

MONITORING AND EVALUATION OF ANTI-TRAFICKING LAWS AND POLICIES AND THEIR IMPLEMENTATION IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA IN 2014 AND 2015

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**Monitoring and Evaluation
of Anti-Trafficking Laws and Policies
and their Implementation
in the Former Yugoslav Republic of Macedonia
in 2014 and 2015**

This report was prepared in the context of the project Balkans ACT Now (BAN)!. It was prepared by the staff of Open Gate – La Strada in the former Yugoslav Republic of Macedonia (FYROM).

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ACRONYMS USED IN THE REPORT

BAN	Balkans ACT Now!
CoE	Council of Europe
CSW	Centre for Social Work
BPPO	Basic Public Prosecutor's Offices
EU	European Union
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).
MKD	Macedonian Denar
MOI	Ministry of the Interior
NGO	Non-governmental organization
SOPs	Standard Operating Procedures
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) 'presumed victim' of trafficking (or of traffickers) refers to anyone who comes into contact with the authorities and concerning 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 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

This report describes action taken to stop trafficking in human beings in the Former Yugoslav Republic of Macedonia (subsequently abbreviated to 'Macedonia') in 2014 and 2015. It focuses on five specific issues:

- A. The law and the national legal framework for criminalizing trafficking in human beings
- B. The identification of trafficking victims
- C. The protection of victims of trafficking
- D. Assistance and support for victims
- E. Compensation and legal redress

Information for this report was compiled with the assistance of 'Monitoring and Evaluation of anti-trafficking policies: a handbook for victims' advocates'. This 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 and based on international and European regional standards. Following the method suggested in the handbook, Open Gate–La Strada (based in Skopje; subsequently abbreviated to Open Gate) 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 Macedonia with each of the 'Framework Indicators' (general standards) specified in the handbook. The various Framework Indicators used to measure law, policies and practice are mentioned in the report below, while the more detailed subindicators can be found in the handbook itself.

The monitors in Open Gate obtained information from a number of sources. The primary sources were the annual reports of the National Commission for Action Against Human Trafficking and Illegal Migration for 2014 and 2015 (subsequently referred to as the National Commission). Apart from these reports, the monitors used publicly available data contained in the 2014 report of the National Rapporteur on Trafficking in Human Beings and Illegal Migration,¹ as well as the report on the implementation in Macedonia of the Council of Europe Convention on Action against Trafficking in Human Beings, published in 2014.²

¹ National Rapporteur on Trafficking in Human Beings and Illegal Migration. Annual Report of the National Rapporteur on Trafficking in Human Beings and Illegal Migrations in the Republic of Macedonia for 2014.

² Group of Experts on Action against Trafficking in Human Beings (GRETA). Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by "the former Yugoslav Republic of Macedonia". GRETA (2014)12 (Council of Europe). 17 June 2014.

The latter was consulted extensively when the recommendations in section F of this report were drafted (notably when GRETA's findings were identical to the findings of the monitors who prepared this report). The findings of Open Gate itself and a legal specialist that was hired by the organization were an additional source of information. In terms of the status of sex workers, and especially the way the police treated them, the monitors consulted the Coalition for Sex-related and Health Issues of Marginalized Communities³.

In order to ascertain the legal framework (laws and bylaws), the monitors' focus was primarily on the Law on Criminal Procedure and the Criminal Code, since they are the legal foundations for action on the issue of human trafficking. They also analysed the 2010 Standard Operating Procedures (SOPs),⁴ as well as the 2014 indicators⁵ issued by the Ministry of Labour and Social Policy for use in identifying people who are trafficked.

The second of the two calendar years that were the subject of this monitoring exercise, 2015, was one in which substantial numbers of refugees and other migrants passed through Macedonia, largely due to its strategic geopolitical location along the route that migrants took through the Western Balkans. Migrants from various countries of origin, emergency hotspots and countries experiencing economic hardship in Central Asia, the Middle East, and Northern and Northeast Africa were increasingly trying to access European Union (EU) countries through the Western Balkan migration route as other routes posed growing challenges and dangers. The flow of migrants along this route had grown from a trickle in 2011 to becoming one of the most popular migration routes into the EU, as demonstrated by published figures and media reports.

Since the beginning of the refugee/migrant crisis in Southeastern Europe, criminal networks are reported to have been involved in smuggling some of the migrants involved in the mixed flow of refugees and other migrants moving through the Balkans. Because they were unable to get legal protection in Macedonia many migrants ended up being blackmailed, detained by the authorities or held captive by smugglers, having their freedom of movement restricted, being tortured and so on. In June 2015 the law regulating asylum seekers and temporary protection was changed, with the result that state authorities become involved once migrants entered Macedonia from Greece.

³ Coalition Sexual and Health Rights of Marginalized Communities, <http://coalition.org.mk/?lang=en>.

⁴ Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings. 2010 (approved by the Government in December 2010). Accessed in English at http://www.mtsp.gov.mk/content/pdf/operativni_eng.pdf. and <http://www.mtsp.gov.mk/content/pdf/operativni.pdf>.

⁵ Индикатори за идентификација на жртви на трговија со луѓе, Скопје, 2014. http://www.mtsp.gov.mk/content/pdf/Indikator_i_trgovija.pdf.

Nevertheless, migrants were still exposed to human trafficking and smuggling during their journey, particularly once new entry restrictions were imposed in 2016 on people regarded as 'economic migrants' trying to reach EU countries. Among the migrants, it was particularly girls, women and unaccompanied or separated children that were travelling in groups or alone without adults who were "easy prey" for traffickers and smugglers.⁶ Unfortunately, most such cases remained invisible and those involved did not receive appropriate assistance from the relevant service providers, because of the lack of a system to provide protection or otherwise to intervene.

Since the United Nations High Commissioner for Refugees (UNHCR) began monitoring the mixed flow on 1 July 2015, until 31 March 2016 some **778,768** refugees and migrants are reported to have transited through Macedonia. The Ministry of Interior's statistics on refugees and migrants seeking asylum between 19 June 2015 and 7 March 2016 reached **477,856**, including 148,245 children (31 per cent of the total), of whom 18,349 were registered as unaccompanied (4 per cent of the total and 12 per cent of all the children). Of these 260,897 (55 per cent of the total) of the arrivals were Syrians, 122,289 (26 per cent) were Afghans, 73,329 (15 per cent) Iraqis, and the remaining 21,441 (4 per cent) had other nationalities, such as Iranians, Palestinians, Pakistanis, Somalis, Congolese and Bangladeshis. Women and children registered made up 49 per cent of the total. On 8 March 2016 Macedonia's border with Greece was closed to new arrivals and no further arrivals or departures of undocumented migrants were allowed.

The escalation in the numbers of migrants that used Macedonia to cross the western Balkans had serious implications for the Ministry of Interior and other state institutions. It was mainly the Ministry of Interior (MOI) which focused its attention on security issues along the country's borders and migration routes. This resulted in increased efforts to detect criminal networks that were smuggling migrants rather than screening migrants in general to detect trafficking cases and to provide protection to trafficking victims.

Open Gate concluded that it was very challenging to identify and protect vulnerable migrants transiting through Macedonia. This was for a range of reasons: the limited time that migrants remained in Macedonia and the language barrier that made it difficult for officials to communicate with them, the health, psychological, behavioural and social consequences resulting from gender-based violence and human trafficking (which few victims are ready to speak about easily), as well as misunderstandings about what constitutes human

⁶ See Open Gate, Needs assessment, 2015 at <http://www.lastrada.org.mk/mainarchive/Human%20trafficking%20in%20context%20of%20migration%20and%20refugee%20crises%202015.pdf>.

trafficking and human smuggling (and a mistaken assumption that they were the same thing), the cultural context, limited access to services, and the general distrust shown by migrants towards state authorities.

Different state stakeholders and international organizations highlighted the implications of the limited time that unaccompanied minors (who, as a group, were considered at high risk of being trafficked) spent in Macedonia, with the result that many legal procedures were not followed. A series of other factors were relevant in meaning that unaccompanied minors did not receive adequate protection. These included: to inadequate identification procedures, which meant that they were not referred for assistance; limited human capacity in the state institutions that deal with mass migration; the absence of explicit legislation to ensure that the rights of unaccompanied minors were respected; and the unfamiliarity of all the service providers involved with the cultural, religious, national and ethnic diversity amongst the migrants.

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

A.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standards that were 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;

and

Legislation provides for effective, proportionate and dissuasive penalties to punish persons having been proven guilty of committing the crime of trafficking in human beings.

On the basis of the monitors' findings, the national legal framework for criminalizing human trafficking meets international standards as prescribed by the Council of Europe Convention on Action against Trafficking in Human Beings and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the 'Palermo Protocol'), supplementing the United Nations Convention against Transnational Organized Crime. In summary, national legislation on human trafficking has the following features:

- effective and proportionate punishment is foreseen for the perpetrators of these crimes;
- the law recognizes all the methods of human trafficking mentioned in article 4 of the Council of Europe Convention and article 3 of the Palermo Protocol;
- the law recognizes all the abusive means for perpetrating these crimes listed in the two standards;
- the law prescribes all the types of exploitation that are purposes of human trafficking listed in the standards;
- the national legal framework distinguishes between trafficking in human

- beings and smuggling of migrants;
- the consent of the human trafficking victim is irrelevant for establishing the criminal liability of the perpetrator;
- perpetrators of human trafficking who do not use violent means are not exempt from criminal liability;
- people who use the services of a person who has been trafficked and are aware that the person has been trafficked also have criminal responsibility;
- attempting, aiding or abetting in human trafficking is also punishable;
- the national legal framework provides for discovery, seizure and forfeiture of property resulting from human trafficking-related criminal acts;
- the national legal framework enables criminal charges to be brought against perpetrators of human trafficking-related crimes, wherever they are committed.

National legislation foresees effective and proportionate punishment for human trafficking perpetrators

Macedonian criminal legislation foresees effective, dissuasive and proportionate punishment for perpetrators of these crimes, since the prison sentence for the basic crime of human trafficking (article 418-a of the Criminal Code) is at least four years' imprisonment (which defines it as a felony). If the victim is a minor aged under 18 years, the law (article 418-d) prescribes a minimum of eight years' imprisonment.

A separate article of the Criminal Code (article 418-d) punishes trafficking in children. In the course of 2015, amendments and additions were made to this article to encompass more forms of trafficking in children and a stricter punishment policy was introduced for perpetrators of crimes where the victims are children under 14 years.

