

Promoting a Victim Centred Approach in Trafficking Cases

Legal analysis
Bosnia and Herzegovina



IMPRESSUM

**Promoting a victim centered approach in trafficking in human beings cases:
Legal analysis in Bosnia and Herzegovina**

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July 2015.

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ABOUT THE PROJECT AND LEGAL ANALYSIS IN BOSNIA AND HERZEGOVINA

Legal analysis of the Trafficking in Human Beings in Bosnia and Herzegovina is a comprehensive study, carried out within the project “Promoting a Victim Centered Approach in Trafficking Cases in Albania and Bosnia and Herzegovina”, which International Forum of Solidarity – EMMAUS (IFS-EMMAUS) implemented in the period June 2013 – June 2016. The project was implemented in cooperation with partner organizations: Netherlands Helsinki Committee and the Dutch Judicial Academy, with the support of Ministry of Foreign Affairs of the Netherlands. The principal objective of the project was building and development of capacity in judiciary institutions in Bosnia and Herzegovina and Albania related to application of European Union standards in prosecution of trafficking in human beings and related offences.

Since the project foresees active participation of professional judges and prosecutors, including the representatives of Centers for education of judges and prosecutors of the Federation of Bosnia and Herzegovina and the Republika Srpska, Legal analysis shall be promoted in course of activities of building the capacities of judges and prosecutors, aimed at improvement and comprehensive application of laws governing the area of trafficking in human beings, particularly the position of victims/witnesses in criminal proceedings, with a particular focus on their application in practice, including the analysis of case law.

Bosnia and Herzegovina, as a state with a complex constitutional structure, shall include the application at four legislative levels, which significantly burdens the position of victims of trafficking in human beings in the criminal investigation and proceedings. Legal analysis is based on minimal standards confirmed in international documents, which protect the rights of victims of trafficking in human beings. As for Bosnia and Herzegovina, the following documents shall be relevant:

- UN Convention on Transnational Organized Crime;
- Council of Europe Convention on Action against Trafficking in Human Beings;
- Protocol to prevent, suppress and punish trafficking in persons, especially women and children – Palermo protocol.

Purpose of the legal analysis of the criminal offence of trafficking in human beings in Bosnia and Herzegovina is the assessment of current situation related to respecting the victims of trafficking in human beings that is their rights guaranteed in international instruments, Constitutions, and national legislation. Structure of legal analysis covers a series of matters, which regulate the treatment of victims of trafficking in human beings, substantive, and procedural matters, such as:

- Criminal laws – various forms of trafficking in human beings, trafficking in human beings and prostitution, case law;
- Position of victims of trafficking in human beings in criminal proceedings;
- Access to legal aid; and
- Rights of victims of trafficking in human beings.

Finally, study tries to identify gaps and obstacles in application of valid European Union standards, and includes the opinions of courts and prosecutors’ offices, as well as victims of trafficking in human beings.

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Introduction

This report assesses the current situation in regard to the rights of trafficked persons and their treatment as victims and witnesses in criminal and other legal proceedings.

The report is based on the minimum standards as contained in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, the Council of Europe Convention on Action against Trafficking in Human Beings, EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and other relevant European and international legal instruments. Bosnia and Herzegovina ratified both the UN Trafficking Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. It is a potential candidate for membership of the EU.

Before discussing the specific legislation governing the criminalization of trafficking in human beings and the protection of victims, it is important to briefly present the basics of the constitutional and legal system of Bosnia and Herzegovina (BiH).

In accordance with its Constitution, BiH is organized as a complex state consisting of two entities (the Federation of Bosnia and Herzegovina and the Republika Srpska) and the territory of the Brcko District of Bosnia and Herzegovina, which has the status of condominium (joint management).



Therefore, there are currently four legal systems: one at the state level; two at the entity level; and one at the Brcko District level. The four legal systems have developed along largely autonomous lines over the past two decades. Due to the autonomous nature of legislative procedures at the Entity and Brcko District level, their legal orders vary in many areas of

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substantive and procedural law. In addition, since each Entity, the Brcko District and the state of Bosnia and Herzegovina have their own judicial systems, differences arise in the interpretation and the application of similar or even identical legal provisions. This also applies to the criminal justice system, both at the normative and institutional level.

The main problems connected with the practical application and interpretation of the provisions of the criminal codes from all four legislations are jurisdiction, coordination and alignment of institutional actions. In many cases, differences in legal definitions between four criminal codes cause conflicts of jurisdictions between state, entity and Brcko District prosecutors' offices. There is no formal hierarchy between these four jurisdictions. How to ensure common criteria for prosecution of certain cases is a crucial question. Internal harmonization could offer solutions to this problem.

Regarding the criminalisation of human trafficking, the Criminal Code of Bosnia and Herzegovina has been harmonized with the relevant international standards, most importantly the Palermo protocol and the CoE Convention on Trafficking, since 2010. Furthermore, during 2013, the Republika Srpska's and Brcko District's criminal codes were harmonized with the international standards in this field. The most important elements of this criminal offence (the acts, means and purpose) are in line with the legal standards established under international law instruments. In contrast, the Criminal Code of the Federation BiH (CC FBiH) is not yet harmonized with aforementioned standards. First and foremost, CC FBiH does not acknowledge the vulnerable position of children and still requires proof that offenders have incited, lured or coerced the child. Moreover, the FBiH Criminal Code is indifferent to the ways in which the suspect has acted to achieve his or her purpose. With an emphasis on prostitution, other purposes for exploitation are ignored. It is only possible to prosecute cases of trafficking committed for purposes of prostitution according to the current provisions of the Criminal Code of Federation BiH.

Currently, the process of amending the criminal legislation in the Federation of BiH is in place in order to ensure that specific provisions regarding human trafficking comply with the BiH Criminal Code. This should result in the harmonization of all four legislations with international standards; provide a clear separation between jurisdictions; and allow better coordination between institutions. According to the State Strategy and Action plan, internal harmonization is planned since 2012 in order to ensure that the BiH Prosecutor's office would be in charge of international cases of human trafficking, while the entities and Brcko District would be responsible for domestic cases of human trafficking. During May 2015, the Law on Amendments to the Criminal Code of Bosnia and Herzegovina was adopted. The new amendments will ensure that the BiH Prosecutor's office is in charge of international cases of trafficking in human beings, as planned by State Strategy and Action plan, and provide a clear separation between jurisdictions. However, due to the significant delay in the adoption of amendments of the Criminal Code of the Federation BiH and as a result of decriminalization of internal trafficking at the state level (i.e. removal of the article on internal trafficking from the CC BiH), a legal vacuum/gap in the criminalization of internal trafficking at the territory of the Federation BiH is created. This legal vacuum will cause serious problems in prosecution of the cases of internal trafficking in human beings committed in the territory of the Federation BiH, which covers 51% of State territory, until legislative authorities adopt amendments to the Criminal Code of Federation BiH and finally harmonize legislation in this area at all four legal systems.

With the purpose of effective monitoring of trafficking cases, the official data collected by the BiH Ministry of Security/Department for Anti-trafficking include, along with information on human trafficking cases, information on related criminal acts that contain elements of human trafficking or are closely related to human trafficking and can be seen as a form of human trafficking, such as enticing into prostitution and the abuse of children or juveniles for pornography.

The information provided by this report pertains to the entire territory of Bosnia and Herzegovina and includes data gathered from all levels of the judiciary, law enforcement agencies and other relevant institutions, except when specifically noted. When it comes to legal practice, this report could not provide examples of the application of the latest amendments to the criminal legislation at the state level (from May 2015), due to the fact that they are only recently adopted and their application in practice is not yet recorded.

The following resources were used for this report:

- *Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 40/15;*
- *Criminal Code of Federation of Bosnia and Herzegovina, Official Gazette of Federation of Bosnia and Herzegovina: 36/03;*
- *Criminal Code of the Republika Srpska, Official Gazette of the Republika Srpska: 49/03, 108/04, 37/06, 70/06, 73/10, 01/12, 53/12, 67/13;*
- *Criminal Code of Brcko District, Official Gazette of Brcko District: 44/10, 47/11, 9/13, 33/13;*
- *Law on Movement and Stay of Aliens and Asylum, Official Gazette of Bosnia and Herzegovina: 36/08, 87/12;*
- *Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings, Official Gazette of Bosnia and Herzegovina: 49/13;*
- *Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Nationals of Bosnia and Herzegovina Official Gazette of Bosnia and Herzegovina: 66/07.*

In addition, the following other relevant acts were examined:

- *Criminal Procedure Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09;*
- *Criminal Procedure Code of Federation of Bosnia and Herzegovina, Official Gazette of Federation of Bosnia and Herzegovina: 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 09/09, 12/10, 08/13, 59/14;*
- *Criminal Procedure Code of the Republika Srpska, Official Gazette of the Republika Srpska: 53/12;*
- *Criminal Procedure Code of Brcko District of Bosnia and Herzegovina, Official Gazette of Brcko District: 33/13;*
- *Labour Law, Brcko District, Official Gazette of Brcko District: 70/06;*
- *Labour Law, Federation of Bosnia and Herzegovina, Official Gazette of Federation of Bosnia and Herzegovina: 43/99, 32/00 and 29/03;*
- *Labour Law, the Republika Srpska, Official Gazette of the Republika Srpska: 8/00, 40/00, 47/02, 38/03, 66/03 and 20/07;*
- *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings, Official Gazette of Federation of Bosnia and Herzegovina: 7/14;*
- *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings, Official Gazette of Brcko District: 44/11;*
- *Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings, Official Gazette of the Republika Srpska: 13/10;*
- *Law on the Protection of Witnesses under Threat, Official Gazette of Bosnia and Herzegovina: 03/03, 21/03, 61/04, 55/05;*

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- *Law on Public Order and Peace of the Brcko District, Official Gazette of Brcko District: 32/09;*
- *Law on Public Order of the Herzegovina-Neretva Canton, Official Gazette of Herzegovina-Neretva Canton: 8/00, 2/05, 9/09;*
- *Law on Public Order of the Republika Srpska, Official Gazette of Republic of Srpska: 20/07, 11/15;*
- *Law on Violations against Public Order of the Sarajevo Canton, Official Gazette of Sarajevo Canton: 18/07, 7/08;*
- *Law on Public Order of the Tuzla Canton, Official Gazette of the Tuzla Canton 9/01, 01-02-752-8/07;*
- *Law on Confiscation of Illegally Acquired Material Gain, Official Gazette of the Republika Srpska 12/10;*
- *Law on the Seizure of the Proceeds of Crime and Offences, Official Gazette of Federation of Bosnia and Herzegovina: 7/14;*
- Press Code of Bosnia and Herzegovina, April 29th, 1999.¹

Court cases:

- N.C. (I.S., P.L.) Kz-45/06 (2006);
- M., KVP-03/03-A (2004);
- Z. and N.N., Kz-70/06 (2007);
- D.G. and Z.V., Kz-125/05 (2005).

Interviews:

- Interview with a Federal prosecutor, member of the Strike Force for Combating Trafficking in Human Beings of BiH, December 12th 2013;
- Interview with a lawyer, representative of NGO “Vasa prava”, December 19th, 2013;
- Interview with the IFS-EMMAUS Shelter coordinator, December 20th, 2013.

Literature:

- “Direct Assistance to Victims of Trafficking in Bosnia and Herzegovina”, IOM, Ministry of Human Rights and Refugees BiH, State Coordinator for Combating Trafficking in Human Beings in BiH, 2008;
- “Guidelines for Conduct of the Regional Monitoring Teams for Combating Trafficking in Human Beings in BiH”, Ministry of Security BiH, 2012;
- Practicum for social workers on the occurrence and forms of labour exploitation of children, Trafficking in Human Beings for the purpose of sexual exploitation, prostitution, pornography and paedophilia, Catholic Relief Services BiH, Ministry of Security of BiH, 2010;
- Return procedures for victims of Trafficking in Human Beings, Catholic Relief Services BiH, Ministry of Security of BiH, s.a.;
- “Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina”, OSCE, 2009;
- “Trafficking in Human Beings and Responses of the Domestic Criminal Justice System, A Critical Review of Law and Emerging Practice in Bosnia and Herzegovina in Light of Core International Standards”, OSCE BiH, June 2009;

¹ http://english.vzs.ba/index.php?option=com_content&view=article&id=218%3Akodeks-za-tampu&catid=6%3Apress-code&Itemid=9&lang=bs.

- "Trafficking in Human Beings - Prevention and Protection in Bosnia and Herzegovina, Guidelines for Judges and Prosecutors", Ministry of Security of BiH/Department for anti-trafficking; Centre for Judicial and Prosecutorial Training of the Federation BiH; Centre for Judicial and Prosecutorial Training of the RS, Judicial Commission of Brcko District; IOM Mission in BiH; USAID.

Reports:

- "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2014", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina, 2015;
- "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013;
- "Situation Report and Bosnia and Herzegovina Anti-Trafficking Action Plan Implementation Report for 2013", State Coordinator for Combating Trafficking in Human Beings in BiH, 2014;
- "Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina" and "Report on the Implementation of the Action Plan for Combating against Trafficking in Human Beings in Bosnia and Herzegovina for 2012", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina, 2013;
- "Trafficking in Human Beings in Bosnia and Herzegovina: Situation Report and Bosnia and Herzegovina Anti-Trafficking Action Plan Implementation Report for 2011", State Coordinator for Combating Trafficking in Human Beings in BiH, 2012;
- "Report on the Situation of trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina and Report on the Implementation of the Action Plan for Combating trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina in 2007", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina, 2008.

Strategies and Directives:

- Council of Europe Convention on Action against Trafficking in Human Beings, 2005;
- Directive 2004/81/EC of the Council of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
- Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 108, 1981;
- "Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013 – 2015 and Action Plan for implementation of Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013 – 2015", Council of Ministers of Bosnia and Herzegovina, March 2013.

Web pages:

- <http://www.hjpc.ba/secr/cait/?cid=3730,2,1> – BiH High Judicial and Prosecutorial Council;
- <http://www.tuzilastvobih.gov.ba> – Prosecutor's Office of Bosnia and Herzegovina.

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Part 1 - Facts & figures

It is very challenging to provide figures on the number of trafficking cases, as the criminal justice statistics in BiH do not provide reliable data on the prosecution of criminal offences, including those related to trafficking in human beings. The main obstacle is the very complex organization of the judiciary system, which is unable to collect, analyse and publish unique crime statistics for all prosecutors' offices, courts and law enforcement agencies. The lack of a reliable data source makes it almost impossible to provide reliable figures on the number of trafficking cases, the type of work or services people were trafficked for, the number of suspects, and especially the number of victims involved and whether it concerned in-country or cross-border trafficking.

The numbers on trafficking cases and the number of suspects and victims involved are presented below as far as it was possible to collect them. Please note that the criminal codes of the Republika Srpska and Brcko District of BiH are harmonized with the international standards in this field during 2013. Thus, data for 2013 and 2014 is provided in accordance with these legislative changes. Furthermore, data for the state level relate to the period before the decriminalization of internal trafficking on the state level in May 2015. This note refers in particular at the differences in articles of criminal codes and criminal offences related to trafficking in human beings.

Total number of court cases on trafficking in 2011, 2012, 2013 and 2014

	No. of investigations	No. of indictments	No. of verdicts in first instance	No. of verdicts in appeal	No. of verdicts by Supreme Court
2011.	10 against 19 pp	19 (in 6 cases)	7 (in 4 cases)	/	/
2012.	19 against 42 pp	22 (in 15 cases)	13 (in 11 cases)	/	/
2013.	37 against 81 pp	16 (in 11 cases)	15 (in 10 cases)	/	/
2014.	14 against 18 pp	7 (in 9 cases)	12 (in 13 cases)	/	/

Data on 2011

According to the data collected by all prosecutors' offices in Bosnia and Herzegovina² on criminal offences related to trafficking in human beings³, in 2011 there were:

- 19 reports, filed by the responsible law enforcement agencies, received on trafficking and related offences committed against 38 persons;
- 10 investigations were conducted against 19 persons; in 6 cases, indictments were raised against in total 19 suspects;
- in 4 cases verdicts were ruled against 7 suspects. All seven suspects were convicted to imprisonment. In one case, the perpetrator was also fined. Appropriation of material gain acquired by the crime was not ruled in either of the cases.⁴

² Data is aggregate and refers to all levels of the judiciary throughout BiH.

³ As explained in the Introduction, the official data collected by BiH Ministry of Security/Department for Anti-trafficking, along with information on trafficking in human beings cases, include information on related criminal acts, which contain elements of human trafficking or are closely related to human trafficking and can be seen as form of human trafficking, such as: enticing into prostitution and the abuse of children or juveniles for pornography.

⁴ "Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and Bosnia and Herzegovina Anti-trafficking Action Plan Implementation Report for 2011", State Coordinator for Combating Trafficking in Human Beings in BiH.

Data on 2012

According to the data from the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC BiH), the competent prosecutor's office in 2012 ordered 19 investigations against 42 persons for trafficking in human beings and related offences. It suspended 9 investigations against 22 persons and indictments were issued in 15 cases against 22 persons in total.

In 11 cases, a total of 13 suspects were convicted: 6 suspects were sentenced to imprisonment, 2 suspects received a penalty (monetary fine) and 5 suspects were given suspended punishments. In 2 cases, a total of 3 suspects were acquitted, and in the case of 3 suspects the court declared the case inadmissible.⁵

Thus, in total, 13 suspects were convicted, 3 suspects were acquitted, and prosecution was declared inadmissible for 3 suspects.

Data on 2013

According to data of HJPC BiH, the prosecutors' offices in Bosnia and Herzegovina received 17 reports on criminal offences of trafficking in human beings and related offences in 2013 in Bosnia and Herzegovina, involving 34 perpetrators. From the previous year, 29 reports were processed against 53 perpetrators. Therefore, during 2013, the prosecutors' offices worked on 46 reported criminal offences against 87 perpetrators in total.⁶

During 2013, the prosecutors' offices ordered 14 new investigations against 31 persons. Over the year, work continued on 23 investigations from the previous year against 50 persons, and the prosecutors' offices conducted in total 37 investigations against 81 persons. The prosecutors' offices decided not to instigate investigations in 7 cases against 10 persons; ceased 7 investigations against 24 persons; and in 12 cases filed indictments against in total 21 persons, of which the courts confirmed indictments against 16 persons in 11 cases. There were no ceased proceedings. During 2013, the courts pronounced sentencing verdicts against 15 persons in 10 cases: in 5 cases, prison sentences against 7 persons; and suspended sentences against 8 persons in 5 cases. There were no acquittals, nor did courts declare any case inadmissible in 2013. Also, no sentencing verdicts imposed fines, though in one case, seizure of illegal gain was imposed.

Data on 2014

According to the Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina⁷, the prosecutors' offices in Bosnia and Herzegovina received 23 reports on criminal offences committed against 32 persons. In accordance with this, 14 investigations were ordered against 18 persons. In 2014 there were:

- 23 reports, on criminal offences committed against 32 persons;
- 14 investigations were conducted against 18 persons;
- 7 indictments were raised against in total 9 suspects;
- the courts imposed convictions against 13 persons in 12 cases and 4 suspects were acquitted in one case.

⁵ "Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina and Report on the Implementation of the Action Plan for Combating Against Trafficking in Human Beings in Bosnia and Herzegovina for 2012", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina.

⁶ "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2013", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina

⁷ "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2014", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina

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Type of exploitation

Data on 2011

During 2011, indictments were confirmed⁸ in 8 cases: in two cases, the Prosecutor's Office of Bosnia and Herzegovina issued two indictments against two persons for the crime of Trafficking in Human Beings in violation of Article 186 CC BiH, which were confirmed; in 3 cases indictments were confirmed for the criminal offence of Incitement to prostitution in violation of Article 210 of the CC of FBiH; in 1 case in the Republika Srpska indictment was confirmed for the criminal offence of Trafficking for Prostitution in violation of Article 198 CC RS; and in 2 cases in Brcko District of BiH, two indictments were confirmed for the criminal offence of Incitement to prostitution in violation of Article 207 CC BDBiH. Data on criminal offences related to trafficking in human beings in 2011 were collected in cooperation with the Strike Force for Combating Trafficking in human beings.

Data on 2011							
	Nr. of reports	Nr. of suspects	Nr. of investigations	Nr. of suspects	Nr. of suspended investigations	Nr. of indictments	Nr. of convictions
Bosnia and Herzegovina (BiH) – state level							
Trafficking (art. 186 CC BiH)	9	22	15	47	3 (against 6 suspects)	2	1 acquittal 4 prison
Federation of Bosnia and Herzegovina (FBiH) – entity level							
Incitement to prostitution (art. 210 CC FBiH)	5	5	4	4		3	2 (15 and 30 months prison); 1 appeal; 1 joined with another case
Republika Srpska (RS) – entity level							
Trafficking for prostitution (art. 198 CC RS)	2	2	2	4		1	1 (26 months + fine)
Brcko District (BD BiH)							
Incitement to prostitution (art. 207 CC BD BiH)	2	6	2	6		2	Incitement to prostitution (art. 207 CC BD BiH)

In 2011, the **BiH Prosecutor's Office** received nine reports for human trafficking, in violation of Article 186 CC BiH, against 22 persons. A prosecutorial decision was reached in neither of these cases.

⁸ Confirmed indictment means that an indictment is filed/issued by the prosecutor and approved by the court.

In addition to trafficking reports filed in 2011, BiH Prosecution worked on pending charges and investigations that they had received in previous years and that had been transferred to 2011. The BiH Prosecutor's Office data indicates that in 2011, 23 cases from previous years were dealt with against 71 persons: there were four decisions on opening an investigation against 11 persons; there were a total of 15 investigations against 47 persons; the investigation was suspended in three cases against 6 persons. At the end of 2011 there were 9 investigations against 23 persons that remained unresolved and pending. Two indictments against two persons were confirmed and processed at the court. In one case, the perpetrator was acquitted, while in the other case, against four persons, all the perpetrators were sentenced with imprisonment.

In 2011, the Cantonal Prosecutors' Offices (PPO in Tuzla and Travnik) of the **Federation of Bosnia and Herzegovina** received 5 reports against 5 persons for the criminal offence of Incitement to Prostitution (Article 210 CC FBiH). In four cases against four persons, the decision was made to open an investigation. There were three indictments raised against three persons. There were two verdicts reached against two persons, both with imprisonment; one sentence was 15 months, and the other 30 months. In one case, the prosecutor appealed. One case was joined with another case, having the same perpetrator reported in both. Thus, at the end of the reporting period there is only one report against one person that remains unfinished.

The Republic Prosecutor's Office of the **Republika Srpska** submitted data for 2011 relating to two reports against two persons for the crime of Trafficking in Human Beings for the purpose of prostitution (Article 198 CC RS). In both cases, the investigation was against two persons. One person was indicted. There was a verdict reached against one person and the perpetrator was sentenced to 26 months imprisonment and a fine amounting to 18,000.00 BAM.

The Prosecutor's Office of **Brcko District** of BiH received two reports on Incitement to Prostitution (Article 207 CC BDBiH). In one case, four persons were charged and an indictment was raised against them. Since a plea agreement was reached, the verdict ruled a sentence of 42 months imprisonment for the perpetrator. The other 3 perpetrators were sentenced to imprisonment of 36, 30, and 24 months respectively. In the second case two persons were charged and an investigation was ordered on both. A plea agreement was reached with one person, thus he was sentenced to 6 months imprisonment. The second suspect fled. Appropriation of material gain acquired by crime was not ruled in either of the cases.

Data on 2012

In 2012 it was possible to have more comprehensive and precise data on the prosecution of trafficking in human beings. This is a result of the functioning of the modern Court Management System (CMS) which allows for reliable data on registered crimes, including trafficking in human beings. However, this system does not provide information about the victims/injured parties in court proceedings.⁹

In cooperation with the Strike Force for Combating Trafficking in Human Beings of BiH and HJPC BiH, the following data on criminal offences related to trafficking in human beings in 2012 were collected by the BiH Ministry of Security/Department for Anti-trafficking¹⁰.

⁹ "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013.

¹⁰ "Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina and Report on the Implementation of the Action Plan for Combating Against Trafficking in Human Beings in Bosnia and Herzegovina for 2012", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina.

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Data on 2012					
	Nr. of investigations	Nr. of suspects	Nr. of suspended investigations	Nr. of suspended investigations	Nr. of convictions
Bosnia and Herzegovina – state level					
Trafficking (art. 186 CC BiH)	3		2	1	1 (2 yr. prison)
International procuring (art. 187 CC BiH)	2		2		
Organised crime (art. 250 CC BiH) related to art. 186 & 187 CC BiH	1		1		
Federation of Bosnia and Herzegovina (FBiH) – entity level					
Incitement to prostitution (art. 210 CC FBiH)	3	10	-	-	-
Abuse of minors for pornography (211 CC FBiH)	1	2	-	3	3 (resp. 3, 24 & 36 months)
Introducing pornography to a minor (art. 212 CC FBiH)	1	1	-	1	1 (fine)
Republika Srpska (RS) – entity level					
Trafficking for prostitution (art. 198 CC RS)	4	10	3 (against 8 suspects)	7	2 (26 months prison + fine; 6 months suspended, prison)
Abuse of minors for pornography (art. 199 CC RS)	1	1	-	3	1 (6 months prison)
Production and screening child pornography (art. 200 CC RS)	1	1	-	2	2 (1 yr. suspended. prison; fine)
Brcko District of Bosnia and Herzegovina (BD BiH)					
Incitement to prostitution (art. 207 BD BiH)	1	1	-	-	-
Abuse of a minor for pornography (art. 208 CC BD BiH)	1	2		2	-
Introducing pornography to a minor (art. 209 CC BD BiH)	-	-	-	-	1 (7 months prison)

The **Prosecutor's office of BiH** ordered 3 investigations for the criminal offence of Trafficking in human beings (Article 186 CC BiH), suspended 2 investigations and filed one indictment. The Court of BiH imposed one 24 months prison sentence on one person.

The Prosecutor's office of BiH ordered two investigations for the criminal offence of International procuring for prostitution (Article 187 CC BiH). Both investigations were suspended.

A further investigation was ordered and suspended for the criminal offence of Organized crime (Article 250 CC BiH) related to the criminal offence of Article 186 and 187 CC BiH.

In the **Federation of Bosnia and Herzegovina** (FBiH) three investigations were ordered against 10 persons for the criminal offence of Incitement to prostitution (Article 210 CC FBiH).

For the criminal offence of Abuse of children or juveniles for pornography (Article 211 CC FBiH), one investigation was ordered against 2 persons. There were no suspended investigations, while in 2 cases three indictments were filed against in total 3 persons. Three convicting suspended sentences of 3, 24 and 36 months were pronounced against three persons.

For the criminal offence of Introducing pornography to a minor (Article 212 CC FBiH), one investigation was ordered against 1 person. There were no suspended investigations, and an indictment was filed against 1 person. One person was fined with 500 BAM.

In the **Republika Srpska** (RS), 4 investigations were ordered against 10 persons for the criminal offence of Trafficking in human beings for the purpose of prostitution (Article 198 CC RS). Three investigations against 8 persons were suspended, and in 4 cases indictments were filed against in total 7 persons. Two convicting verdicts, one prison sentence against one person and one suspended verdict for 1 person were pronounced. The prison sentence was for 26 months and a fee of 18.000 BAM. The suspended sentence was 6 months imprisonment.

For the criminal offence of Abuse of children or juveniles for pornography (Article 199 CC RS), 1 investigation was ordered against 1 person. In 2 cases three indictments were filed against 3 persons. One convicting verdict was pronounced – a prison sentence of 6 months for one person.

