

BALKANS
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MANUAL
FOR JUDGES AND PROSECUTORS ON
COMPENSATION FOR VICTIMS
OF TRAFFICKING IN HUMAN BEINGS
IN BOSNIA AND HERZEGOVINA



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BALKANS ACT NOW!

MANUAL FOR JUDGES AND PROSECUTORS ON COMPENSATION FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA



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The Manual for Judges and Prosecutors on Compensation for Victims of Trafficking in Human Beings in Bosnia and Herzegovina was prepared within the "Balkans ACT (Against Crime of Trafficking) Now!" project implemented by civil society organizations: ASTRA-Anti Trafficking Action (Serbia), International Forum of Solidarity - EMMAUS (Bosnia and Herzegovina), PSD - Partnership for Social Development (Croatia), Open Gate - La Strada (FYR Macedonia), NHC - Netherlands Helsinki Committee (the Netherlands), ALC-Accompagnement, Lieux d'Accueil, Carrefour éducatif et social and CCEM-Committe Contre L'Esclavage Modern (France), and supported by the European Union. The project aims to contribute to democratisation and EU integration processes in the Western Balkans through improving the environment for civil activism, as well as the capacity, commitment and influence of civil society networks in the debate on human rights and the rule of law related to the issue of organized crime, specifically trafficking in human beings.

Since organized crime and trafficking in human beings are serious problems in all countries of the Western Balkans region and such problems are often cross-border in character, and as relevant authorities need to further strengthen their influence in addressing these issues, the civil society organizations involved in project implementation recognized the importance of regional cooperation at the levels of civil society and government bodies. Therefore, the regional partnership within the "Balkans ACT Now!" project is very important because it focuses specifically on the involvement of the judicial sector, especially in the judicial proceedings in cases of trafficking in human beings, including ineffective investigation and prosecution of perpetrators and ineffective protection of victims in accordance with fundamental rights and EU standards. Accordingly, International Forum of Solidarity-EMMAUS (IFS-EMMAUS) took the initiative to establish a state compensation fund for victims of human trafficking in Bosnia and Herzegovina. As part of a national advocacy campaign over the whole BiH territory, IFS-EMMAUS focused on decision-makers and judicial institutions, and developed this Manual for Judges and Prosecutors on Compensation for Victims of Trafficking in Human Beings in BiH. Application of the Manual will be promoted during the capacity building activities for judges and prosecutors in order for improved and comprehensive application of the provisions of relevant laws on compensation for victims of trafficking in human beings.

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INTRODUCTION

Under international law, States are obliged to ensure that trafficked persons have access to compensation for material and non-material damages suffered. As the analysis showed, in most countries compensation mechanisms and procedures exist that would allow victims of criminal offences access to compensation for the injuries suffered in the trafficking process. These mechanisms range from possibilities under criminal law, civil law, labour law, and/or through state compensation funds.

However, in practice, awarding compensation is often a neglected aspect of the fight against trafficking; only a few trafficked persons claim compensation, and even fewer are awarded actual payment. Thus it was difficult to pinpoint a legal system which is exempted from issues pertaining to awarding compensation.

According to relevant research in this area, lack of an effective compensation system has its roots in:

- lack of awareness/knowledge on the part of authorities and NGO service providers;
- law enforcement approach vs. human rights approach in which the victim is seen as a witness and necessity for criminal proceedings;
- ineffective use of asset seizure and confiscation for the purpose of compensating trafficked persons;
- lack of legal aid for trafficked persons, long duration of proceedings;
- fear of retaliation from trafficker or uncertain immigration status¹.

The same underlying causes of such practice of effective compensation can be found before courts in Bosnia and Herzegovina (hereinafter BiH).

The basic assumption of the Manual is that trafficked persons have a right to compensation. Therefore, the Manual does not argue for such a right or its importance. The Manual will present the current legal framework at the international, regional and national level, and include practice at the national level in terms of access to compensation, as well as present best practices from the countries in the region and at the level of the EU, with the aim of improving the practice of granting the victims compensation for material and non-material damage. As stated before there is no absolute best practice but rather effective mechanisms to award victims compensation for the sufferings encountered through trafficking in human beings. It all comes down to practice in evaluation of the mechanism of compensation. Therefore, in selecting best practices the Manual provides practical examples as far as possible.

The Manual is to serve judicial actors in raising awareness of the possibilities of awarding compensation and improving this practise, thus taking a more comprehensive and human rights-based approach to combating trafficking in human beings.

¹ La Strada International, Anti-Slavery International, Concept Note for COMP.ACT Europe – European Action for Compensation for Trafficked Persons (hereinafter: LSI/ASI, COMP.ACT concept note), p 3.

USE OF TERMS IN MANUAL:

TRAFFICKING IN HUMAN BEINGS:

Trafficking in human beings is defined in Article 4 of the Council of Europe Convention on Action against Trafficking as:

- 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;*
- b) *the consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- c) *the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- d) *"Child" shall mean any person under eighteen years of age;*
- e) *"Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article."*

VICTIM OF TRAFFICKING:

VoT is defined pursuant to the definition from the Council of Europe Convention on Action against Trafficking.

The Convention defines "victim" as "any natural person who is subjected to trafficking in human beings as defined in this Article". As explained above, a victim is anyone subjected to a combination of elements (action, means, purpose) specified in Article 4(a) of the Convention. Under Article 4(c), however, when that person is a child, he or she is to be regarded as a victim even if none of the means specified in Article 4(a) has been used.

COMPENSATION:

In this Manual the term "compensation" has been used to refer to the overall concept of payment to a person, regardless of the source of payment; the mechanism used; or the types of losses to be compensated. Compensation includes awards made by state-funded schemes as well as awards made in criminal, civil or labour law proceedings².

² OSCE/ODHIR: Compensation for Trafficked and Exploited Persons in the OSCE Region, Warsaw 2008

MATERIAL AND MORAL DAMAGES:

Different terminology is used for the elements of loss that constitute a compensation claim. However compensation claims are made up of elements that fall into two separate categories: compensation for "material damages" and compensation for "moral damages."

"Material damages" refers to financial or pecuniary losses, e.g. medical, funeral and hospital costs; loss of future earnings and employment-related benefits; unpaid wages; and costs of damage to property. The definition and scope of material damages in the national setting is specified in law (or through case-law precedent in common-law countries) and varies from country to country. Some compensation mechanisms enable all forms of material damages to be claimed whilst others allow only limited categories to be claimed.

"Moral damages" refers to non-financial or non-pecuniary losses, e.g. emotional suffering; loss of reputation or "honour"; "pain and suffering"; inconvenience; loss of enjoyment of life; loss of society and companionship. The definition and scope of moral damages in the national setting is specified in law (or through case-law precedent in common-law countries) and varies from country to country. Some compensation mechanisms allow for all types of moral damages to be claimed, some allow only specific types of moral damages to be claimed and others do not allow moral damages to be claimed at all³.

³ Ibid p.16

1. FUNCTION OF COMPENSATION TO VICTIMS OF TRAFFICKING

Trafficking in human beings represents a grave violation of the human rights of victims, who suffer severely and long after the exploitation has finished. Thus, compensation serves as an important tool for the victim to mitigate those sufferings and heal from the injuries incurred in the scope of trafficking. Compensation ought to be seen not only as a remedy for the victim, but also as an important tool to counter trafficking in general – to deter perpetrators from continuing to commit an offence and to influence the general public and send the message that committing an offence does not pay off.

In essence, compensation has three functions: restorative, punitive and preventive⁴.

The restorative function of compensation represents the victim's recovery, since victims experience both physical and psychological consequences through abuse deriving from trafficking, including loss of dignity, mental health issues, diminished capability to act autonomously etc.

In serving to acknowledge wrongdoing, and redefine the victim as the subject of justice instead of an object of the commission of a criminal offence, compensation has a restorative function. It opens space for the victim to have an active role in the process of bringing their traffickers to justice⁵. Compensation, when awarded, would provide for financial independence of the victim and, to some extent, prevent their re-victimisation.

For compensation to achieve its preventive and punitive function, greater emphasis should be placed on the confiscation of the criminal assets of traffickers in order to increase the resources available for compensation awards to victims. Successfully redirecting criminal assets to compensation for victims of trafficking can go beyond mere punishment in particular cases; it can directly impact and contribute to the prevention of the crime of trafficking. Depriving traffickers through confiscating their criminal assets constitutes a strong deterrent mechanism⁶.

States do provide for different mechanisms for compensation of the victims of trafficking either through criminal, civil or labour proceedings or through separate funds to facilitate the compensation for the VoTs. To which extent those mechanisms achieve these purposes in BiH is subject of this Manual.

⁴Please see: <http://lastradainternational.org/Isidocs/Findings%20and%20results%20of%20Comp.Act.pdf>

⁵ Ibid.

⁶ Ibid.

2. INTERNATIONAL LEGAL FRAMEWORK

There are numerous international instruments that potentially could be used to protect the rights of victims of trafficking and establish an effective system of compensation as a tool to counter trafficking. In this regard, instruments that protect victims of trafficking and forced labour are widely recognized and ratified even more than those dealing exclusively with migrant workers. The right to compensation is also closely connected with ancillary rights to include, for example right to legal assistance. However, one should bear in mind that the standards are obligatory only when ratified by the country and that they represent minimum standards to be respected; states are at liberty to introduce enhanced provisions.

2.1 UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (UNTOC)

UNTOC, and the Palermo Protocol that supplements it, was the first internationally recognized instrument that obliges state parties to ensure at least one type of legal procedure is available to trafficked persons to access compensation. It also stipulates the obligation of states to ensure that VoTs are informed of the possibility to seek compensation⁷. Since it regulates cross-border issues, States are also obliged to promote this right across borders.

The Palermo Protocol has few mandatory victim support provisions. One of these requires that state parties ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered. This provision is not an obligation to provide compensation or restitution, but states must offer the legal possibility of seeking compensation.

The Interpretative Notes to the Protocol⁸ indicate that this should apply both in the destination country and the victim's country of origin. According to the Legislative Guide⁹, this obligation would be satisfied by establishing one or more of three options: provisions allowing victims to sue offenders for damages in a civil court; provisions allowing criminal courts to award criminal damages (paid by offenders), or to impose orders for compensation or restitution against persons convicted of trafficking offences; or provisions establishing dedicated funds or schemes to allow victims to claim compensation from the state for injuries or damages.

The Protocol does not mention ancillary rights such as the right to information or the right to legal aid, but it does include the right to remain in the country during proceedings. Article 8(2) places an obligation on destination countries to conduct return 'with due regard for...the status of any related legal proceedings'.

Furthermore, the Protocol links criminal justice to victim support by identifying victim compensation as a priority option when considering the disposal of confiscated assets. Regarding international requests around asset confiscation, Article 14(2) requires State Parties 'to give priority consideration to returning

⁷ Trafficked persons are provided with information on available remedies and with access to legal assistance (Prot. art 6; UN HCHR Guidelines principle 9 & guideline 4.8; CoE CAT art. 15; EU Directive 2011/36/EU art. 12). There is a legislative and practical possibility for trafficked persons to obtain compensation for damages suffered (UN TOC art. 14.2 & 25; Prot. art. 6.6; ICRMW art. 25.3; ILO no. 97 & 143; UN HCHR Guidelines principle 17; CoE CAT art. 15; EU Directive on Compensation). Trafficked persons are enabled to present their views and concerns at appropriate stages of the criminal proceedings (UNTOC art. 25; Prot. Art. 6)

⁸ <http://lastradainternational.org/doc-center/2039/travaux-preparatoires-of-the-negotiations-for-the-elaboration-of-the-united-nations-convention-against-organized-crime-and-the-protocols-thereto>

⁹ Please see: https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf

confiscated proceeds of crime or property to a requesting State Party for compensation of (or return to) victims’.

2.2 COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

The right to compensation is further strengthened through this regional instrument promoting a human rights-based approach to combating trafficking in human beings. The right to compensation, under the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Convention), provides for the right to claim compensation for both moral and material damage from the trafficker. Interestingly, the CoE Convention also calls upon states to consider providing access to a state-funded compensation scheme referring to the model set out in the European Convention on the Compensation of Victims of Violent Crime¹⁰.

