

REPORT ON TRAFFICKING IN HUMAN BEINGS IN 2015 IN BOSNIA AND HERZEGOVINA

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**INTERNATIONAL FORUM
OF SOLIDARITY - EMMAUS**
BOSNIA AND HERZEGOVINA

REPORT ON TRAFFICKING IN HUMAN BEINGS IN 2015 IN BOSNIA AND HERZEGOVINA

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ABBREVIATIONS

BiH	Bosnia and Herzegovina
FBiH	Federation of Bosnia and Herzegovina
RS	Republika Srpska
BD	Brcko District
CC	Criminal Code
CC BiH	Criminal Code of Bosnia and Herzegovina
CC BD BiH	Criminal Code of Brcko District of Bosnia and Herzegovina
CC FBiH	Criminal Code of the Federation of Bosnia and Herzegovina
CC RS	Criminal Code of the Republika Srpska
COE	Council of Europe
CPC BH	Criminal Procedure Code of Bosnia and Herzegovina
CPC BD	Criminal Procedure Code of Brcko District of Bosnia and Herzegovina
CPC FBiH	Criminal Procedure Code of the Federation of Bosnia and Herzegovina
CPC RS	Criminal Procedure Code of the Republika Srpska
CSO	Civil Society Organisation
NGO	Non-governmental organization
THB	Trafficking in Human Beings
SIPA	State Investigation and Protection Agency

5

INTRODUCTION

The Report on Trafficking in Human Beings in 2015 in Bosnia and Herzegovina was prepared within the regional project "Balkans ACT (Against Crime of Trafficking) Now!" implemented by civil society organizations: ASTRA-Anti Trafficking Action (Serbia), International Forum of Solidarity - EMMAUS (Bosnia and Herzegovina), Open Gate - La Strada (FYR Macedonia), Women's Right Center (Montenegro) and The International La Strada Association, supported by the European Union. The project aims to contribute to democratisation and EU integration processes in the Western Balkans through improving the environment for civil activism, as well as the capacity, commitment and influence of civil society networks in the debate on human rights and the rule of law related to the issue of organized crime, specifically trafficking in human beings.

The Report was prepared as a part of the initiative of International Forum of Solidarity – EMMAUS, within the joint regional action for the development of a comprehensive tool for monitoring anti-trafficking policies and practice in all participating IPA¹ states. The period that was monitored was the calendar year 2015 and the monitoring process was conducted in accordance with the indicators based on the Council of Europe's Convention on Action against Trafficking in Human Beings and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and against the values formulated and promoted through the Balkans declaration on the suppression of trafficking and the exploitation of human beings, prepared within Balkans ACT Now project.

This Report presents the main findings of monitoring process and the data it collected regarding trafficking in human beings, based on the activities carried out during the implementation of the project and also on the following documents: data collected about the indicators; a report based on Strategic litigation for compensation for Victims of trafficking in human beings; reports of trial monitoring (trials involving prosecutions for the offence of Trafficking in Human Beings); and a feasibility study for a compensation mechanism for victims of trafficking in BiH. Also, this report contains conclusions, recommendations and proposals for policy changes, prepared by an independent consultant engaged to draft and finalise the report.

¹ The Instrument for Pre-Accession Assistance (IPA) of the European Union

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

A.1. COMPLIANCE WITH INTERNATIONAL STANDARDS

The standard that was assessed was:

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).

There are currently four legal systems in Bosnia and Herzegovina: one at the state level; two at the entity level; and one at the Brcko District level. The two entities are the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS). Each of the four legal systems has its own rules of criminal law and institutions responsible for their implementation. It can be said that trafficking in human beings (THB) has been directly and/or indirectly incorporated as an offence in all four legal systems.

At the state level, the Criminal Code² (CC BiH) and Criminal Procedure Code³ (CPC BiH) of Bosnia and Herzegovina were adopted. At the Entity levels, the relevant criminal codes are the Criminal Code⁴ (CC FBiH) and Criminal Procedure Code⁵ (CPC FBiH) of the Federation of Bosnia and Herzegovina and the Criminal Code (CC RS) and Criminal Procedure Code of the Republika Srpska⁶ (CPC RS). Also, Brcko District has its own Criminal Code (CC BD BiH) and Criminal Procedure Code (CPC BD BiH).⁷ Other legal instruments within these four legal systems in the areas of healthcare, social care and education, etc. are not treated explicitly

² Official Gazette of BiH, 3/03, amended by: 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 40/15.

³ Official Gazette of BiH, 3/03, amended by: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09.

⁴ Official Gazette of FBiH 36/03, amended by 37/03, 21/04, 69/04, 18/05, 42/10.

⁵ Official Gazette of FBiH 35/03, amended by 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13.

⁶ Official Gazette of RS, 49/03, amended by 108/04, 37/06, 70/06, 73710, 01/12, 53/12, 67/13.

⁷ Official Gazette of BD BiH, 44/10 and 47/11, 9/13, 33/13.

with respect to trafficking in human beings, although their provisions can allow direct or indirect assistance to victims of trafficking in human beings in BiH.

CC BiH proscribes direct and indirect offences related to THB in three articles⁸ and foresees penalties ranging from one year to long-term imprisonment. CC RS proscribes direct and indirect offences related to THB in four articles⁹ with foreseen penalties ranging from six months' up to 15 years' imprisonment. CC FBiH proscribes offences only indirectly related to THB - *incitement to prostitution* - in one article with foreseen penalties ranging from one to 15 years' imprisonment.¹⁰ It is relevant to mention that, in addition to criminalizing incitement, article 210 (2) makes in an explicit offence for whomever "by use of force or by threat to use force or to inflict greater harm, coerces another or by deceit induces another into offering sexual services", for this covers much of the component acts of THB for the purpose of the exploitation of the prostitution of others. However, the fact that it can be punished by as little as one year's imprisonment means the penalty is not proportionate. Also, it might be worth explicitly reporting on the provision of article 210 (4), as this almost has the effect that the international instruments want, disregarding whether abusive means are used in cases of children. The penalty in case of a child or a minor is more proportionate when compared to this offence committed against an adult. CC BD proscribes direct and indirect offences related to THB in three articles with penalties ranging from six months to long-term imprisonment¹¹.

National criminal legislation in terms of direct criminalization of the offence of human trafficking is largely in line with Article 4 of the Council of Europe Convention on the Action against Human Trafficking and Article 3 of the Palermo Protocol. In relation to the purposes of exploitation listed in the relevant instruments¹² CC BiH, CC RS and CC BD contain provisions and proscribe all the exploitative purposes of human trafficking provided for these instruments¹³. CC

⁸ CC BiH: Article 186 "International trafficking in human beings", Article 186a. "Organized international trafficking in human beings", Article 187. "International Incitement to prostitution".

⁹ CC RS: Article 198 "Incitement to prostitution", Article 198a. "Trafficking in human beings"; Article 198b. "Trafficking in minors" and Article 198v. "Organizing of a group or criminal association for the perpetration of criminal offenses of trafficking in human beings and trafficking in minors".

¹⁰ CC FBiH: Article 210 "Incitement to prostitution".
Note: During finalisation of this Report, in June 2016 amendments in CC FBiH were adopted and Trafficking in Human Beings has been criminalized - Official Gazette of F BiH, 46/16

¹¹ CC BD: Article 207 "Incitement to prostitution", Article 207a. "Trafficking in human beings", Article 207b. "Organized trafficking in human beings".

¹² The exploitation purposes provided those instruments read as follows: "the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

¹³ Article 4 of the Council of Europe Convention on the Action against Human Trafficking: "Recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation"

RS¹⁴, as a minimum, recognizes all forms of exploitation foreseen in the Article 4 of the CoE Convention and Article 3 of the Palermo Protocol. Considering that committing criminal offences, forced marriage, forced sterilization and the use in the armed forces are listed explicitly in the legislation of some neighbouring States as exploitative purposes of THB, it's relevant to mention that all of those are listed at CC RS as such.

In regard to the degree of compliance of national legislation with the EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, it should be noted that laws define the following components and related offences:

- a) slavery, servitude and practices similar to slavery are included in the corresponding articles of criminal Code of BiH¹⁵, RS and BD, while CC F BiH does not explicitly mention trafficking in human beings;
- b) use of forced labour or services, including forcing people to beg and to hand any of their earnings to a third person, other than a parent or legal guardian is partially included in the corresponding articles of criminal Code of BiH¹⁶, RS and BD, while CC F BiH does not mention trafficking in human beings;
- c) sexual exploitation, including the exploitation of the prostitution of others (e.g., pimping or pandering) is included in the corresponding articles of the Criminal Codes of BiH, RS, F BiH and BD;
- d) commercial sexual exploitation of children is included in the corresponding articles of Criminal Code of BiH, RS, BD, and partially in the CC F BiH;
- e) forced marriage is included in the corresponding article of the Criminal Code RS, while in Criminal Codes of BiH and BD it has not been explicitly mentioned¹⁷, and CC F BiH does not mention trafficking in human beings;
- f) the removal of organs for commercial profit is included in the corresponding article of the Criminal Code RS, while in the Criminal Codes of BiH and BD it is not explicitly mentioned¹⁸, and CC F BiH does not mention trafficking in human beings.

The Criminal Codes of F BiH, RS and BD also define offences to allow the prosecution of those responsible for the severe economic exploitation of adults,

¹⁴ Article 198a CC RS

¹⁵ Article 186 paragraph 2 CC BiH

¹⁶ Article 186 paragraph 2 of the Criminal Code of BiH

¹⁷ The formulation used is "... or to the purpose of other types of exploitation"

¹⁸ The formulation used is "... removal of human body parts"

which does not involve slavery, but nevertheless a high level of control, related to servitude or forced labour. These provisions are related to protection of labour rights and can be committed by any person who deliberately does not comply with the legal framework related to labour rights and thus violates, denies or restricts the right of workers.¹⁹

The Criminal Codes of F BiH, RS and BD define offences to allow the prosecution of those responsible for the economic exploitation of children (under 18), when the offence does not involve slavery, but a form of servitude or forced child labour, e.g. along the lines of the ‘sale of children’ on one of the ‘practices similar to slavery’. These corresponding provisions are related to the abuse and neglect of minors.²⁰

Anti-trafficking legislation does not confuse trafficking in human being or related crimes against the person with crimes against the security of the state, notably migrant smuggling or people smuggling. Legislation at State level proscribes offences such as smuggling in human beings and organizing a group or association to commit the offence of “migrant smuggling”.

Methods of trafficking in human beings listed in the Article 4. of the Council of Europe Convention on the Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol proscribed by the laws in BiH

Article 4. of the Council of Europe Convention on the Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol	CC BiH (Article 186. International trafficking in human beings)	CC FBiH	CC RS (Article 198a. Trafficking in human beings)	CC BD (Article 207a. Trafficking in human beings)
recruiting	Yes	CC FBiH does not define offence trafficking in human beings	Yes	Yes
transportation	Yes		Yes	Yes
transfer	Yes		Yes	No
harbouring	Yes		Yes	Yes
receipt of persons	Yes		Yes	Yes
delivery	Yes		Yes	Yes

¹⁹ Publication “Trafficking in human beings for the purpose of labour exploitation”, OSCE, July 2011

²⁰ Articles 216 CC BD, Article 207 CC RS and Article 219 CC FBiH

Means of trafficking in human beings listed in the Article 4. of the Council of Europe Convention on the Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol proscribed by the laws in BiH

Article 4. of the Council of Europe Convention on the Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol	CC BIH (Article 186. International trafficking in human beings)	CC FBIH	CC RS (Article 198a. Trafficking in human beings)	CC BD (Article 207a. Trafficking in human beings)
threat or force	Yes	CC FBIH does not define offence trafficking in human beings	Yes	Yes
other forms of coercion	Yes		Yes	Yes
abduction	Yes		Yes	Yes
fraud	Yes		Yes	Yes
deception	Yes		Yes	Yes
abuse of power or of a position of vulnerability	Yes		Yes	Yes
giving or receiving of payments	Yes		Yes	Yes
giving or receiving benefits to achieve the consent of a person having control over another person	Yes		Yes	Yes

Forms of exploitation of victims of trafficking in human beings listed in the Article 4. of the Council of Europe Convention on the Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol proscribed by the laws in BiH

Article 4. of the Council of Europe Convention on the Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol	CC BIH (Article 186. International trafficking in human beings)	CC FBIH	CC RS (Article 198a. Trafficking in human beings)	CC BD (Article 207a. Trafficking in human beings)
exploitation of the prostitution of others	Yes	CC FBIH does not define offence trafficking in human beings	Yes	Yes
other forms of sexual exploitation	Yes		Yes	Yes
forced labour or services	Yes		Yes	Yes
slavery or practices similar to slavery	Yes		Yes	Yes
servitude	Yes		Yes	Yes
removal of organs	Yes		Yes	Yes

National legislation (except CC FBiH) provides that the consent of an adult victim of trafficking to the intended exploitation is irrelevant when any of the abusive means set forth in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol were used against the trafficked person.²¹

The Criminal Code of RS, in a specific article (198b), provides that the crime of trafficking in human beings against a child qualifies as such even in the absence of the use of the abusive means mentioned in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol (this is the same provision as in the two international instruments). Although CC BiH and CC BD do not qualify the use of abusive means against a child explicitly by a specific article, these laws also provide similar provisions that are in compliance with the international standards.

Legislation (except the CC FBiH) establishes as a criminal offence the use of the services which are the object of exploitation when the person using such services knows that the person is a trafficked person. Legislation establishes as a criminal offence aiding or abetting the commission of the offence of trafficking in human beings. It should be noted that, although trafficking in human beings is not provided in the CC FBiH, Article 33 provides that, if someone intentionally takes part in the commission of an offence, he/she can be punished as if he/she had committed the offence personally, or can be less severely punished.

The national legal framework (except the CC FBiH) makes it possible to trace, seize and confiscate the proceeds of trafficking-related crimes.²²

The national legal framework establishes jurisdiction over trafficking-related offences when the offence is committed on the State's territory; or on board a ship flying its flag; or on board an aircraft registered under its laws; or by one of its nationals abroad; or against one of its nationals abroad; or by a person who has her or his habitual residence in the State's territory.

Trafficking-related offences are treated as extraditable offences under relevant treaties and domestic laws, i.e. the Extradition Convention²³ and the Law on international legal aid in criminal matters.

²¹ Article 4 of the Council of Europe Convention on the Action against Human Trafficking: "means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person".

²² Although Federation of BiH had adopted the Law on the Seizure of the Proceeds of Crime and Offences, Official Gazette of Federation of Bosnia and Herzegovina: 7/14, but exception in regard to the F BiH was mentioned since there is no direct incrimination of trafficking in human beings in the CCFBiH.

²³ Official Gazette BiH – International treaties No: 4/2005.

The CC BiH and CC BD provide that victims of trafficking in human beings are not to be punished (or not even prosecuted) for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts. Criminal Code of RS does not explicitly stipulate this provision, while CC FBiH does not explicitly mention trafficking in human beings.

The national legal framework does not specify that a potential or presumed victim of trafficking who has been detained (either without being identified as such or even when there was a suspicion that s/he might have been trafficked) should be released from custody.

On the basis of this analysis, the CC RS is the most compliant with the CoE Convention and UN Trafficking Protocol, while other criminal laws in BiH could be improved and amended, notably by adding references to the abusive means used to traffic a person and the various ways in which victims of trafficking may be exploited. However, the CC FBiH itself simply does not comply with international instruments, as there is no direct criminalization of human trafficking as such. This “legal void” creates a lot of problems in practice. The fact that trafficking in human beings is not defined as an offence means that, at best, traffickers in the Federation of Bosnia and Herzegovina will be charged and prosecuted for different offences stipulated in the CC FBiH. Further, this situation also limits the rights of THB victims according to the legislation in F BiH.

In those areas where THB is an explicit criminal offence, the penalties proscribed by law are proportionate and dissuasive, especially at the State and Brcko District level where long-term imprisonment is proscribed for certain forms of offences.

A.2 GENERAL INFORMATION ON INVESTIGATIONS AND PROSECUTIONS

The standard that was assessed concerning investigations, prosecutions and trials in 2015 was:

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

A.2.a. Investigation stage

The data that was collected concerning investigations in 2015 suggests that anti-trafficking investigators used the legal and supervised application of financial investigation powers and pursuit of assets confiscation orders in appropriate cases in 71% of the cases. Victim-witnesses were questioned during a 'reflection period' by the investigators in 43% cases, in 86% cases the victim felt safe and not threatened. Victim-witnesses were in 43% cases asked to provide much the same information during repeated interviews with law enforcement officials. According to the data collected from the questionnaire responders concerning trafficked persons who were newly identified in the period under review, no cases were reported which did not lead to an investigation. Furthermore, responders stated that the investigation was stopped as a result of reluctance of a victim as a key witness to cooperate in only 14 % of the cases. In 3 out of 7 cases newly-identified victim-witnesses agreed to provide evidence. According to the "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2015" by the State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina, during 2015, the prosecutors' offices ordered 20 new investigations against 30 persons.

A.2.b. Prosecution stage

Prosecutors assured that during the pre-trial period, regular contact was maintained with the victim to make certain that the victim was kept fully apprised of the status of the case and that the victim was in a safe and secure environment – most were accommodated in shelters, where the victim's basic needs are met. Prosecutors adequately prepared victims and other witnesses to be effective witnesses at trial by meeting individually with the victim and witnesses prior to trial to explain the trial process; to make clear that the only obligation of the victim and witnesses was to tell the truth; to review, without coaching, the substance of the testimony to be given; and to prepare the victim and witnesses to respond truthfully to questioning by the defence. Trafficked persons were informed about their rights and applicable administrative and judicial procedures by the prosecutors and legal advisors from the NGO sector. Trafficking victims were kept informed of relevant court and administrative proceedings. In the six out of seven cases victims of trafficking in human beings were informed of the outcome of trials in which they were a victim or witness regardless to the outcome of trials (whether the verdict was guilty or not guilty). Out of 7 cases, in one case the victim was not informed. There were no data collected in the research for the Handbook in relation to the number of cases

where there was no prosecution, or the prosecution was stopped as a result of reluctance of a victim as a key witness to cooperate. According to the “Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2015” by the State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina, the prosecutors decided on stopping the prosecution in 11 cases against 22 persons and in 9 cases filed indictments against a total of 15 persons. There were two prosecutions under the terms of legislation that establishes the liability of legal persons for direct or indirect involvement in the commission or attempt to commit the crime of trafficking in human beings.²⁴

A.2.c. Trials and convictions

When it comes to the courts imposing effective, proportionate and dissuasive penalties, prevailing opinion is that in 57% of the cases, it was not done. During 2015, the courts pronounced 10 guilty verdicts and sentences against 14 persons, imposing prison sentences at seven trials on nine persons and suspended sentences at three trials on four persons. At one trial two people were acquitted.²⁵

The courts respected the non-discrimination principle. There were various in-court protection measures in cases, e.g. victim-witness protected from view of defendant and public in two cases, video evidence accepted instead of witness appearing in period in one case, victim-witness given a special place to wait, avoiding direct contact with defendant or defendant’s associates in one case, and other in - court protection measures in four cases. Also, according to the data collected by trial observers, not all victim-witness were granted or taking advantage of in-court protection measures. There is no data on the number of victims punished for involvement in unlawful activities that they were compelled to carry out while under the control of traffickers or exploiters. Government officials and politicians in government on several occasions made public statements confusing human trafficking with migrant smuggling. There is no available data on numbers of traffickers convicted in two successive calendar years where a penalty imposed on a convicted trafficker was not fully applied by the end of the second calendar year.

²⁴ Note: according to questionnaire respondents; however, no other data regarding the above mentioned cases were available to researchers.

²⁵ According to the “Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2015” by the State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina (accessed at: http://www.msb.gov.ba/PDF/2015_TIP_report_local.pdf).

A.2.d. Statistics on prosecutions and convictions

It is very challenging to provide figures on the number of trafficking cases, as the criminal justice statistics in BiH do not provide reliable data on the prosecution of criminal offences, including those related to trafficking in human beings. The main obstacle is the very complex organization of the judiciary system, which is unable to collect, analyse and publish unique crime statistics for all prosecutors' offices, courts and law enforcement agencies. The lack of a reliable data source makes it almost impossible to provide reliable figures on the number of trafficking cases, the type of work or services people were trafficked for, the number of suspects, and especially the number of victims involved and whether it concerned in-country or cross-border trafficking. According to the "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2015" issued by the State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina, prosecutors' offices in Bosnia and Herzegovina ordered 20 investigations against 30 persons in 2015 for the criminal offence of trafficking in human beings and relating offences. In nine cases a total of 15 persons were the subject of indictments. During 2015, the courts pronounced 10 guilty verdicts and sentences against 14 persons, seven with prison sentences involving nine defendants and three involving suspended sentences for four defendants. There was one acquittal of two defendants.

For the criminal offence in article 186 CC BiH (International trafficking in human beings), the BiH Prosecutor's office ordered one investigation involving two suspects, filed an indictment against one person and dropped four investigations involving 12 suspects. For the criminal offence proscribed in article 187 CC BiH (International incitement to prostitution), the BiH Prosecutor's office dropped one investigation involving three suspects. In the reporting period (2015), no prison sentences were imposed by the Court of Bosnia and Herzegovina. In accordance with Article 250 (Organized crime) in conjunction with Article 186 of the CC BiH (International trafficking in human beings), prosecutors received one report involving three suspects, and prosecution was declared inadmissible for one other report also involving three suspects. Regarding the mentioned articles, the Prosecutor's office entered into a plea agreement with four suspects.

In the Federation of Bosnia and Herzegovina for the crime of "Incitement to prostitution" under Article 210 of the CC FBiH, the Prosecutor's Office ordered five investigations of eight suspects, while two investigations involving two suspects were suspended. There were three indictments filed against five people. For criminal offenses covered by Chapter XIX CC Federation BiH (Offences against sexual freedom and morality), there were six convictions involving eight

defendants. Under Article 211 of the CC FBiH (Exploitation of children and minors for pornography), prosecutors ordered four investigations involving five suspects. Three indictments were filed against four persons, with two convictions involving three defendants.