For the criminal offence of Production and screening child pornography (Article 200 CC RS), one investigation was ordered against 1 person. Indictments were filed against 2 persons. Two convicting verdicts were pronounced – a fee against one person for the amount of 1500 BAM and one suspended sentence of 12 months.

In the **Brcko District** of Bosnia and Herzegovina (BD BiH) one investigation was ordered against 1 person for the criminal offence of 'Enticement into prostitution' (Article 207 CC Brcko District).

For the criminal offence of 'Abuse of a Child or a Minor for Pornographic Purposes' (Article 208 CC BD BiH), one investigation was ordered against 2 persons. In 1 case two indictments were filed against 2 persons.

For the criminal offence of 'Introducing pornography to a child' (Article 209 CC BD BiH), 1 convicting verdict was pronounced: a prison sentence of 7 months for one person.

Data on 2013¹¹

For the criminal offence of Trafficking in Persons (Article 186 CC BiH), the **Prosecutor's Office of BiH** received 4 reports against 7 persons, which along with 9 active reports against 23 persons from previous years, gave a total of 13 reports against 30 persons. The Prosecutor's Office ordered 2 investigations against 6 persons which, together with the previously ordered 7 investigations against 22 persons, made a total of 9 investigations against 28 persons. One investigation against 2 persons was not instigated. Four investigations against 12 persons were ceased. No indictments were filed. Against two persons in one case, the Court of Bosnia and Herzegovina pronounced a sentence of 4 years imprisonment for each.

¹¹ "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2013", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina

Data on 2013							
	Nr. of reports	Nr. of suspects	Nr. of investigations	Nr. of suspects	Nr. of suspended investigations	Nr. of indictments	Nr. of conviction
Bosnia and Herzegovina (BiH) – state level							
Trafficking (art. 186 CC BiH)	4	7	2	6	4 (against 12 persons)	0	2 (4 yr. prison each)
Federation of Bosnia and Herzegovina (FBiH) – entity level							
Incitement to prostitution (art. 210 CC FBiH)	7	14	5	14	Incitement to prostitution (art. 210 CC FBiH)	8	5
Abuse of minors for pornography (211 CC FBiH)	2	3	3	4		4	3 (resp. 3, 24 & 36 months)
Republika Srpska (RS) – entity level							
Trafficking for prostitution (art. 198 CC RS)	1	1	1	1	3 (against 4 persons)	3	1
Production and screening child pornography (art. 200 CC RS)			-	-	-	2	
Brcko District (BD BiH)							
Incitement to prostitution (art. 207 CC BD BiH)	2	4	1	2	0	1	1
Trafficking in human beings (art 207a CC BD BiH)	1	2	1	1		2	
Abuse of a minor for pornography (art. 208 CC BD BiH)			1	2		2	1 (1,5 yr. prison)
Introducing pornography to a minor (art. 209 CC BD BiH)	1	1	1	1			

The Prosecutors' Office of BiH also ordered an investigation for the criminal offence of Organised Crime in violation of Article 250 in conjunction with the criminal offence of Trafficking in Human Beings (Article 186 CC BiH), against two persons. An indictment was filed against 2 persons for having committed this criminal offence, which was also confirmed by the Court of Bosnia and Herzegovina.

In the **Federation of Bosnia and Herzegovina**, the Prosecutor's Offices received 7 reports against 14 persons for the criminal offence of Incitement to Prostitution (Article 210 CC FBiH). These, together with 12 active reports against 19 persons from previous years, gave a total of 19 reports against 33 persons. Five investigations against 14 persons were ordered which, together with 7 previously ordered investigations against 13 persons, gave a total of 12 investigations against 27 persons in 2013. Five investigations against 6 persons were not

instigated, while 1 investigation against 8 persons was ceased. In four cases indictments against in total 10 persons were filed, and in 3 cases indictments against 8 persons were confirmed. In two cases, sentencing verdicts were pronounced against in total 5 persons: in one case 2 persons were sentenced to 1 year imprisonment each, and in the second case 3 suspended verdicts for a term of 2.5 years were pronounced.

The Prosecutor's Offices received 2 reports against 3 persons for the criminal offence of Abuse of a Minor for Pornography (Article 211 CC of FBiH). These, together with 6 active reports against 9 persons from previous years gave a total of 8 reports against 12 persons. Three investigations against 4 persons were ordered which, together with 3 previously ordered investigations against 4 persons, gave a total of 6 investigations against 8 persons. In three cases indictments were filed against in total 4 persons, and in 3 cases indictments against 4 persons were confirmed. Four sentencing verdicts were pronounced against 5 persons, each of whom was given a suspended sentence for a term of 1 year. For the criminal offence of Introducing pornography to a minor (Article 212 CC FBiH) no reports were filed during the reporting period.

In the **Republika Srpska**, for the criminal offence of Trafficking for Prostitution (Article 198 CC RS) the Prosecutor's Offices received 1 report against 1 person. This, together with 1 active report against 1 person from the previous period, made 2 reports against 2 persons in total. An investigation against 1 person was ordered which, together with 4 previously ordered investigations against 5 persons, gave 5 investigations against 6 persons in total. There were no investigations which were not instigated, while 3 investigations against 4 persons were ceased. In two cases indictments were filed against in total 3 persons, and in 2 cases indictments against 3 persons were confirmed. One verdict pronouncing a sentence of imprisonment was pronounced against 1 person. For the criminal offence of Production and Screening Child Pornography (Article 200 CC RS), the Prosecutor's Offices did not receive any reports in the reporting period; they continued to work on one report against one person from previous years. Two previously ordered investigations against two persons also continued.

In **Brcko District** of Bosnia and Herzegovina, for the criminal offence of Incitement to Prostitution (Article 207 CC BD BiH) the Prosecutor's Office received 2 reports against 4 persons. One investigation was ordered against 2 persons which, together with 1 previously ordered investigation against 1 person gave a total of 2 investigations against 3 persons. One investigation against 2 persons was not initiated; there were no ceased investigations. One indictment against 1 person was filed and confirmed. One verdict sentencing 1 person to imprisonment was pronounced. For the criminal offence of Trafficking in Human Beings (Article 207a CC BD BiH), the Prosecutor's Office received 1 report against 2 persons. One investigation against 1 person was ordered. In one case indictments against 2 persons was filed and confirmed. For the criminal offence of Abuse of a Minor for Pornography (Article 208 CC BD BiH), the Court of Brcko District pronounced one verdict sentencing one person to a prison term for 1.5 years. For the criminal offence of Introducing Pornography to a Minor (Article 209 CC BD BiH), the Prosecutor's Office of Brcko District received 1 report against 1 person, and an investigation was ordered against 1 person.

Data on 2014¹²

According to the HJPC BiH, during 2014, the prosecutors' offices in Bosnia and Herzegovina received a total of 23 reports for the criminal offence of Trafficking in Human Beings and related offences committed by 32 persons. The prosecutors' offices during 2014 conducted 14 investigations against 18 persons. During the same period, prosecutors decided to suspend the investigation in 6 cases against 12 persons and filed indictments in 7 cases against 9 persons.

¹² "Situation Report on Trafficking in Human Beings in Bosnia and Herzegovina in 2014", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina

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The courts pronounced convictions in 12 cases against 13 persons, out of which in 8 cases prison sentences against 8 persons and in 4 cases suspended sentences against 5 persons. In one case against four persons, the perpetrators were acquitted.

At the state level, the Prosecutor's Office of Bosnia and Herzegovina ordered 1 investigation against one person and raised indictments against 2 persons. One investigation was suspended.

In Federation of Bosnia and Herzegovina, the prosecutors' offices ordered investigations against 6 persons, while 4 were suspended. Indictments were raised against 6 persons. Convictions against 10 persons were pronounced, as well as 1 acquittal.

Republika Srpska ordered 1 investigation against 1 person and 1 indictment was raised against 1 person for the criminal offence Trafficking in Minors (Article 198b CC RS).

In Brcko District, the prosecutor's office ordered 1 investigation against 6 persons; 1 investigation against 6 persons was suspended.

Data on 2014							
	Nr. of reports	Nr. of suspects	Nr. of investigations	Nr. of suspects	Nr. of suspended investigations	Nr. of indictments	Nr. of convictions
Bosnia and Herzegovina (BiH) – state level							
Trafficking (art. 186 CC BiH)	5	9	1	1	1	2	-
Federation of Bosnia and Herzegovina (FBiH) – entity level							
Incitement to prostitution (art. 210 CC FBiH)	4	4	3	3	2	4	8
Abuse of minors for pornography (211 CC FBiH)	5	5	3	3	2	2	2
Republika Srpska (RS) – entity level							
Trafficking for prostitution (art. 198 CC RS)					1		1
Trafficking in minors (198b CC RS)	1	1	1	1	1	1	1
Abuse of minors for pornography (art. 199 CC RS)	1	1	1	1			
Production and screening child pornography (art. 200 CC RS)	6	6	3	3	1	2	1
Brcko District (BD BiH)							
Trafficking in human beings (art. 207a CC BD BiH)	6	6	1	6	1		
Introducing pornography to a minor (art. 209 CC BD BiH)				1			

Number of suspects involved in criminal proceedings in 2011, 2012, 2013 and 2014

	Total no. of suspects involved in criminal investigations, prosecution or trial ¹³
2011.	38 ¹⁴
2012.	42 ¹⁵
2013.	87 ¹⁶
2014.	32 ¹⁷

Number of trafficking victims involved in criminal proceedings

Relevant data on trafficking in human beings in BiH can be found only in the Annual reports of the State Coordinator for Anti-trafficking and Illegal Migration. These reports summarise all delivered data from police, prosecutors and NGOs. Although the methodology of data collection and analysis is still improving, at this moment there is no comprehensive data on the number of victims involved in court cases. Reliable, comprehensive and accurate data on trafficking in human beings in the country is one of the priority areas for further action.¹⁸

However, the 2011 Annual Report of the State Coordinator for Anti-trafficking¹⁹ provides data on victims who were involved in court cases in Federation BiH (but only in FBiH) for the criminal offence of Incitement to Prostitution (Article 210 CC FBiH). In one case, the victims were three male children: one under fourteen and two under sixteen. In the other two cases, the victims were female children: 4 girls were under 14, one girl was between 16 and 18 years old. All victims were below the age of eighteen, and therefore considered and treated as children.

The Court Management System (CMS) of the High Judicial and Prosecutorial Council of BiH (HJPC BiH) does not collect and/or provide information about the victims/injured parties in court proceedings. Therefore, this system should be improved to enable the collection of information about victims/injured parties.²⁰

¹³ The total number of suspects involved in criminal investigations, prosecution or trial refers to the total number of suspects in the cases of trafficking in human beings but also to the cases related to the criminal offence of trafficking in human beings (incitement to prostitution, child pornography).

¹⁴ "Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and Bosnia and Herzegovina Anti-Trafficking Action Plan Implementation Report for 2011"; State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina.

¹⁵ "Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina and Report on the Implementation of the Action Plan for Combating against Trafficking in Human Beings in Bosnia and Herzegovina for 2012"; State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina.

¹⁶ "Situation Report on Trafficking in Human Beings in BiH in 2013"; State Coordinator for Combating Trafficking in Human Beings, Sarajevo, April 2014.

¹⁷ Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina in 2014.

¹⁸ "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013.

¹⁹ "Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and Bosnia and Herzegovina Anti-Trafficking Action Plan Implementation Report for 2011"; State Coordinator for Combating Trafficking in Human Beings in BiH.

²⁰ Interview with Federal prosecutor, member of the Strike Force for Combating Trafficking in Human Beings of BiH, December 12, 2013.

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Number of identified victims of trafficking in 2011, 2012, 2013 and 2014²¹

	Total no. of victims identified	Female		Male		National	Foreign	Prostitution	Other purposes
		adults	minors	adults	minors				
2011	35 ²²	16	12	/	7	29	6	18	17
2012	39 ²³	20	16	/	3	27	12	23	16
2013	16 ²⁴	5	6	2	3	14	2	3	13
2014	49 ²⁵	11	24	1	13	46	3	10	39

In **2011**, 35 victims were identified: 18 were sexually exploited; 11 were exploited for the purpose of begging; 5 were sold for the purpose of forced marriage; and one victim had her travel documentation destroyed and her movement restricted.

Of the total of 39 victims identified in **2012**, 20 were sexually exploited; 3 were victims of incitement to prostitution; 13 were exploited for the purpose of begging; and 3 were sold for the purpose of forced marriage.

According to data obtained from the prosecutors' offices, law enforcement agencies, Centres for Social Work, and non-governmental organisations, required for the annual Situation report on trafficking in human beings in BiH, it was concluded that 16 potential victims of trafficking in human beings/incitement to prostitution and/or sexual exploitation/human trafficking for the purpose of begging/sale for entering into marriage, were identified/assisted in **2013**. Of this total number of 16 victims, 3 were sexually exploited, 4 were exploited through forced labour/begging, 2 were sold for forced marriage/begging, and 7 were involved in forced begging. Of the 16 victims, 2 were foreign nationals, namely 1 underage male and 1 adult female persons, both citizens of Serbia.

Out of the total of 49 potential victims, identified in **2014**, 10 were sexually exploited; 3 were exploited through forced labour (labour exploitation); 31 were exploited for the purpose of begging; 1 victim was exploited for the purpose of production, possession and screening child pornography and 4 were sold for forced marriage/begging.

During 2014, 14 potential victims of trafficking in human beings were provided assistance in the shelters; 21 potential victims were provided assistance through the daily centre/reception unit; 1 victim was assisted in the Orphanage Bjelave in Sarajevo; 13 potential victims themselves refused assistance.

In addition, in May 2014, the Court of Bosnia and Herzegovina confirmed the indictment for the criminal offence of Organized Crime (Article 250, Paragraph 3 CC BiH) in conjunction with the criminal offence of Trafficking in Human Beings (Article 186, Paragraph 1 CC BiH). In this

²¹ "Identified victim" means that there are reasonable grounds to believe that the person is a victim of trafficking.

²² "Trafficking in Human Beings in Bosnia and Herzegovina Situation Report and Bosnia and Herzegovina Anti-Trafficking Action Plan Implementation Report for 2011"; State Coordinator for Combating Trafficking in Human Beings in BiH.

²³ "Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina and Report on the Implementation of the Action Plan for Combating Trafficking in Human Beings in Bosnia and Herzegovina for 2012", State Coordinator for Combating Trafficking in Human Beings in BiH.

²⁴ "Situation Report on Trafficking in Human Beings in BiH in 2013", State Coordinator for Combating Trafficking in Human Beings, Sarajevo, April 2014.

²⁵ Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina in 2014, State Coordinator for Combating Trafficking in Human Beings in BiH, April 2015.

case, 672 victims of human trafficking were identified, of which 652 were citizens of Bosnia and Herzegovina and 20 foreign nationals (16 from Serbia and 4 from FYR Macedonia), who were exploited through forced labour (construction work) in Azerbaijan during 2009.

It is not known how many victims pressed charges and/or filed reports with the police. The High Judicial and Prosecutorial Council (HJPC) BiH does not collect and/or provide information about victims/injured parties in court proceedings. Similarly, although CMS facilitates the collection of statistical data on offenders and cases, it does not provide data on victims of crime. Therefore, it is difficult to specify the number of victims who were involved in court cases or the number of victims who pressed charges without insight into each individual case on trafficking in human beings. Data collection varies between different official institutions (e.g. police, prosecution, courts); between NGOs; depending on the stage of the procedure; or depending on the manner of conducting the procedure. Trafficking in human beings is not only defined by Article 186 of the Criminal Code of BiH (CC BiH), but is also defined as Incitement to prostitution. In addition, the actual number of victims is misplaced among other crimes, for example child pornography, which can in some way be related to trafficking, etc.²⁶

Based on the collected and provided statistical data regarding the number of victims of trafficking and the purposes of exploitation, as well as official data of the HJPC related to the prosecution of trafficking, it can be concluded that in the majority of cases trafficking for sexual exploitation, exploitation of prostitution and other sexual exploitation related offences tend to be prosecuted at all levels of prosecution in BiH. This conclusion relates to the period up to 2014.

IFS-EMMAUS consider this data as an indicator for the neglect of and failure to identify other forms of trafficking by the relevant authorities, as well as an indicator for problems in inconsistencies and incompleteness of legislation. However, following the adoption of the amendments of the criminal laws related to trafficking in RS and BD, prosecutions in 2014 started to work on labour exploitation and forced begging as a form of human trafficking, both at the entity and state level. Also, during 2014 and 2015 investigations were launched into forced marriages and trafficking in human embryos. Although the outcomes of these investigations are not yet available to the public, this clearly indicates positive changes in the perception of human trafficking and its diverse forms, as well as certain improvements in regard to the harmonization of legislation.

²⁶ Interview with Federal prosecutor, member of the Strike Force for Combating Trafficking in Human Beings of BiH, December 12, 2013.

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Part 2 - Criminal law

Introduction

As abovementioned, there are currently four legal systems in Bosnia and Herzegovina: one at the state level; two at the entity level; and one at the Brcko District level. Each of the four legal systems has its own rules of criminal law and institutions responsible for their implementation. It can be said that trafficking is regulated to some extent within all four legislative systems in BiH.

At the state level, the Criminal Code²⁷ (CC BiH) and Criminal Procedure Code (CPC BiH) of Bosnia and Herzegovina²⁸ are relevant for the purposes of this analysis. At the Entity levels, the relevant criminal codes are the Criminal Code (CC FBiH)²⁹ and Criminal Procedure Code (CPC FBiH)³⁰ of the Federation of Bosnia and Herzegovina and the Criminal Code (CC RS) and Criminal Procedure Code of the Republika Srpska (CPC RS)³¹. Also, Brcko District has its own Criminal Code (CC BD BiH) and Criminal Procedure Code (CPC BD BiH).³²

Other legal instruments within these four legal systems in the areas of healthcare, social care and education, etc. are not treated explicitly with respect to trafficking, although their provisions can allow direct or indirect assistance to victims of trafficking.

Criminal Code of Bosnia and Herzegovina (CC BiH)

According to the latest amendments to the CC BiH, adopted during May 2015, the Prosecutor's Office of BiH is in charge of international cases of trafficking in human beings, as planned by the State Strategy and Action Plan, to provide a clear separation between jurisdictions. Consequently, international trafficking in human beings implies the recruitment, transportation, transfer, harbouring or receipt of a person with the use of coercive or deceptive means for the purpose of exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, servitude or the removal of organs or for the purposes of any other exploitation in a country in which such person has no residence or is not a citizen (Article 186 CC BiH)³³. The prescribed sanction is at least five years of imprisonment, and is more severe than the previous punitive sanction, which stipulated at least three years of imprisonment for committing this criminal offence. Furthermore, if the crime of trafficking is committed against a person below 18 years of age, the prescribed sanction is at least ten years of imprisonment (previously at least five years of imprisonment).

²⁷ Official Gazette of BiH, 3/03, amended by: 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 40/15.

²⁸ Official Gazette of BiH, 3/03, amended by: 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09.

²⁹ Official Gazette of FBiH 36/03, amended by 37/03, 21/04, 69/04, 18/05, 42/10.

³⁰ Official Gazette of FBiH 35/03, amended by 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13.

³¹ Official Gazette of RS, 49/03, amended by 108/04, 37/06, 70/06, 73710, 01/12, 53/12, 67/13.

³² Official Gazette of BD BiH, 44/10 and 47/11, 9/13, 33/13.

³³ Official Gazette of BiH 40/15.

CC BiH, *International Trafficking in Human Beings (Article 186)*:

- (1) Whoever, by force or threat of force or other forms of coercion, abduction, fraud or deception, abuse of authority or influence of position or a position of vulnerability or by giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbors or receives a person for the purpose of exploitation of that person in a country in which such person has no residence or is not a citizen shall be punished by imprisonment of at least five years.
- (2) Whoever recruits, entice, transports, transfers, harbors or receives a person under 18 years of age for the purpose of exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, servitude or the removal of organs or for the purposes of any other exploitation in a country in which such person has no residence or is not a citizen shall be punished by imprisonment of at least ten years.
- (3) In the event that a criminal offence under paragraphs (1) and (2) of this Article is perpetrated by an official exercising his official duty, the perpetrator thereof shall be punished by imprisonment for a term not less than ten years.
- (4) Whoever forges, obtains or issues a travel or identity document or uses, retains, seizes, alters, damages, or destroys a travel or personal document of another person in order to facilitate international trafficking in human beings shall be punished by a prison sentence between one and five years.
- (5) Whoever uses the services of a victim of international trafficking in human beings shall be punished by a prison sentence between six months and five years.
- (6) In the event that the perpetration of the criminal offences under paragraphs (1) and (2) of this Article resulted in serious health damage, bodily injury or death of the persons referred to in paragraphs (1) and (2), the perpetrator shall be punished by a prison sentence of minimum ten years or long-term imprisonment.
- (7) The exploitation within the meaning of paragraph (1) of this Article implies: the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, servitude or the removal of human organs or any other exploitation.
- (8) The items, means of transportation and the objects used for the perpetration of the offence shall be seized.
- (9) Whether a person who is a victim of international trafficking in human beings consented to the exploitation is of no relevance to the existence of the criminal offence of international trafficking in human beings.
- (10) Against the victim of international trafficking in human beings who is forced by the perpetrator to participate in the committing of another criminal offence will not be conducted criminal proceedings if such conducts were a direct result of his/her status as a victim of international trafficking in human beings.

Despite the fact that the latest amendments of the state criminal code obviously signify important improvements, such as a stricter penal policy and the acceptance of the principle of non-punishment of victims, it must be noted once again that the adoption of these amendments created a legal gap in the prosecution of internal trafficking in the territory of the Federation BiH. Therefore, it should be emphasised that there is an urgent need for the legislative authorities to adopt amendments to the Criminal Code of Federation BiH and finally harmonize legislation in this area at all four legal systems with the aim to provide equal access to justice for all citizens and criminalise trafficking in human beings, internal and international, in the whole territory of BiH.

Although the criminal offence of Organized Crime is proscribed under Article 250 CC BiH³⁴ as a general incrimination which is then connected with other crimes committed under specific circumstances and with special purposes as is proscribed by law, the legislator went a step further in the latest amendments and incriminated in a separate article Organized International Trafficking in Human Beings (Article 186a CC BiH):

CC BiH, Organized International Trafficking in Human Beings (Article 186a):

- (1) Whoever organizes or leads a group or other association which by its common operations commits the criminal offence referred to Article 186 of this Code (International Trafficking in Human Beings) shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.
- (2) Whoever commits the criminal offence within a group or another association referred to in paragraph (1) of this Article or otherwise assists such group or association shall be punished by imprisonment at least ten years.
- (3) On the members of an organized group or the association of paragraph (1) of this Article are applied the provisions of Article 250 paragraph (4) and (5) of this Code (Organized crime).

Alongside this core incrimination of international trafficking in human beings, the CC BiH also includes a crime named International Incitement to Prostitution (Article 187), which covers procurement for the purpose of prostitution with an international element. The article does not criminalize prostitution itself as criminal offence.

CC BiH, International Incitement to Prostitution (Article 187):

- (1) Whoever, for profit or other gain, incites, encourages or entices another to offering sexual services or otherwise enables her/his offering sexual services to another person or in any way participates in organizing or managing of sexual services in a country in which such person has no residence or is not a citizen shall be punished by imprisonment of six months to five years.
- (2) The fact that a person who is incited, encouraged or enticed was involved in prostitution does not affect the existence of a criminal offence.

Forced labour, slavery-like practices or servitude are not criminalised as separate offences, but are qualifications within the offence of trafficking in human beings, since they are elements of this crime. Correspondingly, in the law there is no definition of these concepts.

Given that the data provided in this document mainly refer to the period before the latest amendments to the CC BiH (*see for example Part I – Facts and Figures*) by which internal

³⁴ CC BiH, *Organized crime (Article 250):*

- (1) Whoever perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina as a member of a group for organized crime, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than three years.
- (2) Whoever as a member of a group for organized crime perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of five years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than five years.
- (3) Whoever organizes or directs at any level a group for organized crime which by joint action perpetrates or attempts to perpetrate a criminal offence prescribed by the law of Bosnia and Herzegovina shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment.
- (4) Whoever becomes a member of a group for organized crime which by joint action perpetrates or attempts to perpetrate a criminal offence prescribed by the law of Bosnia and Herzegovina, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than one year.
- (5) A member of a group for organized crime referred to in paragraph 1 through 4 of this Article, who exposes that group, may be released from punishment.

trafficking in human beings was decriminalised at the state level, footnote 35³⁵ provided an overview and analysis of the relevant articles before the amendments.

³⁵ According to the provisions of the CC BiH that were in force until May 2015, trafficking implied the recruitment, transportation, transfer, harbouring or receipt of a person with the use of coercive or deceptive means for the purpose of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of organs or of other type of exploitation (*Article 186 CC BiH*). The prescribed sanction was at least three years of imprisonment. If the crime of trafficking had been committed against a person below 18 years of age, the prescribed sanction was at least five years of imprisonment.

CC BiH, Trafficking in persons (Article 186) (in force until May 2015):

(1) Whoever, by means of use of force or threat of use of force or other forms of coercion, by abduction, fraud or deception, the abuse of power or influence or a position of vulnerability, or by giving or receiving payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, hands over, harbours or receives a person for the purpose of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices servitude or the removal of organs or of other types of exploitation, shall be punished by imprisonment for a term not less than three years.

(2) Whoever recruits, incites, transports, transfers, hands over, harbours or receives individuals under 18 years of age for the purpose of the exploitation referred to in paragraph (1) of this Article, shall be punished by imprisonment for a term not less than five years.

(3) In the event that a criminal offence under paragraphs (1) and (2) of this Article is perpetrated by an official exercising his official duty, the perpetrator thereof shall be punished by imprisonment for a term not less than five years.

(4) Whoever forges, obtains or issues a travel or personal document, or uses, retains, seizes, alters, damages, or destroys a travel or personal document of another person for the purpose of facilitating trafficking in persons, shall be punished by a prison sentence between one and five years.

(5) Whoever organizes or in any manner leads a group of people for the purpose of perpetration of the criminal offences referred to in paragraphs (1) or (2) of this Article, shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment.

(6) Whoever uses the services of a victim of trafficking in human beings shall be punished by a prison sentence between six months and five years.

(7) In the event that the perpetration of the criminal offences under paragraphs (1) and (2) of this Article resulted in serious health damage, bodily injury or death of the persons referred to in paragraphs (1) and (2), the perpetrator shall be punished by a prison sentence of minimum five years or long-term imprisonment.

(8) The objects and means of transportation used for the perpetration of the offences shall be seized, while the facilities used for the purpose of trafficking in human beings may be temporarily or permanently closed.

(9) Whether a person consented to the exploitation is of no relevance to the existence of the criminal offence of trafficking in persons.

Alongside this core incrimination of trafficking in human beings, the CC BiH also included a crime named “international procuring in prostitution” (*Article 187*), which covered procurement for the purpose of prostitution across borders. This article was intended to prosecute cases of trafficking for the purpose of prostitution that have an international dimension. The basic form, however, did not require the use of coercion or deception; these were aggravating conditions under *article 187(2)*. The article did not criminalize prostitution itself as a criminal offence.

CC BiH, International Procuring for the purpose of prostitution (Article 187) (in force until May 2015):

(1) Whoever procures, entices or leads away another person to offer sexual services for profit within a State excluding the one in which such a person has residence or of which he is a citizen, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the State in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment, shall be punished by imprisonment for a term between one and ten years.

