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COMPENSATION FOR TRAFFICKED PERSONS IN THE REPUBLIC OF BELARUS

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The book considers legal and practical aspects of compensation of damage caused by the crime to the victims of trafficking. Short overview of international legislation and legal mechanisms in this sphere is provided. Existing legal procedure and compensation practice of physical, property and moral damage of trafficked persons in the Republic of Belarus is covered. Views of professional community (lawyers, psychologists, social workers) on the pondering problem are studied. Recommendations to the specialists working in anti-trafficking domain are provided. Annexes contain excerpts from legislative acts, results of empiric researches, samples of procedural documents.

The book is aimed at specialists of investigation and law-enforcement bodies, barristers, judges, psychologists, reintegration specialists, scientific workers, students of law faculties, and victims of trafficking.

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INTRODUCTION

Compensation of harm or damage caused by a crime is universally recognized as one of the major rights of trafficked persons in the context of ensuring their access to justice. Trafficked persons are victims of serious human rights violations; therefore, they should enjoy their legal right to be compensated for the damages caused by such crime.

Awarding and payment of compensations have several important aspects. Firstly, compensation of damage is the basis for restoring the victim's broken rights, an official recognition of sufferings and instrument of vengeance, helping to restore the sense of justice in trafficked persons. Secondly, this approach ensures a more severe punishment of the traffickers, and, respectively, ceases to be regarded as a low-risk and high-revenue crime. Besides, compensation of damage is a certain tool, in its monetary equivalent, for a faster rehabilitation, since the victim, depending on his/her needs, can buy basic consumer goods, medicines, pay for some training, etc. to improve chances for faster re-integration in the society.

The studies, conducted by the Global Alliance against Trafficking in Women (GAATW), anti-Slavery International and Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE, demonstrate that, in spite of the fact that trafficked persons have the right to compensation of damage, and European countries make use of different legal mechanisms for awarding the compensation, real receipt of compensation payments is often difficult for various reasons. In most countries the property and physical damage is subject to compensation; however, the moral sufferings and the pain experienced by the victims should not be left without attention and respective compensation.

The aim of this publication is to draw attention of the professional community and broad audience of readers to the problem of compensating the harm caused to trafficked persons by the crime and to accumulate materials for further improvement of the existing compensation mechanisms in Belarus. The work sums up and analyses the legal grounds and practical opportunities to ensure the access of trafficked persons to compensation of their physical, property and moral damages.

To acquaint the reader with the international practice of compensation of trafficked persons, the starting chapter of the publication cov-

ers the international legal instruments and legislation of foreign countries and analyses certain problems arising in application of various mechanisms of damage compensation. The second part of the study describes the existing in Belarus legal procedures and practice of damage compensation of trafficked persons, and describes both the notion and types of damage, and the procedural bases and practical aspects of damage compensation.

The third part of the publication deals with the results of studying the opinions of experts of law enforcement bodies and social workers, having long experiences in counteracting the trafficking in persons. The fourth part illuminates the problem of damage compensation from the viewpoint of the trafficked persons, who cooperated with law enforcement bodies and received help from social organizations.

The final part of the work presents conclusions and recommendations, made in the course of the study. The publication also includes excerpts from the regulatory legal acts of the Republic of Belarus dealing with damage compensation.

The Public Organization (PO) «Young Women's Christian Association of Belarus (BYWCA)»/Programme La Strada expresses its gratitude to the trafficked persons, who took part in the study and frankly shared their problems relating to damage compensation, and to the experts, who expressed their opinions in the course of the study on problem issues and moved their recommendations on improvement of law enforcement practice in this area, namely, to judiciary employees, law enforcers, lawyers, activists of NGOs and international organizations. Special gratitude is addressed to the authors of the book and the main partner of the research – the Academy of the Ministry of Internal Affairs of the Republic of Belarus.

Secretary General of the PO «BYWCA»

Galina Tyurina

REVIEW OF INTERNATIONAL LEGISLATION AND NATIONAL LEGAL MECHANISMS ON COMPENSATION OF TRAFFICKED PERSONS

International legal regulation for compensation of trafficked persons

Many provisions of the current international law aimed towards complex solution of the problem of trafficking in persons, prescribe the countries the need to ensure the damage compensation to trafficked persons.

The United Nations Convention Against Transnational Organized Crime¹ of November 15, 2000, contains provisions on setting up the due procedures «to provide access to compensation and restitution for victims of offences covered by this Convention» (Article 25). The **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**², supplementing the United Nations Convention Against Transnational Organized Crime, prescribes in its Article 6(6) that

«Each State Party shall ensure that its domestic legal system contains that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered».

The modern international documents of the regional level, in particular, of the Council of Europe and of the OSCE, also contain the norms, which oblige the member-countries to promote compensation of damage to trafficked persons. The **Council of Europe Convention on Action against Trafficking in Human Beings**³, adopted on May 16, 2005, demands from the states not only to provide judicial means within the civil or criminal process for collecting compensations, but

¹ Ratified by the Republic of Belarus on May 3, 2003. Source: <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

² Ratified by the Republic of Belarus on May 3, 2003 Source: <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

³ The Republic of Belarus has not acceded. Source: http://www.coe.int/t/dghl/monitoring/trafficking/Source/PDF_Conv_197_Trafficking_E.pdf.

also to guarantee the payment of compensations to the victims (Article 15). The **OSCE Action Plan**¹ also indicates to the need of having a judicial mechanism for confiscation of traffickers' revenues, which subsequently should be directed to the victims' needs.

The European Convention on Compensation to Victims of Violent Crime², adopted on November 24, 1983, stipulates possibility of paying compensations from state funds to victims of wilful and grave crimes, who received heavy injuries or died. In some cases trafficked persons, as well as their relatives and dependants can be referred to such persons.

The Convention, while fixing the minimum set of conditions for such payment, lists the instances, where the compensation shall be provided, namely: loss of earnings as a result of loss of motion ability because of bodily injury, costs of treatment, stay at hospital, funerals, availability of dependants, or loss of the breadwinner (Article 4).

The Convention assumes a possibility to set up the upper and lower limits of compensation sums (Article 5). It also establishes the situations, when payment of compensation may be rejected. For example, it can be established in the course of investigation that the «potential» trafficked person is a member of a criminal group or organization, which commits acts of violence, or the «victim» is a searched criminal (Article 8).

The compensation responsibility of the state before the victims (although restricted by violent crimes) is the fundamental provision of this international treaty. As of November 2009, 24 states ratified this Convention³. As a rule, these are economically developed states (Germany, Denmark, France, Spain, etc.). The only CIS country, which ratified the Convention, is Azerbaijan, where it is in force from July 1, 2000.

For a number of countries, accession to the European Convention and its enforcement could restore the rights of a much bigger number of victims. For example, under the current legislation of the Russian Federation the compensation of damage is made only under the verdict of the court, which has come into legal force. With account of the level of opening, for example, of violent and lucrative-violent crimes, under the data, which can be encountered from time to time in interviews of the top officials of the Ministry of Internal Affairs (MIA) of Russia, does not exceed 70%⁴. Thus, over one third of victims of this sort of en-

¹ The Republic of Belarus has not acceded. Source: <http://www.osce.org/odihr/documents.html?lsi=true&limit=10&grp=368>.

² The Republic of Belarus has not acceded. Source: <http://www.echr.coe.int/Library>.

³ Source: Treaties Bureau of the Council of Europe, in the website. <http://www.coe.int/>.

⁴ Source: Special Report of the Ombudsman in the Russian Federation of 4.06.2008 in the website: <http://www.rg.ru/2008/06/04/doklad-dok.html>.

croachments are deprived of the possibility to have compensation of the damage caused to them, since the culprits were not found.

According to the provisions of the European Convention, the compensation of damage is made by the state, if the criminal cannot be subject to criminal prosecution, for example, he/she has not been established, or the limitation period on this crime has expired. Also, the state undertakes to solve the problems of compensation, if the culprit is covered by the release from punishment in connection with acts of amnesty or pardon, heavy disease, etc. as envisioned by the legislation. Ratification of this document will allow the countries to make a serious progress in the issue of damage compensation of trafficked persons and contribute to the solution of the problem to defend the rights and freedoms of crime victims.

The fundamental right¹ to compensation of damage to the crime victims is also stipulated by a number of other international acts: Universal Declaration of Human Rights² (adopted by Resolution 217A (111) of the UN General Assembly on December 10, 1948), the European Convention on Protection of Human Rights and Fundamental Freedoms³ (adopted by the Council of Europe on November 4, 1950), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁴ (adopted by Resolution 40/34 of the UN General Assembly of November 29, 1985), ILO Conventions No. 29⁵ «On Forced or Compulsory Labour» (1930) and No. 105⁶ «On Elimination of Forced Labour» (1957).

National mechanisms of damage compensation of trafficked persons

One of the methods for restoring the broken rights of trafficked persons is compensation to them of the damage caused by a crime. However, its efficiency and chances to reach the aims of compensation de-

¹ Karpikov, A.R., Kaplan, M.I., Zhupanov, A.N. Compensation by preliminary investigation bodies of property damage caused by a crime: training and practical manual. Bryansk, 2004. P. 24.

² Text: <http://www.un.org/ru/documents/udhr/>.

³ The Republic of Belarus has not acceded. Source of text: <http://www.echr.coe.int/Library>.

⁴ Text: <http://www.un.org/russian/documen/declarat/power.htm>.

⁵ BSSR (Byelorussian Soviet Socialist Republic) acceded on 21.08.1956. Source: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>.

⁶ Ratified by the Republic of Belarus on 25.09.1995. Source: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>.

pend from a whole range of factors: the applied mechanism of damage compensation, forms of compensation, reality of obtaining compensation, and the dates of presenting such. Among the range of factors, the volume of compensation is not in the last place – it should be proportionate to the caused damage and not to humiliate the dignity of the victim, but contribute in fact to restoration of the broken victim's rights.

As a rule, most European countries have their judicial mechanisms of damage compensation of trafficked persons¹. The claims on damage compensation may be lodged within the framework of the criminal or civil process, through address to special labour courts (tribunals); or compensational payments may be made from compensation funds. National legislations assume also a possibility the pre-trial settlement of the dispute and voluntary damage compensation. On the basis of analysis of international practice, it seems expedient to consider the advantages and deficiencies of the available mechanisms from the viewpoint of their efficiency and completeness of enforcement of the rights and lawful interests of trafficked persons.

a) Pre-trial settlement of the dispute and voluntary compensation of damage

The overwhelming majority of legislators of foreign countries have assumed, within the domain of civil proceedings, including the area of the labour law and process, a possibility of pre-trial settlement of the dispute, conclusion of the so-called «amicable agreement». In the countries of the Anglo-Saxon legal system, a similar mechanism is envisioned within the framework of the criminal process and is named the «plea agreement». The essence of the deal is that the criminal admits his/her guilt, but in order to soften the punishment makes a voluntary, prior to passing the verdict, compensation of the damage to the victim; and often the sum of such compensation exceeds the volume as established by the court. In any case, the desire of the wrongdoer to compensate the damage to the victim in the voluntary order deserves approval by the legal system of the state.

For example, in Thailand², in July 2006, twenty Laotian workers locked for labour at the gloves factory with no salary, after two of them managed to escape and address a local public organization, received from the employer, in the voluntary order, full compensation of their

¹ Article by M. van Doornink and S. Hoff «Compensation – an instrument for empowerment of trafficked persons», 2007. Source: http://lastradainternational.org/?main=informationlsi§ion=lsinewsarchive&news_id=233.

² G.H. Yamauchi «Claiming compensation and unpaid wages in Thailand» Source: GAATW Alliance news July, 2007. P. 24–25.

salaries and overtime payments. In the opinion of an activist of the local organization, it was much better for the employer to completely compensate all the debts to the workers, as it then served as a mitigating circumstance when the case was considered by the court.

According to experts of the OSCE¹ «the plea and amicable agreements of the parties are profitable for the victims, including victims of trafficking in persons, since they contribute to obtaining of the real compensation of damage».

b) Bringing action in civil process

The general sense of lodging a suit (claim) in civil process is that the civil claimant declares the need to recover his/her broken rights directly in relation to the respondent. The legal dispute takes place between private persons (as a rule, a trafficked person opposes the exploiter – an individual or a legal entity). In the order of civil proceedings, the burden of proof causing damage is always on the claimant, i.e., the trafficked person, who is independently proving the volume of damage, the causal interrelation, prepares and lodges the claim, unlike the procedure of the criminal process, when the state accuser stands for defence of the rights of the victim of trafficking in persons.

Within the civil legal relations within the Roman-German legal system the whole damage is subject to compensation, caused both to the person (life, health, reputation) and the property by the actions of the respondent. In the countries of the Anglo-Saxon law, the notion of damage is defined rather narrowly, and, as a rule, is connected with the type of the offence.

According to the principles of civil law, the volume of compensation should approximately correspond to the volume of caused damage and does not depend from the degree of the guilt of the wrongdoer and his/her role (recruiter, exploiter, helper, etc.) or the type of offence. However, in certain countries the compensation can be smaller than the volume of caused damage, for example, in case of poor material position of the wrongdoer (paragraph 44, parts 1–2 of the Swiss Civil Law)². The compensation of damage can be made in the form of the monetary compensation or in kind (for example, return of taken away things), but never – in the form of imprisonment for the guilty person.

The advantages of this system are as follows:

✓ The financial compensation is the closest to the real value of the caused (suffered) damage;

¹ Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 159.

² The Civil Code of Switzerland is called the Swiss Main Law. E. Bogatykh. Civil and Trade Law. M., 2000. P. 258.

✓ A possibility to lodge a collective suit partially removes the fear of trafficker's revenge in the victim;

✓ It is most frequently used for compensation of damage, caused to labour migrants.

The following should be mentioned among the drawbacks:

✓ Expensive process because of high legal expenses, counted as a certain percentage from the sum of the claim;

✓ Long process, connected with the necessity for the trafficked person to independently prove the guilt of the respondent; and

✓ Impossibility to apply the measures of defence from the respondent, which can be applied under the criminal process.

c) Bringing action in criminal process

The main aim of the criminal process is to expose and punish the culprit for his/her illegitimate action (a crime), committed against a person, state, society, legal order, and recovery of the rights of the victim. The criminal proceedings assume a mandatory consideration of the case by the court, where the state is one of the main acting subjects. The volume of punishment depends on the level of guilt, the character of the act and a number of other circumstances. Depending from all that, the types of punishment may include both deprivation or restriction of liberty, and fines and confiscation of property.

In the countries of the Anglo-Saxon legal system, the rights for compensation within the criminal process may be appointed by the court, and its value, as a rule, is minimal. For example, in Great Britain the prosecutor may state the necessity of compensation of a certain part of damage for the victim¹. In the USA, the claim on damage compensation is declared by the prosecution advocate a priori in any criminal process on trafficking in persons. This requirement of the legislation, applied to all the cases of trafficking in persons, is automatically removing any suspicions from the victim, which may arise in judges or lawyers about any hidden lucrative motives in the victim for taking part in the case².

In the Roman-German legal system (Russia, Ukraine, Czech rep., etc.), the procedure of lodging a civil claim in the criminal process is mainly used.

The main drawbacks of the procedure of damage compensation by means of taking part in the criminal process is the duty to evidence against trafficker, the long delay connected with dependence from the verdict's coming into its legal force, as well as a frequent impossibility

¹ Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 148–149.

² Ibid. P. 30.

to get the full volume of compensation for absence or insufficient property owned by the defendant. At the same time, this mechanism has proved to be universal in the sphere of defending victim's rights, and is classical for the above countries.

d) Compensation of damage through labour court (arbitration)

Enforcement of the right of the victim from trafficking in persons to compensation of damage through the labour court (arbitration) is similar to lodging a claim in the civil process. The main distinction from the civil proceedings is in a narrower specificity in the subject of dispute – broken labour rights. According to the international law¹ a labour migrant possesses definite labour rights (for example, the right to have his/her labour paid not below the floor salary, non-discrimination, compensation of damage, caused to one's health by a labour accident, etc.). Since in most countries prostitution is not perceived as labour activity, this mechanism of damage compensation is mainly used by labour migrants, who became victims of trafficking in persons with the aim of labour, not sexual, exploitation. But, for example, in Germany the 2002 Law «On Prostitution»² stipulates that a sex-worker may lodge a claim on payment of services according to contract (agreement) against his/her client or employer.

In a number of cases national legal mechanisms assume that some necessary conditions should be in place for lodging a claim through the labour court.

For example, in Great Britain³ lodging a suit may be possible only in case of official employment and presence of a labour contract (agreement). In Spain, the national laws⁴ demand to observe the procedure of direct pre-trial proceedings with the dishonest employer, which questions the use of this possibility by the victim of trafficking in persons. At the same time, in case of nicely tuned mechanism of damage compensation through labour courts, victims of labour exploitation can much quicker and easier receive their compensation. In Israel, human rights organizations note that «...labour courts are much more accessible (legal fees are much lower), and the hearings pass rather quickly.

¹ For example, see ILO Convention No. 97 «Convention on Workers- Migrants (revised in 1949)» Source of text: <http://www.ilo.org/ilolex/russian/docs/conv097.htm>.

² Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 34.

³ Ibid. P. 148–149.

⁴ Savelieva, T.A. Law-enforcement activity and pre-trial settlement of individual labour disputes: Abstract of Thesis for Candidate of Law. Research Supervisor V.I. Popov. Tomsk, 2002. P. 23 (Source: <http://law.edu.ru/book/book.asp?bookID=107277>).

Lawyers take such cases with pleasure, as they get their percentage from the sum awarded to the victim, and such cases are easily won»¹.

e) Compensation Fund

In many countries the courts may oblige the criminal to compensate the damage, caused by a crime². However, by virtue of many objective reasons the practice of compensation of damage, realized only from the funds of the criminal, cannot satisfy the interests of the victim (for example, in cases of criminals' insolvency, long terms of imprisonment, and when the culprit was not found). Under these circumstances the system of state compensation of damage allows restoring the social justice.

The Compensation Fund is the fund set up by the state for compensation of damage caused to any victim of the crime, or to victims of a definite type of crimes. As a rule, the recognition of the person to be a victim and report of law enforcement bodies that the citizen contributes to the inquiry is enough for starting the procedure of paying the compensation³. Compensation Funds are set up mainly in the countries of the Anglo-Saxon legal system (in the USA, certain provinces of Canada and Australia, in Great Britain⁴), where, as a rule, victims have no rights to independently claim damage compensation, while the claim should be lodged during the criminal process by the lawyers for the prosecution or by state prosecutors. The main benefits of using this mechanism are connected with the following factors:

- ✓ Independence from coming into force of the verdict of guilty in relation to the criminal;

- ✓ Greater safety for the victim, since criminal knows nothing about the desire of the victim to get compensation; and receipt of compensation is not linked directly with the criminal's property and incomes; and

- ✓ Independence of payments from the availability of funds with the criminal.

In Great Britain payments are possible both through the systems of criminal and labour law. However, the most successful practices are related to payments from the State Fund. Great Britain has a special body –

¹ Taylor-Nicholson, E. Interview with Rachel Idelevich of Kav La Oved. Source: GAATW Alliance news July, 2007. P. 49.

² Karpikov, A.R., Kaplan, M.I., Zhupanov, A.N. Compensation by preliminary investigation bodies of property damage caused by a crime: training and practical manual. Bryansk, 2004. P. 28.

³ Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 40.

⁴ Karpikov, A.R., Kaplan, M.I., Zhupanov, A.N. Compensation by preliminary investigation bodies of property damage caused by a crime: training and practical manual. Bryansk, 2004. P. 27.

the Criminal Injuries Compensation Authority (CICA)¹ – to manage the programme, funded from the state budget and aimed at payment of compensations to victims of violent crimes, who suffered from essential physical or mental damage. For addressing for a compensation for a victim, the crime should have been committed in the territory of England, Scotland or Wales; and an application about payment of the compensation should be submitted by the victim or any other person as specified in the law within two years from the moment of committing the crime. The programme also stipulates payment of compensations to relatives of the person, who died as a result of a crime, and to the persons – close relatives to the victim of the crime, who have suffered from the moral harm in their presence at the moment of the crime, or during their direct involvement in the case after the crime. The types of compensated damage include elements of both moral and material damage:

a) Compensation, awarded for the pain and sufferings, caused by a physical or mental injury;

b) Compensation for the trauma received in connection with the death of a close relative, paid to the parents, child, spouse or partner;

c) Special expenses: expenses on burial and expenses on the experts who render medical aid or equipment may be included into the claim;

d) Loss of earnings: compensation is possible only if the victim remains disabled within 28 weeks from the moment of obtaining trauma, with mandatory presentation of a written confirmation from the doctor.

For obtaining compensation, no verdict of guilt is needed. However, the victim should timely address the police and have a medical confirmation. There is a number of requirements and conditions, under which the victim may receive his/her compensation. Firstly, the victim should be ready to cooperate and help in investigation and legal prosecution (in 2004–2005, 30 applications were rejected because of late filing of the complaint on what happened or because of refusal from cooperation)². Secondly, the CICA may reject or decrease the volume of compensation, if the victim was involved in criminal activity, or provoked the crime by his/her aggressive behaviour or a fight (in 2004–2005, 21 claims were rejected in Great Britain just for this reason)³. Thirdly, the restricted point is the requirement of the authorities that the victim, as of the moment of lodging a complaint, should in no case be connected with the person

¹ Janice Lam & Klara Skrivankova Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK. Anti-slavery International, 2008. P. 14.

² Ibid. P. 14–15.

³ Ibid.

who committed the crime (joint residence, etc.). This restriction was introduced with the aim to hamper the wrongdoer to extract benefits from the compensation paid. The payment of the compensation is made directly by the state and does not depend from the enforcement of the court decision on the civil claim.

The drawbacks of using the mechanism of the compensation fund are connected, first of all, with the dependence from the system of payments, existing in the country, and presence of assets in the fund. Besides, the volume of payment from the fund may be incommensurate with real sufferings of a particular victim.

In the USA¹, only the material damage can be compensated from the fund money. By the conclusions of OSCE experts² «...although programme specifics vary by state, victims generally may recover for “material damages” – medical and hospital care, dental care, mental health counselling, lost earnings due to crime-related injuries, loss of support for dependents of a deceased victim, and funeral and burial expenses». Note that «lost earnings due to crime-related injuries» would not include the financial losses suffered by a trafficking victim who is simply unpaid or underpaid for his or her compelled labour. Rather, the term is intended to apply to those crime victims who are unable to work as a result of injuries caused by the criminal conduct itself. Application to a compensation fund is fairly straightforward and should not require legal representation, but there are agencies at the state and local level that can help with the process. If a victim hires a lawyer, some states will reimburse a portion of the legal fees³.

Compensation funds exist not only in Great Britain and USA, but also in France, Germany, Finland, Lithuania, Rumania, Azerbaijan and Austria. Ukraine⁴ is undertaking measures to bring their national legislation in conformity with the current international obligations as regards crime victims. Presently, the Ministry of Justice of Ukraine has drafted the law «On Compensation to Victims of Grave of the crime». The law will stipulate creation of a state system aimed to ensure payment of compensations in the cases, when a deliberate crime, connected with violence against the person, which has entailed health damage or death, has been committed in the territory of Ukraine. The law assumes that the state will pay compensations to victims irrespective of

¹ Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 157.

² Ibid.

³ Ibid. P. 158.

⁴ Asset confiscation as a source of financing victim assistance and combating trafficking in Ukraine, IOM Kiev, 2007. P. 9.

the fact, whether the criminal was found, a criminal case initiated and whereabouts defined.

In the Russian Federation, proposals about the duty of the state to compensate the damage, caused by a crime to the victim, in the form of the state fund were moved by a group of experts in the sphere of criminal procedure, who justified their recommendations by the following arguments¹: «Firstly, since the state has completely undertaken the care to support the public order and ensure safety of the society as a whole and of its every individual member, it has excluded any possibility of personal vengeance by the victim by rightfully considering the task to find and punish the culprit to be the mission of the state. It follows from here that elimination of the consequences of the crime, including also through compensation of the caused damage, should also be the task of the state, once its bodies have failed to present the crime. Secondly, undertaking by the state of the duty to compensate the damages, caused by crimes, could essentially improve the efficiency of the system of damage compensation, since the capabilities of the state in this respect are incomparable with capabilities of any individual (for example, of the wrongdoer). Thirdly, the compensation of damage by the state would contribute not only to fuller satisfaction of the lawful interests of the victim, but also to achieving the aims of general prevention, Fourthly, the state possesses the sums, arriving as a result of application of property punishments to the convicts, as well as revenues from inmates' labour. It would be fair, if these assets are spent, in particular, for compensation of damages, caused by crimes. Fifthly, in the final end the sums spent to cover the damage, caused to the victims by criminal acts, will get back into the state budget as deductions from inmates' earnings. Thus, the guilty persons will compensate the damages, not the state, which in this case acts only as the warrant of restoration of the property rights of the victim».

***International experience and certain problems
of national compensation mechanisms
for trafficked persons***

The compensation of damages of trafficked persons is a narrow topic, which should be considered in a broader context of ensuring ac-

¹ Karpikov, A.R., Kaplan, M.I., Zhupanov, A.N. Compensation by preliminary investigation bodies of property damage caused by a crime: training and practical manual. Bryansk, 2004. P. 30–31.

cess to justice of trafficked persons. In this context, there are some problems of practical damage compensation.

Status of victim and his/her place in the course of collecting damage

The main problem of access to justice for trafficked persons is connected with the fact that they are not always legislatively recognized to the victims of trafficking in persons. Thus, for example, for absence in the legislation of Rumania¹ of the definition of the notion of «trafficked person», the victim of trafficking in persons may be incorrectly identified; therefore, he/she loses the right to obtain the compensation. For example, in the course of the judicial process judges in Rumania are often incorrectly identifying VoTs as «witnesses», not as «suffered parties», as a result of which they are deprived of their certain legal rights, including also the right to obtain compensations².

In France, the possibility of obtaining compensational payments through the State Fund for victims of terrorism and violent crimes³ is envisioned only for the citizens of France or the European Union, as well as for the foreigners living on legitimate grounds in the course of committing the crime or lodging a complaint.

In Switzerland⁴, victims in the cases of trafficking in persons may get a temporary residence permit for the time of preliminary inquiry and court proceedings, in which the victim is figuring. However, upon the end of the procedure, victims lose their right to stay in the country and are obliged to leave it, which subsequently means complications in receiving the collected monetary assets.

In Bulgaria⁵, according to the Act on Support and Compensation of Crime Victims, which came into force in December 2006, a mechanism is assumed for compensations to crime victims, including trafficked persons. The compensation of damage is available only for citizens of Bulgaria and European Union. The financial compensation

¹ Rumania has Law No. 211/2004 on certain measures towards defence of crime victims and Law No. 678/2001 on combating trafficking in persons. Source: Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 101.

² Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 108.

³ Ibid. P. 78.

⁴ The 2007 Review of Amnesty International (Source: <http://archive.amnesty.org/air2008/rus/regions/europe-and-central-asia.html>).

⁵ Article by M. van Doornink and S. Hoff «Compensation – an instrument for empowerment of trafficked persons», 2007. Source: http://lastradainternational.org/?main=informationlsi§ion=lsinewsarchive&news_id=233.

assumes coverage of material expenses only, and the minimum and maximum limits are established (about 128 and 2555 euros).

In Japan, in connection with the new wording of the Law on Immigration Control and Recognition of Refugees of 2005¹, according to its Article 50, it is now legally possible for a trafficked person to get the right to legally stay in the country. However, the period of stay is restricted by the term from 1 to 3 months. The above Law also states that a trafficked person is not authorized to get any social payments or privileges from the state.

Informing victims about their rights and access to legal services

In the post-criminal period, many VoTs remain alone, often without documents, jobless and with no means of support. Evidently, in such circumstances, receipt of the minimum volume of information about one's rights seems hardly possible without participation of third persons (for example, those international and nongovernmental organizations (hereinafter – the IOs-NGOs).

According to legislation of a number of countries, such as Albania and Moldova², organs of inquiry, prosecution or justice are not obliged to inform crime victims about their rights. Thus, even provided the right to compensation of damage exists, it is seldom enjoyed, because people just do not know about it.

In Japan, according to the Act on Legal Aid³, a citizen of Japan, or a person living in the country legally and for a long time, has the right to duly-qualified legal aid. Evidently, a foreign trafficked person cannot satisfy this criterion and enjoy the above right. Moreover, the 2005 Law on Immigration Control and Refugee Recognition assumes no free legal aid to victims. In April 2007, the National Association of Lawyers of Japan set up a special fund for the foreigners, who have no legal status or long-term legal stay in Japan. This fund is made up of lawyers' membership fees and donations by some other funds.

Calculation of the compensation sum

In most of the civilized countries of the world, all the damages – physical, material and moral ones, caused by a crime, are subject to

¹ Enacted on November 23, 2007. Source: N. Bilbatua. Interview with Joko Joshida. Source: GAATW Alliance news. Seeking compensation in trafficking cases. July, 2007. P. 42.

² By materials of the collection: Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009.

³ Bilbatua, N. Interview with Joko Joshida. Source: GAATW Alliance news July, 2007. P. 42.

compensation. The definition of the volume of compensation depends both on the type of damage, claimed to compensation, and on other circumstances: legal system of the state, type exploitation, etc.

If we compare cases of labour and sexual exploitation, we see that most evidently the damage is proved in the cases, connected with labour exploitation, since the calculation is based on the non-obtained revenues from labour activities. In July 2006, an application arrived to the labour arbitration of Thailand¹ from illegal workers, who were forced to work in garment manufacture. The court satisfied their petition on the basis of the floor daily salary. However, the decision of the court disregarded the over time work and bonuses due for work on weekends and holidays. At the same time, in those countries, where prostitution is legal (for example, in Germany and the Netherlands), it is theoretically possible to claim compensation of non-received revenues from rendering sexual services.

In different legal systems, approaches to definition of the volume of damage also differ. In the Anglo-Saxon legal system (Great Britain and USA) the volume of paid compensation is based on court precedents. The Roman-German system is making use of country-specific ways of interpreting and detailing of the law, for example, statement of Supreme Court Plenums, etc.

When considering opportunities for satisfaction of the claims on compensation of moral or material damage, on the basis of the law-enforcing practice and in connection with the character of the crime against trafficking in persons, notable for application of violence and restriction of freedom, victims face problems with the sufficiency of proofs of the caused material damage. It is right because of this circumstance, trafficked persons more often receive compensation of moral damage.

Forced collection of assets and arrest of property

According to the studies conducted by experts and international and nongovernmental organizations², the actual payment of the awarded compensation to trafficked persons is the main problem of the executive proceedings. In cases, even when the criminal serves his/her term of imprisonment, there are no guarantees that the damage caused

¹ Yamauchi, G.H. «Claiming compensation and unpaid wages in Thailand» Source: GAATW Alliance news July, 2007. P. 24.

² See: Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009; Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK. Anti-slavery International, London, 2008; Asset confiscation as a source of financing victim assistance and combating trafficking in Ukraine, IOM Kiev, 2007.

by him/her will be compensated. During the latest ten years, over the whole post-Soviet space, about half of the convicts do not work in the places of deprivation of freedom, because there is no paid work in such places¹. For example, according to the current Russian legislation, if a convict works, the money earned by him/her are distributed not in the interests of the victim. In accordance with Article 107 of the Executive-Criminal Code of the Russian Federation, first the state taxes are deduced from the inmate's salary, then – the alimonies on the inmate's children (if any), then, the necessary sum is collected to cover the expenses of the state to keep the inmate (the cost of nutrition, clothes, footwear, etc.). Besides, the inmate is guaranteed the entrance of 25 percent of his/her salary to the personal account, and in colonies-settlements – 50 percent. In the result, practically nothing is left for compensation of the damage caused to the victims of the crime².

Let us consider in examples from legislation of foreign countries how the problems of securing the claim are addressed, in particular imposition of arrest on property, as well as stimulation of criminals to voluntary payments of compensations in favour of victims.

Great Britain has a widespread state system, which assumes compensation of both material, and physical and moral damage. The system has demonstrated its flexibility in enforcement of court decisions on compensations to trafficked persons. The legislation of the United Kingdom has many laws and provisions on arrest and confiscation of property. They differ depending on their use in the civil or criminal proceedings. When considering a criminal case, the court may use the powers assumed by the Powers of Criminal Court (Sentencing) Act 2000³ in relation to any property confiscated from the criminal after his/her arrest. In accordance with these powers, a criminal may be deprived of the property, if it was used or was intended to use for committing or assisting in committing any crime (that is, not obligatory of the crime, for which the defendant was punished). The revenues obtained from disposing this property may be transferred to the victim also in the case, when as a result of the crime he/she received a bodily injury, loss or damage. The Proceeds of Crime Act assumes that the confiscated property should be accessible for satisfaction of civil claims, which can be lodged by the victim (there is no contradiction – civil

¹ Trunov, I.L. «Problems of observance of rights and freedoms of crime victims», 2009; from the website: Representative Power, 21st Century: Legislation, Comments, Problems <http://pvlav.ru/archive>.

² Ibid.

³ Compensation for Trafficked and Exploited Persons in the OSCE Region. ODIHR of the OSCE, Warsaw, 2009. P. 148–149.

claims may be lodged by the victim). If the court finds that the claimant (in case of trafficking in persons the victim acts as a claimant in civil process) has initiated or intends to initiate judicial prosecution against the respondent in the part of compensation of loss or damage, then, the court is obliged to pass a statement about confiscation of the revenues received in a criminal way. The property confiscated in accordance with the Proceeds of Crime Act is provided for the disposal of trafficked persons.

According to Article 17 of the Bill on Trafficking in Persons of Nepal¹, criminals can decrease their term in prison by up to 50% through paying the fine. If the fine is paid out, then 50% of the sum is adjudged to the victim as compensation. The remaining 50% of the fine will go to the Special State Fund aimed to help and rehabilitate trafficked persons.

In the issue of payment of compensation and claim securing, an essential role belongs to the court, which independently decides whether to pay the damage compensation or not, defines the volume thereof and the order of compensation. For example, the regional court of Israel² has stated: «We believe that in this case there is no place to compensation, since it may be perceived as an encouragement and legitimization of illegal entrance to Israel with the aim of prostitution. In our opinion, in such circumstances the court should not deal with collecting debts». The court emphasized that this possibility could have been considered if the point was in physical or sexual violence, but in case of considering trafficking only, payments to victims are unreasonable.

¹ Bilbatua, N. Overview of the discussions on the right to compensation during the GAATW Access to justice global and national consultations in Nepal and Nigeria. Source: GAATW Alliance news July, 2007. P. 9.

