

**CURRENT SITUATION WITH REGARD TO  
LEGAL COUNSELLING AND LEGAL  
AID/REPRESENTATION OF TRAFFICKED  
PERSONS AND THEIR TREATMENT AS  
VICTIMS/WITNESSES IN CRIMINAL AND  
OTHER RELEVANT LEGAL PROCEEDINGS**

**COUNTRY REPORT  
SLOVAKIA**

**Human Rights League**





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*NETHERLANDS HELSINKI COMMITTEE*



**Current situation with regard to legal counselling and legal aid/representation of trafficked persons and their treatment as victims/witnesses in criminal and other relevant legal proceedings**

Country Report, Slovakia

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# FOREWORD

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This report has been written as part of the 3-year project “*Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support – A Human Rights-Based Approach*”. It provides a legal analysis of the position of trafficked persons in criminal and other relevant proceedings and their treatment by the judicial system, in particular their access to legal aid and the protection of their rights as victims and witnesses, including access to compensation. The report contains an analysis of the legal provisions pertaining to the position of victim/witnesses of trafficking and their implementation in practice, based on the experiences of the partner NGOs and information from interviews with victims. Attention is also paid to the national definition of trafficking and its implementation, in particular whether it offers equal protection without discrimination to all possible victims, including sex workers and victims of trafficking and exploitation for other purposes than prostitution.

Despite increasing awareness that trafficking and the exploitation of human beings under forced labour or slavery-like conditions constitute severe human rights violations, States tend to focus on the prosecution and punishment of the perpetrators, while the protection of the rights of trafficked persons lags behind. Often victims are purely seen as instrumental for the prosecution with little regard for the far reaching impact testifying against their exploiters may have on their current and future wellbeing, safety and life.

One of the problems many countries have in common, including Bulgaria, Romania and Slovakia, is the lack of access of victims to legal counseling and aid. An adequate referral system which ensures that victims are informed about the relevant judicial proceedings and their rights from their very first contact with the authorities is missing. There are few lawyers trained in working with trafficked persons. State-funded legal aid is scarce. Even if formally

victims have a right to claim compensation for the damages they suffered, in practice such claims are rarely awarded and, if they are, hardly ever executed. Provisions that might protect victims are not effectively used and many actors in the judicial system, including police, prosecutors, judges and lawyers, lack knowledge about trafficking and its psychological, social and health impacts on its victims. As a result trafficked persons face major barriers in accessing justice and criminal proceedings often lead to their secondary victimization. At the same time, NGOs are not trained in providing legal counseling and only have limited funds to pay for legal aid and representation.

This project was developed to respond to some of the challenges listed above. It aims at:

- Increasing knowledge of lawyers and social workers about trafficking, its impact and the legal rights of trafficked persons
- Enhancing victims' access to legal counseling, aid and representation during criminal and other legal proceedings
- Increasing the capacity of NGOs and social workers to provide legal information and counseling to trafficked persons
- Enhancing the capacity of NGOs to effectively advocate for the protection and promotion of the rights of trafficked persons as victims and witnesses of a serious crime and human rights violation.

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The first step was to map the current situation in regard to the position of victims in criminal and other relevant legal proceedings. To this aim a questionnaire was designed to guide the research, based on the minimum standards as laid down in EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the CoE Convention on Action against Trafficking and other relevant international standards. This resulted in three national reports on the current situation in Bulgaria, Romania and Slovakia. The reports will feed into national trainings of social workers and lawyers and act as a basis for lobby and advocacy by the partner NGOs. The outcomes of the national researches will also be discussed in Round Table sessions with the relevant stakeholders, including law enforcement, judges and prosecutors.

Following the national research, a group of 15-20 social workers per country will be trained to provide legal counseling and information to trafficked persons. Per country also 20 lawyers will be trained to provide legal aid to trafficked persons and defend their interests and rights during criminal and other legal proceedings. The trainings will be followed by a number of expert meetings on different topics, depending on the national situation. Aim is to create a sustainable network of social workers and lawyers, able to provide legal counseling and aid to trafficked persons, which will continue to operate after the closure of the project.

During the project a leaflet will be developed for trafficked persons to inform them about their rights, including a list of trained lawyers who can provide specialized legal aid. The leaflet will be distributed among all actors that are or might come in contact with (potential) victims of trafficking, including NGOs, social welfare centres, police and embassies.

Next to the training of social workers and lawyers, a model will be developed to systematically monitor court cases with respect to the treatment of the victim/witnesses concerned and the protection of their rights and interests. The monitoring will be carried out by law students who will be specifically trained to this aim. Together with the legal analyses, the outcomes will provide the relevant stakeholders with concrete recommendations on how to improve the situation of trafficking victims within the three legal systems in light of the relevant European and international standards. A joint summary of the national

reports and the outcomes of the monitoring process, identifying shared problems, will be made for regional advocacy.

In the third year a lobby & advocacy training will be organized for the partner NGOs to optimally use the outcomes of the project for national, regional and international lobby & advocacy to enhance the position of trafficked persons in criminal and other relevant legal procedures. The training will be followed by media events, Round Table meetings with national stakeholders, international experts and a selection of the trained lawyers and various other advocacy activities, depending on the country.

Netherlands Helsinki Committee

Julia Koster

Marjan Wijers



***NETHERLANDS HELSINKI COMMITTEE***



# 1. PART 1

## FACTS AND FIGURES

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### Introduction

This report will first discuss the facts and figures about trafficking in human beings as far as known. This is followed in Part 2 by a discussion of the provisions on trafficking and related offences in the Criminal Code. Part 3 provides an introduction and general overview of the position of victims of trafficking in criminal proceedings. In Part 4 specific attention is given to access to legal aid and representation of victims of trafficking. Part 5 discusses the current situation in Slovakia, both in the books and in practice, in regard to the basic rights of victims of trafficking as laid down in international documents. The report concludes with a summary and an overview of the main recommendations.

In this part an overview is given from the available figures on trafficking, in particular the number of courtcases and involved suspects and victims, and the number of identified victims over 2011 and 2012. Information Centre on Combating Trafficking in Human Beings of the Ministry of Interior of the Slovak Republic has provided the following data in line with the mandate of the Centre. The collection of statistical information in the field of trafficking has again proved to be a challenging exercise. Different state institutions have their own statistical systems, gather different types of data, to a different extent of detail and disaggregation, and it is not possible to extrapolate some requested data from the various systems. When there is no information provided or there is a comment „not available“ , the data is either not collected by responsible actors, or not possible to match with other statistical systems, or /too costly and time consuming.

## Courtcases

### Number of court cases

	Total no. of court cases	First instance	Appeal	Supreme court
2011	2	1	1	-
2012	3	3	-	-

Source: Information Centre on Combating Trafficking, Ministry of Interior

### Types of trafficking involved

	Prostitution	Other sectors (pls specify)	Internal	Cross-border
2011	Sexual exploitation (prostitution)	n/a	data not available	data not available
2012		Forced labour (2), trafficking in children (1)	data not available	data not available

Source: Information Centre on Combating Trafficking, Ministry of Interior

Given the fact that the information on the sector in which the exploitation took place is not collected by the Information Centre on Combating THB (section of the Ministry of Interior tasked with the collection of data on THB) and could be gained only by accessing the court files, it is not possible to specify in which sector the forced labour did take place. In regard to the cases of trafficking in children, the sentence mentioned in the table in 2012 relates to the offences punishable under § 180 (1) of the Criminal Code, reading: *(1) Anyone, who contrary to generally binding legal regulations, hands over a child to another person for the purpose of adoption, shall be sentenced to up to three years of imprisonment.* Information whether the above mentioned court cases concerned internal or cross-border trafficking are also not collected by the Information Centre and can be gained only through an access to case files.

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Total number of victims involved

	Total no. of victims involved	Female		Male		Prostitution	Other sectors
		Adults	Minors	Adults	Minors	Adults	Minors
2011	not known	not known	not known	not known	not known	not known	not known
2012	not known	not known	not known	not known	not known	not known	not known

Source: Information Centre on Combating Trafficking, Ministry of Interior

Total number of suspects involved

	Total no. of suspects involved
2011	12
2012	10

Source: Information Centre on Combating Trafficking, Ministry of Interior



## Number of (possible) victims identified

### Total number of victims identified

	Total no. of victims identified	Female		Male		National	Foreign	Prostitution	Other sectors
		adults	minors	adults	minors				
2011	31	14	1	11	-	30	1	10	21
2012	25	16	3	6	-	23	2	15	10

Source: Information Centre on Combating Trafficking, Ministry of Interior

The data in the table refer to victims identified both by state and civil society organizations. Not all 31 victims were provided assistance under the MoI Programme, despite being identified as victims or possible victims of trafficking in human beings. The most frequent reason for not being provided assistance in the Ministry of Interior Program to Protect Victims of Trafficking run by IOM, Caritas and NGO Dotyk, is that a trafficked person does not want/need any services provided by the Programme. Also, there have been cases, especially regarding third country nationals about whom the referring NGOs had reasonable grounds to believe they may have been victims of trafficking, and requested their enrollment in the MoI Programme, however, the Ministry of Interior refused to enrol them. The Ministry has conditioned their enrollment by the actual start of criminal investigation proceedings for the crime of trafficking in human beings despite the fact that in one of the cases, the proceedings had started for the crime of abuse of close and entrusted person.

# II. PART 2 CRIMINAL LAW

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## Introduction

There is no single law in the Slovak Republic which deals specifically with trafficking in human beings and all its aspects (prevention, protection of victims and prosecution of traffickers). The most important legislative provisions concerning trafficking in human beings are contained in Articles 179 to 181 of the Criminal Code (hereinafter CC). Other legal acts which are relevant to certain aspects of action against trafficking regulate areas such as the residence of foreigners, the accession to the Schengen area and its consequences, the provision of social services, socio-legal protection of children and social guardianship, the Labour Code, the Act on Benefits to Persons in Material Need, the Act on Health Insurance, etc. In addition, normative acts/regulations issued by the Ministry of the Interior govern the composition and functioning of the national co-ordinating body against trafficking and the provision of assistance to victims of trafficking.

The Slovak Criminal Code criminalises human trafficking and related offence as follows:

- a. Trafficking (Articles 179, 180, 181 CC)
- b. Forced labour (Article 18, section 1 Slovak Constitution)
- c. Slavery (regulated through international treaties having precedence over Slovak legislation in line with the Article 7 of the Slovak Constitution)
- d. Slavery-like practices (regulated through international treaties having precedence over the Slovak legislation in line with the Article 7 of the Slovak Constitution)
- e. Servitude (Article 18, section 1 Slovak Constitution)

## Trafficking in human beings

The definition of trafficking (concerning adult individuals) is provided in **Article 179** of the CC (“trafficking in human beings”) which reads:

- “(1) He/she who by means of deception, deceit, restriction of personal freedom (limitation of personal liberty), kidnapping, violence, threats of violence, threat of another severe injury or other forms of coercion, adoption or provision of money or other benefits to achieve the consent of the person on whom the other person is dependent, or abuse of his/her position or abuse of the vulnerability or otherwise vulnerable position of the other person deceives, transports, keeps, gives, or takes another, even with his/her consent, for the purpose of prostitution or other forms of sexual exploitation, including pornography, forced labour or forced services including mendicancy, slavery or practices similar to slavery, servitude, forced marriage, abuse to commit the crimes, removal of organs, tissues or cells, or other forms of exploitation, will be punished by imprisonment for four to ten years.*
- (2) As in paragraph 1, he/she shall be punished who deceives, transports, keeps, gives or takes any person under 18 years, even with his/her consent, for the purpose of childred prostitution or other forms of sexual exploitation, including children pornography, forced labour or forced services including mendicancy, slavery or practices similar to slavery, servitude, forced marriage, abuse to commit the crimes, unlawful adoption, removal of organs, tissues or cells, or other forms of exploitation.”*
- (3) The offender shall be sentenced to **seven to twelve years** of imprisonment, if he/she commits the offence **referred to in paragraphs 1 or 2**,*
- a) and thereby gains higher profit<sup>1</sup> for himself/herself or for another person,*
  - b) and causes the danger of death or grievous bodily harm of the another person*
  - c) the offender is a public figure*
  - d) **on the protected person**<sup>2</sup>,*
  - e) from special motive<sup>3</sup>, or*

<sup>1</sup>Article 138-140 CC

<sup>2</sup>The protected person shall also be considered a child pursuant to the provisions of § 139 of the Slovak Criminal Code. Since the „protected person“ is a child below 18 years of age, there is a duplication of provisions relating to the severity of sentence for trafficking in children as provided in the § 179 (2) - 4-10 years of imprisonment, and in the § 179 (3) b) - 7-12 years of imprisonment.

