



Labour trafficking in Bosnia and Herzegovina: risk factors, trends and challenges

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Labour trafficking in Bosnia and Herzegovina:

risk factors, trends
and challenges

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LABOUR TRAFFICKING
IN BOSNIA AND HERZEGOVINA:
RISK FACTORS, TRENDS AND
CHALLENGES.**

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List of acronyms

| | |
|---------|--|
| BD BiH | Brčko District of Bosnia and Herzegovina |
| BiH | Bosnia and Herzegovina |
| CL | Criminal Law |
| CoE | Council of Europe |
| COM BiH | Council of Ministers of Bosnia and Herzegovina |
| ECHR | European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms) |
| ECtHR | European Court of Human Rights |
| EU | European Union |
| FBiH | Federation of Bosnia and Herzegovina |
| GRETA | Group of Experts on Action against Trafficking in Human Beings |
| HDI | Human Development Index |
| ILO | International Labour Organization |
| LCT | Local Coordination Teams |
| MHRR | Ministry of Human Rights and Refugees of Bosnia and Herzegovina |
| MOS BiH | Ministry of Security of Bosnia and Herzegovina |
| NGO | Non-governmental organisation |
| NRM | National Referral Mechanism |
| RS | Republika Srpska |
| SIPA | State Investigation and Protection Agency |
| THB | Trafficking in human beings |

I. Introduction

This study was commissioned in the framework of the project “Preventing and Combating Trafficking in Human Beings in Bosnia and Herzegovina” implemented under the joint European Union – Council of Europe programme Horizontal Facility for the Western Balkans and Turkey 2019-2022. It is based on research carried out by a group of consultants who collected data through desk research and interviews with relevant stakeholders between 2019 and 2021.

The study identifies the challenges typically encountered in preventing and responding to incidents of human trafficking for the purpose of labour exploitation (hereafter “labour trafficking”), clarifies specific risk and vulnerability factors that underpin labour trafficking in Bosnia and Herzegovina, and offers suggestions on how to improve current responses.

The study draws on the assumption that in order to devise effective prevention strategies, national authorities need to understand the broader social and economic context and the structural factors that make individuals and communities vulnerable to trafficking. Therefore, the study aims to provide insight into structural factors (such as attitudes to Roma or other ethnic minorities, deep rooted discrimination, social alienation leading to economic deprivation, attitudes to gender) as well as other elements (access to labour market, the participation in the informal economy, poor law enforcement, low awareness among vulnerable communities and general public).

The analysis of these factors and elements is expected to contribute to a better understanding of the underlying causes and situations creating vulnerability to labour trafficking. The aim of the report is to stimulate a national discussion on the development of meaningful prevention measures and targeted strategies to alleviate those factors.

Key concepts and definitions

To strengthen the implementation of the obligation to prevent and combat trafficking for the purpose of labour exploitation, GRETA published a *Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation*¹ and a *Guidance Note on preventing and combatting trafficking in human beings for the purpose of labour exploitation*² (hereafter: GRETA's Guidance Note), which provide an outline of measures that can be taken by the State Parties and explains key concepts and definitions.

As noted in GRETA's Guidance note, "The internationally agreed definition of trafficking in persons, replicated in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings, as well as in other instruments is a combination of three components: an "action" (recruitment, transportation, transfer, harbouring or receipt of persons), which is committed through the use of "means" (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person), for the "purpose" of exploitation. The definition provides an open-ended list of "exploitation" practices, which include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a person to the intended exploitation is irrelevant where any of the previously mentioned "means" have been used, or where the trafficked person is a child."

GRETA's Guidance Note further notes that "Trafficking for the purpose of labour exploitation as a term is used to differentiate between trafficking for the purpose of sexual exploitation, and trafficking for exploitative purposes in different economic sectors, both in the formal and informal economy. The concept of "labour exploitation" in the context of human trafficking is taken to cover, at a minimum, forced labour or services, slavery or practices similar to slavery, and servitude, notions that are well acknowledged in international law, including in the case law of the European Court of Human Rights regarding Article 4 of the European Convention on

¹ GRETA, *Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation*, 2020. Available at: <https://rm.coe.int/mpendium-of-good-practices-in-addressing-trafficking-in-human-beings-f/16809f9bef>

² GRETA, *Guidance note on preventing and combatting trafficking in human beings for the purpose of labour exploitation*, 2020. Available at: <http://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-f/1680a1060c>

Human Rights (ECHR). Notably, forced or compulsory labour is defined in Article 2(1) of the International Labour Organization (ILO) Convention concerning Forced or Compulsory Labour (No. 29 of 1930) as "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".³

Continuum of exploitation

The concept of exploitation is referred to, but not defined in international law. GRETA points out that "The absence of a clear definition of "exploitation" makes it difficult to draw the line between exploitation in terms of violation of labour rights and extreme exploitation amounting to forced labour. Within the context of human trafficking, there is general support for understanding "exploitation" - in the sense of taking unfair advantage of another person's vulnerability or state of need - as a continuum,⁴ albeit one that is poorly defined and is not static. At one end lie situations which amount to labour law violations, such as failure to pay a mandated minimum wage, and at the other extreme are situations where the unfair advantage is acute and the resulting harm very severe. Currently, it is not clear where on this continuum labour exploitation changes from being considered a problem of labour law to becoming an issue under criminal law."⁵

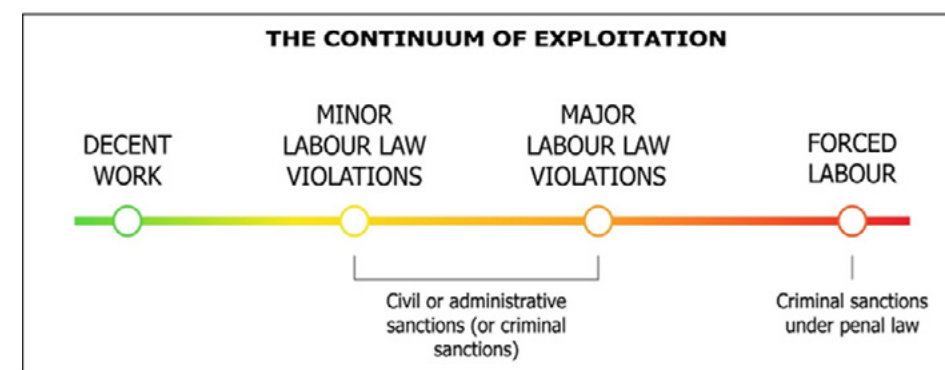


Figure 1: Continuum of exploitation

³ Ibidem, p.4, See Annex I for a list of relevant international treaties.

⁴ Klara Skrivankova, *Between decent work and forced labour: examining the continuum of exploitation*, Joseph Rowntree Foundation, November 2010.

⁵ GRETA, *Guidance note on preventing and combatting trafficking in human beings for the purpose of labour exploitation*, Council of Europe, p. 5.

Trafficking for the purpose of labour exploitation: a major challenge in Europe and globally

Reports by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) show that trafficking for the purpose of labour exploitation has been on the rise across Europe.⁶ It occurs in a number of sectors of the economy, including construction, hospitality, agriculture, domestic work, manufacturing, cleaning and catering. It is found both in the formal and the informal economy, and concerns women, men and children.

GRETA noted that preventing and combating trafficking in human beings for the purpose of labour exploitation is challenging on many accounts. One of the biggest barriers to anti-trafficking efforts is that anti-trafficking actors and the general population lack clear understanding of the concept of labour trafficking. The awareness among institutions about specificities of trafficking for the purpose of labour exploitation has for a long time lagged behind the awareness about trafficking for the purpose of sexual exploitation. This has impacted the capacity to pro-actively identify situations of labour exploitation. Differences in interpretation and practical application of labour standards and understanding of labour exploitation pose further challenges.⁷

⁶ GRETA, Thematic Chapter on human trafficking for the purpose of labour exploitation in GRETA's 7th General Report, 2017. Available at: <https://rm.coe.int/labour-exploitation-thematic-chapter-7th-general-report-en/16809ce2e7>

⁷ Ibidem.

II. Country situation of trafficking in human beings for the purpose of labour exploitation

Trends in trafficking in human beings in Bosnia and Herzegovina

- 306 potential victims of trafficking were registered in the period 2017-2021. A person is given the status of a "potential victim" of trafficking when he/she is identified as such by the relevant authority. In order for a person to be considered as a victim of trafficking, a final conviction for the criminal offence of trafficking in human beings has to be handed down by the competent court.
- More than two thirds (69%) of the potential victims were women and girls.
- Children accounted for 62% of the potential victims. Many of them are from Roma communities, exploited primarily in forced begging, as well as sexual exploitation and forced marriage.
- Over half (62%) of the potential victims were trafficked for forced begging, followed by sexual exploitation (17%).
- Only 8 potential victims of trafficking for the purpose of labour exploitation were registered since 2017 (2,6% of all victims).
- The great majority of the victims were citizens of Bosnia and Herzegovina (92%), most of them being trafficked within the country.

There are reasons to believe that the actual number of victims of human trafficking is significantly higher. Bosnia and Herzegovina has experienced an influx of migrants and refugees since 2018. While persons on the move are particularly vulnerable to becoming victims of human trafficking, only three victims of trafficking were identified among them.

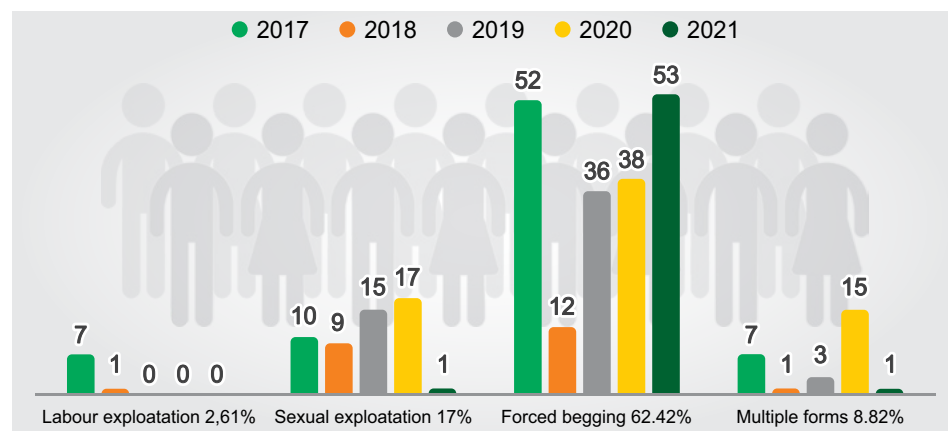


Figure 2: Number of victims per form of exploitation, 2017- 2021

Responses to trafficking for the purpose of labour exploitation

Trafficking for the purpose of labour exploitation has received more attention in recent years in Bosnia and Herzegovina, including as a result of projects implemented in cooperation with international organisations. Nevertheless, interviews conducted for the purpose of this study suggest that many labour trafficking cases are not identified as such. Victims rarely report their experiences to the authorities; relatively little is known about the recruitment of victims or the methods of coercion and exploitation. Moreover, ineffective coordination and collaboration amongst anti-trafficking stakeholders can create an environment in which labour trafficking goes undetected.