To be more specific, the following Criminal Code amendments were adopted⁷:

- article 418-d was amended to mention "begging and exploitation for illegal activities" as purposes of trafficking in children;
- longer prison sentences were introduced for perpetrators of trafficking in children when the child is under 14 years of age, by introducing a 10-year minimum sentence for any person who forces a child younger than 14 to beg or exploits the child in illegal activities, and at least 12 years' imprisonment for a person who uses the sexual services of a child under 14. The upper sentence for each of these criminal acts is 20-year prison, which is the highest sentence in the Republic of Macedonia.

⁷ Law on Amendments and Supplements to the Criminal Code, Official Gazzete No. 226 from 25.12.2015

During 2015, the national legal framework for protecting human trafficking victims was improved by preparing and adopting two action plans and specific procedures for providing assistance to the most vulnerable categories of victims. The National Commission for Action Against Human Trafficking and Illegal Migration adopted **An action plan for resolving the comments and acting upon the recommendations of GRETA** (made in GRETA's report on Macedonia issued in June 2014). The Government also adopted a set of **Standard Operating Procedures (SOPs) for dealing with unaccompanied foreign children**.

Since there are no separate sentences for the various forms of human trafficking punishable by law, while deliberating on the sentence the court pays special attention to the forms of the crime and the means used for perpetration. For example, if the purpose of the trafficking was slavery, if the victim agrees, the court may reduce the sentence to a minimum of five years' imprisonment, and if it was sexual exploitation, regardless of the consent of the victim, the court may impose a maximum prison sentence of 20 years.

National legislation recognizes all methods of human trafficking-related crimes in line with international standards

Articles 418-a and 418-d of the Macedonian Criminal Code mention the various forms of human trafficking. The articles have been transposed from the UN Convention on Transnational Organized Crime and the Palermo Protocol in their entirety, mentioning: recruitment, transportation, facilitation of prostitution (also known as 'exploitation of the prostitution of others), buying, selling, sheltering or receiving persons for exploitation by prostitution and other forms of sexual exploitation, forced labour or servitude, and slavery. The articles also mention, as purposes of trafficking, involving someone in making pornography, forced marriage and forced pregnancy, none of which are mentioned explicitly in the Palermo Protocol. However, they do not mention practices similar to slavery (which include debt bondage and sale of children).

National legislation recognizes all means of human trafficking-related crimes in line with international standards

The Macedonian Criminal Code is fully in line with the Convention and the Protocol, i.e., it refers to the various abusive means which might be used for carrying out the trafficking of adults: the use of force or serious threats, misleading any person or other forms of coercion, abduction, deceit by malfeasance or abuse of pregnancy⁸, weakness, or physical or mental incapacity of another person, or

⁸ The law does not specify what this entails.

by giving or receiving money or other benefits in order to obtain the consent of a person (notably a child, or a person with temporary or permanent disability, i.e., any person who is considered not to have the ability to decide independently).

National legislation defines all forms of exploitation

The Criminal Code is in line with the Convention and the Protocol concerning the forms of exploitation it mentions as purposes of trafficking in human beings or trafficking in children. It mentions several additional forms of exploitation. The Criminal Code covers the following forms: exploitation of the prostitution of others and other types of sexual exploitation; forced labour or servitude, slavery and illicit transplantation of human body parts. The additional forms of exploitation mentioned are: pornography (i.e., when either an adult or a child is trafficked to be involved in making pornography), forced marriage, forced pregnancy, illegal adoption or similar actions, and begging.

Even though the term **slavery** is not defined by law, all elements of slavery are punishable by law. Slavery includes making the person take any action against their will or by threatening the person with punishment, and this term includes employment against the will of the worker.

Forced labour or servitude is foreseen as a purpose of trafficking, as well as begging. Criminal Code Article 201 makes it a crime (“forced labour of a child”) if a parent, guardian or other person with parental responsibilities grossly neglects his or her duty of care and upbringing, by forcing children to carry out work that is not suited to their age or physical abilities or induces him/her to beg or perform other actions that are harmful to the child’s development.

Sexual exploitation is included as an element of the crimes, and in addition to that since the persons that facilitate the prostitution of others are considered as much responsible for this crime as the perpetrators, the prison sentence is the same as that for the perpetrators.

The Criminal Code also makes it an offence to profit from the prostitution of another person (i.e. ‘mediation’ or exploitation of the prostitution of others) in cases when the victims providing sexual services have not been trafficked.

Child victims of human trafficking enjoy special protection, that is special criminal liability is foreseen for perpetrators with the introduction of a separate crime, trafficking in children, in article 418-d of the Criminal Code. In paragraph 1 of this article the commercial sexual exploitation of children is considered to be

among the most severe forms of this crime, and the recommended sentence for this type of crime is at least eight years' imprisonment.

Forced marriage. This type of crime related to human trafficking is foreseen in the basic law, and special criminal liability is foreseen if the crime is perpetrated against a child (the sentence is more severe if a child is involved).

According to the Criminal Code, trafficking for the purpose of **the illicit transplantation of human organs (for commercial profit)** is punishable by law according to article 418-a. The sentence is more severe if a child's organs are involved (article 418-d). There is no criminal liability for transplanting human organs if there is mutual consent (e.g., when a parent donates a kidney to their child) or vice versa, if the person from whom the human organ was transplanted has given permission before dying that his or her organ be removed and given to another person without any fee. However, while a person is alive, the donation of organs is allowed only for one of the organs that come in pairs.

According to article 201 of the Criminal Code, there is criminal liability for **forced labour** if the parent, guardian or a third person grossly neglects their duty to provide care and guidance, and forces the child to do unsuitable work for the child's age or physical strength or for their own benefit compels the child to beg or carry out other activities harmful to the child's development. Of course, as we already mentioned, begging is already foreseen as a purpose of trafficking.

The national legal framework distinguishes between human trafficking and smuggling of migrants

The same article of the Criminal Code (article 418) specifies penalties for trafficking in human beings (418-a) and smuggling migrants (418-b), but the two offences are, in effect, covered by separate sub-articles. The law distinguishes between the two offences, but links them closely, especially when law enforcement officials learn about them in the same article of the Criminal Code. While in principle the first involves crimes against the person and the second involves crimes against the state, article 418-b also covers crimes against the person (of individuals who are moved illicitly across a national border). Article 418-c specifies penalties for the organization of criminal groups to commit either of these crimes ("Organizing a group and instigation to commit acts of trafficking in human beings, smuggling of migrants and trafficking in children"), so effectively treats the different offences as very similar.

The human trafficking victim's consent is irrelevant for the liability of the perpetrator

This means that even if the victim agreed to being exploited in a particular way, the perpetrator will be held responsible for human trafficking or trafficking in children.

Perpetrators of human trafficking who do not use any violent means are not exempt from criminal liability

The Criminal Code foresees criminal liability for trafficking in children even if the perpetrator has not used any of the abusive means mentioned in the law when adults are trafficked. The use of abusive means is an aggravating circumstance.

Criminal responsibility for service users who were aware that they are taking part in human trafficking

According to Article 418-a of the Criminal Code, it is a crime to use (or enable another person to use) the sexual services of a person who has been trafficked, or to subject them to any other form of exploitation, while knowing that they have been trafficked (punishable by imprisonment of between six months and five years).

Any attempts or instances of aiding and abetting crimes related to human trafficking are punishable by law

Any person who attempts or aids this crime is to receive a punishment equal to that of the perpetrator. If it is only an attempt to commit the crime, there is a possibility of a reduced sentence.

The national legal framework provides for discovery, seizure and forfeiture of property resulting from human trafficking-related criminal acts

Compulsory forfeiture of all means used in perpetrating human trafficking or trafficking in children offences is foreseen for both a physical person and a legal entity found guilty of these crimes, along with seizure of all property obtained by perpetrating those crimes (article 96-m for people, articles 97, 97-a, 98, 98-a, 100 for legal entities and 100-a).

The national legal framework has established comprehensive authority for pressing criminal charges against perpetrators of human trafficking-related crimes

Each perpetrator of this type of crime on the territory of the Republic of Macedonia, on a ship that sails under the flag of the Republic of Macedonia, or

on an aircraft registered under Macedonian law is criminally liable for any type of crime related to human trafficking, trafficking in children and smuggling of migrants. In addition, every person shall be held liable, regardless of whether they are a citizen of Macedonia, whether they have a residence permit in Macedonia and whether according to the laws of their country perpetrators of this type of crime are held criminally liable.

A.2 WHAT HAPPENED IN PRACTICE

The standard that was assessed:

Trafficking cases were prosecuted and adjudicated fairly in accordance with international criminal justice standards.

The monitors concluded that there were significant differences between the provisions of the law on human trafficking, on the one hand, and the implementation of the law by the competent institutions, on the other.

This part of the report gives an overview of all the stages of criminal investigations and proceedings:

- The investigation stage and the actions taken by the police;
- The criminal charge stage and the actions taken by the Basic Public Prosecutor's Offices (BPPO);
- The trial stage and the sentences imposed by the courts.

A.2.1 Investigations and action taken by the police

The monitors noted that by 2014 the police had abandoned the negative practice of using the fight against human trafficking as an excuse for raids on sex workers. According to the data collected by institutions working with sex workers, the last such raid was conducted in 2008.

In terms of the actions taken by the police, according to the data supplied by the National Rapporteur, victim identification, the provision of support and referrals are all carried out in line with the SOPs. Official identification (of someone as a 'victim of trafficking') is carried out by the National Referral Mechanism (NRM) - the Centres for Social Work (CSW) and the Ministry of the Interior (MOI) Sector for

trafficking in human beings and illegal migration (STHBIM), which are trained in conducting interviews.⁹

According to the data of the National Commission for Action Against Human Trafficking and Illegal Migration (hereafter 'the National Commission'), in 2015 the following charges were submitted to the BPPO for organized crime and corruption:

- two criminal charges for human trafficking, under article 418-a of the Criminal Code, against three men;
- one criminal charge for trafficking in children, 418-d of the Criminal Code, against two persons, one male and one female.

In these cases, three female human trafficking victims were identified, one adult woman and two girl children. "In terms of the type of exploitation, there was one instance of sexual exploitation, one instance of sexual and labour exploitation, one instance of forced marriage and one instance of labour exploitation".¹⁰

In the previous year (2014), the situation in terms of criminal charges for crimes of this type was identical, i.e., there were two criminal charges for human trafficking and one charge for trafficking in children. In 2014 three investigations were launched, two for trafficking for sexual exploitation and one for trafficking for exploitation by begging.

