

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

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REPORT TITLE

Monitoring and Evaluation of Anti-Trafficking Laws and Policies and their Implementation in the Republic of Serbia in 2014 and 2015

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MONITORING AND EVALUATION OF ANTI-TRAFFICKING LAWS AND POLICIES AND THEIR IMPLEMENTATION IN THE REPUBLIC OF SERBIA IN 2014 AND 2015

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CONTENTS

ACRONYMS USED IN THE REPORT	5
GLOSSARY OF TERMS	5
INTRODUCTION	6
A. THE LAW AND THE NATIONAL LEGAL FRAMEWORK FOR CRIMINALISING TRAFFICKING IN HUMAN BEINGS	7
A.1 COMPLIANCE WITH INTERNATIONAL STANDARDS	7
A.2 WHAT HAPPENED IN PRACTICE	13
A.2.1 Investigations	15
A.2.2 Prosecutions	16
A.2.3 Trials	16
A.3 WITNESS PROTECTION	19
B. IDENTIFICATION OF TRAFFICKING VICTIMS	21
B.1 COMPLIANCE WITH INTERNATIONAL STANDARDS	21
B.2 WHAT HAPPENED IN PRACTICE	23
B.3 DISPUTED IDENTIFICATION AND PEOPLE CATEGORISED INAPPROPRIATELY AS NOT TRAFFICKED	25
C. THE PROTECTION OF VICTIMS OF TRAFFICKING	27
C.1 COMPLIANCE WITH INTERNATIONAL STANDARDS	27
C.2 WHAT HAPPENED IN PRACTICE	32
C.3 PROTECTION OF VICTIMS WHO WERE NON-NATIONALS, INCLUDING CHILDREN	33
C.3.1 Compliance with international standards	33
C.3.2 What happened in practice to non-nationals	33
C.4 PROTECTION OF NATIONALS WHO WERE TRAFFICKED ABROAD AND RETURNED TO THE COUNTRY	34
C.4.1 Compliance with international standards	34
C.4.2 What happened in practice to nationals who were returned	35
C.5 PROTECTION OF CHILD VICTIMS	36
C.5.1 Compliance with international standards	36
C.5.2 What happened in practice to children	38
C.6 THE PROTECTION OF INSTITUTIONS OR INDIVIDUALS WHO SUPPORT VICTIMS	39

3

D. ASSISTANCE AND SUPPORT FOR VICTIMS	40
D.1 COMPLIANCE WITH INTERNATIONAL STANDARDS	40
D.2 WHAT HAPPENED IN PRACTICE	42
D.2.1 Shelter & Material Assistance	43
D.2.2 Medical assistance	44
D.2.3 Information	45
D.2.4 Vocational Training/Income-Earning Opportunities	45
D.2.5 Other	45
D.3 WHAT HAPPENED IN PRACTICE CONCERNING LEGAL ASSISTANCE	46
D.4 WHAT HAPPENED IN PRACTICE CONCERNING CHILDREN	46
D.4.1 Shelter & Material Assistance	46
D.4.2 Medical assistance	47
D.4.3 Education or Vocational Training	47
E. COMPENSATION AND LEGAL REDRESS	48
E.1 COMPLIANCE WITH INTERNATIONAL STANDARDS	48
E.2 WHAT HAPPENED IN PRACTICE	49
 LIST OF LAWS	 52
RECOMMENDATIONS	53

ACRONYMS USED IN THE REPORT

BAN	Balkans Act Now!
CPTV	Centre for the Protection of Trafficking Victims
CC	Criminal Code
CCP	Code of Criminal Procedure
CoE	Council of Europe
CSO	Civil Society Organization
CSW	Centre for Social Work
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).
MOI	Ministry of the Interior
NGO	Non-governmental organization
RSD	Serbian Dinar
THB	Trafficking in human beings
UN	United Nations

5

acronyms used in the report / glossary of terms

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

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

As with subsequent sections, this section starts with information about the legal framework established by the Government for responding to trafficking in human beings (A.1) and then reviews how this framework was implemented in practice during 2015.

A.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standard that was assessed:

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

Serbian legislation offers a comprehensive framework to fight trafficking in human beings (THB) - from the constitutional prohibition of human trafficking to an exhaustive list of criminal offences in the Criminal Code (2005, hereinafter CC)¹. The main requirement of the two international treaties mentioned above concerns the need to define criminal offences related to THB. As a response, Serbia has specified two different criminal offences: trafficking in human beings (Article 388 of the CC) and trafficking in minors for adoption (Article 389 of the CC), although trafficking for adoption is not envisaged as a trafficking offence by either the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime (2000) or the Council of Europe Convention on Action Against Trafficking in Human Beings (2005). Anti-trafficking legislation does not confuse trafficking in human beings or related crimes against the person with crimes against the security of the state, such as migrant smuggling or people smuggling. The criminal offence of illegal crossing a national border and smuggling of people is a separate criminal offence in Article 350 of the CC.

¹ Official Gazette of the Republic of Serbia, No.85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014.

Trafficking in Human Beings

Article 388 of the CC provides for the most exhaustive list of offences thus far (ten paragraphs), mentioning nearly all types of human trafficking. To a great extent this is in line with international standards. The criminalization includes basic forms of human trafficking and the exploitation of victims, as well as the qualified forms determined by the status of the victim, the perpetrator and the resulting consequences.

The basic form of this criminal offence reads as follows:

“Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person’s labour, forced labour, commission of offences, prostitution or other forms of sexual exploitation, begging, pornography, establishment of slavery or similar relationship, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of three to twelve years”²

This CC article covers almost all the actions listed in the THB definitions in international standards, as well as mentioning the various abusive means named in these standards in relation to the THB offence when committed against adults - force, threat, deception, abuse of authority, trust, abuse of a relationship of dependency, difficult circumstances of another or giving or accepting money or other benefit. What is still missing is envisaging “abduction” and “deception” as modes of committing the offence. While “servitude” and “practices similar to slavery” (both mentioned explicitly in the CoE Convention) are not explicitly mentioned in the definition of the crime, the term “slavery or similar relationship” appears to cover these as well.

It should be emphasized that exploitation for the purpose of forced labour may also include forced begging, especially when it relates to children³. The act can amount to a criminal offence of human trafficking if all necessary elements of that criminal offence are present in a given situation, especially if children are sold for the purpose of forced begging. Otherwise, it can be punishable under Article 193 of the CC (neglecting and abusing a minor) or as a petty offence.

² Article 388 (1).

³ In this Report, the term ‘child’ refers to persons under 18 years of age.

Finally, the forms of exploitation covered by the CC include trafficking a person for the purpose of the removal of their organs or body parts. It also covers service in armed conflicts (which is not explicitly mentioned in the relevant international standards) but does not include exploitation for the purpose of forced marriage (which, nevertheless, can be punishable under different articles of the CC). Legislation on sexual offences, including facilitation of the prostitution of others, is clear and does not categorize an offence as 'trafficking' unless the abusive means have been involved in the act of recruiting, transporting, transferring, harbouring or receiving a person.

On the other hand, the offence of facilitation of prostitution (Article 184 of the CC), which includes not only causing or inducing another person to prostitution, but also any form of promotion and advertising sex work, is sometimes used for prosecuting THB cases, either when judges and prosecutors fail to recognize THB or when they cannot collect sufficient evidence to prove human trafficking.

The CC expressly emphasizes that the victim's consent to exploitation or to the establishment of slavery or similar position is irrelevant when considering whether the basic forms of this crime have occurred.⁴

When referring to the aggravating circumstances arising from the victim's status, two circumstances should be noted: first, in line with international standards, the abusive means listed in Article 388 (1) are not necessary for the existence of the criminal offence if it is committed against a person under the age of 18 (Article 388 (2)); secondly, if the victim of the basic form of the criminal offence of human trafficking is a child, the minimum punishment is five years' imprisonment (Article 388 (3)), which means that the maximum sentence of 20 years' imprisonment may also be imposed.

The criminalization of human trafficking under Article 388 also includes two forms qualified by a grave consequence. Paragraph 4 refers to grievous bodily harm and paragraph 5 to death of one or more persons.

In line with international standards, the CC defines as aggravated forms of the THB offence cases where the offence was committed by a person who had repeatedly committed that offence or by a group or an organized criminal group. The penalties provided by the law are rigorous and befit the gravity of the offence. The minimum sentence for a perpetrator who habitually engages in human trafficking, as well as for the members of the group, is five years'

⁴ Article 388 (10) reads as follows: Consent of persons to exploitation or to establishment of slavery or similar position referred to in paragraph 1 of this Article, shall not affect the existence of the criminal offence referred to in paragraphs 1, 2 and 6 of this Article.

imprisonment (Article 388 (6)), whereas the minimum sentence for members of an organized criminal group is ten years' imprisonment (Article 388 (7)). In both cases it is possible to impose the maximum sentence of 20 years' imprisonment.

However, the CC does not make it an aggravating circumstance for a THB offence to be committed by a public official in the performance of his/her duty, nor if the offence deliberately or by negligence endangers the life of the person being trafficked.⁵ In these respects, the CC is not in line with requirements of Article 24 of the CoE Convention, which requires State Parties to punish these as aggravating circumstances. Also left out is punishment if the offence was committed in a particularly cruel or particularly degrading manner, which was envisaged as an aggravating circumstance in one of Serbia's previous laws.

In accordance with international standards, the CC has also introduced what is sometimes known as "accountability of the client" for those who exploit victims of human trafficking ("Whoever knows or should have known that a person is a victim of human trafficking and abuses their position or allows another to abuse their position for the purpose of exploitation...shall be punished with imprisonment of six months to five years"). The legal provision envisages a sentence of imprisonment from six months to five years for anyone who abuses the position or enables another to abuse the position of the victim of human trafficking for the purposes of exploitation envisaged by the law, if he/she knew, or might have known, that the person is a victim of human trafficking.⁶ In such cases, the punishment is more severe if the offence was committed against a child and ranges between one and eight years' imprisonment.⁷

The amendments to the Criminal Code of 2009 laid the foundations for stricter sentencing policy. Consequently, suspended sentences may no longer be imposed on defendants convicted of THB offences. The same amendments specify that the punishment imposed on those found guilty of THB may not be mitigated.⁸ Finally, the CC envisages a security measure – prohibition of approaching and communicating with the injured person, which is important for the protection of victims of human THB.⁹

⁵ The Criminal Law of the Republic of Serbia used to regard these facts as aggravating circumstances (Article 111b (2) of the Criminal Law of the Republic of Serbia, which was valid until the entry into force of the Criminal Code of the RS in 2005).