(3) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

An analysis of *Articles 186 “trafficking in persons”* and *187(2) “international procuring for the purpose of prostitution”* of the CC BiH shows an overlap in the criminalisation of trafficking in human beings, as *Article 186* covers both domestic and cross-border trafficking. This was also noted as a problem in practice: it depended on the prosecutor how he would qualify the offence and whether the court would accept this qualification. Hence there are recorded cases of trafficking for the purpose of prostitution with an international element that are qualified under *Article 186*, according an interview with Federal prosecutor, member of the Strike Force for Combating Trafficking in Human Beings of BiH

The fact whether the crime was qualified as “trafficking in persons” or as “international procuring for the purpose of prostitution” had no consequences for victims of trafficking in terms of access to assistance and protection, or at least these consequences have not been reported or observed. However, the difference in minimum punishment (for *Article 186* the minimum punishment is 3 years; for *Article 187* it is 1 year) may have consequences for the victim as the punishment for the offender(s) may be lower if the crime is prosecuted under *Article 187*.

However, this overlap has been noticed and it is expected that the harmonization of criminal laws would resolve this problem, as well as the problem of the differences in length of the sentences, as the harmonization aims to ensure that the state prosecutor’s office is in charge of international cases of human trafficking, while entities and Brcko District are responsible for domestic cases of human trafficking.

Criminal Code of Federation of Bosnia and Herzegovina (CC FBiH)

The CC FBiH places the crime of trafficking under the title “Incitement to prostitution”, which is committed when someone entices, incites or lures another into prostitution, introduces a person to another for the exercise of prostitution or takes part in organizing or managing prostitution (Article 210).

The aggravated form is proscribed in paragraph 2 of the same article which stipulates “whoever, in order to achieve material gain, introduces another into prostitution by force or threat of infliction of harm, or by deceit (...)”.

At the level of FBiH, under the current criminal legislation, trafficking in human beings can only be prosecuted in cases of sexual exploitation.

CC FBiH, Incitement to prostitution (Article 210):

- (1) Whoever, for gain, induces, incites or lures another into offering sexual services or in another way enables turning another over to a third person for offering sexual services, or in any way takes part in organizing or managing the offering of sexual services, shall be punished by imprisonment for a term between one and five years.
- (2) Whoever, for gain, by use of force or by threat to use force or to inflict greater harm, coerces another or by deceit induces another into offering sexual services, shall be punished by imprisonment for a term between one and ten years.
- (3) The punishment referred to in paragraph 2 of this Article shall be imposed on whoever, for gain, in the manner referred to in paragraph 2 of this Article, by abusing a difficult situation of a person residing in a foreign country, coerces or induces that person into offering sexual services.
- (4) Whoever perpetrates the criminal offence referred to in paragraphs 1 and 3 of this Article against a child or juvenile shall be punished by imprisonment for a term between three and fifteen years.
- (5) The fact whether the person who is induced, incited, lured or coerced has already been engaged in prostitution is of no relevance to the commission of the criminal offence under this Article.

The CC FBiH also provides for the crime of abusing children or juveniles for pornography, which may be seen as a form of trafficking in human beings (Article 211 Abuse of children or juveniles for pornography, and Article 212 Introducing pornography to a child).

CC FBiH, Abuse of a child or juvenile for pornography (Article 211):

- (1) Whoever photographs or films a child or juvenile with the aim of developing photographs, audio-visual tapes or other pornographic materials, or possesses or imports or sells or deals in or projects such material, or induces such persons to play in pornographic shows, shall be punished by imprisonment for a term between one and five years.
- (2) Items meant or used for the commission of the criminal offence referred to in paragraph 1 of this Article shall be forfeited and the items produced by the perpetration of criminal offence referred to in paragraph 1 shall be forfeited and destroyed

CC FBiH, Introducing pornography to a child (Article 212):

- (1) Whoever sells, shows or renders available through a public display or in any other way writings, pictures, audio-visual and other objects containing pornography to a child, or whoever shows him a pornographic show, shall be punished by a fine or imprisonment for a term not exceeding one year.
- (2) The items referred to paragraph 1 of this Article shall be forfeited.

Though FBiH does not have a separate article on trafficking in human beings, the specific provisions on victims of trafficking in human beings provided in bylaws on state level also apply to victims identified in FBiH, and can also be applied to victims identified in FBiH as victims of incitement to prostitution.

Furthermore, trafficking in human beings committed in the territory of Federation BiH, both internal and international, were prosecuted at state level up until recent amendments to the CC BiH. As a result of the decriminalization of internal trafficking at the state level, a legal vacuum in the criminalization of internal trafficking in the territory of the Federation BiH is created. This legal vacuum will cause serious problems in the prosecution of the cases of internal trafficking in human beings committed in the territory of the Federation BiH.

Criminal Code of the Republika of Srpska (CC RS)

In August 2013 the article on Trafficking for the purpose of prostitution (Article 198 CC RS) was amended and a new article on trafficking in line with the UN Protocol was adopted.³⁶ The new Article 198a CC RS criminalises recruitment, transport, etc. with the use of coercive, deceptive or abusive means for a wide range of exploitative purposes. The previous applicable article on trafficking for prostitution (Article 198 CC RS) is renamed to incitement to prostitution and criminalises enticing or luring another person into prostitution as well as organising or managing prostitution.

In addition, the CC RS contains specific incriminations for trafficking of minors (Article 198b), organizing groups or criminal organizations to carry out the criminal acts of trafficking and trafficking in minors (Article 198v), as well abuse of a child or juvenile for pornography (Article 199) and the production and screening of child pornography (Article 200).

CC RS, Incitement to prostitution (Article 198):

- (1) Whoever, in order to get financial benefits, entices, incites or lures another into prostitution, or whoever, in any way, enables turning a person over to another person for the exercise of prostitution, or whoever, in any way, takes part in organizing or managing prostitution, shall be punished by imprisonment for a period between six months and five years;
- (2) The history of prostitution of the person who has been enticed, incited, lured or forced into prostitution shall not have any bearing on the criminal offence referred to in this Article.

CC RS, Trafficking in human beings (Article 198a):

- (1) Whoever by force, threat or other forms of coercion, abduction, fraud or deception, abuse of a relationship of trust, dependence or helplessness or of difficult life conditions of another person, or by giving or receiving money or other benefits, recruits, transports, transfers delivers, sells, buys, mediates in selling, hides, receives, or holds another person for the purpose of labour exploitation, committing a criminal act, prostitution, use for pornography, establishing slavery or slavery-like practices, forced marriage, forced sterilisation, harvesting of organs or body parts, for use in the armed forces or other forms of exploitation, will be punished by imprisonment of at least three years;
- (2) Who seizes, retains, falsifies or destroys personal identification documents for the purpose of perpetrating acts referred to in paragraph 1 of this Article, will be punished by imprisonment of at least five years;
- (3) If the offence referred to in paragraph 1 and 2 of this Article was committed by an organized group, the offender will be punished by imprisonment of at least five years;
- (4) Who uses or enables another person to use sexual services or other forms of

³⁶ Official Gazette of RS 67/13, August 2013.

exploitation and was aware that the person is a victim of trafficking in human beings, will be punished by imprisonment between six months and five years;

- (5) If the offence referred to in paragraphs 1, 2, 3 and 4 of this Article is committed by an officer while performing official duties, the offender shall be punished by imprisonment of at least eight years.
- (6) If the offence referred to in paragraphs 1 to 3 of this Article caused serious bodily injury, serious violations of health or death of one or more persons, the offender will be punished by imprisonment of at least ten years;
- (7) The consent of the victim to any form of exploitation listed in paragraph 1 of this Article does not affect the existence of the criminal offence of trafficking in human beings;
- (8) Items, means of transportations and objects used to commit offences shall be seized.

CC RS, Trafficking of juveniles (Article 198b):

- (1) Whoever recruits, transports, transfers, sells, buys, mediates in selling, hides, holds or accepts a person under the age of 18 years for the purpose of labour exploitation, committing a criminal act, prostitution or other forms of sexual exploitation, pornography, establishing slavery or a similar relationship, forced marriage, forced sterilization, illegal adoption or a similar relationship, for the removal of organs or body parts, for use in the armed forces or other forms of exploitation, shall be punished by imprisonment of at least five years;
- (2) Whoever commits the offence referred to in paragraph 1 of this Article by making use of force, serious threats or other forms of coercion, deception, kidnapping, blackmail, abuse of his position, abuse of a relationship of trust, dependence or helplessness or of difficult life conditions of another person, or by giving money or other benefits, shall be punished by imprisonment of at least eight years;
- (3) Whoever uses or allows the use of sexual services or other forms of exploitation of minors, and was aware that the minor is a victim of trafficking in persons, shall be punished by imprisonment of at least five years;
- (4) Whoever takes, retains, falsifies or destroys personal identity documents to commit the offences referred to in paragraphs 1 and 2 of this Article, the offender shall be punished by imprisonment of three to fifteen years;
- (5) If the offence referred to in paragraphs 1, 2, 3 and 4 of this article made part of an organized criminal group, the offender shall be punished by imprisonment of at least ten years;
- (6) If the offence referred to in paragraphs 1, 2, 3 and 4 of this article is committed by an official in the execution of his duties, he shall be punished by imprisonment of at least eight years;
- (7) If the offence referred to in paragraph 1 and 3 of this Article, caused serious bodily injury, serious violations of health or death, the offender will be punished by imprisonment at least ten years;
- (8) The consent of the minor to any form of exploitation listed in paragraph 1 of this Article does not affect the existence of this criminal act.

CC RS, Organizing groups or criminal organizations to carry out the criminal acts of trafficking and trafficking in minors (Article 198v):

- (1) Whoever organizes a group, association or criminal association for committing the criminal offences of Article 198a or 198b shall be punished by imprisonment of three to fifteen years
- (2) Who becomes a member of a group or association referred to in paragraph 1 of this Article, or in another way helps such a group, shall be punished by imprisonment of one to ten years

CC RS, Abuse of a child or juvenile for pornography (Article 199)

- (1) Whoever photographs or films a child with a view to developing photographs, audio-visual tapes or other pornographic materials or incites such person to play in pornographic shows, shall be punished by imprisonment of a term between six months and five years.
- (2) The items referred to in Paragraph 1 of this Article shall be forfeited.

CC RS, Production and screening of child pornography (Article 200):

- (1) Whoever sells, shows or renders available through a public display or in any other way writings, pictures, audio-visual material or other items containing child pornography, or whoever for the same reasons, produces, purchases, keeps or screens a child pornographic show shall be fined or punished by imprisonment for a term not exceeding one year.
- (2) If the offence referred to in Paragraph 1 is committed against a minor who is under 16, the perpetrator shall be punished by imprisonment of a term of three years.
- (3) If the offence referred to in the preceding Paragraphs is committed through the mass media or internet, the perpetrator shall be punished by imprisonment of a term between six months and five years.
- (4) Child pornography in terms of this provision shall be understood to mean any pornographic material that visually shows:
 - (a) a child or a minor involved in an obvious sexual act, and
 - (b) realistic photographs that show a child or a minor involved in an obvious sexual act.
- (5) The items referred to in Paragraphs 1 and 2 of this Article shall be forfeited.

Criminal Code of Brcko District BiH (CC BD)

Comparable amendments were adopted in 2013 in the Brcko District BiH³⁷. Whereas originally trafficking was placed under incitement to prostitution (Article 207 CC BD), a new article on trafficking was adopted (Article 207a CC BD), which criminalises trafficking for a range of purposes and includes the criminalisation of the use of services provided by a trafficked person. It also contains a non-punishment clause (Article 207a sub 9). The CC BD also criminalises organized trafficking in human beings (Article 207b); abuse of children and juveniles for pornography (Article 208); and introducing a child to pornography (Article 209).

CC BD, Incitement to prostitution (Article 207):

- (1) Whoever, for profit or other benefit induces, encourages or entices another person to provide sexual services or otherwise facilitates the offering of sexual services of another person shall be punished by imprisonment from 6 months to 5 years.
- (2) The fact that the person who was induced, encouraged or enticed was previously engaged in prostitution is without influence on the criminal offence of this article.

CC BD, Trafficking in human beings (Article 207a):

- (1) Whoever by force or threat of force or other forms of coercion, abduction, fraud or deception, by abuse of power or by giving or receiving of payments or benefits in order to persuade a person having control over another person, recruits, transports, transfers, harbours or receives a person for the purpose of exploitation of that person, shall be punished by imprisonment for not less than 5 years.
- (2) Whoever recruits, induces, transports, transfers, harbours or receives a person who has not attained 18 years of age for the purpose of exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of body parts or any other exploitation, shall be

³⁷ Criminal Code of Brcko District of Bosnia and Herzegovina, Official Gazette of Brcko District: 33/13

punished by imprisonment of at least ten years.

- (3) If the criminal offence referred to in paragraphs 1 and 2 of this Article is committed by an official person while performing official duties, the offender shall be punished by imprisonment at least ten years.
- (4) Whoever falsifies, acquires, or issues a travel document or uses, retains, subtracts, alters, damages or destroys a travel or identity documents of another person for the purpose of facilitating trafficking in human beings shall be punished by imprisonment for one to five years.
- (5) Whoever uses the services of a trafficked person shall be punished by imprisonment of six months to five years.
- (6) If the commission of the crime referred to in paragraphs 1 and 2 of this Article, caused the deterioration of health, serious physical injury or death of persons referred to in paragraphs 1 and 2 of this Article, the offender shall be punished by imprisonment for not less than ten years or long-term imprisonment.
- (7) Objects, vehicles and facilities used for the commission of the offence shall be seized.
- (8) Whether a person consented to the exploitation is of no relevance to the existence of the criminal offence of trafficking in persons.
- (9) No criminal proceedings shall be conducted against victims of trafficking who were forced, by the perpetrator of the criminal act, to participate in the commission of another criminal offence, if such act was a direct consequence of his status of victim of trafficking in human beings.

CC BD, Organized trafficking in human beings (Article 207b):

- (1) Whoever organizes or leads a group, organized group or criminal organization that by joint action perpetrates or attempts to perpetrate the offence under Article 207a (Trafficking) of this Act, shall be punished by imprisonment of not less than ten years or long-term³⁸ imprisonment.
- (2) Whoever commits an offence as member of the group referred to in paragraph 1 of this Article, shall be punished by imprisonment of at least ten years.
- (3) Who becomes a member of the group referred to in paragraph 1 of this Article, shall be punished by imprisonment of not less than one year.
- (4) A member of a group as referred to in paragraph 1 of this Article who reveals the group or organization can be relieved of punishment.

CC BD, Abuse of a child or a juvenile for pornographic purposes (Article 208):

- (1) A person who abuses a child or a juvenile for taking photographs, producing audio-visual material or other material with pornographic contents, or possesses, imports, sells, distributes or presents such material, or induces such person to take part in a pornographic performance, shall be sentenced to prison from one to five years.
- (2) Items that were intended to be used or were used in committing the criminal offence referred to in paragraph 1 of this Article shall be confiscated, and the items produced as a result of the criminal offence of paragraph 1 of this Article shall be confiscated and destroyed.

CC BD, Introducing pornography to a child (Article 209):

- (1) A person who sells, shows, or presents to the public, or in some other way makes available documents, photographs, audio-visual and other pornographic material, or shows a pornographic performance to a child, shall be fined or sentenced to up to one year of imprisonment.
- (2) Items referred to in paragraph 1 of this Article shall be confiscated.

³⁸ According to the Criminal Code of Brcko District BiH, Article 43b, long-term imprisonment implies a prison sentence between 21 and 45 years.

Inclusion of different purposes of trafficking

The criminal codes of BiH, FBiH, RS and BD do not define all forms of “exploitation”, but only enumerate different forms. The definitions of trafficking in the four criminal codes cover trafficking for all purposes: labour exploitation, committing criminal acts, prostitution, use for pornography, establishing slavery or a similar relationship, forced marriage, forced sterilisation, harvesting of organs or body parts, for the purpose of armed forces or other forms of exploitation.

However, the legislation has not yet been fully harmonized, as the amendments to the CC FBiH have not yet been adopted. The legislative procedure for adoption of the amendments to the CC BiH which enables the state level to be in charge of cases with an international dimension have been completed; the Republika Srpska institutions and those in Brcko District are in charge of domestic cases of trafficking in human beings; however, Federation BiH, still has not adopted the proposed changes.

Article 11³⁹ of the CC BiH, however, states that the BiH Criminal Code applies to anyone who perpetrates the offence in question within its territory, meaning that despite the fact that trafficking in human beings is not adequately defined in Entity codes, the offence effectively exists in all parts of the country. The jurisdiction rules are defined in the Law on Courts of BiH, the Law on Courts of FBiH, the Law on Courts of RS and the Law on Courts of BD.

Slavery

It is worth mentioning that slavery and transport of slaves in general is criminalized in the CC BiH, so whoever, in violation of the rules of international law, places another in slavery or in a similar status or keeps him in such a status, buys, sells, hands over to another person or mediates the purchase, sale or handing over of such a person or induces someone else to sell his freedom or the freedom of the person he provides for or takes care is punishable (Article 185 CC BiH). The concept of slavery is defined in this provision of the Criminal Code, and is fully harmonized with the international definition of slavery, since this incrimination falls under the group of criminal offences against international law. The sanction for the crime of slavery is between one and ten years of imprisonment. There is, however, no information on the use of this article in practice.

The legislation in the area of labour relations, foreigner’s regulations and other sources do not provide the necessary definitions that would allow prosecution and sanctioning for trafficking.⁴⁰

Trafficking of prostitutes

In accordance with the Criminal Codes of BiH, FBiH, RS and BD, the fact whether the person who was procured, enticed, led away, forced or deceived into prostitution had already been engaged in prostitution is of no relevance for the existence of pandering. These legal provisions are strictly complied to by prosecutors and judges in practice, and apply to cases of trafficking in human beings, as well as cases of enticing into prostitution.⁴¹

³⁹ CC BiH, Article 11, Applicability of Criminal Legislation of BiH to those Perpetrating a Criminal offence within the Territory of Bosnia and Herzegovina:

(1) The criminal legislation of BiH shall apply to anyone who perpetrates a criminal offence within its territory.
(2) The criminal legislation of BiH shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the offence.
(3) The criminal legislation of BiH shall apply to anyone who perpetrates a criminal offence aboard a domestic civil aircraft while in flight, or aboard a domestic military aircraft, regardless of its location at the time of perpetration of the offence.

⁴⁰ “Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia“, project “Balkans ACT (Against Crime of Trafficking) Now!“, 2013.

⁴¹ Interview with Federal prosecutor, member of the Strike Force for Combating Trafficking in Human Beings of BiH, December 12, 2013.

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Therefore, if the prosecuting authority, police, State Investigation and Protection Agency (SIPA) or the prosecutor recognizes or identifies a prostitute as a victim of trafficking in human beings, and/or if the victim cooperates as a witness in the court case, she or he can get the status of victim of trafficking and the attached protection under BiH legislation.⁴²

In theory, prostitutes enjoy the same legal protection against trafficking and exploitation as other citizens (if they are recognized as victims of trafficking in human beings). However, prostitutes are at a larger risk of becoming victim of trafficking and/or exploitation given that BiH does not have a law on the legalization of prostitution. Consequently, prostitutes are subject to illegal processes and to prosecution for misdemeanours. Considering that prostitution is an illegal business in BiH, prostitutes are usually very dependent on their “bosses” and do not have the opportunity to determine the tasks to be performed, working times, etc. Therefore it is very easy to become victim of trafficking in human beings for the purpose of sexual exploitation. In this regard, prostitutes do not enjoy the same protection as other citizens.⁴³

Furthermore, if a person is engaged in prostitution, regardless of solicitation to prostitution, it is a thin line between consent and coercion. Also, it is more difficult for prosecutors to prove trafficking and exploitation if the person had already been involved voluntarily in prostitution. But even in this case, the fact that the person was voluntarily engaged in prostitution cannot be used in criminal proceedings as evidence.⁴⁴

Criminalisation of prostitution

The criminal codes in all four legislations in BiH criminalise any third party involvement in prostitution with or without the use of coercion or deceit.

The CC BiH criminalises “incitement to prostitution”, which prohibits incitement, encouraging or enticing another person to offer sexual services for profit in a country in which such person has no residence or is not a citizen, whereby the fact that the person who is incited, encouraged or enticed was involved in prostitution does not affect the existence of a criminal offence (Article 187⁴⁵). The article is intended to criminalise enticing or luring another person into prostitution as well as organising or managing prostitution with an international dimension.

The CC FBiH places trafficking under “incitement to prostitution”, which prohibits introducing, enticing, inciting or luring another person into prostitution for gain, as well as organizing or managing prostitution. Aggravating circumstances are the use of deceit or coercion, abuse of the difficult situation of a person in another country and the fact that the victim is a minor (Article 210⁴⁶). This implies that at the level of the Federation BiH only trafficking in human beings for sexual exploitation (prostitution) can be prosecuted.

The Republika Srpska criminalises “incitement to prostitution”, which prohibits enticing, inciting or luring another person into prostitution for gain, enabling somebody to turn over a person to another person for prostitution, and organizing or managing prostitution (Article 198⁴⁷).

The Brcko District BiH criminalises “incitement to prostitution”, which prohibits inducing, encouraging or enticing another person to provide sexual services or otherwise facilitating the offering of sexual services by another person for profit or another benefit (Article 207⁴⁸).

⁴² Interview with lawyer, representative of NGO “Vasa prava”, December 19, 2013.

⁴³ Ibid;

⁴⁴ Interview with Federal prosecutor, a member of Strike Force for Combating Trafficking in Human Beings of BiH, for the purpose of this analysis, December 12, 2013.

⁴⁵ See for the full text of article 187 CC BiH above.

⁴⁶ See for the full text of article 210 CC FBiH above.

⁴⁷ See for the full text of article 198 CC RS above.

⁴⁸ See for the full text of article 207 CC BD above.

In all cases the fact whether or not the victim was previously engaged in prostitution is not relevant.

Criminalisation of prostitutes

Prostitution as such (both from the position of clients and the position of sex workers) is not criminalized by either the State or Entity Criminal Codes. Rather, enticing into prostitution and pimping are criminalized. However, prostitution and various related activities are penalised in the laws on Public Order in the Republika Srpska, Brcko District, and in the ten (10) Cantons of the Federation of Bosnia and Herzegovina. All of these laws regulate prostitution in a similar manner. Below are some examples provided in the laws on public order of RS, Brcko District, Tuzla Canton and Sarajevo Canton.

According to article 19 (prostitution) of The Law on Public Order of the Republika Srpska (Official Gazette RS 20/07):

- (1) Whoever engages in prostitution shall be punished by a fine of 400 to 1200 BAM.
- (2) Whoever rents, or provides premises for prostitution, shall be punished by a fine of 500 to 1500 BAM.
- (3) For the offence referred to in paragraph 2 of this Article a fine of 4000 - 12000 BAM shall be imposed on a company or other legal entity.
- (4) For offences under paragraph 1 of this article a responsible person in a company or other legal person shall be imposed a fine of 500 - 1300 BAM⁴⁹.

The Law on Public Order of the Brcko District 32/09 penalises whoever engages in prostitution with a fine ranging from 100 to 1000 BAM (Article 16 'Prostitution'). Moreover, it establishes receiving payment for sex as a violation of the Law (Article 3 Paragraph 14, punishable by a fine), while paying for sex is not considered a violation.

No similar law exists on the level of the FBiH, but individual Cantons pass their own laws on public order. The Law on Public Order of the Tuzla Canton, for example, includes approaches similar to that of the Brcko District, whereby receiving payment for sex is a misdemeanour (Article 3 Paragraph 19; punishable by a fine or up to 60 days in jail), while making payments is not. This is also the case with the Law on Public Order of the Herzegovina-Neretva Canton (Article 9, fine or up to 60 days in prison).⁵⁰

The Law on Violations against Public Order of the Sarajevo Canton, Article 8 ('Violations and fines for natural persons') also punishes clients and renting or providing premises for prostitution:

- (2) With a fine ranging from 200 to 600 BAM will be punished for the offence:
 - c) whoever engages in prostitution and who uses the services of prostitution
- (5) With a fine ranging from 500 to 1500 BAM shall be punished for the offence:
 - c) whoever entices another person into prostitution or who rents or provides premises for prostitution.

The Law on Violations against Public Order of the Sarajevo Canton, Article 8 ('Violations and fines for natural persons') also penalises begging:

- (3) With a fine ranging from 300 to 900 BAM shall be punished:
 - b) whoever is begging
- (4) With a fine ranging from 400 to 1200 BAM shall be punished:
 - c) whoever entices another person into begging
- (5) With a fine ranging from 500 to 1500 BAM shall be punished:
 - b) whoever organizes begging or entices a minor or person with a mental disability to beg.

⁴⁹ RS Law on Public Order, Official Gazette RS 11/15.

⁵⁰ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

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Similar provisions are contained in other laws on public order in BiH.

The quoted provisions do not apply to victims of trafficking, if they are recognized as such according to the criminal codes provisions. However, in practice victims of trafficking may sometimes be prosecuted and/or penalised, as a result of their not being identified or recognized as victims of trafficking, since prostitution, begging and various related activities are penalised in the laws on Public Order in the Republika Srpska, Brcko District and in the Cantons in the Federation Bosnia and Herzegovina. This applies both to victims of trafficking for the purpose of sexual exploitation, as well as persons trafficked for the purpose of begging, if they are not recognized as victims of trafficking.

Distinction between trafficking and (exploitation of) prostitution

As previously stated, the CC BiH distinguishes between international trafficking in human beings and international incitement to prostitution, while the exploitation of prostitution is counted as a form of sexual exploitation within the definition of trafficking.

The criminal codes of BiH, RS and BD clearly distinguish trafficking in human beings and pandering, whereas the first requires the use of coercion or deceit, while the latter is also punishable with the consent of the person involved, that is, without the use of coercion or deceit.

The FBiH Criminal Code does not contain a separate article on trafficking in human beings. Trafficking for prostitution can be prosecuted under the article on 'incitement to prostitution'. Consequently, there is no clear distinction between the two.

Publication of case law

The High Judicial and Prosecutorial Council (HJPC) of BiH has established the web portal www.pravosudje.ba which contains information about all courts and prosecutors' offices in BiH and their activities and provides access to the judgements of the courts. Furthermore, schedules of trials as well as judicial practice bulletins of the courts in BiH are available through this web portal. Parts of the website are available to public, while public representatives need to submit a specific request for access to some official documents in accordance with the Law on Access to Information. There is no central system to specifically collect and publicise case law on trafficking and related offences.

Moreover, the HJPC BiH has developed and established a modern Court Management System (CMS), which provides reliable data on registered crimes, including trafficking in human beings. CMS is the official electronic information system of justice of BiH, which is used by most of the employees, and ensures that all work processes in the courts can be linked into a single logical and organizational unit. CMS contains a common database for all judicial institutions in BiH, and is available to all persons acting in a case, as well as in the form of statistical reports to the Presidents of the Courts and HJPC BiH.⁵¹

Domestic Practice

Most of the problems attached to the effective prosecution of trafficking in human beings are connected with the diametrically different interpretations of the relevant offences in the different criminal codes which lead to differences in the practical actions of prosecutors at all levels of the criminal justice system. This sometimes results in the initiation of a criminal investigation as trafficking by the Prosecutor's Office of BiH on the basis of the BiH Criminal Code, and the case then being transferred to Entity or Cantonal prosecutors who continue under charges of forcing to prostitution.