Information became available in 2015 about charges brought in 2014 by the MOI against police officers for involvement in crimes related to human trafficking. According to the annual 2014 report of the National Commission, the MOI conducted six investigations concerning eight police officers during 2014. Criminal charges were brought against all of them, and seven were detained. Also reporting on 2014, the United States Department of State noted that "Four officers were prosecuted and convicted and three remained under investigation at the end of the reporting period".¹¹

There is no data available for confiscated property of perpetrators of crimes related to human trafficking. According to the 2014 data of the State Statistical Office, 18 persons (including one woman) were charged for trafficking in children, and in 12 cases items were forfeited.¹²

⁹ Data from the human trafficking victims focus, project of the USAID for legal protection of women.

¹⁰ 2015 annual report, National Commission for Action Against Human Trafficking and Illegal Migration.

¹¹ US Department of State, Trafficking in Persons Report, 2015 (chapter on Macedonia).

¹² Perpetrators of crime in 2014, convicted adults according to the total number of security measures implemented, seizure of property and forfeited items, State Statistical Office 2015

A.2.2. The criminal charge stage and the actions taken by the Basic Public Prosecutor's Offices (BPPO)

The annual reports of the National Commission and the National Rapporteur contain no information on the actions taken by the BPPO in criminal proceedings related to trafficking in human beings, i.e., the support they provided to victims. The only data that was available concerns the number of criminal charges for each of the crimes related to human trafficking and illegal migration, i.e., data on the people accused and convicted in such proceedings.

The victims receive support to enable them to exercise their rights in the Centre for Victims of Trafficking, a specialist centre caring for Macedonian women and girls who have been trafficked. The Centre was established by the Ministry of Labour and Social Policy in 2011 to provide accommodation for trafficked victims, as well as legal, medical and psychosocial support. However, in 2015 as in previous years, the Ministry paid only for the cost of utilities at the Centre, while its operational costs were covered by civil society organizations. Legal assistance was available from a lawyer hired by Open Gate. In terms of providing victims with information, lawyers informed victims about their rights in both administrative and court proceedings, as well as the outcome of these proceedings in which they were witnesses or aggrieved parties.

The 2015 data from the BPPO in terms of charges on which suspected traffickers were brought to trial are identical to the police data about the criminal charges referred to the BPPO, that is none of the cases was requalified as a different crime. Three criminal charges were submitted in the basic court (Macedonia's first level courts), two of which were for human trafficking and one for trafficking in children. The only difference is in the number of persons accused of the offence of trafficking in children: the BPPO pressed charges against one person, while the police had brought charges against two suspected perpetrators of this crime. No data was available to indicate if criminal charges had been dropped because a victim had decided not to press charges or not to provide evidence to the police or prosecutors.

According to the data from the State Statistical Office, in 2014 three instances of human trafficking were reported and three criminal charges were pressed, while one person was accused and convicted. Even though there were no reported instances of trafficking in children in 2014, as many as 18 people were accused of trafficking children and convicted in the course of 2014. In none of the 2014 and 2015 cases was a legal entity (rather than an actual person) held liable.

A.2.3 The trial stage and the sentences imposed by the courts

Non-discrimination

No data points to discrimination at court in the criminal procedures for trafficking in human beings. The courts abided by the non-discrimination principle without fail.¹³

Duration of procedure

The average duration of the procedure, from the onset of the investigation to the passing of the first instance verdict was between 12 and 18 months. All of the cases are usually followed by an appeal. In one particular case it had been more than 10 years since the investigations started and by the end of 2015 there was still no verdict on the appeal. Similar is with the repeated proceeding (in case the accused was not present during the first court proceeding/conviction) where the time length is between 3year up to 10 years.

Expert witnesses

In three-quarters of the 2015 cases (3 out of the total of 4 cases), an expert witness was called to assess the psychological state and the degree of trauma and fear present in the victim.¹⁴ In each case, the expert witnesses carried out a comprehensive assessment of the human trafficking victim, that is an assessment of the psychological state and the general situation of the victim (e.g., their family life, any history of illness in the family, the environment where the victim was raised, etc.)¹⁵.

Number and type of sentences

In terms of the sentences imposed on individuals convicted of human trafficking, the monitors were surprised that there was one verdict in 2015 with a suspended sentence imposed on four people convicted of human trafficking under article 418-a of the Criminal Code.¹⁶ Article 418-a does not, in principle, allow for such lenient sentences to be imposed. The judge did not apply the legally prescribed prison sentence from the Criminal Code, but ruled that there were mitigating

¹³ Open Gate lawyer.

¹⁴ Open Gate lawyer.

¹⁵ Open Gate lawyer.

¹⁶ National Commission for Action Against Human Trafficking and Illegal Migration. 2015 Annual report.

circumstances justifying a lighter sentence¹⁷. It is far from clear that judgments are effective and dissuasive or than sentences are proportionate when only suspended sentences were imposed for crimes of this type, for which the minimum sentence prescribed by law is four years' imprisonment.

Recommendation: the legally prescribed sentences should be imposed by court for the perpetrators of these crimes.

The US Trafficking in Persons Report¹⁸ noted that in 2014 only two individuals were sentenced for crimes related to human trafficking, and that this was the lowest annual total since 2009. One of the perpetrators of labour exploitation received a two-year prison sentence, while the other received a 13-year prison sentence for organizing a group that dealt with smuggling of migrants, trafficking in persons, trafficking in minors and forced marriages. Data from the State Statistical Office¹⁹ for 2014 point to the fact that one woman received a prison sentence for human trafficking. A total of 18 persons, including one female, received sentences for trafficking in children in 2014, and all perpetrators received prison sentences.

A.3 WITNESS PROTECTION

The standard that was assessed was:

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.

In general, the monitors concluded that the Basic Public Prosecutors and judges acted appropriately in court proceedings related to trafficking in human beings. This was evident in the use of special measures for victim and witness protection and in the fact that the victims were not held liable for crimes they were forced to commit while under duress from the trafficker or exploiter.

¹⁷ Article 40, Criminal Code of RM

¹⁸ US Department of State, Trafficking in Persons Report, 2015 (chapter on Macedonia).

¹⁹ Perpetrators of crimes in 2014, convicted adults by type of crime, State Statistical Office, 2015.

Special protection measures

In 2015, special protection measures for the protection of victim witnesses inside and outside a courtroom were in place on three occasions. The victim used a separate entrance with special protection from the MOI, waited in a separate room, separated from the accused, and during the trial the accused were removed from the courtroom, while only their lawyers remained. The public was excluded.²⁰

Non-punishment of victims for illegal actions

The non-punishment principle was respected during both 2014 and 2015—there was no information indicating that a trafficked person was charged or prosecuted for unlawful activities that they were compelled to carry out.

Execution of sanctions

No data is available on the execution of the sentences. In 2015 two (2) cases were concluded with verdicts of first instance courts, but the cases went to appeal and had not been heard by the end of 2015. One (1) case had not been closed by the end of the year. This was because of a new view taken by the Macedonian Supreme Court that, when a court member changes while a trial is in progress, the victim must be called into court again to repeat their evidence for a second time. Further, this ruling exposes victims to repeated stress, trauma and victimization because of the obligation to appear in court once again and to repeat their statements in front of the accused (this is especially true for the nationals that are in the country) while for the foreign nationals (who refuse to return to Macedonia) it is only their previous statements that are read out.

According to the State Statistical Office, three persons were charged with human trafficking²¹ in 2014, out of which one person was sentenced, and one was accused. In the same year there were no reports of children being trafficked,²² but criminal charges were brought against 18 persons (arising from child trafficking in a previous year) and the same number of people were convicted. No additional information was available about the 18 people who were accused and convicted, so it is probable that the criminal proceedings started in previous years.²³

²⁰ Open Gate lawyer.

²¹ Article 418-a, Macedonian Criminal Code.

²² Article 418-d, Macedonian Criminal Code.

²³ 7 perpetrators were reported in 2013, there were no reports in 2012, while in 2011 18 perpetrators of trafficking in children were reported.

Drawing the line between offences involving trafficking in human beings and offences involving migrant smuggling or illegal migration

Just as the law puts these two categories of offences (human trafficking and migrant smuggling) together, creating an inappropriate impression that they are two sides of the same coin, so the strategies and action plans adopted by the Government, as well as the mandates of the competent mechanisms and institutions working in this field, cover both offences. As a result, the steps taken against smuggling of migrants are sometimes reported as efforts to combat human trafficking. For example, the 2014 annual report of the National Rapporteur, in the chapter on the court system, in the segment that covers "human trafficking-related crimes", the sentences imposed on perpetrators of crimes related to migrant smuggling are also listed. In 2015, a total of 120 criminal charges were pressed against 212 perpetrators for 142 instances of smuggling of migrants, which, according to the National Commission's annual report, was a 33 per cent increase in comparison to 2014.

Much the same conclusion (that inappropriate confusion was occurring) was reached as early as 2013, when representatives of GRETA visited Macedonia. GRETA's subsequent report on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings observed that "GRETA notes that national anti-trafficking policy is frequently associated with action against smuggling of migrants", and recommended awareness-raising activities for both professionals and the general public, in order for them to be more aware of the features of human trafficking and the differences between human trafficking and smuggling of migrants. No measures are known to have been taken by the Government in 2015 to address this recommendation.

In addition, the representatives of civil society organizations considered that insufficient time and effort was allocated to identifying human trafficking victims among irregular migrants, and as a result they are not given suitable support, which in turns prevented them from cooperating in prosecutions of human trafficking cases. GRETA's 2014 report urged the authorities to "pay more attention to the identification of victims of trafficking among irregular migrants, asylum seekers and unaccompanied foreign minors and provide additional training to staff who come in contact with such persons".

B. IDENTIFICATION OF TRAFFICKING VICTIMS

B.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standard that was assessed:

The legal framework is appropriate for ensuring the rapid and accurate identification of victims of trafficking in human beings.

It is also relevant that one of the sub-indicators used to assess this standard was:

Publicly available indicators are based on international good practice.

Identification in line with the law

According to the law itself, there is no special procedure or special authority that determines whether a person is a victim of human trafficking. However, procedures are specified by policy, in particular in the Standard Operating Procedures (SOPs), adopted during session 202 of the Macedonian Government on 28 December 2010.²⁴ After the detection of cases of human trafficking, trafficking in children or smuggling of migrants, it is during police investigations that investigators generally conclude whether a particular person is a victim of trafficking.