⁶ Article 388 (8).

⁷ Article 388 (9).

⁸ Article 57 (2).

⁹ Article 89a.

Trafficking in minors for adoption

The criminal offence of THB covers cases in which children are trafficked, but does not include trafficking in children for adoption (which is also not the subject of the UN Trafficking Protocol or the CoE Convention). The CC punishes trafficking in minors for adoption as a separate criminal offence.¹⁰

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

In addition to the basic form of the offence, the CC also criminalizes two aggravated forms. The first concerns criminals who have habitually engaged in trafficking in minors for adoption, as well as when the basic offence is committed by an organized group. In both cases the penalty is a minimum of three years' imprisonment. The second concerns the commission of the offence by an organized criminal group. The minimum punishment in this case is five years' imprisonment.

Issues pertaining to prosecution of human trafficking and trafficking in minors for adoption

According to the CC, instigating, and aiding or abetting in a THB offence are all punishable.

The national legal framework makes it possible to trace, seize and confiscate the proceeds of trafficking-related crimes. The relevant rules are covered in a comprehensive Act on Seizure and Confiscation of the Proceeds from Crime (2013)¹¹. The Act is applicable to criminal offences of trafficking in human beings and trafficking in minors for the purpose of adoption if the value of the object of the criminal act exceeds the amount of 1,500,000 RSD (12,237 Euros). In addition, the CC envisages the *sui generis* measure of confiscating pecuniary gain: "No one shall keep any pecuniary gain acquired by a criminal offence" (Article 91 (1)). This measure is mandatory, and, in order to apply it, it is not necessary for a defendant to be convicted of a crime. In that sense, no

¹⁰ Article 389.

¹¹ Official Gazette of the Republic of Serbia, No. 32/2013.

one can keep pecuniary gain stemming from an act of human trafficking, no matter whether he/she has been found guilty for that act or not. Finally, the Prosecutor's Office can request immediate temporary seizure and ban on the use of property.

All six grounds for establishing jurisdiction over THB related offences envisaged by international standards are established in the Serbian legal framework, including jurisdiction based on the principles of territoriality (involving commission of the offences on board of a ship or aircraft, as well), active and passive citizenship and universal jurisdiction. The issues are covered in Articles 6-10 of the CC.

Human trafficking and trafficking in minors for adoption are extraditable offences in the CC - the penalties relating to deprivation of liberty can give rise to extradition. The Act on International Legal Aid in Criminal Matters (2009)¹² regulates extradition proceedings. If extradition is denied on the grounds that the fugitive is a Serbian national, there is always the legal possibility of prosecuting that person in Serbia itself, which is one of the provisions of the UN Convention on Transnational Organized Crime.

Serbian legislation does not contain a specific legal provision concerning the non-punishment of victims of trafficking. However, Article 14(2) of the CC establishes the general principle that there is no criminal offence without an unlawful act or culpability, regardless of the presence of the elements of a crime, while Article 21 envisages that an act committed under "irresistible force" is not to be considered an offence. In case of the commission of an offence under force which was not irresistible, it is possible to conclude that there were mitigating circumstances and to impose a more lenient penalty. Similar solutions are included in the Petty Offences Act (2013)¹³.

¹² Official Gazette of the Republic of Serbia, No. 20/2009.

¹³ Official Gazette of the Republic of Serbia, No. 65/2013, 13/2016.

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.

Trials of suspected traffickers generally respected the rights of victims and witnesses, but in many cases only in a formal way. The actors involved in the provision of legal aid to victims (NGOs and the state agency the Centre for the Protection of Trafficking Victims) were not satisfied with the level of respect of victims' rights. Protection measures provided by the law were not regularly applied, and when they were, it did not change the position of the victim. For example, in one case the victim had the status of an especially vulnerable witness, but he still had to make a statement in the presence of the alleged trafficker, although such status *inter alia* implies that the witness should be allowed to testify from another room. On many occasions, trials were postponed for all sorts of reasons, including the absence of the defendant (even in cases when the defendant was in custody and it was court's duty to ensure his presence in court), but one victim was fined RSD 50,000 (around 400 Euros) for not appearing in court when required.

The quality of investigators' interviews with presumed victims depended on the degree of specialization of the police concerned. Specialist anti-trafficking police demonstrated skills and knowledge, but other frontline professionals who came into contact with presumed victims more frequently appeared unable to recognize trafficking and exploitation. The Serbian police are organized in such a way that specialized anti-trafficking units belong to the Border Police Directorate, as at the time of their foundation transnational trafficking was the main form of THB reported in Serbia and other parts of Southeast Europe. In the last five years, local/internal trafficking has been the main form, so ordinary frontline police are in a better position to come in contact with presumed victims. Generally, when they recognized a case they referred it to specialized anti-trafficking police. However, the habitual problem was that they failed to recognize it, especially when it involved coercing victims into carrying out criminal activities or forced begging.

There were also cases in 2015 in which the police refused to accept and register victims' reports when they went to police themselves. In such cases, it was

necessary for a non-governmental organization (NGO) to intervene and share their diagnosis that the case involved THB in order to persuade the police to take action.

There were no cases reported in 2015 in which a police investigation was stopped as a result of a victim being unwilling to act as a key witness. In 2014 there had been a case in which the investigation was stopped for this reason. It resulted in mutual recriminations between the police and the Centre for the Protection of Trafficking Victims (CPTV)¹⁴ about whose fault it was that the victim decided not to cooperate – whether the CPTV should have taken better care of him and thus prevented him from resorting to the traffickers' family for help or the police should have collected additional evidence, rather than depending exclusively on the victim's statement. In 2015, two victims refused to be identified (as THB victims) even for statistical purposes, but the monitors were unable to learn how these cases ended and whether prosecutions concerning their cases went ahead (by the time they stated that they were not THB victims, their cases had already been referred to the prosecutor's office).

Newly identified victims-witnesses collaborated with the criminal justice system during the criminal investigations in all cases that were reported in 2015. Essentially there was no option for a victim not to collaborate, once she or he was identified.

The police did not usually conduct financial investigation in THB cases except in the cases prosecuted before the Special Court for Organized Crime. There were no such cases in 2014 and 2015.

There were no reported cases of public officials being involved in human trafficking or being accomplices to traffickers in any way in 2014 and 2015, nor compelling reasons that the monitors could identify for suspecting that such cases were occurring.

Prosecutors did not, as a matter of routine, ensure support for victims nor inform them about their rights and about applicable administrative and judicial procedures, for they expected the CPTV and NGOs that provided legal aid to do this. However, cooperation between prosecutors and the CPTV and NGOs improved significantly after ASTRA¹⁵ signed a Memorandum of Cooperation with the Republican Prosecutor's Office in 2012, and subsequently organized a series of training sessions for prosecutors who were identified as contact points for THB cases.

¹⁴ <http://www.centarzztlj.rs/>

¹⁵ www.astra.rs

The only information which any trafficking victims received about court proceedings started was when he/she was summoned to testify. They were not even informed if the person who they knew had trafficked them was released from custody. The level of information provided depended on the victim's lawyer, who was appointed with the assistance of the CPTV/NGOs. It was not possible to estimate how many THB victims participating in trials in 2014 and 2015 did not have a lawyer and consequently how many of them received no information at all about their rights or about legal procedures (According to ASTRA's analysis of judgments made in 2015¹⁶, six victims identified in the previous years did not have representation).

The liability of legal persons (i.e. legal entities such as a business) for their direct or indirect involvement in a human trafficking offence has never been either investigated or prosecuted in Serbia.

There were no reported cases of discrimination before the courts in THB cases in 2015, but on several occasions judges showed a lack of respect to victims, based on the victim's social and education status, e.g. questioning the authenticity of their statements read from police records in terms of their capacity, education and literacy to make such statements.

In 2015 there were no cases in which victims were punished for involvement in unlawful activities that they were compelled to carry out under the control of traffickers or exploiters. In one case which started before the reporting period, the Prosecutor's Office decided in 2015 not to bring charges against a victim who was forced to recruit other women for her trafficker.

A.2.1 Investigations

In 2015, the police made 15 criminal reports for human trafficking, involving 27 perpetrators and 32 victims. Perpetrators were citizens of Serbia (21), France (3), Bosnia and Herzegovina (2) and Austria (1). All but one of the alleged perpetrators were male. All the victims were citizens of Serbia, 72 per cent them female (19 adults and four under 18) and mostly adults (only 12 per cent of the total were children). The majority of victims were exposed to sexual exploitation (20), followed by labour exploitation (8) and one case of coercion into criminal activity. In three cases exploitation had not started when the case was discovered. The case allegedly involving perpetrators from France appeared to involve kidnapping, so it was unclear why it was categorized as THB.

¹⁶ <http://www.astra.rs/wp-content/uploads/2016/07/ASTRA-pravna-analiza-2015.pdf>

It should be borne in mind here that police statistics about human trafficking cases and the number of victims does not coincide with the statistics kept by the CPTV, the institution responsible for officially recognizing the status of trafficking victim in Serbia, as the status and rights deriving from it need not be accompanied by police investigation and prosecution.

A.2.2 Prosecutions

According to the statistics of the Republican Prosecutor's Office, in 2015 the Higher Prosecutor's Offices in Serbia worked on THB (under article 388 of the CC) involving 59 suspects¹⁷ and on trafficking in minors for illegal adoption (under article 389) involving 16 suspects. The 44 suspects of offences recognized as THB by the UN Trafficking Protocol and the CoE Convention were reported in 2015 and others reported in previous years. Indictments were made against 20 persons for THB after the investigation, while there were no indictments for the offence of trafficking in minors for illegal adoption.

It is difficult in Serbia to track individual cases from the police report to the final judgment. For this reason, it was difficult to relate the statistics provided by the police with those from the Republican Prosecutor's Office. Comparable statistics about trials do not exist, for the data have to be collected manually and are known to be unreliable, as the systems for collating data about court cases are sometimes inaccurate.

A.2.3 Trials

ASTRA analysed most of the court judgments issued in 2015 which involved the offence of THB. Copies of the judgments were obtained directly from the courts (based on free access to information requests). A total of 19 first instance judgments were analysed (estimated to amount to around 80 per cent of all the judgments in 2015 concerning THB cases) and 20 second instance judgments (i.e. judgements on appeal, only 15 of which were connected with the 2015 first instance judgments that were analysed).

In 88 per cent of the judgments that were analysed, the THB victims were being trafficked for the purpose of sexual exploitation, in three per cent for labour exploitation, combined sexual and labour exploitation or coercion into criminal activity respectively.