⁵¹ HJPC BiH website <http://www.hjpc.ba/secr/cait/?cid=3730,2,1>.

Forced labour is still an unknown form of trafficking in human beings in the domestic judicial system, especially in cases of child begging on the streets, so these cases are often prosecuted as minor offences with children as offenders.

An example of Trafficking in Human Beings for the purpose of sexual exploitation is the case of *N.N. and Z.* prosecuted at the State level. It concerned a mother and son who kept a group of women who could not support themselves and coerced them to provide sexual services. Some were single mothers of small and sick children; others lived with an unresolved legal status in Bosnia and Herzegovina. The Appellate Chamber of the Court of BiH held that the question of 'consent' to provide the sexual services was of no relevance. This case set a benchmark for the issue of consent of victims.⁵²

An example of Trafficking for labour exploitation is the case of *M.Z. and E.T.* in Trebinje. From August 2006 to 20 December 2006, in order to acquire financial gain, Z.A. used the vulnerable position of M.Z. and his common-law wife E.T., being unemployed and sick, and forced them to beg. Every morning they were taken in his vehicle from Bileca, where they were using a rented apartment, to Trebinje, where they begged in cafes, apartments, restaurants, markets and other locations. In the same way they were taken to other towns in the RS, *in casu* Gacko, Foca and Zvornik, where both of them had to hand over their proceeds amounting to 100 BAM per day, under the threat of physical abuse. Thus in five months they earned proceeds amounting to 4.000.00 BAM, which they were forced to hand over to the suspect under the threat of physical force. Thus, by threat of the use of force and benefiting from the vulnerability of the persons concerned, with the intention of gain and for the purpose of exploitation, he acted in an extremely inhuman and humiliating way. The suspect Z.A. was sentenced to three years imprisonment for the criminal offence of trafficking in persons in violation of Article 186 (1) CC BiH.⁵³

Sentencing practice

At the State level, only trafficking cases involving organized criminal networks have received high sentences. Other trafficking cases show a wide variation in the length of sentences, even when they are comparable in nature and gravity. As a matter of record, the harshest sentences for trafficking in human beings ever pronounced in Bosnia and Herzegovina related to organized criminal activity is in the case of *C. and S.*⁵⁴. The Appellate Chamber of the Court of BiH delivered a compound sentence of fourteen years of imprisonment for the principal suspect, out of which nine years were related to trafficking in human beings. It found that the Court in first instance had not sufficiently taken into account the aggravating circumstances, especially given the severity of physical violence suffered by the underage victims and the effect of such violence on their psychological and physical wellbeing.

Similarly, the *M.* case was a large-scale enterprise involving 18 individuals accused of trafficking foreign women and horrific proportions of abuse.⁵⁵ They had forced victims to have abortions and forged the medical records of some of the victims who had tested positive for HIV or syphilis. Following a plea agreement, the major suspect was sentenced to nine years for organized trafficking in human beings.

By contrast to these organized crime cases, the *N.N. and Z.* case, also tried at the Court of BiH, resulted in the defendants receiving one year of imprisonment each for the exploitation of

⁵² Trafficking in Human Beings and Responses of the Domestic Criminal Justice System, A Critical Review of Law and Emerging Practice in Bosnia and Herzegovina in Light of Core International Standards, OSCE BiH, June 2009.

⁵³ *Ibid.*

⁵⁴ *N. C. (I.S., P.L.) Kz-45/06 (2006).*

⁵⁵ *M. KVP-03/03-A (2004) (convicting four out of eighteen persons indicted).*

several women.⁵⁶ In its decision, the Appellate Chamber gave particular weight to extenuating circumstances, as the perpetrators had no previous convictions and one of them was in poor health.

Perhaps even more indicative of the sentencing practice and assumed aggravating circumstances is the *G. and V.* case tried at the Court of BiH. The defendants bought foreign victims and forced them to engage in sexual intercourse with men. One victim died from multiple sexually transmitted diseases within hours of reaching the hospital. In the ensuing judgment, the Court established that the death of the victim was caused by lack of timely medical attention and sexual exploitation. However, it justified a sentence of two years for one of the accused as follows:

“[T]he accused was not previously convicted, his personal situation and his behaviour after committing the offence, when he took the victim [...] to the hospital for treatment warranted a sentence of two years imprisonment.”⁵⁷

As regards sentencing in the Entities, practice is still contradictory to legislation and perhaps even more inclined towards leniency, including when weighed against particular abuse or suffering.⁵⁸

Main problems attached to the prosecution of trafficking

The main problems in regard to the application and interpretation of the relevant provisions of the criminal codes of the four legislations concern jurisdiction, coordination and adjustment of institutional actions.

Conflicts of jurisdiction

In many cases, differences in legal definitions within the four criminal codes cause a conflict of jurisdiction between State, Entity and Brcko District prosecutor's offices. There is no formal hierarchy between these four jurisdictions.

While an Entity prosecutor may decide to refer a case to the BiH prosecutor if it becomes clear that the offence in question is among those listed in the CC BiH, there is no obligation for him/her to do so. A prosecutor can also decide to prosecute at the Entity level for a different offence, such as enticing into prostitution. This lack of clear rules means that whether an offence will be prosecuted at State level or not, and whether it will be prosecuted as a human trafficking offence or not depends largely on the attitude of the prosecutors involved and their initiative.⁵⁹

Until the latest amendments to the Criminal Code of Bosnia and Herzegovina, domestic and international trafficking in human beings were both being prosecuted at the state level, while it is now specified that the Prosecutor's Office of BiH is in charge of international cases of trafficking and the Entities and Brcko District are responsible for domestic cases of trafficking. Moreover, it is not possible anymore to prosecute internal trafficking in human beings at the State level, as internal trafficking is no longer criminalised in the Criminal Code of BiH. Bosnia and Herzegovina did not yet apply the latest amendments, but in theory, it should be functioning as abovementioned. It could be assumed that all cases of trafficking that including any international element would be prosecuted at the state level (i.e. cases that have both a domestic and international element).

⁵⁶ *Z. and N.N.* Kz-70/06 (2007).

⁵⁷ *D.G. and Z.V.* Kz-125/05 (2005).

⁵⁸ Trafficking in Human Beings and Responses of the Domestic Criminal Justice System, A Critical Review of Law and Emerging Practice in Bosnia and Herzegovina in Light of Core International Standards, OSCE BiH, June 2009.

⁵⁹ “Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina”, OSCE, 2009.

A crucial question is how to ensure the correct criteria for prosecution of certain cases. The internal harmonization as described above might offer a solution to this problem. Moreover, until the amendments to the Criminal Code of Bosnia and Herzegovina, coordination between police and prosecution was also problematic since they had different interpretations of their jurisdiction over trafficking cases. A typical example of such conflict of jurisdictions occurred, for instance, when initial suspicions about trafficking by the police were brought before the Prosecutor's Office of BiH, which usually decided that the case belonged to Entity prosecutors, since there was not enough evidence about trafficking and the case should be prosecuted as negligent parental custody (in case of children being exploited on the streets) or unlawful deprivation of liberty or enticing into prostitution.⁶⁰

As mentioned, internal harmonization is planned since 2012 in order to ensure that the state would be in charge of international cases of trafficking, while the entities and Brcko District would be responsible for domestic cases of trafficking. After adoption of amendments to the criminal codes of RS and BD during 2013, parallel definitions of the same crime "trafficking in human beings" existed in RS, BD and at the State level, which again led to a conflict of jurisdiction which could not be solved by legislative provisions. Considering, however, that the process of amending the criminal legislation in the Federation BiH is significantly delayed and that in the meantime the recent adoption of amendments to the CC BiH decriminalised internal trafficking in human beings at the state level, at present it is not possible to prosecute internal trafficking committed in the territory of the Federation BiH.

Therefore, there is an urgent need for the legislative authorities to adopt the amendments to the Criminal Code of Federation BiH and finally harmonize the legislation in this area at all four legal systems.

Differences between regions or between courts

The provisions of the CC BiH in the area of criminalizing trafficking in human beings are harmonized with the relevant international standards, in particular the Palermo protocol and CoE Convention on Action against Trafficking in Human Beings, but only in cases of international trafficking in human beings. The most important elements (acts, means and purpose) are in line with the international standards as established under these instruments. The criminal codes of RS and BD are harmonized with the Criminal Code of BiH and relevant international standards, in relation to domestic trafficking in human beings.

The CC FBiH, however, does not acknowledge the vulnerable position of children and still requires proof that offenders have incited, lured or coerced the child. Moreover, the CC FBiH is indifferent to the ways in which the suspect acted to achieve his or her purpose. With an emphasis on prostitution, other purposes of exploitation are ignored.

In accordance with the aforementioned differences in the criminalisation of trafficking in the criminal codes at different levels in BiH, courts also apply definitions that are partially different. It is important to note that the Court of BiH, which until May 2015 was in charge of prosecuting the offence of human trafficking – whether domestic or international - is not superior to the Entity courts, as is often assumed. Rather, this Court is simply responsible for cases defined by the CC BiH. In other words, it could be described as a specialized court that only deals with certain heavier crimes, as defined by the CC BiH. There is no hierarchical relationship between the Court of BiH and the Entity courts system, they exist in parallel.⁶¹

⁶⁰ "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project „Balkans ACT (Against Crime of Trafficking) Now!", 2013.

⁶¹ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

Part 3 – General position of victims of trafficking in criminal proceedings

Problems attached to the position of victims

As in many jurisdictions, the main problem faced by victims in criminal proceedings is that they do not have standing and are not a party, with well-defined rights and obligations in the criminal process. As the victim is not a party to the proceedings, whatever the case may be, he or she does not have the power to request treatment of the case behind closed doors or any other protection measures, nor can he or she otherwise affect the proceedings. The trial chamber may exclude the public from the hearing based on its official duty on a request of one of the parties.

The second problem concerns the division of jurisdiction between State and Entity courts. In practice, a number of cases that should have been referred to Court of BiH to be prosecuted as trafficking cases are instead prosecuted before Entity criminal courts as incitement to prostitution. After adoption of the amendments of the criminal codes of RS and BD during 2013 and the amendments to the CC BiH in 2015, this practice has changed in the Republika Srpska and Brcko District, but is still applicable in 2015 for the Federation of BiH. This means that the protections available to victims on State level are no longer applicable, unless identical laws exist at the Entity level.

Although criminal procedures are relatively similar, including the Law on the Protection of Witnesses under Threat, there is no mirror image of the state Law on the Witness Protection Programme at Entity level. This means that victims who are involved in cases in Entity level courts simply cannot benefit from the law. The Law on the Witness Protection Programme is applied only in extraordinary circumstances, and therefore in practice this may not present much of a problem, but the Witness Support Office at the state criminal court level is much more advanced and better resourced than anything at the Entity level.

Beside criminal codes at all administrative levels in BiH there are no specific legal instruments that would allow victims of trafficking to enjoy any specific rights during or outside of criminal proceedings.

Cases of trafficking usually carry high risks, while most of the identified victims are women and/or children as the most vulnerable categories. The high level of risk implies that a high degree of caution is required. Victims/witnesses often fear reprisals, despite the involvement of various institutions that are obliged to provide protection and assistance to victims. Regardless of the high level of risk involved, victims are obliged to testify. They are not recognized by law as a special category, which has the right to refuse giving testimony. In cases when they are afraid for their safety, the special laws on witness protection can be applied.⁶²

However, given that trafficking in human beings is a highly complex criminal offence, professionals in the judicial system have an additional obligation to apply international conventions and laws in order to provide protection and humane treatment to victims of trafficking. International treaties that Bosnia and Herzegovina has ratified could be directly applied in the legal order of

⁶² "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013.

Bosnia and Herzegovina. Yet, their actual application largely depends on the awareness and education of the judicial professionals involved in the process.

Victims of trafficking are particularly vulnerable as they may be traumatised and suffer from fear and stress, which according to one of the members of the BiH Strike Force for Combating Trafficking makes it necessary to regulate their treatment and position in judicial processes. Also, the Rules on the Protection of Victims and Witnesses of Trafficking who are Nationals of BiH and the Rulebook on the Protection of Foreign Victims of Trafficking should provide a better position to victims/witnesses of trafficking and are applying to the entire territory of BiH.⁶³

This makes it the more necessary that police, prosecutors and court officials abide by their professional codes of conduct when working with trafficking victims. It is their general obligation to respect the dignity, human rights and freedoms of each victim of crime, including those who were trafficked.⁶⁴ Despite the efforts of dedicated professionals, victims often find that the competent institutions do not invest enough efforts in the prosecution of perpetrators.⁶⁵

In accordance with national criminal procedure laws, any citizen is entitled to report a criminal offence. However, all persons must report the commission of a criminal offence in those instances where failure to report such a criminal offence constitutes a criminal offence in itself (*see for more information on this issue: the right not to cooperate*).⁶⁶ The Prosecutor's office can open an investigation either *ex officio* or by someone's report. However in practice, investigations are mostly initiated by a police report. Although a victim's statement is very important since it can provide additional evidence that will facilitate the prosecutor in offering solid evidence to the court, the case should not be based on the victim's statement. Nevertheless, such cases do occur in practice and are usually unsuccessful in condemning the perpetrators.

Complaints filed by victims on their treatment by the judicial system are considered by the police and the Prosecutor's Office, and investigated according to protocol. According to an interview with a lawyer who provides free legal aid to victims of trafficking the most common complaint of victims refers to the seizure of personal items, for example, during police raids. These personal belongings are often cellular phones, money or other personal belongings, that are later used as evidence in criminal proceedings. On the basis of a lawyer's requests to the prosecution bodies, items are returned.⁶⁷

Position of a child victim

According to the definition given by the substantive criminal law of FBiH (Article 2, paragraphs 9 and 10 of CC FBiH), a child is defined as a person under the age of 14 and a juvenile is defined as a person under the age of 18. However, the FBiH adopted a new Law on the Protection and Treatment of Children and Juveniles in Criminal Proceedings in January 2014 that entered into force in February 2015, one year after its adoption, which defines a child as a person under the age of 18 in accordance with international standards.⁶⁸

⁶³ Interview conducted with one of the Federal prosecutors, member of Strike Force for Combating Trafficking in Human Beings of BiH, for the purpose of this analysis, December 12, 2013.

⁶⁴ "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013.

⁶⁵ Information provided by IFS-EMMAUS Shelter Coordinator, December 20, 2013.

⁶⁶ Criminal Procedure Code BiH, Article 214.

⁶⁷ Interview conducted with a lawyer, representative of NGO "Vasa prava", for the purpose of this analysis, December 19, 2013.

⁶⁸ Official Gazette of FBiH 13/14 (19. 1.2014.).

In the Republika Srpska and Brcko District, laws on the protection and treatment of children and juveniles in criminal proceedings have been applied since 2011 and 2012, respectively, in particular when it concerns children and juveniles who were victims or victim-witnesses of serious crimes. According to abovementioned laws, in cases where a child or a juvenile is the injured party, the trial should be presided by a judge for juveniles or a judge who has special knowledge. The Centres for Training of Judges and Prosecutors are implementing specialized trainings for judges and prosecutors on dealing with cases of juvenile delinquency, as well as on the protection of minor victims/injured parties. Therefore, for all criminal offences, in any case where the minor is an injured party, judges and prosecutors must be specialized and certified by the Centres for training of judges and prosecutors to be able to proceed in such cases.

The process of harmonizing legislation, due to different timings of the adoption and introduction in the Entities and Brcko District and different solutions in the legislations, have resulted in an uneven and unequal status of children and juveniles involved in the judicial process, regardless of whether they have the status of injured party or suspect. However, improvements are expected in 2015 considering that laws on the protection of children in criminal proceedings have now started to become applied in both the entities and Brcko District. The definitions of a child in relation to the application of criminal sanctions are the same in FBiH, RS and BD BiH: a child, in accordance with these laws, is any person under the age of 18 years.

Furthermore, no criminal sanctions can be imposed upon a child who was less than 14 years of age at the time of the criminal offence, nor other measures provided for in the laws concerned. If the child was between 14 and 18 years of age (juvenile) at the time the crime was committed, criminal sanctions or other measures provided for in these laws, may be imposed. These provisions are the same for the state level, entities and Brcko District.

Definition of the term ‘victim’

The general term “victim” is not defined or regulated in the criminal legislation of BiH, including State and Entity Criminal Procedure Codes. The criminal procedure codes only define the general term “injured party”. According to the Criminal Procedure Code of BiH, the “injured party” is a person whose personal or property rights have been threatened or violated by a criminal offence (CPC BiH Article 20 (1)h).

The term “victim of trafficking” is specifically defined in the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are nationals of Bosnia and Herzegovina (2007) and in the Rulebook on the Protection of Foreign Victims of Trafficking in Persons (2008). These bylaws apply to the entire territory of BiH. However, these bylaws, especially Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are nationals of Bosnia and Herzegovina, should be revised and amended, in accordance with the new amendments to the criminal legislation which stipulate that domestic cases of trafficking in human beings fall under the jurisdiction of the entity and district courts.

According to these documents, “victim” refers to any person for whom the competent authorities have reasonable grounds to believe that the person might have been subjected to offences defined as trafficking in persons in accordance with the Criminal Code of BiH, Article 186. “Victim-witnesses” are persons whose personal safety or the safety of their family is endangered due to threats, intimidation or similar actions related to their participation in the proceedings and testimony, as defined in the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Nationals of BiH.

Part 4 – Access to legal aid/ legal representation

Victims have the right to legal counselling and representation to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for damages suffered. Legal advice and representation must be free of costs if the victim does not have sufficient financial resources.

The Rules on the Protection of Victims and Witnesses of Trafficking who are Nationals of BiH and the Rulebook on the Protection of Foreign Victims of Trafficking lay down that it is the state's obligation to provide legal aid to victims of trafficking. These bylaws apply to the entire territory of BiH.

However, in practice legal aid is still a partially unregulated area. Defendants in criminal courts can have a lawyer appointed free of charge upon request. Although it is well understood that the standing of the accused differs from that of a victim who is not party to the proceedings, the balance of interests needs to be struck properly. This is currently not the case. In administrative procedures (e.g. a trafficking victim applying for a residence permit) or civil cases (e.g. a victim pursuing compensation in a civil court) victim representation should be ensured.⁶⁹ In criminal proceedings victims of trafficking are not entitled to a lawyer but, as injured parties, are represented by the prosecutor.

Furthermore, the system of free legal aid in BiH is still in development. In certain parts of the country free legal aid centres have been established. These are focused on providing free legal assistance regardless of the nature of the proceedings and the legal status of the beneficiaries. These centres are overburdened by providing free legal aid to numerous cases in the area of refugee returnees. Moreover, there is a lack of specialized lawyers to provide assistance to victims of trafficking. This means that victims of trafficking are not in a good position when it comes to free legal assistance. Most legal assistance for victims of trafficking is provided through the activism of civil society organizations that are funded from international, and partly from domestic, institutions' budgets.

There is currently one NGO that provides legal aid to victims of trafficking: the NGO *Vasa Prava* ("Your Rights"). This NGO has offices in a number of different cities in BiH, including Sarajevo, and operates in the entire BiH territory. Their offices not only provide services to victims of trafficking, but also to a number of other categories of beneficiaries, from refugees to returnees and others. *Vasa Prava*'s initial involvement with trafficking victims stems from its engagement with the BiH Ministry of Security, by which it was contracted to provide legal aid to asylum applicants. Later on, an additional protocol was signed with the Ministry to include specifically foreign victims of trafficking in human beings among their beneficiaries. It has also signed a protocol with the BiH Ministry for Human Rights and Refugees by which it is contracted to provide legal aid to national victims of trafficking in human beings.

According to an interview with one of its lawyers who provides free legal aid to victims of trafficking, *Vasa Prava* provides legal advice and consultation, as well as legal representation

⁶⁹ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

in administrative and civil proceedings when needed. Its representatives also accompany victims to the courtroom when they have to testify as witnesses in criminal cases. However, criminal procedures do not allow them to address the court, as the victim/injured party nor her lawyer is party in the criminal proceeding.⁷⁰ The interests of the victim as the injured party are represented by the prosecutor. When it comes to criminal proceedings, the legal representative is present during the police and prosecutor's investigation. But before the court, during trial, the representative of an NGO that provides free legal aid may not represent victims of trafficking.⁷¹

Furthermore, according to the CPC BiH: "A lawyer as the advisor may be assigned by the Court's decision to the witness during the hearing if it is obvious that the witness himself is not able to exercise his rights during the hearing and if his interests cannot be protected in some other manner"⁷². Although it is stated in the law, when it comes to victims/witnesses of human trafficking such practice has not been recorded.

Legal aid is provided to victims who are staying in shelters on the basis of geographical closeness of the shelter to the centre. Once a victim is accommodated in a shelter, the management informs *Vasa Prava*, whose staff will visit the shelter to meet with the victim. This does not mean that *Vasa Prava* as a matter of principle only provides assistance to victims who are referred by NGOs. Rather, any other referrals or self-referrals are extremely unlikely in practice.

Police refer a victim to legal aid during the first interview, but in most cases the legal representative is being notified and invited to provide legal aid by the shelter manager during the victim's reception at the shelter. This means that victims have access to legal counselling and representation in an early stage of the proceedings, immediately after identifying them as potential victims or during this process. In theory this applies to all victims, but usually cooperation between legal representatives and shelters is the only method that is currently effective.

The relevant provisions regarding (free) legal aid and representation of victims of trafficking are mainly laid down in the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Nationals of BiH and the Rulebook on the Protection of Foreign Victims of Trafficking.

In regard to **foreign victims**, the issue is addressed by three different articles of the Rulebook. Article 14 of the Rulebook (Rights of the victims of trafficking) states that victims will, amongst other services, be provided with counselling and information with regard to their rights and obligations and with legal assistance during criminal and other proceedings:

- (1) For the purpose of providing special protection to victims of trafficking relating to recovery and return, the victim will be secured with the following:
 - Adequate and safe accommodation;
 - Medical assistance;
 - Counselling and information especially in regard to his/her rights and obligations in a language he/she understands;
 - Legal assistance during criminal and other procedures in which the victim is realising his/her rights;
 - Information on access to diplomatic-consular representative offices of the countries of the victim's origin or usual stay;
 - Information on the possibilities and procedures of repatriation;
 - Different types of training and education depending on financial capabilities. (...).

⁷⁰ Interview with a lawyer, representative of "Vasa Prava", December 19, 2013.

⁷¹ "*ibid*"

⁷² Criminal Procedure Code BiH, Article 84, para 5: "Right of the Witness to Refuse to Respond"

Article 8 (1) (Conduct of interview) states that during the interview of the victim by an officer of the Service for Foreigners' Affairs BiH in order to determine her or his status, the victim should be briefed on her or his rights and obligations, as well as the possibility of using independent legal counsel:

(1) The officer for foreigners from the organizational unit where the foreigner is found who is suspected to be victim of trafficking, shall before conducting the interview inform the foreigner on his rights and obligations as defined by this Law, as well as about the possibility of using independent legal counselling in all stages of the proceedings and the right to an interpreter (right to follow procedures in a language he/she understands). It will be officially recorded that the foreigner is informed regarding his/her rights and obligations.

Finally, Article 17 (Counselling and information) once again reaffirms the victims' rights to counselling and to be informed of their rights:

During her/his stay in a shelter the victim has the right to counselling and to be informed about her/his rights, in a language he/she understands.

The counselling will be provided through a legal representative, office for legal aid or in any other way securing protection of the victim's rights.

Regarding **national victims**, the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Nationals of BiH addresses some of the issues related to legal information, counselling and assistance. Article 8 (Forms of protection) recognises legal assistance as one of the basic forms of protection:

The basic forms of protection of the victims and victim-witnesses are: physical protection, protection of privacy and identity, legal aid, social (education and re-socialization) and health protection, measures of special protection of children and other vulnerable categories, as well as provision of victims and victim-witnesses with other needs in order to provide appropriate individual protection and help.

Article 11 specifically deals with the provision of legal aid, which should include assistance on claiming compensation. According to this article:

The victim or victim-witness shall be provided with information about the relevant judicial and administrative proceedings with the aim of ensuring legal aid that will enable their standpoints and interests to be brought up and considered in the appropriate phases of the proceedings against perpetrator of the criminal offence.

The legal aid shall also include provision of professional assistance related to realization of the social protection, compensation and other rights.

Once again, it is important to note that, even though the victim's lawyer is allowed to accompany victims to the courtroom when they have to testify as witnesses in criminal cases, criminal procedures do not allow them to address the court, as the victim/injured party nor her/his lawyer are party in the criminal proceeding. Therefore, the victims' standpoints and interests should be brought up by prosecutor, who represents the interests of the victim as the injured party before court.

Finally, Article 17 paragraph 3f (Action of the authorized institutions and authorized organizations) states that a Centre for social work working with domestic victims may request free legal aid for the victim from the authorities that provide such service:

The protection measures for victims and victim-witnesses shall be planned and implemented in collaboration with an authorized social welfare service or centre, with freely given consent of the victim or victim-witness. (...)

(3) In the implementation of the required protection measures: (....)

(f) The social welfare centre or service may ask for free legal aid for the victim or victim-witness from the authorized organization that provides this kind of aid.

However, the Rulebook and the Rules do not clarify how the legal representation of victims should be handled before criminal, administrative and civil courts.

In addition, the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses of BiH (Article 5), FBiH (Article 7) and Brcko District (Article 7), and the Law on the Protection of Witnesses in Criminal Proceedings of the Republika Srpska (Article 5), stipulate that witnesses under threat and vulnerable witnesses are entitled to legal aid and assistance and support from social welfare authorities, in accordance with the law.

In terms of the provision of legal aid in civil proceedings, the situation is even more fragmented. The Law on (Free) Legal Aid at the state level has been drafted but has never been passed in Parliament, meaning that there is no coherent legal aid policy in the country. Centres for legal aid have been opened in some Cantons of Federation BiH, as well as in Brcko District and five centres in the Republika Srpska. Legal aid is also provided by a number of NGOs that operate across the country.

Role of social workers in providing legal counselling

The centres for social work provide legal aid and are involved in proceedings against traffickers with the assistance of legal counsels who protect the victims' interests in proceedings against traffickers. If the victim is a minor, the centres for social work act as guardians, but they do not always constitute an effective legal representation, because the guardians are usually not lawyers and cannot explain the essence of the problem and the rights of the victims.⁷³

According to The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH (Article 17 Paragraph 3f) social welfare centres or services may ask for free legal aid for victims or victim-witnesses from authorized organizations that provide this kind of aid.

Children

Legal aid and representation for child-victims is addressed by the Rulebook on Protection of Foreign Victims of Trafficking in Persons and the Rules on the Protection of Victims and Victims-Witnesses of Trafficking who are Nationals of BiH.

Regarding national child-victims of trafficking, Article 7 of the Rules on the Protection of Victims and Victims-Witnesses of Trafficking who are Nationals of BiH (Identification and Interview) states that a guardian, parent or service or the centre for social work is entitled to request legal aid when taking statements for the hearing:

(7) The Prosecutor's Office and the Police Service shall not interview a child without the presence of parents or guardians and services or centre for social work, which serves as a guardian and official authorization. The guardian, parent or service or centre for social work is entitled when taking statements or hearing to request legal aid.

According to Article 19 of the Rulebook on Foreign Victims, foreign child-victims are entitled to the same protection as national children.

⁷³ Interview with a lawyer, representative of "Vasa prava", December 19, 2013.

These provisions are taken very seriously by all professionals involved in the process and during the past few years almost always are applied in practice.