Identification in line with the SOPs

In line with the SOPs for dealing with human trafficking victims, identification of victims is carried out in a process comprising a number of steps, including identification or determining the victim's status. These procedures include the process of identification, immediate and mid-term assistance for a victim, the victim's return to another country, reintegration, and victim support throughout criminal proceedings.

²⁴ Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings. 2010, available at: <http://www.mtsp.gov.mk/content/pdf/operativni.pdf>

Identification is done by asking questions and revisiting the circumstances in which the presumed victim of trafficking or another type of crime was identified. The person who is presumed to be a human trafficking victim is officially recognized as a victim as a result of an interview conducted by members of the Unit for Combating Human Trafficking and Smuggling of Migrants (UCHTSM) and/or the National Referral Mechanism/Centre for Social Work (NRM/CSW).²⁵

Revisions of the SOPs

There is no publicly available information on whether the SOPs are regularly reviewed and amended. The 2014 report of the National Commission for Action Against Human Trafficking and Illegal Migration, in the section about the legal and regulatory framework, says that there was an analysis carried out with the support of the OSCE Presence entitled "Analysis of the domestic legislation and practices in terms of adhering to the principle of non-punishment of human trafficking victims"²⁶, but this report makes no reference to the Standard Operating Procedures. In the same report (on page 7), it says that the sub-group for combating trafficking in children carried out an analysis of the current situation in terms of the identification and protection of child trafficking victims in 2014, shortcomings and issues were detected, and those were the basis for drafting recommendation for improvement and better identification and protection of child victims. The National Commission's 2015 report, notes that on 21 November 2015 the Macedonian Government adopted a SOP concerning unaccompanied minors (foreign children). The report also states that an Action Plan was drafted for responding to the comments and acting upon the recommendations of GRETA. No further information was available to the monitors when they consulted the website of the National Commission in April 2016.

Identification indicators

The identification indicators for victims before they are interviewed, as well as those used when presumed victims are interviewed, come from a cumulative assessment based on two different sources of information. The indicators themselves are not formally part of the current SOPs. They are contained in a separate document prepared by the Ministry of Labour and Social Policy in 2014,²⁷ which is intended to be used by experts as an additional resource for, as

²⁵ Стандардни оперативни процедури за постапување со жртви на трговија со луѓе/Standard Operating Procedures for Treatment of Victims of Trafficking in Human Beings, adopted on session 202 of the Macedonian Government on 28 December 2010, available at <http://www.mtsp.gov.mk/content/pdf/operativni.pdf>. For further information about victim identification, please consult pp. 17- 32 of the SOP.

²⁶ http://www.pravdiko.mk/wp-content/uploads/2015/01/1._analiza_za_primenata_na_nacheloto_na_nekaznuvanje_na_zhrtvi_na_trgovija_so_lugje_vo_rm.doc.pdf.

²⁷ http://www.mtsp.gov.mk/content/pdf/Indikator_i_trgovija.pdf.

the document says, "high-quality, timely identification" in the course of filling out the human trafficking victims identification form.²⁸ It is not clear why the document was prepared by this Ministry and whether the other organizations with specialist involved in human trafficking cases were consulted in the process, or at least whether the National Commission reviewed and approved this document. Hence it is also unclear whether and in what way this document is used for timely and efficient identification of human trafficking victims.

Two types of indicators that are foreseen: direct ones to confirm that a particular individual is a victim, and indirect ones, used to identify presumed victims. The direct indicators are grouped into general and specific ones, according to the type of trafficking. The indicators also differ for adult and child victims of human trafficking. When these indicators were compared by the monitors to the ILO operational indicators of trafficking in human beings (2009),²⁹ no similar traits could be found. The only similarity is that there are separate indicators for adult and child victims. The structure of the ILO publication on indicators is identical for the two types of exploitation described (sexual and labour), but they are divided into six sub-groups/dimensions of human trafficking, including: deceptive recruitment; coercive recruitment; recruitment by abuse of vulnerability; exploitative conditions of work; coercion at destination; and abuse of vulnerability at destination. The individual indicators are further divided into weak, medium and strong indicators, and their presence helps identify the victim. Each of these six dimensions of indicators is assessed independently of each other for each presumed victim. The result of the assessment is positive if each of the dimensions includes two strong indicators; a strong and a medium or weak indicator; three strong indicators; and two medium and one weak indicator. This type of classification of the strength (and reliability) of the indicators, relatively speaking, does not exist in the Macedonian document on indicators. This suggests that Macedonia's model is not based on international good practice.

Other indicators have been published by the European Commission (such as the Guidelines for the identification of victims of trafficking in human beings especially for Consular Services and Border Guards, 2013 and the Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking, 2011³⁰). The latter contains a list of direct indicators that should be taken into account in identification, grouped in three sections, including lack of control (restricted freedom of movement and communication); conditions of

²⁸ Annex 8 of the SOP.

²⁹ International Labour Office, ILO Operational Indicators of Trafficking in Human Beings (2009), accessed at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf.

³⁰ http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb-victims-identification/thb_identification_en.pdf and https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/cbss_handbook_for_diplomatic_personnel_2011_en_1.pdf

exploitation; and living conditions. In addition, the handbook contains questions that would paint a clearer image of the situation that the presumed victim faces. These questions are then sorted by types of exploitation, so there are different questions for sexual exploitation, labour exploitation, exploitation for begging and exploitation for petty crime. Once again, it seems reasonable to regard these indicators as a reflection of international good practice, so it is notable (and regrettable) that Macedonia's indicators for identification are not based on a similar model.

Procedure for cases when the person is not granted a victim status

The current SOPs do not foresee situations when a person is not granted the status of a human trafficking victim, so give no hint about how someone who has been trafficked, but who is not identified as a trafficking victim, can lodge an appeal or otherwise seek a legal remedy. This suggests that a system to allow accurate identification (including when the authorities make an error that requires correcting) is still not in place.

B.2 WHAT HAPPENED IN PRACTICE. BASIC INFORMATION ABOUT IDENTIFICATION, INCLUDING STATISTICS

The standard that was assessed:

Victims of trafficking were quickly and accurately identified.

Adherence to the SOPs

The monitors noted that the procedures for identifying and responding to human trafficking victims, as prescribed by the SOPs, were generally respected by all the organizations and bodies that participated in identification procedures. NGOs specialized in working with victims also took part in the initial identification.

Number of presumed and officially recognized victims in 2014

The only publicly available source of data about trafficking victims was the annual report of the National Commission for Action Against Human Trafficking and Illegal Migration. The Commission collects data from all relevant entities (public institutions and civil society organizations) twice a year, by sending a

questionnaire. The data is processed by the Commission and presented in its annual reports. The data presented in these reports is generally incomplete and does not describe the factual situation accurately. Furthermore, no indicators are used consistently in the reports every year, preventing comparison of the data for different years. Some of the data presented in the report is contradictory, in the sense that there is no logical explanation of the difference between the data presented. Because the data in the annual reports of the Commission are inconsistent, they are not necessarily a reliable foundation on which to draw conclusions.

According to the 2014 report of the National Commission for Action Against Human Trafficking and Illegal Migration, 83 presumed victims were identified in 2014 (66 children and 17 adults), out of whom 70 were female and 13 were male. No information was provided about their countries of origin. The same report stated that there were eight (8) officially recognized victims, out of whom six (6) children and two (2) adults. There was also no information available about their sex. In terms of how many in the two categories were foreigners, the report states that out of the 83 presumed victims only eight were foreigners, and they were all adults, identified by the MOI, while out of the eight (8) officially recognized victims only one was foreigner.

Unfortunately, the data presented in the report does not include information about the form of exploitation that the the presumed victims experienced or were intended for, i.e., sexual or labour exploitation. This type of information is provided in the report only for the officially recognized victims. Out of the eight victims that were officially recognized, three had been subjected to sexual exploitation, four were subjected to a combination of sexual and labour exploitation (forced marriage), and one to begging. So in practice, according to this data, sexual exploitation was the most noted form of exploitation among the officially recognized victims. As mentioned earlier, the majority were females: out of the 83 presumed victims, 70 were women and 13 men (i.e., 84 per cent were women and 16 per cent were men). No information was available on the sex of the officially recognized victims. The vast majority of the presumed victims were children (66 out of 83). There was no specific information about the age of these children. Out of the eight officially recognized identified victims, more than half, i.e. six, were children, aged between 13 and 17.

It is not known how many presumed victims reported themselves to the authorities (rather than being identified as a result of pro-active investigations by the authorities). The 2014 Commission report does not reveal this. Similarly, no information in the report revealed whether the authorities had conducted any

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investigations in sectors of the economy where workers are generally unprotected or where children or migrant women or men are relatively numerous (these are sectors in other countries where human trafficking has been reported).

The monitors did not note that members of the ethnic minorities, or lesbians, gays, bisexuals or transsexuals (LGBT) had any additional difficulties, in comparison to the other groups, in being identified or officially recognized as trafficking victims. No relevant information was available to assess this.

Number of presumed and officially recognized victims in 2015

According to the 2015 report of the National Commission for Action Against Human Trafficking and Illegal Migration, 11 presumed victims were identified in 2015 (two children and nine adults), significantly less than in 2014. The same report states that four victims were officially recognized as trafficking victims, three of whom were children and one an adult. All were female. In terms of the number of foreigners in the two categories in 2015, two children from Syria were among those identified as presumed victims, and one adult foreigner was officially recognized as a victim. No information was available about the type of exploitation for which the presumed victims were trafficked, i.e., whether it was sexual or labour exploitation or a combination of both. In terms of the officially recognized victims, out of a total of three, one was a victim of sexual exploitation, one of sexual and labour exploitation, and one of forced marriage and labour exploitation.

As no information was published about the sex of the presumed victims, nothing can be said about the proportions of males and females. As far as the officially recognized victims are concerned, all four were female. In terms of the number of trafficked children under 18, they accounted for three out of four of the officially recognized victims. No information was available about the age of the children. Similarly, no information was published about the age of the presumed victims, apart from the statement that two of the 11 were children (i.e., accounting for 18 per cent of the total number of presumed victims).

Once again, no information in the report revealed how many of the presumed victims had reported themselves to the authorities. Similarly, the other details sought by monitors to find out if investigations had identified any trafficking victims in unprotected sectors and if any groups experienced disproportionate difficulty in being officially recognized were not available.