¹⁷ RPO statistics contain data on individuals and not on the number of cases.

In one case the offence of human trafficking was requalified during the trial as facilitation of a person in prostitution. ASTRA provided legal aid in one other case of human trafficking which was prosecuted as facilitation of a person in prostitution from the beginning, for which reason it was not included in the analysis of THB cases. In this case, although the victim was officially identified as a trafficked person by the CPTV, the prosecutor apparently did not trust her evidence, as she had previous convictions for forging documents.

Out of 47 victims/injured parties in the first instance judgments that were analysed, 26 (55 per cent) were female and 12 (25 per cent) were children at the time of the offence. 34 persons (72 per cent) were citizens of Serbia, one was a citizen of Moldova while for 12 victims there were no data in the judgments about their nationality.

Almost half the first instance trials (48 per cent) resulted in convictions, a decrease compared to 2014 and 2013 (when convictions accounted respectively for 59 per cent and 76 per cent of the verdicts). A total of 21 defendants were convicted for human trafficking – 15 persons for one count of human trafficking (two of whom were convicted for aiding and abetting and two as co-perpetrators), four for the crime of human trafficking and also another crime (e.g., domestic violence, theft etc.) and two persons for facilitating prostitution.

The average prison sentence imposed on those convicted of human trafficking in 2015 was four and a half years, more severe than the average in 2014 (three years and nine months). The lowest imposed sentence was two years' imprisonment (the offence was committed before 2009, when sentences below the legally prescribed minimum could be imposed) and the highest was eight years. The majority of traffickers were sentenced to imprisonment of between three and five years (in 84 per cent of cases) and only 11 per cent to imprisonment lasting more than five years. The proportion of sentences of more than five years' imprisonment has been in steady decline year by year (2013 – 27 per cent of the total, 2014 – 14 per cent, 2015 – 11 per cent).

The duration of legal proceedings was calculated from the moment of the indictment until the verdict of a first instance court was issued. The average duration in 2015 was two years and four months – the longest being five years and the shortest two months. Of all first instance proceedings, 26 per cent lasted up to one year, 42 per cent between one and three years and 32 per cent more than three years. Compared to 2014, the average duration of a trial in 2015 was nearly six months longer. Trials in 2014 were shorter (so, possibly more efficiently managed) – as many as 60 per cent of the proceedings lasted for less than a year. When proceedings appear to drag on for a long time, victim witnesses tend to

feel frustrated in their quest for justice. However, complicated cases evidently take longer to try and the time required may be essential for justice to be done.

There were some trial proceedings which went on and on over several years. In one case where ASTRA was providing legal assistance to the victim, the trial started in 2010 and was still underway at the end of 2015. It was notable that in 2015 all six hearings that were scheduled were postponed, sometimes for bizarre reasons (on one occasion the defence lawyer was described as suffering from emotional distress), but the judge nevertheless insisted that the victim had to appear in court. This appeared to be an example of ‘justice postponed is justice denied’.

As the CPTV does not keep records of indictments against suspected traffickers, it was not possible to calculate the number of victims who were identified in 2014 but whose suspected trafficker had not been charged or tried by the end of 2015. This might have given some indication of the efficiency of prosecutions in THB cases.

It was also not possible to estimate from the judgments that were analysed in how many cases expert witnesses were called to court to provide evidence on the psychological state of the victim. In ASTRA’s experience of THB trials, such expert witnesses are usually called, but their level of expertise varies and in most cases they do not have appropriate expertise when it comes to victims of violence. What was observed in the analysis of judgments is that the evidence which expert witnesses presented about the psychological state of victims was disproportionately more detailed than the comparable evidence presented about the psychological state of defendants. Thus, judgments contained many pages about the psychological state of the victim and only one paragraph about the defendant. Yet, in spite of detailed examination of the victim, which often included evidence that the victim suffered psychological trauma, no trial judges concluded that it was inappropriate to question victim witnesses in court. Further, in no cases was the evidence about trauma taken into account when deciding on victims’ compensation claims, even when detailed evidence had been presented about the fear and harm experienced by a victim (such as post-traumatic stress syndrome).

All the victims who claimed compensation in criminal proceedings in 2015 were instructed to pursue their claims via civil litigation. Three civil proceedings were known to be underway in 2015, which had been started before 2015. For details, see section E below.

A.3 WITNESS PROTECTION

The standard that was assessed:

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

Judges implemented provisions to protect vulnerable victims and witnesses during the trial in only a small number of cases. Further, even when the victim was considered by the court to be an especially vulnerable witness, in many cases this did not affect the level of protection provided to them in court, as they had to sit and testify in the same courtroom as the trafficker and even to wait before the hearing started in the same corridor as the alleged trafficker and his family (this is known not to be good practice in trafficking-related prosecutions and trials).

There was an example of good practice in this area in the Higher Court in Kragujevac, when the victim was required to appear in court for only a few minutes to confirm that she was not intending to change the statement she had given to the police as evidence. She did not have to appear again. The Special Court for Organized Crime is also known to provide effective protection of especially vulnerable witnesses, but the last case before this court ended in 2013. It seemed that the protection of victims in court depended not on the prosecutorial or judicial system, but on the personal sensitivity and understanding of individual judges and prosecutors.

The analysis of 2015 court judgments showed that the exclusion of the public from trials as a protection measure occurred in only one third of cases, even though a significant number of victims were children at the time that the offences were committed (so it was reasonable to expect measures to have been taken to prevent their identity becoming publicly known). Victims were on average questioned three times in the course of legal proceedings – once during the investigation of their case and a further two times at the main trial. This applied to individuals trafficked as children as well, suggesting that too little was being done to minimize the number of sessions for interviewing and questioning young people, for whom repeated questioning might do more harm than in the cases of older adults.

No information was available to indicate that the potential protection measure of prohibiting a suspect from approaching or communicating with a victim witness had ever been applied in a THB case.

The police sometimes filed criminal reports for the offence of 'trading in influence' (an offence under Article 366 of the CC) in cases where traffickers, their families or friends tried to persuade a victim to change or withdraw his/her statements. There was one such report in 2015, although it was difficult to obtain reliable data because of the shortcomings of the police and court statistics. In earlier years there were cases in which victims were charged with perjury when they changed their statements as a result of pressure from traffickers.

The Witness Protection Act (2005)¹⁸ and measures it provides has been applied only once to protect a victim of trafficking (in 2006). In 2014-2015 not a single THB case was prosecuted as an act of organized crime, nor were the measures from the Witness Protection Act applied.

20/

¹⁸ Official Gazette of RS, no. 85/2005.

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.

Until 2012, the identification of THB victims was carried out by the Agency for Co-ordination of the Protection of Trafficking Victims.

Following the adoption of the Regulation on the Network of Social Protection, the Government of the Republic of Serbia established the CPTV in Belgrade on 13 April 2012. The Statute of the CPTV was approved by the Ministry of Labour, Employment and Social Policy, on the basis of Article 12, paragraph 1, of the Law on Social Protection.¹⁹

According to Article 9 of the Statute under which the CPTV operates it is established to:

... assess the situation, needs, strengths and risks of human trafficking and based on the indicators which point out that a person is a victim, conducts the identification within the legal framework in the field of registered activity. All of this is done in order to provide appropriate help and support for victims, and to assess other important people in the victim's environment.

Accordingly, one of the main tasks of the CPTV includes identification of THB victims. Since the CPTV is a part of the Ministry of Labour, Employment, Social and Veteran Policy, victim identification is based on a social protection approach.

Although the 2012 Statute states that the CPTV is responsible for identification, no official document specifies who (or what range of actors) can make a preliminary identification. These details are expected to be included in a new Social Protection Act, which had not been finalized by the end of 2015. As a result, written procedures and guidelines on victim identification did not exist. The indicators for preliminary identification and procedures were developed by the CPTV in 2015, but the Minister had not signed the instruction for their implementation in

¹⁹ Act no. 110-00-567/2012-09 of May 28, 2012.

the area of social protection by the end of 2015. Similar guidelines are expected to be made available for the police and education system. As a result, during 2015 identification was based on existing internal practice.

Despite the lack of formal procedures, identification of trafficking victims was based on three factors: the assessment of a series of indicators of human trafficking (which are also based on practice and not yet formalized); the responses of the suspected victim during the course of a structured interview; and the data from elsewhere and from other actors.

The complaint procedure for those who feel entitled to be identified as a victim but who have not been exist only as an internal procedure and is based on the Social Protection Act, i.e. it is not specific to trafficking victims but can be used by all beneficiaries of the social protection system who are not satisfied with the service they receive. This raises the question of whether such procedures are sufficiently clear and accessible. The CPTV has not received any official complaint so far regarding identification procedures.

A set of Standard Operating Procedures concerning identification and referral of THB victims are contained in an appendix to the Agreement on Cooperation signed on 12 November 2009 between the Ministries of the Interior, Justice, Health, Education, and Labour and Social Policy. However, in practice these Standard Operating Procedures have not been put to use. The reasons for this are unclear. In particular, they have not been updated since 2012 to take account of the role of the CPTV, which is in effect the central point of the national referral mechanism and consequently needs to be mentioned in any Standard Operating Procedures.

The system of identification in Serbia is such that the status of a victim is not connected with criminal investigations or the prosecution of traffickers or results of prosecutions. Instead, victims are treated as persons in social need and the provisions of the Social Protection Law and bylaws are applied to them (not the Criminal Code). In that respect, there are more victims identified by the CPTV than those registered as injured parties in criminal reports made by the police. This was also the reason why the number of judgments for trafficking offences did not correspond to the number of identified victims.

There was also a lack of standardized terminology between the criminal justice system and the social protection one. For the CPTV, a “possible” victim is a person for whom some of the actors in preliminary identification suspect to be trafficking victim. Following urgent identification, the CPTV decides whether the person is a “presumed” victim, i.e. a victim for whom there are real grounds to suspect

that human trafficking has occurred, in which case the process of identification continues. During the process of identification, the CPTV establishes whether a presumed victim is a victim of human trafficking who is at the moment of identification in the phase of recruitment, transportation to the place of exploitation or being subjected to exploitation itself.

B.2 WHAT HAPPENED IN PRACTICE

The standard that was assessed:

Victims of trafficking were quickly and accurately identified.

