





# TRAFFICKING IN HUMAN BEINGS

## MANUAL FOR LAWYERS

ASTRA – Anti-Trafficking Action  
Belgrade, 2024.

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# TRAFFICKING IN HUMAN BEINGS – Manual for lawyers

## Second amended and supplemented edition

### Authors:

Marija Anđelković	Milan Žarković
Tamara Vukasović	Radmila Dičić
Marjan Wijers	Slobodan Josimović
Biljana Slavković	Dejana Spasojević Ivančić
Ines Cerović	Annet Koopsen
Marija Vukašinović	Vera Litričin
Ivana Stevanović	Ivana Radović
Vukašin Čobeljić	

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**Proofreading:** Nevena Bojičić

**Dizajn:** Darko Kolesar

**Translation:**

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Marija Anđelković  
ASTRA – Anti-Trafficking Action  
Belgrade, Republic of Serbia  
astra@astra.rs  
www.astra.rs  
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# INTRODUCTION

You are holding the revised and amended second edition of the Manual for Lawyers, supported by the Council of Europe Office under the project "Strengthening the rights of victims of human trafficking in Serbia with an emphasis on legal support", as a part of the joint European Union and Council of Europe program "Horizontal Facility for the Western Balkans and Türkiye," implemented from 2023 to 2026.

The manual was first published in 2012 as the culmination of a three-year project Improvement of Human Rights for Victims of Human Trafficking in Serbia focusing on Legal Aid – A Human Rights-Based Approach. This project, conducted from 2009 to 2012, was a partnership between the Netherlands Helsinki Committee and ASTRA – Anti-Trafficking Action, in cooperation with numerous experts from Serbia and the Netherlands. It was financed through the Dutch Ministry of Foreign Affairs MATRA program.

When a victim exits the cycle of human trafficking and begins their physical and psychological recovery, achieving justice through criminal proceedings represents state recognition of the trauma they have endured, which significantly contributes to their overall recovery while also sending a message of general prevention to society.

Our goal is for this manual to contribute to the timely provision of information to trafficking victims regarding their rights, as well as to the effective legal representation of victims in these complex criminal cases.

The manual is the result of 25 years of direct work with victims of human trafficking, their representation in court proceedings, court monitoring, and the collection and analysis of judgments related to this criminal offense.

Additional value has been brought to the manual by the experiences of a network of 27 lawyers specially trained to represent victims of human trafficking, which was created within the framework of the project mentioned earlier. Moreover, the analysis of judicial practices that ASTRA has conducted since 2011 for the criminal offense of human trafficking and related crimes has helped us highlight trends and examples of good practices that can assist lawyers in representing victims.

This manual represents the values and working methods of ASTRA and its collaborators. It is primarily intended for lawyers who may have the opportunity to provide legal advice or represent victims of human trafficking as injured parties in court proceedings. The central focus of the manual is on the protection of victims' rights, the promotion of international standards in this field, the legal possibilities in the Republic of Serbia, and positive experiences and practices. Therefore, this manual will also be useful to other professionals who may encounter victims of human trafficking in their work, as well as victims of other forms of violence.

The manual is published in both Serbian and English.

Marija Anđelković  
Director of ASTRA  
Belgrade, October 2024



## CHAPTER 1 HUMAN TRAFFICKING AS A GLOBAL PHENOMENON

### Introduction

This chapter provides basic information on trafficking in human beings. It briefly discusses the character and scope of human trafficking, the differences between trafficking and smuggling and between trafficking and sex work, as well as the push and pull factors

### Phenomenology of human trafficking

Human trafficking involves selling and buying, i.e. holding human beings to exploit them, for-profit or non-profit, as well as all other actions that may be a part of the process (e.g. transport, hiding, keeping and alike). Exploitation is always initiated and maintained through the use of force, threat, deceit, abuse of power abuse of a vulnerable position, kidnapping, or in some other way. When it comes to child trafficking, the instrument used is irrelevant, i.e. we would also cover the topic of human trafficking when the elements of suffering, coercion, abuse of power, and alike are not present. Furthermore, a situation where the victim agrees to exploitation does not change the fact that it is human trafficking and a criminal offense. The purpose of human trafficking is to make a profit (or acquire some other benefit) through some sort of exploitation.

There are several types of human trafficking:

- sexual exploitation
- labour exploitation
- forced begging
- illicit activities
- forced marriage
- domestic labour/servitude
- trafficking in human organs

Human trafficking is one of the most severe forms of human rights violation. The victims are deprived of their freedom of movement and freedom of choice; they do not have control over their own lives. This phenomenon is also known as a form of “modern slavery”, because the victims are held in slave-like conditions and treated as the property of the people who bought them. Human trafficking is a form of organised crime, but also a type of criminal business conditioned by supply and demand in the market. Human trafficking is considered to be one of the three most profitable criminal activities, along with drug trafficking and illegal weapon trafficking. Trafficking is usually considered to be a highly profitable and low-risk criminal activity. The annual earnings of traffickers can be estimated as approximately a few hundred billion dollars. Setting up and maintaining a human trafficking business requires minimal

funds, while the profits are huge. On the other hand, statistically speaking, very few traffickers in human beings end up in court and are sentenced to long imprisonment, and their proceeds of crime are rarely being seized.

According to an estimate of the International Labour Organisation (ILO)<sup>1</sup>, the global annual profit generated from human trafficking amounts to USD 31.6 billion:

- USD 15.5 billion (49%) – in industrial countries
- USD 9.7 billion (30.6%) – in Asia and Oceania
- USD 1.3 billion (4.1%) – in Central and Southern America
- USD 1.6 billion (5%) – in Sub-Saharan Africa
- USD 1.5 billion (4.7%) – in the Middle East and Northern Africa

Human trafficking is a global phenomenon that has an impact on all countries – countries in political and economic transition, underdeveloped countries and developing countries, countries at war and post-war countries, which all serve as countries of origin and transit, as well as economically developed countries that serve as countries of destination. According to a report by the UN Office on Drugs and Crime, cases of human trafficking were identified in 161 countries, where 127 countries serve as countries of origin and 137 countries serve as countries of destination<sup>2</sup>.

The International Labour Organisation<sup>3</sup> has estimated that 2.5 million people are exploited in a human trafficking chain at any given moment, with the purpose of either sexual exploitation or some other form of forced labor. The ILO mentions the following figures:

- 1.4 million (56%) – in Asia and Oceania
- 270,000 (10.8%) – in industrial countries
- 250,000 (10%) – in Central and Southern America
- 230,000 (9.2%) – in the Middle East and Northern Africa
- 200,000 (8%) – in the countries in transition
- 130,000 (5.2%) – in Sub-Saharan Africa

Even though some groups appear as victims more often than other groups, anyone can become a victim of human trafficking – men and women, boys and girls, regardless of their origin, age, nationality, education, social status or other characteristic. The same applies to traffickers – a variety of men and women have their role in the trafficking chain, from recruitment to exploitation. Human traffickers are members of organised criminal groups, but relatives of the victims, even the closest family members, as well as friends and acquaintances of the victims, may play a role in the trafficking chain in many cases. On the other hand, the exploitation may be performed by an unknown person whom the victim met while looking for work, educational opportunities abroad or in another city, marriage and alike. Human trafficking often functions as a “family business”, where every family member has their role.

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<sup>1</sup> Patrick Besler, *Forced Labour and Human Trafficking: Estimating the Profits*, working paper (Geneva, International Labour Office, 2005).

<sup>2</sup> United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna, 2006).

<sup>3</sup> International Labour Organisation, *Forced Labour Statistics Factsheet* (2007).

**Trafficking victims worldwide:<sup>4</sup>**

- Human trafficking victims are usually between 18 and 24 years old.
- An estimated 1.2 million children are trafficked each year.
- Nearly 95% of victims have experienced physical or sexual violence during exploitation<sup>5</sup>.
- Nearly 43% of victims are forced to perform sex work, 98% of them being women and girls<sup>6</sup>.
- 32% of victims are exposed to other forms of labour exploitation, 56% of them being women and girls.<sup>7</sup>

**Human traffickers worldwide<sup>8</sup>:**

- In the majority of cases (52%) the recruitment was done by men, rather than by women (42%), but also jointly by men and women (6%)
- In 54%, the victims are recruited by a stranger, while in 46% of cases, the recruiter is known to the victim.
- The majority of suspects in human trafficking cases are nationals of the country in which the trafficking process takes place.

**Trafficking victims in Serbia**

According to ASTRA's experience gained by working with more than 661 victims of trafficking until December 2023, there is no such thing as a victim profile, i.e. a single trait that characterises all trafficking victims. Even though women from marginalised, socially and economically deprived environments who are forced into prostitution are overrepresented, this does not mean that no other kind of victims are identified. ASTRA's data also refutes a number of prejudices, such as that child trafficking is more frequent, or even deemed traditional, in Roma communities based on some unacceptable interpretations.

**Child trafficking** – Children make up 37% of the identified trafficking victims helped by ASTRA. Fewer boys than girls fall victim to trafficking. The average age of a child victim is 14.5 years, though the age limit is dropping year after year. Children in Serbia are trafficked for the purposes of forced begging, prostitution, forced marriage and the commission of crimes.

**Previous experience of violence** – Many trafficking victims have previously experienced violence (most often domestic violence, intimate partner violence and alike). Out of the 661 persons about whom ASTRA has information, as much as 72.48% had been exposed to some sort of violence (usually domestic) before their trafficking experience.

**Nationals** make up the majority of trafficking victims identified in Serbia (ASTRA – 76.5%), whereas **Serbia** is also the **country of destination** for the majority of them, which is also known as **internal human trafficking** (42.5% in 2023).

**Men** form an increasing number of identified victims of human trafficking in recent years (ASTRA – 13.5%). Usually, they are adult males recruited for forced labour, primarily for work on construction sites and in agriculture.

<sup>4</sup> UN.GIFT, Human Trafficking – The Facts.

<sup>5</sup> The London School of Hygiene & Tropical Medicine, Stolen smiles: a summary report on the physical and psychological health consequences of women and adolescents trafficked in Europe (London, 2006).

<sup>6</sup> International Labour Organisation, Forced Labour Statistics Factsheet (2007).

<sup>7</sup> Ibid.

<sup>8</sup> UN.GIFT, Human Trafficking – The Facts.

Trafficking, smuggling and sex work

It is important to make the distinction between human trafficking and human smuggling (illegal migration), and between human trafficking and prostitution, i.e. consensual adult sex work. However, smuggling and prostitution, especially forced prostitution, may occur as a result of or instrument for human trafficking.

HUMAN TRAFFICKING	HUMAN SMUGGLING
The aim is to make a profit through the <i>exploitation of the victim</i> .	The aim is to illegally <b>transfer a person accros a national border</b> .
The destination may also be <i>across borders</i> and <i>internal</i> (human trafficking from one place to another, without crossing a national border).	Always includes <b>crossing a national border</b> .
<i>The victim does not consent to exploitation</i> ; the victim's obedience and participation in exploitation are secured through the use of threats, force, deception, etc.	Smuggling is always performed with the <b>consent</b> of the smuggled person.
Victims of human trafficking <i>do not have freedom of movement and decisions about their lives</i> , while their documents are often taken away from them.	When they arrive at their destination, smuggled persons <b>may go wherever they wish</b> , i.e. they do not remain tied to the smuggler. * * However, one should bear in mind that illegal migrants are at a higher risk of trafficking, either during their illegal transfer, since they are completely dependent on their smuggler, or when they reach their desired destination, because they are forced to secure their existence on the illicit labour market, due to their illegal status, and they don't have any kind of protection.

HUMAN TRAFFICKING	CONSENSUAL SEX WORK
<i>Victims have no freedom of choice</i> since they are completely controlled by the person who bought them.	A person who voluntarily engages in sex work has the <b>freedom of choice</b> about her/his own life.
<i>Victims of trafficking are forced</i> to engage in prostitution and it is not their choice.	Voluntary sex work, although it may be conditioned by unfavourable personal circumstances or lack of other options, is a <b>free choice of the person concerned</b> .
<i>Victims usually have no freedom of movement</i>	A person who voluntarily engages in sex work has <b>freedom of movement</b>
Sexual exploitation is just one of the many forms of human trafficking	It may, but does not have to entail different forms of force and exploitation. *  * Sex workers may become victims of human trafficking, i.e. sexual exploitation, just like anybody else, when the conditions of their work become exploitative and when they have no control over their decisions, earnings, documents and/or lives.

Human trafficking functions on the supply and demand principle. On the one hand, unemployment, poverty, social exclusion, wars, political instability, domestic violence and discrimination lead people to seek a job, continue their education or start a life in another city or country in search of a better life, or to merely survive. On the other hand, in the age of globalisation, there is a growing demand in developed and rich countries<sup>9</sup> for cheap products, cheap labour and cheap services. It is not unimportant that the 20th century was an age of numerous armed conflicts and international peace missions, which generated a demand for sexual services wherever army forces were stationed, leading to a lack of protective institutions and the collapse of the system in the conflict countries, and favoured an unobstructed rise of all kinds of criminal activities, including human trafficking. Organised criminal groups profit by earning enormous financial benefits in bridging demand and supply. Apart from the social and economic circumstances that favour the development of human trafficking, some other factors and causes may make a country attractive for the recruitment of victims, ranging from natural disasters to strict visa and immigration regulations in developed countries.

Reasons that lead a person to become a victim of trafficking may be divided into **"push" and "pull" factors**, i.e. factors that lead an individual to leave one place and move to another place. "Push" and "pull" factors of human trafficking coincide with the factors that lead to migration.

"PUSH" FACTORS	"PULL" FACTORS
<ul style="list-style-type: none"><li>• Overall situation in the country of origin</li><li>• Labour market discrimination</li><li>• Social factors</li><li>• Violence against women</li><li>• Presence of foreign troops in the region</li><li>• Natural disasters</li></ul>	<ul style="list-style-type: none"><li>• Tempting employment opportunities</li><li>• Better living conditions in more developed and richer countries</li><li>• More employment opportunities</li><li>• Desire for a better life</li><li>• Desire for life without violence</li><li>• Believing in false promises</li></ul>

<sup>9</sup> The state of development in the country of destination should not be assessed *per se*, but in the context of the underdevelopment, poverty and instability of the country of origin.

## CHAPTER 2 THE TRAFFICKING PROCESS – RECRUITMENT, CONTROL AND LEAVING THE TRAFFICKING CHAIN

### Introduction:

This chapter describes the three stages of the trafficking process: the recruitment, the transit and the exploitation. Special attention is paid to the difficulties that prevent victims from leaving the trafficking situation and the problems they face once they are out of the trafficking situation.

### Three phases of the trafficking process

#### i. Recruitment

The recruitment for human trafficking is often carried out by a person familiar to the victim and has the victim's trust: a female friend, a relative, a godfather, a neighbour, an aunt, a boyfriend, a husband, etc. The trafficker (a recruiter, an intermediary, an employer, a corrupted official, a person providing transport, a person exploiting others by organising the provision of services) abuses the victim's trust and his or her desire for a better life, sometimes simulating an emotional relationship and abusing the victim's desire to be loved. Recruitment strategies differ: they are creative and ever-changing, but the one thing they have in common is the promise of a good job, a better life and the fulfilment of one's dreams.

The most common recruitment strategies are:

- **False business and other offers made by persons familiar to or trusted by the victim.**
- **"Loverboy"** – a guy who simulates a love relationship with a girl, only to ask her, at some point after he gains her trust, to come with him to another country/city to try their luck and start a new, happier life together.
- **Deceptive job advertisements in different media (newspapers, the internet and social networks).** The jobs being offered are better paid or offer better working conditions than those offered in the country of residence of the potential victim.
- **Selling by family members** – sometimes due to poverty and other problems, sometimes due to parents' belief that their child will have a better life elsewhere, not suspecting that he/she will become a slave.
- **Kidnapping** is a possible, but not very frequent, recruitment strategy.

**Modern technologies, the Internet and social networks are being increasingly used to recruit victims.**

#### ii. Transit

**Transit** includes the **transfer and transport of the victim within a country or across national borders** towards the final destination. The final destination is the place with the highest demand, where the highest profits can be made through exploitation.

Human trafficking victims may be transported by **land, air or sea**. **Authentic or false documents** may be used for this purpose, and

sometimes the border may be crossed **illegally, outside the official border crossings**. Some victims are transported through secret tunnels, hidden in trucks, vans or ships, or they cross a border by foot, through the woods, across a river, etc.

**The first instance of exploitation and violence may be encountered by a victim during the transit itself** before he or she arrives at the final destination. Sometimes victims are **re-sold several times** during their journey.

Transport does not necessarily include the crossing of a national border since human trafficking may also be **internal**. Victims may be transported from **one town to another**, from one bar or brothel to another, from one house to another, all within a single country.

### iii. Exploitation

**The exploitation** of victims implies different ways of using the victims to achieve the **final purpose of trafficking**, i.e. **making as much profit as possible for the traffickers**.

Depending on the type of exploitation (e.g. sexual exploitation, forced labour, begging, domestic servitude or some other form of human trafficking), victims may encounter different types of violence and torture to become fully controlled and obedient.

Traffickers control victims by isolating them, strictly controlling their movements, and taking away their documents, allegedly to “keep them safe” or to “fix” their working permits, etc. Thus the victim loses his or her legal identity. For many victims, this is **the first time they have left their country**, they **don't know the language**, they **don't know where they are**, what they can do, or what rights they have. They are sometimes **afraid of the institutions**, especially the **police**, so they do not dare to seek help from them. Often traffickers prevent their victims from asking for help from the police by convincing them that **the police are corrupt and work in conspiracy with them**.

The obedience of the victim is secured by violence, blackmail and threats, not only against the victim but often against their family members. Drugs and alcohol addiction are often encouraged to break the victim's resistance and secure his/her full obedience. Moreover, the victim is held in constant fear of the potential consequences of his or her escape and reports to the police by persuading them that they have committed a crime or by telling them that the police are corrupt and cooperate with the traffickers, which is unfortunately true in many cases.

Trafficking victims are usually forced to **work all day long without rest, while the majority of their entire earnings are taken away from them**. They do not have the right to complain about the working conditions and, depending on the type of exploitation, they may be **forced to meet work quotas**, or else they will be **deprived of food** or **punished** in some other way.

**The amount of money that** the victim potentially gets from the traffickers for his/her forced labour **is irrelevant** when a specific situation is identified as human trafficking, as long as the **other elements that indicate exploitation are present**. This must be taken into serious consideration, especially since in recent years, the exploitation of trafficking victims in Serbia tends to involve less violence and “better” working conditions, for the traffickers, if they are uncovered, to be able to more easily prove that the victims had been with them “voluntarily”.

A frequent control strategy is "**debt bondage**". Namely, the victim is informed about the expenses the trafficker had suffered to get him or her to the country of destination, and this amount is increased by high interest rates and living expenses, while the victim is made to believe that he/she can regain his/her freedom as soon as this debt is repaid. The dynamics of the debt decreasing and increasing are regulated by the trafficker so that the victim, hoping that the situation in question will end, remains obedient and does whatever is requested, while the victim never succeeds in repaying the debt.

However, it must be borne in mind that the working conditions are not crucial for a particular situation to be seen as human trafficking. It is often the case that the victim has lived in such extreme poverty that even the exploitative conditions in the trafficking chain are better. A situation of emotional captivity is also common, where the trafficker manipulates the victim's need for love and maintains her false belief that she is loved and that her engagement in prostitution is not by force, but an investment in their joint future.

The most common ways victims **get out** of the trafficking chain are

- **police intervention**
- **help of clients or other third parties**
- rarely by **escaping**
- or being **released by the trafficker, when they assess that they cannot make a profit from them anymore** and that the victims do not pose a threat due to their poor physical and mental state.

However, the **majority of trafficking victims never manage to leave the exploitation chain\*** or, if they do manage to escape, they remain outside the support system.

(\*Various sources estimate that as few as 10-25% of trafficking victims are identified and rescued from the trafficking chain. Some less optimistic estimates indicate that only 1% of the estimated number of trafficking victims worldwide are identified.)

When victims **leave the trafficking situation**, they will need **considerable time and work to recover and rebuild their lives**. During this period, they require **various kinds of help**, ranging from **medical aid** to address poor health status and physical injuries, to **psychological help and support**. This process is immensely important because in many cases, victims return to the very same environment and situation that they tried to escape from, and need to solve the very same problems. They need to be provided with all the help they need to regain control over their life and reduce the risk of re-trafficking.

When leaving the exploitation situation, trafficking victims face different problems:

- Concern about survival – where they will live and how they are going to support themselves, which is linked to their objective and subjective capacity to ensure a decent subsistence in a short time.
- Administrative obstacles – victims usually do not possess valid personal and other documents to prove their identity and exercise their right to medical and social care.
- Fear of stigmatisation and condemnation by their family/community / other people because of what they were forced to do, especially in the case of sexual exploitation victims.
- Fear for their safety – even when the traffickers are detained, their associates may be free, together with their family members,



friends, etc. The police have limited options to provide long-term protection, while any interest in the victims stops after they give testimony in court.

- The victims are expected to participate in court proceedings and provide key evidence against the traffickers with precise, consistent and believable testimonies. Generally, their decision not to participate is rarely met with understanding, as is their decision to withdraw or to avoid stating some facts.
- Those who provide or coordinate support expect the victims to gratefully accept the offered help, immediately recover and change their way of life.

Due to the psychological consequences of trafficking, it is very important to allow the victim enough time for recovery and reflection (reflection period). Any attempts to make the victim cooperate in criminal proceedings against the participants in the trafficking chain during this period are not only harmful to the victim but may also have a detrimental effect on the criminal case, especially if the case primarily relies on the victims' testimonies. Namely, in the first period upon leaving the trafficking situation, the victim is usually unable to give a consistent account of what happened due to trauma, but also due to the fear of the traffickers and their associates. More information about the link between the victim's health status/consequences for the victim and their participation in the criminal proceedings may be found in Chapter 7 of the Manual.

Stereotypes and misconceptions about human trafficking and its victims

MISCONCEPTION	IN REALITY
Trafficking necessarily involves the crossing of a national border	Internal trafficking, where the entire process, from recruitment to exploitation, takes place within a single country, is increasingly common worldwide.
Each alleged human trafficking victim knew exactly what he/she was getting into and what the specific "business" offer meant, so they cannot be regarded as a victim.	Even when a person agrees to accept the proposed situation or to work under exploitation conditions, such a person may be seen as a victim of human trafficking if the offer he/she accepted differs significantly from the conditions in the country of destination or if illegal substances are being used. The alleged acceptance of the victim of the exploitation situation does not change the fact that the situation in question constitutes human trafficking.
Human trafficking cannot exist when the victim and the trafficker are in a relationship or married.	The partner or spouse may be the exploiter, while a "loverboy" is a well-known recruitment strategy. Furthermore, familiar persons are more likely to recruit a victim than total strangers.
Legal migrants cannot become the victims of trafficking.	Trafficking victims may enter the country of destination illegally, but in many cases, they enter the country of destination legally with a valid passport and stay there based on a tourist visa, a work permit and the alike. There are various ways for the traffickers to regulate the exploitation victim's residence and legal status, to decrease the risk of being identified by the immigration authorities and deported to their country of origin.

MISCONCEPTION	IN REALITY
Trafficking victims are only women and children.	Women and children are the most frequent, but not the only victims of human trafficking. In recent years, there has been an increase in the number of male victims of human trafficking exploited in the agricultural or construction industries, who face the same torture and intimidation as female victims of sexual exploitation.
Trafficking victims can at any point return home and stop doing what they do.	Victims rarely succeed in escaping the human trafficking chain. The traffickers secure their victims' stay and obedience by the use of violence and threats of violence, not only against the victim but also against their families. Furthermore, victims often find themselves in an unknown country, without legal documents, afraid of the immigration authorities and additionally intimidated that they will be charged for the criminal offences they were forced to commit.
All trafficking victims enter the chain of exploitation against their will and under duress.	In our region, kidnappings for trafficking are very rare. The majority of victims were deceived or lured to willingly agree through the use of false promises of a better life or better employment opportunities in the country of destination.
If a person states that he or she is living better or financially better than before, then it cannot be a case of human trafficking.	Traffickers usually recruit their victims from among extremely poor persons; they buy them food, clothes and presents, and they give them small sums of money, thus creating the illusion of well-being, while they make a profit by exploiting their work.
A person cannot be a trafficking victim unless he/she is sexually exploited.	Sexual exploitation is only one form of human trafficking. Many people are trafficked for forced labour, forced begging, or to commit crimes, without sexual violence, or the sexual violence is used as a punishment rather than as a profitable activity.
Trafficking victims are exposed to physical violence, they don't have freedom of movement, no personal identification documents, and are not paid for their work.	In a large number of cases, trafficking victims are exposed to severe physical violence and restriction of their freedom of movement. However, their obedience may also be secured by threats, manipulation and other non-violent methods, which makes them seemingly free to make their own decisions.
If a trafficking victim refuses to be helped, then they are not a trafficking victim.	There are many reasons why a person may refuse help or not perceive him/herself as a victim of exploitation, which may imply their refusal to participate in the criminal procedure. However, this attitude should not influence their status or the availability of support measures.

## CHAPTER 3 INTERNATIONAL AND EUROPEAN LAW

### Introduction

This chapter offers an overview of the existing international and European legal instruments on trafficking in persons. Its main aim is to place the issue of trafficking in the context of international law and human rights and to provide lawyers with useful resources.

It answers the question of how trafficking in persons, forced labour, slavery and slavery-like practices are defined in international law. It also addresses questions like the difference between trafficking and sex work, trafficking and smuggling, and trafficking and forced labour.

### International instruments

The core international instrument is the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (also called the Palermo Protocol or Trafficking Protocol). The Trafficking Protocol is one of three protocols attached to the UN Convention against Transnational Organized Crime. The Convention, the Trafficking Protocol and a Protocol on Smuggling (*Protocol Against the Smuggling of Migrants by Land, Sea and Air*) were adopted by the UN General Assembly in November 2000, followed by the adoption of a protocol on firearms (*Protocol Against the Illicit Manufacturing of and Trafficking in Firearms*) in 2005. They are primarily law enforcement instruments to promote cross-border cooperation by governments and to ensure that all countries have adequate laws to address these crimes. The Trafficking Protocol consists of three instruments: The Protocol itself, relevant sections of the 'parent' Convention and the Interpretative notes (*Travaux Préparatoires*), which provide explanations of some of the provisions of the Protocol. Serbia is a party both to the Organised Crime Convention and the Trafficking Protocol.

The term "trafficking" was first used at the end of the 19th century. Since then, however, there has been persistent confusion about the exact meaning of the term, that is, what practices should be combated. The Protocol, for the first time, contains an internationally agreed legally binding definition of trafficking in persons (see page ... 'What is trafficking' for the definition).

The different human rights violations that occur during the process of trafficking are addressed in various international treaties. The most important are the *Slavery Convention* (1926), the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (1956), the *ILO Forced Labour Conventions* no. 29 (1930) and no. 105 (1957) and the *Protocol to the 1930 Forced Labour Convention* (2014) (not ratified by Serbia), the *International Covenant on Civil and Political Rights* (ICCPR, 1966), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR, 1966), the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW, 1979), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT, 1984), the *Convention on the Rights of the Child* (CRC, 1989), the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD, 1965), the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICRMW, 1990).

Other relevant ILO Conventions are the *Convention on the Protection of Wages* (C. 95, 1949), the *Convention on Migration for Employment* (Revised) (C 97, 1949), the *Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers* (C. 143, 1975), the *Convention on Private Employment Agencies* (C. 181, 1997), the *Convention on the Worst Forms of the Child Labour* (C. 182, 1999), the *Convention on Domestic Workers* (C. 189, 2011) (not ratified by Serbia), and the *Convention on Violence and Harassment in the Field of Work* (C. 190, 2019) (not ratified by Serbia).

## Non-binding international instruments

A key human rights-based instrument is the 2002 OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (hereinafter: OHCHR Guidelines),<sup>10</sup> which aims to provide a foundation for the development, implementation and evaluation of a rights-based response to trafficking. The Guidelines cover prevention, protection and assistance as well as criminalization, punishment and redress. In 2010, the OHCHR published a Commentary elaborating on the Principles and Guidelines and providing guidance on their legal status.<sup>11</sup>

Also of interest are the *ILO Guidelines for Legislation and Law Enforcement on Human Trafficking and Forced Labour Exploitation*<sup>12</sup> and the *ILO Declaration on Fundamental Principles and Rights at Work* (1998, amended in 2022) and its Follow-up procedure.<sup>13</sup> The Committee on Elimination of All forms of Discrimination against women issued a specific *General Recommendation on trafficking of women and girls the context of global migration* (GR 38).<sup>14</sup>

In respect to the position of victims, the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*<sup>15</sup> and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation*<sup>16</sup> provide further guidance.

## European instruments

A more human rights-oriented instrument is the *Council of Europe Convention on Action Against Trafficking in Human Beings* (hereinafter CoE Trafficking Convention), which was adopted in 2005 and entered into force in 2008, and to which Serbia is a party. The treaty explicitly identifies trafficking as a human rights violation and covers both transnational and domestic trafficking. In regard to labour exploitation the (non-binding) CoE *Guidance Note on preventing and combating human trafficking for the purpose of labour*

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<sup>10</sup> Office of the UN High Commissioner for Human Rights (2002), *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (E/2002/68/Add. 1). Available at: <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

<sup>11</sup> Office of the UN High Commissioner for Human Rights (2010), *Commentary Recommended Principles and Guidelines on Human Rights and Human Trafficking*. Available at: [https://www.ohchr.org/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](https://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf).

<sup>12</sup> Human Trafficking and Forced Labour Exploitation, Guidelines for Legislation and Law Enforcement (2005). Available at: <https://www.ilo.org/media/319661/download>.

<sup>13</sup> ILO Declaration on Fundamental Principles and Rights at Work. Available at: <https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work>.

<sup>14</sup> General Recommendation 38 on trafficking of women and girls the context of global migration (2020). Available at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women>.

<sup>15</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly Resolution A/RES/40/34 of 29 November 1985. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

<sup>16</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Resolution 60/147 of 16 December 2005. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

*exploitation*<sup>17</sup> adopted by GRETA, the Experts Group tasked with monitoring the CoE Trafficking Convention, sets out key indicators for properly functioning labour inspectorates, victim identification and assistance, and criminal justice responses. Similarly following a human rights and victim-centred approach, the CoE *Recommendation on Trafficking in Human Beings for Labour Exploitation* (2022)<sup>18</sup> calls on Member States to adopt national laws and policies to address labour exploitation.

Also relevant is the *Council of Europe Convention on Violence Against Women and Domestic Violence* (Istanbul Convention, 2011), which requires parties to develop comprehensive and coordinated policies and support services to end all forms of violence against women, involving both government agencies and NGOs.

Another key European instrument is the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 4 holds that no one shall be held in slavery or servitude and that no one shall be required to perform forced or compulsory labour. According to the European Court of Human Rights (ECtHR) trafficking in human beings constitutes a violation of Article 4 of the convention without the need to determine whether it should be qualified as slavery, servitude or forced labour (*Rantsev v Cyprus and Russia*, Appl. no. 25965/04, 7 January 2010, and *S.M. v. Croatia*, appl. no. 60561/14, 25 June 2020. See boxes on p. 30 & ...).<sup>19</sup>

## KEY RIGHTS ENGAGED IN TRAFFICKING IN HUMAN BEINGS<sup>20</sup>

**Right to life, liberty and security** (Art. 2 & 6 EU Charter; Art. 2 & 5 ECHR; Art. 6 & 9 ICCPR; Art. 6 & 37 CRC; Art. 5 CERD; Art. 9 & 16 ICRMW)

**Right to freedom from slavery, servitude, forced labour, or bonded labour** (Art. 5 EU Charter; Art. 4 ECHR; Art. 8 ICCPR; Art. 10 ICESCR; Art. 11 ICRMW; Slavery & Forced Labour Conv.)

**Right not to be sold, traded, promised or forced into marriage** (Art. 16 CEDAW; Art. 1 Conv. on slavery-like practices; Art. 37 CoE Trafficking Conv.)

**Right not to be subjected to torture, cruel, inhumane and degrading treatment or punishment** (Art. 4 EU Charter; Art. 3 ECHR; Art. 7 ICCPR; Art. 3 CAT; Art. 37 CRC; Art. 10 ICRMW)

**Right to be free from gender-based violence** (Art. 2 CEDAW; Istanbul Convention; Dir (EU) 2024/1385 on violence against women and domestic violence)<sup>21</sup>

**Right to freely choose one's work and to just and favourable conditions of work** (Art. 15 & 31 EU Charter; Art. 6 & 7

<sup>17</sup> *Guidance Note on preventing and combating human trafficking for the purpose of labour exploitation* (GRETA 2020(12)). Available at: <https://edoc.coe.int/en/trafficking-in-human-beings/10277-guidance-note-on-preventing-and-combating-trafficking-in-human-beings-for-the-purpose-of-labour-exploitation.html>.

<sup>18</sup> *Recommendation CM/Rec (2022)21 (2023) of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation*. The recommendation draws on the monitoring work and guidance of GRETA, the case-law of the European Court of Human Rights, and the conclusions and decisions of the European Committee of Social Rights. The Explanatory memorandum contains a comprehensive package of measures. Available at: <https://edoc.coe.int/en/trafficking-in-human-beings/11413-preventing-and-combating-trafficking-in-human-beings-for-the-purpose-of-labour-exploitation-recommendation-cmrec202221.html>.

<sup>19</sup> See also ECHR *L.E. v. Greece*, appl. no. 71545, 21 January 2016; *Chowdury and Others v Greece*, appl. no. 21884/15, 30 March 2017; *V.C.L. and A.N. v the United Kingdom*, appl. nrs. 77587/12 and 74603, 16 February 2021.

<sup>20</sup> The boxes listing international standards are originally based on *Prevent, Combat Protect Human Trafficking, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach* (2011), p. 23. Available at: [www.unhcr.org/refworld/docid/4edcb932.html](http://www.unhcr.org/refworld/docid/4edcb932.html). They are updated June 2024.

<sup>21</sup> Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.

ICESCR; Art. 11 CEDAW; Art. 32 CRC; Art. 25 ICRMW, Art. 9 ILO Conv. No. 143 concerning migrations in abusive conditions)

**Right to a safe and healthy working environment** (ILO C. 187, 197)

**Right to protection against violence, harassment and abuse at work** (ILO C. 189, 190)

**Right to freedom of association and collective bargaining** (Art. 21 ICCPR; ILO C. 87, 98, 154)

**Right to protection against abusive recruitment practices and social protection** (ILO C. 97, 143)

**Right to a minimum wage** (ILO C. 26, 99, 131; [Dir \(EU\) 2022/2041 on adequate minimum wages in the European Union](#))

**Right to freedom of expression and information** (Art. 10 ECHR; Art. 19 ICCPR; Art. 13 ICRMW; Art. 11 EU Charter)

**Right to property** (Art. 15 ICRMW; Art. 17 EU Charter)

**Right to keep one's own identity documents** (Art. 21 ICRMW)

**Right to health** (Art. 12 ICESCR; Art. 5 CERD; Art. 14 CEDAW; Art. 24 & 39 CRC, art. 28 ICRMW)

**Right to freedom of movement** (Art. 12 ICCPR; Art. 15(4) CEDAW; Art. 5 CERD; Art. 8 ICRMW; Art. 45 EU Charter)

**Right to privacy and protection of family life** (Art. 8 ECHR; Art. 17 ICCPR; Art. 9 & 10 CRC; Art. 14 ICRMW; Art. 7 EU Charter)

**Right to protection of personal data** (Art. 8 ECHR; General Data Protection Regulation (GDPR), esp. Art. 9<sup>22</sup>; Art. 8 EU Charter).

**Right to non-discrimination, equality before the law and equal protection by the law** (Art. 14 ECHR; Art. 2, 14 & 26 ICCPR; Art. 2 & 3 ICESCR; Art. 2 CEDAW; Art. 2 CRC; Art. 2 & 5 CERD; Art. 1 & 24 ICRMW; Art. 20 & 21 EU Charter)

**Right to an effective remedy** (Art. 13 ECHR; Art. 2 ICCPR; Art. 6 CERD; Art. 15 CoE Traf Conv; Eur. Conv. on compensation of victims of crime: ILO 2014 Protocol to the 1930 Forced Labour Convention; ILO C. 95 Protection of wages; ILO C. 181 (Private Employment Agencies); OHCHR Guidelines no. 9; 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation;<sup>23</sup> 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>24</sup> EU Traf Dir 2024; EU Victims Dir; Art. 47 EU Charter)

**Right to international protection/principle of non-refoulement** (Art. 14 Traf Prot; Art. 40 CoE Traf Conv.; Art. 3 ECHR; Art. 33 1951 Refugee Conv.; UNHCR *Guidelines on international protection: The application of article 1.A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* (HCR/GIP/06/07)<sup>25</sup>; Group of Experts on Action against Trafficking in Human Beings (GRETA) (2020), *Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection*

<sup>22</sup> Art. 9 GDPR protects so-called sensitive data, such as data concerning someone's racial or ethnic origin, health, sex life or sexual orientation. The latter includes the fact that somebody is or was engaged in sex work.

<sup>23</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UN GA resolution 60/147, 15 December 2005). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

<sup>24</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (UN GA resolution 40/34, 29 November 1985). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

<sup>25</sup> Available at: <https://data.unhcr.org/en/documents/details/71320>.

(GRETA(2020)06)<sup>26</sup>; OSCE (2014) *Guiding Principles on Human Rights in the Return of Trafficking Persons*<sup>27</sup>; Art. 3 CAT; Art. 7 ICCPR; Art. 22 CRC; Art. 3(3) Eur. Conv. on Extradition; Art. 4 & 19 EU Charter)

**Right to seek asylum** (Art. 14 UN Traf. Prot; Art 40 CoE Traf Conv.: 1951 Refugee Conv.; Art. 18 EU Charter)

## EU instruments

At the EU level the 2024 *Revised Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims* (hereinafter EU Dir THB 2024)<sup>28</sup> and *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime* (hereinafter: EU Victims Directive) are the most relevant instruments. Although they are not binding for Serbia, they can be considered as standard-setting documents.

Similar to the original 2011 EU Directive on Trafficking, the revised 2024 EU Trafficking Directive recognises trafficking as a gross violation of human rights. It aims to take an integrated, holistic and human rights approach and pays specific attention to the identification, assistance, protection, non-prosecution and compensation of victims, including child victims. The revised Directive broadens the UN Protocol's definition of trafficking to include the exploitation of surrogacy, forced marriage and illegal adoption as forms of exploitation (Art. 2), establishes the use of information and communication technologies as an aggravating circumstance in relation to the dissemination of images of a sexual nature involving the victim (Art. 4), strengthens sanctions on legal persons (Art. 6), obliges to criminalise the intentional and knowing use of services provided by trafficking victims (Art. 18a), makes EU-wide data collection on trafficking mandatory Art. 19a), and requires EU member states to establish or strengthen Referral Mechanisms, and appoint national anti-trafficking coordinators (and optionally independent Rapporteurs) and a focal point for the cross-border referral of victims (Art. 11). The 2011 Joint Commentary of the UN Agencies *Prevent Combat Protect Human Trafficking* provides an extensive human rights-based commentary on the original 2011 Directive.<sup>29</sup>

Directive 2012/29/EU on minimum standards on the rights, support and protection of victims of crime<sup>30</sup> establishes minimum standards on the rights, support and protection of victims of crime and ensures that they are recognised and treated with respect. It strengthens the rights of victims and their family members to information, support and protection, and strengthens their procedural rights in criminal proceedings. It also requires EU countries to ensure appropriate training of officials who may come in contact with victims. The Directive is part of the so-called "Victim Package", which aims at strengthening the rights of victims in the EU, no matter where they come from or live or where the crime takes place.

<sup>26</sup> Available at: <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>.

<sup>27</sup> Available at: <https://www.osce.org/files/t/documents/c/8/124268.pdf>.

<sup>28</sup> The EU Council adopted the revised Anti-Trafficking Directive on 27 May 2024. Original title: *Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (COM/2022/732 final). Available at: EUR-Lex - 52022PC0732 - EN - EUR-Lex (europa.eu).

<sup>29</sup> *Prevent Combat Protect Human Trafficking, Joint Commentary on the EU Directive - A Human Rights-Based Approach*. Available at: [www.unhcr.org/refworld/docid/4edcbf932.html](http://www.unhcr.org/refworld/docid/4edcbf932.html).

<sup>30</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

In addition to the Trafficking and Victim Rights Directive, several other EU Directives are relevant:

- Directive 2004/81/EC on a temporary residence permit for victims of trafficking who cooperate with the authorities<sup>31</sup> provides for a reflection period and a temporary residence permit during criminal proceedings for victims who cooperate with the authorities, including material, medical, legal and other assistance, and access to education and the labour market.
- Directive 2004/80/EC relating to compensation to crime victims<sup>32</sup> aims to ensure that each Member State has a national scheme in place that guarantees fair and appropriate compensation to victims of violent intentional crime and which is accessible to victims regardless of where in the EU a person becomes the victim of a crime.
- Directive 2011/93/EU on combating the sexual abuse, sexual exploitation of children and child pornography<sup>33</sup> obliges Member States to criminalise the demand for child prostitution and pornography and the involvement of children in sexual exploitation, including sex tourism and activities like 'grooming' (befriending children with the intention of sexually abusing them). Special attention is paid to prevention, the protection of child victims against additional trauma resulting from the criminal proceedings, including access to a free lawyer, and the treatment of offenders, so that they don't abuse again.
- Directive 2009/52/EC providing for minimum standards on sanctions against employers of illegally staying third-country nationals<sup>34</sup> provides for criminal penalties in case of particularly exploitative working conditions and where the employer knows the worker is a victim of trafficking or a minor. It also requires Member States to ensure that employers are liable to make back payments to workers, such as outstanding remuneration.
- Directive 2014/36/EU on seasonal workers<sup>35</sup> aims to ensure fair and transparent rules for admission of non-EU seasonal workers and decent working and living conditions and equal rights for those workers; to prevent that non-EU seasonal workers stay/work in the EU without authorisation; and to make it easier for those workers to come back for seasonal work in the EU in following years.
- [Directive \(EU\) 2022/2041 on adequate minimum wages in the European Union](#)<sup>36</sup> establishes a framework for adequacy of statutory minimum wages; promoting collective bargaining on wage-setting; enhancing the effective access of workers to their rights to minimum wage protection where provided for under national legislation and/or collective agreements.
- Directive (EU) 2024/1260 on asset recovery and confiscation<sup>37</sup> encourages Member States to take the necessary measures to allow the possibility of using confiscated property for public interest or social purposes, including for restitution and compensation of victims.
- Directive (EU) 2024/1385 on violence against women and domestic violence<sup>38</sup> obliges Member States to criminalise female genital mutilation, forced marriage, non-consensual sharing of intimate images, cyber stalking, cyber harassment and cyber incitement to hatred or violence.
- The newly adopted EU Corporate Sustainability Due Diligence<sup>39</sup> aims to promote sustainable and responsible corporate behaviour and requires companies to remedy human rights violations against affected individuals, communities or the environment.

<sup>31</sup> Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC, 29 April 2004).

<sup>32</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

<sup>33</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. See also: <https://www.europarl.europa.eu/news/en/press-room/20240408IPR20311/child-sexual-abuse-online-current-rules-extended-until-april-2026>.

<sup>34</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

<sup>35</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

<sup>36</sup> Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

<sup>37</sup> Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202401260](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401260)

<sup>38</sup> Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.

<sup>39</sup> European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)), approved by the Council at 24 May 2024.



## What is trafficking in persons?

The definition of trafficking in Article 3 of the UN Trafficking Protocol provides the common ground for the international community to prevent, combat and punish trafficking in persons, as well as to provide assistance and protection to its victims. The definition has three constituent elements. For adults, all three elements must be present to constitute the crime of trafficking in persons. For children the 'means' element does not need to be present (Art. 3c, see below).

DEFINITION OF TRAFFICKING IN PERSONS		
<b>ACTS</b> <ul style="list-style-type: none"> <li>Recruitment</li> <li>Transportation</li> <li>Transfer</li> <li>Harbouring</li> <li>Receipt of persons</li> </ul>	<b>MEANS</b> <ul style="list-style-type: none"> <li>Threat or use of force or other forms of coercion</li> <li>Abduction</li> <li>Fraud</li> <li>Deception</li> <li>Abuse of power or a position of vulnerability</li> <li>Giving or receiving payments or benefits to achieve the consent of a person having control over another person</li> </ul>	<b>PURPOSE</b> <p>Exploitation, including:</p> <ul style="list-style-type: none"> <li>Exploitation of the prostitution of others or other forms of sexual exploitation</li> <li>Forced labour</li> <li>Slavery or practices similar to slavery</li> <li>Servitude</li> <li>Removal of organs</li> <li>Other forms of exploitation</li> </ul>

The definition furthermore states that:

- The consent of a victim to the intended exploitation shall be irrelevant where any of the listed deceptive or coercive means has been used (Art. 3b);
- The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if it does not involve any of the deceptive or coercive means as listed in the definition (Art. 3c);
- 'Child' shall mean any person under eighteen years of age (Art. 3d).