The Convention places more emphasis on the ancillary rights that make compensation an effective and practical possibility, such as free legal assistance. The right to compensation from the trafficker and the state are supported by certain politically binding (or “soft law”) instruments, most importantly the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and European Union law, such as the EU Council Directive on Compensation of Crime Victims.

The CoE Convention is the first international treaty that looks at human trafficking as a human rights issue and makes the protection of victims’ rights obligatory. Article 15 provides for the right to compensation and legal address, as well as the preconditions that should be met in order for trafficked persons to access this right. The Convention acknowledges that victims cannot claim their rights if they are unaware of them.

Member State Parties must ensure that victims have access to information on relevant court and administrative proceedings, in a language that they can understand, from their first contact with law enforcement authorities. Parties must provide for the right to legal assistance and free legal aid for victims under the conditions provided for under its internal law, and under Article 16 of the CoE Convention Parties of destination countries must conduct return `with due regard for [...] the status of any related legal proceedings’. A victim must be ensured the right to compensation to cover both material and non-material damage. The Convention recognizes that a trafficked person will rarely receive full compensation from the trafficker(s), and provides in Article 15.4 that parties take steps to guarantee compensation of victims, for example, through establishing a state compensation fund or through social assistance programs, possibly funded by criminal assets.

2.3 EU CONTEXT AND RIGHTS OF VICTIMS TO COMPENSATION

The EU Directive 2011/36/EU¹¹ of the European Parliament and the Council, of 5th April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (hereinafter EU Directive) takes a similar approach to the rights of trafficked persons as the CoE Convention and includes the right to compensation as well as ancillary rights that should guarantee access to justice. Article 17 requires Member States to ensure that trafficked persons have access to existing schemes of compensation available to victims of violent crimes. Counselling and information as described in Art. 11(5) should include information about available remedies in a language and form that the victim understands. The right to legal assistance is stipulated in

¹⁰ Please see Article 15 of the CoE Convention: Article 15 – Compensation and legal redress available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/convntn/cets197_en.asp#P1153_166853

¹¹ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

Recital 19 and Art. 12(2); Member States shall ensure that victims of trafficking in human beings have access, without delay, to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources. Assistance and support should include the provision of a temporary residence status for the purpose of seeking remedies and should, as stipulated in Art. 11(3), not be made conditional on the willingness of the victim to cooperate in criminal proceedings.

Furthermore, the EU Directive also addresses the seizure of assets. Under Article 7, Member States shall take necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from perpetrators. Similarly, Recital 13 states that: '[...]the use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged'.

Pursuant to EU Directive, Article 12, paragraph 2, victims have access, without delay, to legal counselling and to legal representation, including for the purpose of claiming compensation. EU Directive, Article 16 and 17, Council Framework Decision 2001/220/JHA, Article 9, paragraph 1 and 3, provides that victims are entitled access to existing compensation schemes for victims of violent intentional crimes, stipulating that Member States should promote measures to encourage perpetrators to provide adequate compensation to victims in the course of criminal proceedings. Victims are also entitled to obtain a decision on compensation by the perpetrator in the course of criminal proceedings within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

Victims are entitled to the return of their own property (unless urgently needed for criminal proceedings) which has been recovered or seized during criminal proceedings, without delay.

With regards to access to compensation schemes in cross-border situations, *Directive 2012/29/EU, Article 9, Directive 2012/29/EU, Article 4, paragraph 1 provides that:*

- victims are entitled to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed;
- victims are entitled to essential information on the possibilities for claiming compensation. This includes information and guidance on how the application should be completed, what supporting documentation may be required, and any supplementary information requested;
- victims are entitled to receive, as soon as possible and if possible, information on the contact person or department responsible for handling their compensation claim, acknowledgement of the receipt of the application, an indication of the time by which a decision on their application will be made, and the decision taken.

2.4 MIGRATION PERSPECTIVE AND LABOUR EXPLOITATION FRAMEWORK

The right to an effective remedy is widely recognised in the major international human rights instruments and the International Labour Organisation (ILO) Forced Labour Conventions No. 29 and 105¹². Both the ILO Conventions, No. 97¹³ and 143¹⁴ on Migrant Workers, and the International Convention on the

¹² Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174 and http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250

¹³ Please see: ILO Migration for Employment Convention (Revised), 1949 (No. 97) available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097;

¹⁴ Please see: ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312288

Protection of Migrant Workers and Members of their Families¹⁵ set standards to ensure that migrants are not deprived of their right to be paid for work or services that they have performed. The ILO standards on forced labour have been widely ratified by States and deal with issues relating to labour rights which should be applicable at the national level in cases of labour exploitation. In countries that have not ratified ILO conventions, the 1998 ILO Declaration on Fundamental principles and Rights at Work and its Follow-up provides for the obligation of ILO member States to apply certain core principles, which include a prohibition on forced labour, child labour and discrimination.

The ILO conventions on migrant workers set standards to ensure that migrants are not deprived of their rights regarding work they have performed. Migrant workers are entitled to those rights which are relevant to claims of exploited workers in civil or labour law for unpaid or underpaid wages and other losses and damages arising from abuse of labour law standards (e.g. health and safety at work, deprivation of holidays, excessive hours, etc.).

Regarding irregular workers, it is important to mention that Art. 9(1) of Convention 143 on Migrant Workers stipulates the obligation “to ensure that illegally employed migrant workers are not deprived of their rights in respect of the work actually performed” and that they should be accorded the same rights as regularly-employed migrants.

The ILO Forced Labour Convention of 1930 does not deal directly with compensation. However, a general survey issued by the ILO Committee of Experts¹⁶ regarding the application of Article 25 – which deals with penalties for forced labour - provides that: “Where a form of forced labour is found to exist, those responsible must be effectively punished in accordance with the penal sanctions established by the law. The State has to ensure that the victims of such practices are able to complain to the competent authorities, have access to justice and obtain compensation for the harm they have suffered”.

In relation to forced labour and trafficking in persons, the ILO¹⁷ states that the existence of civil, administrative and labour law remedies is critical and that workers will often require assistance in making a claim. Importantly, states are required to use their administrative legal system to protect foreign workers and provide them with remedies against exploiters.

The ILO standards on prohibition of forced labour, protection of migrant workers, standards regulating wages and work of private agencies all reinforce numerous labour rights that are relevant to trafficked persons, including the right to a remedy (and compensation) for those subjected to abuses of these rights. The ratification and effective implementation of these conventions is necessary in protecting trafficked persons by improving their labour rights and improving access to compensation through enforcing these rights. These documents’ emphasis on the right to a remedy reinforces the right to compensation in international law, especially for victims of labour exploitation¹⁸.

¹⁵ Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en

¹⁶ Eradication of forced labour, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), International Labour Conference, 96th Session, 2007 available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_089199.pdf

¹⁷ Human trafficking and forced labour exploitation: Guidelines for Legislation and Law Enforcement Special Action Programme to Combat Forced Labour 2005, p. 26-29

¹⁸ Please see OSCE/ODHIR Analysis on Compensation for Trafficked and Exploited Persons in the OSCE Region

2.5 GROUP OF EXPERTS AGAINST TRAFFICKING - REPORT ON BIH

The Group of Experts against Trafficking (GRETA), in its evaluation reports, assesses the implementation of the provisions on compensation for victims of trafficking. It also underlines the need to ensure that victims of trafficking receive compensation. To this effect, the authorities should review the current legislation regarding compensation obtained from perpetrators. They should also set up a state compensation scheme accessible to victims of trafficking¹⁹.

Article 15 of the Convention establishes Parties' obligation to provide for the right of victims of trafficking to legal assistance and free legal aid in their internal law. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators and adopt legislative or other measures to guarantee compensation for victims from the state. Furthermore, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

For BiH, the Report states that pursuant to criminal legislation victims of human trafficking may claim compensation from the offenders in criminal proceedings. However, GRETA assessed that such claims are discouraged in practice, as their examination would imply establishing the damage sustained to evaluate compensation, which in turn would delay the delivery of the judgment in the human trafficking case. As a consequence, victims are reportedly advised to claim compensation through civil proceedings.

However, in practice, very few victims do claim compensation through civil proceedings, because of the length of such proceedings and the fact that the burden of proving damages sustained lies on the victim. According to representatives of the judiciary, the current legislation does not provide sufficient possibilities to decide on compensation of victims by the offenders in criminal proceedings, and therefore the legislation needs to be amended. Furthermore, there is no possibility in law to obtain compensation from the state, and no compensation fund for victims of THB or victims of crime in general has been set up. Therefore GRETA urges the authorities of Bosnia and Herzegovina to:

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

¹⁹ Group of Experts on Action against Trafficking in Human Beings GRETA(2013)7 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina First evaluation round, Strasbourg, 14 May 2013, p. 8 available at: http://www.coe.int/t/dghl/monitoring/trafficking/docs/Reports/GRETA_2013_7_FGR_BIH_with_cmnts_en.pdf

3. LEGAL FRAMEWORK IN BIH

In the international setting it is possible to compensate trafficked persons directly from the trafficker in criminal proceedings. How this works largely depends on the country's legal system. Regardless of the legal tradition or whether it is civil or common law country, the victim is entitled to compensation upon the conviction of the perpetrator or by the court's order that the perpetrator pay compensation. In most civil law countries a civil claim for damages can also be filed by victim and appended to the criminal case. This possibility exists in the BiH criminal legislation.

Bosnia and Herzegovina has a solid legal framework in place for compensation of victims of trafficking in human beings. An important pillar of access to justice is compensation for the victims of criminal offences. An equally important aspect of compensation is the right to be informed of the opportunity/mechanisms to seek compensation and the means to access this in a particular criminal justice system. International standards recognize the importance of compensation and provide an obligation for the State to ensure that there are opportunities for the victims to receive compensation for damages²⁰.

These standards regard access to information and legal assistance to victims as equally important for effective exercise of the right to compensation.

3.1 COMPENSATION IN CRIMINAL PROCEEDINGS

Criminal legislation in Bosnia and Herzegovina provides for the right to file a damage compensation claim in criminal proceedings as one of the forms of compensation for victims of trafficking. This right is not exclusive to victims of trafficking, but refers to all victims of criminal offences²¹. National legislation does not provide a definition of 'victim' which is more a term defined under 'victimology', but refers to the injured party.

The injured party is defined as "a person whose personal or property rights have been threatened or violated by a criminal offence."²²

Pursuant to the relevant provisions, the court shall make a decision regarding a damages compensation claim within the criminal proceedings under the condition that the decision does not "considerably

²⁰ Article 6, paragraph 6 of the Palermo Protocol states: "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered". The corresponding provision of the Organized Crime Convention, in article 25, paragraph 2, requires that at least some "appropriate procedures" are established to provide access to compensation or restitution. See also Article 15 – Compensation and legal redress of the CoE Convention that prescribes that each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand. They will also provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law while each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators. Paragraph 4 provides that: "Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23"

²¹ See OSCE Mission to BiH leaflet and template on damages compensation claims available at: http://www.oscebih.org/documents/osce_bih_doc_2010122713020999eng.pdf

²² See Article 20 p. h) of the Criminal Procedure Code of BiH ("Official Gazette" of BiH, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09) and corresponding articles of the entity and BD criminal procedure codes

prolong such proceedings²³. Therefore, the decision is solely based on the discretion of the court and depends on the assessment of the prolongation of the criminal proceedings.

Such a decision enabling the court to properly assess if the decision on compensation would prolong criminal proceedings will be dependent upon the prosecutor and his/her work in the investigation in terms of collection of evidence to substantiate the compensation claim.

The effectiveness of this mechanism is also in direct correlation with the status of the victim/injured party in the criminal proceedings. According to the provisions of the criminal codes, the rights of the injured parties are restricted to exclude representation or status in the criminal proceedings. Procedural rights are narrowed down to mere provision of information, or status of the injured party as witness. Therefore, pursuant to the criminal legislation, it is the prosecutor who guards the rights of the victim and ensures that overall satisfaction is achieved.