A comparison of the situation in 2014 and 2015

Comparing the data for 2014 and 2015, in 2014 there were more presumed and officially recognized victims. Namely, 83 victims were identified in 2014, while the figure in 2015 (11) was almost only 10 per cent of the 2014 total. In terms of the officially recognized victims, the difference was smaller. So, in 2014 there were eight victims officially identified, while in 2015 there were only four, half of the number identified in 2014. The only matching trend was that of the sex of the presumed and officially recognized victims, as there were more women and girls. In both years there were a considerable proportion of young people under 18 among the officially recognized victims, which was not the case among the presumed victims. The latter information might not be fully accurate, because the data in the annual reports of the commission are inconsistent.

B.3 DISPUTED IDENTIFICATION AND PEOPLE CATEGORIZED INAPPROPRIATELY AS NOT TRAFFICKED

The standard that was assessed:

Civil Society Organizations (CSOs) 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'.

Failure to recognize trafficking victim status

According to the legal advisors who provided assistance and support to trafficking victims, illegal migrants, sex workers and unaccompanied children, not a single person who they had reason to suspect might be a victim of trafficking was not identified as a victim by the authorities. In other words, the authorities met the performance standard specified above. There was no evidence that in the felony or misdemeanour charges brought against sex workers for prostitution or related crimes that the authorities failed to recognize any victims of trafficking. According to the findings of Open Gate and the other organizations that deal with the protection of child victims of trafficking, there were no cases in which child victims were not recognized as victims of trafficking, i.e., the victim status was recognized for all trafficking victims who merited it.

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Human trafficking training

In terms of the training for officials, such as officials who work with irregular migrants (including the officers in charge of processing asylum applications and those tasked with protecting refugees), the monitors sought to find out if they had attended at least one training session presenting relevant information about human trafficking. According to the 2014 report of the National Commission (chapter 2.2: 'Capacity Building and Implementation of Preventive Activities'), 348 border police officers attended a total of 24 training sessions in 2014. In 2015, once again there were specialized training sessions for border police officers. The trainings were organized by the Border Affairs and Migration Sector, the International Organization for Migration (IOM), FRONTEX (the EU's border management agency) and the United Nations High Commissioner for Refugees (UNHCR). A total of 180 border police officers took part in the trainings.

The 2014 report of the Commission does not include any information about whether part or the entire staff of the country's Consular offices abroad had attended training sessions about human trafficking, including identification and referral of victims. However, the Ministry of Foreign Affairs, assisted by the Organization for Security and Co-operation in Europe (OSCE), published a handbook entitled "How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers". Of the myriad activities aimed at building the capacity of the various organizations that worked on the issue of human trafficking in 2015, not a single one is known to have been dedicated to training the staff of Consular offices (those that were trained included: institutions that provide social protection, the police officers of the Border Affairs and Migrations Sector and the Internal Affairs Sector, foster families, judges, public prosecutors, lawyers, clerks, MOI representatives, representatives of civic organizations etc.).

Identification of asylum seekers as trafficking victims

The monitors noted that some measures for identifying trafficking victims were taken within the asylum seeking procedure. While providing services in the Centre for Asylum Seekers (in Skopje), Open Gate staff identified three potential human trafficking victims and referred the identified persons to state institutions to get additional services. No further information was available to indicate whether the state institutions responded by providing these persons with the care and attention they were considered to need.

In 2015, as a consequence of the amendments to the Law on Asylum and

Temporary Protection³¹ a foreigner at the border crossing or on the territory of the Republic of Macedonia could show their intention to submit an application for recognition of their right to asylum in front of an MOI officer, and within 72 hours had to submit an application to an official in the Asylum Sector at the Asylum Seekers' Shelter. This amendment aimed at improving migrant safety, reducing smuggling of migrants and providing appropriate medical and humanitarian assistance, but still the civil society organizations and international organizations that worked with migrants remarked on major gaps in the registration, identification and treatment of migrants who came into the 'vulnerable' category, including human trafficking victims. The amendment, which seems positive at face value, had the effect of curbing the freedom of movement and choice of the migrants concerned.

Between September and December 2015, in the Vinojug transit centre (Gevgelija), 104 individuals were identified by Oen Gate/La Strada among the migrants and refugees as showing some signs or indicators that they might be victims of trafficking. The key findings from the human trafficking needs assessment in context of migration and refugee crises³² suggested that inadequate attention was given to identifying human trafficking victims amongs refugees/migrants. According to the needs assessment data, the existing SOPs and Indicators for Identification were not suitable for identifying victims in the context of the mixed flows of refugees and migrants transiting through Macedonia. There were many reasons for this. Namely, the lack of time and language barrier, the blurred line between human trafficking and gender-based violence, as well as the line between human smuggling and human trafficking, and finally the cultural context. All these were the reasons behind the lack of identification of human trafficking victims among the refuges/migrants passing through the country.

Data showed that refugees/migrants spent between two and six hours at a Reception Centre in Vinojug-Gevelija, waiting for the transport to the Serbian border. Usually inside the camp migrants/refugees spent a little time waiting for their registration document to be issued, taking food, refreshment and a rest, which made the identification of victims or potential victims of human trafficking unfeasible on site. The number of migrants/refugees made it impossible to do much more. The language barrier was another limitation for approaching suspected cases of human trafficking among vulnerable groups of migrants/refugees, especially for migrants/refugees speaking Farsi, Urdu and Pashto. The needs assessment also determined that in many cases victims of gender-

³¹ Official Journal no. 101/2015.

³² Open Gate/ La Strada Needs Assessment: Human trafficking in context of migration and refugee crises December 2015 available at: <http://www.lastrada.org.mk/mainarchive/Human%20trafficking%20in%20context%20of%20migration%20and%20refugee%20crises%202015.pdf>.

based violence became victims of human trafficking and vice-versa due to the vulnerable situation in which migrant and refugee women found themselves during this crisis.

Misunderstandings among officials of what constitutes human trafficking and human smuggling also contributed to the lack of identification of trafficking victims. Most migrants resorted to the services of smugglers to cross borders. The risk of being trafficked into a form of exploitation by smugglers was greater for women, girls and children travelling alone, as the smuggled person's circumstances might change during the journey or in the arriving at the final destination, where is possibility to become exposed to violence and exploitation. Namely La Strada outreach teams collected number of testimonies mainly of women and unaccompanied minors that have paid with sexual and labor services for their travel or have been locked and exploited for certain period of time. For most of the cases the exploitation happened in other counties prior arriving to Macedonia.

C. THE PROTECTION OF VICTIMS OF TRAFFICKING

C.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standards that were assessed were:

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;

and

The legal framework provides specifically for victims to be given appropriate protection from potential retaliation and intimidation during and after investigation and prosecution of perpetrators.

The legal definition of the term "human trafficking victim"

The Macedonian Criminal Code defines the term 'victim' in article 22, article 122 and defines the term 'child victim of crime'. There is no separate definition of 'human trafficking victim' in the Criminal Code. However, the Law on Criminal Procedure (LAP) imposes special rights and rules for treating children who are human trafficking victims.

In the Criminal Procedure Code, and especially in the Criminal Code, there is no definition of a presumed or potential human trafficking victim (both terms are used to refer to people who are suspected of being victims or who show some signs of having being trafficked). The definition for these two terms is part of the Standard Operating Procedures, as well as of the human trafficking victim identification indicators explaining that those should have same rights and the same treatment as victims of trafficking.

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Protection for people who have been trafficked, as prescribed by the law

Police procedures do not allow visual recordings which clearly show the identity of the victim of crime to be shown subsequently during criminal proceedings.

According to the Law on Criminal Procedure and the Criminal Code, there is no rule to keep the identity of a victim of trafficking confidential, unless the victim is a child. To protect the identity of victims of crime in general, the Law on Criminal Procedure allows judges to exclude the public from the main hearing of a case. Evidently this does not prevent the accused or the accused's lawyer from seeing and identifying a victim witness.

The law itself does not say anything about a victim's right to a recovery and reflection period. This right is foreseen in the SOP, in measure no. 7 ('reflection period and temporary residence permit'), which states that the victim should be offered a reflection period so that she may recuperate, stabilize and decide whether to collaborate with the authorities (detailed information can be found on pages 29-31 of the SOP). A number of different services are to be provided while someone is in a reflection period, including: appropriate and safe accommodation; medical, psycho-social assistance; advice and information about the legal rights of victims in a language they understand; legal assistance in criminal proceedings or in other types of proceedings so that the victim can exercise her or his rights; information about the appropriate court or administrative procedures, as well as the right of foreign citizens to seek asylum; information about the options and ways of returning to the person's country of origin (or country where they have citizenship) or where they were residing legally before entering Macedonia, and access to education. If the victim decides to cooperate with the authorities in this period, after the reflection period it she may be issued a temporary residence permit.

The SOPs do not have any specific provisions about trafficking victims who are identified abroad and returned to Macedonia as their country of origin, with or without help from the authorities. The same applies for the procedure and guidelines for victim identification. In practice, it appeared that victims identified inside the country and those identified abroad were treated in much the same way. In 2015 one Macedonian victim who was identified abroad returned to Macedonia and was immediately placed in a shelter and provided with assistance. No special mechanism is foreseen that enables trafficking victims who are repatriated (either to or from Macedonia) to keep their medical files and findings (to inform health professionals in the country to which they are moving). The monitors learned that victims who are repatriated from another country usually return with their medical files. Whether these medical files are taken into account

in Macedonia was not clear. Parenthetically, Macedonia, like other countries, has concluded bilateral health insurance agreements with some countries. That means that in countries with a bilateral agreement with Macedonia, citizens of Macedonia pay the same price for health services as the citizens of the other country concerned. The agreements would be valid for victims who have health insurance.

The legal framework provides specifically for victims to be given appropriate protection from potential retaliation and intimidation during and after investigation and prosecution of perpetrators.

The existing legal framework enables victims to exercise the right to claim damages and seek all available legal remedies, both in criminal and civil proceedings.

Legal provisions for witness protection

Macedonia has a specific Law on Witness Protection (Law on Witness Protection, Official Gazette no. 38/5 and 58/2005). It governs the conditions and the procedure for protecting witnesses. However, people who give evidence as witnesses do not automatically benefit from the provisions of this law. The law does not provide for a compulsory change of identity and compulsory physical protection of the victims. The latter applies even when there is a possibility for the victims to change their address.

