).

The extent of the margin of appreciation is determined based on several criteria. One of the criteria for determining the extent of the margin of appreciation is to take into account the diversity of national solutions given the different local conditions with which local authorities are better acquainted than the ECtHR. The margin of appreciation is wider in the case where there is no common European standard regarding the specific issue.
The principle of effective protection, according to which it is necessary to ensure effective protection of all rights guaranteed by the ECHR, is very important for the realization of its "purpose and meaning". Thus, in Artico v. Italy the ECtHR emphasized that "(...) the purpose of the ECHR is to guarantee rights that are not theoretical or illusory, but rights that are practical and effective".[18] It is not enough for states to only prohibit behaviour that is in conflict with the ECHR, but they should also undertake positive obligations to protect the rights guaranteed by the ECHR. Namely, the ECtHR divides the obligations of the states into two groups: negative obligations and positive obligations. It can be said that obligations to respect are negative obligations, while obligations to protect and implement are positive obligations. The goal is to enable individuals to effectively enjoy the rights provided for by the ECHR and its protocols. In accordance with the principle of effectiveness, this principle requires the ECtHR to be interpreted in accordance with social development, from which the progressive character of the ECtHR case-law results.

In most cases, the positive obligations of states are not explicitly stated in the text of the ECHR, but are interpreted by the ECtHR. According to the ECtHR, there are two types of positive obligations, namely: substantive obligations and procedural obligations. This division is explicitly stated in the judgment in Öneryildiz v. Turkey.[19] The difference between these two types of positive obligations consists in the essence of the action that should be taken by the state. Material positive obligations provide the content for the full enjoyment of rights (for example, the observance of standards in prisons). Procedural positive obligations are those that mandate the establishment of domestic procedures that ensure better protection of individuals, mainly in terms of the existence of appropriate legal remedies in case of violation of guaranteed rights.

The principle of proportionality is constantly under consideration when interpreting the ECHR. Thus, in Soering v. United Kingdom, the ECtHR pointed out that "(...) inherent in the entirety of the ECHR is the search for a fair balance

[18] Application no. 6694/74
[19] Application no. 48939/99

between the requirements of the general interest of the community and the requirements for the protection of individual fundamental rights".[20] In doing so, the establishment of a fair balance always presupposes an approach that is based, *inter alia*, on consideration of the principle of proportionality. Most of the debates on defining its meaning have been made in the context of the limitations of the rights protected by Articles 8(2) – 11(2) of the ECHR. The steps taken by the ECtHR to determine whether there is a violation of a right or freedom that can be limited are the following:

1. It is examined whether the state interferes in the exercise of rights and freedoms from the ECHR.
2. If there is an interference, the ECtHR examines whether it is legal, according to the national law, but also the quality that that law should possess.

3. If the interference is lawful, it is examined whether it has a legitimate purpose, which is usually, but not always, included in the provision of the ECHR itself.

4. If it is determined that the interference has a legitimate purpose, then the proportionality of the means used is examined. It is a matter of proportionality between the means that the state has used to limit a qualified ECHR right to achieve a legitimate goal. The main meaning of this principle is not to allow minimisation of individual human rights under the guise of protecting a public good such as preventing the spread of infectious diseases, maintaining public order and peace, protecting from crime.

8.3 THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS IN CASES RELATED TO MIGRANTS AT RISK OF TRAFFICKING IN HUMAN RIGHTS

The ECtHR has issued a number of important judgments that formulate principles and standards in the sphere of protection of migrants against human trafficking, and which cover almost all forms of human trafficking. Herein, the practice of the ECtHR is elaborated on the protection of migrants at risk of human trafficking, with the most significant cases tackled.

In the case of Rantsev v. Cyprus and Russia, the applicant's daughter, a Russian citizen, died under unexplained circumstances after falling from a window of a private property in Cyprus, a few days after arriving on a cabaret artist visa.[21] Her father complained that the Cypriot police had not done everything possible to protect his daughter from human trafficking, while she was alive and to punish

[20] Case no. 1/1989/161/217
[21] Application no. 25965/04

those responsible for her death. He also lamented the failure of Russian authorities to investigate the crime against his daughter and the circumstances surrounding her death, and to take steps to protect her from the risk of human trafficking.