The effectiveness of such mechanisms is in direct correlation with the submission of the property claim in criminal proceedings, but also in relation to the duty of all actors to inform victims of trafficking on their right to seek compensation. The injured party does not have to make the decision to file a damages compensation claim at the beginning of the proceedings. According to the law, the claim may be submitted no later than the end of the main trial or sentencing hearing before the court²⁴.

Compensation claims in criminal proceedings may be filed with the Prosecutor or the court. As regards the duties of the prosecutor and the court in relation to the establishment of legal facts, the prosecutor has a duty to gather evidence regarding damages compensation claims relevant to the criminal offence²⁵. The prosecutor or the court shall question the suspect or the accused in relation to facts relevant to the claim.

Compensation claims may pertain to reimbursement for material and non-material damages, recovery of items, or annulment of a particular legal transaction. The court decides upon the claim conditioned by the assessment of non-prolongation of criminal proceedings.

In general, material damage can occur in the following cases:

- loss or damage of property due to the commission of a criminal offence (for instance car theft; damage of movable property such as car, TV, furniture or real-estate property e.g. house or similar);
- bodily injuries and/or deterioration of health conditions caused by commission of the criminal offence (possibility to claim the costs of the medical treatment: medicines, medical services, rehabilitation costs, costs for intensified nutrition, assistance from a third person, loss of income and earnings, diminished working ability);
- for the death of a person, one can claim compensation for support of the dependents of the deceased, funeral costs and costs for medical treatment of the deceased that occurred between the injury and death.

Non-material damage can occur in the following cases:

- physical pain caused by bodily injury, surgery during medical treatment and pain experienced after medical treatment;
- mental suffering which might be caused by decreased vital activities, mutilation (loss of parts of the body, scars etc.), death or disability of a close person, rape and sexual harassment;

²³ The provisions on the damage compensation claim are contained in Chapter XVII of the CPC BiH please see Article 193 and ensuing articles.

²⁴ See Criminal Procedure Code, Article 195

²⁵ See Criminal Procedure Code, Article 197 and corresponding Articles of CPCs of RS, FBiH and BD

- fear suffered due to the commission of a criminal offence and after it, if the fear was especially strong and was of long duration.

In order to quantify compensation for non-material damage, reference could be made to the **orientation criteria developed by the Supreme Court of the Federation of BiH²⁶**.

The Criteria do not represent binding and automatic formula to calculate compensation²⁷ since all circumstances of the case need to be taken into account. These are instructive criteria for particular types of non-material damage:

1. Physical pain:
 - strong pain – BAM 70.00 per day;
 - medium pain – BAM 40.00 per day;
 - light pain – BAM 10.00 per day;
 - up to maximum of BAM 10,000.00.
2. Mental suffering caused by decreased vital activities:
 - up to 30%, BAM 5,000.00 for every 10%;
 - up to 50%, BAM 6,000.00 for every 10%;
 - over 50%, BAM 7,000.00 for every 10%.

As a rule, this is utilised where the damage is permanent, but compensation can also be awarded in cases where the decrease in vital activity is temporary, if it is of particularly strong intensity and long duration or if some particular circumstances justify that.

1. Mental suffering caused by mutilation:
 - high level, very visible – BAM 10,000.00;
 - visible only occasionally (for example to persons living in the same household, visible only while on the beach etc.) – BAM 6,000.00;
 - medium level, very visible – BAM 6,000.00;
 - visible only occasionally – BAM 3,000.00;
 - low level, very visible – BAM 1,500.00;
 - visible only occasionally – BAM 700.00.
2. Mental suffering due to death of a close relative (conjugal and extra-conjugal partner, child, loss of fetus, parent, brother or sister):
 - in case of death of conjugal or extra-conjugal partner) or child - BAM 20,000.00;
 - to the parents, in case of loss of fetus – BAM 7,000.00;
 - in case of death of parents: To a child living with parents – BAM 20,000.00; To a child living elsewhere – BAM 12,000.00;
 - in case of death of a brother or sister – BAM 7,000.00.
3. Mental suffering due to particularly high level of disability of close relative;

²⁶ Available at: http://www.advokat-prnjavorac.com/zakoni/ORJENTACIONI_KRITERIJI_naknada_nematerijalne_stete.pdf

²⁷ Please see Verdict of Supreme Court of FBiH No 36 0 P 005883 10, Rev dated 08 September 2011

- in case of very high level of disability of conjugal or extra-conjugal partner and child – BAM 20,000.00;
- in case of very high level of disability of a parent: To a child living parents – BAM 20,000.00; To a child living elsewhere – BAM 12,000.00;

4. Fear: from BAM 400.00 up to BAM 6,000.00.

Fair pecuniary compensation for fear suffered due to the commission of a criminal offence shall be rendered if the circumstances of the case, especially duration and intensity of the fear, justify that.

Level and duration of physical pain, mental suffering and fear shall be established by a medical expert.

Recovery of items: can be claimed in the case that the injured party was deprived of a personal item. If the item was destroyed or damaged then the property claim for recovery of the item changes into claim for the damage. A seized item shall be returned if it is in possession of the perpetrator or an accomplice at the main trial, or in the possession of a third person to whom the perpetrator or his/her accomplice gave it in custody.

Annulment of certain legal transactions: the term “legal transactions” usually refers to contracts, particularly sale contracts (for example land, house, car and similar). If a contract was elicited in an illegal manner the injured party can ask for the annulment of such, in part or in full, in order to restore the legal condition that was in place before the commission of the criminal offence or signing of the contract.

Criminal legislation in BiH also provides for the possibility to propose mediation. The proposal for mediation can be initiated before the completion of the main trial by the injured party or the accused (and the defence attorney).

The court may award the injured party the claim in its entirety, or partially and refer the injured party to civil proceedings for the remainder of the claim. Furthermore, the law provides that if there is no information presented in the criminal proceedings that warrant an entire or partial award, the injured party shall be referred to civil proceedings to pursue the claim²⁸. If the court reaches an acquittal verdict, the injured party shall be informed of the possibility of pursuing the claim within civil proceedings²⁹.

The injured party may file a separate civil lawsuit for compensation for damages (material and non-material). The initiation of civil procedures is not formally dependent on the initiation/completion of criminal proceedings.

It is considered to be more economical to determine both the criminal and the civil “side” of a subject of criminal proceedings, unless this negatively affects the efficiency and expeditiousness of proceedings (under the condition that there is a connection between the commission of the criminal offence and the claim under property law). The evidence for a criminal offence and criminal liability of the suspect/accused are usually the basis for grounding the claim under property law.

Such a claim shall be deliberated on the motion of authorised persons in criminal proceedings if this would not considerably prolong such proceedings. A compensation claim (or property claim) may pertain only to reimbursement of damage, recovery of items and annulment of a particular legal transaction (can be claimed cumulatively). Such a claim has to be of a nature that is admissible in a civil action. An example of a claim that could not be accomplished in civil action is a claim for reimbursement of damage for money given to carry out illegal aims (if the injured party gave some money to be used as bribe, and someone misled him/her)³⁰.

²⁸ See Criminal Procedure Code, Article 198

²⁹ Ibid para 3.

³⁰ See Supreme Court of Croatia, I, Kž 1944/73, 28 November 1973)

It has to be established that the claim does not fall under the statute of limitation pursuant to rules of civil law. While evaluating the statute of limitation of the claim, the eventual break of the limitation period has to be taken into account, in which case the limitation period starts again. The break of limitation period of the claim for the reimbursement of damage starts with the break of limitation period of criminal prosecution. In accordance with the Law on Obligations (Article 376), the limitation period for reimbursement of damage is 3 years (from the moment of acknowledgement of the damage and the person who caused the damage), and generally 5 years since the damage was caused.

Additionally, under property law the claim has to directly arise from the commission of the criminal offence, or be directly related to the criminal offence. Under property law the claim has to be related to the accused/suspect, and not to a third party. A claim cannot be filed against a third party even if that party is obliged to carry out some obligation instead of the accused or together with him/her. Also, a claim cannot be filed against a third party who is vicariously liable for the damage caused by the accused, for example:

- against a company which is vicariously liable for the damage caused by its employee at work or in relation with work;
- against parents who are, under certain conditions, vicariously liable for the damage caused by their children;
- against a state, the structures of which were obliged to prevent damage caused by some terroristic acts, demonstrations etc.;
- against a state which is vicariously liable for the damage caused by its officials as a result of some illegal and improper activity.

A claim under property law may not considerably prolong the proceedings. Existence of "considerable" delay of proceedings has to be established in a particular case. After taking into consideration all circumstances, the court would provide a detailed explanation with regard to the circumstances that justify considerable delay of the proceedings.

Pursuant to the provisions of criminal procedure codes the court shall render the verdict on a claim under property law if the criminal proceedings are initiated. If proceedings are discontinued, the court can decide (as part of decision regarding discontinuation of proceedings) about claim under property law if the accused and the injured party agreed upon that. Also, if the information and evidence presented during criminal proceedings constitute a justified basis for awarding a claim under property law, the court is obliged to do so, and that decision is not contrary to a decision that the accused is free of reimbursing expenses of criminal proceedings.³¹

When deciding about a claim under property law, the court cannot refuse the claim³², but has the possibility to award the claim or, if claim is not awarded, to refer the injured party to civil proceedings. If a claim under property law is awarded to the injured party, reimbursement of damage is regulated by the rules of executive proceedings.

If a verdict pronounces the accused guilty, the court may award the injured party the entire claim under property law or may award the victim part of the claim and refer her/him to civil action for the remainder. There are two conditions to be fulfilled in order to award the injured party the entire claim under property law:

- a) guilty verdict – the court render a verdict pronouncing the accused guilty;
- b) information and evidence presented provide for basis to award property claim.

³¹ See District Court in Belgrade, KŽ. 103/67, 18 October 1967)

³² See Supreme Court of Croatia, KŽ. 103/67, 18 October 1967)

If the accused is acquitted or the court renders a verdict dismissing the indictment, a claim under property law cannot be awarded. Court can award part of the claim under property law and refer the injured party to civil action if the information and evidence presented partially provide the basis for awarding the claim. If the court establishes and decides upon a certain amount (taking into consideration the circumstances of the specific criminal offence), and that amount is within the values of claim under property law, the court may not award the injured party with a smaller amount, which would be a grave breach of the rules of criminal proceedings.

If the court renders a verdict acquitting the accused of the charge or dropping the charges or if it decides to discontinue criminal proceedings, the Court is obliged to instruct the injured party that he can pursue his claim in a civil action. In case charges were dropped, the accused is not obliged to reimburse claim under property law to the injured party, not even if accused agrees with that. If the criminal proceeding is discontinued, temporary seized items will be back to the possessor, and ownership over those items can be discussed in a civil proceedings.³³ Upon the completion of the evidentiary proceedings, injured party, inter alia, can be called to present his closing arguments.

Closing arguments of the injured party are limited to analysis of the evidence confirming justifiability of the proposal for a claim under property of law, which may pertain to reimbursement of damage, recovery of items, or annulment of specific legal transaction.

3.2. RELATIONSHIP BETWEEN CONFISCATION OF ILLEGALLY ACQUIRED MATERIAL GAIN AND COMPENSATION

Criminal legislation in BiH provides for the possibility to confiscate material acquired through illegal means and provides for procedures for temporary and permanent seizure of property gained through perpetration of a criminal offence. Article 110 of the BiH Criminal Code³⁴ sets the basis for confiscation of proceeds of crime, stipulating that: "*Nobody is allowed to retain material gain acquired by the perpetration of a criminal offence.*" Material gain shall be confiscated by the court's decision establishing perpetration of criminal offence³⁵.

The criminal code also provides for the opportunity for the court to order confiscation of material gain for which the prosecutor provides sufficient evidence that there is reasonable suspicion that it was acquired through execution of specific criminal offences (chapters XVII, XVIII, XIX, XXI, XXI A and XXII – that includes trafficking in human beings), and the accused person does not provide evidence to prove that the material gain was acquired legally³⁶.

