

MONITORING AND EVALUATION OF ANTI-TRAFICKING LAWS AND POLICIES AND THEIR IMPLEMENTATION IN MONTENEGRO IN 2014 AND 2015

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WOMEN'S RIGHTS CENTER
CENTAR ZA ŽENSKA PRAVA

REPORT TITLE

**Monitoring and Evaluation of Anti-Trafficking
Laws and Policies and Their Implementation in
Montenegro in 2014 and 2015**

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Author and publisher
Women's Rights Centre
Podgorica, Montenegro

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ACRONYMS USED IN THE REPORT

BAN	Balkans ACT Now!
OFATHB	Office for Fight Against trafficking in Human BeingTrafficking Victims
CC	Criminal Code
CCP	Criminal Procedure Code
CoE	Council of Europe
CSO	Civil Society Organization
CSW	Centre for Social Work
EU	European Union
CoE Convention	Council of Europe's Convention on Action against Trafficking in Human Beings
GRETA	Council of Europe's Group of Experts on Action against Trafficking in Human Beings (established by the Council of Europe's Convention on Action against Trafficking in Human Beings, 2005).
MOI	Ministry of the Interior
NGO	Non-governmental organization
THB	Trafficking in human beings
UN	United Nations

GLOSSARY OF TERMS

Victim of trafficking	<p>This report refers to people who have been trafficked in two different ways:</p> <ul style="list-style-type: none">(i) 'possible or presumed victim' of trafficking (or of traffickers) refers to anyone who comes into contact with the authorities and for whom there are <u>reasonable grounds</u> for the competent authorities to believe the person has been trafficked, but who has not yet been formally recognized as such by the authorities;(ii) a person who has been positively or conclusively identified by the authorities as having been trafficked has the 'officially-recognized' status of a victim of trafficking, either as a result of the authorities' identification procedures or after being identified as a victim in the course of a trial. <p>The term 'victim' refers in both cases to someone who is a victim of a crime (the offence of trafficking in human beings) and is, as such, regarded by the authorities as having a particular status as a 'victim'.</p>
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INTRODUCTION

Since its foundation on 3 May 2012, the Women's Rights Center has been actively working on raising public awareness about women's human rights, including human trafficking and violence against women and children in Montenegro. Participation at the Regional project *Balkans ACT Now 2*, whose project manager is ASTRA, based in Belgrade (Serbia), and cooperation with the partner organizations in Bosnia and Hercegovina, the former Yugoslav Republic of Macedonia and the Netherlands, as well as the local partners from Montenegro, enabled us to take on the role of monitoring responses to human trafficking and measures taken by the Republic of Montenegro in terms of prevention, assistance and combating this severe form of violation of human rights. Within this project we developed cooperation with the Government's Office for Combating Trafficking in Human Beings and with the Supreme Court of Montenegro (with whom we signed a Memorandum of Cooperation on 7 March 2016).

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By monitoring developments in this area, and analyzing the position of women and the rights of trafficking victims during court proceedings, compared to the minimum standards set by the international and regional treaties and conventions, our goal is to draw attention to certain court practices. These practices result from shortcomings in domestic legislation in the area of combating human trafficking and also from the inconsistent implementation of the legal solutions available to victims, as well as the obstacles that occur due to a lack of understanding among law enforcement officials of the position of human trafficking victims during criminal investigations and court proceedings.

In the report we assessed Montenegro's responses to human trafficking, mainly in 2014-2015 in five areas:¹

- A. The law and the application of the law;
- B. Identification of trafficking victims;
- C. The protection of victims of trafficking, both nationals and foreigners;
- D. Assistance and support to victims;
- E. Compensation and legal redress for victims.

¹ In each case, we investigated whether the standards observed met those set out in a handbook on monitoring that was prepared by the Balkans ACT Now 2 project: Monitoring and Evaluation of anti-trafficking policies: A handbook for victims' advocates.

INSTITUTIONAL AND STRATEGIC FRAMEWORK

The government of Montenegro adopted a new *Strategy for Fight against Trafficking in Human Beings, 2012-2018*², as well as the Action Plans for 2012, 2013, 2014 and 2015. These documents define objectives and directions in the fight against trafficking in human beings as well as the measures for development of anti-trafficking mechanisms in public, private and civil society sectors such as strengthening skills of institutions' representatives who deal with trafficking victims, formation of the operation teams and creation of the multi-lingual questionnaires for identification of victims.

The strategy encompasses the following areas: 1. Prevention and education; 2. Identification of victims; 3. Support, protection and reintegration of victims; 4. Effective prosecution; 5. International cooperation; 6. Coordination and partnership. The action plan for the implementation of the Strategy includes set of measures which, inter alia, refer to creation and promotion of standardised rules and policies to employ in case of an abuse of position of authority by the police, specialised training sessions for institutions' representatives and creation of conditions for better witness protection. Also, these documents emphasise the obligation to provide adequate means for the efficient discharge of function by the National Co-ordinator and Office for Fight against Trafficking in Human Beings in order for these institutions to have an active role in the fight against trafficking in human beings in Montenegro.

Anti-trafficking fight has been treated in the *Action Plan for Negotiation Chapter 24* which includes a list of measures directed towards harmonisation of national legislation with the EU legacy, strengthening institutions' capacities for adequate identification and reaction in the fight against trafficking in human beings as well as strengthening capacities of the Shelter for Victims of Trafficking in Human Beings so that it could provide adequate and diverse services of protection and support.³

² <http://www.antitrafficking.gov.me/rubrike/nacionalna-strategija/89629/164499.html>

³ Measures 6.2.55 - 6.2.66 for the Action Plan for chapter 24, revised on 16th February, 2015. godine, accessed at: file:///D:/PODACI/Downloads/Akcion%20plan%20za%20Poglavlje%2024%20E2%80%93%20Pravda,%20sloboda%20i%20bezbjednost%2019%20II%2015.pdf

It is important to note that with the support of OSCE mission to Montenegro, parties to the Treaty on co-operation composed a *List of Indicators* and harmonised it with the national referral anti-trafficking mechanisms⁴, but it does not legally bind institutions which do not guarantee a unified implementation of indicators in each and every case of trafficking in human beings.

Institutional framework in the fight against trafficking in human beings includes the following institutions:

- **Office for Fight against Trafficking in Human Beings** at General Secretariat of the Government of Montenegro which co-ordinates the activities for prevention and suppression of trafficking in human beings, in co-operation with Human Resources Administration and Non-governmental organisations implements prevention and education programs for representatives of the institutions that deal with human trafficking victims, collects and organises data obtained from the Shelter for victims of THB, Police, State Prosecutor's Office and Supreme Court. In 2009, the Office started a free helpline for victims of THB which operates 24/7;
- **Police Directorate** which, within its legal authority investigates human trafficking and advises such cases to prosecution;
- **State Prosecutor's Office** which prosecutes perpetrators of THB;
- **Courts** with the competence to make decisions in the proceedings of THB cases as well as to provide court protection to victims;⁵
- **Shelter for Victims of THB** formed in 2004, provides accommodation, legal, psychosocial and medical aid to the THB victims⁶.

In 2013, The Supreme Court, VDT, Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Education, Ministry of Interior, Office for Fight against Trafficking in Human Beings, Centre for children and family support Bijelo Polje, Red Cross of Montenegro and NGO Montenegrin Women's Lobby, Women's Safe House, SOS line for women and children, victims of violence – Nikšić, SOS line for women and children, victims of violence – Podgorica, House of Hope, Institute of

⁴ Referral mechanism (national referral mechanism) is a co-operative framework via which national bodies fulfill their obligations regarding protection and promotion of human rights of human trafficking victims through co-ordination of measures in strategic partnership with civil society – a process through which a potential human trafficking victim is directed to specialised services and assisted.

⁵ To support witnesses in courts an Informer, which gives basic information on the proceedings and role of a witness, is created together with the representatives of witness support service. Also, courts provide a separate space for accommodating witnesses throughout the duration of the proceedings and a witness/victim support service in cases of trafficking in human beings, family violence and war crime. Note: taken from the Report on Implementation of the Strategy for the Judicial Reform 2007-2012, Human rights action/CeMi, July 2015, Podgorica, page 84, accessed at : [http://www.hraction.org/wp-content/uploads/izvje%C5%A1taj-kona%C4%8Dna-verzija-14.7.2015.-sa-logoima.pdf](http://www.hrraction.org/wp-content/uploads/izvje%C5%A1taj-kona%C4%8Dna-verzija-14.7.2015.-sa-logoima.pdf)

⁶ The Shelter is managed by Crnogorski zenski lobi, NGO and from 2006, their work is entirely financed by the Office for fight against THB.

Social Inclusion signed the *Treaty on Co-operation in Fighting against Trafficking in Human Beings*.⁷

Coordinating body which consists of representatives of signatories of the Treaty generally meet twice a year, but if it is necessary they organize ad hoc meetings, especially in case of possible case of trafficking in human beings which demands cooperation and coordinating actions of above stated actors.

⁷ <http://www.antitrafficking.gov.me/rubrike/sporazum-o-saradnji>

REVIEW OF STATISTICAL DATA

Like other countries in the region, Montenegro is most often characterized as a country of origin and transit of victims of trafficking in human beings, and to a lesser extent as a destination country for victims. Profiles of identified victims demonstrate that until now the victims were girls and women from Eastern Europe and other Balkan countries, including Serbia and Kosovo, who migrate to Western Europe and become the subject of trafficking in Montenegro, but there is a growing number of victims who originate from Montenegro.

The government of Montenegro invested efforts in combating trafficking in human beings, which proved to be insufficient. The official, repetitive attitude of the authorities is that organized trafficking does not exist in Montenegro, and that such cases were individual. Fight against trafficking in human beings becomes even more complicated by the fact that there is no valid data upon which to determine the scale of the problem, especially since many forms of exploitation occur in the grey economy area. Additionally, the relevant authorities have kept records based on the number of formally identified persons who were given the status of a victim, as well as based on the number of filed criminal charges for the criminal offence of trafficking, and number of perpetrators and victims who were included in those charges, or based on the number of court processed cases. Such a data proved insufficient for understanding the overall situation relating to prevalence of trafficking in human beings in the country and region.

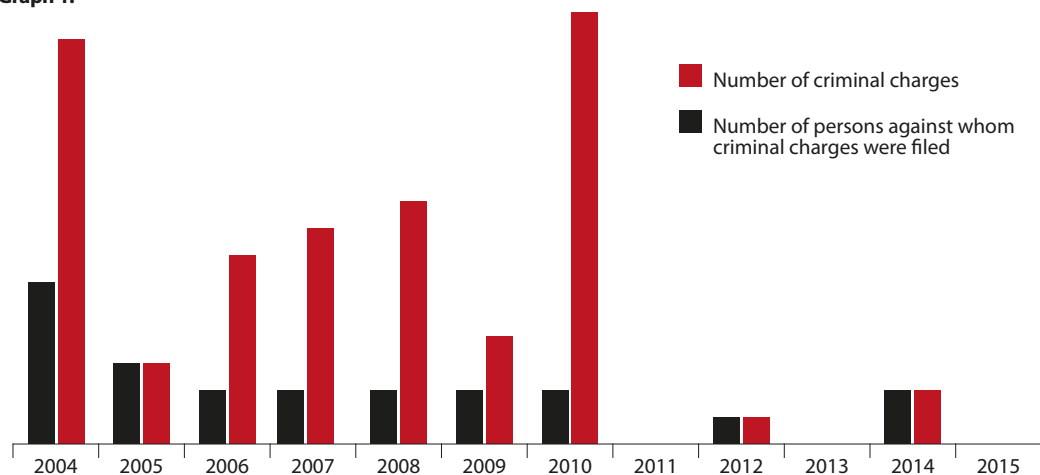
According to the the data provided by the Office for fight against trafficking in human beings obtained upon the request for free access to information⁸, in the period 01.01.2004 - 31.12.2015 the Police department has filed 21 criminal charges for the criminal offence trafficking in human beings article 444 of Criminal Code of Montenegro and 1 criminal charges for criminal offence trafficking of children for adoption purposes from the article 445 of Criminal Code of Montenegro.