In the Republika Srpska, for the criminal offence under Article 198a (Trafficking in human beings) and 198b (Trafficking in minors) of the CC RS, the Prosecutor's office ordered two investigations involving five suspects. There were suspensions of investigations. There was one indictment filed against two individuals, and one conviction involving two defendants. For the criminal offence of abuse of children and minors for pornography (under Article 199 CC RS), one person was convicted and one person was acquitted. For the criminal offence of production and possession of child pornography under Article 200 CC RS, prosecutors ordered seven investigations involving seven suspects.

The Prosecutor's office of Brcko District ordered investigations involving three individuals for the offence of Trafficking in persons under Article 207a, and dropped an investigation involving one suspect. One indictment was filed against two individuals and one defendant was acquitted.

Although official data presented by the Office of the Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina show an increase in the numbers of victims during the period of 2011, 2012, 2013, followed by a decrease in 2014, the Coordinator's report noted that this decrease was probably due to the fact that many victims were not "seen" or identified by the State authorities.²⁶

During the investigation phase, a number of deficiencies were noted that require remedying. In many cases, a reflection period was not respected by the authorities and victims were questioned by law enforcement officials before the expiry of this period, in addition to being re-questioned on several occasions, which causes further trauma or anxiety for the victim. During the prosecution phase, it is clear that the procedure is tailored to the needs of victims and they are provided with the necessary guarantees to exercise their legal rights. However, the penalties imposed by the courts in most of the cases were not effective, proportionate or dissuasive. Also, the protection of witnesses-victims was often not implemented properly, which is probably why victims sometimes refuse to cooperate with the authorities.

²⁶ Ibid.

A.3 WITNESS PROTECTION

The standard that was assessed was:

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

Protection of witnesses and victims in Bosnia and Herzegovina is regulated by the Law on protection of witnesses under threat and vulnerable witnesses and the Rules on the protection of victims and witnesses of trafficking in human beings who are nationals of Bosnia and Herzegovina as well as the Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings. Specific protection measures adapted to the needs of victims and witnesses during criminal proceedings can be ordered by the competent court and may include allowing a witness to give testimony by means of transferred image and sound (meaning that the victim or witness concerned does not have to appear in court), removal of the accused while a witness testifies, measures to provide anonymity of a witness, and a special procedure of hearing of protected witness. The above-mentioned law also allows for the use of recorded testimony.

The law and rules on witness protection were not implemented satisfactorily. As a result, witnesses-victims were often intimidated by the traffickers and sometimes refused to testify. According to data collected in the process of monitoring court cases, some measures to protect the safety of victims were noted. However, it was clear that available measures could and should be used more often. This would be facilitated if legal proceedings were to be further harmonised with relevant international legislation with the aim of providing enhanced protection for victims. Regarding the way in which victims were questioned in court, it was particularly worrying that courts still allowed confrontations to occur between victims and defendants (there alleged traffickers), despite the intimidating and potentially harmful effects this has on victims. Courts did not in practice have all the technical equipment that would make it possible to conduct hearings using audio-visual technology or similar equipment. Use of available measures to protect the victim and/or to defend the best interests of the victim largely depends on the prosecutor, his consideration, abilities and skills to use all the options provided by the various Criminal Procedure Codes. Judges have a vital role

to play during trials to protect victims against improper or irrelevant questions, but did not play this role appropriately. There is consequently a need for most of the judiciary to be given further briefings about their responsibilities and the methods they can use to prevent the secondary victimisation of trafficking (and other) victims during court proceedings.²⁷

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²⁷ Annual Report for 2014 for trial monitoring cases of trafficking in human beings and related criminal offences, IFS-EMMAUS and 2015 Annual Report on Trial Monitoring in Trafficking in Human Beings and Related Crime Cases, IFS-EMMAUS

B. IDENTIFICATION OF TRAFFICKING VICTIMS

B.1. LEGAL FRAMEWORK

The identification of victims of trafficking who are nationals of Bosnia and Herzegovina is regulated by the Rules on the protection of victims and witnesses of trafficking in human beings who are nationals of Bosnia and Herzegovina. Pursuant to Article 4 of these Rules, any institution, NGO, physical or legal person who suspects that a person might be a victim of trafficking should immediately inform the State Information and Protection Agency (SIPA) and the Prosecutor's Office. The information can also be submitted to the Prosecutor's Offices or police departments of the entities or the Brcko District. Further, Article 4 of the Rules indicates that victims of trafficking in human beings can self-report themselves. The procedure for the identification of victims who are nationals of Bosnia and Herzegovina is based on information gathered by the competent authorities (police and prosecution) and a "voluntary interview" with the possible victim of trafficking. In the case of children, the interview should take place in the presence of a parent, legal guardian or representative of a social welfare centre protecting the interests of the child. Formal identification of a victim of trafficking in human beings in the sense of the criminal definition is performed by the Prosecutor's Office, SIPA or the courts, when there are sufficient elements to initiate a criminal case for trafficking in human beings.

The identification of foreign victims of trafficking in human beings is regulated by the Rules on protection of alien victims of trafficking in persons. The main authority performing the identification of such victims is the State Ministry of Security. An officer of the State Ministry of Security/Service for Foreigners' Affairs is supposed to conduct an interview with the possible victim to check for indicators that the person has indeed been trafficked.

Bearing all this in mind, it seems that the legal framework provides for the rapid and efficient identification of victims of trafficking. However, in view of the fact that the CC FBiH does not explicitly criminalize trafficking in human beings, it is clear that the provisions of the current legal framework are not enough, and that there is still a need to bring the legal framework into line with international instruments.

B.2. IDENTIFIED VICTIMS

The standard that were assessed were:

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

and

Victims of trafficking were quickly and accurately identified.

Procedures concerning the identification of trafficking victims were followed by law enforcement officials and others involved. Specialist anti-trafficking CSOs/NGOs contributed to the identification of victims. During the reporting period, the total number of individuals identified by the authorities as presumed or potential victims ('reasonable grounds' identifications) was 35: 18 adults (5 male and 13 females) and 17 children (3 males and 14 females), all nationals of BiH and no foreigners.

Total number	35		
Adults	18	Minors	17
Male	5	Male	3
Female	13	Female	14
Country of origin		Country of origin	
BiH	18	BiH	17
Foreign citizens	0	Foreign citizens	0

Out of the total of 35, 11 had reportedly been subjected to (or intended for) a form of sexual exploitation, while other 24 were reportedly subjected to non-sexual forms of exploitation. According to the data collected by the monitors, self-identification occurred in 56% of the cases. Labour inspectors responsible for detecting illegal exploitative working practices reportedly investigated at least one case in an unprotected sector of the economy, including the sectors in the country where migrant women and men are found, but prevailing opinion in the country is that such investigations occur only very rarely. Regarding cases involving members of minorities, 44% respondents are of the opinion that minorities, as Roma, have not experienced additional difficulties for identification

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or access to assistance, while the rest of them (56%) were not of such opinions. However, the difference is more obvious with answers related to LGBT people who did not experience additional difficulties for identification or access to assistance (compared with other persons who have been identified, a non-LGBT) for only 28% respondents.

Although the number of identified / officially recognized victims of trafficking, according to the official data, is declining, the above-mentioned figures suggest that officials are not sufficiently trained/educated to recognize indicators of a person being a potential victim. This conclusion is additionally supported by the large proportion of victims who identified themselves as victims, rather than being pro-actively identified by the authorities. It is concerning that labour inspectors, according to most respondents, rarely investigate illegal exploitative working practices, which in practice results in many victims remaining unidentified and unprotected. It is also important to note that minorities experience additional difficulties in being identified.

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

CSOs and lawyers 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' during the reporting period. When it comes to the prosecutions of sex workers for engaging in prostitution (or related offences), 61% of the respondents who were consulted observed that there was no evidence that they had been trafficked or that the authorities failed to identify them as trafficking victims, while 39% replied differently. Cases of misidentification appeared to be rare and to be promptly acknowledged and remedied. Officials responsible for vetting irregular migrants (including officials involved in refugee protection or considering asylum requests) attended at least one training session about human trafficking. Some or all BiH consulate staff working abroad received training concerning human trafficking and/or demonstrated their awareness of identification and referral procedures both in the country where they were based and in their own country but, according to the opinions of respondents, almost half of consular staff were not trained or familiar with the relevant procedures.

The current system for the identification of victims of trafficking in Bosnia and Herzegovina is not sufficiently effective, as it risks leaving out those who do not

want to co-operate with the authorities and take part in criminal proceedings against the alleged traffickers. Identification depends to a large extent on a case being correctly categorized by law enforcement agencies at the level where the offence was detected (cantonal, entity or state level). Failure to categorize a trafficking in human beings case as such and prosecuting it as a different offence resulted in failure to identify victims of trafficking. Further, NGOs were given an insignificant role, if any, in the identification of victims of trafficking, despite having extensive practical experience and knowledge from working with victims of trafficking in human beings.

C. PROVISIONS FOR THE PROTECTION OF VICTIMS OF TRAFFICKING

C.1. PROTECTION FOR ALL VICTIMS

The standards that were assessed were:

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

and

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

and

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

There is no clear definition on the term “victim”, “presumed victim”, “potential” or “suspected” victim of trafficking in human beings in criminal legislation in BiH. The term “victim of trafficking in human beings” is defined by the Rulebook on protection of foreign victims of trafficking in human beings and Rules on protection of victims and witness victims of trafficking in human beings nationals of BiH.

The definition of a “potential victim” is contained in the Guidelines for Conduct of Regional Monitoring Teams for Fight against Trafficking in Human Beings, Handbook on Direct Assistance to Victims of Trafficking in Human Beings in Bosnia and Herzegovina, Guidelines for Conduct of Social Welfare Centers with

Victims of Trafficking, Guidelines for Conduct of Mental Health Centers with Victims of Trafficking, Handbook on Protection of Victims of Trafficking in Bosnia and Herzegovina.

The standard that was assessed concerning the protection of the privacy of trafficking victims was:

Personal data concerning presumed or officially-recognized victims of trafficking is stored and used in conformity with the conditions provided for by the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981).

The legal framework ensures that the identity of victims is protected from public disclosure. In general, the collection of personal data has to meet certain standards on the basis of the EU Data Protection Directive and CoE Convention No. 108: victims should be informed who/which body is collecting their personal data; their personal data are not disclosed or shared with other parties without their freely given and informed consent; personal data are collected only for specified, explicit and legitimate purposes in the framework of the tasks of the competent authority; personal data are processed only for the same purposes for which they were collected; processing of these data must have a legal basis and be adequate, relevant and not excessive in relation to the aim for which it was collected; personal data is deleted or made anonymous when it is no longer required for the purpose for which it was collected. The Rules on Domestic Victims address the issue of confidentiality in Article 3 paragraphs 2 and 5 (Basic Operational Principles).²⁸ Provisions pertaining to the protection of personal data of foreign victims may be found in the Rulebook on Foreign Victims. Article 3 on the Protection of Privacy and Identity of Victims of Trafficking addresses the protection of private life and personal data.²⁹

Victims of THB evidently need legal aid, so he/she could adequately get acquainted with her rights and obligations, deadlines, possible fees, etc.,

²⁸ (...) (2) Protection of privacy is the professional standard which shall ensure client's confidence and privacy, confidentiality of the process and, if necessary, a temporary or permanent protection of the identity of the victim or victim-witness. (...) (5) Confidentiality shall be ensured by classifying information as secret or confidential, which shall immediately oblige all authorized institutions in BiH to keep it secret or confidential regardless of the manner of receipt of such information.

²⁹ (1) In order to protect the privacy and identity of the victim of trafficking in all proceedings, it is obligatory to apply the principle of confidentiality.

(2) For the purpose of protection of the identity of the victim of trafficking, the Ministry of Security will establish registers of individual data on victims of trafficking that will be harmonized with the laws and other provisions relating to the protection of personal data and will be accessible to persons who have competence for the use of such data.

but this right is currently not exercised in civil proceedings, although it has been proscribed within provisions of Law on free legal aid in RS, and in some of the cantonal level Laws on free legal aid within the F BiH. Free legal aid for victims of THB is currently provided only by NGOs. This situation is exposing victims to financial liabilities (representation fees, legal expenses etc.) and (re) victimization – since the burden of proof lies on the plaintiff. Even if the victim obtains a positive decision by the court, the issue of decision enforcement poses a great problem. BiH labour laws regulate only legal employment relationships between an employer and employee. In cases where there is no formal written contract and work is instead informal or illegal, the victim of trafficking for labour exploitation could in theory file a civil suit to determine whether an employment relationship existed. Only after the court determines the existence of an employment relationship may a victim seek the rights deriving from such employment (for example, unpaid wages, social security contributions, etc.). In practice, this means that the victim would first have to provide evidence of the existence of employment and, based on a determination on this, the court could protect the worker's rights, but the worker would still have the burden of proving the actual breach of the employment relationship and any damages caused. In reality, this is not only a difficult procedure to follow, it is highly unlikely that any trafficked person would embark on it.

If a person is presumed to be a victim of trafficking, placement in an authorized shelter grants them the status of a protected person for a recovery and reflection period of 30 days from the date of their reception into the shelter. In this period they should decide whether to cooperate with the authorities, outside the influence of the perpetrators and based on accurate information. The recovery and reflection period is addressed only in the Rulebook on Foreign Victims³⁰ which implies that this period is not specifically provided for national victims. However, although not prescribed by laws and regulations, the reflection period applies to both national and foreign victims, in accordance to guidelines and handbooks for professionals that are part of National Referral Mechanism.

The relevant institution, such as the Ministry of Security BiH, Ministry for Human Rights and Refugees BiH, Prosecutor's Office, law enforcement agencies, centres for social work, which identifies the victim decides on their placement in a shelter. During the reflection period, in a shelter or other form of accommodation, victims have access to social, psychological and medical assistance. According

³⁰ Article 10 paragraph 1 that states:

(2) To a person presumed to be a victim of trafficking, placement in a shelter grants the status of protected person for a period of 30 days from the date of reception into the shelter, which will be considered as period of recovery and reflection, in which without the influence of the perpetrators of crimes and based on accurate information he/she should decide whether to cooperate with the competent authorities for investigation and prosecution of the crime of trafficking in human beings.

to the Rules on Protection of National Victims and Victim-Witnesses domestic victims of trafficking are also provided onetime financial assistance.

Protection of witnesses and victims in Bosnia and Herzegovina is regulated by the Law on protection of witnesses under threat and vulnerable witnesses and the Rules on the protection of victims and witnesses of trafficking in human beings who are nationals of Bosnia and Herzegovina as well as the Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings. Specific protection measures adapted to the needs of victims and witnesses during criminal proceedings can be ordered by the competent court and potentially include testimony by means of transferred image and sound not requiring the presence of a victim or witness concerned, removal of the accused during testimony, measures to provide anonymity of a witness, and a special procedure of witness protection hearing. This law also allows for the use of recorded testimony.

However, the law is not implemented satisfactorily and, as a result, victims and witnesses are often intimidated by the traffickers and consequently refuse to testify.

The legal framework in BiH, in general, provides all victims of trafficking in human beings (i.e. victims of transnational crime, those trafficked within a country and those returning to their country of origin) with protection and support. Protection of privacy (use of personal data of the victim) is respected in accordance with the Criminal Procedure Code and legal rules that consider information of the victim are respected in accordance with the Criminal Procedure Code. Victims can file a compensation claim in criminal and civil procedures, but these procedures do not provide sufficient guarantees that the victim will be able to exercise their right to compensation, bearing in mind the fact that, under the terms of the criminal procedure law, the protection of victim depends on the prosecutor representing the case, and in civil proceedings exercise of their rights depends on the victim hiring a legal representative to represent her (or his) claim before the competent civil court, the financial possibilities to advance the costs required to prove the merits and the amount of claims. The rules of civil procedure are rigid and do not allow victims of any particular crimes easier access to the procedures for seeking compensation. Legal assistance to victims is usually provided through the work of non-governmental sector and there is a lack of legal regulations related to legal assistance in proceedings related to compensation. Bearing this in mind, it is clear that access to legal remedies for the victim is limited and that the legal framework needs to be amended.

The legal framework provides specifically for victims to be given appropriate protection from potential retaliation and intimidation during and after

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investigation and prosecution of perpetrators. However, available measures should be used more often and also legal proceedings should be further harmonised with relevant international legislation with aim to provide enhanced protection of the victims' safety.

C.1.a. Protection of all victims including those trafficked abroad and subsequently returned to their own country

There was at least one case in which a trafficked person was offered special protection at the stage of investigation of a possible trafficking case, such as accommodation in a shelter that is under armed guard, or a change of identity. With regard to the number of victims receiving assistance and protection measures after a trial in which they have been involved, 36% of the respondents thought there were no cases of this, while 64% reckoned there that between one and 10 victims had received such assistance or protection. At least one victim was reported to have benefited from some form of protection despite refusing to cooperate with the police or other law enforcement officials (i.e. refusing to provide information or evidence for use in a prosecution) and for this protection not to have been withdrawn as a result, even though it is not clear what form of protection had been provided. Results from analysing the data that was collected showed that victims feel safer after 12 months of assistance than after six months of providing assistance (73% victims in comparison with 64% victims). In 73% of the cases, victims were formally provided with a protection measure during criminal proceedings. A large number of those consulted (73%) reported that no trafficking victim had received protection measures such as physical protection, relocation, or a change in identity, while 27% said they were aware of such measures being taken. Among the respondents, 36% reported that at least one victim was subject to intimidation or harm during the court proceedings. Presumed or officially-recognized victims benefited from a minimum of 30-day recovery and reflection period in 55% of the cases, while 36% of the trafficking victims did not have any recovery and reflection period. Almost the same numbers apply when it comes to the presumed victims who received assistance to help their physical, psychological and social recovery during the recovery and reflection period that was granted to them.

During the reporting period in BiH were no reports of any alien/foreign victims of trafficking returning to from BiH to their country of origin.

C.2. PROTECTION OF CHILD VICTIMS OF TRAFFICKING IN HUMAN BEINGS

C.2.a. Special protection measures for children

According to the definition given by the substantive criminal law of FBiH (Article 2, paragraphs 9 and 10 of CC FBiH), a child is defined as a person under the age of 14 and a juvenile is defined as a person under the age of 18. However, the FBiH adopted a new Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings³¹ in January 2014 that entered into force in February 2015, one year after its adoption, which defines a child (in accordance with international standards) as a person under the age of 18. In the Republika Srpska and Brcko District, laws on the protection and treatment of children and juveniles in criminal proceedings have been applied since 2011 and 2012, respectively, in particular when it concerns children and juveniles who were victims or victim-witnesses of serious crimes. According to the laws mentioned above, in cases where a child or a juvenile is the injured party, the trial should be presided by a judge for juveniles or a judge who has specialist knowledge. The Centers for Training of Judges and Prosecutors are implementing specialized trainings for judges and prosecutors on dealing with cases of juvenile delinquency, as well as on the protection of minor victims/injured parties. Therefore, for all criminal offences, in any case where the minor is an injured party, judges and prosecutors must be specialized and certified by the Centers for training of judges and prosecutors to be able to proceed in such cases. The principle that the 'best interests of the child' is a primary consideration in all actions (and decisions) affecting a child is accepted in national law and formally integrated into the State's procedures and guidelines for protecting and assisting child victims of trafficking. Rules on the protection of victims and witnesses of THB who are nationals of Bosnia and Herzegovina provide that, in the case of children, potential³² victims of THB, the interview should take place in the presence of a parent, legal guardian or representative of a social welfare center protecting the interests of the child. That said, it is not clear from the Rules who is responsible for conducting the interviews and whether there are any guidelines as regards the procedure to be followed.

According to the Law on protection of witnesses under threat and vulnerable witnesses, children are considered to be vulnerable witnesses. This entitles them to increased protection. Children cannot be questioned more than twice during the entire investigation of a case and should not be exposed to any direct

³¹ Official Gazette of FBiH 13/14

³² I.e. children suspected by the police or others officials of being victims or 'presumed' victims'.

contact with the suspected perpetrators. Further, children can give testimony only in the presence of a parent or a legal guardian and a child psychologist. Such testimonies are recorded to avoid interviewing children more than once. During court proceedings a judge is entitled to hold a part of the session *in camera*, if this is in the best interests of a child, upon request of a prosecutor or a lawyer of a victim/witness.

The Rules on the Protection of Victims and Witnesses of Trafficking who are Nationals of BiH and the Rulebook on the Protection of Foreign Victims of Trafficking lay down that it is the state's obligation to provide legal aid to victims of trafficking. These regulations apply throughout the entire territory of BiH. However, most legal assistance for victims of trafficking is provided by civil society organizations which are, in turn, funded in part by international organizations and in part by the budgets of domestic institutions.

In the light of the evidence that was collected, the monitors concluded that the legal framework in BiH provides for child victims of trafficking to be identified, protected and supported in full accordance with the 'best interests of the child' principle.

C.2.b. Protection of Child victims

When it comes to the protection of child victims of trafficking in human beings (potential and/or officially identified), adequate protection and assistance was provided during 2015. Some 45% of respondents reported that unaccompanied children (and BiH nationals and foreigners who were identified as victims of trafficking) had had a guardian or legal representative formally appointed within one month of being identified as potential victims.

The situation is similar in regard to the unaccompanied children who are citizens of BiH and which are identified as victims of trafficking (i.e. internal trafficking or children who have returned from a foreign country), and whose family is not found within a reasonable period of time (e.g. a few days) after the child's identification as a potential victims (unless it is estimated that contact with family and/or family reunification is not in the best interests of the child) where, in the opinion of the respondents, 82% responded that there were no such cases.

When it comes to the number of potential child victims whom the police questioned about a possible crime committed against them, 36% of the respondents reported that such cases happened; furthermore, 64% of the

respondents thought that when such cases occurred, the children were not provided with independent legal advice (i.e. from a lawyer or legal adviser) while the police were conducted an investigation. These data suggest that the protection of children and the application of protective measures for child victims need urgent improvement.

Regarding the number of child victim-witnesses who were able to provide evidence for a court prosecution without themselves having to appear in court or to confront the suspected trafficker(s), 82% of the respondents thought that there were no cases of this sort. Similarly, 73% of respondents thought there were no cases in which child THB victims received some form of protection that was not available to adult victims.