The trafficking victim statement

The law (in the form of the Law on Criminal Procedure) does not allow for witness statements made before a trial, for example to the Public Prosecutor's Office (PPO), to be the sole evidence presented at a trial: a witness has to repeat their evidence at the main trial, when they can be cross examined by the judge and defence lawyer representing the accused. There is one exception to this. If the trafficking victim has been detained for more than 30 days because of the proceedings, and the victim does not wish to remain in Macedonia, at the suggestion of the PPO and in the presence of the defense lawyer and the accused, the victim may be interviewed separately to the main trial by a judge involved in the pre-trial proceedings. This statement may then be read at the main hearing.

Protection of persons who help and assist victims

There is no legally defined protection for legal entities or physical persons that are in any way involved in providing assistance and support to a victim, nor is

protection for the victim's family from retaliation and intimidation provided during the investigation and criminal proceedings.

C.2 WHAT HAPPENED IN PRACTICE IN GENERAL

The standard that was assessed:

Victims of trafficking (whether presumed or officially recognized) were protected and assisted adequately during the period under review.

Special victim protection measures during investigation

According to the 2014 report of the National Commission for Action Against Human Trafficking and Illegal Migration, the Border Affairs and Migrations Sector of the MOI provided 24-hour security and safe accommodation and food for victims of trafficking and migrants in the Skopje shelter for foreigners, in which nine persons were sheltered in 2014 (one officially recognized and eight presumed victims). Safe accommodation in the Centre for Victims of Human Trafficking was provided to five victims of trafficking in human beings (four nationals and one foreign victim with a temporary residence permit).

According to the 2015 report of the National Commission for Action Against Human Trafficking and Illegal Migration three victims of human trafficking and 11 potential victims of human trafficking were identified. Out of three identified victims, only one human trafficking victim stayed in the Centre for Victims of Human Trafficking. No information was available in the report about the number of victims or potential victims who were placed in the Reception Centre for Foreigners or to indicate if they were provided with any protection measures.

All those in shelters received general and specialist medical attention and psychosocial care by a psychologist and a social worker. In terms of whether the police or another competent authority provided any protection to victim witnesses after trials came to an end, no information in the 2014 and 2015 reports of the Commission revealed this. There was no information either on whether victims were provided with particular types of protection. The monitors were not aware of additional measures. On the other hand, the monitors confirmed that there were no cases in which victims refused to cooperate with the authorities:

as a result, there were no cases in which victims refusing to cooperate suffered from a lack of assistance or support as a result.

After checking whether any victims supported by or otherwise in contact with Open Gate itself reported feeling unsafe six months or so after first contacting the organization, the monitors concluded that no victims had significant worries in this way. The monitors were not aware that any victims had asked for additional protection measures during criminal proceedings, and none said they had been threatened.

According to Open Gate data, in 2014 all victims willingly contacted the police and the BPPO within the 30-day deadline of the reflection period. Out of eight (8) officially recognized victims and 83 presumed victims, all received assistance during the recovery and reflection period. In 2015, according to the annual reports of Open Gate (*Otvorena porta*) and one other organization, For a Happy Childhood Association (*Za srečno detstvo*), one officially recognized victim received assistance while staying at the Centre for Victims of Human Trafficking. The child victim received psycho-social and psychiatric care and was in contact with a guardian. In order to aid their reintegration, Open Gate provided direct assistance and support to 12 persons participating in the direct support programme as well. Open Gate also identified and assisted three female presumed victims of trafficking accommodated in the Center for asylum seekers in Vizbegovo.

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C.3 PROTECTION OF CHILD VICTIMS

C.3.1 Compliance with international standards

The standard that was assessed:

Child victims of trafficking are to be identified, protected and supported in full accordance with the 'best interests of the child' principle.

Protection of child victims

In line with the Criminal Procedure Law (article 53, 'Victim' and article 54, 'Special rights for Vulnerable Victim Categories'), everyone younger than 18 is considered

to be a child (referred to in legal texts as a 'minor'). The law provides for special protection of children when they are human trafficking victims because their interview is carried out in a special way, and in the presence of a legal guardian, a representative of the Centre for Social Work (CSW), a pedagogue and a psychologist, in order to minimize possible harm to the child. The Criminal Procedure Law requires that at the interview the child trafficking victim is accompanied by their legal guardian, a representative of the CSW, a proxy lawyer, with the fee for legal representation covered by the Government's budget. This means that the child may not be interviewed without his or her guardian being present. If a child is suspected of being a victim, he or she cannot exercise all these rights unless it is ascertained that the child has indeed been trafficked. The authorities are obliged to treat such children with special care, and the police must report the case to the Public Prosecutor's Office and also to the competent officer in the CSW, so that the CSW can invite the child through their guardian and provide him or her with due protection if, following an interview, it is determined that the child is a victim. Until a definitive conclusion is reached about a young victim's age, they are to be treated as if younger than 18.

The Standard Operating Procedures (SOPs) meet the requirements of the Law on Juvenile Justice (which is no longer in force) and the Law on Protection of Children. Article 4 of the Law on Protection of Children says: "The foundation for the application of the provisions of this law are the principles of protection of the right to life and development of any child, the protection of the best interests of the child, provision of minimal standards for every child in equal conditions, prohibition of any type of discrimination, the respect of the right of the child to freedom and safety of the person, individual opinion and the freedom of expression, assembly and education, conditions for a healthy life and exercising other social rights and freedoms of the child". However, the SOPs do not define what is meant by "the best interests of the child", even though this is listed as one of its basic principles. According to certain SOP provisions, such as measure 7, the reflection period for domestic victims is two months from the day the victim is placed in a shelter, and in the case of children, in the best interests of the child, this period may be extended. In order to explain how the 'best interests of the child' principle is to be applied, there is an overview of the conventions that should be respected while making a decision on returning of the child to her or his country of origin.

C.3.2 What happened in practice to children

The standard that was assessed:

Child victims of trafficking (whether presumed or officially recognized) were protected and assisted adequately during the period under review.

In the 2014 report of the National Commission, out of the eight identified victims, six were children aged 13-17, but no information was available to indicate if the children were accompanied or unaccompanied, nor if they had guardians appointed. In the absence of clear information, the monitors guessed that the six children who were identified as victims were connected with the cases of two people charged with trafficking in children (as defined in article 418-d of the Criminal Code). Open Gate was aware that the police had interviewed all the children. In its chapter about legal assistance to victims and migrants, the National Commission's 2014 report noted that the NRM/MLSP office had appointed guardians for a total of 64 children (59 boys and five girls) who had irregular migration status in Macedonia, but did not indicate their countries of origin.

In all cases where Open Gate was involved in providing assistance to children, the monitors were aware that a guardian was appointed and the victims received legal advice in the course of police investigations (four children in 2014 and three in 2015). No information was available to indicate if children who were victims of human trafficking received additional child-specific protection in 2014 and 2015.

In terms of acting as witnesses, only one victim from abroad was invited to give a statement in 2015, but since the victim (who had left the country after testifying at a previous trial when the defendant was tried in absentia) refused to return to the country to appear in court, their previous statement was read and assessed by the court. As a result, the defendant, now tried in person, was convicted.³³

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³³ Open Gate lawyer.

C.4 THE PROTECTION OF INSTITUTIONS WHICH PROVIDED ASSISTANCE AND SUPPORT TO VICTIMS

In the reports of the National Commission for Action Against Human Trafficking and Illegal Migration, three organizations that provided direct assistance and support to victims and migrants were mentioned: Open Gate (*Otvorena porta*), For a Happy Childhood (*Za srečno detstvo*) and Equal Access (*Ednakov pristap*). The 2014 and 2015 reports do not contain any information about whether the representatives of these organizations were intimidated or whether their safety was threatened. As far as the staff of Open Gate were aware, no-one in any of the three organizations was threatened or reported intimidation or retaliation at any moment, either during pre-trial investigations or during court hearings.

D. ASSISTANCE AND SUPPORT FOR VICTIMS

D.1 COMPLIANCE WITH INTERNATIONAL STANDARDS ON ASSISTANCE

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);

and

The legal framework provides for the right to legal assistance for victims of trafficking (whether presumed or officially recognized) in all relevant proceedings.

How human trafficking victims are to be assisted and supported according to the law

The legal framework in Macedonia envisages provision of comprehensive protection, assistance and support for human trafficking victims. The only exception concerns the way access to health services is supposed to be guaranteed, which is not well formulated in the law. The state and the support system do not foresee provision of financial assistance for human trafficking victims to pay for their diverse needs. Macedonian laws do not make initial assistance and support for presumed human trafficking victims conditional on their readiness to provide evidence to police investigators or to act as a witness in any criminal proceedings.

The Criminal Procedure Law stipulates that, after initial identification, if the person is believed to be a victim, they should be told their rights as early as in the previous procedure, especially when they appear before the Basic Public Prosecutor's Office, and the victim should be informed about all their rights during court proceedings, including the right to seek compensation or legal

redress. The legal framework entitles the presumed or officially recognized victim to receive counselling in a language they understand. The victim has a right to a translator or interpreter free of charge, i.e., to use their native tongue or a language they understand, and the right to receive all written correspondence in a language they understand.

In February 2014, the Ministry of Labour and Social Policy adopted the Program for assistance and support in the reintegration of victims of trafficking. The program was intended to be followed by expert teams from Centres for Social Work and other partner institutions/organizations involved in the process of reintegration. The main components of the program included the basic services necessary for reintegration, including transport and safe accommodation/housing, medical care, legal aid, social care, education and economic empowerment/employment. According to the program document, all services and reintegration assistance should be available to the victims and to be provided on an informed and voluntary basis.

Provision of financial support for combatting human trafficking

Governments have a responsibility to pay all or some of the costs incurred in assisting people who have been trafficked. According to the National Commission's 2014 report, a total of 23,449,259.00 MKD (approximately 383,079 Euros) were allocated by the Government for all activities related to human trafficking. Out of this amount, the Government provided 8,192,585.00 MKD (133,822 Euros) or 35 per cent of the total to look after victims (this money went to the Centre for Victims of Human Trafficking run by the Ministry of Labour and Social Policy and the Shelter for Foreigners run by the Ministry of Interior). More than half of the allocated funds, i.e. 53.8 per cent, were provided by civil society organizations, and 11.2 per cent by international organizations.