⁸ Decision of the Office for fight against trafficking in human beings, no.16 – 222/16 od 08.04.2016.

Chart 1:

	Number of criminal charges	Number of persons against whom criminal charges were filed
2004	6	15
2005	3	3
2006	2	7
2007	2	8
2008	2	9
2009	2	4
2010	2	16
2011	0	0
2012	1	1
2013	0	0
2014	2	2
2015	0	0
Total	22	65

Graph 1:

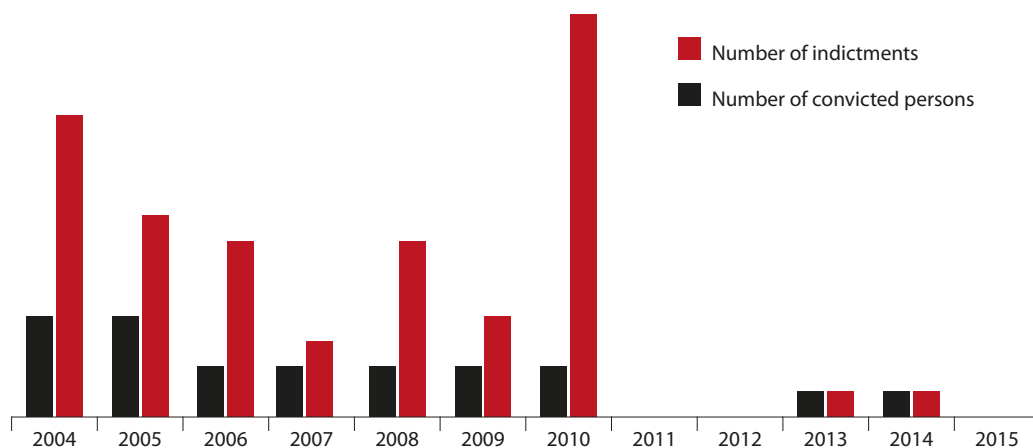


In the period from 01.01. 2004 to 31.12.2015, State Prosecutor's Office of Montenegro filed 20 charges against 59 persons for the criminal offence Trafficking in human beings from the article 444 of the Criminal Code and against 6 persons for criminal offence Trafficking of children for adoption purposes from the article 445 of CC.

Chart 2:

	Number of indictments	Number of convicted persons
2004	4	12
2005	4	8
2006	2	7
2007	2	3
2008	2	7
2009	2	4
2010	2	16
2011	0	0
2012	0	0
2013	1	1
2014	1	1
2015	0	0
Total	20	59

Graph 2:

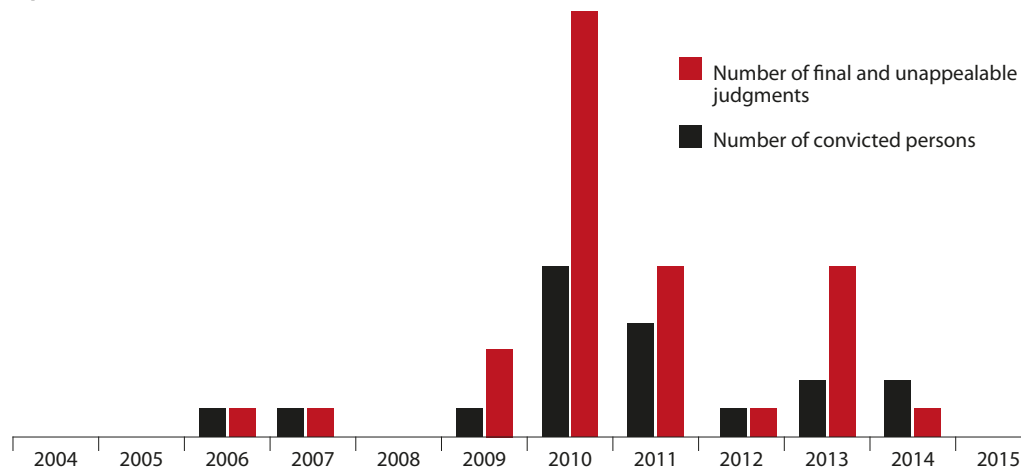


From 01.01. 2004 - 31.12.2015, relevant courts had 17 cases in progress for trafficking in human beings and 1 case related to trafficking of children for adoption purposes (total of 18). In 13 validly solved cases, 34 persons were found guilty and sentenced to prison, while in 5 cases the defendants were acquitted. In 2015 there were no newly initiated proceedings.

Table 3:

	Number of final and unappealable judgments	Number of convicted persons
2004	0	0
2005	0	0
2006	1	1
2007	1	1
2008	0	0
2009	1	3
2010	6 ⁹	15
2011	4 ¹⁰	6
2012	1	1
2013	2 ¹¹	6
2014	2 ¹²	1
2015	0	0
Ukupno	18	34

Graph 3:



In the period from 01.01.2004 to 31.12.2015, 38 victims of human trafficking

⁹ In 5 cases 15 persons are criminally convicted, while in 1 case 5 persons are acquitted (for the criminal offence trafficking of children for adoption purposes)

¹⁰ 2 judgments of acquittal against 6 persons and 2 convicting judgments also against 6 persons.

¹¹ 1 judgment of acquittal for 16 persons and 1 convicting judgment against 6 persons

¹² 1 convicting judgment against 1 person and 1 judgment of acquittal as well against 1 person

were registered¹³. All, with the exception of 8 cases, were foreign citizens with an average age between 17 and 45 (9 were minors, between 12 and 17 years). In terms of a country of origin, identified victims were coming from Serbia, Kosovo, Bosnia and Herzegovina, Montenegro, Ukraine and Bangladesh.

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¹³ Note: Since 2013 possible victims of human trafficking have been statistically shown as victims of human trafficking regardless of the qualification of criminal offence by the authorities competent for criminal prosecution.

REVIEW OF THE REPORTS OF RELEVANT INTERNATIONAL BODIES

In the *Montenegro progress report for 2015* it is concluded that: “Montenegrin authorities need to search and indentify victims of trafficking in human beings in a proactive manner (e.g. through relevant inspection services). A new police unit, which deals with cases of trafficking in human beings, needs to go through an adequate training¹⁴. Internal reorganization and better planning is necessary for the shelter for victims of trafficking in human beings, bearing in mind the small number of victims housed in it.” The report also states that, during 2016, Montenegro needs to pay special attention to **intensifying investigations conducted by intelligence operations in cases of trafficking in human beings**¹⁵

In the recommendations addressed to Montenegro in June 2013 within the scope of *Universal periodic review*¹⁶, UN Human Rights Council urged the Government to intensify activities aimed at preventing and sanctioning all forms of human trafficking, with the special emphasis on **preventing frequently arranged marriages and child labour**.

UN Committee on social, economic and cultural rights in its *Concluding observations no. 18, 19 and 20*,¹⁷ issued on 12th December 2014 related to the Implementation of international Covenant on economic, social and cultural rights in Montenegro, expressed concern about **limited capacities for implementation of the laws and victim identification, small number of court proceedings and lenient sentences given to perpetrators of human trafficking**. The Committee urges the country to ensure efficient investigations and criminal prosecution of the perpetrators, to keep updated statistical data about the number of victims, perpetrators, judgments and types of sanctions

¹⁴ The necessity to intensify special training for fight against trafficking in human beings in Montenegro was also recognised in the report of Amnesty International organization for the year 2015, available at: <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>

¹⁵ Montenegro Progress Report, pages. 18, 20 i 72, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_montenegro.pdf

¹⁶ <http://www.upr-info.org/en/review/Montenegro/Session-15---January-2013/Adoption-in-the-Plenary-session#top>

¹⁷ Concluding Observations on the Initial Report of Montenegro: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fMNE%2fCO%2f1&Lang=en

imposed, as well as to ensure access to effective remedies including the right to a fair financial compensation for suffered damages. The Committee expressed special concern for the prevalence of child labour (especially child begging) and insufficient sanctioning of arranged marriages.

With regard to arranged marriages, the Committee emphasised the need for awareness-raising campaigns about punishability and harmful consequences of such marriages and obliged the country to collect accurate data categorized by sex, age and nationality of the victims. With regard to combating child begging, the Committee recommended that the country should conduct more efficient inspection, awareness-raising campaigns among parents, collect data about the measures taken for preventing and punishing labour exploitation of children, and to provide victims with necessary help and rehabilitation.

The United Nations Committee on the Elimination of Discrimination against Women (UN CEDAW Committee) that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women in its conclusions¹⁸ raises concerns regarding the **small number of prosecutions and lenient sentences imposed to perpetrators; limited capacities of relevant professionals to detect possible victims of trafficking in human beings, including women and girls from vulnerable groups; and lack of protection of victims and compensation.** The Committee also notes that the signatory country cooperates with a very small number of NGOs in implementing the National strategy and Action plan against trafficking in human beings.

In the *Report on Montenegro's implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, GRETA (2012) it is stated that if there exists the final court sentence for the criminal offence trafficking in human beings according to the national regulations, then granting legal status of "victim of trafficking in human beings" narrows the definition of a victim. GRETA urges Montenegrin authorities to separate victim identification from the criminal procedure and to take legal measures that will provide the possibility of not imposing sentences to victims of trafficking in human beings for their participation in unlawful activities given that they were forced to do so.

Regarding the investigation of cases of trafficking in human beings, GRETA urges the Montenegrin authorities to take measures to identify gaps in the investigation procedure and the presentation of cases in court with a view to ensuring that the crimes relating to trafficking in human beings are to be investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions. The

¹⁸ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/MNE/CO/1&Lang=En

authorities should **make full use of the available measures to protect victims and to prevent intimidation during the investigation and during and after the court proceedings**¹⁹. This report indicates the similar problems referred to in this analysis, especially the problem of exercising the right to compensation and legal aid, as well as the fact that protection of victims still largely depends on activism of NGOs.

In the *Report on trafficking in human beings for 2015*, United States Department of State notes that the Government of Montenegro invests strong efforts in prevention, but did not ensure compliance with the minimum standards for elimination of trafficking in human beings in terms of law enforcement, and also failed to effectively prosecute and punish perpetrators of this offence, stating that **in judgments of acquittal against traffickers the most frequently cited reasons are not in accordance with the international standards**. (WRC translation).²⁰

¹⁹ Page 7 and 8: https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_9_trad_MNE.pdf

Note: GRETA - Group of experts for combating human trafficking is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties and consists of 15 independent and unbiased experts elected for their competences in the field of human rights, help and protection of victims, activities against THB or for their professional experience in the fields which covers this Convention.