The core elements of the definition are therefore:

- the movement of a person from one place to another
- with the use of deception, coercion or abuse of power
- into conditions of exploitation.

### Movement from one place to another

The recruitment process can take place in formal and informal ways. Many trafficking cases involve legal or illegal recruitment agencies, but family members, friends, or acquaintances may also act as recruiters.

Trafficking often takes place between countries, but can also occur without crossing international borders. According to the parent Convention on Transnational Organised

### ATTENTION!!

In cases where the victim is a child, the criminal offense of human trafficking exists even when the "means" element is not present, as it is considered that, due to their age, lack of experience, and vulnerability, children must be afforded special protection (Article 3c, see below).

Crime, domestic law must establish trafficking as an offense "independently of the transnational nature or the involvement of an organized criminal group" (Art. 34 (2)). The Council of Europe Trafficking Convention explicitly covers both internal and cross-border trafficking.

Trafficking can occur through both legal and illegal migration channels. Some migrants enter the country illegally while others enter with legitimate visas or work permits and only become illegal when they remove themselves from the power of an abusive employer.

### **Fraud, deception, or abuse of power or a position of vulnerability**

The inclusion of fraud, deception, and the abuse of power or a position of vulnerability makes it clear that trafficking can occur without the use of (physical) force. Deception may relate to the nature of the work or services, for example, if a trafficked person is promised a job as a domestic worker but is forced to provide sexual services, but in many cases, traffickers mislead their victims about the conditions in which they will be forced to work/live. For example, if a woman is trafficked for sex work or domestic work, she may know that she will be working as a sex worker or a domestic worker, but not that she will be deprived of her freedom and her earnings. The fact that someone originally consented to sex work or any other type of work does not exclude that person from being a victim of trafficking once all three elements of the definition are present (see for the issue of consent also p. ... and ECtHR *Krachunova v. Bulgaria*<sup>40</sup> and *S.M. v. Croatia*).

While in some cases traffickers use violence, in many cases they abuse the vulnerable situation of the trafficked person. According to the *Interpretative notes* on Art. 3 of the Protocol, abuse of a position of vulnerability refers to "*any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved*" (para 63).<sup>41</sup>

This includes, for example, situations in which victims do not speak the language, have their identity papers taken away, have no legal residence status or working permit, are prohibited to leave the workplace without an escort or to have contacts with their family or the outside world, or are threatened with reprisals against themselves, children or other dear ones. In this way victims are brought in a situation of dependency on their captors with no real and acceptable alternative than to submit.

'Giving or receiving payments or benefits to achieve the consent of a person having control over another person' means, in short, giving payments or benefits to a person in control of the victim. This refers, for example, to situations where a person who has control over the victim is paid to deliver the victim to a third person to exploit the victim.

### **Into conditions of exploitation**

The definition covers all forms of exploitation into which people may be trafficked, including forced begging, illegal adoption, forced or servile marriage and the exploitation of criminal activities.<sup>42</sup> While the sex industry is one of the industries into which women in particular are trafficked and exploited in forced labour or slavery-like conditions, people can be trafficked into a variety of industries,

<sup>40</sup> ECtHR *Krachunova v. Bulgaria*, appl. no 18269/18, 28 November 2023. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-229129%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-229129%22]})

<sup>41</sup> Crime Prevention and Criminal Justice, report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh session, Addendum, *Interpretative notes for the official records (Travaux Préparatoires)* of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UN General Assembly, 3 November 2000 (A/55/383/Add.1), to be found at <http://www.odccp.org/crime-cicp-convention-documents.html>.

<sup>42</sup> See also the revised EU Directive 2011/36/EU 2024 on preventing and combating trafficking in human beings and protecting its victims, Art. 2(3).

including domestic work, sweatshop labour, construction or agricultural work. It does not matter whether the work is legal or illegal under national laws (e.g. begging or sex work).<sup>43</sup>

The Protocol does not define exploitation. It only states that exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

For the offence to be committed, it is sufficient that the intention to exploit exists; the actual exploitation does not have to have taken place.

### Children

Regarding children, the *Convention on the Rights of the Child* (CRC) and the *Convention on the Worst Forms of Child Labour* (ILO Convention No. 182) identify specific types of exploitation of children. The engagement of children under 14 (15 in developed countries) in any form of full-time work, or children under 18 in hazardous work such as mining, seafaring or sex work, is always exploitation.

### What are exploitation of the prostitution of others and sexual exploitation?

'Exploitation of the prostitution of others' and 'sexual exploitation' are not defined in the Protocol or in international law. According to the *Interpretative notes*<sup>44</sup> the terms were intentionally left undefined in order to allow all States, independent of their domestic policies on prostitution, to ratify the Protocol.

'Exploitation of prostitution' only constitutes trafficking if the other two elements are present, that is, one of the acts and the use of deceptive or coercive means.<sup>45</sup> Whether or not a person has previously been engaged in prostitution (or domestic work or any other form of labour) or knew that they would be so, is irrelevant if all three elements of the definition are met: the presence of one of the acts, the use of one of the

#### European Court of Human Rights (ECtHR)

*Siliadin v France*, 26 July 2005, application no. 73316/01

In the case of a minor girl from Togo who was brought to France, the Court found that she had been subjected to **forced labor** as she had worked for years for a family that exploited her "without respite, against her will, and without being paid", while residing illegally in the country, afraid of being arrested by the police.

The Court also found she had been subjected to a **modern form of slavery**. As relevant factors in assessing whether a situation amounts to a contemporary form of slavery, the Court mentioned:

- there is control of a person's movement or physical environment
- there is an element of psychological control
- measures are taken to prevent or deter escape
- there is control of sexuality and forced labor.

<sup>43</sup> See also: UNHCHR, UNHCR, UNICEF, UNODC, UN Women, ILO, Joint UN agencies (2011), *Prevent Combat Protect Human Trafficking, Joint Commentary on the EU Directive-A Human Rights-Based Approach*, 102-104.

<sup>44</sup> Interpretative notes (*Travaux Préparatoires*) (A/55/383/Add.1). Available at: <https://www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html>. See also <https://documentation.lastradainternational.org/doc-center/2039/travaux-preparatoires-of-the-negotiations-for-the-elaboration-of-the-united-nations-convention-against-organized-crime-and-the-protocols-thereto>.

<sup>45</sup> The same goes for the purpose of 'removal of organs', which also only amounts to trafficking if the other two elements are present.

coercive or deceptive means and the purpose of exploitation.

While the Protocol distinguishes between trafficking for forced labour and for sexual exploitation, this does not mean that forced prostitution may not constitute forced labour. Since the coming into force of the Forced Labour Convention, the ILO Committee of Experts has treated forced prostitution as a form of forced labour, regardless of whether prostitution is illegal under national law.<sup>46</sup>

As made clear in the *Interpretative notes* on Art. 3, the Protocol addresses the exploitation of prostitution of others or other forms of sexual exploitation only in the context of trafficking. It does not imply a specific position on the treatment of (the exploitation of) consensual adult prostitution, leaving it to individual States how to address prostitution in their respective laws. Different legal systems, whether decriminalising, legalising or regulating consensual adult sex work, can comply with the Protocol.

### What are forced labour, slavery, slavery-like practices and servitude?

An integral component of trafficking is usually forced labour, servitude or slavery/slavery-like practices. Forced labour or services, slavery or practices similar to slavery and servitude are not defined in the Trafficking Protocol, but are elaborated in other international conventions, to which regard must be taken in its implementation and interpretation. The European Court of Human Rights (ECtHR) has also clarified the concepts of forced labour, slavery and servitude in its judgments (see box *Siliadin v. France* and *S.M. v. Croatia*).

The ILO *Forced Labour Convention* no. 29, to which Serbia is a party, defines forced labour as:

According to the Court **servitude** can be defined as "an obligation to provide one's services that is imposed by the use of coercion, and is linked to the concept of slavery".

The Court furthermore ruled that states have a positive obligation to criminalize the practices referred to in Art. 4 ECHR and to apply these in practice.

### *Rantsev v Cyprus & Russia*, 7 January 2010 (Application no. 25965/04)

In the case of a Russian victim of trafficking brought to Cyprus, the Court ruled that trafficking in human beings, as defined in the UN Trafficking Protocol and the CoE Trafficking Convention, is **prohibited by Article 4 ECHR** without the need to determine whether it should be qualified as slavery, servitude or forced labor:

*"(Like slavery) trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labor, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements were often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions".*

In the same judgment, the Court ordered Cyprus and Russia to pay compensation to the family of the victim, who had died during her attempt to escape after having been sent back to her exploiter by the police, for the **failure to provide for an appropriate legal and administrative framework** to combat trafficking and to **properly investigate** how and where the victim was recruited.

<sup>46</sup> ILO (2007), *Eradication of Forced Labour*, International Labour Conference (2007), General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), p. 42.

*'All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.*

'All work or service' encompasses all forms of work, employment or occupation, irrespective of the nature of the activity performed, its legality or illegality under national law or its recognition as an economic activity.<sup>47</sup> Forced labour, thus, can apply as much to factory work as to prostitution or begging when performed under coercive conditions.<sup>48</sup> The ILO Committee of Experts has always treated forced prostitution as a form of forced labour. As stated in the Forced Labour Survey 2007:<sup>49</sup>

*While a certain distinction has been drawn in the above definition between trafficking for forced labour or services and trafficking for sexual exploitation, this should not lead to a conclusion that coercive sexual exploitation does not amount to forced labour or services, particularly in the context of human trafficking. [...] [I]t seems clear that coercive sexual exploitation and forced prostitution do come within the scope of the definition of forced or compulsory labour in Article 2, paragraph 1, of the Convention (Forced Labour Survey, p. 42, para 78).*

While a worker may have entered an employment contract without any form of deception or coercion, they must always be free to revoke a consensually made agreement. Any restriction on leaving a job owing to legal, physical or psychological coercion can be considered forced labour.

If the employer or recruiter has used deception or coercion, consent becomes irrelevant.<sup>50</sup> The experience of loss of control over one's life is a general indicator of coercion and forced labour. Child prostitution and pornography always constitute forced labour and are among the worst forms of child labour under ILO Convention No. 182, as is trafficking in children.

Indicators of forced labour are:<sup>51</sup>

- Threats or actual physical or sexual harm
- Restriction of movement and confinement to the work place or a limited area
- Debt bondage/bonded labour. This is the case when the person works to pay off a debt or loan and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the person cannot escape the debt
- Withholding of wages or excessive wage reductions that violate previously made agreements
- Retention of passport and identity documents, so that the person cannot leave or prove his/her identity and/or status
- Threat of denunciation to the authorities where the worker has an irregular status.

These practices impose a degree of restriction on an individual's freedom, which is often achieved through violent means. However,

<sup>47</sup> The EU Court of Justice (EU CoJ) recognised prostitution as an economic activity in the case of *Jany and Others*, in which it ruled that prostitution falls within the concept of 'self-employed economic activities' when it is practised by the provider of the service without any relationship of authority as regards the choice of the activity, working conditions and the remuneration; under her/his own responsibility; and for remuneration which is wholly and directly paid to her/him (*Jany and Others*, EU Court of Justice, 2001: recital 70).

<sup>48</sup> ILO (2009), *The Cost of Coercion*, p. 6.

<sup>49</sup> International Labour Conference (2007), *Eradication of Forced Labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), p. 42, para 78.

<sup>50</sup> ILO (2005), *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement*; ILO (2008), *Handbook for Labour Inspectors*, p. 4.

<sup>51</sup> ILO (2005), *Human Trafficking and Forced Labour Exploitation*, p. 20-21.

**European Court of Human Rights (ECtHR)**  
***S.M. v. Croatia*, application no. 60561/14, 25 June 2020**

In the case of a Croatian national, who alleged that she was forced into prostitution for several months, the Court found a **violation of the prohibition of slavery and forced labour (Art. 4) due to significant shortcomings in the investigation** by the Croatian authorities of the applicant's allegations, in particular their failure to follow obvious lines of inquiry and their over-reliance on the victim's testimony without taking into account the possible impact of psychological trauma and other reasons for reluctance to cooperate with the authorities. The Court also ordered Croatia to pay the applicant 5,000 euros for non-pecuniary damage.

The Court clarified that **in order for human trafficking falling within the scope of Art. 4, all three constituent elements of the international definition of trafficking must be present** (action, means, purpose). From the perspective of Art. 4 of the Convention, "the concept of trafficking in persons encompasses all forms of trafficking in persons, whether national or transnational, whether or not connected to organised crime".

It further clarified that the notion of **"forced or compulsory labor"** under Art. 4 ECHR aims to protect against instances of serious exploitation, such as forced prostitution, irrespective of whether they are related to the specific human-trafficking context. "Moreover, any such conduct may have elements qualifying it as "servitude" or "slavery" under Art. 4, or may raise an issue under another provision of the Convention" (recital 300). "Force" may encompass subtle forms of coercive conduct (recital 301).

the definition of forced labour does not incorporate the concept of ownership as is the case for the Slavery Conventions.

The League of Nations *Slavery Convention* (1926) defines slavery as:

*"The status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised."*

The definition in the *Slavery Convention* may cause difficulties today, as legally there can be no rights of ownership of one person over another. A contemporary definition would be "the status or condition of a person over whom control is exercised to the extent that the person is treated like property", or "reducing a person to a status or condition in which any or all of the powers attached to the right of property are exercised".<sup>52</sup>

The 1956 UN *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar Practices* prohibits slavery-like practices. These include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. Debt bondage and servile forms of marriage (including forced marriages) are particularly relevant in the context of trafficking.

Debt bondage refers to the system by which people are kept in bondage by making it impossible for them to pay off their (real, imposed or imagined) debts. The *Supplementary Slavery Convention* defines it as:

*"The status or condition arising from a pledge by a debtor of his personal services or those of a person under his*

*control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or*

<sup>52</sup> UNODC (2009), *Model law against trafficking in Persons* (V.09-81990 (E)), p. 19. Available at: [https://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf).

*the length and nature of those services are not respectively limited and defined."*

This occurs when, for example, the trafficked person is required to pay back a large and often ever increasing sum for travel expenses, housing, transportation, clothing, food, etc., making it effectively impossible to pay off the debt. Debt bondage or bonded labour is considered to be a form of forced labour as well as a slavery-like practice.

Servile forms of marriage include all forms of marriage whereby women have no right to refuse, defined as:

*"Any institution or practice by which (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; (iii) a woman on the death of her husband is liable to be inherited by another person."*

Servitude is prohibited by the ICCPR and the ECHR. Although it is not defined in either instrument, it is identified as a slavery-like practice, covering exploitative conditions of work or service, which one cannot change or from which one cannot escape.<sup>53</sup> According to the ECtHR servitude can be defined as

*"[A]n obligation to provide one's services that is imposed by the use of coercion and is linked to the concept of slavery"* (ECtHR, *Rantsev v. Cyprus and Russia*, appl. no. 25965/04).

## The issue of consent

The Trafficking Protocol stipulates that the consent of the victim shall be irrelevant where any of the coercive or deceptive means listed in the definition is used. This is in line with existing international legal norms and does not take away the right of the accused to a full defence and to the presumption of innocence, as explicitly stated in the *Interpretative notes* to the Protocol. It should also not be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the state or public prosecutor, in accordance with domestic law. However, once the elements of the crime of trafficking are proven, any allegation that the trafficked person 'consented' is irrelevant.

Significantly, the Court affirmed the understanding that prostitution can be consensual and is not by default exploitation. As it states **"there are different, often conflicting, views as to whether prostitution as such can ever be consensual or is always a coercive form of exploitation."** (para 298). However, where a person is coerced to engage in, or to continue with, prostitution an issue arises under Art. 3 and/or 4 of the convention (recital 299). Accordingly, the Grand Chamber does not use the term "trafficking for the purpose of sexual exploitation" but "trafficking for the purpose of exploitation of prostitution".

<sup>53</sup> Manfred Novak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, 2005. See also: Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, Gulnara Shahanian (A/HRC/15/20), 28 June 2010.

In practice, however, the issue of consent can confuse, because if a person appears to have consented to what is a situation of forced labor or slavery-like practices, some may consider that the person is not trafficked. However, when considering the relevance of actual or apparent consent, the following should be taken into account:

- A freely given decision implies the realistic possibility of not giving consent or, more precisely, of refusing to perform or tolerate an individual act. If there is no possibility of refusal, there is no freely given consent. The question of whether or not a decision was free or not must be asked and answered for each individual act.
- The consent of the victim must have been given with respect to all relevant circumstances of an act. Genuine consent is only possible and legally recognisable, when all relevant factors are known and a person is free to consent or not.

It should also be borne in mind that while the initial recruitment may be voluntary, the coercive or deceptive mechanisms used to keep a person in an exploitative situation may come into play at a later stage.

This means that while a person may consent to migrate, carry false papers, engage in prostitution or work illegally abroad, this does not imply consent to be exploited in forced labour or slavery-like conditions, including in the sex industry, and does not preclude the person from being a victim of trafficking.

### **Relationship between trafficking and smuggling**

The Trafficking Protocol makes a clear distinction between human trafficking and human smuggling, which is the subject of another Protocol. Smuggling is a violation of domestic laws that protect the state by regulating who can cross its border and how, while trafficking is primarily concerned with protecting people from human rights abuses and can occur with or without crossing borders.

When people are smuggled, at the end of the journey they are free and not tied to the person who smuggled them. When people are trafficked, they are not free at the end of the journey, but bound to their traffickers for the exploitation of their labour or services. For trafficked people, the real problems often begin when they arrive at their destination. They have often been promised a job that does not exist and/or are forced to work in conditions to which they have not agreed. In practice, it is often not clear until the end of the journey whether a person has been trafficked or smuggled. People who have paid to be smuggled may therefore end up being trafficked.

What makes trafficking identifiable and distinct is not the movement of a person from one place to another or the site of work per se, but the deceitful brokering, the violation of the free will of the person, and the exploitative conditions of work.



## Obligations of the State

States have a responsibility under international law to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons, as confirmed by the ECtHR in its judgments on *Rantsev v. Cyprus and Russia*,<sup>54</sup> *S.M. v. Croatia*,<sup>55</sup> and *Zoletic and Others v. Azerbaijan*.<sup>56</sup> States should therefore take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts relating to human trafficking, including when these are perpetrated by non-state actors. The ECtHR also ruled that states have an obligation to penalise and effectively prosecute slavery, servitude and forced labour and to provide victims with specific and effective protection (*Siliadin v. France*)<sup>57</sup>.

In its judgment of 28 November 2023 in the case of *Krachunova v. Bulgaria* (Application No. 18269/18), the ECtHR held that Member States have a positive obligation under Art. 4 ECHR to enable victims of trafficking to claim compensation from their traffickers in respect of lost earnings, including in cases of sexual exploitation and irrespective of the legal status of prostitution. As stated by the court, "[I]t cannot be accepted that a simple reference to the 'immoral' character of the applicant's earnings constituted sufficient justification for failing to comply with that obligation" (recital 192)<sup>58</sup>

In addition, states have the obligation to ensure that anti-trafficking efforts do not affect the rights, obligations and responsibilities of states under international law, including international human rights, humanitarian and refugee law.<sup>59</sup> Examples are measures that restrict the freedom of movement of certain categories of people or prevent people from seeking asylum, detainment of trafficked people in detention centres or closed shelters,<sup>60</sup> and compulsory medical examinations, including HIV/AIDS testing.

This principle is implicitly recognized in Art. 14 of the UN Trafficking Protocol, which prevents anything in the Protocol to affect the responsibilities of states under international law, including international human rights and humanitarian law. The same article holds that the measures outlined in the Protocol should be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons and that is consistent with internationally recognized principles of non-discrimination. A similar provision is set out in the Council of Europe Convention on Trafficking (Art. 40). The exact content of this obligation will depend on the specific human rights treaties to which the state is a party.

<sup>54</sup> ECtHR, *Rantsev v. Cyprus and Russia*, application no. 25965/04, 7 January 2010, para 281.

<sup>55</sup> ECtHR, *S.M. v. Croatia*, application 60561/14, 25 June 2020.

<sup>56</sup> ECtHR, *Zoletic and Others v. Azerbaijan*, application. no. 20116/12, 7 October 2021 (SerBaz case).

<sup>57</sup> ECtHR, *Siliadin v. France*, application no. 73316/01, 26 July 2005, recital 112, 121 & 148.

<sup>58</sup> ECtHR *Krachunova v. Bulgaria*, appl. no 18269/18, 28 November 2023. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-229129%22%7D>.

<sup>59</sup> OHCHR Recommended Principles & Guidelines on Human Rights and Human Trafficking, Guideline 1(6) & 1(9)

<sup>60</sup> Gallagher, Anne & Pearson, Elaine, *Detention of Trafficked Persons in shelters. A legal and policy analysis*, 2008, available at: <https://documentation.lastradainternational.org/doc-center/1781/detention-of-trafficked-persons-in-shelters-a-legal-and-policy-analysis>.

## KEY INTERNATIONAL OBLIGATIONS OF STATES

This box lists the main anti-trafficking obligations of states. For each obligation, a set of standards is given that states should meet. These standards are drawn from the UN Trafficking Protocol (UN Traf Prot) and its parent convention (UN TOC), the CoE Trafficking Convention (CoE Traf Conv), the major human rights treaties, the OHCHR *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (hereinafter: OHCHR Guidelines), the judgments of the ECtHR, the (revised) EU Directive on Trafficking of Human Beings 2024 (EU Dir THB 2024), the EU Directive on the reflection period & temporary residence rights for victims of trafficking (EU Dir residence) and the EU Directive establishing minimum standards on the rights, support and protection of victims of crime (EU Victims Dir). We have also included judgments from the European Court of Human Rights, other EU directives, and guidelines from international bodies, such as the UNHR and the OSCE, where relevant.

### Obligation to criminalize all forms of trafficking, slavery, servitude, and forced labor

- Trafficking, as defined in the UN Trafficking Protocol, is a criminal offense under national law (UN Traf Prot Art. 5, CoE Traf Conv, EU Dir THB 2024 Art. 4; ECtHR *Rantsev*)
- The component acts, i.e. slavery and practices similar to slavery, servitude, forced labor, the worst forms of child labor, forced marriage, debt bondage, and forced prostitution/sexual servitude, are criminalized under national law (Forced Labour & Slavery Conventions; ECtHR *Siliadin v France*; CRC; ICCPR; ECHR; OHCHR Guidelines Principle 12)
- Proportionate penalties apply to these offenses and are applied (UN Traf. Prot; CoE Traf Conv.; EU Dir THB 2024 Art. 4 & 6)
- The EU Dir THB 2024 also includes the obligation to criminalize the intentionally and knowing use of services of trafficked persons (Art. 18a)

### Obligation to actively identify victims of trafficking

- Guidelines and procedures for the relevant state authorities and officials are in place to permit the rapid and accurate identification of trafficked persons (CoE Traf Conv Art. 10; OHCHR Guidelines no. 2.1; EU Dir THB 2024 Art. 11)
- The relevant state authorities and officials have been trained in correct identification procedures (CoE Traf Conv Art. 10; OHCHR Guidelines no. 2.2; EU Dir THB 2024 Art. 18)
- Law enforcement officials work together with NGOs to facilitate the identification and assistance of trafficked persons (CoE Traf Conv Art. 10 & 14; OHCHR Guidelines no. 2.3; EU Dir THB 2024 Art. 11)
- Migrants and other groups that might be vulnerable to trafficking receive information that enables them to seek assistance when needed (OHCHR Guidelines no. 2.4)

### Obligation to duly investigate & prosecute cases of trafficking forced labor, servitude, and slavery

- There is an adequate legislative framework in place for the investigation and prosecution of trafficking cases, slavery, servitude, and forced labor (UN Traf Prot; CoE Traf Conv.; ECtHR *Siliadin and Rantsev*; EU Dir THB 2024 Art. 9)
- Law enforcement agencies and judicial authorities are provided with training in the investigation and prosecution of trafficking cases to enable them to deal with victims respectfully and professionally (CoE Traf Conv Art. 29; OHCHR Guidelines no. 5; EU

Dir THB 2024 Art. 9 & 18; EU Victims Dir Art. 25)

- Complaints are taken seriously; trafficking cases are duly investigated and prosecuted and trafficked persons are assisted and protected (ECrTHR *Rantsev*)
- Trafficked persons are informed about their case (EU Victims Dir Art. 6)
- Trafficked persons are provided with interpretation and translation during criminal investigation and proceedings (EU Victims Dir Art. 7)
- Trafficked persons must be enabled to present their views and concerns at appropriate stages of the criminal proceedings (UN TOC Art. 25, UN Traf Prot. Art. 6; EU Victims Dir Art. 10)
- Law enforcement agencies, prosecutors, and the judiciary demonstrate an understanding of trafficking and its human rights dimensions and an ability to work together on this issue (OHCHR Guidelines no. 5)
- Data are available on the number of complaints, arrests, prosecutions, and convictions (EU Dir THB 2024 Art. 19a).

### **Obligation to provide a reflection period, temporary residence & access to international protection**

- Trafficked persons are not automatically detained or deported (CoE Traf Conv Art. 10; EU Dir THB 2024 Art. 11)
- Trafficked persons are granted a reflection period and a temporary residence permit for the duration of criminal and other procedures. During the reflection period and the temporary residence permit, they have access to material, medical, psychological, and legal assistance. During the temporary residence permit they have access to the labor market, vocational training and education (CoE Traf Conv Art. 12-14; EU Dir. Residence Art. 6-9)
- Trafficked persons have a right to remain in the country pending the completion of legal proceedings including proceedings for compensation (OHCHR Guidelines, no. 4.7)
- Trafficked persons are protected from summary deportation or return when there are reasonable grounds that this would constitute a risk for the person or his or her family (CoE Traf Conv. Art. 16; OHCHR Guidelines, no. 4.6)
- The safety of the trafficked person and his or her family, including safety for re-trafficking, is taken into account in any decision on repatriation (UN Traf Prot. Art. 8.2; CoE Traf Conv Art. 16)
- Trafficked persons are provided with information on the possibility of granting international protection (UNHCR *Guidelines on international protection: The application of article 1.A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked* (HCR/GIP/06/07); Group of Experts on Action against Trafficking in Human Beings (GRETA) (2020), *Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection* (GRETA) (2020)06; OSCE (2014), *Guiding Principles on Human Rights in the Return of Trafficking Persons*; EU Dir THB 2024 Art. 11a)

### **Obligation to assist and protect victims**

- Trafficked persons have access to (confidential) assistance and support, including victim support services, (emergency) shelter, medical assistance, legal advice and/or aid, material and psychological assistance, and translation and interpretation services. Assistance and support are not made conditional on the victim's willingness to cooperate in the criminal proceedings (CoE Traf Conv Art. 10, 12 & 28; OHCHR Guidelines, no. 8; EU Dir THB 2024 Art. 11 & 12; EU Victims Dir Art. 8, 9 & 13)
- Measures are taken to protect trafficked persons from further harm, including secondary and repeat victimisation, and to

protect their safety (UN Traf Prot. Art. 6; CoE Traf Conv Art. 12 & 28; OHCHR Guidelines no. 8; EU Dir Residence Art. 7; EU Dir THB 2024 Art. 12; EU Victims Dir Art. 18, 20, 22 & 23)

- The privacy and identity of trafficked persons are protected (UN Traf Prot. Art 6; CoE Traf Conv Art. 11; ECHR Art. 8; ICCPR Art. 17; OHCHR Guidelines no. 6; EU Victims Dir Art. 21; GDPR Art. 9)
- Victims are given information on relevant court and administrative proceedings and assistance to enable their views and concerns to be presented (UN Traf Prot. Art. 6; CoE Traf Conv Art. 12; EU Victims Dir Art. 4)
- Measures are taken to assist trafficked to understand and to be understood (EU Victims Dir Art. 3)
- Trafficked persons who act as witnesses (and where appropriate their family and others close to them) are provided with effective protection from potential retaliation or intimidation (including possibilities for relocation, giving testimony in a way that ensures their safety, e.g. through video links, etc. (UN TOC Art.25; CoE Traf Conv Art. 28 & 30; OHCHR Guidelines no. 6, 4.10 & 5.8; Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 12; EU Dir THB 2024 Art. 12).

#### **Obligation of non-detention of trafficked persons and non-prosecution for status-related crimes**

- Trafficked persons are not prosecuted or punished for violations of immigration law or for the activities they have been involved in as a direct consequence of their being trafficked (CoE Traf Conv Art. 26; OHCHR Guidelines no. 2.5 & 4.5)
- Trafficked persons are not held in immigration detention or other forms of custody (OHCHR Guidelines no. 2.6)
- Trafficked persons are not detained by law enforcement authorities for any reason other than their immediate physical protection (ICCPR Art. 9)
- Trafficked persons are never detained for reasons of collecting evidence including statements (ICCPR Art. 9)
- Trafficked persons are not detained by welfare authorities, unless they are in agreement (in which case they are not detained) or unless i) the detention is for a specific purpose directly related to the immediate needs of that victim and ii) for the shortest possible period of time (ICCPR Art. 9)

#### **Obligation to provide victims with access to adequate and appropriate remedies**

- Trafficked persons are provided with information on available remedies, including national compensation schemes, and with access to legal assistance (UN Traf Prot. Art. 6; CoE Traf Conv Art. 15; EU Victims Dir Art. 4 & 9)
- There is a legislative and practical possibility for trafficked persons to obtain compensation for damages suffered (UN TOC Art. 14 & 25, UN Traf Prot. Art. 6; CoE Traf Conv Art. 15; ICRMW Art. 25(3); ILO C no. 97 & 143; ILO 2014 Protocol to the 1930 Forced Labour Convention Art. 1 & 4; EU Dir Comp.; EU Dir THB 2024 Art. 17; EU Victims Dir Art. 16; EU Assets Recovery Dir Art. 18 & 19.1; EU Corporate Sustainability Due Diligence Dir (CSDDD) Art. 3.1t, 25.6 & 29.2)
- Trafficked persons must be enabled to claim compensation from their traffickers in respect to lost earnings (CoE Traf Conv Art. 15.3; EU Victims Dir Art. 16; ECtHR *Krachunova v. Bulgaria*, Appl. No. 18269/18)
- There is a provision for payment of compensation from the state where such compensation cannot be obtained from the trafficker (CoE Traf Conv Art. 15)

### **Obligation to prevent trafficking and the related exploitation, while ensuring that measures do not violate established rights**

- Policies and practices address the factors that increase vulnerability to trafficking, including poverty, inequality and all forms of discrimination (UN Traf Prot Art. 9; OHCHR Guidelines, no. 7)
- Prevention strategies are evidence-based (OHCHR Guidelines, no. 7)
- The state has taken concrete steps to address public sector involvement or complicity in the trafficking process (UN TOC Art. 8; OHCHR Guidelines principle 6)
- The state has taken concrete steps to address the demand for the products of trafficking (e.g. through legislation targeting those who knowingly use or take advantage of the labour and services provided by trafficked persons) (UN Traf Prot Art. 9.5 & 19; CoE Traf Conv Art. 6; OHCHR Guidelines no. 7; EU Dir THB 2024 Art. 18a)

### **General obligations**

- No aspect of the state's response to trafficking discriminates on, for example, the basis of race or sex (e.g. there are no gender-based restrictions on freedom of movement including emigration) (UN Traf Prot Art. 14; CoE Traf Conv. Art. 3; OHCHR Guidelines no. 1; all major human rights treaties)
- No aspect of the state's response to trafficking violates other established rights (i.e. no compulsory testing, no arbitrary detention) (UN Traf Prot Art. 14; CoE Traf Conv Art. 40; OHCHR Guidelines no. 1; all major human rights treaties).

### **Child victims**

Child victims of trafficking enjoy specific rights to assistance, support, education and protection. See Art. 6 UN Traf Prot; Art. 10.4 (unaccompanied child victims), Art. 12 (education), Art. 16 (repatriation), Art. 28 & 30 (protection) CoE Traf Conv; Art. 13 & 14 (assistance & support), Art. 15 (protection in criminal investigations and proceedings) and Art. 16 (unaccompanied child victims) EU Dir THB 2024; Art. 1.2 (best interest principle), Art. 10 (right to be heard), Art. 21 (protection of privacy), Art. 22 (specific protection needs) and Art. 24 (protection) EU Victims Dir. According to the EU Traf Dir 2024, children also have a right to safe reporting procedures, carried out in a child-friendly manner (Art. 13).

Other relevant standards include the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; and the 1999 ILO Convention on the Worst Forms of Child Labour (C. 182).

The UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006) set out standards for good practice concerning the protection of and assistance to trafficked children. They are based on international human rights instruments and look at the protection of trafficked children from their identification up to their recovery and integration.<sup>61</sup>

<sup>61</sup> UNICEF (2006), Guidelines on the Protection of Child Victims of Trafficking. Available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/4d9484e39.pdf>. See also OSCE (2020), Trafficking in Children, Recommendations for effective protection of the best interests of the child. Available at: <https://www.osce.org/cthb/462655>.

## CHAPTER 4 THE SERBIAN LEGAL FRAMEWORK

### Introduction

This chapter presents an overview of the legal framework in Serbia. It discusses the relevant articles of the Criminal Code of Serbia, as well as other provisions pertinent to trafficking in human beings.

Relevant laws:

- Law on the Ratification of the UN Convention against Transnational Organised Crime and Protocols Thereto ("Official Journal of the FRY – International treaties", no. 6/2001)
- Law on the Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("Official Gazette of the RS – International treaties", no. 19/2009)
- Law on the Ratification of the Convention on High Technology Crime ("Official Gazette of the RS – International treaties", no. 19/2009)
- Law on the Ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ("Official Journal of the FRY – International treaties", no. 7/2002 and "Official Journal of the Serbia and Montenegro – International treaties", no. 18/2005)
- Law on the Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ("Official Gazette of the RS – International treaties", no. 19/2009)
- Law on the Ratification of the UN Convention on the Rights of the Child ("Official Journal of the SFRY – International Treaties", no. 15/90 and "Official Journal of the FRY – International Treaties", no. 4/96 and 2/97)
- Law on the Confirmation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, with the Convention on the Rights of the Child ("Official Journal of the FRY – International Treaties", no. 7/2002)
- Law on the Ratification of the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse ("Official Gazette of the RS – International treaties", no. 1/2010)
- Constitution of the Republic of Serbia ("Official Gazette of the RS" no. 98/2006 and 115/2021)
- Criminal Code ("Official Gazette of the RS", no. 85/2005, 88/2005 – correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019)
- Criminal Procedure Code ("Official Gazette of the RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Decision of the CC and 62/2021 – Decision of the CC)
- Law on Public Order and Peace ("Official Gazette of the RS" no. 6/2016 and 24/2018)
- Law on Foreigners ("Official Gazette of the RS", no. 24/2018, 31/2019 and 62/2023)
- Law on the Employment of Foreign Nationals ("Official Gazette of the RS", no. 128/2014, 113/2017, 50/2018, 31/2019 and 62/2023)
- Law on Social Protection ("Official Gazette of the RS", no. 24/2011 and 117/2022 – decision of the CC)
- Healthcare Law ("Official Gazette of the RS", no. 25/2019 and 92/2023 – authentic interpretation)
- Law on the Seizure and Confiscation of the Proceeds from Crime ("Official Gazette of the RS" no. 32/2013, 94/2016 and 35/2019)

- Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles ("Official Gazette of the RS", no. 85/2005)
- Law on the Programme for the Protection of Participants in Criminal Proceedings ("Official Gazette of the RS", no. 85/2005)
- Law on Personal Data Protection ("Official Gazette of the RS", no. 87/2018)
- Law on the Prohibition of Discrimination ("Official Gazette of the RS" no. 22/2009 and 52/2021)
- Programme for Combating Human Trafficking in the Republic of Serbia for the period 2024-2029. Together with the Action Plan for the implementation of the Programme for Combating Human Trafficking in the Republic of Serbia for the 2024-2029 period.

Article 26 of the Constitution of the Republic of Serbia stipulates that no person may be kept in slavery or servitude and that all forms of human trafficking are prohibited. Forced labour is also prohibited.<sup>62</sup>

The criminal offence of human trafficking is one of the most severe crimes against humanity. The law of the Republic of Serbia classifies it in the section that covers crimes against humanity along with war crimes, thus recognising and highlighting the cruelty and severity of human trafficking as a criminal offence. This is not the case in most countries. Here, the object of protection is not life and body, but the greatest values of humanity and goods protected by international law, which include, in addition to the right to life and freedom, the right to dignity, honour and humane treatment. It protects a fundamental right stipulating that no human being may be subject to exploitation and treated as a commodity.

Human trafficking was not recognised as a separate criminal offence in our legislation until April 2003, when Article 111b on Human Trafficking was introduced into the Criminal Code of the Republic of Serbia.

The legislation that is currently in force is the Criminal Code of Serbia (CCS), in effect since 1 January 2006, which Article 388 regulates the trafficking of human beings.

- 1) Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, the difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person aimed at exploiting that person's labour, forced labour, commission of offences, prostitution, other forms of sexual exploitation, begging, pornography, establishing slavery or slavery-like relation, the removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment for three to twelve years.
- 2) When the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration.
- 3) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment for a minimum of five years.
- 4) If the offence specified in paragraphs 1 and 2 of this Article resulted in grave bodily injury of a person, the offender shall be punished with imprisonment for five to fifteen years, and if a grave bodily injury of a minor resulted from

<sup>62</sup> Sexual or financial exploitation of a person in an unfavourable position shall be deemed forced labour (Article 26, paragraph 3 of the Constitution of the RS).

the offence referred to in paragraph 3 of this Article, the perpetrator shall be punished with imprisonment for at least five years.

- 5) If the offence specified in paragraphs 1 and 3 of this Article resulted in the death of one or more persons, the offender shall be punished with imprisonment for a minimum of ten years.
- 6) Whoever habitually engages in offences specified in paragraphs 1 and 3 of this Article or if the offence is committed by a group, they shall be punished with imprisonment for a minimum of five years.
- 7) If the offence specified in paragraphs 1 to 3 of this Article is committed by an organised group, the offender shall be punished with imprisonment for a minimum of ten years.
- 8) Whoever knows or should know that the person is a victim of trafficking, and abuses their position or allows another to abuse their position for the exploitation envisaged in paragraph 1 of this Article, shall be punished with imprisonment for six months to five years.
- 9) If the offence specified in paragraph 8 of this Article is committed against a person for whom an offender knew or could have known they were a minor; the offender shall be punished with imprisonment for one to eight years.
- 10) The endorsement of persons of the exploitation or slavery or similar relations specified in paragraph 1 of this Article, shall not affect the existence of the crime specified in paragraphs 1, 2 and 6 of this Article.

**Article 389** of the Criminal Code of the Republic of Serbia singles out the trafficking of minors for adoption as a separate criminal offence. This provision stipulates:

- 1) Whoever abducts a child under sixteen years of age for adoption contrary to the laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under sixteen years of age or transports such a person, provides accommodation or conceals such a person, shall be punished with imprisonment for one to five years
- 2) Whoever habitually engages in activities specified in paragraph 1 of this Article or if the offence is committed by a group, they shall be punished with imprisonment for a minimum of three years.
- 3) If the offence specified in paragraph 1 of this Article, is committed by an organised group, the offender shall be punished with imprisonment for a minimum of five years.

### **The relationship between human trafficking and other criminal offences**

To achieve the ultimate goal of providing justice to the victims of human trafficking and adequately punishing the perpetrator(s), it is first necessary to know the nature of the crime, to ensure adequate legal qualification and not to resort to reducing and/or not distinguishing the criminal offence of human trafficking from other related criminal offences.



## Human trafficking and mediation in prostitution

The failure to differentiate between mediation in prostitution and the exploitation of victims through forced prostitution most often boils down to not recognising the indicators of coercion, fraud or abuse by traffickers who control and exploit the victims.

If the incitement or encouragement is carried out in one of the ways provided for in Article 388 of the CCS (by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, the difficult circumstances of another, etc.) or relates to a minor, and the goal is the exploitation of a person through prostitution, such an offence is a criminal offence of human trafficking and not the criminal offence of mediation in prostitution.<sup>63</sup>

The essential difference between the criminal offence of mediation in prostitution and the criminal offence of human trafficking lies in the objectives of these criminal offences. When it comes to the criminal offence of human trafficking, the act is undertaken with the aim of exploitation, i.e. taking advantage of the victim, while in the criminal offence of mediation in prostitution, the act is not undertaken to exploit the victim, but the acts of encouraging and inciting to prostitution, surrendering a person to another person for the purpose of prostitution, as well as propagating and advertising prostitution are, at the same time, the goals of this criminal offence.

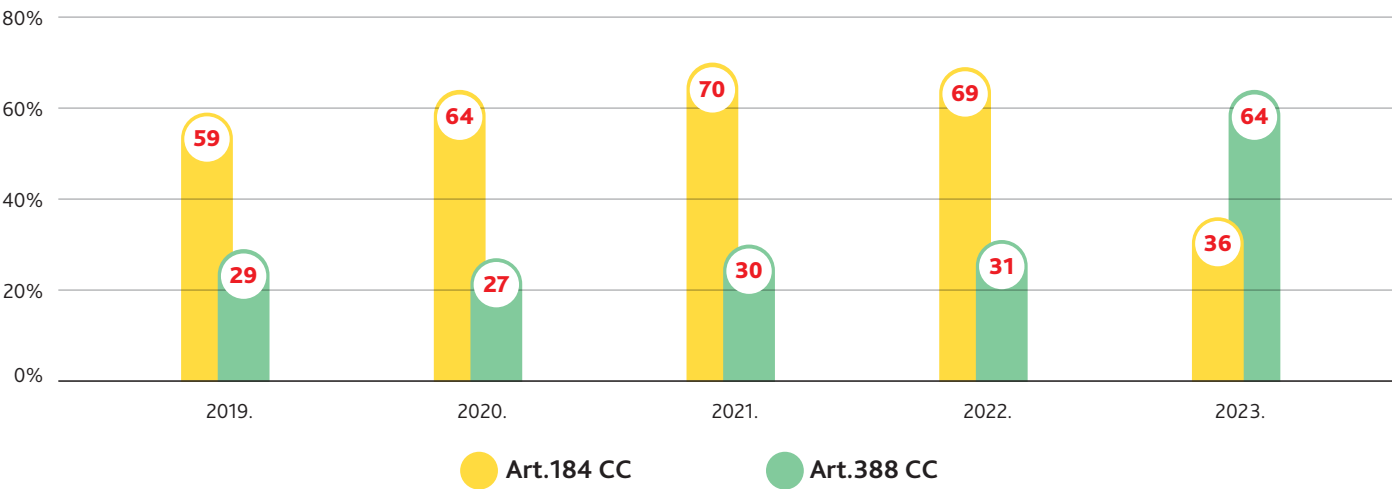
In the examples from practice, there are situations when a girl or woman engages in prostitution voluntarily, but in the meantime gets dragged into/forced to establish a "collaborative relationship" with a pimp to whom she usually has to give a good part of her earnings. After that, if she decides to stop engaging in prostitution, the pimp does not allow her to do so, he starts blackmailing her, uses threats and coercion, and then the entire situation turns into sexual exploitation. The fact that a girl or woman initially provided sexual services voluntarily does not diminish her position as a victim of sexual exploitation from the moment she became a victim.

### ATTENTION

Unfortunately, recent practice shows that a serious crime such as human trafficking is increasingly being misclassified as the criminal offence of "facilitating prostitution" under Article 184 of the Criminal Code, to later conclude the proceedings through a plea agreement, which undoubtedly benefits the trafficker.



<sup>63</sup> Additional information: Delibašić, V., U kanzdama prostitucije, krivičnopravni aspekt prostitucije, Čigoja, Beograd, 2010, p. 52–64.



Human trafficking and smuggling

When dealing with smuggled persons (illegal migrants), one should bear in mind that there is a real possibility that there are potential victims of human trafficking among the smuggled persons. Accordingly, it is necessary to talk, i.e. to act to detect clues that point to the intended exploitation of illegal migrants. For example, money is taken from a potential victim of human trafficking, as well as from other smuggled persons, for illegal transfer across the border, although the real intention of the perpetrators is to exploit the smuggled persons in the country of destination. The money is taken in order to conceal such an intention and to facilitate the control of the victim, who is thus kept in a state of delusion. On the other hand, the perpetrators of the criminal offence of smuggling (Article 350 of the Criminal Code) may decide to exploit a smuggled person after contact with the smuggled person in one of the stages of transfer across the border or while hiding in the country of destination (this is especially true given the possibility of abuse of risk and the difficult position of the smuggled person). In addition, it often happens that the same transfer routes are used in cases of human trafficking and smuggling, i.e. the same perpetrators are hired for transferring, transporting and hiding smuggled persons, as well as for transferring, transporting and hiding victims of human trafficking.