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- f) by using a more severe method of conduct<sup>4</sup>
- (4) The offender shall be sentenced to twelve to twenty years of imprisonment, if he/she commits the offence **referred to in paragraphs 1 or 2**
- a) and thereby gains considerable profit<sup>5</sup> for himself/herself or for another person,
  - b) and thereby causes severe bodily harm or death, or other particularly serious consequence<sup>6</sup>, or
  - c) as a member of a dangerous group<sup>7</sup>
- (5) The offender shall be sentenced to twenty to twenty-five years of imprisonment or to life imprisonment, if he/she commits the offence referred to in paragraphs 1 or 2
- a) and thereby gains profit of a great extent<sup>8</sup> for himself/herself or for another person, or
  - b) and thereby causes severe bodily harm or death of several persons.<sup>9</sup>

## Children

The definitions relating to trafficking in children are governed by several provisions in the Slovak CC:

- a. § 179 (2) under the heading trafficking in human beings (deals with all forms of exploitation): see above
- b. § 180 under the heading handing over a child to another person (deals with illegal adoption)
- c. § 181 under the heading handing over a child to another person (deals merely with child labour – duplication with § 179 (2) which already covers labour)

<sup>3</sup>Article 140 CC

<sup>4</sup>Article 138 CC

<sup>5</sup>Article 138- 140

<sup>6</sup>Article 142 CC

<sup>7</sup>Article 141 CC

<sup>8</sup>Article 138-140 CC

<sup>9</sup>Article 143 CC

**§ 180** Handing over a child to another person

*(1) Anyone, who contrary to generally binding legal regulations, hands over a child to another person for the purpose of adoption, shall be sentenced to up to three years of imprisonment.*

**§ 181** Handing over a child to another person

*(1) Anyone who, in return of a reward, hands over a child to another person for the purpose of the use of such a child for child labour<sup>10</sup> or for other purpose<sup>11</sup> shall be sentenced to four to ten years of imprisonment.*

**Comments**

In line with the UN Protocol, in the case of trafficking in human beings under the age of 18 (§ 179 par. 2) evidence of the so-called improper means (fraud, use of force, threat of the use of force, abuse of the victim's position of vulnerability, etc.) is not required. However, the law does not say so explicitly. The law states: "even with his/her consent", but does not explicitly indicate that in case of children, coercive means are not necessary for the offence to constitute trafficking. Since a child cannot "consent" to exploitation, by including the wording "even with his/her consent", in practise, the police may be led by this definition to consider whether any consent was given by the child in trafficking cases. This is especially not desirable because the law provides that a child beyond 15 years of age may give a valid consent to sexual activity and an adult is not criminally liable if engaging in sexual activities with such a child, giving the child's previous consent.

In this connection, attention needs to be drawn to the provisions of § 179 par. 3 (b) which regulates the imposition of a more severe penalty if the victim is a child. These provisions do not explicitly specify the term "child", but use the term "protected person" pursuant to the provisions of § 139 par. 1 (a) which defines a "protected person" as a child (a person younger than 18) and a pregnant woman.

In order to consider whether to prosecute under § 179 par. 2 or § 179 par. 3 (b), current practise makes a distinction whether or not the particular act was committed *in connection with the position, status or age of the protected person*

<sup>10</sup>Not defined in law.

<sup>11</sup>Not defined in law, discretionary for all possible forms of exploitation which may fall under this provision.



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(§ 139 par. 2 CC). This means that if, for example, a legal guardian of the child is involved in the trafficking of that child, the case would be prosecuted as aggravated under § 179 par. 3 (b).

Nevertheless, since a „child“ and a „protected person“ refer to essentially the same concept, notably a person below the age of 18, the current provisions in the CC are confusing and do not contribute to legal clarity.

Article 179 (2) defines *“placing a child under the control of another for the purpose of adoption in breach of general rules”* as one of the forms of trafficking. Paragraph 94 of the Explanatory Report of the CoE Convention states that: *“definition of trafficking in human beings does not refer to illegal adoption as such. Nevertheless, where an illegal adoption amounts to a practice similar to slavery as defined in Article 1(d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, it will also fall within the Convention’s scope”*.

So, when the illegal adoption does not mean a practice similar to slavery, this crime should be penalized under § 180-*handing over a child to another person*.

Finally, Article 181(1) CC states that

*“anyone who in return of a reward, refers a child in the charge of another person for the purpose of its use for child labour or for other purpose shall be sentenced to four to 10 years of imprisonment”*.

According to the Slovak authorities, this provision stems from the UN Convention on the Rights of the Child and concerns only parents or legal guardians of a child, thus having a narrower scope than 179(2) CC.

At the same time, § 181 is redundant as the conduct it criminalizes is already covered by § 179 (2), in particular given the fact that child labour is not defined in CC.

## Aggravating circumstances

Pursuant to the provisions of Articles 179 - 181 CC, trafficking is punished by imprisonment from 4 to 10 years. The aggravating circumstances, provided for in Article 179, are as follows:

- (3) *“The offender shall be sentenced to seven to 12 years of imprisonment, if he/she commits the offence referred to in paragraphs 1 or 2, and thereby gains higher profit for himself/herself or for another person; against a protected person; with special motive; or by using a more severe method of conduct;*
- (4) *The offender shall be sentenced to 12 to 20 years of imprisonment, if he/she commits the offence referred to in paragraphs 1 or 2, a) and thereby gains considerable profit for himself/herself or for another person; b) and thereby causes severe bodily harm or death, or other particularly serious consequence; or c) as a member of a dangerous group;*
- (5) *The offender shall be sentenced to 20 to 25 years of imprisonment or to life imprisonment, if he/she commits the offence referred to in paragraphs 1 or 2,*
  - a) and thereby gains profit of a great extent for himself/herself or for another person; or*
  - b) and thereby causes severe bodily harm or death of several persons.”*

In addition, the list of aggravating circumstances applicable to all crimes, which is provided for in Article 37 CC, includes the commission of an offence by a person who abused his/her occupation, profession, function or position to achieve unjustified benefit. According to the Slovak authorities, when trafficking is committed by a public official in the discharge of his/her duties, it is most likely that the prosecution will be carried out pursuant to Article 179 in conjunction with other offences, such as abuse of power (Article 326 CC), corruption etc., which leads to higher penalties.

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## **Clients of victims of trafficking**

Slovak legislation does not criminalise knowingly making use of the services of a victim of trafficking and no consideration has so far been given to making this a criminal offence.

## **Liability of legal persons**

The criminal law provisions establishing liability of legal persons for criminal offences have entered into force on 1 September 2010. According to the Slovak authorities, no legal persons have been subject to criminal or non-criminal sanctions for trafficking-related offences so far.

## **Comments**

All forms of trafficking, national and transnational, linked to organised crime or not, are covered by the provisions of the CC. As said above, in addition to Article 179(2) CC, trafficking in children is criminalised by Articles 180 and 181 (“trafficking in children”) CC.

As for the possible differences in the application of the definition of trafficking by courts in the Slovak Republic, such findings go beyond the scope of this research. This would entail gaining access to all decisions of all courts which have pronounced final judgements in trafficking cases, their throughout analysis and identification of trends (if any could be identified) so far.

## **Forced labour, slavery, slavery-like practices and servitude**

The Slovak legislation does not contain separate definitions of exploitation (beyond Article 179), forced labour, services, slavery like practices and servitude. Forced labour and services, slavery like practices and servitude are prohibited by the Slovak Constitution and customary international law obligations. To our knowledge, the provisions on slavery, slavery-like practices and servitude have not been used in practice at all.

## Offences associated with trafficking

### Prostitution

Prostitution is not a crime or administrative offence in Slovakia. However, prostitutes and their clients may be fined, for instance, for offending public morals, endangering public health or safety or for riotous conduct. This is rather general practice.

While prostitutes are not criminalized in Slovakia, procuring and pimping are:

### § 367 CC Procuring/Pimping

Procuring and/or pimping is criminalized in **§ 367 CC**, which reads:

- (1) *Anyone, who procures, induces, entices, exploits, acquires or offers another person to engage in prostitution, or anyone who draws benefits from the prostitution engaged in by another person, or allows such engagement, shall be sentenced to up to three years of imprisonment.*
- (2) *The offender shall be sentenced to one to five years of imprisonment, if he/she commits such offence by using a more severe method <sup>12</sup>of conduct*
- (3) *The offender shall be sentenced to three to ten years of imprisonment, if he/she commits the offence specified in paragraph 1 against a protected person (protected person is child- any person below 18 years of age- and a pregnant woman, as defined in the § 139 CC)*
- (4) *The offender shall be sentenced to seven to twelve years of imprisonment, if he/she commits the offence referred to in paragraph 1*
  - a) *and thereby gains considerable profit for himself/herself or for another person,*
  - b) *as a member of a dangerous group, or*
  - c) *against a person under the age of fifteen.*
- (5) *The offender shall be sentenced to ten to fifteen years of imprisonment, if he/she commits the offence referred to in paragraph 1 and thereby causes grievous bodily harm or death.*

<sup>12</sup> As defined in Art.138 CC

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**Comments**

§ 367 (3) and (4) (c) are not in line with the standards of the UN Protocol and the CoE Convention. Any recruitment, transportation, transfer, harbouring and receipt of a child for the purpose of exploitation shall be regarded as trafficking in human beings. This provision has particular consequences for the identification and prosecution of child trafficking. We know about the case where a child victim was not recognized as such, and consequently placed in re-educational facility for children with behavioural problems instead of being provided assistance and protection as a child victim. Later, the child was identified by an NGO worker, and provided a proper care in a children's home for child victims of trafficking. As said, the above mentioned provisions are redundant and do not contribute to legal clarity when investigating and prosecuting trafficking.

Provisions on procuring/pimping are being used sometimes to prosecute trafficking mainly when there is not enough evidence to prosecute for trafficking or when there are difficulties in proving the use of coercive means.

If a woman who initially voluntarily engaged in prostitution later claims that she has been subjected to trafficking, the trustworthiness of such person is questioned and often the entire case stands on such trustworthiness considerations, her possible consent, knowing what she was going to do, and „it only went wrong“, etc. In theory prostitutes can also be trafficked, in practice, however, they do not enjoy the same legal protection, because they are not considered reliable/trusted witnesses in line with the public conception that prostitutes are morally corrupted women. The same reasoning is upheld in many cases of women, victims of domestic violence, rape or other sexual offences, and also domestic/agricultural workers in degrading conditions. The widespread conceptions are that they „sought trouble“, „it was their fault“, „they contributed to the fact that it all went bad“.

**§ 201 Sexual abuse**

*(1) Anyone, who has sexual intercourse with a person younger than 15 years of age, or sexually abuses such a person in any other way shall be sentenced to three to ten years of imprisonment.<sup>13</sup>*

<sup>13</sup> Children below 15 cannot consent to have sexual intercourse so if someone has a sexual intercourse with a child below 15, he/she is criminally liable.

(2) *The offender shall be sentenced to seven to twelve years of imprisonment, if he/she commits the offence referred to in the paragraph 1*

*a) by using a more severe method of conduct*

*b) against a protected person<sup>14</sup>*

Protected person as defined by the CC is a child (a person younger than 18) and a pregnant woman.

### **§ 211 CC Corrupting good morals of youth**

*1. Anyone, who exposes, even through negligent conduct, a person below 18 years of age to the danger of corrupting his/her good morals by means of luring him/her into such immoral conduct, enabling him/her to live immorally or enables him/her to engage in criminal conduct as defined in this Act, or prevents him/her from enrolling in and attending a compulsory schooling, shall be sentenced to 2 years of imprisonment.*

### **§ 364 1 c) Riotious conduct**

*“Anyone, who verbally or physically, in public or in a publicly accessible place exercises riotous conducts or acts of gross indecency and causes public outrage by having sexual intercourse, performing sexual exhibitionism or other pathological sexual practises in such a place, shall be sentenced to 2 years of imprisonment.”<sup>15</sup>*

<sup>14</sup> As stated above since a „child“ and a „protected person“ refer to essentially the same concept, namely a person below the age of 18, the current provisions in the CC are confusing and do not contribute to legal clarity.

<sup>15</sup> Riotious conduct provisions can be used against women engaged in prostitution.



## Publication of case law on trafficking

All court decisions which have come into force are published on websites and accessible through the web. There is no central system to specifically collect case law on trafficking. Case law on first instance and second instance courts is rather easily accessible through the state run websites [jaspi.justice.gov.sk](http://jaspi.justice.gov.sk) and <http://www.zbierka.sk/sk/judikaty>.

Supreme Courts judgements are published on the website of the Slovak Supreme Court but the search system is not very user friendly ([www.nssr.gov.sk](http://www.nssr.gov.sk)).

Another portal (paid service) which collects case law is [www.judikaty.info](http://www.judikaty.info) where one can search for the jurisprudence of the Slovak and Czech courts including Supreme Courts and also the European Court of Justice.