Criminal legislation

The Criminal Code of Bosnia and Herzegovina (Article 186) criminalises transnational trafficking in human beings, which is understood as trafficking of a national to a foreign country or trafficking of a foreign national to the country for the purpose of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, the removal of parts of a human body or other type of exploitation.

The Criminal Codes of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District all criminalise trafficking in human beings for the purpose of prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, the removal of body parts or another type of exploitation.

Labour legislation

According to GRETA⁸, labour legislation and the extension of the scope of labour protection over all sectors of the economy and over undocumented workers, labour and workplace inspections, including on health and safety, compliance with labour standards and revenue laws, play an important role in deterring instances of labour trafficking and identifying possible victims. Furthermore, labour inspectors can play an active role in preventing and detecting cases of labour trafficking, as well as in protecting the victims whose integrity and rights are violated as they usually have a range of discretionary measures at their disposal.

In Bosnia and Herzegovina, the Labour Codes govern issues related to labour relations at the level of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District. They regulate employment contracts, working hours, safe working environment, holidays and absences, minimum wages and salaries for work, protection of labour rights, protection measures for women and children, participation of workers in trade unions, collective bargaining agreements, settling of disputes between workers and employers, and other issues. Although the laws do not contain any explicit references to 'trafficking in human beings', they make reference to 'forced labour' or 'compulsory labour' and provide for prohibition of 'labour exploitation' and 'discrimination'.

Monitoring the implementation of laws and regulations that govern issues related to labour relations is under the responsibility of labour inspectors at the levels of the two entities and the Brčko district. In Bosnia and Herzegovina, a labour inspector may issue an order to initiate misdemeanor proceedings against an employer before a court or a decision ordering the employer to eliminate irregularities and deficiencies. In practice, inspectors use of this authority in cases of unregistered workers and/or unjustified non-payment of three or more salaries. In the event of serious violation of the rights of workers, the labour inspector may file criminal charges against the employer. Inspectors use this authority in cases of physical injuries or death at the workplace. A total of 92 labour inspectors are employed in all inspectorates in Bosnia and Herzegovina, in accordance with data collected by the EU/CoE project "Preventing and combatting trafficking in human beings in Bosnia and Herzegovina" in May 2022. The active population older than 15 years of age is 2,926,000 persons.⁹

⁸ GRETA, 7th General Report on GRETA's activities, thematic chapter on human trafficking for the purpose of labour exploitation (2017), page 28; and GRETA Guidance Note on preventing and combatting trafficking in human beings for the purpose of labour exploitation (2020), paragraph 35

⁹ Agency for Statistic of Bosnia and Herzegovina; Bosnia and Herzegovina in figures, Dec 2021 <https://bhas.gov.ba/Calendar/Category/30?lang=en>

Prevention of labour trafficking

The Strategy to Suppress Trafficking in Human Beings in Bosnia and Herzegovina (2020-2023) recognises action against labour trafficking as a priority and includes a commitment to raise awareness of professionals, in particular law enforcement officials and the judiciary, as well as measures to strengthen relationships with labour market actors to improve the response to the phenomenon. The Strategy foresees strengthening prevention of labour trafficking through dissemination of information about false job offers online, cooperation with the private sector and revision of the national referral procedure (NRM) to involve labour market actors and frontline professionals who may encounter possible victims. To prevent labour trafficking of nationals of Bosnia and Herzegovina abroad, it foresees the establishment of a monitoring mechanism for bilateral agreements on labour migration with other countries and stresses the need to promote clear criteria for official registration and licensing of employment agencies as well as monitoring of their work. In addition, it foresees the establishment of an early warning mechanism to inform nationals about the risks of trafficking and channels to report and seek assistance.

Despite this political commitment, there has not been a targeted and coordinated approach to preventing labour trafficking. Prevention has not been mainstreamed across relevant policies, including those focused on sustainable development, reduction of poverty and social exclusion, and migration management. There has been little focus on addressing the underlying causes of labour trafficking. Prevention has not been focused on specific target groups to reduce their vulnerability or to increase their protection. Protocols and channels for identification and referral of victims of labour trafficking are yet to be developed. Effective prevention measures and strategies require an understanding of the social, economic and structural factors that make individuals and communities vulnerable to trafficking, and should be built around the needs of vulnerable populations and with their participation.

According to GRETA, co-operation with trade unions and NGOs is essential in order to tackle cases of trafficking for labour exploitation successfully and needs to be organised in a structured way¹⁰.

The role of trade unions included ensuring that governments fulfil their obligations to give effect to and protect the rights of workers. Trade unions play an important role in monitoring employment agencies and companies to detect and prevent practices that can lead to human trafficking, as well as providing assistance to workers in the informal sector to claim their rights.

¹⁰ GRETA, 7th General Report on GRETA's activities, thematic chapter on human trafficking for the purpose of labour exploitation (2017), page 29

Trade unions in Bosnia and Herzegovina appear to be poorly informed about human trafficking and to predominantly address labour exploitation through the lens of workers' social rights. Trade union representatives interviewed for the purpose of this study referred to recent changes in the domestic labour laws and expressed concern that these changes would create opportunities for employers to further infringe workers' rights. For instance, while the labour laws provide a basis for the minimum wage throughout the country (in both entities and the Brčko District), they allow employers to enact individual labour regulations or labour statutes if a collective bargaining agreement is not signed within a certain period of time. This in turn opens the way to employers to avoid signing collective bargaining agreements and pay workers only the legal minimum wage, regardless of their education, qualifications and experience. This not only creates risks for infringements of workers' rights, but also encourages the 'grey economy' as employers are known to pay their most qualified workers some amount in cash every month in addition to their regular salary, thereby avoiding payment of social and pension benefits.

Raising awareness and providing information is a way of preventing labour trafficking. In 2020, thanks to the funding from the project "Preventing and Combating Trafficking in Human Beings in Bosnia and Herzegovina" under the joint EU-Council of Europe Programme Horizontal Facility for the Western Balkans and Turkey, the NGOs Lara Foundation and Ja BiH u EU conducted some 30 activities, such as public debates, street actions, video conferences, social media campaigns and distributed promotional materials. NGO Novi put implemented the campaign "Do you know your labour rights?" aimed at raising awareness about the risks of labour trafficking in the context of the COVID-19 pandemic.

To prevent labour trafficking of Bosnian nationals abroad, the Labour and Employment Agency provides online information about legal and safe labour migration, working conditions and the protection of labour rights abroad. However, information concerns only some countries, in particular those with which Bosnia and Herzegovina has concluded bilateral agreements to facilitate safe labour migration (e.g. Germany, Serbia, Slovenia and Qatar). Negotiations to conclude similar agreements with Croatia, Montenegro and the Russian Federation are ongoing. In spite of these agreements in place, many nationals travel abroad to work without a work permit, and when they fall victim to labour exploitation, they rarely seek help from the authorities or the diplomatic missions of Bosnia and Herzegovina as they work illegally and thus fear prosecution.

Detection and identification of potential victims

As noted above, only eight presumed victims of labour trafficking have been identified in Bosnia and Herzegovina in 2017-2021. There have been no prosecutions related to these identifications. The official data does not record the sectors in which it has occurred and is not disaggregated by age and gender.

The "Rules on the protection of victims of THB who are nationals of Bosnia and Herzegovina" and the "Rulebook on the protection of foreign victims of trafficking" foresee the possibility for victims to 'self-identify', which is understood by professionals to mean that victims have to present themselves to an official and state that they have been trafficked, instead of a determination made by a professional after a formal interview.

The involvement of labour inspectors in joint operations with other law enforcement officials is reported to have begun in Bosnia and Herzegovina with their involvement in local-level monitoring teams. However, their participation in official anti-trafficking structures is not sufficient in itself to make them effective. Labour inspectors have the mandate to carry out inspections in all sectors of the economy, but lack adequate resources. Inspections are based on risk assessment and previous violations of the labour legislation by employers. Private households may be inspected only with a court order. As a rule, labour inspectors should announce their visits, but they have some discretion to decide if an advance warning would impede effective inspection.

To improve the knowledge of labour inspectors about human trafficking several training activities have been carried out in the recent years with the support of international organisations, including the Council of Europe. A comprehensive manual for labour inspectors with guidelines and indicators for the detection and identification of victims was developed in 2016 and disseminated to all labour inspectorates. Inspections were carried out in various sectors, in particular at construction sites and in the catering industry, resulting in a considerable number of workers having been found working without contracts and insurance. Inspections of private employment agencies were also conducted, resulting in numerous misdemeanour warrants, mainly due to the illegal practice of leasing workers to other employers using contracts for technical cooperation¹¹.

Despite these initiatives, no victims of trafficking have been identified so far during labour inspections. Labour trafficking remains underreported. The most common reasons are the fear of repercussions from traffickers

¹¹ GRETA, Third evaluation report on Bosnia and Herzegovina, GRETA(2022)06, paragraph 170.

and the language barrier in communicating with public officials. Recognising signs of trafficking remains challenging. All professionals involved in the National Referral Mechanism need to understand the specificities of labour trafficking, be skilled to detect cases and know how to communicate with potential victims and build their trust.

Investigation and prosecution of cases

Official data does not provide information on legal precedence nor conviction records concerning trafficking for the purpose of labour exploitation in Bosnia and Herzegovina. Corroboration of a victim's story is essential for investigation and prosecution. Because the evidence provided by individual victims is heavily relied upon in labour trafficking prosecutions, corroboration of this evidence is often necessary to meet the standard of proof required in criminal proceedings. It is therefore crucial that the authorities establish a relationship of trust with victims to ensure that the victims are safe and receive the assistance they need.

The data collected for this study suggest that, in general, only a small number of trafficking cases are investigated in Bosnia and Herzegovina. It also found that anti-trafficking legislation is not applied consistently. The courts apply lenient sanctions or requalify the trafficking offence into a lesser one. Moreover, the mechanisms for victim protection and inadequate, especially in cases involving trafficking for the purpose of labour exploitation. Such cases are also requalified into lesser offences, as illustrated by the following case.

The case involved two adults and three children trafficked by two men who were indicted for having used "threats, use of force, deceit and coercion, to recruit and transport the victims for the purpose of forced begging, domestic servitude and other exploitation purposes".