Human trafficking and domestic violence

Each type of violence (domestic, partner or peer) is closely related and represents a risk factor for the subsequent exploitation of the victim. Domestic violence may also be an indicator of potential exploitation, bearing in mind that traffickers are sometimes close family members.

Victims of human trafficking, who are also victims of domestic violence, in addition to criminal and legal protection, also enjoy the protection provided by the Law on the Prevention of Domestic Violence, i.e. provided by the Family Law. At the same time, for certain state authorities and institutions, these regulations also prescribe additional powers and obligations aimed at achieving protection and providing support to the victims of domestic violence.

Bearing in mind that the Criminal Code, the Family Law and the Law on the Prevention of Domestic Violence prescribe the circle of persons who are considered family members in different ways, in terms of providing protection to victims of human trafficking who have also suffered domestic violence through the act of committing the offence referred to in Article 388 of the CC, the other two laws apply in relation to those persons who are assigned the status of a family member by those regulations.

CRIMINAL CODE - Article 112, paragraph 28	FAMILY LAW - Article 197, paragraph 3	LAW ON THE PREVENTION OF DOMESTIC VIOLENCE - Article 3, paragraph 3
Spouses	Spouses	A person with whom the perpetrator is presently in a matrimonial relationship
Spouse's children	Children, parents and other blood relatives	Blood relative in the direct line of descent
Brothers and sisters, their spouses and children		Blood relative in a side line up to the second-degree
Adoptive parent and adopted child	Persons in an adoptive relationship	The adoptive parent and adopted child
Foster parent and foster child	Persons bound by foster care	A foster child or foster parent
Ancestors of the spouse in the first line of blood relationship	In-laws	In-laws up to the second degree
Former spouses and their children, and parents of former spouses if they live in the same household	Former spouses	A person with whom the perpetrator was previously in a matrimonial relationship
Common-law partners and their children	Common-law partners	A person with whom the perpetrator is presently in a common-law partnership
Persons who have a child together or a child is about to be born, although they have never lived in the same household	Persons who have a child together or a child is about to be born, although they have never lived in the same household	
	Former common-law partner	A person with whom the perpetrator is presently in partnership
	Persons who were or are still in an emotional or sexual relationship with each other, although they have never lived in the same household	Lice sa kojim se učinilac nalazi u sadašnjem partnerskom odnosu
		A person with whom the perpetrator was previously in partnership
	Persons who live or have lived in the same Household	Another person with whom he/she lives or has lived in the same household

The fact that human trafficking was committed against a member of one's own family does not make the offence from Article 388 of the CC more severe, but it should be taken into account as an aggravating circumstance when determining the punishment. This is because family members enjoy special protection, due to the severe, complex and long-term consequences that exposure to domestic violence may have on them.

### **Important prosecutorial practice and jurisprudence in the protection of victims of human trafficking – useful experience for victims' attorneys**

#### **Exclusion of the possibility of punishment mitigation**

To achieve the more efficient prevention and suppression of the criminal offence of human trafficking, in addition to the provisions of the criminal substantive law that regulate it (since its introduction into the domestic legislation in 2003, it has been amended and supplemented on several occasions), the provision of Article 57, paragraph 2 of the CC is also important, which excludes the possibility of mitigating the punishment for this criminal offence since 2009. The efforts made by the Republic of Serbia at the legislative side to prevent and suppress the criminal offence of human trafficking are also evidenced by the provisions contained in the Criminal Procedure Code, the Law on the Seizure and Confiscation of the Proceeds from Crime, the Law on the Programme for the Protection of Participants in Criminal Proceedings, as well as in the Law on the Organisation and Competence of State Authorities in the Suppression of Organised Crime, Terrorism and Corruption.

#### **Application of special evidentiary actions**

It is also a fact that the legislator has explicitly singled out the criminal offence of human trafficking for the first time in the Criminal Procedure Code (2001), before its normative determination in the Law on Amendments and Supplements to the Criminal Code of the Republic of Serbia (2003). This was done while introducing surveillance measures and the recording of telephone and other conversations or communications by other technical means and the optical recording of faces, linking the possibility of their use in case of the commission of criminal offences with elements of organised crime, including human trafficking (Article 232, paragraph 1, item 3). The fact that the problem of human trafficking is viewed through the prism of preventing and suppressing organised crime is also evidenced by the provisions of the applicable Criminal Procedure Code in the part where special evidentiary actions are normatively defined. This complements the general possibility of their use in case of the fulfilment of the assumptions for the involvement of the prosecutor's office of special jurisdiction, i.e. when it comes to organised crime (Article 162, paragraph 1, item 1), but also in all other cases of committing the criminal offence of human trafficking (Article 162, paragraph 1, item 2), i.e. in those cases that are dealt with by the higher public prosecutor's offices. The use of special evidentiary actions is particularly recommended when it comes to the offence committed within an organised criminal group because it has been proven in practice that it is effective for determining the roles of individuals, but also as evidence that relieves the victim from the position of a crown witness. It is also a common situation that a victim who is exposed to pressures and threats during the procedure often changes his/her statement, so that special evidentiary actions, even in this context, are of great importance. Otherwise, other actions must be taken to verify the credibility of the victim's testimony and assess its significance.

### **Confiscation of proceeds from crime**

In relation to the perpetrators of the criminal offence of human trafficking, the provisions of the Law on the Confiscation of Proceeds from Crime could also be applied, which were introduced into the domestic legislation for the first time in 2008. This is the case if the specific criminal activity is a form of organised crime (Article 2, paragraph 1, item 1), as well as if the criminal profit gained through the criminal offence of human trafficking, i.e. the value of the object of the criminal offence, exceeds the amount of one million and five hundred thousand dinars (Article 2, paragraph 1, item 6, in relation to paragraph 2). The current Law on the Confiscation of Proceeds from Crime 38 contains the same provisions regarding the possibility of application to perpetrators of the criminal offence of human trafficking (Article 2, paragraph 1, item 1 and item 9 about paragraph 2).

### **Special protection measures for participants in criminal proceedings**

The Law on the Protection Programme for the Participants in Criminal Proceedings foresees the possibility of applying its provisions when it comes to offences of organised crime, but also for all criminal offences against humanity and other goods protected by international law, including human trafficking (Article 5, paragraph 1, items 2 and 3). Similar to the solution found in the CPC from 2001, the Law on the Organisation and Competence of State Authorities in the Suppression of Organised Crime from 2002 also linked the possibility of application to the criminal offence of human trafficking, which at that time was not envisaged as a separate criminal offence in the substantive criminal legislation (Article 2 paragraph 1, item 3 – with the general condition that an element of organised crime is present). The Law on the Organisation and Competence of State Authorities in the Suppression of Organised Crime, Terrorism and Corruption also foresees the possibility of its application in those cases of human trafficking that can be classified as criminal offences of organised crime (Article 2, paragraph 1, item 1).

## **The principle of the non-punishment of victims**

The non-punishment principle, when it comes to absolute and compulsive force or threat, should always be interpreted in connection with the ways of committing the criminal offence of human trafficking prescribed by Article 388 of the Criminal Code, in particular to coercion. Persons who are victims of human trafficking act without any real autonomy of will (they do not have freedom of will or such freedom is limited due to the methods used by the human traffickers), they act under coercion that excludes or limits their freedom of decision, which means that they cannot be held responsible for the committed offences – they are lacking guilt as an element of the general concept of a criminal offence.

The principle of the non-punishment of human trafficking victims is determined by the Council of Europe Convention on Action against Trafficking in Human Beings as follows: "Each party should, following the basic principles of its legal system, foresee the possibility of not imposing penalties on victims for their participation in illegal activities, to the extent in which they were forced to do so". By adopting the Law on the Ratification of the Council of Europe Convention ("Official Gazette of the RS – International treaties", no. 19/2009), the Republic of Serbia undertook to implement this provision under the basic principles of its legal system.

The first basis for the application of the principle of the non-punishment of victims is provided for by the Criminal Code, whose Article 388 defines the criminal offence of human trafficking, foresees exploitation to commit a criminal offence, and that in such a case the victim cannot be prosecuted for a criminal offence resulting from that status.

The Criminal Code also offers the possibility of applying the principle of the non-punishment of human trafficking victims, namely the provisions from Articles 18-21, which refer to offences of minor significance, self-defence, extreme necessity, force and threat ("Official Gazette of the RS", no. 85/2005, 88/2005 – correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019).

By applying Article 23 Mental Incompetence, provided for by the same law, and with the help of expert witnesses, it is possible to assess whether the victim could really understand the gravity of the committed criminal offence, including in relation to the situation in which he/she was.

Another national document that could be of importance for the application of the principle of non-punishment is the Instructions on the Conditions for Granting Temporary Residence to Foreigners who are Victims of Human Trafficking, which stipulates: If the victim of human trafficking has entered the country or resides in the country illegally, the competent authority is obliged, before starting the procedure, to establish the facts or circumstances that reduce the criminal or misdemeanour liability of the victim.

Finally, the provision on Deferring Criminal Prosecution, Article 283 of the Criminal Procedure Code ("Official Gazette of the RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the CC and 62/2021 – decision of the CC) should also be taken into account, where the principle of opportunity provides for the possibility for the public prosecutor to dismiss the criminal complaint against the person who committed the criminal offence that is causally related to the status of the victim by ordering him/her to perform one or more obligations provided for in Article 283 of the CPC. The same law, in Article 284, provides for the dismissal of a criminal complaint by the public prosecutor if the reported criminal offence is not an offence that is prosecutable *ex officio*.

## CHAPTER 5 POSITION OF VICTIMS IN INTERNATIONAL AND EUROPEAN LAW

### Introduction

This chapter offers an overview of the position of victims of trafficking in human beings in international law. It first discusses the right of victims to assistance and protection, and the question of who should be considered a victim with the corresponding rights. This is followed by a discussion of the obligation of States to provide an effective remedy to victims of human rights violations. This chapter aims to provide background information to lawyers when representing victims and defending their interests. In the next chapter, the rights of victims in criminal proceedings will be discussed in more detail.

### Right to assistance and protection

Although trafficking is recognised as a serious crime and a violation of human rights, in many cases trafficked persons, if recognised as such, are primarily seen as witnesses and as tools for law enforcement. In many countries, for example, access to assistance and protection depends on the willingness of the victim to cooperate with the authorities and their usefulness for the criminal proceedings. Often measures do not respect the basic human rights and dignity of trafficked persons. Examples are mandatory medical examinations and HIV testing, compulsory counselling, restriction of the victim's freedom of movement, or contacting the victim's family and informing officials in their country of origin without their prior consent.<sup>64</sup>

The willingness of victims to report to the police and cooperate in criminal proceedings is strongly related to their general treatment by the police and judicial authorities, the protection of their safety and privacy, the availability of information and assistance, and the risks they incur of being arrested, detained, prosecuted or deported for offences arising out of their status of being trafficked, such as illegal entry or stay, involvement in the sex industry and/or the use of false documents. Research shows that victims who are treated well are more likely to cooperate and that law enforcement officials are most successful in securing convictions when the rights of the trafficked person are respected.

In recent years there has been increasing attention to the needs and rights of victims of trafficking. While most of the victim-related provisions in the UN Protocol are not binding, the more recent Council of Europe Trafficking Convention, the EU Trafficking Directive 2024 and the EU Victims Directive (Dir 2012/29/EU) establish a set of minimum standards of assistance and protection that State Parties are obliged to provide to victims, regardless of their willingness to cooperate in criminal proceedings and/or to act as witnesses.

According to all three instruments, assistance should be provided on a consensual and informed basis and should include at least appropriate and safe accommodation, psychological and material assistance, access to emergency medical treatment, translation and interpretation services, counselling and information on their legal rights and the services available to them, assistance to defend their rights and interests in criminal proceedings and, in the case of children, access to education.

<sup>64</sup> See e.g. *Trafficking in Human Beings*, Report of the EU, Experts Group, Brussels, 2004. Available at: <https://documentation.lastradainternational.org/doc-center/1049/report-of-the-experts-group-on-trafficking-in-human-beings>.

State Parties must also ensure that trafficked persons have access to compensation for the damages they have suffered, including claims for lost earnings from the traffickers (see box ECtHR *Krachunova v Bulgaria*, page 34). Moreover, due account must be taken of the victim's safety and protection needs before, after and during proceedings.

According to the EU Trafficking Directive 2024, assistance should be provided as soon as there is a reasonable grounds indication for believing the person might be a victim of trafficking (Art. 11(2)). To avoid secondary victimisation Member States should take measures to avoid unnecessary repetition of interviews during investigation, prosecution or trial; visual contact between victims and defendants, including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies; the giving of evidence in open court; and unnecessary questioning concerning the victim's private life (Art. 12(4)).

The EU Victims Directive (Dir 2012/29/EU) lays down a set of binding rights for victims and obligations for states. The Directive aims to ensure that victims and their family members are recognised and treated in a respectful and non-discriminatory manner tailored to their individual needs. Key rights are the right to understand and be understood; the right to information about their rights, their case and the services available to them; the right to confidential support free of charge; the right to participate in criminal proceedings and be informed about the different steps in the proceedings; and the right to protection from further harm by the offender or the criminal justice system and to an individual assessment of their protection needs. Family members of victims who died as a result of the crime have the same rights as direct victims, including the right to information, support, protection and compensation. Family members of surviving victims also have the right to support and protection.

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking contain various recommendations on assistance and protection, among others to ensure that legal proceedings involving trafficked persons are not prejudicial to their rights or wellbeing.

The fact that trafficked persons, regardless of their willingness or ability to cooperate in legal proceedings, should have access to help and support has been reconfirmed by the Supervisory Committee of the Women's Treaty (CEDAW) in its 2010 Concluding Observations on the Netherlands:

*"The Committee also reiterates its concern that victims of trafficking who do not cooperate with the police in the investigation and prosecution of traffickers are excluded from the protection of the so-called B-9 regulation. The Committee considers that by imposing this requirement, the Government of the Netherlands seriously hampers its capacity to reach and support victims of trafficking with adequate help"*

It therefore urges the Netherlands

*"to comply with its obligations to protect all victims of trafficking regardless of their willingness or ability to cooperate in legal proceedings".*  
(CEDAW/C/NLD/CO/5)



## The concept of 'victim'

The term victim in itself is not without problems. Many service providers and people who have been trafficked prefer "trafficked person" or "survivor". They do not want to use or be labelled as "victim", because they feel that its emphasis on vulnerability, passivity and powerlessness fails to recognise the dignity, courage, aims and choices of the individuals concerned.

But even if the term victim is accepted, it is important to keep in mind that the fact that a person is a victim of a crime does not mean that they can be completely identified with their status of victim or should be patronised in any way.

In the framework of legal procedures, it is, however, important to discuss the legal definition of victim. According to the Council of Europe Trafficking Convention "victim of trafficking" means "any natural person who is subject to trafficking in human beings [as defined in the convention]".

However, some crimes, including trafficking, have an impact that reaches beyond the immediate victim. This problem is addressed by the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which includes in the definition of victim, where appropriate, the immediate family and dependents of the direct victim. It also explicitly notes that a person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.

### Definition of victim

#### Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

- 1) Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
- 2) A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

#### Council of Europe Trafficking Convention

Victim of trafficking means  
"any natural person who is subject to trafficking in human beings [as defined in the convention]".

### EU Victims Directive 2012/29/EU

#### a. Victim means

- (i) a natural person who has suffered harm, including physical, mental, or emotional harm or economic loss, which was directly caused by a criminal offense.
- (ii) family members of a person whose death was directly caused by a criminal offense and who suffered harm as a result of that person's death. (b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings, and the dependants of the victim.

Fundamental rights of victims under the Declaration are access to justice, legal redress and compensation. States and their authorities are responsible for minimising the obstacles that victims face in seeking justice and support them through the justice process.

The EU Victims Directive defines victim as "a natural person who has suffered harm, including physical or mental or emotional harm or economic loss, which was directly caused by a criminal offence". It also extends rights to family members of the victim.

### Right to an effective remedy

Under international human rights law States have an obligation to provide victims of human rights violations with adequate and appropriate remedies and to protect them from further harm.<sup>65</sup> The provision of adequate remedies serves multiple purposes. It offers the victim payment or reparation for injury, loss or harm and is an essential element of access to justice. It helps to empower the victim, contributes to their recovery and reduces the risk of re-trafficking. At the same time it serves as punishment and deterrence of traffickers.<sup>66</sup>

The right to a remedy is a human rights norm widely recognized in the major international and regional human rights instruments. The International Covenant on Civil and Political Rights (ICCPR), for example, requires States Parties to ensure "that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy" (Art. 2(3)). A similar provision is found in Art. 13 of the European Convention on Human Rights (ECHR).

As stated in Guideline 9 of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking:

*"Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies."*

<sup>65</sup> OHCHR (2010), *Commentary Recommended Principles and Guidelines on Human Rights and Human Trafficking*, pp. 141-151.

<sup>66</sup> Joint UN agencies (2011), *Prevent Combat Protect Human Trafficking*, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, p. 86.

Key international instruments on the right to an adequate remedy are the *2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation*,<sup>67</sup> and the *1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.<sup>68</sup> Both are resolutions and not legally binding instruments, yet they are politically binding.

According to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation*, adequate reparations include:

- restitution;
- compensation;
- rehabilitation;
- satisfaction;
- guarantees of non-repetition.

**Restitution** aims at restoring the situation that existed before the violation. Measures may include release from detention (whether such detention is imposed by the traffickers, the State or another entity<sup>69</sup>), return of property, such as identity and travel documents and other personal belongings, safe and voluntary repatriation to one's place of residence (where applicable and if it is in the interest of the trafficked person), recognition of legal identity and citizenship, and assistance and support to facilitate social integration.

**Recovery (rehabilitation<sup>70</sup>)** recognizes the need to ensure that persons who have suffered a violation of their human rights have their status and position "restored" in the eyes of the law and community. It includes medical and psychological care, as well as legal and social services. By definition trafficking involves physical, sexual or psychological violence, coercion, threats and intimidation which may have severe physical and psychological health consequences for trafficked persons.<sup>71</sup>

**Compensation** is payable for economically assessable damage to the extent that such damage cannot be made good by restitution. It can cover a wide range of injury, loss or damage caused by the offender, including loss of earnings (see also ECtHR *Krachunova v Bulgaria*, appl.no. 18269/18).

**Satisfaction & guarantees of non-repetition:** Satisfaction can be addressed by ensuring that the violations of the victim's rights are properly acknowledged and that 'justice is done'. Guarantees of non-repetition are a particularly important component of the right to a remedy in the case of trafficking, owing to the danger and harm caused by re-trafficking. This includes the obligation of states to take all necessary measures to protect the victim from future trafficking, as well as the effective prosecution and sanctioning of the traffickers.

<sup>67</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN GA resolution 60/147, 15 December 2005). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

<sup>68</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN GA resolution 40/34, 29 November 1985). Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

<sup>69</sup> See for the issue of unlawful detention of trafficked persons in State or private run shelters or rehabilitation centres: Anne Gallagher & Elaine Pearson (2008), Detention of Trafficked Persons in shelters. A legal and policy analysis.

<sup>70</sup> As the former UN Special Rapporteur on Trafficking, Joy Ngozi Ezeilo, notes in her report, the term recovery should be preferred to rehabilitation as to avoid re-victimization of trafficked persons by labeling them as persons in need of 'rehabilitation'.

<sup>71</sup> See, for example, *Stolen Smiles. The physical and psychological health consequences of women and adolescents trafficked into Europe*, Cathy Zimmerman et al, the London School of Hygiene and Tropical Medicine, 2006.

### Procedural rights

The right to an effective remedy contains both substantive elements and procedural rights needed to be able to access remedies.<sup>72</sup> These include:

- The right to information about available remedies in a language the victim understands;
- The right to legal assistance, including to pursue compensation;
- The right to remain in the country during legal proceedings, including those for claiming compensation;
- Protection against unlawful interference with the victim's privacy and safety from intimidation and retaliation before, during, and after proceedings;
- The right to play a meaningful role in legal proceedings, to be heard and to act;
- In the case of children: the appointment of a guardian is.

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<sup>72</sup> See Joy Ngozi Ezeilo, Special Rapporteur on trafficking in persons, especially women and children (2011), *Report on the right to an effective remedy for trafficked persons*, 13 April 2011 (A/HRC/17/35). Available at: <https://www.right-docs.org/doc/a-hrc-17-35/>.

## CHAPTER 6. RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS AND BEYOND

### Introduction

This chapter discusses the rights of victims before, during and after criminal and other legal proceedings, both in international law and in Serbian law. Lawyers have a crucial role in realising these rights. They can explain the proceedings, prepare the victim for interviews and court hearings, and protect their rights and interests during criminal and other legal proceedings. Even if criminal proceedings are generally extremely painful for victims, a good explanation and preparation can mitigate the harmful effects. In section 2 an overview is given of the key international standards concerning the treatment of victims and witnesses of trafficking. In section 3 these are explained more in detail. Throughout the chapter, several boxes provide lawyers with guidelines and tips.

### Key international standards on the treatment of victims of trafficking

#### Information & legal assistance

- Trafficked persons are provided with information on relevant judicial and administrative procedures from their first contact with the competent authorities (UN Traf Prot Art. 6; CoE Traf Conv. Art. 12 & 15; OHCHR Guidelines no. 6.5; EU Victims Dir. Art. 4 and 6)
- Trafficked persons are provided with counselling and information, in particular about their legal rights, in a language they understand (UN Traf Prot Art. 6(3)(b); CoE Traf Conv Art. 12; EU Victims Dir. Art. 4 & 9)
- Trafficked persons have access to legal assistance and free legal aid under the conditions provided by domestic law, for the duration of any criminal, civil or other actions against the traffickers, including for the purpose of obtaining compensation (Art. 15(2) CoE Trafficking Conv.; Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 12; OHCHR Guidelines, Principle 9 & Guideline 9(3); EU Dir. THB 2024 Art. 12(2); EU Victims Dir. Art. 13)
- Trafficked persons have access to translation and interpretation services (CoE Traf Conv Art. 10, 12 & 28; OHCHR Guidelines no. 8; EU Dir. THB 2024 Art. 11; EU Victims Dir. Art. 7)
- Trafficked persons have access to (specialised) victim support services (EU Victims Dir. Art. 8 & 9)
- Trafficked persons are provided with information on available remedies (UN Traf Prot. Art. 6; CoE Traf Conv. Art. 15(1); OHCHR Guidelines, Principle 9 & Guideline no. 4(8) & 9(2); Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 12; EU Victims Dir. Art. 12)

#### Protection of safety

- Measures are taken to protect trafficked persons from further harm, including secondary and repeat victimisation and to protect their safety (UN Traf Prot. Art. 6; CoE Traf Conv Art. 12 & 28; OHCHR Guidelines no. 8; EU Residence Dir. 2004/81/EC Art. 7; EU Dir. THB 2024 Art. 12(2); EU Victims Dir. Art. 18, 20, 22 & 23).
- Measures take into account the age, gender and special needs of victims of trafficking (UN Traf Prot Art. 6(4); EU Victims Dir. Art. 22).

- Child victims are given special protection, taking into account the best interests of the child (CoE Traf Conv Art. 28, EU Victims Dir. Art. 24)

### **Protection of privacy**

- The privacy and identity of trafficked persons shall be protected. This includes setting standards for the storage of personal data and encouraging the media to protect the private life and identity of victims (UN Traf Prot Art. 6(1); CoE Traf Conv Art. 11; ICCPR Art. 17; OHCHR Guidelines no. 6 & 5.8; CoE Convention No. 108<sup>73</sup>; ECHR Art. 8; EU Victims Dir Art. 21; GDPR Art. 9)
- The identity of trafficked persons is not publicly disclosed and their privacy is respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons are given full warning, in advance, of the difficulties inherent in protecting identities and are not given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard (OHCHR Guidelines no. 6.6).

### **Trafficked persons as witnesses**

- Trafficked persons are given assistance to enable their views and concerns to be presented and considered at appropriate stages of the criminal proceedings (UN TOC Art. 25, UN Traf Prot Art. 6; CoE Traf Conv Art. 12, EU Victims Dir. Art. 10)
- Trafficked persons who act as witnesses (and where appropriate their family and others close to them) are provided with effective protection from harm, threats, potential retaliation or intimidation by traffickers and associated persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. This may include giving testimony in a way that ensures their safety (e.g. through video links), identification of a safe place in the country of destination; protection of identity during legal proceedings; and identification of options for continued stay, resettlement or repatriation (UN TOC Art. 25; CoE Traf Conv Art. 28 & 30; OHCHR Guidelines no. 6, 4.10 & 5.8; Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 12; EU Dir. THB 2024 Art. 12; EU Victims Dir. Art. 18 & 22)
- An individual assessment is carried out to identify specific protection needs and to determine their vulnerability to secondary and repeat victimisation, intimidation and retaliation and what special protection measures they require. This applies explicitly to victims of trafficking, organised crime and sexual violence and to children (EU Victims Dir. Art. 22, 23 & 24)
- Legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being (OHCHR Guidelines 6.4)
- Interviews with trafficked persons are kept to a minimum, victims may be accompanied by their legal representative and a person of their choice, medical examinations are kept to a minimum and only when necessary (EU Victims Dir. Art. 20)
- Trafficked persons receive specific treatment aimed at preventing secondary victimization by avoiding, as far as possible and in accordance with by national law, the following:
  - › unnecessary repetition of interviews during investigation, prosecution or trial;
  - › visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
  - › the giving of evidence in open court; and
  - › unnecessary questioning concerning the victim's private life

(EU Dir. THB 2024 Art. 12(4); EU Victims Dir. Art. 19, 20 & 23)

<sup>73</sup> CoE Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (CETS No. 108) and its Protocol (ETS No. 181). Available at: <https://www.coe.int/en/web/data-protection/convention108-and-protocol#:~:text=The%20Convention%20for%20the%20Protection,in%20the%20data%20protection%20field.>

**Right to adequate and appropriate remedies**

- Trafficked persons are provided with information on available remedies (UN Traf Prot. Art. 6; CoE Traf Conv. Art. 15(1); OHCHR Guidelines, Principle 9 & Guideline no. 4(8) & 9(2); Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 12; EU Victims Dir. Art. 4)
- Trafficked persons have an enforceable right to effective and appropriate remedies. Remedies may be criminal, civil or administrative in nature (ECHR Art. 13; ICCPR Art. 2; CERD Art. 6; CEDAW General Recommendation No. 19; Basic Principles and Guidelines on the Right to Remedy and Reparation, para. 12; Declaration of Basic Principles of Justice; OHCHR Guidelines, Principle 17 & Guideline 9(1); EU Charter Art. 47)
- There is a legislative and practical possibility for trafficked persons to obtain compensation for damages suffered. This includes both material and non-material damages (UN TOC Art. 14(2) & 25(2); UN Traf Prot Art. 6(6) ; CoE Traf Conv Art. 15(3); ICRMW Art. 25(3); ILO C 97 & 143; OHCHR Guidelines, Principle 17 & Guideline 4(9)); EU Dir 2004/80/EC on Compensation; EU Dir. THB 2024 Art. 12 (2) & 17; EU Victims Dir Art. 16; ECHR *Krachunova v. Bulgaria*, Appl. No. 18269/18)
- There is a provision for payment of compensation from the State where such compensation cannot be obtained from the trafficker, i.e. through a Victim Fund or a similar instrument. Such fund may be financed through the use of confiscated assets (CoE Traf Conv Art. 15(4); OHCHR Guidelines 4.4; EU Dir THB Art. 17; EU Assets Recovery Dir Art. 18 & 19)
- Trafficked persons have a right to be paid for the work they have performed, independent of the lawfulness of their stay (ILO C 97 & 143; ICRMW Art. 25(3); EU Directive on sanctions against employers of illegally staying 3th country nationals)
- There are provisions for confiscation of the proceeds of trafficking. A priority option is to use confiscated assets is to compensate victims (UN TOC Art. 25(2); OHCHR Guidelines, Principle 16 & Guideline 4(4); EU Assets Recovery Dir Art. 18 & 19)

**Non-punishment and non-application of penalties**

- Trafficked persons are not detained, charged, prosecuted or punished for violations of immigration law or for their involvement in criminal or administrative activities they have been compelled to commit as a direct consequence of their being trafficked (CoE Traf Conv Art. 26; OHCHR Guidelines, Principle 7, Guideline no. 2.5 & 4.5; EU Dir THB 2024 Art. 8 )
- States provide for the possibility of not prosecuting or imposing penalties on victims of trafficking (CoE Traf Conv Art. 26); EU Dir. THB 2024 Art. 8)

**Non-detention of trafficked persons, including children**

- Trafficked persons should not be held in immigration detention centres, other forms of custody or vagrant houses (OHCHR Guidelines 2.6 and 6.1)
- Trafficked persons should not be detained by law enforcement authorities for any reason other than their immediate physical protection. They are never detained for reasons of collecting evidence, including statements (ICCPR, Art. 9 & 12)
- Trafficked persons should not be detained by welfare authorities, unless they are in agreement (in which case they are not detained) or unless i) the detention is for a specific purpose directly related to the immediate needs of that victim and ii) for the shortest possible period of time (ICCPR, Art. 9 & 12; ECHR Art. 5)
- Trafficked children should not be placed in closed facilities unless it can be demonstrated that it is in their best interest and there is no reasonable alternative for protection, it is for the shortest possible period and is subject to periodic review (CRC Art. 25 and 37(b)).

**Reflection period and temporary residence**

- Trafficked persons are granted a reflection period of at least 30 days and a temporary residence permit for the duration of criminal and/or other legal procedures. During this period, they have access to material, medical, psychological and legal assistance. If granted a temporary residence permit they also should have access to the labour market, vocational training and education (CoE Traf Conv Art. 12-14; EU Directive 2004/81/EC on a temp residence permit Art. 6-9; EU Dir THB 2024 Art. 11 (6)).

### **Non-refoulement and the right to seek asylum and/or international protection**

- Trafficked persons are not returned to another state where there is a serious risk they will be subjected to persecution, torture or other forms of ill-treatment (UN Traf Prot Art. 14; CoE Traf Conv Art. 40(4); ECHR Art. 3; 1951 Refugee Conv Art. 33; CAT Art. 3(1); ICCPR Art. 7; CRC Art. 22; OHCHR Guidelines no. 2.7; European Conv on Extradition Art. 3(2) )
- Trafficked persons have the right to seek and enjoy asylum and have access to fair and efficient asylum procedures, no matter their means of entry, the use of fraudulent travel documents, or their willingness to give evidence against their exploiters (UN Traf Prot. Art. 14; CoE Traf Conv Art. 40(4); 1951 Refugee Conv Art. 31 & 33; CAT Art. 14; OHCHR Guidelines no. 1.6 & .2.7; UNHCR Guidelines on international protection, para. 45-50; EU Dir THB 2024 Art. 11; UNHCR 2003 Agenda for Protection; Art. 18 EU Charter)
- States should ensure that procedures are in place for receipt and consideration of asylum claims and/or claims for international protection from trafficked persons (UN Traf Prot Art. Art. 14: CoE Traff Conv Art. 40(4); OHCHR Guidelines no. 1.6 and 2.7; EU Dir. THB 2024 Art. 11a)
- Trafficked persons may qualify for international refugee protection if the acts inflicted on them by their traffickers would amount to persecution on a 1951 Refugee Convention ground and in the absence of effective national protection (UNHCR Guidelines on international protection; OHCHR Guidelines no. 1.6 and 2; EU Dir. 2004/83/EC on international protection; EU Dir. 2005/85/EC on granting refugee status)
- States use a gender-sensitive interpretation of the 1951 Refugee Convention, in particular the recognition of gender and gender based violence. Women and children trafficked for the purpose of forced prostitution or sexual exploitation are considered refugees when their State is unable or unwilling to provide protection against such harm or threats of harm (UNHCR 2002 Guidelines on Gender-related persecution; CEDAW Gen. Rec. 19 on violence against women)
- Trafficked persons are informed about the possibility of receiving international protection in a language they understand and in an age- and gender-sensitive manner (UNHCR *Guidelines on international protection*; Group of Experts on Action against Trafficking in Human Beings (GRETA) (2020), *Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection* (GRETA(2020)06); OSCE (2014), *Guiding Principles on Human Rights in the Return of Trafficking Persons*; EU Dir. THB 2024 Art. 11a & 11(6))
- Anti-trafficking measures do not interfere with or otherwise negatively affect established rights, including the right of trafficked persons to seek and enjoy asylum and the principle of non-refoulement (CoE Traf Conv Art. 40(4); UN Traf Prot. Art. 14; OHCHR Guidelines no. 1.6)

### **Return of trafficked persons**

- Trafficked persons are protected from summary deportation or return when there are reasonable grounds that this would constitute a risk for the person or his or her family (CoE Traf Conv Art. 16; OHCHR Guidelines, Principle 11 & Guideline 4.6)
- The status of any legal proceedings related to that person being a victim of trafficking is taken into account in any decision on repatriation (UN Traf Prot Art. 8(2); CoE Traf Conv Art. 16)



- The safety of the trafficked person and their family, including the risk of re-trafficking, is taken into account in any decision on repatriation (UN Traf Prot Art. 8(2); CoE Traf Conv Art. 16(2); OHCHR Guideline no. 6.7)
- The return of a trafficked person is, where possible, voluntary and takes place with due regard for the rights, safety and dignity of the trafficked person and the status of legal proceedings (UN Traf Prot Art. 8(2); CoE Traf Conv Art. 16(2); OHCHR Guidelines, Principle 11 & Guideline 6.7)
- States ensure, in partnership with non-governmental organisations, that trafficked persons who return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social reintegration and prevent their re-trafficking (CoE Traf Conv Art. 16(5); OHCHR Guidelines no. 6.8)
- Repatriation programmes avoid re-victimization and respect the right to privacy of the victim (CoE Traf Conv Art. 16(5))
- Victims who wish to return are permitted to do so without undue or unreasonable delay (UN Traf Prot Art.8(3)-(4) and Art.9(1)(b); CoE Traf Conv Art.16(1) and (3)).

### Victims' rights one by one

**Core victim rights include the right to give and receive information, the right to legal assistance, the right to protection of their privacy and safety, the right to compensation, and the right to not being punished for criminal or other unlawful acts committed as a direct consequence of their being trafficked. In particular, it should be ensured that the victim is protected from risks of retaliation and/or intrusion of their privacy.**

A key question is the implementation of victims' rights, the role and responsibilities of the different actors in the criminal justice process and the obstacles they face. Some challenges faced in Serbia are the lack of access to a free and qualified lawyer, the lack of trust of victims in the criminal justice system, the general attitude towards sex workers, the limited protection that can be offered to victims, the need to repeatedly interrogate the victim, the lack of protection from confrontation with the suspect(s), the length of the criminal proceedings and the need to ensure closed-door trials for all trafficking cases.

### Right to legal representation

**Victims have the right to a lawyer to protect their rights, to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for the damage suffered.**

Most trafficked persons have no legal training and no experience in legal proceedings. Access to legal aid is crucial for them to be able to exercise their rights. A lawyer should be appointed from the very first contact with the authorities (and preferably even before that point). It is recommended that the victim has the same lawyer during the entire proceedings.

The need to provide legal and other assistance to trafficked persons throughout any criminal, civil or other proceedings against alleged traffickers is emphasized in Principle 9 of the OHCHR Guidelines. The underlying assumption is that trafficked persons have

an important role to play – and a legitimate interest – in legal proceedings against their exploiters.

Both the UN Trafficking Protocol and the CoE Trafficking Convention contain provisions on legal assistance and representation. The Explanatory Memorandum of the latter refers to the ECtHR which ruled that in certain circumstances there is a right to free legal assistance under art. 6(1) ECHR (*Airey v. Ireland*, Appl. No. 6289/73, 9 October 1979). Effective access to justice may require free legal assistance where someone is unable to present their case properly and satisfactorily without the assistance of a lawyer. (*Golder v. UK*, Appl. no. 4451/70, 21 February 1975).

The EU Trafficking Directive (2011/36/EU 2024) requires Member States to provide victims, without delay, with legal counselling and legal representation, which should be free from charge if the victim does not have sufficient financial resources (Art. 12(2)).

### The right to legal aid and support in national legislation

In the wording of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Offences in the Republic of Serbia for the 2020-2025 period<sup>74</sup>, with the conclusion that the normative framework is largely aligned with the provisions of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, it is emphasised that certain changes are also necessary in the part related to the improvement of the right to legal aid. Although the provision of Article 23, paragraph 3 of the Law on the Organisation of Courts<sup>75</sup> states that the higher court also provides assistance and support to witnesses and injured parties, it should also be borne in mind that the employees of the support services established at the higher courts do not discuss the specific content of the testimony with the victims and witnesses, nor provide legal assistance,<sup>76</sup> as well as that these services are still not fully functional in all higher courts.<sup>77</sup> From 1 October 2019, the Law on Free Legal Aid<sup>78</sup> has entered into force, which also recognises victims of human trafficking as potential beneficiaries.

As part of the decisions created in order to protect particularly sensitive witnesses, the CPC foresees the possibility for the public prosecutor, the president of the panel or a single judge, acting ex officio or at the request of the parties or the witness, to issue a decision on granting the status of a particularly sensitive witness, and if it is believed that it is necessary to protect the interests of a particularly sensitive witness, to pass a decision on appointing a representative to the witness (at the same time as passing a decision on determining the status, i.e. after that – if the authority conducting the proceedings learns about reasons that were not previously known, or if new reasons or circumstances appear). The public prosecutor or the president of the court shall appoint an ex officio defence counsel, according to the order on the roster of attorneys provided by the competent bar association (Article 76).

Pursuant to Article 12, paragraph 2 of the Law on the Protection Programme for the Participants in Criminal Proceedings, in the

<sup>74</sup> Adopted by the Government of the Republic of Serbia on 30 July 2020 (05 Number: 011-6103/2020-2)

<sup>75</sup> "Official Gazette of the RS", no. 30/18)

<sup>76</sup> The National strategy for exercising the rights of victims and witnesses of criminal acts in the Republic of Serbia for the period 2020-2025, p. 12

<sup>77</sup> Under Article 86, paragraph 4 of the Court Rules of Procedure ("Official Gazette of the RS", no. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 – compare, 39/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019 and 93/2019), it is determined that the premises of the Service for assistance and support to witnesses and injured parties and waiting rooms for witnesses and injured parties shall, as a rule, be located in the immediate vicinity of the premises for holding hearings (courtrooms), while Article 88, paragraph 2 prescribes that the president shall designate the premises where the parties, lawyers and other persons are not allowed to enter (clerk's office, archives, accounting, premises of the Service for assistance and support to witnesses and injured parties, computer centre, etc.).

<sup>78</sup> "Official Gazette of the RS", no. 87/2018

implementation of the Protection Programme, the Protection Unit provides the protected person with the necessary economic, psychological, social and legal assistance.

In 2010, ASTRA initiated the establishment of an informal network consisting of 30 lawyers sensitised and trained to represent victims of human trafficking, born from the need to provide victims from all over Serbia with access to specialised legal support and assistance. Members of the network meet once a year and exchange experiences concerning the cases on which individual lawyers have worked, as well as the practices of the European Court of Human Rights in connection with the topic of human trafficking and related offences.

## Right to information

**Victims have the right to information about their status, their rights and the relevant judicial and administrative procedures, including information on available remedies.**

Transparency of procedures and honesty of information are paramount. Trafficked persons have often been deceived and exploited. It is important that the victim is provided with full and accurate information in order to be able to make informed decisions. The provision of information should take into account the possible impact of psychological trauma and/or the person's cognitive abilities. For example, victims who are traumatised may find it difficult to process information adequately.

When the victim has expressed a wish to be kept informed of the proceedings following charges being brought, the police should, to the best of their ability, keep the victim informed of the progress and disposition of the case until the file is sent to the prosecutor. From that point on, the prosecutor should be responsible for keeping the victim informed about the progress of the case. Lawyers can play an important role as "watchdogs" in this respect.

## The right to information in national legislation

The Criminal Procedure Code establishes the victim's (injured party's) right to information in various ways through numerous norms. Article 50, under the heading "Rights of the Injured Party", stipulates (in paragraph 1) that the injured party has the right to:

- 5) be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor;
- 7) be advised about the possibility of assuming criminal prosecution and representing the prosecution;
- 11) be notified about the outcome of the proceedings and be served the final judgment..

The public prosecutor and the court shall inform the injured party of the rights referred to in paragraph 1 of this Article (paragraph 2). The most frequently mentioned right is the right to a restitution claim, about the existence and possibility of realisation of which the public prosecutor and the court must inform the injured party. What should also be ensured is to inform the victim about the defendant's release from custody, prison or his/her potential escape. The Law on the Execution of Criminal Sanctions stipulates that the Institute will inform the victim when the convicted person is released from serving a prison sentence, i.e. conditionally released, as well as in the case of his/her escape from prison.

The Law on Police<sup>79</sup>, in Article 35, under the title "Protection of Rights and Provision of Legal Assistance to Citizens", stipulates that the Police, in the performance of their duties, are obliged to:

- provide citizens with information and advice significant for their personal and property safety, as long as it does not contravene the law and does not jeopardise the performance of police tasks;
- a citizen whose personal or proprietary right has been infringed may address the Police for the protection of such a right<sup>80</sup> if in the specific case, no other legal protection is provided and if the infringement of such right is in relation to his/her personal or property safety.

It may rightfully be said that the obligations of state authorities to act to ensure the victim's right to information, which is fully defined in the national legislation in accordance with the standards set by the EU directives, are only present in the Law on the Prevention of Domestic Violence. Considering the content of the provision of Article 4 of this law, which states that this law also applies to cooperation on the prevention of domestic violence (Articles 24-27) "for certain criminal offences, including human trafficking" (Article 388 of the Criminal Code), as well as to providing protection and support to victims of criminal offences from paragraph 1 of this Article (Article 4, paragraph 1, item 17 and Article 4, paragraph 2). Unfortunately, this only applies through the imposition of a way of dealing during first contact, but not in other situations that are highly significant for victims of human trafficking in this context. This was done a bit more precisely by informing her about the type of urgent measure that was ordered against the offender, but not in the case of notification about the extension of the measure by the court, about the expiration date, etc.

- State authorities and institutions competent for the application of this Law shall be obliged, during the first contact with a victim of domestic violence or of a criminal offence set forth in this Law, to provide the victim with complete information on the authorities, legal entities and associations that provide protection and support for the victim, in the manner and in a language that the victim of violence understands. – Law on the Prevention of Domestic Violence<sup>81</sup>, Article 29.
- The competent police officer shall deliver the order, immediately upon it being served, to the basic public prosecutor in the territory containing the permanent or temporary residence of the victim, to the centre for social work and the group for coordination and cooperation, and the victim of violence shall be informed in writing of the type of urgent measure being imposed. – Law on the Prevention of Domestic Violence, Article 17, paragraph 7.

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<sup>79</sup> "Official Gazette of the RS", no. 6/2016, 24/2018 and 87/2018.

<sup>80</sup> If the procedure aimed at protecting the right referred to in paragraph 2 of this Article falls under the competence of another authority, the Police shall be obliged to promptly forward the request to the competent authority and inform the applicant thereof.

<sup>81</sup> "Official Gazette of the RS", no. 94/2016 and 10/2023 – other law; This law also applies to cooperation in the prevention of domestic violence (Articles 24-27) in criminal proceedings for criminal offences: trafficking in human beings (Article 388 of the Criminal Code); Article 4, paragraph 1

If the victim does not speak or understand the Serbian language well, he/she has the right to a translator and to have all relevant information, especially those concerning his/her rights, delivered to him/her in a language he/she understands. This right is guaranteed during the entire recovery process and in contact with all institutions.

During the first interview at the Centre for Social Work, ASTRA's client P.P. was given ASTRA's contact data and the representatives of ASTRA explained in detail what services and help she could get. After establishing contact with her, ASTRA realised that she was a potential victim of human trafficking. In addition to the domestic violence she suffered, her parents arranged a marriage for her in exchange for money and wanted to sell her to another family. Fortunately, she escaped. With the intervention of the ASTRA's Victim Support Team, and in cooperation with the Centre for Social Work, she was placed in a Safe House and provided with all other necessary forms of support.

**ASTRA ID: 4687**

### Right not to cooperate with law enforcement

Victims have the right to refuse cooperation with the prosecution authorities.

Pressing charges and/or acting as a witness can have far-reaching consequences for victims. It can expose them, their children and other loved ones to intimidation and reprisals from the perpetrators and increases the risk of their situation becoming publicly known, with all the consequences that this entailed. In addition, the legal process itself is extremely burdening and risks re-traumatising the victim. These concerns must be fully understood and respected. Victims may also need time before they can fully consider their position and options. If the victim needs more time to make an informed decision about pressing charges and/or acting as a witness, this time should be given. This will reduce the likelihood of re-victimisation of the victim and is likely to result to better evidence and a stronger witness in the long term. If the victim decides, for whatever reason, not to press charges or to act as a witness, this decision should be respected and no undue influence should be exerted on her or him.