According to our knowledge, no trafficking case has reached the Slovak Supreme Court so far. Trafficking cases are also tried by the Specialised Anti-Mafia Court, when organized criminal groups are involved. However, we were unable to find any final judgements on trafficking cases through the website. We have noticed that judgements may be published selectively. So far, we managed to access only corruption related judgements involving organized criminal groups.



# PART 3

## GENERAL POSITION OF VICTIMS IN CRIMINAL PROCEEDINGS

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### Definition of ‘victim’

The CoE Convention defines “victim of trafficking” as any natural person who is subjected to trafficking as defined in Article 4 of the Convention. Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

The status of a “victim of trafficking” in Slovakia is not defined by law. The only relevant definition (outside criminal law) is contained in administrative *Regulation No.180 of December 2013 of the Minister of the Interior on Ensuring the Support and Protection of Victims of Trafficking in Human Beings*<sup>16</sup>, according to which a victim of trafficking is:

- *a citizen of the Slovak Republic, if there are reasonable grounds to believe that he/she was subjected to trafficking on the territory of the Slovak Republic or abroad;*
- *a foreign national or a stateless person, if there are reasonable grounds to believe that he/she was subjected to trafficking on the territory of the Slovak Republic or abroad*

For additional rights of victims enrolled in the Ministry of Interior *Program on Ensuring the Support and Protection of Victims of Trafficking in Human Beings*, see the section on the Programme below. That said, it is important to note that the Program is regulated by administrative Regulation of the Ministry of Interior and is not binding on other state actors, but only on the Ministry of Interior and service-providing NGOs under contractual obligation with the MoI.

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<sup>16</sup>Under revision currently, the regulation is a Ministry of Interior Program to Protect and Assist Victims of Trafficking.



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Further, there is no legal obligation to give special consideration to the fact that the person has been a victim of trafficking under the above Program in relation to relevant administrative, civil, or criminal proceedings.

### Position as injured party

From a criminal law perspective, trafficking victims (as any other victim of a crime) fall within the category of “injured party”, which is used to describe victims of any criminal offence within the meaning of Articles 46 to 50 CC. The term injured party cannot be replaced by the term victim when investigating and prosecuting trafficking. NGO providers call trafficked persons victims, as does the above mentioned administrative regulation of the Ministry of Interior. However, such term does not have any legal rights attached to it from a criminal investigative, administrative or judicial point of view. Trafficking victims may also fall within the category of “witnesses” if they file a complaint, co-operate with the authorities and testify in criminal proceedings. Therefore, in criminal proceedings, the victim has the position of injured party and witness. Different procedural guarantees apply to these two positions.

The Criminal Procedural Code (CPC) defines “injured party” as the person who was bodily injured, or who suffered material, moral or another form of damage caused by the criminal act, or whose other rights and freedoms protected by the law were violated or endangered (Article 46 (1)). The injured person can claim these damages in the criminal proceedings against the offender.

The injured party may be represented by a proxy (§ 53 and 54 of CPC). As a proxy for the injured party, an authorized representative of the organization providing help to the victim may also act when certain conditions prescribed by law are met<sup>17</sup>. The proxy may submit evidence, requests and legal remedies. The proxy is also entitled to participate in all proceedings on the same footing as the injured party and has the right to submit concrete petitions for settlement or agreement with the defendant in regard to compensation of damages. Such petitions can also be submitted by probation and mediation officers.<sup>18</sup> A proxy need not be a lawyer. A proxy can be anybody with full legal capacity. The proxy is entitled to claim legal remedies on behalf of injured party.

<sup>17</sup> As provided in the Sec. 53 of the Criminal Procedure Code

<sup>18</sup> Sec. 54 of the Criminal Procedure Code.

The injured party<sup>19</sup>(and/his or her proxy) has the right:

- to express opinions whether they agree with criminal prosecution;
- to claim damages either in the criminal proceedings or the injured party may be transferred with their claim to civil proceedings;
- to propose that evidence shall be executed („vykonanie dokazovania“, meaning examination of witnesses and experts, reading of documents)or supplemented;
- to submit evidence;
- to inspect and study files;
- to participate in the trial and in a trial held in public concerning an appeal or guilty plea<sup>20</sup> and sentencing („dohodu o vine a treste“)<sup>21</sup>;
- to express their opinion on evidence produced;
- to have the closing speech;
- to appeal in regard to the claimed damages.

According to the law, information on the fact that the accused has been released from custody or escaped from custody, or that the convicted was released from prison or escaped from prison is also provided if the injured party could be in danger, or in other cases if requested by the injured party. That said, carrying out a risk assessment is not formalized in the Slovakian police service (in trafficking cases). It is questionable, if such information is provided proactively in instances when not requested by the injured party.

More on this subject will be discussed under part 5, Right to information and Right to protection of privacy.

<sup>19</sup> Sec. 45-49 of the Criminal Procedure Code ; also see the section where the difference between injured party and the witness are explained.

<sup>20</sup> Through a guilty plea “dohoda o vine a treste” – between accused and prosecutor, the sentence can be lowered.

<sup>21</sup> If the results of investigation give reasonable grounds to conclude that the act constitutes a criminal offence and that it was committed by the accused who confessed to having committed it, admitted the guilt, and the evidence supports the truthfulness of his confession, **the prosecutor may initiate a plea bargaining procedure.** After a plea bargain agreement has been reached concerning the guilt, punishment and other verdicts, the prosecutor shall file a motion asking the court to accept the plea bargain agreement as concluded.

## Criminal investigation

The criminal police, the judicial police<sup>22</sup> and prosecutors all have responsibilities in the investigation of a crime. One area where there is a clear distinction between the two types of police is the formal interview of witnesses and suspects. At least one judicial police officer must conduct the interview. A judicial police officer can conduct an interview alone or together with another person, including a criminal police officer.

The final signature of the witness statement must be witnessed by at least two people. In practice, judicial police officers will frequently conduct interviews alone and then ask someone else to witness the signature of the person making the statement (normally, they call a colleague to come and sign at the end of the witness statement). The signature must be witnessed in the presence of the person making the statement, but that witness does not have to be a police officer, judicial or criminal: it can be any suitable convenient person.

The criminal police question witnesses but do not conduct formal evidential interviews. A witness may be questioned a number of times<sup>23</sup> by the criminal police before the judicial police take a formal statement. There are no units or officers (criminal or judicial) that formally specialise in interviewing vulnerable witnesses (including victims of trafficking or sexual offences and children,). The decision on which officers will deal with a particular investigation is taken by the unit supervisors. There are formal criteria for such selection. A commonly reported criterion is that female officers tend to be allocated to cases involving children and female victims, particularly in cases of domestic violence or sexual assault.

The dual interview system as explained above (criminal/judicial police system) makes interviews prolonged and necessarily involves changes in interviewers (from criminal to judicial police). This is particularly burdening when dealing with trafficking victims. As a practical measure, efforts to work together when planning interviews to reduce duplication and make the process as comfortable for the interviewee as possible have been reported by individual police officers. Also there is a tendency to have a criminal police officer take part in the initial interviews with the judicial police.

Where there is a significant discrepancy between the statement of the victim and the account of a suspect, the judicial police investigator can decide to have a 'face to face' encounter between them called «confrontation » as provided for in the

<sup>22</sup> One of the main differences between the criminal and judicial police is that the criminal police does not conduct formal evidential interviews. The judicial police takes a formal statement.

<sup>23</sup> Minimum three times in pre-trial proceedings

Code of Criminal Procedure. The judicial police have a legal obligation to eliminate significant discrepancies in allegations between the accounts of the suspect and the witness/victim. Depending on how the prosecutor assesses the strength of the evidence he/she can confirm or cancel the judicial police officers' decision to hold a confrontation. The defence can complain to the prosecutor if a confrontation is not held. Confrontations have been held also in trafficking cases. If a child is below 15 years of age, a confrontation cannot be held. A new amendment to the Penal Code adjusts the age to 18 years.

## Main problems

**One of the major problems in practice in relation to the position of victims of trafficking in criminal proceedings is the fact that they are routinely subjected to confrontation.** There is a procedural obligation for the police to eliminate any major discrepancies in the accounts of the victim and the perpetrator, and the institute of confrontation is supposed to serve that, if no other evidence can substantiate the claim of either party. The prosecutor may even object that the confrontation has not taken place. **Confrontation leads to direct victimization of a victim who has to face the perpetrator and his lawyer face to face.**

**The second major problem is the lack of legal aid/representation of the victim in the criminal proceedings.** There are in general very few lawyers experienced in representing victims of trafficking. Centre for Legal Aid does not have statutory mandate for representation of persons in criminal proceedings. In 2013, as reported by the Centre, no victim of trafficking was assisted by the Centre in other than criminal proceedings either. Free legal aid provided by the state is therefore unavailable for trafficked persons in practise. Since the trafficking discourse in the country has evolved through the discourse on measures aiming at eliminating violence against women, and victims of trafficking (for sexual exploitation) risk to be victimized in the same way as victims of domestic and/or sexual violence throughout the proceedings, various renounced lawyers experienced in representing victims of violence have gradually developed expertise also in trafficking. They numbers however, are still very low. Their services are expensive, even though some provide assistance pro bono. Projects of NGOs funded under the Ministry of Interior Program to Assist and Protect Victims have

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so far not funded the provision of legal aid. From time to time, experienced trafficking lawyers take a few cases on *pro bono* basis as said above. However, this is not a systematic way to approach the problem, since proceedings are lengthy, extremely demanding, and can take years.

**A third major problem is linked to the questioning of victims by the police who lack experience, and often lack genuine will to view the person as a victim of crime and not as someone guilty for what has happened to him/her.** Interviews are often carried out in a patronizing manner and in the spirit of lack of trust. The police officers often request a psychological/psychiatric vetted expert opinion on the victim. **We have not encountered a situation where such medical opinion was requested on the perpetrator.**

# IV. PART 4

## ACCESS TO LEGAL AID/LEGAL REPRESENTATION

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**Victims have the right to a lawyer to protect their rights, to inform them about their role in the legal proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. The right to a lawyer includes civil or other proceedings to claim compensation for damages suffered.**

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### **Free legal aid in civil and administrative proceedings**

The Center for Legal Aid (hereinafter also referred to as “Center”) is in charge of providing free legal aid (except from criminal proceedings). The Center was established by the Act No. 327/2005 Coll on the provision of legal aid for people in material need (hereinafter the Act on Legal Aid). It is a state budgetary organization connected to the Ministry of Justice (its founder). With the aim to secure effective access to justice, the Centre covers the provision of legal aid for natural persons whose personal financial situation makes it impossible for them to bear the expenses of legal services in order to assert their rights. Such persons have to prove their financial situation which makes them eligible for the provision of this aid. Once they prove it, the Centre can start providing legal aid within terms specified in law.

**The Center provides legal aid in domestic legal disputes and cross-border disputes in civil, family, labour, and commercial matters, in administrative justice procedures ( e.g. in proceedings for review of decisions of administrative bodies, etc.) and in proceedings before the Constitutional Court.**

Pursuant to § 12 sec. 1 of Act on Legal Aid, if an individual (applicant) was granted free legal aid by the decision of the Center for Legal Aid, the participant signs an agreement on the provision of legal aid with a chosen attorney or with the Center and grants power of attorney to the attorney concerned or the Center for acts related to the provision of legal aid.

**If an individual (applicant) does not grant the power of attorney for acts related to the provision of legal aid to the Center or the designated attorney or revokes the power of attorney, he/she is not entitled to the appointment of another lawyer.** This does not apply if the individual (applicant) proves inaction (“nečinnosť” in Slovakian) of the attorney or his/her relationship with the counterparty.

The Center appoints the attorneys from the list kept by the Slovak Bar Association. When appointing the attorney, the Center considers, e.g., the place of residence of the applicant and the attorney, etc. **In principle, the attorney is appointed, not chosen by the applicant.** According to § 87 sec. 2 of Act no. 586/2003 Coll. on advocacy, the Slovak Bar Association keeps the list of attorneys who may be selected by the Center to provide legal aid pursuant to the Act on Legal Aid. The list of attorneys must be sent on a regular basis to the Ministry of Justice and the Center for Legal Aid. **Free legal aid pursuant to the Act on Legal Aid is not provided in criminal matters.**

The Center does not provide free legal aid in criminal proceedings. Free legal aid in criminal proceedings is provided according to the CPC, as will be discussed below.

**In practice, victims of human trafficking rarely decide to file a criminal complaint or initiate civil proceedings.** They cooperate with NGOs and seek for psychological aid, help in re-socialization, and/or financial aid. Many NGO representatives consider the possible opening of civil or criminal procedures as secondary traumatization. Thus, trafficked persons do not really get any free legal aid pursuant to the Act on Free Legal Aid. Trafficking as other offences can also be investigated and prosecuted *ex officio* but this does not happen in practice.