Brčko District Prosecutor's Office indicted the perpetrators for the offence of trafficking in human beings (Article 207a of the Criminal Code of Brčko District) in 2013. The trial went on for five years. During the first instance hearing the indictment was re-qualified by the court to 'extortion' and the offenders were sentenced to eight months' imprisonment in 2016.

Following an appeal by the prosecution, the Court of Appeal accepted and referred the case to a second hearing in 2017, declaring that the First Instance Court "...is not authorised to change the qualification of indictment... and has therewith completely distorted the objective identity of the indictment and the ruling". During the second trial, in 2017, the offenders were sentenced to a one year's imprisonment for the criminal offence of trafficking in human beings, as initially indicted. The Appellate Court of Brčko District of Bosnia and Herzegovina confirmed the first instance verdict of the Basic Court of the Brčko District of Bosnia and Herzegovina on 16 January 2018.

Legal professionals interviewed for this study stressed the need for judges, prosecutors and law enforcement officials to be specialised in handling human trafficking cases and understanding their intricacies. Specialisation in human trafficking would ensure that qualified professionals would serve as points of contact for trafficking offences.

The best-known case of BiH nationals trafficked for the purpose of labour exploitation is the so-called the SerbAz Case which involved migrant workers from Bosnia and Herzegovina, Serbia and North Macedonia who were recruited to work in Azerbaijan. After exhausting all domestic remedies, 33 Bosnia and Herzegovina nationals who had been recruited in 2009 to work in Azerbaijan as temporary foreign construction workers appealed to the European Court of Human Rights. On 7 October 2021, the Court ruled in the case *Zoletić and others v. Azerbaijan* (application No. 20116/12)¹² that the failure of the Azerbaijani authorities to conduct an effective investigation into the migrant workers' claims of cross-border human trafficking and forced labour constituted a violation of Article 4, paragraph 2, of the European Convention on Human Rights. The Court found that the totality of the applicants' arguments and submissions made both before the domestic courts in their civil claim and before the Court (concerning forced excessively long work shifts, lack of proper nutrition and medical care, physical and other forms of punishments, retention of documents and restriction of movement) constituted an "arguable claim" that the applicants had been subjected to human trafficking and forced labour. Each applicant was awarded compensation for non-pecuniary damage in the amount of 5,000 euros.

Victims' access to justice and effective remedies

As noted in GRETA's third report on Bosnia and Herzegovina, victims of trafficking can seek compensation for material and non-material damages from the perpetrator in criminal and civil proceedings.¹³ The law states that courts may decide to award compensation in criminal proceedings, if such a decision does not significantly delay the proceedings. In the case where a court decides not to hear a claim, it may refer the injured party to separate civil proceedings. GRETA noted that in most criminal cases where the defendant is found guilty judges do not decide on the property claim, based on the assessment that doing so would considerably prolong the proceedings, and they refer victims to civil proceedings instead. In

¹² European Court of Human Rights, *Zoletić and others v. Azerbaijan* (application No. 20116/12).

¹³ See paragraph 66 and following of GRETA's third report on Bosnia and Herzegovina.

case the defendant is acquitted of the charges, the victim will be referred to seek compensation in civil proceedings.

As stated in GRETA's third report, in practice, victims of human trafficking have a very limited access to justice and effective remedies.

In the period between 2009 and 2021, courts in BiH awarded compensation to victims of trafficking only on four occasions. Out of these four, compensation was awarded in criminal proceedings in three cases, two involving sexual exploitation of underage victims,¹⁴ and third one concerned the criminal offence of trafficking in children in relation to the criminal offence of non-marital co-habitation with a child.¹⁵ A fourth case relates to civil proceedings against two traffickers previously convicted by the Court of BiH in criminal proceedings.¹⁶ However, no compensation is known to be paid out so far.

Victims of trafficking for the purpose of labour exploitation can seek compensation for unpaid wages and social security contributions from the employer, on the basis of the relevant labour laws.

¹⁴ OSCE, *Ensuring Justice for Victims of Trafficking in Human Beings: Response of the criminal justice system in Bosnia and Herzegovina*, December 2021, <https://www.osce.org/mission-to-bosnia-and-herzegovina/509345>

¹⁵ See paragraph 72 of GRETA's third report on Bosnia and Herzegovina, <https://rm.coe.int/greta-evaluation-report-bosnia-and-herzegovina-3rd-evaluation-round/1680a70b3b>

¹⁶ OSCE, *Ensuring Justice for Victims of Trafficking in Human Beings: Response of the criminal justice system in Bosnia and Herzegovina*, December 2021, <https://www.osce.org/mission-to-bosnia-and-herzegovina/509345>

III. Risk and vulnerability factors for trafficking for the purpose of labour exploitation

Economic and social environment

The UN Human Development Index classifies Bosnia and Herzegovina as an upper middle-income country, ranking it at 73rd place out of 189 countries. As a former republic of the Socialist Federal Republic of Yugoslavia, Bosnia and Herzegovina inherited a modern system of education, health-care, social insurance and social assistance. Although the basic structures of the system remain in place today, the consecutive impact of the conflict of the 1990s, economic transition, external economic shocks, austerity policies, low growth and rising inequality have left many parts of the system unable to provide the quality of care and equality of access required by citizens.

The legislation and institutions aiming to ensure fundamental rights, non-discrimination and gender equality are largely in place, but enforcement remains insufficient. Effective enforcement of fundamental rights requires strengthening of administrative capacity and adequate resourcing. The European Commission assesses that equality is not ensured for all citizens. Protection and inclusion of vulnerable groups remains inadequate, in particular persons with disabilities, children, LGBTI persons, the Roma community, detainees, migrants and asylum seekers.¹⁷

The pandemic crisis has highlighted the inefficiencies within the social protection system in Bosnia and Herzegovina. Its mechanisms have been shown to be unsuccessful in supporting groups vulnerable in the event of adverse economic shocks, while expenditure on social assistance has failed to target the poorest. The pandemic has also exacerbated and brought to the forefront the systemic and deeply entrenched economic and societal inequalities that are among the root causes of trafficking in human beings.

¹⁷ Communication from the Commission to the European Parliament and the Council. Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union. Brussels, 29.5.2019 COM(2019) 261 final.

The economy of Bosnia and Herzegovina bounced back strongly in 2021 from the pandemic-induced economic crisis, with growth estimated at 7.1 percent. Real GDP growth was driven by a surge in exports, and robust growth in private consumption. However, output growth in 2022 is expected to slow to 2.7 percent, as the war in Ukraine disrupts trade and exacerbates energy and food price increases.¹⁸

Labour market situation

Considering how the labour market operates is important when designing anti-trafficking action. Employment policies and labour rights enforcement, and their intersection with migration policies, all play a role. Poor access to employment (including discrimination of some groups, such as Roma), informality and unemployment drive the growth of the grey economy where exploitation is rife. These are also a push factors for people to seek employment abroad.

According to the ILO, **Bosnia and Herzegovina shows one of the most challenging labour market situations in the region.**¹⁹ Employment and activity rates remain very low (38,6% and 47% respectively in 2021). Unemployment remains high despite a downward trend in recent years (19,1%) and especially among youth (34 % in 2019). One out of four young people is neither in education, employment nor in training. The country has one of the lowest female employment rates in the Balkans (around 27% in first quarter 2021) and women account for 57.2 % of the unemployed.²⁰

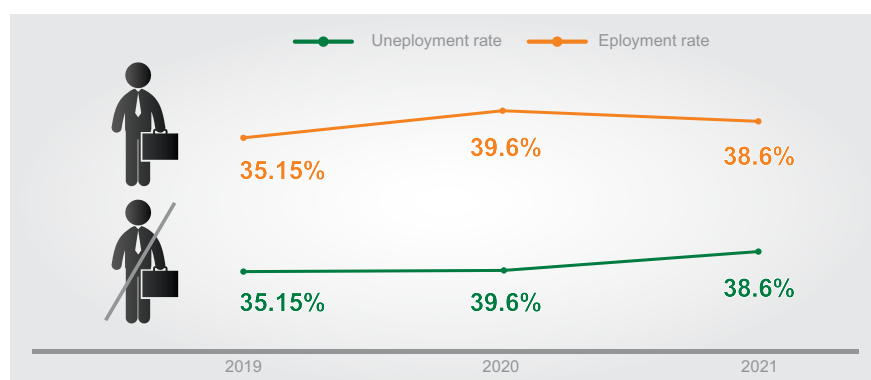


Figure 3: Unemployment and employment rate, 2019 - 2021

¹⁸ World Bank, Western Balkans Regular Economic Report No.21, Spring 2022.

¹⁹ International Labour Organization, About the ILO in BiH, https://www.ilo.org/budapest/countries-covered/bosnia-herzegovina/WCMS_471903/lang--en/index.htm

²⁰ http://bhas.gov.ba/data/Publikacije/Saopštenja/2020/LAB_03_2020_04_0_BS.pdf

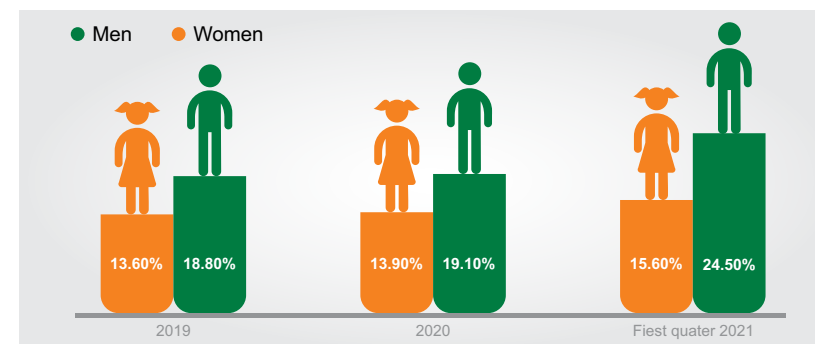


Figure 4: Unemployment rate, gender disaggregated, 2019 - 2021

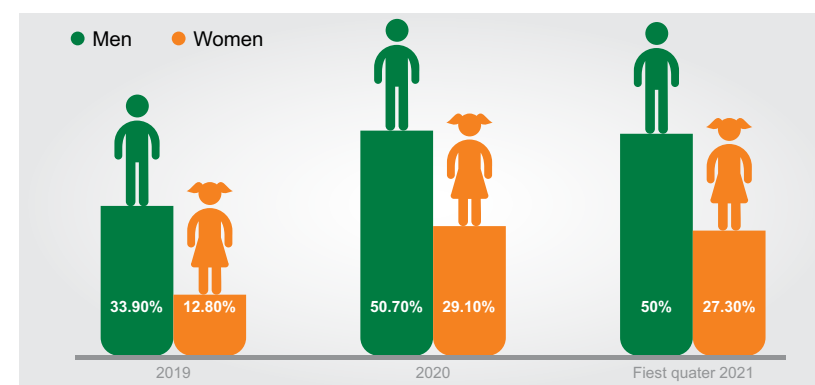


Figure 5: Employment rate, gender disaggregated, 2019 - 2021

A particularly high-risk category are people aged between 25 and 49, mostly women and girls.