All money, valuable objects and any other material gain acquired through perpetration of a criminal offence shall be confiscated from the perpetrator. If confiscation is not feasible the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain. Material gain acquired by perpetration of a criminal offence may be confiscated from the persons to whom it has been transferred either without compensation or with a compensation which does not correspond to the real value, if the persons knew or should have known that the material gain had been acquired through perpetration of a criminal offence³⁷. If proceeds of the crime are connected to legitimate property, such property shall be liable for confiscation but should not exceed the assessed value of the connected

³³ See District Court in Belgrade, Kž. 199/96)

³⁴ Including corresponding articles in entity criminal codes and criminal code of BD

³⁵ Article 110 para 2

³⁶ Article 110 a CC BiH

³⁷ Article 111 CC BiH – Manner of confiscation

property. This rule is also applicable to income and other benefits, property from commission of the criminal offence that has been converted, or connected property.

The Criminal code also regulates the relationship between confiscation and protection of the injured party. Article 112 of Criminal Code of Bosnia and Herzegovina reads:

"1) If criminal procedure has resulted in awarding property claims to the injured party, the court shall order the confiscation of material gain if it exceeds the awarded property claim of the injured party.

(2) The injured party who has been directed to initiate civil litigation in the course of criminal proceedings regarding his property claim, may demand that he be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day when the decision by which he has been directed to litigate took effect and if he demands to be compensated from the confiscated value within three months from the day when his claim was legally established.

(3) An injured party who did not report a property claim during the course of a criminal proceedings may demand compensation from the confiscated value, if he has begun litigating his claims within three months from the day when he found out about the judgement which confiscates a material gain, but no longer than within two years from the day when the decision on the confiscation of material gain took effect, or if within three months from the day when the decision by which his claim was established he demands compensation from the confiscated value."

Provisions of this article determine the relationship between confiscation of property illegally obtained through commission of a criminal offence and a property claim from the injured party. The aim of such provisions is to protect the interests of the injured party. In cases where a person is injured by the commission of criminal offence, the court shall pronounce confiscation of illegally obtained material gain only if it did not award a property claim or if the material gain is higher than the property claim. In this regard, a property claim has supremacy over the application of confiscation of illegally obtained material gain.

Paragraph 2 of this Article regulates the rights of injured parties that submitted a property claim in criminal proceedings, were totally or partially referred to civil proceedings, and the court pronounced confiscation of illegally acquired material gain. The injured party in such case has the right to request the amount to be paid from illegally acquired property if within the deadline of 6 months from the final and binding verdict which referred him/her to civil proceedings and if within the deadline of three months requests claim to be compensated.

Paragraph 3 of this Article stipulates the rights of injured parties who did not submit a property claim in criminal proceedings and the court pronounced confiscation of illegally acquired material gain. In such case the injured party may request awarding of claim if civil proceedings are initiated within the deadline of three months to two years from the date of the legally binding verdict.

3.3. PROVISION OF LEGAL AID TO VICTIMS OF TRAFFICKING

Despite the fact that a legal framework is in place to guarantee that victims have access to the aforementioned possibilities for compensation, the system of legal aid provision is not effective even though there are some mechanisms in place. This is because BiH has a fragmented legal and institutional system with numerous layers of governance, which is reflected in the provision of legal assistance. Despite the fact that victims of trafficking have access to free legal aid through the special agreement that local NGO Vasa Prava has with the Ministry of Security of BiH, the effectiveness of this mechanism is under question.

Practice shows that victims of trafficking, if identified, are not granted legal counselling, despite the fact that this is guaranteed under the Rulebook for Foreign Victims and Rules for Protection of Domestic Victims of Trafficking in Human Beings. The provision of legal assistance is left to the country's fragmented system of general legal aid provision.

There is no free legal aid system established at the BiH level; RS has centres for free legal aid and FBiH has established some centres at the local and cantonal level. Although these mechanisms are in theory available for VoTs, in practice they are used rarely if at all.

This has serious implications on the effectiveness of the compensation mechanisms available, and it is unsurprising that victims are rarely awarded any compensation for injuries and suffering encountered through trafficking.

Despite the fact that the Criminal Code and Criminal Procedure Codes provide for the possibility to award compensation through criminal proceedings, this rarely occurs in practice. Interestingly the court usually refers victims to civil proceeding under the assumption that the decision on property claim would further prolong criminal proceedings.³⁸

Based on research conducted on the adjudicated cases before the Court of BiH (as the only competent court before the amendments in 2013 in RS and BD), the court decided to award compensation to the victim only in one case.³⁹

There was no case in which Article 112 was applied, guaranteeing protection of the injured party and awarding compensation directly from the proceeds of the crime. Thus it is apparent that the practice has to change to fulfil international obligations with the ratification of relevant conventions.

Analysis of the trafficking cases before the courts in BiH shows that the court rarely decides upon damages compensation claims in criminal proceedings, regardless of the complexity of the claim⁴⁰. In most cases, the injured party is referred to civil proceedings; the number of filed civil lawsuits by injured parties was not officially available.

Although the CoE Convention provides for the obligation to establish a mechanism that would ensure compensation from the State through, for example, a compensation fund or alternative mechanism, BiH has not developed any alternative mechanisms apart from the procedures⁴¹ described above.

3.4. RIGHT TO COMPENSATION IN CIVIL PROCEEDINGS

Victims of trafficking in human beings have the possibility to seek compensation through regular civil proceedings. Since BiH has a fragmented legal system, a trafficked person would file a civil lawsuit for compensation of damage based on their place of residence and before a competent court. The court would base its decision on the application of the entity Law on obligations⁴².

A civil proceeding is initiated by a complaint. The complaint must contain: ⁴³

³⁸ Please see verdicts of Court of BiH K-71/05 dated 25 April 2006 where around 40 000 BAM of illegal material gain was confiscated and injured parties referred to civil proceedings and verdicts X-K-06/181 and appellate verdict No X-Kz-06/181 dated 21 April 2009 where around 280 000 BAM was confiscated and injured parties referred to civil proceedings.

³⁹ Please see verdicts of Court of BiH No: K- 76/08 dated 11 September 2009, confirmed at second instance by verdict No: Kž-61/09 dated 09 March 2010. The accused is found guilty and sentenced to five years of imprisonment. Injured party was awarded compensation in the amount of 5.000 BAM to be paid in the period of 30 days under the threat of execution. For the remaining part of property claim (victim requested 30 000 BAM) the victim was referred to civil proceedings.

⁴⁰ Please also see Verdicts of Court of BiH No S 1 3 K 010546 12 K dated 9 July 2012, X-K-09/850 dated 5 July 2010, ⁴¹ ODIHR and CoE, Review of Legislation Pertaining to Combating Trafficking in Human Beings in BiH, Opinion-Nr: 127/2009 (MA), available at: www.legislationonline.com. p. 67-68

⁴² Law on Obligations ("Official Gazette of SFRY", no. 29/78, 39/85, 45/89 and 57/89, "Official Gazette of RBiH", no. 2/92, 13/93 and 13/94 and "Official Gazette of FBiH", no. 29/03 and 42/11), which is applied as a federal law on the basis of Article IX 5 of the Constitution of the Federation of Bosnia and Herzegovina; Law on Obligations ("RS Official Gazette", no. 17/93, 3/96, 39/03 and 74/04)

⁴³ Article 53 Law on Civil Proceedings of RS and Article 53 of FBiH LCP

- grounds on which the plaintiff asserts the jurisdiction of the court;
- specified claim regarding the main matter and any subsidiary claims ("Statement of Claim");
- facts on which the plaintiff is basing the Statement of Claim;
- evidence corroborating those facts;
- value of the dispute;
- legal basis for the claim; and
- other data that must be contained in each written pleading, as is prescribed by the Law on Civil Proceedings.

With regards to the disputes for damages, basic courts in RS and municipal courts in FBiH have jurisdiction for these cases. The injured party can select the court either of his/her residence or where the criminal offence was committed⁴⁴. This may discourage victims to pursue property claim in civil proceedings, especially in small communities. In some instances, members of the victim's family are not aware that the victim has gone through exploitation and as a consequence, in order to avoid stigmatization and reliving trauma, victims choose not to report the crime or testify. Besides the formal reasons that may raise concern about the effectiveness of civil proceedings (such as free legal aid or court fees etc.) below are some of the issues to be taken into account when assessing/proposing/referring the victim to civil proceedings.

Laws on witness protection (LWP) regulate measures to provide for the protection of witnesses in criminal proceedings conducted by court or prosecutor's offices.⁴⁵ Therefore, LWPs are not applicable to the civil procedure. Under the laws on civil procedure the court can exclude the public from the trial⁴⁶. However, exclusion of the public cannot be applied to the parties, their legal representatives, attorney, interveners and Ombudsman⁴⁷.

Witness protection measures ordered by the criminal court, such as for example, removal of the accused from the courtroom (Article 10 BiH LWP⁴⁸), examination of the injured through technical means for transfer of image or sound (Article 9 BiH LWP⁴⁹), testimony behind a screen or utilizing electronic distortion of the voice or the image (Article 13 BiH LWP⁵⁰), cannot be applied in civil proceedings. As a consequence the injured party/victim will have to face the accused in civil court even if the public is excluded.

⁴⁴ Article 32 (1)(2) RS LCP (Also Article 32(1)(2) FBiH LCP):

"In the case of tort disputes, jurisdiction shall, in addition to the court of general territorial jurisdiction, also lie with the court on whose territory the harmful action was performed or in the court on whose territory the harmful consequence occurred. If the damage occurred as a result of death or bodily injury, jurisdiction shall, in addition to the court from Paragraph 1 above, also lie with the court on whose territory the plaintiff has permanent or temporary residence".

⁴⁵ Article 1 of BD, RS, FBiH and BiH LWPs

⁴⁶ Article 119(1) RS LCP and Article 119(1) FBiH LCP – *"The court may exclude the public during the whole trial or during one part of the trial if this is required in the interests of official, business or personal secret, protection of interest of minor, public order or morality".*

⁴⁷ Article 120 (1) RS LCP (Almost identical provision in Article 120 (1) FBiH LCP): *Exclusion of the public shall not apply to parties, their legal representatives, attorney, interveners and Ombudsman of Republic of Srpska. The court may allow that a trial from which the public is excluded be attended by particular official persons, as well as scientific and public workers, if that would be of interest for their service and scientific or public activity, respectively. The Court shall instruct the persons attending the trial from which the public is excluded that they are obliged to treat as a secret anything they come to know during the trial and draw their attention to the consequences of disclosing such secret.*

⁴⁸ Also Article 10 RS LWP; Article 11 FBiH LWP; Article 10 BD LWP

⁴⁹ Also Article 9 BD LWP; Article 10 FBiH LWP; Article 9 RS LWP

⁵⁰ Also Article 13 BD LWP; Article 14 FBiH LWP; Article 13 RS LWP

3.5 COURT FEES, COST OF CIVIL PROCEEDINGS AND LEGAL AID

The plaintiff is obliged to state the value of dispute in the complaint, except in those cases when that value cannot be expressed in a monetary amount.⁵¹ The court fee is calculated as a certain percentage determined on the basis of value of dispute, and this matter is regulated with laws on court fees at the cantonal, entity and state level.

Generally, each party, individually and in advance, covers the costs incurred by his/her litigation actions, including, but not limited to court costs and attorney fees.⁵² As a general rule, a party who loses a case completely is obliged to pay the costs of the opposing party.⁵³

The court may exempt from payment of litigation costs a party whose financial situation makes them unable to pay those costs without harm to the vital support of him/herself and his/her family. Exemption from payment of litigation costs covers exemption from payment of fees and the deposit for expenses of witnesses, expert witnesses, inquiries, translation and court announcements.⁵⁴

However, there is insufficient data on whether court fees and costs of proceedings affect or dissuade victims who pursue property a claim in civil proceedings. At the time of writing it was not possible to obtain information as to the number of civil law suits or civil court cases. Due to the fact that courts' administration and files do not run protocols on trafficking in human beings it was not possible to retrieve cases where a victim of trafficking submitted a civil lawsuit.

In most countries civil proceedings are rarely used for compensation of trafficking victims. Bringing a claim to civil courts can be a time-consuming, expensive and resource-intensive effort. Additionally, civil proceedings can be stressful for the victim since they create an additional burden of finding witnesses, giving statements and gathering evidence. Furthermore, in order to receive compensation from a trafficker, the victim needs to be present in the country and have identifiable assets. Moreover, if the compensation is ordered in the civil proceedings the issue of execution of judgement represents a serious obstacle to full enjoyment of rights. Thus, in many countries a civil law suit is not a realistic option.