Pursuant to § 30 CPCa participant in a civil procedure who asks for an attorney and who meets the criteria for the waiver of court fees (§ 138 of Civil Procedure Code)<sup>24</sup> will be referred by the court to the Center for Legal Aid. The court must advise the participant about this possibility.

<sup>24</sup>Pursuant to § 138 sec. 1 of the Civil Procedure Code on a motion filed by a party, the presiding judge may in full or partly exempt a party from paying of court fees if the circumstances of the party give basis for such decision (the court accounts material, social, health and other conditions) and if the motion does not constitute an arbitrary or manifestly unfounded attempt at exercising or defending one’s right. Unless the presiding judge decides otherwise, exemption is granted in respect of the entire proceedings and has a retroactive effect; however, fees that have been paid prior to the exemption decision shall not be reimbursed.

Pursuant to § 6 sec. 1 of the Act on Legal Aid, a participant in judicial proceedings before a civil court (according to the Civil Procedure Code) may obtain free legal assistance pursuant to the Act on Legal Aid when meeting the following conditions:

- 1) the person is in a state of material emergency which means that his/her income is less than 1,4 times of the monthly minimum wage<sup>25</sup> and he/she has no other assets for covering the costs of legal assistance (if the amount is more than 1,4 times but less than 1,6 times of the monthly minimum wage, the party should cover 20% of the costs of legal assistance);
- 2) the dispute is not obviously unsuccessful (e.g. due to missed deadlines, lapse of limitation period, lack of evidence);
- 3) disputed amount must exceed the value of the minimum wage set by law<sup>26</sup> - such a condition is applied in cases where the financial value of the dispute can be quantified.

Pursuant to § 10 sec. 5, the Center decides on the application within 30 days of receiving a request that meets all the requirements; this deadline cannot be extended. The decision can be appealed within 15 days of its receipt. The appeal must be submitted to the appropriate regional court. The applicant must be instructed about this possibility.

## Free legal aid in criminal proceedings

**In criminal proceedings, free legal aid may be obtained in line with § 47 section 6 and 7 Criminal Procedure Code (hereinafter “CPC”) according to which:**

*“the judge may appoint an attorney **in case the victim claimed for damages** and does not have sufficient funds to pay the costs associated with his/her claim, if it deems necessary to protect the interests of the victim. The fact that the victim does not have sufficient funds must be proved. If in the course of the proceedings, it is found that the victim has sufficient funds to pay the costs of claiming damages in criminal proceedings, the representative appointed shall be cancelled by the authority which appointed the representative.”*

<sup>25</sup>Act no. 601/2003 Coll. on subsistence minimum, currently it is the amount of 194,58 euro

<sup>26</sup> Act no. 663/2007 Coll. on minimal wage, currently it is the amount of 337,70 euro



Contrary to civil cases, in criminal proceedings the attorney is selected by the judge. The attorneys are selected from the list of attorneys kept by the Slovak Bar Association. There are no other special rules when choosing the attorney.

According to § 18 sec. 2 of Act no. 586/2003 Coll. on Advocacy, each attorney is obliged to practice his/her legal profession with due care, which means that he/she acts honestly, conscientiously, adequately and consistently uses all legal means and applies them in the best interest of the client. He/she takes care about the practicalities and efficiency of legal services. This provision must guarantee that the client obtains proper legal aid. Otherwise he/she may file a motion for a disciplinary procedure or ask for damage that was caused by inadequate legal service. We cannot report on instances where this happened, as this goes beyond the scope of this research.

**What we can say is that victims do not have access to a lawyer from the very first contact with the authorities.** They are assisted by NGOs, but the quality of provision of legal aid varies and the judge (in criminal procedure) or the Center (in civil procedure) only decides on the appointment of an attorney, if the trafficked person decides to start any proceedings.

The victim, as injured party, may also be represented by a proxy (§ 53 and 54 of CPC), as explained under Part 3. As a proxy, an authorized representative of the organization providing assistance to the victim may act for the injured party when other conditions prescribed by law are met<sup>27</sup>. The proxy may submit evidence, requests and legal remedies. The proxy is also entitled to participate in all proceedings on an equal footing as the injured party and has the right to submit concrete petitions for settlement or agreement with the defendant in regard to compensation of damages. Such petitions can also be submitted by probation and mediation officers.<sup>28</sup> There is no legal obligation as to the specific training the proxy has to undergo.

**A victim who is seeking compensation of damages**, but does not have adequate resources to pay the related costs may be appointed a legal representative (a lawyer) in the pre-trial procedure once charges have been brought (**not before**).<sup>29</sup> This decision is taken, on the proposal of the prosecutor, by the judge in the pre-trial proceedings or by the presiding judge in the trial, if considered necessary to protect the victim's interests. The victim must prove that she/he has insufficient means.

<sup>27</sup>Sec. 53 of the Criminal Procedure Code.

<sup>28</sup>Sec. 54 of the Criminal Procedure Code.

<sup>29</sup> The appointed legal representative in the pre-trial procedure can appeal against the decision of the prosecutor not to press charges.

- If the prosecutor decides not to prosecute/dismiss the case, which implies that this would happen in pre-trial proceedings, the injured party can submit a complaint against this decision but only against the part on claimed damages. The injured party may be represented by a proxy (or may have his/her attorney at law), however, state provided free legal aid to submit such an appeal is not available.

## Children

There are no special provisions in regard to child victims. Due to the limited legal capacity of a child, the legal guardian (usually a parent or another person appointed by court) will act for the child. **The legal guardian (parent or another person appointed by court) may empower organizations providing help to victims to act for the child victim as the child's lawyer.**

In case a child does not have a legal guardian, or if the legal guardian cannot act for the child due to a serious reason (e.g. parent involved in trafficking, the court will appoint a guardian for the purpose of the criminal proceedings (appointed guardian). In the case that the perpetrator of the crime is a person close to the child, i.e. a parent (e.g. in case of domestic violence, sexual abuse or rape, etc.) and the child is a victim, the court will appoint a collision guardian who will act for the child due to the conflict of interests.

**The legal guardian may also elect an attorney for the child, but this does not often happen in practice.** In case that the injured person **who claims compensation of damages** does not have sufficient financial resources to cover costs of their claim, the judge may appoint a legal representative free of charge. Children obviously do not have sufficient financial resources. As a general rule the attorney appointed by the court acts on behalf of the injured person. Nevertheless, the attorney cannot withdraw the claim for compensation of damages without written consent of the injured. If the injured is a child, clearly, the guardian has to give a written consent for such withdrawal.

In criminal proceedings against juveniles and criminal proceedings against a person who committed a crime against a child, a number of problems in regard to the appointment of a guardian for a minor may occur. **The Criminal Procedure Act does not specify the reasons for appointing a guardian for a child victim and the legal interpretation is left to legal practice.**

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The main reasons for excluding a parent from representing the child are a conflict of interests between the parent and the child or a conflict of interests among children of the same parents. The same applies to a conflict of interests between adoptive parents and the child or between a guardian and the child. There also exists a conflict of interest if one of the parents committed a criminal offense to the detriment of the child, if one of the siblings committed a criminal offense to the detriment of another sibling, or in case of the prosecution of an unmarried partner of the mother of a minor child who was victim of a criminal offense. This includes, in particular, moral offenses and offenses against family and youth.

Appointment of a collision guardian for the purpose of the criminal proceedings is also necessary if, due to the absence of its parents, a child victim is in the care of adult siblings, grandparents or others who were appointed as guardians in civil proceedings. A similar situation occurs in the absence of a legal guardian when the child is placed in foster care. **The Criminal Procedure Code does not preclude such persons from acting as appointed guardians for the purpose of criminal proceedings.** The decision is taken by the judge in the pre-trial proceedings and by the chairman of the senate (panel of judges) in the trial proceedings. Only in cases where the crime against the child is committed by a person close to the child, the legislature favors appointment of a social protection body or an authorized representative of the organization providing help to victims as guardian for the purpose of criminal proceedings.

As in the case of adults, a child - injured party- may also be represented by a proxy (§ 53 and 54 of CPC). This can also be an authorized person from a support organization.

When interviewing a child younger than 18 years, the presence of a pedagogue, a social officer, a child psychologist or an expert is required. If the presence of the legal guardian may contribute to the proper questioning of the child, the legal guardian will be called to be present as well. The interview is usually video-recorded and the child can be interviewed in the later stages only exceptionally. When interviewing a child in regard to facts that, given their age, could have adverse affect on their mental and moral development, the interview should be carried out in such a way that further interviewing the child in the trial-stage is avoided. In order to avoid further hearing of the child the court may decide to take evidence by reading the minutes so that the child does not have to appear at court and face the trial. A person that has been assisting when hearing the child may be called to be heard in the trial-stage for accuracy and completeness of the record or to give evidence about the manner in which the hearing was conducted and the way the child gave his or her testimony.

In case of crimes committed against a child younger than 18 years by a person who is close to the child or in whose care the child is, and there is a need to repeat the hearing after the charges were brought, the next hearing of a person in pre-trial proceedings may only be carried out with the consent of the legal guardian or the appointed guardian.

The presence of a child psychologist is required when interviewing the child younger than 15 years. The child is first asked to tell what they know about the case, consequently the child is questioned in a manner appropriate to their age. The language used should be adjusted to the child's age. This is mainly the role of the child psychologist which is of a high importance. It is also preferable that the interview is led by a woman to make a child more comfortable.

## Main problems

There are three major problems in regard to access to free legal aid for victims of trafficking:

### **- the lack of financial resources from the “Program for support and protection of victims of trafficking”**

The goal of this Program is to provide various types of help, such as comprehensive care, financial assistance, social assistance, psychosocial counseling, psychotherapy services, legal advice, health care, retraining courses, etc. **Although the Program is deemed to also provide legal aid, in practice there is a lack of financial support and no money left for any relevant and qualified legal aid, even if the assisting organization wants to refer the victim to a lawyer, or is in a position to hire a lawyer for this purpose.** Therefore, no legal aid is provided in practice. The lack of legal information may then cause the victim to be afraid to initiate criminal or civil proceedings as they do not have enough relevant information. As reported above, trafficking offenses can also start *ex officio*, but this does not happen in practice. Clearly, if *ex officio* proceedings start, victims are obliged to testify by law, even if they did not press charges/filed complaint themselves. It would be desirable if victims were accompanied by a lawyer/proxy to testify even in these instances, however, NGOs involved in the Ministry of Interior Programme usually do not have resources and expertise to be able to do so. **Lack of basic legal training of NGO and state social workers**

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**Social workers from the NGOs that are financially supported by the “Program for support and protection of victims of trafficking” lack legal training and therefore cannot provide basic legal support to victims.**

They mainly focus on social and psychological assistance and accept if the victim does not want to initiate criminal proceedings. This is not slowly changing at least in some selected NGOs owing to the HRL/Netherlands Helsinki Committee project. We assume that if they were more informed about the possibilities for free legal aid and basic rights and remedies, they could assist victims also with ongoing judicial proceedings and support them when deciding whether to start the proceedings, whether criminal, civil or administrative, or not.

**Lack of experience and specialization**

As most victims decide not to file a complaint, there is a lack of experience in this field. Also, due to the small number of cases, and extremely lengthy and complex proceedings, there is little motivation to specialize in this area. We also sometimes see an unprofessional and un-empathetic approach of police officers, prosecutors, and judges. As there are so few victims who initiate criminal proceedings, it is hard to draw general conclusions in regard to the quality of legal aid. Most cases are either dropped and do not reach the court (charges are not brought), or they are not investigated as trafficking. We are not aware of any *ex officio* prosecution of trafficking so far.

# V. PART 5

## RIGHTS OF VICTIMS

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In this part the rights of victims before, during and after criminal and other relevant procedures are discussed. First the international norm is given (see boxes), followed by a discussion of the national situation.

### Right to information

**Victims have the right to information about their status, their rights and the relevant judicial and administrative procedures, including information on available remedies.**

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The provision of information to victims, whether children or adults, is regulated by law. As far as criminal proceedings are concerned, the police officer or prosecutor concerned who comes into contact with a person claiming that he/she was subjected to a crime have the obligation to instruct the injured party about their rights and the organisations providing help to victims in Slovakia<sup>30</sup> at the moment of first contact with that person, in writing.

There are no specific provisions relating to children, so children will receive the same information as an adults. However, when the victim is a child, all information is supposed to be read out and explained in a child friendly manner to help them understand the content of the instruction. With regard to children younger than 18 years, a child psychologist should be called to provide assistance to the child. In reality, whether this is actually done depends on the individual sensibility of the police officer in each individual case. Therefore no general statement can be made.

Information on the fact that the accused has been released or escaped from custody, or that the convicted was released or escaped from prison should be provided if the victim could be in danger, or when requested by the victim.