In 2015, the CPTV identified 40 victims of trafficking. This was a significant decrease when compared to 2014, when 125 victims were identified. However, out of 125 victims in 2014, 78 per cent (98) were men exposed to labour exploitation who were identified in just a couple of cases involving large numbers of workers exploited abroad and only categorised as 'trafficked' after returning home to Serbia. Apart from these cases, only 27 other people were identified in 2014 as victims of other forms of exploitation. In previous years the number of victims identified in Serbia each year was usually around 90, so the decrease that was apparent in 2015 could be considered to have started in 2014, if the large group of 98 men are not taken into account. Since the police are still responsible for making the majority of reports to the CPTV, which result in formal identification – proactive identification is not in the CPTV's mandate – the general reduction in identified victims suggests that police efforts to detect THB cases have not been intensive in recent years.

Out of 40 victims identified in 2015, 40 per cent (16) were adults and 60 per cent (24) children. Female victims accounted for 80 per cent and citizens of Serbia for 92 per cent. Three victims who were foreign citizens were identified in 2015, from Bosnia and Herzegovina, Syria and Ukraine. Since 2007, foreign victims have been identified rather rarely as being exploited in Serbia. One of the foreign victims was identified before the phase of exploitation started.

With respect to the type of exploitation involved, the majority of victims were exposed to sexual exploitation (47.5 per cent - 12 women and seven girls), followed by forced begging (25 per cent - six girls and four boys); labour exploitation (7.5 per cent - two girls and one man), other sorts of sexual exploitation for personal

23

purposes (5 per cent - one girl and one woman), forced marriage (5 per cent - one girl and one woman), coercion into criminal activity (5 per cent - one girl and one man), illegal adoption (one boy) and exploitation in pornography (one boy). Taken together, the cases involving some sort of sexual exploitation accounted for just over half (55 per cent) the victims.

For the 40 victims, the destination country (where the person was to be exploited) was the Republic of Serbia for 70 per cent. Other destination countries were Germany (4), Austria (4), Italy (1), Belgium (1), Switzerland (1) and Montenegro (1).

These characteristics of human trafficking within and out of Serbia, have remained much the same for several years.

No formal or official procedures were followed for identifying trafficking victims. When it came to unofficial procedures, some actors adhered to them, but the majority did not, as a result of which it was sometimes difficult to carry out identifications. This seemed mostly to be due to lack of expertise and poor organization within the police. For example, the police identified one victim and called the CPTV to give them the victim's phone number, while at the same time taking the phone away from the victim to use it as evidence.

The CPTV officially recognized some victims by responding to reports made by other actors. In most cases reports came from the police, but others came from the social protection system, NGOs and international organizations. In 2015, the CPTV worked on 128 reports, 105 of which were submitted in 2015. Specialist anti-trafficking NGOs contribute to the identification of victims. However, the CPTV complained that reports made by NGOs often did not result in formal identification because the cases did not involve human trafficking, but rather individuals who were at significant risk of being trafficked in the future. In some cases, it was because the individual reported by an NGO as a presumed victim was inaccessible. On the other hand, NGOs claimed that the reasons for refusing identification given by the CPTV are not always clear or reasonable.

There were 85 presumed victims in 2015, of whom 40 persons were officially recognized as trafficking victims. In 36 cases it was decided that the persons in question were not trafficking victims, while others could not be reached.

The majority of identified cases in 2015 involved sexual exploitation. However, there was ongoing concern among specialist anti-trafficking actors that cases of trafficking for other forms of exploitation were being neglected at the level of preliminary identification, in particular forced begging and coercion into criminal

activity. Officials in the CPTV expected this to change once the social protection system and the police started using the indicators for preliminary identification that were developed in 2015.

Not information was available to the monitors to indicate how many victims presented themselves to the police to report a crime against them. Two persons called the CPTV themselves, but in the process of identification it turned out that they were not trafficking victims. ASTRA provided assistance to one woman in 2015 who tried several times to present herself to the police, but they did not trust her and refused to accept her report. They started working on the case only when ASTRA contacted them and convinced them it was necessary.

Members of minorities did not experience any special difficulties in being identified, nor in accessing assistance as THB victims. Because of stereotypes, it sometimes seemed that members of the Roma community were reported more frequently as possible victims, but they did not stand out when it came to official identification. On the other hand, some exploitative practices, such as forced and child marriages, are not recognized either as possibly involving human trafficking offences or even as being unacceptable, because of stereotypes about Roma culture and traditions.

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

The standard that was assessed:

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

In 2015, NGOs were not aware of individuals whom they considered to have been trafficked but who were not identified as trafficking victims by the CPTV. In the majority of cases where reports from NGOs were not accepted, the CPTV was unable to establish contact with the possible victim. In previous years, there were cases when the CPTV would not identify a particular person whom NGOs considered to be a victim, but this was not an obstacle to providing assistance to such individuals.

25

One NGO working with street children reported that they had good cooperation with the CPTV, but not with local Centre for Social Work (CSW), the government agency which is the main actor in charge of cases involving trafficked children. This organisation also claimed that there was a lack of understanding and inconsistent interpretation of what constituted human trafficking (for example, when forced marriage was regarded as a cultural phenomenon rather than a crime), resulting in untimely or inappropriate responses by the competent authorities.

There were some trainings, consultations and meetings about human trafficking with the officials responsible for vetting irregular migrants and protecting refugees, but mainly at *ad hoc* project-based events. The police responsible for migrants were the same police who were responsible for investigating THB cases and consequently they should have already been adequately trained in methods to identify migrants being trafficked or otherwise at special risk. All the Centres for Social Work in municipalities along Serbia's borders reportedly had an opportunity to learn about human trafficking. However, it was far from clear that the training attempts were sufficient and there was no evidence that they increased the actual capacity of CSWs to recognize possible human trafficking among refugees and migrants. The CPTV was reportedly never contacted to take part in the examination of asylum applications or to comment on them. Serbian consular staff are not known to have received any training concerning human trafficking. Some plans for this were made in the past, but the contact person at the Ministry of Foreign Affairs changed his job, with the result that nothing happened. ASTRA's experience suggests that consular staff remain generally unaware of identification and referral procedures and that their readiness to cooperate varies from consulate to consulate, even when it comes to their regular scope of work (such as issuing temporary travel documents), not to mention when there is a need to organize transportation for Serbian trafficking victims to return to Serbia or other special cases.

C. THE PROTECTION OF VICTIMS OF TRAFFICKING

C.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standard that was assessed:

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

Unlike international standards for protecting people who have been trafficked, the Serbian legal framework does not provide a clear definition of a “victim of trafficking in human beings”. Nor does it provide a clear definition of “presumed victim”, or “potential” or “suspected” victim.

Indeed, the concept of “victim” has not been introduced into Serbian criminal law, either substantive or procedural. However, any natural person, victim of the criminal offence established in Article 388 of the CC is considered as an “injured party”. According to the Code of Criminal Procedure (CCP) (2011)²⁰, an injured party is defined as any person whose personal or property right has been violated or endangered by a criminal offence (Article 2 (1) (11)). The status of “injured party” gives rise to the victims of THB being entitled to measures of protection set out in Serbian law, mostly in accordance with standards provided in the CoE Convention. Yet, it is worth repeating here that for the purpose of effective protection, the definition of “child” in the CC needs to be harmonized with relevant international standards which, unlike the Serbian law, all define a “child” as a person who is below the age of 18. A clear definition of “victim of trafficking in human beings” is not provided outside the scope of criminal law either. Nevertheless, “victims of THB” can also benefit from protection and enjoy certain rights envisaged in the Social Protection Act²¹, the Health Care Act²² and the Act on Foreigners²³, which all explicitly refer to victims of THB with respect to certain protected rights.²⁴ The Social Protection Act uses the term “victim of THB”

²⁰ Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014

²¹ Official Gazette of the Republic of Serbia, No. 24/2011.

²² Official Gazette of the Republic of Serbia, No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, 106/2015.

²³ Official Gazette of the Republic of Serbia, No. 97/2008.

²⁴ See Article 41 (2) (7) of the Social Protection Act, Article 241 (6) of the Health Care Act, Article 28 of the Act on Foreigners.

as a beneficiary in the system of social protection, but it is not further defined from the point of view of the trauma that a victim has experienced, only in the context of her or his social need.

The issue of identification of victims of THB came into focus during the huge refugee crisis in 2015. It would consequently be preferable for Serbian law to include a clear definition of a “victim of THB” and thus make the legal status of such people clearer and less subject to arbitrary considerations.

According to the CCP, people who can furnish information regarding a criminal offence, the perpetrator and other relevant circumstances, are to be summoned as witnesses (Article 91). This includes the possibility of calling THB victims to be witnesses.

In principle victims – who are always witnesses – in Serbia do not have an option not to cooperate with the police once they are identified. If they are not identified as victims, they have no role to play as far as the police and other officials are concerned. The system of humanitarian residence permits for foreign victims foresees a possibility of a three-month stay regardless of victim’s willingness to cooperate with law enforcement, but this concerns only residence status and does not guarantee any actual protection. So, protection measures are not systemically applied even if the victim cooperates with law enforcement officials.

The issue of protecting the identity of THB victims from public disclosure is covered under general constitutional and legislative provisions. The protection of privacy in the course of judicial proceedings is mentioned specifically as a guarantee in the Constitution (Article 32 (3)). The CCP provisions on the protection of privacy and of the identity of anyone participating in criminal proceedings are directly applicable in cases of THB victims. So, particular attention should be paid to special witness protection measures, including *in camera* trial hearings and the prohibition of public disclosure of the identity of witnesses (under the terms of Article 106 of the CCP). The Police Act (2016)²⁵ imposes an obligation on police officers to maintain confidentiality about the identity of a person who furnishes information regarding a criminal offence or the suspected perpetrator (Articles 48 and 49).

In the Serbian legal system, the victim of THB can potentially obtain compensation for damages either during criminal proceedings or under the rules of civil law. Articles 252 to 259 of the CCP govern the issues relating to compensation within criminal proceedings. A claim for material or non-material damages arising out

²⁵ Official Gazette of the Republic of Serbia, No. 6/2016

of a criminal offence is supposed to be considered during criminal proceedings, provided that this does not delay the proceedings considerably. The claim for damages may consist of a demand for compensation, recovery of an object or the annulment of a certain legal transaction. The victim is supposed to be informed of the right to file such a claim by the trial court. According to Article 257 of the CCP, the court can temporarily freeze the assets of a defendant to secure payment of compensation. In its verdict and judgment, the court may satisfy the claim of an injured party in full, or it may satisfy it only partially while directing the injured party to assert the rest of the claim in a civil action. If the evidence that is accepted by the court in criminal proceedings does not provide a reliable basis for either full or partial adjudication, the court is to direct the injured party to assert a claim in its entirety in a civil action. When a trial results in an acquittal, or in the charge being rejected, or a ruling discontinuing criminal proceedings, the court is to direct a possible victim to assert his/her claim for damages in a civil action. At the same time, in accordance with Article 45 of the Act on Seizure and Confiscation of the Proceeds from Crime (2013), it is also possible to provide compensation to victims of offences when property is confiscated after a court's final judgment. If compensation cannot be claimed directly from the offender, the court may decide to pay compensation from assets that have been confiscated.