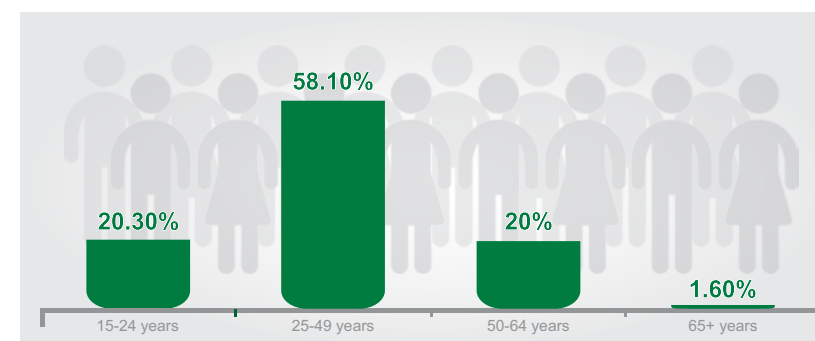


Figure 6: Unemployment according to the age, 2019-2021

Long-term unemployment is a recurring problem in Bosnia and Herzegovina. This has been amplified even more during the COVID-19 crisis. The impact of the crisis on the economy and the population has been both deep and widespread. According to data²¹ for the first semester 2021, job-seekers for more than 2 years make up an alarming 59% of the total unemployed. At the same time, the largest number of unemployed persons (118,000) belong to the category of those who have been unemployed for 4 years and more.

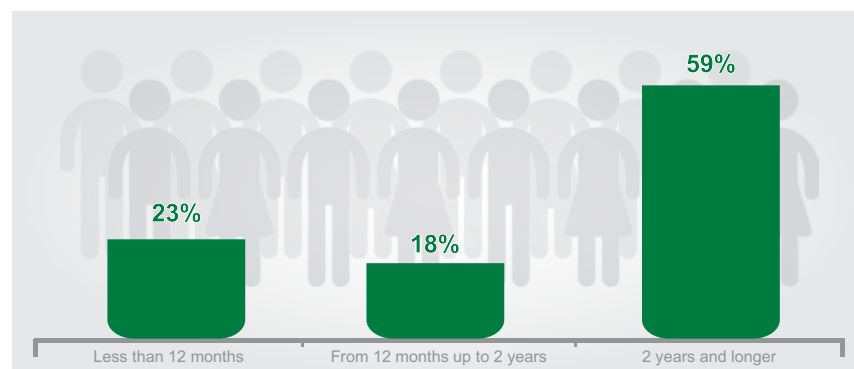


Figure 7: Unemployment length

According to the Labour and Employment Agency, over 330,000 unemployed people live in the Federation of Bosnia and Herzegovina, mainly Bosnian and Croat, and almost 90,000 in the mainly Serb-populated Republika Srpska. Around 7,000 of the unemployed live in the autonomous district of Brcko.

The sharp difference reflects the nature of the entities' economies, with the Federation traditionally more industrial and the Republika Srpska more dependent on agriculture.

Informal economy and at-risk sectors

Informality of employment in Bosnia and Herzegovina is relatively high both in terms of the share of the total production and the number of people employed in this way. ILO estimates suggest the share of informal employment in total employment was about 30,5% in 2019.²²

²¹ B&H Labour Force Survey, II quarter 2021, https://bhas.gov.ba/data/Publikacije/Saopštenja/2021/LAB_00_2021_Q2_2_BS.pdf

²² Overview of the informal economy in Bosnia and Herzegovina, https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/genericdocument/wcms_751314.pdf

The structure of informally employed by status is similar to other countries in the region, but different from the structure in the EU. Unpaid family or domestic employment accounts for a significant share of informal employment, while it is the least prevalent form of informal employment in the EU.²³ High incidence of informal employment is also found in the agriculture sector, among men, and among those with low educational attainment and skills. Informal employment contracts are held by the most vulnerable groups, such as young people, women and the older age group, who are at the margins of the labour market, having just entered it, or being about to leave it.²⁴ People with low educational attainment and skills, people from rural areas, and those from economically disadvantaged families or communities represent groups at high risk of informal employment.²⁵ Lesbian, gay, bisexual, transgender and intersex (LGBTI) people more often work in the grey economy, without secured employment rights. They are less likely to have properly regulated jobs, and more often for a certain period of time.²⁶

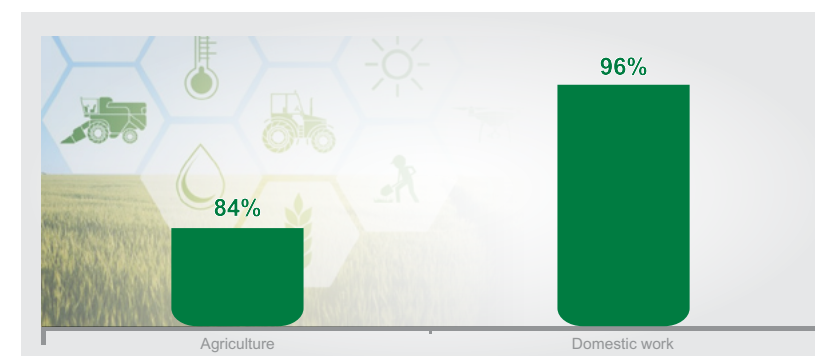


Figure 8: Most exposed sectors to informality

²³ Regional Co-operation Council, Labour Markets in the Western Balkans 2019 and 2020, June 2021, available at: ESAP2 | Labour Markets in the Western Balkans: 2019 and 2020

²⁴ Oruč, N. and Bartlett, W., Labour Markets in the Western Balkans: Performance, Causes and Policy Options, Regional Cooperation Council, Sarajevo 2018.

²⁵ Western Balkans Labour Market Trends 2020, World Bank, 2020, available at: <https://wiiw.ac.at/western-balkans-labor-market-trends-2020-dlp-5300.pdf>.

²⁶ Gačanica, L. Socio-ekonomski položaj lezbijki, gej, biseksualnih, transrodnih i interseksualnih osoba u Bosni i Hercegovini, Sarajevski otvoreni centar, 2021, available at: <https://soc.ba/site/wp-content/uploads/2021/06/Socio-ekonomski-položaj-LGBTI-osoba-u-BiH-web.pdf>.

Working conditions and occupational risks

The analysis of the reports from the Labour Inspectorates and interviews with labour inspectors shed light on poor employment practices and the prevalence of abuse and exploitation among workers in both the formal and informal sectors, in particular in the sales (shopping centres), catering and construction. Respondents interviewed for the purpose of this study also raised concerns regarding workers' rights violations, including excessive working hours, non-payment, withholding or manipulation of wages as well as work in dangerous or unsafe conditions for construction workers.

The 2019 report from the Labour Inspectorate of the Federation of Bosnia and Herzegovina describes, for example, that inspections carried out in 2018 found 2,596 workers in undeclared work without employment contracts.²⁷ Among them, 168 workers had serious injuries, 14 of which were fatal, as a result of unsafe conditions, mainly on construction sites. The International Trade Union Confederation (ITUC) annual Global Rights Index suggests that between 2014 and 2021 there was a serious deterioration in respect for the human rights of workers in Bosnia and Herzegovina as a whole and that workers' rights are continuously under threat from both the government and employers.

Trade union representatives interviewed for this study confirmed the pattern of ongoing violations in workers' rights in Bosnia and Herzegovina. Representatives from the Trade Union of Textile, Leather and Footwear, which includes some 40,000 workers in Bosnia and Herzegovina, including some 12,500 from Republika Srpska, reported that serious violations of workers' rights started with the privatisation process after the war, when the state capital was privatised, either by national employers or European employers, although it was noted that national employers were responsible for more violations of workers' rights than European employers. A memory of violations in a factory in Kotor Varoš when the owner was of BiH origin before it was sold to an Italian owner, includes incidents of long working hours and unsafe working conditions.²⁸

Occupational risks are compounded by such factors as precarious housing, low quality nutrition, a lack of access to sanitary facilities, and a lack of basic health services. For many informal sector operators their home and workplace are one and the same.

²⁷ A comparison of undeclared workers found at inspection sites to the previous year could not be made, as the report for 2018 did not include these records.

²⁸ Interview with representatives of the Trade Union of Textile, Leather and Footwear Workers of Republika Srpska

* * *

The analysis of labour market developments in Bosnia and Herzegovina reveals serious employment challenges faced by workers in the formal and informal sectors.²⁹ Finding a job remains a challenge and decent working conditions are not guaranteed. The scope of the problem is particularly demonstrated by the prevalence of informal economy, largely unregulated and unregistered, falling outside of the state control. Lack of effective enforcement against labour rights violations is known to be linked to increased risk of trafficking for the purpose of labour exploitation. High exposure to risks, combined with low coverage of social protection, places most workers in a very vulnerable situation. Gender discrimination at work highlight that gender inequality is more prevalent in the informal economy, where women are concentrated in the lower end and earn significantly less than men.³⁰ Similar situations concern members of the marginalised Roma communities, who find jobs in the most unskilled end of the informal labour market (agriculture, trading in open-air markets, informal collection of recyclables), characterised by menial and low paid activities.³¹ It is also in the informal economy that child labour and bonded labour are the most prevalent and difficult to address.³²

²⁹ Labour Force Survey 2019, Agency for statistic of Bosnia and Herzegovina, available at: https://bhas.gov.ba/data/Publikacije/Bilteni/2019/LAB_00_2019_TB_0_BS.pdf

³⁰ Gačanica, L. Gender-Based Discrimination and Labour in Bosnia and Herzegovina. Banja Luka, Helsinki Citizens' Assembly Banja Luka, 2019, available at: <http://hcabl.org/wp-content/uploads/2019/05/GENDER-BASED-DISCRIMINATION-AND-LABOUR-IN-BOSNIA-AND-HERZEGOVINA-FINAL.pdf>

³¹ UNDP survey available at https://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_BIH_Roma.pdf and Regional Roma Survey available at: <https://documents1.worldbank.org/curated/en/646541554470226635/pdf/Regional-Roma-Survey-Briefs.pdf>

³² Gačanica, L. Gender-Based Discrimination and Labour in Bosnia and Herzegovina. Banja Luka, Helsinki Citizens' Assembly Banja Luka, 2019, available at: <http://hcabl.org/wp-content/uploads/2019/05/GENDER-BASED-DISCRIMINATION-AND-LABOUR-IN-BOSNIA-AND-HERZEGOVINA-FINAL.pdf>

IV. Vulnerable groups and at-risk profiles for trafficking for the purpose of labour exploitation

Young people

As demonstrated above, the unemployment rate among youth aged between 15 and 29 was 34% in 2019. Most of those who are employed work in the informal sector or have temporary job contracts. Unable to see the potential for professional development and financial stability, young people migrate abroad for better opportunities.