Moreover, the Republika Srpska, Brcko District and Federation of BiH implemented laws on the protection and treatment of children and juveniles in criminal proceedings in 2011, 2012 and 2015 respectively. As discussed before, the process of harmonizing legislation, due to different timings of their adoption and introduction in the Entities and Brcko District, as well as different solutions in each jurisdiction, have resulted in uneven and unequal status of children and juveniles, in conflict with the law, regardless of whether they have the status of an injured party or a suspect. However, in 2015 improvements are expected considering that the application of these harmonised laws has begun in both entities and Brcko District.

Appointment of a guardian or representative if needed

Article 3 (Basic Operational Principles) of the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Nationals of BiH confirms that all involved institutions should act at the best interest of the child as standard:

(3) The protection of the best interest of a child shall be an obligatory standard for authorized institutions in BiH and authorized organizations, which, in case of violation of a child's rights, shall aim at ensuring automatic protection of a child, appropriate aid, reintegration and re-socialization, that is, full recovery and permanent care of a child-victim or victim-witness.

However, at no point do the Rules deal with how to treat those victims whose age is unidentified.

If the parents may be involved in the trafficking of the child, the child should be separated from his/her family and receive an appointed guardian. Moreover, all children who are victims should be treated as children without parental care, regardless of their family status. In practice this means that such children are all in the care of the state. According to article 15 (Protection of children):

(2) Pursuant to the family laws applicable in BiH, a child shall be separated from the family without delay and a temporary guardian shall be appointed if there is evidence that a parent or guardian induces the child to any kind of unacceptable conduct, that a child carries out activities inappropriate for his/her age or was sexually abused, or when there is sufficient evidence that the guardian or parent took part in trafficking in children.

(4) A child-victim or victim-witness shall be treated as a child without parental care or having been neglected in upbringing regardless of his/her family status.

When the age of a foreign victim cannot be established, and there are reasons to believe that the victim is a child, he or she should be treated as such and a guardian should be appointed. As stated in Article 11 of the Rulebook on Foreign Victims (Procedure and competence for accommodation of victim of trafficking):

(3) If the age of the victim cannot be determined with certainty and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child and all proscribed measures shall be undertaken in the best interest of the child and the relevant information shall be forwarded to the territorially responsible municipal administrative organ for social protection in order to secure guardianship.

The issue of guardianship is addressed in more detail in Article 19 of the Rulebook on Foreign Victims (Special protection of children), which stipulates that all children victims are entitled to the same protection as children who are citizens of BiH and which reconfirms the best interest

principle. This includes that the identity or data that would enable the identification of child-victims of trafficking may not be published in the media or in any other way:

- (1) All children in the sense of the definition of the Rulebook are entitled to special treatment and protection as other children who are citizens of BiH.
- (2) A child who is not a citizen of Bosnia and Herzegovina shall enjoy the same rights to care and protection as children who are citizens of Bosnia and Herzegovina.
- (3) After a child is accommodated in the shelter, the competent organizational unit of the Service will inform the administrative organ responsible for social assistance, in the place where the shelter seats, about the need for appointment of a temporary guardian who will be responsible to represent the child interests in proceedings until the final solution is identified.
- (4) The competent organs have the obligation to inform the appointed guardian on all issues relevant for the interest of the child victim of trafficking in persons since he/she will represent the child in all phases of proceedings.
- (5) All activities by the competent organs must be undertaken in the best interest of the child, understanding that each activity has to be conducted with utmost care and protection as necessary for the welfare of the child including the rights and obligations of the child's parents, guardians or other individuals who may be legally responsible for the child and including the opinion of the child who is evaluated depending on the age of the child.
- (6) Actions dealing with the rights and interests of children should be given priority. All actions concerning children-victims of trafficking must be executed with the utmost degree of urgency and efficiency. Identity and data that enable the identification of children victims of trafficking will not be published in media or in any other way, except in extraordinary cases in order to find family members or to otherwise ensure the best interests of child.
- (7) If it is not possible to determine the age of child with security and there are reasons indicating that such child is a victim, then such child will be treated under the assumption that it is a child victim.

In the case of the biological parents being unable to take care of the child, a competent centre for social work will initiate proceedings to determine custody. All decisions related to victims and children victims of trafficking are based on a multidisciplinary team assessment within a single institution. Decisions on participation in criminal proceedings, protection measures and measures of repatriation will be taken by the competent institutions. These decisions are carried out with the child-victim accommodated in the shelter and her or his guardian, in cooperation with the institution, which made the decision.

Centres for Social Work (CSW) should provide adequate treatment to minor victims of trafficking throughout all procedures that would include the victim during her or his stay at the shelter:

- appoint a guardian in a special case, who is responsible for all procedures with minor victims or dependent adult victims;
- the CSW must be informed of any such potential victim of trafficking;
- the CSW/guardian must be present during the interviewing of any such potential victims of trafficking;
- ensure the privacy and identity of victims;
- prevent the re-victimization of victims;
- provide an expert opinion to the police on the capabilities of minor victims to make a statement;
- provide an expert opinion for the prosecutor's office and for the court on the ability of minor victims to testify and on the possible consequences for a minor victim.

Main problems attached to access to legal aid

Victims should have the right to free State-funded legal aid and to have their interests and rights represented by a lawyer at all stages of the relevant proceedings: criminal, civil and administrative.

However, none of the criminal procedure codes addresses the issue of legal aid and representation of victims. Rather, they only provide a basis for the appointment of defence attorneys for defendants. Although victims do not have standing in criminal proceedings legal advice and representation should nonetheless be afforded to them. While the Rulebook on Foreign Victims and the Rules on National Victims do include provisions that mention “legal assistance” or legal counselling, such service does not amount to legal advice or legal representation, and therefore is incomplete and in violation of the Palermo Protocol, the CoE Convention on Trafficking and EU Directive 2011/36/EU, which include the right of victims to legal representation to defend their interests and have their views and concerns presented at the appropriate stages of the criminal proceedings. Furthermore, legal representation is especially important as it would allow the victim’s lawyer to effectively pursue the victim’s claims for compensation in local courts even after the victim’s departure from BiH, which can be of crucial importance in cases that take a long time.

Although legal aid includes professional assistance related to social protection, compensation and other rights, as previously mentioned, the provision concerning compensation is hardly used in practice. Therefore, it can be concluded that the existing regulations on legal aid for victims in procedures regarding compensation are insufficient.

Moreover, it is necessary to improve cooperation mechanisms in order to prevent situations where statements are taken from a victim without the presence of legal advisors.

Most of the legal assistance for victims of trafficking is provided through the activism of civil society organizations that are funded from international and partly from domestic institutions’ budgets. Key problems are the lack of permanent sources of funding and the sustainability of projects.

Moreover, lawyers of NGOs or free legal aid centres cannot represent their clients nor address the court during court proceedings, as neither the victim (the injured party) nor her lawyer is a party to the criminal proceeding. As the victim is at the same time injured party and witness, it is the prosecutor who is supposed to represent and protect the victims’ interests in court. The protection of the victims’ interests in court therefore largely depends on the prosecutor, his consideration, abilities and skills to use all opportunities to protect the victims’ interests. In practice, in majority of cases, prosecutors do not see this as their task and victims are valuable for them only as witness who should support prosecution of perpetrators.

There is no coherent legal aid policy in the country considering that the Law on (Free) Legal Aid is not adopted at the state level. Centres for legal aid have been opened in some cantons of Federation BiH and in Brcko District, with five centres in the Republika Srpska. Legal aid is also provided by a number of NGOs that operate across the country. Therefore, the operation of these centres should be regulated in order to prevent differences and alterations in the quality of legal aid provided in different parts of the country.

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Part 5 – Rights of victims

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 the available assistance services and how to access these, their rights and the relevant judicial and administrative procedures, including information on available remedies and access to legal aid.

The right to information is applicable to any person who is subject or participant in criminal proceedings. Any person who has suffered damage from a criminal act has the right to be informed about the status of criminal procedures and the actions of the prosecutor.

One of the obligations of the prosecutor is to inform the injured party (victim) about the current state of the proceedings and his or her rights. In certain cases victims are active subjects of certain acts of the prosecutor, e.g. in the case of plea bargaining the injured party is consulted about the intention to sign a plea bargaining agreement. According to the criminal procedure laws, the prosecutor is obliged to inform the injured party after reaching an agreement on the results of such agreement. Thus, the prosecutor is not obliged to consult the injured party on reaching an agreement and the conditions thereof. The extent, in which the prosecutor applies a victim-centered approach and complies with the victim's opinions and needs, largely depends on their additional education and familiarity with international legislation in the field of protection of the rights of victims, as well as on their sensitivity to the victim's needs.

During the victim's first contact with the police or prosecution, he or she should be informed about the available assistance, relevant judicial and administrative proceedings and his or her rights, including the right to legal aid, which sometimes is not respected. Most commonly the first contact of the victim with a legal counsel takes place after the victim's placement in a shelter. In that case, the lawyer has an interview with the (potential) victim and informs him or her of his/her rights.⁷⁴

The right to information is particularly important as only with proper information can a victim be able to evaluate her/his situation and decide whether to cooperate with the authorities, whether to pursue the case in court, whether to return home or try to stay by requesting a temporary residence permit, etc.

For foreign victims, the right to information is laid down in articles 8, 14 and 17 of the Rulebook on Foreign Victims. Article 8(1) (Conduct of interview) states that

The officer for foreigners from the organizational unit where the foreigner is found who is suspected of being a victim of trafficking, shall before conducting the interview inform the foreigner on his rights and obligations as defined by this Law as well as about the possibility of using independent legal counselling in all stages of the proceedings, and about the right to an interpreter (right to follow procedures in a language he/she understands). It will be officially recorded that the foreigner is informed regarding his/her rights and obligations.

⁷⁴ Interview conducted with a lawyer, representative of "Vasa prava", December 19, 2013.

Article 14 (1) (Rights of the victims of trafficking) lays down that

For the purpose of providing special protection to victims of trafficking relating to recovery and return, the victim will be secured with the following: (...)

- Counselling and information especially in regard to his/her rights and obligations in a language he/she understands;
- Legal assistance during criminal and other procedures to victim realise his/her rights;
- Information on access to diplomatic-consular representative offices of the countries of victim origin or usual stay;
- Information on possibilities and procedure of repatriation (...).

Finally, Article 17 (Counselling and information) reaffirms the victims' rights to counselling and to be informed of their rights:

During her/his stay in shelter the victim has the right to counselling and to be informed about her/his rights, in a language he/she understands.

The counselling will be provided through a legal representative, office for legal aid or in any other way securing protection of the victim's rights.

Regarding domestic victims, the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Nationals of BiH address some of the issues related to legal information, counselling and assistance.

Article 8 (Forms of protection), recognises legal assistance as one of the basic forms of protection:

The basic forms of protection of victims and victim-witnesses are: physical protection, protection of privacy and identity, legal aid, social (education and re-socialisation) and health protection, measures of special protection of children and other vulnerable categories, as well as the provision of victims and victim-witnesses with other needs in order to provide appropriate individual protection and help.

Article 11 (Legal aid) specifically deals with the provision of legal aid:

The victims or victim-witnesses shall be provided with the information about the relevant judicial and administrative proceedings with the aim of ensuring legal aid that will enable their standpoints and interests to be brought up and considered in the appropriate phases of the proceedings against the perpetrator of the criminal offence.

The legal aid shall also include provision of professional assistance related to the realization of social protection, compensation and other rights.

Information about the progress of criminal investigations and prosecution

The prosecutor or police have the obligation to provide information and notification of the relevant judicial and administrative proceedings to the victim and victim-witness. According to the Guidelines for Judges and Prosecutors, the victim needs to be informed about the course of the proceedings in regards to submissions, the stage of criminal proceedings and decisions of the court. The victim must, in particular, be informed of the liberation or release of the accused person or the sentencing of the accused person.⁷⁵

⁷⁵ "Trafficking in Human Beings - Prevention and Protection in Bosnia and Herzegovina, Guidelines for Judges and Prosecutors", Ministry of Security of BiH/Department for anti-trafficking; Centre for Judicial and Prosecutorial Training of the Federation BiH; Centre for Judicial and Prosecutorial Training of the RS, Judicial Commission of Brcko District; IOM Mission in BiH; USAID.

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If the prosecutor decides to suspend the investigation, he is obliged to inform the injured party of his decision and his or her right to make a complaint, which can be submitted to the Prosecutor's Office. Furthermore, the prosecutor must inform the injured party and the person who filed the report within three days if he decides not to initiate an investigation, including the reasons for his decision. The injured party has the right to file a complaint on the decision not to prosecute to the Prosecutor's Office within eight days. Communication between the prosecutor and the victim is a legal obligation, since the prosecutor, acting in his capacity, is the legal representative of the state with the purpose of the criminal prosecution of the perpetrator. Victims should be informed prior to the release from detention or imprisonment of the person who is arrested or convicted for the offence of trafficking or a connected offence.

Victims should be informed by the prosecutor about their role, the scope and duration of the procedure and any charges that will be brought against the offender. They should also be informed that the prosecutor is the only person who can initiate prosecution against the perpetrator(s), and that the prosecutor collects evidence himself or through authorized officials and is not exclusively tied to the testimony of the victim. The court must inform the injured party of the perpetrator's plea. The court must also submit the judgment to the injured party, with information on legal remedies.

In practice, it is usually the staff of the shelter that makes inquiries to the prosecutor and requests information on the status and progress of the criminal investigations and prosecution.

Children

Both the Rules on domestic victims of trafficking and the Rulebook on Foreign Victims contain a number of specific provisions on children.

Article 17 of the Rules on the Protection of Victims and Victim-Witnesses of Trafficking who are Citizens of BiH specifies under 'Action of the authorized institutions and authorized organizations':

(....) (2) When it comes to children with parental care or without guardianship, protection and assistance are organized in collaboration with parents, families, guardian and authorized social welfare service or centre.

The Rulebook on the Protection of Foreign Victims of Trafficking states in Article 19 (Special protection of children):

(...) (4) The competent organs have the obligation to inform the appointed guardian on all issues relevant to the interest of a child victim of trafficking in persons since he/she will represent the child in all phases of proceedings.

The rules on informing child-victims are applied in practice; however, it depends on the child's age and the assessment of the guardian who informs the child.

Main problems attached to the right to information

Information about the available assistance

Although the victim has the right to be informed about the available assistance, relevant judicial and administrative proceedings and his or her rights, including the right to legal aid, this right is sometimes not respected during his/her first contact with the police. Depending on the region, it may occur that the testimony of the victim is taken without the presence of a counsel or lawyer.

Information about the progress of the criminal proceedings

Even though the prosecutor or police have the obligation to provide information and notification of the relevant judicial and administrative proceedings to the victim and victim-witness, this responsibility is usually conducted on the intervention of the shelter staff. However, it should be noticed that this applies only to information about the progress of proceedings, while notification of the hearing or invitation for testimony are delivered in a timely manner.

Translation services

According to official data, the majority of foreign victims lately are from neighboring countries, and speak good enough one of the official languages in BiH. Therefore in majority of cases there is no need for the services of an interpreter during court proceedings. While this may be the case, it is nevertheless important that victims can be provided all information relevant to them in a language that they understand. As much as they may be able to tell their story in one of the official languages in BiH, it is very difficult to imagine that rudimentary knowledge of the language would be sufficient for them to understand everything else that is happening in the court room. Further, the need for a translator does not start and end in the courtroom. Victims need to be provided with legal assistance in a language that they understand prior to coming to court, and need to have access to psychological support in the language that they are most comfortable with.

Currently only a minority of victims are foreigners and the majority are domestic, meaning that translation services are much less of an issue than they have been in the past.⁷⁶

Right not to cooperate with law enforcement

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

In accordance with national criminal procedure laws any citizen is entitled to report a criminal offence. The prosecutor's office can open an investigation *ex officio* or following someone's report. However in practice, investigations are usually initiated on a police report. Although the victim's statement is very important since it can indicate additional evidence that will facilitate the prosecutor in offering solid evidence to the court, the case should not be based on this statement. Nevertheless such cases are recorded in practice and often aren't successful in condemning the perpetrators.

The victim can refrain from reporting the crime to the authorities and requesting the opening of criminal proceedings against the trafficker. However, all persons must report the commission of a criminal offence in those instances in which failure to report constitutes a criminal offence.⁷⁷ The sanction on failure to report such crime depends on the type of criminal offence and who is obligated to report the crime. State level, Entities and Brcko District have regulated this issue in a largely similar way with a few differences.⁷⁸ In all cases it must concern a crime for which long-term imprisonment can be imposed.⁷⁹ In all cases the punishment is also higher if it concerns an official or responsible person who in the course of his duties discovered a crime

⁷⁶ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

⁷⁷ Criminal Procedure Code BiH, Article 214.

⁷⁸ Criminal Code of Bosnia and Herzegovina, Article 230, Failure to Inform of a Criminal Offence or a Perpetrator; Criminal Code of the Republika Srpska, Article 36, Failure to Report a Criminal Offence or a Perpetrator; Criminal Code of Federation of Bosnia and Herzegovina, Article 345, Failure to Report a Criminal Offence or a Perpetrator; Criminal Code of Brcko District, Article 339, Failure to Report a Criminal Offence or a Perpetrator.

⁷⁹ Long-term imprisonment may be imposed between 21-45 years.

on which 5 years or more imprisonment can be imposed. Partners, relatives, defence lawyers, doctors and priests are exempted from the obligation to report. In all four criminal codes (CC BiH, CC FBiH, CC RS and CC BD) medical workers, psychologists and social welfare workers are separately criminalised if it concerns failure to report a crime against a minor.

According to the criminal procedure codes of Bosnia and Herzegovina, whoever knows of the identity of the perpetrator of a criminal offence for which a punishment of long-term imprisonment can be imposed, or whoever having knowledge of the perpetration of such an offence and fails to report it, shall be punished by a fine or imprisonment of three years.

Considering that the BiH Criminal Code stipulates long-term imprisonment regarding the criminal offence of International Trafficking in Human Beings (Article 186 (6) CC⁸⁰), as well as for Organised International Trafficking in Human Beings (Article 186a (1) CC⁸¹), if a victim is involved in such cases, he/she is obliged to report such criminal offence. Similar provisions are provided in the CC BD regarding the criminal offence Trafficking in Human Beings, while the CC RS does not stipulate long-term imprisonment for this criminal offence. Furthermore, in FBiH trafficking in human beings is not criminalized yet.

IFS-EMMAUS has no information that these provisions have ever been used against victims, social workers, psychologists or other professionals involved in the process of protection and assistance of victims.

Below the relevant provisions are listed:

Criminal Code of Bosnia and Herzegovina, Article 230, Failure to Inform of a Criminal Offence or a Perpetrator:

- (1) Whoever, having knowledge of the identity of the perpetrator of a criminal offence for which a punishment of long-term imprisonment can be imposed under the law of Bosnia and Herzegovina, or whoever having merely knowledge of the perpetration of such an offence, fails to report the fact, although the timely discovery of the perpetrator of the offence depends on such report, shall be punished by a fine or imprisonment for a term not exceeding three years.
- (2) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person who fails to inform of a criminal offence he has discovered while performing his duties, if for the offence a punishment of imprisonment for a term of five years or a more severe punishment can be imposed under the law of Bosnia and Herzegovina.
- (3) No punishment for failure to inform of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be imposed on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the perpetrator.

Criminal code of the Republika Srpska, Article 362, Failure to Report a Criminal Offence or a Perpetrator:

⁸⁰ CC BiH, Article 186 (International Trafficking in Human Beings), Paragraph 6: In the event that the perpetration of the criminal offences under paragraphs (1) and (2) of this Article resulted in serious health damage, bodily injury or death of the persons referred to in paragraphs (1) and (2), the perpetrator shall be punished by a prison sentence of minimum five years or long-term imprisonment.

⁸¹ CCBiH, Article 186a (Organised International Trafficking in Human Beings), Paragraph 1: Whoever organizes or in any manner leads a group of people for the purpose of perpetration of the criminal offences referred to in Article 186 (International Trafficking in Human Beings) of this Law, shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment.

(1) Whoever, knowing the identity of someone who committed a criminal offence punishable by imprisonment for a term of up to twenty years or long term imprisonment, or whoever knowing of the commission of such an offence, fails to report the same before the perpetrator or the offence was detected, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) An official person who intentionally fails to report a criminal offence he found about in the course of his duty and the offence is punishable by imprisonment for a term of five years or more and prosecuted *ex officio*, shall be punished by imprisonment for a term not exceeding three years.

(3) There shall be no criminal offence referred to in Paragraph 1 of this Article if the person who failed to report the offence was perpetrator's spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, doctor or clergy confessor.

Criminal Code of Federation of Bosnia and Herzegovina, Article 345, Failure to Report a Criminal Offence or a Perpetrator:

(1) Whoever knows of a perpetrator of a criminal offence for which a long-term imprisonment may be imposed, or whoever merely knows that such an offence is perpetrated, and fails to report this, although the timely discovery of the perpetrator or of the offence depends on such report, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person, who fails to report a criminal offence which comes to his knowledge in the discharge of his duty, if a punishment of imprisonment for a term of five years or a more severe punishment may be imposed for such a criminal offence.

(3) No punishment for the criminal offence referred to in paragraphs 1 and 2 of this Article shall be imposed on a person who is the spouse, common-law partner, lineal blood relative, brother or sister, adoptive parent or adopted child and their spouses or common-law partners, or who is the defence attorney, physician or confessional priest of the perpetrator.

(4) A physician, dentist, midwife or medical worker, psychologist, notary public and social welfare worker shall be punished for the criminal offences referred to in paragraphs 1 and 2 of this Article, if the criminal offence is perpetrated against a child or juvenile.

Criminal Code of Brcko District, Article 339, Failure to Report a Criminal Offence or a Perpetrator:

(1) Whoever, knowing the identity of someone who committed a criminal offence punishable by imprisonment for a term of up to twenty years or long term imprisonment, or whoever knowing of the commission of such an offence, fails to report the same before the perpetrator or the offence was detected, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) Punishment under paragraph 1 of this Article shall be punished the official or responsible person who fails to report an criminal offence for which he found out in the performance of his duties, if for such an offence can be pronounced a prison sentence of five years or more severe punishment.

(3) The criminal offence under paragraphs 1 and 2 of this Article shall not be punished the person to whom the perpetrator is a spouse, a person who lives with him in wedlock, blood relative in a straight line, brother or sister, adoptive parent or adopted

child or their spouse or the person with whom living out of wedlock, or that the defence counsel, the doctor or religious official offender.

(4) For criminal offences under paragraphs 1 and 2 of this Article shall be punished be a medical doctor, dentist, midwife or health worker, psychologist, notary public and employee social security, if the offence is committed against a child or a minor.

However, once criminal proceedings are opened either on request of the victim, third parties or upon initiative of the authorities, the victim is obliged to testify.⁸² Domestic criminal procedure codes impose a general obligation on all persons to testify in Court where there is likelihood that their statements may provide information concerning the offence, the perpetrator or any other important circumstances. If the witness fails to appear or justify his absence, the Court may impose a fine of up to 2.500 or 15.000 EUR (depending under which jurisdiction) or order the apprehension of the witness. Victims of trafficking are treated as any victim of serious crime; they are not recognized by the law as a special category, which has the right to refuse testimony. In cases when they are afraid for their safety, the special laws on witness protection can be applied. The laws also do not contain general provisions, which allow persons not to testify, for example when this would endanger their mental or physical health.

According to Article 54 of the Law on Movement and Stay of Aliens and Asylum foreign victims may be granted a (temporary) residence permit due to either the need for their protection and rehabilitation, or in order to enable the conduct of court proceedings, when recommended so by the competent authority. In practice, not all victims who are given this status testify, but often they are given a residence permit if their information might be useful for the case. Therefore, one interpretation may be that the residence permit is not used as an award for cooperation, but as a way to legally keep the victim in a country if there is likelihood that her or his information might help the case.⁸³ In both cases (award or the interest of the prosecution) it is the interest of the state rather than the interest of the victim that determines whether or not a victim gets a temporary residence permit.

Although the victim's access to support services does not depend on their level of cooperation with the law enforcement agencies,⁸⁴ practice shows that victims of trafficking automatically receive protection and are provided with accommodation in a shelter if they are identified as potential victims. However, according to an interview with one of the Vasa Prava lawyers, if foreign victims refuse to cooperate with the prosecution they will have no grounds for a temporary residence permit on humanitarian grounds (considering that the prosecutor gives a recommendation to the Ministry of Security for granting this type of residence permit). In such cases usually "voluntary" repatriation is granted to the victim.⁸⁵

The Law on Movement and Stay of Aliens and Asylum provides a separate provision (Article 56) stating that the Ministry of Security of BiH has the obligation to provide special assistance and protection to trafficked persons with the aim of their rehabilitation and return to their country of habitual residence or the country that accepts the victim.⁸⁶

⁸² Although trafficking victims are obliged to testify according to the law, the criminal procedure codes recognize special categories of witnesses who can refuse to testify and/or witnesses who cannot testify. If the witness is not encompassed in any of the mentioned categories he/she can be brought to the Court on the basis of a court order.

⁸³ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

⁸⁴ "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013.

⁸⁵ Interview conducted with a lawyer, representative of "Vasa prava", December 19, 2013.

⁸⁶ Law on Movement and stay of Aliens and Asylum (Official Gazette of Bosnia and Herzegovina 36/08, 87/12).

Right to protection of privacy and safety before, during and after to criminal proceedings and to be treated with respect

Victims have the right to protection of their private and family life, their personal data and their safety before, during and after criminal proceedings. The police should examine whether the safety of the victim is ensured. If they testify, they have the right to witness protection, to be treated with respect and dignity and to be protected from threats, insults, intimidation and any other assault before, during and after the investigations, prosecution and trial. Victims have the right to (free-of-charge) translation and interpretation services during interviews or questioning.

Protection of personal data

In general, the collection of personal data⁸⁷ has to meet certain standards on the basis of the EU Data Protection Directive and CoE Convention No. 108⁸⁸: victims should be informed who/ which body is collecting their personal data; their personal data are not disclosed or shared with other parties without their freely given and informed consent; personal data are collected only for specified, explicit and legitimate purposes in the framework of the tasks of the competent authority; personal data are processed only for the same purposes for which they were collected; processing of these data must have a legal basis and be adequate, relevant and not excessive in relation to the aim for which it was collected; personal data is deleted or made anonymous when it is no longer required for the purpose for which it was collected.

The Rules on Domestic Victims address the issue of confidentiality in Article 3 paragraphs 2 and 5 (Basic Operational Principles) as follows:

(....) (2) Protection of privacy is the professional standard which shall ensure client's confidence and privacy, confidentiality of the process and, if necessary, a temporary or permanent protection of the identity of the victim or victim-witness.

(....) (5) Confidentiality shall be ensured by classifying information as secret or confidential, which shall immediately oblige all authorized institutions in BiH to keep it secret or confidential regardless of the manner of receipt of such information.

Provisions pertaining to the protection of personal data of foreign victims may be found in the Rulebook on Foreign Victims. The Rulebook is based on the Law on Movement and Stay of Aliens and Asylum. Article 3 on the Protection of Privacy and Identity of Victims of Trafficking addresses the protection of private life and personal data in the following way:

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

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

Article 3 of the Rulebook makes it clear that personal data of foreign victims collected in the process of providing them with assistance is to be treated as confidential, thus enhancing the

⁸⁷ "Personal data" means any information relating to an identified or identifiable individual. Data is considered personal when it enables anyone to link information to a specific person, even if the person or body holding that data cannot make that link. That means any information that identifies or can lead to the identification of one person (data subject) from the rest of person's falls under personal data.