²⁰ Trafficking in Persons Report, page.253, available at: <http://www.state.gov/j/tip/rls/tiprpt/2015/>

MONITORING REPORT

METHODOLOGY

This report was compiled with the assistance of a handbook entitled 'Monitoring and Evaluation of anti-trafficking policies: a handbook for victims' advocates'. The handbook is intended to enable civil society organizations to assess law, policies and practice against a set of indicators and minimum standards outlined in the handbook, that are based on the international and European regional standards. Following the method suggested in the Handbook, our project partner NGO ASTRA (based in Belgrade) first sought information concerning each of the sub-indicators in sections A to E of the Handbook; on this basis the authors reached conclusions on the level of compliance in Serbia with each of the 'Framework Indicators' (general standards) specified in the handbook. The various Framework Indicators used to assess the law, policies and practice are mentioned in the report below, while the more detailed sub-indicators can be found in the handbook itself.

Given that in the reporting period there were no court proceedings for criminal offence involving human trafficking that we could monitor, in the report below we included information we obtained through the analysis of 17 court decisions in human trafficking cases, which are delivered by the courts in Montenegro over a period of approximately ten years, from 2006 to 2015, as well as the judgments for criminal association and facilitating prostitution in cases categorized as being primarily about human trafficking. The cases involved 16 defendants and 13 victims²¹.

The Analysis is based on the judgments Women's Rights Center received from the courts on the basis of the Law on free access to information²² and those published on the web portal www.sudovi.me, which are possible to find based on the case file numbers²³. The analysis includes total of 11 court cases through 11 first-instance and 6 second instance court decisions.

Analyzed decisions refer to criminal offence Trafficking in human beings from

²¹ In Montenegro, a person remains a "possible" victim of trafficking until there is a final conviction for a THB offence.

²² Law on free access to information („Official gazette of Montenegro" no.44/12)

²³ The case files numbers were delivered electronically to WRC by the Office for fight against trafficking in human beings on 23rd November 2015

the article 444 paragraph 6 of the Criminal Code of Montenegro, whereas the decision K.no 2/2012 also refers to the criminal offences *Mediation in prostitution* from the article 210 paragraph 1 of CC, *Criminal association* from the article 401 of CC, *Misuse of Office* from the article 416 of CC. Judgment 392/2011 refers as well to a criminal offence *Rape* from the article 204 paragraph 3 of CC.

We were not able to obtain the remaining 6 second instance judgments through the request for free access to information, nor via web portal.²⁴

Namely, Women's Rights Center addressed the Court of Appeal of Montenegro and high courts in Podgorica and Bijelo Polje, as well as the Office for fight against trafficking in human beings²⁵, for the purpose of obtaining accurate case files numbers for trafficking in human beings, which were prosecuted in Montenegro, as well for obtaining the copies of the very judgments. Even though certain courts, such as High Court in Bijelo Polje and High Court in Podgorica, delivered copies of the sought judgments²⁶, the work on collecting information about the cases was largely complicated by the fact that case files numbers in records of courts and the Office for fight against trafficking in human beings are different.²⁷

Considering that the analysis is based solely on the individual court decisions, as such it does not provide a thorough insight into the judicial practices relating to the criminal prosecution and adjudication of the processed cases. However, a solid base can be found in the processed decisions based on which, with analytical approach to facts presented in the judgments, conclusions can be made about the treatment of victims of human trafficking in court practice in Montenegro.

²⁴ Court of Appeal delivered to WRC a call for correction of submission (V-su 3/16 from 12.2.2016), stating that they are not in possession of a final court judgment Kž.no 9/09 from 03.03.2010. for the criminal offence Trafficking in human beings, but that they have judgment number Kž 9/09 from 21.09.2009. which refers to the criminal offence Unauthorized production, possession and release into circulation of narcotic drugs (article 300 of CC). In the decision V-su no. 3/16 from 29.02.2016 it is stated that the judgment 329/11 from 23.06.2011. is available on the web page of Court of Appeal, and therefore the court is not obliged to enable access in the manner required. Browsing through their web page Women's Rights Center was not able to find the requested decision.

²⁵ Women's Rights Center in accordance with the Law on free access to information (Official gazette of Montenegro no.44/12) submitted the request for delivering anonymised judgments to the following courts: High Court in Bijelo Polje on 11.02.2016, High Court in Podgorica on 11.02.2016 and Court of Appeal of Montenegro on 12.02.2016.

²⁶ Decision of the High Court in Bijelo Polje Su.V no.605/16 od 16.02.2016. and Decision of the High Court in Podgorica Su.no.24716 od 26.02.2016.

²⁷ Differences exist concerning the judgments case files numbers: K.no.55/2008, K.no.267/2008, K.no.271/2008, K.no.261/2009 and Ks.no.3/2009, K.br. 197/2008, K.no.261/2009, K.no.35/2009, Ks.no.3/2009, Ks.no. 12/2012, K.no.2/2012 and K.no.19/2012 whether it was related to changing the jurisdiction of the courts, subsequent trials or other procedural aspects. Please note the fact that the same cases have different file numbers and that the change in numbers is not possible to monitor in the decisions published on the website of the courts, which largely complicates the work of NGOs when it comes to monitoring and observation of the court cases, which we discussed in the matter of methodology of court reporting about the cases they act upon. See the Report on Implementation of the Judicial Reform Strategy: <http://www.hracion.org/wp-content/uploads/izvje%C5%A1taj-kona%C4%8Dna-verzija-14.7.2015.-sa-logoiama.pdf>, str.101 – 104.

A. THE LAW AND THE NATIONAL LEGAL FRAMEWORK FOR CRIMINALISING TRAFFICKING IN HUMAN BEINGS

The standard that was assessed:

Domestic legislation offers a comprehensive framework to fight trafficking in human beings in line with the CoE Convention on Action against Trafficking in Human Beings or the UN Trafficking Protocol (the Trafficking Protocol).

Montenegrin legislation offers a comprehensive framework to fight trafficking in human beings (THB). Provisions to criminalize human trafficking were introduced into the Montenegro's Criminal Code²⁸ in 2002: Article 444 (Human Trafficking), Article 445 (Trafficking in Children for Adoption) and Article 446 (Submission to Slavery and Transportation of Enslaved Persons) and were subsequently amended in 2004, 2006, 2008, 2010 and 2013.

Trafficking in human beings

The criminal offence of *Human Trafficking* is defined and punished by Article 444 of the Criminal Code²⁹ (according to the version amended in August 2013) as follows:

“Anyone who by use of force or threat, deceiving or keeping in deception, abuse of power, trust, dependence, position of vulnerability of another person, dispossession of personal documents or giving or receiving payments or other undue advantage to achieve the consent of a person having control over another person commits any of the following: recruits,

²⁸ „Official Gazette of Montenegro”, no. 70/2003, 13/2004, 47/2006 and “Official Gazette of Montenegro”, no. 40/2008, 25/2010, 32/2011, 40/2013, 56/2013, 14/2015 42/2015 i 58/2015):

²⁹ Criminal Code of Montenegro, Article 210 Mediation in Prostitution („Official gazette of Montenegro”, no. 70/2003, 13/2004, 47/2006 and “Official gazette of Montenegro”, no. 40/2008, 25/2010, 32/2011, 40/2013, 56/2013, 14/2015 42/2015 i 58/2015):

- (1) Anyone who leads or incites another person to prostitution or participates in transferring of some person to other for the purpose of prostitution or who by means of public communication or other similar means promotes or advertises prostitution, shall be punished by a fine or an imprisonment sentence not exceeding one year.
- (2) If an act as of Paragraph 1 of this Article is committed against a minor, the perpetrator shall be punished by an imprisonment sentence of one to ten years.
- (3) Punishment from the Paragraph 2 of this Article will be used as well against the consumer of sexual services from a minor.

transports, transfers, surrenders, sells, buys, mediates in sale, conceals or keeps another person for the purpose of exploitation of his labour, forced labour, submission to servitude, commission of criminal activity, prostitution or other type of sexual exploitation, begging, exploitation for pornographic purposes, unlawful extraction of organs for transplantation, or for exploitation in armed conflicts shall be punished by a prison term from one to ten years”.

The Criminal Code expressly emphasizes that the victim’s consent to exploitation is irrelevant when considering whether the basic forms of this crime have occurred.³⁰

In accordance with the international standards, the Criminal Code has also introduced what is sometimes termed as “accountability of the client” for those who exploit victims of human trafficking (Paragraph 7 of Article 444 *“Anyone who uses the services of a person knowing that the person is a victim of the offence under para. 1 of this article, shall be punished by a prison term from six months to five years.”* **However, there have been no convictions based on this provision.**

In accordance with the international standards, the Criminal Code provides for more severe forms of the offence of human trafficking if an offender is someone who has previously committed a similar offence or if the offence has been committed by a group of people, or an organized criminal group. The law stipulates that a criminal offence is committed when a child (anyone under 18) is involved, even if the perpetrator did not use force or threats.

However, the Criminal Code does not recognize kidnapping and fraud as ways of committing the crime of human trafficking, nor does it provide for an aggravated version of the offence if it is committed in an especially cruel and degrading manner, even though this is required by the Council of Europe Convention on Action against Trafficking in Human Beings (2005). Article 444 of Criminal Code says that “keeping” a victim’s identity documents is one of the ways of committing a trafficking offence, while forgery is punishable by the Articles 412-415 of the Criminal Code.

However, other actions stated in the Article 20 of the Council of Europe Convention still have not been included in the Criminal Code. Therefore, it is necessary to incriminate actions such as: providing, acquiring, concealing, damaging or destroying a travel or identity document of another person,

³⁰ Article 444 (9) reads as follows: “The consent of the victim, against which the offense is committed, related to paragraph 1 to 3 of this article, does not affect the existence of the crime”.

when done intentionally and for the purpose of enabling trafficking in human beings.

In accordance with the recommendations of the expert body of the Council of Europe - GRETA, in 2013 Amendments to the Criminal Code, introduced the *definition of victim*. The victim is a person who in an unlawful act, which the law defined as a criminal act, is caused physical or mental pain or suffering, property damage or violation of human rights and freedoms. *Submission to servitude, slavery or relation similar to slavery* (both mentioned explicitly in the CoE Convention) makes part of the amended definition of the THB crime.

The exploitation for the purpose of forced labour may also include forced begging, especially when it relates to children³¹. The act can amount to a criminal offence of human trafficking if all necessary elements of that criminal offence are present in a given situation, especially if children are sold for the purpose of forced begging. Otherwise, it can be punishable under Article 219 of the CC (*Neglecting and abusing a minor*) or as a petty offence.

Article 444 of CC does not include exploitation for the purpose of **forced marriage**, but includes “entering into unlawful marriage”. Forced marriage can be punishable under different articles of the CC.

Montenegrin legislation does not include specific provision concerning **non-punishment of victims of trafficking**, except general provisions of CC, such as Article 3 of the CC that establishes the general principle that there is no criminal offence without culpability and Article 12 that envisages that an act committed under “absolute force” is not to be considered an offence. If the crime is committed under force or threat, which does not qualify under absolute force or threat, the offender can be punished more leniently, and if the offense is committed under particularly mitigating circumstances, the offender may be released from punishment.

The criminal offence of THB covers cases in which children are trafficked, but does not include trafficking in children for adoption (which is also not the subject of the UN Trafficking Protocol or the CoE Convention).