² Woman becomes commodity: trafficking in women in Israel. 2003 (Source: <http://www.owl.ru/win/books/israel/p3.htm>).

EXISTING LEGAL PROCEDURE AND COMPENSATION PRACTICE OF PHYSICAL, PROPERTY AND MORAL DAMAGE TO TRAFFICKED PERSONS IN THE REPUBLIC OF BELARUS

Legal bases for compensation of damage caused by a crime

The international legislation has many legal norms, aimed to this or that extent towards recovery of one's broken rights and, in particular, concerning the human right to compensation of damage caused by a crime¹. There are also many normative legal documents of international level dedicated to counteracting the modern slavery – trafficking in persons². Currently, the basic one for most civilized countries of the world is the Protocol to Prevent, suppress and Punish Trafficking in Persons, Especially Women and Children and Punishment for that, which supplements the 2000 United Nations Convention against Transnational Organized Crime, ratified by the Republic of Belarus in May 2003. Part 6, Article 6, of the Protocol specifies the above right as applied to trafficked persons³, establishing that «Each State Party shall ensure that its domestic legal system contains that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered».

The current national legislation in this sphere meets the international requirements. The right of citizens to have the damage caused to them by a crime compensated is fixed by Articles 21 and 60 of the Con-

¹ See, for example, the Universal Declaration on Human Rights; UN declaration of 1985 «On Main Principles of Justice for Victims of Crimes and Power Abuse».

² See, for example the International Convention Against Trafficking in Women and Children, open for signing in Geneva from September 30, 1921, to March 31, 1922 (Geneva, September 30, 1921); Convention Against Trafficking in Adult Women (Geneva, October 11, 1933); Convention Against Trafficking in Humans and Prostitution Exploitation by Third Persons (New York, December 2, 1949).

³ Hereinafter in the text, along with the expression «trafficked persons», the abbreviation «VoTs» will be used.

stitution of the Republic of Belarus. These provisions are extrapolated to the criminal-procedural legislation. Thus, according to Article 2 of the Code of Criminal Procedure of the Republic of Belarus¹, one of the tasks of the law of criminal procedure is «ensuring of legal rights and interests of individuals and legal entities, who and which suffered from physical, property or moral damage, caused by a crime.» In accordance with part 2, Article 27, of the CCP the body of criminal prosecution «shall ensure the victim's access to justice and take measures to ensure compensation of the caused damage». Part 1, Article 149, assumes that «the individual or legal entity, who or which has suffered damage from a crime or a public dangerous act committed by a mentally incompetent person, may lodge by themselves or via their legal representatives a civil claim against the defendant or the persons who bear material responsibility for his/her actions, from the moment of initiation of the criminal case and till the end of the court investigation».

At the same time, according to Decree of the President of the Republic of Belarus «On Prevention of Consequences of Trafficking in Persons» of August 8, 2005, No. 352 «the victims of trafficking in persons are understood as the individuals, in relation to whom the acts were committed, entailing responsibility under Article 181 of the Criminal Code of the Republic of Belarus² (“Trafficking in persons”)³, or other actions directed towards using them with the aim of sexual or other exploitation, responsibility for which is assumed by Articles 171, 171¹, 182 and 187 of the Criminal Code of the Republic of Belarus, and if in connection with committing them in the territory of the Republic of Belarus or abroad the criminal prosecution was (is) undertaken».

Thus, the legislator does not relate the notion of a «victim of trafficking in persons» with the criminal-procedural status of this person, as well as with the fact of causing damage to him or her. Depending from circumstances of the case (for example, in the cases, when the girls, taken abroad for prostitution, knew about the aims of the travel, and upon return did not think that they had suffered from a crime), VoTs may take part in the criminal process as witnesses. Evidently, in case the national legal system has the measures as indicated in the Protocol, enforcement of them is only possible, when a VoT acquires a legal status of victim.

According to part 1, Article 49, «a person shall be recognized to be a victim, who has suffered any physical, property or moral damage, caused by a socially dangerous act, assumed by the criminal law, and in

¹ Hereinafter – the «CCP».

² Hereinafter – the «CC».

³ Auth.

relation to whom the body running the criminal process has made a statement (definition) about recognizing him/her to be a victim».

However, prior to consider the procedure of compensation of damage caused by a crime, it is necessary to deal with the notion thereof and its types.

Notion of damage and its types

The law of criminal procedure has no direct definition of the term «damage». In the civil law it is understood as diminishing of the property belonging to a legal entity, or of the personal or property wealth of a citizen¹. Literally, damage means consequences of any destruction, spoilage, loss, or any violation of a person's rights or property². In other words, these are certain legally and socially meaningful negative changes caused by a certain event (in this case – by a criminally-punishable act)³.

The current legislation makes use, along with the term «damage», the term «harm». These terms are not quite identical by their sense; however, both the legislator and practical workers use them as synonyms. The Civil Code is using the term «damage» in case of an onset of really expressed losses (loss, damage of property (Article 14 of the Civil Code), and the term «harm» – when a need arises to calculate the damage and compensation thereof, i.e., as applied to the moral and physical damage⁴.

The legislator defines three types of damage⁵: physical, property and moral, each of them, based on point 2, part 1, Article 6, of the CCP, is subject to measuring in the monetary form.

The basic definitions of the above types of damage are given in Chapter 48 of the CCP, which regulates the proceedings to compensate the damage, caused to an individual or legal entity by illegal actions of the body in charge of criminal process, and which should be taken as the basis in defining any particular type of damage, caused as a result of a crime or a socially dangerous act of the mentally incompetent person⁶.

¹ Comments to the Civil Code of the Republic of Belarus: in two vol. V. 2 / Resp. ed. V.F. Chigir. Minsk, 1999. P. 449.

² See: Russian Dictionary / ed. by N.O. Shvedova. M., 1983. P. 92, 753.

³ See: Danko, I.V. Problem issues of compensating damages caused by a crime or a socially dangerous act of an insane person. Minsk: Academy of the MIA of the Republic of Belarus, 2006. P. 5.

⁴ See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 299.

⁵ Point 4, part 1, Article 89, of the CCP is also using the term «character of damage».

⁶ See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 301.

*Physical damage*¹ means the damaging consequences of a crime or a socially dangerous act of the mentally incompetent person for the health and life of an individual, expressed in degradation of health, mutilation, invalidity, and other consequences, connected with degradation of physical or mental health of a person, or his/her death. The physical damage is compensated in monetary form, including expenses on treatment, loss of a part of earnings in connection with a disease, mutilation or invalidity, or losses in connection with loss of breadwinner, and other expenses (part 3, Article 460, of the CCP). Compensation of this type of damage is made in the order, stipulated by Articles 953-963 of the Civil Code. Based on the sense of point 1, Article 954, of the Civil Code, other expenses should include the cost of additional nutrition, purchase of medicines, prosthesis, care of nurses, sanatorium and resort treatment, etc.

As an example of compensation of the physical damage, caused by trafficking in persons with the aim of sexual exploitation, we can quote a criminal case, which is vividly demonstrating victimization by members of a criminal organization P. and R. of girl M., who was recruited by them through a deceit and «exposed, in the condition of deprivation of freedom, for violent sexual exploitation during two months..., having forced her to run away by jumping out of the window... of the apartment located in the third level of the building. In doing so, she caused herself, by inadvertency, bodily injuries in the form of the fracture of the heel bone on the right side, compression fracture of the first lumbar vertebra, fracture of the socket of the hip, fracture of the ischial bone on the left side and fracture of the top of the tail bone, which refer to the category of grave by the criterion of health disorder, connected with skeleton bone traumas for the term of more than four months»². By the verdict of the court, material compensation of the caused damage in the sum of five million roubles was collected from the traffickers in favour of the victim in the solidary procedure.

Property damage means a factual loss of property, things, money, material valuables, or spoilage of them, i.e., the damage, which has some cost estimate and can be calculated in monetary form. It is caused by means of a direct criminally punishable encroachment on material things belonging to a particular person, as a result of which they are destructed, damaged or illegally embezzled. The property damage also includes such expenses, which are not caused by the criminally punishable act as such, but which were caused directly by it. For example, ex-

¹ The Civil Code uses the term «harm caused to one's life or health».

² See: Court Archives of the Leninskiy District of the city of Minsk. Criminal Case No. 03041030085/05.

penses, connected with burial of a person, payment of pension for loss of breadwinner, who perished from the hands of the killer, etc.¹

Unlike physical damage, which is compensated only in monetary form, the compensation property damage may be made in kind, i.e., through provision of a thing of the same type or quality, repairing of a damaged thing, etc., or by means of a complete compensation of the expenses suffered by the victims in connection with the loss or spoilage of his/her property. If necessary, the volume of such damage is defined on the basis of an expert's opinion. It is important that the volume of compensation of the property damage includes not only the cost of stolen material valuables, but also other losses, suffered from the crime (for example, the cost of restoration of broken property)².

Moral damage means physical and (or) moral sufferings, experienced by a citizen, caused to him/her by actions (inaction), violating his/her personal non-property rights or encroaching on the non-material values belonging to the citizen from birth or by virtue of the law (part 1, Article 152, of the Civil Code). According to point 1, Article 151, of the Civil Code, these include: life and health, personal dignity, personal immunity, honour and good name, business reputation, privacy right, personal and family secrets, right of free travel, choice of the place of stay and residence, etc.

According to Point 8 of the Statement of the Plenum of the Supreme Court of the Republic of Belarus of September 28, 2000, No. 7 «On Practice of Application by the Courts of the Legislation, Regulating Compensation of Moral Damage», physical sufferings are physical pain, functional disorder of organism, changes in the emotional-will sphere, other deviations from normal state of health, which are consequences of actions (inaction), encroaching on non-material wealth or property rights of a citizen. Moral sufferings, as a rule, are expressed in the feeling of fear, shame, humiliation, same as in other sufferings, unfavourable for the person in psychological aspect, connected with loss of relatives, work, disclosing of doctor's secrets, impossibility to continue one's active public life, restriction or deprivation of some citizen's rights, etc.

An example of material compensation of the moral damage, caused by trafficking in persons with the aim of labour exploitation, can be found in the materials of the criminal case on persecution of X., who «with the aim

¹ See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 301–302.

² See: Danko, I.V. Problem issues of compensating damages caused by a crime or a socially dangerous act of an insane person. Minsk: Academy of the MIA of the Republic of Belarus, 2006. P. 6.

of labour exploitation in his household, ...recruited persons by deceit, and then put them into tough dependence from himself, took away their documents, used physical and mental violence, forced them to different works without paying for their labour»¹. Under the verdict of the court, the material compensation of moral damage in the volume of one million roubles was collected in favour of victim P.

Compensation of moral damage is made in monetary form. At the same time, the legislator does not define any clear criteria of calculating this type of damage. According to part 2, Article 152, and point 2, Article 970, of the Civil Code, the volume of compensation of moral damage is defined in dependence from the character physical and moral sufferings, caused to the victim, as well as the guilt degree of the wrongdoer. When defining the volume of compensation damage, the requirements of reason and justice should be taken into account. The character of physical and moral sufferings is evaluated by the court with account of factual circumstances, under which the moral damage was caused, and individual peculiarities of the victim.

Literature on this issue contains differing opinions. It is offered to base the methodology of counting moral damage on mathematical calculations (for example, based on the ratio of the «basic level» – a definite number of floor salaries, the limits of sanctions of the norms of the CC and the gravity of bodily injuries), psychological and medical-biological criteria of assessing the level of physical and moral sufferings, dependence of compensation from the penal sanctions of the CC (volume of punishment), and judicial practice². At the same time, while being interesting from the scientific viewpoint, these approaches may not be applied in practice by virtue of impossibility of their complete adaptation to all types of crimes (including trafficking in persons) and absence of their fixing in the law.

It should be noted that, since each of the above types of damage is calculated in monetary form, they are in close mutual relation. Thus, for example, loss of earnings in connection with invalidity, or expenses, connected with recovery of health, are, as a matter of fact, property damage, but are included into the expenses on compensation of physical damage, since they arise in connection with causing negative consequences to the health. In other words, the property damage in this case is a result of en-

¹ See: Court Archives of the Cherikov District, Mogilyov Region. Criminal Case No. 24052408/06.

² See: Voronovich, T. Moral damage: definition of compensation volume // Sudovy Vesnik. 2000. No. 3. P. 49-51.; Zadorozhny, V. Improvement of damage compensation mechanism to crime victims // Law and Rights (RF). 2006. No. 4. P. 27-28.; Budyakova, T. Compensation of moral damage to crime victims // Legality (RF). 2006. No. 10. P. 56-57.

croachment on a person. The property damage in this part outgoes from the physical damage, which is practically impossible to compensate. It is possible, for example, to implant a kidney, damaged by a crime, but this is not compensation of damage, since physically it is already another kidney and not that very health that the person had. But the expenses, suffered in connection with such surgery, make property negative consequences for the citizen, which he/she has the right to eliminate in full volume. In this case, they just make the physical damage, which can only be compensated by defining its monetary form. The physical damage means degradation of the organs of the human body, violation of the anatomical integrity or organ functionality as result of external environmental factors. Although the physical damage is an independent type of damage, its compensation, as noted above, is impossible. This damage, in its turn, is expressed through physical sufferings, pain, which are, at the same time, components of moral damage¹.

Civil claim in the criminal process: notion, grounds and procedural order of lodging

The procedure of compensation of damage caused by a crime is enforced in the criminal process through the institution of civil claim. It should be, however, kept in mind that this institution is not the only mechanism of recovery of citizens' above right.

In the criminal process, this right is enforced also by other methods: through damage compensation upon the own initiative of the court, if the civil claim remained un-lodged, in the order of part 8, Article 149, of the CCP (except for moral damage, the compensation of which, in accordance with Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2004, No. 8 «On Practice of Consideration by Courts of Civil Claims in Criminal Process», cannot be decided by the court by its own); through the criminal-legal restitution, i.e., issuance of material evidences to their legal owners (part 4, Article 98, of the CCP); through voluntary damage compensation, which is just superficially mentioned in the CCP (part 1, Article 124, of the CCP), but which is, however, one of the most efficient ways to eliminate the civil-legal consequences of a crime or a socially dangerous act of the mentally incompetent person and is broadly applied in practice. Moreover, it is recognized by the CC, naming it as a circumstance mitigating the responsibility (point 4, part 1, Article 63, of the CC)².

¹ See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 301–302.

² See: Danko, I.V. Problem issues of compensating damages caused by a crime or a socially dangerous act of an insane person. Minsk: Academy of the MIA of the Republic of Belarus, 2006. P. 4.

At the same time, the main and most fully regulated method of compensation of the damage caused by a crime is a civil claim.

Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2004, No. 8 «On Practice of Consideration by Courts of Civil Claims in Criminal Process» runs that «a correct consideration of a civil claim in the criminal process is an important guarantee of timely compensation of damage caused by a crime. That is why the court shall ensure a complete and objective consideration of the civil claim, lodged in the course of proceedings with regard to a criminal case and decide on it in full compliance with the requirements of the material and procedural law».

A *civil claim in the criminal process* is a demand of an individual or a legal entity, as well as of the prosecutor, of compensation of the damage, directly caused by a crime or by a socially dangerous act of a mentally incompetent person, envisioned by the law.

The grounds for a civil claim in the criminal process are as follows:

1) Presence in the criminal case of the data indicating to causing damage to an individual or a legal entity;

2) The caused damage is a direct consequence of the committed crime or a socially dangerous act of the mentally incompetent person;

3) With regard to a criminal case, a claim in writing has been lodged on compensation of this damage¹.

The law of criminal procedure defines the time framework for initiating a civil claim in the criminal process: according to part 1, Article 149, of the CCP, the claim on damage compensation may be lodged only from the moment of initiation of the criminal case and up to the end of the court investigation. A civil claim with regard to a criminal case may be lodged both in writing and orally. The oral presentation of a civil claim is fixed in the protocol (minutes). If the claim is lodged at the stage of appointing and preparation of the court proceedings, it should be drawn up in writing, since at this stage there is no protocol (minutes). The statement of claim shall contain only the information, which is really required for consideration on the merits, namely: the subject, grounds and the volume of stated claims².

A civil claim in the criminal process arises in connection with submission of stated claims. The following persons have the right to lodge a claim in the criminal process:

¹ See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 299–300.

² See: Point 3 of Statement of the Plenum of the Supreme Court of June 24, 2004, No. 8 «On Practice of Considering Civil Claims by Courts in Criminal Process».

1) The individual, who was recognized to be a victims in the order of Article 49 of the CCP;

2) The legal entity, which suffered damage from a crime or a socially dangerous act of the mentally incompetent person (in cases about crimes in the sphere of trafficking in persons such entities can be local executive and managerial bodies, territorial centres of social care of the population, children's social shelters: they lodge claims on collection of the funds spent on enforcing protection measures of VoTs¹);

3) Representatives of an individual or a legal entity in case of causing damage to a minor or a person recognized to be legally incapable by the law – their lawful representatives (point 5, part 2, Article 57, of the CCP). They may be parents, adoptive parents, custodians or guardians in case they are capable (part 1, Article 56, of the CCP);

4) The prosecutor in the cases, if demanded by protection of the rights of citizens, legal entities, or state and public interests. Here, we can list, for example, the cases, when the victim is in helpless condition, or a failure to lodge a claim by some state enterprise or institution, which have suffered damage by the crime or a socially dangerous act of a mentally incompetent person. In practice, cases are widespread of lodging a claim by the prosecutor against the defendant in favour of the interests of medical institutions, who spent money on treating crime victims². Besides, on cases on trafficking in persons, the prosecutor, same as the persons, specified in point 2, may submit requirements about collection of funds, spent on measures of protection of VoTs³.

In case of lodging a claim by the prosecutor, the person, in whole interests it was done, should be notified about the fact⁴.

According to Article 150 of the CCP, if it follows from the materials of the criminal case that damage has been caused to an individual or a legal entity by a crime or by a socially dangerous act of a mentally incompetent person, envisioned by the law, the body of criminal prosecution or the court shall explain them or their representatives the right to lodge a civil claim, on which fact a protocol is drawn up, or a written notice is made.

¹ See: Point 9 of Decree of the President of the Republic of Belarus of August 8, 2005, No. 352 «On Prevention of Consequences of Trafficking in Persons».

² See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 308–309.

³ See: Point 9 of Decree of the President of the Republic of Belarus of August 8, 2005, No. 352 «On Prevention of Consequences of Trafficking in Persons».

⁴ See: Point 3 of Statement of the Plenum of the Supreme Court of June 24, 2004, No. 8 «On Practice of Considering Civil Claims by Courts in Criminal Process».

Before recognizing an individual to be a civil claimant, he/she is first, in most cases, recognized to be a victim¹. According to Point 2 of the Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 30, 2005, No. 6 «On Application Practice of Norms of the Code of Criminal Procedure, Regulating Participation of Victims in Criminal Process», a person is recognized to be a victims irrespective of his/her citizenship, age, physical or mental condition and other personal data, of establishment of the person, who committed the crime, and of the lawfulness of behaviour of the victim him/herself.

Part 2, Article 49, of the CCP specifies that, if at initiation of the criminal case there are no grounds for recognizing the person to be a victim, this decision shall be made immediately, once such grounds are established. It follows out of this requirement of the law that, if at the moment initiation of the criminal case an individual is known, who has suffered damage from a crime or from a socially dangerous act, the inspector or investigator shall immediately after taking the criminal case for proceedings recognize this person to be a victims, and then, in case this person lodges a civil claim, also to recognize him/her to be a civil claimant². In case of recognition of an individual to be a victims and a civil claimant, he/she then shall at the same time enjoy the respective procedural rights and bear the duties as defined by the law and prescribed by Articles 50 and 53 of the CCP. When lodging a civil claim in the criminal process, the claimant is released from paying the state duty.

The individual or the legal entity, who or which has lodged a suit, are recognized to be civil claimants in the order established by Articles 52, 56 and 58 of the CCP. The person, who has lodged the claim, or his/her representative, is announced the statement (definition) about recognizing him/her to be a civil claimant and explained the rights, envisioned by Articles 53, 57 and 59 of the CCP, about which fact a note is made in the statement (definition) and certified by a signature of the civil claimant or his/her representative.

In accordance with part 1, Article 149, of the CCP, a civil claim is lodged against the defendant or against the persons who bear material responsibility for his/her actions (if the defendant is a minor, possesses no earnings or property, which may be collected or arrested, or if the person as on the moment of committing a socially dangerous act was in the state of insanity). Presentation in the criminal process of the interests of the above categories of persons is made by lawful representa-

¹ This provision does not cover the cases, when the interests of the victim are represented by third persons.

² See: Shostak, M.A. Criminal Process: manual. Minsk: GIUST BGU, 2008. P. 259.

tives, who are attracted to participation in the proceedings with regard to the criminal case as a civil respondent by a statement (definition) of the body in charge of the criminal process. A failure to establish the person, who has committed a socially dangerous act, is no obstacle to lodging a claim.

The body running the criminal process, having established the person, who is bearing material responsibility for the damage, caused by a crime or a socially dangerous act of a mentally incompetent person, shall recognize, in case of initiating a civil claim in the course of proceedings with regard to a criminal case, this person to be a civil respondent in the order, stipulated by Articles 54 and 58 of the CCP. The civil respondent or his/her representative is sent to a copy of statement (definition) about recognition of him/her to be a civil respondent (Article 152 of the CCP). At the same time, Point 4 of the Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2004, No. 8 «On Practice of Consideration by Courts of Civil Claims in Criminal Process» explains that «as a rule, the person to bear responsibility under the civil claim for the damage, caused by a crime, is the defendant. There is no need to pass a statement (definition) about recognition of the defendant to be a civil respondent; however, he/she, same as the civil respondent, should be acquainted with the contents of the lodged claim, and in the course of court proceedings he/she is given a possibility to present explanation on the suit. The individual or legal entity is recognized to be a civil respondent only in the cases, when on him/her, by virtue of the law and in connection with the lodged claim, the material responsibility may be imposed for the action of the defendant (for example, in case of committing of the crime by a minor, etc. – Articles 54 and 152 of the CCP). These persons should receive explanations of their rights and duties, envisioned by the law of criminal procedure.

In one criminal case several civil claims may be lodged by different individuals and legal entities, who have suffered from the damage; and one claim can move requirements on compensation of various types of damage. The individual or legal entity may demand compensation of damage, caused by joint actions of a number of persons, both from all and from only some of them. The claim may be lodged both in the full volume of the caused damage and in a part thereof. If the damage by the crime or a socially dangerous act of a mentally incompetent person was caused to several individuals or legal entities, then each of them is entitle to lodge a civil claim at any stage of proceedings with regard to a criminal case up to the end of the court investigation, irrespective of

the fact, whether any claims have already been lodged in this criminal case to other persons¹.

For absence of the grounds for recognizing a person to be a civil claimant, a motivated statement (definition) is passed about refusal to recognize to be a civil claimant, which is announced to the claimant against signature; and his/her right to appeal against it is explained. The refusal at performance of inquiry or preliminary investigation to recognize a person to be a civil claimant does not deprive him/her of the right to lodge a civil claim at the court session (Article 151 of the CCP).

In accordance with Article 154 of the CCP, an individual or legal entity, as well as the prosecutor, may, at any moment of the inquiry or court proceedings with regard to a criminal case, but prior to retirement of the court to the consultation room, refuse from their lodged civil claim, about which fact a notice is made in the protocol of the investigatory action or of the court session. If refusal from the claim is declared in writing in the form of an application, it is added to the criminal case. The refusal from the claim is considered accepted from the moment of passing by the body of criminal prosecution or the court of a statement (definition) to this end. The acceptance of the refusal from the civil claim entails termination of the proceedings thereon. The refusal of the prosecutor (state accuser) from a civil claim shall not deprive the civil claimant, in whose interests the claim was lodged, or his/her representatives, to support the claim at the trial by their own.

The person who has failed to lodge a civil claim in the criminal process (or who refused from the lodged claim), as well as the person, whose claim was left without consideration by the court, may lodge it by way of civil proceedings.

Proving civil claim in the criminal process

The proving a civil claim, lodged in the course of proceedings with regard to a criminal case, according to part 3, Article 148, of the CCP is made under the general criminal-procedural rules. It should be made along and in inseparable interconnection with the circumstances, making part of the fact in proof, as established by Article 89 of the CCP.

The burden of proof, based on part 2, Article 102, of the CCP, in the course of the pre-trial proceedings is imposed on the body of criminal prosecution, and in the court proceedings – on the state or private accuser. In doing so, the inspector, investigator, prosecutor and the court shall outgo from the principle of presumption of innocence, both in the part of committing crimes and in the part of causing damage by the act of the defendant, suspect or mentally defective person.

¹ See: Shostak, M.A. Criminal Process: manual. Minsk: GIUST BGU, 2008. P. 258.

According to point 4, part 1, Article 89, of the CCP, the presence of damage, its nature and volume shall be established in the course of preliminary inquiry, as well as the court proceedings even in the case, when the person, who suffered from the crime, has not lodged direct claims. Along with that, the civil claimant shall be obliged, by the demand of the body in charge of the criminal process, present the available objects and documents (point 3, part 2, Article 53, of the CCP), i.e., he/she is removed from taking part in the proving of the civil claim not completely, but only in that part, which refers to the competence of the body of criminal prosecution¹. At the same time, the defendant shall not be obliged to present any proofs, refuting the subject, grounds or the volume of the lodged claim, since he/she bears no liabilities imposed by the law on the civil respondent².

While studying the circumstances, connected with causing damage by a crime or a socially dangerous act of a mentally incompetent person and with the lodged claim, the body running the criminal process, shall be guided by the provisions of the Constitution, the CCP, as well as in the cases, envisioned by the law, by the international legal acts. However, if the procedural relations, arising in connection with the civil claim, are not regulated by the CCP, also the norms of the civil procedural and civil legislation shall be applied, if they do not contradict the criminal-procedural norms (part 4, Article 148, of the CCP).

The analysis of the judiciary-inquiry practice of proceedings on criminal cases dealing with the crimes in the sphere of trafficking in persons allows identifying a number of peculiarities, which should be noted here, in proving the character and volume of the damage caused by a crime, and of the civil claim, as a demand of its compensation³.

It should be kept in mind that many persons, involved in the sphere of trafficking in persons, especially with the aim of sexual exploitation, after coming back to their homeland, remain for a very long time (during several months or – sometimes – years) in the condition of deep depres-

¹ See: Kukresh, L.I. Criminal Process. General Part: manual. Minsk: Tesey, 2005. P. 300–306.

² Point 10 of Statement of the Plenum of the Supreme Court of June 24, 2004, No. 8 «On Practice of Considering Civil Claims by Courts in Criminal Process».

³ See Shrub, M.P. The fact in proof as a structural element of the criminalistical methodic of investigation of trafficking in persons with the aim of sexual exploitation // Problems of Criminalistics: Collection of Scientific Works / Academy of the MIA of the Republic of Belarus; Resp. editor G.N. Mukhin. Minsk, 2008. Issue 6. P. 32–40; Shrub, M.P. Investigation methodic of trafficking in persons with the aim of sexual exploitation / M.P. Shrub; ed. by V.M. Logvin. Minsk: Tesey, 2009. P. 57–68.

sion as a result of the traumatic events that happened to them. Besides, there are cases, when victims are infected, in the process of exploitation, with sexually transmitted infections (STIs) and HIV-infection. The unwanted pregnancy and beatings aimed to interrupt it may have place. At physical influence on the victims with the aim to force them to prostitution and control them, they may get bodily injuries. Rehabilitation, such as physical and psychological, as well as moral and social reintegration of trafficked persons, often requires not only time, but also material expenses. Along with the aforesaid, as a rule, in the process of exploitation, VoTs are deprived of most of their earned money, means of communication and other material values.

Thus, the crimes in the sphere of trafficking in persons are referred to such encroachments, after committing of which the damage is caused in combination to the rights and interests of the person. The victims suffer from different forms of damage: physical, property and moral. As noted before, according to point 2, part 1, Article 6, of the CCP, each of the above damages is subject to monetary evaluation. The character of the damage is established based on particular rights of the person broken as a result of committing the crime in every particular case.

The volume of damage is established, based on definition of its character, by means of conducting the whole complex of the investigatory and other procedural actions envisioned by the law.

The volume of *physical damage* is established through defining the gravity of the damage, caused to the victim's health, the volume of monetary expenses, required for treatment, additional nutrition, etc. Important role here belongs to forensic medical examinations, as well as requesting the documents, relevant for the criminal case. For example, with the aim to certify the reasons and time of the person's stay in the medical establishment, as well as of the volume of funds spent on his/her treatment and further rehabilitation, the documents containing this information shall be requested and added to the criminal case.

To detect bodily injuries on the victim, in whose relation a heavy or especially heavy crime has been committed, his or her examination can be conducted. This investigatory action allows revealing bodily injuries, fix in the protocol their colour, shape, number and localization. It should be kept in mind, however, that the examination does not define the gravity of bodily injuries. This is the exclusive prerogative of the forensic medical examination, which is held mandatory, in accordance with Article 228 of the CCP, to establish the reason of death and character and gravity of bodily injuries. According to the Rules of Forensic Medical Examination, it is conducted only by the state forensic medical expert by means of medical examination of the victim. Making

this examination by documents (clinical record, individual outpatient record, etc.) is allowed in exclusive cases and only when authentic full documents are available, containing exhaustive data about the character of injuries, their clinical progress, and other data as required for conducting the examination.

In our opinion, when establishing the volume of property *damage*, apart from the damage directly caused to the victims (taking away money, personal things, etc.), also the volume of the incomes should be taken into account obtained by the criminals as a result of their illegal actions. This circumstance, according to point 4, part 1, Article 89, of the CCP, is subject to establishment in application to every particular victim, involved in the sphere of trafficking in persons, based on the sums earned by her and taken away by the criminals – i.e., obtained from her exploitation in sex-industry (labour slavery). The circumstances of such exploitation should be accounted for (in particular, the duration of exploitation, average daily number of clients, rates on sexual services, as well as the sums, taken away from the victims out of their salaries).

Essential importance for proving the character and volume of damage belongs to interrogation of the victim, which, apart from other circumstances of the committed offence, allows establishing the types, localizations and number of injuries received by the victim; characterization of the consequences, arisen as a result of the caused physical violence; the treatment prophylactic establishment, where the victim addressed (was taken); the preliminary and final diagnosis (if any); the general, specific and individual features of the property lost as a result of the crime; the location of the lost valuables, any passports, receipts, cheques, etc. In the course of interrogation, also the data on the character and depth of physical and moral sufferings of the victim, caused by the criminal act, can be revealed.

The most complex from the viewpoint of proving is the establishment of the volume of *moral damage* caused by a crime. For this purpose, along with other sources of proofs, envisioned by the CCP (evidences of the victim, defendant, data as indicated in the civil claim, documents added to the materials of the criminal case as material evidences, etc.), a forensic psychological-psychiatric examination may be appointed¹.

As applied to proving the moral damage, one should take into account the provisions of Points 15–16 of the Statement of the Plenum

¹ See: Danko, I.V. Problem issues of compensating damages caused by a crime or a socially dangerous act of an insane person. Minsk: Academy of the MIA of the Republic of Belarus, 2006. P. 10–13.

of the Supreme Court of the Republic of Belarus of September 28, 2000, No. 7 «On Practice of Application by the Courts of Legislation, Regulating Compensation of Moral Damage». The Statement indicates that the requirements about the volume of compensation of moral damage should be based on particular circumstances. The volume of compensation of moral damage does not depend from the volume of compensation of the material damage. When defining the volumes of compensation of moral damage one should rely on part 2, Article 152, and point 2, Article 970, of the Civil Code. Here, with the aim to ensure the requirements of good reason and justice, in each particular case the moral and physical sufferings of the victim should be accounted, based on the gravity (value) of the arisen consequences and public estimate of them. One should take into account the circumstances of causing the moral damage, the age of the victim, his/her health conditions, living level, material position and other individual peculiarities.

In case of death of the victim, the volume of compensation of moral damage to the persons, eligible for this compensation, is defined depending from his/her relation to the deceased person, dependence, character of relations with him/her, other particular circumstances, relevant for assessing the depth of moral sufferings.

When defining the volume of compensation of moral damage, one should take into account the degree of the guilt of the wrongdoer in the cases, when the guilt is the reason for damage compensation. If the carelessness of the victim him/herself has contributed to appearance or increase of moral damage, then, according to Article 952 of the Civil Code, the volume of compensation is defined with account of the degree of the victim's guilt. The court may also take into account the property (financial) status of the wrongdoer.

Measures to ensure a civil claim

According to part 5, Article 10, of the CCP, in case of causing damage by the crime, the body of criminal prosecution and the court shall take measures towards ensuring the civil claim. Article 156 of the CCP explains this provision and establishes that should the sufficient data be available about causing damage by the crime or by a socially dangerous act of a mentally incompetent person, envisioned by the law, as well as in case of committing of the crime, for which confiscation of property is assumed, the bodies of criminal prosecution shall take measures to ensure the civil claim and enforcement of the verdict in the part of confiscation of property. These measures include the following:

- 1) Identification of the property, which can be arrested;

2) Imposition, in the order, stipulated by Article 132 of the CCP, of arrest on the property of the defendant, or of the persons bearing material responsibility for the damage, caused by criminal acts of the defendant or by a socially dangerous act of a mentally incompetent person, envisioned by the law;

3) Ensuring preservation of the property until resolution of the criminal case in the court proceedings.

In the course of preliminary inquiry, the actual location shall be defined of the property of the suspect, defendant or the persons bearing material responsibility for their actions or for the actions of the mentally incompetent person, which can be arrested. The enforcement of this requirement of the law by the body of criminal prosecution is achieved through executing the whole complex of investigatory and other procedural actions. An important role in detecting the property also belongs to the non-procedural means – in accordance with part 7, Article 36, of the CCP, upon instruction of the inspector, the inquiry agency may undertake respective operative-search actions; and the inspector shall have the right to get acquainted with the materials thereof. The instructions are given in writing and are mandatory for the inquiry agency.

In accordance with Article 132 of the CCP, imposition of arrest on property implies announcement to its owner or proprietor of a ban to dispose of, and in necessary cases also to use this property, or withdrawal of the property and transfer to storage. Imposition of arrest on the property, which is in the house and other lawful ownership, shall be made only upon the consent of the owner or adult persons living there, or with a sanction of the prosecutor, deputy prosecutor, or upon the judgement of the court.