### Right to protection of privacy

Victims have the right to protection of their private lives and identities. They have the right to request that their lives and identities are protected during criminal proceedings and that the press and public are excluded from the court room.

A major fear for many victims, particularly if they have been trafficked into the sex industry, is that what has happened to them will become public knowledge. Public exposure can lead to stigma and social rejection and can effectively prevent the victim from rebuilding their lives. Protection from intrusion of their privacy is important at every stage of the process. If victims, for example,

choose not to inform their immediate environment (family, partner, friends, neighbourhood, village) of their predicament, this choice should be respected at all times. Contacts with the victim should be made in a way that respects this wish, for example through the services of a victim support organisation.

It is generally preferable for the trial to take place behind closed doors, especially in cases of trafficking for prostitution and/or cases involving sexual offences. This is to protect the privacy of the victim and, in some cases, to prevent the public exposure of intimate details of the victim's personal life, as well as for the safety of the victim.

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking call on states to ensure:

*"...that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard"* (Guideline 6).

In addition, Art. 8 of the ECHR, Council of Europe Convention No. 108<sup>82</sup> and the General Data Protection Regulation (GDPR) are relevant. Both the CoE Convention and the GDPR recognise certain categories of personal data that pose a greater risk to a person's private life than 'regular' personal data and therefore require additional protection. As a general rule the processing of so-called 'sensitive data', which includes data relating to a person's sexual life (e.g. that a person has worked in prostitution) or sexual orientation and health, is prohibited, unless it has a legal basis, is necessary for reasons of substantial public interest, and is subject to appropriate safeguards.<sup>83</sup>

## The right to privacy in national legislation

Human and minority rights guaranteed by the Constitution are directly applied. The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws<sup>84</sup> – Article 18, paragraphs 1 and 2 of the Constitution of the RS. Within the provision that envisages the right to a fair trial, it is emphasised, among other things, that the public may be excluded from all or part of the court procedure in the interest of protecting the private life of the parties, in compliance with the law. – Article 32, paragraph 3 of the Constitution of the RS. The protection of privacy as a right of the participants in the procedure is recognised by the Criminal Procedure Code (CPC) when regulating numerous institutes, including when defining the conditions and rules for examining the documents, keeping secrets, excluding the public, recognising persons and things, and questioning protected witnesses:

<sup>82</sup> CoE Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (CETS No. 108) and its Protocol (ETS No. 181). Available at: <https://www.coe.int/en/web/data-protection/convention108-and-protocol#:~:text=The%20Convention%20for%20the%20Protection,in%20the%20data%20protection%20field>.

<sup>83</sup> See also: Roth, Uhl, Wijers & Zikkenheinerbn (2015), *Data Protection Challenges in anti-trafficking policies. A Practical Guide*. Available at: <https://documentation.lastradainternational.org/doc-center/3222/data-protection-challenges-in-anti-trafficking-policies-a-practical-guide>.

<sup>84</sup> Among the relevant international legal documents that emphasise the importance of the right to privacy, the Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, November 1950) can be singled out, which states: "Everyone has the right to respect for private and family life, home and correspondence (Article 8)" and the International Covenant on Civil and Political Rights (UN, December 1966), which states: "No one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation" (Article 17).

- if the public had been excluded from the main hearing or if there could be a substantial violation of the right to privacy, examination of the documents may be denied or made conditional on a ban on the public use of the names of the participants in the proceedings. – Article 250 of the CPC;
- in order to protect the privacy of the participants in the procedure, as well as if necessary for the purpose of protecting the interests of national security, public order and morality, the interests of minors, or for other justified interests in a democratic society, the authority conducting proceedings conducting an evidentiary action shall order persons he/she is questioning or examining or who are attending evidentiary actions or are examining the case-file to maintain the confidentiality of certain facts or data learnt on the occasion, and warn them that the disclosure of a secret represents a criminal offence under the law. – Article 304 of the CPC;
- in order to protect the privacy of the participants in the proceedings and for other reasons identical to those in Article 304, from the commencement of the hearing until the conclusion of the main hearing, the panel may ex officio or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire main hearing or a part thereof. – Article 363 of the CPC;
- recognition of persons in the pre-investigation proceedings and during the investigation shall be conducted so as to prevent the person being recognised from seeing the witness, and to prevent the witness from seeing that person before the formal recognition procedure. – Article 100 of the CPC;
- the court may authorise one or more measures of special protection by issuing a ruling determining the status of a protected witness, where the measures of special protection include questioning the protected witness under conditions and in a manner ensuring that his/her identity is not revealed to the general public, and exceptionally also to the defendant and his/her defence counsel, in accordance with this Code. – Article 105 of the CPC;
- the measures of special protection ensuring that the identity of a protected witness shall not be revealed to the public are excluding the public from the main hearing and prohibiting the publication of data about the identity of the witness. – Article 106 of the CPC.

ASTRA's client A.P. was a victim of human trafficking in one of the largest human trafficking chains in Bosnia and Herzegovina. Citizens of several countries – wealthy people, politicians and businessmen – were accused in this case, while the news about the “breaking” of this chain was covered by the media. The personal data of the victims was not taken into account. It took a year of intensive psychotherapeutic work for A.P. to partially overcome this trauma. A week before the hearing, she saw her entire statement given to the prosecution in the newspaper. After that, she tried to commit suicide.

**ASTRA ID: 5912**

## **Right to protection of physical integrity and safety and to witness protection**

**Victims have the right to protection of their safety. The police should examine whether the safety and security of the victim is ensured.**

The right to integrity relates to the protection of the safety of the victim, but also to, for example, to medical examinations. Victims must give their informed consent to any medical or other examination. In order to be able to do so, they must be informed about the limited possibilities to keep the medical data confidential if the case goes to court. Particularly in light of these limited possibilities, refusal to consent should not be seen as a failure to cooperate with the authorities.

The EU Victims Directive (Art. 22) obliges states to carry out an individual risk assessment to identify specific protection needs and to determine the victim's vulnerability to secondary and repeat victimisation, intimidation and retaliation and what special protection measures they require. This applies explicitly to victims of organised crime, trafficking sexual violence and children.

**When victims testify in criminal proceedings, they have the right to witness protection and to be treated with respect and dignity. They have the right to be protected from threats, insults, intimidation and any other assault before, during and after the investigation and prosecution.**

Many victims have a well-founded fear of reprisals against themselves, their children or other people close to them. In most cases, they have been threatened by the suspects with reprisals against them or their loved ones if they dare to report to the police. They often have personal experience of the violence that the suspects are capable of exercising. In many cases, traffickers or their associates (which may include family members) will try to intimidate the victim to silence them. They may pressure, harass or abuse the victim to prevent them from testifying or to make them withdraw their testimony. This is often exacerbated if there is a close relationship between the victim and the trafficker, for example, because they are from the same community or family. The safety of the victim and their family and loved ones should therefore always be a paramount consideration.

For trafficked persons, the fear of confrontation with the accused (suspect) may be significant. Wherever possible, confrontation between the victim/witness and the accused during the criminal investigation and trial should be avoided to avoid unnecessary pressure on victims and to protect them from intimidation by the accused, their accomplices or their family. While it is good to have special witness protection programmes, these are generally not a real option, as they require victims to change their identity, sever all ties with their family and friends and essentially erase their former existence.

## **The right to the protection of integrity and security in national legislation**

In national legal documents, the issue of the protection of injured parties, witnesses and other participants in criminal proceedings is regulated by the Criminal Procedure Code and the Law on the Protection Programme for the Participants in Criminal Proceedings<sup>85</sup>.

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<sup>85</sup> Law on the Protection Programme for the Participants in Criminal Proceedings, "Official Gazette of the RS", no. 85/05. Certain procedural protection measures for minors are provided for in the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles ("Official Gazette of the RS", no. 85/05).



While defining general protection measures for the injured party/witness, the legislator states:

- the authority conducting the proceedings shall be required to protect an injured party or witness from insults, threats and any other attack;
- the public prosecutor or the court shall caution a participant in proceedings or another person who, before the authority conducting proceedings, insults an injured party or a witness, threatens him/her or endangers his/her safety, and the court may also fine him/her up to 150,000 dinars;
- upon receiving notification from the police or the court or upon learning about the existence of violence or a serious threat directed at an injured party or a witness, the public prosecutor shall undertake criminal prosecution or notify the competent public prosecutor thereof;
- a public prosecutor or the court may request that the police undertake measures to protect an injured party or a witness in accordance with the law (Article 102 of the CPC).

A victim of human trafficking, A.A., after repatriation and return to her place of residence, started the recovery process with ASTRA's support. She made a statement, legal proceedings were initiated, she was provided with medical assistance and slowly began to leave behind the trauma she experienced while being exploited. After some time, she started receiving threats through social networks, and one day two men appeared in front of her apartment door conveying the "greetings" from the traffickers. Accompanied by a consultant from the ASTRA Support Team, the victim went and reported everything to the police. In the following period, she had a police patrol in front of her building and felt much safer.

**ASTRA ID: 6131**

In the function of protecting the participants in the proceedings, i.e. the witnesses, some provisions foresee the possibility of:

- ordering the persons being questioned or examined or who are attending evidentiary actions or are examining the case file to maintain the confidentiality of certain facts or data learnt on the occasion (Article 304 of the CPC);
- exclude the public from the entire main hearing or a part thereof, if it is necessary for protecting the interests of minors, i.e. the private lives of the participants in the proceedings (Article 363 of the CPC);
- decide to have the defendant temporarily removed from the courtroom during the main hearing if a co-defendant or witness refuses to give testimony in his/her presence or the circumstances indicate that his/her presence shall exert an influence on the aforesaid persons (Article 390 of the CPC).

After the end of the hearing regarding the case that was conducted against several persons for the criminal offence of human trafficking, the victim-witness came out visibly shaken. Her face had changed colour and her whole body was shaking from fear and muffled crying. The words of support from her lawyer and consultant who followed the trial encouraged her to move away from her inner spasm and “allow” herself to cry out loud and express the hurt, anger and sense of horror that overwhelmed her. After she composed herself, she said that two things offended her a lot. The first was that one of the defendants was only half a metre away from her and she had the feeling that he was “breathing down her neck” the whole time she was giving her statement and that he could get up and attack her at any moment. The second was when the judge laughed at her, mocked her with his question and hurt her deeply. Namely, the question that the judge had asked her directly related to specifying where the intervention was performed, after her abortion (which happened during the exploitation). When she answered the question and specified the place, the judge continued with further questioning and asked her to describe the staff who were present at the time, which she did, only for him to rudely interrupt her with the comment that he was just checking to see if his colleague, i.e. the record-keeper who lives near the clinic, assisted the doctor on a part-time basis, and he began to laugh. Also, the defendant’s defence attorney asked her to demonstrate how to pole dance, which the judge allowed, to check whether she was lying about having to do that as well.

### ASTRA ID 2238

Of particular importance for (in some cases perhaps also necessary<sup>86</sup>) the protection of victims of human trafficking and other vulnerable categories of witnesses are the provisions of the CPC on particularly sensitive witnesses (Article 103-104):

- to a particularly sensitive witness, considering his/her age, life experience, way of life, gender, state of health, nature, manner or consequences of the committed criminal offence, or other circumstances of the case<sup>87</sup>, the authority conducting the proceedings may, ex officio, at the request of the parties or the witness himself/herself, grant the status of a particularly sensitive witness;<sup>88</sup> the decision on determining the status of a particularly sensitive witness is made by the public prosecutor, the president of the panel or a single judge<sup>89</sup>;
- should it deem it necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority that granted the status of an especially vulnerable witness to the victim shall issue a ruling appointing a proxy for the witness – the public prosecutor or the president of the court shall appoint an ex officio defence counsel, according to the order on the roster of attorneys provided by the competent bar association (Article 103);

<sup>86</sup> For example, in cases of exploitation where, through prostitution or other forms of sexual exploitation, the victim is a minor and the offence is accompanied by severe consequences, and was committed by a group or an organised criminal group, a member of the victim’s family or another person in the victim’s environment, or another person to whom the victim is or has been in a relationship of dependence.

<sup>87</sup> When minors appear as witnesses in criminal proceedings, the facts of their age and lack of life experience clearly point to the conclusion that they are at an increased risk of stress and reactions to stress during questioning. If the case pertains to violent criminal offences or the participation and involvement in the commission of a criminal offence of persons close to a child, i.e. a minor, it is clear that the witness is particularly sensitive, so that status should be granted for him/her. Sinanović, B., Posebno osetljivi svedok u krivičnom postupku, Bilten Vrhovnog kasacionog suda, br. 3/14, Beograd, 2014, p. 33.

<sup>88</sup> Under the heading “Principle of the individual assessment of the victim’s needs” in Article 4 of the General Mandatory Instructions on the Procedures of the Service for Information and Support to Victims and Witnesses in Public Prosecutor’s Offices of the Republic Public Prosecutor’s Office from 2016, it is said that, when dealing with victims, the Service for Information and Support to Victims and Witnesses in Public Prosecutor’s Offices (SIP) undertakes measures to ensure that victims receive a timely and individual needs assessment, in accordance with the national legislation, for the purpose of an individualised approach to providing support and possible recognition of the need for granting the status of a particularly sensitive witness, as well as for the purpose of undertaking measures to prevent repeated victimisation, in cooperation with the acting public prosecutor.

<sup>89</sup> A separate appeal is not allowed against the decision by which the request was accepted or denied. The status of a particularly sensitive witness needs to be determined at the earliest possible stage of the procedure, both for the protection of the rights of the injured party and for more efficient and easier criminal proceedings. Sinanović, B., Ibid., p. 33

- an especially vulnerable witness may only be examined through the authority conducting the proceedings, who shall treat the witness with particular care, endeavouring to avoid the criminal proceedings having possible detrimental consequences for the personality, physical and mental state of the witness;
- an examination may be conducted with the assistance of a psychologist, social worker or other professional, which shall be decided on by the authority conducting proceedings;
- should the authority conducting the proceedings decide to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination shall be conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located;
- an especially vulnerable witness may also be examined in his/her dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such a case, the authority conducting the proceedings may order the application of the measures referred to in paragraph 2 of this Article;
- a particularly vulnerable witness may not be confronted with the defendant, unless the defendant himself/herself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence<sup>90</sup>;
- no special appeal shall be allowed against a ruling referred to in paragraphs 1 to 3 of this Article (Article 104).

A client who received support from ASTRA was exposed to brutal violence as a victim of human trafficking and suffered from post-traumatic stress disorder as the most pronounced consequence of torture. Due to the intense fear he felt for himself and his family, his lawyer requested the status of a particularly sensitive witness and proposed giving his testimony via video link. The judge approved this request and granted the status of a particularly sensitive witness and adjourned the hearing. The client experienced great relief and was calmer and more optimistic about the testimony. A month later, the client came to the court with a lawyer, a psychotherapist and a consultant from ASTRA, who provided psychological and logistical support. However, the judge informed the victim's lawyer that he could not organise the execution and testimony via a video link because "he has never done it before and does not even know how it could be technically implemented in the court building". The client was very upset and had a panic attack because he met the defendants who were throwing things at him. He had the feeling that "the system has failed him and that he cannot feel any trust concerning his safety in the future."

#### ASTRA ID 1737

Bearing in mind that the criminal offence of human trafficking is reflected in the exploitation of victims, most often by the use of force, threats, causing or maintaining a delusion, abuse of difficult circumstances or relationships of dependence, as well as the use of other mechanisms that serve to subdue the victim to the perpetrator, which often involve minors, it can be reasonably concluded that victims of human trafficking, as vulnerable and traumatised persons, fall into the category of particularly sensitive witnesses. The public

<sup>90</sup> Considering that this action is ineffective in practice and necessarily associated with considerable stress for the people being confronted (engage in procedural confrontation), it should be completely prevented when it comes to children, and, as a rule, not used when it comes to minors. Škulić, M., Bitne karakteristike maloletničkog krivičnog prava i osnovne specifičnosti nacrta zakona o maloletnim učiniocima krivičnih dela i zaštiti maloletnih lica u krivičnom postupku, Bilten Vrhovnog kasacionog suda br. 2/15, Beograd, 2015, p. 175.

prosecutor should always grant them this status not only ex officio but during the investigation phase, because the victim's request is not necessary for granting the status of a particularly sensitive witness, but rather the assessment of the authority conducting the proceedings that in the specific case, the victim/witness is particularly sensitive. A significant advantage of this status is that the victim can give his/her testimony from a separate room where there are no other participants in the criminal proceedings, where other participants monitor the course of the interrogation from another room, using technical means for image and sound transmission, which allows the victim to describe all the circumstances of the case freely, unhindered and with less fear and discomfort, reducing the victimization of the victim, which necessarily occurs during every questioning about traumatic events. If the public prosecutor's office or the court does not have the appropriate premises and technical equipment for this type of questioning, the existing premises and equipment of another state authority or public institution, such as the centre for Social Work, may be used. Regardless of the potential impossibility of this type of questioning, victims should not be denied the status of a particularly sensitive witness. This status also includes other benefits, such as the prohibition of confronting the defendant, asking questions exclusively through the authority conducting proceedings, questioning through an expert, appointing a representative and alike, and all these mechanisms represent forms of procedural protection for victims of human trafficking, as particularly sensitive witnesses.

The provisions of the CPC on the protected witness also serve the function of protecting vulnerable witnesses (Articles 105-112)<sup>91</sup>:

- If circumstances exist that indicate that by giving testimony or answering certain questions, a witness would expose himself/herself or persons close to him/her to a substantial danger to life, health, freedom or property, the court may authorise one or more measures of special protection by issuing a ruling determining a status of a protected witness.
  - › The measures of special protection include questioning the protected witness under conditions and in a manner ensuring that his/her identity is not revealed to the general public, and exceptionally also to the defendant and his/her defence counsel, in accordance with this Code (Article 105).
- The measures of special protection ensuring that the identity of a protected witness shall not be revealed to the public include the following:
  - › exclusion of the public from the main hearing, and
  - › prohibition of the publication of data about the identity of the witness<sup>92</sup>.
- The special protection measure of withholding the data about the identity of a protected witness from the defendant and his/her defence counsel, may be ordered by the court exceptionally if, after taking statements from witnesses and the public prosecutor, it determines that the life, health or freedom of the witness or a person close to him/her is threatened to such an extent that it justifies restricting the right to defence and that the witness is credible:
  - › The identity of the protected witness withheld in accordance with paragraph 2 of this Article shall be revealed by the court to the defendant and his/her defence counsel no later than 15 days before the commencement of the main hearing (CPC, Article 106).
- The status of a protected witness may be granted by the court ex officio, or at the request of the public prosecutor or the witness himself/herself.
- In addition to the personal data on the witness, data on the criminal offence in connection with which the witness is being

<sup>91</sup> When collecting information from citizens, the police and the public prosecutor are obliged to inform them about the special protection measures referred to in Article 106 of this Code (Article 111).

<sup>92</sup> In deciding on the measures of special protection referred to in paragraphs 1 and 2 of this Article, the court shall endeavour to order a harsher measure only if the purpose cannot be achieved by the application of a more lenient measure.

examined and a description of the circumstances to which the testimony relates, the request also contains:

- › facts and evidence indicating that in the case of giving testimony, there exists a substantial danger to the life, body, health or property of the witness or persons close to him/her.
- The request shall be submitted in a sealed cover marked "witness protection – strictly confidential" and shall be submitted during the investigation to the judge for preliminary proceedings, and after the indictment is confirmed, to the president of the panel.
- If during interrogation, the witness withholds the provision of the data referred to in Article 95 paragraph 3 of this Code or replies to certain questions, or refuses to give testimony, with the explanation that the circumstances referred to in Article 105 paragraph 1 of this Code exist, the court shall invite the witness to act within three days in accordance with the provisions of paragraphs 2 and 3 of this Article (Article 107).
- During the investigation, the judge for the preliminary proceedings shall decide on determining the protected witness status by issuing a ruling, and after the indictment is confirmed:
  - › the public shall be excluded from the main hearing if the decision is taken at the main hearing (Article 363), without the exceptions prescribed by Article 364 paragraph 2 of this Code.
- The ruling determining the protected witness status shall contain a pseudonym of the protected witness, the duration of the measure and the manner in which it shall be implemented:
  - › alteration or erasure from the record of data on the identity of the witness,
  - › concealment of the witness's appearance,
  - › examination from a separate room with distortion of the witness's voice,
  - › examination using technical devices for transferring and altering sound and picture.
- The parties and the witness may appeal against the ruling referred to in paragraph 1 of this Article (Article 108).
- Once the ruling determining the protected witness status becomes final, the court shall, by a special order that represents a secret, confidentially notify the parties, defence counsel and the witness about the date, hour and location of the questioning of the witness.
- Before the commencement of the questioning, the protected witness shall be notified that his/her identity shall not be revealed to anyone but the court, the parties and the defence counsel, or only to the court and the public prosecutor, under the conditions referred to in Article 106 paragraphs 2 and 3 of this Code, and shall also be informed about the manner in which he/she shall be examined.
- The court shall caution all those present that they are required to keep confidential data on the protected witness and persons close to him/her and on other circumstances that may lead to the exposure of their identities, and that divulging a secret represents a criminal offence. The caution and the names of those present shall be entered in the record.
- The court shall deny any question that requires an answer that might reveal the identity of the protected witness.
- If the examination of the protected witness is being conducted using technical means for altering sound and image, they shall be handled by a professional.
- The protected witness shall sign the minutes using a pseudonym (Article 109).
- Data on the identities of the protected witness and persons close to him/her and on other circumstances that may lead to the exposure of their identities shall be sealed under a separate cover marked "protected witness – strictly confidential", sealed and submitted for safekeeping to the judge for the preliminary proceedings.
- The data referred to in paragraph 1 of this Article shall be secret data. Besides public officials, all other persons who gain knowledge thereof, in any capacity whatsoever, shall be required to maintain their confidentiality (Article 110).

**Case Law example:**

In the judgment of the Court of Appeals in Belgrade Kž1 266/17 of 24 April 2017, and in connection with the appeals filed against the judgment of the Higher Court in Smederevo K 62/16 of 14 December 2016, among other things, the following is stated: Contrary to the claims presented by the defendant in his appeal that the reason why the first-instance court did not allow him to face the injured parties Z.K. and M.Z. is not clear, the first-instance court, in the minutes of the main hearing dated 26 October 2016, acting at the request of the prosecutor's office and after the parties' declarations, issued a decision by which the court granted the injured parties Z.K. and M.Z. the status of particularly sensitive witnesses pursuant to Article 103 of the CPC, as it was determined that the conditions prescribed by the law were met, where the circumstances of the criminal offence were particularly taken into account, as well as the medical documentation for the injured persons Z.K. and M.Z., as well as the position of the representative of the Centre for the protection of victims of human trafficking given in the findings and opinion about the injured parties... Therefore, at the main hearing, the questions were asked to the injured party exclusively through the president of the panel, the hearing of the injured party was conducted in the presence of the defendant, but by Article 104, paragraph 4 of the CPC, the injured party and the defendant were not confronted.

The Law on the Protection Programme for the Participants in Criminal Proceedings governs the terms and procedures for providing protection and assistance to participants in criminal proceedings<sup>93</sup> and their close persons<sup>94</sup>... (Article 1).

- The Protection Programme may be implemented:
  - › Before, during and after the final conclusion of the criminal proceedings (Article 2 and Article 4).
- The Protection Programme is implemented:
  - › if the participants in the criminal proceedings are also close persons,
  - › due to testifying or giving information significant as evidence in criminal proceedings,
  - › if facing danger to life, health, physical integrity, freedom or property,
  - › if without that testimony or information, it would be considerably more difficult or impossible to prove in criminal proceedings,
  - › for criminal offences: 1) against constitutional order and security; 2) against humanity and other values protected by international law; 3) organised crime (Article 5).
- State authorities and officials who ensure and provide protection for participants in criminal proceedings are obliged to conduct the proceedings and act urgently.
- Information related to the Protection Programme is confidential and constitutes a secret. In addition to officials, such data may not be disclosed by other persons to whom it becomes available (Article 6).
- Decisions on the inclusion, extension, suspension and termination of the Protection Programme shall be passed by the Commission for implementing the Witness Protection Programme, comprising three members.
- The Protection Unit shall perform such professional and administrative tasks as may be required by the Commission<sup>95</sup> (Article 7, paragraphs 1 and 5).

<sup>93</sup> A participant in criminal proceedings may be a suspect, defendant, witness-collaborator, witness, injured party, expert witness and expert person (Article 3, paragraph 1, item 1).

<sup>94</sup> A close person is a person whom the participant in criminal proceedings demands to be included in the Protection Programme (Article 3, paragraph 1, item 2).

<sup>95</sup> The Protection Unit is a specialised organisational unit of the Ministry of the Interior (Article 12, paragraph 1)

- In implementing the Protection Programme, the Protection Unit shall provide the protected person with the required economic, psychological, social and legal assistance. All government bodies, organisations and services are obliged to render assistance to the Protection Unit, and at the request thereof, undertake activities within their purview as required for implementing the Protection Programme.<sup>96</sup> (Article 12, paragraphs 2 and 3).
- As part of the Protection Programme, the following measures are applied:
  - › physical protection of person and property,<sup>97</sup>
  - › change of place of residence or relocation to another prison institution,<sup>98</sup>
  - › hiding identity and ownership information,<sup>99</sup>
  - › change of identity.<sup>100</sup>
- In the implementation of the Protection Programme, one or more measures may be applied.
- The measure of a change of identity may only be applied when the purpose of the Protection Programme cannot be achieved otherwise<sup>101</sup>.
- The measures of the physical protection of persons and property, change of the place of residence or relocation to another prison institution and concealing the identity and ownership information may be applied as exigent measures (Article 14).
- The competent body of the procedure (public prosecutor, investigative judge or president of the court panel) may, ex officio or at the motion of a party in the criminal proceedings, submit a request to the Commission to include a party in criminal proceedings and close persons into the Protection Programme.
- After the effective conclusion of the criminal proceedings, the request specified in paragraph 1 of this Article may also be submitted by the Protection Unit (Article 25).
- If in the assessment of the competent body of the procedure (public prosecutor, investigative judge or president of the panel), there is a direct threat to the life, health, physical integrity or property of the party in the criminal proceedings or a close person, he/she shall inform the Protection Unit of the need to take urgent measures.
- The head of the Protection Unit shall order the implementation of urgent measures, with the prior consent of the party in the criminal proceedings and/or the close person (for a juvenile or legally incompetent person, the consent is given by a legal representative).
- The head of the Protection Unit shall promptly inform the Chairperson of the Commission and the relevant public prosecutor, investigative judge or president of the panel in respect of applied urgent measures.
- Urgent measures shall be applied until the Commission rules on the request for implementing the Protection Programme (Article 27).

<sup>96</sup> The Protection Unit shall autonomously implement measures under Article 14, paragraph 1 of this Law. Implementing these measures regarding a protected person in detention shall be instituted by the Protection Unit in cooperation with the Ministry of Justice.

<sup>97</sup> Physical protection of person and property constitutes prevention of the unlawful endangerment of life, health, physical integrity, freedom or property of the protected person through the use of physical/technical means (Article 16).

<sup>98</sup> A change of residence constitutes the temporary or permanent relocation of the protected person from the place of permanent or temporary residence to a location designated by the Protection Unit. Relocation to another prison institution constitutes the transfer of a protected person in detention from the current to another prison institution determined by the Protection Unit in agreement with the Ministry of Justice (Article 17).

<sup>99</sup> Concealing identity and ownership information comprises the issuing and use of personal identity documents or ownership documents of a protected person in which the original data has been temporarily altered. The document specified in paragraph 1 of this Article is produced by the Protection Unit, while the implementation of the measures under paragraph 1 of this Article may not result in a change of the original data maintained in official records (Article 18).

<sup>100</sup> The measure of a change of identity constitutes a complete or partial change of the personal data of the protected person. This measure may also include the measure of changing the physical characteristics of the protected person. A change of identity may impact the rights and obligations of the protected person only to the extent necessary to apply the Protection Programme and shall not impact the obligations of the protected person towards third parties. After an identity change, the Protection Unit shall approve and supervise access to the original data of the protected person. The Protection Unit shall supervise all the status and other rights and obligations related to the original identity of the protected person (Article 20).

<sup>101</sup> If the protected person is summoned to appear before the court in the capacity of a suspect, defendant, witness-collaborator, witness, injured party, expert witness or expert person for a criminal offence committed prior to the change of identity, the protected person shall participate in the criminal proceedings under his/her original identity. In other proceedings before a court or other government authority where the use of the original identity is necessary, the protected person may only participate with the consent of the Protection Unit. If the Protection Unit does not give approval, the protected person exercises his/her rights in the proceedings through a proxy. The summoning of the protected person is done through the Protection Unit, which shall ensure his/her appearance (Article 23).

- After receiving the assessment from the Protection Unit, the chairperson of the Commission shall promptly, and not later than within three days, convene the session of the Commission. The Commission shall promptly, and not later than within eight days, pass a decision approving or rejecting the application of the Protection Programme. The Commission shall immediately inform the applicant about the decision.
- The decision of the Commission is final (Article 28).
- The Agreement on implementing of the Protection Programme<sup>102</sup> shall contain, among other things:
  - › Statement of the protected person on voluntary inclusion in the Protection Programme;
  - › Obligations of the protected person: to comply with the instructions of the Protection Unit during the implementation of the Protection Programme; to inform the Protection Unit about any change of circumstances that could affect the application of the Protection Programme; to present his/her accounts, legal transactions, financial and other liabilities; to request consent from the Protection Unit prior to concluding legal transactions with a larger scope; to undertake all necessary measures to achieve financial independence until the end of the agreement;
  - › Obligations of the Protection Unit: to apply protection measures with only necessary restrictions of the fundamental freedoms and rights of the protected person; to determine the time period and scope for providing economic assistance to the protected person; to provide the protected person with the necessary psychological, social and legal assistance;
  - › Term of the Protection Programme and conditions for the termination of the Agreement;
  - › A clause that the Agreement was drawn up in a single copy and that it is kept with the Protection Unit and available only to the Commission during the application of the Programme; that obligations deriving from the Agreement cannot be denied in judicial proceedings; a statement of the protected person that he/she understands the contents of the Agreement and is aware of the mutual obligations.
- International cooperation in implementing the Protection Programme provided under this Law shall be realised on the basis of international agreement or reciprocity.
- The Protection Unit:
  - › submits an application to the foreign government to accept the protected person and apply the measures specified in Article 14, paragraph 1 of this Law;
  - › proceeds pursuant to the application of the foreign government to accept the protected person and apply protection measures in the Republic of Serbia (Article 39).

A significant contribution to the creation of institutional assumptions for the exercise of the rights, protection, assistance and support for victims and witnesses was made by the establishment of the Office for Assistance and Support for Victims and Witnesses (Office for Assistance and Support) at the High Court in Belgrade, in accordance with the provisions of Article 11 of the Law on the Organisation and Competence of Government Authorities in War Crimes Proceedings – 2009 ("Official Gazette of the RS", no. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other law, 6/2015 and 10/2023).

<sup>102</sup> If the protected person is a juvenile or legally incompetent person, the Agreement shall be signed by their legal representative or guardian (Article 30).



### Case Law example:

In the judgment of the Higher Court in Novi Sad in case K 322/12, it is stated that the court denied the request of the defence to confront the defendants with the injured minor A.M. ... for the reason that the questioning of the minor A.M. at the main hearing on 8 June 2012 was really difficult, bearing in mind the fact that it was very difficult for her to give her testimony and that when she did, she did so through crying and tears, and bearing in mind the proposal of the representative of the Centre for Social Work stating that the confrontation of the minor A.M. with the defendants and witnesses could threaten her further proper growth and development. Regarding this decision of the court of first instance, the Court of Appeal in Novi Sad, in its judgment KŽ 1 1473/13, stated as follows: "The appeal of the defence attorneys of the defendant S.J. unfoundedly states, as does the appeal of the defence attorney of the defendant M.V., that there was a violation of the provisions of the criminal proceedings when the court refused to arrange for a confrontation between the minor injured party A.M. and the defendants, the injured party D.M., as well as the minor witness N.N. The reason for this is because on page 15, paragraph 2 of the rationale of the contested judgement, the court of first instance gave complete and proper reasons why the said proposal was rejected, and such reasons of the court of first instance are fully accepted by this court and the court hereby refers to them. This, all the more so, arising from the findings and opinions of the expert's Dr S.I.K. and V.Š. on page 12, last paragraph."

The work of the Service for assistance and support within the Higher Court in Belgrade is regulated in more detail by the Rulebook on the Internal Organisation and Systematisation of Jobs, which the President of the High Court in Belgrade adopts with the approval of the Minister of Justice<sup>103</sup>. With the emphasis that in the Special Unit for Organised Crime and the Unit for War Crimes of the Higher Court in Belgrade, as well as the Unit for Juveniles<sup>104</sup> according to the scope and nature of work, in order to ensure the legal, efficient and successful performance of work and tasks within the competence of the said special units of the Court, the Service for Assistance and Support for Witnesses and Victims is also established, the Rulebook defines the job description of its coordinator and officers<sup>105</sup>, and thus also the manner of their engagement in relation to victims and witnesses through<sup>106</sup>:

- contacting the witnesses by order of the judge or the president of the panel and assessing their needs,
- informing the acting judges about the assessed needs of witnesses,
- taking measures to obtain timely information that is relevant for providing support and assistance,
- informing the judge or the president of the panel about possible problems with the attendance of witnesses at the court and the needs of witnesses,

<sup>103</sup> <https://www.bg.vi.sud.rs/tekst/334/sluzba-za-pomoc-i-podrsku-svedocima-i-ostecenima.php>

<sup>104</sup> Vodič kroz organizacije za pomoć i podršku žrtvama u Srbiji. <http://www.vds.rs/File/VodicZaOrganizacijeZaPomoc.pdf> The Counsellor for minors in criminal proceedings, among other things, talks with minor injured parties and witnesses, at the request of the judge, for the purpose of providing psychological support and preparing them for giving testimony before the Court, directly and with the use of a special room for giving testimony through audio-visual means; provides the judge with information about possible problems and needs of the minor during the court proceedings, which may endanger not only the minor but also the credibility of the testimony before the court; if necessary, provides advisory assistance to the Service for assistance and support to witnesses and injured parties.

<sup>105</sup> The act on systematisation also introduced the position of a Counsellor for minors in criminal proceedings who, among other things, talks with minor injured parties and witnesses, at the request of the judge, for the purpose of providing psychological support and preparing them for giving testimony before the Court, directly and with the use of a special room for giving testimony through audio-visual means; provides the judge with information about possible problems and needs of the minor during the court proceedings, which may endanger not only the minor but also the credibility of the testimony before the court; if necessary, provides advisory assistance to the Service for assistance and support to witnesses and injured parties.

<sup>106</sup> <https://www.bg.vi.sud.rs/files/PRAVILNIK%20O%20SISTEMATIZACIJI%20RADNIH%20MESTA%202019-1.pdf>

- providing witnesses with practical information<sup>107</sup> about the assistance, support and protection measures,
- providing direct support for witnesses, organising transport and hotel accommodation,
- informing witnesses about all the changes related to the testimony,
- informing witnesses about the testimony procedure and familiarising them with the courtroom in which they will be heard (during the witness's stay in special rooms),
- carrying out cost estimates for witnesses and helping witnesses collect the costs of coming to court,
- establishing cooperation with other services of the court and outside the court in order to provide effective and high-quality support for witnesses,
- establishing cooperation with the members of the Ministry of the Interior of the Republic of Serbia and with other officials in charge of securing the witnesses, as well as with other relevant institutions and non-governmental organisations,
- establishing cooperation with services abroad in order to coordinate work and provide effective and high-quality support for the witness in connection with the arrival and departure of the witness, as well as in connection with organising a video-conference as necessary in case of testimony.

The acting judge assesses which witnesses need help and support through the work of this service, and the record-keeper or judge's assistant delivers a written notification to the Service about such properly summoned witnesses. The Service receives this notification in the form of a letter that should contain data on the date of the scheduled hearing, the number of cases with the order of their examination and with a notification on whether the confrontation of the witness is planned, whether protective measures have been assigned to the witness, as well as general information about the witness. In order to provide information to the witnesses in a timely manner, the record-keepers inform the Service about all the changes related to the hearing that may have something to do with the witnesses (postponement of the questioning, change of date, change of the courtroom in which the questioning will take place, etc.).

The Service informs the acting judge in a timely manner about the witness's illness, inability to come to the court, the need for a companion and other important information, about the witness's request for procedural protection measures, the state of the witness (anxiety, aggressiveness, fear and the health status of the witness), the existence of a threat before and after testimony, as well as actions taken by the Service<sup>108</sup>.

In accordance with the strategic determination aimed at the most efficient possible support for persons injured by a criminal offence and witnesses, the Services for Assistance and Support for Witnesses and Victims have been established in all 25 higher courts, with the possibility of providing support in proceedings conducted before lower courts<sup>109</sup>, i.e. courts of appeal.

The Service for Assistance and Support for Witnesses and Victims at the Higher Court in Novi Sad started working on 1 June 2015 as a joint service in criminal proceedings before the Basic Court in Novi Sad, the Higher Court in Novi Sad and the Court of Appeal in Novi Sad. A special room for witnesses and injured parties is equipped with sound and image transmission devices and used for particularly

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<sup>107</sup> This also includes information about the rights of victims, legal terminology and other relevant legal information related to the procedure (about the roles in the criminal procedure, the manner in which questions are asked before the court, testimony, the organisation of the hearing of the witness and the victim in a separate room with the transmission of audio and video without the presence of parties and participants in criminal proceedings and alike). <https://www.podrskazrtvama.rs/lat/>

<sup>108</sup> <https://www.podrskazrtvama.rs/lat/>

<sup>109</sup> Aimed at providing emotional and logistics assistance and support for witnesses and victims before, during and after their testimony (directly and through the involvement of trained volunteers). <https://www.podrskazrtvama.rs/lat/>

sensitive witnesses, minors and victims of criminal offences to be heard without the presence of parties and participants in criminal proceedings. In this way, the conditions for safe and secure testimony are ensured and the injured parties and witnesses are helped to overcome negative feelings related to participation in criminal proceedings. The Service provides support and assistance to witnesses and victims by providing explanations of their roles in criminal proceedings, by explaining the manner in which questions are asked before the court, the legal terminology, the collection of attendance fees and by providing all other legal information related to their testimony, as well as the organisation of hearings of the witness and the injured party in a separate room with sound and image transmission devices without the presence of the parties and participants in the criminal proceedings.

The Services for information and support for the victims have been established at all higher public prosecutor's offices in Serbia, the Prosecutor's Office for Organised Crime, the Prosecutor's Office for War Crimes and the First Basic Public Prosecutor's Office in Belgrade. It is their duty to provide information and logistics support to victims, with the aim of facilitating their participation in the procedure and preventing secondary victimisation. The role of these services is extremely important, especially during the investigation phase. Every victim and witness should be given the opportunity to express their needs, concerns and expectations. Victims and witnesses should receive information from these Services about the rights and roles of victims/injured parties in the procedure (including explanations of legal terminology) and, if necessary, be directed to other authorities and institutions that can provide them with support, including temporary accommodation in safe houses. If the victim or witness fears for their safety, the employees of the support services at the prosecutor's offices will refer them to a conversation with the public prosecutor, who will take further steps to ensure protective measures. In cooperation with the judicial guard, the victims and witnesses may be provided with an escort and special measures when arriving at the building of the prosecution and court.<sup>110</sup>

### Witness protection and right to protection from secondary victimisation

Many victims have a well-founded fear of reprisals against themselves, their children, or other people close to them. In most cases, the suspects have already threatened them with reprisals against them or their loved ones if they dare to report to the police. Victims often have personal experience of the violence that the suspects are capable of. In many cases, traffickers or their associates (who may include family members) will attempt to intimidate the victim to silence them. They may pressure, harass, or abuse the victim to prevent them from testifying or to make them withdraw their testimony. This situation tends to worsen when the victim and the trafficker have a close relationship, for example, if they are from the same community or family. Therefore, the safety of the victim and their family and loved ones should always be of paramount importance.

For trafficked persons, the fear of confrontation with the accused (suspect) can be significant. Wherever possible, confrontation between the victim/witness and the accused during the criminal investigation and trial should be avoided to prevent unnecessary pressure on the victims and to protect them from intimidation by the accused, their accomplices, or their family. While it is beneficial to have special witness protection programs, these are generally not a realistic option, as they require victims to change their identity, sever all ties with their family and friends, and essentially erase their former existence.

<sup>110</sup> <https://www.podrskazrtvama.rs/lat/>

Key factors in preventing secondary victimisation are the provision of information so that the victim knows what to expect and can make informed decisions, avoiding unnecessary repetition of interviews during the investigation, prosecution and trial, protection from unnecessary confrontation with the suspect or the suspect's family members, avoiding visual contact between the victim and the suspect during testimony such as interviews and cross-examination, e.g. through the use of communication technologies, and protection from inappropriate and unnecessary questions about their private life or sexual history, particularly in the case of victims of trafficking into the sex industry. See Chapter 7 for a more detailed discussion of secondary victimisation and how to prevent it.

### **The right to accommodation in national legislation**

According to the Law on Social Protection ("Official Gazette of the RS", no. 24/2011 and 117/2022 – decision of the CC), among the beneficiaries of administrations or services<sup>111</sup>, the following are also distinguished in Article 41:

- a minor (in this law, a child) and person aged up to 26 years old (young person, youth) when, due to family and other life circumstances, their health, safety and development are risk, or when it is evident that without the support of the social protection system they could not achieve an optimal developmental level. This is particularly the case in the situation stipulated by law, even if someone from the specified category of persons is a victim of human trafficking;
- a person aged between 26 and 65 years old (hereinafter: adult) and a person aged older than 65 (senior beneficiary) is a beneficiary in the sense of paragraph 1 of this Article, when his/her welfare, safety and productive life are jeopardised by old age, disability, medical condition, family and other life circumstances. This is particularly the case in the situation stipulated by law, even if someone from the specified category of persons is a victim of human trafficking.

The legislator also emphasises that institutions and other forms of organisation established by law that perform activities, i.e. provide social protection services, cooperate, among other things, with the police, judicial and other state authorities (Article 7)<sup>112</sup>, and in the part that regulates the issue of financing the rights and social protection services, it states that accommodation services for victims of human trafficking are also financed from the budget of the Republic of Serbia (Article 206, paragraph 9).

Article 1 of the Regulation on the Network of Social Protection Institutions ("Official Gazette of the RS", No. 16/2012 and 12/2013) states that, among other things, it defines the network of social protection institutions that provide home accommodation services and centres for family accommodation and adoption established by the Republic of Serbia, i.e. the Autonomous Province, and regulates in more detail the spatial layout and activities of institutions that provide home placement services, their capacities and groups of users. In the overview of the spatial layout, activities, capacities and groups of users of social protection institutions, which is an integral part of it, it is also stated that accommodation services (urgent accommodation), services, assessment and planning and advisory, therapeutic and social educational services whose beneficiaries are children, young and adult victims of human trafficking are provided by the Centre for the Protection of Human Trafficking Victims.<sup>113</sup>

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<sup>111</sup> The holder of rights or beneficiary of services of social protection is a person, or family faced with obstacles to satisfying their needs, therefore being unable to attain or maintain quality of living, or failing to provide sufficient means for basic living needs, and unable to provide such means through their work, income from property, or other sources.

<sup>112</sup> Cooperation in the provision of social protection services is achieved primarily within the framework and in the manner determined by agreements on cooperation (Article 1, paragraph 2 of the Law on Social Protection).

<sup>113</sup> The founder of the Centre is the Government of the Republic of Serbia, which exercises its founding rights, in accordance with the law governing social security, through the Ministry responsible for social security.

ASTRA's client (17 years old) is returning to the country, after a stay abroad organised by a close family member, where she escaped a "forced marriage" at the last moment. Since she cannot return to the place where her family lives (domestic violence, poverty and attempted trafficking), she stays in another city. Although thanks to the ASTRA's support, she is continuing her education, treatment and psychotherapy, she is constantly threatened existentially, employers hire her "off the books", and her biggest problem is accommodation. This element of frequent relocations and the fear of being cheated or attacked by landlords she does not know disturbed and exhausted the victim to a great extent. Such situations made her feel helpless and to fear for herself.

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The Statute of the Centre for the Protection of Human Trafficking Victims and the Rulebook on the Internal Organisation and Systematisation of Work and Tasks stipulate that the Centre performs its activities within two organisational units, the Service for coordinating protection for the victims of human trafficking and the Shelter for Victims of Human Trafficking (Article 14), while other forms of social protection with accommodation are also distinguished as the predominant activity of the Centre (Article 10).