Trafficking in minors for adoption

The CC punishes trafficking in minors for adoption as a separate criminal offence under Article 445 *Trafficking in minors for adoption*. Punishment for the basic form

³¹ In this Report, the term ‘child’ refers to persons under 18 years of age.

of this offence is envisaged for anyone who, contrary to the laws in force, abducts a minor for the purpose of adoption or who adopts such a child or acts as an intermediary in such adoption. Such a criminal offence is also deemed to occur if someone buys, sells or hands over another person for adoption, or transports such a child, provides accommodation or conceals such a child. **The criminalization should be interpreted in such a way that it does not necessarily refer to a kidnapped child, since selling of children for adoption may also be carried out by the child's own parents or custodians. The envisaged punishment is imprisonment of one to five years.**

Article 446 of CC *Submission to Slavery and Transportation of Enslaved Persons* stipulates that anyone who, in breach of rules of international law, submits another person to slavery or other similar position or keeps another person in such a position, or who buys, sells, surrenders to another person or mediates in buying, selling or surrendering of such a person or who incites another person to sell his own freedom or freedom of persons he supports or cares for shall be punished by a prison term from one to ten years.

Article 210 of the Criminal Code *Mediation in prostitution* (the offence known in international law as "exploitation of the prostitution of others") makes it an offence to lead or incite another person to prostitution or to participate in transferring of some person to other for the purpose of prostitution or to promote or advertise prostitution. **However, a low penalty is prescribed for this offence – a fine or imprisonment of up to one year**, except in cases when the offence is committed against a child. **As such, this article warrants amendments, i.e introducing more severe penalties and including a reference to organized prostitution by several persons for the purpose of gaining profit, particularly because it is sometimes used for prosecuting THB cases, either when judges and prosecutors fail to recognize THB or when they cannot collect sufficient evidence to prove human trafficking.**

The *Law on Free Legal Aid*,³² in article 13, which stipulates that a victim of a criminal offence involving family violence, and also victims of human trafficking have the right to free legal aid. This includes legal advice, drafting statements and representation before the court, state prosecutor and Constitutional Court, as well as the right to be exempt from paying any costs of litigation. This right is guaranteed without prior assessment of the financial situation of a victim of human trafficking. **The law, however, does not stipulate the right of a woman to have a female lawyer to represent her, if that is what the victim wants and if it is possible, in accordance with the guideline 9 (b) of the United Nations**

³² Law on Free Legal Aid ("Official Gazette of Montenegro", no. 20/2011).

Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012).³³

The national legal framework makes it possible to trace, seize and confiscate the proceeds of trafficking-related crimes. The relevant rules are covered in a comprehensive *Law on Confiscation of the Proceeds from Crime* (2015)³⁴. The Act is applicable to crimes against humanity and other goods protected by the international law and includes trafficking in human beings and trafficking in minors for the purpose of adoption. It also refers to crimes against sexual freedom, offenses against official duty etc. The Prosecutor's Office can request immediate temporary seizure and ban on the use of property.

It is important to note other criminal offences that can be regarded as relevant to the context of trafficking in human beings: *criminal offence against freedom and bodily integrity*, *criminal offence against sexual freedom* (rape; sexual intercourse with a helpless person; sexual intercourse by abuse of position; illicit sexual acts; mediation in prostitution), *criminal offence against minors* (pandering and facilitating sexual intercourse; inducement of a minor to witness sexual acts; showing pornographic material and using children for pornography; kidnapping a minor; utilization of computer network or other means of communication in order to commit a crime against sexual freedom against a minor; neglecting and abusing a minor; family violence), as well as *criminal offence related to violation of privacy* (unauthorized collection of private data; unauthorized photographing; violation of letter secrecy and other consignments; violation of inviolability of the home).

*The Law on Compensation of Damages for Victims of Violent Crimes*³⁵ was adopted in July 2015, but its entry into force has been postponed until Montenegro's accession to the EU. Women's Rights Center has prepared amendments to the Law that introduce sustainable Victim Compensation Fund and an earlier entry into force (2019)³⁶.

³³ The Guidelines emphasize the role of gender in the legal aid context. For example, Guideline 9 encourages states to incorporate "a gender prospective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice." It also states that states should take active steps to ensure that "where possible, female lawyers are available to represent female defendants, accused and victims."

³⁴ "Official Gazette of Montenegro, No. 58/2015", of 09/10/2015.

³⁵ "Official gazette of Montenegro", no. 35/2015

³⁶ Proposal of amendments to the Law on compensation was done by a working group, which included representatives from Supreme Court of Montenegro, High Court in Podgorica, Office for fight against trafficking in human beings, Supreme state prosecutor's office and NGO Women's Rights Center. The proposal was presented at the Roundtable "Exercising the right to compensation for victims of criminal acts of violence in Montenegro" organized by Women's Rights Center on 23. June 2016, within the scope of regional project "Balkans Act (Against Crime of Trafficking) Now!". The proposal is available at WRC's web page: www.womensrightscenter.org

The Law on Foreigners, which entered into force in 2015³⁷, contains provisions that ensure the victims of THB can obtain temporary residence permit for humanitarian reasons independently of the victim's co-operation with the law enforcement authorities.

However, no residence permits were issued to THB since the law was adopted.

The Law on Witness Protection and the Criminal Procedure Code regulates protection of witness during criminal proceeding³⁸. Provisions on witness protection available according to the law include measures of physical protection of witnesses during court proceedings, measures to protect a witness' identity (concealing their identity, testifying from a separate room, changing their face and voice by means of devices for transmission of image and sound), as well as measure of excluding the public from the main hearing.

However, by the end of 2015 not a single victim of human trafficking in Montenegro had been given the status of a protected witness, nor the use of technical devices was established as the standard practice during testimonies of victims of THB who were exposed to sexual exploitation³⁹.

Legislation that further regulates the problem of human trafficking encompasses the Law on international legal assistance in criminal matters, Law on protection of personal data, Law on treatment of children in criminal proceedings and Law on the liability of legal entities for criminal offences.

³⁷ " Official gazette of Montenegro", no.56/2014"

³⁸ Official gazette of Montenegro, no. 57/2009, 49/2010, 47/2014, 2/2015 i 35/2015), Article. 120 – 125 and Article 314, regulates the protection of a witness in court and includes the possibility to conduct the hearing under pseudonym, hearing with assistance of technical devices (protective wall, voice simulators, devices for transmission of image and sound) and alike. Protection of witness outside criminal proceeding, i.e. in the beginning phases of investigation or after the termination of criminal investigation is regulated with the Law on Witness protection. ("Official gazette of Montenegro, no 65/04). The witness protection is provided with implementation of the Witness Protection Program as set of measures which are implemented with the aim of protecting the life, health, physical integrity, freedom or property of greater scope of witnesses, i.e. its relatives. Witness protection program can be applied only with their consent, for a minor with consent of its parents, and for the person partially or completely deprived of legal capacity only with the consent of the person authorized for his representation or guardian.

³⁹ Information obtained through judgments analysis

B. IDENTIFICATION OF TRAFFICKING VICTIMS

The standard that was assessed:

Civil Society Organizations supporting trafficking victims were not aware of any individuals whom they considered to have been trafficked but who were not identified as trafficking victims by the relevant ‘competent authority’.

All institutions and NGOs - signatories of the Memorandum of Cooperation⁴⁰ - may perform the initial identification of possible victims of human trafficking, or are obliged to inform the police, which is the only body permitted to formally identify a person as a *possible* or *presumed* victim. The term “identified victim of human trafficking” only relates to persons whose status of victim is confirmed by the final court judgment at a trial for human trafficking, while persons recognized by the police as victims of trafficking are given the status of “possible victim of human trafficking”. With the status of “possible victim” the person does not lose the right to aid, including the period of recovery and reflection.

According to data provided by the Office for Combating Trafficking in Human Beings, with regard to 38 victims of human trafficking registered in the period from 2004 to 2015, the largest proportion were women or girls exposed to sexual exploitation (20), while male victims (10) were exposed to labour exploitation, except one man who was also a victim of sexual exploitation. Three cases involved unlawful marriage⁴¹ and domestic labour exploitation, in which five victims were all female. Two other cases involved begging. With regard to the country of origin of the victims, those who were sexually exploited came from Montenegro (10), neighbouring countries such as Serbia, Bosnia & Herzegovina, FYR Macedonia and Kosovo (16), and from Bangladesh (4) and Ukraine (8).

⁴⁰ Memorandum of Cooperation on Fight against Trafficking in Human Beings between Supreme Court, Supreme State Prosecutor's Office, Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Education, Ministry of Interior- Police Directorate, General Secretariat of Government of Montenegro-Office for Fight Against trafficking in Human Beings, PI Center for child and family support Bijelo Polje, Red Cross Montenegro and NGOs: Montenegrin Women's Lobby, Safe Women's House, HOT line for women and children victims of violence- Niksic, HOT line for women and children victims of violence Podgorica, House of Hope, Institute for Social Inclusion was signed on October 18, 2013. The content of MoC available here: <http://www.antitrafficking.gov.me/ResourceManager/FileDownload.aspx?rId=151222&rType=2>

⁴¹ Family Law of Montenegro (Official gazette of Montenegro, no. 1/2007 i 53/2016) marriage cannot be concluded with a person under the age of 18. In exceptional cases and under special conditions prescribed by a special law, court may permit the marriage to a child older than 16, in accordance with a special law. A minor under 16 years is not allowed to marry. Law on amendments to the Criminal Code of Montenegro amended the definition of human trafficking by adding “conclusion of the illicit marriage” and “slavery or other similar position” as a form of exploitation.

The number of court proceedings relating to trafficking offences has gradually decreased over the years, as well as the number of people identified as victims of this criminal offence. This would be have been a good news if the evidence was available to confirm that rates of trafficking have declined, but this is far from being certain. Until 2013, statistical data only mentioned formally identified victims of human trafficking, while, since 2013, they have registered possible victims as well. That being said, in 2014 and 2015, five possible victims were registered, two in 2014, and three in 2015; all Roma girls aged under 18. They were identified as victims of trafficking by social workers in the government managed Centers for Social Work and with the help of the police. In one of these cases, a medical doctor reported that a girl was a victim of violence, but it was a social worker that subsequently identified her as a possible victim of human trafficking. The prosecution qualified one case as labour exploitation in the household, and the other four as unlawful marriage, which means that not a single prosecution was initiated for human trafficking, resulting in the fact that in the reporting period there were no formally identified victims of human trafficking. However, the statistics of NGO Center for Roma Initiatives (CRI) provides a different picture to that of the official statistics. CRI registered 19 cases of **child forced marriages** in the 13-month period from January 2015 to February 2016, and all of them were reported to relevant authorities (police, prosecutors, Centres for Social Work). Some of these cases were not prosecuted at all⁴². There were cases, according to CRI, when the girls who were the subject of forced marriages were sent back by the authorities to the very families that had forced them into marriage. **This sort of harmful practice is too often justified in Montenegro by references to customary law and tradition. Montenegro has legal obligations to ensure efficient prosecution, but also proper protection, long-term accommodation, financial support and educational programs for victims of forced marriages, in order to prevent their re-victimization.**

Center for Roma Initiatives conducted a national survey⁴³ about the problem of child arranged marriages in four municipalities: Nikšić, Podgorica, Berane and Ulcinj on a sample of **643** members of Roma and Egyptian population. The survey demonstrates that even 72.4% of respondents got married by the time they were 18, in most cases between 12 and 17 years of age. This data confirms hypothesis that within Roma and Egyptian ethnic communities child marriages are an established model of behaviour which causes a string of far-reaching consequences, especially for Roma and Egyptian girls and women.

The survey has shown that during the child marriage arrangements a certain amount

⁴² Statistics of NGO Center for Roma Initiatives sent electronically to WRC at 11 November 2016, which continuously monitors cases of child forced marriages in Roma community.