A motivated statement is passed on imposition of the arrest on the property, which indicates the following: who, when and on what criminal case passed it; on what grounds, with what aim; and whose property is subject to arrest and to what sum. A protocol is drawn up with the inventory of the arrested property, which shall contain the data about the place, time, position and surname of the person, who has executed the imposition of the arrest, persons, who were present in the course of the procedural action, and about explanation of their rights. In imposition of arrest on the property a specialist may take part, who appraises the property. The arrest cannot be imposed on the mortgage, as well as on the property, which comprises the living essentials, the list of which can be found in Appendices to the Criminal-Execution Code (see Appendix – the Criminal-Execution Code).

The arrested property may be withdrawn and transferred for storage to a representative of local administration, housing and maintaining organization, the owner of this property, or to another person, who should be warned about their responsibility for preservation of the property, on which fact a personal recognizance is taken. The protocol shall indicate whom the property was delivered for storage to. According to Article 509 of the CCivP, in case of spending, alienation or concealment of the property, which was delivered for storage, the keeper shall be subject, apart from the property responsibility, also to criminal responsibility, envisioned by Article 409 of the Criminal Code (CC).

When imposing arrest on monetary assets, placed to the accounts and deposits in banks and credit institutions, the payment operations from these accounts are stopped within the volume of the arrested funds.

In accordance with Article 284 of the CCP, in case of a failure by the body of criminal prosecution to take the measures, ensuring compensation of the damage caused by a crime, and possible confiscation of property, the judge shall, at appointing the court proceedings, oblige it to take the required security measures.

Point 8 of the Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2004, No. 8 «On Practice of Consideration by Courts of Civil Claim in Criminal Process» draws attention of the courts to the need of taking timely measures. According to part 2, Article 156, of the CCP, if such measures were not taken at the stage of preliminary inquiry, the court may rule, prior to entrance of the verdict into its legal force, to take such measures. Point 8 of the Statement of the Plenum of the Supreme Court explains to this end that these measures can be taken at appointment and preparation of the court proceedings, during the court proceedings of the criminal case, as well as after passing the verdict, but prior to its entrance into the legal force.

At the stage of appointing and preparation of the court proceedings, the statement about the measures to secure the claim shall be sent by the judge to the body of criminal prosecution for enforcement (Article 284 of the CCP). The definition (statement) of the court about imposition of arrest on the property, passed in the course of court proceedings or prior to entrance of the verdict into its legal force, shall be enforced in the order, stipulated by the legislation about executive proceedings (see the Appendix).

The measures of ensuring a civil claim and enforcement of the verdict in the part of confiscation of property shall survive until the final enforcement of the verdict, and at passing a statement (definition) about application of a measure of forced safety and treatment – until

complete damage compensation. In case of refusal of the court to satisfy the civil claim or leave the claim without consideration, the measures of securing the civil claim shall survive until entering of the verdict into its legal force, or until expiry of the term, established by part 3, Article 377, of the CCP, for appealing against the statement (definition) about termination of the proceedings with regard to a criminal case on application of forced safety and treatment measures¹. Imposition of arrest on the property is lifted by a statement (definition) of the body in charge of proceeding of the criminal case, when there is no more need of this measure.

Decisions of the court on civil claims

A civil claim in the criminal process shall be considered by the court together with the criminal case. Based on requirements of point 11, part 1, Article 352, point 1, Article 364, and part 6, Article 448, of the CCP, the court shall solve, when passing the verdict or making a definition (statement) about application of forced safety and treatment measures, the issue, whether the civil claim is subject to satisfaction, in what volume and in whose favour.

According to Point 9 of the Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2004, No. 8 «On Practice of Consideration by Courts Civil Claims in Criminal Process», the court shall clarify, at the court proceedings of the criminal case, whether the civil claimant or his/her representative supports the lodged claims, and whether the defendant or the civil respondent (his/her representative) admits the lodged claim.

In case of refusal of the civil claimant or his/her representative from the claim, the court shall find out the motives of such refusal. The civil claimant shall be explained the consequences of the acceptance by the court of the refusal from the claim, as envisioned both by part 4, Article 154, of the CCP, and by Article 164 of the CCivP.

The refusal from the claim shall not be accepted by the court, if it is forced, that is, does not reflect the free will of the person, as well as under the circumstances, indicated in part 4, Article 61, of the CCivP.

If the civil claim has remained un-lodged, then, according to part 8, Article 149, of the CCP, the court may decide, on its own initiative, the issue of compensation of the damage, caused by a criminally punishable act. It is necessary to keep in mind that such issue may be resolved if the person, who bears material responsibility for the damage, is the defendant him/herself, and the proofs, sufficient for the correct definition of the volume of damage, have been studied in the course of court pro-

¹ See: Shostak, M.A. Criminal Process: manual. Minsk: GIUST BGU, 2008. P. 278.

ceedings (Point 17 of the above Statement of the Plenum of the Supreme Court).

Point 11 of this Statement draws attention of the courts to the fact that to make a decision about satisfaction of the civil claim in the criminal process, it is mandatory to establish the guilt of the defendant of committing a crime, or the fact of committing by a mentally defective person of a socially dangerous act, envisioned by the criminal law. That is why, the recognition by the defendant or civil respondent of the claim is not by itself an absolute ground for satisfying the claim.

In accordance with Article 155 of the CCP, when passing the verdict of guilty or passing a statement (definition) about application a measure of forced safety and treatment, the court shall make, depending on the proving of the grounds and the volume of civil claim, one of the following decisions:

- 1) to satisfy the lodged claim completely or partially;
- 2) to reject satisfaction of the civil claim;

3) to recognize the civil claimant's right for satisfaction of the claim and transfer the issue of the volume thereof to consideration by way of civil proceedings (in case it is impossible to make a detailed calculation under the civil claim without delay of the proceedings of the of the criminal case).

Point 12 of the above Statement of the Plenum of the Supreme Court runs that at complete or partial satisfaction of the claim on compensation of property or physical damage, the court shall present the respective calculations of its volume. The volume of the property damage, subject to compensation, is defined by the court based on the cost of the property as of the day of passing the verdict or statement (definition); while the volume of the physical and moral damage – based on arisen consequences. On the claims about compensation of moral damage, the court shall present, with account of the claimant's arguments and objections of the defendant or civil respondent, the motive of the decision made, based on the particular circumstances, which have entailed causing the damage, as well as from the requirements of reason and justice.

Depending from the established circumstances of the case, and if it is necessary for correct consideration of the claim, the court may get outside the bounds of the submitted claims (Article 298 of the CCivP), without exceeding in this case the limits of the court proceedings of the criminal case, as defined by part 1, Article 301, of the CCP.

In cases of full or partial satisfaction of the claim, the court establishes and indicates in the verdict or decision (definition) the deadline for voluntary execution of the verdict in the part of the civil claim. In

doing so, the court shall outgo from the interests of the person, who suffered from the damage, and from the character and volume of the damage. The established time period shall be counted from the date, when the verdict comes into its legal force. The forced execution is made in the order established by the legislation on executive proceedings (see the Appendices).

When considering civil cases against several defendants (civil respondents), the joint and several liability to compensate the damage shall be born by all the persons who caused it by their joint criminal actions. If a crime has been committed by several persons, they shall bear joint and several liability for the caused damage under the episodes of the crime, in which their co-participation in any form has been established (Article 16 of the CC).

If the defendant(s) has (have) committed the crime jointly with other persons, in whose relation the criminal case was isolated into separate proceedings, or these persons have been relieved from criminal responsibility, the liability to compensate the damage shall be imposed in full volume on the persons, in whose relation the judicial proceedings are held.

On application of the civil claimant and in his/her interests, the court may also impose on the defendants, by whose joint actions the damage has been caused, the shared, not joint and several liability, if this procedure of collection ensures the timely and complete compensation of damage.

When considering a claim, lodged by several civil claimants, or to several defendants (civil respondents), the court shall indicate, in what part the judgement refers to each of them, or is the liability or the right of collection joint and several. In the cases, when the body in charge of the criminal process has taken measures to secure the civil claim, the court shall specify the procedure of collecting the property, subjected to arrest, in the volume, as necessary to enforce the verdict in this part (Article 156 of the CCP).

According to Point 16 of the above Statement of the Plenum of the Supreme Court, the recognition with the civil claimant of the right to satisfy the claim and transfer of the problem of its volume to consideration by way of civil proceedings can have place in exclusive cases, when without delay of the proceedings of the criminal case it is impossible to make a detailed calculation on the civil claim. The formulation of such decision in the substantive provisions of the verdict shall comply with the provisions of part 3, Article 155, of the CCP. In this case, the court shall initiate, based on a copy of the verdict, which has entered its legal force, a case by way of civil proceedings within the term

as established by Article 244 of the CCivP. Any delay of the transfer of the issue about the volume of compensation of moral damage to consideration by way of civil proceedings shall not be allowed.

When passing an acquittal, same when passing a statement (definition) about termination of the proceedings with regard to a criminal case on application of forced measures of safety and treatment, the court shall:

1) Refuse to satisfy the civil claim, if no socially dangerous act, envisioned by the criminal law has been found, or if the participation of the defendant or the person, in whose relation the issue was decided on application of forced safety and treatment measures, in committing a crime or a socially dangerous act, envisioned by the criminal law, was not proved;

2) Leave the claim without consideration in case of acquittal of the defendant for lack in his/her actions of crime attributes, or in case of termination of the proceedings with regard to a criminal case for absence of grounds for application of forced safety and treatment measures to the person, who presents no danger, by the character of his/her committed act and his/her condition, no danger for the society.

At termination of proceedings with regard to a criminal case on the grounds, specified in points 3-9, part 1, Articles 29 and 30, of the CCP, the court shall leave the civil claim without consideration, having preserved the right to lodge a complaint in the civil procedure. In accordance with part 2, Article 297, of the CCP, the court may also leave the civil claim without consideration at non-appearance of the civil claimant or his/her representative to the court session without good excuse. In this case, the civil claimant shall preserve the right to lodge a claim by way of civil proceedings. However, according to part 4, Article 297, of the CCP, if the suit is supported by the prosecutor, the court shall consider the civil claim irrespective from the appearance of the civil claimant or his/her representative.

Statistical data on compensation of damage caused by a crime to trafficked persons

Aiming to reflect objective data about practical realization of the legal procedure of compensating the damage caused by a crime to VoTs in Belarus, the authors tried to collect the relevant statistical data in the considered area.

In the course of interaction with the Ministry of Justice of the Republic of Belarus, we found out that there is no special differentiated statistics on all types of damage, claimed to compensation by VoTs; therefore, it is hardly possible to present the whole picture of the considered issue. Along with that, we were presented with the statistical

data, available at the Ministry of Justice for the period from 2002 to 2008 about the number of suits on compensation of moral damage on Articles 171, 171-1, 173, 181, 182, 187, 343 of the Criminal Code (CC) and corresponding articles in the earlier wordings (trafficking in persons and related crimes), the court decisions passed on them and compensation sums received by the claimants. The aggregate data are presented in the Table below.

Region	Number of lodged suits	Total sum claimed (in thousand Belarusian roubles)	Total sum collected by court decisions in thousand Belarusian roubles)	Total sum actually received by claimants (in thousand Belarusian roubles)
Brest	27	55,200	32,500	10,100
Vitebsk	13	24,000	22,000	5560
Gomel	13	35,800	29,300	8300
Grodno	6	22,900	10,100	4620
Minsk	23	38,600	29,200	4184
City of Minsk	28	41,600	29,100	9520
Mogilyov	12	26,000	17,100	4670
Total for the Republic of Belarus	122	244,100	169,300	46,954

Thus, according to the data of the Ministry of Justice, for the period from 2002 to 2008, in total the Republic of Belarus considered 122 claims on compensation of moral damage, caused by trafficking in persons and crimes related thereto. All the claims were satisfied. Out of the claimed 244.1 million roubles, the courts ruled to collect 169.3 million roubles, or 69.5% of the claimed compensations. As of December 20, 2008, the claimants received 47 million roubles, or 27.7% of the sum subject to collection.

At the same time, according to the data of the Department on Drugs and Combating Trafficking in Persons of the Criminal Militia¹ of the Ministry of Internal Affairs (MIA) of the Republic of Belarus, in the period from 2002 to 2008 in total 3591 victims of trafficking (VoTs) were established (of them, 3062 persons suffered from sexual

¹ Hereinafter – the «DD and CTP CM».

exploitation, and 529 – from labour exploitation)¹. Thus, the comparison of the above statistical data allows concluding that out of the total count of established VoTs only 3.4% lodged their claims on compensation of moral damage caused by a crime.

Evidently, this percent indicates a rather low level of activity of VoTs in lodging suits on compensation of moral damage. As noted above, for objective reasons it is not possible to present and analyse the data on compensation of other types of damage (physical and property damage) – in this case, the totals share of the VoTs, who lodge their claims would be somewhat higher. At the same time, the criminalistical analysis of the crimes in the sphere of trafficking in persons² allows us to reasonably assume that physical and property damage are caused to VoTs in essentially less degree and much less often than the moral damage.

With the aim to clear out the reasons of the low activity of VoTs in lodging their claims on compensation of the damage caused by a crime, and to get answers to some other questions, concerning the practical aspect of the considered problem, let us consider the results of studying the experts' opinions.

¹ See: <http://mvd.gov.by/modules.php?name=Content&pa=showpage&pid=458>.

² See: Shrub, M.P. Criminalistical characteristic of crimes in the sphere of trafficking in persons with the aim of sexual exploitation / edited by I.I. Baset'skiy. Minsk: ALC «Druk-S», 2007. P. 6–38; 87–90; Shrub, M.P. Investigation methodic of trafficking in persons with the aim of sexual exploitation / ed. by V.M. Logvin. Minsk: Tesey, 2009. P. 7–31; 139–148.

VIEWS OF PROFESSIONAL COMMUNITY ON THE PROBLEM OF DAMAGE COMPENSATION OF TRAFFICKED PERSONS

This chapter presents the study results of opinions of specialists highly experienced in combating trafficking in persons. Each interrogated professional had to deal in his or her with dozens or even hundreds of trafficked persons.

When defining the categories of experts, the authors relied on the so-called «4P» system, generally recognized in the sphere of combating trafficking – Prevention, Prosecution, Protection and Partnership¹ and tried to study the opinion of employees from various agencies. Since many specialists, who work directly with victims of trafficking (VoTs), face the problem of damage compensation in their practice, while the problem in its broad sense is not purely legal, but touches on certain psychological aspects, we formed two target groups: lawyers and experts in reintegration activities (including psychologists). Thus, by means of semi-structured interviews we interrogated inquiry and operative employees of law enforcement bodies² (law enforcers – LEs), lawyers, judges and social workers³.

Being restricted by time and not intending to make a profound scientific study, the authors did not try, when studying experts' opinions, to get any objective statistical data (quantitative indicators) on the exhaustive range of points, and to offer solutions. Instead, by studying the opinions of twenty experts, we tried to make a sort of a qualitative analysis of the state of things on the problem, aiming to draw attention of the professional community thereto.

¹ See, for example: Angelika Kartusch. Reference Guide for Anti-Trafficking Legislative Review with Particular Emphasis on South Eastern Europe. Ludwig Boltzmann Institute of Human Rights, Vienna. OSCE\ODIHR, 2001. P. 12; Mohamed Y. Mattar. Human Rights Report on Trafficking in Persons, Especially Women and Children. A Country-by-Country Report on a Contemporary Form of Slavery. Third Edition, 2005. Johns Hopkins University.

² Including heads of subdivisions.

³ For ethical reasons we do not present here any personal data of the respondents; we just indicate the area of activities: «lawyer», «judge», «ILE» – investigatory law enforcer, «OLE» – operative law enforcer.

Therefore, the authors refrained from categorical judgements and univocal conclusions, but just presented the obtained data to the reader's contemplation. However, we preserve the right to make our comments on certain data. The materials below are summing up of the answers on each of the questions put before the experts in the course of the interviews¹.

Opinions of law enforcers, the court and the bar

When studying ***the issue of the share of those who claim damage compensation in the total number of VoTs***, we saw that the opinions of the respondents split mainly into two groups. In the opinion of the first group (most LEs and all judges), the right to compensation of damage is enforced by 5–10% of all VoTs, in the opinion of the second group (all lawyers and 1 LE) – practically all VoTs institute suits. This difference in opinions can be explained by the fact that when a lawyer renders legal services to a TP as his/her representative, the latter becomes much more active in the criminal process: *«Absolutely all of them lodged their claims. Initially, there were difficulties, as they were afraid to do it; I gave them long consultations, they wanted to know, how it would affect them, to what extent it is confidential, and how it looks generally at the court. Thus, I had to tell them all this "cooking", but finally – all of them lodged suits»*(**Lawyer-1**).

At the same time, as an explanation of a low share of claimants among all VoTs, we can quote **Judge-3**: *«The most interesting arose afterwards – after passing the verdict one of the trafficked girls refused from the claim and submitted an application asking not to collect the sum as defined in the verdict of the court. Obviously, there was some pressure of the defendants on her, which caused this sort of reaction»*.

The time limits for lodging a civil claim in the criminal process are clearly defined by the Code of Criminal Procedure (CCP) (part 1, Article 149). The law gives the right to lodge such claim from the moment of initiation of the criminal case up to the end of the court investigation. ***As to the moment of lodging the claim***, only three respondents said that it is lodged, as a rule, in the course of pre-trial proceedings: *«At the stage of preliminary inquiry we help the victims to draw up a complaint»* (**ILE-1**). However, most of the respondents noted that the claim is lodged at the court (trial), motivating that the complaint will go to the court all the same, and will be considered there:

¹ In case of no answer (difficulties in answering) of some of the respondents, we give the answers as share of the total respondents.

«We don't lodge it at the inquiry, as a rule; all the same, it will be considered at the court» (Lawyer-2).

In answer to the question «**What do you think: is it important for every TP, when taking part in the criminal process, to claim compensation of moral, material or physical damage caused to him/her by the crime? Why?**» opinions of respondents split into two groups. The advocates of a clear positive answer gave the following arguments:

ILE-1: «I believe that yes, but we need to switchover to money. There's no reason to place a criminal to prison for 10 years and feed him for our money – this is point one, and the second reason is to »bind" victims to the case; for the girl to go to court, to share all that; not to drag her here; i.e., for her to have some interest».

ILE-2: «I believe it's important. Well, firstly, the defendant's punishment depends on this; the court will surely take it as a negative point when choosing the punishment for the defendant; while the victims, when receiving compensation under decision of the court, feel that the state somehow takes care of and helps them».

OLE-1: «This is the right, attached to the person by the Code of Criminal Procedure, but not the duty; therefore, it is up to them, whether to enjoy the right or not... If she goes and knows that she will be engaged in prostitution and give part of the money to the pimp for the work, to pay for housing, in this case she may have no claims: she knew where she went and what for. If she is taken away by deceit, then, they should lodge suits for sure and move claims. If the trafficker not only brought the girl, but gets money from her work during this time, in such case compensation of the property damage can be claimed – in this case, it should be done for sure. The problem is that they don't do it – they don't do it, since they don't want to go to the court and tell the whole story there».

OLE-2: «I believe that every trafficked person should complain of the moral and physical damage, caused to him/her by the crime. Because, whatever the case is, if, say, a girl... a victim, be it a girl or a man, suffered from a crime, they have the full right to have their damage, let's say, small or great, violence or non-violence, some monetary expenses, somehow compensated by the persons involved, i.e., by the defendants».

OLE-3: «I believe that it's important. Lord forbid to be once a victim, or his/her relative in any sort of trial (theft, robbery...or any other property or personal crime)! A human is in a stressful situation; naturally, he/she shall have the right to declare the caused damages».

OLE-4: «I believe that it's important, and the duty of law enforcement bodies is to inform them about it... The legislator has adopted a very broad notion of who is understood to be a victim of trafficking in persons. These are victims of the crimes, envisioned by Article 181, i.e., of direct

"trafficking in persons", and those against whom other crimes were committed, related with sexual exploitation, for example, envisioned by Article 171 "benefiting from prostitution". That is, as the practice shows, the persons, who practiced prostitution under control of pimps and were exposed to sexual exploitation, very seldom feel themselves to be victims of trafficking in persons. Even when we talk to them and explain that they, according to the current legislation, can be recognized to be victims of trafficking in persons, and may receive help, they reject: "I'm not a trafficked person, I've not suffered". That is why, these persons are often witnesses in criminal cases, not victims, although the legislation assumes that they are trafficked persons. One should also keep in mind that pimping, maybe, with application of violence can take place in case of consent of the person to prostitute...».

Lawyer-1: «Of course, claims should be lodged, for sure; this is my opinion that this is one of the elements of the punishment, so to say. A person who turns to crime should understand that apart from his/her punishment defined by the court, he/she will have to compensate the damage, caused by his/her actions. This is my opinion. This should be done for sure, and, naturally, the victim should understand that he/she has the right to compensation of moral and material damage. This is what we are doing from the very beginning».

Lawyer-2: «Well, of course, if a person has really suffered, then, it indicates that this is really a victim; it's really normal, when the person wants to take revenge; that no even questions should arise in that structure, because sometimes different court sessions take place. It happens that the victim does not claim, because she/he does not feel very much to be a victim, maybe even feeling a bit guilty her/himself; and somehow in order to soften the guilt, he/she says: 'No, make the punishment more lenient, please, I don't want anything.' Here, it's in any case seen that the person really suffered».

Lawyer-3: «It has no effect on qualification of the offence, on the punishment and on the proof of defendants' guilt; therefore, this is exclusively to the discretion of the person. He/she shall apply... You understand, here we have a very complex mechanism of obtaining this money, this is the state, which collects; therefore, afterwards it's very difficult to really get the money. The imprisonment terms, awarded under these articles, are small; so, first, the culprit serves his/her term, then gets employed; meanwhile the court marshal goes and sequesters property, but not always there's what to sequester».

In the opinion of the second group of respondents, lodging a claim on compensation of the damage caused by a crime is an exclusive right of a TP. See some of their comments below:

Judge-1: *«This is the right of every victim. ...For someone it's important, for someone not; someone just wants to punish the culprit and demands no compensation; therefore, it's the right of every citizen to claim compensation, or not to claim, and to regard oneself to be a victim. ...Sometimes they state directly: »I don't find myself to be a victim, I know where I go, I know why I go, and I know how much I pay and to whom. Was it in fact more or less – it's already another point; but they in fact are witnesses...».*

Judge-3: *«In general, this is the right of every victim – to lodge such claims, and everybody should decide for her/himself; and some indicator of how they adopt this situation is whether they find themselves to be victims, whether they believe that some damage was really caused to them. Our duty is to explain them that this right is available, for them to understand what the civil claim is, that, maybe, their party is thus protected».*

The next question **«Do you personally inform trafficked persons about their right to lodge complaints on compensation of physical, property and moral damage, caused by a crime?»** was answered positively practically by all the experts:

ILE-1: *«We inform everybody, i.e., now people are filing statements of claim, they know that they can get some compensation. Suppose that amnesty is announced; earlier they released all of them, and now: if there's a suit – serve your term. The convict has to pay out the claim as soon as possible, i.e., he's also interested... That is, there's real work underway. It is for 3–4 years now that that file suits on damage compensation...»*

ILE-2: *«Yes, I tell every victim about it».*

OLE-1: *«We inform and explain that it is better to file a suit now, at once, at the stage of preliminary inquiry, since in this case they have no need to pay the state duty».*

OLE-2: *«All the girls, who addressed the court on damage compensation, they were all informed by us, operative workers. As a rule, it happens, if we communicate, if we find personal contact, we always say that this is the situation – you have full right to go to the court for damage compensation».*

OLE-3: *«Victims are informed by the inspector who is investigating the criminal case. We can only advise victims. From 2005, we closely cooperate with the International Organization for Migration (IOM) and the Belarusian Red Cross Society (BRCS). Practically every trafficked person passed through these organizations. The practice of providing legal services of a lawyer by these organizations and participation of the lawyer as a victim's representative in the case are positive. It's very important that moral support is provided and proper legal assistance».*

Lawyer-1: «Surely, we have cases, when already before initiation of the criminal case we tell them. We cooperate with the IOM and other organizations, and, apart from consulting victims free of charge, as prescribed by the law, we explain all the rights, absolutely all, and, naturally, we try to persuade that this particular right should be enforced in the first place; sometimes even when they refuse to take part, they say that they need no lawyer, by virtue of some specific circumstances, we draw up statements of claim even without their participation in the case and give complete consultation: how to behave at trial, at confrontations, because they are afraid a little; they don't come alone, they come accompanied by a specialist, because they fear to confront professionals, but later, of course, it all then passes away».

Lawyer-2: «Of course, always with every new person, whom we find, we hold a legal consultation and give advice on everything: about rights and duties, including the right to file a suit for compensation of damage».

Lawyer-3: «Always, and in principle, probably, even bring them close to the idea that they should still lodge a suit».

Judge-2: «Yes, this is their right, and I explain them the possibility to enforce it in the criminal process».

While the explanation of the right to compensation of damage caused by a crime, on the one hand, is prescribed by the law as the duty of the body in charge of the criminal process, on the other hand, it is assumed by the professional work of lawyers, the following detailing question «**Do you describe in detail to trafficked persons the very procedure of lodging complaints and claiming compensation of the damage caused by a crime?**» assumed different answers – they are presented below:

ILE-1: «Yes, for sure, and we even indicate what we have confiscated from the criminal, and what property can be distributed – thus we ensure compensation of the suit. If we have found nothing and imposed no arrest on property, as people say »empty as a drum", then, there's no sense to file a suit... If we have really intercepted some money, values, then we say that it was all arrested and it will all be divided, maybe you will also get something; then, they file suits, and do it with pleasure».

ILE-2: «I not only describe, but also help to draw up and compile everything».

OLE-1: «We explain that they will be interrogated, the inspector will explain their rights to them; we tell them that they can address a lawyer, and explain that there are such organizations like the Red Cross and La Strada, which can render them legal help, support and a lawyer».

OLE-2: *«Of course, we tell them the whole procedure, from start to the end, and at what moment the complaint can be lodged for the court to consider and accept it».*

Lawyer-1: *«Of course, this is in the first place: the person should know how to do it, how to compile an application, what should be included into the application, what documents should be attached. Moreover, we make requests to other organizations, if we need some information, because in order to confirm the damage, we surely need to request some specialists, as a matter of fact, this is our work, and we collect additional evidences».*

Lawyer-2: *«Well, as a rule, I tell about the proper time to lodge a suit, what approximately should be indicated there, and we discuss the sum, because I always ask about the sum, and the person tells her/himself, what sum to write. But I warn that it's hardly probable that the court will collect the whole sum; still, there's certain practice, and the judge will define by him/herself how much to collect; and all the rest is legal activities, and I don't tell about it, because he/she won't understand all the same in principle».*

Lawyer-3: *«Always we make a sort of a rehearsal of the very procedure of submission, because statements of claim should be applied by the victims on the case themselves; they move this petition at the statement of claim; then they are interrogated on the suit; for people to understand, at what stage it should be lodged, how should evidences be presented. It is necessary to differentiate between the physical and moral sufferings; people sometimes put it all together, but they need to speak separately about physical and moral sufferings, in order to justify their claims».*

Judge-2: *«No, this is not in my competence, for this purpose there are legal consultations, etc».*

Judge-3: *«As a matter of fact, under the law they may lodge claims orally and in writing; therefore, well, this form is explained to them right during the process».*

By the sense of the law, the right to lodge a civil claim is explained by the body, in charge of the criminal process, to the individual, legal entity or their representatives after initiation of the criminal case (Article 150 of the CCP). At the same time, this circumstance does not exclude a possibility of preliminary explanation of this right at the stage of initiation of the criminal case, without the proper procedural documenting. In answer to the question *«At what stage of your work with trafficked persons do you present this information?»* the following answers were received:

ILE-1: *«In the course of preliminary inquiry: in the course of interrogation, and after interrogation».*

ILE-2: «At the stage of, probably, even first meeting, immediately, i.e., after the victim has agreed to contact and told about everything happened».

OLE-1: «At once, when we meet the person for the first time. The victim is not immediately ready to cooperate with law enforcement bodies; the girl thinks for herself that if had gone there voluntarily, this is her fate: she had agreed to that, therefore, she's herself guilty. We should explain the benefits of cooperating with the OVD (Interior Division), and one of such benefits is that the victim may lodge a claim, when participating in the criminal process».

OLE-2: «When we, as a rule, detect a crime, when we have the first contact with the girl, when we talk and find common language, we say that if the case reaches the court and the culprit will be sued, you may lodge to the court an application on damage compensation».

OLE-3: «This can be done prior to initiation of the criminal case, at the stage of preliminary inquiry. Mainly, when the inquiry subdivisions are working».

Lawyer-1: «You know, at any stage, if even before initiation of the criminal case, a person comes to us person, for example, nobody knows anything yet, because an address to the legal consultation is confidential, we're not disclosing such information, when a person comes – this is lawyer's secret. That is why, if a person comes to us and tells about what has happened with him/her, and that he has addressed nowhere officially yet, we already give full consultation, i.e., he/she already has absolutely complete information».

Judge-2: «At the early stage of the court investigation, when explaining the rights in the criminal process».

Judge-3: «At the beginning, at the very start of judicial proceedings, when we explain the procedural rights, prior to appointment of the case to hearings, we don't meet the victims; therefore, naturally, we don't explain anything».

Since lodging a civil claim on damage compensation by VoTs depends not only from objective but also subjective factors, the authors found it reasonable to put the following question to the experts: «**What do you think, do trafficked persons always correctly understand the information you provide on their right to compensation of damage and on the very procedure of filing a claim and receiving a compensation?**» The following opinions arrived in response:

ILE-1: «This depends on the victims, on their development level. There are victims with quite a low level of development; for them, it's all very difficult for understanding; but there are girls who understand every-

thing quite well. There's elite prostitution: they know everything better than we do».

ILE-2: *«Do they understand it right? Well, mainly, they're afraid to lodge suits, because they wouldn't like to tackle with some bureaucratic barriers, go to the court, deal with legal executives, etc. They try to forget all that as soon as possible and have minimum contacts with law enforcement bodies».*

OLE-1: *«If she speaks Russian, she understands absolutely everything, she can't but understand. We explain in simple clear language».*

OLE-2: *«They understand it right not always; we try to explain not in legal words, which can bewilder, but in simple terms, that when such situation arises, they can file and get compensation for this and for that; they can have their debts returned, if illegally deduced, they may have this... and that... We try to explain every point, so they could reflect in their suit, what particular sum they think should be compensated».*

OLE-3: *«Rather often we see, you know, that the persons who found them in such situation have insufficient level of intellectual development; we often have to take them by hand in fact and accompany to all the instances. There are such girls who come from rural areas. Yes, there were some from the model agency, a resonant case in Belarus, there were also girls from and the Mogilyov Region. Those girls, mainly, understood where they went. Their parents were alcohol abusers and paid no attention to rearing their kids; therefore, they were grown up by the street; and this is already the victims' vulnerable situation».*

Lawyer-1: *«Well, you know we try, of course, to bring to people, to their consciousness, for them to understand, of course, what happens; but persons are different; it's hard to say whether he/she correctly perceived the situation or not. But what concerns minors, we have to talk with their legal representatives, because minors, by virtue of their young age, can be easily persuaded to one side; and then, you may form whatever you wish from them. You will explain whatever you would to them, they'll nod and agree. However, in my practice there was a case, when I represented the interests of minor victims, and two advocates worked for defendants, and they managed somehow, in the break of the court session, intercept my clients, the girls, and affected on them in such manner that after the break the girls changed their evidences. In general, they perceive it right, when they talk about themselves and demand compassion; but their behaviour, I can't say why, compared with those adults, with whom I worked. I understand that they understand all the responsibility and they make weighed decisions; from this viewpoint yes».*

Lawyer-2: *«No, of course, we try to explain legibly, i.e., not in legal terms, but in plain language, i.e., when you talk, you see whether the per-*

son understands or not – we tell again; in principle, we have experience to work with people, and of our direct work as well; therefore, we know all that quite well; and it work».

Lawyer-3: «I try to explain them, at any rate, several times in a row; and I hope I explain it clearly».

Judge-2: «Yes, for sure».

Judge-3: «I believe that yes, because the procedure is rather simple, or a written application can be made, in principle, in a rather free form, or an oral statement; and this oral application can sound like that: “I ask to collect from the defendant a certain sum as compensation of (moral, say, or material) damage”, i.e., here, it’s all rather simple».

After asking a number of questions about the way information is presented to VoTs on the possibility to initiate a civil claim in the criminal process, with the aim to clear out the reasons of the low, in the opinion of some specialists, percentage of claimants for damage compensation, the experts were asked another question, similar to the previous one, but asking for more details: «**Based on your personal experience, do all the trafficked persons, being informed about a possibility to lodge a complaint on compensation of damage, caused by a crime, quickly and willingly agree to enforce their right?**».

ILE-1: «It all depends on how many defendants and how many victims. It was once a case with 3 defendants and some 370 victims, but non of them lodged claims, only some of them, most abused, who came back indeed with some mental confusion, they complained indeed; the rest of them had no need – nobody will get anything. About 30 percent of those informed lodge complaints».

ILE-2: «Well, as I already said, they’re not too much willing to agree, since they hate to be involved in bureaucratic procedures. But I offer it to everyone. I don’t know about others, maybe not all of them offer».

OLE-1: «No».

OLE-2: «Very few, as I already said. Thus, in one of criminal cases out of 600 victims, some 30 persons only lodged complaint. In spite of the fact that we explain the rights, even persuade sometimes, the percentage is small from the total amount».

OLE-3: «At the stage of preliminary investigation, the inspector explains that they have the right. The integration help is rendered by specialists in the area of jurisprudence and law, they explain the victims what they can get, and a lawyer is present in the process. If a person is interested in certain points, he/she gets interested and asks questions. Most of them lodge complaints, almost 100%, if to judge by our criminal cases».

Lawyer-1: «If we get into the case and if we talk to our clients – yes; and as soon as we reach mutual understanding with the client – there are

no problems, they surely trust us, they advise with us and understand that it should be done, i.e., the participation of the defender just affects their opinion, because many people don't understand; they are frightened and fear to make an extra step, but when you explain her that this is her right – then, OK, no questions».

Lawyer-2: «Not always, some are afraid, some...As a rule, some of them have fear here, some of them are afraid to go to court, not even some, but the majority; they are afraid, they fear the defendant's vengeance. However, it's already a widespread practice; a lot of suits have been lodged; therefore, in principle, they dare».

Lawyer-3: «Those who had illegal employment, they were first to ask; I explained only the legal aspects of how to lodge, not about the right and how to enforce it; with all the others I had to talk longer. All of them knew about this suit – they learnt about it back at the investigation».