Safe accommodation is provided through accommodation services or by returning the victim to his/her family, if it is estimated that the family is a safe place for the victim. The decision on the accommodation of the victim is made by the locally competent CSW and the Centre, in cooperation with service providers and depending on the available capacities. It is also emphasised that the CSW implements the procedures for immediate intervention and the regulation of guardianship protection, security smeštaja i olakšava komunikaciju sa drugim institucijama na lokalni.

## Right to compensation

**Trafficked persons have a right to adequate and effective remedies. This includes the right to compensation for damages suffered.**<sup>114</sup>

The right to compensation is an important element of access to justice. Victims of trafficking have generally suffered serious harm. Damages may include both material damages (financial and pecuniary losses: unpaid wages, medical, funeral or hospital and other expenses, relocation costs, loss of future earnings, costs of damage to property etc.) and immaterial or moral damages (psychological and emotional suffering and injury, loss of reputation, pain and suffering, loss of society and companionship).

Redress of wrongs is a fundamental legal principle which constitutes both a general principle of law and a customary rule of law.<sup>115</sup> As stated in the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking:

<sup>114</sup> See for a practical guide on claiming compensation La Strada International & Anti-Slavery International (2012), *Guidance on representing trafficking persons in compensation claims*. Available at: <https://documentation.lastradainternational.org/doc-center/2943/guidance-on-representing-trafficked-persons-in-compensation-claims>.

<sup>115</sup> OHCHR (2010), *Commentary on the Recommended Principles and Guidelines*, p. 223.

**European Court of Human Rights (ECrHR)  
Zoletic and Others v. Azerbaijan, application  
no. 20116/12, 7 October 2021 (SerBaz case).**

The case concerned 33 citizens of Bosnia and Herzegovina, who were recruited and taken to Azerbaijan where they were forced to work. The Court ruled that Azerbaijan had failed to comply with its procedural **obligation to institute and conduct an effective investigation** of the applicants' claims concerning the alleged forced labour and human trafficking.

The state of Azerbaijan was aware that the workers were potential victims of human trafficking and forced labour. This information had been made available to government officials and authorities based on several reports: (1) a report from ASTRA, based on the testimony of injured workers compiled by ASTRA in cooperation with partner organizations from BiH and Croatia), (2) the 2011 report of the European Commission against Racism and Intolerance ECRI, and (3) the 2014 report of the CoE Group of Experts on Trafficking in Human Beings GRETA.

In addition, all injured workers were awarded **compensation** for non-pecuniary damage of 5,000 euros, which should be paid to them by the state of Azerbaijan.

See also: *Finally, Justice for some of the workers of the SerBaz case*, at: <https://astra.rs/en/finally-justice-for-some-of-the-workers-of-the-serbaz-case/>

*Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies (Guideline 9).*

**TIPS**

In the Netherlands lawyers have been quite successful in claiming compensation for the money victims of trafficking into the sex industry earned for their traffickers by calculating the number of days the victim worked and the amount of money she earned per day. As explained by Annet Koopsen, a Dutch lawyer:

*"If you want to claim compensation for the money the trafficker took from the victim and it is hard to prove how much money she earned per day and how much she gave to the trafficker, I make a calculation that avoids any discussion. For instance, if my client tells me that she earned about € 500 to € 1,000 a day, I have asked the courts to grant her compensation for €200 a day (but also amounts of € 500 a day have been accepted), 5 days a week and 4 weeks per month, that is € 4,000 per month. If I have pleaded that with a calculation like this, there won't be any dispute whether she was allowed to keep any money for herself, whether she had to buy food, clothes, rent etc, since the amount of money that she gave to the trafficker was so much more, that this calculation is a minimum estimate. The courts have accepted this and the highest amount that has been granted to one of my clients has been €500,000. This was in criminal proceedings."*

The UN Trafficking Protocol and its parent convention oblige State Parties to establish appropriate procedures to provide access to compensation and restitution. In addition, the CoE Trafficking

Convention contains a provision on State compensation, for example through the establishment of a Victim Fund.

The EU Trafficking Directive 2024 also includes a provision on access to existing compensation schemes, and suggests that states may establish a national victim fund. EU Directive 2004/80/EC relating to compensation to crime victims requires member states to have a compensation scheme for victims of violent intentional crime committed on their territory and sets up an EU-wide cooperation system based on those national schemes to help victims get compensation regardless in which member state the crime is committed.

Key international instruments are the 2005 *Basic Principles and Guidelines on the Right to a Remedy and Reparation*,<sup>116</sup> the 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*,<sup>117</sup> and, for children, the 2005 *Guidelines on Justice for Child Victims and Witnesses of Crime*.<sup>118</sup> In addition, the ILO Migrant Workers Conventions No. 97 and 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) set standards to ensure that migrants are not deprived of their right to be paid for work they have performed. A similar provision is included in EU Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

In case of violations by non-State actors, that actor will in principle be individually liable for reparation to the victim. In *Krachunova v. Bulgaria* (Application No. 18269/18), the ECtHR ruled that Member States have a positive obligation under Art. 4 ECHR to enable victims of trafficking to claim compensation from their traffickers in respect of lost earnings, including in cases of sexual exploitation and irrespective of the legal status of prostitution.

However, under certain conditions, State responsibility can arise, e.g. when State actors are complicit to trafficking or where a State has failed to duly prevent, investigate and punish trafficking and/or its forced labour outcomes, as confirmed by the ECtHR in *Rantsev v. Russia and Cyprus* and *Siliadin v. France*.<sup>119</sup>

According to the UNODC Model Law against Trafficking in Persons,<sup>120</sup> compensation may include payment for or towards:



### TIPS

#### Collecting information about the damages suffered by the victim

The start for collecting information about the damages suffered by the victim lies with the police. To this aim the police should include in the record of the statement of the victim, or in an annex to the record, relevant information about the material and immaterial damages the victim suffered. The lawyer should check if the police have done so. The lawyer can also collect information about the damages and submit these as part of the file.

Annet Koopsen: "*Under Dutch Law, it is possible for a judge to estimate the damages but a lawyer has to help the judge to make this estimate based on the compensation claim. Depending on how much information there is in the file, these estimates may vary.*"

<sup>116</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law*, UN General Assembly, 16 December 2005.

<sup>117</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly, 29 November 1985.

<sup>118</sup> *Guidelines on Justice for Child Victims and Witnesses of Crime* (ECOSOC Res. 2005/20).

<sup>119</sup> ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010; ECtHR, *Siliadin v. France*, no. 73316/01, 26 July 2005. For a more detailed discussion on state responsibility, see OHCHR (2010), *Commentary on the Recommended Principles and Guidelines*, p. 224-225 and Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), p. 4-5.

<sup>120</sup> Available at: [https://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf).



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

### **The right to compensation in national legislation**

In the national legal system, the right to compensation may be exercised in two ways: in **criminal and civil proceedings**. Victims of violent crimes see the right to compensation as a kind of compensation for the evil they suffered, i.e. the satisfaction of justice. Despite the undoubted importance of this right and the fact that its existence is not being questioned, its realisation is accompanied by numerous difficulties. The issue of compensation for victims of criminal offences in civil and criminal proceedings is not only significant in terms of realising one of the most important rights of the victim, it is inextricably connected to numerous other aspects of the victim's life, including the risks of secondary victimisation. Failing to decide on a property claim in criminal proceedings and instructing the victim to exercise this right in litigation only makes the already unenviable position of the victim even more difficult. Namely, a very large number of victims are reluctant to engage in criminal proceedings, and when it turns out that they have to take part in another court proceeding, a civil one, such a decision often results in the victim giving up on the right to compensation, and thus in losing confidence in the judicial system of the state. The key reasons for such a decision are recognised in the victim's desire not to relive the event that he/she wants to forget, but also in the need to set aside additional funds for the costs of litigation, which he/she usually does not have at his/her disposal. Uncertainty regarding the duration of the civil procedure and possible decisions may also demotivate the victim from participating in the procedure, thus hampering the realisation of the right to compensation. To avoid such situations, it is necessary to strengthen the obligation of the criminal court to decide on the compensation claim (property claim) and leave the victim with the option to file a lawsuit if he/she is not satisfied with the court's decision in the criminal procedure<sup>121</sup>. One should also bear in mind what may be the subject of a property claim – compensation for damage, return of goods or the reversal of a legal transaction.

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<sup>121</sup> The criminal court is the most competent to decide on property claims, given that they are familiar with all the circumstances of the specific case, and all disputed factual issues may be resolved by using the appropriate evidence.



ASTRA's client O.A., while she was a minor, was sexually exploited by a group of men. When, thanks to a police action, the human trafficking chain was broken and she was provided with help and support; she did not want to testify in this proceeding. Institutions of the system recognised that she needed time to think about everything she had been through and, above all, she was provided with psychological support through ASTRA's network of therapists.

After several months of intensive therapeutic work, she felt empowered enough to give a statement and participate in the proceedings. After one year, the judge working on the case was changed and she had to give a new statement. Thanks to the previous empowerment and preparation with colleagues from the network of therapists and a network of lawyers, she did not give up the procedure.

### ASTRA ID: 615

Bearing in mind that it is in the victim's interest to facilitate the simplest and most accessible procedure for obtaining compensation for damages, as one of the possible and seemingly the best ways is to decide on this issue in the criminal proceedings. Although such a possibility is foreseen by the Criminal Procedure Code, the injured party is almost always instructed to exercise this right in civil proceedings. Such a solution is not justified for the previously stated reasons.

We believe that the already existing solutions in the Criminal Procedure Code, with the application of international conventions and standards, allow for the issue of a property claim (See Appendix 1), i.e. compensation, to be discussed in criminal proceedings with the enhanced knowledge, vigilance and responsibility of the public prosecutor and the judge.

As an illustration, we refer to the first judgement whereby the victim of human trafficking was awarded an amount of RSD 800,000 as a compensation of non-material damages for the mental pain suffered due to the violation of honour, reputation, freedom, personal rights and dignity (judgment of the Court of Appeal in Novi Sad Gž3536/013), in which, among other things, the following is stated.

The actions of the defendants, who committed the criminal offence of human trafficking against the injured party, violated the personal sphere of the injured party on several levels.

Starting from the violation of her freedom in the way that she was held in captivity by illegal force and forced into prostitution against her will, which violated her human dignity as a natural feeling of every human being, as the foundation and assumption of the exercise of human rights, since it is rooted in the very essence of a human being, whose protection is guaranteed by the Constitution as the highest legal act. Unquestionably, being forced to involuntarily sell one's own body resulted in a violation of the injured party's sense of honour, as a personal experience of the value of one's personality, which is minimised to the point of non-existence in the victims of human trafficking.

Given that the injured party, as a victim of human trafficking, was deprived of basic security and dignity due to the illegal actions of the defendants, she undoubtedly suffered mental pain due to the violation of her basic rights, which merits the award of compensation in all fairness determined in the amount PROPORTIONATE TO THE MORAL DAMAGE SHE SUFFERED.

Victims of criminal offences in the framework of criminal proceedings exercise the right to property claims. This right is clearly defined in Article 50, paragraph 1, item 1 of the CPC, which reads: "The injured party shall be entitled to submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it."

To exercise this right in criminal proceedings, it is important to familiarise oneself with the provisions that regulate this right in civil proceedings. Prosecutors and judges need to learn about the types of damage that can be discussed and measured during the criminal proceedings, without delay, and previously informing the victim about his/her rights and the evidentiary actions taken. This approach requires a better understanding of the types and forms of damage and the method of determining the amount of compensation, which is regulated, first of all, by the Law on Contracts and Torts. Thus, the damage caused to the victim by the commission of a criminal offence may be material and non-material.

Material damage represents the reduction of one's property (ordinary damage) and the prevention of its increase (lost profit), (Article 155 of the Law on Contracts and Torts). In criminal proceedings, it may often be obvious and the court can decide on it in whole or in part.

Non-material damage refers to any other non-financial loss and comes in different forms.

In Article 200, paragraph 1 of the Law on Contracts and Torts, various forms of non-material damage are foreseen, caused by:

- physical pains suffered,
- fear,
- mental anguish suffered due to:
  - › becoming disfigured,
  - › reduction of life activities;
  - › offended reputation and honour,
  - › violation of the right to freedom, and
  - › violation of rights of personality.

In Article 201, paragraphs 1, 2 and 4 of the Law on Contracts and Torts, various forms of non-material damage are foreseen, caused by:

- the death of a close person, particularly severe disability of a close person, or due to
- mental pain resulting from the commission of a criminal offence against sexual integrity, personal dignity or morals (Article 202 of the Law on Contracts and Torts).

Since the object of protection when it comes to the criminal offence of human trafficking is the freedom, honour and dignity of the person and all other rights that protect humanity, i.e. those rights that do not require special expertise, non-material damage can always be determined in criminal proceedings. In the jurisprudence of the civil units, there are many examples based on which the amount of compensation for such damages can be determined. It might be useful for the criminal court to prepare guidelines regarding the determination of the amount of such compensation, but such guidelines do not exist in the civil units either. We believe that through cooperation with colleagues from those units, every criminal judge can determine the appropriate amount.

ASTRA's client M.P. became a victim of trafficking when he was just a child. He was forced to beg and commit criminal offences. As one of the consequences of the difficult living conditions while he was in the human trafficking chain (irregular and poor nutrition, exchange of day and night, mistreatment, beating, forced consumption of alcohol and psychoactive substances), he had serious health problems, which resulted in the amputation of one leg. Part of the money he received as compensation, he invested in a prosthesis for his leg, which enabled his further recovery. This was the first step towards the long-term rehabilitation that followed.

#### **ASTRA ID: 836**

When deciding on a request for compensation for non-material damage, as well as the amount of compensation, the court will take into account the importance of the damaged property and the purpose of the compensation. All other listed types of non-material damage can be determined in criminal proceedings, if necessary, by expert testimony. Please note that the expert testimony may be ordered even at the stage of the investigative procedure, by the order of the prosecutor or later by the order of the court, in accordance with the provisions of 118 of the CPC. The expert examination of the victim is often ordered in criminal proceedings in order to determine the ability of the injured party to testify or the facts important for determining the criminal responsibility of the perpetrator, and by expanding the order for expert examination, circumstances related to the intensity of the pain and fear and their duration can be determined, as well as other significant circumstances that themselves can be significant both for the decision on the amount of compensation for damages and for the decision on the scope of the criminal sanction.

The expert's task can be determined as follows:

- the degree and intensity of the fear suffered by the injured party as a result of the actions of the defendants and whether there are any consequences,
- the degree and intensity of mental pain due to the violation of honour, reputation, freedom, personal rights and personal dignity, and
- whether the injured person still suffers pain or fear at the time of the expert examination.

The court can also determine the existence of physical pain and reduction of life activity:

- whether there is a reduction in life activity and if so, in what percentage,
- whether there is disfigurement and whether it is light, medium or severe.

As we determined the possible types and forms of damage in the previous part, as well as ways to determine the amount of compensation, we will return to the provisions of the CPC that facilitate the application of the given possibilities.

Discussion and decision-making on compensation for victims in criminal proceedings is carried out according to the provisions of Articles 252 through 260 of the CPC, which regulate the general conditions and the subject of the property claim and the procedure until the court's decision is made.

It is necessary to emphasise once again the connection between the right to information and the right to compensation, i.e. the duty of the authorities conducting proceedings, the police, the prosecutor's office and the court to inform the victim in detail about this right, as was pointed out in the said conventions and directives of the international community.

In practice, this means that the victim must be informed in detail about the right from Article 50, paragraph 1, item 1 of the CPC, as well as that he/she has the right to a lawyer. It is necessary to explain to the victim what the property claim can refer to and how it is determined, in which stages of the procedure it can be claimed, that he/she may propose evidence in this sense, and propose the imposition of a temporary measure (See Appendix 1). Most often, the prosecutor is the first in contact with the victim, and therefore his/her responsibility is greater. This is all the more so because the evidence of importance for exercising this right may be collected as early as in the pre-investigation procedure.

The legislator has foreseen a significant number of provisions in order to impose an obligation on the authority conducting proceedings to inform the injured party (authorised person) during the undertaking of certain procedural actions in different stages of the criminal procedure about the right to file a property claim:

- injured parties questioned as witnesses shall be asked whether they wish to realise their restitution claim in the criminal proceedings (Article 98, paragraph 4);
- if an authorised person has not submitted a claim for restitution until the charges are filed, he/she shall be notified that he/she can submit it by the end of the main hearing... (Article 254, paragraph 3);
- if the authorised person has not filed a restitution claim, the public prosecutor shall invite him/her to file the claim before the (plea) agreement is concluded (Article 313, paragraph 6);
- the president of the panel shall advise, within the meaning of Article 50 paragraph 1 item 1) of this Code, an injured party who has not submitted a restitution claim (Article 348, paragraph 4);
- if the injured party is present, he/she may submit a restitution claim, and if he/she is not present, the president of the panel shall read out the claim, if one has been submitted (while the parties give their declarations at the preliminary hearing) (Article 349, paragraph 2);



### IMPORTANT!

The possibility that the request will not be decided on in the criminal proceedings in the sense of this provision should be interpreted as an exception to the rule, especially taking into account the previously mentioned options for the court to decide on the amount of non-material damage.



### IMPORTANT!

Taking basic information from the defendant, relating to the amount of his earnings and whether he/she owns immovable property is not sufficient and does not constitute a hearing of the defendant about the facts pertaining to the property claim. The court should question the accused to all his/her revenues, whether he/she owns valuable movable property, whether he/she has savings deposits, whether he/she has accounts with banks and which accounts they are, does he/she own shares, artwork, vehicles.

- if the injured party is present, the president of the panel (during the main hearing) shall advise him/her about the rights referred to in Article 50 of this Code, and if a restitution claim has not yet been filed, he/she shall advise him/her that such a claim may be filed in criminal proceedings (Article 389, paragraph 3);
- an injured party who is not being summoned as a witness shall be notified by the court in the summons that the main hearing shall be held even in his/her absence, and that his/her statement on a restitution claim shall be read out:
  - › The injured party shall also be cautioned that if he/she fails to appear, it shall be deemed that he/she does not intend to continue the criminal prosecution if the public prosecutor desists from the charges (Article 355, paragraphs 1 and 5);
- an injured party may present a restitution claim and in his/her absence, if such a claim has been filed, the claim shall be read out by the president of the panel (during the presentation of the charges at the main hearing) (Article 391, paragraph 2);
- following the presentation of the charges (at the main hearing), the president of the panel shall ask the defendant:
  - › whether he/she wishes to state his/her position about the charges and regarding the restitution claim, if one has been filed (Article 392, paragraph 1, item 2);
- after the introductory statements (at the main hearing), the injured party may briefly substantiate his/her restitution claim (Article 393, paragraph 4);
- in the closing argument, the injured party or his/her legal representative or proxy may substantiate the restitution claim and indicate evidence proving that the defendant committed the criminal offence (Article 413, paragraph 2).

A claim for restitution<sup>122</sup> arising as a result of the commission of a criminal offence or of a wrongful act designated by law as a criminal offence shall be considered on a motion by authorised persons in criminal proceedings:

- if those proceedings would not be substantially prolonged thereby (Article 252, paragraph 1 of the CPC).

A property claim<sup>123</sup> in the procedure may be filed by a person who is authorised to file such a claim in civil proceedings:

- the person referred to in paragraph 1 of this Article shall be required to designate his/her claim in a certain manner and to submit evidence (Article 253, paragraphs 1 and 2 of the CPC).

A claim for restitution shall be submitted to the authority conducting the proceedings no later than by the conclusion of the main hearing before the court of first instance (Article 254, paragraphs 1 and 2 of the CPC).

### IMPORTANT!

In relation to this provision, the victim must be informed in a timely manner by the authorities conducting proceedings, so that it is clearly indicated to him/her what the determination of the claim entails, i.e. he/she must be informed that the claim for compensation must be determined by the type of damage and forms of damage, as well as about the need to provide evidence thereabout. A blanket reference to her right, as is done in the procedure, is not in accordance with the international standards.

<sup>122</sup> It can refer to compensation, restitution or the reversal of a legal transaction.

<sup>123</sup> At the same time, the legislator prescribes that the injured party shall be entitled to submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it (Article 50, paragraph 1 of the CPC), i.e. the injured party as a subsidiary prosecutor shall be entitled to submit a motion and evidence for realising a restitution claim and a motion for interim measures to secure it (Article 58, paragraph 1, item 2).

Authorised persons may, until the end of the main hearing, desist from a claim for restitution in criminal proceedings and pursue it in civil litigation.

In the case of desisting, a claim for restitution may not be submitted again (Article 255, paragraph 1 of the CPC), of which the victim should be informed.

With regard to the measures, actions and decisions of the authorities conducting proceedings in connection with the property claim (in certain situations, even when the authorised person did not file such claims), the legislator prescribes that:

- the authority conducting the proceedings shall be required to collect evidence for adjudicating a claim even before it is submitted, and
- the authority conducting the proceedings shall question the defendant in respect of the facts in connection with a claim for restitution and examine the circumstances of importance for adjudicating it (Article 256, paragraph 1 of the CPC).

If the collection of evidence and examination of circumstances regarding a claim for restitution would substantially prolong the proceedings, the authority conducting the proceedings shall limit itself to collecting data whose determination at a later date would be impossible or substantially difficult (Article 256, paragraph 2 of the CPC).

#### **The court shall decide on a claim for restitution – Article 258, paragraph 1**

- When the court renders a verdict acquitting the defendant of the charges or dismissing the charges, or when the criminal proceedings is suspended by a decision, the court will instruct the authorised person that the property claim may be pursued in civil proceedings.
- In a judgment declaring the defendant guilty or the decision on the imposition of a security measure of mandatory psychiatric treatment:
  - › the court will award the property claim to the authorised person in whole or in part and refer to civil proceedings for the excess.

#### **Temporary Measures, Article 257 of the Criminal Procedure Code**

- At the proposal of authorised persons (Article 253), in the criminal proceedings according to the provisions of the law governing the enforcement and security<sup>124</sup>, temporary security measures can be determined for the property claim arising from the commission of a criminal offence or an illegal offence defined in the law as a criminal offence.

#### **IMPORTANT!**

In this case, the authority conducting proceedings is most often the prosecutor, and through the provision of Article 256, he/she has the duty to undertake investigative actions, which most often may include a timely examination of the victim, determination and documenting of injuries and, as needed, expert testimony. The provision from paragraph 2 of this Article should also be interpreted restrictively because there is no reason for the prosecutor, in the case of such a serious crime, in addition to the presentation of other evidence, not to provide evidence related to the resulting damage, which does not prejudice the outcome of the procedure but enables the victim to exercise the right to compensation and in the event of an acquittal, to provide evidence that may be used in civil proceedings. This is also in line with the obligations from the ratified conventions and accepted international standards.

<sup>124</sup> Law on Enforcement and Security Interest, "Official Gazette of the RS", no. 106/2015, 106/2016 – authentic interpretation, 113/2017 – authentic interpretation and 54/2019, Article 447 – Article 460.

- The proposal referred to in paragraph 1 of this Article is decided on by a decision in the investigation phase by the investigative judge, and after the indictment is filed by the panel<sup>125</sup>.

### **Other procedures of importance for the realisation of a property claim**

In the Criminal Code, the Criminal Procedure Code, the Law on the Confiscation of Proceeds from Crime<sup>126</sup> and the Law on Juvenile Offenders and the Criminal Protection of Juveniles<sup>127</sup>, there are several institutes within the framework of which the right to compensation is ensured and the perpetrator is stimulated to compensate the injured party.

### **Confiscation of Material Gain**

Material gain obtained by committing a criminal offence is determined in criminal proceedings ex officio, because no one can retain material gain obtained through a criminal offence (Article 91 of the CC). However, contrary to the imperative provision that material gains must be confiscated, we have seen that this is not always the case and the prosecutors do not make such proposals, nor does the court decide on them.

This is significant because according to Article 93 of the Criminal Code, the injured party, i.e. the victim, has the right to settle his/her property claim from the seized material gain.

If in criminal proceedings, a property claim of the injured party is accepted (see Appendix 1), the court shall only order the seizure of material gain if it exceeds the adjudicated amount of the property claim (Article 93, paragraph 1 of the CC).

The injured party who, in criminal proceedings, has been directed to institute a civil action in respect of his/her property claim may request compensation from the seized material gain if he/she institutes a civil action within six months from the day the decision referring him/her to litigation becomes final (Article 93, paragraph 2 of the CC).

The injured party who does not file a property claim during the criminal proceedings may request compensation from the seized material gain if he/she has instituted civil action to determine his/her claim within three months from the day of learning of the judgement ordering the seizure of material gain, and not later than within three years from the day the order on the seizure of

According to the provisions of the CPC:

- the authority conducting the proceedings shall be required to collect evidence and examine circumstances of importance for determining the property gain during the proceedings,
- if an injured party has submitted a restitution claim whose subject matter excludes the confiscation of property gain, the property gain shall be determined only in the part that is not encompassed by the restitution claim (Article 538),
- the court may impose the confiscation of the property gain in the judgment of conviction or in a ruling on the imposition of the security measure of compulsory psychiatric treatment.

<sup>125</sup> For an example of this decision, see Appendix 1.

<sup>126</sup> "Official Gazette of the RS", no. 32/2013, 94/2016 and 35/2019.

<sup>127</sup> "Official Gazette of the RS", no. 85/05 This regulation foresees the possibility that the treatment of criminal prosecution according to the principle of the opportunity in relation to a minor is conditioned by the fulfilment of certain obligations (implementation of diversion orders) by the minor, which include the settlement with the injured party in order to compensate for the damage, apology, work or in some other way, in whole or in part, to remove the detrimental consequences of the criminal offence (Article 7). One of the special obligations that the court may impose on a minor as a criminal sanction is to compensate the damage he/she caused within his/her personal capacity (Article 14, paragraph 2, item 2).

The court shall evaluate the property gain at its discretion if its determination would cause disproportionate difficulties or considerably delay the proceedings (Article 541).

### **Special conditions for remittance of punishment**

The court may also remit from punishment the perpetrator of a criminal offence punishable by imprisonment for up to five years if, following the commission of the offence and before learning that he/she has been uncovered, the offender eliminates the consequences of the offence or compensates the damages caused by the criminal offence (Article 58, paragraph 3 of the Criminal Code).

### **Settlement of the offender and victim**

The court may remit from punishment the perpetrator of a criminal offence punishable by up to three years' imprisonment or a fine if the offender has fulfilled all his/her obligations from an agreement reached with the victim (Article 59 of the CC).

### **Dismissing a Criminal Complaint**

In the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss a criminal complaint if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and in view of the circumstances of the case, the public prosecutor finds that pronouncing a criminal sanction would not be fair. In this case, the provision of Article 51 paragraph 2 of this Code shall not be applied (Article 284, paragraph 3 no notification to the injured party).

### **Deferring Criminal Prosecution**

The public prosecutor may defer criminal prosecution for criminal offences punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one or more of the following obligations, including to rectify the detrimental consequences caused by the commission of the criminal offence or indemnify the damage caused (Article 283, paragraph 1, item 1 of the CPC).

### **Plea Agreement**

A plea agreement may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation until the finalisation of the main hearing (Article 313, paragraph 1 of the CPC).

- If the authorised person (Article 253, paragraph 1) has not filed a restitution claim, the public prosecutor shall invite him/her to file the claim before the agreement is concluded (Article 313, paragraph 6 of the CPC).

In addition to the public interest, which is sought to be secured by the conclusion of the agreement on the recognition of the criminal offence, and is manifested in the quick and efficient conclusion of the criminal procedure, in which, with the economical use of all state resources, the right of the state to punish is established, the public prosecutor should also protect the interests of the victims, and the agreement on the recognition of the criminal offence appears to a certain extent as an instrument of restorative justice.

The agreement on the recognition of the criminal offence also contains the agreement on the property claim, if one has been submitted (Article 314, paragraph item 4).

Since the victim does not participate in or has no influence on the conclusion of this agreement, it is very important that the



prosecutors respect this provision, and that they call the victim before the conclusion of the agreement and fully inform him/her about the right to the compensation of damages, about the possibility of providing evidence of damages and determine its amount. In the case of such a serious criminal offence, as well as other serious crimes, it is recommended that the judges always ask the prosecutor at the hearing scheduled to make a decision on the agreement if the victim has been informed about his/her rights and if there is a note about this in the case files.

An agreement on testifying in connection with the criminal offence referred to in Article 162 paragraph 1 item 1 of the CPC may be concluded by the public prosecutor and the defendant from the moment of the issuance of an order to conduct an investigation up until the end of the main hearing (Article 320, paragraph 1).

- An agreement on testifying by a defendant shall contain an agreement on the costs of the criminal proceedings, confiscation of the pecuniary benefits from crime, and about the restitution claim, if one has been submitted (Article 321, paragraph 1, item 4).

The Law on the Seizure and Confiscation of Proceeds from Crime and the provisions relevant for the property claim of the injured party:

- if a decision on the property claim of the injured party has been made by a final judgment, the court will extract that amount from the confiscated property in the decision on the permanent confiscation of property, and if such a decision has not been made, the court may extract a part of the property in order to settle the property claim by virtue of a decision. With the decision from Article 44, paragraph 2 of this law, the court may decide on the property claim of the injured party, the existence of which has been determined by a final judgment. (Article 45, paragraph 1);
- after deducting the costs of managing the confiscated property and settling the property claim of the injured party, the funds obtained from the sale of the permanently confiscated property are paid into the budget of the Republic of Serbia (Article 63, paragraph 1).

We may conclude that the judicial system pertaining to the compensation for the victims of criminal offences in the Republic of Serbia provides for the opportunity to exercise the right to compensation for damages within the framework of criminal and civil proceedings, though a problem may certainly arise in the process of executing a decision of the court, as well as in cases where the perpetrator of the criminal offence is unknown, legally acquitted and in all other cases where there was no conviction. Therefore, we support the initiative that calls for the establishment of a special Fund for compensation for victims of criminal offences with elements of violence. The basic function of the Fund would be the payment of material and non-material damages to victims based on the decision of a criminal or civil court. The Fund would also be competent to decide on the compensation for victims of criminal offences for which court proceedings are not conducted, as well as in cases where the perpetrator of the criminal offence is unknown or has been legally acquitted. As a possible source of financing of the said Fund, the funds obtained from the sale of permanently confiscated proceeds of crime are mentioned (Article 63, paragraph 2 of the Law on the Seizure and Confiscation of Proceeds from Crime).

**See also:** Smernice za unapređenje sudske prakse u postupci ma naknade štete žrtvama teških krivičnih dela u krivičnom postupku.<sup>128</sup>

<sup>128</sup> <https://www.osce.org/sr/mission-to-serbia/437726>

## Case Law example:

As an example of good practice, above all of the prosecution, we highlight the judgment of the Higher Court in Novi Sad K 152/18, according to which the Agreement on the recognition of the criminal offence with the accused for the criminal offence of human trafficking from Article 388, paragraph, in connection with paragraph 1 of the Criminal Code, was accepted, whereby a prison sentence of 5 years and 3 months was established for this crime. The criminal offence in question was about the exploitation of the work of the injured party and prostitution. Since the agreement also included a property claim, the court awarded it in line with Article 258 of the CPC in the amount of RSD 1,117,000. The claim related to material and non-material damage, and it is important to point out that during this procedure, following the Agreement on the method of settlement of the property claim, a temporary measure was adopted to secure the property claim. The Higher Court in Novi Sad ... in the criminal proceedings against the defendant ... for the criminal offence of human trafficking from Article 388, paragraph 6, in connection with Article 1 of the CC and secondly, according to the indictment of the Higher Public Prosecutor's Office in Novi Sad no. ... dated 12 March 2018, which was amended by submission no. KTO 97/18 dated 6 December 2019, while deciding on the Agreement on the recognition of a criminal offence, concluded between the Higher Public Prosecutor's office in Novi Sad ... and the accused ... who is defended by a lawyer ... from Novi Sad, and after the hearing held under Article 315 of the CPC on 28 April 2020, the court has passed the following

**JUDGMENT**

Based on Article 317 of the Criminal Procedure Code, the Agreement on the recognition of criminal offence No. SK 17/20 dated 28 April 2020, concluded between the public prosecutor Higher Public Prosecutor's office in Novi Sad, ... and the defendant ... represented by the defence attorney... and according to the indictment of the Higher Public Prosecutor's Office in Novi Sad no. ... dated 11 June 2011, which was amended on 6 December 2019 ... the accused M.K. was found to be

**GUILTY**

Of:

In the period from October 2014 until 19 February 2018, in a ... state while capable of understanding the significance of his actions and managing his actions, he engaged in human trafficking, by using force to recruit and keep the victim N.N. from ... with the aim of exploiting her work and prostitution, and in October 2014, he gave the victim several blows in the area of the face and told her that she had to go to the Republic of Slovakia to work and to send him money every month, and he thus forced her to go to the Republic of Slovakia for temporary work, as well as to hand over to him on 18 December 2014, in Bački Petrovac, a part of the earned income in the Republic of Slovakia in the amount of EUR 940, and in the period from 21 July 2015 to 14 July 2016, from the Republic of Slovakia, via Western Union, to send him funds in the amount of EUR 2,230 on ten occasions, and upon the return of the injured party from the Republic of Slovakia, he demanded that she engage in prostitution and to bring him all the money earned, so the injured party

N.N. provided sexual services on the side of the road on the routes Bački Petrovac – Novi Sad and Bački Petrovac – Odžaci every day, in the evening hours, until 19 February 2018, at a price of approx. RSD 1,500, and she handed over the entire earnings to the suspect, who repeatedly insulted her, calling her a whore and a slut, and physically assaulted her by hitting her with his hands and feet in the area of her head and body, and hit her with a rolling pin, a knife and scissors, causing minor physical injuries in the form of a striped scar on the left scalp area, two scabs above the upper lip, a striped scar on the left side of the neck, skin abrasions on the right upper arm and a striped scar on the front of the right upper leg, and on 13 September 2017 he took money from the injured party in the amount of RSD 302,470, which she received from Generali osiguranje Srbija as compensation of damages, and he also took from the injured party the earnings she earned as daily wages for physical work performed in the field, while he was aware of his actions and wanted to execute such actions and was fully aware that his actions were prohibited ...

By which he committed the criminal offence of human trafficking from Article 388, paragraph 6, in connection with paragraph 1 of the Criminal Code ... so the court applied the cited legal provisions ...

#### IT IS PREVIOUSLY DETERMINED

For the criminal offence of human trafficking from Article 388, paragraph 6, in connection with paragraph 1 of the Criminal Code, a PRISON SENTENCE in a duration of 5 (five) years and 3 (three) months.... On the basis of Article 258 of the CPC, the injured party ... is awarded a property claim, and the defendant ... is obliged to pay the amount of RSD 1,117,000 (one million one hundred and seventeen thousand dinars) to the injured N.N. as compensation for material and non-material damage, within 8 days from the day this judgment becomes final, under the threat of enforcement, in such a way that the monetary amount of RSD 1,117,000 will be paid from the dinar account of the defendant ... no. ... – term savings deposit managed by Opportunity Bank a.d. Novi Sad (which was blocked by a temporary measure pronounced by the decision of the Higher Court in Novi Sad no. KPP 37/2018 dated 22 May 2018, WHICH TEMPORARY MEASURE SHALL BE ABOLISHED BY THIS JUDGMENT), into the account of the injured party ... no. ... which is managed by Erste Bank a.d. Novi Sad, where Opportunity Bank a.d. Novi Sad shall be ordered to transfer the said amount upon the finality of the judgement, in accordance with the Agreement on the method of settlement of the property claim for the injured party ... and the costs of the criminal proceedings of the injured party, from 28 April 2020 ... the defendant undertakes to compensate the costs of the criminal proceedings, namely the costs of the Clinical Centre of Vojvodina – Centre for Forensic Medicine in the amount of RSD 10,700, the costs of a court translator for the Slovak language in the amount of RSD 15,189.87, the costs of bringing the defendant from the district prison in Novi Sad in the amount of RSD 800, the costs of neuropsychiatric expertise in the amount of RSD 14,000, the costs of neuropsychiatric expertise in the amount of RSD 14,000, the costs of neuropsychiatric expertise in the amount of RSD 14,000, the costs of neuropsychiatric expertise in the amount of RSD 14,000, the costs of neuropsychiatric expertise in the amount of RSD 14,000, the costs of a psychological expertise in the amount of RSD 15,493.68, the costs of psychological expertise in the amount of 14,196, the costs of psychological expertise in the amount of 14,196, the costs of psychological expertise in the amount of 14,196 and the costs of forensic and medical expertise in the amount of 24,057 dinars, by payment into the enforcement budget account ... all within 15 days from the date of finality of

the judgement, together with all the expenses incurred before the Higher Court in Novi Sad in procedure K 152/18 in the total amount of RSD 8,898..... the defendant undertakes to reimburse the costs of the award and necessary expenses of the lawyers of the injured parties, lawyers ... incurred in the criminal case of the Higher Court in Novi Sad no. K 152/18, ... in the amount of RSD 1,275,000 within 8 days from the date of the finality of the judgement, under the threat of enforcement, in such a way that the amount of RSD 1,275,000 shall be paid by transfer from the dinar account of the defendant – term savings deposit managed by Opportunity Bank a.d. Novi Sad ...

Given that the provisions of criminal substantive and criminal procedural law were respected when concluding the Agreement on the recognition of a criminal offence, in the sense of Article 317 of the CPC, it was decided as specified in the operative part of the judgement.

### Non-prosecution and non-punishment of trafficked persons

**Trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.<sup>129</sup>**

Victims may have been involved in illegal behaviour or committed crimes as a result of being trafficked, such as illegal border crossing, using false documents, begging or being involved in drug production or trafficking, or engaging in prostitution in countries where sex work is illegal. This may be used by traffickers as a means of maintaining control over their victims. In this way, victims can be caught in the crossfire: if they do not report the crime or facilitate the arrest of the perpetrators they may find themselves prosecuted, e.g. for prostitution, drug or immigration related offences, but if they do report, they risk intimidation and reprisals from the side of the perpetrators. In the case of prostitution this is aggravated by the stigma on sex work. Traffickers may, for example, threaten the victim that no one will believe her or that the police are on the side of the traffickers – which is not uncommon in many countries. In general, the police are a major source of violence and extortion against sex workers.<sup>130</sup>

It is a widely accepted principle that one should not be held responsible for a crime he or she was compelled to commit. Whereas the UN Trafficking in Persons Protocol does not specifically address the issue, the Working Group on Trafficking in Persons, the body established to make recommendations on the effective implementation of the Protocol, noted that State Parties should consider

*...not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts.<sup>131</sup>*

<sup>129</sup> The Inter-Agency Coordination Group against Trafficking in Persons (ICAT) (2020), *Non-Punishment of Victims of Trafficking*, Issue Brief 8. Available at: <https://www.unodc.org/unodc/en/human-trafficking/Webstories2020/punishing-traffickers--not-victims-icat-launches-an-issue-brief-on-the-non-punishment-principle-for-victims-of-human-trafficking.html>. ICAT is a lead policy mechanism to coordinate anti-trafficking responses within and beyond the UN system. See also the *OSCE Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (2013). Available at: <https://www.osce.org/secretariat/101002>.

<sup>130</sup> See e.g. Amnesty International (2016), *Sex Workers at Risk. A research summary on human rights abuses against sex workers*; Guidance Document of the UN Working Group on discrimination against women and girls (2023): *Eliminating discrimination against sex workers and securing their human rights*. Available at: <https://www.ohchr.org/en/documents/tools-and-resources/guidance-document-working-group-discrimination-against-women-and>; Council of Europe Commissioner for Human Rights (2024), *Protecting the human rights of sex workers*. Available at: <https://www.coe.int/en/web/commissioner/-/protecting-the-human-rights-of-sex-workers>.

<sup>131</sup> Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009 (CTOC/COP/WG.4/2009/2, para. 12).

The OHCHR Recommended Guidelines and Principles on Human Rights and Human Trafficking (2002) state:

*Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons (Principle 7).*

The CoE Convention on Trafficking explicitly provides for the possibility of not imposing penalties on victims for their involvement in unlawful activities if they were compelled to do so by their situation (Art. 26). This is further explained in the Explanatory Report.<sup>132</sup> The EU Trafficking Directive 2024 contains a similar article (Art. 8).

*Non-punishment princip in national legislation it is elaborated in detail on page 43 of this Manual..*

## Non-detention of trafficked persons

**Trafficked persons should not be detained or held in closed shelters or other welfare centres.**

The detention of (presumed) trafficked persons (including children) in public detention facilities, or public or private shelters violates several fundamental principles of international law, such as the right to freedom of movement, the prohibition on unlawful deprivation of liberty, arbitrary arrest and detention, and, in the case of female victims of trafficking for sex work, the prohibition of discrimination on ground of sex; it should therefore be considered as unlawful.<sup>133</sup>

Detention of trafficked persons, defined as “the condition of any person deprived of personal liberty except as a result of conviction for an offence”,<sup>134</sup> can cover a wide range of situations. Victims may be detained as irregular/undocumented migrants, as a result of their engagement in illegal activities, such as prostitution, unauthorized work or drug production (even if correctly identified as victims), because they are unwilling or unable to cooperate with criminal investigations or because their cooperation is not considered useful.

Another form of detention is the placement of trafficked persons in closed shelters or other welfare facilities in conditions similar to detention. Common justifications for this form of detention include the need to provide shelter and support, the need to protect victims from further harm and the need to ensure the victim's cooperation in the investigation and prosecution of traffickers. The practice of detaining victims in shelters and other welfare institutions is often highly gendered. The majority of trafficked persons detained in closed shelters are women and girls.

<sup>132</sup> CoE, Explanatory Report – Action against Trafficking in Human Beings, 16.V.2005, para. 272-274.

<sup>133</sup> Anne Gallagher & Elaine Pearson, Detention of Trafficked Persons in shelters. A legal and policy analysis, 2008. See also Joint UN Commentary, Prevent Combat Protect, p. 38.

<sup>134</sup> Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution 43/173, annex.

The OHCHR Recommended Principles and Guidelines are clear that detention of trafficked persons is inappropriate and (implicitly) illegal. They call upon States to ensure that trafficked persons are not held in immigration detention centres or any other form of custody (Guidelines 2(6) & 6(1)).

On a case-by-case basis victim detention may only be justified if it meets the requirements of necessity, legality and proportionality. This implies that victims cannot be detained, either in law enforcement or welfare institutions, for any reason other than their immediate safety and only for the shortest period possible. They can never be detained for reasons of collecting evidence.

In the case of child victims<sup>135</sup>, Article 37(b) CRC states that

*"...[no] child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."*

The detention of children in need of protection has been explicitly rejected by the Committee on the Rights of the Child:

*"Such deprivation of liberty for children who have been abandoned or abused equates to punishment for children who are victims of crimes, not the offenders."*<sup>136</sup>

### Reflection period, temporary, permanent and humanitarian residence permit

**Victims have the right to a reflection period of 3 months. Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities. If return would compromise their life and safety, trafficked persons have the right to apply for asylum/international protection or a residence permit on humanitarian grounds.**

The reflection and recovery period allows trafficked persons to begin to recover and to make informed and considered decisions about the options available to them. The reflection period is not tied to cooperation with the authorities and should not be used to compel trafficked persons to cooperate. The reflection period is equally important for national and non-national victims, whether they have been trafficked within or across borders. According to the Council of Europe Trafficking Convention a recovery and reflection period should be granted of at least 30 days if there are reasonable grounds to believe that the person is a victim of trafficking. During this period the person should not be removed from the country (Art. 10(2) and 13).

Empirical evidence suggests that a period of at least 90 days is necessary for the cognitive functioning and emotional strength of a trafficked person to increase to a level at which they can be informed about their safety and cooperation with the authorities against the traffickers, and to provide detailed evidence about past events.<sup>137</sup>

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<sup>135</sup> See also CRC General Comment No. 6 on unaccompanied and separated children.

<sup>136</sup> Committee on the Rights of the Child, General Comment no. 10 on children's rights in juvenile justice.

<sup>137</sup> Cathy Zimmermann et al. (2006), *Stolen Smiles. The physical and psychological health consequences of women and adolescents trafficked into Europe*, London School of Hygiene and Tropical Medicine, p. 3.

## Reflection period and the right to humanitarian residence in national legislation

National legal documents that set a normative basis and define the framework and rules for exercising the right to temporary residence of foreigners who are victims of human trafficking have evolved from those that had the form of instructions and guidelines. The process was opened with the signing of the Statement of Obligations<sup>138</sup> in Tirana in 2002, in which ministers and other representatives of the countries of Southeast Europe assumed the responsibility to solve the problem of human trafficking in a joint and coordinated manner through a strategy that serves as an instrument for combat against organised crime and for protecting the human rights of victims. By refraining from deporting potential victims of human trafficking due to their illegal entry into the country and due to their unregulated residence and/or work status,<sup>139</sup> and then by legalising the status of victims of human trafficking through granting a temporary residence of up to three months, the starting point for a more effective strategy is provided, in particular, due to several reasons:

- contributes to the more effective identification of victims of human trafficking, and thus to the prevention of further exploitation,
- creates the preconditions for assisting a larger number of victims who otherwise would not have dared to seek refuge in a shelter or with the police due to fear of deportation (social assistance, health care, counselling and legal advice regarding their situation and possibilities),
- contributes to the preparation of measures important for the reintegration of victims and the prevention of re-victimisation by traffickers,
- **victims are encouraged to cooperate with investigative authorities and/or to testify, and**
- contributes to the development of the witness protection programme.