In this case, the ECtHR confirmed that the crime of human trafficking falls within the scope of Article 4 of the ECHR, and from there derives its competence to deal with the complaint. Namely, the ECtHR noted that, like slavery, human trafficking, by its nature and purpose of exploitation, is based on the use of powers attached to property rights; it treats human beings as commodities to be bought and sold and engaged in forced labour. This crime implies close monitoring of the activities of the victims, whose movements are often restricted; and that it involves the use of violence and threats to victims. The ECHR considered that states have positive obligations that are applicable in cases related to human trafficking, in light of Article 4 of the ECHR:

- a positive obligation to establish an appropriate legal and administrative framework for the prohibition and punishment of human trafficking and which ensures real and effective protection of the rights of victims of human trafficking;

- a positive obligation to take operational protective measures for identified or potential victims of actions contrary to Article 4 of the ECHR;

- a procedural obligation to investigate the cases of human trafficking; and

- a positive obligation to establish an appropriate legal and administrative framework (according to Article 4 of the ECHR).

The ECHR found in this case that Cyprus, among other, failed to fulfil its positive obligations under Article 4 of the ECHR to establish an appropriate legal and administrative framework. Despite evidence of human trafficking in Cyprus and concerns expressed in various credible reports that Cypriot immigration policy and legislative deficiencies encourage the trafficking of women in Cyprus, the state did not provide the applicant's daughter with practical and effective protection from trafficking and exploitation.

In particular, the ECtHR criticised the system for the artist’s visa, where the request comes from the cabaret manager, and thus making the artists dependent on their employer or intermediary and increasing their risk of falling into the hands of traffickers. Furthermore, the ECtHR emphasised that while the obligation on employers to notify the authorities in the event that an artist leaves her employment is a legitimate measure to allow the authorities to monitor immigrants' compliance with their immigration obligations, the responsibility for

ensuring compliance and for taking steps in cases of non-compliance by the migrant artists lies with the authorities. Measures at the time encouraging cabaret owners and managers to find the missing artists or otherwise take personal responsibility for their behaviour were not acceptable in the wider context of allegations of possible human trafficking in Cyprus under the guise of employment as an artist. The ECtHR also found the practice of requiring cabaret owners and managers to submit a bank guarantee to cover potential future costs associated with the artists they employed particularly troubling. The separate bond signed in Ms Rantseva's case was of equal concern, as was the police's unexplained conclusion that the cabaret manager was responsible for Ms Rantseva and was therefore required to come and collect her from the police station.

- Positive obligation to take protective measures (according to Article 4 of the ECHR).

Also, the ECtHR found in this case that Cyprus failed to fulfil its positive obligations under Article 4 of the ECHR to take protective measures, taking into account the failure of the police officers to take operational measures to protect the applicant's daughter despite the circumstances which raised credible suspicions that she might be a victim of human trafficking.

Namely, the ECtHR noted that at the police station, the manager of the cabaret told the police that Ms. Rantseva was a Russian citizen and was employed as an artist in the cabaret. He further explained that she had recently arrived in Cyprus, left her employment without warning and moved out of the accommodation provided to her. He handed her passport to the police, which was returned to him, together with Mrs. Rantseva. The manager took her away from the police station in Limassol.

The ECtHR recalled the obligations undertaken by the Cypriot authorities in the context of the Palermo Protocol of the United Nations and, subsequently, the Convention on Action against Trafficking in Human Beings of the Council of Europe, to organise adequate training for employees in relevant areas to enable them to identify potential victims of human trafficking. In particular, under Article 10 of the Palermo Protocol, states undertake to provide or strengthen training for law enforcement, immigration and other relevant officials to prevent trafficking in human beings. The ECtHR considered that the police had sufficient indicators, taking into account the context of human trafficking in Cyprus, to become aware of circumstances giving rise to a reasonable suspicion that Ms. Rantseva was at a real and imminent risk of becoming a victim of human trafficking, or of exploitation. Accordingly, there was a positive obligation to conduct an investigation without delay and to take all necessary operational measures to protect Ms. Rantseva.