Traffickers lure their victims with promises of financial stability and embellished employment opportunities, placing adverts on social media. The reality is, however, that once they reach their destination, what they find does not look anything like what they were promised. Reports from civil society suggest that Bosnian victims of trafficking are often subjected to sex and labour exploitation in European and other countries.³³

Roma communities

Roma remain one of the most vulnerable groups in Bosnia and Herzegovina and continue to face difficult living conditions and discrimination in access to social protection, health, employment and adequate housing. The significant overrepresentation of Roma among the victims of trafficking in Bosnia and Herzegovina points out to their “position of vulnerability” within society. No attention has been paid to the link between the position of Roma in the labour market and the occurrence of labour exploitation.

Although trafficking can affect anybody regardless of ethnicity and social status, push factors are often particularly acute in the case of Roma. Indeed, there is a striking overlap of the most significant factors that

³³ Youth use arts to raise awareness about the dangers of trafficking | Bosnia and Herzegovina | World Vision International (wvi.org)

contribute to human trafficking and those that contribute to the marginalisation of Roma in general.

The UNDP-World Bank EC Regional Roma Survey (2017) highlights a gap between marginalised Roma and neighbouring non-Roma in terms of human capabilities and material wellbeing. The gap is almost triple for young people: only 14% of Roma aged 18-24 in 2017 have been in employment, education or training, compared to 41% of non-Roma. Only 11% of marginalised Roma aged 15-64 have been employed compared to 27% of non-Roma employed in 2017. 63% of Roma were engaged in informal work, while only 17% of non-Roma living in their vicinity work in the informal sector in the same year.

Although both marginalised Roma and their non-Roma neighbours face high levels of severe material deprivation, the gap is significant between these groups. 85% of marginalised Roma face severe material deprivation compared to 48% of non-Roma living in the vicinity.

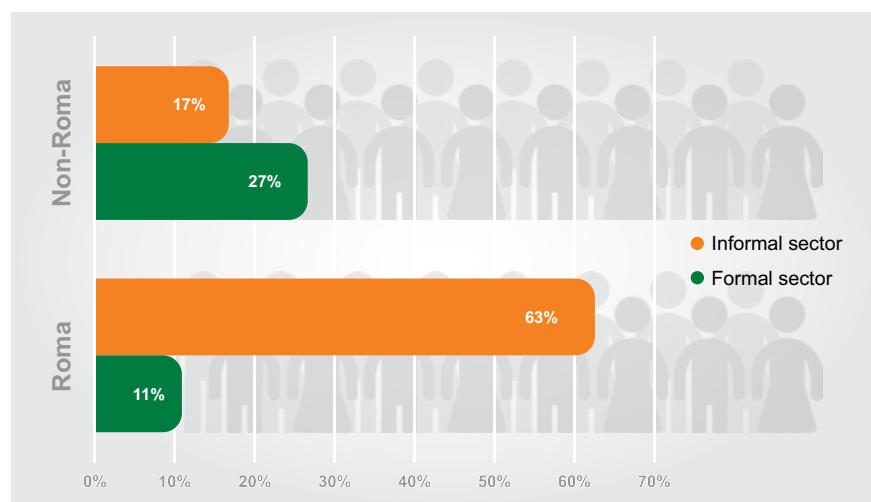


Figure 9: Roma employment rate in informal and formal sectors compared with non-Roma rate

According to the Ministry of Human Rights and Refugees of BiH (MHRR), an overall employment rate of Roma is a staggeringly low 11%, and there was a total of 3,278 unemployed Roma in BiH in 2020. The position of Roma who are active jobseekers (registered with employment services) has been further deteriorating during the pandemic. According to the MHRR analysis of general indicators on Roma, there are additional 5,500 adult Roma who are unemployed or involved in informal forms of work. Without accelerating and increasing the number of Roma employment programs, the social exclusion and poverty they are faced with on a daily

basis is likely to increase even further.

Apart from social and economic factors, discrimination against Roma creates a vulnerability on several levels. Discrimination against Roma, Romani women, poor or rural people limits their employment, educational and economic opportunities, rendering them more vulnerable to traffickers as they seek better opportunities.

Due to the feminisation of poverty, the lower status of women in patriarchal societies and various forms of gender discrimination, women constitute a large proportion of victims of trafficking worldwide, particularly for the purpose of sexual exploitation. Romani women are often the target of multiple forms of discrimination in a wide range of fields which further deepens their vulnerability to trafficking.

The Strategy of Bosnia and Herzegovina for addressing the issues of Roma in Bosnia and Herzegovina stresses the non-discrimination of Roma and raising awareness of necessity for inclusion of Roma in all social processes in BiH. Action plans for Roma in Bosnia and Herzegovina specifically target the areas of education, employment, housing and health protection. The Ministry of Human Rights and Refugees has finalised a draft Action Plan of BiH for social inclusion of Roma for the period 2021-2025 based on the regional Declaration of Roma Integration (2019). The Action plan has five relevant goals: (i) strengthening support system, coordination and monitoring in order to reduced discrimination against Roma men and women, (ii) improving employability and employment of Roma men and women, (iii) improving living conditions of Roma population in BiH, (iv) improving availability and quality of healthcare for members of Roma population in BiH, and (v) improving coverage of education of Roma men and women through a more effective implementation of Framework Plan of Education Needs.

The availability of this strategy creates an opportunity for devising anti-trafficking prevention action that respond more effectively to vulnerabilities factors explained below.

Leased employees

The inspection of private employment agencies in the Federation of Bosnia and Herzegovina in 2018 discovered the practice of “leasing” workers,³⁴ mostly men sent to work in transport and industry, by private employment

³⁴ Labour Inspectorate of the Federation of Bosnia and Herzegovina, Report for 2018.

agencies that establish fixed-term contracts for workers and then “lease” them to another employer on the basis of a “contract for technical cooperation”. This creates an opportunity for labour trafficking to occur. This practice is reported to be on increase, and is not covered by the existing labour legislation. Cantonal inspectorates could be encouraged to act against this form of undeclared labour and “grey” economy employment. Legislators could discourage or eliminate this practice by prohibiting or regulating it.

Domestic workers

In Republika Srpska the exploitation of domestic workers, mostly women working in private homes, is potentially facilitated by a regulation that allows up to 50% of their remuneration to be ‘in kind’, in the form of the food and accommodation. In such arrangements the value of food and accommodation provided to domestic workers could be inflated by their employers and the employers could abuse the position of power they have to deduct half the pay and to justify this as legitimate ‘deductions for accommodation and food’. At a minimum, such arrangements require oversight by a state-run institution.

Migrants and refugees

The nexus between migration and human trafficking is well known. Regulation and policies designed to manage and restrict migration can create vulnerabilities to trafficking. Migrants are often more at risk of exploitation because of vulnerabilities linked to their status as migrants. It is therefore important for to consider the risks that migrants in the country might face as well as the risk that Bosnia and Herzegovina national migrating abroad might be exposed to.

Since 2018, some 85,000 refugees and migrants arrived in Bosnia and Herzegovina via the Western Balkans migration route. According to the IOM, around 4,000 refugees and migrants are currently present in the country. Five temporary reception centres and one emergency tent camp in the Una-Sana and Sarajevo cantons are managed UNHCR and IOM. The funding for these relies on independent donors. In the border exit area towards Croatia, many migrants and refugees stay in squats, mosques or houses provided by private individuals. They have limited access to food, shelter, sanitation, medical care, and their situation is barely consistent with human survival and dignity.

Migrants and refugees are seen to be at significant risk of labour trafficking in Bosnia and Herzegovina due to their precarious situation. Although civil society organisations and officials³⁵ have reported possible cases of trafficking among migrants, including incidents of unpaid labour or servitude in private homes and farms, as of the end of 2020, no victims of trafficking had been identified. In 2021, three persons have been identified in reception centres as potential victims of trafficking for sexual exploitation by the Service for Foreigners’ Affairs of BiH. It was determined in criminal proceedings that these individuals were not victims of trafficking in human beings.³⁶ Migrants are unwilling to talk about possible labour exploitation due to fear. Many of them often ‘disappear’ from camps overnight, taking what is known as the ‘Game’³⁷ across the Croatian border.

This vulnerable status, lack of legal protection and severe economic precarity put migrants and refugees at particular risk of trafficking. Data and information collected by IOM Mobile Teams since June 2017,³⁸ indicate a number of individuals and families at risk of, or particularly vulnerable to, exploitation and abuse. The UN rapid assessment study³⁹ conducted in March and April 2018 identified 28 children (eight of them unaccompanied), two elderly individuals, one person with a disability, and three with chronic illnesses. IOM experience and data from the region⁴⁰ show that migrants and refugees transiting along the Balkan Route have experienced diverse forms of abuse and exploitation, including physical and mental abuse, food and sleep deprivation, theft, imprisonment for the purpose of asking a ransom, and labour exploitation.

IOM found a correlation between the duration of travel and the duration of stay in a particular country, and specific human trafficking indicators amongst migrants and refugees. UN and NGO staff identified a number of potential victims of trafficking amongst migrants and referred them to

³⁵ Interviews held with NGO Vasa prava BiH and representative of the Service for foreigner’s affairs of BiH.

³⁶ See paragraph 180 of GRETA’s third report on Bosnia and Herzegovina, June 2022, <https://rm.coe.int/greta-evaluation-report-bosnia-and-herzegovina-3rd-evaluation-round/1680a70b3b>

³⁷ ‘The Game’ is a term that migrants use to describe the practice of crossing borders unofficially and without being stopped, notably by evading the Croatian (or other) police in their attempts to cross the border between BiH and Croatia and thereby to enter the EU.

³⁸ <https://publications.iom.int/books/migrant-vulnerability-human-trafficking-and-exploitation-evidence-central-and-eastern>

³⁹ UN Report, Refugee and migrant situation in Bosnia and Herzegovina, March 2018.

⁴⁰ <https://publications.iom.int/books/migrant-vulnerability-human-trafficking-and-exploitation-evidence-central-and-eastern>

authorities for further investigation. However, the total number of foreign victims of trafficking recorded by government in 2017- 2021, remained low – only 24 persons (originating from Serbia, Montenegro, North Macedonia, Libya, Afghanistan, Syria, Iran, Sri Lanka and the Netherlands).

With the rise in the number of entries and the increasing duration of stay of those who are unable to enter the EU (Croatia), there is a greater number of migrants and refugees that are likely to have experienced some form of abuse or exploitation while in transit.