⁴³ Survey available at the following link: <http://crink.me/wp-includes/PDF/Ugovoreni%20brakovi.pdf>

of money is transacted, and according to the answers of respondents it ranges between 200 and 400 euros, while in 25,3% of cases the sum was higher than 4000 euros.

Child begging is widespread in Montenegrin towns, especially during the tourist season. The majority are Roma children from Serbia and Kosovo. However, not a single trafficking victim was identified among them in 2014 -2015. Not much has changed since the last study on exploitation of children in Montenegro conducted in 2010-2013 by the Office of the Ombudsman in Montenegro⁴⁴. The *Research on child begging* showed that the authorities generally have insufficient capacity to respond well to this problem and that there was a complete lack of mechanisms to reintegrate or rehabilitate children found begging. Further, no systematic records were kept of children engaged in begging. Most of the Centers for Social Work dealt with these cases by referring them to teams responsible for children with behavioral disorders and sometimes as victims of neglect and abuse. **It is unacceptable that children who are victims of neglect, exploitation and abuse are treated as offenders or children with behavioral disorders.**

When it comes to the identification of cases of trafficking for **labor exploitation**, Labor inspection plays an important role. During 2014-15, labor inspectors found violations of the Labor Act and / or the Law on Foreigners in approximately 1,000 cases⁴⁵. However, labor inspectors did not identify any possible victim of human trafficking.

The inadequacy of procedures for identifying trafficking victims remains a major cause of concern. Efforts to identify possible cases of trafficking need to be fortified, particularly by involving NGOs more effectively, i.e. NGOs which are signatories of a Memorandum of Understanding with the Anti-trafficking Office⁴⁶ who are not always familiar with police procedures for detecting possible victims (or at least not at first), but are at present provided with information only in the later stages of a case, when asked to provide accommodation and assistance.

⁴⁴ The Office of the Ombudsman in Montenegro in period from 2010-2013, conducted three studies on the exploitation of children in Montenegro. They have addressed the issues of child begging, protection of children from sexual exploitation and abuse of children via the Internet, and were carried out in the framework of the regional project entitled "Improvement of the situation of children in order to protect them from all forms of exploitation."The project was made possible by the regional network of the Office of the Ombudsman for Children of South East Europe, with the financial support of Save the Children. The studies were accessed at: http://www.ombudsman.co.me/djeca/docs/110420133_kompilacija_izvjestaja%20konacna.pdf

⁴⁵ Report of the Inspection Office for 2015 available at: <http://www.uip.gov.me/ResourceManager/FileDownload.aspx?rid=233533&rType=2&file=Izvje%C5%A1taj%20o%20radu%20Uprave%20za%20inspekcijске%20poslove%20za%202015.godinu.docx>

⁴⁶ Memorandum of Cooperation in the fight against human trafficking, which defines the operating procedures to identify and assist victims of trafficking, and which was discussed and revised in 2013. The signatories of this Memorandum are: the Supreme Court, State Prosecutor's Office, Ministry of Interior, Ministry of Health, Ministry of Labor and Social Welfare, Ministry of Education, Office for Combating Trafficking in Human Beings, the Centre for the Protection of Children and Families in Bijelo Polje, the Montenegro Red Cross and six NGOs. There is an Annex to the Memorandum in which there is a list of duties for each signatory related to prevention, identification, assistance and prosecution of trafficking cases.

C. PROTECTION OF VICTIMS OF TRAFFICKING

The standard that was assessed:

The legal framework provides victims of trafficking in human beings with protection and support, i.e. victims of transnational crime, those trafficked within a country and those returning to their country of origin, including a right of access to remedies.

Montenegrin legal framework does not provide a definition of a “victim of trafficking in human beings”, nor does it provide a clear definition of “presumed victim”, or “potential” or “suspected” victim. However, a general definition of the term “victim” was introduced in Montenegrin Criminal Code in 2013⁴⁷: “The victim is a person who, by an unlawful act which the law prescribes as a criminal offence, has been caused physical or mental pain or suffering, property damage or violation of human rights and freedoms. A clear definition of “victim of trafficking in human beings” is not provided outside the scope of criminal law either. Nevertheless, “victims of THB” can also benefit from health protection⁴⁸ and enjoy certain rights envisaged in the Law on Social and Child Protection⁴⁹. The Law uses the term “victim of THB” as a beneficiary in the system of social protection, but it is not further defined from the point of view of the trauma that a victim has experienced, only in the context of her or his social need. When it comes to the victim’s privacy protection, article 314 of CPC prescribes that from the opening of the session to the conclusion of the main hearing, the Panel may at any time, by virtue of an office or on the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or any part of it, if that is necessary for keeping information secret, protecting public order, preserving morality, **protecting the interests of a minor** or protecting the personal or family life of the accused person or the injured party.

CPC also provides special procedural rule for hearing of the minor, especially if it is damaged by a criminal offence, when it’s necessary to act cautiously in order not to have a harmful effect on psychological condition of the victim. CPC provides that

⁴⁷ Article 142, paragraph 11 of the CC

⁴⁸ Article 13 of the Law on health care (official gazette of Montenegro no. 3/2016 and 39/2016) “An asylum seeker, person given the status of a refugee, person granted additional protection and person granted with temporary protection in Montenegro, is entitled to a health care in accordance with the provision of this and special law, if otherwise not stipulated by an international agreement”.

⁴⁹ Article 4 of the Law on Social and Child Protection (Official Gazette of Montenegro no, 27/2013, 1/2015, 42/2015, 47/2015 i 56/2016)

the injured parties who are victims of a criminal offence against sexual freedom, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The instruction shall be entered in the record.

C.1 PROTECTION OF FOREIGN VICTIMS

The Law on Foreigners, which entered into force in 2015, contains specific provisions on legalization of the residence of foreigners that apply to the persons who are suspected to be victims of the criminal offence of human trafficking. Relevant authority will allow them to stay and approve residence on the territory of Montenegro for humanitarian reasons. These persons are to be given a special guarantee in terms of prohibition of forced removal for illegal entry or stay in Montenegro (Article 102). The system of humanitarian residence permits for foreign victims foresees a possibility of a three-month stay regardless of victim's willingness to cooperate with law enforcement. Above mentioned provisions refer to children as well⁵⁰. Adopting these provisions, Montenegro has fulfilled part of the obligations stemming from the article 35 of the Convention on the Rights of the Child, which refer to protection of child abduction, selling and trafficking in children. However, for the purpose of effective protection, the definition of "child" in the CC needs to be harmonized with relevant international standards which, unlike the Montenegrin law⁵¹, all define a "child" as a person who is below the age of 18.

C.2 PROTECTION OF VICTIMS WITNESSES

The standard that was assessed:

Prosecutors and judges understood and, where appropriate, implemented provisions to protect vulnerable victims and witnesses before, during and after trial, as provided by national law as well as by obligations incurred through ratification of treaties and accepted international prosecutorial and judicial good practice.

⁵⁰ In this Report, the term 'child' refers to persons under 18 years of age.

⁵¹ According to the Criminal Code of Montenegro child is a person under fourteen.

Based on the analysis of data listed in the observed first instance judgment it can be determined that **only in one case the public was excluded from the entire main hearing**⁵² due to reasons provided by the law - to protect the interests and family life of minors as injured parties in terms of the Article 314 of CPC⁵³. In two cases, minors were not even examined yet the rule of immediacy was retreated by reading their testimony that were given before the investigating judge (because at the time of the procedure the victims were located at an unknown address abroad and their presence at the main hearing could not be secured with the available legal mechanisms) with the consent of the parties, in accordance with law.⁵⁴ **In other cases, it was noted that the victims of human trafficking were examined at the hearings in the presence of defendants**, which is contrary to the obligation of the state to enforce all available measures to protect the victims and witnesses in proceedings for human trafficking, especially the ones that were to ensure the protection of victims witnesses from possible retaliation or intimidation.⁵⁵ Besides that, the presence of the defendants may have an impact in estimating the credibility of the testimony of victims.⁵⁶

There were no cases where injured parties (that may be interrogated as witnesses in accordance with article 107, paragraph 2 of CPC) used their right not to testify in accordance with article 109 of the same Law. In one case (K.no.6/2016) the minor victim refused to answer to certain questions in accordance with the article 111 of CPC⁵⁷, although they were not excused from testifying⁵⁸. There were cases where the victims changed their testimony given in the previous proceeding⁵⁹. In one of those cases, **the injured party – witness – stated in court that the differences regarding her testimonies given to the investigating judge**

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⁵² K.br.6/13

⁵³ This Article prescribes that from the opening of the session to the conclusion of the main hearing, the Panel may at any time, by virtue of an office or on the motion of the parties but always after hearing their statements, exclude the public from the entire main hearing or any part of it, if that is necessary for keeping information secret, protecting public order, preserving morality, protecting the interests of a minor or protecting the personal or family life of the accused person or the injured party. Besides that, article 347 of CPC prescribes that if a minor is attending the trial as a witness or an injured party, he/she will be removed from the courtroom as soon as his presence is no longer required.

⁵⁴ **Note:** In other cases, where victims were minors at the time of the offence, there was no exclusion of the public, because at the time of the trial and their testimony the victims were adults.

⁵⁵ (page 40) states that “unit for witness protection has so far applied proactive measures for one person in the case of human trafficking”

⁵⁶ One of the victims in the case file K.no.6/13 has previously stated to investigating judge that the testifying would subject her to ridicule, disgust and contempt in her community” which clearly indicates how the victim experiences the consequences of testifying and how it can reflect on the credibility of her testimony.

⁵⁷ “If this Law does not stipulate otherwise, the witness is entitled not to answer certain questions if it is likely that by doing so he/she would expose himself/herself or persons from the article 109 paragraph 1 of this law to serious disgrace or criminal prosecution, which the court is obliged to inform them about”.

⁵⁸ In many cases the testimonies of the victims were substantiated or confuted with transcripts of telephone conversations, obtained through secret surveillance measures. In the judgment Kž.29/2014, passed on by the appeal on the judgment K.no.6/2013, Court of Appeal of Montenegro said that “denying to testify does not question the legality of the evidence - recorded telephone conversations, given that they were obtained legally in the process of investigation and the validity of that evidence does not depend on the behaviour of the injured party who refused to answer to certain questions”:

⁵⁹ K.no.35/2009, K.no.6/2013, K.no.19/12.

and at the main trial were consequence of “threats made by the defendants, and their existence goes way back when she stayed at the defendant’s place, i.e. that she was not to say anything if the police captures her” (Judgment K.no.35/2009, page 9).

In one case, there was a confrontation between the victim and the accused⁶⁰. Implementation of the regulations on confrontation between a victim and an accused from the article 102 of CPC⁶¹ is not compatible when it comes to hearings of the victims of human trafficking in judicial proceedings⁶², because the interrogation tactics are not always adequate when it comes to hearing the victim due to their dominant feelings of fear and insecurity while the defendants are present. **It is especially suggestive that in none of the monitored cases rules of protection of witnesses from intimidation were applied or special ways of participation or hearing of protected witness despite the existence of adequate legal framework that serves as a basis for the application of special measures of hearing a victim in the proceedings.⁶³**

In the analysed judgments, six children had the status of the injured party. From the analysis of the judgments, it can be determined that the victims were exposed to sexual exploitation by the defendants who, while taking advantage and confidence of the victims, committed the criminal offense of human trafficking. In one of the analyses of a judgment, the court refers to international standards in this area stating: *“When minors are victims of a criminal offense then, according to the European convention, they are considered to be threatened by the perpetrator ‘because of their age’, even when no force, threat or other ways of perpetration were used as set out in paragraph 1 from article 444 of the CPC, and then, based on the paragraph 2, the punishability of the perpetrator is identified with the one regulated in the preceding paragraph and ranges from one to ten years.”* In accordance with

⁶⁰ Ks.no.12/12.