The Serbian legal framework does not include a provision mirroring the standard set in article 13 of the CoE Convention, which guarantees that victims of THB will be granted a recovery and reflection period of at least 30 days. However, some provisions of the Instruction on the Implementation of the Act on Foreigners²⁶ of 2009 (issued by the Ministry of Internal Affairs) partially cover this situation.

Chapter XXVIII of the Instruction, entitled "Humanitarian residence", provides that THB victims of foreign origin will be granted temporary residence on humanitarian grounds if the Agency for Coordination of the Protection of Victims of Trafficking has determined that they are in need of protection.²⁷ This means that a temporary residence permit may be granted to a THB victim for humanitarian reasons for a period of three months, for the purpose of protection and assistance during the recovery period and repatriation or return to the country of previous residence (paragraph 68 of the Instruction). In this case, issuing a temporary residence permit is not conditional on the victim's willingness to cooperate with law enforcement officials and may be obtained within three days from the day of filing the request (paragraph 72). The Agency for Coordination of the Protection of Victims of Trafficking was required by the 2009 Act to apply for a temporary residence permit to the relevant unit of the Ministry of the Interior within seven

²⁶ Official Gazette of the Republic of Serbia, No. 97/2008.

²⁷ In the meantime, the Agency has been abolished and the Centre for the Protection of Trafficking Victims (CPVT) has been established.

days of starting to provide accommodation to a victim in a shelter for victims of THB (paragraph 72).²⁸

The Instruction refers to two additional periods for which temporary residence permits can be granted to victims of trafficking: (1) temporary residence may be granted to a victim of trafficking for a period of six months, provided that the victim cooperates with the state authorities conducting the investigation (paragraph 69); (2) temporary residence may be granted for a period of one year if the victim actively participates in judicial proceeding as a witness or injured party, as well as when it is necessary for the victim's personal safety (paragraph 70). However, none of these provisions involve a recovery and reflection period, but only the question of issuing residence permits.

Although the three-month temporary residence granted for humanitarian reasons partially meets international standards regarding the recovery and reflection period to which foreign victims of THB are entitled, there is a need not only to specifically define in Serbian law the concept of a recovery and reflection period, but also to specify that (a) during this period THB victims are entitled to protection and assistance, as well as (b) that the recovery and reflection period is not conditional on their cooperation with law enforcement officials conducting an investigation or on their taking part in judicial proceedings. Further, the Instruction only applies to foreign THB victims and their residence status, while a recovery and reflection period for Serbian citizens trafficked in their own country is not mentioned by the legal framework.

Victims of THB have the same access as other victims of crime and witnesses to general witness protection schemes envisaged in the Act on the Protection Programme for Participants in Criminal Proceedings (2005) and the CCP. This potentially gives them access to a variety of protection measures, including physical protection, identity change, and relocation measures.

This Act sets out the conditions and procedures for protection and assistance to be provided to participants in criminal proceedings, including injured parties, witnesses and protected witnesses, and persons close to them, whose lives, health, physical integrity, freedom or property may be threatened because they have given evidence or information in criminal proceedings.

The related rules included in the CCP regulate the issues of 'especially vulnerable witnesses' and the status of a 'special witness'. As stipulated in Article 103 of the CCP, THB victims can be categorized as 'especially vulnerable witnesses' - a witness who is especially vulnerable in view of his or her age, experience, lifestyle, gender,

²⁸ This duty was taken on from 2012 onwards by the CPVT.

state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances. This status implies special rules regarding examination by law enforcement officials, including examination while being assisted by a psychologist, examination at a special institution or at victim's residence, prohibition of confrontation (with the accused) and implementation of special technical measures (Article 104).

Trafficked persons who have been identified in another country and who have returned to Serbia have the same rights to protection and assistance as those identified in the country. This is because after return the victim is identified again in Serbia, whether or not he or she has been formally identified as a trafficking victim in another country. Identification in a foreign country of a person as a trafficked victim is not always accepted by the Serbian authorities. A presumed victim who returns from a foreign country has the same rights as an officially identified victim. This is not regulated by any particular policy, but was developed as a practice. Similarly, it is a matter of practice, rather than any formal procedure, that individuals who have received assistance in another country as a result of being trafficked retain their health records when repatriated to Serbia.

An additional standard that was assessed:

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 CCP includes rules relating to the protection of a witness or person close to him/her from assaults and intimidation. According to the CCP, the court may grant a victim of THB a status of 'protected witness', if there are circumstances indicating that a witness or persons close to him/her might face threats to their lives, bodily integrity, health, freedom or large value assets as a result of giving public testimony. Protected witness status is supposed to be granted in particular when offences have been committed by organized crime, or involve corruption or other especially serious criminal offences. This implies that the offence of THB should be included as well. Special witness protection measures include witnesses being questioned under special conditions, in ways that do not reveal their identity, and also more intensive physical security measures for witnesses in the course of the trial (for the above see Article 107-111 of the CCP).

C.2 WHAT HAPPENED IN PRACTICE

The standard that was assessed:

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

This standard was not met. Victims of trafficking identified in 2015 were not protected and assisted adequately.

During the period under review not even one victim was offered a special protection measure at the stage of police investigation of a possible trafficking case. Equally, no victim enjoyed protection after the conclusion of a trial at which she or he was a witness or injured party. Cooperation with some police stations is very good in practice, when it comes to stopping subsequent violence which some victims face, but which is not related directly to human trafficking (e.g. domestic violence). Sometimes police officers investigating a case were reported to have given victims their phone numbers to use in emergency or arranged to have more frequent police patrols in the vicinity of a victim's house, but such measures were not the result of a systematic approach to protection, but seemed instead to depend on the sensitivity of individual police officers. Consequently such protection was not influenced directly by the stage that a prosecution had reached.

The CPTV reported that a few victims in 2015 said that they still did not feel safe half a year or even a whole year after they were identified, but this sense of insecurity did not appear to depend on the real risks they faced or on the quality of the support that was provided. Around 10 per cent of victims supported by ASTRA in 2015 reported feeling unsafe and such feelings were connected to realistic threats (e.g. in one case a trafficker's associates were throwing stones at a victim's house; in another two victims were receiving threatening text messages from unknown persons, which they reported to the police, but it was not clear if the police took further action, although the police officer in charge of the case was ready to receive the reports). Further, two of ASTRA's clients experienced fear that their traffickers might be let out of prison—a realistic fear in view of the fact that victim witnesses were not kept informed in advance of such releases.

THB victims were not formally provided with any protection measure, including physical protection, relocation or identity change, during criminal proceedings except for the status of especially vulnerable witness as described in section

A above. The status of especially vulnerable witness refers to protection in the court room and is aimed at preventing a witness being re-traumatized.

Although a 30-day recovery and reflection period did not exist officially (except in terms of the instruction regulating the residence status of foreign victims), it was nevertheless sometimes implemented in practice. When the police contacted the CPTV in order to interview a person believed to be THB victim, the CPTV was usually able to postpone questioning for a certain amount of time. Since there was no formal policy or procedure which they could quote to justify this, they apparently made reference to the Social Protection Law and to human rights. The police were especially careful in cases involving children and appeared ready to accept suggestions made by others. On the other hand, ASTRA's experience was that the police question victims extensively immediately after a case was reported to them. One 19-year old girl was questioned for eight hours in her first interview immediately after the case was reported to the police—an extremely gruelling experience. Since she was young and very frightened, she did not turn up for her first appointment with the Public Prosecutor, and the police officer in charge of her case told her if she failed to appear the next time she would have to refrain from contacting him ever again, as she was ruining his reputation at the Public Prosecutor's office.

All victims received support and assistance during what was in practice their recovery and reflection period in 2015 since, as explained earlier, their right to assistance and support was based on the Social Protection Law and was not affected by criminal proceedings.

C.3 PROTECTION OF VICTIMS WHO WERE NON-NATIONALS, INCLUDING CHILDREN

C.3.1 Compliance with international standards

C.3.2 What happened in practice to non-nationals

The standard that was assessed:

Identified foreign victims (whatever their nationality) were provided with renewable residence permits and were provided with at least the same level of protection as victims who are nationals.

33

And

Identified foreign victims (whatever their nationality) who left the country were assisted and protected while doing so.

Victims identified in Serbia who are not nationals have in principle the same rights to assistance and protection as victims who are Serbian nationals.

C.4 PROTECTION OF NATIONALS WHO WERE TRAFFICKED ABROAD AND RETURNED TO THE COUNTRY

C.4.1 Compliance with international standards

In principle Serbian nationals who are trafficked in a foreign country and who later return to Serbia, either after being identified as human trafficking victims while abroad and assisted in returning, or travelling back to Serbia without assistance, are to be subjected to a new process of identification by the CPTV as described in Section B1 (above). If they are identified as victims, they have the same rights as the victims exploited in Serbia. Identification of a Serbian national in a foreign country is not automatically recognized by the Serbian authorities. If the CPTV establishes that a person is not a victim of trafficking, she/he would be referred to other institutions of social care according to his/her need.

Procedures followed by actors involved in the organization of the return do not necessarily include risk assessment. The CPTV developed an *ad hoc* procedure for Serbian consulates abroad, which have been asked to make direct contact with the CPTV in any cases involving Serbian children, so that the CPTV could conduct an assessment of the child's family prior to a child's return. However, for this procedure to work, the child needed to be identified in the country of destination and Serbian consulates informed of such identification. In practice, it varied from country to country.

C.4.2 What happened in practice to nationals who were returned

The standard that was assessed:

Victims of trafficking returning from abroad whose cases were brought to the attention of the authorities were protected and assisted adequately during the period under review.

In 2015, six persons (were) returned to Serbia after being exploited in a foreign country.

The CPTV claimed that returns of trafficking victim were never been delayed by actions or inaction by the Serbian authorities. However, Serbian Embassies did not have a dedicated budget to pay for the return of Serbian citizens, so in practice this was a cause of delays and the impediment was not resolved by the authorities in 2014 or 2015. In one case in 2015 a consulate reportedly refused to issue temporary travel documents to presumed victims because they did not have money to pay fees and told them that “Embassies do not have funds for that”, although the fee was apparently required simply for the Embassy itself to issue a document to the victims. Earlier, in 2014, ASTRA was aware of the case of a girl aged under-18 who waited in a foreign country for one year for the CPTV to send her birth certificate, which was required to facilitate her return. Although she was identified as a THB victim in that country, the CPTV decided that she was not a victim and refused to divulge other details about the case or the reasons for the 12-month delay because of the need to protect the child’s privacy.