The reliance of migrants and refugees on irregular migration and the use of smugglers further exacerbates their vulnerability. In Bosnia and Herzegovina, the capacity of institutions to identify and assist potential victims of trafficking among the mixed migration flows is insufficient and requires adaptation. In view of the number of refugees and migrants passing through or staying in BiH, there appears to be an urgent need for organisations that come into contact with refugees and migrants (both state organisations and NGOs) to be included in the local-level monitoring teams set up under the terms of the State's current Anti-Trafficking Strategy.

V. Towards strengthened responses to trafficking for the purpose of labour exploitation

As demonstrated above, there is a wide range of systemic and structural issues which together create an environment in which labour trafficking arise and persist. Numerous complex factors include economic and labour market situation, social exclusion, gender discrimination and a weak legal or social protection system. There is a consensus that remedies for these shortcomings require a broader set of actions than those designed specifically to counteract human trafficking.

The experience of other State Parties to the CoE anti-trafficking Convention⁴¹ provides evidence that labour trafficking cannot be eliminated through the implementation of criminal law alone. Based on these, this study advocates for a comprehensive multidisciplinary response that includes, in addition to criminal justice pathways, prevention, protection and remedies, underpinned by strengthened labour market measures.

Preventing trafficking for the purpose of labour exploitation

Addressing vulnerabilities and risk factors

While the broad concept of prevention has been introduced in the current antitrafficking framework in BiH, viewing prevention in terms of its relationship to the social, economic and cultural vulnerability of certain at-risks groups has been neglected in practice.

Against the information analysed in the chapters II and III, the vulnerability emerges as the missing link in the current prevention initiatives. To improve the approach, the focus needs to be placed on what constitutes vulnerabilities to labour trafficking as a prerequisite for the development

⁴¹ GRETA, Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, GRETA(2020)08.

of the valid prevention action. New considerations need to be introduced to develop strategic approach capable of addressing the real problems of at-risks groups according to their specific needs.

Within the Bosnian context, prevention activities need to take into account the first-hand experiences of victims of trafficking as well as individuals at risk of trafficking, in particular Roma, most affected by trafficking in BiH, and migrants, potentially second the most affected at-risk group. Elements of concrete labour trafficking cases need to be analysed to inform the design, delivery and the evaluation of the prevention strategies. Targeted prevention strategies should include engagement with relevant stakeholders depending on at risk group:

Preventing trafficking of Roma: leaders of Roma communities, Roma mediators, Social Welfare Centres.

Preventing Trafficking of migrants: migrant reception centres, community leaders in the centres who can play the role as the referral person, Service for Foreigners' Affairs of BiH, Border Police of BiH and State investigation and protection agency of BiH. The Service for Foreigners Affairs has a significant role in managing migration in the conditions of increased influx of migrants that BiH has been facing since 2017 and could play role in referring victims of trafficking to appropriate support and assistance channels.

Labour market-based measures

The strengthening and effective implementation of national labour legislation, for all workers and across all sectors – in particular sectors found to be at risk, is of utmost importance in addressing vulnerabilities to labour trafficking in BiH. Countering trafficking for the purpose of labour exploitation requires stronger action against employers found to be in breach of laws and standards. It also requires measures to ensure that the rights of workers are protected and respected, regardless of their ethnicity, age, gender or migration status. The role of workers' organisations /trade unions active in BiH need to be strengthened to protect vulnerable workers and their rights.

The practice of reducing up to 50 per cent of the remuneration of live-in domestic workers (in particular in Republika Srpska) because of the provision of food and accommodation by employers could be reviewed to generate data about employment conditions and assess whether the employers abuse the position of power over live-in domestics. On that basis the authorities could determine whether the employment of domestic workers merits tighter regulation.

The practice of private employment agencies employing a worker on a fixed-term contract and then 'leasing' him or her to work on a temporary basis for a different business is an opportunity for labour trafficking to occur. Relevant labour institutions should review this practice as part of a range of measures taken to counter increasing rates of 'undeclared work' and increasing employment in the so-called 'grey economy'.

Stronger engagement by trade unions, especially with respect to collective bargaining and setting and monitoring minimum labour standards should be encouraged. Trade unions should be enabled to provide assistance to workers in the informal sector or workers with no identity documents (internally displaced persons, Roma or migrants).

Targeted prevention strategies represent a vital opportunity for trade unions in BiH to obtain, through social dialogue and action, measures to end exploitative labour practices and to advance opportunities for decent work. Labour trafficking is closely related to practices that govern employment, business and trade. Understanding the logic of labour trafficking can enable trade unions to play a more active role in the national antitrafficking action and realise that combatting trafficking is not solely a criminal justice issue but also one of labour rights.

As it is explained in the introduction of this study labour trafficking is one extreme of a continuum, the polar opposite of decent work conditions. It can be prevented by ensuring the protection of labour rights and employment protection mechanisms.

Awareness-raising

Heightened awareness and improved knowledge and understanding are critical to changing behaviour and practices that can lead to human trafficking, forced labour and related abuses. The experience of awareness raising campaigns conducted under HF project provides evidence that sensitizing the general public can help people identify situations, in which human trafficking is likely to occur. This also helps improve the public's understanding of what needs to change in order to prevent labour trafficking, be it when contracting services and employing people, especially in the informal sectors.

Information-sharing

Informing people about how to prevent labour trafficking can help prevent them from getting involved in labour exploitation that can lead to labour

trafficking. Such information should include key indicators of trafficking for labour exploitation and recruitment methods, as well as support and assistance that can be accessed in case of abuse and exploitation. Special attention needs to be placed on effectively informing children and adolescents/youth about the risks of trafficking for labour and sexual exploitation, and ensure they have a full understanding of their rights, in a manner and language that is appropriate for their age.

Preventing labour trafficking of Bosnian nationals abroad

Private employment agencies and agents are currently requested to only register with the government. Establishing a scrutiny mechanism for both registered and unregistered agencies and agents to monitor whether workers recruited to work abroad are offered jobs which expose them to risks of labour exploitation would discourage from engaging in fraudulent recruitment. Further, adequate information services for those who consider migrating abroad would facilitate safe labour migration. Bilateral cooperation agreements with respect to employment brokering, i.e., when other countries host workers from BiH or when foreign nationals are offered employment in BiH would ensure minimum requirements which all employers should fulfil.

Protecting the victims of trafficking for the purpose of labour exploitation

Identification

Effective protection of labour trafficking victims relies first on their proper identification and is built by taking into account the direct experiences of the most concerned and at-risk groups, such as marginalised Roma individuals, young workers, migrants and refugees staying in precarious situations on the territory of BiH.

It is important that authorities reinforce and prioritise the detection of cases of human trafficking for the purpose labour exploitation and the identification of victims. Failure to identify victims of human trafficking may lead to a violation of Article 4 of the European Convention on Human Rights, as illustrated by the case-law of the European Court of Human Rights⁴².

⁴² Rantsev v. Cyprus and Russia, application No. 25965/04, judgment of 7 January 2010; L.E. v. Greece, application No. 71545/12, judgment of 21 January 2016; Chowdury and Others v. Greece, application no. 21884/15, judgement of 30 March

Of particular importance to strengthening identification is engagement with a wide range of frontline actors – such as labour inspectors, police officers, social workers and immigration officers, among others – who may come into contact with people subjected to labour trafficking, as well as strengthening standardised procedural guidelines, common operational indicators, and the National Referral Mechanism to help meet the critical need for coordination among these diverse actors. It is important that key anti-trafficking actors continue benefit from training to better understand how to spot the tell-tale signs of labour exploitation and how to communicate effectively with workers who might be trafficking victims (with due regard to the workers' safety). Multidisciplinary training activities are important to improve and reinforce the coordination and cooperation amongst the key anti-trafficking actors.

Assistance

The obligation to protect victims extends beyond victims' initial identification and exit from the labour trafficking situation, encompassing additional measures for immediate assistance and long-term recovery and rehabilitation, with special consideration for the needs of women, girls, boys, refugees and migrant workers. Critical immediate assistance should be age-sensitive and gender-responsive as well as culturally appropriate and include at a minimum: temporary sex-segregated shelter, medical care, psychosocial support and legal assistance. Social and economic assistance should include access to educational and training opportunities and access to decent work. Such measures are designed to ensure the long-term reintegration of victims trafficked for the purpose of labour exploitation and to prevent their revictimization.

The information presented in the Chapters above underlines the need for strengthening a victim-centred approach in combating trafficking in human beings in general and in the cases of labour trafficking in particular. It is important to ensure that the rights of the victims are guaranteed and prioritised over economic, financial, law enforcement and migration aims.

Access to justice and remedies for the victims

Every victim of trafficking for labour exploitation has the right to and requires access to justice and effective remedies, including the ability to seek compensation for injury, loss or harm. The provision of effective

2017; V.C.L and A.N. v. United Kingdom, judgement of 16 February 2021.

remedies serves multiple purposes. The remedy of compensation, for instance, whether for material damages (such as medical costs, unpaid wages, legal fees, and loss of earnings and earning potential) or for moral damages (such as pain, trauma and emotional distress), can provide critical support to this recovery and help prevent their revictimization. In the absence of a state fund for compensation, judges are strongly encouraged to order the confiscation of criminal assets as an integral part of sentences imposed on traffickers. Obliging perpetrators to pay compensation to those they have harmed can also serve a punitive function and may act as a deterrent for other potential offenders.

It is important that increased emphasis is placed by criminal justice actors on measures to influence the profitability of the trafficking business, including regular application of basic financial investigation practices by police and the implementation of dissuasive sanctions against exploitative employers by judges.

ANNEX I. Overview of relevant international instruments

| Forced and compulsory labour | |
|---|---|
| International instrument | Definition/reference |
| 1930 Forced Labour Convention | Article 2(1): Forced or compulsory shall mean 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. |
| 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime | Forced labour is not defined but referred to as one of the purposes of exploitation for which people are trafficked. Article 3 (a): Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. |
| 2005 Council of Europe Convention on Action against Trafficking in Human Beings | Forced labour is not defined but referred to as one of the purposes of exploitation for which people are trafficked. Article 4(a): Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. |
| 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims | Forced labour is not defined but referred to as one of the purposes of exploitation for which people are trafficked. Article 2(2): Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. |
| 2014 Protocol to the Forced Labour Convention | Does not define forced or compulsory labour, but reaffirms the 1930 Convention definition. The Protocol covers specific action against trafficking in persons for the purposes of forced or compulsory labour (Article 1.3). |
| Child labour⁴³ | |
| International instrument | Definition/reference |

⁴³ Conventions 138 and 182 are fundamental Conventions. This means that even the member States that have not yet ratified these Conventions should respect, promote and realise the principles of these Conventions.