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<sup>30</sup>The provision of information about organisations providing help to victims in Slovakia includes the name of such organisations and contact information such as the phone number or infolink. The following organisations providing help to victims exist in Slovakia and are stated in the written instruction for the injured party - *Náruč, Pomoc obetiam násillia, Aliancia žien Slovenska, Pomoc ohrozeným deťom - centrum nádeje*.

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## **Main problems**

Victims usually decide not to start criminal proceedings/file a complaint and therefore do not receive information on their procedural rights from the law enforcement agencies. From the criminal law point of view victims only have the right to be informed on their rights if they file a complaint, which most victims do not do. If they do, the information by the police is provided in a very formal way, usually just by handing over a written form without making sure that the person has understood properly. There are also no specific provisions relating to children: children receive the same information as adults, which is a serious shortcoming.

If an NGO is the first contact organization, the provision of information is better. NGOs inform victims about the reflection period, the MoI Programme, etc. NGOs, which are financially supported by the “Program for the support and protection of victims of trafficking” of the Ministry of Interior have the responsibility to provide trafficked persons with social, health, and psychological aid during the reflection period and for some time beyond. However, as stated under the section on legal aid, although these NGOs are supposed to also provide legal aid, they are generally not able to do so, due to lack of financial and professional support. Moreover, social workers mainly focus on providing social and psychological assistance and are not trained in providing legal information or support to victims, and are not qualified to provide information on criminal proceedings.

Therefore, victims are generally improperly informed about their rights. The number of victims who file a complaint/are involved in judicial proceedings is very low.

## Right not to cooperate with law enforcement

**Victims have the right to refuse cooperation with the prosecution authorities.**

Victims are free to decide whether or not they want to file a complaint. However, the prosecution may start an investigation *ex officio*, although this rarely happens. **If the victim is called to testify they are obliged to do so.** There are a few exceptions.

A witness may refuse to give testimony in case this would incriminate themselves or if he or she is a relative of the accused in a direct line, sibling, adoptive parent, adoptive child, spouse or partner. A witness is entitled to refuse to give testimony in order to prevent themselves from self-accusation or accusation of close persons, i.e. if there would be a danger of criminal prosecution of such person.<sup>31</sup>

## Right to protection of privacy and safety/ right to witness protection

**Victims have the right to protection of their private life and identity. They have the right to request that their life and identity are protected during criminal proceedings and that the press and public are excluded from the court room. Victims have the right to protection of their safety. The police should examine whether the safety and security of the victim is ensured.**

**If victims testify in criminal proceedings, they have the right to witness protection and to be treated with respect and dignity. They have the right to be protected from threats, insults, intimidation and any other assault before, during and after the investigation and prosecution.**

<sup>31</sup> A witness also has the right to refuse to give testimony if their testimony would violate a confessional secret (i.e. a secret revealed in religious confession) or confidential information which was given to them orally or in writing as a person entrusted with pastoral care.



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There are a number of specific provisions to protect the privacy and safety of victims before, during and after the criminal procedure, given the fact that the injured party/victim is a witness in the criminal procedure.<sup>32</sup> **These apply to all victims of crime, not specifically victims of trafficking.**

The regulations on the protection of witnesses are contained in two legal acts, the Criminal Procedure Code “CPC” (Act no. 301/2005 Coll.) and the Act on witness protection (act No. 256/1998 Coll.). The law makes a distinction between “confidential witnesses” (Article 136 of CPC), “threatened witnesses” and “protected witnesses” (Witness Protection Act).

### Confidential witnesses

Pursuant to § 136 CPC a witness is allowed not to provide identification data (personal data leading to the identification of such person) in criminal proceedings if this would put a risk to the life, health or physical integrity of the witness (whether child or adult) or that of persons close to the witness. At the trial, however, the witness must say how he/she obtained the information (facts) he/she gives testimony about. Materials including identification data of the witness are not put into the court’s files but must be deposited at the prosecution or the presiding judge in the trial proceedings. The identification data are put into the file only when the threat has passed.

Before examination of a witness whose identity must remain concealed, the police, prosecutor or the court may take the necessary measures to protect the identity of the witness, such as a change of their appearance and voice, or they may interrogate the witness with the use of audio-video technical equipment.<sup>33</sup>

### „Threatened“ or „protected“ witnesses

„Threatened“ or „protected“ witnesses (and their family) may enroll in the special protection program on the basis of the Act on Witness Protection according to § 3 of this Act. A difference is made between the „threatened“ and the „protected“ witness (analysed in the separate chapter)<sup>34</sup>.

According to § 134 (1) CPC, if a witness cannot appear for examination because of his/her age, illness, bodily, sensory or mental handicap or because of other serious reasons, he/she may be examined by using technical devices for the trans-

<sup>32</sup>§ 136 of the Criminal Procedure Code

<sup>33</sup> Sec. 136 subsec. 1-3 of the Criminal Procedure Code

<sup>34</sup> Section on the Witness Protection

mission of sound or images. This applies also to the examination of endangered or protected witnesses who are granted assistance under the Act on Witness Protection.

According to media reports<sup>35</sup> and field experience, only interrogations of children are recorded in order to avoid their appearing in the Court. **The use of audio-video technical equipment is reported only in 1 from 100 interrogations.**

Third country nationals cannot be included in the programme for witness protection based on the special Act on the Protection of Witness (Act no. 256/1998 Coll.<sup>36</sup>).

Other provisions to protect the safety and privacy of victims which can be used are: not providing personal info, change of voice and appearance, use of audio-video technical equipment, hearing of witness outside the presence of defendant (if there is a reasonable fear that the witness do not tell the truth in the presence of defendant), not public court hearing (when the safety of witness is in danger), safety measures taken by the judge such as the police guidance (if there is a reasonable fear that the witness may be put at risk of life, health or physical integrity) (§ 262 Criminal Procedure Act), information on the fact that the accused has been released from custody or escaped from custody, or that the convicted was released from prison or escaped from prison

## Main problems:

### Children

In order to ensure the effective protection of child witnesses from potential retaliation or intimidation by the perpetrators, the provisions of Act No. 256/1998 Coll. on Witness Protection, which are discussed below were amended in 2009. The current legislation is strong and can provide effective protection from potential retaliation or intimidation for child witnesses in criminal procedure. That said the existing legislation need to be used more widely.

The age of a child reporting a crime and the type of criminal offence must be taken into account when assessing the facts of the crime and deciding upon further steps to be taken in pre-trial proceedings. If the victim is a child, the police officer must contact the agency for socio-legal protection and social guardianship (hereinafter “social protection body”) to provide the child with assistance of a social officer and the court must provide the child with a counsel. Clearly, if the

<sup>35</sup> <http://www.sme.sk/c/4397955/policahti-vypocuvaju-bez-kamier.html>

<sup>36</sup> Act no. 256/1998 Coll. on the Protection of Witness and Amendment and Supplementation of Certain Acts

parent is not stripped of paternal rights or his/her rights were not waived by the court, the parent is called at this point. In case there is a suspicion that the parent is involved in the commission of the crime against the child, a collision guardian should be appointed by the court (as explained in the previous sections). The question, whether a parent is called at this point and the question what measures will be taken depend on the crime concerned.

When the accused is a person close to the child (e.g. in the case of domestic violence, sexual abuse or rape, and obviously also trafficking), the police will not contact the parents as the child would have problems to give testimony and to face the parent's presence. In such cases, the court will appoint a guardian who will then act for the child. The court may also, according to § 75a CPC, impose a civil restraining measure and decide to put the child temporarily in the care of the social protection body (basically the Bureau of Labour, Social and Family Affairs) to avoid that the health or development of the child could be put at serious risk or be negatively affected.

The presence of the social protection body's officer is meant to ensure that further measures are appropriate and in the interest of the child. The child-victim will normally be asked to provide a witness statement which normally should be video recorded in order to avoid repeated questioning in the later stages of the criminal proceedings. If the child is younger than 18, a child psychologist is called to be present when interviewing the child.

According to the special provisions on questioning a person younger than 18 years<sup>37</sup>, children below that age should be interviewed by persons with professional experience in the field of youth education while having regard to their age, mental and moral development and in a manner to avoid further questioning so that the child will not face the negative and harmful effects of criminal proceedings. Children below 18 may be interviewed in a later stage only when necessary and in the pre-trial stage only with the consent of the prosecutor.

Art. 135 CPC contains a number of specific measures to protect child victims/witnesses:

- (1) *If the person examined as a witness is under 18 years of age and the examination concerns matters whose recollection could, given the witness's age, have a negative influence on his mental and moral development, the examination must be conducted with utmost consideration and care*

<sup>37</sup>Sec. 135 of the Criminal Procedure Code.

*should be taken that the testimony will not have to be repeated in the further proceedings. A pedagogue, social worker, psychologist or expert with expertise in juvenile education must be invited for the examination to contribute to the proper conduct of the examination, taking into account the subject of examination and the degree of mental development of the interrogated person. If their presence can contribute to the proper conduct of the interrogation, the legal guardian (usually parents) may also be invited.*

- (2) *In further proceedings, a child (a person below 18) may be examined only if it proves to be absolutely necessary, and in pre-trial proceedings only with the consent of the prosecutor. In trial proceedings, the court may decide to have the evidence presented by reading the records even if the conditions of section 263 CPC<sup>38</sup> are not fulfilled. If necessary, the person who attended the examination (pedagogue, social worker, psychologist or expert with expertise in juvenile education) may be questioned about the accuracy and completeness of the record, the manner in which the examination was conducted and the way in which the examined person testified.*
- (3) *Where a person under 18 years of age is examined as a witness in connection with a criminal offence committed against a close relative or a person entrusted to the care of such relative, or where it is evident from the circumstances of the case that her or his repeated testimony of the person could be influenced, or where there is a reason to believe that examination could affect the her or his mental and moral development, the examination must be done with the help of technical equipment for the transmission of sound and images, in order to ensure that his or her examination in the further proceedings will only be required in exceptional cases. The repeated examination of a person under 18 years of age during pre-trial proceedings can only be done with the consent of his legal guardian.*

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<sup>38</sup>Instead of questioning a witness at the trial, the judge can read the records of his testimony or a substantial part thereof, with the agreement of the prosecutor and the accused and if the court does not consider personal testimony as needed.

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**Main problems in relation to children**

The biggest problem in the criminal proceedings is that the examination of child victims is done during the pre-trial proceedings, thus by police officers. It is an unwritten rule that in extremely serious crimes the examination is done by the prosecutor, who (pursuant to § 230 section 3 letter c CPC) has the right to perform certain procedural acts him/herself.

Legal theory has stated several rules that should be followed for the proper examination of a child. However, the legislation does not spell out the ways in which judges (or police officers) should question children. On the basis of literature and the well-established practices of judges, the questioning of children **should meet** (but often do not in practise) the following standards:

- questioning the child must be preceded by a preparatory phase, during which the judge prepares the questions; the purpose is to ensure that judges use terms that are appropriate considering the child's cognitive skills and emotional state
- before questioning the child, it is necessary to establish a good relationship with the child, so that the child trusts the person who will conduct the hearing
- while questioning the child, it is important that the judge asks questions that the child is likely to be able to address quickly and correctly in a spontaneous manner
- is it important to encourage the child at the early stage of the procedure to speak freely and spontaneously about incriminated issues, moreover it is necessary to show that the judge (or any other person leading the hearing) knows about his/her concerns and uncertainties, and that he/she appreciates the courage with which the child talks about the events that are the subject of the hearing
- before and while posing the questions it is important that the judge uses (or any other person leading the hearing) non-verbal communication techniques, such as eye contact and nodding, which assures the child that the judge (or any other person leading the hearing) listens to what he/she says
- during the entire hearing the judge (or any other person leading the hearing) should proceed with understanding, empathy and patience

- the judge (or any other person leading the hearing) if he/she succeeds to make the child speaking spontaneously should not interrupt during his/her narrative
- the judge (or any other person leading the hearing) should ask additional questions when the child stops speaking spontaneously
- during the interrogation the judge (or any other person leading the hearing) should restrain from expressing his/her own opinion or emotions
- the judge should use a tone of voice and formulate his/her questions in a way that makes the meaning of his/her question clear and easy to answer for the child and from which it is not obvious what the answer of the child should be
- the judge (or any other person leading the hearing) should not express his/her opinion about the answer of the child openly
  
- a judge (or any other person leading the hearing) should be aware of the risk of so called “closed questions “ („yes/no“ questions). Children tend to say ‘yes’ rather than ‘no’ to questions they do not understand
- sometimes judges are advised to use so-called “contrary questions“ (the question of what has not happened) with the hope that the child will refute the claim and at the same time spontaneously tells important circumstances, which he/she would not have provided otherwise.

Another peculiarity of examination of children is to choose an appropriate environment (e.g. a place outside the police station, the court). Conducting the interrogation in a suitable place may significantly affect the final statement of the child. A judge (or any other person leading the hearing) is responsible for choosing an atmosphere/environment that is appropriate for the interrogation of the child. It is clear that judges (or any other person leading the hearing) play a key role in influencing the willingness of the child to cooperate and the mental/emotional state of the child while being heard (e.g. how relaxed the child is while being heard).