No forced repatriations were reported in 2014 and 2015.

Serbia did not have a formal return programme. The CPTV reported that it had tried to establish such a programme but adequate finance was not available. The CPTV used to finance a formal return programme with funds provided at the discretion of the Public Prosecutor’s Office, but in 2014 responsibility for supervising such funds was transferred to the Ministry of Justice and the funding ceased. In practice, the existence of a formal return programme need not depend on the availability of funding, but should be linked to the functioning of some form of transnational referral mechanism, allowing for the cooperation of state and non-state actors in the various countries involved. In 2014 and 2015 the CPTV was not involved in organizing or facilitating returns.

35

C.5 PROTECTION OF CHILD VICTIMS

C.5.1 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.

Serbia’s legal system does not formally define who is a child, but refers to the age of majority, reached at the age of 18. Similarly, the principle that a child’s best interests should be a primary consideration in all actions affecting a child is not stated clearly in Serbian legislation and the principle appears to be poorly understood or applied by officials. However, the Serbian Constitution²⁹ refers to the principle of the child’s best interests in the context of revoking parental rights in court proceedings (Article 65). Further, the Family Law (2005)³⁰ specifies that everyone is obliged to act in the best interests of the child in all activities related to the child (Article 6 (1)). This law emphasizes this principle with respect to some specific issues, such as the exercise of parental rights, personal relationships, the appointment of a legal guardian, adoption, foster care, etc.

There are several legal mechanisms to ensure that children who are “presumed” or confirmed victims of THB are not left without protection. The Serbian Constitution is child-rights oriented. It guarantees special protection for the child and makes clear that the child is to be protected from psychological, physical, economic and any other form of exploitation or abuse (Article 64 (3)). The Serbian Constitution also commits the state to providing special protection for children without parental care and for children who are mentally or physically challenged . Finally, the Constitution prohibits the employment of children under 15 years of age and specifies that children under 18 may not be employed at jobs detrimental to their health or morals (Article 66 (4)).

The Family Law reaffirms the principle that the state must undertake all necessary measures to protect children from negligence and psychological, physical, emotional and any other form of exploitation or abuse (Article 6). In addition, the Instruction to Police Officers in Treating Minors and Juveniles of 2006, issued

²⁹ Official Gazette of the Republic of Serbia, No. 83/2006.

³⁰ Official Gazette of the Republic of Serbia, No.18/2005, 72/2011 - and 6/2015.

by the Minister of the Interior, obliges police officers to inform the Agency for Coordination of Protection of Trafficking Victims without delay whenever a minor or juvenile is identified as a victim of human trafficking or of any other offence involving exploitation, so that the Agency can provide suitable assistance and protection (paragraphs 12 (3) and 22 (3) of the Instruction).³¹

One of the anticipated measures is the appointment of a guardian. According to the Family Law, a temporary guardian must always be appointed for a child who is a foreign national and not accompanied by a parent or guardian while he/she is in the territory of the Republic of Serbia, and for the child whose usual residence is unknown (Article 132). The same article stipulates that a legal guardian may be also appointed if it is in the best interest of the child. A temporary legal guardian is empowered to supervise and represent the child, secure his/her means of living and administer the child's property (Article 135).

Although the monitors had access to no case-specific data concerning the treatment of children who were identified as trafficking victims in 2014 and 2015, it was reported that all child victims who were provided with accommodation in a residential child care institution were formally provided with a guardian - temporary or permanent - immediately after the beginning of the identification process, as specified by the law. However, it is possible that in some cases the children concerned never actually met their particular guardian. The duration of temporary guardianship is not specified in the law. Once it is established before a child's reunification with her/his family that family members have not been involved in the child's trafficking and that they can take proper care of the child, the child usually returns back to her/his family straight away. If more time is needed for an assessment, a guardian is appointed and the child is placed in a residential child care institution.

There is also a legal basis for accommodating child victims of THB in shelters in order to avoid their re-victimization; this is Article 28 (6) of the Act on Foreigners, which regulates the placement of trafficking victims in the country. The foreign child is not allowed to return to his/her country of origin or to travel to a third state that is ready to accept him/her, until an adequate reception for him/her is known to be available (Article 52 (2)).

If a child victim gets a status of a special witness, securing him/her a shelter is one of the protective measures envisaged in the Act on the Protection Program for Persons Participating in Criminal Proceedings (Article 14).

³¹ As said earlier, now the CPTV has this responsibility.

The Act on Juvenile Criminal Offenders and Criminal Protection of Juveniles³² includes a set of provisions regarding the protection of a child victim of THB when a child participates in the course of criminal proceedings as an “injured party” (Articles 150-157). The proceedings in which child victims of THB participate always demand high standards; a child who is an injured party may be examined more than twice only in exceptional cases. The examination is to be conducted without the presence of the other participants in the proceedings, by asking questions through the judge, psychologist, child education specialist or other professional person. In principle, during the examination, a defendant is not supposed to have face-to-face contact with the child. A child must have a legal representative from the first hearing. The costs of representation are covered by the court’s budget.

Serbia’s legal framework still leaves the definition of who is a child unclear and does not specify that a child’s best interests are to be a primary consideration in any decision affecting her or him (i.e., must be taken into account on an equal basis with other primary considerations, taking precedence over considerations which are ranked as secondary ones). On both points, action is required by the Serbian authorities to bring the legal framework into line with international standards. In this way, the interests and entitlements of child victims of THB would be better served and not the subject of arbitrary decisions.

38

C.5.2 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 2015, 24 children were identified as victims of trafficking in Serbia (18 girls and 6 boys), that is to say 60 per cent of all identified victims. They were reported to have experienced different forms of exploitation: sexual exploitation (9), forced begging (10), labour exploitation (2), forced marriage (1), coercion into criminal activity (1) and illegal adoption (1).

It was difficult in practice to obtain independent information about the treatment of child victims since assistance and support for children were organized

³² Official Gazette of the Republic of Serbia, No. 85/2005.

entirely by the state-run formal social protection system and CSOs were rarely in contact with such children. CSOs were unable to obtain information even about developments in the cases of children that they had reported to the CPTV. This lack of information was justified by the authorities by the need to protect the children concerned, but evidently meant that there was also a lack of accountability by the authorities.

All presumed child victims were questioned by the police about possible offences committed against them. The police generally observed particular procedures when children were questioned; the CPTV sometimes had to stop the questioning because interviews went on too long. The law provides plenty of possibilities for the protection of children, but in practice these were not used properly. As a result, children were routinely questioned more times than allowed and there was a case in which the child victim had to directly confront her father who had trafficked her.

All child victims identified in the last two years whose case led to a prosecution had a lawyer during both investigation and trial. This right was observed not because the children were victims specifically of a trafficking offence but as child victims of a criminal offence. For this reason, the CPTV sometimes engaged legal aid lawyers, whose quality varied. When the CPTV realizes that a lawyer is of inadequate quality, he or she is replaced with another. There is a problem in practice that at the moment the victim turns 18, he/she loses the right to a lawyer on these grounds, even when the young person concerned was trafficked as a child.

The CPTV assesses that insufficient were able to provide evidence for use in a trial without being present in court or encountering their alleged trafficker/exploiter. The monitors did not come across information suggesting there were particular protection measures that were available to child victims but not to adult victims.

C.6 THE PROTECTION OF INSTITUTIONS OR INDIVIDUALS WHO SUPPORT VICTIMS

Members of CSOs which provide assistance and support to trafficking victims are occasionally subject to intimidation, usually in the form of threatening phone calls, by traffickers and their associates. On the whole this is assumed by those concerned to be part of the job and no serious incidents were reported in 2015. There is no particular police procedure to protect victim assistance providers in Serbia.

D. ASSISTANCE AND SUPPORT FOR VICTIMS

D.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standard that was 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).

The Serbian legal framework does not make initial assistance and support to presumed victims conditional on their willingness to press charges or testify against any perpetrator/suspected criminal. In that sense, the establishment by the Serbian Government in 2012 of the Centre for the Protection of Trafficking Victims (CPTV) was a welcome step towards meeting this standard, for it is responsible for establishing victims' needs and referring them to assistance, which includes accommodation, psychological and financial assistance, counselling, information, medical assistance, access to education, labour market and vocational training. The activities of the CPTV are covered by the state budget.

Article 41 of the Social Protection Act recognizes that victims of THB are entitled to benefit from social protection services without having to prove that they are in social need. Article 206 of the same Act specifies that the costs of accommodation of THB victims should be financed from the State budget. Accommodation of the victim is not time-limited but is to last as long as there is a need.

THB victims are entitled to material assistance under the same conditions and following the same procedure as other poor citizens. Once the documentation concerning their case is submitted, the victims may start receiving material assistance in one month's time. However, it routinely takes longer than this to collect all the necessary documentation to prove an individual's need for (and right to) material assistance. Trafficking victims usually need first to obtain a new identification document, birth certificate, residence certificate, etc. Further, what is called 'continuous material assistance' can actually last for only nine months of the year³³.

Article 241 (6) of the Health Care Act stipulate that health care costs of foreign

³³ Article 85 of the Social Protection Law

nationals identified as THB victims should be covered by the State budget. The costs of health care for the THB victims who are the Serbian nationals are to be paid by local social services.

The Serbian Constitution refers to a defendant having the right to information in his or her own language in any judicial proceedings. Thus, the right to information on reasons for arrest and charge in a language which the person concerned understands is guaranteed by Article 27 (2) of the Constitution. In addition, everyone is entitled to the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court (Article 32 (2) of the Constitution). The CCP reaffirms these rights: it guarantees right to use their own language to all participants in criminal proceedings, including victims and witnesses (Article 11 (3)). Interpretation costs are to be borne by the state authority, while the victim is to be informed about this right before the first hearing. These constitutional and CCP provisions are equally applicable to victims of THB.

Trafficked persons' right to information in the language they understand is confirmed in CPTV's internal procedures and one segment of the CPTV's budget is specifically earmarked for interpretation services. The right to be provided with information promptly is not specified in the legislative framework. The police, who are in most cases the first service to come into contact with a victim, leave everything to do with informing victims about their rights to the CPTV. If a possible victim is placed with another institution before making contact with the CPTV, then the institution in question is supposed to provide basic information, while the CPTV subsequently provides full information.