Child victims of trafficking (whether presumed or officially-recognized) were, in general, protected and assisted adequately during the period under review. However, problems occurred in the provision of legal aid for child victims in the phase of investigation.

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C.3. PROTECTION OF VICTIMS WHO ARE NON-NATIONALS (RESIDENCE PERMITS AND RETURN OF VICTIMS), INCLUDING CHILDREN

The recovery and reflection period of 30 days from the date of their arrival in a shelter is addressed in the Rulebook on Foreign Victims. During the reflection period, in a shelter or other form of accommodation, victims are supposed to have access to social, psychological and medical assistance. Pursuant to Article 54, paragraph 1(a), of the Law on the Movement and Stay of Aliens and Asylum and Article 58 of the Law on Aliens, paragraph 2(a)³³, foreign victims of organized crime and/or trafficking in human beings may be granted a temporary residence permit on humanitarian grounds for the purpose of protection and assistance or return to his or her home country. The duration of the residence permit issued on humanitarian grounds is six months and may be extended if the grounds on which it was issued persist. The legal framework also includes a guarantee of non-refoulement. Victims have the right, if they wish, to return to their home country without unnecessary or unjustified delay and with their safety taking care of. The safety of the trafficked person and their family is supposed to be taken into account in any decision on repatriation. Article 21 of the Rulebook

³³ During November 2015 the Law on Aliens was adopted, while the Law on the Movement and Stay of Aliens and Asylum ceased to be applicable.

(Protection of Children) contains specific provisions on the return of child victims that provide additional guarantees for safe and dignified repatriation. The legal framework provides that the best interests of the child should be considered in return processes following risk and security assessments.

In general, victims have the right to voluntary, safe and dignified return to their country of habitual residence. In practice, if foreign victims refuse to cooperate with the prosecution, they will not be entitled to receive a temporary residence permit on humanitarian grounds. In other words, a victim's "voluntary" repatriation depends on their willingness to cooperate with the prosecution and/or the prosecutors' decision on whether a victim is needed to testify during criminal proceedings.

During the reporting period there were no foreign victims of trafficking in human beings reported, and there also was no data on victims-nationals identified in another country who were returned to BiH after being identified as trafficking victims in another country.

C.4. PROTECTION OF INSTITUTIONS OR INDIVIDUALS WHO SUPPORT VICTIMS

In almost half of the cases of trafficking in human beings, members of CSOs were subject to intimidation and/or retaliation during or after the investigation or prosecution of a case in which they were assisting a victim. Also, 36% of the respondents (members of CSOs) reported being subjected to intimidation or retaliation, irrespective of whether or not this was connected to any specific investigation or prosecution. Law enforcement officials reportedly reacted in an adequate way to contain the threat or punish the perpetrators in 34% of the cases.

D. ASSISTANCE AND SUPPORT FOR VICTIMS

D.1. ASSISTANCE IN GENERAL

The provision of assistance to victims of human trafficking is regulated by the Rules on the protection of victims and witnesses of THB who are nationals of Bosnia and Herzegovina and Rulebook on protection of foreign victims of trafficking in human beings. According to both regulations, victims are entitled to safe accommodation, medical assistance, access to information about their rights, and legal assistance during criminal proceedings. Adult victims who are nationals of Bosnia and Herzegovina may be accommodated in a shelter, and children are accommodated in child protection institutions and shelters. Regarding foreign victims of human trafficking, as a general rule, they are accommodated in closed shelters that guarantee their safety, with their consent Victims are allowed to go in and out with the permission and when accompanied by a competent officials and/or shelter staff. The new Law on Aliens adopted in November 2015, like the previous Law on the Movement and Stay of Aliens and Asylum, provides foreign victims of trafficking in human beings with a right of access to the labour market under the same conditions as other aliens/foreigners, though no such cases are known to have occurred, nor is it clear how this right would be implemented in practice. The new Law provides also access to the professional training and education in Bosnia and Herzegovina.

During the victim's first contact with the police or prosecution, s/he is supposed to be informed about the assistance that is available, relevant judicial and administrative proceedings and her/his rights, including the right to legal aid. Most commonly in practice, the first contact of the victim with a legal counsel takes place after the victim's placement in a shelter. In that case, the lawyer has an interview with the (potential) victim and informs her/him of her/his rights. For foreign victims, the inspector for foreigners from the organizational unit of the Service for Foreigners' Affaires where the foreigner is found (who is a presumed victim of trafficking) is supposed, before conducting an interview, to inform the foreigner on her/his rights and obligations as defined by the Law, as well as about the option of consulting an independent legal counsel at all stages of the proceedings, and about the right to an interpreter (in order to follow procedures in a language that s/he understands).

The legal framework provides for partial assistance for victims of trafficking, appropriate to their particular needs (e.g. taking into account gender, language, ethnicity and age). Some of these guaranteed rights, such as right of access to the labour market, are impossible to exercise in practice, due to the fact that victims are placed in shelters and are usually unable to prove what level of education they have reached, as they are not in possession of any documentation. The right to legal assistance for victims of trafficking (whether presumed or officially-recognized) in all relevant legal proceedings is not stipulated by BiH's legal framework. For example, there is no provision on legal assistance in compensation claims before the civil courts, which leaves victims helpless when it comes to exercising the right to seek compensation due to rigid rules of procedure before the civil courts and their own lack of knowledge on BiH legislation.

D.2. ASSISTANCE FOR ALL VICTIMS IN ALL CATEGORIES

Any person identified as a potential and/or officially recognized victim of human trafficking is supposed to be offered immediate assistance and support, including shelter, medical assistance, information and legal advice, in accordance with their specific needs (e.g. gender, language, ethnicity and age), and the state has provided some funding to meet the costs of such assistance. During 2015 funding for foreign victims of human trafficking provided by the Ministry of Security of BiH amounted to 120,000 BAM (approximate 61,355 EUR), while the Ministry for Human Rights and Refugees of BiH provided 60,000 BAM (approximate 30,677 EUR) for citizens of BiH who were victims of trafficking in human beings. This inappropriate allocation of funds for foreign and national victims once again confirms the inefficiency of the state apparatus in responding to actual needs in practice, e.g. to the situation that during last few years there were significantly more victims with BiH nationality than foreigners. These budget allocations were agreed in the early 2000s when the proportion of foreign victims of human trafficking was much higher.

Seven of the twelve NGOs that participated in the survey confirmed that their costs related to the assistance of foreign and domestic victims of trafficking were financed from the state resources. However, more than half of these NGOs reported providing additional resources for this purpose from other sources, which confirms that the allocations from the state budget for assistance to victims are inadequate.

D.2.a. Shelter and material assistance

Appropriate and safe accommodation for newly identified victims in the period under review was not provided within a reasonable time in almost 30% of cases. The practitioners consulted by the monitors reported that in at least three cases offered accommodation options were considered unsatisfactory by the victims. It should be noted that the provision of accommodation for victims of human trafficking in Bosnia and Herzegovina is based on the ongoing cooperation of competent institutions and non-governmental organizations

Approximately 71% of presumed and officially-recognized trafficking victims benefited from a series of payments as material assistance, based on an assessment of their needs. Presumed and officially-recognized trafficking victims benefited from material assistance provided by government sources for long enough to recover and cease needing assistance in 57% of the cases. Regarding victims who do not receive adequate material assistance during the initial three months after they have been identified, a high percentage of respondents (86%) answered that material assistance is not provided to victims in accordance with applicable laws on social welfare of both the entities and the Brcko District of BiH (for one or more victims).

D.2.b. Medical assistance

Victims were able to rely on the public health service for free (or almost free) treatment for health-related problems in 57% cases. According to respondents, during 2015 emergency medical assistance was provided to victims of trafficking in human beings in five cases; and in one case this assistance was not provided within the first 12 hours.

All victims were provided with medical assistance within the time period of seven days. Respondents were questioned about possible discrimination against victims, based on nationality or gender: they considered that in 86% of cases there was no discrimination. The same ratio applies when it comes to discrimination against either women or men identified as presumed or officially-recognized victims in terms of access to medical assistance.

According to the respondents, 29% of victims who needed mental health care (psychological services) were not provided with such care within a reasonable time.

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D.2.c. Information

In two cases respondents reported that victims did not receive comprehensive and accurate information about their legal rights and services available to them.

D.2.d. Vocational Training/Income-Earning Opportunities

When it comes to the victims who have legal residence in Bosnia and Herzegovina (both domestic and foreign victims), but who are not allowed to work or to participate in professional training, the data available indicate at least one such case.

D.2.e. Other

According to the survey conducted by the monitors, 43% of the respondents reported that assistance to victims was conditional to their willingness to act as a witness.

It can be concluded that in practice, whether identified as a presumed or officially-recognized victim of trafficking, most were 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 finance to pay for such assistance. Data collected by the monitors show that funds provided by the State are not sufficient, and that NGOs obtain additional resources for this purpose from other sources. Accommodation in shelters depends on victims cooperating with law enforcement agencies in many cases. Medical services are usually provided in time, but in one third of cases, psychological assistance was not provided within a reasonable time. Victims were unable to exercise their right to access the labour market in practice, due to the fact that they were placed in shelters and had inadequate documentation to prove their qualifications.

D.3. ASSISTANCE AND SUPPORT FOR CHILD VICTIMS

Child victims of trafficking were offered assistance and protection in accordance with their age, including shelter, medical help needed, information and legal advice, all in accordance with their specific needs (e.g. age and maturity, gender,

language and ethnicity). This assistance was reportedly available for up to three months in 57% cases; for between three and six months in 29% cases; and for between six and 2 months in 14% cases. In 72% of the cases child victims continued to receive assistance during 2015, which implies that the national referral mechanism was unable to ensure their prompt and efficient reintegration.

It is important to emphasize that it is not possible to ensure regular education for the children who are presumed and/or officially identified victims of human trafficking and BiH citizens, given the fact that they are mostly accommodated for months in closed shelters for security reasons. The shelters provided the possibility of mentoring children and enabling school aged children to sit special exams. Furthermore, special attention is given to provision of official documentation to children who are not registered in birth registries or citizenship registries and therefore were not involved in the education process.

D.3.a. Shelter and material assistance

Bosnia and Herzegovina has no special accommodation facilities exclusively for children who have been trafficked, and for which it could be said that is appropriate to their age. Accommodation is provided in cooperation with CSOs. In 2015, in line with the statistical data in the report of relevant institutions, all child trafficking victims received assistance in institutions that were specialized in the care of children who have been victims of trafficking or who have survived similar trauma.

The average time for which presumed and officially-recognized child victims were provided with accommodation and other material assistance after being identified paid for by the state, supported by CSOs or other privately-funded organisations was estimated by 57% (four respondents) to be up to three months, by two respondents to be 3-6 months and by one respondent to be between 6-12 months. Material assistance for child victims ceased in 2015 in 28% cases.

D.3.b. Medical assistance

Regarding the provision of medical assistance and age-appropriate psychological counselling for child victims of trafficking, respondents' answers varied: 72% of the respondents thought that child victims did have access to this type of assistance. Organizations that provide accommodation for victims reported that in one case a child victim in need of medical assistance did not get it. This certainly

shows a failure to provide adequate assistance and act in the best interests of the child, as required by laws and regulations.

D.3.c. Education or Vocational Training

According to the collected data, 43% respondents thought there were no child victims of school age who were not attending school within one month of being identified as a child victim; a slightly larger proportion, 57%, thought that at least 1 child victim was in this situation. Also, 71% of respondents reported that there were victims aged under 18 who were not attending school, or vocational training or in a job within three months of being identified.

D.4. LEGAL ASSISTANCE AND LEGAL AID

D.4.a. Legal framework

The system of free legal aid in BiH is still in development. In certain parts of the country free legal aid centres have been established by the government, but provision of free legal aid in some cases depends on whether the beneficiary has permanent residence within the area of jurisdiction of the centre. These are focused on providing free legal assistance regardless of the nature of the proceedings and the legal status of the beneficiaries. Also, there are CSOs which provide free legal aid for different categories of beneficiaries. However, it is the state's obligation to provide legal aid to victims of trafficking.

In criminal proceedings, victims of trafficking are not entitled to a lawyer but, as injured parties, it is the prosecutor who is supposed to uphold the rights of the victim and ensure that victim's rights are protected. According to the CPC BiH, a lawyer as the advisor (not as representative) may be assigned by the Court's decision to a witness during the hearing if it is obvious that the witness her- or himself is not able to exercise her/his rights during the hearing and if her/his interests cannot be protected in some other manner.

Laws on civil proceedings do not contain provisions to ensure the right of the victim to have a state appointed lawyer. However, although this issue is partially covered with provisions of laws on free legal aid in RS, and some cantons within F BiH, to this day, free legal aid for victims of THB was provided only by civil society organizations that are funded from international, and partly from domestic,

institutions' budgets. It puts the victim in a very difficult position, given the fact that they are forced to spend significant amounts paying for legal representation, payment of fees and the expenses of litigation.

D.4.b. Legal Assistance and Legal Aid

There were no cases of adult victims who, upon first contact with the authorities, were not immediately provided with information on relevant judicial and administrative proceedings in a language they could understand. Also, when it came to the victims who were involved in legal proceedings (criminal trials or other proceedings) as victims or witnesses, there were no victims who did not have access to independent legal advice and/or assistance prior to or during the proceedings.

At the same time 57% of the respondents reported that victims involved in criminal proceedings had the support of an NGO when the state was unable to provide such assistance, while 43% responded that there were no such cases.

Responses to the question regarding the number of requests for free legal aid and assistance to victims, or cases where the victim was unable to obtain legal assistance from lawyers with the appropriate skills confirmed that there were applications for free legal aid by at least one victim in the reference period. However, it was not possible to determine their exact number.

In regard to cases where child victims or their parent, guardian or legal representative, upon initial contact with the authorities, were provided promptly with information on relevant judicial and administrative proceedings in language they could understand, 43% of the respondents thought that during 2015 this was not occurring, while 57% respondents thought it was.

When it comes to the child victims who were involved in legal proceedings and who received independent legal advice/assistance, respondents thought that all child victims received independent legal advice/attention: 43% reported that 1-10 child victims had been involved in legal proceedings and had received independent legal advice; 14% of the respondents reported that such assistance was received by 20 or more child victims; 14% by more than 20 victims; and 29% of the respondents reported that there were no such cases .

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E. COMPENSATION AND LEGAL REDRESS

E.1. LEGAL FRAMEWORK

With respect to compensation, the standards that were assessed were:

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.

and

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

In Bosnia and Herzegovina, victims of human trafficking may claim compensation from the offenders in criminal proceedings.

However, such claims are discouraged in practice, as their examination in court would imply establishing the damage sustained to evaluate compensation, which in turn would delay the delivery of the court's judgment on the human trafficking case. As a consequence, victims are reportedly advised to claim compensation through civil proceedings from a trafficker who had already been convicted.

There is no possibility in law to obtain compensation from the state and no compensation fund for victims of THB or victims of crime in general has yet been set up.

Criminal legislation in Bosnia and Herzegovina provides for the right to file a damage or compensation claim in criminal proceedings as one of the forms of compensation for the injured party (victims of trafficking). This right refers to victims of any criminal offence. Pursuant to the relevant provisions, courts are required to consider any claims for damages or compensation during a criminal

trial on condition that this does not “considerably prolong such proceedings”. Decisions on this depend mainly on the prosecutor and his/her work in terms of the collection of evidence during the phase of preparing the prosecution to substantiate any compensation claim. Compensation claims may pertain to reimbursement for material and non-material damages, recovery of items, or annulment of a particular legal transaction. The court decides upon the claim. Victims of THB can also seek compensation through regular civil proceedings. With regards to the disputes for damages, basic courts in RS and municipal courts in FBiH have jurisdiction over such cases. However, it should be noted that filing the lawsuit (compensation claim) and success in these proceedings is fraught with many obstacles.

E.2. COMPENSATION AND LEGAL REDRESS IN PRACTICE

In the opinion of respondents, during 2015, there were no first-instance verdicts against suspected traffickers that required the trafficker to pay compensation to the victim of THB or other payments, nor any first-instance verdicts in which the court ordered the convicted trafficker to pay unpaid (or underpaid) earnings to victims of human trafficking. Also, there were no presumed or officially recognized victims of trafficking who were awarded compensation in civil proceedings, nor victims who filed a civil claim for compensation and who subsequently received any compensation, as well as no court decisions to award compensation to victims resulting in payments actually being made within six months of the ruling.

In the end, it is necessary to specify the data on the average duration of the proceedings for compensation of presumed and officially identified victims of trafficking. Although it was previously noted that during 2015 there were no such proceedings, the survey produced estimates of how long proceedings might take: 60% thought it would take up to six months, 20% estimated 6-12 months and a further 20% thought it would take two years or more.

One strategic litigation case of THB victims filing a compensation claim in civil proceedings, after their trafficker had been convicted, showed all the difficulties regarding this process in practice. The first instance procedure lasted about 14 months (21 October 2014 - 15 January 2016) and the court declined the compensation claim, inter alia, due to the fact that the victims did not appear to give their testimony during the proceedings before this court, nor were they heard as civil parties to determine whether they had suffered mentally, what the

implications were and for how long. This raises serious concern for victims since this court decision has a deterrent effect on victims, who have been victimized enough first when being trafficked, then during the criminal proceedings in which they participated as victim-witnesses. Making their presence obligatory during civil proceedings, having them re-examined during the civil proceedings and exposing them to another medical forensic examination represents a form of re-victimization and denies them justice.³⁴ The legal representatives of the victims filed a complaint to the second instance court, and were still waiting for a decision at the end of 2016.

E.3. CIVIL CLAIMS

No official data are available about civil claims made by victims of trafficking in human beings. However, the data collected by monitors showed that only one civil procedure was ongoing in 2015 before the competent first instance court, with respect to damages arising from the criminal acts of trafficking. It should be noted that filing the lawsuit (for a compensation claim) and success in these proceedings faces many obstacles. In principle legal aid should be provided for the victim, so he/she could adequately get acquainted with her rights and obligations, deadlines, possible fees, etc. In practice, the laws on civil proceedings do not entitle trafficking victims to have a state appointed lawyer, even when their alleged trafficker has been convicted, and expose them to a range of financial difficulties (representation fees, legal expenses etc.) and revictimization – since the burden of proof lies on the plaintiff. Even if the victim obtains a positive decision by the court, the issue of enforcing any compensation or damages payment ordered by a court is regarded as very difficult.

³⁴ Strategic litigation report, IFS-EMMAUS

RECOMMENDATIONS

Considering the monitors findings, and comparing these to monitoring reports concerning previous periods, it is reasonable to conclude that BiH has made significant progress in the fight against human trafficking, particularly regarding its legal and institutional framework. However, it is evident that there are still gaps in the legislative framework where this has not been brought into line with international standards. This requires the BiH authorities to take further action.

In practice, the monitors noted problems concerning the identification of THB victims: situations when the victim is "invisible", especially when it comes to arranged and forced marriages and begging, when children are involved. There is a need for additional training and awareness raising of all the professionals who might come into contact with victims, children or adults.

Further action is required by the authorities to investigate cases and prosecute suspected traffickers. There is also a need to take action to improve respect for the rights of victims during criminal and civil proceedings. This applies particularly to the need for free and effective legal aid.

Therefore, the recommendations of this Report are the following:

1. BiH should ensure that the offence of trafficking in human beings is incorporated in a consistent manner in all criminal codes applicable on the territory of Bosnia and Herzegovina;
2. The Criminal Code of Federation of Bosnia and Herzegovina should be amended and include the criminal offence of Trafficking in Human Beings;³⁵
3. The Criminal Procedure Codes in BiH should include the term "victim" instead "injured party";
4. The rights of the victim in criminal proceedings should be strengthened, considering that due to criminal procedure codes, accused have more rights than victim-witnesses;
5. Investigations of prosecutor's offices and role of law enforcement agencies should be proactive and intensified with the aim of discovering and detecting THB crimes;

³⁵ During finalisation of this Report, in June 2016 amendments in CC FBiH were adopted and Trafficking in Human Beings has been criminalized - Official Gazette of F BiH, 46/16

6. Ensure that crimes related to trafficking are investigated and prosecuted promptly and effectively, leading to proportionate and dissuasive sanctions.
7. Intensify the role of the Department for Support to Victims within the courts in Bosnia and Herzegovina;
8. Improve the identification of victims of trafficking by disconnecting it from the initiation of criminal proceedings;
9. Ensure that relevant professionals adopt a proactive approach to identification;
10. Train employees of Centres for Social Work in appropriate ways of treating children who are victims of trafficking in human beings, especially begging;
11. Strengthen the protection of children against human trafficking by additional training for professional stakeholders involved in work with children;
12. Train and strengthen the role of Labour Inspectors in how to identify victims of THB and how to prevent labour exploitation;
13. Ensure that victims of trafficking have effective access to assistance and protection, regardless of whether they co-operate with the law-enforcement authorities;
14. Define in law the recovery and reflection period provided in Article 13 of the Council of Europe Convention and ensure that trafficked persons are effectively granted such a period;
15. Available measures for protecting victim-witnesses should be used more often and legal proceedings should be brought into line with relevant international legislation with the aim of enhancing the protection of victims and ensuring their safety;
16. Ensure that victims of trafficking really can obtain compensation from offenders and set up a state compensation scheme which is accessible to victims of trafficking;
17. Establish a Compensation Fund for Victims of Trafficking in Human Beings in Bosnia and Herzegovina.

ANNEXES

ANNEX 1: MONITORING TOOL FOR ANTI-TRAFFICKING POLICIES AND PRACTICE IN BIH: EXAMPLE OF QUESTIONNAIRE

Eneid Hasanović, M.Sc. in Political Science

Anti-Trafficking Policies Monitoring Tool

- Survey -

The phenomenon of trafficking in human beings has been capturing the attention of both the professional community and laymen for a long time at the global, regional and national levels not only because of its very complex and concealed nature but also because of very different views on whether under the current circumstances this term is appropriate to cover a growing number of the forms of exploitation of human beings for criminal purposes, that is, for the purpose of generating illegal profits by exploiters. This survey aims at measuring the scope and structure of trafficking in human beings at the regional level and at the national level in Bosnia and Herzegovina, at least in terms of official indicators presented by various international and regional organisations dealing with this problem and by the relevant institutions in our country.