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## **Implementation in practice**

As far as practical implementation is concerned, there are significant gaps in Slovakia. These gaps mainly concern:

- the fact that the use of audio-video technical equipment is reported only in 1 from 100 interrogations
- Hearing of child victims generally takes place at the police station and not in a different child-friendly setting
- Victims have the right to be protected from threats, insults, intimidation and any other assault before, during and after the investigation and prosecution - however, confrontation “face to face” encounter in pre-trial proceedings is applied also in trafficking cases, victims may even meet their traffickers (and their attorneys) at the police station/corridor, or the same waiting room at the police station (pre-trial) or at the court hearing (trial procedure)

There is no consistent practices, the approach largely depends on individual persons whether police, prosecutors and judges.

## **Right to witness protection and to be treated with respect and dignity**

There are no extra provisions on right to witness protection and respectful and dignified treatment apart from those discussed already under the previous sections of the report.

## Right to protection of physical integrity

**Victims have the right to protection of their physical integrity**

Informed consent is requested for medical or other physical exams. Whether the consent is really informed is questionable as consent is asked in a formal way, where a person does not really have enough time or is not in a situation to freely decide or to be able to refuse (e.g. at the police station, already in the hospital, when about to be given medication, the person is provided with a written document on side effects of medications and is required to provide informed consent).

## Right to compensation

**Trafficked persons have the right to adequate and effective remedies. This includes the right to compensation for material and immaterial damages suffered.**

The Criminal Procedural Code (CPC) defines the “injured party” as the person who was bodily injured or who suffered **material, moral or another form of damage caused by the criminal act**, or whose other rights and freedoms protected by the law were violated or endangered (Article 46 (1) CPC). The injured person can claim these damages in the criminal proceedings against the offender.

The relevant provisions in regard to financial compensation of victims for material and/or immaterial damages (§ 46 CPC Act no. 301/2005 Coll. Criminal Procedure Code) read as follows:

*(1) Injured party is the person who was bodily injured, or who suffered material, moral or another form of damage caused by the criminal act, or whose other rights and freedoms protected by the law were violated or endangered. The injured party has the right in the criminal procedure to state if he/she agrees with the criminal prosecution, he has the right to claim compensation for damages (...)*



- (2) *The injured party who has, according to the law, a legal entitlement for claiming compensation for damages caused by the criminal act against the offender, is also entitled to ask the court to impose the duty to compensate the damage in the condemnatory judgment; the proposal must be applied at the latest by the termination of the investigation or summary investigation.*
- (3) *The proposal must be clear on what grounds and to what extent a claim for damages is applied*
- (4) *Such a proposal cannot be submitted in case it has already been decided on the proposal in civil procedure or in any other relevant procedure*

**The victim (whether children or adults) may thus ask the court to impose on the accused the obligation to compensate the damage. The claim must be submitted at the latest by the termination of the investigation.**

The request must clearly state the grounds for the compensation requested and the extent of the damages claimed. When requesting compensation, it is in practice difficult to quantify the extent of immaterial damages in the claim which the victim submits before the termination of the investigation. The criminal court is entitled to decide about the damage if it was not decided yet in civil or other proceedings. The court decides on the victim's claim in a so-called "adhesion procedure" which is a part of the criminal procedure and is taking place simultaneously. According to the Article 164 CPC, in its judgment on the guilt of the accused, the court must also decide on the claim for compensation of damages, **if the claim for its compensation was submitted properly and on time:**

In the judgment on the guilt of the accused, the court decides also on

- a) *The compensation for damage, if the claim for its compensation was submitted properly and on time*
- b) (...)

**If the evidence put forward in the criminal proceedings is not a sufficient basis for compensation of damages or if further investigation is needed, the court will refer the victim to civil proceedings or proceedings before other competent authorities.<sup>39</sup>**

<sup>39</sup> § 288 sec. 1 Criminal Procedure Code, Act no. 301/2005 Coll.

## Securing the claim of the injured

If there is a well-founded reason to believe that satisfying the claim of the injured party for compensation of damages will be defeated <sup>40</sup> or impeded, it is possible to secure the claim for the necessary value by the property of the accused (Art. 50 (a) CPC). In case the court decides not to detain the accused or release him/her from custody, it can impose one or more proportional restrictions or duties to secure the objective which would otherwise be achieved by the custody, in particular the duty to deposit the financial resources for securing the claim for compensation of damages of the injured party. Article 82(1)(i) CPC on proportional duties and restrictions reads:

*(1) In case it is decided that the accused is staying free or should be released from the custody to liberty, to secure the objective, which would otherwise be achieved by the custody, the body deciding on the custody can at the same time impose one or more proportional restrictions or duties, mainly*

*i) The duty to deposit the financial resources for the purpose of securing the claim of the injured for the compensation of damages.*

**In practice, however, this is extremely rarely done as it involves parallel financial investigations.**

In case the accused is condemned for the criminal act, by which he caused damage in accordance with Article 46 (1) to somebody else, as a general rule the court imposes a duty on him in the judgment to compensate the injured party for damages, if the claim was submitted **properly** and on time. If the damage has not been paid yet (Article 287(1)) and there is no legal obstacle, the court always imposes the duty on the accused to compensate damages, **if its value is part of the description of the criminal act stated in the judgment**, or if it concerns compensation for moral damage caused by a violent intentional criminal act according to the special legal act- Act on compensation for victims of violent crimes, (Article 287 CPC). This of course applies also to trafficking cases. As mentioned above, the extent of immaterial damages/value of immaterial damages are in practice difficult to determine, which may lead to the dismissal of the claim as “improperly” submitted.

<sup>40</sup> For example the accused party sells his/her property or withdraws money from the bank account, etc.

### Act on compensation for victims of violent crimes

In cases of violent crimes, there is a possibility to claim compensation for damages based on Act no. 215/2006 Coll. on compensation for victims of **violent crimes**<sup>41</sup>. However, according to Article 3 (1) of this Act

*“compensation can be claimed **only** by the injured party who is citizen of the Slovak Republic or citizen of another EU member state, or a stateless person having a permanent residence permit at the territory of Slovakia or the territory of another Member State, or a foreign citizen based on the conditions and to the scope specified by the international convention<sup>42</sup>, (...), in case the injury **is caused at the territory of Slovakia**”.*

**This means that only citizens of Slovakia or another EU member state and citizens from a member state of the Council of Europe can claim compensation for damages for a Slovak court under this Act.** It goes without saying that unless trafficking did not include violence, compensation under this Act cannot be sought. Third country nationals are not eligible for compensation of damages on the basis of **this Act**. Only if trafficking did not involve acts of (explicit) violence, victims can claim compensation under **this Act**.

The decision on the claim for compensation lies with the Ministry of Justice, who also **pays** the compensation **under the condition that the judgment finding the accused to be guilty is final**. The request for compensation should be submitted to the Ministry within 6 months from the entry into force of the final judgment of the court, penal order or any other decision of the law enforcement authorities of courts who dealt with the case as the last instance authority (such as e.g. decision on the stopping of proceedings).

<sup>41</sup>Crime has to be a violent crime. If THB did not involve acts of violence, victims cannot claim compensation under this Act.

<sup>42</sup>European Convention on the Compensation of Victims of Violent Crimes

## Civil claims

Victims of human trafficking are mainly involved in criminal proceedings as “injured parties” (poškodený) but also may seek compensation for damages in civil proceedings. **According to the Criminal Procedural Act the injured party is referred to the civil or other proceedings to claim compensation for damages in the following cases:**

- 1) *If the evidence proposed in criminal proceedings is not a sufficient basis for compensation of damages or if it is necessary to conduct further investigation.*<sup>43</sup>
- 2) *If the claim was not fully recognized in the criminal procedure (for the remaining part of the claim)*<sup>44</sup>
- 3) *If the accused is not prosecuted*<sup>45</sup>
- 4) *If the Court of Appeal annuls the judgment of the lower court only for the part concerning the compensation for damage and it does not decide itself on the compensation claim*<sup>46</sup>
- 5) *If the criminal procedure is stopped by the court*<sup>47</sup>
- 6) *If there is agreement on the guilt and punishment in line with (§ 232 (7) d) Criminal Procedure Code, Act no. 301/2005 Coll), but not on the compensation of damage, the state prosecutor will suggest the court to refer the injured party with his claim or part of its claim to a civil or other procedure.*<sup>48</sup> *The agreement on the guilt and punishment contains the scope and method of compensation of damage caused by the criminal act.*<sup>49</sup>

**So far, no victim of trafficking has claimed, or has been awarded compensation, be it Slovak nationals or foreigners by the Slovak courts.** In general the courts do not award damages in criminal proceedings but refer the claimant to civil proceedings, which take time. Even when the court awards damages to victims of crimes in other (not trafficking) cases, they are often not paid by the perpetrator. Courts rarely sentence perpetrators to financial sanctions apart from the criminal charges (mainly in cases relating to fraud, illicit organized crime activities, money-laundering, etc).

<sup>43</sup>§ 288 sec. 1 Criminal Procedure Code, Act no. 301/2005 Coll.

<sup>44</sup>§ 288 sec. 2 Criminal Procedure Code, Act no. 301/2005 Coll

<sup>45</sup>§ 288 sec. 3 Criminal Procedure Code, Act no. 301/2005 Coll

<sup>46</sup>§ 329 Criminal Procedure Code, Act no. 301/2005 Coll

<sup>47</sup>§ 281 (3) Criminal Procedure Code, Act no. 301/2005 Coll

<sup>48</sup>§ 232 (3) Criminal Procedure Code, Act no. 301/2005 Coll

<sup>49</sup>§ 232 (7) d) Criminal Procedure Code, Act no. 301/2005 Coll

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**There is no fund for the compensation of victims of trafficking. There are no specific provisions in regard to financial compensation for material and/or immaterial damages for child-victims.**

## **Non prosecution and non-punishment of trafficked persons**

**Victims of trafficking should not be charged or prosecuted for prostitution or other illegal acts they were compelled to commit.**

The amendment to the Penal Code of May 2013 introduced new possibilities for waiving trial by punishing the perpetrator of the offense that did not result in death or grievous bodily injury. Based on Article 40 (1) d):

*“The punishment of the perpetrator of a minor offence that did not result in death or grievous bodily injury may be waived if the minor offense was committed by a person under duress in direct relation to the fact that he/she was the victim of trafficking in human beings according to § 179, or sexual abuse according to § 201 and 202 or manufacturing of child pornography according to § 368.”*

Another non-punishment provision is also contained in the Act on the Residence of Foreigners, based on the Article 88 (10), holding that the decision on detention becomes invalid once the person is registered in the Programme of the Ministry of Interior for the support and protection of the victims of trafficking.

In practice, this provision is impossible to apply. The Ministry of Interior regulation on the Programme states, that the person is registered in the Programme upon the issuance of a tolerated residence permit. A tolerated residence permit, however, cannot be issued to a person having a decision on detention issued against him/her. This means that registration in the Programme is only possible if the decision is cancelled by the court following the appeal lodged by the person, or when the time of the detention has lapsed and the period of detention has not been extended.

In addition, trafficked persons can be prosecuted for petty crimes, riotous conduct, sanctioned for irregular immigration status (administrative expulsion/deportation order, administrative detention order), and any other offences provided for by the CC.

## Non-detention of trafficked persons

**Trafficked persons should not be detained or held in closed shelters or other welfare centres.**

### Third country nationals

According to Article 88(1) of the Act on the Residence of Foreigners/Aliens there are four legal reasons for detention of third country nationals:

- a) *In the procedure on administrative deportation when there is a risk of escape or the third country national resists or evades the process of preparation of his forced return*
- b) *For the purpose of the execution of the decision on administrative deportation or the punishment of deportation*
- c) *For the purpose of transfer based on the Dublin II Regulation*
- d) *For the purpose of return based on an international agreement (= extradition)*

Based on Article 88 (10) the decision on detention becomes invalid once the person is registered in the Programme of the Ministry of Interior for the support and protection of the victims of trafficking. **As stated above, in practice, this provision is impossible to apply as the one excludes the other.**

The MoI regulation on the Programme states, that the person is registered in the Programme upon the issuance of a tolerated residence permit. A tolerated residence permit cannot be issued to a person having a decision on detention issued against him/her. **This means in practice that a detained foreigner can never be released from detention as soon as they are registered in the Programme, as the Programme itself excludes such registration as long as a tolerated residence is not issued to the person in question.** The decision on enrolment of a trafficked person in the Programme is taken by the National Coordinator/State Secretary of the Ministry of Interior.