⁸⁸ The two main instruments in the area of data protection are Directive 95/46/EC on the Protection of individuals with regard to the processing of personal data and on the free movement of such data and the 1981 Council of Europe Convention No. 108.

protection of the privacy of victims, and clarifying possible confusion regarding access to the data. The Rulebook, however, is only relevant for victims who are foreigners.

All data and information collected during the criminal procedure is protected on two different levels. The first is connected with the protection of personal data. According to the Law on the protection of personal data, any personal data processed by a public authority must be adequately protected. Secondly, the Law on protection of secret data provides certain types of protection of data collected and processed within criminal procedures.

Personal data collected from victims for purposes other than in the framework of criminal investigation and prosecution are collected only for specified, explicit and legitimate purposes in the framework of the tasks of the competent authority and are processed only for the same purposes for which they were collected:⁸⁹

- Police and prosecutors: information must be collected and processed in accordance with the criminal procedure codes in Bosnia and Herzegovina.
- Centres for Social Work: data must be collected and processed in accordance with the laws on social protection, child protection, family law, laws on administrative procedures and regulations of keeping official records. Some of the centres have implemented standardized forms for data collection and processing.
- Organizations providing legal assistance: they use information collected from all other institutions and organizations that provide direct assistance to the victim. The organization “Vasa Prava” uses a form to enter data into the database created by the organization itself. The collected data is used for internal use and submission of data on foreign nationals to the Ministry of Security and to the Ministry of Human Rights and Refugees in the case of domestic victims of trafficking in human beings. The database is protected and accessible only to authorized persons working in the organization.
- NGO shelters: the shelters open a file for each victim. According to standard procedures, it is obligatory to inform every victim about the data that will be collected and how it will be used. Furthermore, victims are informed that some data, and precisely which data, will be available to the court and hence will be available to the defence of the suspect. Victims should give their written consent, by signing a protocol, to the collection and sharing of these data. Data which is available to third parties do not include medical data, which is especially protected by the Law on the Protection of Personal Data. The victim’s file is used to record professional psychological and medical work. The file also contains all documents that are shared with other institutions involved in a particular case, such as correspondence with police agencies, prosecutor’s offices, courts and the Ministry of security BiH. If the prosecutor or court requests to view reports from therapists or psychologists, or other medical data, NGO shelters can refuse to share these documents, as they usually do, in accordance with the Law on the Protection of Personal Data. In such cases, NGO shelters refer the court or prosecutor to request permission from the victim themselves. Victims are notified that the information or documents that are available to the prosecutor and the court will be available also to the accused and his legal representative.
- NGOs: for the purpose of creating a single database of potential and identified victims of trafficking, NGOs are required, twice a year, to submit the completed forms of all the potential and identified victims of trafficking in human beings to the Department for Combating Trafficking in human beings in the Ministry of Security of Bosnia and Herzegovina. These data are used for statistical purposes as well as for reporting

⁸⁹ “Direct Assistance to Victims of Trafficking in Bosnia and Herzegovina”, IOM, Ministry of Human Rights and Refugees BiH, State Coordinator for Combating Trafficking in Human Beings in BiH, 2008.

on the situation of trafficking in BiH and planning appropriate measures to combat trafficking in persons, especially newly identified forms of trafficking in human beings. These forms do not include medical or psychological data.

- Health care agencies: they create health records for all victims, which include all medical records of the victim. Data on the health status of the victims are confidential and cannot be disclosed to the public.

The processing of personal data is carried out in accordance with the Law on the Protection of Personal Data of BiH. Also, during their reception into NGO shelters victims are informed who/ which body is collecting their personal data, for what purposes, and the fact that their personal data are not disclosed or shared with other parties without their freely given and informed consent.

Individual risk assessment

Risk assessments of victim-witnesses are carried out by the Prosecutor's Office, police and the centre for social work, including the Service for Foreigners Affairs.

Police agencies cannot act independently in the process of making a risk assessment. The prosecutor and police agencies are obliged to take note of whether the victim is adequately protected from threats to her or his life and health. After collecting information about a victim, police will check whether the case has been registered at an earlier date, collect additional information, make an assessment of the case, collect evidence of exploitation, identify resources available for assistance and protect victims. Prosecutors and police will provide NGOs with advice for individual protection plans and programs.

Information about the existence of physical threats stated by a victim or witness, as well as information indicated by the person responsible (police officer or prosecutor) for ensuring the physical protection of victims and witnesses, is investigated in order to take increased measures of protection.⁹⁰

Protection of the privacy and safety of victim-witnesses in criminal proceedings

The protection of witnesses in criminal procedures, regardless of the type of crime, is regulated by the special Law on protection of witnesses under threat and vulnerable witnesses and the Law on witness protection programs in Bosnia and Herzegovina; the Law on protection of witnesses under threat and vulnerable witnesses of the Federation of Bosnia and Herzegovina; the Law on protection of witnesses under threat and vulnerable witnesses of the Republika Srpska; and the Law on protection of witnesses under threat and vulnerable witnesses of Brcko District. These laws are also applicable to victims of trafficking in human beings.

According to article 3 paragraph 3 of the State Law on Witness Protections:

A vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or who otherwise suffers from a serious mental condition rendering him unusually sensitive, or a child or a minor.

Victim protection programs are mainly implemented for war crime cases and organized crime, including trafficking of human beings. Within the State Investigation and Protection Agency (SIPA), a specially designed department for witness protection was established. This is working with the strong support (financial, equipment and expertise) of international law enforcement partners.

The four laws on the protection of witnesses under threat and vulnerable witnesses contain very similar provisions. These include the duty to inform victim-witnesses of the available

⁹⁰ "Guidelines for Conduct of the Regional Monitoring Teams for Combating Trafficking in Human Beings in BiH", Ministry of Security BiH, 2012.

protection measures, the right to legal aid and assistance, the possibility of psychological support at examinations or hearings, and protection from harassment during examinations. They also contain provisions which make it possible for the Court to pose questions directly to the victim on behalf of the defendant, to examine the victim without the presence of the suspect or through the use of audio-visual means, to use the testimony given by the victim during the investigative phase as evidence in the trial, to hide some or all of the personal details of a witness from the defendant and/or to not disclose the identity of the victim-witness. However, victims of trafficking are rarely accorded the status of threatened or vulnerable witness; in the judiciary practice of the BiH there were only a few such cases.

Below are listed relevant provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of Bosnia and Herzegovina:

Article 5, Informing witnesses:

(1) The Court, the Prosecutor and other bodies participating in the proceedings shall, *ex officio*, advise a witness who may be under threat or a vulnerable witness of the witness protection measures available under this Law.

(2) A witness under threat and a vulnerable witness shall be entitled to legal aid and shall have the right to assistance and support of social care bodies in accordance with the law.

According to Article 5a (witness protection measures) protection measures should only be implemented with the consent of the witness.

Article 6, Access to psychological and social assistance and professional help:

During the investigation and after the indictment has been issued, the Prosecutor and the Court respectively shall, provided that the witness agrees, and without disclosing any of the witness's personal details, ensure that the agency responsible for social care is aware of the vulnerable witness' involvement in the proceedings, and shall enable the assistance of this agency as well as psychological support to the witness, including the presence of appropriate professionals at examinations or hearings.

Article 8, Examination:

(1) The judge or the presiding judge shall exercise appropriate control over the manner of the examination of witnesses when a vulnerable witness is examined, particularly to protect the witness from harassment and confusion.

(2) In exceptional circumstances, if the Court finds it to be in the witness's best interest, the Court may, with the consent of the parties and the defence attorney, hear a vulnerable witness by posing questions directly to the witness on behalf of the parties and the defence attorney.

Article 9, Testimony through technical means for transferring image and sound:

When determining whether there are justified reasons for examining a witness using technical means for transferring image and sound in such a manner as to permit the parties and the defence attorney to ask questions in a separate room to the witness, the need to provide for the protection of witnesses under threat and vulnerable witnesses shall also be taken into account.

Article 10, Removal of the accused:

(1) Where there is a justified fear that the presence of the accused will affect the ability of the witness to testify fully and correctly, the Court may, either *ex officio* or upon the motion of the parties or the defence attorney, and after hearing the other party and the defence attorney, order that the accused be removed from the courtroom.

Article 11, Exception from the imminent presentation of evidence:

When determining whether the records of the testimony given during the investigative phase may be read or used as evidence at the main trial, the Court shall also take into account the need to provide for the protection of a witness under threat who would either expose himself or his family to great personal danger or expose himself to significant emotional distress by appearing at the main trial.

Article 12, Limitation of the right of an accused and his defence attorney to inspect files and documentation:

(1) In exceptional circumstances, if revealing some or all of the personal details of a witness or other details would contribute to identifying a witness, and would seriously endanger the witness under threat, the preliminary proceedings judge may, upon the motion of the Prosecutor, decide that some or all of the personal details of a witness, may continue to be kept confidential after the indictment is issued.

(2) The prosecutor shall immediately notify the accused and his defence attorney of the submission of the motion referred to in paragraph 1 of this Article.

(3) If possible, the preliminary proceedings judge shall hear the accused and his defence attorney prior to issuing the decision referred to in paragraph 1 of this Article. The decision of the preliminary proceedings judge must be issued within 72 hours following the day the motion is received.

(4) No appeal shall be permissible against the decision referred to in paragraph 1 of this Article. (...)

Article 13, Additional measures to provide for the non-disclosure of the identity of the witness:

(1) In exceptional circumstances, where there is a justified fear that if some or all of the personal details of the witness are released it would seriously endanger the personal security of a witness or his family, and the danger would persist after the testimony is given, the Court may, either *ex officio* or upon the motion of the parties or the defence attorney, decide that the personal details of the witness shall remain confidential for such period as may be determined to be necessary, but in any event not exceeding thirty years, following upon the day the decision became final.

(2) The Court may, after hearing the parties and the defence attorney, decide that the identity of the witness is not disclosed by allowing the witness to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound.

(3) The Court may, at any time, revoke the decision from paragraph 1 of this Article, either *ex officio* or upon the motion of the parties or the defence attorney.

Article 14, Hearing of protected witness:

In exceptional circumstances, where there is a manifest risk to the personal security of a witness or the family of the witness, and the risk is so severe that there are justified reasons to believe that the risk is unlikely to be mitigated after the testimony is given, or is likely to be aggravated by the testimony, the Court may conduct a hearing of protected witness in accordance with Articles 15 through 23 of this Law.

Article 15, Motion for a hearing of protected witness:

(1) Either *ex officio* or upon a motion filed by the Prosecutor, the suspect⁹¹, the accused⁹², or his defence attorney, the Court may determine whether a hearing of protected witness is justified.

⁹¹ In accordance with the Criminal Procedure Code of Bosnia and Herzegovina: "The term "*suspect*" refers to a person with respect to whom there are grounds for suspicion that the person may have committed a criminal offence."

⁹² In accordance with the Criminal Procedure Code of Bosnia and Herzegovina: "The term "*accused*" refers to a person against whom one or more counts in an indictment have been confirmed."

(2) The motion must comprise:

- a) information establishing the identity of the witness and the proceedings in which the witness is to testify;
- b) facts indicating that the personal security of the witness or the family of the witness is at risk through his participation in the proceedings; and
- c) circumstances about which the witness is to be examined.

(3) The motion must be submitted to the Court in a sealed envelope clearly indicating on its outside that it is a motion for hearing of protected witness under Articles 14 through 23 of this Law.

(4) The envelope with the request for a hearing of protected witness shall be delivered to the Court President without delay. The Court President shall forward the motion to the respective trial chamber or, where no indictment has been confirmed so far, shall issue an order naming the President and two additional members of the panel that has to deal with the matter.

(5) The Court may summon the person who put forward the proposal to further explain or clarify the facts relevant to the request.

Special witness protection programmes

The Witness Protection Program Law of BiH addresses the most extreme cases where it is necessary to change the identity of the witness in order to protect them or their family from possible harm. According to this law, persons who are determined to be key witnesses to an investigation or prosecution are eligible for inclusion in the program if the witness him/herself or a member of his/her family “faces a danger to life, health, or freedom because of (the witness’) willingness to testify”, noting that “a witness may also be protected under the provisions of this law if the danger is only realized after the termination of the criminal proceedings and if the danger is a result of the person having testified during the proceedings” (Article 2 paragraph 2).

Furthermore, family members of such witnesses may also be offered the same protection (Article 2 paragraph 3). Within the framework of this law, witnesses or their family members who have been included into the witness protection program shall be provided with protection to ensure their safety along with other support (Article 4), and may receive a new identity and all necessary documents (Article 7), as well as spending allowances (Article 11).

However, in the judiciary practice of the BiH there is only one case recorded in which a victim of trafficking in human beings entered this program and had her/his identity changed.

Other measures to protect the privacy and safety of the victim and avoid secondary victimisation

In high-risk cases of trafficking in human beings, the victim will be transported with a police escort or, in the case of foreign victims, by the relevant Field Office of the Service for Foreigners’ Affairs, and accompanied by officers of the Centre for Social Work (CSW). If no security threats are registered, the transport of victims to shelters is the responsibility of the CSW. The responsibility for transport of the victim to and from the shelter during their accommodation for the purpose of medical reasons, court hearings or similar activities where the presence of the victim is needed, will lie with the law enforcement agencies handling the case and/ or an authorized agency, depending on the situation.

Furthermore, in the majority of the premises of prosecutor’s offices and courts, wherever possible, separate waiting areas are provided.

As stipulated in Directive 2011/36/EU (art. 12) measures should be taken to avoid secondary victimisation of victims as a result of the criminal process. These include avoiding unnecessary repetition of interviews, visual contact between victims and defendants, the giving of evidence in open court and unnecessary questioning concerning the victim's private life.

Repetition of interviews

Despite extensive training of all relevant actors involved in the process of identification and assistance, including the prosecution, and guidelines for officials on how to respect the human rights of victims of trafficking, it very often occurs that victims are interviewed several times during the reflection period of 30 days, and by several agencies. Most often this problem occurs as a result of conflict of jurisdiction, for example, first the Cantonal police take a statement of the victim, then officials of the Service for Foreigners' Affairs, then the State Investigation and Protection Agency (SIPA), etc.⁹³

Avoidance of direct (face-to-face) confrontation and/or visual contact between the victim and the suspect

If a victim is granted the status of threatened or vulnerable witness, it is probable that direct confrontation with the offender will not be allowed, in accordance with the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of BiH (Article 10, Removal of the accused):

Where there is a justified fear that the presence of the accused will affect the ability of the witness to testify fully and correctly, the Court may, either *ex officio* or upon the motion of the parties or the defence attorney, and after hearing the other party and the defence attorney, order that the accused be removed from the courtroom.

The laws on Protection of Witnesses under Threat and Vulnerable Witnesses of FBiH, RS and Brcko District contain the same provision.

Although rarely, the provisions on the protection of victim-witnesses at the hearing are also applied in practice, e.g. hearing of the victim through the use of an audio-visual link and other measures. Indeed, in one case, two victim-witnesses requested the abolition of protection measures, in order to directly confront the defendant's false allegations.⁹⁴

Nevertheless, it occasionally occurs that, due to a lack of understanding of the position of the victim-witness or due to insufficiently equipped premises of the courts, a direct confrontation of the victim and the perpetrator takes place. This usually leads to the re-victimization and additional trauma for the victim.

For example, an adult victim-witness who had not been granted the status of protected witness attended hearings in court three times, where she was directly confronted with the perpetrator. This experience had an extremely negative impact on her recovery and rehabilitation; therefore she was provided with additional psychosocial support and therapy.⁹⁵

The separate issue of exclusion of the public during the criminal proceeding is regulated by the relevant criminal procedure codes. Generally, the public can be excluded from the trial if it is necessary to protect the personal and intimate life of the accused or the injured party or to protect the interests of a minor or a witness (Article 235 BiH CPC). The court's decision to exclude the public is not determined by the nature of the offence or by a specific victim profile. This means that trafficking cases are not stipulated as reason for imperative exclusion of the public from the trial. In practice, when it comes to trafficking cases, the public in general is rarely excluded.

⁹³ Interview with a lawyer, representative of NGO "Vasa Prava", December 19, 2013.

⁹⁴ *Ibid.*

⁹⁵ Information provided by the IFS-EMMAUS shelter coordinator, December 20, 2013.

As previously stated, the main problems with all these legal instruments are that they do not recognize specific categories of victims, including victims of trafficking in human beings, and that they are rarely applied for victims of trafficking.

Protection against (unnecessary) questions about the victim's private (sexual) life or history

Questions about the private life of the witness, including their sexual history are strongly prohibited by the law. Facts relating to previous sexual experiences or the sexual orientation of the injured party cannot be used as evidence in criminal proceedings.

Article 264 of the CPC BiH, Article 279 of the CPC FBiH, Article 279 of the CPC RS and Article 264 of the CPC BD, in identical manner, prohibit anyone from asking the injured party about her/his previous sexual experiences. Even if obtained, any such information would be excluded from the admissible evidence. Further, in order to prevent any such information from coming to light, in cases of sexual abuse a closed hearing must be conducted to examine the evidence and any relevant evidence must be sealed.

CPC BiH Article 264 (Special Evidentiary Rules When Dealing with Cases of Sexual Misconduct) stipulates:

- (1) It shall not be allowed to ask an injured party about any sexual experiences prior to the commission of the criminal offence in question. Any evidence offered to show, or tend to show the injured party's involvement in any previous sexual experience, behaviour, or sexual orientation, shall not be admissible.
- (2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.
- (3) In the case of a criminal offence against humanity and values protected by international law, the consent of the victim may not be used in a favour of the defence.
- (4) Before admitting evidence pursuant to this Article, the Court must conduct an appropriate hearing in camera.
- (5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the Court orders otherwise.

However, there have been cases where the judge(s) failed to react in a timely manner to unnecessary and provocative questioning from the defence addressed to the victim-witness.

Protection from insults, threats or any other assault from the part of the defendant, their associates or family members

The BiH Criminal Procedure Code specifically addresses the protection of witnesses from insults, threats and attacks in Article 267:

- (1) The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.
- (2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person, who insults, threatens or jeopardizes the safety of the witness before the Court. In the case of a fine, the provisions of Article 242, Paragraph 1 of this Code shall be applied.
- (3) In the case of a serious threat to a witness, the judge or the presiding judge shall inform the Prosecutor for the purpose of undertaking criminal prosecution.
- (4) At the petition of the parties or the defence attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.

The criminal procedure codes of Entities and Brcko District address the protection of witnesses from insults, threats and attacks, in an identical manner as the CPC BiH⁹⁶.

Moreover, according to the BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses, the Court can order other protective measures if it deems this necessary, including access to psychological and social assistance and professional help; exercise of appropriate control over the manner of examination of the witness when a vulnerable witness is examined, particularly to protect her or him from harassment and confusion; testimony by using audio-visual means; removal of the accused; protection hearing; anonymous witness, etc.

The judge and the prosecutor are legally obliged to protect the victim/witness from insults, threats or any other assault. Professional codes of conduct apply to prosecutors and court officials, also when they work with trafficking victims. It is their general obligation to respect the dignity, human rights and freedom of each crime victim including those who were trafficked.

Presence of a confidante of the victim-witness during interrogations

During interrogations conducted by the police and/or prosecutor, the presence of a legal representative and/or representative of the shelter (case manager) is permitted. In certain cases, such representatives have even been invited by the prosecutor's office to be present. Although this practice is not prescribed by law, it is nonetheless done in order to obtain a more specific and clearer statement of victim, as well as to enhance the collection of evidence.

If the victim is particularly traumatized and needs the help of a psychologist or psychiatrist, the law provides for this possibility. However, situations in which a psychologist attends the trial and witness testimony are rare. In such case, the defence could more easily deny the charges on the argument that the person is not mentally stable or his/her statement is not strong

⁹⁶ Article 282 CPC FBiH - *Protecting the witness from insults, threats and attacks:*

- (1) The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.
- (2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of witnesses in court. In case of a fine Article 257 of this Code shall be applied.
- (3) In the case of a serious threat to a witness, the judge or the presiding judge shall notify the prosecutor in order of undertaking criminal prosecution.
- (4) At the petition of the parties or the defence attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.

Article 282 CPC RS – Protecting the witness from insults, threats and attacks:

- (1) The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.
- (2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of witnesses in court. In case of a fine Article 257 of this Code shall be applied.
- (3) In the case of a serious threat to a witness, the judge or the presiding judge shall notify the prosecutor in order of undertaking criminal prosecution.
- (4) At the petition of the parties or the defence attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.

Article 267 CPC BD – Protecting the witness from insults, threats and attacks:

- (1) The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.
- (2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of witnesses in court. In case of a fine Article 242 paragraph 1 of this Code shall be applied.
- (3) In the case of a serious threat to a witness, the judge or the presiding judge shall notify the prosecutor in order of undertaking criminal prosecution.
- (4) At the petition of the parties or the defence attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.

enough to sustain the indictment. The presence of a psychologist is considered a threat to the indictment and therefore prosecutors rarely use this option.⁹⁷

In the case of minors, no officials are allowed to conduct an interview without the presence of a temporary guardian for special cases.

Protection of physical integrity

According to the practice of shelters, victims have to sign their informed consent for any medical or other physical examinations in the framework of criminal proceedings. This is in accordance with Article 9(2) of the Law on Protection of Personal Data BiH, Processing of Special Categories of Personal Data:

(2) Notwithstanding the provision of Paragraph 1 hereof, processing of special categories of personal data shall be allowed:

a. if a data subject has explicitly granted the consent.

During the use of accommodation in a shelter or other forms of assistance, medical assistance and treatment are provided to potential and identified victims of trafficking in human beings if needed, regardless whether criminal proceedings are initiated or not. This medical data is accessible to the court only if the victim gave consent for sharing his/her medical data. The fact that the victim refuses to give consent for sharing his/her medical data has no influence on his/her access to medical service.

The victim is informed that the defendant and his lawyer will have access to the victim's medical information if he/she gave consent to share this information with court, either during the victim's reception into the shelter but before their first medical examination, or during their first interview with a lawyer providing free legal aid.⁹⁸

Right to (free of charge) translation and interpretation services during interviews or questioning

The right to translation and interpretation services during interviews and questioning is of crucial importance for foreign victims. Availability of translation and interpretation is the first step towards ensuring their access to justice and their rights.

The issue of language is mentioned in two places in the Rulebook on Foreign Victims, including Article 14 (Rights of the victims of trafficking), and Article 17 (Counselling and information). Article 14 states that victims will receive information and counselling, in a "language that he or she understands". Article 17 reiterates this.

The right to participate in criminal procedures in one's own language is also guaranteed by Article 8 of the Criminal Procedure Code BiH. According to this article, parties and witnesses can choose to have proceedings and their testimony interpreted into a language that they understand by court interpreters. Entity and BD CPCs include almost identical provisions. The State Law on Movement and Stay of Aliens and Asylum has a similar wording in Article 12 paragraph 2 and requires that authorities enable foreigners to follow proceedings through a translator and/or interpreter.

⁹⁷ Interview with a lawyer, representative of NGO "Vasa prava", December 19, 2013.

⁹⁸ *Ibid.*

These provisions are applied in practice and victims get counselling and information in their own language during police, prosecutors and court questioning, but also during free legal aid. Translation services are provided and reimbursed by the institution responsible for assistance to victims of trafficking or in the case of foreign victims the Ministry of Security BiH.

Very similar provisions are included in other laws, such as the BiH Law on Administrative Procedure (Article 18), the FBiH and RS Laws on Administrative Procedures (Article 16 in both cases), etc. It should be noted, however, that in case of civil procedures both the FBiH and RS Laws on Civil Procedure require that the party requiring a translator or interpreter pays for such services (Art. 315 in both), while the BD Civil Procedure Code states that all parties have the right to translation and interpretation, and associated costs are covered by the Court (Article 50).

Protection of the privacy and safety of children

Both the Rules on the protection of domestic victims and the Rulebook on Protection of Foreign Victims of Trafficking in Persons contain specific provisions on the protection of the privacy and safety of child victims.

The Rules on Protection of Victims and Victim-Witnesses of Trafficking who are Citizens of BiH state in Article 17, Action of the authorized institutions and authorized organizations, stipulate that

(2) When it comes to children with parental care or without guardianship, protection and assistance are organized in collaboration with parents, families, guardian and authorized social welfare service or centre.

Other relevant provisions of the Rules are Article 3(3) on basic principles of operation, Article 7 (7) on identification and interview and Article 15 on Child protection. Abovementioned articles refer to the protection of children and their safety.

Article 3 (2) refers to the protection of the identity:

Protection of the privacy is the professional standard that ensures the trust and privacy of the client, ensuring the confidentiality of the proceedings and, where appropriate, temporary or permanent protection of the identity of the victim or victim-witness.

As regards the foreign children, article 19 on Special protection of children of the Rulebook on Protection of Foreign Victims of Trafficking reiterates the special care needed in relation to child victims and the fact that the identity of child victims should not be made public:

(6) Actions dealing with the rights and interests of children should be given priority. All actions concerning child victims of trafficking must be executed with the utmost degree of urgency and efficiency. Identity and data that enable the identification of child victims of trafficking will not be published in the media or in any other way, except in extraordinary cases in order to find family members or to otherwise ensure the best interests of child.

This is also reflected in the Press Code⁹⁹, which specifically states that caution should be exercised in publicising the identity of children aged 15 or below who are victims of crimes. Children who are under this age should never be publicly identified if they appear as witnesses in criminal cases. Despite this, the regulation remains incomplete, as children aged 15-18 are not covered by this rule.¹⁰⁰

Other relevant provisions of the Regulations on the Protection of Foreign Victims of Trafficking are Article 19, Special child protection; Article 20, Placement of the child in the shelter; Article 21, Return of the child.

There are special procedures applied to the identification and accommodation of child victims of trafficking: Interviews with the child cannot be conducted without the presence of a temporary guardian for special cases. This also applies to a lawyer or employee of *Vasa Prava*. Juveniles cannot even be placed in a safe house without the appointment of a guardian.¹⁰¹

Shelters do not have separate accommodation specifically for minor victims. Yet, since the capacity of the shelters is larger than the current need, child victims often do end up staying alone in shelters, and therefore do not mix with the adults.

The protection of children is complicated by a lack of clarity about the application of the law in practice. One of the problems is the placement of minor victims of human trafficking in shelters. Reportedly, by law, minors cannot be placed in a shelter without the consent of their parents or without removing the custodianship over the child from the parents. NGOs that run shelters are therefore hesitant to accept minors unless temporary custody has been given to the Centres for Social Work, as they could otherwise be accused of kidnapping the minor.

Since parents are often involved in the exploitation of the child, it is clear how important it is that custodianship matters are handled in a timely manner in order to protect the children. In practice, however, this is problematic. The initiative to take temporary custody of the child needs to be taken by the Centres for Social Work. However, these are very hesitant to undertake action and see this simply as another burden and more work for which they did not sign up. This problem reflects the general lack of dedication and commitment on the part of the Centres for Social Work, an issue that was brought up by a number of actors. These problems may be associated with the generally low level of knowledge about human trafficking among social workers, since they still do not participate in any larger-scale training on the issue. Furthermore, Centres for Social Work were included in anti-trafficking activities later than other agencies because they are involved only with domestic victims, and domestic victims of trafficking are a more recent phenomenon.¹⁰² However, in the past few years inclusion of Centres for Social Work in regional monitoring teams has been intensified, as well as trainings for social workers. Thus the situation in this area is to some extent improved.