The information is gathered for the period 1 January – 31 December 2015.

The survey is completely anonymous!!!

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QUESTIONNAIRE

A. The law and the national legal framework criminalising trafficking in human beings

A.i. Does the domestic legislation provide a comprehensive framework to fight trafficking in human beings in line with the Council of Europe Convention on Action against Trafficking in Human Beings or the UN Palermo Protocol?

	CC BiH	CC FBiH	CC RS	CC BD
Fully				
Partly				
Not at all				

*For each Criminal Code, mark X one response

A1. Does the domestic legislation provide for effective, proportional and dissuasive criminal penalties to punish the persons having been proven guilty of committing the crime of trafficking in human beings?

	CC BiH	CC FBiH	CC RS	CC BD
Fully				
Partly				
Not at all				

*For each Criminal Code, mark X one response

A2. Does the legislation identify **all the methods** of trafficking in human beings listed in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol?

	CC BiH	CC FBiH	CC RS	CC BD
Fully				
Partly				
Not at all				

*For each Criminal Code, mark X one response

A3. Does the legislation identify **all the means** of trafficking in human beings

as provided in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol?

	CCBiH	CCFBiH	CCRS	CCBD
Fully				
Partly				
Not at all				

*For each Criminal Code, mark X one response

A4. Does the legislation identify, at a minimum, **all the purposes of exploitation** as provided in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol?

	CCBiH	CCFBiH	CCRS	CCBD
Fully				
Partly				
Not at all				

*For each Criminal Code, mark X one response

Does the legislation define the following components and related criminal offences (and does the law provide for effective, proportionate and dissuasive penalties in relation to each offence below)?

- (a) Slavery, servitude and practices similar to slavery.
 - a. Yes
 - b. No
- (b) Forced labour or services, including forcing people to beg and to hand any of their earnings to a third person other than a parent or legal guardian.
 - a. Yes
 - b. No
- (c) Sexual exploitation, including the exploitation of prostitution of others (for example, pimping or pandering).
 - a. Yes
 - b. No
- (d) Commercial sexual exploitation of children.
 - a. Yes
 - b. No
- (e) Forced marriage
 - a. Yes
 - b. No
- (f) The removal of organs for commercial profit.
 - a. Yes
 - b. No

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A5. Does the domestic legislation define at least one criminal offense to allow the prosecution of those responsible for the severe economic exploitation of adults, which does not involve slavery (i.e. “ownership” of another human being), but, nevertheless, a high level of control related to servitude or forced labour?

	CC BiH	CC FBiH	CC RS	CC BD
It does				
It does not				

*For each Criminal Code, mark X one response

A6. Does the domestic legislation define at least one offence to allow the prosecution of those responsible for the severe economic exploitation of children (under 18), when the offence does not involve slavery, but a form of servitude or forced child labour, e.g. similar to “sale of children” in one of the “practices similar to slavery”?

	CC BiH	CC FBiH	CC RS	CC BD
It does				
It does not				

*For each Criminal Code, mark X one response

A7. Anti-trafficking legislation does not confuse trafficking in human beings or related crimes against person with the crimes against security of the state, notably with migrant smuggling.

	CC BiH	CC FBiH	CC RS	CC BD
It does				
It does not				

*For each Criminal Code, mark X one response

A8. The legislation regarding sexual offences, including exploitation of the prostitution of others, is clear and does not categorise a criminal offence as “trafficking in human beings” unless the abusive means (specified in Article 4(a) of the CoE Convention on Action against Trafficking in Human Beings and Article 3 of the Palermo Protocol) have been involved in the act of recruiting, transporting, transferring, harbouring or receiving a person.

	CCBiH	CCFBiH	CCRS	CCBD
It classifies				
It partly classifies				
It does not classify				

*For each Criminal Code, mark X one response

A9. Does the domestic legislation provide that the consent of an adult victim of trafficking in human beings to the intended exploitation is irrelevant when any of the means set forth in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol were used against the trafficked person?

	CCBiH	CCFBiH	CCRS	CCBD
It does				
It does not				

*For each Criminal Code, mark X one response

A10. Does the domestic legislation provide that the crime of trafficking in human beings against a child qualifies as such even in the absence of the use of the abusive means specified in Article 4 of the CoE Convention on Action against Trafficking in Human Beings or Article 3 of the Palermo Protocol?

	CCBiH	CCFBiH	CCRS	CCBD
It does				
It does not				

*For each Criminal Code, mark X one response

A11. Does the legislation establish as a criminal offence the use of the services which are the object of exploitation when the person using such services knows that the person is a trafficked person?

	CCBiH	CCFBiH	CCRS	CCBD
It does				
It does not				

*For each Criminal Code, mark X one response

A12. Does the legislation establish as a criminal offence an attempt to commit, or aiding or abetting the commission of, the offence of trafficking in human beings?

	CC BiH	CC FBiH	CC RS	CC BD
It does				
It does not				

*For each Criminal Code, mark X one response

A13. The national legal framework enables the tracing, seizure and confiscation of proceeds of the crime of trafficking in human beings.

	CC BiH	CC FBiH	CC RS	CC BD
It does				
It does not				

*For each Criminal Code, mark X one response

A14. Does the national legal framework establish jurisdiction over trafficking in human beings and trafficking-related offences when the offence is committed:

- (a) in the State's territory; or
 - a. Yes
 - b. No
- (b) On board a ship flying its flag; or
 - a. Yes
 - b. No
- (c) On board an aircraft registered under its laws; or
 - a. Yes
 - b. No
- (d) By one of its nationals abroad; or
 - a. Yes
 - b. No
- (e) Against one of its nationals abroad; or
 - a. Yes
 - b. No
- (f) By a person who has her or his habitual residence in the State's territory.
 - a. Yes
 - b. No

A15. Are trafficking in human beings and trafficking-related offences treated as extraditable offences under the relevant treaties and domestic laws?

- a. Yes
- b. No

A16. Does the national legal framework provide that victims of trafficking in human beings are not to be punished (or not even prosecuted) for unlawful

acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts?

a. Yes

b. No

A17. Does the national legal framework specify that a potential or presumed victim of trafficking in human beings who has been detained (either without being identified as such or even when there was a suspicion that she/he might have been trafficked) should be released from custody?

	CC BIH	CC FBIH	CC RS	CC BD
It does				
It does not				
I don't know				

*For each Criminal Code, mark X one response

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Section 2.2: Indicators to Monitor and Evaluate the Outcomes of the National Anti-Trafficking Frameworks during a specific period of time

A. The law and the legal framework: investigations and prosecution of traffickers

A.1 General information on investigations and prosecution

A.ii. Were trafficking cases prosecuted and adjudicated (judged) fairly and in accordance with international criminal justice standards?

a. Yes

b. No

A25. Were there compelling reasons to suspect that one or more public officials were involved in trafficking in human beings or was an accomplice to traffickers in some way?

a. Yes

b. No

A26. Did trials of suspected traffickers respect the rights of victims and witnesses?

a. Yes

b. No

A.1.a The investigation stage (police)

A27. Did police engage in general round ups of sex workers, while justifying these as operations to assist trafficking victims?

- a. There were no round ups
- b. There were 1-5 round ups
- c. There were 5-10 round ups
- d. There were 10 or more round ups

A28. Did anti-trafficking police investigators use the legal and supervised application of financial investigation powers and pursuit of assets confiscation orders in appropriate cases?

- a. Yes
In how many cases in 2015? _____
- b. No
Why? _____

A29. Did the quality of interviews of presumed victims by special anti-trafficking investigators (not general frontline police) meet international “good practice” standards?

- a. Yes
- b. No

A30. How many newly identified trafficked persons were there in the period under review, where there was no investigation, or the investigation was stopped as a result of reluctance of a victim as a key witness to cooperate?

- a. 0
- b. 1-10
- c. 10-20
- d. 20 or more

A31. How many investigations were conducted in which newly identified victims/ witnesses collaborated with the criminal justice system (police and prosecutors) during the criminal investigation?

- a. 0
- b. 1-10
- c. 10-20
- d. 20 or more

A.1.b Prosecution stage (Public Prosecutor/Attorney)

A32. Did prosecutors ensure appropriate support to victims prior to trial?

- a. Yes b. No

A33. Were trafficked persons informed about their rights and applicable administrative and judicial procedures?

- a. Yes b. No

A34. Were trafficking victims kept informed of relevant court and administrative proceedings?

- a. Yes b. No

A35. Were trafficked persons informed promptly of the outcome of trials in which they were a victim or witness, both guilty verdicts and not-guilty verdicts?

- a. Yes b. No

A36. In how many cases there was no indictment or the prosecution was stopped as a result of reluctance of a victim as a key witness to cooperate?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A37. Was there at least one prosecution under the terms of legislation that established the liability of legal persons for direct or indirect involvement in the commission or attempt to commit the crime of trafficking in human beings?

- a. Yes, in how many cases? _____
b. No

A.1.c Trials and Convictions

A38. Did the courts impose effective, proportionate and dissuasive penalties?

- a. Yes b. No

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A39. Did the courts respect the non-discrimination principle (i.e. did not discriminate against defendants on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status)?

- a. Yes b. No

Did prosecutors and judges understand and, where appropriate, implement 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?

- a. Yes b. No

A40. Number of cases involving in-court protection measures, e.g. victim/witness shielded from view of defendant and public, or videoed testimony accepted instead of a witness appearing in court, or the victim/witness given a special place to wait, avoiding direct contact with a defendant or defendant’s associates (including defendant’s lawyers).

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A41. How many victims were punished for involvement in unlawful activities that they were compelled to carry out while under the control of traffickers or exploiters?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A42. Did officials and politicians in government make public statements confusing human trafficking with migrant smuggling or such statements were not reported to have been made?

- a. Yes, they did
b. No, they did not
c. Not reported

A43. How many traffickers were convicted in two successive calendar years (the period under review and the previous calendar year) where a penalty imposed on a convicted trafficker was not fully enforced by the end of the second calendar year?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014				

A.2 Statistics on prosecutions and convictions (in a specified period of time)

A.2.a The investigation stage (police)

A44. How many crime reports (police reports) suspecting a crime of trafficking in human beings were submitted (prior to an investigation which may, or may not, confirm that a crime has been committed)?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A.2.b Charges and prosecutions

A45. How many suspected criminals were charged with trafficking in human beings (or a trafficking-related offence)?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A46. What is the number of prosecution cases (including the total number of people prosecuted, as more than one defendant may be prosecuted during one case) by the state for trafficking in human beings or trafficking-related offences committed on its territory, on a ship flying its flag or on an aircraft registered in that state?

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Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A47. Proportion of prosecutions (and of people prosecuted) for trafficking for the purpose of sexual exploitation, versus prosecutions for offences concerning trafficking for the purpose of labour exploitation (including forced labour, servitude, forced begging, etc., but excluding trafficking for organ removal).

Sexual exploitation		Labour exploitation	
No. of cases	No. of persons prosecuted	No. of cases	No. of persons prosecuted

A48. Number of criminal proceedings for likely trafficking offences that were requalified as another offence with a lower penalty.

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A49. What is the number of trials of suspected traffickers at which evidence was presented by victim-witnesses at which expert witnesses were called to court to provide evidence on the psychological status of the victim (e.g. degrees of trauma, continuing fear of trafficker or the trafficker's associates, etc.)?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A50. What is the number of cases in which expert witnesses who testified at trials of indicted traffickers (or were otherwise involved in legal proceedings involving trafficked persons) demonstrated an appropriate level of expertise concerning both the psychological status of victims and other issues affecting victims?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A.2.c Convictions

A51. What is the number of convictions (including the number of people convicted) for the crime of trafficking in human beings committed on the state's territory, on a ship flying its flag or on an aircraft registered in that state?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

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A.2.d General

A52. What is an average duration of trafficking in human beings criminal proceedings (i.e. from the beginning of an investigation of a case) involving court cases which ended in the period being reviewed?

- Average duration from the beginning of an investigation:
 - a. 0-6 months
 - b. 6-12 months
 - c. 1-2 years
 - d. 2 years or more
- Cases which did not end:
 - a. 0-6 months
 - b. 6-12 months
 - c. 1-2 years
 - d. 2 years or more

A53. What is the number of (presumed) victims officially identified in a previous calendar year whose alleged trafficker, though reportedly located in your country, is not reported to have been charged or tried by the end of the following year, i.e. the year under review (either in the country under review or in another country)?

Under Criminal Codes	CC BiH	CC FBiH	CC RS	CC BD
2015				
2014 (if none in 2015)				

A54. Was at least one prosecution and conviction for a trafficking-related offence reported with the aggravating circumstance of involvement of one or more public officials in the exercise of their functions?

- a. Yes
in how many cases? _____
- b. No

A.2.e Civil claims

A55. What is the number of (presumed) trafficking victims involved in court cases who pursued a civil claim in court?

- a. 0
b. 1-10
c. 10-20
d. 20 or more

A56. What is the number of cases involving a civil claim in which any financial settlement was awarded?

- a. 0
b. 1-10
c. 10-20
d. 20 or more

A57. What is the number of cases involving a civil claim that resulted in a financial settlement being awarded, in which victims received all the money awarded?

- a. 0
b. 1-10
c. 10-20
d. 20 or more

Link to online questionnaire
<http://goo.gl/forms/hufswJbMtN>

THANK YOU

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ANNEX 2: 2015 ANNUAL REPORT ON TRIAL MONITORING IN TRAFFICKING IN HUMAN BEINGS AND RELATED CRIME CASES

Nedimka Bećirović, LL.M.

In accordance with the complex constitutional system of Bosnia and Herzegovina, which implies four legal levels, i.e. the state level, two entities (Federation of Bosnia and Herzegovina, Republika Srpska) and the Brcko District, the criminal offence of Trafficking in Human Beings is included in three Criminal Codes. The first time Trafficking in Human Beings was criminalized was in 2003 in the Criminal Code of Bosnia and Herzegovina, but it took long for this crime to be criminalized at lower levels. In 2013, significant amendments to the criminal legislation were adopted in the Republika Srpska and the Brcko District, in which way Trafficking in Human Beings was criminalized for the first time in its completed form.³⁶ In May 2015, amendments to the Criminal Code of Bosnia and Herzegovina were adopted, introducing an international element in the criminal offence of Trafficking in Human Beings. This means that only trafficking in human beings with an international element can be prosecuted at the state level. Also, the Criminal Code of the Federation of Bosnia and Herzegovina did not yet criminalize Trafficking in Human Beings and it is using criminal offence "Incitement to prostitution".³⁷

In the first quarter of 2014, International Forum of Solidarity – EMMAUS (IFS-EMMAUS) launched an activity of monitoring court cases regarding trafficking in human beings and related criminal offences and twenty two students of the Faculty of Criminology and Security Studies, Sarajevo University, were engaged as accredited observers. Focus of the monitoring has been the treatment of victims/witnesses in the courtroom, as well as analysing of judicial practice in recognizing this criminal offence and respecting international mechanism and documents that Bosnia and Herzegovina is obliged to implement.³⁸ The observers were given an observation list for monitoring the trials, upon which they noted significant details of the hearings.

³⁶ In 2013, the Criminal Code of Republika Srpska criminalized "Trafficking in Human Beings" and Brcko District criminalized "Trafficking in Human Beings";

³⁷ In June 2016 amendments in CC F BiH were adopted and Trafficking in Human Beings has been criminalized - Official Gazette of F BiH, 46/16

³⁸ United Nations Convention against Transnational Organized Crime and the Protocols Thereto; Council of Europe Convention on Action against Trafficking in Human Beings;

The list includes questions divided by category, as follows:

- Information about the trial;
- The usage of personal data of victims;
- Support to the victim;
- Informing the victim;
- The presence of the public and/or media;
- The safety of victims;
- Interrogation of the victim;
- Communication and attitudes;
- Property claim;
- Course of the procedure;
- Results.

During 2015, accredited observers monitored eight (8) criminal cases, as follows:

1. Municipal Court in Tuzla;
2. Basic Court of the Brcko District BiH;
3. Municipal Court in Zivinice;
4. Cantonal Court in Novi Travnik (second case);
5. District Court in Doboj;
6. Court of Bosnia and Herzegovina (first case);
7. Court of Bosnia and Herzegovina (second case);
8. Court of Bosnia and Herzegovina (third case).

Based on monitored court cases, three first-instance verdicts were available to IFS-EMMAUS, as follows:

1. Municipal Court in Zivinice;
2. Cantonal Court in Novi Travnik (second case);
3. District Court in Doboj.

The above-mentioned verdicts have been analysed for the purpose of this report. The report will analyse treatment of victims/witnesses based on the reports from the hearings and analysis of the application of articles of the Criminal Procedure Codes regarding the treatment of victims/witnesses, as well as the comparison of EU standards with domestic criminal legislation in order to analyse harmonization of domestic legislation with EU standards.

Note: Considering that Bosnia and Herzegovina is not a member of the European Union, the application of EU Directive 2011/36 and EU Directive 2012/29 is not obligatory. However, BiH aims to harmonize legislation with EU legislation and therefore in this report Directive 2011/36 will be used as a good example of how the treatment of victims and victims/witnesses should be realized in practice.

a) Analysis of treatment of victims/witnesses in criminal procedure

In the analysis of the criminal offence of Trafficking in Human Beings, relevant actors should always have in mind three basic elements of this criminal offence: actions, means and purpose of exploitation. Considering that practice shows difficulties in investigations and prosecutions of this criminal offence, it is of significant importance to know in detail these three elements (which describe trafficking in human beings), as well as its definitions and types.³⁹

One of the basic and important problems regarding trafficking in human beings is that Bosnia and Herzegovina has not incorporated the term “victim” in its criminal legislation, i.e. its Criminal Procedure Codes. The Criminal Procedure Codes in Bosnia and Herzegovina use the term “injured party” which is defined as follows: *“An injured party refers to a person whose personal or property rights have been threatened or violated by the commission of a criminal offence”*. For example, the term “victim” in international standards implies any natural person who is subject to trafficking in human beings as defined in Art. 4 of the Council of Europe Convention on Action against Trafficking in Human Beings.

Criminal offence of Trafficking in Human Beings in detail explains exploitation, as well as actions (underlying act) and means (form of commission).⁴⁰ Although the term “victim” is not defined in the Criminal Procedure Codes in Bosnia and Herzegovina, the Rules on the Protection of Victims and Victims/Witnesses of Trafficking in Human Beings who are Nationals of Bosnia and Herzegovina contain the definition of a victim and of a victim/witness. The Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings uses only the term victim.⁴¹

Also, considering that the victim and victim/witness is in focus of monitoring of court cases, one of the main problems is that there is not enough information regarding the treatment of the victim/witness in the courtroom. During the monitoring of court cases, observers concluded that the protection of victim/witness is not sufficient; especially privacy of the victim/witness is not protected in a satisfactory manner. Furthermore, a testimony by the victim in the presence

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³⁹ A Case Law Compendium in Trafficking in Human Beings, OSCE, page 10;

⁴⁰ *“Trafficking in human beings” shall mean the recruitment, transportation, transfer, harbouring or receipt of person, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefit to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs, Council of Europe Convention on Action against Trafficking in Human Beings;*

⁴¹ Rules on the Protection of Victims and Victims/Witnesses of Trafficking in Human Beings who are Nationals of Bosnia and Herzegovina, Art. 2; Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings, Art. 2;

of the accused – *which can cause secondary victimisation of the victim/witness* – has been noticed. Treatment of the victim/witness in the courtroom and treatment of the accused is the proof that insufficient attention is paid to the protection of victims' rights compared to the rights of the accused in the courtroom and in criminal proceedings in general. Also, comparing data in the annual reports on monitoring court cases in 2014 and 2015 no significant changes have been observed in the treatment of victims/witnesses, which shows urgent necessity for training of judges and prosecutors, because the voice of the victim in the courtroom and his/her testimony is most important for the prosecutors in the process of issuing an indictment and for the main trial, but also, very important in the end, for the conviction. The prosecutor, court and defence lawyer should always bear in mind respect for the principles of the Criminal Procedure Code, especially the principle of equality in proceedings and fair trial.

Regarding the treatment of victims/witnesses, the observers were collecting information on the protection of privacy, the use of personal data (*whether victim's personal data were mentioned during the hearing, such as: name and surname, address, previous personal history, health condition and other data*) testimony in the presence of the accused, security measures, etc. Based on collected data from the hearings, communication and attitudes were on professional level, but most of the time the defence lawyer acted as he/she wanted to confuse or frighten the victim/witness.

In accordance with the reports on monitoring court cases, victims/witnesses were asked about all of their personal data. For example, in accordance with the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Art. 100 – Course of hearing of a witness, Par. 3), *a witness shall be asked for name and surname, name of father or mother, profession, residence, place and date of birth, relationship with the suspect, i.e. the accused and an injured party. Also, it is not allowed to ask the injured party for previous sexual life (before committed criminal offence)* - Par. 5. The Council of Europe Convention on Action against Trafficking in Human Beings (Art. 11 – Protection of private life) stipulates that *"Each party shall consider adopting, in accordance with Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures."* Security measures were not used sufficiently.