3.6 LABOUR AND EMPLOYMENT LAW

In some countries, labour and employment law afford trafficked persons legal redress for the harm suffered. Legal remedies and compensation through labour law are, however, generally only available to individuals who have endured forced labour in formal work sectors such as agriculture, construction, or hospitality. Individuals who are victims of trafficking for sexual exploitation are usually not able to access labour law protections to obtain compensation, as many governments do not recognise prostitution as legitimate work. The existence of rights under labour law may also depend upon the individual's immigration status. In several countries in Europe, even within the European Union, undocumented workers are not entitled to remedies under labour laws because any employment contract is considered void and unenforceable.

Before bringing a claim before a labour court or employment tribunal, the individual may have to observe a number of procedural requirements. This can mean that in some countries the claimant must first attempt to resolve the issue directly with the employer through mediation or other informal processes. Also, in many countries there are strict time limits within which a claimant must initiate proceedings; the time limits are usually shorter than those for civil proceedings.

⁵¹ Article 316 of LCP FBiH and RS

⁵² Articles 383 and 384 RS LCP; Articles 383 and 384 FBiH LCP

⁵³ Article 386(1) RS LCP and Article 386(1) FBiH LCP

⁵⁴ Article 400 RS LCP and article 400 FBiH LCP

BiH labour laws regulate only legal labour relations between an employer and employee⁵⁵. In cases where there is no formal written contract and informal or illegal work is conducted it would be possible for the victim of trafficking for labour exploitation to file a civil suit to determine the existence of labour relation⁵⁶. Only after the court renders a verdict determining the existence of labour relation, the victim may file a lawsuit seeking the rights deriving from labour relation (for example unpaid wages, social security contributions etc.)⁵⁷. In practise, this means that the person would be placed in a position to provide evidence as to the existence of factual labour relation and, based on such determination, court protection would be provided but the worker would have the burden of proving the existence, actual breach of labour relation and damage. This means that in cases of irregular migration where the trafficked person's work was irregular (through use of force, threat, deceit or coercion) there may not be a basis for labour law claims. In cases where the existence of labour relation could not be established, redress would be sought through the civil code and criminal code.

3.7 STATE COMPENSATION FUND

In some countries it is possible for a trafficked person to apply for compensation from the state compensation fund. State funds are often limited to persons who have been victims of violent crime and have suffered injuries as a result. The amount of compensation may vary widely from country to country. In some countries, psychological violence might not be recognised, or moral damages may not be covered, whereas in other countries a significant amount of money may be paid for a victim's loss of opportunity of earnings.

There are many advantages of a state compensation fund. Where this opportunity exists the claimant/victim does not need to go through lengthy court proceedings, be they criminal or civil; the perpetrator is not involved in the proceedings and does not need to be informed; a conviction is not necessary; and state compensation payment is generally guaranteed and prompt.

The main disadvantage is that eligibility criteria may be restrictive, excluding some victims of trafficking from the state compensation fund. Some compensation schemes only include those victims who have suffered violence and injury and exclude, for example, trafficked persons with experiences of emotional or psychological trauma, exploitation and economic loss. Some state funds do not allow access to funds to specific groups, such as undocumented migrants and sex workers, who have been identified as engaging in illegal and immoral behaviour. Additionally, a state compensation fund is expensive to run and it can be costly for potential claimants who do not have legal assistance or legal aid support.

There are no state efforts identified to establish such a fund in BiH⁵⁸. This represents a serious obstacle, as noted in the GRETA report, to granting the right to compensation to victims of trafficking. Policy makers should consider the most effective ways to establish such a scheme, using the best practices of countries in the region and the EU, but also adapting the scheme to the national context.

⁵⁵ Article 21 and 21a FBiH Labour law (Official Gazette of FBiH No 43/99, 32/00 i 29/03) and Articles 19 and 23 RS Labour law, consolidated version (Official Gazette of RS 55/07).

⁵⁶ Article 54 of the FBiH LCP and corresponding articles of RS and BD LCP

⁵⁷ The labour legislation in BiH does not provide for definition of factual work. Pursuant to Verdict of Supreme Court of FBiH No 56 0 P 006632 08, Rev dated 23 April 2009: non possession of Decision on establishment of working relation does not necessarily lead to legal conclusion that employee did not establish working relation, nor factual work, due to lack of legal basis for existence, mean automatically that labour relation was illegally established on which basis legal protection cannot be provided.

⁵⁸ Notable effort has been made under the project "Balkan ACT Now!" through Balkan Declaration available at: http://www.bihat.ba/images/Vijesti/24.09.2013/Balkanska_deklaracija_o_suzbijanju_trgovine_ljudima_i_eksploatacije_ljudskih_bica_BOS%20lektorisana.pdf. However, elaboration of policy options for establishment of such state compensation scheme in BiH political environment and institutional, constitutional structure should be explored.

4. BEST PRACTICES IN AWARDING COMPENSATION TO VICTIMS OF TRAFFICKING

The rights of victims relating to compensation are often neglected by States when responding to trafficking in persons and victims of this crime. There are a number of possible reasons for this, including a lack of awareness among relevant actors, and a lack of information and legal assistance available to victims of trafficking with regard to their compensation rights.

In the development of an appropriate model and effective schemes, there is no state that can be said to have achieved maximum use of available measures. In identifying best practices one should bear in mind that the current state of affairs provides for no ideal model due to the different and complex nature of the systems in place.

The requirements in many States for access to and the possibility of obtaining compensation frequently diverge from the common experience of a trafficked person. In practice, common obstacles to compensation faced by victims include, among others:

- (a) lack of access to information and legal representation;
- (b) the requirement to have a regular immigration status;
- (c) the requirement to be physically present in judicial proceedings;
- (d) the requirement for an offender to be identified and either charged or convicted of a crime;
- (e) difficulties in the effective tracing and seizure of criminal assets.

Although the international basis for compensation is well defined, it is important to keep in mind that it is the implementation of these provisions in the domestic settings that may or may not create an enabling environment for victims to claim compensation.

Having the abovementioned restrictions in mind, the following chapter presents some of the practices in countries that have established more effective systems of compensation for victims of trafficking. Differences in the legal systems of the presented practices have been taken into account; effectiveness in a BiH context is not guaranteed.

4.1 ALBANIA

4.1.1 CRIMINAL PROCEEDINGS

Victims of trafficking may file a compensation claim in criminal proceedings. The victim is awarded the status of *parte civile*. Moral damages may not be claimed in the criminal proceedings but rather in separate civil proceedings. According to the Albanian Criminal Procedure Code⁵⁹ a victim may apply for prosecution of the perpetrator and compensation of damage. If the victim applies, the court grants him/her the status of civil plaintiff who can be represented by a legal councillor.

The court would decide upon the claim when deciding upon the sentence and costs or during proceedings, but also has a discretion not to decide upon the claim if it would "hinder or delay" criminal proceedings when the claim is sent to civil court to be dealt with separately. This is also the possibility if

⁵⁹ Article 58 of Albanian Criminal Procedure Code reads: "The person injured by the criminal offences or his successors have the right to ask the prosecution of the guilty and the compensation of the damage."

the evidence submitted is not sufficient for proper assessment of damage. Unlike the system established in Moldova and Ukraine, judges do not have an obligation to decide ex officio on compensation claims.

4.1.2 CIVIL PROCEEDINGS

The victim of trafficking has the right to request compensation in the civil proceeding when they have been damaged by a criminal offence. This right is also guaranteed to foreigners. The victim may seek material and non-material damage. The OSCE/ODHIR analysis provides that this system of compensation shifts the burden to victim while the outcome and enforcement of the decision may be under question.

4.1.3 LABOUR PROCEEDINGS

Albanian labour law regulates only legal labour relations between an employer and employee. If the existence of the labour relation could not be established, redress would be sought through the civil code and criminal code.

OSCE/ODHIR, in the analysis of compensation, identified some good practices in Albania. Namely, the possibility to claim profits made by a trafficker through exploitation of victim as damage; existence of a state level National Coordinator; and efforts to streamline asset recovery law and legal connection between asset confiscation and victim compensation.

4.2 BULGARIA⁶⁰

4.2.1 CRIMINAL PROCEEDINGS

Pursuant to article 84(1) of the Bulgarian Criminal Procedure Code, the victim or his/her heirs may file, in the course of court proceedings, a civil claim for compensation of damages and participate in the trial as civil claimants. A civil claim may not be lodged in the course of criminal court proceedings where it has already been lodged pursuant to the Civil Procedure Code. The prosecutor and the court have the duty to inform the victim of his/her right to file a compensation claim against the defendant. The participation of the victim as a civil claimant in the criminal proceedings is free of charge – no court fee is required. The victim can seek both moral and non-moral damages. As a civil claimant, the victim has all evidence collected by the prosecutor at his/her disposal - documents, witnesses etc. – and uses it to support her/his compensation claim.

4.2.2 CIVIL PROCEEDINGS

In the framework of the civil law system in Bulgaria, perpetrators of a crime are required to pay compensation to the victim for the inflicted damages. The victim has to file a lawsuit against the perpetrator in order to seek compensation. A trafficked person can therefore file a claim for compensation as a civil plaintiff. If the victim does not file a claim for damages in criminal proceedings, or considers that the compensation awarded does not cover the damages, the victim is entitled to claim

⁶⁰ The right to compensation for victims of human trafficking in Bulgaria, COMP.ACT PROJECT, December 2011 available at: [http://lastradainternational.org/Isidocs/Bulgaria%20-%20The%20Right%20to%20Compensation%20for%20Victims%20of%20Human%20Trafficking%20in%20Bulgaria%20\(2011\).pdf](http://lastradainternational.org/Isidocs/Bulgaria%20-%20The%20Right%20to%20Compensation%20for%20Victims%20of%20Human%20Trafficking%20in%20Bulgaria%20(2011).pdf)

compensation under the Obligations and Contracts Act to a civil court and the case follows the rules of the Civil Procedure Code.

Pursuant to the Country study on Compensation for victims of trafficking in Bulgaria⁶¹, protection of victims' rights in civil proceedings is underdeveloped; there are two main reasons for this statement. First, the initiation of civil proceedings necessitate that the victim pays a court fee amounting 4% of the compensation claimed. Second, in civil proceedings the victim alone bears the burden of collecting evidence to support her/his statements. Therefore, the option of filing a civil claim within the criminal proceedings is preferred.

4.2.3 LABOUR PROCEEDINGS

There is no Labour Court in Bulgaria which can decide on cases related to trafficking for the purpose of labour exploitation. Labour cases are decided by civil courts, under the general rules of the Civil Procedure Code, with some particularities aimed at equality of arms, for example, exemption from court fees for the employee; requirement of prompt consideration of the case, etc. A labour case is only possible if the victim had signed a labour contract, but worked, for example, for a wage lower than the minimum salary in the country. If the victim had not signed a labour contract, which most often would be the case, s/he could employ the general tort ground of Article 45 of the Obligations and Contracts Act or the unjust enrichment ground under Article 55 of the Obligations and Contracts Act.

4.2.4 COMPENSATION FUND

The Compensation Fund was established under the Crime Victims Assistance and Financial Compensation Act which has been effective since 1 January, 2007. This Act was adopted to fulfil the requirements of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, and 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. Despite the fact that the fund was assessed as positive step forward in establishing an effective system of compensation – some serious obstacles have been identified in terms of conditions for awarding compensation and access to resources by victims of trafficking.

The National Council establishes an Expert Commission to support its activities. The members of the Committee are appointed by the Minister of Justice. The Commission considers requests for financial compensation, prepares a statement of the merits of each offer and the amount of financial compensation for each case. The requests for financial compensation are considered no later than three months after of the date of their submission. Pursuant to the Compensation Act, the resources for the implementation and execution of the law are provided in the budget of the Ministry of Justice, as planned under the terms of and procedure for preparing the state budget each year.