The ECtHR found that the police did not question Mrs. Rantseva when she arrived at the police station, that is, no statement was taken from her. Furthermore, the police did not make further investigations of the facts. They simply checked to see if Ms. Rantseva's name was on the list of people wanted by the police and after finding out that her name was not there, they called her employer, the manager of the cabaret, and asked him to pick her up.

According to all previously stated, the failures of the police authorities were multiple. First, they failed to immediately make further inquiries as to whether Ms. Rantseva was at risk of human trafficking. Second, they did not release her, but practically handed her over to the custody of the cabaret manager. Third, no attempt was made to comply with the legal provisions, according to which the state has an obligation to protect victims of human trafficking by providing support, including accommodation, medical care and psychiatric support. Accordingly, the ECtHR held that these deficiencies, in circumstances of credible suspicion that Ms. Rantseva may have been trafficked or exploited, resulted in the failure of the Cypriot authorities to take measures to protect Ms. Rantseva.

- Procedural obligation to investigate potential cases of human trafficking (according to Article 4 of the ECHR).

ECtHR also found that there had been a violation of Article 4 of the ECHR by Russia for failing to investigate how and where the applicant's daughter was recruited and, in particular, to take steps to identify those involved in her "employment", i.e. recruitment and/or the methods used.

The ECtHR recalled that, in cases involving cross-border trafficking, crimes related to human trafficking can occur in the country of origin as well as in the country of destination. In the case of Cyprus, as the Ombudsman pointed out in her report, the recruitment of victims is usually undertaken by art agents in Cyprus who work with agents in other countries. Failure to investigate the recruitment aspect of alleged human trafficking allows much of the human trafficking chain to operate with impunity. The ECtHR emphasized that the definition of trafficking in persons adopted in both the Palermo Protocol and the Convention on Action against Trafficking in Persons explicitly includes the recruitment of victims. At the same time, the need for a complete and efficient investigation that will cover all aspects of human trafficking allegations, from recruitment to exploitation, is indisputable. Therefore, the Russian authorities had an obligation to investigate the possibility that individual agents or networks operating in Russia were involved in the trafficking of Ms. Rantseva to Cyprus.

The ECtHR noted that the Russian authorities did not undertake an investigation into how and where Ms. Rantseva was recruited. The authorities have taken no steps to identify the persons involved in the recruitment of Ms. Rantseva or the

methods of recruitment used. The recruitment took place in the Russian territory. The Russian authorities were therefore in the best position to conduct an effective investigation into the recruitment of Ms Rantseva. The failure to launch an investigation was all the more serious in light of Ms Rantseva's subsequent death and the resulting mystery surrounding the circumstances of her departure from Russia.

- Procedural obligation to conduct an effective investigation (according to Article 2 of the ECHR).

In this case, the ECtHR, among other things, also assessed whether there was a violation of Article 2 of the ECHR. Namely, the ECtHR found a violation by Cyprus of Article 2 of the ECHR, as a result of the failure of the Cypriot authorities to effectively investigate the death of the applicant's daughter.

Given the ambiguous and unexplained circumstances surrounding Ms. Rantseva's death and the allegations of human trafficking, ill-treatment and illegal detention in the period leading up to her death, the ECtHR held that the Cypriot authorities had a procedural obligation to investigate the circumstances of Ms. Rantseva's death. In doing so, the investigation had to consider not only the immediate context of Ms. Rantseva's fatal fall from a balcony, but also the broader context of her arrival and stay in Cyprus, in order to assess whether there was a connection between the allegations of human trafficking and the subsequent death of Mrs. Rantseva.

As for the adequacy of the investigation, the ECtHR noted that the police arrived quickly and closed the scene within minutes. Photographs were taken and a forensic examination was carried out. The same morning, the police took statements from those present in the apartment at the time when Mrs. Rantseva died and from the neighbour who witnessed the fall. Police officers on duty at Limassol Police Station also gave statements. An autopsy was performed and an investigation was conducted. However, there were a number of elements of the investigation that were not satisfactory.

First, there were conflicting testimonies from witnesses who were present in the apartment at the time of Ms. Rantseva's death, and the Cypriot investigative authorities did not take steps to resolve them. Furthermore, there were inconsistencies in the evidence regarding Ms Rantseva's physical condition, and in particular the extent of the effects of alcohol on her behaviour. Mrs. Rantseva did not make a noise while falling from the balcony, for which no satisfactory explanation was given.