**Another gap in the system can be found in the provisions of the Act on Residence of Aliens, which lists victims of trafficking in the definition of “vulnerable person” (Art. 2 (7)).** Other vulnerable persons according to Art. 2 (7) are minors, handicapped people, people older than 65 years of age, pregnant woman, single woman with minor children and persons subjected to torture, rape

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or other serious forms of psychological, physical or sexual violence. Moreover, Art. 88 (9) states that separated children cannot be detained and “*other vulnerable persons should be detained only in inevitable cases and for the shortest period of time possible*”. **This provision should therefore apply also to victims of trafficking however in practice it again is inapplicable.** No identification/screening for trafficking takes at the Departments of Alien Police where the apprehended irregular migrant is questioned and which issues decisions on detention and expulsion. It is therefore very likely that in such context, every migrant who enters or stays in Slovakia irregularly will be issued a detention order. Despite the legislative obligation to consider alternatives to detention in specific cases given by law, an alternative to detention has been granted only in one case so far, and did not involve trafficking case.

There are two detention centres in Slovakia, one in Medveďov (Western Slovakia) and one in Sečovce (Eastern Slovakia, near Slovak-Ukrainian border, which is an external Schengen border) where NGOs have regular access and often identify individuals who could indeed be trafficked.

Third country nationals can be detained for a maximum of 48 hours in the procedure of administrative deportation (meaning before the decision on administrative deportation is issued) or a maximum of 6 months for the purpose of the execution of the decision on the administrative deportation. If the execution of the decision was not possible because the foreigner refused to cooperate or because the Embassy does not issue a travel document to him/ her, the police can prolong the period of detention for a maximum of another 12 months. The detained foreigner can appeal the decision on detention within 15 days from the delivery of the decision to the Department of Border or Foreigners police which issued the decision, if the decision has not been validated already at the police department and foreigner gave up his right to appeal (which often happens in practice). There is no system of automatic judicial review of decisions on detention. **In addition, submitting an appeal or lodging an asylum application is not a reason for release of the foreigner from detention.**

As to asylum seekers who are or potentially could be victims of THB, they are placed together with other asylum seekers in Reception centre for asylum seekers in Humenné, which is basically a quarantine/closed camp. This means that the asylum seekers cannot leave the camp before all the entrance medical examinations are finished and it is established that they do not suffer from any infectious disease. This period can take from two to four weeks (in general). After this, they are placed in open residential camps.

**In summary, there is a major risk that third country nationals are detained and deported without being ever identified as victims**, or that they will be removed from the territory during the initial screening of reasonable grounds. Employees of IOM as well as HRL, NGO Marginal are visiting detention centres regularly to provide either counselling on voluntary return, legal counseling or under UNHCR monitoring activities, so if they have an indication that a detained foreigner could be a victim of trafficking, they contact their colleagues working on trafficking issues, which then can visit the person in the detention centre.

However, by the time a foreigner is actually identified as victim, he/ she can be deported from Slovakia as deportations are really quick (e.g. in the case of detained foreigners with travel documents or those from surrounding countries, mainly Ukraine). There is also a high probability that a detained foreigner will never come to the attention of the IOM or another organization which could provide him/ her with advice and/or identify him/her as a victim and will be deported from Slovakia as any other irregular migrant.

### **Illegal work or another offence**

**Another reason for the deprivation of liberty of a victim of trafficking can be when he/ she is has been accused of committing a crime and is put either in custody or in prison.** Illegal or unauthorized work is classified as an offence according to Act no. 82/2005 Coll. on Illegal Work and Illegal Employment. However, the punishment for working illegally is not deprivation of liberty, but a fine up to 331 euro. **There is no provision exempting victims of trafficking from paying this fee.** Prostitution is not criminally punished in Slovakia there is therefore no risk of detention for potential victims of trafficking just for being engaged in prostitution.

### **Closed shelters**

Victims of trafficking, either Slovak nationals or foreigners, who are registered in the Programme for support and protection of victims of trafficking, can, if necessary, be provided with accommodation. There are various NGOs providing accommodation to victims registered in the Programme. There are concerns that the accommodation provided by one NGO (Dotyk) does not meet the minimum standards and that victims are sometimes being placed in closed flats and therefore deprived of their liberty.



## Separated children

Separated children (unaccompanied minor foreigners) are placed in a children's home based on a court preliminary ruling after being identified as separated children. The children's home has a closed/ quarantine part where they are basically deprived of liberty for a period of 3 to 7 days (in exceptional circumstances or if having an infectious disease this can be longer). This also applies to separated children who are (potential) victims of trafficking. **There are no legal provisions which establish closed/ quarantine parts of the children's homes.**

## Main problems

The three biggest problems are:

- a. Lack of identification and *de facto* exclusion/deportation of third country nationals from registration in the Programme for support and protection of victims of trafficking, meaning that they will be detained and deported without ever being identified as (possible) victim of trafficking
- b. The existence of closed/ quarantine parts even in children's homes for separated children (who can potentially be victims of trafficking)
- c. Lack of monitoring of the conditions under which accommodation is provided to victims of trafficking by NGOs.

## Reflection period, temporary & long term residence

**Victims have the right to a reflection period of 3 months. Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities. If return would compromise their life and safety, trafficked persons have the right to apply for asylum or a residence permit on humanitarian grounds.**

### Reflection period

**The Slovak law provides for a reflection period, but only for foreign victims of trafficking, as enacted in the Act no. 404/2011 Coll. on Residence of Aliens. For Slovak victims of trafficking no reflection period is guaranteed by any legal provision.<sup>50</sup>**

Article 58 (4) (d) guarantees a reflection period of maximum 90 days, which can be extended by 30 days upon the request of the person and must be authorised by the Ministry of Interior. **It applies only to foreigners being identified as victims of trafficking at the territory of Slovakia.**

According to the law there is no formal decision to be taken on the reflection period. It only states that

*“The following shall be considered as tolerated residence: a period of maximum 90 days during which a third country national, who is a victim of human trafficking and at least 18 years old, decides whether s/he would cooperate with the prosecuting authorities” (Art. 58(4)(e).*

**However, the law does not specify when exactly this period of maximum 90 days starts (whether from the moment when the victim is identified by the relevant state authorities or from the moment when he/she is registered as a victim in the Programme for support and protection of the victims of trafficking, or when?).** There is a clear legal gap, which makes the cited provision of the law unclear and dependent on the discretion of the foreigners police and the Ministry of Interior.

<sup>50</sup> Meaning they can be registered in the Programme as long as the NGO has enough funds to care for a victim.

**There are no legal provisions guaranteeing access to any assistance.**

Such guarantees exist only in the national Programme for support and protection of victims of trafficking and are linked to the approval by the National Coordinator on the inclusion of the person in question in the Programme. Registration of the victim in the Programme is therefore conditional for the provision of any assistance to him or her.

**Programme for the support and protection of the victims of trafficking<sup>51</sup>**

A victim who is registered in the Programme for support and protection of victims of trafficking should be provided with (Article 6):

- a) Necessary care - the first 30 days are devoted to the crisis intervention
- b) Crisis Care - 30 days of crisis care (should it be necessary and justified, the Information Centre of the Ministry of Interior may prolong the period for another 30 days - no criteria exist which are taken in consideration when taking the decision, the decision is purely on discretionary grounds)
- c) Reintegration or integration- 30 days of reintegration (should it be necessary and justified, the Information Centre of the Ministry of Interior may prolong this period for 30 days, maximum for 90 days - no criteria exist which are taken in consideration when taking the decision, the decision is purely on discretionary grounds)
- d) Voluntary return to the country of origin

The Programme contains the following elements (Article 8):

- a) Isolation from the criminal environment
- b) Help in voluntary return to the Slovak Republic or legalisation of stay in the territory of the Slovak Republic
- c) The possibility of anonymous accommodation, if the victim applies for it
- d) Financial support
- e) Social help
- f) Psycho-social counselling
- g) Psycho-therapeutical services
- h) Interpretation

<sup>51</sup> Internal regulation of the Ministry of Interior No. 180 of December 2013

- i) Legal counselling
- j) Health care
- k) Requalification courses
- l) The possibility of being included in the programme for witness protection based on the special Act on the Protection of Witness (Act no. 256/1998 Coll.<sup>52</sup>). This is not applicable to third country nationals.
- m) The possibility of claiming one-time financial compensation based on the special Act on the Compensation of Victims Damaged by Violent Criminal Acts (Act no. 215/2006 Coll.) Not applicable to third country nationals
- n) The possibility of being granted a permanent residence permit if it is in the interest of the Slovak Republic
- o) Help in the voluntary return to the country of origin and mediation in regard to help of non-governmental organisations in the country of origin.

### Temporary Residence

The Act on Residence of Aliens provides for a temporary residence permit called “tolerated stay” for foreign victims of trafficking over 18 years of age “*if the presence of a third country national in the Slovak Republic territory is necessary for the purpose of criminal proceedings*” (art. 59(6)). The police department or a person authorised by the Ministry of Interior should inform the victim about the possibility and conditions for the granting of tolerated residence for this reason and the attached rights and duties (art. 58(c)). When granted tolerated residence the prosecution or a person authorised by the Ministry of Interior should inform the victim about any potential programmes or projects aimed at his/her integration into the society during tolerated residence (Art. 59(11)). Tolerated residence does not authorize its holders to work, study or have insurance coverage. They are fully dependent on the support of NGOs.

**The permit can be refused when the third country national gave false or misleading data or submitted falsified or counterfeited documents or a document of another person or is an undesired alien (Art. 59(12)(c)) or when it is demonstrated, that the victim did not abandon or restored, out of his/her own will, contacts with the suspects (art. 59(6)).**

<sup>52</sup>Act no. 256/1998 Coll. on the Protection of Witness and Amendment and Supplementation of Certain Acts

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**The permit is exclusively related to the criminal proceedings and does not include civil or administrative proceedings for compensation.** It is given for 180 days and can be renewed (art. 59(6)). The decision is taken by the foreigner's police (Art. 58(2)). **The application for tolerated stay cannot be submitted by the foreign victim but must be filed by the prosecuting authority (Art. 59(1)).** This means that any reflection period is in practise completely impaired.

During „a tolerated stay permit“ a foreign vicim has access to appropriate accommodation. According to the Act on the Residence of Aliensthe Ministry of Interior must„provide for a third country national who has tolerated residence as per Art. 58 par. 2(c) (provision of tolerated residence for victims of trafficking...) appropriate accommodation, if s/he cannot provide for it on his/her own“ (art. 59(10)).

**The law, however, does not guarantee access to social, psychological, medical and financial assistance during the tolerated stay permit.** Access to any assistance is dependent on registration in the Programme for support and protection of victims of trafficking. In practice it depends on the possibilities and projects run by NGOs cooperating with the state authorities responsible for trafficking.

### Long term residence

**Being a victim of trafficking is not a reason for granting a permanent residence permit and the law does not recognize the possibility of granting a residence permit on humanitarian grounds.** Moreover, the law does not even contemplate the situation that there may be a foreigner already with long term residence (permanent residence permit/or temporary residence permit) and become a victim of trafficking, e.g. in domestic slavery situation or labour exploitation. If his/her permit is linked to the employer or a family member who actually are the exploiters, and the person escapes the traficking situation, he/she is in reality actually facing becoming irregular migration status, with all the consequences such as expulsion/deportation and detention, as their residence permits are cancelled in such instances by the Foreign Police. This is so even if the person e.g. divorces the perpetrator.

The Act on Asylum (no. 480/2002 Coll.) does not recognize trafficking as grounds for asylum. Only when the victim is e.g. traumatised, sick, or elderly, the Migration Office of the Ministry of Interior may grant him/her asylum on humanitarian grounds.

According to Art. 9 of the Act on Asylum the Ministry has the possibility to grant asylum on humanitarian grounds. However, the law does not define what “humanitarian grounds” are and there is no legal entitlement to be granted asylum on humanitarian grounds, the evaluation of each individual case being dependent on the discretion of the Migration Office. Although there is a Regulation of the Minister of Interior which gives examples of what could be considered “humanitarian grounds” – e.g. cases of very old, very ill or traumatised asylum seekers – the decision whether or not a concrete asylum seeker is a “humanitarian case” is up to the Migration Office.

The relevant provision reads (Act 480/2002 Coll. as of June 20, 2002 on Asylum and Amendment of Some Acts, Section 9 on Granting Asylum on Humanitarian Grounds):

*„The Ministry may grant asylum on humanitarian grounds even when no reasons under Section 8 are established in the procedure.“*

In the asylum procedure, there is only an assessment of whether the asylum seeker could be recognized as “humanitarian case”, e.g. to examine the “traumatisation” of the asylum seeker. Screening aimed at identification of indicators of trafficking, or considerations related to risks linked to his/her return to the country of origin as a result of trafficking, if not granted international protection, are not made by the Migration Office in the asylum procedure.