A disadvantage is that the Compensation Act covers financial compensation only for non-moral damages. In order to claim financial compensation, the claimants have to present evidence for the costs they made i.e. all necessary documents including receipts from pharmacies, doctors' examinations, etc. It is not surprising that the majority of clients would not keep such receipts.

As for moral damages, the Act provides only for free psychological and medical help, but not for financial compensation.

⁶¹ Ibid. p.10

4.3. CROATIA

The victim may claim damages in line with the Act on Pecuniary Compensation to Victims of Criminal Offenses (hereinafter Act)⁶² that came into force on the day of Croatia's accession to the EU. The provision of Article 5 paragraph 2 of the Act stipulates that a person who has suffered severe physical injuries or severe health impairment as a consequence of a violent crime is considered a direct victim of the criminal offense. This provision means that the Act makes it possible to claim damages in cases when the victim of trafficking has suffered severe physical injuries or psychological trauma as a consequence of a criminal offense. In that sense, this Act covers all types of severe injuries as the basis for claiming the damages. Furthermore, provisions of Article 7 stipulate that the right to such compensation of damages pertains to victims who are citizens of the Republic of Croatia or who have residence in the Republic of Croatia, or to citizens of any EU member state or persons who have residence in an EU member state.

GRETA recommended that rights pursuant to this Act be accessible to victims of trafficking irrespective of their nationality or residence. Croatia argued that this GRETA recommendation⁶³ would require further amendments to the Act, which would go further than the provisions of the European Convention on the Compensation of Victims of Violent Crimes with respect to the persons authorized to request the right to compensation. The Convention regulates the right to compensation of damages to victims who are citizens of the states that are parties to this Convention and to the citizens of all Council of Europe member states who have residence in the country on whose territory the criminal offense was committed. Also, in relation to the recommended possible amendments to the Act, Croatia is planning to enact amendments to this Act at the end of 2014. A victim of a crime with elements of violence intentionally committed on Croatian territory after 1 July 2013 has the right to claim financial compensation:

- if he/she is a Croatian citizen, or a citizen of the European Union or resides in its territory
- if he/she suffered a serious personal injury or serious deterioration of health as a result of the offense
- if the offense is reported or recorded at the police or state attorney's office within six months from the date of the offense, whether the offender is known or not
- if a written application is submitted on the official form and with required documents enclosed (the form is available at each police station, state attorney's office, municipal and county courts, and in electronic form on the official website of the Ministry of Justice, Ministry of Interior, the State Attorney's Office, and municipal and county courts.

The victim may exercise his/her right to compensation for:

- the cost of medical treatment,
- loss of earnings up to the amount of kn 35,000.00,
- close blood relative of a deceased victim is entitled to compensation for loss of statutory maintenance of up to kn 70,000.00 and funeral expenses up to the amount of kn 5,000.00.

The procedure starts with filling out an official form that must be accompanied by all the required documents; the list is specified in the form. The application is submitted to the Ministry of Justice within six months from the date of the offense, and may be filed later if the victim for legitimate reasons was

⁶² Official Gazette of Republic of Croatia, No. 80/08 and 27/11

⁶³ Report submitted by the Croatian authorities on measures taken to comply with Committee of the Parties Recommendation CP(2012)3 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, Received on 29 January 2014, available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Reply_REC/CP_2014_3_RR_HRV_en.pdf

not able to submit the application before the specified period, not later than three months from the date legitimate reasons ceased. After the expiry of three years following the commission of the offense, an application may not be submitted. To get assistance in completing the application form a victim can contact an official in the police station, the state attorney's office, the municipal and county courts or make a call to the toll-free phone of the National Call Center for Victims of Crime and Misdemeanour. The Committee on compensation to crime victims shall make a decision on the merits and the amount of compensation after the procedure and no later than 60 days from receipt of the full and complete application. Payment of fees shall be made within 30 days after the victim has received a decision ordering payment of compensation.

In the case of a false report of a criminal offense the applicant shall bear criminal liability under the Criminal Code. In the case of groundless payment of fees due to the quoting of inaccurate or incomplete information in the application, or if after payment the authority determines that no criminal offense was committed, the Republic of Croatia has the right to request the return of the amount paid by the victim plus interest and procedure costs.

4.4 SLOVENIA

According to the provisions of Chapter X of the Criminal Procedure Code, a victim of a criminal offence may in the course of the criminal proceedings seek damages from the perpetrator through a compensation claim.

Such a claim is dealt with as part of the criminal procedure, provided that its consideration does not unduly prolong the procedure. The compensation claim has to be filed with the authority responsible for receiving reports on offences or with the court conducting the criminal proceedings prior to the end of the main hearing in the first instance court.

Law enforcement agencies provide information on possibilities and conditions for enjoying this right. Based on the individual request, police will issue a certificate that the offence is reported or enlisted as a criminal offence while the Ministry of Justice provide the applicant with information on possibilities and conditions for requesting monetary compensation.

In its judgment, the court may grant compensation in full or in part and may refer the victim to claim the remainder or any other damages through civil proceedings. The court may also refer the injured party to seek compensation through civil proceedings only.

The victim may request compensation within six months from the commission of the criminal offence. If the individual is prevented from submitting a request due to bodily injuries sustained, he/she would be entitled to do so within three months once the reasons for non-submission ceased to exist and within 5 years from the commission of an offence. Civil proceedings are also an option for seeking material and non-material damage for VoTs.

Additionally, victims of THB may obtain compensation in accordance with the Crime Victims Compensation Act. The application of this Act is limited only to victims of violent intentional crimes defined as "an act committed with a direct attack on life and body, with the use of force or violation of sexual integrity". GRETA in its report on Slovenia⁶⁴ stressed that while the commission of THB may

⁶⁴ Group of Experts on Action against Trafficking in Human Beings GRETA(2013)20, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia, First evaluation round, available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_20_FGR_SVN_public_en.pdf

involve such acts, this is not always the case; in particular when a person is subjected to trafficking for labour exploitation. Furthermore, Article 5 of the Act limits the scope of its application to EU nationals.

In the same Report, GRETA notes that obtaining compensation for victims of THB is very difficult in practice. Despite the previously mentioned legal possibilities to claim compensation, not a single victim of THB received compensation in 2009-2011. Furthermore, according to information provided by the Slovenian authorities, from January 2012 to August 2013 no victims of THB applied for compensation.

In Slovenia, the applicant may seek compensation regardless of whether the perpetrator is known or whether the criminal proceedings are initiated. The request is submitted to the Ministry of Justice in writing. In cases when criminal proceedings were initiated, victims have the right to file a request for confiscation of property of the perpetrator. Moreover, the "Zakon o odškodnini žrtvam kaznivih dejanj" [Act on Compensation to Crime Victims]⁶⁵ adopted in 2005 has established an overall scheme for compensation for the victims of violent criminal offences. The following damages are included: physical injury or impairment to health, suffering; loss of maintenance; medical and hospitalisation expenses; funeral expenses; damages for destruction of goods; and expenses for compensation claims.

The amount of compensation is decided by a special Commission that has been supported by Ministry of Justice. Any compensation for damages pursuant to this Act is reduced by the compensation awarded in the same case, but on a different legal basis. The Commission is composed of a presiding judge of Supreme or High court in civil law, with members coming from the prosecutor's office, health care experts, pensions and social security experts etc.

The national compensation program is financed from the Slovenian budget. The Office of State Prosecutor of Slovenia provides in its financial plan, resources for the work of Commission and payment of awarded compensations. The general legal basis for compensation for the damages suffered by the victims of criminal acts is provided by the "Obligacijski zakonik" [Code of Obligations]. The rule is that anyone who inflicts damage upon another person must compensate him/her.

4.5 THE NETHERLANDS⁶⁶

In the Netherlands the victims may seek compensation through criminal and civil court proceedings and via the Criminal Injuries Compensation Fund. In cases of migrant workers there is a possibility under the Act on Migrant Labour to allow the awarding of lost earnings to irregular migrant workers through a formula based on the minimum salary and a presumed period of six months worked.

It is possible to seek compensation for material and non-material damage through civil proceedings. However the victim bears the burden of proving the crime and the proceedings may be complicated and lengthy. The victims pay for legal assistance.

Victims of trafficking may file a compensation claim within the criminal proceedings as a person who suffered direct damages as a result of a crime. In such cases the victim is awarded the status of injured party and submits a civil claim for compensation to the criminal proceedings (art. 51f para 1 CPC)⁶⁷.

** The victim/injured party can submit a civil claim for compensation by filling in a special "joining form", in which all damages suffered need to be listed including evidence like receipts, etc. As soon as the victim*

⁶⁵ http://ec.europa.eu/civiljustice/comp_crime_victim/comp_crime_victim_sl_n_en.htm

⁶⁶ Policy paper written within the scope of „Balkans ACT Now“ project by Marjan Wijers: Compensation of victims of trafficking under international and Dutch law, 13 April 2014

⁶⁷ Ibid.

indicates that she or he wants to claim compensation, the form will be send to her or him by the Prosecutor's Office.

In cases where the court assess that the decision on the claim of the injured party poses a disproportionate burden to the criminal proceedings, it may declare the claim in whole or in part inadmissible.⁶⁸ The court has to issue a decision on the civil claim together with the judgement in the criminal case (unless the injured party has previously been declared inadmissible).

According to article 361 paragraph 1 of the CPC, the court has to decide on the injured party's claim in terms of: the admissibility of the injured party, the merits of the claim, the distribution of the expenses incurred in regard to the proceedings by the injured party and the defendant (or his or her guardian if the suspect is younger than 14 years old). If the defendant is sentenced to pay compensation to the victim/injured party, as a rule he/she will be ordered to pay the costs of the proceedings in relation to the injured party claim. In cases where the claim is declared inadmissible, the victim may seek remedy through civil proceedings.

- ***An interesting measure is provided for by the criminal legislation of the Netherlands, which can be considered the best practice since it places the burden of execution to the offender. The court has at its disposal a Criminal Compensation Order – as a form of criminal measure.***

A criminal compensation order (CCO) provides that the Court will pronounce criminal measures to convict the offender to pay the awarded amount of damages to the State for the benefit of the victim. The CCO also enables the court to substitute the order for detention if the offender fails to pay awarded damage (Art. 24c CC).

The Court can impose a criminal compensation order ex officio, even in cases when the injured party or prosecutor did not file a claim. The Court will not impose a CCO without it being apparent that the victim wishes the compensation of damages. Yet, the Court may impose a CCO in cases when the claim for compensation is not admissible for formal reasons, e.g. failure to sign the joining form during appellate procedure due to failure to submit the claim in first instance. The financial capacity of the defendant, in principle, does not play a role in determining the amount of compensation. Even in cases when there is already a judgement of the civil court, the criminal court may still impose a CCO.

- ***A major advantage of the Criminal Compensation Order is that the State is responsible for collecting the money on behalf of the victim/injured party. The Central Judicial Collection Agency (CJIB) will do so, commissioned by the prosecutor.***

In order to execute the criminal compensation order, the Central Judicial Collection Agency (CJIB) will send a payment notice to the offender. Under certain conditions it is possible for the offender to ask for payment in multiple terms. If in response to the notices the offender does not pay and no arrangement for payment is made, the CJIB will transfer the claim to a bailiff in order to seize corresponding assets of the offender.

If it appears that the offender has insufficient assets to cover the claim, the CJIB can execute the substitute detention order. This requires no new court case: the prosecutor can order this immediately. The execution of the measure of substitute detention, however, does not relieve the offender of the obligation to pay the compensation ordered (art. 36f lid 7 CC). Substitute detention can only be imposed once.

Since the entry into force of the Act on Strengthening the Position of Victims of Crime in December 2010, victims of violent crimes and sexual offences, including trafficking in human beings, can seek payment from the State if the offender was convicted and ordered to pay damages to the victim as part of the

⁶⁸ Article 361 para 3 CPC

criminal sentence, and he/she fails to pay these damages for a period of eight months after the sentence has become final.

This means that if a CCO has been imposed the State will pay the (remaining) amount to the victim if the offender has not or not fully met his/her obligation to pay within eight months after the verdict has become final. The arrangement does not apply to legal persons (Art. 36f para 6 CC). The responsibility for execution lies with the CJIB.