Furthermore, the inquest into her death recorded that Ms Rantseva died in

"strange circumstances" in an attempt to escape from the flat where she was a "guest". Despite the ambiguity surrounding the circumstances of her death, Cypriot police have made no effort to question the people who lived with Ms Rantseva or worked with her at the cabaret. Also, despite the conclusion of the investigation that Ms. Rantseva was trying to escape from the apartment, no attempt was made to determine why she was trying to escape or to clarify whether she was kept in the apartment against her will. Furthermore, it was not clear why the investigation did not try to establish exactly what happened at the Limassol police station.

The applicant was not sufficiently informed about the investigation into the death of Mrs. Rantseva, although he expressly requested it. The Cypriot government did not dispute the applicant's claim that he was not informed of the findings of the investigation until 15 months after the evidentiary hearing. The Cypriot authorities therefore failed to ensure that the applicant participated effectively in the proceedings, despite his efforts.

Finally, the ECtHR confirmed that for the investigation to be effective, the member states must take steps that are necessary and available in order to secure relevant evidence, regardless of whether the subject of the investigation is in the territory of the state conducting the investigation. The ECtHR noted that both Cyprus and Russia are contracting parties to the Convention on Mutual Assistance, with a concluded bilateral Agreement on Legal Assistance. These instruments set out a clear procedure by which the Cypriot authorities could request Russia's assistance in investigating the circumstances of Ms. Rantseva's stay in Cyprus and her subsequent death. The Prosecutor General of the Russian Federation emphasized that Russia will assist in any request for legal assistance by Cyprus, in order to collect additional evidence. However, there was no evidence that Cypriot authorities sought any legal assistance from Russia in the context of the investigation. In these circumstances, the ECtHR considered that the failure of the Cypriot authorities to apply for legal aid to obtain the testimony of the two Russian women who worked with Ms. Rantseva at the cabaret was particularly disadvantageous, given the value of such testimony in clarifying matters which were central to the investigation. In view of all the above, the ECtHR concluded that the Cypriot authorities failed to fulfil their procedural obligation to conduct an effective investigation into the death of Ms. Rantseva.

The case of S.M. v. Croatia refers to the complaints of a Croatian citizen about human trafficking and forced prostitution.[22] She complained about an inadequate criminal response to her allegations. This case does not concern a migrant, i.e., a person who is not a citizen of the respondent state, but it is worth mentioning,

[22] Application no. 60561/14

for the reason that the ECtHR has determined when a certain conduct or situation may raise an issue of human trafficking under Article 4 of the ECHR. There is a human trafficking case only if all three constituent elements of the international definition of human trafficking are present, according to the Convention on Action against Trafficking in Human Beings and the Palermo Protocol. The ECtHR clarified how the facts of the case fit into the legal definition of the human trafficking crime.

In this case, the ECtHR found a violation of Article 4 of the ECHR, due to the deficiencies in the Croatian authorities' investigation into the complainant's allegations of forced prostitution. Taking the opportunity through the applicant's case to clarify its jurisprudence on human trafficking for the purpose of exploitation through prostitution, the ECtHR indicated in particular that it relied on the definition under international law to decide whether it could characterise a conduct or situation as trafficking under Article 4 of the ECHR and, therefore, whether that provision could be applied in the specific circumstances of the case.

The conduct at issue can qualify as trafficking in human beings under Article 4 of the ECHR only if all the constituent elements of the international definition of trafficking in human beings are present:

(1) action (recruitment, transport, transfer, shelter or reception of persons);

(2) means/manner of carrying out the act (threat or use of force or other forms of coercion, extortion, fraud, abuse of power or position of vulnerability, or giving or receiving money or benefits to obtain consent from a person who has control over another person); and

(3) exploitative purpose (including, at a minimum, exploitation by way of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servile addiction, or removal of organs).

The ECtHR has determined that, from the point of view of Article 4, the concept of trafficking in persons refers to both national and transnational trafficking in persons, regardless of whether or not it is related to organised crime, provided that the three constituent elements of the international definition of human trafficking are present, according to the Convention on Action against Trafficking in Human Beings and the Palermo Protocol.