According to the National Commission's 2015 report, the budget to pay for activities related to human trafficking doubled in 2015 to 42,604,681.00 MKD (695,965 Euros). However, this seems to have been a mirage. In comparison to 2014, the Macedonian Government actually provided eight times less in 2015 for the Centre for Victims of Human Trafficking at the Ministry of Labour and Social Policy (801,036.00 MKD) and the Shelter for Foreigners at the Ministry of Interior (260,000.00 MKD), i.e., a total of 1,061,036.00 MKD for the two (17,328 Euros or 2.5 per cent of the total income required to finance the two institutions), little more than one eighth of the amount provided in 2014. Most of the funds needed to run the two shelters (81 per cent) was provided by civil society organizations, with 12.3 per cent contributed by international organizations.

In 2014, the government allocated a total of 1,500,000 MKD (24,494 Euros or 10.6 per cent of the budget, for civil society organizations, and in 2015 it allocated only one fifth as much, or 300,000 MKD (0.86 per cent).

By the end of 2015, the two civil society organizations, Open Gate and For a Happy Childhood, had not received any funds from government sources for running the state shelter, even though the state budget had allocated funds for this purpose. To allow the Centre for Victims of Human Trafficking to continue running, the two organizations relied on their own funds. The government did not offer any explanation of why it had cut funding so drastically, especially when the officially-approved budget had implied that the opposite was going to be the case. Nor did it seek to justify the cuts. This was evidently an alarming situation, verging on the irresponsible, both for the organizations managing the Centre and for the victims housed there.

D.1.1 Shelter & Material Assistance for human trafficking victims

The Law on Social Protection and the SOPs include provision for human trafficking victims from Macedonia to be provided with accommodation and support in a specialized Centre for Victims of Human Trafficking for up to six months. In line with the Law on Social Protection, the Centre provides counselling, food, accommodation, shelter, maintenance of hygiene and cultural and entertainment activities. The operating expenses, i.e., the rent and the bills, are supposed to be covered by the Ministry of Labour and Social Policy.

D.1.2 Access to Health Services

The provision in the Law on Social Protection that states that human trafficking victims have the right to health care is poorly worded and, in effect, inapplicable. The monitors noted that in practice there was no clear procedure or authority to secure free health services, so trafficking victims were unable to fully enjoy their right to free health services.

Part of the SOPs is an early risk assessment for every presumed victim is an initial interview to determine any immediate risks to the health and safety of the presumed victim. The risk assessment is in fact a two-way conversation between the authorities and the presumed victim, and its purpose is to assess the need for urgent assistance or urgent medical care. In terms of initial care and mid-term assistance, the SOPs foresee an assessment of the health needs of the victim in order to determine what care or attention is required.

D.1.3 Employment, vocational training and education

Human trafficking victims who are not citizens of the Republic of Macedonia have the right to be employed or to work in Macedonia in line with the procedure and the conditions foreseen in the Law on the Employment of Foreigners. According to this law, a foreigner becomes employed in the Republic of Macedonia when they sign an employment agreement with an employer whose headquarters or residence is in the Republic of Macedonia, or when they obtain self-employed person status in accordance with this law. The services provided by foreigners and other types of work carried out by foreigners on the basis of work agreements or other types of agreements in line with their civil rights, that are implemented on the territory of the Republic of Macedonia for a limited period, are considered to be work done by foreigners in line with this law.

According to article 2, paragraph 7, "a human trafficking victim" is a foreigner for whom there is reasonable doubt that they are a victim of the crime of human trafficking, as prescribed by the Criminal Code, and who, in line with the Law on Foreigners, has been issued a temporary residence permit on humanitarian grounds. The SOPs foresee employment counselling and assistance to be an integral part of the human trafficking victims' reintegration plan.

Measure 4, on 'Adjustment and stabilization', in the SOPs, includes acquisition of knowledge and skills within the programme for psycho-social assistance and support. This is mentioned below, in the context of decisions made by victims to return to their country of origin or not: a factor influencing this decision is the possibility of further education and vocational training in Macedonia. Open Gate was aware that they had the right to gain certain qualifications, i.e., attend courses at the Open Civic University for Lifelong Learning - Koco Racin (*Otvoren gradjanski univerzitet za doživotno učenje*), Skopje.

D.1.4 The right to free legal assistance

According to article 8 of the Law on Free Legal Assistance, such assistance is to be provided to human trafficking victims in all court and administrative proceedings.

Free legal assistance is provided in the form of preliminary legal aid in all court and administrative proceedings, covering the cost of initial legal advice about a person's rights, general legal information and legal assistance in completing applications for further free legal aid. Preliminary legal aid is provided by an

official in the local units of the Ministry of Justice and by authorized civil society organizations in line with the law.

There are also civil society organizations which, in addition to providing free legal assistance, provide comprehensive legal assistance to victims with the help of professionals, but the law does not prescribe special standards for this type of assistance. Legal assistance is offered by lawyers authorized to offer free legal assistance and includes advocacy in the procedure in the Ministry of Interior and the Centre for Social Work in line with the Law on Child Justice, advocacy and drafting documents at all instances in court and administrative proceedings.

Free legal aid, as foreseen by this law, does not apply to cases of compulsory defence as prescribed by the Law on Criminal Procedure, nor does it apply to cases of expenditure relief as foreseen in the Law on Litigation Procedure and Law on General Administrative Procedure.

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D.2 WHAT HAPPENED IN PRACTICE

The standard that was assessed:

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.

Services for assistance and support of human trafficking victims

The monitors noted that this standard was not met in Macedonia, in particular because the State did not provide sufficient finance to pay for assistance.

D.2.1 Shelter & Material Assistance for human trafficking victims

According to the findings of Open Gate for 2014 and 2015 for the human trafficking victims who were staying at the Victim Centre where they receive

assistance and support, all victims were sheltered reasonably quickly. Macedonians who were victims of domestic trafficking were accommodated at the Centre for the Victims of Human Trafficking shelter. Foreign nationals were sent to the shelter for foreigners, which they were not allowed to leave until they were issued a temporary residence permit. There were various reports that the shelter for foreigners was overcrowded and the level of hygiene was substandard.³⁴ Conditions for domestic victims were better and no residents at the Centre for the Victims of Human Trafficking reported being dissatisfied by the accommodation there.

D.2.2 Access to Health Services

Public health services were not completely accessible to the victims. Open Gate paid a fee for victims that it was assisting to get access to health services such as: gynecological checkups, dental services and micro-biological testing; and services at the Trauma Clinic. It also paid for drugs that were prescribed to those who required them. In theory the state should have provided money to meet these costs (or part of them), but it did not.

No information was available to suggest that a victim had not received medical assistance within a reasonable period.

According to the civil society organizations responsible for providing assistance and support, in terms of medical assistance, there were no cases reported of foreign victims being discriminated against in comparison to domestic victims. There were no cases reported of gender-based discrimination either.

All human trafficking victims who stayed at the Centre for the Victims of Human Trafficking and who needed psychological assistance and support received it in a reasonable time. The victims were not forced to use a service they did not consent to. All human trafficking victims received comprehensive and accurate information about their rights and the services available. According to the beneficiaries of the program the help and support for victims at the Centre was very good considering the constraints of the human and material resources available to the two organizations providing it. This was noted in the feedback forms that the beneficiaries are filling anonymously prior leaving the Center.

Despite the legally prescribed types of reintegration services, they were not available at a local level as a result of the insufficient capacity of the local units of the competent authorities and the local self-government units. The program

³⁴ Amnesty International Report EUROPE'S BORDERLANDS 2015 <https://www.amnesty.org/en/documents/eur70/1579/2015/en/>

supposed to be implemented in the place of living of the victims. In 2015, these services were only available to victims who were staying at the Skopje Victim Centre. For instance, there are no state facilities that provide specialised vocational trainings in other towns than Skopje.

D.3 WHAT HAPPENED IN PRACTICE CONCERNING LEGAL ASSISTANCE

The standard that was assessed:

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

Legal assistance in court proceedings

In 2015, four victims took part in human trafficking-related court proceedings. All four had been trafficked when they were children (before reaching 18). Two of them had access to legal assistance throughout court proceedings, while two victims from abroad (one from Albania and one from Romania) had legal assistance when the trials started and they first gave evidence, but did not attend the hearings when they were restarted and as a result did not have further access to legal assistance.³⁵

One of the foreign victims reached 18 years of age while waiting for a trial to start and opted not to seek legal representation. This apparent victim then changed a previous witness statement, now claiming not to be a trafficking victim. This implies witness tampering where the victim was intimidated and pressured by the perpetrator and their family into changing their testimony. Therefore it is necessary country adopted measures for protection of victims and witnesses in cases of human trafficking to be fully applied in both the investigative and court proceedings, in order to curb any witness tampering.

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³⁵ Open Gate.

D.4 WHAT HAPPENED IN PRACTICE CONCERNING CHILDREN

The standard that was assessed:

Child victims were offered immediate age-appropriate assistance and support, including emergency shelter, medical assistance, and information and legal advice, appropriate to their particular needs (e.g. age and maturity, gender, language and ethnicity).

In 2014, a total of six child victims of human trafficking were assisted, and in 2015 a total of three children. In 2014, four children were placed in a shelter, while in 2015 there was only one. The average stay in the shelter was one week and the children left it at their own request. Other types of assistance (besides accommodation) were provided for period of between six and eight months. Despite the children's need for material assistance, it was not provided.

There were no separate shelters for child victims of trafficking. This means that the Centre for the Victims of Human Trafficking provided accommodation for both girls under 18 and adult women. It was not large enough to provide separate space for those under 18 and those over 18. In 2014 and 2015, no children were placed in foster families, nor was accommodation for children victims of trafficking available in institutions that were not specialized in assisting human trafficking victims.

However, concern remained about where young children, trafficked under the age of 12, should be placed after leaving the Center for victims of human trafficking. In practice, two orphanages were used (named 25 May [*25-ti Maj*] and 11 October [*11-ti oktombri*]), institutions that had no special expertise in assisting child victims of trafficking. In some cases, when no family members or foster family was available, the orphanages were the only places available to provide residential accommodation for such young children.

Children included in the Open Gate programme were provided with age-appropriate assistance, excluding material assistance, which was not provided for any child. All the children received psychological and medical assistance within a reasonable period in accordance with their age and need.

In terms of helping them enter the educational system, in 2014 one of the four children in a shelter was included the education process, while in 2015 all three

children were included in the education process. Three of the children who had previously attended school did not go to school and did not attend any training.