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| International Labour Organization (ILO) | ILO defines "child labour" as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: <ul style="list-style-type: none"> is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work. | | |
| 1973 Convention on the minimum age for admission to employment and work, (No. 138) | | The minimum age at which children can start work | Possible exceptions for developing countries |
| The Convention sets out the principles concerning the minimum age of acceptance for employment or work | Hazardous work Any work which is likely to jeopardize children's physical, mental or moral health, safety or morals should not be done by anyone under the age of 18. | 18 (16 under strict conditions) | 18 (16 under strict conditions) |
| | Basic minimum age The minimum age for work should not be below the age for finishing compulsory schooling and in any case not less than 15. | 15 | 14 |
| | Light work Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training. | 13-15 | 12-14 |
| 1989 Convention on Rights of the Child | Article 32 specifies "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Does not define child labour; covers the act in the context of economic exploitation. | | |
| 1999 Worst Forms of Child Labour Convention (No. 182) | Article 3(a) defines worst forms of child labour as "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict." | | |
| Trafficking in human beings (persons) | | | |
| International instrument | Definition/reference | | |
| 1926 Slavery Convention | The Slavery Convention does not define trafficking in human beings. Article 1(2) covering slave trade can be considered a precursor to the later definition of trafficking. ⁴⁴ The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to | | |

⁴⁴ Weissbrodt, D., Dottridge M., Abolishing Slavery in its Contemporary Forms. UN OHCHR, 2002, p.18.

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| | slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves. |
| 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime | Article 3(a) defines "trafficking in persons" as recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. |
| 2005 Council of Europe Convention on Action against Trafficking in Human Beings | Article 4 (a): "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. |
| 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims | Article 2 (1) defines trafficking in human beings as "the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". |
| 2014 Protocol to the Forced Labour Convention | Does not define trafficking in human beings. The Protocol covers specific action against trafficking in persons for the purposes of forced or compulsory labour (Article 1.3). |
| Exploitation/exploitative working conditions | |
| 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime | Exploitation is defined as a non-exhaustive list of manifestations of trafficking. Article 3(a) defines "trafficking in persons" as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. |

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| 2005 Council of Europe Convention on Action against Trafficking in Human Beings | Exploitation is defined as a non-exhaustive list of manifestations of trafficking. Art. 4 (a): "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. |
| 2009 EU Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals | Article 2(i) defines 'particularly exploitative working conditions' as working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity. |
| 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims | Exploitation is defined as a non-exhaustive list of manifestations of trafficking. Article 2(3): Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. |
| EU Fundamental Rights Agency 2015 report: Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights p.10 | Severe labour exploitation The term 'exploitation' denotes work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal regulations, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment. The term 'severe' refers to forms of exploitation of workers which are criminal under the legislation of the EU Member State where the exploitation occurs. Hence, severe labour exploitation includes coercive forms of exploitation, such as slavery, servitude, forced or compulsory labour and trafficking (Article 5 of the Fundamental Rights Charter), as well as severe exploitation within the framework of an employment relationship, in particular employment situations covered by Article 9 (1) of the Employer Sanctions Directive. |

ANNEX II. Overview of the "Serbaz" case⁴⁵

The applicants, 33 nationals of Bosnia and Herzegovina, were recruited and taken to Azerbaijan as foreign construction workers for a construction company, Serbaz Design and Construction LLC ("Serbaz", a company registered in Azerbaijan). They stayed in Azerbaijan for periods of six months or longer. The applicants alleged, *inter alia*, that during this period they had been victims of forced labour and human trafficking, had worked without contracts and work permits, had their documents taken away and their freedom of movement restricted by their employer, and had not been paid their wages starting from May 2009 and until their departure from Azerbaijan. The civil claim they brought against Serbaz before the Azerbaijani courts following their return to Bosnia and Herzegovina seeking unpaid wages and non-pecuniary damage for alleged "breaches of their rights and freedoms" was unsuccessful. Their appeal and cassation appeal were also dismissed.

Following a criminal investigation into allegations of forced labour and trafficking by Serbaz management and employees, criminal proceedings by the Prosecutor's Office of Bosnia and Herzegovina were initiated against thirteen nationals of Bosnia and Herzegovina. In the context of these proceedings three legal-assistance requests were made by the Bosnia and Herzegovina authorities to the Azerbaijani authorities, referring to the allegations concerning the situation at Serbaz.

The applicants complained that the respondent State had failed to comply with its procedural obligation to investigate their claims.

Law – Article 4 § 2

(a) Applicability – The Court found that the totality of the applicants' arguments and submissions made both before the domestic courts in their civil claim and the Court, constituted an "arguable claim" that they had been subjected to cross-border human trafficking and to forced or compulsory labour on the territory of Azerbaijan by, among others, some alleged perpetrators who had been resident in Azerbaijan. In particular:

First, it transpired from the case file that the period during which the applicants had worked in Azerbaijan had coincided, either fully or at least partially, with the period in respect of which the grievances in general about the situation at Serbaz had been raised, namely May to November

⁴⁵ European Court of Human Rights, Case *Zoletic and Others v. Azerbaijan* (Application no. 20116/12).

2009. Second, the Court took into account the general description of the working and living conditions provided in the applicants' civil claim as well as the additional material they had had relied on both before the domestic courts and the Court. More specifically they had referred to a report ("ASTRA" report) dated 27 November 2009 prepared by three NGOs from Serbia, Bosnia and Herzegovina and Croatia in cooperation with the Azerbaijan Migration Centre ("AMC"). This report provided a more detailed account of the allegations made concerning the treatment of workers by Serbaz and contained additional information as to the potential situation of forced or compulsory labour and human trafficking. The existence and contents of this report had been sufficiently brought to the attention of the domestic courts. Although an NGO report would not, in itself, have significant evidentiary value without further investigation, given the area of expertise of the NGOs involved, namely assistance to migrant workers and combating human trafficking, the prima facie information provided in it constituted material corroborating the applicants' submissions. Further, there had been other corroborating information regarding workers who had reportedly been in the same or similar situation as the applicants during the same time period which had been referred to by the applicants or otherwise brought to the attention of the domestic courts and other authorities.

The allegations concerning physical and other forms of punishments, retention of documents and restriction of movement explained by threats of possible arrests of the applicants by the local police because of their irregular stay in Azerbaijan had been indicative of possible physical and mental coercion and work extracted under the menace of penalty. The allegations as to non-payment of wages and "fines" in the form of deductions from wages, in conjunction with the absence of work and residence permits, disclosed a potential situation of the applicants' particular vulnerability as irregular migrants without resources. These allegations suggested that even assuming at the time of their recruitment the applicants had offered themselves for work voluntarily and had believed in good faith that they would receive their wages, the situation might have subsequently changed as a result of their employer's conduct. In this connection, the allegations of forced excessively long work shifts, lack of proper nutrition and medical care, and the general picture of the coercive and intimidating atmosphere within Serbaz was also relevant. The Court considered that all of the above allegations, taken together, amounted to an arguable claim that the applicants had been subjected to work or service which had been exacted from them under the menace of penalty and for which they had not offered themselves voluntarily.

Moreover, the three constituent elements of human trafficking were also present: the fact that the applicants had been recruited in Bosnia and

Herzegovina, brought in groups to Azerbaijan by a private company and settled collectively in designated accommodation, which they allegedly could not have left without permission by the employer, could have constituted "recruitment, transportation, transfer, harbouring or receipt of persons" ("action"); the information in the ASTRA Report concerning the circumstances of recruitment disclosed an alleged situation that may have amounted to recruitment by means of deception or fraud ("means"); the conclusion reached as regards the arguability of their claim of "forced or compulsory labour" disclosed also the potential purpose of exploitation in the form of forced labour ("purpose").

(b) Compliance with obligations

(i) Whether an obligation to investigate arose in the present case – The Court found that it did, even though the applicants themselves had not lodged a formal criminal complaint, as it considered that their "arguable claim" had been sufficiently and repeatedly drawn to the attention of the relevant domestic authorities in various ways, such as, complaint letters by the AMC to the law-enforcement authorities and its challenge of the authorities' inactivity before the domestic courts; the applicants' civil claim and the legal-assistance requests. In connection to the latter, the Court noted that in the context of positive obligations under Article 3 of the Convention, which were similar to those under Article 4 of the Convention, sufficiently detailed information contained in an inter-State legal-assistance request concerning alleged grave criminal offences which might have been committed on the territory of the State receiving the request might amount to an "arguable claim" raised before the authorities of that State, triggering its duty to investigate those allegations further.

The Azerbaijani authorities had also been aware of the 2011 report of the European Commission against Racism and Intolerance ("ECRI") on Azerbaijan according to which many employers employing migrant workers in Azerbaijan, including in the construction sector, had had recourse to illegal employment practices and, as a result, migrants employed illegally often found themselves vulnerable to serious forms of abuse. The findings of this report had been later developed in the 2014 Report of the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe ("GRETA") concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan. This report observed that law enforcement officials in Azerbaijan reportedly had a tendency to see potential cases of human trafficking for labour exploitation as mere labour disputes between the worker and the employer and there seemed to be a confusion between cases of human trafficking for labour exploitation and disputes concerning salaries and other aspects of working conditions. While far from being conclusive, the

general context described in both these reports was relevant in the assessment of the facts of the present case.

In view of all the above, the authorities had been under an obligation to act on their own motion by instituting and conducting an effective investigation.

(ii) Whether there was any effective investigation – The Government had not submitted any information or comments about any investigation conducted by the domestic law-enforcement authorities, failing thus to demonstrate that any effective investigation had taken place into the applicants' allegations. Nor did it follow from the case file, including the documents submitted by the third party, that any such investigation had taken place. Amongst other things, these documents contained no information as to any attempts to identify and question any potential or already-identified alleged victims, including the applicants. In so far as the Anti Trafficking Department of the Ministry of Internal Affairs had known that many alleged victims had been sent back to Bosnia and Herzegovina and had been informed about the criminal proceedings there, it could have sent a formal legal-assistance request to the authorities of that country under the Mutual Assistance Convention, requesting the latter to identify and question such potential victims and to provide copies of their statements to the Azerbaijani law-enforcement authorities. Furthermore, it had not been demonstrated that any attempts had been made to identify and question any of the allegedly implicated persons who were nationals or residents of Azerbaijan. The respondent State had thus 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.