The ECtHR also clarified that the term "forced or compulsory labour" under Article 4 of the ECHR, aims to protect against cases of serious exploitation, such as forced prostitution, regardless of whether, in the specific circumstances of the case, they are related to the specific context of human trafficking. It found that Article

4 could be applied in the applicant's case because some features of human trafficking and forced prostitution were likely to be present, such as abuse of power over a vulnerable individual, coercion, fraud and harbouring. In particular, the complainant's alleged abuser was a police officer, who led her to believe that he would help her find a job. Instead, he used mental and physical coercion to force her to perform sexual services, usually in the apartment where they lived.

In this case the ECtHR followed the general principles established in the case of Rantsev v. Cyprus and Russia. According to the ECtHR, the previously described situation meant that the law enforcement authorities were obliged to investigate the allegations of the applicant, meaning to fulfil the procedural obligation under Article 4 of the ECHR. However, they did not follow all the obvious leads in the investigation, that is, they did not examine all the witnesses (for example, the complainant's parents, the owner of the apartment where the complainant lived with her alleged abuser, neighbours, etc.), nor did they make efforts to examine the circumstances of the contact between the complainant and her alleged abuser through Facebook, despite the fact that such contact is one of the recognised ways traffickers use to recruit victims. As a result, in the court proceedings the complainant's word was against the word of her alleged abuser. Such deficiencies in the investigation fundamentally undermined the ability of the domestic authorities to establish the true nature of the relationship between the applicant and her alleged abuser and whether she had indeed been taken advantage of by him.

Based on the foregoing, the ECtHR concluded that there were significant deficiencies in the domestic authorities' procedural response to the arguable claim and *prima facie* evidence that the applicant was subjected to treatment contrary to Article 4 of the ECHR. Accordingly, the ECtHR determined that the manner in which the mechanisms of the criminal law were implemented in the specific case was defective to the extent that it constituted a violation of the procedural obligation of the respondent state under Article 4 of the ECHR.
In the case of Chowdury and Others v. Greece, the ECHR elaborates the scope of Article 4 paragraph 2 of the ECHR in the context of human trafficking and forced labour.[23] The applicants are 42 Bangladeshi migrants who were recruited in Athens and other parts of Greece from late 2012 to early 2013. Without a Greek work permit, they worked on a strawberry farm in Manolada. The employers did not pay the applicants wages and forced them to work in difficult physical conditions under the supervision of armed guards. The applicants claimed that they were subjected to forced or compulsory labour. They further stated that the state had an obligation to prevent them from becoming victims of human trafficking, to adopt preventive measures in that direction and to punish the

[23] Application no. 21884/15

employers.

The ECtHR found a violation of Article 4 paragraph 2 of the ECHR (prohibition of forced or compulsory labour), determining that the applicants did not receive effective protection from the Greek state. The ECtHR, in particular, noted that the situation of the applicants was a situation of human trafficking and forced labour, and specified that labour exploitation was one of the aspects of human trafficking. The ECtHR also found that the State had failed to fulfil its obligations to prevent the situation with human trafficking, to protect the victims, to conduct effective investigation of the committed offences and to punish those responsible for human trafficking.

The ECtHR first referred to its relevant case law on the general principles governing the application of Article 4 in the context of human trafficking, reiterating the principles established in the case of Rantsev v. Cyprus and Russia.

The ECtHR recalled that the term "forced labour" denotes physical or mental coercion. As for the term "compulsory work", it is work "imposed ... under the threat of any punishment" and also performed against the will of the person concerned, that is, work for which he "did not offer himself voluntarily". Work to be performed pursuant to a freely negotiated contract cannot be considered to fall within the scope of Article 4 of the ECHR merely because one of the parties has committed to the other to perform that work, and otherwise bear the consequences. In certain cases or circumstances, prior consent to provide a service may not be treated as voluntary acceptance. The validity of prior consent should be assessed in the light of all the circumstances of the case.