⁶¹ (1) The defendant can be confronted with a witness or another defendant if their statements do not concur in terms of important facts.
(2) The confronted persons will be placed in front of each other and required to repeat their statements to one another and to discuss the veracity of what they said.

⁶² Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims states that Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law unnecessary repetition of interviews during investigation, prosecution or trial, visual contact between victims and defendants, by appropriate means including the use of appropriate communication technologies; avoid giving a statement in open court; and unnecessary questioning concerning the victim’s private life.

⁶³ Criminal Procedure Code (“Official gazette of Montenegro no. 57/2009, 49/2010, 47/2014, 2/2015 and 35/2015) in the article 113, paragraphs 4 i 5 prescribe:

- (4) When a minor is heard, especially if a minor was injured by the criminal offence, special care shall be taken in order to ensure that the hearing would not have an adverse effect on the minor’s mental condition. When necessary, the minor shall be heard with assistance of a psychologist or another expert.
- (5) Injured parties who are victims of a criminal offence against sexual liberty, as well as children being examined as witnesses, shall be entitled to testify in separate premises before a judge and a court reporter, whereas the Prosecutor, accused person and defense attorney shall be given the possibility to view the course of hearing from other premises and to put questions to the witness, after having been duly instructed by the court thereon. The instruction shall be entered in the record.

the quoted Convention, a circumstance where 'any minor person gives consent to exploitation during their first meeting' cannot be accepted as an excuse of a perpetrator precisely because of their age and the fact that the process development of such personalities has not been completed.' This represents one of the positive examples in court practice when, while adjudicating, courts refer to sources from the international law and standards in this field connecting them with the circumstances of the particular case.

With the analysis of the judgments, it was determined that, in almost all cases, the defendants were in custody during the criminal proceedings which confirms the claim that the victims feel the safest when the defendants are in custody and that they usually reflect fear and anxiety in the presence of the defendants. CPC provides four reasons due to which the defendant can be kept in custody as a measure of ensuring their presence at the main trial. With the analysis of the judgments, it was not possible to establish the reasons for ordering the custody applied on every particular case.

In the previous period, in all the courts of Montenegro that act upon the criminal offense, the Service for witnesses/injured parties in cases of human trafficking, trafficking in children for adoption purposes and family violence or family community was established. Supreme Court of Montenegro also published an Information Booklet⁶⁴ that provides short information on the rights of witnesses in the process. It is stated that the victim can give a testimony with changed voice and picture, but also that if, for security reasons, the victim refuses to come to court and testify, a video conference call can be approved in certain cases. **In the Information Booklet, it is emphasized that in recent practice, this option was used more as an exception, and not a rule, which is confirmed by this report.**

However, **mentioned services did not come to life in practice**, even though this kind of support largely contributed to just, efficient and safe examining of witnesses during the trial, as well as to efficient conduct of the proceedings. According to information received from the Supreme Court, renewing the aforementioned services are planned, new contact persons are named in all courts of Montenegro, including misdemeanour courts. Supreme Court in cooperation with Women's Rights Center works on developing a new information booklet for victims of human trafficking.

⁶⁴ See more: Information booklet for witnesses/injured parties - victims of human trafficking, trafficking in children for adoption purposes and family violence, Supreme Court of Montenegro, 2011. Available at: <http://sudovi.me/osba/sluzba-za-podrsku/>

The case of S.Č.⁶⁵

The case of a Moldovan citizen, S.Č., who was assisted as a victim of trafficking in 2002, revealed the involvement in THB of Montenegrin high ranking officials. In 2015, she was convicted *in absentia* for perjury. The trial was conducted in her absence and S.Č was twice acquitted by the Basic Court in Podgorica, before the High Court assigned the case to another judge of the Basic Court, who convicted her and imposed a sentence in absentia. The parties appealed, and the High Court changed the sentence to one year's imprisonment, without the possibility of delayed execution. At the request of Human Rights Action, Women's Rights Center and Women's Safe House, Supreme State Prosecutor submitted a request for protection of legality against the mentioned judgment before The Supreme Court of Montenegro, but the Supreme Court rejected that claim as groundless⁶⁶. An international arrest warrant was issued against S.Č. The biased conduct of Montenegro's judiciary in this case has undermined the trust of trafficking victims in the country's institutions and discouraged them from seeking protection or assistance.

The Analysis of final judgment against S.Č. provided by NGO Human Rights Actions, is available at following link:

<http://www.hraction.org/wp-content/uploads/ANALYSIS-Moldovan-victim-S-C-did-not-have-a-fair-trial-HRA-WRC-WSH.pdf>

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⁶⁵ Published in 2003, a report on Montenegro by the Counter-Trafficking Regional Clearing Point provided information about this case: "Until the 'Moldovan case' erupted in December 2001, trafficking cases primarily came to the surface through police operations... In the aftermath of the 'Moldovan case', working relationships between counter-trafficking actors were eroded, and law enforcement units have not referred a single case to service providers since the case arose" (Counter-Trafficking Regional Clearing Point [Stability Pact Task Force on Trafficking in Human Beings], First Annual Report on Victims of Trafficking in South Eastern Europe. Country Report, Montenegro, 2003). The following year, a different regional monitoring report (B. Limanowska, Trafficking of Human Beings in South Eastern Europe: 2004 Focus on Prevention. UNICEF, OHCHR and OSCE/ODIHR, 2005) observed with respect to Montenegro that, "While government representatives accused NGOs of overestimating the numbers of unidentified victims of trafficking, NGOs suggested that, regardless of the MoU signed between the police and NGOs, victims were not being identified properly and in many cases trafficked people were being deported to Serbia as illegal migrants... Since the 'Moldovan case', there have been only two confirmed cases of trafficking in Montenegro: one Roma child victim that was in transit and a Ukrainian woman who has been in Montenegro for the last 5 years". A subsequent regional monitoring report noted that, "In two cases in 2004 and one case in 2003, (the now famous Moldovan case) victims were resettled in a third country" (R. Surtees, Counter-Trafficking Regional Clearing Point, Second Annual Report on Victims of Trafficking in South Eastern Europe, IOM, 2005). Amnesty International also provided a statement on this case on 21 November 2014, available at: <http://www.refworld.org/pdfid/5475931c4.pdf>.

⁶⁶ The Supreme Court Judgement KZZ br.11/15 od 22.09.2015 (Presuda Vrhovnog suda KZZ br.11/15 od 22.09.2015.)

D. ASSISTANCE AND SUPPORT FOR VICTIMS

The standards that were assessed:

The legal framework provides a comprehensive assistance framework for victims of trafficking, appropriate to their particular needs (e.g. taking into account gender, language, ethnicity and age).

Everyone who was identified as a presumed or officially-recognized victim of trafficking was offered immediate assistance and support, including emergency shelter, medical assistance, information and legal advice, appropriate to their particular needs (e.g. gender, language, ethnicity and age) and the State provided sufficient finance to pay for such assistance.

D.1 COUNSELING AND INFORMING

Providing information and help in exercising rights and interests of victims in court proceedings is one of the basic principles prescribed by articles 12 and 15 of the Council of Europe's Convention on action against trafficking in human beings as well as by article 6 of Palermo Protocol. Due to methodological limitations which in this particular analysis reflect the inability to monitor immediate treatment of courts in specific cases, it cannot be fully estimated whether in specific cases respect of above mentioned standards was ensured.

Specifically, within court proceedings, victims need to be informed about the date and place of the hearing, as well as about a possible delay of hearing; about their rights concerning damages and compensation, about legal assistance, and how to receive in a specific case a copy of judgment. As most of terminology referring to victims are included in the court proceeding the way it is regulated in CPC within the term "parties to a proceeding", some articles refer especially to the injured parties / victims and witnesses.

When it comes to Montenegrin framework, article 64 of CPC contains guarantees that the injured party can exercise his/her rights in a proceeding through an authorised person, whereas article 112 of CPC prescribes a possibility that rules which apply to a hearing of protected witness can as well be applied to the injured party i.e. victims in the proceeding.

D.2 MATERIAL SUPPORT AND ACCOMMODATION

The initial assistance and support to possible victims is unconditional and does not depend on their willingness to press charges or testify against any perpetrator/suspected criminal. Article 4 of the Law on Social and Child Protection⁶⁷ recognizes that victims of THB are entitled to benefit from social protection services without having to prove that they are in social need.

THB victims are entitled to material assistance under the same conditions and following the same procedure as other socially vulnerable citizens (Article 21). Once the documentation concerning their case is submitted, the victims may start receiving material assistance within a month. However, it routinely takes longer than this to collect all the necessary documentation to prove an individual's need for (and right to) material assistance. Primarily trafficking victims usually need to obtain a new identification document, birth certificate, residence certificate, etc. Further, what is called 'continuous material assistance' can actually last for only nine months of the year⁶⁸.

There is one shelter for victims of human trafficking that is supported by the state and run by the NGO Montenegrin Women's Lobby. Accommodation capacity is for up to 10 persons (women, men and children) and there is always a social worker. This shelter is a semi-open type, so, for example, the shelter staff exchange information with the police whenever the victim leaves the shelter. Employees in the shelter accompany victims to and from any meetings required by institutions investigating the case or preparing for a trial.

⁶⁷ Official Gazette of Montenegro no, 27/2013, 1/2015, 42/2015, 47/2015 i 56/2016

⁶⁸ Article 29 of the Social Protection Law

D.3 REHABILITATION AND REINTEGRATION

The huge problem remains rehabilitation and reintegration of victims, due to very limited resources for these programs⁶⁹. Since most of these victims come from vulnerable groups with low levels of education, there is little chance of them finding a job when they leave shelters.

Five Roma girls under 18 years of age, were living in the shelter in 2014 and 2015. However, their cases are not categorized as crimes of human trafficking by the State Prosecution, but one case was regarded as labour exploitation in a private household and the four others as cases of entering unlawful marriage (i.e. marriages contracted when the girls were, by Montenegrin law, too young). One victim was returned to Kosovo in cooperation with the police of Kosovo. According to information obtained by NGO Montenegrin Women's Lobby, her return was voluntary. The other three were staying with relatives because their parents were apparently complicit in the illegal marriage. According to information obtain by the Montenegrin Women Lobby, families in which they were located the girls were under close supervision of the Centers for Social Work who are also involved in the development of individual plans, with the aim of their rehabilitation and integration into society. **However, according to information obtained from NGOs⁷⁰, in practice, little has been done by the Centers for Social Work to support the girls' reintegration or prevent them from being re-victimized by family members.**

⁶⁹ Information obtained through communication of WRC with the shelter staff.

⁷⁰ Information from Center for Roma Initiatives , community based NGO from Niksic

E. COMPENSATION AND LEGAL REDRESS FOR VICTIMS

E.1 ACCESS TO LEGAL AID

The standard that was assessed:

Victims of trafficking (both presumed and officially-recognized) were offered and able to access appropriate legal advice.

Particularly important for ensuring access to justice to trafficking victims is **The data collected by the Women's Rights Center through Montenegro's Law on Free Access to Information⁷¹ are particularly alarming because, since the entry into force of this law in 2011, not one victim of human trafficking is known to have exercised her (or his) right to free legal aid.**

According to the information that WRC obtained from the Montenegrin courts, so far **no victims (potential or officially identified) have benefited from free legal aid.**

The he state should provide specialized free legal aid to possible trafficking victims. This would secure better protection for them, make it much more likely that their rights (as victims of crime) are respected, and also contribute to their feeling safe and being able to trust the various institutions involved in the criminal justice system.