Concerning the "Statement of Obligations" signed at the 3rd Regional Ministerial Forum of the Stability Pact held in Tirana on 11 December 2002, "Declaration on the Protection of Victims-Witnesses", which was signed at the 4th Regional Ministerial Forum of the Stability Pact held in Sofia on 10 December 2003 and the Recommendation of the UN High Commissioner for Human Rights "Principles on Human Rights and Human Trafficking" (E/2002/68/Add. I), the Minister of the Interior of the Republic of Serbia issued an instruction in 2004 on the conditions for granting temporary residence to foreigners who are victims of human trafficking, which states:

*"To foreign nationals whom the competent authority, established by the Ministry of Labour, Employment and Social Affairs of the Republic of Serbia – Service for the Coordination of Assistance to Victims of Human Trafficking, deems that they should be provided with protection and treatment as victims of human trafficking, the internal affairs authority responsible according to the place of residence shall grant temporary residence for humanitarian reasons."*

*A victim of human trafficking may be granted a temporary residence for humanitarian reasons for a duration of three months, with the aim of providing protection and assistance in recovery and return to the country of origin or previous residence.*

<sup>138</sup> At the third Ministerial meeting in Tirana on 11 December 2002, Government Ministers and representatives signed the Statement of Commitment on the Legalisation of the Status of Trafficked Persons, thereby agreeing to grant temporary residence to trafficking victims, which is essential for the recovery of trafficking victims and for prosecuting traffickers

<sup>139</sup> Direct repatriation of victims of human trafficking: reduces the chances of obtaining information needed to prosecute the traffickers (especially in the context of organised crime); prevents the victims from testifying in criminal proceedings; prevents the victims from accessing proceedings in which they may try to resolve their civil rights issues; exposes the victims to the risks of repeated victimisation.

*A victim of human trafficking may be granted a temporary residence for 6 months if he/she cooperates with the authorities in the detection of criminal offences and perpetrators.*

*A victim of human trafficking may be granted temporary residence for a period of one year if he/she actively participates in the court proceedings as a witness or injured party, as well as in the case where reasons for his/her personal safety require such treatment.*

If the victim of human trafficking has entered the country or resides in the country illegally, the competent authority is obliged, before starting the procedure, to determine the facts and circumstances that exclude or reduce the criminal or misdemeanour liability of the victim of human trafficking (to determine the elements of force, threat and coercion, i.e. extreme necessity or necessary defence)."

The Law on Foreigners<sup>140</sup> provides for the possibility of granting temporary residence for humanitarian reasons related to a suspicion that the foreigner is a victim of human trafficking<sup>141</sup>, but also for foreigners who have found themselves in some other, even the following situations (Article 61 of the Law on Foreigners)<sup>142</sup>:

- temporary residence may be granted to a foreigner who meets the general requirements from Article 43 of this law and for whom there are other circumstances that require special consideration in connection with:
  - › a foreigner who is a victim of a serious criminal offence, including persons involved in facilitating irregular migration and who cooperates with the police and judicial authorities, and whose presence is necessary in criminal proceedings, or who participates in the investigation as a witness or injured party<sup>143</sup>,
  - › a minor foreigner who is abandoned, a victim of organised crime or left without parental care or unaccompanied for other reasons,
  - › serious and justified personal reasons of a humanitarian nature, the interests of the Republic of Serbia, or international obligations undertaken;
- temporary residence for humanitarian reasons is granted for a duration of at least six months, and up to a year, and can be extended if the circumstances on which the temporary residence was granted still exist.

The residence of a foreigner who is presumed to be a victim of human trafficking is legally regulated by the Law on Foreigners from 2018<sup>144</sup> (before that, but to a much smaller extent, it was regulated by the Law on Foreigners from 2008<sup>145</sup>), which in Article 62 provides:

<sup>140</sup> "Official Gazette of the RS", no. 24/2018 and 31/2019.

<sup>141</sup> Temporary residence is a permit for the stay of a foreign national in the Republic of Serbia and may be granted to a foreigner who intends to stay in the Republic of Serbia for more than 90 days on the basis of: 12) the status of a presumed victim of human trafficking; 13) the status of a victim of human trafficking; – Article 40, paragraph 1, items 12 and 13.

<sup>142</sup> The justification of the request for the approval of humanitarian residence for a foreigner who cooperates with the police or judicial authorities, and if his/her presence is necessary in the proceedings conducted before those authorities, is proven by the authority's confirmation of his/her participation in the proceedings, which is obtained ex officio (Article 26, paragraph 3 of the Rulebook on the Detailed Conditions for the Approval of Temporary Residence, the Appearance of the Request for the Approval of Temporary Residence, the Appearance and Method of Placing a Temporary Residence Sticker in the Foreign Travel Document ("Official Gazette of the RS" no. 72/2018 dated 28.09.2018)).

<sup>143</sup> The competent authority shall decide on the request for approval or extension of temporary residence within 30 days from the date of submission of the request. – Article 42, paragraph 1 of the Law on Foreigners. The request for the approval of temporary residence is submitted to the Police Administration for the city of Belgrade, the Administration for Foreigners and regional police administrations, and organisational units that are responsible for the residence and movement of foreign citizens in the territory of the Republic of Serbia. Request for the approval or extension of a temporary residence is submitted in person and a complete set of documents, i.e. all prescribed evidence, is to be enclosed with the request. When requested by the officials, the request may be supplemented with additional evidence. [http://www.mup.gov.rs/wps/portal/sr/gradjani/Informacije%20za%20strance/ut/p/z1/fc9Rb4lwEAfwz2lMr9y1sAp7a0jXphgydRnrC8GFVRkplTx44\\_oXozOe7vL73-5AwUfQlY6bnXltqatmqH\\_VKwkNKZpDHLBX1BTvjK9S7m01W18HEG-E9xBPU4v-xsuV1W46xy7bBMnX0ezxmRSGcyFQO5C5lcJAENjkbBTFDkb5M4mYkoiFL8Aw8OmoSjVlfnuPtOogOKft\\_17a2\\_sEO441z--7ZQw\\_7vve1Mbqp\\_s-z8\\_BeZGM6B8W1hP2uOL3-PDXHjI9-fOTN4cl/?1dmy&urile=wcm%3apath%3a%2Fpublc\\_cyrlilic%2Fpocetna%2Fgradjani%2Finformacije%2Bza%2Bstrance%2Fprivremeni%2Bboravak%2Fprivremeni%2Bboravak](http://www.mup.gov.rs/wps/portal/sr/gradjani/Informacije%20za%20strance/ut/p/z1/fc9Rb4lwEAfwz2lMr9y1sAp7a0jXphgydRnrC8GFVRkplTx44_oXozOe7vL73-5AwUfQlY6bnXltqatmqH_VKwkNKZpDHLBX1BTvjK9S7m01W18HEG-E9xBPU4v-xsuV1W46xy7bBMnX0ezxmRSGcyFQO5C5lcJAENjkbBTFDkb5M4mYkoiFL8Aw8OmoSjVlfnuPtOogOKft_17a2_sEO441z--7ZQw_7vve1Mbqp_s-z8_BeZGM6B8W1hP2uOL3-PDXHjI9-fOTN4cl/?1dmy&urile=wcm%3apath%3a%2Fpublc_cyrlilic%2Fpocetna%2Fgradjani%2Finformacije%2Bza%2Bstrance%2Fprivremeni%2Bboravak%2Fprivremeni%2Bboravak)

<sup>144</sup> "Official Gazette of the RS", no. 24/2018 and 31/2019.

<sup>145</sup> By virtue of the instruction on the implementation of the Law on Foreigners (01 number 1089/09-11 of 14 July 2009), this matter was defined in more detail by the Minister of the Interior.



- if, based on specific indicators, it is presumed that the foreigner is a victim of human trafficking, the competent state authority for identifying and coordinating the protection of human trafficking victims (Centre for the protection of human trafficking victims – hereinafter: the Centre) performs an assessment of the victim's condition and needs, as well as victim identification;
- The Centre informs the Ministry of the Interior about initiating the procedure from paragraph (1) of this article and informs the foreigner about the conditions for approving temporary residence and other rights;
- temporary residence may be granted to a foreigner presumed to be a victim of human trafficking without meeting the general conditions of Article 43 of this law, for a duration of 90 days;
- during the duration of temporary residence, recovery is facilitated, and the possible further influence of the perpetrator of the criminal offence on the victim is eliminated, as well as the possibility that, based on timely and complete information about their status, the victim can independently, without conditioning on testifying, decide on further cooperation with the competent state authority for identifying and coordinating the protection of human trafficking victims, court, prosecution or police;
- during the validity period of the temporary residence on this basis, a decision on return cannot be made;
- during the validity period of the temporary residence on this basis, the Centre:
  - › coordinates the protection of human trafficking victims, and
  - › in cooperation with other institutions, establishments and organisations, ensures security and protection, appropriate and safe accommodation, psychological and material assistance, access to emergency medical care, education access for minors, counselling, and information about their legal rights and rights available to them, in a language they understand;
- if necessary, translation and interpretation services are provided, as well as assistance in exercising their rights and interests in the event of a criminal proceeding;
- when it is determined that a minor foreigner presumed to be a victim of human trafficking is unaccompanied by parents, guardians or legal representatives, the competent authority, guardianship authority and police, in cooperation with the Centre, determine whether his/her family is in the territory of the Republic of Serbia, with the goal of family reunification;
- the victim will not be reunited with the family if the state authority competent for the protection of human trafficking victims assesses that reunification with the family is not in the best interest of the minor, especially if there is suspicion that the victim's family is involved in human trafficking. Reunification of the minor with the family will only be carried out in situations where the competent guardianship authority, in cooperation with the Centre, determines that reunification with the family is in the best interest of the child;
- if the victim's family is not in the territory of the Republic of Serbia or cannot be found, a guardian will be appointed for the minor in accordance with the law.

#### **Temporary Residence for Victims of Human Trafficking (Article 63 of the Law on Foreigners):**

- if it is determined in the procedure from Article 62, paragraph 1 of this law that the foreigner is a victim of human trafficking and has made an independent decision on further cooperation with the Centre, court, prosecution or police, the Centre informs the Ministry of the Interior about the above in the form of a professional opinion;
- victims of human trafficking, including minors who are victims, will be granted temporary residence (without meeting the conditions of Article 41, paragraph 2, or Article 43 of this law) if the Centre considers their stay necessary for their protection, recovery and assurance of safety, or if the court, prosecution or police consider their presence necessary due to cooperation in criminal proceedings;

- temporary residence for a foreigner who is a victim of human trafficking is granted for a period of one year, with the possibility of extension under the same conditions;
- a foreigner granted temporary residence as a victim of human trafficking, in addition to the rights from Article 62 of this law, without conditioning on consent to testify, has the right to access the labour market, professional training and education;
- a foreigner with an approved temporary residence for victims of human trafficking, who does not have sufficient material means for necessary treatment, the Centre, independently or in cooperation with the healthcare system, the competent centre for social work, and other service providers and organisations, will ensure the availability of medical and other necessary assistance;
- when approving temporary residence for a minor foreigner, the competent authority takes into account the best interest of the minor, their age and maturity.

#### **Termination of Humanitarian Residence and Temporary Residence for Victims of Human Trafficking (Article 64 of the Law on Foreigners):**

- temporary residence for victims of human trafficking... can be terminated at any time if the foreigner no longer meets the conditions, especially:
  - › if the foreigner who has been granted temporary residence actively voluntarily and on his own initiative renewed contacts with persons suspected of committing a criminal offence in the field of human trafficking and irregular migrations, or if it is determined that the report of these criminal offences is false or unfounded,
  - › if the foreigner who has been granted temporary residence has ceased to cooperate or is using deception in the cooperation process,
  - › when required for reasons of protecting the security of the Republic of Serbia and its citizens,
  - › when judicial authorities decide to discontinue the process;
- the temporary residence for humanitarian reasons from Article 61, paragraph 1, items 1), 2), 4) and 5) ceases if the circumstances for which the foreigner was granted temporary residence cease to exist or if required for reasons of protecting the security of the Republic of Serbia and its citizens.



#### **IMPORTANT**

For the duration of temporary residence:

- recovery is facilitated,
- possible further influence of the perpetrator of the criminal offence on the victim is eliminated,
- based on timely and complete information about their status, the victim can independently, without conditioning on testifying, decide on further cooperation with the competent state authority for identifying and coordinating the protection of human trafficking victims, court, prosecution or police.

(Article 62, paragraph 4 of the Law on Foreigners)

### **Recovery and reflection in national legislation**

At the national level, the importance of respecting the rights of victims of human trafficking to recovery and reflection is also discussed in the Standard Operating Procedures for Dealing with Victims of Human Trafficking (See Appendix 4) of the Office for the Coordination of Activities in Combating Trafficking in Human Beings. The presumed victim of human trafficking, in the identification process, is informed about his/her rights during the very first conversation with the expert from the Centre, regardless of whether he/she requested it or not:

- the right to independently decide on further cooperation with the Centre and other participants in providing aid, support and protection;
- the right to a period of recovery and reflection, regardless of whether the presumed victim is a citizen of the Republic of Serbia or a foreigner, before deciding on whether to cooperate with the prosecuting authorities in the criminal proceedings against the perpetrators of the criminal offence (as long as this does not question the actions carried out by the competent authorities in all stages of the corresponding national procedure, and especially in the investigation and prosecution of the perpetrators of this criminal offence).

### **Asylum status and international protection<sup>146</sup>**

Helping victims seek asylum and/or international protection can be a crucial part of victim assistance services. Trafficked persons may be unable to return to their home country for fear of being re-victimised or re-trafficked by their traffickers. They may also fear ostracism, stigmatisation and punishment from their family, community and sometimes the authorities, or retaliation by the traffickers. These fears may be well-founded and may amount to persecution, triggering international protection under refugee law.

The obligation to provide protection, including protection against refoulement and the granting of refugee status or subsidiary protection, is enshrined in several international and regional treaties. The Council of Europe Trafficking Convention explicitly states that trafficked persons should not be returned to another state if there is a serious risk that they would be subjected to persecution, torture or other forms of ill-treatment. It also reaffirms the right of trafficked persons to seek and enjoy asylum.

The UNODC toolkit (tool 7.9) provides a detailed discussion of the issue of protecting and assisting trafficking victims as refugees and refers to various guidelines of the Office of the United Nations High Commissioner for Refugees (UNHCR) which may be helpful in the process of ensuring such protection.<sup>147</sup> The UNHCR *Guidelines on international protection*<sup>148</sup> provide guidance on the assessment of asylum claims presented by (potential) victims of trafficking as well as procedural guidance. In addition, the UNHCR *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs*<sup>149</sup> clarifies that, in the absence of effective state protection, victims of gang violence - who may include victims of trafficking - may also qualify for international protection.

The Guidance note of the Council of Europe on the entitlement of victims of trafficking, and persons at risk of being trafficked, to

<sup>146</sup> See for a more detailed discussion: Joint UN Commentary, *Prevent Combat Protect*, p. 56-63.

<sup>147</sup> UNODC (2006), Tool 7.9 *Protecting refugee victims of trafficking*. Available at: [https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_7-9.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-9.pdf)

<sup>148</sup> UNHCR *Guidelines on international protection: Application of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*. Available at: <https://data.unhcr.org/en/documents/details/71320>.

<sup>149</sup> UNHCR, *Guidance on Refugee Claims Relating to Victims of Organized Gangs*, 2010.

international protection aims to strengthen the implementation of the obligation to provide international protection to victims of trafficking.<sup>150</sup> It highlights the criteria that may entitle victims of trafficking, as well as those at risk of being trafficked, to international protection, and guides the relevant authorities, agencies and organisations that work with trafficked persons.

### The principle of non-refoulement

The principle of non-refoulement is a central principle of refugee and international human rights law. It guarantees that no one should be re-turned to a country where they would be at risk of torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, regardless of their migration status.<sup>151</sup> The prohibition of non-refoulement is included in the 1951 Refugee Convention and several international and regional treaties, among which the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the EU Charter of Fundamental Rights.

Although the principle of *non-refoulement* does not as such, entail a right of the individual to be granted asylum in a particular state, it does mean however, that for the removal of the individual to be lawful, States need to examine whether such removal would result in a breach of the states' *non-refoulement* obligations.

In the case of children actions of the State must be taken in accordance with the best interests of the child. In particular, a child should not be returned if such return would result in the violation of their fundamental human rights, including if there is a risk of insufficient provision of food or health services.

### Repatriation and guarantees of non-repetition

***Victims have the right, if they wish so, to return to their home country without unnecessary or unjustified delay and with taking care of their safety. The safety of the trafficked person and their family should be taken into account in any decision on repatriation.***

Both the UN Trafficking Protocol and the Council of Europe Trafficking Convention contain the obligation to provide safe and, as far as possible, voluntary return. A critical aspect of safe repatriation is supported reintegration. Victims who are provided with assistance and support on their return are less likely to be re-trafficked and are less vulnerable to intimidation, retaliation, social isolation and stigmatization.<sup>152</sup> Return and reintegration programmes should respect the right to privacy of the victim and take due consideration of the rights, safety, dignity and health of the trafficked person.<sup>153</sup> They should also seek to secure the safety and well-

<sup>150</sup> Group of Experts on Action against Trafficking in Human Beings (2020), *Guidance note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection* (GRETA 2020(06)). Available at: <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>.

<sup>151</sup> OHCHR, *The principle of non-refoulement under international human rights law*. Available at: <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

<sup>152</sup> OHCHR (2010), *Commentary on the Recommended Principle and Guidelines*, p. 181-182.

<sup>153</sup> See also the Council of Europe Convention on Action against Trafficking in Human Beings 2005, *Explanatory Report*, Paragraph 202.

being of returned victims, enable them to find viable means of existence prevent re-victimization and reduce the risk of re-trafficking.

The right to return also implies the obligation to permit victims who wish to return to do so without undue or unreasonable delay. Detention of trafficked persons in shelters, prisons or immigration detention centres or compelling victims to remain for the duration of criminal proceedings is clearly in contradiction with this right.<sup>154</sup>

An important component of the right to an adequate remedy is the guarantee of non-repetition (see also Chapter 5). According to the UN Special Rapporteur on trafficking guarantees of non-repetition, which include measures to prevent trafficking, are an important form of remedy given the risks of re-trafficking to which trafficked persons may be exposed.<sup>155</sup> The guarantee of non-repetition includes the right to be protected from re-victimisation by not being returned to a place of trafficking or where traffickers operate. The UN Trafficking Protocol (Art. 9(1)b) requires all States Parties “to protect victims of trafficking [...] especially women and children, from re-victimization”.<sup>156</sup>

The guarantee of non-repetition involves a guarantee of safe return. A crucial factor is therefore the actual capacity of the state to which the victim will be returned, to effectively protect victims of trafficking upon their return. For this reason, an individual risk assessment should be carried out before any decision on return, deportation or repatriation is taken.

In practice this means that (potential) victims of trafficking may not be turned back at the border. The CoE Trafficking Convention (Art. 10.2) requires that States do not remove a person from their territory until the identification process as victim has been concluded, as the rights afforded by the Convention would be theoretical and illusory if such persons were removed before their identification as victims was completed. According to the UN Protocol and the Council of Europe Trafficking Convention, the safety of the trafficked person and their family should be taken into account in any decision on repatriation.

### The right to return (repatriation) in national legislation

Pursuant to the provisions of national legislation, our diplomatic consular offices play a crucial role in the voluntary return of victims of human trafficking with citizenship of the Republic of Serbia. The conditions for the return of victims are ensured through the cooperation of the Ministry of Foreign Affairs, the Ministry of the Interior, the Centre for the Protection of Victims of Human Trafficking with the competent authorities and organisations in a foreign country and other participants in the process of return and reintegration. This process is implemented with due respect for the rights of the victims, their safety and dignity. Assistance to these victims is provided as soon as the conditions for such assistance are created; it implies their consent and is achieved through the provision of travel documents for return<sup>157</sup>, a comprehensive risk and security assessment, security measures during the transfer and measures of (re)integration and inclusion.<sup>158</sup>

<sup>154</sup> OHCHR, *Commentary on the Recommended Principles and Guidelines*, p. 178.

<sup>155</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezelo, 13 April 2011 (A/HRC/17/35). Para. 41.

<sup>156</sup> UN Trafficking Protocol, Art. 9(1)(b).

<sup>157</sup> If necessary, and pursuant to Article 17 of the Law on Travel Documents, through issuing a travel document by a diplomatic or consular mission of the Republic of Serbia in the territory of the state in which the victim is found (against prior verification of the citizenship status).

<sup>158</sup> Standard Operating Procedures for dealing with the victims of human trafficking, the Office for the Coordination of Activities in Combating Trafficking in Human Beings within the Police Directorate of the Ministry of the Interior of the Republic of Serbia, 12 December 2018

Procedures aimed at exercising the right to voluntary return from the Republic of Serbia of human trafficking victims with foreign citizenship necessarily imply respect for their right to temporary residence for humanitarian reasons<sup>159</sup> and the fact that, in accordance with Article 3, paragraph 1, item 24 of the Law on Foreigners, along with many others, particularly vulnerable persons also include the victims of human trafficking.

For a foreigner who resides in the territory of the Republic of Serbia illegally, the competent authority issues a decision on return and sets a deadline for voluntary return in which he/she is obliged to leave the Republic of Serbia (the deadline cannot be shorter than seven days or longer than 30 days from the date of the decision on return)<sup>160</sup>.

- The competent authority may extend the period for voluntary departure for a foreigner who, for justified reasons, has not left the Republic of Serbia within the specified deadline.
- If the foreigner does not leave the Republic of Serbia in accordance with the return decision, they will be forcibly removed from the Republic of Serbia.
- During the period for voluntary departure, the foreigner is entitled to emergency medical care in accordance with the provisions of the law regulating health insurance, the right to basic education in the case of minors, and the right to participate in a voluntary return support programme conducted by the migration management authority, in accordance with the programme adopted by the Government upon the proposal of that authority.
- After participating in the voluntary return programme, the foreigner is entitled to rights in accordance with the provisions of the law regulating asylum, which prescribe voluntary return.
- In cases where a return decision has been issued, and subsequently, temporary stay is granted to the foreigner in accordance with Article 61 of this Law, the return decision shall be deemed null and void – Article 77 of the Law on Foreigners.
- The foreigner may file an appeal against the return decision through the competent authority within 15 days from the date of receipt of the decision (in writing, in the Serbian language, accompanied by the prescribed fee).
  - › The Ministry of the Interior decides on the appeal.
  - › The appeal against the return decision does not suspend the execution of the decision, except in cases where there is a real danger of violating the rights prescribed by Article 83 of this Law or if there are serious humanitarian reasons.
  - › Administrative proceedings may be initiated against the decision issued in the second instance procedure – Article 80 of the Law on Foreigners.

The return of foreign victims of human trafficking to their country of origin is only possible if it is not contrary to the provisions of Article 83 of the Law on Foreigners<sup>161</sup> and Article 6 of the Law on Asylum and Temporary Protection.<sup>162</sup>

<sup>159</sup> Temporary residence for humanitarian reasons is granted for a duration of at least six months and up to a year, and can be extended if the circumstances on which the temporary residence was granted still exist (Article 61 of the Law on Foreigners). Temporary residence for a foreigner who is presumed to be a victim of human trafficking (may be granted for a period of 90 days and during the validity period of the temporary residence on this basis, a decision on return cannot be made – Article 62 of the Law on Foreigners), i.e. for victims of human trafficking (granted for one year, with the possibility of extension under the same conditions – Article 63 of the Law on Foreigners). The reasons for making a decision on the termination of humanitarian residence and temporary residence for victims of human trafficking are stipulated by Article 64 of the Law on Foreigners.

<sup>160</sup> With the return decision, the competent authority may order the foreigner to leave the territory of the Republic of Serbia immediately or within a deadline shorter than seven days, if there is a risk that the foreigner will not be available to the competent authority for the purpose of enforcing a forced removal, or if the foreigner poses a threat to the security of the Republic of Serbia and its citizens (Article 77, paragraph 7).

<sup>161</sup> A foreigner may not be forcibly removed to a territory where they face persecution based on their race, sex, sexual orientation or gender identity, religion, nationality, citizenship, membership of a particular social group, or political opinion. This shall not apply to a foreigner for whom it can be reasonably believed that they pose a threat to the security of the Republic of Serbia or who has been convicted by a final judgment of a serious criminal offence, thereby posing a danger to public order (except where there is a risk of the execution of the death penalty, torture, inhuman or degrading treatment or punishment upon return, or where there is a serious violation of rights guaranteed by the Constitution). Unaccompanied minors may not be forcibly removed unless the competent authority is convinced that the minor will be returned to a family member, guardian or appropriate childcare institution.

<sup>162</sup> No person shall be deported or returned to a territory where his or her life or liberty would be jeopardised on account of his or her race, gender, language, religion, nationality, belonging to a particular social group or political opinion. This does not apply to a person for whom it is reasonably believed that they pose a threat to the security of the Republic of Serbia or who has been convicted by a final judgment for a criminal offence.

- The key actor is the Centre for the Protection of Victims of Human Trafficking, which implements this activity through cooperation with the CRM and other participants in the Republic of Serbia, as well as with competent state authorities in the country of origin, CSOs and intergovernmental organisations in Serbia and the country of origin.
- Helping the victims includes the provision of travel documents for return, security measures during the transfer, if possible, preparing a special risk and security assessment before the return, as well as the measures for reintegration in the country of origin (at the same time, it is necessary to inform the partner organisation in the country of origin about the activities undertaken as prescribed by the Support Plan, about the findings and opinions given, as well as to agree on further coordination mechanisms in each specific case).
- Before returning, the victim of human trafficking will be provided with all the available information about state authorities, institutions, services and civil society organisations for providing support to the victims in the country to which he/she is returning.
- The centre ensures that the return is carried out with due respect for the rights, safety and dignity of the victim of human trafficking.

### Risk assessment

Before returning a trafficked person, a risk assessment of whether a victim of trafficking could be at risk of re-trafficking, re-victimization and/or further harm should be carried out. The purpose of a risk assessment is to assess the safety of the trafficked person upon his or her return, the perspectives of his or her social and professional inclusion and the risks of re-trafficking. When the trafficked person has children, the best interest of each child should be taken into account, and whether they will have the opportunity to go to school and to receive medical, social and other necessary care and protection.

#### Factors to Consider When Assessing Risk

- The method by which human trafficking was carried out
- How the individual who conducted the recruitment and/or trafficking may be part of a broader network, and the operations of that network
- The risk of retaliation from traffickers, including whether victims owe money to traffickers or not
- The risk of exposure to harassment, arrest, detention, or prosecution by authorities, for example, due to immigration law violations or involvement in prostitution
- The risk of social exclusion, taking into account the victim's age, gender, social status, and family situation
- Access to assistance, education, and sustainable means of livelihood
- The capacity and willingness of the country of return to provide adequate help, support, and protection

From the 2004 Report of the EU Expert Group on Trafficking in Human Beings.

for which, according to the legislation of the Republic of Serbia, a prison sentence of five years or a more severe sentence may be imposed, which is why he/she poses a threat to the public order (however, no person may be deported or returned against his/her will to a territory where there is a risk that he/she will be subjected to torture, inhuman or degrading treatment or punishment).

## Children

Article 16(7) of the CoE Trafficking Convention states that “child victims shall not be returned to a State, if there is an indication, following a risk and security assessment, that such return would not be in the best interests of the child”. Also the Legislative Guide to the Trafficking Protocol stresses the need for special care in the repatriation of child victims:

*“In cases where child victims are involved, legislators should not return those child victims unless doing so is in their best interest and, prior to the return, having established that a suitable caregiver such as a parent, another relative, another adult caregiver, or a government agency in the country of origin has agreed and is able to take responsibility for the child upon return and to provide him or her with appropriate care and protection. Relevant judicial authorities and government ministries, in cooperation with the relevant social service authorities and/or parent or guardian should be responsible for establishing whether or not the repatriation of a child victim is safe and should ensure that the process takes place in a dignified manner and is in the best interest of the child. [...] States Parties should establish procedures to ensure that the child is received in the home State by an appointed member of the social services of the country of origin and/or the child's parents or legal guardian.”<sup>163</sup>*

Any decision to return a child should be based on a formal Best Interests Determination.<sup>164</sup> Factors that should be taken into account are:<sup>165</sup>

- The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return;
- The availability of care arrangements for that particular child;
- The views of the child expressed in exercise of his or her right to do so under Article 12 CRC and those of the caretakers;
- The child's level of integration in the host country and the duration of absence from the home country;
- The child's right “to preserve his or her identity, including nationality, name and family relations” (Article 8 CRC); and
- The “desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background” (Article 20 CRC).

<sup>163</sup> UNODC (2020), *Legislative guide for the Trafficking Protocol*, para. 259 and 260. Available at: [https://www.unodc.org/documents/treaties/Review\\_Mechanism/Review\\_Mechanism\\_2020/Website/Legislative\\_Guide\\_on\\_TIP/TIP\\_LegislativeGuide\\_Final.pdf](https://www.unodc.org/documents/treaties/Review_Mechanism/Review_Mechanism_2020/Website/Legislative_Guide_on_TIP/TIP_LegislativeGuide_Final.pdf).

<sup>164</sup> A Best Interest Determination (BID) describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decisions-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option. UNHCR (2008), *Guidelines on Determining the Best Interests of the Child*; UNHCR (2008), *Best Interests Determination Children – Protection and Care Information Sheet*. Available at: <https://www.refworld.org/policy/opguidance/unhcr/2008/en/61708>.

<sup>165</sup> Committee on the Rights of the Child, General comment No. 6, para. 84.



## CHAPTER 7. HEALTH AND PSYCHOLOGICAL CONSEQUENCES OF HUMAN TRAFFICKING

### Introduction

Although numerous aspects of human trafficking have been analysed in detail at the global level, in-depth research on the health consequences of this phenomenon has been sporadic. There are certainly partial scientific articles and research, especially those dealing with the study of *post-traumatic stress disorder* after experiencing a trauma, i.e. exploitation. Also, the consequences of sexual exploitation are often studied, but it is forgotten that it is only one of the forms of human trafficking (even though it is the most common). However, comprehensive research that would deal in depth with health issues (physical and psychological consequences, access to health care, correlation with (hindering of) daily functioning, etc.) is still missing.

### Health consequences for the victims of human trafficking

In this chapter, as well as later in the presentation of the research results, the generally accepted definition and classification of post-traumatic stress disorder developed by the American Psychiatric Association (DSM V) was used, according to which *posttraumatic stress disorder occurs as a prolonged response of the organism after experiencing a traumatic event*. Fear and its manifestations are a normal reaction of the organism that occur as a survival mechanism in the "fight or flight" reaction when a person is faced with a traumatic event. However, if these symptoms persist in a person for a longer period and dominate his/her life, we are talking about post-traumatic stress disorder.

Symptoms of post-traumatic stress disorder (PTSD) are usually categorised into four basic categories:

#### 1. Repetitive and intrusive thoughts (re-experiencing)

- **Flashbacks:** A person may experience a traumatic event as if it were happening again. This may include visual, auditory or other sensations.
- **Nightmares:** frequent, disturbing dreams about a traumatic event.
- **Intrusive thoughts:** unwanted, persistent thoughts about the trauma that are difficult to control.
- **Physical reactions:** physical reactions, such as sweating or an increased heart rate, in response to reminders of the trauma.

#### 2. Avoidance

- **Avoidance of thoughts and memories:** actively avoiding thinking or talking about the traumatic event.
- **Avoidance of places and people:** avoiding situations, places or people that remind them of the trauma.
- **Avoidance of activities:** Cessation of activities that were previously enjoyable because they remind them of the trauma.

## 3. Negative cognitions and moods

- **Negative beliefs:** negative beliefs about oneself, others or the world (e.g. "I'm bad", "You can't trust anyone").
- **Guilt and shame:** unfounded feelings of guilt or shame related to the traumatic event.
- **Loss of interest:** lack of interest in activities that were previously important or enjoyable.
- **Detachment:** a feeling of separation or alienation from other people.
- **Memory problems:** problems in remembering important aspects of the traumatic event.

## 4. Changes in reactions and behaviour (hyperarousal and reactivity)

- **Irritability and rage:** Increased irritability or rage, which may result in tantrums or aggressive behaviour.
- **Hypervigilance:** Constant vigilance and tension, a sense of constant danger.
- **Overreaction to sudden stimuli:** intense reactions to sudden sounds or movements.
- **Sleep problems:** problems falling and/or staying asleep.
- **Difficulty concentrating:** problems with focusing or maintaining attention.

One of the more recent studies in this area was conducted by a group of British authors from UCL (United Central Lancashire).<sup>166</sup> The research provides insight into the most common health consequences faced by trafficking victims in the UK, as well as the broader challenges related to access to healthcare and available services. Qualitative methodology, as well as semi-structured interviews, were used in the research. The sample consisted of 50 health workers and associates. The most important conclusions reached in this study include the following:

- a. Psychiatric and psychological problems are dominant consequences of exploitation;
- b. Emergency response and care are crucial for the recovery process; and
- c. There are enormous administrative challenges that prevent access to health care, including the regulation of health insurance.

At the national level, it is important to note that the Republic of Serbia has only recently (in 2022) developed and adopted indicators for identifying and reporting suspected potential victims of human trafficking, intended for professionals working at healthcare institutions. In the previous period, two training sessions were organised in cooperation with the Ministry of Health and the Centre for the Protection of Victims of Human Trafficking in order to familiarise the employees of health institutions with the use of these indicators, but also with the phenomenon of human trafficking itself. It was announced that the training sessions will continue. So, for example, the Programme for Combating Human Trafficking foresees that work will be done on improving the prevention of human trafficking among sensitive groups by training 35 Roma health mediators by 2029. The accompanying Action Plan also envisages the continuous implementation of training for the application of indicators for the preliminary identification of human trafficking victims for health workers during the 4th quarter of the plan (2026).

<sup>166</sup> Williamson Victoria, Borschmann Rohan, Zimmerman Cathy, Howard Louise M., Stanley Nicky and Oram Sian (2020) Responding to the health needs of trafficked people: A qualitative study of professionals in England and Scotland. Health & Social Care in the Community, 28 (1). pp. 173-181. ISSN 0966-0410 <https://clock.uct.ac.uk/29784/1/29784%20Responding%20to%20the%20health%20needs%20of%20trafficked%20people%20v2.pdf>

ASTRA has also developed a programme intended for healthcare professionals pertaining to identification and treatment when there is a suspicion of potential exploitation or human trafficking. Close to 40 participants from various specialities, including general practitioners, nurses and specialist doctors: gynaecology, paediatrics, psychiatry and forensic medicine, have attended this programme.

## Research methodology

In the 24 years of ASTRA's work, the Team for direct support for the victims of human trafficking has supported over 640 victims of human trafficking. While working with the victims, ASTRA's employees had the opportunity to gain insight into the most common health, physical and psychological consequences of exploitation.

In order to gain a more specific perspective of the problem, for the purpose of this manual, the available materials/documents of clients with whom ASTRA worked were analysed, with their consent and the prior anonymisation of personal data. The sources of information used for the purpose of this research were as follows:

- medical documents in the form of medical reports (reports from general practitioners and specialists) and reports from psychotherapy sessions
- chronology of the case from the ASTRA database, and
- legal documents – minutes from hearings and judgments for those cases that have been finalised.

The availability of these documents largely shaped the sample of this analysis and resulted in certain methodological limitations.

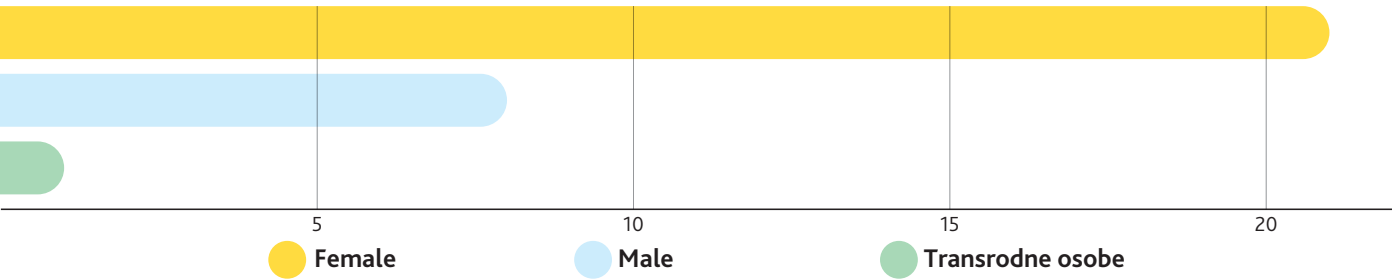
The data was processed using a combination of qualitative and quantitative analysis. Qualitative analysis was applied to the chronology of the case, which contains records, stories, testimonies of victims and a timeline of exploitation. During the quantitative analysis, the data was entered into an Excel table, grouped into clusters and finally interpreted and presented through various graphs, diagrams and tabular representations.

The analysis has included 30 trafficking victims. Of that number, slightly more than two-thirds of ASTRA's female clients (21) were also involved in the criminal proceedings as victims/witnesses. The limitations of such a sample are reflected in the lower statistical power and variety of data, hindered observation of clear trends, and the risk of deviation/distortion of the research results because the presence of one or two extremes could significantly affect the mean values. Due to these limitations of the sample and its characteristics, we note that the findings cannot be generalised and do not apply to the entire population of human trafficking victims.

Below is a summary of the research results divided into three sections: 1. a person's previous health status as a risk factor for exploitation 2. Health consequences faced by victims of human trafficking 3. The impact of participation in criminal proceedings on the victim's health status.

Gender and age structure of the human trafficking victims in the analysed sample

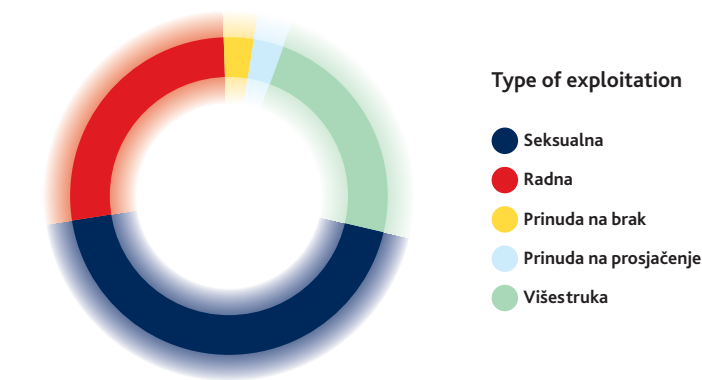
Of the 30 analysed persons with experience of human trafficking, 21 were women, 8 were men and 1 was a transgender person (Graph 1). **The oldest** person (at the time of establishing contact with the Team for Support of Victims of Human Trafficking) was **73 years old, and the youngest was 14 years old.**



Graph 1: Gender structure summary

When it comes to the type of exploitation experienced by these victims, the most common is sexual, followed by labour and multiple exploitation<sup>167</sup> (Graph 2).

Women and girls are most often the victims of sexual exploitation (forced prostitution, forced production and distribution of pornographic material), while men are more often victims of labour exploitation. Of course, men may also be victims of sexual exploitation, just as women and girls may often be victims of labour exploitation.



Graph 2: Type of exploitation

<sup>167</sup> Multiple exploitation means a combination of two or more types of exploitation in the case of one person/victim (the most common types of exploitation are: sexual, labour, begging, being forced to commit criminal offences, forced marriage, etc.)

## 1. A person's health status as a risk factor for exploitation

As explained in the section on research methodology, the availability of documents and the client's consent were the main factors that shaped the sample for the analysis. It is important to keep this in mind because of the limitations of the obtained results and the prevention of generalisation.

This means that, despite the results showing that only 7 people did not have any health problems of a physiological and/or psychological nature before the experience of human trafficking, we know from practice that even "completely healthy" people can become victims of human trafficking. The presentation of the results refers only to the analysed population.

From the 30 analysed cases, psychological challenges and previous experiences of violence stand out as significant factors of vulnerability.

Health characteristics of victims before exploitation:

- a total of 7 persons **did not have or did not declare that they had** physical (physiological) or psychological disorders before the period of exploitation;
- 4 people had disabilities in mental development;
- 7 people had some health problem/difficulty of **physiological origin** (heart problems, kidney failure, damage, etc.)
- 15 people had one or more **psychological problems and/or personality disorders** before the period of exploitation (affective disorders and/or bipolar personality disorders, emotional instability, early separation anxiety and/or abandonment by one or both parents)
- 17 people had **psychological consequences due to a previous experience of violence** (domestic, partner, peer, sexual/rape or incest) that left psychological and, in some cases, physiological consequences

## 2. Health consequences faced by victims of human trafficking

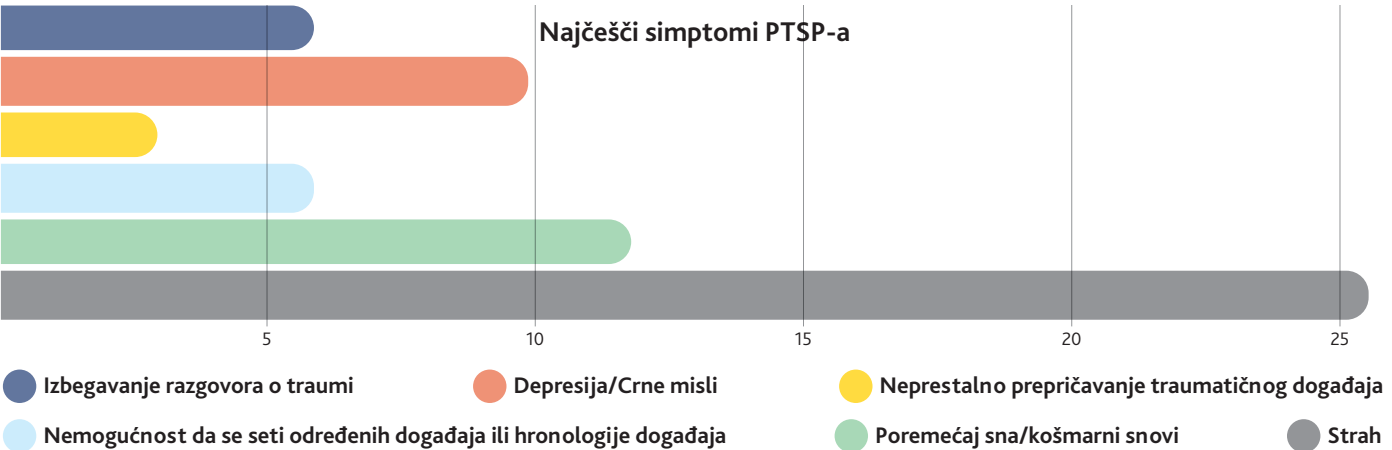
The experience of surviving exploitation inevitably leaves health consequences and difficulties for any person. Many factors influence whether, how and how soon a person will recover (length of exploitation, support systems, previous traumatic experience, etc.).

### Summary of health consequences:

- Although we know that controlling the victim does not necessarily imply and include physical violence in the 30 analysed cases, each person (**100%**) had physical injuries, bruises, hematoma and sometimes scars on the body and head from the violence suffered.
- 3 people had fractures (in one case a finger, in two cases a hand) as a result of the violence. The injuries were recorded in the medical reports.
- Among the 21 women in the analysed sample, 12 (**57%**) had gynaecological problems (inflammation, infections, sexually

transmitted diseases, etc.) that required short-term or long-term therapy and treatment, and in 7 out of these 12 cases, a gynaecological intervention was also required (removal of condyloma, curettage, etc.)

- 12 people (**40%**) had eating problems and/or disorders
- 11 people (**37%**) started consuming alcohol and/or psychoactive substances (PAS) as a direct consequence of the exploitation. Abuse of alcohol and/or PAS often begins while they are still in the trafficking chain, and then continues after leaving the trafficking chain.
- 10 people (**33%**) had outbursts of anger, rage, frustration and aggressive communication with others (most often with the experts and professionals from the institutions involved in support, but also with family and friends)
- 4 people (**13%**) showed signs of agoraphobic behaviour – fear of leaving the house / safe accommodation or fear of being alone
- 26 people (**87%**) showed clear signs of PTSD, with associated symptoms, while in the remaining cases covered by the analysis (4), where the diagnosis was not officially recorded by the psychiatrist, the clients expressed concern, agitation, fear and/or anxiety in relation to the experience they suffered. A more detailed presentation of the identified symptoms of PTSD is given in Graph 3.
- Among other health consequences, in at least one or several cases, the following problems were identified: urinary infections, rectal bleeding, dental problems, gastroenterological problems, back and joint pain, cardiovascular problems, ophthalmological problems, dermatological problems – eczema, rash, fainting, chest pain, breathing problems – feelings of suffocation, asthma and hepatitis C, as well as panic attacks when there are several unknown men in the room, and suicide attempts.