As to the access to the labour market, the Serbian Constitution specifies that the right to work is guaranteed in accordance with the law and provides that all jobs shall be available to everyone under equal conditions (Article 60 (3)). The Labour Act (2005)³⁴ specifies that foreign nationals and those with no nationality have access to the labour market on the basis of conditions specified in the law (Article 29). The Labour Act extends its protection to foreign nationals and persons without citizenship and prohibits any kind of discrimination regarding persons seeking an employment (Articles 18 -20). Apart from the standard clause which bans discrimination, the Act also guarantees gender equality in the labour market and provides for positive discrimination in favour of persons who traditionally have more difficulty in employment (Article 22). However, the key guarantees pertain to the fact that access to the labour market is specifically guaranteed to THB victims for as long as their residence permit lasts. This is a

³⁴ Official Gazette of the Republic of Serbia, No.24/2005, 61/2005, 54/2009, 32/2013, 75/2014.

novelty, introduced for the first time in the Serbian legal framework with the adoption of the Act on Employment of Foreigners³⁵ of 2014 (Article 13 (5)).

It is notable that legislative measures to explicitly secure victims of THB access to vocational training and education are missing. It would be appropriate for legislation to adopt clear rules aimed at victims' (re)integration into society and supporting them in gaining their independence, even if it does not explicitly recognize their right to vocational training and education. In that sense, the newly amended Act on Employment and Insurance in the Case of Unemployment of (2015)³⁶ was a missed opportunity, for it failed to refer to the specific needs of THB victims.

A further standard that was assessed was:

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

This standard is not yet being met, for Serbia has not yet enacted a law on free legal aid, so victims of THB depend on the support of NGOs and the CPTV to pay all the costs involved in this respect. It should be mentioned that, in practice, this legal aid is free for victims, but not for NGOs/CPTV, which engage lawyers and pay them. Free legal aid is available only for children who are victims of human trafficking according to the Act on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

42 /

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.

³⁵ Official Gazette of the Republic of Serbia, No. 128/2014.

³⁶ Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 38/2015.

There are two CSOs in Serbia which provide specialist assistance to trafficking victims – ASTRA and Atina³⁷. ASTRA's expenditure related to victim assistance has never been financed from the state budget or grants from government structures. In 2015, 4.3 per cent of Atina's total budget was provided from government sources, specifically the City of Belgrade and the Ministry of Labour, Employment, Social and Veteran Policy.

D.2.1 Shelter & Material Assistance

All the victims who were identified in 2015 who needed accommodation were provided with somewhere to stay. The Annual Report of the CPTV³⁸ reported that 16 victims were assisted in finding accommodation, but this does not necessarily refer to victims identified in 2015. CSOs questioned whether victims were actually willing to be housed in accommodation that they considered inappropriate. ASTRA knew of one case in 2015 where the accommodation option offered to a victim was refused as inappropriate, as she was offered accommodation in a shelter without the possibility of taking her child with her.

Trafficked persons in Serbia are not accommodated in specialized shelters for trafficking victims as such specialized shelters do not exist. It was planned that one of the units at the CPTV would be a shelter for urgent accommodation of victims, but it was never established. In 2015, the only available specialized accommodation was provided by NGO Atina. It is relatively small (with capacity for three persons) and is designed to provide support while victims prepare for reintegration, not for victims who need emergency care and support. Other victims in need of accommodation were placed in shelters for victims of domestic violence run by social welfare centres; such accommodation is inappropriate in the majority of cases in which a woman has been trafficked. No specialized accommodation that could be used by adult men was available in 2015. CSOs providing direct assistance supported living programmes for victims and the costs of such accommodation were sometimes paid by the CPTV (one case was reported in 2015) or CSWs.

Since trafficking victims do not receive material assistance on the grounds of being trafficked, but as citizens in social need, the duration of the assistance they get does not depend on their status as victims of trafficking, but can last as long as there is a need. As far as the monitors could establish, no victim who started receiving material assistance in 2015 had this assistance terminated. When it

³⁷ See <http://www.atina.org.rs/>.

³⁸ http://www.centarzztj.rs/images/download/lzvestaj_o_radu_2015.pdf

comes to access to material assistance in 2015, there were problems in calculating the amount of material assistance to which victims were entitled, as assessments made by CSWs were based on how much a beneficiary could work and earn during a one-month period, regardless of whether the person in question was actually employed. In the case of one victim, material assistance was paid into the account of her husband, who was serving a prison sentence for having trafficked her, and she did not have the necessary authorization to withdraw money from his account (they had previously been entitled to material assistance as a family unit).

The CPTV was not able to speed up the procedure for obtaining assistance, even when a need for material assistance was particularly urgent. In such cases the CPTV itself purchased essential items, such as food packages and clothes (in 2015, 28 food and hygiene packages were provided to victims; the CPTV bought clothes and footwear for 15 victims, school books for two, and heating fuel for 10).

In conclusion, the system for providing routine assistance to victims was flawed and the system for providing immediate (emergency) assistance was wholly inadequate.

D.2.2 Medical assistance

THB victims were able to rely on the public health service for free treatment for health-related problems. The CPTV has an agreement and developed a procedure with one public health centre in Belgrade so victims can go there for treatment, even if they do not have health insurance. In other towns, CSWs take care of access to health care. CSWs assisted victims in receiving medical service 13 times in 2015. CSOs which provided assistance often paid for services in private health institutions when a victim did not have health insurance or access to public services for a variety of reasons, including to protect victims' privacy. The monitors did not hear of any victims who needed medical assistance who were unable to receive it within a reasonable time. The CPTV sometimes paid for medication required by victims (in six cases in 2015). The monitors did not learn of any cases in which a victim was forced to receive health services without her or his consent.

The CPTV engaged psychotherapists aimed at helping victims improve their mental health on eight occasions in 2015.

D.2.3 Information

The CPTV reported that all victims were informed about the existence of services provided by different victim assistance providers, for which purpose a special leaflet was produced. However, specialized CSOs doubted the accuracy of this claim. The question is whether THB victims were provided with information, in what way such information was shared with them and whether they were encouraged or discouraged to contact CSOs.

D.2.4 Vocational Training/Income-Earning Opportunities

Serbia did not have foreign nationals identified as victims of human trafficking who stayed in the country long enough to exercise in practice their right to employment and vocational training.

D.2.5 Other

Since there was no connection between a victim's identification and assistance, on the one hand, and criminal proceedings against her trafficker, on the other, access to services was not conditional on their willingness to act as a witness. However, once identified by the police, a victim has no right to refuse to testify, as she (or he) is likely to be threatened by law enforcement officials with being sued for perjury or punished for not appearing in court.

All victims generally received the translation and interpretation services that they needed, although CSOs doubted that this was the case where trafficking and exploitation were suspected among migrants and refugees.

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.

All victims identified after the establishment of the CPTV in 2012 reportedly received independent legal advice. Such legal assistance was financed either from the budget of the CPTV or by CSOs. In 2015, ASTRA provided legal assistance (including representation in court) for 10 victims, but none of them was identified for the first time in 2015, as trials involving victims identified in 2015 had not started by the end of 2015. Adult victims of trafficking do not have access to state-funded free legal aid.

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).

D.4.1 Shelter & Material Assistance

As stated in section C, it was difficult to make any objective assessment on the level and quality of the assistance offered and provided to children, as CSOs generally did not have access to them; they were assisted via the state social protection system (CSWs) which was in general poorly resourced and unable to meet all the needs of its clients.

Serbia does not have specialized shelters for trafficked children. In 2015, 35 children (not all of them are identified in 2015) who were THB victims were provided with accommodation, specifically 11 in homes for children without parental care, two children in the Institute for the Upbringing of Children and

Youth, six at the shelter for children who have survived some form of violence, two at the Temporary House ran by the CSO, Atina, and 14 in foster families. The CPTV claims that although these are not specialized shelters for children victims of trafficking, they are specialized for meeting the needs of children in general; children accommodated there have full care and assistance, as well as access to experts specialized for the kind of trauma they survived.

D.4.2 Medical assistance

The monitors were not able to obtain any information on the availability and quality of medical assistance provided to child victims in practice.

D.4.3 Education or Vocational Training

The monitors were similarly unable to obtain any information on children who had been trafficked were able to attend school classes or vocational training within a reasonable time. The CPTV reported that “all children who were physical and psychologically fit” attended school.

47

E. COMPENSATION AND LEGAL REDRESS

E.1 COMPLIANCE WITH INTERNATIONAL STANDARDS

The standard that was assessed:

The legal framework provides victims of trafficking in human beings with a right of access to remedies for the harm committed against them including restitution and compensation.

In the Serbian legal system, the victim of THB has a possibility to obtain compensation for damages either in criminal proceedings or in civil proceedings. Articles 252 to 259 of the CCP govern the issues relating to compensation within criminal proceedings. A claim for damages arising out of the commission of a criminal offence is supposed to be considered during a criminal trial provided that this does not considerably delay the proceedings. The claim for damages may consist of a demand for compensation for both material and non-material damages, recovery of an object or the annulment of a certain legal transaction. The victim is supposed to be informed of the right to file such a claim by the court conducting the proceedings. According to Article 257 of the CCP, the court can temporarily freeze the assets of the perpetrator to secure a payment in compensation.

When delivering its verdict and convicting a defendant, the court may, in its judgment, satisfy the claim of the injured person fully, or it may satisfy it partially while directing the injured party to assert the rest of the claim in a civil action. If evidence accepted during criminal proceedings furnishes no reliable basis for either full or partial adjudication, the court is to direct the injured person to assert her or his claim in its entirety in a civil action. When acquitting a defendant, or delivering a judgment rejecting the charge, or making a ruling discontinuing criminal proceedings, once again the court is to direct the victim to assert his/her claim for damages in a civil action. In accordance with Article 45 of the Act on Recovery of Illegally Gained Assets³⁹, it is possible to provide compensation to victims of offences when the property is confiscated once a court judgment becomes definitive (i.e. after any appeal is heard). If compensation cannot be claimed from the convicted offender, the court may decide to pay compensation from confiscated property.

³⁹ Official Gazette of the Republic of Serbia, No. 32/2013.

In order to make the THB victim's right to compensation more effective, the CCP needs to be amended to introduce the possibility of awarding victims compensation exclusively within criminal proceedings, thereby eliminating the need for a victim to subsequently file a civil lawsuit. In addition, although in 2010 Serbia signed the Council of Europe Convention on the Compensation of Victims of Violent Crimes, which allows victims to claim compensation from the State, the Convention has not yet been ratified. Therefore, victims of THB cannot currently obtain compensation from the State.