Judge-1: «As to their awareness, I think that there are no problems, we already don't have such "slave-like" and timid persons, who don't know their rights. Here, everybody knows about opportunities, especially, they are informed in the course of investigation, from contacts there. And as far as I know, thanks to public and nongovernmental organizations, which deal with these problems and ensure participation of an advocate, but this possibility exists, they indeed pay for the work of advocates and representatives of the victims. But how readily they agree... If they want to get compensation, if they want to move their claims, why not to agree?».

Judge-2: «Just single persons».

Judge-3: «The victims are informed at all the stages of the criminal process, they are explained their rights and, respectively, they are informed that they have the right to compensation of damage; therefore, there are no complications here».

As applied to trafficking in persons, a specific point is that, unlike other crimes (against citizens' life, health or property), VoTs are not always self-identifying themselves as victims. In order to clarify the reasons of this phenomenon, the experts were asked to answer to the question: «**What do you think, do trafficked persons understand the depth of the damage, caused to them as a result of exploitation? How do they describe this damage (give examples)?**».

ILE-1: «First of all, a suit is lodged for compensation not only of the moral, but also of the property damage, now all the girls think: well, I ran away from the brothel, suppose, her lipstick was left there and other things, it all costs money, and she says about compensating them, and compensates indeed, almost always, as she really spent her money on that. While the moral damage – this is up to the court, whether to compensate or not.

This again depends on the level of development of the girls, the more educated – they understand better, although the other one, who is already a prostitute, maybe she was not yet a prostitute in her first travel, but already half a year later she is already a completely spoiled person, with all those complexes of a bad person; she believes that there was no damage, she was properly paid there for her work, i.e., the person very quickly gets accustomed to prostitution, just in a couple of weeks».

OLE-1: «The persons who were deceived and forced to exploitation (by way of psychological threats, coercion or intimidation) understand, they were forced to do this, they fully realize the damage. The persons who went there voluntarily knew what to expect. They wanted to earn money but, for some reasons, failed to get it and they are offended. For example, the brothel proved to be in a rural area. In this case, everything depends on the money aspect: little money – big offence, a lot of money – no offence».

OLE-2: «As a rule, if there is no encouragement or the first push on our part, they seem to ignore the fact that they really can file a suit and request compensation for caused damage, without our assistance they don't realize it. The first push means that we start explaining and they think. Whether they agree or not – it is their own business, but we must explain them».

OLE-3: «If the girls were deceived or under-age they don't understand. For example, two girls were offered work as waitresses in Dubai, while they had to provide sexual services for some remuneration. When they got off the aircraft they were separated and told that 30,000 dollars had been paid for each of them and they were to work out the money».

Lawyer-1: «Well, in my view, they understand everything. As for examples, I just want to say that that it is very difficult to interrogate victims both during the trial and during preliminary investigation. In the course of preliminary investigation one must initially establish trust relations because they are reluctant to speak and, at the beginning, it is very difficult for them to describe what happened to them. One has to draw it all from them, maybe because many of them do not want to recollect what happened to them. I have not had a single case when a person was willing to describe everything that happened and what damage was inflicted, it is all very difficult. Even in that particular case of the girl who jumped out of the window there were difficulties in that she trusted no one, she couldn't, although the girl had a higher education, had a perfect command of the language and was able to describe everything. However, she had difficulties in giving examples, I am not even able to cite the words they use».

Lawyer-2: «This more depends on the person and the person's character. They all understand, of course, but the depth of feelings really depends on the personality. The damage inflicted may be differently per-

ceived by different persons, it may be felt more acutely or less acutely. Well, first of all it means a story of their life, then there is a feeling of shame for what they engaged in, then frequently there are problems in the family when the family and acquaintances find out. It is all very difficult, it is difficult to reintegrate in the society, even in the family there are problems. And, of course, there is a feeling of humiliation; at least they state something like this».

Lawyer-3: «When I speak with them about the law suit I also explain that they must state the amount of damage and they very often say in response that they cannot determine the amount because it is impossible to measure by any money. It is the most frequent answer, this is what they start with and, of course, each of them will have further additions and impressions. They are all different but if a person intends to file a claim then I try to speak more specifically simply in order to determine the amount of claim. No one has ever stated the amount from the start, they all want to ask me about it. Naturally, I can not determine the amount either because I have no right to do it, but I am interested in this category of cases in principle, even if I take no part in them. I am interested in the judicial practice as a matter of principle, and most claims in such cases constitute 5 to 10 million, and the amount which is often claimed and granted, as a rule ,is 2 million».

Judge-1: «I believe, and basing on the cases we have considered, the true victims, where there was really trafficking in persons, know very well what damage has been inflicted on them, while if they have been called victims or appointed victims it is difficult to speak about any damage ...They say, let us go as quickly as possible, we have no time to take part in the court proceedings, we have to go, clients are waiting for us».

Judge-2: «No, in most cases they do not understand, they believe that if nothing terrible happened to them once (as a rule, physically), there has been nothing bad and nothing bad is going to happen in future. Most of them never think of the moral and psychological aspect of the problem».

Judge-3: «I think, no, and even for me as a professional it is difficult to estimate the damage. The problem should probably be formulated from the point of view how they estimate their condition at the time they were victims, when they were subjected to sexual exploitation. This is a purely ethical problem, it is a self-assessment of the person to determine the full damage».

The legislator assumes three forms of damage. Thus, the next question put to the experts was: «**The compensation of what form of damage (physical, property or moral) do victims of trafficking claim most? Why?**».

ILE-1: *«Of moral, since most often they don't remember the prices of their things, they wave their hands... But they believe that they suffered from moral damage, that she was spoiled. One girl told me, who was there for 7 or 8 times already; she saw very well what she asked for, but that first man who left her for the first time, she would like to punish him properly... Every woman has her first man, well, the first one is the most hurtful. A now she in prostitution and that's all, she doesn't pity and she wants nothing else; she can and wants doing nothing else, but I think that she was spoiled».*

OLE-1: *«Theoretically, they should claim the moral damage, since if we follow the logic, they agree not because they love men and sex, but to earn money, i.e., they are materially vulnerable, and pimps benefit from this. Here, prostitution is not welcomed, it is condemned by the society; therefore, girls are forced to step over themselves, to break themselves; that is why, moral damage is claimed more often...».*

OLE-2: *«They claim all forms of damage in complex, as a rule; the person has suffered both morally and materially, and, possibly, physically. As a rule, all these forms of damage, in complex, are specified in the statement of claim».*

OLE-3: *«Mainly, of moral and property damages, of physical – very seldom, when physical mutilations were caused. The moral damage has a greater psychological component, because the people who get into such situations are also exposed to mental influence exerted by criminals and clients; therefore, they need first of all psychological help, since often they get even mental disorders. They also need medical help, since, mainly, all the girls who come from abroad already have a whole “bouquet” of STIs (sexually transmitted infections). The property damage is caused when the person invested his/her money and didn't get it back. Mainly they earned incredible sums for the pimp; and that is why they claimed the sum they could have earned, the sum they were promised and the sum they had earned in reality».*

OLE-4: *«I think, of moral. The sufferings that the person faced there, anger or no anger, but offence on herself, probably, regret about the lost time, that everything could be otherwise, but happened what happened, that she had to spend a year, or half a year, or some other time in that slavery, but everything could have turned out differently. Maybe I'm mistaken, I don't know».*

Lawyer-1: *«You know, from my practice, based on the cases that I ran, I filed completely statements of claim on compensation of moral and property damages together, because there we had both moral and property damages. But I think that more often, if the crime caused property damage, the lawyer will never bypass it, and will surely advise the client*

to confirm it; if there are all, well, proofs, which can be put into the basis of this suit; we always use it, and as to moral damage, it is always present, in this category of cases, I think, it's beyond discussion».

Lawyer-2: «Of course, of moral damage, since the physical harm, thanks Lord, is not so often met. There was one case, when a girl had her crown broken, she had to undergo a very complex trepanation; in that case we surely claimed also the physical damage, and as to the property one – it's seldom».

Lawyer-3: «There're only two forms of damage: moral and property ones. The property damage – this is only what is confirmed by cheques, bills, receipts, i.e., what requires very strict confirmation of suffered expenses; I had only one case of this sort, and it was not trafficking in persons, it was another article – illegal employment abroad. I had two victims in that case, well, they preserved all the documents: they were brought to the Moscow Region for earning money. Not just that they had to run away later, they had to work additionally, at various construction sites, other places, in order to somehow raise money for their tickets home, to get back to Belarus. They kept all the documents; and everything they could confirm by documents the court later collected from the culprits, and even with account of inflation, since the case lasted for long; the inquiry lasted for 1.5 years, and then, the case was considered by the court for about one year. In all other cases, the compensation of property damage was not even claimed, because there were no proofs. All the remaining claimants demanded only the moral damage, since it requires almost no documents».

Judge-1: «As the minimum, if we outgo from analysis of criminal cases, of course, the moral damage. The moral damage was claimed in the form of causing physical and moral sufferings. Raising the problem of compensating purely physical damage – I didn't see it in any cases. The property damage – I haven't seen it at all, possibly, because they go abroad, as a rule, without any property...».

Judge-2: «Of moral and property damages. The people are ready to withstand physical sufferings. Causing property damage is clearer and tangible. As to the moral damage – from the philistine viewpoint – there's hope of getting some money».

Judge-3: «Judging from my practice, suits only on compensation of moral damage were lodged. As a matter of fact, the expenses, when claiming compensation of property and physical damages should be confirmed by relevant documents, which is practically impossible to do».

The most profitable and – therefore – the most widespread in the world as a whole, and in Belarus in particular, is such form of trafficking in persons like trafficking in women with the aim of sexual exploi-

tation. Under the data of the DD and CTP CM (Department on Drugs and Combating Trafficking in Persons of the Criminal Militia) of the MIA (ministry of Internal Affairs) of the Republic of Belarus, till 2005 the country revealed no cases of trafficking in persons with other aims¹. In recent years, Belarus is facing a topical problem of trafficking in persons with the aim of labour exploitation. In this context, the experts were asked: **«Has the sphere of a victim's exploitation any effect on his/her intention to claim damage compensation (what form of damage)?»**.

ILE-1: *«I think the peculiarities of exploitation have some effect. When it is seen from the materials of the case that no tough enforcement measures had been applied, such girls don't claim. And where they had plenty of clients, and it was all against their will, then, they claim».*

ILE-2: *«I think, it depends on the way they were treated in the process of exploitation. It is possibly connected with diseases. If it is labour exploitation, the diseases are connected with hard labour, while in case of sexual exploitation they are connected with the reproductive system, with gynaecological diseases».*

OLE-1: *«Of course, labour exploitation is drastically different. Normally, men have nothing to be ashamed of: they go to earn money by what they can do – physical labour. They go to earn bread for their families. The main thing is the material well-being, they are prepared to fight for each rouble; therefore, damages are claimed in the monetary equivalent. These are claims for the amount they failed to receive for their work. The main thing is to get normal payment for their labour».*

OLE-2: *«Absolutely no, nothing, be it labour exploitation, sexual exploitation or involvement in pornographic films – affects if this is the internal belief or desire of the person, absolutely irrespective of the exploitation. As a rule, it is the wish to return one's money. For our people with such mentality, the sphere plays absolutely no role».*

OLE-3: *«Generally, whether it is sexual or labour exploitation, person has suffered anyway. Girls are more often subjected to sexual exploitation, men - to labour exploitation, but they should not be discriminated, they must be treated equally».*

Lawyer-1: *«Yes, probably it matters, but I have not had any cases where a person refused to lodge a complaint. Maybe there are such people, I simply want to say that there are different people».*

Lawyer-2: *«I have only been working with victims of sexual exploitation, there have been no cases of labour exploitation. At least there has been one case but it was dropped».*

¹ See: <http://mvd.gov.by/modules.php?name=Content&pa=showpage&pid=458>.

Lawyer-3: *«I can conditionally divide my cases into three categories – cases on illegal employment abroad where people had no doubts that they would file a claim intentionally and kept all receipts even before meeting me. They kept everything and were asking me how they could do it. Then girls who get into different brothels, they are often shy even to communicate with me, it is difficult to talk with them about any facts of the case which are badly needed, not mentioning the lawsuit itself. It is hard to explain that there is nothing shameful here and that the lawsuit is their right . Of course, they all agree in the long run. And there is the only case where a young man has refused to file a suit. Maybe, just because of being a male, even if very young, but a male, and he thought it awkward. We discussed the problem more than once but the complaint was not filed».*

Judge-1: *«Well, our practice shows that sexual exploitation and labour exploitation are the spheres of exploitation of such victims. Generally, cases of labour exploitation are not numerous, but they are filed. People want compensation for the unpaid earnings. They are often taken away or assisted in travelling and promised high earnings. They work there, whether well or badly – it is a different problem. Of course, they are not paid and, as a result, they are considered victims. They want the money they have earned, while the defendant says, just prove what you have earned because I say that you have been working poorly and have not fulfilled your tasks or your quality is low, we had to redo everything after you and you have earned nothing.*

Sexual sphere generally means sufferings in the context of what I have already mentioned. Many of them go there 9 times each and consider themselves victims, while during the trial they want to go away. So if sexual exploitation and trafficking in persons was in place, lawsuits are filed for compensation of moral damage, although not always».

Judge-2: *«Yes. While victims of the so-called labour exploitation are not ashamed to witness against slave merchants and describe the inhuman conditions of their life and work, the victims of sexual exploitation, as a rule, want to avoid publicity of their private life in the conditions of exploitation».*

Judge-3: *«Of course, I have already mentioned that there were 15 victims on the recent case, only 5 of them have filed such claims and only thanks to the help of a lawyer whom I even do not know about. The lawyer is from some organization providing help to victims of sexual exploitation. Thanks to him the claims have been filed and the lawsuit initiated. The lawyer formulated the complaint and they filed it. Others were simply ashamed, they were ashamed of claiming damage compensation, they felt some connection between the defendants and the victims. I suppose that one of the*

defendants was not in custody, and some influence on the victims outside the court room was clearly felt. Not during the trial, but outside it».

The assessment of the caused damage is an essential problem, since the legislator does not provide any clear criteria for its determination (especially for such type as the moral damage). Putting the following question, the authors try to clarify how the VoTs subjectively assess the damage caused by the crime: **«How and on what basis do the traf-ficked persons usually define the amount of claim?»**.

ILE-1: *«They ask us, the practitioners, i.e., the judicial precedent is used. That is why we say that the biggest claim was filed for 10 million roubles and 6 million was granted, that was to the girl how had fallen from the 4th floor, broken her spine and pelvis. She was granted 6 million. They always claim 4 – 5 – 6 million».*

OLE-1: *«Labour exploitation is clear. They agreed on a certain sum and they want to get it, based on the tariffs of the country to which they went to work. If the person had worked along with others and his counter-part received, say, one thousand dollars, the person wants one thousand dollars, too. In case of sexual exploitation, they may lodge a claim for the amount which they weekly gave to the pimp, minus accommodation and food. Theoretically, that it. They know how much the pimp earns using them, they know how much money they earned for him and for themselves – the amount of claim is determined on this basis. In Germany, for example, the state initially lays a claim to the defendant irrespective of his real income. The property is arrested and confiscated, proceeding from the amount the girls have brought him».*

OLE-2: *«The amount is calculated. As a rule, nobody is going to yield more than is due, no court will judge in favour of the victims, because the evaluation of property, of moral and physical damage, proceeding from the seriousness of the crimes committed, proceeding from the real damage, is done in the course of court proceedings. The judge makes an evaluation: what are the travelling expenses, what percentage was deducted, what the amount was earned – everything is taken into account and the amount is thus determined. This is all individual and depends on the real damage inflicted».*

OLE-3: *«The problem is difficult. In case of labour exploitation, for example, one thousand dollars had been promised while the actual payment was lower or there was no payment at all ... They were to get this money. People often pay their own money for travelling abroad (labour exploitation), but upon arrival they are told that they must work the money out since someone paid for them».*

Lawyer-1: *«We explain them their rights, if, say, person files a claim and he has suffered material damage, we look at how he may confirm it so that is not just his words. We request certain documents. For instance, the*

recent case, there were tickets and some receipts that confirm the material damage. A woman was sent to Egypt. She never prepared for a lawsuit but she has kept all documents which fully justify the amount of the claim she filed. As regards moral damage, in principle, there is no certain sum which is prescribed by the law. The sum must be reasonable, i.e., the victim may claim the amount for the damage he/she internally feels has been inflicted, while the court must make a decision. Naturally, everything will be taken into account, and if the amount is commensurable to the actual consequences, all things considered, then ...but there is no fixed sum».

Judge-1: «We have no studies and no criteria to define the volume (sum) of claim, as every person estimates his/her sufferings in virtue of the conditions in which he/she lives. Someone estimates his or her honour and dignity higher, and someone lower. Someone proceeds from what he/she has earned and how much he/she could have earned. But the court proceeds from the practice, there is some practice...».

Judge-2: «Proceeding from emotions and the material expenses incurred».

Judge-3: «Generally, there are no criteria for determination, one can only mention the ceiling, practically they take an arbitrary sum. Of course, the lawyer renders some help since he already has some experience in the sphere, and he has mentioned that the amount varies from 5 to 15 million roubles».

In development of the above aspect of the considered problem, the experts were offered the question: «**Do you help trafficked persons to define the sum of claim? If yes, how do you define it?**». By asking the question, the authors tried to learn from the experienced lawyers about the most advanced practices. The answers were as follows:

ILE-1: «Yes, we do help – the moral damage costs dozens thousand dollars. How we do it? We look how wealthy the persons is who will pay compensation. If he/she is a beggar, there's no reason of lodging the claim he/she will never pay. If the defendant (respondent) has money, we claim great sums; the main point here is to have a real chance to receive compensation. We have practice on road accidents, when a source of increased danger causes damage to a family, when we define somewhat 5 thousand dollars per person, and we outgo from this practice. The damage, caused to a citizen, is appraised low in our country, because people are unable to pay. We can imagine that a victimized girl came back with hepatitis, she'll never have children; then, what is her sense in these three million... Therefore, some of them refuse to file complaints; should they evaluate such damage as three million roubles? It's nothing; that is why many girls refuse to do it».

ILE-2: «We offer them to write down any sums they'd like to get. They ask about sums on other cases, we give them approximate data, and they write down. What sums? From one to ten million roubles».

OLE-2: «We explain the victims, what can be regarded as caused damage – these are the debts, travel expenses, interest accrued on salaries, on their exploitation, etc. We explain that we don't count money. We recommend thinking, calculating and putting down, what particular damage was caused and should be reimbursed, justifying the particular indicated sum. We don't calculate, but we say approximately, what sum the victim can expect, based on particular situation and with account of available practice».

Lawyer-1: «You know, well, how we help; they ask our advice, of course, on what sum to put; we tell the practice of the courts, explain the law; what is accounted when charging the moral damage, and then the person indicates the sum he/she would like to have».

Lawyer-3: «When people are asking me, I tell them examples from judicial practice. From some of them I heard the reaction that even if the sum is 10 million, and if it's reimbursed, will be no compensation of what they had lived through. We don't restrict people in the sums; however, they, as a rule, outgo from our recommendations, based on practice».

Crimes in the sphere of trafficking in persons touch on intimate sides of human life and very often cause ineradicable psychological traumas to victims. At the same time, when VoTs start cooperating with law enforcement bodies in revealing and investigating such crimes, certain risks arise for them (risk of being executed or get under traffickers' pressure, etc.). These are often the reasons why victims refuse to move claims of compensation of the damage caused to them by the crime. To get details on the problem, we asked the experts: «**Have you heard from trafficked persons about their psychological, organizational or other problems, related to lodging a suit for compensation of the damage caused by a crime? If yes, please, give examples of such problems?**».

ILE-1: «In fact, no problems; the best psychological help is the confidence that she will get some money. They need no psychologist, nobody and nothing; they calm down at once, when they get money; and that's it».

ILE-2: «There're no problems; they evidence at the trial, and immediately after, they hand over their complaints to the judge; and that's it, no more problems».

OLE-1: «The problems are of psychological nature, because they need to tell the court again, in support of the claim, about what she did there, how she suffered; and this is in much a restraint for them».

OLE-2: *«The girls lodge their complaints, as a rule, directly in the course of court proceedings, with our help, let's say it like that. We help to draw up the complaint, which they then lodge by themselves».*

Lawyer-1: *«In my practice there was a case, when a minor girl was on rehabilitation: she had health problems. She didn't quite understand what her future would be; she wouldn't contact anybody. She was in such a depressed psychological condition that she wouldn't bear any talks on damage compensation. She was very implicit; and what had happened to her, had an obvious effect on her. While in general, in criminal cases, at some stage of communication, they understood that they need to have their damages compensated and enforce their rights».*

Lawyer-2: *«No, that was not the case; there were no problems».*

Lawyer-3: *«In general, I think, there's a certain barrier... It's worth talking with them once, or two-three times, with some of them... I never press on them to lodge a suit; I explain that this is up to their discretion. But sometimes, they need to be explained the expediency of lodging one».*

Judge-2: *«Yes. There are problems: uneasiness, fear of publicity or vengeance (in different forms) from the culprits or their friends or relatives; or from the persons who escaped justice».*

Judge-3: *«I didn't hear about any organizational, psychological or other problems; since, as I said, the mechanism of lodging claims is rather simple».*

Based on discussing particular issues on the topic, the experts were offered to answer the following general question: **«What do you think, is the problem of low activity of trafficked persons in taking part in the criminal process and lodging complaints on compensation of damage caused by a crime actual in Belarus today?».**

ILE-1: *«If a suit is lodged, they take part; they get interested; and if they know that money and property were arrested, they hope, they go and take part. On these cases the activity is not just low, it's practically zero. We are initiating this, to interest them somehow, because any woman, who has lost everything and will get nothing instead – she doesn't want it. It has passed away long ago; and going to court and talk there on sexual violence over her – nobody wants to do it. That is why we are initiating such claims and try to intercept as much money or property of the defendant as possible; for them to see a real chance of getting compensation. When they see it, they go and take part».*

ILE-2: *«The activity is generally low, maybe, only 10 percent of all the victims agree to go to court and lodge a complaint. They voluntarily give evidences, convict the defendants and insists; while the rest of them – they mainly give evidences, and that's all: don't touch them, no trials, no suits – and forget about us».*

OLE-2: «We ensure ourselves the appearance of trafficked persons to the criminal process; we try to do it to the maximum; therefore, the problem of low activity is not actual for us. For the country, this possibility is not excluded, because ensuring appearance of trafficked persons to the investigation and to the court – is not as good as we'd like to... It is important to have a good contact with the victim from the very first meeting till the consideration of the case by the court. We'd like, of course, to draw attention of victims to this, not to fear and lodge their suits on compensation of damage caused by a crime».

OLE-4: «In the sense of their participation... probably yes; this has mainly to do with the fact that the victim doesn't want to make it public, he/she hates to live through it again; they don't need all these trials... Victims are unwilling to go, they feel bad, they feel hard to live through it again in reality; when they were actually exploited, then, at the preliminary investigation, and then – at the trial. That is why we try to work carefully with them; we explain them that we'll accompany them, for them to feel less stress...».

Lawyer-2: «As a rule, firstly, it's fear, and secondly, it's more unwillingness to talk about it. Low activity is actual, of course, because they, as a rule, are revealed by militiamen; the facts, when they come and file claims by themselves, are very few; opposite situations are more frequent».

Lawyer-3: «It's difficult to judge for the whole of Belarus, but if psychologists have worked with people, they are somewhat prepared, for the process inclusive. I had two girls, who were still to face hard interrogations at court; and their situation was not quite so easy. I know that in the course of the trial they addressed for help to psychologist from the IOM with the aim to come to the court and be able to evidence, well, those girls were quite young, about 18. However, all the rest of them come already after contacts with a psychologist, and they are more or less ready to communicate».

Judge-1: «Low activity in the process of lodging suits – I think there's no such problem, it's not actual. Low activity of certain victims in taking part in the criminal process – it's actual, many of them don't want to go to the judicial instance, and not only because they are afraid of anything; in relation to such persons protection measures are applied as envisioned by the law; therefore, another problem is actual: they don't want to appear, because in that time they are busy with their work».

Judge-2: «It's actual. Most of the victims don't understand the situation in which they are, their status, the essence of the phenomenon of trafficking in persons, and the dangerous public consequences of the phenomenon».

Judge-3: *«I don't believe that it has any actuality – the low activity of trafficking victims, since it's a rather simple mechanism, either oral or written; you have no need to file a long application and to motivate it excessively, etc. It's one's personal decision, whether to lodge or not, conclude whether any damage was caused to him or her...».*

The next question put to practical lawyers was probably one of the most actual for those VoTs, who enforce their right to compensation of damage by lodging respective claims: **«In your opinion, what are the ratios of the sums claimed by VoTs with the sums awarded by the court and actually received by the claimants?»**. The following opinions were expressed in response:

ILE-1: *«We recommend victims to claim real sums, which indeed compensate. They just overvalue a little; they write 5 million and get 3 – some 50–70 percent of the claimed sum. There's no reason in writing some unreal sum, which will never be reimbursed».*

ILE-2: *«Well, firstly, the courts satisfy only a small portion of the claimed sum. Recently we had a trial, where they satisfied 200,000 roubles. Is this money? For the moral damage, when the girl by deceit was taken to Czechia, exploited there; she was against doing prostitution; she was forced into it, they put her on drugs, she was addict when she returned; they abused her and beat all the time. And she was satisfied only of 200,000; and even this sum was only the second case in my 4-year practice that some part of the arrested property; and the girl was paid 100,000 roubles; it's for the second time for 5 years. That is, it's practically impossible to get anything back».*

OLE-2: *«I think that the court is not sufficiently taking into account the sum claimed by the victim... As a rule, the courts decrease the claimed sums. The maximum that has been paid upon the court ruling is nine million Belarusian roubles, while mainly – one million or two million. 10 million may be claimed and 1 million granted, 20 million may be claimed and two million granted, this all depends on the court. Someone considers that there was no moral damage, someone else thinks that one blow on the girl is not considered physical violence. The problems exist and my personal opinion is that the amounts awarded to the girls are not sufficient».*

OLE-3: *«Not always one can get what one claims. For instance, the property owned by the offender does not yield the amount claimed by the victim».*

Lawyer-1: *«This is a very complicated problem and, naturally, people are not satisfied ... The amounts which are claimed by the victims, are usually awarded only partially. For example, we claimed 20,000,000 , while only 5,000,000 was awarded. Of course, this is only my personal opinion, but this is a very small sum imposed on the defendants for the actual con-*

sequences, because, in effect, it is not proportional to what has been done. The person may be dissatisfied with the court ruling because she has only been paid 5 million for her suffering. Within reasonable limits, 20 million is not a big sum at all, still the courts have taken an approach in which the compensation of the moral damage does not correspond to the damage actually inflicted on the victim. I can really confirm this».

Lawyer-2: «In principle, just like in other cases on compensation of moral damage, the amount claimed is always reduced by the court. As a rule, we claim more than hope to get – we do it intentionally so as not to get too little...».

Judge-2: «The amounts claimed are often exaggerated. But ideally, the amounts awarded by the court and the amounts actually received should be commensurable».

Judge-3: «As I have already mentioned, there are no criteria for determining moral damage prescribed by the legislation; therefore, the court itself determines the amount of compensation, proceeding from the material circumstances of the victims, the defendants, and the principles of justice. This is why we ourselves examine the material circumstances of the victims, the circumstances of the crimes, even make comparisons with the compensation amounts in other cases. It is wrong that the more you claim the more you are awarded, we do not judge by this criterion, more often we look at what kind of person this is, under what conditions she was taken abroad, in what conditions she worked, i.e., at specific circumstances».

Anticipating possible responses to the previous question, the authors asked the experts to answer the question: «**What problems do you see in this area?**».

ILE-1: «Insolvency of our people, the real risk is what a person may pay».

ILE-2: «The courts often make judgments, even when a lot of property belonging to the defendant has been detected and arrested, in order to confiscate the property into the state budget, rather than for compensating damage under civil claims. Damage to the victims is at best compensated voluntarily by the defendant. In other cases it is done either by the defendant making small payments during a long period of time, or when he has served most of his term in prison and fully repays the claim in order to get a conditional early release. But this may happen in at least 5 years when inflation will have eaten the claim and the money becomes worthless».

OLE-2: «Some compensation fund is needed, or the courts should adopt rulings to use the money and property confiscated from the defendants primarily for compensation of moral, property and physical dam-

age... Priority should be given to the use of confiscated money for the compensation of damage under the lawsuit».

Lawyer-2: «Possibly, in certain cases, the qualification of judges is not quite sufficient, right in trafficking in persons, because, I believe, even some judges – not all of them, but still. We had such a case, when, you know, they tend to say “you are guilty yourself”, and almost claiming them as “gay ladies”; that is why the collected sums are respective – 500,000 roubles, just trifles».

Lawyer-3: «In my mind, it’s too little; and sometimes I think, God forbid, I could myself occur in such situation, these two million, well, it’s just nothing in principle. On the other hand, these two million are practically unreal to collect».

Judge-2: «The imperfect level of development of the society, low level of victims’ consciousness and deficiencies of the legislation».

Judge-3: «There are no defined borders – the lower and upper limits of collected sums. Until now, there is no uniform practice in the republic, and each region decides in fact in its own way».

Then, the experts were offered to speak out **about possible ways of solving the problems**. The following proposals arrived:

ILE-2: «Decisions should be made to direct the confiscated property of the arrested person not to the state budget, but towards satisfaction of claims, i.e., if we confiscate a car of 20,000 US dollars, why not to compensate a couple of suits, and the balance – into the state budget, and not to the state revenues – this is a question to the judges».

Lawyer-2: «Maybe, also holding some particular seminars with participation of the judges, in order to show and see that the problem is serious, and girls, maybe, would not like to talk, maybe, and it seems that they are such, as a rule, from some uneducated layers of population with low living standards; but still it does not mean that they deserve their attitude, that they can be frightened and forced into the business, they don’t want to deal with».

Lawyer-3: «The solutions – when we remedy the economic situation in the country; of course, I understand that I touch very high spheres, but again, probably, from my cases: just confiscation of property is envisioned, but the confiscation of property of the defendants goes to the state budget, well, if what is confiscated from the defendants, could go not to the state budget, but to compensation of damage to the victims...».

Judge-1: «Let it be one thing for the beginning – in the course of inquiry, as the law obliges, to search property and timely arrest it – this is if we talk about direct compensations to the victims, because when in places of deprivation of freedom, even if the convict will work and compensate, here, unfortunately, we have poor possibilities of employment; therefore,

there's little hope to get real compensation from the convict's wages; well, this is the problem».

Judge-2: *«There're quite a lot of problems: from upbringing, educating and employment of citizens and up to improvement and development of legislation, both of the national and international».*

The next question that the authors found expedient to put to practical lawyers, highly experienced in counteracting criminality in the sphere of trafficking in persons, was as follows: **«In your opinion, are the sums, collected by decisions of the court (received by victims of trafficking in persons) proportionate to the real damage caused by the crime?».**

ILE-1: *«Nothing of the sort, absolutely disproportionate, even by one percent».*

ILE-2: *«No, not proportionate, very low sums are awarded. There was an under-age girl who had been taken away and raped before the departure, and she was awarded 900,000, but this is a laughably low amount. Thus, this is a problem of judges. They file claims for 10,000,000, and are awarded 1,000,000 or 200,000».*

OLE-2: *«Absolutely no, not commensurable. I think that, because the amounts are small, the damage is much greater if we take into account that, possibly, the person's life has been broken and it is absolutely impossible to compensate or correct this for one million».*

OLE-4: *«Not entirely, if we compare how much a victim may get, for example, in Israel and what amount she may get here. Of course we should state that it is not proportionate. At the same time, one should look at the situation here and in Israel...».*

Lawyer-2: *«Well, this is all very difficult, even our law-makers are afraid to assess how much should be awarded; therefore, this is...Well, in principle, the judges in my view often underrate the damage, they should award more, even twice as much».*

Lawyer-3: *«Not commensurable».*

Judge-1: *«Everything depends on whether we can really call it trafficking in persons, what we mean by trafficking in persons. There also is a problem of approaches. If we proceed from our poor reality and our material views, the sufficiency of what we get ...I would say that it is not sufficient, most likely insufficient. Well, the million roubles which is collected or which is awarded, in my view, can not possibly compensate for suffering, if it was real. However, unfortunately, far from every case which we call trafficking in persons is really it».*

Judge-2: *«More no than yes».*

Judge-3: *«It is hard to say, proportional or not. You know, there are problems not only of the victim who assesses her condition at that moment,*

the problem is in the assessment by the judges of the behaviour of the victims, sometimes they do not look as victims in our eyes; therefore, this affects the amount of compensation. But if the person goes there voluntarily and becomes a prostitute and actually earns money, some of them get good money, it is very difficult to consider them victims who are entitled to compensation of moral damage. I suppose it is very difficult for judges, especially when they have to determine the amount of such compensation».

In order to clarify specific features of the law enforcement practice on damage compensation in various regions of the country, the experts practicing in different provinces of the republic were asked the following question: **«Are the approaches of courts in Belarus in assessing the damage caused by a crime uniform? If not, is the uniform approach needed and why?».**

ILE-2: *«No, each judge passes his/her own decision: one may grant all claims filed by the victims, another may reduce them 10 times over. It would be good if there was some normative document prescribing a minimum amount and the judge were not able to impose lower amounts».*

OLE-2: *«No, but a uniform approach is needed. We need to define the criteria for assessing the damage inflicted on the trafficked persons, because, I repeat, some judges do not believe that moral damage has been inflicted. If you went to prostitute, you knew you would be prostituting, what sort of victim are you? But in reality, engagement in prostitution is not labour, it is some kind of societal costs and the costs of the person, the trafficked persons; therefore, the criteria for assessing how severe is her moral suffering must be defined and a uniform approach must be elaborated».*

Lawyer-1: *«No, no, it can not be uniform, no, because no criminal case is like any other case. Even if the defendants are charged under same article, the cases are quite different. Our law incorporates the principle of individualized punishment and everything else. Thus, there can not be identical cases. Another problem is in making the courts to objectively judge such cases, because it is wrong. Everything depends on the case file, on the case itself, on the events and the consequences which follow. I certainly can not understand why the courts award such small amounts, but, maybe, we are still behind other countries in which this is already developed and, maybe, we shall come to this».*

Lawyer-2: *«No of course, each district court has its own practice, but, in principle, the variation of amounts is not so high, although the amounts are not high either. Of course, a uniform approach is needed, but I believe it is very hard to implement it».*

Lawyer-3: *«Yes, I have attended trials in Kletsk district and in Minsk district courts and the amount was the same everywhere – 2 million. Uni-*

form approach? In my opinion, it is not needed. There are different victims and they feel differently».