If the victim in the first eight months received part of the compensation sum through the CJIB or the offender, or has been (partly) compensated by the Criminal Injuries Compensation Fund, this will be taken into account in the execution of the advanced payment.

- ***Best practices include: the duty of the offender to pay compensation when awarded, when the burden of evidence lies with the public prosecutor. Criminal proceedings are usually quicker than civil proceedings. This mechanism also provides for the possibility of the court to issue longer sentence if the offence does not pay. The execution procedure is far more favourable for the victim since the State will try to collect the money from the offender and there is a possibility that the State would pay if unable to collect from the offender. Provision of legal aid is free.***

4.5.1 COMPENSATION FUND

The Criminal Injuries Compensation Fund provides a financial allowance for victims of violent crimes that have caused serious psychological or physical damage. The Fund is an independent part of the Ministry of Security and Justice. If the damages are not compensated in another way, the Fund can provide compensation through a lump sum of up to € 10,000.00 for immaterial damages and € 25,000.00 - for material damages.

Whether the offender is prosecuted or sentenced has no relevance to the basis for enjoyment of the benefit. However, if a case is dismissed or the defendant is acquitted, it might be difficult to receive compensation through the Fund due to issues pertaining to granting the status of victim. The application must be submitted within 3 years of the crime taking place, unless there are serious reasons why the victim could not submit her/his claim within that period.

The victim may appeal the decision to the Commission Criminal Injuries Compensation Fund. Normally the victim will be heard by the Commission in a special hearing. A decision is made within 6 weeks of the hearing. If the victim does not agree with the decision of the Commission, he or she can lodge an appeal at the Court of first instance. The Commission has developed categories of injuries sustained; trafficking can be placed from category 4 to 7, enabling awarding compensation from € 3,500.00 to € 8,000.00. The advantages include awarding compensation regardless of whether or not the perpetrator has been identified, the procedure is rather simple; and the victim may receive compensation even in cases of the perpetrator's acquittal.

4.6 FRANCE

Any person who claims to have suffered harm from a felony or misdemeanour may petition to become a civil party. This is possible during two stages of the criminal proceedings: either during the sentencing hearing, or, if necessary, by filing a complaint with the competent investigative judge (before the prosecution of the perpetrator(s)). The civil action does not replace the prosecution, but rather is joined to it and the procedure varies depending on the stage at which the claimant becomes a civil party. In the first option, the Code of Criminal Procedure has simplified the formalities as much as possible: the victim can become a civil party by claiming damages and/or restitution before the agent or officer of the judicial police, either by sending a fax that will arrive at least 24 hours before the beginning of the hearing, or

during the hearing itself by making a declaration that is recorded by the Court, or by submitting a legal brief. Although this procedure is specifically aimed at facilitating access to compensation for victims, in practice it may function against the victims' best interests in terms of the amount awarded.

The victim's compensation award is discussed only after the Court has reached a positive decision on the criminal case. The Court eventually orders the defendant to pay the civil party the amount that it has determined, in consideration of other factors, including equity and the financial situation of the defendant. The victim claimant's lawyers' fees may be claimed as part of the damages awarded (in conjunction with other experts' fees). Damages that may be awarded include physical or mental injury, those arising from the inability to complete everyday activities, etc. It is important to note that compensation is awarded as a total sum, resulting from all of the damages incurred. If the case is referred to the Enforcement Judge (Juge d'application des peines), he/she may order damages payments in monthly instalments, regardless of (and often without information about) the defendant's financial situation.

With regards to execution the court has two separate measures at its disposal. Firstly, one pertains to the possibility to order bail specifying the amount to secure the presence of the defendant and amount to secure compensation of the victim. If the defendant agrees, the amount may be transferred to the victim even before the verdict. In cases when this amount is higher the victims will return the difference to the accused.

The second option relates to the possibility of an Enforcement Judge (responsible for the execution of sentences) to oversee the obligation by the trafficker. If the guilty party is imprisoned, then the prison administration will open an account for the prisoner in order to manage his resources while he is imprisoned. When the guilty party has also been sentenced to pay damages to the victim, part of the account should automatically be allocated to the victim. In theory, the victim also has a claim to the guilty party's other assets, but the proceedings are complicated and dependent on assistance from the prosecutor in locating the guilty party and subsequently seizing his assets.

4.6.1 INSTITUTIONAL SCHEMES FOR COMPENSATION (CIVI AND SARVI)

The state of France has been implementing various systems aimed at guaranteeing victim compensation since the 1980s to address this prominent issue for victims of crime, regardless of the type of crime. The most recent, the *Service d'Aide au Recouvrement des Victimes d'Infractions* (SARVI) has been in force since October 2008. SARVI is open to all individuals who can invoke a final judgment that awarded him/her damages in a civil action. SARVI complements an older system, the *Commissions d'Indemnisation des Victimes d'Infractions* (CIVI), which is similar to a civil court. Victims may resort solely to the CIVI to obtain compensation, or may use CIVI as a complement to an ongoing criminal or civil action. When the CIVI is used in addition to a criminal action, the compensation procedure is more effective, as the CIVI aims to compensate the damages stemming from a criminal offense. When the CIVI is used in conjunction with a civil action, such as a case before the *Conseil des Prud'hommes*, the claimant is fully compensated because the focus of the *Conseil des Prud'hommes* is compensation through the payment of salaries that are owed to the victim because they were not previously paid in accordance with the Labour Code.

- ***Good practices in France include well-developed schemes for claiming compensation from the defendants and state. Legal aid is available. Labour law traditionally protects all forms of undocumented labour but it stays unutilized in the context of migrants since it requires sharing of information to immigration services.***
- ***Positive developments relate to provisional payment made by the state compensation scheme, while the scheme can pursue the defendant in civil proceedings. The victim is entitled to full compensation from the state and the principle for of paying substantial amounts of moral damage is accepted by courts.***

- ***Victims have a standing in criminal proceedings as civil party and have access to free legal aid. Additionally, there is a possibility to use the money paid by the defendant as bail to secure payment of damage to victims.***

4.7 UNITED KINGDOM - COMPENSATION SCHEMES

One of the main advantages of the established system in the United Kingdom is the existence of a generous state-funded scheme that pays both material and moral damages. Practice has demonstrated that the scheme has flexibility in terms of the types of damages paid to trafficked victims.

The existence of the power to order compensation orders in the criminal courts is positive especially since UK courts do not provide for the possibility of joining the proceedings as a civil claimant. Some of the positive examples include the existence of pro bono services from lawyers, and entitlements to free legal assistance in limited cases. Regarding labour exploitation it is important to note that the UK has developed national minimum wage legislation and enforcement bodies.

4.8 UNITED STATES OF AMERICA

Despite the fact that the USA represents different legal systems and orders it is important to note some of the positive solutions to enable victims of trafficking compensation to be adapted to local context and national frameworks. Those include:

- ***restitution is mandatory for all victims of violent crimes and all victims of trafficking offences regardless of whether the trafficking offence meets the definition of a crime of violence;***
- ***state compensation boards help victims with material losses without restrictions based on citizenship or legal status while emergency funding is available;***
- ***although victims are not parties to criminal proceedings they have statutory protections and rights;***
- ***duties of responsible officers including criminal justice actors towards victims are enforced in court by victims, thus guaranteeing that their rights are not disregarded.***

CONCLUDING REMARKS

Compensation to victims of trafficking represents one of the major pillars of the right to access justice. In order for criminal proceedings to provide satisfaction to victims of crime, the right to compensation has to be an inherent part of such proceedings and comprehensive compensation mechanisms have to be ensured by the state. Effective seeking of compensation is also highly dependent upon the access to other rights such as the right to free legal aid and assistance.

As presented in the Manual, international standards elaborate and provide for guidance in terms of the effect that any such mechanism at the national level should have. The main guidance is given in the CoE Convention that even goes beyond regular mechanisms and proposes that States consider establishment of a specialized fund for compensation of victims of trafficking.

Bosnia and Herzegovina has a solid legal framework for victims to seek compensation. This includes criminal and civil proceedings and to some extent even protection under labour law in cases where labour exploitation occurs. However, the effectiveness of such mechanisms is under question. Access to civil courts for awarding compensation and reluctance of courts to decide in the criminal proceedings brings to a conclusion that it is hard for victim to achieve satisfaction (be it moral or material) thus neglecting full potential of compensation to achieve restorative, punitive and preventive function in a particular legal system. Additionally, although not assessed under the scope of this Manual, the issue of foreign victims and regulation of their (migration) status and cases where the Law on Witness Protection was applied need to be carefully assessed, and adequate mechanisms to seek compensation need to be established since this situation may require disclosure of identity or reporting to migration authorities.

International standards provide for clear guidance as to the minimum standards that the state needs to ensure in order to have compliant legal, institutional and policy systems to counter trafficking in human beings. Apart from the international obligations already taken up by BiH it is also important to carefully assess the effectiveness of such compensation measures in practice. BiH is seriously lagging behind in this regard; the analysis showed that most of victims never received compensation in criminal proceedings, while civil proceedings do not have disaggregated data on cases related to compensation of damage for VoTs. Some guidance in improving this system may be found in the best practices presented in this Manual, ranging from procedural possibilities (like Criminal Compensation Order) to the establishment of a state funded or subsidized compensation fund.

Therefore in order to facilitate establishment of a more effective system of compensation it is necessary to improve the effectiveness of available compensation mechanisms in criminal and civil proceedings and explore possibilities to establish more effective schemes including a state compensation scheme.

Specifically, in relation to criminal proceedings:

- consider possible ways to decide upon compensation claim in criminal proceedings and ensure that courts provide clear guidance on how these are decided;
- if a court assesses that a decision on a compensation claim would prolong criminal proceedings, provide reasoning for such decision;
- consider the possibility of ensuring that criminal compensation orders are enforced efficiently and take priority over other payments such as monetary fines;
- ensure full application of Article 112 of the Criminal Code of BiH (and corresponding Articles in Criminal Codes of RS, FBiH and BD) that provide that a compensation claim would be enforceable from the resources confiscated;
- ensure that the burden to enforce compensation order is not on the trafficked person;
- consider enhancing the position of the victim in criminal proceedings to grant procedural rights to be represented in the court, to present evidence to support claim etc.
- ensure that free legal assistance and representation is available for all proceedings (criminal, civil, administrative or labour);
- consider introducing ex officio assessment of the property claim in order to ensure that judges properly consider the victim's request;
- consider introduction of criminal sanctions for non-payment of orders made in criminal cases;

- consider possible ways to further strengthen asset confiscation that should be linked to payment of damages;
- where appropriate, consider targeting capacity building activities for judges and prosecutors to effectively recognise and respect that rights of the victim includes compensation.

Specifically, in relation to civil proceedings:

- consider facilitating access to civil courts for victims of trafficking, especially regulating payment of legal fees;
- consider development of clear guidance on how to assess damages claim. Consider organising activities to promote establishment of consistent practice before all courts;
- ensure that undocumented workers have the same access to protection mechanisms of labour rights, in particular the right to a fair wage, compensation for injuries at work, the right to organise etc.
- consider amending legislation to ease the evidential burden of proving a work relationship with an exploitative purpose and include factual work;
- ensure that the applicant has free legal advice and assistance;
- enhance capacities of civil and labour judges to implement legal obligations in relation to compensation for victims of trafficking;
- evaluate enforcement procedure in civil and criminal cases and identify main challenges.

Specifically in relation to enforcement proceedings:

- establish and monitor coordination and communication between courts, prisons, victims and other relevant agencies;
- ensure that payment by instalments is possible;
- ensure that victims of trafficking have high priority in the list of creditors for criminal assets.

Specifically in relation to state compensation scheme:

- consider establishment of a state-funded or subsidized compensation scheme;
- consider using confiscated criminal assets to contribute to the scheme;
- develop clear criteria as to what types of crime are eligible for compensation and emphasise the application of these principles to the facts of the case rather than the technical classification of the crime;
- consider which crimes which are entitled to the state compensation scheme in order to cater for the many different manifestations of the crime of trafficking;
- ensure that all types of damages are available through the scheme for trafficked persons;
- provide clear guidance on how the damage is calculated and how these compare with claims made in civil proceedings;
- relax the type and nature of evidence required from trafficked person to prove losses;
- ensure that the deadline for submission of claim is not unreasonably short;
- consider establishment of a system of emergency and interim payments to the victim;
- establish simple, clear and accessible procedures with an independent appeal process;
- ensure that applicants receive legal aid, if necessary.