Victims testified in the courtroom in the presence of the accused and it is already proven in theory and practice that it can definitely cause additional trauma for the victim and secondary victimization in general. For example, the Criminal

Procedure Codes provide that *“During a procedure, a witness **may** face other witnesses and the suspect, e.g. the accused...”* But, in the EU Directive 2011/36 (Art. 12 – Protection of VoTs in criminal investigation and proceedings) it is specified that *“Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following: ...”* in Par. 4 (b) *“visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies”*. It is important to notice that secondary victimization is the main reason for specific treatment of the victim/witness, according to the EU Directive 2011/36. Despite the fact that Bosnia and Herzegovina has laws on the protection of witnesses under threat and vulnerable witnesses⁴², it is unknown to what extent they were applied in trafficking in human beings cases. For example, in one first-instance verdict it is mentioned that the victim and two minor witnesses testified via technical devices. When it comes to disparities regarding rights of victims/witnesses and the accused in the criminal procedure, the most striking is their access to the right to defence. In Bosnia and Herzegovina, a victim does not have a right to the lawyer – ex officio. In Criminal Procedure Codes, e.g. the CPC of the Federation of Bosnia and Herzegovina, Art. 7 (Right to defence) it is provided that *“If the suspect or accused does not retain a defence attorney, a defence attorney shall be appointed to him as stipulated by this Code.”* Victims/witnesses have only the right to legal advisor who cannot represent her/him in the courtroom. Also, most of the time victims/witnesses did not have support from the social worker, psychologist, but there is the information that minors received support from a social worker in one court case. Sometimes, court police, the Witness Protection Department took the role in support of the victim/witness, as well as the family.

Although the treatment of minors as victims/witnesses or only as witnesses has already been mentioned during the course of the criminal procedure, this matter deserves special attention considering the age and mental state of minors as well as the effects of participation in the trial. According to this, the entities and the Brcko District of BiH adopted laws on the protection and treatment of children and minors in criminal procedure and within these laws one chapter is dedicated to the criminal offences committed against children and minors. Also, the Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings

⁴² Law on the Protection of Victims under Threat and Vulnerable Victims of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina (3/03, 21/03, 61/04, 55/05) – example;

regulates in Art. 2 the term “Special treatment of the child” and the Rules on the Protection of Victims and Victims/Witnesses of Trafficking in Human Beings who are Nationals of BiH regulates in Art. 3 “Protection of the best interest of the child”. EU standards define broader rights for the minors in criminal procedures, especially the EU Directive 2011/36 in Art. 13, 14, 15, 16.

Regarding compensation, in 2015 more than twenty victims/witnesses claimed compensation in criminal procedure. In general, media representatives were not present during the hearings, but most of the time hearings were public and articles of the Criminal Procedure Codes regarding informing the victim/witness on her/his legal rights before the court were respected.

b) Analysis of first-instance verdicts in 2015 (Municipal Court in Zivinice, Cantonal Court in Novi Travnik – second case, District Court in Doboј)

Basic information regarding the type of criminal offence, accused person/s, sentence, and other relevant data are:

1. One female accused before the Municipal Court in Zivinice was convicted of committing criminal offence “Incitement to prostitution” against about ten female victims (Art. 210, Par. 2 of CC F BiH). She was convicted to one year and six months’ imprisonment. The verdict was announced on 15th January 2015.
2. Two male accused before the Cantonal Court in Novi Travnik (second case) were convicted of committing criminal offence “Incitement to prostitution” and criminal offence “Rape” against one female victim (Art. 210, Par. 1 and Art. 203, Par. 1 of CC F BiH). They were convicted to three years and six months’ and two years’ imprisonment respectively. The verdict was announced on 3rd April 2015.
3. One female and one male accused before the District Court in Doboј were convicted of committing criminal offence of “Trafficking in Human Beings” in conjunction with “Complicity” against one female victim (Art. 198a, Par. 1 and Art. 23 of CC RS). They were convicted to three years and six months’ and four years’ imprisonment respectively. The verdict was announced on 18th June 2015.

Regarding proceedings before the Municipal Court in Zivinice and the Cantonal Court in Novi Travnik (second case), it is important to mention that the process of raising indictment until announcing the verdict lasted too long (several years), while that process before the District Court in Doboј started and finished in 2015.

Regarding the profile of the accused and their previous criminal history, in the Municipal Court in Zivinice, the accused was previously convicted for committing the same criminal offence, both of the accused before the Cantonal Court in Novi Travnik (second case) were also previously convicted, while the man accused before the District Court in Dobož was not previously convicted, but the woman had one ongoing process against her.

Municipal Court in Zivinice:

The analysis of the first-instance verdict of the Municipal Court in Zivinice showed that three elements of committed criminal offence were completed: action (underlying act), means (the form of commission) and the purpose of exploitation. Victims were threatened with the use of force if they refused to provide sexual services; they were recruited through the use of deception – the victims were promised to work as waitresses, but were thereafter threatened and deceived into provision of sexual services. Also, the purpose of exploitation was the prostitution of another person or other forms of sexual exploitation. Considering that this criminal offence was committed by an elderly married couple, procedure against them was separated, whereby procedure related to the female accused was monitored. It is interesting that this couple was previously convicted for committing the same criminal offence in the same bar – which the court took as aggravating circumstances while announcing the verdict. It is not visible that the judge referred to any international document which Bosnia and Herzegovina is obliged to apply. The accused was indicted for committing criminal offence “Incitement to prostitution” and this is example where Federation of Bosnia and Herzegovina did not harmonize its Criminal Code with the Council of Europe Convention on Action against Trafficking in Human Beings, where it was said in Art. 18: *“Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.”* In addition to the fact that Federation of Bosnia and Herzegovina has not criminalized Trafficking in Human Beings, users of sexual services provided by VoTs are not criminalized either, although Convention in Art. 19 foresees: *“Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.”* Although users of sexual services are clearly visible in the verdict, none of them could be prosecuted because of the omission in the Criminal Code of F BiH. Also, in these cases it is really complicated to prove that some of the users knew that the persons who were providing sexual services were victims of trafficking in human beings. At the main trial, victims testified, of whom two denied they were forced by the accused to provide sexual

services, but they testified that there were girls in the bar who provided sexual services. In this criminal procedure, all victims testified in the presence of the accused and only three of them claimed compensation for which they were directed to civil proceeding. All victims in this court case are persons of poor economic and social situation, and they were blackmailed into the provision of sexual services through the revenues, e.g. daily allowance, food, accommodation in the bar. Also, some of them were minors at the moment of committed criminal offence. The defence lawyer tried to prove that the accused never used force toward the victims, and that the prosecutor never determined nor defined “threat of usage of force”, “inflicting significant damage to the other”, “force” and “deception to provide sexual services”. Regarding mitigating circumstances, the Court mentioned personal, familiar, unemployment circumstances. Although the criminal offence Art. 210 “Incitement to prostitution” in Par. 2 envisages prison sentence from one to ten years, the accused was sentenced to one year and six months’ imprisonment, which does not represent justice for the victims, especially because the time spent in detention is included in the prison sentence – and in this case it is about six months of detention.

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Cantonal Court in Novi Travnik (second case):

In the analysis of the first-instance verdict of the Cantonal Court in Novi Travnik, it was noticeable that three elements of the committed criminal offence were fulfilled: action (underlying act), means (the form of commission) and the purpose of exploitation. A victim was recruited, deceived, transferred, and threatened by the use of force if refused to provide sexual services, all for the purpose of sexual exploitation. Regarding the form of the commission of the offence, it can also be interpreted as a form of kidnapping through the usage of deception – because one of the accused was victim’s boyfriend who introduced himself falsely and took her with him to the bar, where she was raped. The victim did not know that they would go to the bar, because the accused told her that they would travel. It is interesting here that the prosecutor asked the judge for her testimony for the third time and the judge refused, because the victim gave her testimony twice. Unlike the Municipal Court in Zivinice, the judge referred to the international practice which is commendable. While announcing the verdict, the judge recognized and used international practice and refused any acts that could expose the victim to further trauma (e.g. request for repeated testimony, medical expertise...). This is visible in the part of the judge’s statement that corroborative evidence related to victim’s testimony was unnecessary in cases of sexual violence. In the first-instance verdict it is mentioned that the victim was visibly stressed, as she was crying while testifying although the crime was committed 12 years earlier. This is proof that the victim was exposed to additional trauma and secondary victimisation. It was mentioned that during her residence in the bar, the victim


was exposed to horrible conditions, e.g. she did not eat and she had to drink alcohol. Also, the connection with the court case at the Municipal Court in Zivinice is related to the opinion of the judge – both of the accused gave their testimony in order to avoid criminal responsibility. Furthermore, this victim was not only involved in this case. She had to testify also in another case related to this one, because her brother killed one of the persons who forced her into prostitution. The victim was directed to the civil proceedings regarding compensation. Finally, unlike the Municipal Court in Zivinice, one of the accused was sentenced to three years and six months' imprisonment for the same criminal offence "Incitement to prostitution", but for Par. 1 which envisages a prison sentence from one to five years and criminal offence "Rape". Other accused was sentenced to two years imprisonment for criminal offence "Rape".

District Court in Doboj:

In this court case action (underlying act) implied recruitment, transport and conveyance; means (the form of commission) implied usage of force or threat by using force or other forms of coercion. Also, regarding purpose of exploitation, both of the accused used forced prostitution of the victim or other forms of sexual abuse. Beside mentioned elements, the victim was exposed to physical violence if she refused to provide sexual services. It is interesting here that the victim was previously convicted for committing the same criminal offence with one of the accused. The victim never received money for sexual services she had provided, i.e. she had to give the money to the accused. Opposite to the Municipal Court in Zivinice and the Cantonal Court in Novi Travnik (second case), the victim and two minors testified via technical devices from another room and the judge underlined in the verdict that this was important for avoiding further traumatization of the victim/witness and children. In the first two analysed cases, the accused used deception, but in the District Court in Doboj, both of the accused used force and threat toward the victim, which caused suicidal thoughts, constant fear. Also, considering that the victim was beaten in the presence of the children (two year old child and brother), this is an additional reason why the victim was under threat, because both of the accused threatened her that they would report her to the Centre for Social Work - this can be also interpreted as a blackmail amongst other acts. It is mentioned in the verdict that victims' brother testified as a vulnerable witness. The victim/witness was addressed to civil proceedings regarding compensation. Also, opposite to the criminal legislation of the Federation of Bosnia and Herzegovina, in the Criminal Code of Republika Srpska the usage of sexual services provided by victim is criminalized. Art. 198a (Trafficking in Human Beings), Par. 4 specifies: *"Whoever uses or enables another to use sexual services or other forms of exploitation, but he was aware that it was about victim of trafficking in human beings, shall be punished with imprisonment from six*

months to five years.” In Par. 5 it is provided that: *“If the offence from paragraph 1, 2, 3, and 4 of this article is committed by an official during performance of his duties, such person shall be punished with imprisonment of at least eight years.”*⁴³ The analysis of the verdict shows that several persons were interrogated regarding their usage of victim’s sexual services.⁴⁴ It is interesting that one witness said that he was sure that he had not given money for “service”, after which he was asked why he was naming that “service” if it had been only a sexual relation – and the witness did not know how to explain. While announcing the verdict, the judge referred to legal theory, saying: *term “Trafficking in Human Beings” for the purpose of sexual exploitation, implies usage of female body as commodity which is exposed to selling, changing (not always for money).* The accused were sentenced to three years and six months’ and four years’ imprisonment (minimum sentence for criminal offence “Trafficking in Human Beings” is three years).

The most important recommendations include:

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1. Strengthening of privacy protection and safety of victims;
 2. Intensify investigations of prosecutor’s offices and role of law enforcement agencies in the aim of discovering and detecting violation of human rights through trafficking in human beings;
 3. Amendments to Criminal Procedure Codes in Bosnia and Herzegovina by including the term “victim” instead of “injured party”;
 4. Better protection of victims against secondary victimization, avoid direct contact between the victim(s) and the suspect(s), avoid testimony of the victim in the presence of the accused;
 5. Improvement of the position of victim in criminal proceedings by granting them procedural rights to be represented in court, to request a closed hearing;
 6. Intensification of the role of the Department for Witness Protection in supporting victims of trafficking in human beings;
 7. Making better use of the possibilities to decide upon compensation claims in the criminal proceedings;
 8. Establishment of Compensation Fund for Victims of Trafficking in Human Beings in Bosnia and Herzegovina;
 9. Education of judges and prosecutors in order to avoid secondary victimization of victims;
 10. More often usage of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses in the criminal procedures;
 11. Raising indictments against users of sexual services or other forms of exploitation by victims of trafficking in human beings.

⁴³ Criminal Code of Republika Srpska, Official Gazette 67/13;

⁴⁴ It is not known whether the investigation was launched regarding this issue.

ANNEX 3: REPORT FOR STRATEGIC LITIGATION, CASE OF COMPENSATION FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS

Zoran Pelemiš, LL.B.

INTRODUCTION

In Bosnia and Herzegovina, there are still no elementary normative assumptions for direct compensation to the victims of trafficking in human beings, although there have been numerous cases in which the courts established criminal liability of a perpetrator of the crime of trafficking in human beings or related criminal offences, such as the procurement of prostitution or establishment of slavery and smuggling, which produced the resulting harm to the victims of such unlawful activities. The material gains acquired through the commission of the crime of trafficking in human beings, confiscated under the final and binding court decisions, are deposited into the state budget as there is no Human Trafficking Victims Compensation Fund in place as yet, which is the reason why the victims, as injured parties, are directed to file a civil lawsuit seeking compensation.

The overall objective of the “Balkans ACT (Against Crime of Trafficking) Now!” project is to contribute to democratisation and EU integration processes in the Western Balkans through improving civil activism environment, capacity, commitment and influence of civil society networks in debate on human rights and the rule of law related to the issue of organized crime, specifically human trafficking.

Within this project phase, IFS-EMMAUS will strive to evaluate and present to the public current practices of the justice sector regarding the treatment of victims of human trafficking and related mechanisms and procedures, as well as to develop and advocate for new policy proposals for self-sustainable and effective compensation mechanism for victims of human trafficking and other violent crimes in targeted states. By using the uniform monitoring tool adjusted to the local needs, results gathered across the Western Balkan countries will be comparable and it will be possible to identify parallel experiences. In order to achieve these objectives, the project team implemented strategic litigation of trafficking cases in the area of compensation, among other project activities.

Project activity named Strategic Litigation is directed to representation of victim/s before local court and the case is closely monitored and documented with the purpose of presenting the facts on the problems regarding access to compensation for victims of trafficking in human beings within the BiH legal system.

Our choice of the strategic litigation case is based on the criminal case completed before the Court of BiH, in which the four citizens of the Republic of Serbia, who were the victims of trafficking in human beings and injured parties, were directed by the Court to pursue a civil claim in court and who, unlike most of the former trafficking victims, demonstrated their intent to seek a determination of non-economic damages to compensate for pain and suffering. Since the victims were ignorant of legal procedures, they sought, via the NGO Astra in Belgrade, in cooperation with IFS-EMMAUS, legal assistance from the Association Vaša Prava BiH, the civil society organisation with a number of experienced lawyers, specialised in providing pro bono legal aid also to this particularly vulnerable category of victims, the victims of trafficking in human beings.

Through the mediation of the NGO Astra Belgrade, Vaša Prava BiH received the power of attorney authorisation letters signed by the trafficking victims who expressed their wish to pursue a civil claim in BiH seeking a determination of non-pecuniary damages for their pain and suffering. Vaša Prava BiH submitted the claim supported by all required documentation as evidence.

The goal of this strategic litigation is to promote cases in which foreign victims of human trafficking sought compensation, since such case law thus far does not exist in BiH, and to strengthen the legal position and factual situation of this vulnerable group in order to improve the legal environment, including through changes to legislation, revoking certain sections of the legislation and harmonising and improving the case law in BiH. The primary goal of these proceedings is to obtain a binding court ruling which will uphold the plaintiffs' claim entirely and which will subsequently be confirmed in an appellate procedure, if any, and lastly, to have the final decision enforced through an enforcement procedure. Also, the goal is to demonstrate that such civil proceedings are lengthy, exhausting and ineffective and to warn the public of unfavourable and inefficient legislation, in an attempt to raise public awareness about this issue.

DOMESTIC LEGAL FRAMEWORK CRIMINAL CODES

In Bosnia and Herzegovina, there is a legal framework in place governing the award of compensation to victims of various criminal acts, including victims of human trafficking in criminal and civil proceedings. The BiH criminal legislation uses the term “injured party”, not the “victim of trafficking in human beings”, which is why the term “injured party” refers also to victims of human trafficking as their personal or property rights have been threatened or violated as a result of the commission of a criminal offence.

In criminal procedures in which victims of human trafficking appear as both witnesses and injured parties, the victims may claim damages or compensation pending the completion of the trial process or sentencing. Their claims must be supported by all the necessary evidence. The prosecutor is obliged to collect the entire evidence for the trafficking victim and to find out what is necessary for the court to decide the claim related to the crime in issue. The burden of proof is placed upon the prosecutor prior to the start of trial and during the trial. The court hears a claim and issues a ruling, awarding the full or part of the amount of money claimed. However, if the criminal procedure does not provide enough information for the court to decide the claim and award the full or part of the amount claimed, the court will direct the injured party to file a civil lawsuit. In case the court acquits the defendant or rejects charges or dismisses the case, it will direct the injured party to initiate civil litigation.

When the court reaches a judgment of guilt against the defendant, the court may award a claim to an injured party in full or in part and direct the injured party to pursue the remaining part of the claim in a civil lawsuit. There are two requirements that must be met in order for the court to award a claim in full: (i) there must be a guilty verdict, and (ii) the presented facts and supporting evidence must represent a reliable ground for awarding a claim. The court may award a claim in part and direct the victim to file a civil lawsuit if the presented facts and supporting evidence represent a partial ground for awarding a claim. If the court makes a finding and awards a certain amount in damages (taking into consideration the circumstances of a case) and the amount awarded is within the amount of money claimed, the court may not award the amount which is smaller than the claimed amount. Otherwise, it would constitute a serious breach of the criminal proceeding rules. If the court acquits the defendant or rejects the charges or dismisses the case, the court is obliged to direct the victim to seek damages in civil litigation. Under the current practice, courts tend to avoid deciding compensation claims in the course of the criminal proceedings

against traffickers or other criminal proceedings, as part of the criminal sentence imposed on the defendant. Rather, their choice is to direct the victims to pursue a civil claim. The main reason for this usual court practice is that deciding a claim would largely extend the duration of the criminal proceedings, which is not a legitimate excuse in every case, particularly because the length of a criminal proceeding depends largely on the pace of prosecutor's investigation and collection of evidence in support of the claim.

The BiH Criminal Code provides for the possibility of confiscating illegally acquired material gain and for temporary and permanent seizure of property and assets derived from crime. The legal basis of such possibility is contained in Article 110 of the BiH Criminal Code: "Nobody is allowed to retain material gain, income, profit or other benefit derived from the proceeds of a criminal offence acquired by the perpetration of a criminal offence. The material gain, income, profit or other benefit derived from the proceeds of a criminal offence referred to in paragraph 1 of this Article shall be confiscated by the court decision, which established the perpetration of a criminal offence, under the terms set forth under this Code." Ways of confiscating material gain acquired by the perpetration of a criminal offence are defined in Article 111 of the BiH Criminal Code: All the money, valuable objects and every other material gain acquired by the perpetration of a criminal offence shall be confiscated from the perpetrator, and in case the confiscation is not possible - the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain. Material gain acquired by the perpetration of a criminal offence will be confiscated from persons to whom it has been transferred without compensation or with a compensation which does not correspond to the real value, if the persons knew, or should have known, that the material gain had been acquired by the perpetration of a criminal offence. If proceeds of a criminal offence have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation not exceeding the assessed value of the intermingled proceeds. Income or other benefits derived from the proceeds of a criminal offence, from property into which proceeds of criminal offence have been converted, or from property with which proceeds of criminal offence have been intermingled, shall also be liable to the measures referred to in this Article, in the same manner and extent as the proceeds of the criminal offence.

The BiH Criminal Code defines the relation between confiscation of property and the protection of an injured party. Thus, Article 112 defines that: "If criminal procedure has resulted in awarding property claims to the injured party, the court shall order the confiscation of material gain if it exceeds the awarded property claim of the injured party. The injured party who has been directed to

initiate civil litigation in the course of criminal proceedings regarding his or her property claim, may demand that he or she be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day when the decision by which he has been directed to litigate took effect and if he demands to be compensated from the confiscated value within three months from the day when his claim was legally established. An injured party who did not report a property claim during the course of a criminal proceeding may demand compensation from the confiscated value, if he has begun litigating his claims within three months from the day when he found out about the judgement which confiscates a material gain, but no longer than within two years from the day when the decision on the confiscation of material gain took effect, or if within three months from the day when the decision by which his claim was established he demands compensation from the confiscated value”.

The provisions of this Article define the relations between confiscation of material gain acquired by the perpetration of a criminal offence and a claim filed by an injured party. The purpose of these provisions is to protect the injured party's interests. In cases in which a person suffered harm as a result of a criminal offence, the court orders confiscation of material gain only if the claim has not been awarded or if material gain exceeds the awarded claim. In this regard, a claim has priority over confiscation of material gain acquitted by the perpetration of a criminal offence.

Paragraph 2 of this Article defines the rights of an injured party who has filed a claim in the course of criminal proceedings which has party or fully been directed to civil litigation, while the court has ordered the confiscation of material gain. The injured party may demand that he or she be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day when the decision by which he has been directed to litigate took effect and if he or she demands to be compensated from the confiscated value within three months from the day when his claim was legally established. Paragraph 3 of this Article defines the rights of an injured party who did not file a claim in the course of criminal proceedings, while the court has ordered the confiscation of material gain. In this case, the injured party may demand compensation if he or she has begun litigating his or her claim within three months but no longer than within two years from the day when the decision on the confiscation of material gain took effect.

CIVIL LITIGATION COMPENSATION

Victims of human trafficking who have suffered some form of loss or pain and suffering may initiate civil litigation and request compensation from the person who caused the loss or pain and suffering. The relevant courts deciding such claims are the courts with territorial jurisdiction over cases involving perpetrators residing within their defined territory and the courts which have jurisdiction over the territory on which a tort occurred or where the harmful consequences occurred. In the event of death or severe bodily injuries, the court is determined on the basis of a plaintiff's permanent or temporary residence. Practically, this means that in human trafficking cases, the claim seeking compensation from human traffickers or procurers may be filed in the place where the human trafficker or procurer has permanent residence or where the damage occurred.

The claim must contain the basic elements and form, as set forth under the Civil Procedure Act: the legal grounds for jurisdiction of the court, the main claim and ancillary claims, the facts that the claim is based on and supporting evidence, a statement of value, legal grounds and other information that every submission must contain.