Judge-1: «No. The uniform approach is impossible because we are not able to apply mathematical formulas or the laws of physics. Each case is unique, someone may evaluate her suffering by one amount, others by a different amount and, personally, I do not see any uniformity or a possibility of a uniform approach. Someone was taken away and spent one day in slavery, as we can say in this case, someone else suffered for a month or a year or more. How can we apply a uniform approach? Shall we fix some coefficient and multiply it by the number of days? No, it is impossible».

Judge-3: «Well, some upper or lower limits must be fixed, of course. We should not strictly relate some specific crime to some specific amount of damage compensation, since the circumstances of the crimes are absolutely different, but, in my view, some upper and lower limits must be established».

It is obvious that when moving a claim on compensation of damage, caused by a crime, the civil claimant expects to have his/her broken rights recovered in the form of receiving a monetary compensation – this is in fact the essence of the function of such institution as a civil claim in the criminal process. In this context, experts were asked the following question: «**Are there any, in your opinion, problems with receiving from the respondent of any payments in compensation of the damage, as collected by the court (if yes, what problems)?**».

ILE-1: «Poor security of the claim, i.e., few arrests imposed on property, little money, there's no work in colony; and just trifle money comes from there».

ILE-2: «The problem, as I already said, is that we can't enforce collection; either he pays voluntarily, or he works, but they don't work now, as far as I know, I haven't heard that something was deduced from wages: the only source was if something was sold from confiscated property, or prior to conditional early relief something can be paid, in some 5 years or so 5».

OLE-1: «I think, yes. If a man has nothing, it's problematic to get anything from him. If he has property, then, of course, something is possible».

OLE-2: «There are certain problems, again, with the property that we confiscate at searches, as a result of tracing bank accounts, money transfers, etc. The problem is that the property is appraised by the suspect himself. I give an example: say, a car – Mercedes-220, made in 2000; the suspect says it's 5000 US dollars, while its real cost is 15,000. On the judgement of the court, the property is confiscated, the car is sold not even for 5000, but for 2–3 thousand; the sum is not enough for several victims. One Mercedes, even very nice, is not enough to really satisfy the claims. The respondent, again, escapes the damage compensation. When there is

property, very expensive, and if it's sold at its real cost, then, it will be enough for ten or twenty victims to indemnify the claimed damages, that's what I say. The problem is that property is sold for kopeks, and that's not enough for compensation of damage».

Lawyer-1: «O, yes, yes, my girls telephoned me, whom I represented at trial. In deed, it's all very complicated there, because one court convicts, while enforcement order arrives to his previous residence, and problems arise there... Another point – the collection is made as follows: the enforcement order is sent, and the enforcement order wanders until finds this respondent... Enforcement mechanisms are very complicated; people don't get the whole sum at once, due by the court verdict; if he has no property and nothing to sell, then, they'll start collecting in small pieces. You understand what it is; well, they adjudge, well, they start collecting, but how really people can get compensation of damage? It's difficult».

Lawyer-2: «These are the cases, when some property was confiscated, and this property is then sold, and the revenues are spent, respectively, for paying the claims; if there is no property, or if the inspector failed to arrest the property at the stage of preliminary investigation, respectively, it's very difficult to receive actual compensation. Because, as a rule, if a person is sentenced to imprisonment, something can be taken from him, even if he'll work there, very small sums can be transferred from his salary to the victims; and they have to wait for long; therefore, it's very problematic at real enforcement».

Lawyer-3: «The problem is that frequently defendants have no property, at any rate, under official data: no bank deposit, no car – nothing. When deprivation of freedom is appointed, very few people work in our colonies; and those who work, have very small wages. Our legislation provides the right to arrest property, at the residence of the respondent often there's nothing. Besides, even in case of imposition of arrest, relatives of the respondent, as a rule, apply for exclusion of the property from under arrest; and should they prove that this property belongs not to the defendant but to them, then, respectively, the arrest is lifted».

Judge-1: «The problem with real compensation is a real problem, because defendants, as a rule, either have no property, or have managed to hide it long ago, because they knew what the end of their crime would be. That is why, they register other people as proprietors; they have no bank deposits, or they managed to withdraw the money in the course of investigation; however, if the investigation is run efficiently, they manage to arrest bank accounts or property; and the revenues then go to pay compensation of the caused damage».

Judge-2: «Yes, certainly, there are problems: same as enforcement of any other court decision, this depends from the material and property status of the debtor and a number of other circumstances».

Judge-3: «Under all the considered cases, at the stage of preliminary investigation, measures were taken to secure the claim, as we call it, i.e., the property of defendants was revealed and arrested; and from this viewpoint, when the property arrest was undertaken, there should be no problems; although I admit that no property can be found, and, respectively, if a person is convicted to imprisonment, it's very difficult to enforce such compensation».

Assuming a positive answer to the previous question, the authors asked experts to answer the following question: «**What way do you see for resolving the above problems?**».

ILE-1: «Resolving? Give them a good and highly paid job so that we can deduct money from the defendants' salary».

ILE-2: «It would be feasible to consider the problem of not releasing the convicts from prison upon serving the term until full compensation of damage caused by their crime».

OLE-1: «The problem is under a theoretical discussion: a compensation fund can hardly be created, since the money collected from the convicts will be insufficient. The state is not obliged to pay, while the defendant, when he gets from prison, will find an employment, so let him pay. We need to find some legal encouragement. If there is a claim the conditional early release should not be applied unless it is compensated, only in this case the person may be released early».

OLE-2: «In my view, the problem should be resolved at the legislative level. The convict must be obliged to realistically compensate the damage, irrespective of the fact that his property was confiscated; he must not have any way of retreat. Besides, whatever his own evaluation of his property, there are assessing organizations and companies which deal with property assessment. The property must be assessed by the existing tariffs, taking into account its depreciation and exploitation. It should be assessed and sold at an auction. This may provide real money for compensation».

Lawyer-1: «Well, if I saw any ways of solution I would prompt them to my clients. But it is very difficult, because these people who embark on this path try to secure themselves, they clearly realize what may happen, and when their property is sequestered they have nothing. They are prepared for this, and the only way is to take what belongs to them and sell it. If nothing belongs to them how can the victims be compensated? Recently we had a seminar attended by Germans. They have a clear system, they abide by the law, everything is transparent, each citizen has some money on the account and the problem is solved without any special difficulties».

On the contrary, here people try to conceal everything and there is no property or bank accounts».

Lawyer-2: *«Here only at the stage of preliminary investigation the inspector sequesters and arrests the property. Well, if there is no property, what can you do?».*

Judge-2: *«Decent bringing up of youth, development of a healthy way of life, enhancing general and legal education and other means».*

The next question may have been expected by the law enforcement agents: **«Do you consider the existing criminal procedure (and other) legislation of Belarus, which regulates the procedure of compensation of damage caused by a crime, efficient enough?».**

ILE-1: *«No, I am in favour of obliging the criminal to find money, it is very difficult to find money. In this case, they look for the money themselves and get some privileges for this like in those countries where they apply the so-called agreement with justice. Relatives club together, sell apartments and bring the money so that their child gets not 15 years but 5 years. The victims are happy, too, they settle their life for the money, they do not prostitute any longer, while now, after the trial, she again is looking for someone who can get her there».*

ILE-2: *«No, I do not believe so».*

OLE-1: *«This should be studied and analyzed, it is difficult to say off-hand».*

OLE-2: *«I can not say now just how efficient it is, because it is the court which faces the problem, it is the only instance which can agree or disagree with the victims' arguments, decide on damage or no damage, compensation or no compensation. The problem is dealt with by the court, and it may judge how efficient it is. From the viewpoint of victims themselves, of course they all should like to get compensation in the amount they claimed during the procedure of claiming compensation».*

OLE-4: *«I can say as follows: I believe that it is efficient, but there is no limit to perfection; therefore, we need to study and evaluate the world experience and its tendencies and implement them in our legislation».*

OLE-3: *«Yes».*

Lawyer-1: *«No, there are a lot of problems here, it is not sufficiently efficient, probably specialists in the area should work more. What concerns sequestration is correct, but the enforcement is different. One should rack one's brains over this».*

Lawyer-2: *«In principle it has been drafted in sufficient detail, at any rate, I can not give any other suggestions now».*

Lawyer-3: *«On the one hand I know that girls, and sometimes grown up women do not get beyond expectations of the money, but at the same time I can not give any specific proposals. If the defendant possesses*

something our legislation allows it to be sequestered for damage compensation, the procedural norms allow it. But the legislation is not at fault when people fail to register their property».

Judge-1: «Who knows just how efficient it is. If what exists here were strictly enforced the problems could be avoided. It is hard to answer the question on the efficiency of the legislation; it exists but often is not enforced».

Judge-2: «It is efficient enough up to the moment of passing a decision on the material compensation of moral damage. At the same time, it requires improvement as regards enforcement of the judgment and from the point of view of psychological rehabilitation».

Judge-3: «I think, yes, since it regulates the procedure of compensation at all stages: investigation, trial and subsequent enforcement of the court ruling. The problem is only in obliging the defendant to work in order to compensate the damage and to locate the property, confiscate and sell the property, in order to compensate the damage».

Then the specialists were asked a logical question: «**What way of enhancing the efficiency of compensation of the damage caused by a crime do you see:**

✓ **introduction into the legislation of norms regulating the possibility of exempting the offender from criminal liability (reducing the punishment, etc.) in case of repentance, active cooperation with the criminal prosecution agency in uncovering crimes and full compensation of damage caused by the crime to the person, the society and the state¹;**

✓ **establishment of a compensation fund for prompt compensation of the damage caused by a crime after the court ruling comes into effect with subsequent regressive collection of the respective amounts from the guilty persons;**

✓ **other?».**

The following answers were given.

ILE-2: «I have given my proposals when answering previous questions. I think it would be feasible to establish a minimum amount of moral damage and to stipulate a greater term in prison if the convict fails to repay the claim – he will remain in prison until he pays the money, i.e., to possibly connect the term of punishment with the debt».

¹ According to Art. 63, 1 of the CP, such circumstances are considered to be mitigating. Art. 88-1 of the CP envisages the possibility of exemption from criminal liability in connection with a voluntary compensation for the caused damage by the person who has committed the crime; however the disposition of the norm precludes its application in criminal cases on the crimes committed in the sphere of trafficking in persons.

OLE-2: *«We need to deal with the problem more often; we should accumulate experience, both judicial and investigational. It is important for people to know that, apart from criminal liability, there may be material liability. We must caution potential traffickers from any intention to engage in such nonsense. Experience is the key. We must accumulate it, we need more victims to come, to demand, to prove, to explain. Then the respective mechanism will be developed».*

Lawyer-2: *«Forced labour may be stipulated for the convicts with debts on civil claims, the way it works on the parents deprived of their parental rights, whose children are placed in children's homes and they have to pay for their care. This is now regulated by the legislation. If forced labour were imposed on persons, the problem could be solved. If a person has to pay a large sum but he does not work, it is the only way to get at least some of the money».*

Judge-1: *«As a matter of fact, the options you propose in your question are generally in place. Such as exemption from criminal liability. Well, complete exemption from liability in this case is not possible, we are talking about reducing the punishment in case of repentance, active cooperation – these conditions are envisaged by the law for imposing a more lenient punishment, there is Article 69 of the CC which stipulates that, subject to mitigating circumstances under such and such provisions of the law (exactly what you propose here) and subject to absence of aggravating circumstances, the punishment may not exceed half of the maximum term prescribed, i.e., if the maximum term is up to 10 years of imprisonment, or even from 8 to 10 (we have such sanctions under, say, article 171 of the CC for pimping), when there are no aggravating circumstances while mitigating circumstances are in place – such as compensation, repentance, repayment of damage and everything else, then the punishment may not be longer than 5 years, although the lower limit under the law is 7 years. The law envisages such possibility, but, unfortunately, there are virtually no such cases where there are no aggravating circumstances due to previous convictions, recurrence of crime or other sinister motives – all this precludes the application of the norm, and the person must realize that, once he has committed a crime and repents later, he should act accordingly. All this is taken into account, all these mitigating circumstances, in imposing a punishment; therefore, there are no doubts here and it is hard to propose anything else ...exemption from criminal liability – no, when we are talking about committing crimes against a person, there can be no full exemption as such. There are property crimes, economic crimes, etc. – a full compensation of damage gives grounds for the president to apply pardon here, but such measures are not applied in this type of crimes.*

The last option could be topical, we discuss this, we know about the practices in the developed countries which apply such measure because the state must protect its persons. To this end there is the CC, there is an army of activists, etc.; therefore, since the state is an integral mechanism it must care about the victims. If it fails to protect a person from a crime, well, it must provide compensation to the person and later collect it from the guilty person. Alas, our financial and economic reality is such that we can not afford this».

Judge-2: *«Improvement of the legislation on the basis of studying, primarily, of the judicial practice...».*

Judge-3: *«The possibility of exemption of the guilty person from criminal liability: a crime of this type is considered serious or very serious; therefore, we can hardly expect the introduction into the law of norms which exempt one from liability because these crimes are serious or very serious, most dangerous types of crime. There is only one way to enhance the efficiency: identify the property and arrest it, ensuring thereby the possibility of compensation».*

Thus, based on the answers to the last and the preceding questions in general, the practical lawyers expressed the following opinions on possible ways to improve the current legislation:

- ✓ the legislation should legally regulate the so-called «agreement with justice,» which could guarantee the defendant more lenient punishment, subject to immediate and voluntary compensation of the damage caused by the crime to the victim;

- ✓ introduce forced labour for the convict during his term in prison in order to collect money for the compensation of damage (such work should be provided);

- ✓ preclude conditional early release in case of a debt under a civil lawsuit until its full repayment (consider the possibility of extending the prison term in such circumstances);

- ✓ establish a compensation fund for compensation of damage caused by crimes, to VoTs (out of the resources confiscated from convicts and obtained from selling the property confiscated and taken into the state budget).

The materials placed above demonstrate that the problem of compensation of damage caused by a crime in general and by trafficking in persons, in particular, is very topical, multi-faceted and ambiguous. In this connection, experts were asked to answer the question: **«Would you like to extend your knowledge in the area of mechanisms and practice of providing compensation to trafficked persons? If yes, what specific knowledge you should like to obtain?».**

ILE-1: *«Yes, I am fully in favour of an agreement with the court and the investigation department, in order not to look for the defendant's money. It is impossible to find it. He should bring it himself, tell everything in full, make compensation, conclude an agreement, for example, with the prosecutor and the investigating officer where it is written that he may get not more than 10 years instead of 25, and the person helps, reimburses the money, shows what he has concealed, provides proof, i.e., we get a tool and a guarantee against punishing an innocent person. He takes part in the investigation, provides help and brings money. We only need international practice to enhance our knowledge, nothing else. Well, what can we learn if they are poor: there is nowhere to live, no money for medical treatment. There was one specific case, we went to meet a victim and attended a trial in Israel. They have the prosecution party and the defence party. When they learned that we came to Israel the defence lawyers started to talk the prosecutor into striking a deal with the defendant. The victim immediately was given 28,000 dollars and the defendant 9 years. She returned back, bought a flat, started a new life, got married – everything is O.K. I believe, it is fair. In case of no deal, he would have received at least 15 years. Now, he is better off and the state, too».*

OLE-4: *«Possibly, yes. The general understanding is that the mechanism in the world is not just a mechanism existing at the legislative level, at the level of documents, but a real mechanism as a world expertise. Take, for example, Portugal to see what the legislation is there and how this legislation is applied in practice. I should like to know it, it would be interesting».*

OLE-3: *«This issue is very topical for investigation officers and lawyers. If you invite us to attend seminars and meetings, we shall be happy to attend».*

Lawyer-2: *«Of course, I should be interested to take part in conferences or training courses. I should like to exchange experience with my colleagues on this issue».*

Lawyer-3: *«Yes, I would agree. The only seminar I have attended was upon invitation of the IOM. Incidentally, it was held by La Strada. My chief and I attended it».*

Judge-1: *«In my view, there is no such necessity. I know what I need. It is difficult to think of some special knowledge which could help. As far as I know, there are some developments in Russia. They are based on the seriousness of the crimes and have some conditional ranking scale. Some time ago we tried to invent something of the kind in this country, to define the amount on the basis of some criteria, but we failed to come to a decision. Thus, if we need to extend something, ...we should extend our knowledge in the area of practical mechanisms. But since such practice is accu-*

mulated by our courts, by us, I do not see any necessity to expand such knowledge».

Judge-2: *«On international practice in the area».*

Judge-3: *«There are no problems in defining the mechanisms and practice of providing compensation; therefore, there are no general grounds for expanding our knowledge».*

Opinions of experts on reintegration activity – activists of IOs-NGOs

The Decree of the President of the Republic of Belarus No 352 dated 8.08.2005 «On Eliminating Consequences of Trafficking in Persons» vests the conduct of social protection and VoTs rehabilitation measures with state agencies. In accordance with the Decree, the organization of the above measures, including psychological help in the form of psychological preventive, diagnostic and corrective measures and psychological consultancy for VoTs, shall be provided by labour and social protection departments, the departments for education and health protection under the local executive and management bodies. For the purpose of returning the VoTs to favourable living conditions¹ they, depending on their age, shall be placed by the criminal prosecution bodies to territorial centres of social services for the population, orphan asylums or medical institutions². At the same time, according to the data provided by the DD and CTP CM MIA of the Republic of Belarus, currently there are no specialized state centres in the country which exclusively deal with VoTs' rehabilitation. There is no statistics on the types of help rendered³.

NGOs and IOs are not mentioned in the existing legislation as participants in the referral mechanism of VoTs. However, as an analysis of the law enforcement practice demonstrates, the informal referring mechanism of VoTs, acting in the republic, has proved its efficiency.

¹ The literature on the topic of the study is making use of the term «reintegration» as a synonym of the word combination «return to favourable life conditions».

² See: On approval of the Model Regulations on territorial centre for social servicing of population and approximate list of staff of territorial centre for social servicing of population: Statement of the Ministry of Labour and Social Care of the Republic of Belarus, No. 86, July 23, 2003; On approval of the list of free medical services rendered to trafficked persons: Statement of the Ministry of Public Health of the Republic of Belarus, No. 28, September 2, 2005.

³ See: <http://mvd.gov.by/modules.php?name=Content&pa=showpage&pid=477>.

For instance, based on the IOM data, the main source of referring VoTs to specific IO or Belarusian NGOs is the MIA. Such competent organizations implement in the republic their respective programmes to combat the trafficking in persons¹ and directly specialize in work with VoTs. The employ experienced experts on reintegration.

Proceeding from the above, the authors formed a second target group of specialists polled using a semi-structured interview.

Unlike the above state agencies vested by the law with the obligation to provide social protection and rehabilitation to VoTs, NGOs and IOs, along with law enforcement agencies, identify VoTs. In other words, IOs and NGOs render assistance to VoTs who are not only referred to them by law enforcement agencies but who also come by other ways (by addressing via a «hot line» or via acquaintances). Thus, the first question asked to the specialists was: «**How many victims of trafficking in persons, who applied to your organization, have taken part in the criminal process? (you may give an approximate figure)?**».

Public Organization «Club of Business Women» (hereinafter – the PO «CBW», Brest: «Probably one of each two, approximately one half».

IOM-1: «*I can say, out of 200, approximately 100. Many of them have taken part, of course, because they were referred to us mainly by militia*».

IOM-2: «*Approximately one out of each two, one half*».

IOM-3: «*Approximately 20–25%*».

BRCS, Gomel: «*Very few. About 20 percent, not more, out of the total number*».

BRCS, Novopolotsk: «*Approximately one half, some of them took part in the proceedings before applying to our organization, they acted as witnesses or victims, some of them took part in trials with our help. I'd say, one half*».

BRCS, Mozyr: «*Regarding those who directly took part in the trial, under-age persons did not take part, they simply gave their testimony. The trial was held in camera, used the testimony given before the trial. Thus, it is minus two out of the total figure*».

PO «BYWCA», Minsk: «*10–15% of those who addressed us*».

The next question was asked by the authors for clarifying the activity of the VoTs, undergoing a course of rehabilitation and taking part in the criminal process, in exercising their right to apply for compensation of the damage caused by a crime: «**How many of them have filed a claim on compensation of the physical, property and moral**

¹ See, for example: Experience of «La Strada» hotline in preventing trafficking in persons in Belarus / G.V. Tyurina et al.; gen. ed. by I.A. Alkhovka and G.V. Tyurina. Minsk: «Prostyia Lekii», 2006.

damage caused them by the crime, and at what stage of the criminal process (you may give an approximate figure)?».

IOM-1: «Maybe 50 or 70 out of those whom I know and with whom I have been working».

IOM-2: «There have been some, but I do not know the percentage».

IOM-3: «If there are defence lawyers, compensation is awarded... Many people have taken part in the criminal processes. However, without defence lawyers...».

BRCS, Gomel: «No one. A lot of them have come to us when the trial was already over...».

BRCS, Novopolotsk: «10 or 13 persons have filed a lawsuit, mainly, they applied during the trial or directly before the trial».

BRCS, Mozyr: «No one. Never filed. Not a single person».

PO «BYWCA», Minsk: «2–4 persons, in the course of the court sessions».

PO «CBW», Brest: «There have been such persons, I know it, but what is the percentage...».

The civil claim in the criminal process is a juridical institution aimed at restoration of a citizen's broken rights. At the same time, since the crimes in the sphere of trafficking in persons are causing huge harm to human psycho, the authors found it necessary to clear out, whether the enforcement of this right is justified from the psychological viewpoint. In answer to the question «**What do you think, is it important for every trafficked person, when taking part in the criminal process, to claim compensation of physical, property and moral damage caused by the crime to him/her? Why?**» the following answers were received from psychologists:

PO «CBW», Brest: «I think it's important, it would be right if people do it and get compensations. Because the people, who have suffered from this sort of violence, are those whose traumas are very hard to cure or remedy somehow, i.e., it's very difficult to reintegrate a person after this sort of violence. I tend to think so, because I have to contact these persons at a bit different level, and I think that I know a bit more about how deep the internal problems are, how deep the traumas are, which may not be seen from outside. Thus, when we talk with people on other topics, we see that, as a rule, all of them feel moral damage; of course, all with whom I had to work. Surely, it would be nice, if the state, or someone else, could compensate this damage, but you know, even the compensation of this sort can hardly help a lot; here, also the time cures, but even the time will ever completely smooth the scars...Of course, we should keep in mind the volume of damage, you understand, there are different cases, someone suffers more, someone less; but in any case, people feel hard to overcome it».

IOM-1: *«I believe it important, because here many perceive it as if the state condemns and the state punishes, but the issue of compensation of personal damage that a person has suffered, that, first of all, his/her personality was hurt – this issue is not raised; maybe, they don't even perceive it. Besides, it has a deep moral sense: if a person made harm to another person, he/she should somehow compensate; and it's a pity, of course, that here, unlike western countries, it's often somewhat very late».*

IOM-3: *«If she is a victim – then yes. It's very important to claim compensation for the triumph of justice and for compensation of damage – with account of psychological and physical condition (paid examinations to define certain diseases, and treatment is often very expensive)».*

BRCS, Gomel: *«Yes, I think that it is very important, but in fact it's very difficult to calculate it in rouble equivalent. I believe that it is very important, because if a person has committed a crime, he/she should reply for it, bear an adequate punishment, respectively, the culprit should pay the persons, whose money he took; and I believe that it's quite adequate that the victim who had suffered and who needs now to restore his/her psychological and physical health; it costs quite a lot, vitamins are very expensive, to say nothing about other medicines. Why the culprit should not pay for all that? I believe that the culprit shall pay for all that. Another point is that it should be properly explained; for people to be able to apply and lodge claims. It's also desirable that they do it before trial, because when they are explained and told that they could do it at the trial, almost nobody does it there, because this is such a stressful situation; very few are able to cope with it; and during the time of my work nobody did».*

BRCS, Novopolotsk: *«I think that it's important, because they get at least some compensation, so to say, although, in my mind, it's very difficult to evaluate, because many of them until now, and I keep contact with them for more than 3 years, are in a rather grave and hard moral condition; money has no special value for them; this is just a trifle, capable at least to some extent smooth over their heartache».*

BRCS, Mozyr: *«In general, not everything can be measured in money; every person defines for him/herself what is more important, i.e., some sportive anger, desire to punish the culprit, or just escape the memoirs and avoid conflicts, which will, quite probably, follow, as it's all very individual and personal. I believe that criminals, of course, should be punished; the defendant shall, possibly as an alternative, even compensate the expenses of certain funds or public organizations. Why not to oblige the person, guilty of such expenses, to compensate them? I say, it's all individual, and with account of the fact that people didn't lodge suits, well...».*

PO «BYWCA», Minsk: *«It's important, since in the overwhelming majority of cases the material aid, rendered by social organizations/struc-*

tures to trafficked persons, is not enough for eliminating those negative consequences for the social, physical and psychological wellbeing of the person, which appeared in his/her life as a result of suffered situation of trafficking. It's important also because many people, who suffered in their life from the situation of trafficking in persons, become incapable because of broken physical or mental health. Besides, the punishment, awarded to criminals-traffickers should correspond to the gravity of their committed crimes and satisfy, first of all, the victims of these crimes.

In general, it's important also because people should know their rights and have chances to stand for/enforce them according to the law».

The question «**Has the type of victims' exploitation any effect of their intention to claim damage compensation (of what type of damage)?**» earlier asked to practical lawyers this time was put by the authors to rehabilitation specialists with the aim to get its psychological explanation.

IOM-1: «Of course, it has an effect: those who suffered from labour exploitation lodge their claims much more often: they can present particular sums. As to sexual exploitation – the issue is much more complex here. Many... It's a question, whether she is a victim, and to what extent a victim? Many of them had a guess about the services, many knew about them. Although they became victims, and the conditions were not as promised; but it's somehow vague... It's hard to say, many don't want to lodge claims and have so to say even friendly feelings to their pimps».

IOM-2: «I think that it has an effect; I think, any type of exploitation has its effect, and it depends, most likely, on the type of personality: not every person will report on what happened to him/her; they want to forget it as soon as possible, thinking that it would never repeat again, since they have already that bitter experience. There are such people, inclined to defend themselves, i.e., they can come, file complaints, start to defend themselves, demand compensation of damage of different type, but I think there are not so many persons of this sort, because people wouldn't like to open their problems not only to the whole society, but even to a small circle of persons. It's not because they don't want to tell about this problem: a lot depends on the feelings they had experienced. When a person feels shame and the feelings, which are hard to talk about; and then to go with those feelings somewhere and claim anything, and ask for help. I think, this is the main obstacle in most cases».

IOM-3: «Men are more often willing to claim, but they can't (their cases fail to reach the court), while women can, under pressure of relatives can change their evidences or recall the compensation suit. Sexual exploitation is often closely connected with fear, while the labour one – not. But in labour exploitation it's difficult to initiate cases. Sexual exploitation is

connected with health damage, moral and physical damages, while labour exploitation – with moral and material damages, and very seldom – with the physical one».

BRCS, Gomel: *«I think yes, of course, we work mainly with women, because men are from regions, and we accompany them more socially than psychologically: they come here, buy foodstuffs, or we go to them there and buy foodstuffs; we have very little contacts with them. As to the girls, who are here, in place, of course, for the girl who was in labour exploitation it's much easier to state that she was sewing something for 12 hours per day than to confess that she was servicing sexual clients for 20 hours per day. There are terrible situations, when they had up to 24 clients per day; of course, at such exploitation, even if the case reaches the court, and the criminals are established, i.e., if inspectors and operative workers bring the case to trial, it's very difficult for a person to come and initiate a suit; and I think it's practically impossible. Many victims don't go to court and even to us, just in order not to tell what had happened with them. In spite of the fact that they know that help is rendered, and the help is not so small; but in order to avoid the necessity to go and tell about all that, they don't come even for help, to say nothing about court proceedings».*

BRCS, Novopolotsk: *«I believe that yes, because in my practice, unfortunately, only one person took part, even not took part, but was a witness in a trial on labour slavery, other girls were involved in sexual exploitation and many of them were shy and feared to speak at the trial right because they had to talk all such intimate details».*

BRCS, Mozyr: *«Yes, those involved in labour exploitation, with whom I work with, and who may be qualified not as a victim of trafficking in persons, who just suffered from a swindle, they surely have an intention to get compensation. By the way, here's a situation with a man from Mozyr who became a victim of labour exploitation, well, he would also like to go to court, but his situation was unique; therefore, his case has just not reached the court. The point there was in return of the apartment, which, according to his story, was illegally taken away from him; swindlers managed to take it away illegally, but still, it was a swindle; therefore, the case didn't reach the court, even the case wasn't initiated».*

PO «BYWCA», Minsk: *«From my viewpoint, the victims of sexual exploitation have generally problems to attend the court sessions for many reasons: strong physical and psychological trauma, shame, fear of execution by traffickers' acquaintances/friends/relatives. As a rule, victims of sexual exploitation try to forget as soon as possible what had happened with them; that is why, they don't claim any damage compensation. If they do, most often it's compensation of material and physical damages».*

Explanation of the right to compensation of damage is the prerogative of the lawyers, who are engaged in proceedings on the case and who are representing the interests of VoTs in the criminal process. At the same time, the authors, by supposing the possible need of the psychological viewpoint, decided also to ask the experts engaged in reintegration support of VoTs: **«Do you personally inform the victims about their right to lodge a complaint on compensation of the physical, property and moral damage, caused by a crime, or is it done by: some other specialist from your organization, external expert or some other person?»**.

PO «CBW», Brest: *«You know, it happens, when we talk about it, it happens. Of course, in our organization this is done by specialists, who work with it more».*

IOM-1: *«I assume, and I always speak about it, we still tune them to cooperation with the court, since it's a social phenomenon, to cooperation with law enforcement bodies, if they go; some of them say at once – there were several such cases – that they wouldn't address the militia, they want nothing. Well, we respect their right, we understand, but we keep informing all of them that they have the right to enjoy a lawyer's services, and that they surely should make use of this right, because if the case reaches the trial, standing alone against defendants' lawyers – it's not real, it's a very hard test. Besides, we inform them also that they have the right to compensation of damage, besides, I think that other specialists, and we have a lawyer, can give more details on all these problems».*

IOM-2: *«Yes, usually we invite specialists, who work with VoTs on these problems».*

BRCS, Gomel: *«Yes, of course, when at the very beginning we register them, we tell them that we have a lawyer, who can draw up all the papers and whom they can address for help. Currently, we have only minor victims, whose parents contact the lawyer, but their case is at the very start – the victims are interrogated at the prosecutor's office; they were not yet interrogated at the Interior Department.*

I'm in charge of registering the victims, and I interview them and tell about the help that we render. The point is that many of them have already passed through the trial».

BRCS, Novopolotsk: *«Yes, for sure. Everyone, who comes to us, is surely informed that he/she has the right to go to court to punish the criminals and claim for damage compensation.*

Only I work with the victims under the programme in our organization, and, besides, also a lawyer, who is not within our structure but cooperates with us all the time».

BRCS, Mozyr: *«I tell them that they have such a possibility. I tell at the first meeting, when we talk about the programme, about the opportunities and the help they can get; we say that they have a chance to get legal help, and that there is such a point of the law like compensation, and they have the right to use it. But, I say, possibly, because it's a small town, and people just don't want any extra problems; they, well, preferred not to enjoy the right».*

In development of the previous question, the experts were offered to answer: **«Do you (or someone from your organization) describe to the victims in detail the very procedure of lodging complaints and claiming compensation of the damage caused by a crime?».**

IOM-1: *«No, not in detail, I say that on all these problems they may apply to a lawyer who can give them full information».*

IOM-2: *«This is done by specialists invited to our organization».*

IOM-3: *«No, I do not describe. If the person takes part in the trial the lawyer will give a competent explanation on the procedure of filing, etc.».*

BRCS, Gomel: *«I print out the paper on the lawyer's computer and we together visit the lawyer who helps you to draft a complaint, you submit the complaint to the judge. But, again, these are the complaints which have not reached the trial».*

BRCS, Novopolotsk: *«Not personally, this is done by the lawyer because she knows more about the problem and she gives a sufficiently full description and tells what should be done».*

BRCS, Mozyr: *«Not yet, not the procedure. I just mention that this is possible, and if the person decides to go ahead and needs legal assistance which she intends to use, then I give a detailed explanation».*

PO «BYWCA», Minsk: *«This is done by a lawyer or a specially invited defence lawyer».*

PO «CBW», Brest: *«I don't describe, but I know that this can be done by specialists from our organization, it can always be done. If the person wishes to file a complaint he/she may address us and we shall explain how it is done».*

Considering the fact that the provision of information about the possibility to apply for compensation of the damage caused by a crime is not among the professional tasks of experts on reintegration activity, the authors decided to ask the experts: **«Where have you personally obtained this information?».**

IOM-1: *«From published matter, from seminars, although there have not been any seminars on the compensation of damage. There are some booklets for victims and for employees, containing basic information».*

IOM-2: *«I have learned this from lawyers whom our organization invites for work with VoTs».*

IOM-3: «There exists international practice followed by our organization in rendering assistance (international standards discussed at seminars and training courses as described in the IOM manual)».

BRCS, Gomel: «I work in close contact with the department on combating trafficking in persons and they periodically invite me for interviewing victims».

BRCS, Novopolotsk: «From IOM seminars».

BRCS, Mozyr: «From my consultations with lawyers, with the legal office and from the published matter provided us by the IOM for work.

The procedure of lodging complaints: it includes the application form, i.e., the application must be correctly drafted. Firstly we explain that the complaint may be submitted before or in the course of the process, i.e., this does not affect the application process itself. And the main thing is the correct submission and drafting of the statement of claim. It is submitted to different officials, depending on the stage of the judicial process».

PO «BYWCA», Minsk: «In the course of my study at the University, from practical work with the victims of trafficking in persons, and from contacts with lawyers».

PO «CBW», Brest: «I knew that such help is possible, that such applications can be submitted».

The next question was also put in order to clarify the above information «**At what stage of your work with the victim do you provide such information?**»

our communication with the clients who address us, i.e., this is all that matters for me.

IOM-1: «Everything depends on the format of communication. Sometimes it is just a one-time consultation, a girl or an outpatient comes, then I tell them at once, usually, towards the end of the interview when we make plans for the future actions. But, if she is placed at our centre and is part of the full two-week or month program, then towards the end of the programs so that this gradually sinks in».