Conclusion: violation of Article 4 § 2 under its procedural limb (unanimously)

Article 41: EUR 5,000 to each of the applicants in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

ANNEX III. List of interviewees

Contacts during fact-finding mission in Sarajevo (central level)

Ministry of Security of BiH – State Coordinator's Office
Ministry of Human Rights and Refugees of BiH
Service for Foreign Affairs of BiH
State Investigation and Protection Agency (SIPA)
Labour and Employment Agency of BiH
Public Procurement Agency of BiH
Prosecutor's Office of BiH
Border Police of BiH

Contacts during fact-finding mission at the level of entities and Brčko District

Ministry of Internal Affairs of FBiH (Federal Police Office)
Brčko District Police
Brčko District Prosecutor's Office
Centre for Education of Judges and Prosecutors of Republika Srpska
Labour Inspection of RS
Labour Inspection of FBiH
Public Employment Service of RS
Union of Employers' Associations of RS
Confederation of Trade Unions of RS / Branch Trade Union of Textile, Leather and Footwear Industry
Private employment agency "Kolektiv d.o.o." (online employment portal "Mojposao.ba")
OSCE Mission to BiH
Marriot Hotels
CSO Your Rights Sarajevo
CSO New Generation Banja Luka
CSO Helsinki Citizens' Assembly Banja Luka

ANNEX IV. References and resources for further information

- Agency for Statistic of Bosnia and Herzegovina, Bosnia and Herzegovina in Figures 2021
- Agency for Statistics of Bosnia and Herzegovina, Bosnia and Herzegovina in Figures 2019
- Agency for Statistics of Bosnia and Herzegovina, Labour Force Survey 2018
- Central Intelligence Agency (CIA) World Factbook 2020
- Council of Europe, Action against trafficking in human beings
- Council of Europe, Convention on Actions Against Trafficking in Human Beings
- Council of Europe, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw 2005
- Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina, Third Evaluation Round, June 2022
- Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, 2020
- Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), Guidance note on preventing and combatting trafficking in human beings for the purpose of labour exploitation, 2020
- Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), Human Trafficking for the Purpose of Labour Exploitation. Thematic Chapter of the 7th General Report on GRETA's Activities (covering the period from 1 January to 31 December 2017), 2019
- Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina, Second Evaluation Round, July 2017
- European Court of Human Rights, Guide on Article 4 of the European Convention on Human Rights. Prohibition of slavery and forced labour. Updated on 30 April 2020
- European Court of Human Rights, Zoletic and Others v. Azerbaijan (Application no. 20116/12)
- European Court of Human Rights, Rantsev v. Cyprus and Russia (Application no. 25965/04)
- European Court of Human Rights, L.E. v. Greece (Application no. 71545/12)
- European Court of Human Rights, Chowdury and Others v. Greece (Application no. 21884/15)
- European Court of Human Rights, V.C.L and A.N. v. the United Kingdom, (Applications no. 74603/12 and 77587/12)
- European Commission, Communication from the Commission to the European Parliament and the Council. Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union. Brussels, 29.5.2019 COM(2019) 261
- European Union, Together against Trafficking in Human Beings
- FLEX, FairWork, ADPARE, Improving the identification and support of victims of trafficking for labour exploitation in the EU, Policy Paper, September 2016
- Helsinki Citizens' Assembly Banja Luka, Gačanica, L. Gender-Based Discrimination and Labour in Bosnia and Herzegovina, Banja Luka, 2019
- International Forum of Solidarity (IFS-EMMAUS), Monitoring and Evaluation: Policy of Contesting the Phenomenon of Trafficking in Human Beings in Bosnia and Herzegovina January - December 2018; unpublished report, 2020
- International Forum of Solidarity (IFS-EMMAUS) and USAID, Hajrija Hadžiomerović-Muftić, Position of TIP Victims in Court Proceedings in BiH: Analysis of Court Practices in 2018 (unpublished research), 2019
- International Forum of Solidarity (IFS-EMMAUS), Balkans Act NOW, Report on Trafficking in Human Beings in 2015 in Bosnia and Herzegovina, 2016
- International Labour Office (ILO), Overview of the informal economy in Bosnia and Herzegovina, 2019
- International Labour Office (ILO) and Walk Free Foundation, Global Estimates of Modern Slavery. Forced Labour and Forced Marriage, Geneva 2017
- International Labour Office (ILO), Global Estimate of Forced Labour, results and methodology, 2012
- International Labour Office (ILO), Indicators of Forced Labour
- International Labour Office (ILO), Protocol of 2014 to the 1930 Forced Labour Convention
- International Labour Office (ILO), Hard to See, Hard to Count. Survey guidelines to estimate forced labour of adults and children, 2012
- International Organization for Migration (IOM), Human Trafficking in the Western Balkans: Needs Assessment, 2016
- International Organization for Migration (IOM), Galos, E., L. Bartolini, H.

Cook and N. Grant, Migrant Vulnerability to Human Trafficking and Exploitation: Evidence from the Central and Eastern Mediterranean Migration Routes, Geneva, 2017

Ministry for Human Rights and Refugees of BiH: Combined 5th and 6th Report of Bosnia and Herzegovina on its Implementation of the Convention on the Rights of the Child

Ministry of Security of Bosnia and Herzegovina, Action Plan for the Prevention of Trafficking in Human Beings in Bosnia and Herzegovina 2008-2012

Ministry of Security of Bosnia and Herzegovina, Analiza stanja i trendova trgovine ljudima u Bosni i Hercegovini (compilation of documents), 2019

Ministry of Security of Bosnia and Herzegovina, Biannual E-Bulletin(s) 1-4, 2018 - 2020

Ministry of Security of Bosnia and Herzegovina, IOM, Guidelines for Work of Regional Monitoring Teams for Combatting Trafficking in Human Beings in Bosnia and Herzegovina, 2019

Ministry of Security of Bosnia and Herzegovina, CPRC, Human Trafficking in Bosnia and Herzegovina

Ministry of Security of Bosnia and Herzegovina, Catholic Relief Service & IFS-EMMAUS Smjernice o postupanju regionalnih monitoring timova za borbu protiv trgovine ljudima u Bosni i Hercegovini; 1st Edition, 2009

Ministry of Security of Bosnia and Herzegovina State Reports on Trafficking in Persons in Bosnia and Herzegovina, 2014-2019

Ministry of Security of Bosnia and Herzegovina, Strategija za borbu protiv trgovine ljudima 2020-2023, 2020

Organization for Security and Co-operation in Europe (OSCE), Mission to Bosnia and Herzegovina Ensuring Justice for Victims of Trafficking in Human Beings: Response of the criminal justice system in Bosnia and Herzegovina, December 2021

Regional Co-operation Council, Labour Markets in the Western Balkans 2019 and 2020, June 2021

Regional Co-operation Council, Oruč, N. and Bartlett, W., Labour Markets in the Western Balkans: Performance, Causes and Policy Options, Sarajevo 2018

Results from a Delphi Survey implemented by the ILO and the European Commission, Operational indicators of trafficking in human beings, 2009

Sarajevski otvoreni centar, Gačanica, L. Socio-ekonomski položaj lezbijki, gej, biseksualnih, transrodnih i interseksualnih osoba u Bosni i Hercegovini, 2021

Situation Analysis of Human Trafficking in Bosnia and Herzegovina, Croatia, FYR of Macedonia and Serbia, prepared by CSOs: ASTRA, International

Forum of Solidarity–EMMAUS, Partnership for Social Development, Open Gate/La Strada, Netherlands Helsinki Committee, Comité Contre L’Esclavage Moderne (CCEM) and the Association ALC - Accompagnement, Lieux d’Accueil, Carrefour éducatif et social, 2013

Skrivankova, K., Between decent work and forced labour: examining the continuum of exploitation. JRF programme paper: Forced Labour. Joseph Rowntree Foundation, November 2010

Trafficking for Labour Exploitation – Tackling Group Cases, ITUC, CCME, Anti-Slavery International, 2011, https://www.ituc-csi.org/IMG/pdf/forced_labour.pdf

United Nations Report Refugee and migrant situation in Bosnia and Herzegovina, March 2018

United Nations, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organised Crime and Protocols thereto, New York, 2006

UN OHCHR, Weissbrodt, D., Dottridge M., Abolishing Slavery in its Contemporary Forms, 2002

UNODC, Issue Paper. The Concept of ‘Exploitation’ in the Trafficking in Persons Protocol, Vienna, 2015

UNODC, Issue Paper. The Role of ‘Consent’ in the Trafficking in Persons Protocol, Vienna, 2014

UNODC, Issue Paper. Abuse of a position of vulnerability and other “means” within the definition of trafficking in persons, UNODC, Vienna, 2013

US State Department Trafficking in Persons Report 2020

World Bank, Western Balkans Regular Economic Report No.21, Spring 2022.

World Bank, Western Balkans Labour Market Trends 2020

Legislative resources:

Constitution of Bosnia and Herzegovina, Official Gazette of BiH, No. 25/2009 – Amendment II; Article II (3)

Constitution of Federation of Bosnia and Herzegovina, Official Gazette of FBiH no.1/94, 13/97, 16/02, 22/02, 52/02, 60/02,18/03 and 63/03

Constitution of Republika Srpska, Official Gazette of RS, No. 21/1992, 28/1994, 8/1996, 13/1996, 15/1996, 16/1996, 21/1996, 21/2002, 26/2002, 30/2002, 31/2002, 69/2002, 31/2003, 98/2003, 115/2005, 117/2005 and 48/2011

Criminal Code of Bosnia and Herzegovina; Official Gazette of BiH No. 40/2015 and 35/2018

Criminal Code of Federation of Bosnia and Herzegovina, Official Gazette of FBiH No. 76/2014, 46/2016 and 75/2017

Criminal Code of Republika Srpska, Official Gazette of RS No. 64/2017 and 104/2018

Criminal Code of Brčko District to BiH, Official Gazette of BD to BiH No. 19/2020

Rulebook on Protection of Foreign Victims of Human Trafficking in Bosnia and Herzegovina, Official Gazette of BiH, No. 49/13

Rules on the Protection of Victims and Victims Witnesses of Human Trafficking Nationals of Bosnia and Herzegovina, Official Gazette of BiH, No. 49/13

Law on Social Protection of RS, Official Gazette of RS, No. 94/2019 and 42/2020

Other online resources:

cleanclothes.org/file-repository/livingwage-europe-country-profiles-bosnia-herzegovina/view

documents1.worldbank.org/curated/en/646541554470226635/pdf/Regional-Roma-Survey-Briefs.pdf

news.marriott.com/news/2019/01/18/marriott-international-has-trained-500-000-hotel-workers-to-recognize-the-signs-of-human-trafficking

www.almamedia.fi/en

www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_BIH_Roma.pdf

www.eurcenter.net

www.klix.ba/vijesti/bih/podignuta-optuznica-u-slucaju-hamidovic-i-drugi-istragom-obuhvacen-i-sluzbenik-ambasade-bih-u-parizu/180510018

www.kolektiv.ba/

www.marriott.com/hotels/travel/sjjri-residence-inn-sarajevo/

www.medicazenica.org

www.mfs-emmaus.ba

www.vasaprava.org

www.wvi.org/article/youth-use-arts-raise-awareness-about-dangers-trafficking

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