Damage represents one of the general requirements of tort and it includes property damage (destruction of, or damage, to property), physical injury (impairment of health, bodily injury or death), psychological harm (harm to honour, reputation, inflicted pain, fear) and a violation of any other property right of another person. Thus, we distinguish between property damage or material damage or tangible damage, and immaterial or intangible damage.

Property damage is an injury to real or personal property through seizure, damage or destruction and also through bodily harm – a bodily injury, damage to health that has caused costs of medical treatment, permanent or temporary incapacitation for work. Property damage is commonly divided into simple or real damage and loss of profit. The real damage decreases the existing property of the injured party, causing a decrease in assets and an increase in liabilities of the injured party. Lost profit is an injury to personal goods of a person, a psychological harm caused to a person. It is the material gain that the person who suffered the injury would have acquired if no harmful event had occurred. Immaterial or intangible damage is an injury to personal goods of a person, a psychological harm done to a person. It appears in various forms, such as: harm to honour, reputation, family and personal peace, physical and mental pain, fear. It can occur simultaneously with, or independently from, property damage.

According to the above legislation, the victim of human trafficking who had been forced to provide sexual services fell ill and her illness caused high costs of medical treatment. Her impaired health prevented her from work and she is entitled to seek compensation for material real damage caused by the costs of medical treatment and to seek compensation for lost profit that she could have earned in her profession. The victim is also entitled to seek compensation for immaterial damage, depending on whether and to what extent he or she was caused to suffer from fear, physical or psychological pain, an injury to personal and family peace, etc.

In order for liability for damages to exist, the following requirements must be met: that there is damage; that damage occurred as a result of an unlawful act or omission by the injurer; that the injurer is guilty of the act and the ensuing damage; and that there is a causal relationship between the wrongdoing and the damage. The purpose of compensation is to restore the property of the injured party to its original state. Thus, compensation must be equal to the damage suffered. The obligation to compensate for the damage matures as from the moment it has occurred. In the event of a physical injury, impairment of health or death of a person, the physical and mental integrity of a person is violated and these injuries represent the cause of a damage. Regarding the physical injury and impaired health, the following forms of material damage would be compensated: costs of medical treatment, labour income lost due to inability to work during the medical treatment, monetary compensation for permanent incapacitation for work or permanent impairment of workability, in the form of a pecuniary annuity. In case of death of a person, the family members of the deceased are entitled to compensation for material damage.

In case of a bodily injury and impairment of health, the injured party is entitled also to non-economic damages as a certain amount of money awarded as satisfaction. The person who was incited through fraud, deception, coercion or the abuse of the relationship that involves subordination or dependence of the victim to engage in a sexual activity and the person who has been the victim of a criminal offence against human dignity and morality shall be entitled to a fair compensation for pain and suffering. If so requested by the injured party, the court will award compensation for future pain and suffering if it is credible that the harm will be ongoing. In the event of joint liability for non-pecuniary harm, the rules which apply to compensation for material damage also apply to compensation for immaterial damage.

It is important to point out that the court deciding the claim in civil litigation and determining the existence of the damage on the basis of the criminal liability

of the perpetrator in most cases relies on the final judgment of guilt of the trial court. That decision is the legal ground for determination of the defendant's liability for the damage caused by the commission of a criminal offence.

The procedure for determining compensation to the victims of human trafficking as injured parties consists of filing a claim to the court seeking that the court orders the defendant:

- To restore the state which existed before the damage occurred, or otherwise, to compensate the plaintiff with the appropriate monetary value,
- In case of death, bodily injury or impaired health, a plaintiff may request monthly payment of cash annuity for a fixed term or during the whole life or a one-time payment of the entire amount of money,
- To reimburse the costs of medical treatment of the injuries to the injured party and the loss of earnings if she/he could have earned the profit during temporary incapacitation for work,
- Fair compensation for immaterial damage, physical or mental pain suffered (reduced life activities, an injury to reputation, honour, freedom or rights of a person, fear)
- Fair compensation if the person was incited through fraud, deception, coercion or the abuse of the relationship that involves subordination to engage in a sexual activity or a lewd act punishable under the law or was the victim of another offence against human dignity and morality.

In order to determine the amount of a fair compensation, an opinion by a medical expert witness is required and the court should follow the orientational criteria developed by the FBiH Supreme Court. It is important to note that the criteria are not a binding or automatic formula for the determination of the amount of compensation because all the circumstances of the case must be taken into consideration, particularly because these criteria have never been applied to trafficking victims as, to our best knowledge, no civil litigation has been initiated, hence no case law in this regard.

It is important to propose in each claim the protection of the plaintiff's private life and personal data in accordance with Article 11 of the European Council Convention on Action against Trafficking in Human Beings which was ratified and came into force in BiH on 1 May 2008 (Official Gazette of BiH - International Agreements - No. 14/2007). It should also be proposed that the plaintiff should not be heard as a party to litigation due to such adverse consequences as secondary victimisation, since the facts have already been adjudicated in a criminal judgement. Also, if the court still decides to hear the plaintiff, the fact

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that the plaintiff lives in a poor financial situation, that he or she is unemployed, has no property in his or her ownership, has no income and the fact that the costs of the procedure would further endanger their lives and their minimum subsistence level should be taken into consideration. A motion to exempt the plaintiff from all costs of litigation should be submitted together with the claim.

Basically, civil proceedings in BiH are slow and are not cost-effective, they require a lot of time and funds (forensic expertise, court fees, etc.), while they cause additional stress to trafficking victims. Besides, after the court makes a final decision at the end of civil litigation, it is necessary to try to enforce the decision in an enforcement proceeding and seize the property in order to obtain payment. In practice, sometimes this is virtually not possible, especially when the perpetrators own no property. It is well-known that enforcement proceedings in some cases last longer than civil litigation. This is why, such proceedings do not exist in many countries as there are other mechanisms and legal arrangements, such as national victim compensation funds which make judgements superfluous, while compensation is guaranteed and paid out quickly.

INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING RIGHT TO COMPENSATION

Bosnia and Herzegovina became the member of the United Nations in 2003, and as a member of the Council of Europe, the state has signed and ratified numerous international documents which are important for the legislative regulation of human trafficking. This created an obligation for Bosnia and Herzegovina to harmonise its legislation with the accepted international standards in all areas, including trafficking in human beings.

There are numerous international instruments which can be used for the protection of the victims of human trafficking and for the establishment of an effective compensation system as a means to fight trafficking in human beings. In this regard, instruments for the protection of victims of human trafficking and forced labour are widely accepted and approved, even to a larger extent than those which exclusively refer to the protection of migrant workers. The right to compensation is closely related to the accessory rights, such as the right to legal aid. However, it should be noted that these standards are binding only when accepted nationally, when they represent the minimum standards to be complied with, while the states may introduce additional provisions. BiH ratified most of the UN and European human rights instruments.

Accordingly, not only BiH has a duty to prevent violations of human rights of individuals guaranteed under international human rights standards but also to take steps to ensure that individuals enjoy their guaranteed rights. In order to fulfil this duty, it is not enough just to impose formal prohibitions but also to consciously participate in the prevention, investigation and punishment of perpetrators of human rights violations and to ensure compensation for the damage suffered.

LEGAL GROUNDS COURT OF BiH JUDGEMENT IN A CRIMINAL CASE

The Court of BiH rendered a judgement of guilt No. S1 3K 009358 12 K dated 4 June 2013, which became final on 10 October 2013 and enforceable on 7 November 2013 against J.M. The Court found him guilty of acting together with M.V., as described under point 1 of the disposition, and alone, as described under points 2.a) and 2.b), i.e. under point 1.a) as an accomplice together with V.M., and under point 2.a) and 2.b) alone, and using force, threatening to use force and using fraud and deception for the purpose of exploitation for prostitution, he held women detained as victims of human trafficking, thereby committing the crime of human trafficking under Article 186, paragraph 1 in conjunction with Article 54 of the BiH Criminal Code, and under point 1.a) and in conjunction with Article 29 of the BiH Criminal Code, and based on these legal provisions and pursuant to Articles 39, 40, 42 and 48 of the BiH Criminal Code, he is sentenced to imprisonment for a 4-year term. Based on Articles 110, 110.a) and 111 of the BiH Criminal Code, material gain acquired by the commission of the crime in the amount of the BAM 36,700.00 and EUR 50,375.00 was confiscated from the convict, given that the material gain was derived from the crime, and the confiscated amount was deposited into the BiH budget. The injured parties were directed to civil litigation, under Article 198, paragraph 2 of the BiH Criminal Procedure Code.

The Court of BiH rendered a judgement of guilt No. S 1 3 K 010546 12 K dated 9 July 2012 which became final on 13 August 2012 against M.V. who was found guilty of having acted together with the person known to her, as described in the disposition, as an accomplice, and by using force, threatening to use force and using deception for the purpose of exploitation for prostitution, held women detained as the victims of human trafficking, thereby committing the crime of human trafficking under Article 186, paragraph 1 of the BiH Criminal Code, in conjunction with Article 29 of the BiH Criminal Code. Therefore, the Court sentenced her to imprisonment for a 2-year term under Article 42, in conjunction

with Articles 39, 49 and 50 of the BiH Criminal Court. The above judgements were rendered after the Prosecutor's Office of BiH filed an indictment No. T 20 0 KT 001923 dated 26 March 2012 which was confirmed by the Court of BiH. However, during the main hearing, the defendant pleaded guilty on 6 July 2012 and the Court of BiH decided to separate the case which is the reason why the Court of BiH rendered two separate judgements.

CLAIM CIVIL LITIGATION

Due to the above, it was proposed in the claim seeking compensation for non-pecuniary harm to compensate the plaintiffs for pain and suffering. The claim was filed by the legal representative together with a motion to exempt the plaintiffs from all costs of litigation to the Basic Court in Doboje on 21 October 2014. Bearing in mind the severity of the case, it was proposed to the Basic Court in Doboje, with jurisdiction over this legal matter, that it should protect their private lives and personal information under Article 11 of the Council of Europe Convention on Action against Trafficking in Human Beings, which BiH ratified and which came into force on 1 May 2008 ("Official Gazette of BiH" – International Treaties – No. 14/2007) and that the plaintiffs should not be heard as the parties to litigation as it would trigger re-victimisation of victims, especially in view of the fact that all the facts had already been adjudicated in the judgements in the related criminal cases.

Since the plaintiffs are poor, unemployed, own no property and do not have income from any source, if they were required to pay the costs of litigation, it would aggravate further their existence and their basic sustenance level, which is why they submitted a motion to exempt them from all costs of litigation, under Article 400 of the Republika Srpska Civil Procedure Act.

The legal ground for the claim is based on Articles 200, 202 and 206 and other relevant provisions of the Law on Contract and Torts.

The legal ground for the territorial jurisdiction of the court over this case is based on Articles 28, 29 and 32 of the Civil Procedure Act of Republika Srpska, and its in rem jurisdiction is based on Article 30, paragraph (b) of the Courts Act of Republika Srpska.

In paragraph I of the claim it was requested that the first and second defendants jointly pay a total of BAM 20,000.00 BAM or 10,000.00 to each plaintiff in non-pecuniary damages to compensate the first and the second plaintiff, of which

for pain and suffering caused by an injury to their honour, reputation, freedom, rights of a person and dignity BAM 7,500.00 each, totalling BAM 15,000.00 with default interest starting from the date of decision until the final payment, and for fear, the amount of BAM 2,500.00 each, totalling BAM 5,000.00 with default interest starting from the date of decision until the final payment, within 30 days starting from the date of finality of this judgement, under penalty of distraint.

In paragraph II of the claim it was requested that the first defendant pays BAM 10,000.00 to the third and fourth plaintiffs each, or BAM 20,000.00 in total, in non-pecuniary damages, of which BAM 7,500.00 each, totalling BAM 15,000.00 to compensate for their pain and suffering caused by an injury to their honour, reputation, freedom, rights of a person and human dignity, with default interest starting from the date of decision until the final payment, and BAM 2,500.00 each, totalling BAM 5,000.00, for fear, with default interest starting from the date of decision until the final payment, within 30 days starting from the date of finality of this judgement, under penalty of enforcement measures.

The claim was returned to the plaintiffs by the decision of the Basic Court in Dobož dated 27 February 2015 seeking the accurate address of the second defendant since the claim could not be delivered to her as she no longer resided at the address specified in the claim. The plaintiffs, under the court's decision, proposed that the court should apply Article 348 or Article 296 (4) of the Civil Procedure Act of the Republika Srpska, since the address of the second defendant was still unknown, and appoint a lawyer to the second defendant.

PRELIMINARY HEARING

It is interesting that the first defendant came to the preliminary hearing without court police escort, although he was serving a prison sentence in the prison in Banja Luka. He was granted leave and when asked by the court how he was going to come to other hearings, he said that he was granted leave whenever needed. A temporary legal representative appointed by the court, at the proposal of the legal representative of the plaintiffs, came on behalf of the second defendant since her whereabouts were unknown.

The court failed to comply with the provisions of the Civil Procedure Act of RS as it was not before the preliminary hearing that the court shared with the plaintiffs' legal representative the responses by the defendants, instead of delivering them immediately upon receipt. In their responses, the defendants said that the value of the claim was set too high and that the duration and intensity of pain were not as strong as claimed to be, and that the plaintiffs had come alone to the first

defendant's location and accepted to be sexually exploited. They proposed that the claim be rejected.

In order to avoid delaying the proceedings and for the efficiency of the operation and judicial economy, the plaintiffs' legal representative orally responded to the defendants' responses and raised objections, contesting them entirely as groundless since sexual exploitation had been proven in the criminal proceedings and ruled in final judgments. Therefore, the plaintiffs were entitled to compensation also under the international standards accepted in BiH as well as under the domestic legislation.

Due to the circumstances of the case and in order to avoid secondary victimisation, the plaintiffs' legal representative specified the claim further by giving up on particular forms of immaterial damages thereby avoiding a new medical evaluation and an unnecessary increase of court fees, since the medical expertise was provided in the course of the criminal proceedings.

It was requested under paragraph I of a modified claim that the first and second defendants jointly pay BAM 10,000 the first and the second plaintiff each (total BAM 20,000.00) in non-pecuniary damages, and under paragraph II that the first defendant pay the third and the fourth plaintiffs BAM 10,000.00 each (total BAM 20,000.00) in non-pecuniary damages to compensate for pain, an injury to honour, reputation, freedom, the rights of a person and human dignity, with default interest starting from the date of the decision until the final payment, within 30 days from the date of finality of the decision, under penalty of distraint.

The plaintiffs' legal representative proposed that the evaluation by a team of medical expert witnesses, kept in the file at the BiH Court, be presented as evidence together with other pieces of evidence submitted in support of the claim. He explained that he was against having the plaintiffs testify as parties to litigation due to the possibility of their re-traumatisation and re-victimisation, but the court accepted the proposal by the defendant and proposed that the plaintiffs be heard as the parties to litigation.

THE MAIN HEARING

The main hearing was held at the Basic Court in Dobož on 21 December 2015. The plaintiffs' legal representative and a court-appointed temporary legal representative of the second defendant, as her address was still unknown, attended the hearing. The first defendant did not appear in court for unknown

reasons nor did he provide any justification of his absence. First the Court stated ex officio that according to the file there were no procedural obstacles to holding the main hearing in terms of Article 98 (1) and in conjunction with Article 67 of the Civil Procedure Act nor were there any procedural objections by the parties in that regard. Then, the plaintiffs' legal representative suggested that the physical evidence, proposed together with the claim at the preliminary hearing, be presented and that following the presentation of evidence, the court uphold the claim in its entirety. The second defendant's temporary legal representative contested the claim entirely as incomplete and proposed that it should be rejected or dismissed.

The Court did not hear the parties since they did not appear at the main hearing. The temporary legal representative of the second defendant proposed in a closing statement that the claim should be rejected as incomplete since the legal grounds for compensation to the plaintiffs were not proven in the course of the proceedings as the plaintiffs had not been heard as the parties and that the previous evaluation by the medical expert witnesses could not be considered as evidence under Article 147 since the defendants were not given an opportunity to present an opinion of the expert witness's personality or to ask questions and ask for clarifications. It would amount to a violation of Article 6 of the European Convention on Human Rights, i.e. a violation of the right to fair trial. Apart from raising an objection against the statement by the temporary legal representative of the second defendant, the plaintiffs' legal representative stated that Article 15 (4) of the European Council Convention on Action against Trafficking in Human Beings which BiH signed on 30 October 2007, provides that "Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims ... through the establishment of a fund for victim compensation [...]." Considering this commitment, BiH as a state party, has failed to comply with this obligation, because such fund does not exist in the country and the plaintiffs did not have a choice but to file a claim against the defendants in order to obtain the minimum moral satisfaction as victims of trafficking in human beings.

The plaintiffs' legal representative stated in a closing statement that the plaintiffs had been coerced through the application of unlawful actions to sell their bodies and had been subjected to sexual exploitation in the manner as described in the judgements of the Court of BiH because the defendants had treated them in an inhumane, degrading and humiliating manner, limiting their freedom, using force and coercing them to sell their bodies, which amounted to the violation of their human dignity. The defendants were obliged to compensate the plaintiffs for the psychological pain they suffered proportionally to the moral injury they

had suffered. Although an evaluation by a neurology expert witness was not proposed in the course of the proceeding or conducted in order not to revive memories which would trigger and even deepen the suppressed negative feelings and affect the psychological stability of the plaintiffs and also because of the poor financial condition of the plaintiffs who were in need of social welfare, which was why their journey to BiH from another country for the purpose of a new medical evaluation would have caused costs that the plaintiffs could not provide for or cover, and particularly knowing that the medical evaluation had already been done in the course of the criminal proceeding, the legal representative of the plaintiffs proposed that the court, in view of all circumstances of the case, determine a fair compensation for the plaintiffs.

FIRST INSTANCE JUDGEMENT

The Basic Court in Doboj passed a first instance judgement on 15 January 2016, which was received by the plaintiffs' legal representative on 18 January 2016, rejecting the claim entirely and ordering that the plaintiffs pay the costs of legal representation of the second defendant in the amount of BAM 2,281.50 into the account of the temporary legal representative, M.Ž., an attorney at law from Doboj, within 30 days under penalty of distraint.

The basic court explained in the contested judgement, *inter alia*, that the plaintiffs failed to present any evidence to prove, under Article 200 of the Law on Contract and Torts, the intensity, severity and duration of mental anguish arising from an injury of honour, reputation, freedom or personal rights as the right to compensation for those forms of damage is given only if the circumstances of the case, and particularly the severity of pain and its duration, justify so. The court inferred that the plaintiffs should have been heard as the parties to litigation in connection with the allegations made in the claim in order for the court to determine whether or not they had suffered mental anguish, its manifestation and duration, and that the claim by the representative of the plaintiffs that their testimonies would trigger and deepen their suppressed feelings and would affect their stability was groundless. This was why the court could not accept the proposed physical evidence of the harm suffered. The court could determine the psychological pain only after a direct examination of the plaintiffs by the proposed medical expert witness and a medical evaluation. Moreover, the Basic Court stated that the plaintiffs would have been provided the same protection which they had been provided in the course of criminal proceedings and that it could assess the harm suffered only on the basis of oral, direct and public hearing because the trial court had not decided the claim but directed

the plaintiffs to litigate. In the reasoning of the contested judgement, the Basic Court analysed the judgments made at the end of the criminal proceedings and said on page 11 of the contested judgement that it arises from the disposition of the judgment made in the criminal case that “the first plaintiff, the second plaintiff and the fourth plaintiff were repeatedly detained and forced to provide sexual services, that is, that they were leaving and coming back, while it was not clarified under which circumstances they were returning to the defendant if they were forced, against their will, to perform involuntary actions” and that this clarification was necessary in order to determine whether and to what extent the plaintiffs contributed to the occurrence of harmful consequences and thereby to determine the harm and the amount of compensation, which is contrary to Article 12, paragraph 3 of the Civil Procedure Act.

THE APPEAL

The appeal was filed against the judgement on 1 February 2016 to the District Court in Doboj as the second instance court on all grounds set out in the Civil Procedure Act of the Republika Srpska. Under the appeal, *inter alia*, the Court failed to apply Article 8 of the Civil Procedure Act (hereinafter: the CPA) which obligates the court to assess scrupulously and carefully each piece of evidence separately and all evidence jointly, which led the court to make an unlawful and erroneous decision in this legal matter. Also, the first instance court wrongly applied the provisions of the CPA regarding costs of the proceedings, hence, the court erroneously based its decision on Articles 383, 386, 387, 393 and 396 of the CPA, while it should have applied Article 388 of the same Act which reads: "The party is obliged to compensate the costs of proceedings which the party itself caused to the opposing party regardless of the outcome of the proceedings [...]. Irrespective of the outcome of litigation, the party shall indemnify the costs caused through his or her fault to other party..." Under this provision, considering that the defendants were found guilty in the criminal proceedings held prior to the civil litigation, and the plaintiffs were directed to file a civil lawsuit, the plaintiffs believe that the Basic Court should have rejected the request by the second defendant's temporary legal representative for the compensation of the costs of the proceedings under Article 388 of the CPA, regardless of the outcome of the civil proceedings, and that the Basic Court should have ordered the defendants to compensate the plaintiffs in the amount of the court fees for the claim and judgement or, by applying Article 400 of the CPA, the court should have exempted the plaintiffs from all costs of the proceedings. Further, the Basic Court failed to apply Article 400 of the CPA as it failed to decide the plaintiffs' motion to exempt them from the costs of proceedings, even though the written

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motion is in the file.