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E. COMPENSATION AND LEGAL REDRESS

E.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The right of a person categorized as a victim of crime to compensation and legal redress is a right guaranteed by law. The human trafficking victim can obtain legal redress in criminal proceedings, or they may opt for civil litigation to seek legal redress. If the human trafficking victim states in criminal proceedings that she or he is not asking for legal redress, the statement does not prevent the victim from seeking redress in civil proceedings, because the former statement is valid only for criminal proceedings. Despite the option for the state itself to provide legal redress (in cases involving crimes punishable by at least four years' imprisonment), the state has not yet established a separate legal redress fund.

D.2 WHAT HAPPENED IN PRACTICE

Out of the eight (8) officially recognized victims and 83 presumed victims in 2014, five were placed in the Centre for the Victims of Human Trafficking (one was a Romanian citizen and had a temporary residence permit). The Romanian citizen, after staying at the Centre for a short period, was returned to their country of origin upon their request. According to the National Commission's report for 2014, those staying at the Centre were provided with the various forms of assistance they needed, including legal assistance. Only one of the five victims staying in the Centre appeared in front of an investigative judge in order to give a statement for court proceedings. Bearing this in mind, Open Gate's lawyer did not launch any court proceedings for legal redress in 2014.

In 2014, according to the National Commission's report, there were no convictions for human trafficking under article 418-a of the Criminal Code or for trafficking in children (article 418-d). Consequently, there were no verdicts mentioning claims for legal redress. The report did not mention whether trafficking victims claimed legal redress in civil proceedings.

The data available to the monitors indicated that there were three verdicts by first instance courts in 2015 (i.e., verdicts which could potentially be challenged on appeal): out of the five human trafficking victims involved, just three were categorized by the courts as 'victims' of trafficking and were entitled to ask for

compensation. All three were girls under 18 when they were trafficked, although their age had no bearing in the compensation proceedings. The convicted traffickers were ordered to pay compensation to two of these three of 400,000 MKD (6,500 Euros) each, while the third was referred to civil litigation to seek redress. The civil proceedings had not concluded by the end of the year. No money had been received by any of the victims by the end of 2015.

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F. RECOMMENDATIONS

On the basis of their findings, the monitors concluded that further action is needed in various areas of law and practice to strengthen Macedonia's responses to human trafficking. While the greatest priority is probably for the Government to meet its international obligations by providing money to meet the costs of housing and assisting people who have been trafficked, the monitors consider that the following recommendations would also address weaknesses they have identified in Macedonia's anti-trafficking systems.

GENERAL RECOMMENDATIONS

1. Publicly available data on human trafficking, or to be more specific the annual reports of the National Commission for Action Against Human Trafficking and Illegal Migration, are inconsistent and incomplete, which hinders analysis, comparison and accountability. We recommend that these reports be publicly available and contain information about actions taken by all the competent authorities active in the counter-trafficking field, so that it is possible to get a more definitive impression of the current situation, with both its strengths and weaknesses.

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

2. The state's increased efforts to deal with irregular migration had a negative effect on the identification, investigation, prosecution and sentencing of human trafficking cases. The number of identified human trafficking victims has been declining year by year, with only a small number of criminal proceedings for human trafficking being initiated. In 2015, only three criminal prosecutions for this type of crime were launched - two for human trafficking and one for trafficking in children. The monitors concluded that the scale of human trafficking in the country was higher than this suggests and merited more prosecutions. **The authorities should intensify their efforts in all phases of the criminal justice system**, and the courts should impose the legally prescribed sentences, rather than sentences which fail to deter or be dissuasive.

B. IDENTIFICATION OF TRAFFICKING VICTIMS

3. The SOPs have remained unchanged since 2010, even though they are the basic tool for responding to human trafficking cases and are bound to need updating regularly to keep abreast with changing realities. Only the identification indicators have been added, but even these are not an integral part of the SOPs. **We recommend that the SOPs should be reviewed and that thereafter they should be reviewed at least once a year to allow their improvement and amendment, including an assessment of the extent to which the authorities implement the SOPs.** The monitors noted that GRETA had recommended similar steps and suggested that labour inspection offices should be involved in MOI raids in suspected cases of human trafficking.
4. In terms of indicators for identifying people who have been trafficked, we recommend they be reviewed and supplemented to reflect international good practice, notably indicators developed by the ILO and European Commission, so that victims are identified in an efficient and timely way. **We highly recommend that they be formulated as questions that can be used by the authorities when conducting interviews with presumed victims, as well as for the situations in which the authorities have to determine whether a presumed victim should be officially recognized as a victim of trafficking (we recommend that the indicators are grouped according to the way they influence the process for identifying presumed and officially recognized victims).**
5. The SOPs do not foresee any procedure to follow in cases when a person is not granted victim status, to enable such a person to exercise their rights in this situation. **We recommend that current practice should be reviewed and a procedure introduced to allow for appeal or for review of the authorities' administrative decisions, as well as to detect any potential failings that could be improved in the current procedure.**
6. Bearing in mind the reports of the National Commission, and the Commission's 2015 report in particular, we are left with the impression that the authorities focused almost exclusively on combatting illegal migration. Such efforts are understandable, since the migrant crisis required the authorities' constant and increased involvement, in particular of the MOI. However, **we recommend that the authorities make clearer distinctions at operational level between human trafficking and smuggling of migrants, and ensure that a suitable number of law enforcement officials have a specialist understanding of investigating and prosecuting human trafficking cases.** The differences between human trafficking and smuggling of migrants should also be emphasized in training sessions for all relevant officials.

7. Many children, especially girls, are among both the presumed victims and those who are officially recognized as victims of trafficking. **Despite the fact that SOPs for responding to cases of unaccompanied foreign children were drafted and adopted in 2015, we recommend that the authorities to take more substantial steps to prevent such cases and to punish the criminals involved.**
8. The total number of people provisionally identified as presumed victims in 2015 was much smaller than the number in 2014, i.e., eight times less. In this context, **we would like to repeat the GRETA recommendation that greater attention must be given to identifying human trafficking victims among migrants, asylum seekers and unaccompanied children, which of course means organizing additional training for the officials who are in contact with such people.**
9. Notwithstanding the fact that the data in the National Commission's annual report are incomplete and inconsistent, we are concerned that only a few foreigners are officially recognized or presumed victims. **Thus, in line with the GRETA recommendation, we recommend that special attention should be given to identifying foreign human trafficking victims.**
10. Bearing in mind that the 2014 and 2015 reports of the National Commission point to the fact that most of the victims that were identified were exploited in the sex industry, **more attention should be given by the authorities to identifying victims exploited in other sectors and for purposes other than sexual exploitation.**

C. THE PROTECTION OF TRAFFICKING VICTIMS

11. In terms of the victim protection guaranteed by law, especially in the recovery and reflection period, in line with GRETA's recommendation **we recommend that the assistance offered in this period is not made conditional on a presumed victim's cooperation with the authorities. We also recommend that the authorities allow all human trafficking victims temporary residence, regardless of whether they cooperate or not.**
12. The SOPs do not contain an explicit provision according to which victims identified outside the country enjoy the same assistance and support that is available to victims identified in the country. **In this context, we recommend the SOP provisions be amended.**
13. In terms of the legally guaranteed victim protection and their protection as witnesses, we recommend that the GRETA recommendation be followed. **Namely, all available measures for protecting victims and witnesses from intimidation and retaliation during the investigation and the court proceeding should be fully applied.**

D. ASSISTANCE AND SUPPORT FOR VICTIMS

14. The legal provisions for providing access to health services for human trafficking victims are imprecise and inapplicable. At the same time, the state has been providing no financial or institutional support to pay for or facilitate access to health services for human trafficking victims. This is a serious failure. In 2014 and 2015, these services were mostly provided with the financial support and assistance of Open Gate. In line with GRETA's recommendations, **we recommend that the Government should urgently create the legal, institutional and financial conditions that would enable human trafficking victims to exercise their right to health care and medical attention.**
15. According to the 2014 and 2015 reports of the National Commission, the Government allocated eight times less funds in 2015 for sheltering domestic and foreign human trafficking victims compared to 2014, that is a total of 1,061,036.00 MKD (17,328 Euros or 2.5 per cent of the actual budget used by government organizations, NGOs and international organizations to pay for anti-trafficking activities). The state and the support system did not, in 2014 or 2015, provide any material assistance to human trafficking victims to meet their needs. **The state must allocate appropriate financial means to pay for assistance and support to human trafficking victims.**
16. The state does not allocate sufficient funds for the civil society organizations which are the primary service providers to human trafficking victims, and the funds available have steadily been reduced each year. **The state must provide financial support for the work of the organizations that provide direct services to victims.**
17. The conditions that must be met for a victim to be granted free legal assistance, under the terms of the Law on Free Legal Assistance, are financially and administratively over complex and act have the effect of acting as an obstacle. As a result, victims receive legal counsel and assistance (including for compensation claims) from a lawyer hired (and paid for) by Open Gate. **Human trafficking victims must be given effective access to legal assistance and free legal counsel so that they can exercise their rights, including their right to compensation.**
18. The Centre for Victims of Human Trafficking provides accommodation for girls and adult women, but it does not have the physical capacity (space) to provide separate facilities for children based on their age. **We recommend that the state provides separate facilities for trafficked children, and gives attention not only to short-term (temporary) accommodation for children in a shelter, but child-friendly arrangements over the longer term (e.g. in foster families) to promote their full integration. This**

should include the state allocating money to pay for the various forms of assistance required by child victims of human trafficking.

E. COMPENSATION AND LEGAL REDRESS

19. The right to compensation of human trafficking victims is encumbered by the manner in which it is legally formulated (both from a material and a litigation perspective). **We suggest the legal provisions be tailored to the needs of the victim, and the victim in this way will be able to exercise this right seamlessly.**
20. There is no separate state fund to pay either compensation or redress to victims, which could be used when a convicted perpetrator is unable to or fails to pay compensation to a victim. Thus, **we recommend that the state establishes a fund immediately and reduces the requirements for a victim to take action herself (or himself) to seek compensation (so that compensation can be sought if a perpetrator is sentenced to less than four years' imprisonment and without requiring that the perpetrator first pays compensation for damages).** The same fund should be used to make payments to trafficking victims whose cases are the subject of prolonged proceedings in the criminal justice system, to ensure that they receive a payment when they need it, rather than years later, when appeal hearings have concluded and a case is the subject of a definitive court decision.



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