IOM-2: «Quite differently, this depends on specific circumstances».

IOM-3: «General information is provided during a personal meeting. Most often it is the first meeting when I tell them how we can help them and what cooperation with us may give them».

BRCS, Gomel: «At the very beginning».

BRCS, Novopolotsk: «Immediately after we get acquainted I describe all the possibilities existing for the person who has addressed our organization».

BRCS, Mozyr: «At the very beginning when we tell the person about the program, about its possibilities, how the person may make use of them.

If the person wishes to use legal help, we provide a detailed description of the procedure, otherwise, why waste time if the person does not need it».

PO «BYWCA», Minsk: *«At the stage of operational search actions or at an appropriate moment at the early stages of providing rehabilitation help to victims».*

PO «CBW», Brest: *«At different stages, even after several court sitting have passed, when I see that the person is strong enough spiritually and it is simpler to work with him/her. But, as a rule, I work with them myself and think that this is all the result of our common work».*

The next question to the specialists on reintegration activity was asked by the authors with the aim of having «an outside view » of its practical aspect: **«Do you think that the victims always correctly understand the information about the right to compensation of damage and about the procedure of lodging complaints and getting compensation?».**

IOM-1: *«Well, they have a poor knowledge of the procedure, “I only know that I have to address a lawyer and he will explain everything”. I have a feeling that they do not fully understand it. In our society it is not developed yet, there are very few examples of genuine compensation and there is some gap in the legislation, because even if a compensation is awarded, the court ruling is one thing and its collection is an entirely different thing. I have information from victims that it is virtually not enforceable. There may be a court ruling but they are no better for that».*

IOM-2: *«I think, yes. When a lawyer works with VoTs, usually there are no problems».*

IOM-3: *«I think that in the course of the first meeting the victims receive such a huge flow of information that it is difficult for them to find certain point related compensation; and they may be frightened; therefore, they can't perceive it. But the general information remains, and, if necessary, the lawyer tells everything in detail».*

BRCS, Gomel: *«I think, not always, sometimes funny thing happen when a person can not understand what is going to happen or how it is going to happen, i.e., people watched some films long ago and visualize a court trial from them. In most cases, this is an American production. There are victims whose education level is below 9 forms, who have not even finished a vocational school. It is more difficult to talk to them because, generally, they do not always understand even the terms which we use in everyday life. You need literally chew everything and put it into their mouth».*

BRCS, Novopolotsk: *«I believe, yes, because many of them refused to request compensation of moral damage just because it was connected with certain emotional feelings».*

BRCS, Mozyr: «Possibly, not always, this depends on the person's development level. If the person has no education or has failed to finish a secondary school, many things will be hard to understand. Then you need to give a more detailed explanation. Everything depends on who you see in front of you, whether you need to spell out everything or the standard procedure is sufficient. I must say that no such cases have been put before trial, no one so far has filed statements of claim. But, generally, this is not my task, I just mention the possibility, i.e., speak about the standard procedure, while it is the lawyer helping the victims who gives a scrupulous and detailed description».

PO «BYWCA», Minsk: «In most cases the information needs to be repeated several times, but even after this, the victims often want a competent specialist, for example, a defence lawyer or a social worker, to deal with all documents».

PO «CBW», Brest: «If you ask clarifying questions, I think, they will always understand it correctly. Of course, you always ask "Have you understood everything correctly?", "How do you understand it?". If you see that something is wrong you explain everything».

The law of criminal procedure obliges the body of criminal prosecution and the court to establish the character and volume of damage caused by a crime. At the same time, when defining the degree of moral damage, in the opinion of the authors, the viewpoint of a professional psychologist is crucial, that is, of the one who works directly with VoTs. In this context, experts were asked: «**What do you think, do trafficked persons understand the full scale of damage, caused to them in the course and as a result of exploitation? How do they describe this damage (give examples)?**».

IOM-1: «Very few understand, in what has to do with moral damage, the depth and degree of trauma, and – generally – it's a poorly studied issue for them, and in the society as a whole, and in the judicial practice, and for these girls, when they understand very little, and they mainly orient themselves towards some material damage, but as to moral one, a psychological trauma, they don't feel it themselves; they seldom address for help, they believe that it's normal, it can be forgotten; say, I just wasn't lucky. There can be different cases; I had a case, for example, when a girl had been invited by her good acquaintance to Turkey. First for 2 weeks of entertainments and then for working it out. She realized it. Besides, this pimp hired some young men who came to her working place and called her syph. The girl filed a lawsuit against the men for inflicting moral damage and for insulting her, and against the pimp, requesting compensation of damage. But such cases are rather rare, many persons believe that it was

just bad luck, and they do not try to punish the guilty persons or compensate the caused damage».

IOM-2: *«Not always. I have repeatedly observed, for instance, that a person thinks that the event has passed for ever and it is just an experience which may be quickly forgotten. But life is such that anything may happen, there are situations where a person faces internal problems, and what happened to her becomes known. In most cases, these are common life situations, it may be related with work or the money the person previously borrowed. If it is a young girl and she starts relations with a young man this may affect her. As regards commercial sexual exploitation, there is a wide spectrum of situations, this is all connected with the emotional world of the victim, periodic recollections which persist. This may be so deep that even some association may remind of the past: some music, some words or remarks remind them of what happened. In case of commercial sexual exploitation, there are all kinds of violence which have an adverse effect. There may be adverse disturbances which hamper normal life and normal sleep. The rehabilitation process is very complicated, one needs to get rid of one's habits and build one's life anew».*

IOM-3: *«Not always victims fully realize the damage inflicted on them, for different reasons. In the rare cases when exploitation results in physical damage one can talk about compensation. For example, if beating results in an operation or pregnancy in an abortion. The connection is obvious. In other cases, irrespective of the type of violence, the victims sometimes only speak about psychological pressure, even forgetting about sexual violence».*

BRCS, Gomel: *«Not always, or they understand it on the emotional level. Most often they accuse the traffickers of intimidation, raping, beatings, humiliation, etc. There has been a case when a girl had two children and the trafficker, Boiko by name, threatened her with the fact that she had big debts for her flat and no money to pay, and that she would bring the social services to take away her children. And she mainly recollects the period before, i.e., how she was intimidated, rather than when she was there. But this is not the most terrible story, we have heard worse things.*

There are victims who say that there was an owner, she worked for half a year and when she was leaving he gave her 300 dollars and said that she had not worked out the debt and not earned anything, but he was not bad, he paid something».

BRCS, Novopolotsk: *«Not all of them. In general, many of them are even afraid to consider themselves victims of trafficking in persons because they are, to some degree, are intimidated and don't realize that everything is in the past, they are afraid that somebody is going to persecute them. Actually, such cases of persecution and threats have happened and this*

affects their mind. I can cite an example, a year ago I had a case, there were 4 victims, the lawyer had drafted a complaint for compensation of moral damage for each of them, but only one dared to file it and she was granted compensation of moral damage, the other three refused and changed their testimony in court because there was pressure on the part of the defendant. All the three remained without compensation. Many of them say: "Well, I have consented myself", "they never beat me or cursed me, and I could go out of the shop", and the fact that she was not able to leave the country did not mean anything for her at the moment. This is what they say».

BRCS, Mozyr: «If the girl or the woman knew what kind of services she would have to provide, it is one thing and feeling, but if this proved to be quite unexpected for her – it is different. For comparison, I can cite one case – one trafficker but girls in different situations, i.e., two of them were almost aware, they realized that they would be providing sexual services, although initially the offer had been to work at the market. Well, naturally, they were morally and psychologically prepared to the life under such conditions, etc., and they got off lightly, but this was one thing. Yes, they, too, had a feeling of disgust, but they were mainly afraid that, when they return home, people would stare at them. That is all. We can say that this was all unpleasant, but these were the feelings. Now, the third of the girls did not realize where she was going to. She had been deceived by her close friend whom she trusted. Her situation was aggravated by the fact that the first two girls, who had been aware of the kind of proposal, were let go when it became known that they were under-age because of a threat of a more severe punishment. This girl, who was already of age and who was deceived by her friend, she ran away herself to the building site to her boyfriend. She was found and under the threat of some terrible punishment but the foreman at the construction site let her escape. This situation is different. I have intentionally given this example. Naturally, my first meeting with them was also different: the girl who says that her situation proved to be absolutely unexpected was like ...a frightened animal, she would not speak out, she was afraid of rustle, contact with her was very difficult until she realized that she was safe and that I strived to help her. She simply could not believe that people, not demanding anything in return, can help her, starting from psychological, material or employment assistance, help in the family, visit the family to settle family conflicts if they happen there. As a result, she drastically changed. The difference is obvious in the appearance, in the speech and in the movements of the person. Again, I work with a team and different situations require different approaches. I say I can not deal with all problems, someone else is responsible for the medical aspects and something else, so I simply say to the cli-

ent, I must introduce you to another person, do you agree, because I need another person to deal with this aspect. While these two girls readily agreed and I carefully introduced them to the other person, the third one, who was in a more complicated situation, said, no, I am not going to speak with anyone else. The degree of complexity of the situation immediately reveals itself in the person's appearance, behaviour, speech, acts, openness, wish to work and give an interview.

I do not ask any specific questions because I conduct the interview very carefully in order not to hurt the girls. But later, with time, we start talking about it when they calm down and realize that they are safe and, I think, again everything depends on the person's character. Someone becomes angry and decides "You, bastard, I am going to revenge and finish you", others, on the contrary, think that everything is over, I have calmed down, my life is settled, thanks God, let it be this way. I can say, if we grade those with whom I have worked, in case of labour slavery people want to get compensation, they specifically discuss the problem of money. If the person lost money he/she knows how much should be compensated. But in our case they find it hard to estimate».

PO «BYWCA», Minsk: «Not all of them; about 50% of all the victims of trafficking in persons do not understand it. Example: a girl, a social orphan, a pupil of the boarding school, was sold by her girl-friend to a brothel in one of the countries of Western Europe. She spent there for about a year; was many times beaten by traffickers, received no salary, acquired drug dependence and tried to commit suicide. Before the trial of traffickers, she said that she wanted them to be punished, but she wanted nothing from them (the owed nothing to her), since during her exploitation they, allegedly, took care of her, namely: gave food, paid for her rented flat, where she lived together with other girls, bought cosmetics, cigarettes, sometimes even sympathized with her».

PO «CBW», Brest: «Not always, as far as I think... A person can say: "I don't know how I build my further life", "I think I'll succeed in nothing, neither at work nor in personal life. I'll not be able to accommodate myself". For many times I heard something like that: "I have a feeling that I was spoilt, and it's impossible to wash off what I have in my soul". For some reason they talk more about dirt, I can't right now remember someone saying like that: "I have a feeling that I'm an invalid", although externally it is not visible, but their internal condition... When a person can talk this way – it's especially at the first stage of work, when... it's very difficult in general; it's very hard to help a person to change his/her attitude to him/herself; this is the work with one's consciousness, and generally I believe that such people should be treated more seriously. Our organization and those, with whom we cooperate, are very serious to the

people who address us, but I think we need to be still more serious; in spite of the fact that there are different cases, various situations. I'm always surprised with the situations, when a person uses the help, but not always it is successful; but, here, if we could have some more interaction, maybe some more time, the help could be more essential support. When she is amidst people, in the society, it's all OK, she has friends, relatives, of course, if there's chance to involve them; when there are close people, with whom she can talk, communicate, of course, it's beneficial for their further recovery, reintegration and other things. But when she has no circle of this sort, it's very difficult to preserve, to keep what she got in contacts, for instance, with our organization, and what she managed to understand about herself. When she began changing, it's very difficult to preserve all that when you are alone».

When asking the next question the authors tried to find out, how, from the viewpoint of psychologists, VoTs' personal opinion about the size of the monetary compensation of the damage caused by a crime is shaped: «**How and on what basis do the victims assess the amount of claim?**».

IOM-1: «A lawyer usually takes part in the process. Firstly, they take into account physical injuries and diseases, for example, syphilis, there have been cases of serious spine injuries, brain injury, a lot of illnesses, then the money spent on treatment, and the earnings which had been promised, while the victim returned back penniless».

IOM-3: «I have a feeling that the amount of claim is determined by the judge, and this is why the lawyer suggests that the amount should be somewhat higher in the understanding that the claim may be granted for the amount less than 2 million, in spite of the fact that it is disproportional to what the exploiters have earned from the person».

BRCS, Novopolotsk: «Naturally, in most cases a lawyer assists them because she knows the procedure better. The chances of getting compensation, probably, depend on the type of exploitation, on how long it lasted, on the conditions, on where? who? how?, and on the consequences».

BRCS, Mozyr: «I do not think that they can define it themselves, they need to be prompted. Those who suffered from labour slavery are able to count, it is easy to count the amount. As regards other victims... I have worked with under-age persons or with those who suffered when being very young and they, of course, find it difficult to make assessments».

PO «BYWCA», Minsk: «They normally address other people for help on this problem: an advocate, a lawyer, asylum manager, etc.».

PO «CBW», Brest: «Well, for example, if there was a trip and the money was borrowed, and these are generally serious money, and when

you came and were deceived it is impossible to repay it, then in most cases this amount is included into the claim with, maybe, some additional amount in order to get some support. But, as far as I know, these are mainly the sums lost because of being deceived».

When asking the next question, the authors tried to find out the role of the psychologist (or other third persons) in determining the amount of compensation of damage caused to VoTs by the crime: **«Do you or another specialist from your organization help the victim to determine the amount of claim? If you do, how is it determined?».**

IOM-2: *«I can not define it, I can ask what amount was spent, because there are cases when the person spends his/her savings and he/she may be shy to request them back, while if the money was borrowed they can state it, it is less difficult».*

IOM-3: *«An advocate helps. See above. We only say that the other information is provided by a specialist. But we persuade the person that it is necessary to file a suit. We give our arguments, tell the girl that she worked and never received money, acquired diseases, was subjected to violence».*

BRCS, Novopolotsk: *«Not me».*

BRCS, Mozyr: *«If only a legal adviser».*

PO «BYWCA», Minsk: *«This is only done by an advocate».*

PO «CBW», Brest: *«I, for one, can not determine any specific sum. For this purpose, we invite experts – advocates».*

By putting the next question to the specialists on reintegration, the authors primarily wanted to find out, what psychological barriers are faced by the VoTs in exercising their right to compensation of damage: **«Have you heard from victims about their psychological, organizational or other problems connected with filing a lawsuit for compensation of the damage caused by a crime? If yes, give examples of such problems».**

IOM-1: *«Well, I have not met any organizational problems, this is the lawyer's area, but there are a lot of psychological problems, of course, firstly, they are afraid».*

IOM-3: *«No, in rare cases they may decide to vindicate the traffickers, the so-called employers. They more readily tell about their fears to the advocates».*

BRCS, Gomel: *«Yes, many times. Many of them speak about how difficult it is to go to the trial, let alone to file a lawsuit. They want to give their testimony as quickly as possible and forget everything. Sometimes the district militia have to escort them to court in order to make the person come and tell something, not speaking about stating claims. The person comes, tells a story and runs away in terror and then shakes with fright for*

three days after. Besides, there are facts of non-professional work of militia officers, the district officer arrives with a court summon and the husband asks what kind of summon it is. The officer tells him, “don’t you know she was a prostitute in Turkey”. We have a victim now who divorces her husband having two children of 3 and 1.5 years of age because the militiaman has told the truth. There happen strange things, and they have to live them through as a calamity».

BRCS, Novopolotsk: «Yes, there have been such cases. Our example, one of the first of our cases, when a girl failed to come to an understanding with a lawyer who initially had been introduced for defending her in court. In the long run, she came to me for help and wanted the lawyer to be replaced. Thanks God, we complied and everything ended well, the lawyer worked with her, they found common ground, and the compensation proved to be the highest among all our cases – 6 million».

BRCS, Mozyr: «No, because we have had no such cases. But, of course, I think, it is good to have a leaflet to give out to people for providing the necessary information. They could thumb it though at leisure. It should be compact, just a leaflet. There are sorts of leaflets, the hot line and information on how to get protected when going abroad. If we had such compact information for dissemination, I think, it would be useful».

PO «BYWCA», Minsk: «In most cases people are afraid of short work on the part of the traffickers when their sentence is served or on the part of their relatives or friends who remain at large. The victims almost always face a psychological barrier in facing the traffickers in court».

PO «CBW», Brest: «You know, what type of problems exist: When application has been filed, its consideration takes a long time, the person feels as if she extorts the money. In this case we must say “You demand what is due, you needn’t get nervous or distressed because this process is complicated, we are not sure about the success but we’d like it to be a success. You file a claim but the situation is not always as favourable as we wish it to be”. They feel uncomfortable, they are very distressed when something is wrong».

The next question bears an organizational character and it was put to the experts of the second target group as representatives of IOs-NGOs: «**Have you personally (or your organization) faced the necessity to invite additional experts for work with a victim on the problems of compensation of damage? If yes, what kind of specialists and for what purpose?**».

IOM-2: «Not personally, but possibly there have been such occasions in the organization».

IOM-3: «Yes, we have invited medical workers, psychotherapists, psychiatrists – for giving medial opinion; advocates – for providing legal

aid; psychologists, social workers – for rendering psychological aid to the victims (including assistance in court) and for conducting explanatory work».

BRCS, Gomel: «Yes, a lawyer is necessary, and it is very good if there is an advocate paid by the IOM, but it is bad that she has no fixed schedule. Now it is done by telephone, if a victim has come and needs an advocate, we phone the advocate to ask, she says, let her come in 10 minutes or I have some time in four days. The system is not perfect, it would be better if she received clients, say, on Monday from two to four, it would be very convenient».

BRCS, Novopolotsk: «Well, well, we invite an advocate and our relations are very good. I am happy to say that this is always one and the same person who takes part in all legal proceedings».

BRCS, Mozyr: «Well, of course, I have already said that we have had no such cases, so far, but if we had, we would naturally call for an advocate».

PO «CBW», Brest: «I have not done this, but our organization often invites lawyers (advocates)».

In order to analyze the practice of assisting VoTs in overcoming the psychological barriers in exercising the right to compensation of damage, the experts were asked the following question: «**Do you help victims in court and do you attend the trial along with them in cases on damage compensation? Do you think it is necessary for the victims?**».

IOM-2: «Not me. There have been no requests to this effect, but, if it were necessary, I would do it».

IOM-3: «The psychologist accompanies them. In PO – social workers accompany and support them. The victims need it».

BRCS, Gomel: «I would accompany under-age victims, but this is stipulated by the legislation, and if it is not recommended by the legislation, then it is not mandatory. I believe that the victims need it, there must be a person who supports them. Let him keep silent, but let him be there, because the judge, the prosecutor, the lawyer and militiamen are all there, and the criminal himself – the victims perceive them as the attackers, it is difficult to resist them alone. One would not want mother for a company at such events, not everybody has friends who are able to adequately take the information. Many people do not say a word about such situation, so, a psychologist who works with them to whom they may address, ask for a napkin, a bottle of water or simply look into the eyes when they give testimony, is a strong soothing factor. I would I think that this is very useful for the victims».

BRCS, Novopolotsk: «It depends on what is my capacity in the judicial process: if I am a witness I have no right to attend and support the

victim. If I am a supporting agent, then I am not a witness. It depends on how we, at the stage of investigation, agree with the investigating agency what is more important in court – my testimony or support of the victims.

I am not sure if it is right in court, but there are certain moments when the person must be present in order to see the offender who humiliated them, to see him behind the bars, to see him punished. Sometimes it is important, it is hard emotionally, but some people say “I saw him behind the bars, so piteous and worthless”. Initially, it is hard emotionally, but it is easier for their subsequent rehabilitation than when they do not see this process. It is very important for victims, because many of them go, at any rate in our cases they went, to court because they were supported by the advocate and me. They actually said that “if you do not attend I am not going anywhere”, so we attend, simply attend because sometimes we are not allowed to say anything, they answer questions, look around, see us beside, notice that there are no questions and there is nothing terrible, that the person is behind the bars and that no one and nothing threatens them».

PO «CBW», Brest: «I think, if VoTs ask for such support, there is no reason to refuse it».

BRCS, Mozyr: «Not so far, except investigative actions. I believe, yes, even if we are not specialists in law, just for social support and psychological aid, because it is a very emotional moment, it is an unpleasant place for any person, let alone the person who already has a bad psychological injury. The lawyer resolves legal problems. As regards me, I always prepare the girls. If they take part, they ask for it themselves, since they are afraid, especially if they meet face to face with the criminal and if there are threats».

PO «BYWCA», Minsk: «Victims are always informed about the possibility to have a specialist (social worker, psychologist) attending the trial. If they believe that the attendance of a specialist is necessary – he will always attend».

On the basis of asking a number of questions about providing VoTs of information about possibility to initiate a civil claim in the criminal process, same as in the case with lawyers, the specialists in reintegration support were asked a similar but a more detaining question: «**Based on your personal experience, do all the victims, informed about the possibility to lodge a complaint on damage compensation, quickly and willingly agree to enforce their right?**».

PO «CBW», Brest: «Well, I think, probably they are all informed about this right, because it is all nicely organized in our organization; but how quickly the person would like to enforce this right, I think, it depends from the attitude, I don't know for sure and can't say exactly».

BRCS, Gomel: «No, some of the generally don't understand how it all happens, they are told that they can file a suit on compensation of moral and material damage, or physical damage, they generally don't understand what the word "suit" means; then they don't understand what moral damage is, and don't understand how it is done; and, respectively, it results that many of our victims get very little compensations from wrongdoers».

BRCS, Novopolotsk: «No, I have an example, when, well, I already gave one of examples, when girls refused from their evidences already in the course of the trial, already refused to file a complaint and got no compensation, and there are examples of refusals whatsoever from taking part in the trial right because of the fear that facts will be disclosed, and something will be investigated, i.e., we make advances, as far as it's possible by the law and they don't take part in legal proceedings generally».

BRCS, Mozyr: «Well, again, we had no such cases».

PO «BYWCA», Minsk: «No, not many people are enforcing this right».

IOM-3: «No, they are thinking, and in future they discuss it with a social worker. They think it over in a hope that maybe they won't be summoned to the criminal process. And in other regions, where public organizations (POs) work, they are with the victims throughout the whole period of contact and explain and support the victims' interest to this issue».

By putting the question «**In your opinion, are the sums collected by the decision of the court (received by the victims from trafficking in persons) proportionate to the damage caused by the crime?**» to the second target groups, the authors tried to get answers, based on a more profound understanding by these respondents of the traumas, caused to the mental health of VoTs.

IOM-2: «I think, disproportionate. Sometimes, the consequences of the trafficking are such that no sum can ever compensate it».

IOM-3: «Well, no. They are disproportionate».

BRCS, Gomel: «I don't know, what sums are collected, because we don't have this practice. Now, when I must tell the suffered boy in answer to the question: how much to claim, I can answer only one thing: the more you ask, the more you get. This is the only answer I can suggest, I don't believe that it's generally possible to calculate. But it seems to me that these should be huge sums, in excess of dozens thousands of dollars, since damage, I believe, is colossal; for myself, I'm surprised with the mental endurance of the victims, since I don't think I could ever withstand such situation, and I don't even see the limit of the sum that could ever compensate this damage to me. That is why I believe that these should be very huge sums, enormous sums».

BRCS, Novopolotsk: *«In our cases, in principle, yes, i.e., to the extent it's possible, The lawyer always offers to claim the maximum sum; and based on my experience, and in principle, in any case, I'm happy that girls get compensation; the minimum sum that we had was a million, the maximum – six million; we had quite a lot of such processes».*

BRCS, Mozyr: *«If we talk about, say, one million or about 1.5 million, then, of course, no, because human life and health are priceless, and, again, if we calculate the expenses spent by specialists on working with a victim: the salary of a specialist, or even not one, these are material assets, which are allocated to the person, this is education; well, i.e., if we sum up the whole integration package, it's an essential sum of money».*

PO «BYWCA», Minsk: *«No, these sums are much smaller».*

PO «CBW», Brest: *«Yes, no sum will be able to compensate this; of course, for some time, if it was awarded, for some time it was a support to the person, because the victim starts, possibly, his/her new life or gets some employment; this, of course, is serious support, but it will never compensate the damage, which was caused, because the whole life the person will suffer; I don't think that it's possible. Generally, I think it's possible to compensate, if to dissolve it somehow; but where can we take so much passion? We need such spiritual resources, to surround the victim, understanding of close people; and not just close people, but those, who would really love him/her, certainly».*

The following question, based on summing up the data obtained from respondents, similar to the one, put to the first target group, was of general character: **«What do you think, is the problem of low activity of victims in taking part in the criminal process and lodging complaints on compensation of damage, caused by a crime, currently topical for Belarus?».**

IOM-2: *«I can't say for sure. But I think that because trafficking is latent, this problem really exists».*

IOM-3: *«Sooner yes than no. Since under the labour migration cases are seldom initiated so far, and under the sexual one – the specificities of exploitation forces the girl not to be active, being afraid of condemnation or persecution – say, she's guilty herself. If nobody else complains – they would never go to complain themselves».*

BRCS, Gomel: *«Yes, the activity is very low, and it is dictated by the attitude of the society. It's difficult to explain to people why a victim differs from a prostitute, and a fool from a person, who went to Moscow and earned money there in construction. Then he was deceived there, and many people think here: oh, swindlers are keen guys, managed to sucker him. As to the girls, the situation is terrible at all. Even I can't explain many of my acquaintances why these people are not prostitutes; respec-*

tively, they know the attitude to them; that is why, they wouldn't go to trial, because they just fear that they will be dabbed with one's finger. We are, of course, a regional capital, but wherever you look – you see an acquaintance; it's very difficult to work, very difficult. When victims come to us, they are afraid that someone will tell, their acquaintances will see; many people in Gomel know that I work with victims, and when I meet my clients somewhere in the city, I don't come up to them, just because I know that this is not desirable; and when victims turn away, I don't feel aggrieved, because I know why they do it. There's now much more debate that understanding of the problem; respectively, if it becomes known, the public will be highly critical, it'll be just horrifying to go out of home».

BRCS, Novopolotsk: «Well, I can't say it's very low, maybe, not, but it's sooner somewhat average, because many don't know until now that there are organizations, which can provide a free advocate, and that it is, as a matter of principle, it is stipulated in state documents, i.e., even without any organizations, an advocate must be provided; another matter that it will be a general lawyer, and not in the narrow sphere, where we work; but I see that people don't know about their right to compensation of moral damage, and they are afraid to sue, or believe that their damage is not so serious for claiming any compensation».

BRCS, Mozyr: «I think that yes, again, with account of the specificity of the town, where I work; for small towns it's topical – the fear of other people, because the town is small, people know each other; therefore, victims wouldn't like another time to attract attention and receive threats from criminals' relatives. They want to have it over as soon as possible; very few people would like all that red tape, only those who have sort of 'sportive rage', who have nothing to lose and decide to go to the end; therefore, well, the colleagues are right, when they say that we need to help such persons, remain close to them, to the victims, in order to bring the case to the end, but this is a very hard and expensive business; therefore, I can say that yes, it's actual».

PO «CBW», Brest: «I don't know to what extent it's topical, but I think that there are still many victims, who never took part in criminal processes, who have never addressed for help and who just prefer to cope with their problems themselves. I think that it's quite topical, I don't know, possibly, problem the problem arises, where people address, but I wouldn't like to speak for all».

PO «BYWCA», Minsk: «Yes, it's quite topical».

When preparing the range of questions for the interview with specialists in reintegration activities, the authors assumed that the deepened discussion of this initially legal issue may cause the need of additional information. In this context, at the end of the interview, they

were offered the question: «**Would you like to deepen your knowledge in the area of mechanisms and practice of indemnifying victims? If yes, what sort of knowledge would you like to get?**».

IOM-1: «Well, surely. It'd be very helpful. I'd be able to talk to and persuade them. Real knowledge, what mechanisms are available and how they work».

IOM-2: «I'd like to».

IOM-3: «Yes. For sure. What are the arguments of the court, when satisfying the particular sum of the claim? Are there any rates? If five clients per day it means 300,000, and 10 clients – 500,000? It would be nice to get acquainted with the practice of other countries in this sphere, possibly, with the practice of Israel».

BRCS, Gomel: «Yes, quite possible. I'd like to get additional knowledge not only about how to calculate; for example, I don't know how to calculate the sum of compensation, and we do it jointly with operative workers; for them to understand that we help them, not hamper, we can do it in co-operation. Now they invite us only when they talk to minor victims; I'd like them to invite us when they interrogate women, in any case it wouldn't do any harm, we wouldn't hamper them; and, finally, we'd have more victims and could take part in the trials. Last year I wanted to be present at the trial, where the victim was going to lodge a compensation claim, but they didn't let me there. This sort of accompaniment in the course of the trial is not assumed; and then, it's very difficult to say who you are and why you should be present there. Accordingly, the victims often find themselves in such situation, when they feel lonely, they think they are alone; they were forced to the trial, they fear; but they are asked to tell, in the presence of the person who had sent them abroad, what happened with them. It's a huge stress, but psychologist is not admitted there».

BRCS, Novopolotsk: «To a certain extent, yes. Maybe, in the sphere of legal psychology, in the area of secondary victimization; why they don't want to address; whether we need persuading them or not; maybe, we'd give them more choice».

BRCS, Mozyr: «Of course, I've already said that it's a sort of a gap in my work; therefore, I'd like to. First of all, I'd like the person, who will be engaged in this in Mozyr – rather, there's an arrangement that he will be in charge of these matters – to undergo a sort of probation training, or something. It's important for me; I know what I should know, but I need to motivate the city expert, who will run these cases – that's what I need in the first place. In this person knows and is interested to run this work, and knows how to do it, then, I'll have only to bring a victim to him; and that's it; then, I'll have just to help him, within the scope as he'll tell me. I have the necessary printed materials, but one thing is to read, but another

point, how it'll work in practice; and I just know from experience of my colleagues that it's OK, when the person has contacts with those who have already passed through it. It would be nice, if he could go somewhere, say, to Moldova or Ukraine, to some seminars there; I'd be happy, if the person could go and just talk in place, contact his colleagues, see how it goes; that is, it'll be his motivation and his experience; and he will know with whom to contact and take consultations, when some complications arise. Now I lack it, I'd like to have a chance to send my person to some information meeting of this sort, or a seminar or training course».

PO «BYWCA», Minsk: *«Yes, to learn about the nuances or lodging a complaint on damage compensation: should the victim appoint a huge sum of compensation, knowing that the court will reduce it, or is it better to outgo from the real suffered damage? Can a victim lodge suits on damage compensation twice, in the Republic of Belarus and abroad, if the trial is held for traffickers in the Republic of Belarus and for traffickers-citizens of other countries. In what way is it realized in practice? I'd like to learn more about the most successful practices of actual compensation to victims in the Republic of Belarus».*

PO «CBW», Brest: *«Judging by today's interview, possibly – yes».*

RESULTS OF STUDYING OPINIONS OF TRAFFICKED PERSONS ON THEIR COMPENSATION OF DAMAGE CAUSED BY A CRIME

The study of the problem of damage compensation of trafficked persons would be at least incomplete and unilateral, if not investigating the opinion of the trafficked persons themselves to this end. With this idea in mind, the authors interviewed the trafficked persons who took or take the course of reintegration help provided by the IOs-NGOs of Belarus¹.

Since lodging a civil claim in the criminal process is a priori assuming participation of VoTs in it, this group of victims was offered to be interviewed. The authors did not try to poll any particular categories of VoTs, based on their gender differentiation or sphere of exploitation; they were just guided by the victims' intention to take part in the poll. Thus, in the course of the study we interviewed fifty girls and women involved in the sphere of trafficking in persons and exposed to sexual exploitation².

To obtain an objective picture, we interviewed the VoTs, living in all the regions of the country. Thus, as of the moment of polling 18% of respondents lived in the Brest Region, 20% – in the Vitebsk Region, 14% – in the Minsk Region, 6% – in the Mogilyov Region, 26% – in the Gomel Region and 16% – in the Grodno Region.

The age distribution as of the moment of interviewing was as follows: the victims aged 13-17 made 2%, 18-21 years – 12%, 22-24 years – 22%, 25-29 years – 34%, 30-39 years – 26%, 40 years and older – 4%. Evidently, the average age of the respondents is somewhat higher than

¹ See the attached Table.

² It should be kept in mind that in spite of recently revealed facts of trafficking in persons with the aim of labour exploitation, the most widespread in Belarus, like globally, due to its high profitability, is trafficking in persons with the aim of sexual exploitation. According to statistics, in 2002-2007, over 85% of total VoTs were involved in sexual exploitation: see: Shrub, M.P. Investigation methodic of trafficking in persons with the aim of sexual exploitation / edited by V.M. Logvin. Minsk: Tesey, 2009. P. 3.

the typical age of those involved in trafficking¹. This fact is mainly referred to our intention to cover the broadest possible time frame (from 2001 to 2008), both as to the moment of involvement into the sphere of trafficking and as to participation of VoTs in the criminal process. The expansion of the range of respondents in view of the temporal criterion was caused by our intention to estimate the reality of obtaining the pecuniary compensation awarded by the court, if the payment of such compensation by the civil respondent in the form of instalments was assumed. The time of respondents' involvement in the sphere of trafficking in persons split as follows: 2001 – 18%, 2002 – 14%, 2003 – 10%, 2004 – 14%, 2005 – 18%, 2006 – 8%, 2007 – 10%, 2008 – 8%.

The reasons of poor activity of the victims in lodging civil claims on compensation of the damage caused by a crime may be different. In the previous section we gave experts' opinions that sometimes one of the reasons is in their legal nihilism, caused by insufficient level of intellectual development. In this context, we studied the education level of VoTs at the time of their participation in the trial; and it essentially confirmed the opinions of the experts. Most of the respondents – 44% – had the basic (elementary) education, 26% – secondary education, 8% – vocational technical training, 12% – specialized secondary education, 6% – incomplete higher education, and 2% – higher education; besides, 2% has even no elementary schooling. It should be noted that most of VoTs were not active thereafter in obtaining knowledge: only 20% of them managed (by the moment of polling) to improve the level of education.

We may suppose that the reason is in the lack of funds on education and complicated access to training in rural areas. However, on the one hand, practically all the IOs-NGOs, operating in Belarus, render assistance in obtaining education (in any case, some professional courses), on the other hand, analyses of VoTs' residence places does not support this idea. Thus, as of the moment of polling 4% of the respondents lived in Minsk, 38% – in regional capitals, 24% – in cities, 6% – in medium-sized towns, 16% – in small towns, and only 12% – in rural areas.