The physical evidence presented at the main hearing, which the court quoted in the contested judgement, shows clearly that the plaintiffs were exposed to constant physical and mental abuse by the defendants, that they were detained against their will, that they were forced to engage in prostitution against their will, which violated their human dignity. Therefore, they are entitled to fair compensation in the amounts proportionate to the moral injury they suffered, under Article 202 of the Law on Contract and Torts. This provision stipulates that "The person who was incited through fraud, deception, coercion or the abuse of the relationship that involves subordination or dependence of the victim to engage in a sexual activity and the person who has been the victim of a criminal offence against human dignity and morality shall be entitled to a fair compensation for pain and suffering." Accordingly, the Basic Court ignored completely this provision regarding the "satisfaction in special cases", wrongly interpreting the provision of Article 200 of the Law on Contract and Torts, although this form of compensation for non-pecuniary harm suffered represents in judicial practice a further penalty imposed on the defendants, in addition to the previously imposed criminal penalty, in order to save the plaintiffs' reputation and dignity to some extent. However, the Basic Court ignored completely the judgements in the criminal case, i.e. the legal qualification of the said criminal act which contains the elements of fraud, deception, coercion and abuse of the relationship that involves subordination or dependency, which was enough to award compensation to the plaintiffs under Article 202 of the Law on Contract and Torts, since there is an attack on personal dignity and morality which shows clearly that the plaintiffs are entitled to a fair compensation for pain and suffering, i.e. satisfaction in special cases in terms of Article 202 of the Law on Contract and Torts. In connection with the application of the provisions of Article 200 and Article 202 of the Law on Contract and Torts, which are identical to the legal provisions in the neighbouring countries as they were taken over from the former Yugoslavia, there are a number of judgements in similar cases awarding a fair compensation for non-pecuniary harm suffered.

In the light of the foregoing, the Basic Court completely ignored Article 12 (3) of the RS CPA, stipulating that: "[...] in civil litigation, with respect to the existence of a crime and criminal liability of the perpetrator, the court is bound by the final judgement of a criminal court which found the defendant guilty." It follows from the disposition of the final judgements of the criminal court of BiH that the defendants used force, threat of use of force and deception for the purpose of exploitation for prostitution and kept the women detained as victims of trafficking, thereby committing the crime of trafficking in human beings."

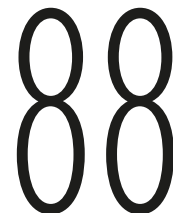
Also, the first instance court wrongly inferred that the plaintiffs, in terms of the allegations in the claim, should have been heard in the capacity of the parties to civil litigation for the purpose of adjudicating the fact whether they had experienced mental anguish and suffering, their manifestation and duration. "The violence against physical and mental integrity of a person is contrary to the fundamental moral principles and amounts to the violation of the rights of the person exposed to such violence, since such an act is an injury to his or her dignity, honour and reputation. The forms, intensity and consequences of the suffered non-pecuniary harm depend on the circumstances of the case and adjudication of these relevant facts does not necessarily require a psychiatric evaluation. The court can adjudicate these facts on the basis of other evidence as proposed by the parties". It is clear from the reasoning of the judgement of the Court of BiH No. S1 3 K 009358 12 K dated 4 June 2013, pages 19 and 20, that there is no doubt that the first and the second plaintiffs testified by audio-visual means from a separate room, in the presence of a female representative of NGO ASTRA in the course of criminal proceedings and that during their testimony, the Court of BiH applied protection measures to avoid their direct contact with the defendant in order to prevent their secondary victimization. Accordingly, the Basic Court erroneously and lightly inferred that the plaintiffs in the civil proceedings should testify again, completely ignoring their secondary victimization that their legal representative had been warning of throughout the proceedings. Also, the Court wrongly concluded that the plaintiffs would be provided with the same protection measures as those used previously in the criminal proceedings, although the CPA does not provide for such measures which are used in a criminal proceeding, thereby equating physical protection and protection from direct contact with the defendant in order to prevent direct contact and secondary victimisation.

In addition, in the reasoning of the contested judgement, the Basic Court analyses the judgements of the trial court and states on page 11 of the contested judgement that it arises from the trial court judgment that "[...]the first, the second and the fourth plaintiff were repeatedly detained and forced to provide sexual services, i.e. that they would leave and yet come back again, so it is not clear under which circumstances they were coming back to the defendants if they were forced against their will or consent to commit involuntary actions" and that this clarification was necessary to determine whether and to what extent the plaintiffs had contributed to the occurrence and severity of the harmful consequences, and to determine the amount of compensation, which is contrary to the provision of Article 12 (3) of the CPA.

It arises from the above quote of one part of the judgement of the trial court that the first, the second and the fourth plaintiff were repeatedly detained and forced to provide sexual services, but the Basic Court ignored the adjudicated facts which constitute the elements of the crime of trafficking in human beings, and mentions or quotes the rest of the disposition of the judgment in the criminal case saying that "they would leave and yet come back again, so it is not clear under which circumstances they were coming back to the defendants if they were forced against their will or consent to commit involuntary actions". Such actions of the Court are unlawful, considering that in such a case, involving human rights and international standards which Bosnia and Herzegovina accepted and ratified, the judge should have known or had to know that the consent by the victim of human trafficking to his or her exploitation is irrelevant and does not constitute a ground for acquitting human traffickers. Thus, Article 186 (9) of the Criminal Code of BiH stipulates that "[...] whether the person who is the victim of human trafficking consented to being exploited is irrelevant for the existence of the crime of trafficking in human beings."

Considering that the plaintiffs and the defendants were heard in the course of the criminal proceedings, and the second defendant pleaded guilty, and considering that a medical evaluation was conducted during the criminal proceedings, it was not necessary to conduct another evaluation in the civil proceedings because the defendants had the possibility to ask questions about the expert witness's findings and opinion, and during the trial, the defendants (now defendants in civil litigation) and the victims (now plaintiffs) had an opportunity to ask each other questions. Moreover, there was no possibility for the plaintiffs to be heard in the capacity of parties to civil litigation as they are foreign citizens and in need of social welfare and could not afford travelling to BiH and returning to their country of origin and could not afford a new evaluation which, if it had been conducted, would have meant their secondary victimisation as it would have triggered memories which would have caused suppressed negative feelings to re-emerge and would have affected their mental stability.

It was proposed that the District Court in Doboje, sitting in a panel of judges or on the basis of hearing, uphold in its appellate decision the appeal and modify the contested decision of the first instance court in accordance with the arguments and proposals made in this appeal and uphold fully the plaintiffs' claim for compensation for their mental anguish, pain, an injury to reputation and honour, freedom, rights and human dignity, including the default interest calculated on the amounts of compensation as from the date of judgement until the payment or that the District Court revoke the part of the first instance judgment which is contested by this appeal and return the case to the Basic Court for a new



litigation process, in which case another judge should be appointed since the judge issued the contested judgement in the first instance procedure without any legal grounds and contrary to the Constitution of Bosnia and Herzegovina, the case law and international standards which BiH signed and ratified.

CONCLUSIONS

1. Although most of the laws in BiH are harmonised with international standards regarding the right of victims of human trafficking to compensation, it is necessary to change the current judicial practice in criminal proceedings in regard to deciding claims or to change the section of the Criminal Code regulating this matter in order to obligate judges to decide the claims filed in the course of criminal proceedings under certain conditions, when possible.
2. Although the victims raise a claim seeking compensation in the course of criminal proceedings, the judges often refuse to decide the claims and direct the victims to litigate. This significantly increases the burden of the victims. Since there has not been any positive cases of initiating civil litigation seeking compensation in BiH, apart from this strategic litigation, it is necessary to examine in detail all factors which might encourage trafficking victims to remain persistent in their efforts to exercise their rights in order to develop mechanisms which would allow victims to obtain compensation and ensure that victims have access to all available resources in exercising their right to compensation.
3. It is necessary to change or harmonise certain provisions of primary and secondary legislation defining the rights and obligations of foreigners in BiH in order to ensure that trafficking victims, following completion of criminal proceedings, have access to courts and exercise their civil rights, including the right to compensation. It is also necessary to ensure that they are entitled to temporary residence in BiH pending the completion of such proceedings.
4. The victims should be entitled to free legal counselling and free legal aid (legal representation) in all stages of administrative and judicial (civil litigation and criminal) proceedings in which case legal deadlines or some legal actions would not be missed due to ignorance of the law resulting in the loss of, or inability to acquire, certain rights.
5. Perhaps the most important obstacle to access to human rights guaranteed to trafficking victims in BiH is persistent resistance in BiH to the establishment

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of a national mechanism for victim compensation, which is the reason why there is no fund for compensation for victims of human trafficking or victims of organised crime in general. It would be necessary primarily for the sake of faster and more equitable payment of compensation to victims, in view of the length of the court proceedings, the fact that the burden of proof of both material and immaterial damage is placed on the victims, the costs of procedural actions, expert evaluations, etc. and also travel cost and court fees, particularly when it comes to foreign victims of trafficking in human beings who have been repatriated to their countries of origin.

Tuzla, 18 April 2016

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ANNEX 4: FEASIBILITY STUDY ON ESTABLISHMENT OF COMPENSATION FUND FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA

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FEASIBILITY STUDY
ON ESTABLISHMENT OF COMPENSATION FUND FOR VICTIMS OF
TRAFFICKING IN HUMAN BEINGS
IN BOSNIA AND HERZEGOVINA



1. INTRODUCTION

Trafficking in human beings is a global phenomenon to which no state is immune. Trafficking in human beings is present in countries in political and economic transition, undeveloped countries and developing countries, countries in war and post conflict countries, as well as in developed and economically wealthy countries.

Although one could talk about “countries of origin”, “transiting countries” and “destination countries”, these are not absolute categories- one country can have different roles in concrete cases. There are no reliable and comprehensive data on the trafficking in human beings, but assessments given by the international organizations and some national agencies can serve as a good indicator. According to the United Nations assessments, 800 000 children, women and men every year become a victim of trafficking in human beings.⁴⁵ Trafficking in human beings is considered as a “high profit and low risk business”. It is considered to be the third most profitable criminal activity, along with the illicit trafficking in drugs and illicit arms trafficking. Annual profit on trafficking in human beings is estimated from 60 to 500 billion dollars. In the other hand, globally, a very small amount of these cases is being prosecuted.⁴⁶

Trafficking in human beings represents a criminal act that has characteristics of organized crime, but it is also a severe violation of human rights guaranteed by the international instruments and the Constitution of Bosnia and Herzegovina, as well as Constitutions of the entities and the Statute of Brcko District. Damage compensation for the victims of trafficking in human beings represents one of the most important components of the right to access to justice. To ensure that the victim obtains satisfaction during criminal proceedings, right to compensation must be an inseparable part of the process, while the country must ensure comprehensive mechanisms for damage compensation.

There are two possible mechanisms analysed in this document: (i) establishment of Compensation fund for victims of trafficking in human beings in Bosnia and Herzegovina as an autonomous state administrative organization on the state level and (ii) establishment of the Commission for damage compensation by the Council of Ministers of Bosnia and Herzegovina.

⁴⁵ <http://globalrescuerelief.org/what-is-human-trafficking>

⁴⁶ Radović I and all (2008), Human Trafficking Manual for Journalists, OSCE, Serbia

2. GOALS, PURPOSE AND METODOLOGY OF THE FEASIBILITY STUDY ON ESTABLISHMENT OF COMPENSATION FUND FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA

Since organized crime and trafficking in human beings are serious problems in all countries of the Western Balkans region and such problems are often cross-border in character; as relevant authorities need to further strengthen their influence in addressing these issues, the civil society organizations involved in project implementation recognized the importance of regional cooperation at the levels of civil society and government bodies.

Therefore, the regional partnership within the “Balkans ACT Now!” project focuses specifically on the involvement of the judicial sector, especially in the judicial proceedings in cases of trafficking in human beings, including ineffective investigation and prosecution of perpetrators and ineffective protection of victims in accordance with fundamental rights and EU standards. Accordingly, International Forum of Solidarity-EMMAUS (IFS-EMMAUS) took the initiative to establish a state compensation fund for victims of human trafficking in Bosnia and Herzegovina.

This feasibility study on establishment of Compensation fund for victims of trafficking in human beings in Bosnia and Herzegovina was conducted as a part of abovementioned initiative. This study has a goal to analyse financial and legal aspects of the provision of sources for financing the mechanisms of compensation and procedures that would enable victims of trafficking in human beings to access damage compensation funds. Also, this study analyses provision of sources of funds for future compensation fund that would be necessary for the victims of violent crimes to exercise their right to compensation, as well as possible sources of funding that do not require allocations from the state budget, which would indicate that this mechanism of compensation is sustainable.

During period January to March 2016 authors, Ms. Velma Pijalovic and Ms. Harisa Bacvic, conducted detailed research regarding preparation of this study. This included research of numerous documentation and relevant provisions of the international and domestic law. Detailed list of documentation and relevant international and domestic law is listed in the Annex I of this Study.

3. NEEDS ANALYSIS

3.1. ESTIMATED NUMBER OF POTENTIAL VICTIMS AND NUMBER OF CRIMINAL PROCEEDINGS

In the State Coordinator for Combating Trafficking in Human Beings Situation report on trafficking in human beings in Bosnia and Herzegovina it is stated that, according to the data collected from the prosecutors' offices, services for implementation of law, centres for social welfare and nongovernmental organizations, during the period of January to December 2014, in BiH 49 potential victims of trafficking have been identified.

Victims were trafficked for the purpose of sexual and work exploitation, forced into prostitution or forced to beg on the streets, sold for the purposes of forced or arranged marriages, or used for making of, owning and displaying children pornography. It is necessary to emphasize that the exact number of potential victims of trafficking is not possible to determine, since trafficking is usually well organized crime and victims are often reluctant to report it to the relevant bodies. On the other hand, due to the complexity of the structure of judicial system, even statistics on criminal justice in B&H is not providing relevant data on criminal prosecution of the criminal acts related to the trafficking in human beings. Also, it is important to mention that it is not possible to obtain data on number of victims of trafficking from the system for automatic management of cases (CMS) in the courts in Bosnia and Herzegovina.

Number of cases on trafficking on human beings before the courts in Bosnia and Herzegovina is presented in Table 1.

Table 1: Number of cases on trafficking on human beings before the courts in B&H⁴⁷

	Number of investigations	Number of indictments	Number of the courts decisions	Number of decisions of the court upon lawsuits	Number of decision from Supreme Court
2011.	10 (19 perpetrators)	19 (6 cases)	7 (4 cases) ⁴⁶	/	/
2012.	19 (42 perpetrators)	22 (15 cases)	13 (11 cases) ⁴⁷	/	/
2013.	37 (81 perpetrators)	16 (11 cases)	15 (10 cases) ⁴⁸	/	/
2014.	14 (18 perpetrators)	7 (9 cases)	12 (13 cases) ⁴⁹	/	/

Although there is clearly a need related to the number of identified victims of trafficking in human beings, it should also be emphasized that this need to establish Compensation Fund for the victims of trafficking in human beings arises from the provisions of international and domestic law.

3.2. INTERNATIONAL AND DOMESTIC LAW OBLIGATIONS

Legal framework related to the compensation for the victims of trafficking in human beings in Bosnia and Herzegovina is laid out in international and domestic law.

Out of the most important international instruments for protection victims of trafficking are United Nations Convention against transnational organized crime⁵² and the Palermo protocol.⁵³ These two documents are also the first internationally recognized instruments that oblige state parties to ensure at least one type of legal procedure is available to trafficked persons to access compensation. It also stipulates the obligation of states to ensure that victims of trafficking are informed of the possibility to seek compensation. The right to

⁴⁷ MFS-EMMAUS – Promoting a Victim Centered Approach in Trafficking Cases: Legal analysis Bosnia and Herzegovina available at web page: www.bihat.ba/images/pdf/Literatura/

⁴⁸ State Coordinator for Combating Trafficking in Human Beings (2012): Situation report on trafficking in human beings in BiH and Report of Bosnia and Herzegovina on implementation of the Action plan on combating trafficking in human beings 2011.

⁴⁹ State Coordinator for Combating Trafficking in Human Beings (2013): Situation report on trafficking in human beings in BiH and Report of BiH on implementation of the Action plan on combating trafficking in human beings 2012.

⁵⁰ State Coordinator for Combating Trafficking in Human Beings (2014): Situation report on trafficking in human beings in BiH and Report of BiH on implementation of the Action plan on combating trafficking in human beings 2013.

⁵¹ State Coordinator for Combating Trafficking in Human Beings (2015): Situation report on trafficking in human beings in BiH and Report of BiH on implementation of the Action plan on combating trafficking in human beings 2014.

⁵² United Nations Convention against transnational organized crime, bosnian version available at: www.bihat.ba/images/pdf2/Medjunarodne_konvencije/

⁵³ Palermo protocol, bosnian version available at: www.bihat.ba/images/pdf/Medjunarodne%20konvencije/

compensation is further strengthened through regional instrument - Council of Europe Convention on Action against Trafficking in Human Beings⁵⁴ promoting a human rights-based approach to combating trafficking in human beings. The right to compensation, under the provisions of this instrument, provides the right to claim compensation for both moral and material damage from the trafficker. The Council of Europe Convention is the first international treaty that looks at human trafficking as a human rights issue and makes the protection of victims' rights obligatory.

The right to an effective remedy is widely recognised in the International Labour Organisation (ILO) Forced Labour Conventions No. 29 and 105.⁵⁵ Both the ILO Conventions, No. 97⁵⁶ and 143⁵⁷ on Migrant Workers, and the International Convention on the Protection of Migrant Workers and Members of their Families⁵⁸ set standards to ensure that migrants are not deprived of their right to be paid for work or services that they have performed. The ILO standards on forced labour have been widely ratified by States and deal with issues relating to labour rights which should be applicable at the national level in cases of labour exploitation.

Criminal legislation in Bosnia and Herzegovina⁵⁹ provides for the right to file a damage compensation claim in criminal proceedings as one of the forms of compensation for the injured party (victims of trafficking). This right refers to all victims of criminal offences. Pursuant to the relevant provisions, the court shall make a decision regarding a damages compensation claim within the criminal proceedings under the condition that the decision does not "considerably prolong such proceedings".⁶⁰ Such a decision enabling the court to properly assess if the decision on compensation would prolong criminal proceedings will be dependent upon the prosecutor and his/her work in the investigation in terms of collection of evidence to substantiate the compensation claim. Pursuant to the criminal legislation, it is the prosecutor who guards the rights of the victim and ensures that victim's rights are protected. Compensation claims may pertain

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⁵⁴ Council of Europe Convention on Action against Trafficking in Human Beings, available at: www.coe.int/t/dghl/monitoring/trafficking/docs/convntn/cets197_en.asp#P1153_166853

⁵⁵ International Labour Organisation (ILO) Forced Labour Conventions No. 29 and 105, available at: www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312174 and www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312250

⁵⁶ Please see: ILO Migration for Employment Convention (Revised), 1949 (No. 97) available at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C097;

⁵⁷ Please see: ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) available at: www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:312288;

⁵⁸ International Convention on the Protection of Migrant Workers and Members of their Families, available at: www.treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en;

⁵⁹ Criminal Procedure Code of BiH ("Official Gazette" of BiH, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09);

⁶⁰ The provisions on the damage compensation claim are contained in Chapter XVII of the CPC BiH please see Article 193 and ensuing articles.

to reimbursement for material and non-material damages, recovery of items, or annulment of a particular legal transaction. The court decides upon the claim.

Victims of trafficking in human beings have the possibility to seek compensation through regular civil proceedings. With regards to the disputes for damages, basic courts in RS and municipal courts in FBiH have jurisdiction for these cases.⁶¹ However, it should be noted that filing the lawsuit (compensation claim) and success in these proceedings is linked to many obstacles. Legal aid should be provided for the victim, so he/she could adequately get acquainted with her rights and obligations, deadlines, possible fees etc. Laws on civil proceedings do not contain provisions to ensure the right of the victim to have a state appointed lawyer, making victims exposed to financial difficulties (representation fees, legal expenses etc.) and victimization – since the burden of proof lies on the plaintiff. Even if the victim obtains positive decision by the court, the issue of decision enforcement poses a great problem.

BiH labour laws⁶² regulate only legal labour relations between an employer and employee. In cases where there is no formal written contract and informal or illegal work is conducted it would be possible for the victim of trafficking for labour exploitation to file a civil suit to determine the existence of labour relation. Only after the court determine the existence of labour relation, the victim may seek the rights deriving from labour relation (for example unpaid wages, social security contributions etc.) In practise, this means that the person would be placed in a position to provide evidence as to the existence of factual labour relation and, based on such determination, court protection would be provided but the worker would have the burden of proving the existence, actual breach of labour relation and damage.

Requirements that member states of the European Union should meet, current and potential member candidates (including BiH), provide clear guidelines about the regulation of compensation issues for victims of (violent) crimes and provision of effective and essential compensation for victims before, during and after criminal proceedings. One should also have in mind the fact that constitutional order of Bosnia and Herzegovina is very complex, especially having in mind the nature of legal proceedings through which is possible to exercise their right to compensation (criminal and civil proceedings, labor laws). Jurisdiction to enact and implement laws is divided (four unconnected criminal systems, Laws on civil

⁶¹ Law on civil proceedings, Federation BiH, „Official Gazette F BiH“, No: 53/03, 73/05, 19/06 i 98/15“, Law on civil proceedings, Republika Srpska („Official Gazette RS“, No: 58/03, 85/03, 74/05, 63/07, 49/09, 49/13);

⁶² Labour Law, Brcko District, Official Gazette of Brcko District: 70/06; Labour Law, Federation of Bosnia and Herzegovina, Official Gazette of Federation of Bosnia and Herzegovina: 43/99, 32/00 and 29/03; Labour Law, the Republika Srpska, Official Gazette of the Republika Srpska: 1/16;

proceedings and Acts on enforcement), different jurisdiction and organization of courts in criminal (state, entities- basic and municipal, district and cantonal) and civil proceedings (basic and municipal) pose obvious obstacle to radical changes.

Action Plan to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2016 – 2019⁶³ adopted by the Council of Ministers of Bosnia and Herzegovina, Strategic measure D.5 Provide an effective access to the justice system and to appropriate legal means for trafficking victims under D.5.2. foresees, as a continuous activity, that „All competent institutions and authorised organisations, international and non governmental organizations shall establish where necessary, or facilitate the access of trafficking victims, regardless of their legal status or nationality, to national compensation funds or other relevant mechanisms“.

From the above mentioned, conclusion can be made that in Bosnia and Herzegovina exist legal grounds for damage compensation for victims (injured parties) within the criminal proceedings, supplemented by the civil proceedings. Implementation, however, is inefficient. Apart from the fact that it is an expensive and long lasting proceeding, it is also very stressful for the victim. As a result, victims rarely get damage compensation suffered during trafficking process. That is why establishment of Compensation Fund is not significant for the victims only, but it is also very important for every country that aspires to protect human rights.