E.2 COMPENSATION

Access to compensation is evidently linked closely to trafficking victims' right to information and free legal aid. In accordance with the domestic legislation on criminal procedure, a victim of human trafficking can submit a request to

⁷¹ The responses to the Women's Rights Center's requests to free access to information by: the Supreme Court of Montenegro Su V.br.254 / 16, the Basic Court in Kotoru Posl.br.V-Su.256 / 2016, the Basic Court of Kolasin Su.br.123 / 16, the Basic Court in Berane VSU br.324716, the Basic Court in Danilovgrad I-Su no.34 / 16, the Basic Court in Herceg Novi I-1 Su 24/16, the Basic Court in Pljevlja Su.br.63 / 2016 (Odgovori na zahtjev Centra za ženska prava za slobodni pristup informacijama: Vrhovnog suda Crne Gore Su V.br.254/16, Osnovnog suda u Kotoru Posl.br.V-Su.256/2016, Osnovnog suda u Kolašinu Su.br.123/16, Osnovnog suda u Beranama VSu br.324716, Osnovnog suda u Danilovgradu I-Su br.34/16, Osnovnog suda uherceg novom I-1 Su 24/16, Osnovnog suda Pljevlja V Su.br.63/2016)

compensation for material and immaterial damages in a criminal proceeding. The procedure for exercising the right on property claim which is a result of committed criminal offence is regulated by the Criminal Procedure Code⁷², which prescribes that proposal for realizing that request can be submitted to the state prosecutor, i.e. court before which criminal proceeding is conducted, at latest by the end of the main hearing before the first instance court. A person authorized to submit this proposal is obliged to mark their proposal and submit evidence (Article 236, paragraph 1-3 of CPC). The authorized person can also withdraw the proposal for exercising the right on property claim and exercise it in the civil proceeding in which case, they have no right to re-submit it in a criminal proceeding (Article 237, paragraph 1).

The court conducting the proceeding is also obliged to collect evidence necessary for deciding upon request before such proposal has been submitted, as well as to examine the defendant on the facts stated in the proposal and examine the circumstances that are of importance for determining the property claim. In case determination of this request significantly prolongs the criminal proceeding, the court shall restrain itself to collecting the data that would either not be possible or extremely difficult to determine later (Article 238). Additionally, the court may refer the injured party to exercise property claim in a civil proceeding⁷³. Besides, in the conviction which renders the offender guilty, the court can instruct the injured party to realise the property claim in the litigation, entirely or in the part which is not awarded in the criminal proceeding, especially if determined facts in criminal proceeding do not provide reliable basis for complete, nor partial award, and their determination would lead to considerable delay of the proceeding. (Article. 239, paragraph 2).

However, the provisions of the Criminal Procedure Code concerning compensation⁷⁴ would make it difficult or impossible for a trafficking victim to obtain compensation in practice. The analyzed data from the first instance judgments show that the injured parties, in all cases where the legal preconditions were met, were referred to obtain the property claim through a lawsuit. In three cases (Ks.no. 12/2, K.no. 55/2008 and Ks.no. 3/09) the injured parties did not join the criminal prosecution during the proceeding, did not file property claims, while in the case K. no. 197/2008 the injured party, while testifying in front of the investigating judge (whose testimony was read at the main trial) was a minor and therefore all the requests were declared by her father who joined the criminal prosecution of the defendants but did not seek damages.

⁷² ("Službeni list CG", br. 57/2009, 49/2010, 47/2014, 2/2015 i 35/2015), čl. 234 – 245.

⁷³ In accordance with the provisions of the Law on Obligations ('Official Gazette Montenegro', no.47/2008 and 4/2011)
Note: In civil proceedings, the court is bound to a final judgment of the court where the defendant is found guilty.

⁷⁴ "Official Gazette of Montenegro", br. 57/2009, 49/2010, 47/2014, 2/2015 i 35/2015), čl. 234 – 245.

Victims that submitted property claims were referred to the civil proceedings in all cases because, among other things, the exact worth has not been determined. Additionally, during the proceedings, the court stated that *'the data from the criminal proceeding does not represent a reliable basis for the adjudication on the value of the property claim of the injured parties, where the basis is indisputable, and considering the ambiguity of that value it would only lead to obstruction of proceedings'* (Judgment 261/2009, page 43) or because *'the facts established in the criminal proceeding did not provide a reliable basis for partial judgment and their establishment would only lead to a significant obstruction of proceedings'* (Judgment K.no. 19/2012, page 26).

Implementation of CPC provisions about the the obligation of the injured party to mark their request and submit evidence has proven to be an issue in practice (which is understandable given the psychological state of the victim), as well as courts obligation to collect data necessary to make a decision upon request even before such proposal has been submitted.

WRC's analysis of trafficking-related judgments shows that in practice courts "relied on" the evidence collected by the state prosecution during the proceeding, i.e. they did not act proactively to determine the facts relevant to uphold a victim's right to compensation. Instead, they routinely failed to issue a ruling on compensation and instead referred victims to seek compensation in separate (civil) proceedings. In these circumstances it is not surprising that **no THB victim have ever been awarded compensation by a Montenegrin court**⁷⁵. To exercise their right to obtain compensation, victims need to be provided with accurate information on how to go about it, and also need free legal aid to get professional legal advice and assistance.

Montenegro has not yet provided an adequate implementation of the legal provisions regarding confiscation of property of persons convicted of crimes related to human trafficking since the proposal for confiscation of property acquired through the criminal offense of human trafficking was set by the prosecution only in the 'Afrodita' case. In its 2012 report, GRETA reminded Montenegrin authorities that "confiscation of property acquired through criminal offence, as a precondition has to have detection, identification and confiscation of illegal property during criminal investigation as well as adequate procedure for execution of the mentioned, which is the basis for enhancing the effect of penalty, as well as ensuring compensation to victim" (page 38 of the Report).

Government should establish a Compensation Fund for trafficking victims.

⁷⁵ WRC obtained the information from Montenegrin courts, for the period 2010-2015, according to the Law on Free Access to Information.

This has been recommended for many years by NGOs and expert bodies dealing with protection of human rights of THB victims.

E.3 PENAL POLICY

Statistical analysis processed 17 judgments most of which were related to the incrimination from article 444, paragraph 6 – which prescribes serious type of criminal offence when one of two qualifying circumstances is achieved – the first one being repetition of the criminal offence and the second one exercising criminal offence in an organized manner and by several persons.⁷⁶

The length of first-instance sentences in relation to the period of time from indictment to reaching the sentence was analyzed. According to this criterion, in 9 of 11 cases, trial lasted more than two years,⁷⁷ while in the other two cases it lasted less than a year.⁷⁸ Maximal length of the proceedings of the cases in question was 7 years and 7 months,⁷⁹ while minimal length amounted to 4 months, 21 days.⁸⁰

Data obtained by the statistical analysis of the first-instance sentences showed that 9 first-instance cases of trafficking in human beings ended with a conviction, while in the other two, the accused were acquitted – in the first one, as it was stated in the explanation of the sentence, that was because *“the evidence presented at the trial did not provide a reliable conclusion that the accused committed the criminal offence they were charged with”* (Judgment K. no.35/2009, page 13), in the second one *“because it wasn’t proved that the accused committed the criminal offence they were charged with”* (Judgment K. no.55/08, page 2). In total, 33 persons were convicted, while 6 were acquitted.⁸¹

When it comes to the decisions of the Court of Appeal, in 3 cases, both the appeals of the state prosecutor and the accused were declined and the sentences of first-instance courts were confirmed, while in 3 cases first-instance decisions were overturned (in cases Kž.no. 470/2008 and Kž.no. 392/11 only when it comes to the penalty, while in the case Kž.no.224/2010 the Court of Appeal overturned the

⁷⁶ Criminal Code of Montenegro in Article 444, paragraph 6 prescribes: “Those who commit criminal offence from items 1-3 of this article or, the offence is committed in an organised manner by several persons, shall be imposed a prison sentence of at least 10 years”

⁷⁷ K.no.35/2009, K.no.19/2012, Ks.no.2/2012, K.no.271/2008, K.no.267/2007, Ks.no.3/2009 and K.no.55/2008.

⁷⁸ K.no.6/2013 i K.no. 261/2009.

⁷⁹ K. no. 35/2009

⁸⁰ K.no.261/2009

⁸¹ In one decision (Ks.no.2/2012), the accused were found guilty of the criminal offence of mediating in prostitution and criminal association, while they were acquitted of trafficking in human beings and abuse of position of authority.

acquittal of the Higher Court in Bijelo Polje and pronounced the accused guilty of the criminal offence of trafficking in human beings ⁸²).

Average sentence length for the criminal offence of trafficking in human beings is 4.1 year, but in most cases (9) the length of the sentence is between 3 and 6 years which indicates that in practice, low sentences have been imposed, although, they are in the legally prescribed span. However, it has been noticed that certain sentences of the first-instance courts as well as the first-instance courts and the Court of Appeal differ in length of the imposed sentence, but a comparative analysis would require a more thorough approach to the documentation of the cases in question. The highest single sentence imposed is 6 years. Data obtained from the analysis indicate high percentage of the first-instance convictions. Namely, out of 11 first-instance sentences of higher courts in Podgorica and Bijelo Polje, 9 were convictions (81%) while two were acquittals (19%). On the other hand, out of 6 sentences of the Court of Appeal of Montenegro, where the first-instance sentences were appealed against, 3 were overturned – three first-instance acquittals were overturned to convictions; while in two cases the decision was changed only in relation to the punishment (in both cases the Court of Appeal imposed a more lenient punishment than the one imposed by first-instance courts). In all other cases, the Court of Appeal confirmed the first-instance sentences.⁸³ In none of the cases did the Court of Appeal overturn the first-instance decision in order to impose a longer prison sentence.

⁸² By the sentence of the Higher Court in Bijelo Polje K.no.55/08 from 19th May, 2009, the accused M.L., Đ.P. and Z.Č. based on article 363, paragraph 1, item 3 of the Code on Criminal Procedure were acquitted of the charges which accused them of the criminal offence of trafficking in human beings from article 444 paragraph 6 in relation to paragraph 1 of the Criminal Code, because it was not proved they committed the criminal offence they were charged with, as described in the judgment. In the proceedings according to the appeal of High State Prosecutor's Office due to an important violation of provisions of the criminal proceedings from article 375, paragraph 1, item 1 of the Code on Criminal Procedure and wrongly and incompletely determined fact situation, the Court of Appeal, after a chamber meeting of 20th October, 2010 and in the process of making a decision, assessed that there were reasons for abolishing the first-instance sentence and overturned the first-instance sentence by convicting the accused. The Court of Appeal based such decision on the findings that the defence of the accused who denied they committed the criminal offence in question was impaired by the statement of the victim which was supported by evidence which the first-instance court did not accept.