In order to clarify the concept of "work" within the meaning of Article 4 paragraph 2 of the ECHR, the ECtHR indicated that any work required of an individual under threat of "punishment" does not necessarily constitute "forced or compulsory labour" prohibited by that provision. It is necessary to take into account the nature and scope of the activity in question. These circumstances make it possible to distinguish "forced work" from work that can reasonably be required on the basis of family support or cohabitation. The ECtHR relied on the earlier case of Van der Mussele v. Belgium for the application of the concept of "disproportionate burden" in determining whether a trainee lawyer was subject to compulsory work when he was required to act free of charge as an *ex officio* counsel.[24]

In the specific case against Greece, the ECtHR noted that the applicants were recruited on various dates between October 2012 and February 2013. They were working until the date of the incident, April 17, 2013, when they rioted and fire

[24] Application no. 8919/80

was opened on them, followed by the police response. Their employers provided them with accommodation at a low price (€3 per day), but their living and working conditions were particularly harsh: they worked in greenhouses from 7am to 7pm every day, picking strawberries under the supervision of armed supervisors; they lived in makeshift shacks made of cardboard, nylon and bamboo and without toilets or running water; the employers did not pay them wages and warned them that they would only receive the wages, if they continued to work.

The ECtHR also noted that the applicants did not have a residence permit or a work permit. The applicants were aware that their situation as illegal migrants exposed them to the risk of being arrested and detained in order to remove them from the territory of Greece. Attempting to quit the job would undoubtedly mean losing all hope of receiving the wages they were due, even for partial payment. The applicants, who had not been paid, could neither live elsewhere in Greece nor leave the country.

The ECtHR took into account the Ombudsman's report, which commented on the numerous cases of large-scale exploitation of migrants in the Manolada area, as well as the report on Greece, prepared as part of the project entitled "Fighting Human Trafficking - Moving Forward" (2011) by the Centre for reintegration for migrant workers with the support of the European Commission. It contains the reaction of the authorities after discovering the situation experienced by the migrants who worked in the strawberry fields in Manolada.

The ECtHR further held that when an employer abuses his power or exploits the vulnerability of workers in order to exploit them, the workers are not volunteering for work. The prior consent of the victim is not sufficient to exclude the characterisation of the work as forced labour. The question of whether an individual is volunteering for work is a question of fact which must be examined in the light of all the relevant circumstances of the case.

According to the ECHR, the facts of the case, and especially the working conditions of the applicants, clearly show the existence of human trafficking and forced labour. The facts in question are consistent with the definition of trafficking in human beings in Article 3 (a) of the UN Palermo Protocol and Article 4 of the Convention on Action against Trafficking in Human Beings of the Council of Europe. Hence, the ECtHR found a violation of Article 4 paragraph 2 of the ECHR, that is, human trafficking and forced labour.

In the case of V.C.L. and A.N. v. the United Kingdom, the ECtHR considered for the first time the relationship between Article 4 of the ECHR and the criminal

prosecution of victims and potential victims of human trafficking.[25] This is the first judgment related to the principle of impunity for victims of human trafficking, provided for in Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings. The case concerns two Vietnamese men who, when they were minors, were discovered working on cannabis farms in Britain. The applicants were charged and pleaded guilty to drug-related crimes. They were then identified as victims of human trafficking by a competent authority. Despite that, the prosecutor's office did not identify them as victims and prosecuted them. The applicants complained mainly about the failure of the authorities to protect them from human trafficking, and the failure of the police and the prosecutor's office to identify them as victims of human trafficking before and in the course of the criminal proceedings, about the failure to conduct an adequate investigation, as well as about unfairness of their trial.

The main allegation was that the state prosecuted and convicted them for crimes related to their situation as victims of human trafficking, contrary to Article 4 of the ECHR. The ECtHR considered whether the respondent state fulfilled its positive obligations under Article 4 of the ECHR. At the same time, the ECtHR reminded that the positive obligations of the member states under Article 4 of the ECHR must be interpreted in the light of the Convention on Action against Trafficking in Human Beings of the Council of Europe, whose provisions require not only prevention, but also protection from and investigation of human trafficking. In this case, as in previous cases, the ECtHR applied the general principles established in the case of Rantsev v. Cyprus and Russia.