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⁶³ Action Plan to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2016 – 2019, available at: www.bihat.ba/images/pdf2/Drzavni_akcioni_plan/AKCIONI%20PLAN%202016-2019-usvojen_ENG.pdf;

4. OPTIONS ON ESTABLISHMENT OF COMPENSATION FUND FOR VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA

4.1. MACROECONOMIC FRAMEWORK

Bosnia and Herzegovina is a country with a complex state model which has a direct influence on its macroeconomic framework and possibilities to implement macroeconomic politics. Basic macroeconomic challenges faced by Bosnia and Herzegovina are high unemployment rate, low rate of economic growth and balance of payments and budget deficit. Monetary politics is being implemented upon the principles of currency board, which, by the nature has very limited power to resolve these issues. Consequently, primary macroeconomic politics in Bosnia and Herzegovina is fiscal politics.

On the other hand, one should have in mind that the current state of public finances is in such shape it is necessary to conduct comprehensive financial consolidation. Budgets are for long period of time in a deficit, budget spending has no investment character and is mainly used for repayment of public debt. Also, a lot of money goes to pay salaries and other allowances, as well as social rights allowances.

During the assessment of options on establishment of Compensation Fund for victims of trafficking in human beings in Bosnia and Herzegovina, one should have in mind that due to large pressure and budget deficit it is not realistic expectation to have damage compensation financed from the existing budgets.

4.2. TYPES AND SCOPE OF DAMAGE COMPENSATION

Practice in the region varies from very wide to very narrow interpretation of types and scope of damage that can be compensated by using money from the Compensation Fund. While many countries have the option to compensate for moral and material damage, some countries restricted compensation only to moral damage compensation, whose existence and scope must be proven by the victim in an unequivocal manner.⁶⁴

⁶⁴ for instance Bulgaria

The same situation is with the implementation of the process of deciding upon the submitted application for compensation. Generally, it requires a proactive attitude and quick action of the victim, in order to meet legal deadlines for filing claims for damages. Some states require that a victim applies for compensation within a period of 6 months from the date of commission of the crime, while others provide for longer maturities.⁶⁵

The procedure of the deciding upon the submitted application for compensation is not unified. According to the Law on Administrative Procedure BiH⁶⁶, the Fund may, if the proposed legislative solution is accepted, be obliged to act in such a way to enable the realization of the basic principles of the Law on Administrative Procedure, one of which is a very important principle of material truth.⁶⁷ In this respect, the Fund would be required to establish the substantive truth - asking the parties, and gathering by itself, all evidence relevant to decide upon application. It would certainly present a cost for the Fund (for the costs of expert opinions etc.) if decision-makers consider that without such evidence they will not be able to determine the material truth and make the right decision.

Also, one of the major issues is the scope of protection and the possibility of compensation at the expense of the Fund. It is necessary to establish clear criteria that determine which types of crimes can claim compensation for damages, with an emphasis on the application thereof in accordance with the facts in each case, the method of calculating the amount of damage (e.g. to introduce exemptions in relation to the legal proceedings that are managed by strict rules of procedure) and to facilitate the procedure of proving the amount of damages to victims of trafficking.

Bearing in mind that the Law on obligations FBiH and RS⁶⁸ define damage as moral and material damage, it should be safe to say that compensation would cover both types of damage. In countries where compensation fund is established, it is accepted that the existence of a decision on the guilt / criminal responsibility of the offender is not a prerequisite for the exercise of the right to compensation. However, most of the countries accepted that one of the conditions for deciding upon application for compensation is to report the crime to the competent authorities.

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⁶⁵ Netherlands

⁶⁶ Law on administrative procedures of Bosnia and Herzegovina, „Official Gazette No: 29/02, 12/04, 88/07, 93/09, 41/13“

⁶⁷ Article. 9 Law on administrative procedures BiH

⁶⁸ Law on obligations of Federation BiH, “Official Gazette RBiH”, br. 2/92, 13/93 i 13/94 and Law on obligations Republika Srpska, “Official Gazette RS”, br. 17/93 i 3/96

As a part of fast and efficient determination of claims for compensation, the victim should have the option to file the lawsuit against the negative decision of the Fund (administrative dispute).

Also, very important issue is the provision of free, efficient and effective legal assistance to victims through provision of information about the possibilities of compensation, provision of legal advice and representation of victims before the competent bodies in BiH.

4.4. METHODS OF FINANCING OF THE FUND

Determining the method of financing of the Fund represents the main challenge for its establishing and future functioning. The Damage Compensation Fund can be financed from different sources. The sources of financing of the Damage Compensation Fund can include:

- Budget funds of the state, Federation of BiH, Republic of Srpska and Brcko District allocated for assistance and compensation for victims of crime;
- Specifically earmarked funds from different sources which would be transferred to a sub-account of the Fund. For example, funds collected from fees for organization of games of chance can, among other purposes, be used to protect rights of children who are victims of abuse, paedophilia, mendacity; meeting the needs of disabled persons in terms of improving life quality and work of organizations providing shelter to victims of torture and violence (safe houses)⁶⁹;
- Revenues from confiscation of unlawfully acquired property⁷⁰ as well as other similar sources;
- Funds of relevant international organizations;
- Donations and loans provided for this purpose by international financial institutions;
- Donations of private sector;
- Donations of specialized agencies and organizations working on protection of rights of human trafficking victims;
- Donations of states which earmark funds for fight against organized crime and human trafficking in their budgets.

As highlighted in the macroeconomic framework, it is important to note that

⁶⁹ Article 7 of F BiH Law on Games of Chance, Official Gazette of F BiH No. 48/15

⁷⁰ In line with provisions of Law on Confiscation of Property Acquired through Illegal Acts, "Official Gazette of RS No. 12/10" and Law on Confiscation of Property Acquired Unlawfully through Acts of Crime, "Official Gazette of F BiH No. 7/14"

when it comes to funds allocated from the budget, we can count only on limited amounts.

If the Fund pays compensation to the victim and the perpetrator is subsequently found guilty and convicted for the crime which inflicted the damage which was compensated by the Fund, and the court obliges the perpetrator to pay compensation to the victim, the Fund might claim back the paid compensation from the perpetrator in a retroactive compensation claim, and revenues made in this way could be used as source of revenues for financing of the Fund.

Funds which would be at the disposal of the Damage Compensation Fund or which are distributed through the Fund will be used only for realization of rights of crime victims which are approved by the Fund/Commission and for functioning of the Fund.

Special funds managing conditions which provide transparency and accountability need to be regulated by a special act of the Fund (Rulebook on funds management or similar). Financial operations of the Fund would be monitored by the Ministry of Finance and Treasury and the Office of Audit Office of the Institutions of Bosnia and Herzegovina.

4.5. EXPENSES OF ESTABLISHING AND OPERATING THE FUND AND/ OR COMMISSION

When estimating expenses of establishing and operating the Fund, we analyse two possibilities:

- (i) Establishing of Damage Compensation Fund for Trafficking Victims as independent administrative organization;
- (ii) Establishing of Commission for damage compensation Claims within BiH Council of Ministers.

Within this Feasibility Study, we made the estimation of expenses of establishing and operating in period of four years for both possibilities. It is important to emphasize that when estimating expenses for the two alternatives, besides the establishing and operating expenses, it is also important to understand the essential difference which refers to securing funds for payment of compensation to victims. Namely, the mechanism which includes establishing of the Commission

would stipulate that compensation is paid out exclusively from budget funds. In case of the Fund, money necessary for execution of compensation claims would be collected from other sources listed in the Section 4.4 of this document.

All expenses related to establishing and operating the Fund and/or Commission can be divided in three basic groups.

- a) Salary and fees expenses:** When calculating the expenses, we assumed that adequate functioning of the Fund would require engagement of two persons: one graduated lawyer and one person with secondary school degree to carry out technical tasks. When deciding on compensation claims, it would be necessary to temporarily hire experts from fields of judiciary, criminal law, social policy and healthcare, as well as representatives of the NGO sector working on protection of crime victims. It is necessary to secure funds for the gross salaries, meal compensation and transportation expenses for the employees of the Fund. On the other hand, in case of establishing of the Commission of BiH Council of Ministers, the Commission would consist of five members who would be elected to a period of 4 years. Salary expenses would include only gross fees for work in the Commission which would be paid on a monthly basis. These fees are defined by the criteria for fees for work in steering boards, supervisory and other boards and other working groups under jurisdiction of the institutions of Bosnia and Herzegovina.
- b) Administration expenses:** These expenses include operation expenses of the Fund and/or Commission. In the first year, the administration expenses would include cost of purchase of office equipment and supplies, and in following years the expenses would include depreciation, office supplies and stationary, maintenance and utilities.
- c) Expertise and awareness raising expenses:** These expenses refer to activities undertaken by the Fund in order to establish material facts – by asking from the parties, but also by collecting all significant evidence necessary to decide on a concrete case. It would be necessary to earmark a minimum portion of the budget for this purpose, whereby the exact activities are not specified.

All the above leads to conclusion that the Fund can be established, and that it can operate in different ways, which definitely influences the cost estimation. The expenses listed here are given in order to compare two options which the analysis proved to be viable, and their only purpose is to help the process of making the decision to accept one of the two offered solutions. Also, the expenses listed here are given approximately, and should be understood in that way. Real expenses can deviate significantly from the estimation given here as an example.

Table 2: Estimation of annual expenses of establishing and operating the Fund and Commission (approximate estimation), in BAM

TYPE OF EXPENSES	DAMAGE COMPENSATION FUND				Commission for damage compensation (5 members)			
	I year	II year	III year	IV year	I year	II year	III year	IV year
Salaries and fees for permanently employed personnel	54,870	54,870	54,870	54,870				
Gross fees of Commission members	11,880 ⁶⁹	11,880	11,880	11,880	59,640	59,640	59,640	59,640
Administration expenses	13,000	10,500	10,500	10,500				
Expertise expenses	5,000	5,000	5,000	5,000				
TOTAL	84,750	81,750	81,750	81,750	59,640	59,640	59,640	59,640

4.6. SWOT ANALYSIS

When analysing the expenses estimation, it becomes clear that establishing of the Commission for damage compensation is the cheaper option. However, when solving problems such as the problem of compensation of victims of criminal activities, expenses are not, nor should they be, the only indicator based on which the decision on the most efficient option is made. In order to analyse advantages and disadvantages of one and/or the other option, we present the SWOT analysis.

4.6.1. SWOT ANALYSIS for establishing of the fund

S (Strengths)

- Analysis of the present state indicates a significant need to establish an efficient mechanism for execution of compensation claims;
- The Fund would make sure that free legal assistance is available to all victims in all procedures (crime processing, litigation, administration), which would increase the efficiency of claims and payment of compensation;
- The Fund would be obliged to establish the material truth – by asking from parties but also by collecting itself all significant evidence necessary to make a decision in a concrete case, which is very important from the perspective of the victim, but also from the perspective of the state;

- The Fund would help create clear guidelines on how to calculate compensation amounts;
- Existence of the Fund would speed up the process of realization of compensation rights which is in best interest of both victims and the state;
- If the Fund was established, the exposure of victims to stress and psychological pressure would be reduced;
- Existence of the Fund would make sure that statistical data related to cases of human trafficking include data related to compensation claims;
- Establishing of the Fund would provide better transparency of collected and paid out funds for compensation claims because all information would be stored in one place;
- There are positive experiences with existence of similar funds in other countries.

W (Weaknesses)

- Expenses of establishing and operating the Fund.

O (Opportunities)

- Establishing of the Fund would enable opening of a sub-account which would collect funds from other sources (other than the budget), which would enable more efficient collection of funds necessary for payment of compensation;
- Human trafficking is not just an internal problem of Bosnia and Herzegovina, so it is realistic to expect that different international organizations and other donors would be willing to provide funds if establishing of the Fund would secure purposeful and transparent spending of funds for assistance to victims of human trafficking and payment of compensation;
- An important consensus has been reached at the legal-political level in Bosnia and Herzegovina, visible through the adoption of the Strategy for Combating Human Trafficking (2012-2015), regarding the issue of compensation for victims of human trafficking, establishing of a special fund for this purpose and better social inclusion and integration of human trafficking victims in general;
- The process of adoption and implementation of special regulations on confiscation of property acquired through crime has already been launched in Bosnia and Herzegovina and it is taking place in individual constitutional-legal units in Bosnia and Herzegovina;
- Damage Compensation Fund for human trafficking victims can – with some additional funding – transform into a fund for compensation of damages for all victims of criminal activities.

T (Threats)

- In order to efficiently regulate the issue of damage compensation for human

trafficking victims in Bosnia and Herzegovina, it is necessary to amend laws, decisions, decrees, etc., which can take additional effort and time in a complex state such as Bosnia and Herzegovina.

4.6.2. SWOT ANALYSIS for establishing of the Commission

S (Strengths)

- Lower expenses of establishing and operating compared to the Fund.

W (Weaknesses)

- Work of the Commission would be reduced merely to deciding on human trafficking victims' compensation claims, and the problem of securing funds for payment of compensation would not be solved;
- The Commission would hardly be able to reach the full potential of damage compensation with its restorative, punitive and preventive functions;
- The Commission would not provide free legal assistance to victims;
- The Commission would not carry out other activities which would be carried out by the Fund, and which are necessary to establish efficient, lawful and purposeful compensation for victims before, during and after criminal proceedings.

O (Opportunities)

- There is a possibility to use the existing office, technical and human resources, which reduces the establishing and operating expenses.

T (Threats)

- Functioning of the Commission, as well as securing funds for pay out of compensations would depend on budget;
- International organizations and foreign donors are not ready to pay funds into the joint budget, which would significantly reduce the amount of funds available for pay out of compensation.

5. CONCLUSION

Human trafficking is a global phenomenon to which no country is immune, including Bosnia and Herzegovina. Besides the number of identified potential victims of human trafficking, the need to establish the Damage Compensation Fund for victims of human trafficking also stems from the provisions of local and international legislation. It is also necessary to emphasize that an important consensus has been reached at the appropriate legal-political level in BiH, which is visible through the adoption of the Strategy for Combating Human Trafficking (2012-2015), regarding the issue of compensation for victims of human trafficking, establishing of a special fund for this purpose and better social inclusion and integration of human trafficking victims in general.

The macroeconomic framework of Bosnia and Herzegovina which is characterized by unemployment, budget and active balance deficit and slow economic growth on one hand, and limited potential to use macroeconomic policies to solve all these problems on the other hand, poses additional challenge for analysis of the possibility to finance compensation for human trafficking victims. This challenge is reflected in the fact that financing must be provided with minimum burdening of the budget. Therefore, establishing of the Fund as independent administration unit would open up the possibility of financing from other sources, such as funds earmarked for this purpose which would be paid into the sub-account of the Fund; revenues from confiscation of illegally acquired property and other similar sources; funds of relevant international organizations, donations and loans provided for this purpose by international financial institutions; donations of the private sector, donations of specialized agencies and organizations working on protection of human trafficking victims' rights; as well as donations of countries whose budgets have funds earmarked for fight against organized crime and human trafficking.

The very nature of the crime and the complexity of the constitutional-legal structure of BiH create the need to solve the issue of compensation for trafficking victims at the state level. It is thereby necessary to pay special attention to interpretation of occurrence, evidence and estimation of damage.

Although the estimated approximate expenses of establishing and operating the Fund are higher than expenses of Commission for damage compensation, the SWOT analysis provides strong arguments in favor of the opinion that establishing of the Fund is a more efficient and better solution not only for the victims, but also for the state.

The main arguments for establishing of the Fund are following:


- Establishing of the Fund would allow setting up of a sub-account where funds from other sources (other than budget) could be paid to, which would secure more efficient collection of funds necessary for payment of compensation;
- Human trafficking is not just an internal problem of Bosnia and Herzegovina, so it is realistic to expect that different international organizations and other donors would be willing to provide funds if establishing of the Fund would secure purposeful and transparent spending of funds for assistance to victims of human trafficking and payment of compensation;
- The Fund would make sure that free legal assistance is available to all victims in all procedures (criminal, litigation and administration procedures), which would improve efficiency of claims and payment of damage compensation;
- The Fund would be obliged to establish the material truth – by seeking from parties but also by collecting itself – all relevant evidence significant for deciding in concrete cases, which is very important not only from the point of view of the victim, but also the state;
- The Fund would help create clear guidelines on how to calculate compensation amounts;
- Existence of the Fund would speed up the process of realization of compensation rights which is in best interest of both victims and the state;
- If the Fund was established, the exposure of victims to stress and psychological pressure would be reduced;
- Existence of the Fund would make sure that statistical data related to cases of human trafficking include data related to compensation claims;
- Establishing of the Fund would provide better transparency of collected and paid out funds for compensation claims because all information would be stored in one place;
- Analysis of the present state indicates a significant need to establish an efficient mechanism for execution of compensation claims;
- There are positive experiences with existence of similar funds in other countries;
- An important consensus has been reached at the legal-political level in Bosnia and Herzegovina, visible through the adoption of the Strategy for Combating Human Trafficking (2012-2015), regarding the issue of compensation for victims of human trafficking, establishing of a special fund for this purpose and better social inclusion and integration of human trafficking victims in general;
- The process of adoption and implementation of special regulations on confiscation of property acquired through crime has already been launched in Bosnia and Herzegovina and it is taking place in individual constitutional-legal units in Bosnia and Herzegovina;

- Damage Compensation Fund for human trafficking victims can – with some additional funding – transform into a fund for compensation of damages for all victims of criminal activities.

Although there are also arguments against the Fund, they are mostly related to operational expenses. Therefore, the proposal and final conclusion of this Study is that establishing of the Fund is preferred to the other option.

ANNEX I LIST OF CONSULTED LITERATURE AND REGULATIONS

1. Action Plan to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2016 – 2019, available at: www.bihat.ba/images/pdf2/Drzavni_akcioni_plan/AKCIONI%20PLAN%202016-2019-usvojen_ENG.pdf;
2. Convention on Forced Labour no. 29 International Labour Organisation (ILO);
3. Convention no. 105 International Labour Organisation (ILO);
4. Convention on Migration for Employment (Revised), 1949 (no. 97);
5. Convention on Migrant Workers (Supplementary Provisions), 1975 (no. 143);
6. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
7. IFS-EMMAUS – Promoting a Victim Centered Approach in Trafficking Cases: Legal analysis Bosnia and Herzegovina available at web page: www.bihat.ba/images/pdf/Literatura/Promovisanje%20pristupa%20usmjerenog%20na%20rtve%20Brosura%2027%2009%202015%20Knjizni%20Blok%20BOS%20A4.pdf;
8. OSCE, Brochure and Form, www.oscebih.org/documents/osce_bih_doc_2010122713020999eng.pdf;
9. Palermo protocol, Bosnian version available at: www.bihat.ba/images/pdf/Medjunarodne%20konvencije/UN_Protokol_Palermo_2000.pdf;
10. Radovic I and all (2008), Human Trafficking Manual for Journalists, OSCE, Serbia;
11. State Coordinator for Combating Trafficking in Human Beings (2012), Trafficking on human beings in Bosnia and Herzegovina: Situation report on trafficking in human beings in Bosnia and Herzegovina and Report of Bosnia and Herzegovina on implementation of the Action plan on combating trafficking in human beings 2011.
12. State Coordinator for Combating Trafficking in Human Beings (2013), Trafficking on human beings in Bosnia and Herzegovina: Situation report on trafficking in human beings in Bosnia and Herzegovina and Report of Bosnia and Herzegovina on implementation of the Action plan on combating trafficking in human beings 2012.
13. State Coordinator for Combating Trafficking in Human Beings (2014), Trafficking on human beings in Bosnia and Herzegovina: Situation report on trafficking in human beings in Bosnia and Herzegovina and Report of Bosnia and Herzegovina on implementation of the Action plan on combating trafficking in human beings 2013.
14. State Coordinator for Combating Trafficking in Human Beings (2015), Trafficking on human beings in Bosnia and Herzegovina: Situation report on trafficking in human beings in Bosnia and Herzegovina and Report of Bosnia and Herzegovina on implementation of the Action plan on combating trafficking in human beings 2014.
15. United Nations Convention against transnational organized crime, Bosnian version;
16. Law on Criminal Procedure of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", no. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76 / 07, 15/08, 58/08, 12/09, 16/09, 93/09;

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17. Law of Civil Procedure of the Federation of Bosnia and Herzegovina “Official Gazette of BiH”, number: 53/03, 73/05, 19/06 and 98/15”
 18. Law of Civil Procedure of Republika Srpska (“Official Gazette of Republika Srpska”, number 58/03, 85/03, 74/05, 63/07, 49/09, 49/13);
 19. Labour Law, Brcko District, Official Gazette of Brcko District: 70/06;
 20. Labour Law, Federation of Bosnia and Herzegovina, Official Gazette of Federation of Bosnia and Herzegovina: 43/99, 32/00 and 29/03;
 21. Labour Law, the Republika Srpska, Official Gazette of the Republika Srpska: 1/16;
 22. Law on Administrative Procedure of Bosnia and Herzegovina, “Official Gazette of Bosnia and Herzegovina No. 29/02, 12/04, 88/07, 93/09, 41/13”;
 23. Law on Obligations of the Federation of Bosnia and Herzegovina, “Official Gazette of BiH”, no. 2/92, 13/93 and 13/94;
 24. Law on Obligations of Republika Srpska, “RS Official Gazette”, no. 17/93 and 3/96;
 25. Law on Administration of Bosnia and Herzegovina (BiH Official Gazette No. 32/02 and 102/09);
 26. Law on compensation of victims of crimes of the Republic of Croatia “80/08, 27/11”;
 27. Law on games of chance FBiH, “Official Gazette of BiH No: 48/15”;
 28. Law on Confiscation of Property Acquired through Illegal Acts, “Official Gazette of RS No. 12/10”;
 29. Law on Confiscation of Property Acquired Unlawfully through Acts of Crime, “Official Gazette of F BiH No. 7/14”.