⁹⁹ The Press Code BiH of the Press Council in Bosnia and Herzegovina (the Self-Regulatory Body for Print and Online Media), *Article 11, Protection of Children and Minors*:

- When treating children and minors, journalists have the obligation to be extremely careful, respecting ethical norms and the Convention on Children's Rights, based on the best child's interest;
- Journalists are obligated to protect the child's identity in procedures not involving the public;
- Journalists shall not interview or photograph children under the age of 18, regarding matters involving the child's family, in the absence of or without the consent of a parent or guardian;
- Journalists shall not identify children under the age of 18 when they are victims of crimes;
- Journalists must not, under any circumstances, identify children under the age of 18 who are involved in criminal cases as witnesses, victims or defendants.

¹⁰⁰ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009

¹⁰¹ Interview conducted with a lawyer, representative of NGO "Vasa prava", December 19, 2013.

¹⁰² "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

In terms of the protection offered to minors in the course of criminal proceedings, it should be kept in mind that the minors in question are victims/witnesses, rather than suspects, which means that provisions related to the treatment of juveniles in the criminal justice system as laid down in the CPC BiH do not apply to them.

Minor victims do not give preliminary statements to the police and can only be interviewed by police following an order by the main investigator. This is to avoid further victimization of the child and the need for numerous recounting of their experiences. It is also important that emphasis is placed on protection, and indeed minor victims receive shelter and basic assistance before they can be interviewed.

The protection of minor witnesses is specifically mentioned in article 86 CPC BiH (Course of the Examination of a Witness), which lays down that special attention must be paid to ensure that the procedure does not affect minors negatively and that the assistance of pedagogues or other professionals should be sought in such situations:

(4) When hearing a minor and, in particular if the minor was victimized by the criminal offence, the participants in the proceedings shall be obligated to act with circumspection in order not to have an adverse effect on the minor's mental condition. The minor shall be heard with assistance of a pedagogue or other professional.

According to paragraph 6 of the same article, age is one of the factors that should be taken into account when deciding whether to use technical means for the examination of the witness:

(6) Given age, physical and mental condition, or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defence attorney to ask questions although not in the same room as the witness.

This effectively means that a decision to use such equipment could be based on the young age of the witness, so that the minor is in a different room during the examination and does not have to face the offender. These rules are also applicable in investigative procedures (Article 219 para 3).

Article 219 paragraph 3 states that the rules set forth by Article 86 are applicable in the investigative procedure as well.

Finally, all the procedures that are applicable to vulnerable witnesses are also applicable to minors who have been given the status of vulnerable witnesses. Children and minors are explicitly mentioned as vulnerable witnesses in the State Law on Witness Protections. Article 3 (3) of the State Law on Witness Protections states that:

A vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a minor.

Accordingly, minors or children can benefit from all the protection measures offered by this law. It should be noted, however, that the Law on Witness Protection does not contain any additional provisions specifically regarding children or minors. In this context, the introduction of relevant revisions may be considered.

Article 90 of CPC BiH states that examinations of the witness may be recorded at any stage of the criminal proceedings. Such recordings are mandatory for minors under the age of 16 or if it is possible that a witness may not be available for testimony at the main trial. It is not clear however, how such recordings are to be used in the procedure.

The Law on Protection and Treatment of Children Juveniles in Criminal Proceedings (both entities and Brcko District) devotes special attention to the position of the child as injured party in the criminal proceedings. One of the main provisions, which enable protection of the privacy and safety of the children, is the prohibition on confrontation with the suspect or defendant during hearings.

Moreover, it is forbidden to confront the minor-witness with the suspect or defendant if the minor is mentally and physically traumatized by the circumstances under which the criminal offence is committed or if the minor suffers from a serious mental disorder.¹⁰³

In practice, juvenile victims-witnesses are granted the status of vulnerable witnesses and in this way are protected from direct contact with the suspect and subsequent further victimization and traumatising.¹⁰⁴

Main problems attached to the protection of privacy and safety

The manners in which cases of identified victims are handled by the officials involved in their protection are a cause for concern. Personal information regarding victims, collected in the process of their identification and for their protection, is shared among many different agencies. Consequently, this creates a greater risk for misuse of the data. Apparently, in efforts to improve data collection and sharing, victims' right to privacy have been somewhat overlooked.

Regarding the protection of private life, practices vary. Practitioners report that judges will use close hearings to protect victims, yet media still often receive information about victims and do not always act according to their own code by publishing pictures or other identifying information regarding the victims.

Particularly worrying is the fact that confrontations between victims and defendants in court are still taking place. Reportedly, judges tend to grant requests for different measures for the protection of witnesses, including closing hearings and similar measures. However, especially at Entity level, courts do not have all the technical equipment that would make it possible to conduct hearings using audio-visual technology or similar equipment. Therefore, victims are brought into a situation where they must face the perpetrator of the crime, which usually leads to their re-victimization and additional trauma.

The use of available measures to protect the privacy and safety of the victim largely depends on the prosecutor, his consideration, abilities and skills to use all opportunities to protect the victim.¹⁰⁵ As the victim has no status in the criminal proceedings, she or he is dependent on the prosecutor. Neither the victim nor his or her legal representative has the competence to request for protective measures.

Repetition of interviews should be avoided if they are not strictly necessary, thereby avoiding possible repetition of situations that may endanger (victimize) victims and/or discourage them from inclusion in offered protection programs. This problem most often occurs as a result of conflict of jurisdictions and/or uncoordinated actions, resulting in several institutions taking a statement from the victim. Professional codes of conduct of police, other officials, prosecutors and court officials should be followed when they work with trafficked persons.

¹⁰³ Law on Protection and Treatment of Children Juveniles in Criminal Proceedings F BiH (Official Gazette of F BiH 7/14), Republika Srpska (Official Gazette of the Republika Srpska 01-101/10), Brcko District (Official Gazette of Brcko District, 01-02-479/11).

¹⁰⁴ Information provided by IFS-EMMAUS Shelter Coordinator, December 20, 2013.

¹⁰⁵ Interview with Federal prosecutor, member of the Strike Force for Combating Trafficking in Human Beings of BiH, December 12, 2013.

Although questions about the private life of the victim-witness, including their sexual history, are strongly prohibited by the law and resulting information cannot be used as evidence in criminal proceedings, there have been cases during the initial stage of the process, when victims make their statements, and the officials, for example the Service for Foreigners' Affairs, take unnecessarily detailed statements from the victim on circumstances of the crime, which is not in their competence. Statements can only be taken on the circumstances of the illegal foreigner's stay, and not on the circumstances of the crime. Such incidents should be reduced to the lowest possible extent, in order not to repeat examinations or actions in inappropriate circumstances and to avoid re-victimization of victims.

A particular problem regarding the treatment of victims-witnesses is their treatment after the trial. Specifically in the case of foreign victims-witnesses, there is no possibility that the victim, who has helped the State and its institutions by giving testimony against criminal offenders, can remain in BiH after the trial or that the State provides rehabilitation and/or reintegration services; the victim-witness must be returned to her or his country of origin, or if needed and possible to a third country. Domestic victims-witnesses are in an even more difficult position, because they are most often stigmatized and rejected by their family and the community of origin, and mechanisms that would enable their relocation to another environment in BiH are rarely used.¹⁰⁶

Right to compensation

Trafficked persons have the right to adequate and effective remedies. This includes the right to financial compensation for material and immaterial damages suffered. Compensation for damages may include costs of medical, physical or psychological treatment or therapy; costs of necessary transportation, temporary childcare or temporary housing; lost income or due wages / the money the victim earned for the trafficker and was forced to hand over; legal fees; payment for non-material damages, resulting emotional distress, pain and suffering as a result of the crime; and any other costs or losses incurred by the victim as a direct result of the crime.

Compensation through criminal proceedings

Any injured party in Bosnia and Herzegovina can make a property claim during the criminal procedure (Chapter XVII CPC BiH). The Criminal Procedure Code of BiH does not apply to the Entities and Brcko District, because every territorial unit has its own criminal legislation. The criminal procedure codes of Entities and Brcko District, however, address the issue of property claims in an identical manner as CPC BiH.

According to Article 86 CPC BiH injured parties who are examined as witness should be asked about their wishes in regard to satisfaction of a property claim in the criminal proceedings:

The injured party being examined as witness shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings.

Compensation claims may pertain to reimbursement for material and non-material damages, recovery of items, or annulment of a particular legal transaction. The court decides upon the claim on the condition that its assessment does not prolong the criminal proceedings. Article 193 CPC BiH (Subject of the Claim under Property Law) reads:

(1) A claim under property law that has arisen because of the commission of a criminal offence shall be deliberated on the motion of authorized persons in the criminal proceedings if this would not considerably prolong such proceedings.

¹⁰⁶ Interview with a lawyer, representative of NGO „Vasa prava“, December 19, 2013.

(2) A claim under property law may pertain to reimbursement of damages, recovery of items, or annulment of a particular legal transaction.

In general, material damage can occur in the following cases:

- Loss or damage of property due to the commission of a criminal offence (for instance car theft, damage of movable property such as a car, TV, furniture or real-estate property e.g. house or similar).
- Bodily injuries and deterioration of health conditions caused by the commission of the criminal offence (possibility to claim the costs of medical treatment: medicines, medical services, rehabilitation costs, costs for intensified nutrition; assistance from a third person; loss of income and earnings; diminished working ability).
- In case of the death of a person one can claim compensation for life support of the dependent of the deceased, funeral costs and costs for medical treatment of the deceased that have occurred between the injury and death.

Non-material damage can be claimed in the following cases:

- Physical pain caused by bodily injury, surgery during medical treatment as well as the pain occurred after medical treatment.
- Mental suffering which might be caused by decreased vital activities, mutilation (loss of the parts of the body, scars, etc.), death or disability of a close person, rape and sexual harassment.
- Fear suffered due to the commission of a criminal offence and afterwards, if the fear was especially strong and was of long duration.

The criminal legislation in BiH provides for the possibility to confiscate proceeds acquired through illegal means and provides for procedures for temporary and permanent seizure of property gained through the commission of a criminal offence. Article 110 of the BiH Criminal Code sets the basis for confiscation of proceeds of crime, stipulating that:

Nobody is allowed to retain material gain, revenue, profit or other benefits from material gain acquired by the perpetration of a criminal offence.

Revenue, profit or other benefits from material gain shall be confiscated by the court's decision establishing the perpetration of the criminal offence.

The criminal code also provides for the opportunity for the court to order confiscation of material gain, revenue, profit or other benefit from material gain for which the prosecutor provides sufficient evidence that there is reasonable suspicion that it was acquired through commission of specific criminal offences (chapters XVII, XVIII, XIX, XXI, XXI A and XXII – which includes trafficking in human beings), and the accused person does not provide evidence to prove that the material gain was acquired legally. In cases when the requirements for confiscation within the criminal procedure are not fulfilled, a request for confiscation may be filed in a civil procedure.

One of the novelties of the latest amendments of the Criminal Code of Bosnia and Herzegovina is the regulation of the terms "Property" and "Property gain". In accordance with this novelty, property is defined as including property of any kind, whether it consists of property or rights, is material or immaterial, movable or immovable, and including legal documents or instruments evidencing the right on the property or interest in such property. A property gain is defined as any economic asset that is directly or indirectly resulted from criminal offence and consists of any property.

All money, valuable objects and any other material gain acquired through the commission of a criminal offence may be confiscated from the perpetrator. If confiscation is not feasible the

perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain. Material gain acquired through a criminal offence may also be confiscated from the persons to whom it has been transferred, either without compensation or with a compensation which does not correspond to the real value, if the persons knew or should have known that it had been acquired through a criminal offence. If the proceeds of the crime are connected to legitimate property, such property may be liable for confiscation but should not exceed the assessed value of the connected property. This rule is also applicable to income and other benefits, property from the commission of the criminal offence that has been converted, or connected property.

The Criminal Code also regulates the relationship between confiscation and protection of the injured party. Article 112 of Criminal Code of Bosnia and Herzegovina reads:

- 1) If the criminal procedure has resulted in awarding property claims to the injured party, the court shall order the confiscation of material gain if it exceeds the awarded property claim of the injured party.
- (2) The injured party who has been directed to initiate a civil litigation in the course of criminal proceedings regarding his property claim, may demand that he be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day when the decision by which he has been directed to litigate took effect and if he demands to be compensated from the confiscated value within three months from the day when his claim was legally established.
- (3) An injured party who did not report a property claim during the course of a criminal proceedings may demand compensation from the confiscated value, if he has begun litigating his claims within three months from the day when he found out about the judgement which confiscates a material gain, but no longer than within two years from the day when the decision on the confiscation of material gain took effect, or if within three months from the day when the decision by which his claim was established he demands compensation from the confiscated value.

The provisions of this article determine the relationship between confiscation of property illegally obtained through a criminal offence and a property claim from the injured party. The aim of the provisions is to protect the interests of the injured party. In cases where a person is injured by the criminal offence, the court may pronounce the confiscation of illegally obtained material gain if the material gain is higher than the property claim. In this regard, a property claim has supremacy over the application of confiscation of illegally obtained material gain.

When the injured party is referred to civil proceedings and the court pronounced the confiscation of illegally acquired material gain, he or she may request the amount of compensation to be paid from the illegally acquired property, if he or she starts the civil case within 6 months from the final and binding criminal verdict and within the deadline of three months after establishing the claim. When the injured party did not submit a property claim in the criminal proceedings, he or she may also later claim compensation from the confiscated assets, taking into account certain deadlines.

In practice, cases in which these provisions have been applied are rare. Generally, asset forfeiture laws and their provisions are still a weak point of law enforcement and the rule of law in BiH. Even when the Court decided to confiscate property of traffickers, such decisions are not enforced due to the lack of effective capacity of domestic institutions in this area.

The BiH Strategy to Counter Trafficking in Human Beings 2013 – 2015 therefore envisages as a second strategic objective within the chapter “Prosecution” measures to simplify and advance the regulations on the confiscation of proceeds in trafficking cases.

It should be noticed that the legislator, through amendments to the Criminal Code BiH in 2009, introduced the institute of the proceeds of a criminal offence for certain offences, including trafficking. These changes have since been incorporated into the Criminal Code of the Brcko District, while the Republika Srpska and Federation of Bosnia and Herzegovina have a *Lex specialis*, namely the Law on Confiscation of Illegally Acquired Material Gain of RS¹⁰⁷ and the Law on the Seizure of the Proceeds of Crime and Offences¹⁰⁸. It is, however, yet to be seen to what extent the courts will apply the measure to seize the proceeds of trafficking.

At the moment, there are no reliable data on the number of cases in which the seizure measure was applied or on the value of seized proceeds and so on. An additional problem is that, at all levels of government, there is insufficient capacity for the management of temporarily seized and/or confiscated property, which significantly weakens the implementation of this measure.¹⁰⁹

Compensation for damages (whether material or non-material, such as for suffering) can be claimed at any point before the end of the main trial or sentencing (Article 195CPC BiH, Procedure for Satisfaction of a Claim under Property Law), meaning that victims do not have to decide at the very beginning of the process:

- (1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the Court.
- (2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court.
- (3) The person authorized to submit the petition must state his claim specifically and must submit evidence.
- (4) If the authorized person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is confirmed, he shall be informed that he may file that petition by the end of the main trial or sentencing hearing. If a criminal offence has caused damage to the property of the State of Bosnia and Herzegovina, and no petition has been filed, the Court shall so inform the body referred to in Article 194, Paragraph 2 of this Code.
- (5) If the authorized person does not file the claim under property law until the end of the main trial or if he requests a transfer to civil action, and the data concerning the criminal proceedings provide a reliable grounds for a complete or partial resolution of the claim under property law, the Court shall decide in the convicting verdict to pronounce on the accused the measure of forfeiture of property gain.

When pronouncing the defendant guilty, the court may award the entire claim or only part of the claim and refer the victim to civil court for further action. If the court decides to acquit the accused, then the victim will be referred to civil courts for further action (Article 198 paragraph. 3, Ruling on the Claims under Property Law):

- (2) In a verdict pronouncing the accused guilty, the Court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the Court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.

¹⁰⁷ The Law on Confiscation of Illegally Acquired Material Gain, Official Gazette of the Republika Srpska 12/10.

¹⁰⁸ The Law on the Seizure of the Proceeds of Crime and Offences, Official Gazette of Federation of Bosnia and Herzegovina: 7/14.

¹⁰⁹ Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013 – 2015 and Action Plan for implementation of Strategy to Counter Trafficking in Human Beings in Bosnia and Herzegovina 2013 – 2015 (adopted at 43rd session of the Council of Ministers of Bosnia and Herzegovina held on 26 March 2013).

(3) If the Court renders a verdict acquitting the accused of the charge or dropping the charges or if it decides to discontinue criminal proceedings, it shall instruct the injured party that he may pursue his claim under property law in a civil action.

According to the regulations applicable in Bosnia and Herzegovina, the proceeds seized by final decisions of the courts shall be wired to the state budget, while the affected parties are advised to file property claims in civil proceedings.

It can therefore be concluded that there is no basic legislative framework for compensation of victims of trafficking through criminal proceedings in Bosnia and Herzegovina.¹¹⁰

Compensation through civil proceedings

Financial compensation for material and/or immaterial damages can also be claimed through a civil action, meaning that the victim can pursue his/her compensation claims before a civil court.

Damages for pain and suffering, among others, can be claimed in Entity and District courts in civil proceedings. Claims for damages may be made in association with the destruction or damage of property, injury to health or body or death, injury to reputation or honour, infliction of pain or fear, as well as the violation of any other property right. Damages may be both pecuniary and non-pecuniary. In cases of injury, compensation may be received for the cost of treatment, loss of revenue, or compensation in the form of regular payment for the continued inability to work. It is also possible to claim damages for pain and fear suffered; in such cases the court assesses the form and the amount of compensation.¹¹¹

There is only one case registered of a victim submitting a claim for financial compensation. This concerned a victim-witness who was displaced to a third country and submitted a claim for damages in criminal proceedings. The Court did not award compensation, but referred the victim to civil proceedings, which are still ongoing more than five years later! Thus, funds that should benefit the victim to start a new life are absent. In this way, a person is once again at risk of becoming a victim of trafficking.¹¹²

According to a lawyer who provides legal assistance to victims of trafficking not a single victim in his practice had submitted a claim for compensation of damages. Although, in theory, a victim can charge a defendant who is declared guilty in criminal proceedings in civil proceedings and demand compensation, this possibility is never used for several reasons. One is the extensive duration of the criminal proceedings and victims not being psychologically ready to again undergo judicial procedures. They are not willing to re-expose themselves to the attached trauma and stress. Moreover, in civil proceedings the burden of evidence and recovery of the compensation claim, if awarded, lies on the claimant (in this case the victim of trafficking), which is a process that the majority of trafficking victims are not able to execute, even with the support of free legal aid. A specific problem is the inability to actually recover any awarded compensation, because in most cases the defendant is in prison or reportedly has no assets (having transferred them to a third person).

A possible solution to this problem is the establishment of a government fund for compensation of damages, as is found in some other European countries. Regardless of whether or not

¹¹⁰ *Ibid.*

¹¹¹ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009

¹¹² Interview with Federal prosecutor, member of Strike Force for Combating Trafficking in Human Beings of BiH, December 12, 2013.

the defendants are found guilty and who according to the Law on Obligations is required to compensate the damage, the term “guilty party” should include the State as passive observer that has failed to protect the victim from trafficking, and therefore should have to compensate damages to the victim.¹¹³

Compensation for unpaid/due wages through labour law

Labour courts do not exist within the judicial system of BiH. However, it is possible to claim unpaid wages through civil proceedings. Such cases are quite numerous in BiH, but they are not related to labour exploitation of trafficked persons, as far as known. Compensation for unpaid wages for sexual exploitation probably could not be claimed since prostitution is prohibited by law.¹¹⁴

Relevant provisions are:

- Labour law of Federation of BiH, Article 85: If an employee suffers damage at work or in relation to work, the employer is obliged to compensate damages to the employee under the general rules of the Contract Law; and Article 103: An employee who believes that the employer has violated a right of employment relationship may require from the employer exercise of this right¹¹⁵;
- Labour law of the Republika Srpska, Article 104: The employee is entitled to compensation from the employer for damages suffered at work or in connection with the work, unless the damage is due to his fault or negligence¹¹⁶;
- Labour law of Brcko District, Article 71: If an employee suffers damage at work or in connection with the work caused by the employer, the employer is obligated to indemnify the employee in accordance with the general provisions of the Law on Obligations¹¹⁷.

Compensation through a State Fund or any other State-run scheme

There does not exist a State Fund for compensation of victims of crime that would benefit from money and goods seized from perpetrators. It would be recommended to establish a system of mandatory compensation to victims within the criminal proceedings, where the payment is made upon the judgment being passed, instead of the practice that the victim is referred to civil litigation for claiming compensation.

However, civil society organizations in the region were initiated advocating and lobbying activities on establishing a Fund for victims, which could be used not only for compensation of victims, but also as a resource for their full reintegration, with the financial means for the Fund provided by the assets seized as proceeds of crime.¹¹⁸

Specific provisions on financial compensation for children-victims

Although children enjoy special protection as a particularly vulnerable category, BiH legislation does not have specific provisions in regard to financial compensation for material and/or immaterial damages of child-victims.

¹¹³ Interview with a lawyer, representative of NGO “Vasa prava“, December 19, 2013.

¹¹⁴ *Ibid.*

¹¹⁵ “Labour law, Federation of Bosnia and Herzegovina Official Gazette, 43/99, 32/00 and 29/03“.

¹¹⁶ “Labour law, Republika Srpska Official Gazette, 8/00, 40/00, 47/02, 38/03, 66/03 and 20/07“.

¹¹⁷ “Labour law of Brcko District, Official Gazette 7/00”.

¹¹⁸ “Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia“, project “Balkans ACT (Against Crime of Trafficking) Now!“, 2013.

Main obstacles for victims to obtain compensation for damages

As stated, the CPC BiH allows for victims and other parties who have suffered damages to request compensation and recovery of goods during the course of criminal procedures. However, while victims with the support of legal aid lawyers, often do request that damages are awarded in the course of criminal proceedings, judges generally refuse to rule on this issue and refer the applicants to the civil court. This poses a heavier burden on the victim. So far, no victim has pursued their claims in civil courts, indicating that this is not an appropriate option for them.

At the same time a Fund for compensation of victims of (serious) crimes does not exist. Related to a State Compensation Fund, a system of mandatory compensation of victims should be established within the criminal proceedings, where the payment is made upon the judgment being passed, instead of the practice that the victim is referred to civil litigation to claim the compensation.

It should again be stressed that the issue of legal aid for victims in criminal and civil proceedings has not yet been comprehensively addressed from a legislative point of view. Therefore, it can be concluded from the outset that when it comes to legal aid for victims in procedures for compensation, the existing regulations are not satisfactory. While the Rulebook on Foreign Victims and the Rules on Domestic Victims do include provisions that mention “legal assistance” or legal counselling, such services do not amount to legal advice or legal representation and are therefore incomplete. Legal representation is especially important as it allows the lawyer of victims to effectively pursue their claims in local courts even after the victims’ departure from BiH, which can be of crucial importance in cases that take a long time.

Non-prosecution and non-punishment of trafficked persons

Victims of trafficking should not be prosecuted or punished for prostitution or other illegal acts they were compelled to commit as a direct result of their being trafficked.

The CC FBiH and CC RS do not at any point deal with the issue of non-punishment of victims of crimes, whether in relation to trafficking in human beings or otherwise. Duress is not specified in those criminal codes as a permissible defence, therefore criminal law itself does not guarantee that victims will not be prosecuted or punished for any potential offences that they may have committed in the process of their victimization.

The situation is different in regard to the State and Brcko District criminal codes which stipulate that no criminal proceedings shall be conducted against victims of trafficking who were forced, by the perpetrator of the criminal act, to participate in the commission of another criminal offence, if such act was a direct consequence of his or her status of victim of trafficking in human beings. In theory, this means that foreign victims of trafficking are fully protected from criminal prosecution and punishment, as well as victims of trafficking in human beings in the territory of Brcko District. Yet, considering that this provision of CC BiH only recently entered into force it cannot yet be concluded how this provision will function in practice. A similar situation exists in Brcko District.

Further, the Rulebook on Foreign Victims in Article 4 states the following:

Acting organs will not initiate procedures against the victims of trafficking due to their illegal entry or stay in the country provided such acts were committed in direct relation to trafficking in human beings.

To some extent this bylaw also protects foreign victims from criminal prosecution and other procedures, yet this protection is limited to actions mentioned in the article, notably illegal entry or stay. Thus, a victim trafficked from abroad and forced to commit petty crimes, for example, would not be protected against prosecution for such crimes.

Domestic victims of trafficking in Entities are not generally excluded from prosecution for committed criminal offences unless they are granted immunity by the prosecutor. On the other hand, a witness who has been granted immunity and who is testifying as a result of this granted immunity shall not be prosecuted except in the case of a false testimony.¹¹⁹

In practice, some prosecutors have directly called upon international standards in order to protect victims and this has often had success in the courtroom.¹²⁰ Yet, there have been cases of domestic victims being prosecuted in local courts for the misdemeanour of engaging in prostitution or begging.

In the last couple of years there have been almost no such cases. Ten years ago this occurred more often, at the time before the establishment of the Ministry of Security BiH and other agencies, such as the Service for Foreigners Affairs. It is evident that these institutions, as well as other relevant stakeholders, are succeeding in their efforts to enhance the protection of victims of trafficking.

The criminal codes stipulate that every citizen of BiH, including foreigners, is required to report to the prosecution if he/she has knowledge of a crime.¹²¹ All citizens can submit information regarding a committed offence to the prosecutor. If a person wants to report a crime in which they have participated or of which they have been an eyewitness, the Criminal Code BiH and the Criminal Procedure Code BiH contain provisions in regard to persons who provide useful information for the detection and prosecution of criminal offences. Under specified conditions they can be provided immunity from prosecution for their part in the commission of the offence.¹²² This also applies to victims of trafficking.

Special provisions in regard to non-prosecution/non-punishment of children-victims

In the Republika Srpska and Brcko District, specific laws on the protection and treatment of children and juveniles in criminal proceedings have been applied since 2011 and 2012, respectively. In Federation BiH a new Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings has been applied since February 2015. This has resulted in an uneven and unequal status of children and juveniles in conflict with the law in different regions/entities of BiH, regardless of whether they are injured party or suspect during last four years. However, according to the laws on the protection and treatment of children and juveniles in criminal proceedings in Entities and Brcko District, no criminal sanctions or other measures can be imposed on a child who at the time of the criminal offence was younger than 14 years.

¹¹⁹ "Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia", project "Balkans ACT (Against Crime of Trafficking) Now!", 2013.

¹²⁰ Interview with Federal prosecutor, member of Strike Force for Combating Trafficking in Human Beings of BiH, December 12, 2013.

¹²¹ Interview with a lawyer, representative of NGO „Vasa prava“, December 19, 2013.

¹²² Official web portal of the Prosecutor's Office of BiH <http://www.tuzilastvobih.gov.ba>.

Main problems in relation to prosecution and punishment of victims

The current legislation of BiH is still not in line with the relevant international conventions and Directives regarding non-prosecution and non-punishment of victims. National victims are only in Brcko District protected by law from prosecution or punishment, while foreign victims are protected for criminal actions committed as a direct consequence of his status of victim of trafficking in human beings. This means that trafficked BiH citizens in Federation BiH and the Republika Srpska are potentially subject to prosecution for offences they committed as a result of their being trafficked.