⁸³ One of those judgements refers to the case publicly known as "AFRODITA" during which 16 persons were arrested and 13 possible victims were identified, coming from Serbia and Kosovo. The accused were charged with the criminal offence of mediation in prostitution, abuse of authority and criminal association, as well as criminal offence of THB, in the manner that by abuse of authority, trust, dependent relations, and difficult circumstances of the injured female persons, they made an offence by recruiting, holding, inducing, abetting and participating in handing over the victims for the purpose of prostitution, where the victims had no possibility of choosing or refusing their clients and by their own will determine type of fees, all done with the aim of gaining profit. With the judgment of High Court in Podgorica, Ks.no. 2/2012 from 18.06.2013, the accused P.D, M.Ž, K.R, S.V, J.R and D.A, were acquitted of trafficking ("because it was not proven that the defendants committed criminal offences they were charged with" - page 4 of the judgment), whereas the accused L. D, P.D, T.M, M.Ž, D.A, B.N and K.R were found guilty for the criminal offences criminal association and mediation in prostitution. Defendant K.R. was acquitted for the criminal offence criminal association, while B.M, R.V and R.M were acquitted for the abuse of authority. Judgment of the Court of Appeal of Montenegro Kžs.no.42/2013 from 16.12.2013. rejected the appeals by the state prosecutor and the accused and upheld the judgement of the first-instance court was. As stated in that judgment "first-instance court correctly concluded the facts do not provide possibility to reliably conclude that P.D, M.Ž and D.A committed the criminal offence described under IV (Trafficking in human beings), as well as that "the accused K.R,S.V and J.R did not commit criminal offence described under VI contested judgment, therefore the first-instance court correctly acquitted them of those offences, finding that it was not proven they committed those offences" (Kžs.br.42/2013). Court of Appeal also states that in the proceeding of giving contested judgment no significant violation was committed against provisions of the Code, nor violations of substantive law to which it was indicated in the process of appeal.

The analysis of the sentences shows that the personal circumstances of the accused such as marital/family status were considered mitigating while deciding on the punishment. First-instance and second-instance courts took into consideration the fact that the accused had not been convicted before, their behaviour after committing the offence, their relationship with the victim as well as expressing remorse in court. In almost all the cases, the courts considered previous convictions as aggravating circumstances. In one of the cases, the court considered as an aggravating circumstance the motive of the criminal offence, the accused's part in the criminal offence as well as the quantity of actions taken in the criminal offence.

In one of the cases, the Court of Appeal granted the appeal of the accused and his lawyer and overturned the first-instance judgment in relation to the punishment. In this case, deciding on the punishment, which they would impose, the Court of Appeal took into consideration all the circumstances that influence its scope and established that the first-instance court upon imposing the first-instance judgment rightly determined the aggravating circumstances, first of all, previous convictions. They also rightly determined the mitigating circumstances - that the accused was a family man, that he was married when the 6 year sentence was imposed, so this court established that 4 years had passed since he committed the offence, the time which he spent in custody, that he expressed remorse for everything that had happened to the victim, therefore, this court decided that a lenient punishment could be imposed and that was why they imposed a 5 year sentence.

In another case, the Court of Appeal overturned the acquittal of the first-instance court and upon deciding on the penalty to impose to the accused, determined that they behaved well at the trial. The court also took into consideration the time passed since the criminal offence was committed, that the accused were family men, that one of them had not been convicted before, but took into consideration that the other two had been convicted, however not for the same criminal offences, so they considered the mitigating circumstances as particularly mitigating. Acting upon provisions of articles 45 and 46 of the Criminal Code, the court imposed a 2 year prison sentence to the accused, finding this punishment adequate due to the seriousness of the criminal offence in question and reckoning that it would achieve the purpose of special as well as general prevention.

JUDGMENT ANALYSIS - CONCLUSIONS

Analysis of judicial practice conducted by Women's Rights Center aims to contribute to a general understanding of the position of THB victims in certain proceedings before the courts in Montenegro in the period from 2006 to 2015. The analysis included 17 decisions issued in criminal proceeding in the reporting period, out of which 11 first instance decisions were issued by High courts in Podgorica and Bijelo Polje and 6 decisions in appellate proceeding before the Court of Appeal of Montenegro.

For the criminal offence trafficking in human beings, first instance proceeding was conducted against 39 accused persons, out of which 9 were at the same time charged with criminal association, 2 for the abuse of authority, 1 for rape and 1 for mediation in prostitution. We can notice the **tendency of prosecuting criminal offence trafficking in human beings under articles 209 or 210 of the CC** (Solicitation and making arrangements for sex act, i.e. Mediation in prostitution).⁸⁴ *Statistical data analysis referring to the accused* in first instance judgments shows that they are mostly male persons, of low or intermediate level of education, low employment and low income. More than half of accused are previously sentenced persons, which the courts found to be an aggravating circumstance in determining the sentence, except in one case.

Analysis of judgments in terms of victim profiles shows that out of total number of THB victims (32) who had the status of an injured party in monitored first instance judgments, in most cases the victims were female persons (23) who were exposed to sexual exploitation (prostitution or other type of sexual exploitation), frequently with labour exploitation. Among victims from Montenegro, Serbia, B&H, Ukraine and Bangladesh there were 6 children aged between 12 and 17.

Statistical data referring to the period from 2004 to 2015, show that out of 65 persons prosecuted for criminal offence trafficking in human beings, **59 of them were accused, out of which only 34 were convicted in 18 final judgments, so half of the initial number. The data show that in recent years there has been an evident decline in the number of formally registered victims of**

⁸⁴ GRETA report from 2012 (page.40): „According to prosecutors, charges under abovementioned articles are less difficult to prove and therefore easier to make a judgment based on them. As an example, so called case “Afrodita” was listed which included two night clubs.”

THB, which does not reflect the real picture of the condition in the area of human trafficking in this country. This type of tendency was also identified in the reports by European Commission and international treaty bodies, with the assessment that it is necessary to work on proactive detection and prosecution of criminal offence of trafficking in human beings.

It was also stated that **corrupt links between representatives of state bodies and human traffickers in specific cases were not adequately investigated, as shown in the analysis of observed judgments,⁸⁵ as well as in the well known case S.Č. where Women's Rights Center was especially involved.⁸⁶** In the mentioned case a principle of impunity for THB victims was not respected for the criminal offence, which is directly related to her situation as a victim, nor was she provided with protection against retaliation.

The analysis has shown that the **process of evidence presentation for criminal offence THB, still largely relies on witnesses/injured parties and their testimony.** Thus, for example, judgment of acquittal K.no 35/2009 was based on the rejection of testimony of the victim as unsuitable for establishing relevant facts in the proceeding. Namely, the victim was giving different statements in various phases of the proceeding (in terms of describing the house in which she was held by the accused, and time she spent in that house), justifying it with fear of threats from the accused and time lapse between those statements (6 years have past from giving her statement before an investigating judge and statement at the main hearing), but such explanation by the victim (and prosecution representative) was not accepted by the First Instance Court, expressing the attitude that *"court cannot base a decision on statements that have discrepancies, but only on clear and specific statements"*.

Observed judgments show that the **public was rarely excluded during the hearing of a victim, except when strictly prescribed by law,** as in cases of interrogation of minors, in order to protect their interests and family life. Analysis of witness' statements quoted in judgments shows that victims tend to avoid giving testimony, referring to legal possibilities or even that their false testimony may help the accused, and they are doing it out of fear from perpetrators of criminal offence, but also because of the feeling of being exposed to ridicule, disgust and contempt in their community if they testify. In spite of that, decisions prescribed by the Criminal Procedure Code in terms of interrogation of witnesses - victims of criminal offence against sexual freedom, and special

⁸⁵ Representatives of state bodies covered by the indictments for THB in observed cases were not convicted for committing that criminal offence, but for abuse of authority.

⁸⁶ <http://www.vijesti.me/vijesti/vdt-da-podnese-zahhtjev-za-zastitu-zakonitosti-protiv-presude-u-slucaju-sc-831409>

methods of examining the witness (use of technical devices without presence of other participants, examining in separate premises etc.) were not applied in any of the cases, even though a number of courts included in the analysis is equipped with such technology which enables the interrogation of a victim without direct confrontation with the accused, and which guarantees a higher level of protection of privacy and safety.

Analysis data show a high percentage of first instance judgments of conviction. Namely, out of 11 analyzed first instance judgments of High Courts in Podgorica and Bijelo Polje, 9 are judgments of conviction (81%) while two are judgments of acquittal (19%). **Average sentence for the criminal offence trafficking in human beings is 4,1 years**, given that in most cases (9 out of 16 observed) sentence length ranges from 3 to 6 years, which shows that **in spite of high level of convicting judgments, in practice lenient prison sentences are imposed, although they are within the statutory range**. Still, we notice that certain judgments of first instance courts, as well as of Court of Appeal, differ in terms of length of the sentence, but a comparative analysis would require a more detailed approach to documentation relating to the observed cases.

The right to compensation of victims of THB is the right that is clearly the most difficult to exercise in practice. Analyzed judgments show that courts in criminal procedure do not decide on property claims of injured parties but point them to a civil procedure. Namely, as is the practice not to decide upon property claims of victims during criminal procedure (even though there is a legal possibility to do so), the court refers them to exercise their right to compensation in a civil procedure, which is generally expensive, long and requires the victim's presence, which certainly contributes to their re-victimization. It is necessary to work on changing this practice, especially when there's a medico-legal expertise of the victim conducted during the criminal proceeding, and when the findings and opinions of court experts contain sufficient information about harmful consequences for the victims, which can serve as a basis for at least partial award of damages, without specific delay of criminal proceeding. This would help avoid long procedures of civil proceedings, and the victim would be spared of testifying again.

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RECOMMENDATIONS

Based on the previously presented conclusions, Women's Rights Center formulated the following recommendations important for improving the condition in the area of protection of THB victims:

- Ensure consistent implementation of existing legislation in terms of protecting the safety and integrity of THB victims in criminal proceedings;
- Establish a practice of the use of special forms of interrogation of victims in order to avoid confrontation and encountering of victims with perpetrators, and exclude the public everytime even when legal requirements are met and when case circumstances require so, not only when it comes to underage victims in order to avoid secondary victimization.
- Implement measures in improving and further harmonizing domestic legal framework with international standards in the area of protection of THB victims;
- Amend the Law on compensation of victims of violent crimes and provide establishment of the Fund for compensation, in order to enable the victims to exercise their right to compensation from the State, in situations when that compensation cannot be provided from other sources;
- Ensure that trainings on international standards of treatment of victims are incorporated in annual programs of compulsory education in judiciary and prosecutor's office, in order to ensure proper understanding of the position and rights of THB victims;
- Increase efforts in order to identify possible victims and ensure continuous cooperation with NGOs dealing with protection of rights of THB victims;
- Conduct regular, independent monitoring of court practice, not only through analysis of statistical and qualitative data on treatment of courts and prosecutor's office in these cases, but through systematic monitoring of cases before every institution included in the process of victim protection and prosecution of perpetrators.
- Provide specialized legal assistance and legal representation to THB victims and monitor the quality of provided assistance. Ensure the right of a woman to have a female lawyer to represent her, if that is what the victim wants.
- Ensure the respect of the principle of "impunity" of THB victims for criminal offences related to their situation.
- It is especially necessary to provide adequate monitoring of data related to exercising the right to compensation, as well as to the number of THB victims who used their right to free legal assistance prior and during the court proceeding.

- Ensure efficient implementation of legal provisions concerning property confiscation of persons convicted for criminal offences related to human trafficking.
- Urgently initiate preparation of adequate programs of resocialization, reintegration and monitoring of the victim's status after the completion of court proceeding and after leaving the Shelter for THB victims;
- Ensure independent monitoring and reporting on activities and results of fight against THB in Montenegro;



WOMEN'S RIGHTS CENTER
CENTAR ZA ŽENSKA PRAVA

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