E.2 WHAT HAPPENED IN PRACTICE

The standard that was assessed:

Victims were provided with real and effective access to compensation for harm and loss suffered as a result of having been trafficked.

Victims of trafficking in Serbia do not have effective access to compensation in practice and no improvements were noted in 2015. Although in theory possible under the terms of the law, in practice decisions on compensation were never made during criminal proceedings in THB cases.

An analysis of judgments in human trafficking cases in 2015 shows that out of 47 victims who were mentioned as injured parties in the judgments that were analysed (approximately 80 per cent coverage of all the trafficking-related judgments in 2015), 87 per cent (41) claimed compensation in the course of criminal proceedings. Since all the actors involved in providing legal aid to trafficking victims reported that, in the cases where they represented a victim, victims claimed compensation during the criminal proceedings, it is reasonable to conclude that the six victims who did not file compensation claims were the victims who did not have legal aid during a trial—highlighting the need for all victims to have legal representation in court and the adverse impact on their rights when they are not represented.

In all these cases the court referred the victims to civil litigation, most often without any particular explanation and sometimes justifying the court's decision by explaining that the court did not possess evidence that would provide reliable grounds even for making a partial decision on a compensation claim in the course of criminal proceedings. In the period 2011-2015 not a single case

49

occurred when a victim's compensation claim was decided upon in criminal proceedings.

None of the victims identified in 2015 had started suing traffickers for compensation in civil proceedings by the end of the year because civil proceedings normally follow the refusal of criminal courts to decide upon compensation claim during a trial and the relevant criminal trials had not concluded.

The monitors learned that three civil proceedings for compensation of victims of trafficking were underway in Serbia in 2015, none of which had been concluded by the end of the year. Two were started in March 2015 and one in 2011. The facts that there were so few civil proceedings and that those that there were took a long time to conclude were both reasons for observing that this procedure (referring compensation claims to separate civil proceedings) is ineffective and antithetical to the interests of victims.

In one case started in March 2015, the court reached a partial decision based on the fact that two of the accused had not responded to the claim, but this partial decision had not become definitive by the end of the year, as the two accused, although convicted, both lodged appeals. Apart from this procedural development, the court has not taken any action or scheduled any hearing in this case by the end of the year.

One civil case started in December 2011 (after criminal proceedings lasting two years, resulting in traffickers being convicted and sentenced to prison terms) and was still underway at the end of 2015, four years later. This case revealed some additional shortcomings of the existing system and how inappropriate it is for people who have survived serious trauma. At one point, the plaintiff (the victim of trafficking) was required to pay the costs of a temporary legal representative for one of defendants, as this is the rule when defendants are unavailable to appear in civil proceedings. Practically, the victim had to pay the costs of her trafficker's lawyer. What affected the duration of the proceedings most is the fact that the first of the accused – the only one with the property that can be used for compensation – died.

The rarity of cases, combined with the fact that one civil case has lasted for such a long time, mean that it is not possible to report what the average duration of civil proceedings is or the average amount awarded as compensation.

Indeed, there has only been one case where the civil courts in Serbia ever made

a compensation award to a trafficked person. This decision became final and enforceable in November 2013, after proceedings which had lasted for three years (following a four-year criminal trial). This judgment is important not only because it was the first one, but also because the awarded amount (RSD 1 million, i.e. EUR 8650) was paid out in full to the victim⁴⁰.

Victims rarely opt for civil proceedings because it is long, expensive (court fees, expert witnessing, attorney, etc.) and psychologically retraumatizing, as usually all the evidence presented at a trial has to be presented again and the burden of proof is on the victim, while he/she enjoys none of the protection that is available during criminal proceedings. On the top of everything the result is uncertain: namely, even if compensation is awarded, there is a question of enforcement, i.e. payment, because convicted traffickers often appear not to possess any property.

⁴⁰ There was one case in 2006 which ended in settlement between the plaintiff and the accused, but the agreed amount was never paid to the plaintiff.

LIST OF LAWS

Act on Employment and Insurance in the Case of Unemployment of 2015 - Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 38/2015

Act on Employment of Foreigners - Official Gazette of the Republic of Serbia, No. 128/2014

Act on Foreigners - Official Gazette of the Republic of Serbia, No. 97/2008

Act on International Legal Aid in Criminal Matters - Official Gazette of the Republic of Serbia, No. 20/2009

Act on Juvenile Criminal Offenders and Criminal Protection of Juveniles - Official Gazette of the Republic of Serbia, No. 85/2005

Act on the Protection Programme for Participants in Criminal Proceedings - - Official Gazette of the Republic of Serbia, No. 85/2005

Act on Seizure and Confiscation of the Proceeds from Crime - Official Gazette of the Republic of Serbia, No. 32/2013

Act Ratifying Council of Europe Convention on Action against Trafficking in Human Beings - Official Gazette of the Republic of Serbia/International Treaties No. 19/2009

Act Ratifying UN Convention against Transnational Organized Crime and Protocols Thereto - Official Journal of FRY/International Treaties, No. 6/2001

Code of Criminal Procedure - Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014

Constitution - Official Gazette of the Republic of Serbia, No. 83/2006

Criminal Code - Official Gazette of the Republic of Serbia, No.85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014

Family Law - Official Gazette of the Republic of Serbia, No.18/2005, 72/2011 - and 6/2015

Health Care Act - Official Gazette of the Republic of Serbia, No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, 106/2015

Labour Act (2005) - Official Gazette of the Republic of Serbia, No.b24/2005, 61/2005, 54/2009, 32/2013, 75/2014

Petty Offences Act - Official Gazette of the Republic of Serbia, No. 65/2013, 13/2016

Police Act - Official Gazette of the Republic of Serbia, No. 6/2016

Social Protection Act - Official Gazette of the Republic of Serbia, No. 24/2011

RECOMMENDATIONS

- The offence of human trafficking should include the following elements: abduction and deception should be added as means of committing the offence; the fact that the offence of human trafficking has been committed by a state official performing official duties, or when the victim's life has been exposed to danger deliberately or by gross negligence during the committing of the offence should be regarded as aggravating circumstances; the offences committed in an extremely brutal or degrading manner should also be aggravating circumstances (or distinct and more serious offences), so that the offence might be considered as "endangering life", and the demand set forth by the CoE Convention regarding the definition of endangering the victim's life deliberately or by negligence might be met. Further, the law should explicitly provide for non-detention, non-prosecution and non-punishment of trafficked persons.
- The term "victim of human trafficking" should be defined in criminal legislation.
- In order to ensure that victims feel free to testify and to avoid their secondary victimization, active use of the possibilities to protect the identity and safety of victim-witnesses should be made during criminal proceedings, as provided for by the law. This includes actively protecting the victim from intimidation and threats, intervening whenever victim-witnesses are asked questions that are irrelevant to the case, avoiding repeated hearings of the victims and their direct confrontation with defendants, awarding victims of trafficking the status of vulnerable witnesses, and making use of technical possibilities such as hearing a victim-witness' testimony over a video link. Every trafficked person involved as a witness in the investigation and prosecution of traffickers must have free legal representation so that someone participates in the process who takes care of the protection of his/her rights and interests. Every trafficked person who testifies in criminal proceedings should be informed on a regular basis about all relevant developments in the case (and not only of the date when he/she has to come to make the statement or testify).
- The expertise of expert witnesses who are called to testify in court about the psychological state of a victim needs to be enhanced, as monitors have observed that they lack appropriate expertise when it comes to victims of violence.
- Trial judges should take into account evidence presented by expert witnesses that the victim suffered psychological trauma, both when deciding on the manner in which a victim-witness may be questioned and protected, and when deciding on a victim's compensation claim.

- Financial investigations should become an integral part of criminal investigations and prosecutions to hit traffickers where it hurts most. Compensation for trafficking victims should be a priority for the use of confiscated assets.
- Indicators for the identification of children and adult victims in all phases and for all forms of human trafficking should be developed and put into use. These indicators should be clearly defined both at the levels of preliminary and final identification. Further, new methods should be worked out that would facilitate the self-identification of (possible) victims.
- A policy on minimum standards for the provision of assistance to trafficking victims during all phases of assistance should be developed and adopted, as well as procedures to be observed by relevant actors that would be based on the principles of respect for the victim's wishes, her/his best interests and non-discrimination.
- Frontline police officers from the Criminal Police who, while performing their routine duties, are most often the first to come in contact with possible trafficked persons in the field, need to be provided with adequate training and tools so they can recognize human trafficking and exploitation efficiently and make appropriate referrals.
- The authorities should organize systematic training for officials in charge of refugee protection and irregular migrants, so they too can identify possible trafficking victims and make appropriate referrals, as ad hoc project events organized so far have proved inadequate.
- Consular staff of the Republic of Serbia should be clearly and formally informed of the procedures for identification and referral of trafficked persons and of the types of assistance that they are obliged to provide to our citizens, in particular when it comes to the issuing of temporary travel documents and assistance in organizing transportation.
- There is a need not only to specifically define in Serbian law the concept of a recovery and reflection period, but also to specify that during this period trafficked persons are entitled to protection and assistance. It is essential to emphasize that the recovery and reflection period is not conditional on victims' cooperation with law enforcement officials conducting an investigation or on their taking part in judicial proceedings.
- The Republic of Serbia should develop a formal return programme for trafficked persons, which includes procedures for mandatory collection of information on safety and reintegration possibilities in the country of origin.
- Trafficked persons need to have access to specialist assistance and support services which correspond to their needs, including services provided by specialist NGOs. Procedures for access to services provided within the state social protection system to which trafficked persons are entitled on account

of their status as citizens who are in a state of social need should be modified to ensure that assistance is provided quickly, efficiently and with minimum administrative and bureaucratic barriers, especially in the early stages of recovery.

- In view of the steadily growing proportion of children among identified victims of trafficking, special assistance programmes for trafficked children need to be developed and established, covering all phases of care provision, from identification to reintegration. Further, independent monitoring and evaluation of these programmes should be ensured and not avoided in the name of protecting children's privacy.
- The Criminal Procedure Code should be amended so as to require courts to make rulings on compensation claims of trafficked persons during criminal proceedings, instead of routinely instructing them to seek compensation in civil proceedings, where victims enjoy no protection.
- The Republic of Serbia should ratify the Council of Europe Convention on the Compensation of Victims of Violent Crimes. This would enable victims to seek compensation from the state for injuries or damages resulting from human trafficking.



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