Duress is accepted as justification only in the Criminal Code of BiH for foreign victims and the Criminal Code of Brcko District for national victims. In practice, however, some prosecutors have successfully called upon international standards in order to protect victims. Yet, there have been cases of local victims being prosecuted in local courts for the misdemeanour of engaging in prostitution.

Furthermore, it is not sufficient that victims are decriminalized only in terms of their criminal liability. A victim may overstay her or his visa, work without a permit, or have similar issues, and should be protected from any administrative proceedings that could result in adverse results for her or him.

Non-detention of trafficked persons

Trafficked persons should not be detained or held in closed shelters or other welfare centres. Detention of trafficked persons, defined as “the condition of any person deprived of personal liberty except as a result of conviction for an offence”, can cover a wide range of situations. Victims may be detained as irregular/undocumented migrants, as a result of their engagement in illegal activities, such as prostitution or unauthorized work, because they are unwilling or unable to cooperate in criminal investigations or because their cooperation is not considered useful. Another form of detention is the placement of trafficked persons in closed shelters or other welfare facilities in conditions akin to detention.

Detention

If victims are correctly identified, they cannot be detained as irregular migrants or as a result of their engagement in illegal activities. Even if victims are not willing or able to cooperate with the prosecution, as potentially identified victim of trafficking in human beings they cannot be detained.

Closed shelters

The majority of identified victims, adults and children, are accommodated in closed shelters (restricted freedom of unaccompanied movement outside the shelter facility) with the intention of ensuring their safety. This applies to both national and foreign victims. Victims can be accommodated in a shelter only with their consent and with prior information regarding the conditions and principles of their stay in the shelter.

Victims can request from the institution responsible for their safety (usually the prosecutor’s office) to permanently leave the shelter. This will be respected in accordance with the legal requirements. However, this means that they are renouncing the right to accommodation in the shelter, and only in cases when it is necessary, other forms of accommodation will be

provided for the victim. This practice is not common. Hence, for example, a victim may already have accommodation but which is not safe or secure, while another may have no place to stay whatsoever, so they usually are accommodated in shelters. Still, this doesn't mean that victims who are not accommodated in shelters have no access to assistance and protection. Medical, psychological and legal assistance and protections that legally belong to them as victims of trafficking are provided to those victims through social welfare centre¹²³ or authorized NGOs.

Adult domestic victims can permanently leave the shelter unaccompanied after notification of all relevant institutions and under the condition that their location is known to the police and prosecution in the case of their giving testimony in the court proceedings. Minor domestic victims can leave the shelter only on the written request of their legal guardian and in the company of legal guardian.

Foreign victims can leave the shelter during the reflection period only with the consent of the competent institutions (Service for Foreigners, police and prosecutor, and - in the case of minors – the Centre for Social Work) and accompanied by an officer of the competent institution who organised the shelter. Signed documents are required to leave the shelter.

Once they have a (temporary) residence permit, foreign victims of trafficking are not required to live in a shelter. A residence permit regulates their status and gives them all the rights that any other foreigner in the country has. Yet, most victims do not have anywhere else to go and temporary residence permits do not automatically make them eligible for any additional social or economic benefits. The Law on Movement and Stay of Aliens and Asylum BiH in Article 54 (3), as well as the Rulebook on Foreign Victims in Article 14 (2) quotes access to the labour market and vocational training during permitted residence as one of the victims' right. Yet such cases are not recorded, nor are operative details specified of how these victims' rights can be implemented in the practice.

The Rulebook on Foreign Victims in Article 14 (1) lists the rights of victims and the services and types of support that must be ensured to them. Adequate and safe accommodation is first on the list. According to the Rulebook, the Ministry of Security is required to establish shelters for victims of trafficking and supervise their work. The establishment of shelters for foreign victims of trafficking is provided for in the Article 15 of the Rulebook. Such shelters may be established by NGOs who have cooperation protocols with the Ministry of Security. However, the Rulebook does not stipulate the minimum conditions to be provided in these shelters, nor does it set up a system (criteria, monitoring and verification), which would ensure that the accommodation provided is indeed adequate and appropriate. In the Article 15 paragraph 4,

¹²³ The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH, Article 10, (Physical protection): ... (3) When the victim or victim-witness does not want to return to his/her place of residence, the authorized institutions in BiH and authorized organizations shall seek another solution to secure the victim or victim-witness in accordance with its capabilities, considering the fact that the victim or victim-witness would return to the environment in which he/she was exposed to the risk of exploitation.

(4) Estimation of the safety of the victim or victim-witness returning to his/her former residence shall be jointly conducted by the prosecutor's office, police department, and social welfare centre or service.

(5) The social welfare service, in cooperation with the local police department, shall continue conducting the measures of intensified observation with regard to the physical safety of the victim or victim-witness and shall define the appropriate duration of the intensified observation and system of information delivery with the aim of ensuring prevention from the secondary victimization.

(6) The provisions of the Rules shall not be applied to victims of the trafficking in human beings included in the witness protection program as protected or endangered witnesses as long as they are under this protection. If the protection has time limits, the application of the Rules shall continue after the termination of protection.

(7) In case of failure to institute criminal proceedings regardless of probable cause which constitute a basis for considering a person victim or victim-witness, the protection procedure shall be approved and launched by the social welfare centre or service which could ask for help and protection by the competent police department irrespective of the status of the criminal proceedings.

“security to the premises of the shelter will be secured in accordance with legal regulations” is mentioned, without providing further detail on how the security of the premise is actually to be accomplished.

As to domestic victims the Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 12 stipulate for victims and victim-witnesses:

- (1) ... a protective care and accommodation, financial aid, counselling and psychological support and professional assistance in terms of their inclusion into the program of resocialization;
- (2) protective care and accommodation, which may be acquired through: shelter, i.e. a facility used to accommodate victims of trafficking in human beings and violence (safe house), other families or foster families and institutions of social and children protection;
- (3) If a victim or victim-witness is in need, he/she shall be provided with appropriate financial aid, i.e. one-time financial assistance pursuant to the valid laws on social protection of the entities and Brcko District of BiH, as well as other help depending on the possibilities of the authorized institutions in BiH and authorized organizations;
- (4) A victim or victim-witness shall be included in the program of resocialization which is individually planned and prepared according to needs of the victim or victim-witness; the program shall include additional education, vocational training, assistance in employment and other social measures in accordance with the possibilities of the authorized institutions in BiH and authorized organizations.

In accordance with the Explanatory Notes of the CoE Convention that state that the individual circumstances of each victim need to be taken in account when deciding on what may be considered proper accommodation the individual needs of each of the victims are considered within the national referral mechanism for the referral.¹²⁴

The rights and obligations of NGOs involved in the provision of accommodation and care for victims of trafficking in shelters are governed by a Protocol signed in cooperation with the Ministry of Security of BiH (for foreign victims of trafficking) and the Ministry for Human Rights and Refugees of Bosnia and Herzegovina (for BiH national victims). The relevant ministries are responsible for defining the standards and quality of services that NGOs must provide to trafficked persons during their stay in their shelters and consult with NGOs on this matter.¹²⁵

Although the current shelter services that NGOs provide vary in capacity, target group, quality and range of activities, there is a basic set of services that each of the signatory NGOs, as authorized organizations, must provide to each potential victim of trafficking receiving care at their shelter: safe accommodation and protection; daily meals in accordance with the prescribed nutritional value; basic clothing, shoes and toiletries needed during residence; general and specialized medical services, including possible hospitalization; psychosocial support and counselling; legal counselling/legal aid and reintegration services (rehabilitation, repatriation and re-socialization).

¹²⁴ The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH, Article 9 (Individual protection): Individual protection is grounded on the consideration of needs and their interdependence, that is, assessment of needs for each individual case, taking into account a health condition, age, gender, national minority affiliation, social status and other individual needs based on medical examination of the victim or victim-witness. Further, The Rulebook on Foreign Victims in Article 14 (Rights of Victim of Trafficking in Human Beings), Paragraph (4): The relevant authorities in securing the rights under this Article, take into account age, gender and special needs of victims, paying particular attention to specific needs of children, including adequate accommodation, education and care.

¹²⁵ “Situation Analysis of Trafficking in Human Beings in Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia“, project “Balkans ACT (Against Crime of Trafficking) Now!“, 2013.

Whereas rehabilitation involves measures taken toward recovery and inclusion in everyday life, repatriation implies the return of a foreign trafficking victim to his/her country of origin, or the return of a BiH national to BiH from the country he/she has been trafficked to. Re-socialization refers to the return of a victim to his/her community with the capacity to live a socially balanced life and successfully engage in social activities.

NGOs with the necessary capacity and trained staff can provide additional services, including psychiatric help, drug rehabilitation and various types of services related to the resocialization of victims. The availability of these services is conditional upon each NGO's capacities and means.

Detention and/or placement of children-victims in closed shelters or other welfare centres

There are no specific provisions in regard to the detention of children-victims and/or their placement in closed shelters or other welfare centres in BiH legislation.

At the state level the Rulebook on Foreign Victims and the Rules on domestic victims contain a number of specific provisions on the protection of the privacy and safety of child-victims. However, there are no laws or measures which define measures of assistance, protection and prevention in relation to child victims of trafficking, taking into account the best interest of the child, regardless of whether the child is a victim of international or domestic trafficking. In neither of Entities social protection legislation contains specific provisions in relation to victims of trafficking, especially of children-victims, or on the assistance which must be provided in accordance with international standards.

According to state, entities and Brcko District laws on the protection and treatment of children and juveniles in criminal proceedings, a child who is less than 14 years cannot be detained.

Main problems in regard to non-detention & shelters

The Rulebook does not stipulate the minimum conditions to be provided in shelters, nor does it set up a system (criteria, monitoring, and verification), which would ensure that the accommodation provided is indeed adequate and appropriate.

In BiH, unlike in some other jurisdictions, the reported problem is that foreign victims may end up staying longer than they may have wished, rather than being repatriated or expelled too quickly. Victims tend to be willing to cooperate with the prosecution authorities and stay in order to do so. However, it may take a long time for the prosecution authorities to put a case together and decide whether to actually use the victim as witness in the case. In the meantime, they need to wait. Consequently, some victims end up staying in BiH for an extended period of time. Given the fact that they usually live in shelters where they are isolated and where they do not have access to many social activities, the experience can be a very negative one.

Material assistance to foreign human trafficking victims is not envisaged by any legislation or bylaws while national victims can get only one-time financial assistance. Indeed, in practice this is true. Victims have some access to goods through shelters, but aside from this assistance in kind, no other assistance is available. This is especially important when it comes to foreign victims who wish to obtain a temporary residence permit and stay in the country for some time. With a "declarative" permission to work, which is still not applied in practice, they are left without any means of survival, which actually increases their risk of being re-trafficked. Hence they are forced to remain in shelters throughout their stay in BiH and are completely dependent on the assistance that they receive through these shelters.¹²⁶

¹²⁶ "Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina", OSCE, 2009.

Reflection period, temporary and permanent residence permit and asylum

Victims have the right to a recovery and reflection period. 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

If a person is presumed to be a victim of trafficking, placement in an authorised shelter grants them the status of protected person for a recovery and reflection period of 30 days from the date of their reception into the shelter. In this period they should decide whether to cooperate with the authorities, outside the influence of the perpetrators and based on accurate information.

The recovery and reflection period is addressed only in the Rulebook on Foreign Victims, in Article 10 paragraph 1, as follows:

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

However, although not prescribed by laws and regulations, the reflection period applies to both national and foreign victims. The relevant institution, such as the Ministry of Security BiH, Ministry for Human Rights and Refugees BiH, Prosecutor's Office, law enforcement agencies (LEAs), centres for social work (CSWs), which identifies the victim decides on their placement in a shelter. In practice, in the majority of cases LEAs identify victims and refer them in a shelter.

During the reflection period, in a shelter or other form of accommodation, victims have access to social, psychological and medical assistance. According to the Rules on Protection of National Victims and Victim-Witnesses domestic victims of trafficking are also provided one-time financial assistance.

It should be noted that the Rulebook states that during the reflection period foreign victims shall be given the status of "protected person". It does not, however, define what this means.

The Law on Movement and Stay of Aliens and Asylum defines "protected person" only in the context of asylum (international and temporary protection). Accordingly, international protection is defined in Article 105 paragraph 1 as follows:

(1) For the purpose of this Law, international protection indicates the status that competent BiH authority accord to refugees or persons fulfilling the conditions for subsidiary protection;

Temporary protection is defined in Article 126 Paragraph 1:

(1) In cases of a mass influx, or an imminent mass influx, of aliens in need of international protection, the BiH Council of Ministers may, in consultation with UNHCR and other relevant international organizations in BiH, issue special regulations providing temporary protection of these persons.

Clearly, neither of the above-mentioned definitions of protected person is relevant here, and therefore the Rulebook is referring to a status that is not defined by law. In other words, victims are given a status that, from a legal perspective, does not exist. It can therefore be concluded that a legal framework is not in place and needs to be further developed. Given that victims remain in this legal “limbo” throughout the reflection period, it is impossible for authorities to issue any kind of document authorizing their stay. None of the relevant laws or rulebooks mentions documentation for victims who are provided with a reflection period, or how victims would prove their status to the authorities, or that they have been granted a reflection period.¹²⁷

Temporary residence permit

Pursuant to Article 54 paragraph 1(a) of the Law on the Movement and Stay of Aliens and Asylum, foreign victims of organized crime and/or trafficking in human beings may be granted a temporary residence permit on humanitarian grounds for the purpose of protection and assistance or return to his or her home country:

(1) Temporary residence on humanitarian grounds may be granted (...) in the following cases:

- α. where an alien has been a victim of organized crime and/or trafficking of human beings, for the purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence, or a country which will admit the alien;
- (...)

(2) Temporary residence on humanitarian grounds may also be granted to an alien (...) in cases where his/her presence in BiH is required to enable the conduct of court proceedings, and/or in cases where the alien cooperates with authorities for the purposes of revealing criminal offences and their offenders, or if he/she has been a victim of organized crime and his/her presence in BiH is essential for the conducting of court proceedings.

According to Article 55 (Recommendation of a competent authority), the granting of a temporary residence permit requires the assessment of the court or a report of a health specialist demonstrating its need:

For granting temporary residence on humanitarian grounds under Article 54 (Temporary residence on humanitarian grounds) paragraph 1, items a), b) and e), as well as paragraph 2 of this Law, the assessment of the authority before which the appropriate (administrative, court) proceedings have been conducted, or by recommendation of another competent authority, or the report of a health specialist from the appropriate health institution showing the necessity for his/her treatment and rehabilitation, shall be required in addition to other evidence relevant to assess the merit of the application.

Moreover, Article 56 provides: “special protection and assistance to victims of trafficking of human beings for the purpose of their rehabilitation and repatriation into the country of their habitual residence”.

According to the Rulebook on Foreign Victims (Article 12) the duration of the residence permit issued on humanitarian grounds is six months and may be extended if the grounds on which it was issued persist. The Ministry of Security BiH/Sector for immigration is responsible for the decision on issuing permits and/or their extension. The residence permit entitles victims to safe accommodation, medical assistance, access to information about their rights and legal assistance during criminal and other proceedings, as well as access to the labour market and vocational training.

¹²⁷ “Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina“, OSCE, 2009.

The authorities who are in charge of applying the rules concerning the protection of foreign victims include the Organizational Units of the Ministry of Security, Service for Foreigners' Affairs, the Border Police, prosecutors' offices, police authorities, inspection authorities and the competent authorities for social protection" (Article 2g).

Unlike the Law on Movement and Stay of Aliens and Asylum, the Rulebook on protection of foreign victims does not make reference to temporary residence granted to a victim for cooperating with justice.

In practice, a temporary residence permit is granted only to those victims of trafficking who are identified as such within the scope of the criminal law definition. In other words, the granting of a temporary residence permit depends on the initiation of a criminal case. NGOs report cases where after a possible victim of trafficking had provided testimony to the prosecutor, the prosecutor decided not to initiate a case for trafficking, following which the person concerned had to leave Bosnia and Herzegovina because no temporary residence permit could be issued.

However, it has to be noted that all potential victims identified by any of the actors described above and referred to a shelter for assistance must be treated as victims of trafficking and provided with the necessary assistance, including repatriation to their home country, as quite often the judicial process exceeds the length of stay/assistance victims receive.

An alien who has been granted temporary residence on humanitarian grounds, on the basis of Article 54 paragraph 1 (a) of the Law on Movement and Stay of Aliens and Asylum, as a victim of trafficking whose residence in BiH is necessary for the purpose of cooperation with the competent bodies in a criminal investigation, has the right to access the job market under the same conditions applied to aliens, as well as access to professional training and education. A child who holds an approved temporary residence permit as a victim of trafficking in persons shall have access to education.¹²⁸

During 2011, a temporary residence permit for humanitarian reasons was granted to four foreign trafficking victims, while two temporary residence permits were granted during 2012.

As a comparison, in 2007, eleven foreign victims of trafficking in human beings were identified in BiH, nine of whom requested temporary residence permits. None were refused.¹²⁹ It is not clear why the remaining two did not request residence permits. Still, these numbers indicate that in general, the majority of foreign victims do apply, and that most, if not all, do receive a permit.

Permanent residence permit on humanitarian ground and/or asylum

The Law on Movements and Stay of Aliens and Asylum of BiH does not provide for a permanent residence permit on humanitarian grounds.

However, trafficking victims can apply for asylum. If they fulfil the definition of refugee or the conditions for subsidiary protection, he or she may be protected in BiH when on return to their country they risk to be exposed to torture or other inhuman or degrading treatment or punishment. According to Article 105, Law on Movements and Stay of Aliens and Asylum of BiH (Definition of international protection):

- (1) For the purpose of this Law, international protection indicates the status that the competent BiH authority grants to refugees or persons fulfilling the conditions for subsidiary protection.

¹²⁸ "Report on the Situation of Trafficking in Human Beings in Bosnia and Herzegovina" and "Report on the Implementation of the Action Plan for Combating against Trafficking in Human Beings in Bosnia and Herzegovina for 2012", State Coordinator for Combating Trafficking in Human Beings in Bosnia and Herzegovina.

¹²⁹ Report on the Situation of trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina and Report on the Implementation of the Action Plan for Combating trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina in 2007.

(2) A refugee is an alien who according to the 1951 Convention Relating to the Status of Refugees and 1967 Protocol, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country he/she is citizen of and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or stateless person outside the country of his/her habitual residence and cannot or due to fear is unwilling to return to that country.

(3) A person holding subsidiary protection is an alien who does not fulfil the criteria defined in paragraph (2) of this Article, but in respect of whom substantial grounds have been shown for believing that the person concerned would face a real risk to be exposed to the death penalty, i.e. execution, torture or inhuman or degrading treatment or punishment in the country of origin or country of habitual residence, as well as the existence of a serious individual threat to a civilian's life or person due to indiscriminate violence in situations of international or national armed conflict and is unable or, owing to the fear, is unwilling to avail himself of the protection of that country.

From the moment of applying for asylum, trafficked persons enjoy full protection as asylum seekers, but they are excluded from the specific regulations on the right of residence of foreign victims of trafficking.

Generally speaking, asylum seekers have a right to lawful residence in the territory of BiH pending a final decision on their application for asylum. If necessary, asylum seekers will be provided with basic healthcare, accommodation within and transport to the asylum centre, nutrition, basic education, free legal assistance on issues related to the proceedings, clothing, footwear and articles for personal hygiene. Minor asylum seekers, who do not have parents, have the right to a guardian and all actions in the process should primarily be guided by the best interests of the child. Asylum seekers will not be punished for illegal entry or stay in BiH.

Victims of trafficking who have applied for asylum have the right throughout this process to stay in the centre accommodating victims of trafficking.

Due to a reduced number of foreign victims, there have been no recent requests for asylum, and therefore it is hard to evaluate what the practice is. In general, victims have the right to request asylum, and necessary information about procedures and the application process can be provided to them through an NGO that provides legal aid to victims of trafficking.

Access to social, psychological, medical, legal and financial assistance

Article 14 of the Rulebook on Foreign Victims lists the rights the foreign victims may exercise. However, material assistance is not mentioned. Article 22 does mention that expenses of "accommodation, recovery and repatriation" are to be covered from the budgets of the State, Entity, or Brcko District, as well as other special funding sources, which could be interpreted to include any possible material assistance. However, the fact that material assistance is not mentioned as a right or even a possibility represents a problem.

Even victims who obtain a temporary residence permit do not automatically get the right to social welfare and other types of assistance that are available for citizens of BiH. Similarly, even if they do automatically get the right to work, such cases are not yet recorded in practice. This means that beyond shelters and food and other goods and services offered by the shelters, foreign victims have no options for any type of additional material assistance.

Situation is different for domestic victims. The Rules on Domestic Victims do address the issue of material assistance. Article 12 on Social Security states that victims and victims-witnesses will be provided, amongst other things, with financial aid, and if needed, one-time financial

assistance. While one-time financial assistance cannot resolve the situation of the victims, it is nevertheless a form of material assistance.

Specific provisions in regard to the reflection period, temporary residence permit or permanent residence/asylum for child-victims

Article 54 paragraph 1(b) of the Law on Movements and Stay of Aliens and Asylum of BiH addresses situations in which children are eligible for temporary residence on humanitarian grounds, by stating that:

(1) Temporary residence on humanitarian grounds may be granted (....)

(....) b) to a minor child of an alien if he/she has been abandoned or is a victim of organized crime or if the minor is without parental protection or custody, or unaccompanied for any other reason whatsoever.

While this Article does not use the wording “the best interest of the child”, Article 19 paragraphs 5 and 6 of the Rulebook on Foreign Victims make such reference. These paragraphs state that all activities must be undertaken in the best interest of the child, with special emphasis on the protection and welfare of the child, and holding the child’s interest as priority.

Main problems attached to the reflection period and (temporary) residence

The 30 days’ reflection period, as specified in the Rulebook on Foreign Victims, is being implemented without much problem. As already discussed, according to the Rulebook, victims are given the status of protected persons during this period. This status, however, is not defined in any way. In practice, this means that victims do not have any official status during this period – they are simply given the right to be in the country without getting expelled.

After this period, if they do not decide to apply for a residence permit, they are either repatriated voluntarily, or alternatively expelled from the country, as there are no other options for them. Hence, the 30 days’ reflection period in practice is treated as a sort of buffer time, during which victims can decide to regularize their status by applying for temporary residence, decide to return home voluntarily, or to be expelled from the country at the end of the term. During this period, they are provided with accommodation in the shelters and other kinds of support.

Furthermore, it should be noted that the (temporary) residence permit regulates the status of victims of trafficking and gives them all the rights that any other foreigner in the country has. Yet, most victims do not have anywhere else to go, and a temporary residence permit does not automatically make them eligible for any additional social or economic benefits. However, it provides them with access to the labour market or vocational training. And even if implementation of these provisions is not yet recorded in practice, it is clear that access to the labour market and vocational training, as stipulated in the Council of Europe Convention on Trafficking and the applicable EU Directives,¹³⁰ should considerably improve their situation.

If victims with a temporary residence permits want to prolong their stay in BiH, they are subject to all regulations that apply to other foreigners. There are no special programs or regulations that would allow them an easy transition from temporary status to permanent residency. As a result, they either return voluntarily or are expelled once their temporary residence expires.

¹³⁰ Council of Europe Convention on Action against Trafficking in Human Beings, art. 12-14; Directive 2004/81/EC on a temporary residence permit for victims who cooperate with the authorities, art. 6-9; Directive 2011/36/EU on trafficking in human beings, art. 11 (1).

Repatriation & 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. Victims may not be returned when there is a serious risk that they will be subjected to persecution, torture or other forms of ill-treatment (principle of non-refoulement).

According to Article 18(3) of the Rulebook (Procedure of repatriation) the organisation that implements the return of a victim is responsible that the return is voluntary, safe and dignified:

- (1) The responsible organizational unit of the Service prepares and initiates the process of repatriation of the victim of trafficking to the country of her/his habitual residence. The Service in cooperation with the Ministry of Security and Ministry of foreign Affairs of Bosnia and Herzegovina shall implement the repatriation procedure.
- (2) The repatriation procedure may be implemented with the assistance of the International Organization for Migration (IOM) or an NGO, which will be regulated by signing Protocols on cooperation with the Ministry of Security.
- (3) The implementer of the repatriation of victims of trafficking is responsible that return is voluntary, safe and dignified. Report on the realized repatriation shall be submitted to the Ministry.
- (4) Detailed procedures for the voluntary return of victims of trafficking will be specified by instruction of the Minister of Security.

It is unclear, however, what, if any, risk assessment is made before repatriation or deportation of the victim back to his/her home country.

Repatriation of child-victims

Article 21 of the Rulebook (Protection of Children) contains specific provisions on the return of child victims:

- (1) A child victim of trafficking who is not a citizen of Bosnia and Herzegovina has the right to return to her or his country of origin or habitual residence.
- (2) The return implementer is obliged to secure return proceedings which will ensure that a child will be received in the country of origin by a member of the responsible body which deals with child protection, or the child's parent or legal guardian.
- (3) A guardian with the assistance of the Service and other responsible state organs will initiate the process of collection of documents and information from the child's country of origin or habitual residence in order to assess the risks and security, upon which a decision will be made either to reunite a child with his/her family or return it to the country of the origin, concerning the child's best interest.
- (4) A child victim of trafficking will not be returned to the country of the origin or habitual residence if there is reasonable doubt upon assessment of the risks and security that his/her return will endanger his/her security or the security of his/her family members.
- (5) The return procedure/repatriation may be implemented with the assistance of the International Organization for Migration (IOM) or an NGO, which will be regulated by signing Protocols on cooperation with Ministry of Security.
- (6) The implementer of the repatriation of child victims of trafficking is responsible that the return is in the best interest of the child, safe and dignified. A report on the realized repatriation shall be submitted to the Ministry.
- (7) Detailed procedures for the voluntary return of child victims of trafficking will be specified by instruction of the Minister of Security.

Due to a reduced number of foreign victims, there have been just few recent cases of repatriations, and therefore it is difficult to evaluate what the practice is. In general, victims have the right to voluntary, safe and dignified return to country of habitual residence. In practice, if foreign victims refuse to cooperate with the prosecution they will not have grounds for issuing temporary residence permit on humanitarian grounds. In other words, victims “voluntary” repatriation depends on their willingness to cooperate with the prosecution and/or the prosecutors’ decision if victim is needed for the criminal proceedings.

Abbreviations

BD	Brcko District
BiH	Bosnia and Herzegovina
CMS	Court Management System
CC	Criminal Code
CC BiH	Criminal Code of Bosnia and Herzegovina
CC BD BiH	Criminal Code of Brcko District of Bosnia and Herzegovina
CC FBiH	Criminal Code of the Federation of Bosnia and Herzegovina
CC RS	Criminal Code of the Republika Srpska
COE	Council of Europe
CPC BH	Criminal Procedure Code of Bosnia and Herzegovina
CPC BD	Criminal Procedure Code of Brcko District of Bosnia and Herzegovina
CPC FBiH	Criminal Procedure Code of the Federation of Bosnia and Herzegovina
CPC RS	Criminal Procedure Code of the Republika Srpska
CSW	Centre for Social Work
ECHR	European Convention on Human Rights
FBiH	Federation of Bosnia and Herzegovina
HJPC	High Judicial and Prosecutorial Council
LEA	Law Enforcement Agency
NGO	Non-governmental organization
PPO	Public Prosecutor's Office
RS	Republika Srpska
SIPA	State Investigation and Protection Agency