Graph 3: The most frequent symptoms of PTSD in the sample

*\*The list is not final.*

**ATTENTION!**

Victims exhibit a varying number of these symptoms, which often affect their daily functioning and make recovery more difficult. As a result, these people cannot maintain focus or stick to what was agreed upon, they cannot take on obligations or responsibility, gain control over their own decisions and life, and may be permanently trapped in a cycle of violence and discrimination, repeatedly reminding themselves of the traumatic experience and/or experiencing new traumatic experiences one after another.

### 3. Participation in criminal proceedings and its impact on the victim's health status

The rights of victims in general, including those pertaining to the criminal proceedings, were discussed in Chapter 6 of this Manual. In addition to the criminal and legal aspects, it is also important to show the other side of this experience. Talking about the trauma is never a pleasant experience, even when it is with experts such as psychiatrists or psychotherapists. This becomes even more difficult when a person has to repeatedly retell his/her story in front of unknown people. To describe this experience as stressful would be an understatement; persons involved in criminal proceedings relive the trauma while recalling their torture, abuse and intimidation. Practice shows that, even when the victim wants to participate and believes they are ready for that step, giving a statement or testifying in a criminal proceeding inevitably causes trauma, to which the body always reacts. Sometimes the reaction is more intense, sometimes less so, but it's always present – whether it lasts only during the time spent at the police station, prosecutor's office or court, or whether it completely cancels out all the progress previously achieved by the victim and leaves long-term and far-reaching consequences.

Among 21 analysed cases in which the persons were involved in some phase of criminal proceedings (pre-investigation and/or investigation), two indictments were brought for other criminal offences (child abuse, abuse and torture), and 19 for the criminal offence of human trafficking from Article 388 of the Criminal Code of the Republic of Serbia.

Of these, in only 6 cases, there were no clear indications that the participation in the procedure had affected and/or worsened the person's health status before or after testifying. In other words, in 15 cases, people reported one or more symptoms of deteriorated health status due to their participation (and sometimes even after receiving a summons to testify) in criminal proceedings. All 15 people reported fear, agitation and anxiety as the dominant feelings and stress in relation to the upcoming hearing and contact with the institutions:

- Tachycardia and panic attacks were recorded in 2 persons in connection with attending the scheduled hearing
- In one case, a person had nausea, vomiting and diarrhoea the night before the scheduled hearing
- In one case, physical injuries (to the body and head) were recorded because the defendant tried to intimidate the victim so that she would change her testimony.
- In one case, a suicide attempt was recorded after the victim was called to testify for the fourth time.

In 2018, ASTRA's client filed a criminal complaint with the competent police department in relation to the experience of exploitation she experienced as a minor, and she also contacted ASTRA. After ASTRA forwarded the report and informed the Centre for the protection of human trafficking victims, she was officially identified as a victim of human trafficking.<sup>168</sup> As in most similar cases, this girl's recovery process was long and arduous. After many years of support from both ASTRA and other organisations and institutions, she received a summons from the competent prosecutor's office in 2023 – **5 years after the criminal offence was reported**. All the consequences of the traumatic experience (anxiety, depression, fear, nightmares, etc.) came back again and, as she said, it was as if she found herself in front of the exploiters again.

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When it comes to testimony, among the 21 victims who were involved in criminal (or pre-investigation) proceedings, 17 gave a satisfactory and high-quality testimony, as assessed by the legal representatives of the victims and/or by the victims themselves, as well as experts who accompanied the victims on these occasions. There is no data on the quality in three cases, while in one case, strong trauma had a negative impact on the content and quality of the testimony.

In the observed sample, 10 victims received psychotherapeutic support before and after their participation in criminal proceedings. All ten confirmed that this type of support was particularly important to them as a special type of preparation before testifying and that thanks to this, they were able to endure the participation in the procedure without feeling as if they were “falling apart”. This data suggests that psychotherapeutic support significantly contributes to the empowerment of victims and indirectly affects the quality of victim testimony.

**Furthermore, it may be concluded that participation in criminal proceedings has a much greater impact on the health status of the victim compared to the impact of the health consequences of exploitation on the quality of testimony.**

Practice has shown that victims often muster the remaining willpower in order to contribute to the criminal proceedings against the defendants, although this inevitably has a negative impact on their health. **That is why it is of great importance that professionals, especially the representatives of the judiciary who come into contact with the victims, keep this aspect in mind and try to minimise the damage and consequences that will inevitably affect the victim's health.**

## Secondary Victimization

Secondary victimization refers to "the worsening of harm inflicted on the victim during the original crime as a result of the criminal process." Research identifies four types of secondary victimization:

- 1) Negative impacts on the victim's self-esteem, belief in the future, trust in the legal system, and belief in a just world;

<sup>168</sup> Read more about the role of the Centre in Chapter 10, which includes a review of the national mechanism for the referral of human trafficking victims



- 2) Increased post-traumatic stress due to the initial trauma (re-traumatization);
- 3) Disruption of the recovery process;
- 4) Experiencing new trauma due to the court proceedings.

The most common negative impacts are on self-esteem and trust (1), and the increased incidence of post-traumatic stress among victims who have already experienced trauma (2). It is important to distinguish between these two forms: the first affects all victims, while the second only impacts those who have already been traumatized by the crime.

Secondary victimization can occur not only during court examinations but also due to other factors, such as the imbalance in the position of the defendant and the victim, lack of information, interactions with justice officials, prolonged trials, and dissatisfaction with the outcome.

Key factors for preventing secondary victimization include predictability, safety, control, and justice. The more positive the justice process is in these dimensions, the lower the risk of secondary victimization and the greater the chances for recovery.

The risk of secondary victimization also depends on the nature of the crime, personal characteristics of the victim (e.g., gender, age, resilience), and the social environment. Victims who have been previously traumatized or have intellectual disabilities are particularly vulnerable, as they require greater predictability and safety during the trial.

KEY FACTORS FOR PREVENTING SECONDARY VICTIMIZATION OF VICTIMS DURING CRIMINAL PROCEEDINGS

**Predictability**

To what extent the victim/witness knows what to expect.

- Informing the victim before, during, and after the criminal proceedings so they know what to expect. This includes information about the position of the victim/witness, the different stages of the criminal process, the progress of the case (including decisions to dismiss the case), information about the detention and release of the accused, and the fact that all information is recorded and accessible to the accused. Information should be repeated and, if possible, provided in both oral and written form.
- Information about questioning by the police or the court (including explanations for why detailed and critical questions are asked).
- (Insufficient) clarity regarding the questioning procedure of the investigating judge or in court.
- The duration of the criminal process, uncertainty about how long it will take, and a lack of understanding of why the process is taking so long

**Physical, Emotional, and Social Security**

Physical safety refers to the fear of retaliation or immediate confrontation with the suspect. Emotional and social safety pertains to the personal integrity of the victim (privacy protection, fair treatment, serious consideration).

- Choosing the location where the victim's statement is recorded.
- Confidentiality of the victim's address and personal information (e.g., using the lawyer's address instead of the victim's in the criminal file).
- Diligence in obtaining information from third parties, such as doctors, family members, friends, and service providers. Consent should be sought from victims in advance, and they must be aware that all information is recorded in the criminal file, which is accessible to the accused.
- The manner of questioning conducted by investigative and/or civil judges, particularly how the defendant's lawyer interacts with the victim, and protecting the victim from intimidation by the accused and/or intimidating or unfair questions.
- Appropriate preparation for questioning.
- Seating arrangements, ensuring that victims and suspects do not sit together in the waiting room or next to each other in the courtroom.
- The presence of a person of the victim's/witness's choice, whom they trust, during questioning (this can be a lawyer, a friend, or an NGO counselor).
- Ensuring safety before, during, and after the trial

**Sense of (Lack of) Control**

The feeling of the victim/witness that they can influence the criminal proceedings: that it is "their case," that they are taken seriously, and that they matter.

- Decisions regarding prosecution, pre-trial detention of suspects, and how the case is resolved.
- The (in)ability of victims to obtain or access a copy of their own statement and the case files, either through their lawyer or otherwise. Lack of access to the case files places the victim in a position "outside" the criminal process: it concerns the victim, but they are not allowed to read the files, unlike the accused.
- The victim has their own lawyer: someone who speaks their language and protects and advocates for their interests.

From the perspective of preventing secondary victimization, the first factor is problematic, as, generally speaking, the wishes and interests of the victim play a very limited role in decisions about prosecution, detention of suspects, and how the case is resolved.

**Sense of Justice**

The feeling of the victim/witness that they are treated fairly and that justice has been served.

- "Managing" expectations: the victim/witness has a realistic understanding of the criminal proceedings, the sustainability of the case, and the outcome that can be expected.
- The imbalance between the position of the accused and the position of the victim. Many victims feel that the accused has all the rights while they have none. This is compounded by the fact that the accused has access to the entire case file, including information about the victim, while victims often do not even receive a copy of their own statement.
- Acknowledgment of the consequences of the crime on the victim.
- The victim is provided with a copy of the judgment.
- Appropriate motivation of the judgment.
- The final outcome of the proceedings (the severity of the sentence, but also whether the judgment helps prevent the emergence of new victims)

## CHAPTER 8. THE FIRST INTERVIEW AND COMMUNICATION WITH VICTIMS OF HUMAN TRAFFICKING

### Introduction

Knowledge about the complex trauma phenomenon experienced by human trafficking victims allows for more efficient representation, the prevention of retraumatisation and secondary victimisation of victims, and preventing the emotional burnout of representatives due to direct exposure to the traumatic experiences of the persons they represent. This text aims to provide a set of knowledge and skills to attorneys (lawyers) of victims, to allow them to ensure "specialised representation of victims of human trafficking"

We emphasise the exceptional importance of proxies in the recovery and social integration of human trafficking victims, because this interpersonal relationship can help the victims reconnect with another person on the basis of respect, trust and benevolence. Through their relationship with proxies, victims can experience a reaffirmation of humanity and restore their faith in humanity, which was taken away from them during the victimisation and violence.

In the process of human trafficking, violence robs victims of their freedom and autonomy and they become victims through the process of victimisation, thus losing their individuality. A person becomes an object.

### The trauma of human trafficking

The language we use when we talk about the trauma of human trafficking most often reflects the essence of the relationship towards the survivors: the legal framework in the Republic of Serbia has so far provided no clear distinction between the terms "damaged party" and "victim", which shows a lack of essential understanding of the specific nature of the complex traumatic experience, the consequences for the victim and the victim's needs in the process of protection, achieving justice and recovery.

The term "survivor" provides a more realistic picture of a person who, given the very fact that she/he has survived a complex trauma, today has a certain capacity to recover and continue with her/his life.

However, even though the term "victim" may label a person in a certain way, especially in the perception of the environment, in direct work with persons who have survived human trafficking, it is psychologically beneficial to use the term.

In this way, the character of the experience they survived is clearly defined. For the same reason, it is recommended to clearly use the terms "violence, abuse, torture, perpetrator of a criminal act, etc.," because it allows the victims to understand and accept their position, and not to blame themselves for what happened to them due to shame, the strategy of the human traffickers and stigma from the environment.

"The national strategy for exercising the rights of victims and witnesses of criminal acts in the Republic of Serbia" foresees the use of the term "victim" as follows:

"Taking into account the legal heritage of the Republic of Serbia, it may be said that, at the time of the adoption of the Strategy, its legal order was harmonised with international standards in the field of victims' rights to a significant extent, given the fact that, in the procedural capacity of the damaged party, the victim in the legal order of the Republic of Serbia has had a whole series of rights for decades, recognised and codified by Directive (2012)029.2 1. The Action Plan for Chapter 23 (activity 3.7.1.20) directly foresees the adoption of this Strategy and the accompanying Action Plan for its implementation. 2 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012) 5 In this sense, it may be concluded that the normative framework is largely harmonised with the provisions of the Directive, but that certain changes are still needed<sup>3</sup>, inter alia, in the part that refers to the elimination of terminological confusion regarding the relationship between the terms "victim" and "injured party"; improvement of the right to legal assistance, the right to information and translation, the right to exercise one's property claims, etc. "When we talk about the adequate use of language, we essentially open up the topic of the relationship towards the victim, the perpetrators, violence, i.e. the criminal offence, but also towards all those who have contact with the victim in their professional capacity. Prejudices are deeply rooted in the language and the victim's testimony about the experience of violence and the conduct of all the processes is based on the spoken and written word. That is why we see the harmonisation of terminology as an important prerequisite for high-quality and uniform practice in working with victims."

### Victimisation: from a person to a victim

We are all born as "little gods" with the same rights, with the same need for acceptance, love and the need to trust people; we are here to utilise the existing and acquire new capacities. During early development and later in adolescence and adulthood, our personality is built and developed. Our identity allows us to perceive ourselves in different relationships, to understand the world we live in and our role in such a world. Our empathy gives us the ability to understand the feelings of others and to build good relationships. Our identity is a communication channel of the intimate (what I am inside) towards the outside; what I experience as "I" becomes complicated by how others perceive me, in all social groups: family, peer groups and all other subsequent social groups in which we participate.

In an example from practice, the victim was exploited in a country of the region for several years. Brutal sexual exploitation (forced prostitution) by her partner, complete control over her, sadistic punishment (deprivation of food, intentional injuries and failure to provide medical assistance, physical violence with permanent consequences, long-term confinement in rooms without windows, threats to harm her family members, marking her with a large tattoo – all of this made the victim feel "as if she didn't exist". She talked about her experience in a flat voice, without emotions (using the psychological mechanism of dissociation and flattened emotional affect, as if she were retelling a boring movie). Due to the intensity and duration of the violence, the victim had a massive feeling of helplessness –

she became a “surrendered victim”. During the exploitation and after leaving the trafficking chain, she had a feeling of self-loathing; later, during the therapeutic process, after she managed to become more in touch with her feelings regarding her experience of complex trauma, she experienced a feeling of guilt and thought that she did not deserve anything, as if she had already died. Her recovery was especially hindered by her primary family, who blamed her for what happened to her and prevented her from trying to establish better contact with her child, as well as from developing parental competence”.

### How do we become victims?

Victimisation is a process in which people, through the actions of the abuser, become the victims, and survive a psychological trauma that is always contained in all other forms of violence.

“By committing a criminal offence, the victim suffers material or moral damage, or both simultaneously. In addition, the victim may also suffer physical injuries and psychological damage. At the same time, psychological damage is often closely related to physical injuries, whether due to their severity or the way in which they were inflicted. Also, psychological damage may occur as a consequence of non-violent criminal acts. All these consequences are consequences of primary victimisation and they create a whole series of problems for the victim (e.g. financial, health, family, problems at work, etc.).”

The process of victimisation may be shorter (a few hours, days or weeks), up to several years or, unfortunately, it may last throughout the victim's life. The duration of the victimisation is a significant factor in the level of endangerment of the victim, but even a short period of experiencing violence may cause long-term consequences (due to the type, characteristics, intensity of violence, age and other personal characteristics of the victims, as well as the context in which the victimisation occurred). The fact that everyone is different also determines the reaction to violence experienced, so an individualised approach to each victim is necessary to assess the consequences of victimisation and provide adequate protection and support measures to the victim.

Victimisation is a process in which abusers always use the following mechanisms to subdue a person: they use power and control (through the abuse, they exercise physical, psychological, economic and other forms of control). It is particularly important to emphasise how human traffickers use certain strategies to place the victims under their complete control:

If there is an emotional connection between the victim and the abuser (present in human trafficking when the traffickers are partners or family members), the position of the victim is particularly difficult because the abuser uses a specific strategy that psychologically causes the victim to feel:

- that she/he is to blame for the violence she/he suffers
- responsibility and shame for the position she/he is in

Blame becomes a powerful psychological mechanism based on abuse of power and control over the victim by the traffickers. Part of the explanation for this phenomenon has its roots in early development (egocentrism stage), when children relate everything to themselves, even things that are external, e.g. "if dad yells at mom, it must be because of me..." or "it's sunny today because I really want to go play in the park...". In the text below, we will discuss the feelings of guilt as a psychological phenomenon, but also in the context of the consequences of violence and why it is important to understand these feelings that keep the victims in a state of helplessness and low self-confidence.

The absence of perception and failure to understand these and other emotions that victims feel as a result of the violence during human trafficking may adversely affect the actions of professionals. We will discuss the strategies used by abusers in the segment that will explain the relationship between the trauma of human trafficking and the violence.

### Psychological trauma

"Psychological trauma is defined as an event outside of the normal range of human experiences that poses a threat to life. A traumatic event shuts down the usual response systems that give people a sense of control, connection and awareness. Traumatic events are not unusual in that they are rare, but in that they represent a breakdown in the usual systems of adaptation to life conditions. The common denominators for psychological trauma include intense fear, helplessness, loss of control and fear of destruction."<sup>169</sup>

A single traumatic event may occur in the life of any person (a natural disaster – e.g. an earthquake, the death of a loved one, an attack by a robber in the street...). "Prolonged, repeated trauma appears in situations of submission, when a person cannot escape because she/he is under the constant control of the abuser. In this way, a special relationship is established between the abuser and the victim based on coercion. This situation certainly applies to people who find themselves in the human trafficking chain. "This applies equally to coercion carried out by force (...) as well as to a combination of force, humiliation and seduction"<sup>170</sup>. It is obvious that the abuser, in this case the trafficker, becomes the most powerful person in the victim's life, and the victim mentality stems from the actions and beliefs of the trafficker.

### Complex trauma

Human trafficking as a complex psychological trauma unifies all the existing forms of violence inflicted by a person – a human trafficker (abuser) and this fact later presents challenges in the recovery of victims. All levels of a person's functioning are under attack because the victim experiences:

- physical violence
- psychological violence

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<sup>169</sup> Dž.L. Herman: „Trauma i oporavak“, Struktura traumatskog doživljaja, p. 67, Psihopolis institut, 2010.

<sup>170</sup> Publisher: ASTRA – Anti-Trafficking Action, Belgrade (with the support of the Ministry of Health of the RS): Authors: Jovana Krotić, Tanja Ignjatović, Biljana Slavković, Slobodan Savić: "Preživeti nasilje – posledice po psihičko i fizičko zdravlje žrtava porodičnog nasilja i trgovine ljudima", 2016; p. 31, cit. "Zimmerman, Hossaid, Yun, Roche, Morison, Watts "Stolen smiles summary report", 2006

- sexual violence
- economic violence
- spiritual violence
- when it comes to children, there is also neglect in addition to other forms of violence

In addition to the listed forms of violence that are often intertwined, the following characteristics are typical and describe the situations from the point of view of a psychological experience encountered by the victims in the human trafficking chain:

- unpredictability of events
- loss of control over events

Due to the above-mentioned characteristics of violence used by traffickers during human trafficking, the victims completely lose control of their lives, and this control is what every person needs in order to be able to preserve their integrity and psycho-physical functioning.

We emphasise that human trafficking, despite the changes in some tendencies in recent years, is still primarily based on gender-based violence, which is confirmed by the previously mentioned statistics (the majority of victims are female – 82%, and out of 64% of child victims, girls make up as much as 59%)

The role of a woman defined by the patriarchal concept of assigning power (i.e. superiority) to a man just because he is a man favours the acceptance and exercising of various forms of violence against women (this is how victims of human trafficking are often “recruited”). In a patriarchy, there is an idealisation of partner “love”, the concept of maintaining a marriage at all costs; a woman’s role is to be obedient, submissive and to sacrifice herself for her family, partner, parents, etc.; there are also arranged marriages; sexualisation – the treatment of women as a sexual object and an object for childbirth; the presence and silent tolerance of incest in the family; frequent social and legal lack of judgment of rapists of women; war, post-war and transitional social periods of crisis intensify violence against women; economic pressure on women is especially pronounced in times of economic crisis; there is a current trend of re-traditionalisation in the society in Serbia, along with the strengthening of the role of religious communities that support the unequal relationship between men and women with their dogmas.

Every person who has survived human trafficking has experienced complex psychological trauma because the traumatic experience has threatened all aspects of their functioning. The term “victim of a trauma of human trafficking” refers to any person who is forced to do certain things against their will. Isolation and exclusion are important terms related to the victims, and represent the mechanisms of control used by traffickers to keep the victims away from the outside world. Psychological trauma as a victim’s response to a traumatic event is different for each person; more will be said about the factors that influence these differences in the text below.

Victims of the trauma of human trafficking develop specific emotional states due to the violence they suffer. Therefore, in contact with the victims, it is necessary to pay attention to, understand and respect the following feelings that originate in the traumatic

experience: fear, anger, rage, sadness, despair, guilt, shame, helplessness, mistrust of others, low self-esteem, the feeling of "I should not exist", hostility, disappointment, etc.

These feelings may come to life in contact with other people even after the end of the traumatic events, often during contact with the representatives of institutions, which will be discussed in detail in the section on secondary victimisation, as an important factor for increasing the quality of communication and treatment of the victims.

### **Response to complex trauma (factors, consequences – symptoms)**

Although, according to research, there is information about the average response of a victim to the trauma of human trafficking in the professional literature, it is necessary to note that every person who has survived the trauma of human trafficking may have a specific reaction, i.e. that an individual approach to the victim is important. In this context, an individualised approach is recommended in the assessment of injuries suffered by the victims and of their needs after leaving the trafficking chain, i.e. during all the processes implemented within the system. This fact is crucial in order to avoid generalisations that carry the risk of an inadequate response to the needs of each victim. The said generalisations are often directly related to the prejudices of professionals towards the victims of human trafficking and victims in general.

In order to understand the essence of the human reaction to trauma, we emphasise that a complex traumatic event is an abnormal experience and that the reaction of the person – the victim, whatever it may be, represents a normal reaction. This is why it is necessary to respect and understand the reactions of the victims without judging them.

#### **Below is a list of factors that affect the way victims react and the corresponding mechanisms of action:**

- a) characteristics of the traumatic event**
- b) environmental factors**
- c) personal factors**

- a) Although the intensity, the characteristics of the traumatic event, the degree of brutality and the duration of the violence have a significant impact on the victim's suffering, sometimes other characteristics of the traumatic experience have an equally negative impact on the victim's life (for example, short-term but intense sexual abuse; mutilation or branding as a one-time event; threatening to kill a child or other close person of the victim, etc.).
- b) when the environment in which the trauma of human trafficking takes place serves entirely for the purpose of abuse and exploitation of the victim, this will aggravate the condition and position of the victim. If there is not a single person or situation in which the victim can feel some kind of relief or get help for even a moment (e.g. if she/he has injuries or other health problems) in the environment where the trauma of violence takes place, this has a significant impact on discouragement and losing hope in the possibility of escaping violence. The complete dehumanisation of the environment to a large extent causes the victim to break down psychologically. Later, during the phase of getting out of the trafficking chain and receiving support, according to all research, recovery is more successful if the environment provides safety, non-judgment of the victim and support.



- c) personal factors (and in reference to particularly sensitive victims) – it has already been said that every person, including a person who has experienced the trauma of human trafficking, is special and has their own personal characteristics, some of which can make them more vulnerable: gender, age, belonging to a minority, physical and mental constitution, psychological history (which for victims of human trafficking often includes an earlier history of violence (e.g. in the family and in partner relationships, sexual harassment, sexual violence, when we speak about a spiral of violence in which human trafficking is at the end of that spiral)), level of education, extreme poverty, inability to speak the language, level of overall health, some kind of mental and/or physical disability, and different degrees of resilience. These personal factors influence how persons will respond to the violence they suffer. Particularly sensitive victims include children, minors, persons with disabilities, persons with developmental disabilities, persons with mental disorders, persons who have previously survived other forms of violence (especially gender-based violence and war crimes), victims of sexual violence, victims being exploited by close family members (especially in terms of sexual exploitation and/or incest), and members of the Roma minority who are repeatedly marginalised in Serbia and the region. This fact is important for all professionals so they can understand the victim more clearly, their victim's functioning and survival strategies, as well as to more successfully assess the risk of retraumatisation and secondary victimisation that may occur due to certain personal factors during the procedural activities.

### Three stages of the victim's response to complex trauma

In some classifications, we can recognise three stages of response to a traumatic situation: immediate reaction, reorganisation/adaptation, recovery."

This division is important because different symptoms that occur as a result and consequence of violence, which will be discussed later, appear in different stages of the reaction to trauma, often in combination and always with different intensities. This is an important fact for the professionals because they need to recognise the moment when they should approach the victim, i.e. they need to recognise the stage of response to the trauma the victim is in and how to adjust their goals, expectations and actions accordingly within their competences.

### Consequences of the complex trauma of human trafficking

Given that human trafficking is a complex trauma that most often includes prolonged and intense abuse, we will always notice the following clusters of negative consequences for the victims:

- physical injuries
- acute and chronic somatic diseases
- long-term poor mental health (emotional problems, psychosomatic problems, poor social functioning, more severe mental illnesses). According to United Nations statistics, 52% of women still have at least 10 symptoms of mental health disorders 90 days after leaving the human trafficking chain.

According to the research on survivors' experiences, the symptoms correspond to the intensity of the symptoms of torture.

When it comes to physical symptoms, it is certain that fatigue, weight loss or excess weight, sleep disorders (insomnia or prolonged sleep), gastrointestinal problems, immune system disorders, dermatological diseases, diabetes, genital and venereal diseases, neurological, sensory, hearing and vision problems are present, among others. The presence of a series of physical symptoms further conditions and aggravates the emotional state of the victim. Professionals in institutions primarily face this cluster of symptoms when they come into contact with victims.

### **Symptoms of mental health disorders as a consequence of the complex trauma of human trafficking**

Familiarity with these symptoms and the ability to recognise them are valuable for prosecutors and judges because they have a direct impact on the success of establishing good communication with the victims, on understanding their experiences, and on improving the procedures during prosecutorial investigations and trials, without the risk of the secondary victimisation of victims.

The symptoms and conditions observed in survivors as a consequence of a traumatic experience during human trafficking are numerous and include depression, pronounced anxiety, psychosomatic disorders, PTSD (intrusive memories – flashback episodes due to various triggers, withdrawal and avoidance, nightmares, intense fears, feelings of losing one's mind, inability to rebuild or maintain relationships with people, etc.), permanent personality change, self-destructive behaviour (impulsivity, self-harm and suicidal impulses), hostility towards the environment, sleep disorders, eating disorders, addictions and psychotic episodes.

Victims often do not see the violence they experienced as the cause of the state they are in and the symptoms they feel. This happens as a psychological phenomenon in which “the symptoms seem to have their own independent life” – they are separated from the victim's experience and are part of a defence mechanism that is unconscious and serves to temporarily protect the victim from the effects of the intensity of the symptoms she/he feels.

**Example:** *a victim of human trafficking who got out of the trafficking chain two years ago has trouble sleeping, i.e. has problems falling asleep and feels exhausted and cannot concentrate on the relationship with the child during the day. In a conversation with a psychotherapist, she says: “I don't understand why I can't sleep, I feel sleepy and yet I can't fall asleep...” When asked if she dreams when she does manage to fall asleep, she says: “I never dream, actually, it is better that way...”*

In this example, we see how the victim is cognitively not in touch with the fact that insomnia is a symptom of the trauma she experienced and that she cannot fall asleep due to tension; however, the symptom of insomnia is unconscious and protects her against the possibility (or risk) of coming into contact with the experience of trauma while sleeping, which usually occurs through intense dreams, i.e. nightmares (which then represents yet another consequence in a series of disturbing consequences of a traumatic experience).

## The impact of the trauma of trafficking on the value system of the victims

A value system is a set of beliefs that are deeply rooted in a person.

The value system is acquired by growing up, from early childhood, and is determined by the culture in which a person lives. Common social concepts are based on moral norms, affirmation of good and condemnation of evil. From childhood, children are taught in the family, at school and in the wider community about the moral principles on which social functioning is based. Children's nature is related to their need for love, justice and sharing. Even when they grow up in families characterised by neglect or violence, later, as adults, people still often have the need to believe in the good – in themselves, in people and in the world. This is a universal human need.

However, some beliefs that are present in patriarchal communities such as Serbia in the 21st century, especially when it comes to women, favour the abusers and become part of the strategy in abusing the victims; for example, the value judgement that “the role of a woman is to sacrifice for her family and children” (even if her husband is violent) or the value judgement “that parents must always be respected” (even if they commit incest or engage in child trafficking).

It is important to note that the value system is most often unconscious. Furthermore, the violence suffered by the victims may have a significant impact on the change of the value system. Also, when victims cannot maintain some important beliefs (such as faith in God) due to abuse, it represents an attack on their identity and psychological functioning. In such a situation, we speak about spiritual violence against the victims. Given the fact that human trafficking is a complex trauma and destroys the entire life, i.e. all levels of the victim's functioning, the negative consequences are also visible in the victim's value system. Victims of this severe form of violence most often share these beliefs:

- beliefs related to feelings of guilt: they are to blame for the violence they experience (“I have no worth, no wonder he mistreats me, it's my fault that he doesn't respect me”).
- beliefs about morality, responsibility and sense of duty (“I chose him, and now I have to bear the consequences of my decisions...”)
- beliefs related to demoralisation (“I'm too tired to keep fighting, no one will believe me. No one will be able to stop him, he does what he wants.”)
- beliefs related to denial and unrealistic expectations (“One day everything will be fine again, maybe this will pass on its own... I've always been beaten... and I can take it, it's not that bad...”)
- beliefs about addiction (“I am nobody and nothing without him. If I leave him, I won't have money to live on...”)

In addition to these categories of beliefs that most often occur as a consequence of violence suffered by victims, we especially emphasise the category of belief related to danger.

- beliefs about danger (“If I leave him, he will kill me or my children...”). (“He will surely get his revenge; there is no escape for me...”).

These beliefs should never be questioned because they arise from the victim's realistic insight into the danger of the situation, i.e. the victim usually knows the abuser (trafficker) very well and knows from experience what they are capable of doing, i.e. the level of danger. When victims express their beliefs about danger, it is necessary to immediately increase the level of protection for them.

### **The impact of the victim's value system on the testimony during prosecutorial and judicial proceedings**

We will enumerate the difficulties that victims/witnesses most often face during prosecutorial and judicial proceedings: the length of the proceedings, an insufficient level of security, manipulation and threats by the accused or their associates and family members, psychological, physical and material exhaustion, the lasting consequences of violence (compromised mental and physical health) due to inadequate and/or insufficient support, a weak or non-existent social network and alike.

These difficulties directly affect the maintenance and strengthening of the set of beliefs that occurred as a consequence of the violence suffered. We emphasise that these beliefs are unfavourable for the victim, and that they significantly affect the emotional state and behaviour of the victims (for example: the belief "I chose him (my partner) and now I have to bear the consequences of my decisions..." will maintain an irrational (and incorrect) feeling of guilt for the victim). This example shows that the victim will feel strong insecurity about survival in the trial against the accused who, as the victim's partner, actually organised her sexual exploitation; the victim will be more susceptible to the influences of the environment and those who would talk her out of testifying, and additionally blame her, which increases the feeling of helplessness. In this way, isolating and blaming the victim opens up space for the accused to intimidate and exert additional pressure, thereby discouraging the victim from fighting for herself.

### **The importance of the value system of proxies (attorneys), prosecutors and judges**

In addition to their professional roles, proxies, prosecutors and judges also play a whole series of other roles that are related to the private sphere of life (psychological roles, social roles, etc.). In most roles, people act from their unique value system that is part of their identity, and we have already discussed the emergence of a value system. As in the case of victims, the value system will significantly influence the opinion, formation of attitudes and behaviour of proxies, judges and prosecutors in their private life, and particularly in their professional conduct. In addition to professional knowledge and experience, sometimes the value system of prosecutors and judges plays a decisive role in understanding the violence suffered, the current situation of the human trafficking victims, their needs, and decision-making during the performance of their professional role. This attitude can also be observed among the proxies, although they may not necessarily be aware that the way they communicate with the victims may be marked by a personal discriminatory value system, especially in the case of sexual exploitation (according to the insights of B. Slavković gained during the regional team training for proxies of damaged parties organised in 2021 by the OSCE and the Bar Association of Serbia).

## Value judgements of professionals often contain prejudices and stereotypes

It is extremely important for professionals, proxies, prosecutors and judges to be aware of their own value judgements because they can significantly influence (in a positive or negative way) the effectiveness of treatment and support for victims. Awareness of one's own value system reduces the risk of the secondary traumatising of victims during the process by the representatives of the system.

***Example:** if the proxy personally believes that the victim is in any way responsible for the situation in which she was sexually exploited by her previous partner, or that she was able to get out of the human trafficking chain because she was not subjected to explicit physical pressure, treatment of the victim may be coloured by these personal attitudes (responsibility for her position may be assigned to the victim, the degree of exploitation and psychological injuries may not be properly observed, and the victim may experience secondary traumatising if her experience of violence is minimised. The representation of such a victim during the process may thus be less effective*

On the other hand, when professionals are open, without negative or accusatory personal attitudes, and when they are benevolent and attentive to the victims, trust is often achieved, victims have support to endure the intense fear and stress during the process, as well as to regain faith in the benevolence of people, trust in human relations and in the state that can bring them justice.

## Recommendation to proxies (lawyers) in the field of value judgements

It is particularly important to examine one's own value judgements (set of beliefs) in the following areas:

- responsibility for violence (who is solely responsible for violence?)
- gender roles (the role of women in the partnership, family and general social context, the sexualisation of women in the social system, the attitude towards motherhood, etc.),
- personal life experience – whether and how such experience can affect professional work with victims of violence (did you have or do you have any experience of violence, do you think that becoming a victim is not accidental because “you would never allow something like that to happen to you” and that “only certain kinds of people can become victims”; “are you also sometimes violent...” and alike).

Openness towards oneself and one's own value judgements, as well as awareness of such value judgements and their correction, represent an important tool for the provision of professional, ethical and effective support to the victims of violence in the human trafficking chain.

## The intersection of the value system of victims and the value system of professionals

When working with victims, it is necessary to offer alternative beliefs, to avoid directly attacking the value system of the survivors, because the victims usually defend what they believe in. By providing alternative solutions, the negative effect of those beliefs, which are most often held by survivors and that hinder the planning process and the protection of their rights, is reduced.

The task of professionals who support victims is to try to offer alternative options, rather than supporting a set of beliefs that is a consequence of the violence. For example, they may say: "you are not to blame for the violence you suffered"; "responsibility for violence lies with the accused"; "no one can provoke violence"; "everyone has the right to safety and to a life without violence"; "try not to feel guilty because it is not your fault"; "nobody chooses a partner because they want to be abused, but because of love, wanting a family, etc."

## **Symptoms in victims of human trafficking**

### ***Symptoms as a consequence of violence and the impact on giving testimony and testifying***

The impact of the trauma of human trafficking on the mental health of victims is long-term; according to United Nations statistics, 52% of women still have at least 10 symptoms of mental health disorders 90 days after leaving the human trafficking chain. According to the research on survivors' experiences, the symptoms correspond to the intensity of the symptoms of torture.

### ***Mental health symptoms***

The symptoms and conditions that occur in victims of traumatic experiences during human trafficking include the following: depression, anxiety, thought disorders, memory problems (cognitive level), interpersonal difficulties (distrust, hostility and difficulties in working or learning), addictions, etc.

### **Depression**

The state of depression, as we already know, is always associated with the experience of loss, and for most victims it is a reaction to the loss of a whole set of aspects of the personality, such as important life roles that are overwhelmed by the imposed role of the victim; loss of self-esteem, self-image, personal beliefs and health; there are also losses of ideals, feelings of inequality, loss of humanity of oneself and others; finally, there is an important loss of trust in honest human relationships; loss of faith in the future and, finally, the right to one's own life. A strong sense of guilt is almost always present (especially as it is a direct result of the mechanisms of violence used by the traffickers). In addition to psychotherapy, depressive symptoms often require the use of pharmacological preparations (psychiatric treatment). Untreated depression in victims may lead to suicide attempts and suicide, and therefore it is necessary to provide the survivors with timely and continuous medical assistance, especially during the investigative and judicial processes.

What do the symptoms of depression look like: given that it is a very complex emotional disorder, there are also noticeable difficulties that the observer apparently fails to recognise as symptoms of depression: difficulties in concentration, orientation – time and space (which is important during procedures as a result of trauma), decrease in motivation, reduced affect, reluctance, self-isolation, sometimes difficulties in maintaining personal hygiene, eating disorders and very often sleep disorders; inability to establish good interpersonal relationships, intense fears, inability to find and maintain employment, difficulties in learning new skills, etc.

The so-called psychosomatic symptoms are also present – when the body “takes over” the repressed emotions: dizziness, exhaustion, chest pain, muscle pain, back pain, headaches, problems in the functioning of internal organs (heart, stomach, thyroid gland, skin changes, etc.).

Conducting an investigation, followed by a court proceeding that includes the testimony of the victim, and the unavailability of material and other assistance, may in many ways have an additional negative impact on the mental health and overall existence of the victim in the case of unrecognised symptoms of depression.

### **Anxiety**

Anxiety is naturally felt when people are faced with a threat, danger or when they are under stress. Although the usual cause of anxiety disorders lies in psychological factors, and although there is evidence of a genetic influence and a neurophysiological basis, research shows that emotional stress may be a significant factor that causes increased anxiety. On the other hand, anxiety symptoms are observed through the excitation of the peripheral nervous system due to frightening unconscious impulses, fantasies and feelings. Traumatic situations experienced by the victims, characterised by the unpredictability of events and the impossibility of controlling those events, inevitably cause increased anxiety that can become generalised.

According to the results of the research, the following symptoms of anxiety were observed in the survivors: fears, tension, panic and terror attacks, restlessness, sudden agitation for no apparent reason, nervousness and internal tremors. These symptoms were measured in survivors during the first stage of trauma response and were expressed between 67% and 91%.

### **Loss of trust in people and feelings of hostility**

When one suffers violence from the hand of a human being, it is much harder for such a person to recover than in cases of natural disasters. The feeling of hostility as a response of survivors in contact with people and especially with representatives of institutions is encountered for several reasons:

- Victims feel pressured when they are forced to talk about the traumatic event again and again under unsafe conditions or at an inadequate moment;
- hostility stems from the loss of trust in people and institutions due to previous bad experiences;
- strong hostility speaks of the survivors' unconscious attempt to “close” themselves and protect themselves from retraumatisation, to “not open the wounds” when they are expected to talk about their experience of violence;
- all the beliefs of the survivors are broken and it is very difficult to establish new and better contacts;
- institutions often devalue the victims by placing themselves in a position of power and keeping the victims in a state of submission, as less valuable persons who do not have the right to their voice, attitude and decisions, i.e. institutions often stigmatise victims in this way.

Threats from traffickers do not stop during long and uncertain investigative and judicial processes. Survivors often do not want to testify and participate in the processes out of fear for themselves and their loved ones, as well as due to the insufficient systemic capacity to ensure their safety. They are justifiably afraid of retaliation.

It is necessary to understand the symptoms of hostile behaviour in the context of the natural response of most survivors. Consequently, it is necessary to find an adequate personal response, without jeopardising the rights of the victims and you personally

Symptoms of loss of trust and the feeling of hostility:

- the need to hit someone, to hurt someone;
- throwing and breaking things;
- conflicts;
- quick agitation, low tolerance for frustration, high sensitivity;
- fits of rage without an external cause, which are difficult to control.
- For example, during the trials, they respond angrily, nervously, aggressively and quarrelsomely towards the judge and the defence counsel

These symptoms measured in victims during the first stage of trauma response were expressed between 36% and 83%.

Addictions: during the traumatic experience, victims were forced to take or voluntarily took psychoactive substances, alcohol and/or drugs. These substances temporarily reduce fear and pain, both physical and emotional. In addition, the coercion to take narcotics provides for additional control of the victims by the traffickers. A developed addiction becomes, in addition to mental, a physical illness and it permanently damages the victim's health. It is necessary to help the survivor to be treated for addiction in a timely manner, and abstinence is necessary before the commencement of certain investigative and judicial processes.

We will reflect on post-traumatic stress disorder (PTSD) briefly due to space limitations, but we believe it is important for professionals to possess a basic understanding of PTSD, because the percentage of victims living with this complex disorder is large.

A traumatic experience linked to post-traumatic stress disorder (PTSD) should meet the following criteria:

- the person has experienced, attended or was faced with an event that is dangerous to the life or physical integrity of the person or others;
- the person's reactions include feelings of intense fear, helplessness and horror.

The course of PTSD does not have a distinct regularity. According to the findings of research on the status of women who survived human trafficking, "the initial interview in the stage of the immediate response to the trauma showed that 56% of women reported symptoms corresponding to PTSD.

After the third interview, in the recovery stage, this percentage was reduced to 6%, which speaks in favour of the importance of professional support and counselling. However, despite the significant reduction in the incidence of PTSD, this does not mean that the disorder will not occur again, especially in certain future, stressful life situations".



That is why it is important for proxies and prosecutors to recognise the stage the victim is in during the course of implementing the measures within their competence and to determine how this affects the victim's status and her/his ability to participate in investigative and judicial proceedings.

The main symptoms of PTSD include intrusive and distressing memories of the traumatic event that occur in the form of images, thoughts or perceptions, frightening dreams about the event, feelings as if the frightening event is happening again, which also occurs in an awake or intoxicated state and manifests itself through illusion, hallucination or flashback episodes of the traumatic event, external or internal reminders (triggers) of the trauma that lead to the reactivation of feelings or behaviours related to the traumatic event; loss of interest in activities that the person used to do, making efforts to avoid thoughts, feelings or people that remind them of the trauma;

What is important for investigative and judicial procedures is the inherent inability to remember important aspects and parts of the traumatic event; the victim feels different and alienated from people close to them and sometimes he/she does not feel love and affection towards once-close family members or friends. The person has a sense of a denied future.

One of the frequent symptoms of PTSD is the feeling that the person herself or the world around her is unreal (depersonalisation/derealisation). All these symptoms significantly hinder the person's psycho-social functioning.

### **How the trauma affects the witness testimony concerning the experience of trauma from human trafficking**

Difficulties in memory, orientation (time and space), verbalisation and feelings accompanying the victims' testimony.

Victims, like everyone else, use unconscious defences ("patterns of thought and behaviour") against what threatens them. The function of defence mechanisms is to reduce anxiety, feelings of concern, fear and discomfort as much as possible; to protect the personality from a sudden flood of emotions and unpleasant content; to enable and support keeping unpleasant content out of the consciousness.

An example of psychological defence is when, for example, we cannot remember the content of an unpleasant quarrel with a close person, and in this way our system temporarily protects itself from the intensity of unpleasant feelings surrounding that event.

### **Defence mechanisms and victim testimony:**

Familiarity with these mechanisms significantly contributes to understanding and explaining the person's actions and to the understanding of the personality as a whole. We will list several defence mechanisms that are important for prosecutors and judges to recognise when talking to victims, in order to prevent misinterpretation, i.e. situations where they think that the victim is not telling the truth or that the degree of suffering experienced is lower.

Suppression is unconscious and the person has no control over that process; it refers to the suppression of unacceptable thoughts,

feelings and urges, especially traumatic and unwanted memories. Although they are not in the sphere of consciousness, they can still cause feelings of discomfort, anxiety and various symptoms, but in a reduced intensity.

**Example:** during an interview, the victim cannot describe a specific situation of violence, because she cannot remember what happened... her memory is not clear enough, as if she were "in a fog".

Denial is an unconscious way of refusing to accept the reality. The person feels and behaves as if the painful event, thought or feeling does not exist. This mechanism is common in humans because it dates back to early childhood. Thus, for victims of human trafficking, denial is an unconscious way to avoid facing frightening and painful feelings and events

**Example:** a victim of human trafficking would say that "her experiences were actually not so terrible, the human trafficker was not so violent, because he took care of her and provided her with food and sometimes even let her walk around town..."

Dissociation and isolation of affect (emotional experience) are related defence mechanisms due to which a person loses track of time and/or identity, her usual thoughts and feelings and perceives herself in a completely different way in order to be able to continue with her life. Traumatic experiences are the most common source of dissociation. Thus, victims of human trafficking who are dissociated may be separated from reality for a while and live in "another world" that is not flooded with unbearable thoughts, feelings and memories of the days of torture. Symbolically, the victims seem to no longer "feel anything about the violence they suffer or have suffered". Or parts of their memory are completely "detached", so in the victim's memory, i.e. consciousness, it is as if they never happened. The described mechanism may become the only way of survival during the exploitation period. However, due to the failure to recognise the mechanisms of dissociation and the isolation of affect, the professionals often think that the victim is not talking about real events, that she is inadequate because she speaks "in a flat voice, cold, as if she were talking about someone else or repeating a memorised text...". Such situations are common in practice and they open up space for educated proxies to draw the attention of prosecutors to the phenomena of the impact of traumatic experience on the course and content of testimony, and thus help them communicate with the victim in a proper way, to protect the victim and preserve the credibility of the testimony.