According to the ECtHR, it is clear that a general prohibition on the prosecution of victims of trafficking in human beings cannot be interpreted as arising from the Convention on Action against Trafficking in Human Beings or any other international instrument. Namely, the non-punishment provisions in Article 26 of the Convention on Action against Trafficking in Human Beings, as well as Article 8 of the EU Anti-Trafficking Directive, contain two important qualifications: the victim of human trafficking must have been forced to commit the crime; and, where applicable, national authorities should have the right, but not the obligation, to decide not to prosecute. Although coercion is not a necessary element of the crime of child trafficking, neither instruments contain a wording that could be interpreted as preventing the prosecution of child victims of trafficking in all circumstances.

However, the ECtHR held that the prosecution of victims or potential victims of human trafficking may, in certain circumstances, conflict with the State's duty to take operational measures to protect the individual where there are

[25] Application nos. 77587/12 и 74603/12

circumstances that give rise to a reasonable suspicion that he or she was subjected to human trafficking. According to the ECtHR, the duty to take operational measures under Article 4 of the ECHR has two main objectives: to protect the victim of trafficking in human beings from further injury and harm; and to facilitate his or her recovery. It is obvious that criminal prosecution of victims of human trafficking would be detrimental to their physical, psychological and social recovery and could potentially make them vulnerable to re-victimisation. Not only will victims have to go through the ordeal of criminal prosecution, but a criminal conviction can create an obstacle to their subsequent integration into society. In addition, detention may impede their access to the support and services provided for by the Convention on Action against Trafficking in Human Beings.

The ECtHR noted that in order to be able to apply the protection of Article 4 during the criminal prosecution of a victim or potential victim of human trafficking, the early identification of the victim is of paramount importance. It follows that, once the authorities are aware, or should be aware, of circumstances that give rise to a reasonable suspicion that an individual suspected of having committed a crime may have been trafficked or exploited, he or she should be immediately assessed by trained and qualified individuals for identifying and protecting victims of human trafficking. That assessment should be based on the criteria of the Palermo Protocol and the Convention on Action against Trafficking in Persons (namely, that the person has been subject to an act of recruitment, transport, transfer, harbouring or acceptance, by means of a threat of force or other form of coercion, for the purposes of exploitation), bearing in mind specifically the fact that the threat of force and/or coercion is not necessary when it comes to a child.

Given that an individual's status as a victim of human trafficking may affect whether there is sufficient evidence to prosecute and whether it is in the public interest to prosecute him or her, any decision whether to prosecute a potential victim of human trafficking should, as far as possible, be undertaken only after a human trafficking assessment has been made by a qualified person. This is especially important when it comes to children. The ECtHR indicates that because children are particularly vulnerable, the measures applied by the state to protect them from acts of violence that fall within the scope of Article 3 – inhumane treatment and violence and Article 8 – protection of privacy, should be effective and include reasonable steps by authorities to prevent injuries when they had, or should have had, knowledge of them.

Once an assessment of whether an individual is a victim of human trafficking has been made by a qualified person, any subsequent prosecutorial decision should take that assessment into account. Although the prosecutor may not be bound by

the above assessment of whether the person is a victim of human trafficking, he will still need to provide clear reasons why he does not agree with the identification of the person as a victim of human trafficking in accordance with the definition of human trafficking contained in the Protocol of Palermo and the Convention on Action against Trafficking in Human Beings.

The ECtHR concluded that there had been a violation of Article 4 of the ECHR, finding that the domestic authorities had not taken adequate operational measures to protect the applicants, who were both potential victims of human trafficking. The ECtHR noted in particular that despite the fact that the applicants were found in circumstances indicating that they were victims of human trafficking, they were charged with a crime to which they pleaded guilty on the advice of their legal representatives, without their case having been previously assessed by the competent authority. Despite the fact that they were later identified by the competent authority as victims of human trafficking, the prosecution, without giving adequate reasons for its decision, disagreed with that assessment. The Court of Appeal, relying on the same inadequate reasons, found that the decision to prosecute was justified. The ECtHR considered such action contrary to the state's duty under Article 4 of the ECHR to take operational measures to protect the applicants, initially as potential victims of trafficking in human beings or later when they are identified as victims of trafficking in human beings. The ECtHR also held that the proceedings as a whole were unfair pursuant to Article 6 paragraph 1 of the ECHR, as a result of the state's breach of its positive obligation under Article 4.