Victims of trafficking may be granted a permanent residence permit for an unlimited period, without fulfilling the conditions of the Act on the Residence of Aliens, if he or she is considered a witness under risk or a protected witness and if granting of a permanent residence permit is necessary for the provision of protection and assistance:.

Act no. 404/2011 Coll. on Residence of Aliens and Amendment and Supplementation of Certain Acts, Article 46 on Permanent Residence of Unlimited Duration:

- (2) *The Ministry of Interior can grant permanent residence of unlimited duration even without fulfilling the conditions as specified herein,*
- a) if necessary for the provision of protection and assistance to a witness as per a special regulation<sup>53</sup>*

<sup>53</sup>This special regulation is Article 2 of the Act no. 256/1998 Coll. on the Protection of Witness and Amendment and Supplementation of Certain Acts.

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According to the Programme for support and protection of the victims of trafficking, a victim of trafficking can potentially also be granted a permanent residence permit for five years based on the Act on the Residence of Aliens, **if this is in the interest of Slovak Republic:**

Article 43, Permanent Residence for Five Years:

- (1) *A police department shall grant permanent residence for five years, if there are no reasons for the refusal of an application as per Art. 48 par. 2, to a third country national*
  - a) *if this is in the interest of the Slovak Republic. Article 48, Deciding about Application for Granting of Permanent Residence: „..*
- (2) *A police department shall refuse an application for the granting of permanent residence, if*
  - a) *a third country national is an undesired person;*
  - b) *there is a justified suspicion that a third country national would threaten the state safety, public order or public health during his/her residence;*
  - c) *a third country national does not fulfil the conditions for the granting of permanent residence; d) a third country national has closed a marriage of convention;*
  - e) *the marriage was not closed as per a special regulation, in the case of an application for the granting of permanent residence as per Art. 43 par. 1(a) or Art. 46 par. 1(a);*
  - f) *a third country national gives false or misleading data or submits falsified or counterfeited documents or a document of another person; or*
  - g) *data in travel document do not correspond with the reality (in case of trafficking victims, this may be the reason for not granting permanent residence)*

We have, however, no information that permanent residence has ever been awarded on the grounds of „interest of the Slovak republic“ to a victim of trafficking. „**Interest of the Slovak Republic“ is not defined anywhere.**

## Children

The provisions of the Act on the Residence of Aliens cited above only regulate „tolerated stay“ for victims of human trafficking who are at least 18 years old.

**There are no special legal provisions on a reflection period, residence permit or asylum in regard to child-victims.**

Separated children/ unaccompanied minors in general shall be automatically granted tolerated stay (if they do not apply for asylum) based on the fact that they are minors found on the territory of Slovakia. They are also appointed a guardian and placed in a children's home for separated children, where they are provided care on an equal footing with Slovak children.

Together with their guardian they can also submit an application for asylum. The Asylum Act contains special provisions on the treatment of unaccompanied minor asylum seekers, e.g. the Ministry must provide due health care to minor asylum seekers who are victims of abuse, neglect, exploitation, torture or cruel, inhuman and humiliating treatment, or who suffered the consequences of an armed conflict (Article 22 (5) Asylum Act).

**Similar to adult domestic victims, there are no legal provisions on the reflection period for Slovak child-victims.** Again this is only regulated in the Programme for support and protection of victims of trafficking.

The tolerated stay is granted by the police to every separated child found in the territory of Slovakia on the request of his/ her guardian (art. 58 Act no. 404/2011 Coll. on Residence of Aliens).

## Main problems

The three biggest problems in practice in relation to the reflection period and the granting of temporary or permanent residence are:

- The reflection period is not guaranteed by law for all victims and its application is rendered impossible by the provisions of the Act on Residence of Foreigners. Further, the law does not specify when exactly the victim's stay is considered as tolerated
- There are no clear guidelines for the relevant police and other state officers on how to apply the reflection period in practice



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- Linking gaining of tolerated residence to the criminal proceedings and inclusion in the Ministry Programme
- No possibility for a person/NGO to appeal the Ministry decision on inclusion of the Programme
- No possibility to gain long term residence on grounds of being victim of trafficking
- No provisions regarding residence permits for trafficked children apart from separated children general provisions on tolerated residence
- No provisions guaranteeing that a residence permit of a trafficked person would not come to an end when tied to one employer or family member who are actually putting the person in trafficking situation
- Although victims of trafficking could potentially be granted a long-term residence permit for five years if this is in the interest of the Slovak Republic and although this possibility is included in the Programme for support and protection of victims of trafficking, in practice this is not applied.

## Repatriation and guarantees of non-repetition

**Victims have the right, if they wish so, to return to their home country without unnecessary or unjustified delay and with taking care of their safety. The safety of the trafficked person and their family should be taken into account in any decision on repatriation.**

Foreign victims of trafficking who are either under 18, are in the reflection period or are granted tolerated stay are protected from expulsion by the provisions of the Act on the Residence of Aliens according to Article 83 (Decisions on Administrative Expulsion):

(7) *A police unit cannot administratively expel*

*a) a child younger than 18 years of age; this shall not apply, if the expulsion of such a child is in his/her interest;*

*c) a third country national as per Art. 58 par. 2(c) during the period as per Art. 58 par. 4(e)*

However, every victim can decide to return home voluntarily.

*(8) A police unit issues the decision on administrative deportation according to the section 1 letter h)<sup>54</sup> without placing a ban on entry, if the third country national voluntarily appears at the police unit and applies for a voluntary return into his/ her home country within the assisted voluntary return. (Art. 82: Reasons of Administrative Expulsion and Ban on Entry, Section Two: Administrative Expulsion of Third Country National*

Assistance in voluntary return and mediation in the organisation of assistance by an NGO in the country of origin make part of the Programme for the support and protection of victims of trafficking (Article 8: see above). According to Article 6 of the Programme voluntary return to the country of origin is facilitated by the service provider based on the consent of the Ministry of Interior Information Centre for trafficking. This applies to both Slovak victims who want to return to the Slovak republic and foreign victims who want to return to their country of origin.

According to the Programme, “service provider” is a “legal person or physical person, with which the Ministry has signed a valid contract on cooperation on facilitating the programme services”. The “Information Centre” (on the fight against the

<sup>54</sup> Article 82 , Reasons of Administrative Expulsion and Ban on Entry ; h) his/her residence in the Slovak Republic territory is not authorised;

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trafficking in human beings and the prevention of criminality), is a structure under the Ministry of Interior, whose task it is to gather statistics on trafficking. It has been recently assigned with a role in the management of the Program for Protection and Assistance of Victims.

In practice, the voluntary return of foreign victims is organised by the International Organisation for Migration (IOM) within its programme of assisted voluntary return (AVR). **However, according to a recent amendment of the Act on the Residence of Aliens (in force since 1 May 2013), the issuance of a decision on administrative deportation is conditional for the inclusion of illegally residing foreigners in the AVR programme of the IOM (see the relevant provisions cited below).** As this is a new provision, it is yet unclear how it will be applied in practice in relation to victims of trafficking.

Foreign victims are removed from the Programme for Assistance and Protection if they decide to return to their country of origin and leave the territory of Slovakia.

When the period of tolerated stay ends<sup>55</sup>, the person has to leave the accommodation provided by IOM or an NGO, is issued a decision on detention and is placed in an Detention Facility awaiting deportation, unless the person immediately applies for asylum, or was detained in the past and appeared to be stateless or non returnable for other reasons. In detention, a person can ask for assisted voluntary return. He or she could also argue that the provisions on alternatives to detention should be considered by the police. However, he/she would then have to prove means of subsistence, accommodation, finances, etc. Once the person is out of the Programme for Assistance and Protection, he/she is left to him/herself as for accommodation and other services. In this respect, it should be kept in mind that 'tolerated residence' does not authorize its holders to work, study or have insurance coverage. They are fully dependent on the support of NGOs.

In the case of victims of trafficking who are returned to Slovakia, the service providers (IOM, Caritas, Dotyk, subcontracted by the Mol) which take care of the victim, must develop a plan of reintegration of the victim into society together with the victim and submit this to the Ministry of Interior for approval (Art. 6 Programme). The Ministry of Interior can make changes in the plan of reintegration. Once the plan is approved, the Ministry of Interior informs the service provider. The reintegration of the victim should then be based on this reintegration plan. NGOs are therefore under close scrutiny by the Mol (i.e. those awarded funds by the Ministry under the Programme to Protect and Assist Victims of Trafficking). Before trafficked Slovak adults or minors return home, IOM and the Slovak Catholic Caritas carry out a risk assessment and assess every case on an individual basis.

<sup>55</sup> This is a hypothetical situation, as no foreign victims has ever been awarded a residence permit so far.

## Children

**There are no specific legal provisions for the repatriation of child victims, so only general legal provisions for the protection and well-being children apply.**

In accordance with the Act on Welfare and Legal Protection of Children and in respect of the Civil Procedure Code, any child without a guardianship or any child in a situation in which his/her life, health and/or personal situation can be seriously harmed must be appointed a legal guardian.

There are only general provisions stating that measures taken to protect any child must respect his/her best interest in terms of the Convention of the Rights of the Child. What is the “best interest of the child” and how it shall be assessed is not defined.

Apart from children, the Act on Welfare and Legal Protection of Children also applies to young adults up to 25 years of age. According to the Act, all authorities who take measures based on this act are responsible to protect children from violations of their rights and are obliged to guarantee all the necessary protection which is essential for the child’s benefit and the protection of their interests.

The procedure for the appointment of a guardian is governed by the Civil Procedure Act. The care of the child is entrusted to a specific entity (a legal person/institution, or an individual/physical person). The court must monitor the performance of the guardianship and custody rights and the fulfillment of the obligations arising from it. Regardless of whether the court appoints a temporary or a permanent guardian, any representative of the child must in all actions involving the child follow and respect the best interest of a child. If a guardian is appointed, all actions and processes in regard to the child, including any repatriation or return process, should be developed in cooperation with the guardian.

## Main problems

The major challenges stem from the fact that there is no formalized risk assessment before repatriation of victims of trafficking. The Ministry of Interior is guided by the “safe third country concept”<sup>56</sup> and it is very unlikely that individual considerations will override deeply rooted procedures. Also, there is no guarantee that a victim of trafficking whose residence permit has come to an end will not be detained pending his/her return to the country of origin. There is no legal obligation to take the fact that the person is a victim of trafficking into account in

<sup>56</sup> <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4bab55e22>

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the administrative procedures leading to his/her removal from the country. Extremely negative for their repatriation is the fact that they may not be able to benefit from the AVR scheme of IOM, as only persons who were issued a decision on detention can enrol in IOM AVR programme, according to the last legislative amendments to the Act of Foreigners. Clearly, this means that unless victims of trafficking are detained (for the purpose of realisation of their forced removal), they cannot enter the AVR Programme. No other comparable scheme for the return and repatriation of vulnerable groups than AVR currently exists in Slovakia. All other returns which take place are forced returns.

## Summary and main recommendations

Although free legal aid is essential to improving access of trafficked persons to justice, it is rarely available, and the situation is not different in Slovakia either. The experience of field practitioners increasingly shows that without a systematic response to the provision of free legal aid for victims of human rights violation, including human trafficking, its survivors are unable to embark on the path securing them, at least in part, access to justice. The possibility to rely on the legal services of qualified, sensitized and affordable lawyers/attorneys at law is only a pre-requisite to a decision of a trafficked person to embark on the criminal or civil justice path, which essentially represent a re-traumatization experience.

This report has provided a legal analysis of the position of trafficked persons in criminal and other relevant proceedings and discussed their implementation in practice in relation to treatment by the judicial system, in particular their access to legal aid and the protection of their rights as victims and witnesses, including access to compensation.

Apart from a number of legal and administrative obstacles, which trafficked persons face, the report has displayed a number of discrepancies in implementation of otherwise well designed norms but also pointed out to a series of legislative gaps namely relating to the reflection period, residence permits, right to the protection of privacy and safety of trafficked persons, their right to seek compensation, rights to the protection of physical integrity, and right to respect for human dignity before, during and after criminal or other proceedings.

It is essential to politically endorse the subject of human trafficking from a human rights perspective and set up a system which would effectively protect survivors of this form of contemporary slavery. Currently, in Slovakia, the entire trafficking agenda, including assistance and protection to trafficked persons lies with the Ministry of Interior, and as such is viewed almost exclusively through a criminal perspective lense. Moreover, Ministry of Interior has a full discretion in determining whether a trafficked person will be included in the Programme and as such provided any assistance he/she is entitled to in line with international legal obligations. That said, the Ministry decides on the rights and duties of an individual guaranteed by international legal standards on the basis of a generally non-binding administrative regulation of the Minister of Interior that offers a “legal” basis for such decision-making and is clearly overrun by application of other legislative norms of higher legal standard. The current status quo is therefore unacceptable and contrary to international and European legal obligations of the Slovak republic.

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