**Example:** during the interview with the prosecutor, the victim talks about how she had to have sexual relations with a large number of men every day, some of whom were physically violent towards her. She describes the details as if she were talking about a movie she was watching, without expressing the feelings that the listener expects to accompany the narrative.

*Another example refers to large "holes" in the memory, while the victim tries to convey the experience of violence in continuity. In fact, continuity does not exist because the traumatic experience tends to fragment the victim's flow of thoughts and emotions. By using the mechanism of dissociation, the victim completely "cuts off" a part of the unbearable experience and thus automatically and temporarily protects her psychological system. Dissociated memories and feelings may return over time, especially during the victim's psychotherapy.*

### **Prevention of burnout syndrome among proxies (lawyers)**

It has already been mentioned that exposure to the complex traumatic experience of another person may involve risks for the proxies themselves. The unconscious transmission of unbearable feelings from victims to proxies, fluid boundaries in the relationship between the proxies and the victims, and previously described symptoms of trauma that we observe during communication can be emotionally very difficult for proxies (often visible in cases of torture, the sexual exploitation of children and alike). In this context, this manual is intended personally for all lawyers who choose to represent victims of human trafficking, as well as all other victims of serious crimes characterised by intensive traumatisation of the victims.

Taking care of yourself, your physical and mental health, setting clear boundaries during the representation of victims of human trafficking, teamwork with other lawyers and cooperating with specialised NGOs that have the knowledge and experience to support you during the process – all this represents the prevention of professional burnout syndrome, as well as the experience of personal victimisation.

It is important to emphasise that the victims in our environment are most often isolated and on the social margins, poor and without sufficient systemic support (personal safety, means of livelihood, housing, employment, education, etc.), and their proxies and associates of the organisations that help the victims often find themselves in this situation of isolation.

Appendix 2 contains working material – "The first interview" for daily use in practice, which recommends adequate and safe communication with victims of human trafficking during representation.

## CHAPTER 9. METHOD OF WORK OF PROXIES WHEN THE VICTIMS OF HUMAN TRAFFICKING ARE CHILDREN

### Introduction

This chapter discusses the specific nature of the procedure when victims of human trafficking are children. It is estimated that 1.2 million children become victims of human trafficking every year, and that they make up 35% of all identified victims of human trafficking (18% girls and 17% boys), which coincides with ASTRA's data, according to which children make up around 36% of all identified victims. Children on the move – migrants, refugees and internally displaced persons – are at particular risk of human trafficking. Similarly to adults, children are not identified as victims of human trafficking often enough. They themselves rarely report the crime out of fear of retaliation, lack of information about potential options for reporting and protection, distrust in the actions of judicial authorities and the police, fear that they will not be believed, that they will be returned to the human trafficking chain or exposed to additional stigmatisation and alike. Even when they are identified, the judicial authorities and other people involved in the procedure may not always be guided by the principle of the best interests of the child, there is insufficient coordination and cooperation between all the authorities involved, they are faced with the lack of interest or insensitivity of experts and do not receive appropriate support, while an additional problem is the fact that child victims are often the only identified witnesses to the event.

Recognising the key role of lawyers in the process of protecting child victims of crimes, as well as when children come in contact with the justice system in general, the UNICEF Europe and Central Asia Regional Office prepared Guidelines on Child-Friendly Legal Aid in 2018. This document was developed in cooperation with over twenty legal practitioners from twelve countries from the region of Eastern Europe and Central Asia. The guidelines are based on international and regional standards for children's access to justice, and in particular on the Convention on the Rights of the Child (the Convention) and its four basic principles that lawyers, as well as all other professionals who work with children in contact with the justice system, should rely on in their work: the right to protection from discrimination, the right to life, survival and development, the right to participation and the right to have the best interests of the child as a primary consideration in all actions concerning children. The key points of the aforementioned guidelines will be presented below, in order to point out the specific nature of the child's position, which differs from the treatment of adult victims, as well as the proposed ways of working with children, in accordance with international and regional standards and national law.

### Acting in the best interests of the child

The best interests of the child should be paramount in all the decisions made in the context of the judicial system. Lawyers and other experts participating in the procedure should be aware of this obligation and should respect it in their work by assessing and acting in the best interests of the child at all stages of the procedure.

The best interests of the child should be prioritised in all actions taken when a child is a victim and/or witness of a crime. Likewise, the lawyers participating in these procedures should be aware of this obligation and should respect it by making an assessment and acting in the best interests of the children they represent.

To this end, it is necessary to pay attention to the following segments:

- Devote time to building a trusting relationship with the child to know for sure what is in his/her best interest;
- Advocate for ensuring that all other key participants in the procedure also take into account and make decisions guided by this principle, e.g. to ensure urgent action and reduce delays in the procedure to a minimum, to plan the schedule and method of taking the child's statement in time, at the very beginning of the procedure, and ensure the presence of all relevant stakeholders in order to reduce the number of times the child has to give testimony to a minimum, to ensure an environment in the courtroom that is adapted to the child's needs, to hire professionals who will provide support for the child before, during or after the procedure, as well as to present clear arguments to the court about the best interests of the child in the specific case, etc. All of this is provided for in the provisions of the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles (Juvenile Justice Law). The provision of Article 152 stipulates that a statement is taken from the child in the presence of a psychologist, pedagogue or other expert, that the questioning may be conducted twice at most (exceptionally, more if necessary to achieve the purpose of the criminal proceedings, with the obligation of the judge to particularly take into account the protection of the child's personality), the possibility of questioning of the juvenile via video link, outside the premises of the judicial authorities, as well as other protection measures. The provision of Article 155 provides that recognition of the defendant by the child will be done with particular care, and only in a way that prevents the defendant from seeing the juvenile, in all phases of the proceeding. Also, Article 157 stipulates that the procedure in these cases is summary. There is no single instruction that would include a list of all the factors that should be taken into account when assessing the best interests of the child, precisely because such an assessment should always be individualised considering the specific circumstances that differ in each specific case. However, in this assessment, the lawyers should be guided by the following aspects:
- Coordinate their work and seek help from experts working for the Units for victim and witness support that have been established or that will be established at all higher courts and/or higher public prosecutor's offices, in accordance with the Strategy for exercising the rights of victims and witnesses of criminal acts in the Republic of Serbia;
- gain a broader understanding of the dynamic development of the child, the influence of the family situation, the negative consequences of the child's exposure to violence, certain mental health problems, addiction to psychoactive substances and alcohol and other factors, so that the context of the specific case and the specific needs of the child can be understood.

### Participation of the child in the procedure

A child should be able to freely express an opinion and such opinion should be given due weight in court proceedings. Children should be consulted on issues related to their involvement in the case, as well as be free to express, in their own way, their views and concerns regarding their involvement in the proceedings.

Article 12 of the Convention clearly states that children who are capable of forming their own views have the right to participate and express those views freely in all judicial or administrative proceedings affecting them. Children's views must be given due weight in accordance with their age and maturity. Age should not be an obstacle for the child's full participation in judicial proceedings. The child's right to participate in the procedure is related to the child's right to

be informed about his/her role in the procedure, available services and other measures and support mechanisms, for example, for filing a complaint or receiving compensation for damages, i.e. the determination of a property claim in criminal proceedings, etc.

The lawyers play an important role in ensuring the child's right to participate in the proceedings. Some of the actions that should be taken include:

- Providing the child with all the necessary information to enable meaningful, effective participation, not just formal;
- Informing the child clearly about the short-term and long-term consequences of certain decisions, which will enable the decision to be made based on relevant information;
- Before taking a child's statement, it is necessary to prepare the child – to inform him/her about what the procedure will be like, where and when it will take place, who will be present, how the child's statements will be considered, etc.;
- If the lawyer believes that the testimony was not taken in an appropriate way and that it is frightening for the child, the lawyer should react and instruct other participants in the procedure on how they should act, e.g. that frequent breaks should be introduced, that separate waiting rooms should be provided for the child, that the child should give a statement via video link, that the child should be accompanied by a trusted person, etc.;
- After taking the statement, it is necessary to explain to the child how the court took into account and considered his or her views when deciding. This emphasises that taking the child's opinion into account is not just a formality, but that the child's views are indeed taken seriously.

### **Protection of children from discrimination**

Professionals should ensure that children are treated fairly and equally and that they are not discriminated against because of their age, gender, ethnicity, disability or other status.

The work of lawyers should be sensitive to the diversity of children, and they should have special knowledge and skills for communication and work with particularly vulnerable groups of children. For example, children who have been victims of sexual violence should be additionally empowered to express their opinion, and the role of a lawyer is crucial in this process. Children with developmental disabilities are more likely to experience abuse, violence and discriminatory attitudes, and that is why lawyers should protect them during the proceedings.

Finally, lawyers, just like all other participants in the proceedings, must never allow their personal views of a discriminatory nature to influence their decisions. As far as possible, they should ensure that participants in the procedure do not behave in a discriminatory manner when working with children, for example by upholding an anti-discrimination policy in the workplace, participating in relevant training and responding to discriminatory behaviour during the procedure.

## Preparation for the first meeting with the child

A lawyer should build a relationship of trust and support with a child he/she represents. The first meeting should be organised in a place that is adapted to the child, where the child feels safe and can speak freely, but also in such a way as to adapt to the child's obligations, such as school or family, and to ensure communication in a manner adapted to the child. Establishing this relationship is the basis of good representation and support. It is preferable that the same lawyer works with the child from beginning to end. A lawyer should not promise something he/she cannot deliver. Considering his/her specific role, the lawyer needs to explain to the child that this role is different from the role of other participants in the procedure, such as a judge or prosecutor, and that the lawyer's task is to provide the child with the best possible representation and assistance. To prepare for the procedure, it is necessary to take care of the logistical details and determine how the child will travel to the court or to the place where the meeting will take place, how he/she will pay for transportation, whether someone, etc will accompany him/her.

## Right to privacy and confidentiality

Lawyers should support the child's right to privacy during the proceedings and ensure that all communications with the client are confidential.

The role of lawyers in protecting the child's right to privacy is of great importance. Any information pertaining to the child's participation in the procedure should be protected. The risks of disclosing a child's identity may be considerable and include putting the child at risk, stigmatising the child in the community, and causing unnecessary additional emotional pain. It is necessary that the proceedings take place without the presence of the public, that judgments are pronounced in such a way that the identity of the child is not revealed, and that the media does not publish information that could lead to the violation of the child's privacy.

To that end, measures must be taken to exclude the public and the media from proceedings involving child victims and witnesses. Appropriate proceedings should be initiated against the media that violate a child's privacy. If the lawyers give certain announcements to the media, they must not contain the name and surname of the child and their family members, as well as other information based on which it would be possible to identify a person. The announcement may include a brief description of the event (date, time and approximate location of the event, as well as information on the age and gender of the child). Finally, there are exceptional circumstances in which a lawyer needs to disclose confidential information about his/her client to a competent authority, e.g. if there is a risk that non-disclosure of the information may lead to the death or injury of a person, or when it is related to the commission of a criminal offence.

## The right to safety

The lawyers should ensure the safety of children before, during and after the proceedings.

All child victims of criminal offences who are involved in court proceedings are exposed to increased risks of intimidation and revenge, which is particularly characteristic of the criminal offence of human trafficking. That is why lawyers should take into account the potential risks and, in this sense, cooperate closely with victim support services, CSW experts, the police, prosecutors and judges in order to take coordinated steps in terms of preventing the negative consequences for the child.

To that end, the lawyers can advocate for the implementation of certain measures:

- Avoiding direct contact between the child victim and witness and the defendant at any stage of the proceedings;
- Organise the questioning of the child via video link and reading the record of the child's testimony at the main trial, i.e. playing the recording of the hearing;
- Get a restraining order;
- Arrange for the defendant to be kept in custody or under house arrest;
- Whenever possible, provide the child victim and witness with a police or other relevant agency escort and keep the child's movements confidential.

### **Communication with the child**

When working with children, lawyers need to develop an approach that is different from the one they have when communicating with adult clients. Some of the characteristics of communication with the child should include: providing the necessary information and explaining concepts, allowing a close person who provides support for the child to accompany them, if the child wants it, ensuring patience and understanding, clear and precise communication, etc.

It is important to carefully structure the meeting with the child client, to use short sentences and a simple vocabulary, ask clear questions with unambiguous meaning and avoid professional language and legal terminology. In the next chapter, we will explain in detail how communication with the child should take place, depending on the age and different stages of the child's development.



## CHAPTER 10. SUPPORT MECHANISMS FOR TRAFFICKING VICTIMS IN SERBIA

### Introduction

This chapter describes the National Referral Mechanism (NRM) for the identification, assistance and protection of the rights of trafficking victims in the Republic of Serbia, the umbrella law(s), key institutions and practices implemented to provide the necessary support and protection to persons who have been exploited.

### Legislative framework

With the adoption of the [Law on Social Protection](#)<sup>171</sup> in April 2011, the conditions were met for the establishment of a specialised institution that would deal solely with the provision of assistance and protection to human trafficking victims. Moreover, Article 41 of this Law defines trafficking victims as beneficiaries of social security or protection services for the first time. Less than a year later, the Government also adopted the Regulation on a network of social protection institutions<sup>172</sup>, the key elements of which enable:

- The establishment of the **Centre for the Protection of Victims of Human Trafficking**, with two organisational units: The Shelter for the victims of human trafficking (Shelter) and the Service for coordinating protection for the victims of human trafficking (Service).
- And, somewhat later, an amendment to the existing Rulebook on detailed conditions and standards for the provision of social protection services was adopted<sup>173</sup>, including the minimum standards for the protection of victims of human trafficking.

Accordingly, by virtue of a Decision of the Government of the Republic of Serbia dated 13 April 2012, the Centre for the Protection of Trafficking Victims was established<sup>174</sup> (Centre). The Service started operating immediately after the establishment of the Centre in 2012, while the Shelter was opened in 2019. Some of the primary activities<sup>175</sup> of the Service include the following:

- Formal identification of human trafficking victims.
- Preparation of an assessment of the risks, statuses and needs of the victims.
- Coordinating the protection and reintegration of victims.
- The process of the voluntary return of victims to their country of origin.

**Apart from the Centre, the most significant role in providing assistance and support to human trafficking victims is played by civil society organisations (CSO). The only two specialised organisations that operate in this field are ASTRA and Atina.**

<sup>171</sup> "Official Gazette of the RS", no. 24/2011 and 117/2022 – decision of the Constitutional Court)

<sup>172</sup> "Official Gazette of the RS", no. 16/2012 dated 07.03.2012

<sup>173</sup> The Rulebook was adopted one year after the adoption of the new Law, "Official Gazette of the RS", no. 42/2013, 89/2018 and 73/2019. The Rulebook prescribes the structural standards that define material and human resources and the management processes, and sets the functional standards for admission, assessment modes and methods, planning, activities during the provision of services, and the termination of services.

<sup>174</sup> Prior to the establishment of the Centre, from March 2004, the Service for coordinating protection for victims of human trafficking operated as part of the Institute for the Education of Children and Youth in Belgrade. This Service was in charge of the identification and organisation of the assistance and protection for victims, without providing direct assistance.

<sup>175</sup> More information about the activities of the Centre can be found in the [Statute](#) and in the [Rulebook on the internal organisation and systematisation of the work and tasks](#) of this institution

## Process of identification and providing support for human trafficking victims

Standard Operating Procedures (SOPs)<sup>176</sup> for dealing with human trafficking victims are essential for the protection of the human rights of victims. According to the defined provisions, the procedures include identification, formal identification, urgent and ongoing support, including support in criminal proceedings, and the voluntary return of victims.

### **Preliminary identification – Procedure I**

The actual process of identification and coordination of assistance to human trafficking victims begins with a preliminary identification, which can be carried out by civil society organisations (CSOs), the police, other service providers, diplomatic and consular missions (DCMs), representatives of the judiciary including lawyers, the victims themselves, or anyone who has information on the alleged victim. The first step in the identification process involves notifying the Victim Protection Centre or the Public Prosecutor's Office (in the relevant city), the Ministry of the Interior/Police (192 or Crime Investigation Police Department), the local Centre for Social Work if the victim is a child (a minor), or an adult who is temporarily or permanently incapacitated, **as soon as they become aware**.

### **Formal identification – Procedure II**

The formal identification procedure is **urgent** and must be initiated immediately or at the latest within 24 hours. According to the SOP, the formal identification of victims includes:

- Initial interview with the alleged victim to gather basic information.
- Upon receipt of information about the alleged victim, the representative of the Agency should conduct an interview as soon as the circumstances of the case permit. (II.1).
- Information sharing and cooperation between all the participants in the identification process.
- Namely, the Agency is obliged to inform all the relevant institutions/organisations involved in the case about the initiation of the identification procedure within 24 hours. (II.2).
- The decision on identification should be reached after gathering all the relevant information.
- The decision is reached upon the completion of the procedure, within three, or in very complex cases within nine months from the date of the report/notification at the latest. (II.3).

### **Support and protection of the victims – Procedure III**

The process of providing support and protection to human trafficking victims includes:

- An urgent response to the urgent needs of the alleged victim, including medical and psychological assistance.
- This measure must be implemented immediately after the commencement of the identification procedure (III.1) by the participants in the preliminary and formal identification. An initial support plan is prepared during this phase.
- Continuous support includes the planning, implementation, monitoring and evaluation of the support plan. The preparation of the support plan starts during the previous phase and the plan is adopted within 14 days after the finalisation of the initial plan. The plan must be regularly updated in accordance with the victim's needs. (III.2).

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<sup>176</sup> The document was adopted on 25 January 2019 by the [Council Conclusion on Combating Trafficking in Human Beings](#)

**NOTE:**

The identification and coordination of the protection of **adult victims with legal capacity** is performed by the Agency, if the victim agrees to it.

The identification and coordination of the protection of **child or adult victims temporarily or permanently deprived of legal capacity** are performed by the competent Centre for Social Work, with the mandatory participation of the Agency.

**Legal assistance and support in criminal proceedings – Procedure IV**

The victims are entitled to the right to legal assistance and support during the criminal proceedings, including assistance in exercising their property and legal claims and claims for the compensation of damages. All the participants in the provision of assistance and support for human trafficking victims, in line with their powers, must provide the victim with basic information about their legal rights and available services during the criminal proceedings, as well as about their right to file motions and evidence to exercise their property and legal claims and propose temporary measures to secure such claims in the criminal proceedings against the perpetrator of the criminal act and/or in the civil proceedings for the compensation of damages, as well as to refer the victim to the authorities and CSOs who provide this type of assistance.

**Voluntary return of the victims – Procedure V**

Voluntary return is crucial for the reintegration of victims into society. The SOP recommends close cooperation with the relevant institutions to ensure a safe and dignified return. The return process must be organised and implemented within 30 days after the victim expresses his/her desire to return.

**Records and documents**

The Agency, the Centre for Social Work and other social protection service providers keep records and documents about their activities in regard to the protection of victims. The Agency manages the databases on identified human trafficking victims and the support and protection services provided, in accordance with the Personal Data Protection Law.

**NOTE:**

It is necessary to provide the victims with support regarding to their participation in the court proceedings even after leaving the social protection system until the completion of the court proceedings against persons accused of human trafficking, the proceedings concerning property and legal claims, civil proceedings for the compensation of damages, i.e. in all the proceedings that directly or indirectly result from the prior experience of human trafficking.



The support mechanisms for trafficking victims in Serbia are complex. Even though it has brought numerous improvements, it still needs to be developed continuously. In accordance with Section III – *Updating these procedures*, the SOP needs to be supplemented and improved whenever needed, but at least once a year. The document has not been updated since 2019. In June 2024, an invitation was received from the Office for the Coordination of Activities in Combating Trafficking in Human Beings at the national level for preliminary activities in relation to updating the SOP. At the time of the finalisation of this Manual, the text of the new Standard Operating Procedures has not been adopted.

In May 2022, ASTRA received an anonymous report via the SOS Hotline about a minor girl, a resident of a home for children without parental care, who was a victim of sexual exploitation. An urgent notification was sent to the competent authorities. The girl was quickly located and a meeting was convened to decide on further measures. After she was identified as a victim, she was placed in the Shelter for the victims of human trafficking. There she received various forms of support, including medical examinations, psychosocial and legal assistance. Namely, after her testimony, the Prosecutor's Office initiated proceedings against the suspects accused of human trafficking. ASTRA covered the expenses of medicines and basic toiletries. In 2023, she moved abroad, as she said, to start a new life. In her last contacts with the representatives of ASTRA, she said that she had successfully integrated in the new environment.

**ASTRA ID: 6715**

## Strategic level and institutional framework

In the previous section, we have presented the operational part of the national referral mechanism. Aside from the operational part, there is also the strategic level (organogram no. 1), which is not as relevant when we speak about direct support for victims. The strategies adopted over the last two decades define the framework for combating human trafficking in the Republic of Serbia, as well as the objectives of the action. The first Strategy for Combating Human Trafficking was adopted in December 2006, while the National Action Plan 2009-2011 was adopted in May 2009. After a longer break, the second Strategy for the Prevention and Combating of Human Trafficking, in particular trafficking in women and children, for the 2017-2022 period, was adopted on 4 August 2017. This strategy is implemented through two action plans<sup>177</sup>.

At the session held on 20 March 2024, the Government of the Republic of Serbia adopted the **Programme for Combating Human Trafficking**<sup>178</sup>, for the 2024-2029 period, with the Action Plan for the implementation of this Programme. The key stakeholders in the institutional framework for the implementation of the Programme are the following:

<sup>177</sup> The Action Plan for the implementation of the Strategy for the Prevention and Combating Human Trafficking, in particular trafficking in women and children, for 2017 and 2018, and the Action Plan for the implementation of the Strategy for 2019 and 2020, adopted in July 2019.

<sup>178</sup> "Official Gazette of the RS", No. 25/2024

- The Council for Combating Human Trafficking, as an expert advisory body to the Government. The Council consists of the president – the Minister of the Interior, and the members of the Council: the Minister of Finance, the Minister of Labour, Employment, Veteran and Social Policy, the Minister of Health, the Minister of Justice and the Minister for European Integrations.
- The Protector of Citizens as the national rapporteur on trafficking in human beings<sup>179</sup>.
- The National Coordinator for Combating Trafficking in Human Beings is appointed by a decision of the Government and simultaneously performs the duties of the Head of the **Office for the Coordination of Activities in Combating Trafficking in Human Beings**. The Office was established within the Office of the Police Director, Police Directorate of the Ministry of the Interior. The Office performs expert activities for the Council for Combating Human Trafficking.
- A special working group for monitoring the implementation of the Programme is established for the purpose of implementing, monitoring, reporting on and evaluating the Programme and the accompanying Action Plans. A special working group is led by the Ministry of the Interior, i.e. the Office for the Coordination of Activities in Combating Trafficking in Human Beings. The representatives of state authorities, organisations and institutions, the Red Cross of Serbia, as well as the relevant civil society organisations, participate in its work.

### INSTITUCIONALNI OKVIR ZA SPROVOĐENJE AT PROGRAMA



**Organogram no. 1** The institutional framework and the relevant stakeholders in combating human trafficking.

<sup>179</sup> In accordance with the Law on the Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings ("Official Gazette of the RS – International treaties", no. 19/09), in accordance with the Law on the Protector of Citizens ("Official Gazette of the RS", no. 105/21).

ASTRA provides comprehensive assistance and support services to the victims of human trafficking and their families through several programmes. The ASTRA SOS Hotline is available 24/7 and offers specialised support and preventive information. A mobile ASTRA team provides urgent medical, psychological, legal and social-economic assistance, including general and specialist medical examinations, medication therapy, laboratory analyses, HIV and STD testing, dental treatments, legal advice and representation before the court, as well as the assistance in finding accommodation, providing toiletries and transport. Furthermore, the representatives of the ASTRA Team provide assistance in relation to education and employment. ASTRA has developed a network of sensitised experts in the field of law, medicine and psychology, who provide efficient support to victims throughout the recovery and reintegration process.

**Contacts of relevant institutions/organisations** involved in the national referral mechanism, i.e. **the provision of direct assistance to the human trafficking victims:**

**Centre for the Protection of Trafficking Victims** – 063-610-590

**List of Centres for Social Work in the Republic of Serbia**, together with their contact information, may be found on the website of the Ministry of Labour, Employment, Veteran and Social Policy at <http://www.minrzs.gov.rs/cms/sr/adresar/275-adrese-centara-za-socijalni-rad>

**ASTRA SOS Hotline** 24/7 011 785 0000

**Citizens Association Atina** – e-mail: [atinango@eunet.rs](mailto:atinango@eunet.rs); [www.atina.org.rs](http://www.atina.org.rs)

## Appendix 1 Examples of the Decisions on interim measures

### E X A M P L E

#### Decision on interim measures – ban on the disposal and sale of real property

##### *Decision*

The motion of the damaged party for granting an interim measure to secure the property and legal claim is hereby adopted.

The accused is hereby forbidden \_\_\_\_\_ to dispose of and sell the real property \_\_\_\_\_ (apartment, house, arable field, business premises), located in \_\_\_\_\_, on plot number \_\_\_\_\_, registered in the real estate folio \_\_\_\_\_.

The Republic Geodetic Authority, the Real Estate Cadastre \_\_\_\_\_, is hereby instructed to make an annotation of this interim measure in the real estate folio \_\_\_\_\_.

The interim measure shall remain in effect until the final completion of this proceedings, where an appeal against this Decision shall not postpone the execution hereof, under the threat of legal consequences.

**E X A M P L E**

**Decision on an interim measure – a ban on the sale and burdening of the share**

*Decision*

The motion of the damaged party for granting an interim measure to secure the property and legal claim is hereby adopted.

The accused is hereby forbidden from making payments from account no. \_\_\_\_\_ with the Bank \_\_\_\_\_, as well as to dispose of the funds in any other way.

The Bank \_\_\_\_\_ is hereby forbidden from paying out the funds to the accused \_\_\_\_\_ from account no. \_\_\_\_\_ with the Bank.

The interim measure shall remain in effect until the final completion of this proceedings, where an appeal against this Decision shall not postpone the execution hereof, under the threat of legal consequences.



## Appendix 2 Work material The first interview with the victim of human trafficking

### The first interview recommendations for adequate communication with the victims of human trafficking during the investigation, the representation and other procedures

work material

Biljana Slavković, psychotherapist

The goals of the **first interview**:

- to start **building trust with the client** (victim) and forming an **operational alliance**
- to obtain the necessary concrete **information**

**Basic recommendation:** it is important to understand that every procedure represents a significant step for the victim/survivor, and that the victim has a need to feel accepted. **Benevolence** towards the person/victim you are interviewing is a necessary condition for an attempt at building trust. The prudence of the experts during their first contact with the victim must also be directed towards preventing the retraumatisation of the victim. Retraumatisation may occur when the victim feels fear, distrust and insecurity when asked to describe his/her experiences. **Asking the victim to repeatedly describe what happened includes a high risk of retraumatisation.**

**The retraumatisation of clients (victims/survivors)** may occur during the initial contacts if the representatives of the institutions and organisations do not communicate openly, but rather from a position of power or when they behave judgmentally. This makes it impossible to create a working alliance based on trust. **The meeting with the victim must never be arranged in the presence of the perpetrator/trafficker (e.g. at the police premises or prosecutor's office) and it is best if no one else apart from the interviewer is present or potentially if only a person with whom the victim feels secure is present** (a person from the support group, e.g. a representative of a specialised NGO from which the victim sought assistance).

## OPEN COMMUNICATION – DEFINITION, GOALS AND REALISATION

**Open communication** means that **we actively listen to one another and openly express our thoughts and feelings, which contributes to building a relationship based on trust. This increases the probability of achieving the common goals.**

Open communication makes the victim feel less upset, decreases the unpleasant feeling of vulnerability during the exposure to the painful experience and creates a feeling of being accepted and trusted, a sense that they can talk more accurately about their experience, facts, timeframe – everything else that is relevant for their future representation.

**Active listening** is the best way to start a conversation with a victim.

Active listening is a technique that supports the individual in expressing his/her needs, emotions and opinions. It represents a safe space for expressing oneself in an atmosphere of respect and benevolence.

In order to be able to actively listen, you need to accept your interlocutor and **enter into conversation without the intention to judge, assess, direct or advise. We emphasise the importance of not interrupting the clients while they speak and achieving full focus on the conversation** (without using the phone while listening, without third-party interruptions, etc.).

**Active listening** as a technique involves a **number of different phases**; we will mention four recommended phases while working with the victims. **Victims often suffer from the consequences of trauma and often have emotional and cognitive difficulties. These are particularly activated when they have to retell their traumatic experience during the investigative processes and in an environment that has an inadequate attitude towards victims** (you can read more in the paper written by B. Slavković – “Human Trafficking – Experience of Complex Trauma – Necessity of Protecting Survivors from Retraumatization by Institutions, Professionals and Procedures”, ASTRA manual).

### PHASES OF ACTIVE LISTENING:

#### Phase 1: Acceptance

Be open to communication without judgment, without giving a positive or negative critique or advice in this phase. Accept the individual/victim *with all his or her thoughts and feelings*. Be neutral and listen without interrupting.

#### Phase 2: Decoding and open-ended questions

When you fully accept the individual/victim, you will be able to accurately “decode” a message, i.e. guess the real topic or feeling behind a certain message, sentence or something unspoken, perhaps suggested by non-verbal communication of the victim (insecure

bodily posture, arms crossed over one's breasts, lack of eye contact, etc.). **This is particularly important in regard to the victim's feeling of safety, as well as for an understanding of the difficulties in talking about traumatic experiences.**

**It is necessary to pay attention to non-verbal communication and ask open-ended questions.**

**Open-ended questions encourage the interlocutors to express themselves.**

Open-ended questions start with: how, when, where, in what way, what...?

"How did you make contact with the Safe House...?"

"In what way did the trafficker contact you...?"

"What was the most difficult thing for you during the torture, which you can now share with me?"

"How do you understand this situation?"

"What do you believe could help you?"

**Important note:** avoid questions starting with "why" because they suggest blame and responsibility in the Serbian language, the very things that the traffickers *implant* into their victims when they blame them for the situation they are in (as part of the complex *mechanism of violence*). Questions such as "Why did you cross the border with him?", or "Why did you believe he loved you?" might psychologically **trigger the feeling in the victim that he or she is responsible for the torture they had to endure, and will prevent them from being active and constructive in the process of representation and fighting for themselves.**

### **Phase 3: Paraphrasing (feedback and checking the decoding)**

During the conversation, one should occasionally repeat parts of what the victim said – exactly in the way in which the listener/prosecutor understood it.

The **aim** of the prosecutor (listener) providing feedback to the victim is to **check whether the victim was understood correctly and to encourage the victim in further expressing him/herself.**

At the same time, it is **an affirmation of active listening and serves to avoid misunderstandings.**

**We recommend the following linguistic structures when paraphrasing what the victim said:**

"If I understood correctly....." (then repeating what the victim said)

"If I got it right....." (then repeating what the victim said)

**Conclusion:** paraphrasing sentences provides a chance for the victim to hear how they expressed themselves, to check if they were clear, and if they were understood properly. At the same time, it enables them to correct themselves and add something in order to clarify ambiguities.

### **Phase 4: Resume (Summary)**

This is a very important phase that is most often used **at the end of the conversation** or at the end of a specific topic **and is used to check whether the person/victim was understood well by the prosecutor. By virtue of this technique, clarity in communication is achieved.**

**The following can be summarised from the conversation:** listing of key theses, summarising the general statements in a shorter form, making a list of instructions, agreement on further actions.

**Conclusion:** summarising is important because it allows victims to understand the overall situation more clearly, to set goals and reach agreements with the prosecutor, and thus to be more focused, which is often difficult for them due to the trauma they have experienced.

### Appendix 3 Example from the case law of the Constitutional Court of the Republic of Serbia

#### VIOLATION OF THE PROHIBITION OF HUMAN TRAFFICKING IN THE CASE LAW OF THE CONSTITUTIONAL COURT OF SERBIA – JUDGMENT US NUMBER UŽ-1526/2017 DATED 4 MARCH 2021

##### Introductory notes

On 4 March 2021, the Constitutional Court of the Republic of Serbia accepted the constitutional appeal <sup>180</sup>of a human trafficking victim, who was a minor at the time of the criminal offence, and ruled that the applicant's right to the prohibition of human trafficking, guaranteed by Article 26, paragraph 2 of the Constitution of the Republic of Serbia, was violated, as well as her right to trial within a reasonable time guaranteed by Article 32 of the Constitution of the Republic of Serbia. The decision of the Constitutional Court in question is of great importance for judicial practice, both from the point of view of the obligations of the authority conducting proceedings, and from the point of view of exercising the rights of human trafficking victims in criminal proceedings.

The established violation of the constitutional prohibition of human trafficking indicates that human trafficking cannot be reduced to the aspect of criminal law, but that it has its own constitutional and legal character whose central goal is to protect the victims of human trafficking. In the aspect of criminal law, the court, in accordance with international standards and constitutional principles, highlighted in detail the obligations of the state in terms of the obligation to establish a legislative and administrative framework for the prevention and punishment of human trafficking, the obligation to protect the victims of human trafficking and the obligation to conduct an investigation and court proceedings when there is reasonable suspicion that the criminal offence of human trafficking has been committed. Starting from the point of view that human trafficking is a modern form of slavery and that, as such, it is contrary to the principle of humanity, that it offends human dignity and the fundamental values on which a civilised democratic society rests, the Constitutional Court took into account the provisions of the Constitution and the regulations of the Republic of Serbia, international treaties, the views and practices of the European Court of Human Rights, as well as the views of the international supervisory bodies, such as the Group of Experts on Action against Trafficking in Human Beings (GRETA).

The decision of the Constitutional Court in question clearly indicates violations of the positive obligations of the state in relation to the victim of human trafficking by failure to comply with the measures of prevention, protection and assistance. In this specific case, during the criminal proceedings, the court failed to provide the injured party, who at the time of the criminal offence was a child according to international treaties, i.e. a minor according to the Criminal Code, with a single measure of protection and assistance, despite the fact that the medical expert testimony indicated that the victim was traumatised and despite the request of the injured party's lawyer to grant her the status of an especially vulnerable witness and to adapt the method of questioning. In addition, the decision points to the incorrect application of the principle of opportunity, as well as the problem related to the requalification of the criminal offence of human trafficking into a lesser offence, with the conclusion that the procedure for the criminal offence of human trafficking must be conducted with a thorough consideration of all constitutive elements and available evidence until a court decision is made.

<sup>180</sup> A detailed analysis of the judgment may be found at: <https://preugovor.org/Policy-Papers/1712/Improving-the-position-of-victims-of-human.shtml>

By pointing out the essential omissions of the authority conducting proceedings in terms of fulfilling the positive obligations in the procedural aspect in relation to Article 26, paragraph 2 of the Constitution, both in terms of the victim's rights and in terms of the course of criminal proceedings, the judgment of the Constitutional Court in question sets important standards of conduct and obligations of the prosecution and the court in criminal proceedings, which is particularly significant for the position of victims of human trafficking in terms of victim assistance, victim safety and especially being heard before the court. Bearing in mind the findings of the annual analyses of judicial practice on the position of victims of human trafficking in criminal proceedings, which ASTRA continuously conducts, this decision of the Constitutional Court provides a basis for improving the actions of the competent authorities in regular court proceedings, in order to allow the victims of human trafficking to effectively exercise their guaranteed rights.

### **The most significant aspects of the judgment of the CC of Serbia**

The decision of the Constitutional Court established a violation of the rights and freedoms of a human trafficking victim (an injured party in criminal proceedings before the High Court in Belgrade) guaranteed by the Constitution of the Republic of Serbia, namely a violation of the prohibition of human trafficking (Article 26, paragraph 2 of the Constitution) and the right to a trial within a reasonable time in the same procedure (Article 32 of the Constitution). While deciding on just satisfaction, the Constitutional Court concluded that in this particular case, no amount of money can represent compensation for the violations of human rights suffered by the applicant of the constitutional appeal, but it found that the amount awarded as non-material damages, with the publication of the Decision in the "Official Gazette of the Republic of Serbia", represent fair satisfaction for the confirmed violation of rights from Article 26, paragraph 2 and Article 32, paragraph 1 of the Constitution.

This part presents the most important aspects of the Constitutional Court's judgment regarding the violation of the prohibition of human trafficking.

### **The facts of the case**

The applicant had the position of the injured party in the criminal proceedings K.4219/10 and she filed a compensation claim. In accordance with the original indictment from 2010, the defendants were charged with the criminal offence of human trafficking from Article 388, paragraph

6, in relation to paragraphs 3 and 1 of the Criminal Code. According to the indictment, in the period from June 2009 to November 2009, in Belgrade, acting as a group and based on their prior agreement, by force and threat, through the abuse of a relationship of dependence and trust, the defendants recruited, transported and handed over the injured party, who was a minor at the time of the commission of criminal offences, all for the purpose of her sexual exploitation. The competent Higher Public Prosecutor's Office in Belgrade amended the initial indictment in 2016 and, in relation to two defendants, reclassified the criminal offence of human trafficking to the offence of mediation in prostitution from Article 184, paragraph 2, in relation to paragraph 1, in relation to

Article 33 of the Criminal Code (after which the proceedings for these two defendants were separated, and the proceedings were concluded on the basis of the agreement on the recognition of the criminal offence), while the third defendant was charged with the criminal offence of assisting the perpetrator after the commission of the criminal offence from Article 333, paragraph 2, in relation to paragraph 1 of the Criminal Code (the Higher Public Prosecutor's Office postponed the criminal prosecution for this defendant). During the criminal proceedings K.4219/10, in which a large number of hearings were postponed, the court rejected the request of the injured party's lawyer to remove the defendant from the courtroom during the questioning of the injured party. Despite the repeated requests of the injured party and her lawyer to grant the status of a particularly sensitive witness to the injured party and to hear her without the presence of the defendants using technical means, the court did not decide on such requests.

### **Constitutional guarantees and the application of international standards**

In the reasoning of the judgement, the Constitutional Court referred to the provisions of Article 26 of the Constitution, which stipulates that: No person may be kept in slavery or servitude (paragraph 1); All forms of human trafficking are prohibited (paragraph 2); Forced labour is prohibited; Sexual or financial exploitation of a person in an unfavourable position shall be deemed forced labour (paragraph 3); The labour or service of persons serving a sentence of imprisonment if their labour is based on the principle of voluntariness with financial compensation, labour or service of military persons, or labour or services during a war or state of emergency in accordance with the measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour (paragraph 4).

When making its decision, the Constitutional Court referred in its rationale to numerous provisions of international treaties and positions of international supervisory bodies relevant to the decision-making, such as the UN Convention on the Rights of the Child, the provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, a protocol to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the General Recommendations of the Committee on the Elimination of Discrimination against Women, the provisions of the International Covenant on Civil and Political Rights, General Comment No. 28 on the Equality of Rights between Men and Women of the Human Rights Committee, the Forced Labour Convention of the International Labour Organisation (Convention No. 29), Recommended Principles and Guidelines on Human Rights and Human Trafficking of the High Commissioner for Human Rights of 2002 (E/2002/68/Add.1), the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe Convention on Action against Trafficking in Human Beings, the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings for Serbia, Recommendation 1325 (1997) on Traffic in Women and Forced Prostitution of the Parliamentary Assembly of the Council of Europe, as well as the Recommendation on the Protection of Women from Violence from 2002 of the Council of Europe's Committee of Ministers.

Considering the content of the constitutional prohibition of human trafficking, the Constitutional Court, in accordance with the practice of the European Court of Human Rights, has mentioned three groups of positive obligations of the state: 1) the obligation to establish a legislative and administrative framework for the prevention and punishment of human trafficking; 2) the obligation to

protect the victims of human trafficking through the provision of measures of prevention, recording and assistance to such persons; 3) the obligation to conduct an investigation and court proceedings when there is a reasonable suspicion that the criminal offence of human trafficking has been committed. The material aspect of the positive obligations of the State is reflected in the creation of a legislative and administrative legal framework in relation to the persons accused of human trafficking, as well as the creation of a legislative and administrative framework in relation to victims of human trafficking, while the procedural aspect is reflected in acting in accordance with the said provisions, both during the investigation and during the court procedure.

The Constitutional Court concluded that the Republic of Serbia has fulfilled the material aspect of its positive obligation to provide a legislative framework for the fight against human trafficking, that it continuously implemented measures for the establishment of a network of bodies for the prevention of human trafficking and the protection of victims of human trafficking, and ensured cooperation with the non-governmental sector and adopted national strategies to combat human trafficking.

### **The procedural aspect of the positive obligations of the State**

#### *Violation of the victim's rights*

When it comes to the procedural aspect of positive obligations, the Constitutional Court first considered the violations of the rights of the human trafficking victim, i.e. the injured party in the specific court proceedings.

Regarding the facts, the Constitutional Court noted that the applicant of the constitutional appeal, as an injured party in criminal proceedings, was 16 or 17 years old at the time of the commission of the criminal offence, that she was questioned twice during the proceedings (without the presence of the public, and she was questioned only once without the presence of the defendants), that during the main hearing she orally requested not to be heard in front of the defendants, as well as that the injured party's proxy proposed that the acting court issued a decision granting the injured party the status of a particularly sensitive witness in order to "prevent the repetition of the secondary victimisation to which the injured party was exposed during the previous hearing", on which the court did not decide. In addition, the injured party's lawyer requested that the injured party be heard through the use of technical means for the transmission of images and sound, pointing out that the injured party came to the main hearing in fear and under stress, and the court failed to pass a decision on this request as well. During the criminal proceedings, the court did not implement any measures to help the victim in terms of counselling or providing information about the legal rights and services available to the victim, or in terms of the measures aimed at physical, psychological and social recovery, while the participation of the representative of the association ASTRA – Anti-Trafficking Action was not ensured through the activities of the court in one part of the procedure. When it comes to cooperation with other organisations and state authorities whose competence and task is to register, protect and provide assistance to victims of human trafficking, the court did not implement any measures.

Bearing in mind that during the proceedings, the court did not provide a single measure of protection and assistance to the injured party, who at the time of the criminal offence was a child according to international treaties, i.e. a minor according to the Criminal Code, that the court did not adjust the conduct of the proceedings to the findings of the court expert, which concluded that the victim was in a state of traumatisatisation, that the court did not respond to the request for obtaining the status of a particularly



sensitive witness, as well as the request pertaining to the method of questioning the injured party as a witness, which led to the secondary victimisation of the injured party, the Constitutional Court found that in this aspect of the procedure, there was a violation of a positive obligation of the state in relation to the victim of human trafficking due to non-compliance with the measures of prevention, protection and assistance guaranteed by Article 26, paragraph 2. Constitution.

### **The course of the criminal proceedings**

Reemphasizing the obligation to achieve the effectiveness of court proceedings, the Constitutional Court concluded that compliance with all procedural rules is a condition for meeting the requirement of effectiveness.

In this specific case, it was concluded that the High Public Prosecutor's Office in Belgrade and the High Court in Belgrade had the obligation to conduct the proceedings for the criminal offence of human trafficking based on all the constituent elements of the specific case and all the available evidence and to finally make the relevant court decision. In this regard, the effectiveness of the court proceedings may be violated if, after five years and six months of proceedings, only five main hearings had been held out of 24 scheduled, with the double testimony of the injured party in the proceedings based on the indictment for human trafficking, the deputy public prosecutor at the end of the evidentiary procedure decided to reclassify the criminal offence, to "postpone the criminal prosecution" by applying the institute from Article 283 of the CPC, and the court decided to suspend the criminal proceedings. Additionally, from the point of view of the procedural aspect of the positive obligations of the court, the Constitutional Court states that by not submitting the decision on the suspension of the proceedings to the injured party, so she could declare whether she wanted to take the position of the public prosecutor, the injured party was deprived of any possibility of taking over the criminal prosecution, to represent the prosecution and with her own activities contribute to the implementation of the entire procedure.

In addition, according to the conclusions of the court, although the implementation of the principle of opportunity is constitutionally acceptable in principle, it does not necessarily have to be justified in every specific case, especially taking into account the type and nature of the obligation imposed on the suspect, as well as the category of the specific victim who may be classified as a particularly vulnerable victim of a criminal offence and must therefore enjoy enhanced legal protection. In this specific case, this principle was applied on the basis of the requalification of the criminal offence from the serious offence of human trafficking to the minor offence of assisting the perpetrator after the crime has been committed, where the injured party is a minor, and the Constitutional Court additionally noted an erroneous application of procedural rules. Therefore, an important conclusion is that for the criminal offence of human trafficking, the procedure must be conducted with thorough consideration of all the constitutive elements and available evidence until the court decision is made.

The Constitutional Court concluded that the authorities did not fulfil their positive obligations in the procedural aspect in relation to the prohibition of all forms of human trafficking, i.e. that a procedure that could be considered effective and fair and that would lead to a relevant court judgement was not conducted.





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