In the case of Zoletic and Others v. Azerbaijan, the applicants are 33 citizens of Bosnia and Herzegovina.[26] They were recruited in Bosnia and Herzegovina as temporary construction workers in Azerbaijan. They complained that they were exposed to human trafficking and subjected to forced or compulsory labour in Azerbaijan, while working on construction projects. Namely, the applicants worked without contracts and work permits in Azerbaijan, their passports were confiscated, their freedom of movement was restricted by their employer and their salaries remained unpaid from May 2009 until their departure from Azerbaijan. They further complained that the respondent state had failed to fulfil its procedural obligation under the ECHR and that the domestic courts examining their appeals had made unreasonable decisions.

In this case, as in previous cases, the ECtHR applied the general principles established within the framework of previous relevant case law (Rantsev v. Cyprus and Russia; Chowdury and Others v. Greece; S.M. v. Croatia).

[26] Application no. 20116/12

According to the ECtHR, the totality of the applicants' arguments and submissions regarding their illegal situation and their working and living conditions, including those raised in the domestic proceedings, constituted an "arguable claim" of a treatment contrary to Article 4 of the ECHR. The ECtHR found that the attention of the domestic authorities was sufficiently and repeatedly drawn to the applicants' "arguable claim" in various ways, through the letters of an NGO to the law enforcement authorities, the requests for legal assistance addressed to the law enforcement authorities by the Prosecutor's Office of Bosnia and Herzegovina, and the court proceedings initiated by the applicants in the domestic courts.

As the attention of the authorities was "sufficiently drawn" to the allegations in question, constituting an "arguable claim", they had to act on their own initiative and initiate and conduct an effective investigation, even though no formal criminal charges had been filed by the applicants. In doing so, the ECtHR also took into account the reports of the non-governmental organization Astra, the Group of Experts for Action against Trafficking in Human Beings of the Council of Europe (GRETA), the European Commission against Racism and Intolerance of the Council of Europe (ECRI) and the International Labour Organization (ILO), which contained information about this case, that is, transnational human trafficking for the purpose of labour exploitation in Azerbaijan.

The ECtHR concluded that there had been a violation of the procedural obligation under Article 4 paragraph 2 (prohibition of forced labour) of the ECHR, finding that the Azerbaijani authorities had failed to fulfil their procedural obligation to initiate and conduct an effective investigation into the applicants' allegations. Notably, the ECtHR noted that there was no information or comment from the authorities in Azerbaijan on any investigation conducted by domestic law enforcement authorities, despite the correspondence between the authorities of Bosnia and Herzegovina and Azerbaijan following requests for legal assistance, and other submissions. Accordingly, the Government has not shown that any investigation into human trafficking for the purpose of labour exploitation has been conducted.

8.4 FINAL REMARKS

The ECtHR has developed a substantial volume of case-law regarding the protection of migrants, as a particularly vulnerable category at risk of human trafficking. In parallel, almost all forms of human trafficking have been covered by the ECtHR’s case-law, mostly under the scope of Article 4 of ECHR.

There are many positive developments within the ECtHR case-law regarding different forms of human trafficking and migrants, such as: imposing positive

obligations on states in the context of Article 4 of the ECHR, but also in the context of other relevant articles (e.g., Article 2 of the ECHR); recognizing that labour exploitation is one of the aspects of human trafficking; confirmation of the non-punishment principle for victims of human trafficking. In doing so, the obligations of the ratifying states under Article 4 of the ECHR must be interpreted in the light of the Convention on Action against Trafficking in Human Beings of the Council of Europe, whose provisions require not only prevention and effective investigation of cases of trafficking in human beings, but also protection of the victims.

From the analysis conducted in relation to ECtHR case-law, it is evident that cases related to human trafficking and migrants considered by the ECtHR provide fairly solid protection against various forms of human trafficking, with significant principles and standards developed in this regard. The analysis also shows the consistent approach of the ECHR on this issue, requiring the proper fulfilment of the state obligations arising from the ECHR.

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