It appears that one of the reasons of the VoTs' low social and legal activity is in their complicated, even provided the respected support of competent organizations, reintegration in the society, caused by a deep stress suffered by them in the context of trafficking, which was noted by psychologists in the previous section. Thus, 50% respondents were forced, in the process of their exploitation to work overtime and with

¹ See: Shrub, M.P. Criminalistical characteristic of crimes in the sphere of trafficking in persons with the aim of sexual exploitation / edited by I.I. Basetkiy. Minsk: ALC «Druk-S», 2007. P. 63–65; 93–94.

no days off; 48% were deprived of their earnings and exposed to fines imposed by traffickers; 52% were forced to work «At full stretch», 38% – in unbearable conditions; 62% were forced to work with no payment at all; 78% were forced to execute the work (render the services), to which they never agreed; 76% were exposed to restriction of freedom; 58% suffered from physical violence, and 84% – from mental violence.

The implications of the exploitation for victims' mentality depend in much from the duration of affection of the circumstances on the person. 22% of respondents were exposed to exploitation for the term of up to one month, 18% – from one to three months, 30% – from three to six months, 24% – from six to twelve months, and 6% – for more than a year.

It is important to note here that the stress condition was not over, for most of the VoTs with their arrival to homeland, but continued during the post-criminal period. Thus, 82% of them felt the absence of psychological help; 56% had health problems; 46% received threats from of traffickers; 74% felt material difficulties (in fact, they went abroad just to solve them, in most cases); 38% had other difficulties (fear of publicity, shame, deprivation of paternal rights, etc.).

In overcoming their problems, as noted the VoTs, a great role belongs to understanding on the part of law enforcers (Les). The very fact that 74% of respondents said that they had been sent for rehabilitation to IOs-NGOs by employees of the MIA (Ministry of Internal Affairs) is an indication that in most cases such understanding was present.

However, same important for their successful reintegration, same as for the inquiry, in social and legal activity, is the understanding of them by their relatives and close friends. In this context, the authors found it necessary to clarify, with whom the VoTs lived at the time in trial. 14% noted that they lived with their parents, 42% – with mothers, 16% – with husbands (cohabitants), 8% – with other relatives, 20% – alone, of the 34% also lived with their children. Evidently, almost half of the respondents grew up and lived in incomplete families (with no father), which had obviously told negatively both on their upbringing and on their reintegration upon return from slavery. Along with that, a third of the respondents had dependent children, and 52% noted, in general, that at the time of the trial they had dependants – relatives and close people. This circumstance, in our opinion, on the contrary, could be a precondition for lodging claims about compensation.

It is evident that the fact of lodging claims was caused, first of all, by self-identification of VoTs: by perception of the fact that the crime had caused damage to them, and its character (type). In answer to the question «What do you think, what type of damage was caused to you by the crime?» 56% of respondents indicated to the physical, 16% –

property, 92% – moral damages, and only 2% had no answer and said that they had suffered no damage. Besides, 90% of the VoTs took part in the criminal process as victims, while the civil suit was lodged only by 44%. 8% of the respondents told about the compensation of the physical, 2% – of the material and 42% – of the moral damage. Thus, while 96% of the VoTs acknowledged the fact that some damage had been caused to them, less than half of them lodged claims on its compensation. 6% of those, who believed that they had suffered damage, were not recognized as victims.

To clarify the subjective factors, which affect the activity in lodging claims, the VoTs were offered to note their motives of doing this. Only 8% noted that they lodged the claim exclusively with the aim to get money; 20% did it based on the reasons of the triumph of justice, and desire to punish the traffickers; most of the respondents, 24%, failed to clearly formulate the motive, giving the following answers: «Lawyer advised me,» «for company», «just wanted compensation». At the stage of preliminary inquiry the claim was lodged by 4% of respondents; 38% noted that they did it in the course of court proceedings, and 2% – after passing the verdict with regard to a criminal case (within the civil procedure).

56% of the responding VoTs did not lodge any claims. 28% of them explained that they had known about their right, but did not want to enforce it. Among the reasons, as a rule, they mentioned three main points: desire to forget their sufferings, fear of publicity and fear of revenge of traffickers. 2% were, as of the moment of polling, in expectation of the trial wanting to lodge a claim on damage compensation. 26% noted that they had failed to lodge the claim because they did not know about this right of theirs. Prior to address to IOs-NGOs for help, 62% of the VoTs did not have this information.

As noted in the previous sections, the law of criminal procedure obliges the body of criminal prosecution and the court to explain the right of lodging a civil claim to the person, who had suffered from the damage, caused by a crime. In this context, a reasonable question arises, why, as the VoTs report, a quarter of them did not know at all about their right, and two thirds did not have this sort of information as of the moment of arrival to IOs-NGOs, provided that 74% of the victims were sent there by law enforcers.

An explanation of the complete unawareness about the right to compensation of damage, in the opinion of the authors, may be in the fact that, on the one hand, not all the VoTs were victims in criminal cases (8% were witnesses, and 2% could not define their procedural status), on the other hand – by virtue of a number of subjective reasons

(stress condition, low level of education and intellectual development) they were not able to duly perceive the information they were given. Thus, in general, only 48% of VoTs indicated that the right to compensation of the damage caused by a crime and the procedure of lodging claims were explained rather completely and clearly; 6% noted that they did not understand the essence of their right; 12% understood their right but did not quite understand the procedure; and 8% gave no definite answer.

In answer to the second part of the question, we can suppose that direction of VoTs to the IOs-NGOs is often made at the early stages of LEs' working with them (for example, at the stage of initiation of the criminal case, or before meeting the inspector), which is justified from the viewpoint of sooner rendering them the respective help, and, at the same time, explains the high percentage of their unawareness about their right at this stage.

In answer to the question put to the VoTs about who had informed them about their right to lodge a claim, most of the respondents, 38%, noted that it was done by the inspector, 34% – by the lawyer, 26% – by employees of IOs-NGOs, and 6% – by the court¹.

It follows from the words of the VoTs, in total, 44% of the victims were informed about their right to lodge claims by the body in charge of the criminal process, and 60% – by lawyers and IOs-NGOs. Here, the authors tend to assume that in the course of explanation of the considered right to the VoTs by both parties, the victims' memory better preserved the detailed information, which was brought to them in the course of legal consultations, given by the lawyers-advocates provided by the IOs-NGOs.

A confirmation of the above assumption is in answers to the question about what organization (structure) was the most influential on their final decision to enforce their right to compensation of damage (for those who enforced this right). Thus, 22% noted that it was the lawyer, 24% – NGOs, 14% – inspector, 2% – court, 2% – friends (relatives). 32% of VoTs indicated that in defining the sum of the claim they were helped by the lawyer (employees of IOs-NGOs), 4% – inspector, 2% – court, and 12% of the respondents defined the sum of compensation by their own.

40% of the respondents noted that the information about the damage compensation that was given to them, matched the reality; 4% answered in the negative; and 30% had no answer (since they did not lodge the claim).

¹ Some respondents gave several answers to certain questions.

When studying the sums claimed by the VoTs to compensation, the following figures were obtained: 18% of them lodged the claim to the sum of 1-3 million roubles, 16% – 3-5 million roubles, and 10% – over 5 million roubles. All the lodged claims were satisfied, and the sums collected by the courts were distributed in the following percentage: 24% – under 1 million roubles, 18% – under 3 million roubles, and 2% – over 5 million roubles.

It follows from the words of the VoTs that in 20% of the cases the monetary funds collected by decisions of the court were paid to them during a long period of time, by instalments; in 14% of the cases the money were paid in a lump sum (at a time), and 10% of the victims could not tell the system, as they got nothing. Equally 20% were satisfied, and 20% – dissatisfied with the system of payments, as defined by the court, while 4% gave no definite answer. Finally, only 18% of the VoTs actually received the money collected by the court into their hands.

The final question of the interview about how the payment of the compensation influenced their further life, the VoTs answered as follows: 4% – bought foodstuffs; 6% – bought clothes and home appliances; 2% – spent money to recover their health; 4% – made repairs in their apartments; 4% – paid their debts; 14% – felt no affect; while 6% – receive regular threats from traffickers.

CONCLUSIONS AND RECOMMENDATIONS

The subjects for identifying the persons involved into the sphere of trafficking in persons are the law enforcement bodies and international and nongovernmental organizations (IOs-NGOs). According to the current legislation, recognition of a person to be a victim of trafficking – a trafficked person (TP) is possible only in case of a criminal prosecution on the fact of a respective crime committed against this TP, that assumes acquisition by him/her of a certain procedural status – of a victim or a witness (depending on the circumstances of the case). The right to compensation of the damage caused by a crime arises only in those VoTs, who were recognized to be victims in the criminal case. Thus, the victims, who address for help to the IOs-NGOs, but appearing outside the field of attention of law enforcement bodies, who did not take part in the criminal process, officially are not VoTs; they are recognized as such only by the respective organizations, and have no right to compensation of damage.

In the opinion of the overwhelming majority of law enforcers (LEs) and judges, the claims of damage compensation are lodged by no more than 10% of the VoTs, participating in the criminal process. The study of the opinions of employees of the IOs-NGOs indicates that out of the total number of the victims, who are taking the course of rehabilitation support in these organization, no more than half take part in the criminal process, while only a quarter of them, about 25%, enforce their right to compensation of damage. When analyzing the above data, one should keep in mind that not all the VoTs, who cooperated with law enforcement bodies, addressed for help to the IOs-NGOs, but, at the same time, all the VoTs, who lodged their claims, including those who underwent their rehabilitation in the IOs-NGOs, were participants of the criminal process. Thus, the comparison of the above figures allows moving a hypothesis that the VoTs, who took (are taking) their reintegration course, are more willing and active in enforcing their right. In the enforcement process, an important role is played by the qualified legal aim rendered to the VoTs. This argument is confirmed by the fact that practically all the interrogated lawyers noted that civil claims in the criminal process were lodged by all the VoTs, whom they rendered help.

In the opinion of most of the experts, the problem of low activity of VoTs is actual for Belarus and stems from the fact that, on the one hand, VoTs are afraid to lodge claims on damage compensation (especially in small towns), and on the other hand – not all of them understand their right and know about it.

The above experts' opinions are confirmed by the results of polling the VoTs. Only 44% of the total number of the respondents, who took their course of reintegration support at the IOs-NGOs and participated in the criminal process, lodged civil claims on compensation of the damage caused by a crime. Out of 56% of the victims, who did not enforce their right, 26% failed to do it by virtue of unawareness about it, 28% – for the desire to forget as soon as possible what had happened with them, for fear of publicity and vengeance from traffickers, etc.

Practically all the psychologists and social workers stick to the same viewpoint about the need for VoTs to claim compensation of the damage caused to them by a crime. In their opinion, reintegration of VoTs in the society is extremely difficult, entails high expenses on treatment and recovery of both physical and mental health. Besides, although no money can often compensate the caused damage, the very fact of collection of compensation from the criminal is an act of his/her attraction to responsibility, not only before the state (in case of conviction), but also before the persons, against whom the particular crime was committed.

In the opinion of the lawyers, while being an integral right of the victim, lodging a civil claim on compensation of the damage caused by a crime, is, besides, very important for VoTs based on the following provisions:

- ✓ it is a stimulus for active participation in the criminal process (giving evidences at the preliminary inquiry and participation in the court proceedings);
- ✓ it contributes to understanding by VoTs of the fact that they are defended by the state and that their broken rights are restored;
- ✓ it contributes to a more complete perception by the court of the character and volume of the damage caused by a crime;
- ✓ it strengthens in the eyes of the convict the principle of imminent punishment; and
- ✓ it contributes to the general prevention of crimes.

Explanation of the right to compensation of damage caused by a crime is the duty of the body of criminal prosecution and the court. At the same time, in case of participation in the case of a representative of the victim (a lawyer), this right is also explained to VoTs by this participant of the criminal process. As follows from the poll of the experts,

experienced LEs and lawyers, already at the first meeting with VoTs, not only explain the right, but also describe in detail the procedure of filing and lodging a suit. Although the explanation of this right is not the duty of the employees of the IOs-NGOs, the general information about the possibility of obtaining the compensation in case of participation in the criminal process is given by them to VoTs in the course of reintegration support.

It follows from the words of psychologists and social workers that at rendering the reintegration assistance they are explained the right of VoTs to compensation of the damage caused by a crime. Although it is not among their direct duties, informing VoTs by them about it may be a stimulus for them for their participation in the criminal process and exposing the traffickers. At the same time, in the opinion of the authors, this practice should also contribute to restoration of the moral condition of victims, since, as noted by a number of experts, compensation of damage brings, to a certain extent, into VoTs the feeling of the triumph of justice not only before the face of the state, but also right against their eyes.

The study of the opinions of VoTs indicates that under all the importance of clarification of the right to compensation of damage, the efficiency of this work is not always very high. Thus, only 48% of the victims said that this right and the procedure of lodging claims were explained to them completely and clearly, and 26% of them noted that they were not informed at all about their right to lodge a civil claim in the criminal process.

The necessity of a detailed explanation of the right to compensation of damage and the procedure of lodging a civil claim is dictated by the fact that not always VoTs by virtue of the level of their education, psychological condition and a number of other subjective and objective factors are capable to correctly perceive the respective information.

Based on the analysis and generalization of the opinions of experts, we can state that in general the active behaviour of VoTs in lodging a claim on damage compensation depends from a complex of subjective and objective factors, which form the attitude of the victims to this issue during a certain period of time after the crime committed against him/her, and the post-criminal period.

Among the subjective factors are the following:

✓ *Fact of awareness about the aim of travel abroad.* Evidently, involvement in the sphere of trafficking in persons through a deceit or kidnapping essentially strengthens the victim's psychological trauma, causing unwillingness to cooperate with law enforcement bodies, take part in the criminal process and lodge a civil claim by virtue of the de-

sire to forget and never get back to these traumatizing memories. At involvement through an open offer, even in case of causing damage by the crime, VoTs may not identify themselves as victims, by accusing themselves of what happened.

✓ *Sphere of exploitation.* The victims of labour exploitation (as a rule, men) are much more active in enforcing their rights and usually willingly lodge civil claims. The victims of sexual exploitation (as a rule, women) are much less active. An important role in this case belongs to the subjective psychological factor.

✓ *Peculiarities of exploitation.* The ways of enforcement to prostitution and slavery labour; the term of exploitation; conditions of stay; number of clients; character of work; duration of labour time; presence and volume of payment for the rendered services or fulfilled works, etc. – along with growth of critical threshold of these circumstances and conditions, the implications of the crime become more and more grave for the mental health of VoTs and decrease their activity in aspiration to restore their rights and broken justice.

✓ *Consequences of exploitation.* Infections of STIs, HIV, viral hepatitis, chronic and other diseases; childlessness; mental disorders, etc. – the presence of these consequences, so grave for VoTs, can still further aggravate the general stress condition of the victims after exploitation. It is obvious that such circumstances are telling negatively on reintegration of VoTs and their persistence in standing for their rights.

✓ *Subjective attitude to what happened and self-identification.* For the considered range of crimes, specific peculiarities are notable in how VoTs perceive what happened to them. The victims can blame themselves of what happened (in particular, under the influence of surrounding people), feel the fear of responsibility for their committed offences (illegal crossing the border and stay in the destination country, prostitution, etc.), feel positive attitude to traffickers (the so-called «Stockholm syndrome»), acquire a post-traumatic stress disorder, or suffer from «psychological personality deformation». Due to similar circumstances, VoTs are not able sometimes to self-identify them as victims.

✓ *Perception of completeness of the damage caused by a crime.* In the opinion of experts, it takes place differently in VoTs and depends on the level of education, awareness about the aims of the trip, etc. At the same time, if the property and physical damage is somehow better understood by them, the presence and the volume of moral damage is not completely perceived by VoTs by virtue of their psychological condition.

The following refers to objective factors:

✓ *Peculiarities of the reintegration period.* It follows out of the answers of experts that often VoTs try to avoid a repeated reconstruction

in their memory of what they had lived through, they fear to disclose the intimate sides of their life, etc. As noted earlier, the rehabilitation course (obtaining, first of all, of psychological help) is telling positively on overcoming the above barriers and intention of VoTs to contribute to attraction of traffickers to responsibility and to claim compensation of the damage caused by a crime.

✓ *Presence of risks.* Certain experts have noted that VoTs, already in the post-criminal period may experience pressure caused by traffickers or their relatives or friends. Evidently, on the one hand, the feeling of insecurity and fear of execution are strengthening their reluctance not only to lodge a suit on damage compensation, but generally take part in the criminal process and give accusatory evidences. On the other hand, when such pressure brings no open aggression, but is aimed towards reevaluation by VoTs of what had happened and formation of a false presentation about his/her guilt of that, the result here can be the absence of a TP's self-identification as a victim.

✓ *Competence and professionalism of employees of law enforcement bodies and social services (other specialists).* Evidently, the formal approach of the inspector (operative worker) to contacting VoTs and, in particular, to explaining their rights and duties, with no account of peculiarities of the crimes in the considered sphere, is depressing, in a number of cases, not only the desire of victims to lodge a civil claim, but also, as a matter of principle, the understanding by them of the very essence of the caused damage, as well as of the procedure of its compensation. The aforesaid also completely refers to the workers of social services, who are rendering the reintegration help to VoTs, and to other specialists (including employees of IOs-NGOs, lawyers, etc.).

✓ *Reality (chances) to get compensation.* This circumstance depends from the fact of establishment by the body of criminal prosecution of any defendant's property and monetary assets and imposition of arrest on them; cost of the arrested property; number of victims and defendants in a particular criminal case. Understanding by VoTs of the fact that the lodged claim can not only be satisfied by the court, but they can indeed get real money as damage compensation, is essentially strengthening the intention of VoTs to enforce their right.

✓ *Obtaining of highly-qualified legal aid (legal consultations; participation in the case of the victim's representative – a lawyer).* Under all the diligence of the inspector and all his/her attention to the problems of VoTs, his/her round of duties does not include rendering legal aid to the victims in compiling their claims (although, as noted earlier, the law obliges the body of criminal prosecution to ensure the victim's ac-

cess to justice and take measures to ensure payment of the compensation of the caused damage; the character and volume of damage are elements of the fact in proof). In this context, rendering of the respective consulting support by the lawyer is a precondition of active behaviour of VoTs in enforcing of their right.

Most of the experts-lawyers have noted that the claim, as a rule, is lodged by VoTs in the court (at the trial); and it is motivated by the fact that the complaint goes to the court and is considered there. This experts' opinion is confirmed by the poll of the victims. Thus, out of the 44% of them who lodged claims, 38% did it at the trial.

It follows from the study of empirical data that VoTs do not face any real organizational problems related to lodging a statement of claim, since the procedure of lodging a civil claim in the criminal process is clearly regulated by the legislation and is rather simple. As to the psychological problems that exist in this area, they are connected not with lodging a claim as such, but sooner with the victim's participation in the court proceedings in principle. The reasons are, as a rule, of subjective character (they were listed above). Based on the experts' opinions we can conclude that these particular reasons, first of all, cause low activity of VoTs in participating in the criminal process and lodging suits on compensation of the damage caused by a crime. In this context, the opinion expressed by practically all employees of IOs-NGOs about the necessity to support VoTs, including to accompany them when they go to court.

It was noted earlier that for VoTs the moral damage is the most complex for understanding. Along with that the experts have stated that exactly moral damage is most often applied to compensation. This is confirmed by the results of polling the victims themselves: 42% out of the 44% of those who enforced their right, claimed for compensation of moral damage.

It is obvious that this circumstance is characteristic for the cases, when VoTs receive the necessary explanations of the respective notions and procedures, which, as a matter of fact, is one of the preconditions of the activity in lodging the claim. The lawyers were unanimous in the opinion that this type of damage is claimed, because in practice it is present in the overwhelming number of cases and requires no documentary confirmation (unlike the property and physical damages), which is not always possible to obtain. At the same time, it was noted many times that a problematic issue is definition of the sum of the claim on compensation of the moral damage, since the legislator does not provide any criteria to this end.

Definition of the sum of the claim depends on the sphere of exploitation. Experts note that as to the labour exploitation such calculations are rather simple, just based on the sums, which were promised to the person involved in the sphere of trafficking in persons and were not paid by traffickers for the work, with account of the duration of exploitation (as a rule, the property damage is claimed to compensation in the first place). In case of sexual exploitation, VoTs face difficulties in defining the sum of the claim and do it with the help of lawyers (32% of the respondents), who are guided, as a rule, by judicial precedents (especially, on compensation of moral damage).

Assistance in defining the volume (sum) of the claim, both by employees of law enforcement bodies and by lawyers, mainly implies providing consultations on the basis of judiciary practice and with account of really available funds for compensation (property of the defendant; detection of the property and imposition of arrest thereon).

In practice, as a rule, the sums, collected by the decision of the court, are lower than those claimed by the VoTs. At the same time, in the opinion of a number of experts, even the claimed sums are sometimes unable to compensate the actual damage caused to the VoTs (HIV-infection, viral hepatitis, childlessness, etc.). The sums, actually received by the VoTs are still lower. The reasons here are the objective impossibility to impose arrest on the property and monetary assets of the defendant (when they are legally owned by third persons); collection of money from defendants in favour of the state and not directly to compensation of damage caused to the victims; insufficiently profound understanding of the problem of trafficking in persons in the society and scornful attitude to VoTs. Both lawyers and psychologists joined in the opinion that the sums collected by the courts on civil claims of VoTs, are often disproportionate to the damage, actually caused by the crime. Most of the responding VoTs confirmed the opinions of the experts. Thus, only 18% of the victims received the money collected by the courts under partially satisfied claims in their hands; and the answers to the question on how the payment of compensation influenced their further life allow concluding that the volume of such payments was highly insufficient.

The judgements of the lawyers about the uniformity of approaches of the courts to definition of the volumes of damage compensation split. With account of individual specificities of each particular criminal case and every particular episode of trafficking in persons and their consequences for VoTs, still, it is difficult to say about any uniformity in assessing the volumes of caused damages all over the country. At the same time, a number of experts made constructive proposals about the

expediency for the legislator to fix the limits (at least the lower one), by which the courts could be guided when defining the volumes of compensation. As noted earlier, the problematic issue here is definition the volumes of material compensation of moral damage.

In the opinion of most of the lawyers, the current legislation, which regulates the procedure of damage compensation, is quite efficient. However, practically all the experts agreed that the problem is to enforce the court decisions in the part of collecting compensations, that is, actual collection from the respondent of payments for compensation of damage. The reason is that if the defendant formally has no money and property, the probability of such collection is minimal. Experts expressed a number of opinions and ways of possible solution of these problems.

Since in the course of the study we interrogated the lawyers, who have essential experiences of the work, many of them found their knowledge in the area of the mechanisms and practices of providing compensations to victims to be quite sufficient. However, a number of experts expressed a wish to get acquainted with foreign experiences in this part. Practically all the specialists in reintegration activities noted in their interviews the need to deepen their knowledge in the considered sphere with the aim to use it in their professional activities. In general, most of the experts expressed their wish to take part in topical workshops and conferences on this problem.

* * *

Based on the analysis and summing up of the opinions of experts, we find it possible to formulate a number of recommendations directed towards increase of the efficiency of compensation of damage caused by a crime, to VoTs.

A precondition for a more active behaviour of VoTs in lodging claims on compensation of damage caused by a crime is a more active cooperation of LEs and IOs-NGOs in implementing the mechanism of redirection of VoTs. On the one hand, the VoTs, identified by LEs, should be sent, whenever possible to these organizations for taking the course of reintegration support, which contributes to VoTs' self-affirmation in the society, increase of the level of their self-actualization and understanding of the need to consolidate the efforts, directed towards punishment of traffickers and recovery of their broken rights. On the other hand, IOs-NGOs should work towards explaining to the VoTs, identified by them, the need to cooperate with LEs and participate in the criminal process, which is not only the necessary precondition for punishing criminals, but also for enforcing the victim's rights, including the right to compensation of damage caused by a crime.

Lodging a claim on damage compensation is not only the right of VoTs, but is also one of the conditions for their successful reintegration in the society. This circumstance should be accounted for both by LEs and IOs-NGOs in their work with VoTs when addressing their professional tasks.

The wish of VoTs to cooperate with law enforcement bodies and take part in the criminal process may depend, in a number of cases, from the personal interest of VoTs in obtaining compensation. On the other hand, a precondition of such interest is their understanding of a realistic opportunity to get compensation of damage. In this context, in executing by the body of criminal prosecution of requirements of part 2, Article 102, and part 3, Article 148, of the CCP on proving a civil claim, and of Article 156 of the CCP on securing a civil claim, any formal approach should be excluded. Timely measures to establish the character and volume of the damage caused by a crime, detection of the property that can be arrested, and monetary assets of suspects (defendants), already at the initial stage of inquiry, can decrease the probability to hide them, including, by means of legal re-issuance by the trafficker of the ownership rights.

The investigator (detective) should explain to suspects (defendants) that in accordance with point 4, part 1, Article 63, of the CC «voluntary compensation of damage, or elimination of the damage caused by a crime; other actions aimed at smoothing this sort of damage,» are the circumstances, mitigating the responsibility.

It is important to exclude formal approach at fulfilling the requirements of Article 150 of the CCP dealing with explanation by the body of criminal prosecution to the person, who suffered from the damage caused by the crime, his/her right to lodge a civil claim. As far as possible, the notion damage and its types, and the procedure of lodging a claim on its compensation should be described in all possible details, since in a number of cases the mental condition, the level of intellectual development and other peculiarities of VoTs, and the volume of information presented to them, do not allow VoTs to completely perceive the explained provisions of the legislation.

It is expedient for IOs-NGOs to hold, in the course of implementing reintegration support in relation to VoTs, consultations on the issues of damage compensation. It is not recommended to hold such consultations at the initial stages of working with VoTs, to avoid any oversaturation with information and difficulties in perceiving it. With the aim to attain better understanding of the essence of the damage caused by a crime, procedure of lodging claims on compensation thereof, help in enforcing this right, as far as possible professional spe-

cialists – lawyers – should be attracted, capable of representing the interests of VoTs in the criminal process. Consulting should be held on the bases of respect of the rights of VoTs, unbiased attitude to them and individual approach.

In general, it is important both for the body of criminal prosecution in charge of proceedings on the case and for the lawyer who is consulting VoTs, to keep in mind subjective and objective factors influencing the intention of VoTs to take part in the criminal process and to claim damage compensation (see the conclusions). In particular, the negative subjective factors, causing the stressful and depressive condition of the TP in the post-criminal period, can be redirected, at a clever individual approach, towards excitation in the consciousness of the victim of a healthy feeling of vengeance, triumph of justice and restoration of broken rights. Here, an important condition is ensuring the VoTs' security in the course of their participation in the criminal process (46% of the respondents indicated that upon their return to homeland they were exposed to threats from traffickers). That is why, the body of criminal prosecution (with possible cooperation with IOs-NGOs) should take the respective and timely security measures¹.

Since participation of VoTs in court proceedings is a stressful situation for them, the right to lodge a civil claim may be enforced at the stage of preliminary inquiry. In any case, it is recommended to prepare a complaint (formulate claims) in the course of the pre-trial proceedings.

When defining the sum of the claim, one should outgo from the data obtained in the course of proving the character and volume of the damage caused by a crime at the preliminary investigation. Along with the provisions and recommendations to this end presented in the first section, it is necessary to keep in mind that at proving the moral damage, along with appointment of the psychological-psychiatric examination, one can also make use of evidences of the psychologists (psychotherapists) of IOs-NGOs about the consequences of exploitation for the VoTs, with whom they worked in the course of reintegration support. It is better that they are interrogated as witnesses with regard to the criminal case.

When the court passes a decision to satisfy a civil claim, an important role belongs to assessment of the character and volume of the damage caused by a crime². In this context, when proving these circumstances, the body of criminal prosecution should take into account,

¹ See: Shrub, M.P. Ensuring safety of participants of the criminal process and other persons when investigating crimes of trafficking in persons for sexual exploitation // Herald of the Academy of the MIA of the Republic of Belarus. 2004. No. 2. P. 146–149.

if the trafficked person is sent to IOs-NGOs for receiving reintegration support, that the need to render certain types of help, first of all, of rehabilitation character (medical or psychological), was caused directly by the committed crime, while rendering them is directed towards elimination of the consequences thereof. In this context, in the opinion of the authors, the expenses suffered by IOs-NGOs on rendering these types of help may be referred to the damage, caused by the crime, and should be reflected in the materials of the criminal case. Such damage cannot be claimed by a TP to compensation within a civil claim, since the respective expenses are suffered not by the TP, but by a third person (IOs-NGOs). At the same time, based on the principle of omnitude, completeness and objectivity of the investigation of the circumstances of the case, this circumstance should be accounted for by the body in charge of the criminal process.

As a whole, in the opinion of the authors, it is important that the body of criminal prosecution and the court take into account, when assessing the presence, character and volume of the damage caused by a crime, the circumstance that frequently the persons, involved in the sphere of trafficking in persons, and real crime victims, do not identify themselves as victims. The list of reasons of this phenomenon was considered earlier (see the conclusions). However, the body in charge of the criminal process is initially assessing the awareness of the person about the aims of the travel, by means of establishing the method of involvement in the sphere of trafficking in persons: whether recruitment through deceit, or kidnapping, or an proposal (in particular, about going in for prostitution). The practice shows that, as a rule, in the latter case the actions of traffickers are qualified not as «trafficking in persons» under Article 181 of the Criminal Code (CC), but as «benefiting from prostitution or creating conditions for prostitution, connected with taking the person out of the state for prostitution» under Article 171 of the CC. In such case, as a rule, VoTs are not recognized in criminal cases as victims.

Evidently, when a person went abroad voluntarily and knowingly, being notified about the aim of the travel, conditions of stay and the rates of payment for works (services), if later all this complied with reality, there is no point of victimization here. In such cases these persons can be witnesses with regard to a criminal case, and they quite reasonably do not believe themselves to be victims.

² See: Points 10–11 of Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2004, No. 8 «On Practice of Considering Civil Claims by Courts in Criminal Process».

However, firstly, one should keep in mind that the very fact of awareness of the character of the forthcoming work in the sphere of sex-industry when going abroad does not at all mean that person subsequently did not suffer any damage. The absence of a person's self-identification as a TP should not be the only criterion for defining his/her procedural status. Thus, the practice knows a huge number of cases, when, bring aware about the aim of the travel (going in for prostitution), people found themselves in slavery conditions: they were forced to work actually for nothing (or for the salary disproportionate to what had been promised), service up to several dozens of clients per day against one's will, etc.¹ Such people often do not believe themselves to be victims and accuse themselves of what had happened. However, the fact of causing them in the process of exploitation at least the property damage looks obvious and cannot be disregarded even under the negative attitude of the society to prostitution. In other words, we should not mix up the legal and ethical components of the problem.

The second aspect of the considered problem is that the absence of self-identification of a person as a TP may have place also in the case of involvement by means of recruiting through deceit or even kidnapping. However, such self-assessment appears not at once, but upon expiry of a certain period – as a rule, at least several months of exploitation; or at a repeated victimization. As a matter of fact, when suffering in the course of exploitation during a certain period of time from a broad range of methods of physical, mental, economic and organizational-legal influence² a person may acquire serious, sometimes irreversible mental changes (psychological deformation): life priorities are reevaluated, concepts and values are replaced, etc. Thus, the damage, really caused by a crime, becomes latent and hard to reveal and understand by surrounding persons.

In addition to the aforesaid, the authors believe it necessary to note that in case of qualifying the offence committed against a TP under Article 171 of the CC, it should be kept in mind that the legislator refers this a crime to Chapter 20 «Crimes Against Sexual Immunity or Sexual Freedom» of Section VII «Crimes Against Person». That is, such crimes encroach directly on the person, causing damage not only to the society, but also to a particular person. Besides, the only criterion of defining the

¹ See, for example: Court Archives of the Oktiabrskiy District of Grodno. Criminal Case No. 1-391/02; Court Archives of the Tsentralny District of Mogilyov. Criminal Case No. 1-554.

² See: Shrub, M.P. Criminalistical characteristic of trafficking in persons with the aim of sexual exploitation / edited by I.I. Basetskiy. Minsk: ALC «Druk-S», 2007. P. 31–35.

procedural status of a person as a victim, according to part 1, Article 49, of the CCP, is the fact of causing him/her any physical, property or moral damage, irrespective of his/her subjective attitude to this fact.

By summing up the conclusions and recommendations, formulated on the basis of the analysis and generalization of the current legislation, opinions of practical experts, as well as of trafficked persons, the authors find it reasonable to quote here Points 19 and 4 of the Statement of the Plenum of the Supreme Court of the Republic of Belarus of June 30, 2005, No. 6 «On Application Practices of the Provisions of the Code of Criminal Procedure, Regulating Participation of Victim in Criminal Process»:

«The victim is the only participant of the process who has directly suffered from the crime; therefore, ensuring the protection of his/her rights and legitimate interests acquires special value. The decision to recognize an individual to be a victim shall be made immediately upon establishment of the grounds thereto, which is an important guarantee of the victim's timely access to justice and enforcement by him/her of procedural rights and execution of his/her duties».