Specifically in relation to evaluation and monitoring:

- regularly evaluate and monitor all compensation mechanisms especially if they relate to VoTs;
- regularly evaluate and monitor national compensation systems in order to assess access for trafficked persons;
- regularly evaluate and monitor the execution of civil judgments and court orders in criminal proceedings to improve efficiency and speed;
- ensure that statistics gathered on trafficking criminal cases include data on compensation claims;
- consider development of policy analysis on the most effective models of compensation fund in BiH context.

ANNEX: MONITORING INDICATORS

1. Introduction

According to international standards, victims of a criminal offence (including trafficking in human beings) have a **right to compensation** and restitution for any damages they have suffered, including economic loss (such as earnings).

Pursuant to its purpose, exercising this right is essential in enabling trafficked persons to reintegrate into society and restart their lives. They should be able to exercise this right in the course of criminal and civil proceedings and also by having access to any appropriate State compensation schemes.

The importance of a State compensation scheme is even more visible in cases when other mechanisms seem not to be efficient. The right to compensation should also be enforceable when victims of trafficking cannot obtain compensation directly from the perpetrator, by allocating confiscated or seized proceeds of traffickers to compensate or pay damages to their victims or the victims of other traffickers. In countries where a State-run compensation scheme exists, the State should pay particular attention to the scope of rights, ensuring that no forms of exploitation are excluded from compensation, but also to facilitating/simplifying the process of application for payments.

Pursuant to international obligations, States should consider⁶⁹:

1. enabling victims of trafficking to remain in the country while they make a claim for compensation of damages;
2. enabling victims of trafficking effective access to a compensation claim within criminal, civil and, in some countries labour proceedings;
3. allocating confiscated or seized proceeds of traffickers for use as a first priority to compensate or pay damages to victims of trafficking;
4. establishing a State compensation fund (if one is not already in existence), which can make compensation payments to trafficked persons, whatever exploitation they have experienced.

More specifically, the UN has adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁷⁰. By this instrument, the international community recognized the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels.

In this regard, it specifies the actions that should be taken by States to ensure that victims of abuse of power and violations of human rights laws have access to redress and reparation. The remedies in question include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice and (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms.

Some of the key questions to be raised regarding the effectiveness of compensation mechanisms for victims of trafficking include:

- Is the ability of citizens of other states, who have been trafficked in your country, to be paid compensation or damages in your country (either via court proceedings or otherwise) hampered in any way, either because foreign victims of trafficking are not allowed to remain in your country while claims are considered, or because some convicted traffickers who are ordered by the courts

⁶⁹ For detailed elaboration on international standards related to compensation please see: Handbook for Judges and Prosecutors on Compensation for Victims of Trafficking in Human Beings: Paper on Bosnia and Herzegovina, Emmaus 2014

⁷⁰ Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

to pay compensation or damages fail to do so and their victims have no alternative channel from which to seek payments?

- Is the ability of citizens of your country, who have been trafficked internally, to be paid compensation or damages in your country (either via court proceedings or otherwise) hampered in any way?
- Are confiscated or seized proceeds of traffickers earmarked for use as a first priority to compensate or pay damages to victims of trafficking?
- Does your country have a State-run compensation scheme which is authorised to pay compensation to victims of trafficking, whatever form of exploitation they have experienced?⁷¹

2. Definitions

Monitoring is a continuing function that uses systematic collection of data on specific indicators to provide the main stakeholders and managers of an ongoing intervention with indications of the extent of achievement of objectives and progress in the use of allocated funds⁷². Here an indicator is defined as:

*"A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Output indicators are normally straightforward. Impact indicators may be more difficult to obtain, and it is often appropriate to rely on indirect indicators as proxies. Indicators can be either quantitative or qualitative."*⁷³

An indicator is a quantitative or qualitative variable that allows changes produced by an intervention relative to what was planned to be measured. It provides a reasonably simple and reliable basis for assessing achievement, change or performance. An indicator is preferably numerical and can be measured over time to show changes. Indicators, which are determined during the planning phase of a project, usually have the following components:

1. What is to be measured? (What is going to change?)
2. Unit of measurement to be used
3. Pre-programme status
4. Size, magnitude or dimension of intended change
5. Quality or standard of the change to be achieved
6. Target populations(s)
7. Time frame⁷⁴

3. Indicators

Below is a list of Indicators and Means of verification⁷⁵ as a starting point to assess effectiveness of compensation mechanisms within BiH. As such they can be used by either policy makers or civil society organisations to assess the effectiveness of compensation mechanisms in the country and to devise recommendations in this regard. However the list of indicators can only be used if and when appropriate monitoring – reporting mechanisms are established.

⁷¹ Directorate General Freedom, Security and Justice, Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual, October 2007

⁷² https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_10-1.pdf

⁷³ http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/3_Victims_Witnesses.pdf

⁷⁴ Ibid.

⁷⁵ Indicators are presented in Directorate General Freedom, Security and Justice, Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual, October 2007 and adapted to BiH context

1. Access to compensation or damages	
Indicator 1.	Means of verification
<p>Trafficked victims have the right to receive legal counselling and information on how to seek compensation in any procedure available (civil and criminal)</p> <p>Evidence that trafficked persons are able to exercise their rights in two specific ways:</p> <p>(1) to receive legal counselling and legal aid; AND</p> <p>(2) to receive information on how they can seek compensation or damages.</p>	<ul style="list-style-type: none"> - Increase in number of potential victims of trafficking who receive legal counselling (i.e. number of victims who received legal aid in the last calendar year in comparison to the same number two years earlier): data coming from organisations providing services to trafficked persons OR from a national lawyers' organisation; AND - Existence of materials advising victims of trafficking how they can seek compensation or damages, in a language they can understand.
Indicator 2.	Means of verification
<p>Number of trafficked victims who have filed a compensation claim in criminal and civil proceedings</p> <p>Evidence that trafficked persons are able to exercise their rights in two ways:</p> <p>(1) prosecutor gathering evidence to support injured party claim AND</p> <p>(2) suspect/accused is questioned on these circumstances</p>	<ul style="list-style-type: none"> - Increase in number of victims of trafficking who file compensation claims in criminal and civil proceedings AND Copy of one or more minutes from hearings where suspect/accused is questioned on these circumstances (criminal proceedings) - Evidence collected available in civil proceedings
Indicator 3	Means of verification
<p>Number of court judgments in criminal proceedings awarding compensation to trafficked persons</p> <p>Evidence that trafficked persons have been awarded compensation for:</p> <p>Material and non-material damage</p>	<ul style="list-style-type: none"> - Increase in number of victims of trafficking who are awarded compensation claims in criminal proceedings - Copy of one or more court judgments in the last calendar year awarding a compensation claim for material and non-material damage
Indicator 4	Means of verification
<p>Number of court judgements that confiscate or seize assets directed to compensation of victims of trafficking in criminal proceedings including foreign victims of trafficking</p> <p>Court judgments ordering the confiscation or seizure of assets of convicted traffickers and payments (compensation or damages) to victims of trafficking.</p> <p>Comparison of number of judgments and amounts confiscated in last</p>	<ul style="list-style-type: none"> - Copy of one or more court judgments in the last calendar year ordering the assets of someone convicted of trafficking to be confiscated or seized; AND - Total amount of money confiscated from criminals in the past calendar year, either as proceeds of trafficking or (if such specific information is unavailable) proceeds of crimes which included trafficking in human beings

calendar year with same period two years earlier.	
Indicator 5	Means of verification
Number of foreign victims of trafficking who received compensation or damages each year as a percentage of all foreign victims of trafficking involved in court cases as victims or witnesses. Statistics (on compensation/damages paid) compiled by the courts and by any relevant State compensation schemes.	Same as above in terms of Means of verification. NB. This does not refer to court orders that they should be paid, but requires evidence that they have already received payment.
Indicator 6	Means of verification
Payments are received routinely by victims of trafficking following the conviction of individuals responsible for trafficking or exploiting them. Number of foreign victims of trafficking who received compensation or damages each year as a percentage of all foreign victims of trafficking involved in court cases as victims or witnesses.	Statistics (on compensation/damages paid) compiled by the courts and by any relevant State compensation schemes. NB. This does not refer to court orders that they should be paid, but requires evidence that they have received payments.
Indicator 7	Means of verification
Members of the judiciary or ministries of justice and security review trafficking cases to assess whether victims of trafficking have experienced difficulties in lodging requests for compensation or damages or difficulties in getting compensation or damages actually paid, and make recommendations for changes in procedures accordingly.	Report of review and recommendations (either for changes in procedures or no change).
Indicator 8	Means of verification
Foreign victims of trafficking are allowed to remain in the country while a court criminal case or civil case application concerning compensation or damages is unresolved.	(Same as Indicator above): Statistics (on the number of foreign victims of trafficking known to have received compensation or damages each year as a percentage of all foreign victims of trafficking involved in court cases as victims or witnesses) compiled by the courts and by any relevant State compensation schemes.
2. Allocating the proceeds of traffickers	
Indicator 9	Means of verification
Decision by the courts or Ministry of Justice (or other state body, state compensation scheme) that proceeds from trafficking or assets of traffickers, which are confiscated by the State, should be reserved to compensate or pay damages to victims of trafficking	Existence of such a decision.

Indicator 10	Means of verification
Payments for compensation or damages to victims of trafficking are made and come from a fund constituted all or in part from confiscated or seized assets of traffickers (when established)	Source of payments of compensation or damages made to victims of trafficking (data provided by courts OR by lawyers representing trafficked persons).
3. Access to a State-run compensation scheme (if and when established)	
Indicator 11	Means of verification
Appropriate government officials responsible for the administration of justice confirm that anyone subjected to any form of exploitation associated with trafficking can be paid compensation out of a fund managed by the State.	Authorisation or advice issued by officials responsible for the administration of justice OR by the organisation running a State-run compensation scheme.
In States where no State-run compensation scheme currently exists which can make payments to trafficked persons, or where an existing compensation scheme can only make payments to trafficked persons subjected to certain forms of exploitation, action is taken to set up a compensation fund for victims of trafficking who are not currently entitled to compensation payments.	Decision by a competent body (such as Council of Ministers of BiH) to set up such a fund and confirmation that money is being allocated to the fund, either from confiscated or seized assets from convicted traffickers or from a regular State budget line.
Indicator 12	Means of verification
Payments are received routinely by victims of trafficking following the conviction of individuals responsible for trafficking or exploiting them.	Statistics (on the number of foreign victims of trafficking known to have received compensation or damages each year as a percentage of all foreign victims of trafficking involved in court cases as victims or witnesses) compiled by the courts and by any relevant State compensation schemes.
4. State compensation fund – if established- specific questions to be asked:	
A. Victim compensation scheme or programme in the country is established. If so:	
<input type="checkbox"/> What agency is responsible for the scheme? <input type="checkbox"/> Does it apply to victims everywhere in the country? <input type="checkbox"/> Does it apply to victims who are not nationals? <input type="checkbox"/> How is the scheme funded? <input type="checkbox"/> What are the eligibility requirements? <input type="checkbox"/> Are victims of crime generally aware of the availability of compensation? (Information and outreach programmes) <input type="checkbox"/> Is the application process simple and accessible? <input type="checkbox"/> How are the claims being processed (fairness, expeditiousness, sound decisions, impartiality, confidentiality, etc.), and by whom?	
B. Is there any statistical information or other data on the functioning of the programme, the compensation being offered, etc.?	

C. In cases of abuse of power and gross violations of international human rights law do victims have:

- Effective access to justice and means of seeking redress?
- Access to adequate, effective and prompt reparation for the harm they suffered?
- Access to relevant information concerning such mechanisms.

D. Has the State adopted appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair and effective access to justice to victims of victims of gross violations of international human rights law?

E. Has the State made available adequate, effective, prompt and appropriate remedies for victims of abuse of power and gross violations of international human rights law?