APPENDIX

Appendix 1

***Summing up of the interviews with trafficked persons
on the issues of compensation of damage caused
by a crime (total number of respondents – 50 persons;
the data presented is in percent)***

1. Sex:

1. Female – 100
2. Male – 0

2. Age (full years as of the moment of polling):

- 13–17 – 2
- 18–21 – 12
- 22–24 – 22
- 25–29 – 34
- 30–39 – 26
- 40 and older – 4

3. Education (as of the moment of polling):

1. Basic (9 forms) – 44
2. Secondary (11 forms) – 26
3. Specialized secondary – 12
4. Technical –vocational training – 8
5. Incomplete higher – 6
6. Higher – 2
7. Other (incomplete basic) – 2

4. Citizenship (as of the moment of polling) – Republic of Belarus – 100

5. Region of residence (as of the moment of polling):

1. Brest – 18
2. Vitebsk – 20
3. Minsk – 14
4. Mogilyov – 6
5. Gomel – 26
6. Grodno – 16

6. Population centre where the victim lives (as of the moment of polling):

1. Country capital (Minsk) (population over 1,600,000) – 4
2. Regional capital (population from 400,000 to 1,000,000) – 38

3. City (population from 100,000 to 400,000) – 24
4. Middle-sized town (population from 50,000 to 100,000) – 6
5. Small town (population from 2000–10,000 to 50,000) – 16
6. Rural-type settlement (population up to 2000–10,000) – 12

7. Country of exploitation:

1. Russian Federation – 42
2. Turkey – 24
3. United Arab Emirates – 4
4. Israel – 2
5. Switzerland – 2
6. Poland – 14
7. Republic of Belarus – 8
8. Cyprus – 2
9. Lebanon – 2

8. Year, when the victim was involved into trafficking:

- 2001 – 18
- 2002 – 14
- 2003 – 10
- 2004 – 14
- 2005 – 18
- 2006 – 8
- 2007 – 10
- 2008 – 8

9. Duration of exploitation:

1. Up to 1 month – 22
2. From 1 to 3 months – 18
3. From 3 to 6 months – 30
4. From 6 months to 1 year – 24
5. Over 1 year – 6

10. What type of violence did the victim suffer from (several answers were possible)?

1. Enforcement to work overtime, without days-off, etc. – 50
2. Unfair financial punishments (deprivation of earnings, increase of debt, etc.) – 48
3. Compulsion to work with increased intensity («At full stretch») – 52
4. Compulsion to work in inhumane conditions – 38
5. Compulsion to work with no pay – 62
6. Compulsion to perform the work, to which you never agreed – 78
7. Restriction of freedom (travel control, isolation, etc.) – 76
8. Long delay of salary payment – 8
9. Compulsion (coercion) to sexual services – 90
10. Physical violence (beatings, etc.) – 58
11. Psychological violence (threats, blackmail, deceit) – 84
12. Other forms of violence – 34

11. Problems the victim faced after return?

1. Threats from traffickers – 46

- 2. Absence of money – 74
- 3. Health problems – 56
- 4. Lack of psychological support – 82
- 5. Other (fear of publicity, shame, deprivation of paternal rights, etc.) – 38
- 6. No problems – 4

12. Year, when you addressed the organization for help:

- 2003 – 6
- 2004 – 4
- 2005 – 4
- 2006 – 10
- 2007 – 20
- 2008 – 36
- 2009 – 20

13. Who sent you to the organization?

- 1. Ministry of Interior or other state agencies – 74
- 2. You addressed by yourself to the NGO, international organization, or hotline – 10
- 3. Other (friends, acquaintances) – 16

14. Name of the organization that helped you during criminal process¹:

- PO «BYWCA» – 20
- IOM – 32
- BRCS – 26
- PO «CBW» – 20
- Other NGOs – 8
- Nobody (do not know) – 18

15. Citizenship at the time of the criminal process: Republic of Belarus – 100

16. Place of residence at the time of the criminal process:

- A) country of residence Republic of Belarus – 100
- B) region of residence:
 - Brest – 18
 - Vitebsk – 20
 - Minsk – 16
 - Mogilyov – 4
 - Gomel – 26
 - Grodno – 16
- C) population centre:
 - Country capital (Minsk) (population over 1,600,000) – 6
 - Regional capital (population from 400,000 to 1,000,000) – 40
 - City (population from 100,000 to 400,000) – 20
 - Mid-sized town (population from 50,000 to 100,000) – 4
 - Small town (population from 2000–10,000 to 50,000) – 18
 - Rural settlement (population up to 2000–10,000) – 12

¹ Some VoTs were helped by several (two, as a rule) NGOs within the redirection mechanism.

- 17. Age at the time of the criminal process (full years):**
 13-17 – 6
 18-21 – 32
 22-24 – 22
 25-29 – 26
 30-39 – 12
 40 and older – 2
- 18. Education at the time of the criminal process:**
 1. Basic (9 forms) – 44
 2. Secondary (11 forms) – 26
 3. Professional-technical – 8
 4. Secondary-vocational – 12
 5. Unfinished higher – 6
 6. Higher – 2
 7. Other (incomplete basic) – 2
- 19. Who did you live with at the time of the criminal process?**
 With parents – 14
 With mother – 42
 With husband (cohabitant) – 16
 With other relatives – 8
 Alone – 20
 Also with children – 34
- 20. Did anybody depend on you materially at the time of the criminal process (parents, children, other relatives and cohabitants)?**
 I had people in material dependence – 52
 Nobody depended – 48
- 21. What do you think, what damage was caused to you by the crime?**
 Physical – 56
 Property – 16
 Moral – 92
 Don't know/No answer – 2
 I believe, no damage was caused to me – 2
- 22. Court, where the case was considered (instance, regional gradation)?**
 District – 74
 City – 26
 Brest – 16
 Vitebsk – 20
 Gomel – 26
 Grodno – 10
 Minsk City – 8
 Minsk Region – 12
 Mogilyov – 8
- 23. In what capacity did you take part in the criminal process (witness, victim)?**
 Victim – 90
 Witness – 8
 Don't know/No answer – 2

- 24. Did you lodge a suit on damage compensation, caused to you by the crime?**
 Yes, I did – 44
 A) If «Yes», then: What damage?
 Physical – 8
 Property – 2
 Moral – 42
 What were the motives of lodging the claim? Getting money – 8
 Triumph of justice – 20
 Other (together with others, on advice, «just to get compensation») – 24
 At what stage of criminal process did you lodge the claim?
 At the stage of preliminary inquiry – 4
 At court sessions – 38
 After passing a verdict on the criminal case – 2
 No, I did not lodge – 56
 B) If «No», then why:
 Did not know about this possibility – 26
 Did not want (wanted to forget sufferings, fear of publicity, fear of re-
 venge of traffickers) – 28
 There was no trial yet – 2
- 25. Did you know about your right to compensation of physical, property and moral damage caused by a crime before you addressed to helping organization?**
 If «Yes», where did you get this information?
 I knew about it (from media, from acquaintances) – 38
 In did not know – 62
- 26. Did anyone inform you about the right to lodge a civil claim on compensation of damage, caused by a crime? If «Yes», list the organizations?**
 No – 26
 LE (inspector) – 38
 Advocate – 34
 NGO – 26
 Court – 6
- 27. To what extent did they clearly and completely explain to you your right to lodge a civil claim on damage compensation, the procedure as such of lodging the claim and receiving the compensation?**
 Everything was explained completely and clearly – 48
 The right to lodge a claim was explained, but the procedure is not quite clear – 12
 Nothing was clear – 6
 Don't know/No answer – 8
- 28. In your opinion, did the information presented by the specialists comply with reality: that is, did the described procedure of lodging the claim and the results thereof coincide with the results obtained in reality?**
 Yes – 40
 No – 4
 Don't know/No answer (claim was not lodged) – 30

29. Representatives of what organization/structure had greater influence on your final decision to lodge a suit on compensation of the damage caused by a crime?

- LE (inspector) – 14
- Lawyer – 22
- NGO – 24
- Court – 2
- Friends – 2

30. To what sum was the suit?

- Up to 1 million Belarusian roubles – 0
- From 1 to 3 million Belarusian roubles – 18
- From 3 to 5 million Belarusian roubles – 16
- Over 5 million Belarusian roubles – 10

31. Who and on what basis helped you to define the sum of compensation?

- LE (inspector) – 4
- Lawyer-(NGO) – 32
- Court – 2
- Independently – 12

32. In what volume did the court adjudged the compensation?

- Up to 1 million Belarusian roubles – 24
- From 1 to 3 million Belarusian roubles – 18
- From 3 to 5 million Belarusian roubles – 0
- Over 5 million Belarusian roubles – 2

33. What system of paying the compensation was decided (for example, payments were made monthly for a long time, or in a lump sum and completely)?

- Within a long period – 20
- As a lump sum (at a time) – 14
- Don't know/No answer, since I got nothing – 10

34. Were you satisfied with the system of paying the compensation as defined by the court?

- Yes – 20
- No – 20
- Don't know/No answer – 4

35. Did you get the compensation in cash after the criminal process?

- Yes – 18
- No – 26

36. How has the payment of compensation affected your further life?

- I bought foodstuffs – 4
- I bought clothes and home appliances – 6
- I spent money to recover my health – 2
- I repaired my apartment – 4
- I paid my debts – 4
- Had no influence – 14
- I receive regular threats from traffickers – 6

Criminal code of the Republic of Belarus

Registered in the National Register of Legal Acts of the Republic of Belarus on 1999. № 76. 2/50

Adopted by the Chamber of Representatives on June 2, 1999

Approved by the Council of the Republic on June 24, 1999

[Excerpts]

Section III CRIMINAL LIABILITY

Chapter 8 General provisions on criminal liability

Article 44. Criminal Liability and Its Aims

1. Criminal liability means conviction, on behalf of the Republic of Belarus under a sentence, of the person who has committed a crime; and application, on the basis of conviction, of a punishment or other measures of criminal liability according to the present Code.

2. Criminal liability aims to correct the person, who has committed a crime, and prevent new crimes both by the convict and other persons.

3. Criminal liability aims to restore social justice. Conviction of the person, who has committed a crime, is the basis to collect from him/her any property damage and material compensation of moral harm.

Section VII CRIMES AGAINST A PERSON

Chapter 20 Crimes against sexual immunity or sexual freedom

Article 171. Benefiting from Prostitution or Creating Conditions for Prostitution

(In the wording of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

1. Benefiting from one's prostitution by another person, or granting, with a mercenary motive, of a premise (place) By the person knowingly aware that this premise (place) would be used for prostitution; or organizing and (or) keeping a brothel for prostitution, at the absence of a graver crime attributes, –

Are punishable by deprivation of freedom for the term from three to five years.

2. Same actions connected with exporting abroad of a person for prostitution; or committed by an official through abuse of his/her service powers; or by a person, who had earlier committed crimes, stipulated by the present Article,

Articles 171-1, 181 or 181-1 of the present Code, or with using a knowingly minor for prostitution, or committed by an organized group –

(In the wording of the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

Are punishable by deprivation of freedom for the term from seven to ten years with confiscation of property.

Article 171-1. Involvement in Prostitution or Compulsion to Continue Prostitution

(Enacted by the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

1. Involvement in prostitution or compulsion to continue prostitution –

Are punishable by deprivation of freedom for the term from one year to three years.

2. Same actions committed repeatedly, or through application of violence or with a threat of its application, or by a person who had earlier committed crimes, stipulated by Articles 171, 181 or 181-1 of the present Code; or by a person aged eighteen and up in relation to a knowingly minor –

(In the wording of the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

(See the text in the previous wording)

Are punishable by deprivation of freedom for the term from three to five years.

3. The actions stipulated by parts 1 or 2 of the present Article, committed by a parent, teacher or another person, entrusted to rear a minor, in relation to a knowingly minor; or by an organized group –

Are punishable by deprivation of freedom for the term from seven to ten years.

Chapter 22

Crimes against personal freedom, honour and dignity

Article 181. Trafficking in Persons

(In the wording of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

1. Sale and purchase of a person, or making other transactions in relation to him/her, same as recruitment, transportation, transfer, concealment or reception of a person (trafficking in persons), committed with the aim of exploitation, –

Are punishable by deprivation of freedom for the term from five to seven years with confiscation of property.

2. Same actions committed:

1) In relation to a knowingly minor;

2) In relation to two or more persons;

3) With the aim of sexual exploitation;

4) With the aim to withdraw organs or tissues from a victim for transplantation;

5) By a group of persons by previous concert;

6) By an official through abuse of his/her service powers;

7) By a person, who had earlier committed crimes, stipulated by the present Article, Articles 171, 171-1, 181-1 or 187 of the present Code;

(In the wording of the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

8) With the aim of export of the victim abroad;

9) Through the use of confluence of the victim's heavy personal, family or other circumstances;

10) By a deceit, breach of confidence or combined with violence, threat of its application or other forms of compulsion –

Are punishable by deprivation of freedom for the term from ten to twelve years with confiscation of property.

3. The actions stipulated by parts 1 or 2 of the present Article, which have entailed the victim's death by inadvertency, or inflicting to him/her of grave bodily injuries, or other grave consequences; or committed by an organized group –

Are punishable by deprivation of freedom for the term from twelve to fifteen years with confiscation of property.

Notes:

1. In the present Article, Articles 181-1, 182, and 187 of the present Code, exploitation means illegal compulsion of a person to work or render services in case he/she for the reasons beyond his/her power cannot refuse from these works (services), including slavery or the customs similar to slavery.

(In the wording of the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

(See the text in the previous wording)

2. In the present Article, Articles 182, and 187 of the present Code, sexual exploitation means extraction of benefits from the actions of sexual character executed by another person, including by using prostitution.

Article 181-1. Using Slave Labour

(Enacted by the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

1. Use of slave labour or other form of human exploitation, at the absence of the crime attributes stipulated by Article 181 of the present Code –

Are punishable by deprivation of freedom for the term from two to five years.

2. Same actions committed:

1) In relation to a knowingly minor;

2) In relation to two or more persons;

3) By a group of persons by previous concert;

4) By an official through abuse of his/her service powers;

5) In relation to a knowingly for the offender pregnant woman;

6) By a person, who had earlier committed crimes stipulated by the present Article, Articles 171, 171-1, 181 or 187 of the present Code –

Are punishable by deprivation of freedom for the term from three to ten years with or without confiscation of property.

3. The actions stipulated by parts 1 or 2 of the present Article, which have entailed the victim's death by inadvertency, or inflicting to him/her of grave

bodily injuries, or other grave consequences; or committed by an organized group –

Are punishable by deprivation of freedom for the term from eight to twelve years with confiscation of property.

Article 182. Kidnapping

1. A secret, opened, by deceit or breach of confidence, or combined with violence or with a threat to apply such, or with other forms of compulsion, illegal abduction of a person (kidnapping), at the absence of crime attributes stipulated by Article 291 of the present Code (Kidnapping) –

Is punishable by deprivation of freedom for the term from five to seven years with or without confiscation of property.

(Part 1, Article 182, in the wording of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

2. The same action committed:

- 1) In relation to a knowingly minor;
- 2) In relation to two or more persons;
- 3) Under mercenary motives;
- 4) With the aim of sexual or other exploitation;
- 5) With the aim to withdraw victim's organs and tissues for transplantation;

6) By a group of persons by previous concert;

(Point 6, part 2, Articles 182, in the edition of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

7) With use of force, dangerous to one's life or health, or accompanied by torments or torture, –

Is punishable by deprivation of freedom for the term from five to fifteen years with confiscation of property.

(Paragraph 2, part 2, Article 182, in the edition of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

3. The actions stipulated by parts 1 or 2 of the present Articles, which have entailed the victim's death by inadvertency, or inflicting grave bodily injuries, or other grave consequences ;or committed by an organized group, –

Are punishable by deprivation of freedom for the term from ten to fifteen years with confiscation of property.

(Part 3, Article 182, in the wording of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

Article 187. Illegal Actions Aimed at Employment of Citizens Abroad

(In the wording of the Law of the Republic of Belarus of 04.05.2005, No. 15-Z)

1. Illegal actions aimed at employment of citizens abroad, if as a result of such actions the persons employed abroad have been subjected to sexual or other exploitation against their will, at absence of the crime attributes stipulated by Article 181 of the present Code (Illegal Actions Aimed at Employment of Citizens Abroad), –

Are punishable by deprivation of freedom for the term from three to five years with deprivation of the right to occupy certain positions or to be engaged in certain activities.

2. Illegal actions aimed at employment of citizens abroad, committed repeatedly or by a person who had earlier committed crimes stipulated by Articles 171, 171-1, 181 or 181-1 of the present Code, –

(In the wording of the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

Are punishable by deprivation of freedom for the term from four to six years with deprivation of the right to occupy certain positions or to be engaged in certain activities.

3. Illegal actions aimed at employment of citizens abroad, committed by an organized group, –

Are punishable by deprivation of freedom for the term from six to eight years with confiscation of property and with deprivation of the right to occupy certain positions or to be engaged in certain activities.

Section XI

CRIMES AGAINST PUBLIC ORDER AND PUBLIC MORALS

Chapter 30

Crimes against public order and public morals

Article 343. Production and Dissemination of Pornography Materials or Pornography Articles

(In the wording of the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

1. Production or storage with the aim of dissemination or advertising; or dissemination or advertising of pornography materials or printed editions, images, other pornography articles, or public demonstration of films or videos with pornography content –

Are punishable by public works; or by a fine; or by corrective works for the term of up to two years; or by arrest for the term of up to six months.

2. Same actions committed by a group of persons by previous concert, or by an organized group, or with use of the Internet global computer network, other general use telecommunication network, or a dedicated telecommunication network; same as dissemination or advertising to a knowingly minor of pornography materials or printed editions, images, other pornography articles, committed by a person of eighteen and up; or demonstration by this person to a knowingly minor of films or videos with pornography content –

Are punishable by deprivation of freedom for the term from two to four years.

Article 343-1. Production and Dissemination of Pornographic Materials or Pornography Articles Depicting a Minor

(Enacted by the Law of the Republic of Belarus of 10.11.2008, No. 451-Z)

1. Production or storage with the aim of dissemination or advertising, or dissemination or advertising of pornography materials or printed editions,

other pornography articles depicting a knowingly minor, or public demonstration of films or videos with this sort of pornography content –

Are punishable by corrective works for the term of up to two years; or by arrest for the term of up to six months; or by restriction of freedom for the term of up to four years; or by deprivation of freedom for the same term.

2. Same actions committed by the person, who earlier committed the crimes stipulated by the present Article, or by part 2, Articles 343, of the present Code; or by a group of persons by previous concert or by using the Internet global computer network, another general use telecommunication network or a dedicated telecommunication network; same as using a knowingly minor for production of pornography materials, printed editions or other pornography articles depicting thereof –

Are punishable by deprivation of freedom for the term from three to eight years with or without confiscation of property.

3. The actions stipulated by parts 1 or 2 of the present Article, committed by an organized group, same as using a knowingly infant for production of pornography materials, printed editions or other pornography articles depicting thereof –

Are punishable by deprivation of freedom for the term from five to thirteen years with or without confiscation of property.

***On preventing consequences of trafficking in persons
Decree of the President of the Republic Belarus
of August 8, 2005, No. 352***

Registered in the National Register of Legal Acts of the Republic of Belarus on August 9, 2005, No. 1/6671

In the wording of Decrees of the President of the Republic of Belarus from 05.04.2006, No. 204, of 01.03.2007, No. 116, and of 12.05.2009, No. 241

With the aim to set up the legal and organizational bases for ensuring the due protection of the persons who fell victim of the criminal activities, connected with the trafficking in persons:

1. To establish that the victims of trafficking in persons are understood as the individuals, in relation to whom actions have been committed, entailing responsibility under Article 181 of the Criminal Code of the Republic of Belarus; or other acts aimed at using them for sexual or other exploitation, the responsibility for which is stipulated by Articles 171, 171-1, 182, 187 of the Criminal Codes of the Republic of Belarus; and when, in connection with commitment thereof, criminal prosecution was (is) undertaken in the territory of the Republic of Belarus or abroad.

2. In relation to the victims of trafficking in persons, the protective measures shall be applied, assuming the following:

- Ensuring their safety;
- Social protection and rehabilitation of them; and
- Rendering of help to them by diplomatic representative offices and consular establishments of the Republic of Belarus.

3. Ensuring safety of the victims of trafficking in persons, including the members of their families, close relatives and other persons, whom they reasonably define as close people, and also of their property, shall be carried out in the order as stipulated by the Code of Criminal Procedure of the Republic of Belarus for ensuring safety of the participants of the criminal process, other persons and their property.

4. Social protection and rehabilitation of the victims of trafficking in persons shall be carried out gratuitously and include the following:

4.1. Provision of temporary residence, including sleeping accommodations and nutrition to the victims of trafficking in persons, for:

4.1.1. Those aged fifteen and up – for the term of up to 30 days at the rehabilitation shelters, which can be set up by local executive and administrative bodies within the structure of the territorial centres of social servicing of the population. In the absence of such shelters, provision of temporary accommodation shall be organized by the territorial centres of social servicing of the population together with local executive and administrative bodies in other organizations from the funds of the corresponding local budgets;

4.1.2. Those aged from three to fifteen years – for the term of up to six months in children’s social shelters;

4.1.3. Those under three years of age – in state public health organizations;

4.2. The legal aid (including explanation of their rights and the duties as stipulated by the legislation of the Republic of Belarus), including free-of-charge legal aid provided by the Bars. Legal aid to victims of trafficking in persons under the age of fourteen is rendered to their lawful representatives;

4.3. The medical aid rendered by state public health organizations in the form of the necessary medical services according to the list, defined by Ministry of Public Health, including in hospitals, irrespective of the permanent residence of the victim of trafficking in persons;

4.4. The psychological help in the form of psycho-prophylactic, psycho-diagnostics and psycho-corrective actions, and psychological consultations, and the socially-pedagogical help;

4.5. The search of families of minor victims of trafficking in persons, or adoption them for rearing into other families; and in the absence of such opportunity – to children’s boarding establishments;

4.6. The assistance in permanent employment;

4.7. Any other assistance, rendered according to decisions of local Soviets of Deputies, executive and administrative bodies.

5. With the aim to bring the victim of trafficking in persons back to comfortable life conditions, they are sent by the bodies of criminal prosecution to:

5.1. The territorial centres of social servicing of the population for implementing the measures of social protection and rehabilitation as stipulated by sub-points 4.1.1, 4.2 – 4.7 of point 4 of the present Decree, – of those aged fifteen and up;

5.2. The children’s social shelters for implementing the measures of social protection and rehabilitation as stipulated by sub-points 4.1.2, 4.2 – 4.5 and 4.7 of point 4 of the present Decree, – of those aged from three to fifteen years;

5.3. The bodies of public health of local executive and administrative bodies for implementing the measures of social protection and rehabilitation as stipulated by sub-points 4.1.3, 4.2 – 4.5 and 4.7 of point 4 of the present Decree, – of those under the age of three years.

6. The organization of social protection and rehabilitation of the victims of trafficking in persons shall be ensured by:

6.1. The bodies on labour and social protection (bodies of social protection) of local executive and administrative bodies – in relation to the help to victims of trafficking in persons, aged fifteen and up as stipulated in sub-points 4.1.1, 4.2 and 4.4 of point 4 of the present Decree;

6.2. The bodies of education of the local executive and administrative bodies – in relation to the help to the victims of trafficking in persons in the age from three to fifteen years as defined by sub-points 4.1.2, 4.2 and 4.4 of point 4 of the present Decree, and the help to the victims of trafficking in persons aged from three to eighteen years as stipulated by sub-point 4.5 of point 4 of the present Decree;

6.3. The bodies of public health of local executive and administrative bodies – in relation to the help as defined in sub-point 4.3 of point 4 of the present

Decree, and the help to the victims of trafficking in persons in the age of up to three years as stipulated in sub-points 4.1.3, 4.2, 4.4 and 4.5 of point 4 of the present Decree;

6.4. The bodies of the state population employment service of local executive and administrative bodies – in relation to the assistance as stipulated by sub-point 4.6 of point 4 of the present Decree.

7. To invalidate as of March 1, 2007, the Decree of the President of the Republic of Belarus of 01.03.2007, No. 116.

8. The diplomatic representative offices and consular establishments of the Republic of Belarus shall:

8.1. Explain the citizens of the Republic of Belarus, who have become victims of trafficking in persons, the provisions of the legislation of the receiving state and the legislation of the Republic of Belarus on counteracting the trafficking in persons and on protection of the victims of trafficking in persons;

8.2. Take necessary measures for observing the legislation of the receiving state on counteracting the trafficking in persons and protection of the victims of trafficking in persons on observance in relation to citizens of the Republic of Belarus;

8.3. Ensure return of the citizens of the Republic of Belarus – victims of trafficking in persons to the states of their permanent residence;

8.4. Take other measures to defend the citizens of the Republic of Belarus – victims of trafficking in persons as stipulated by the legislation, including the international treaties of the Republic of Belarus.

9. The funds spent on implementing the measures of protection the victims of trafficking in persons, are collected from the person(s) who committed the crime, connected with trafficking in persons, in the judicial order under the claims of local executive and administrative bodies, territorial centres of social servicing of the population, children's social shelters, or of the public prosecutor.

10. A foreign citizen or a stateless person – a victim of trafficking in persons, who is actively assisting to the investigation of the crime connected with trafficking in persons, and whose stay in the territory of the Republic of Belarus has expired, is issued by the law-enforcement bodies, in the order as established by the legislation of the Republic of Belarus, a permit on temporary residence in the Republic of Belarus, as a rule, for the term of no more than one year for his/her participation in the criminal process, social protection and rehabilitation.

(In the wording of Decree of the President of the Republic of Belarus of 05.04.2006, No. 204)

11. The measures of protection of victims of trafficking in persons as stipulated by the present Decree shall not be applied, and the applied measures shall be stopped, if the victim of trafficking in persons hampers the preliminary investigation or judicial proceedings of the criminal case.

12. Before October 1, 2005, the Council of Ministers of the Republic of Belarus shall:

– In coordination with the Regional Executive Committees and the Minsk City Executive Committee, to bring to consideration of the President of

the Republic of Belarus proposals on the need to set up rehabilitation shelters for victims of trafficking in persons;

– Ensure bringing the acts of legislation into conformity with the present Decree, and take other measures for implementation thereof.

13. The Ministry of Public Health shall approve, before October 1, 2005, the list of free-of-charge medical services, rendered to victims of trafficking in persons.

14. Local Soviets of Deputies shall ensure, when drafting their respective local budgets for the next financial year, financing of the measures aimed at protection of victims of trafficking in persons.

(In the wording of Decree of the President of the Republic of Belarus of 12.05.2009, No. 241)

15. The present Decree shall come into force since October 1, 2005, except for points 12–14 and for the present point, which shall come into force from the date of official publication of the present Decree.

President of the Republic of Belarus

A. Lukashenko

**Code of criminal procedure of the Republic Belarus
July 16, 1999, No. 295-Z**

Registered in the National Register of Legal Acts of the Republic of Belarus on August 20, 1999, No. 2/71

Adopted by the Chamber of Representatives on June 24, 1999

Approved by the Council of the Republic on June 30, 1999

[Excerpts]

Chapter 6

**Parties of criminal process defending their own or represented
rights and interests**

Article 49. The Victim

1. Seen as a victim shall be an individual, upon whom physical, property or moral damage was inflicted by a socially-dangerous act as stipulated by the criminal law and in whose relation the body conducting the criminal process has made a decision (definition) on recognizing him/her to be a victim.

2. Should at initiation of a criminal case the grounds be absent for recognizing a person to be a victim, the above decision is made immediately upon laying down such grounds.

3. Should it be established, after recognizing a person to be a victim, that there are no grounds for the person to stay in the status of victim, the body conducting the criminal process shall stop by its motivated decision (definition) any further participation of the person in the criminal process as a victim.

4. In cases on the crimes, which have entailed the victim's death, the rights and duties stipulated by Article 50 of the present Code, shall pass over to the members of his/her family, close relatives or legal representatives.

Article 50. Rights and Duties of the Victim

1. The victim shall have the right to:

- 1) Know the essence of the charge;
- 2) Give evidences;
- 3) Present proofs;

4) Challenge and present petitions, including on taking measures to ensure his/her safety, and that of the members of his/her family, close relatives and other persons, whom he/she reasonably defines as close people, as well as of his/her property;

5) Use his/her mother tongue or an interpreter's services;

6) Object to actions of the body of criminal prosecution and demand that his/her objections are put into the protocol of the investigatory or other procedural action conducted with his/her participation;

7) Take part in consideration by the court of complaints against detention, taking into custody, house arrest of the suspect or defendant, and appeal against the decision of the court;

8) Get acquainted with the protocols of investigatory and other procedural actions with his/her participation, and make remarks as to correctness and completeness of records in protocols; at participation in the investigatory or other procedural action, demand entering into the protocol of the above action or court session of records on the circumstances, which in his/her opinion shall be noted; get acquainted with the protocol of the court session, and make remarks thereon;

9) After the moment of receiving a notification about the end of the preliminary investigation, get acquainted with the criminal case, and write out of it any volume of information; and, upon permission of the investigator or inquirer, make copies of the materials of the criminal case that he/she finds interesting, except for those stipulated in part 8, Article 193, of the present Code;

10) Take part in the judicial session of the first instance court, including in examining evidences of the criminal case, and in the sessions of the courts of the cassation and supervisory instances, and in criminal proceedings on newly discovered facts;

11) Speak or reply brief in the judicial debates at the absence of his/her representative;

12) Express, at the judicial proceedings, his/her opinion as to petitions and offers moved by other participants of the criminal process, and on the issues considered by the court;

13) Object to actions of the opposite party or the chairman;

14) Receive notifications from the body conducting the criminal process about the decisions made that touch on his/her rights and interests; and receive, on his/her request, free-of-charge copies of these decisions, including on termination of the criminal case, on attraction as a defendant, on transfer of the criminal case to the public prosecutor for sending to the court, on appointment of the judicial proceedings, on refusal to initiate a criminal case or termination of criminal prosecution; as well as a copy of the sentence, definition (decision) of the court of cassation or supervisory instance, or any other final decision of the court;

15) Lodge complaints against actions and decisions of the body conducting the criminal process, including appeal against the sentence or other final decision of the court;

16) Recall a complaint lodged by him/her or his/her representative;

17) Reconcile with the defendant on private prosecution cases;

18) Submit objections to protests of the state accuser, public prosecutor and complaints of other participants of the criminal process, brought to his/her knowledge by the body conducting the criminal process, or which become known to him/her as a result of other circumstances;

19) Receive compensation of expenses suffered in the course of criminal proceedings, and of the damage caused by the actions of the body conducting the criminal process;

20) Receive back the property, withdrawn from him/her by the body conducting the criminal process as the material evidence or on other grounds; the originals of official documents belonging to him/her; the property belonging to him/her, withdrawn from the person who has committed a socially dangerous offence, stipulated by the criminal law;

21) Have a representative and stop the powers of his/her representative.

2. The victim shall:

1) Appear on calls (summons) of the body conducting the criminal process;

2) Evidence on demand of the body conducting the criminal process, except for the cases stipulated by point 1, part three, Article 60, of the present Code;

3) Present his available things, documents and samples for comparative examination on demand of the body conducting the criminal process;

4) Get examined on demand of the body conducting the criminal process, in case of committing a grave or especially grave crime in relation to him/her;

5) Get subjected, on demand of the body conducting the criminal process, to out-patient examination for checking his/her ability to correctly perceive and evidence about the circumstances, subject to establishment on the criminal case, should there be reasonable grounds to doubt of this his/her ability, as well as for establishing his/her age;

6) Obey to lawful orders of the body conducting the criminal process;

7) Not to disclose the data on the circumstances, which have become known to him/her on the criminal case, if he/she had been warned about it by the body of criminal prosecution or the court.

3. For disclosing the data of the preliminary investigation or of the closed judicial session without a permit of the body conducting the criminal process, the victim shall be held responsible in conformity with Article 407 of the Criminal Code of the Republic of Belarus.

4. For refusal from or avoidance of giving evidences, or for giving knowingly false evidences, the victim shall be held responsible in conformity with Articles 401 and 402 of the Criminal Code of the Republic of Belarus.

5. The victim shall enjoy the rights belonging to him/her and execute the duties assigned on him/her either personally or through his/her representative.

6. In the order, stipulated by the present Code, the rights of a minor victim shall be exercised by his/her lawful representative along with him/her or instead of him/her; and those of an incapacitated victim – by his/her lawful representative instead of him/her.

Article 52. The Civil Claimant

1. Seen as the civil claimant shall be an individual or a legal entity in relation to whom (which) there are sufficient grounds to believe that he/she (it) has suffered the damage by a socially-dangerous act stipulated by the present Code, and the damage is subject to compensation in the order, as stipulated by the present Code, who (which) has filed a claim during the criminal proceedings, and in relation to whom (which) the body conducting the criminal pro-

cess made a decision (definition) on recognizing him/her (it) to be a civil claimant.

2. Should at filing a claim the grounds be absent for recognizing a person to be a civil claimant, the above decision is made immediately upon laying down such grounds.

3. Should it be established, after recognizing a person to be a civil claimant, that the civil claim is filed by an inadequate person or for other reasons there are no grounds for the person to stay in the status of the civil claimant, the body conducting the criminal process shall stop by its motivated decision (definition) any further participation of the person in the criminal process as the civil claimant.

Article 53. Rights and Duties of the Civil Claimant

1. With the aim to support the lodged claim, the civil claimant shall have the right to:

- 1) Know the essence of the charge;
- 2) Give explanations on the lodged claim;
- 3) Give evidences;
- 4) Challenge and present petitions, including on taking measures to ensure the lodged claim, as well as his/her safety, and that of the members of his/her family, close relatives and other persons, whom he/she reasonably defines as close people, as well as of his/her property;
- 5) Use his/her mother tongue or an interpreter's services;
- 6) Object to actions of the body of criminal prosecution and demand that his/her objections are put into the protocol of the investigatory or other procedural action conducted with his/her participation;
- 7) Get acquainted with the protocols of investigatory and other procedural actions with his/her participation, and make remarks as to correctness and completeness of records in protocols; at participation in the investigatory or other procedural action, demand entering into the protocol of the above action or court session of records on the circumstances, which in his/her opinion shall be noted; get acquainted with the protocol of the court session, and make remarks thereon;
- 8) After the moment of receiving a notification about the end of the preliminary investigation, get acquainted with the criminal case, and write out of it any volume of information; and, upon permission of the investigator or inquirer, make copies of the materials of the criminal case that he/she finds interesting, except for those stipulated in part 8, Article 193, of the present Code;
- 9) Take part in the judicial session of the first instance court, including in examining evidences of the criminal case, and in the sessions of the courts of the cassation and supervisory instances, and in criminal proceedings on newly discovered facts;
- 10) Speak or reply brief in the judicial debates at the absence of his/her representative;
- 11) Receive notifications from the body conducting the criminal process about the decisions made that touch on his/her rights and interests; and receive, on his/her request, free-of-charge copies of these decisions, as well as a

copy of the sentence, definition (decision) of the court of the cassation or supervisory instance, or any other final decision of the court;

12) Lodge complaints against actions and decisions of the body conducting the criminal process, including appeal against the sentence or other final decision of the court in relation to the lodged claim;

13) Recall a complaint lodged by him/her or his/her representative;

14) Submit objections to protests of the state accuser, public prosecutor and complaints of other participants of the criminal process, brought to his/her knowledge by the body conducting the criminal process, or which become known to him/her as a result of other circumstances;

15) Express, at the judicial proceedings, his/her opinion as to petitions and offers moved by other participants of the criminal process, and on the issues considered by the court;

16) Object to actions of the opposite party or the chairman;

17) Have a representative and stop the powers of his/her representative.

18) Support wholly or partly the civil claim or drop it at any moment of the criminal proceedings;

19) Receive compensation of expenses suffered in the course of criminal proceedings, and of the damage caused by the actions of the body conducting the criminal process;

20) Receive back the property, withdrawn from him/her by the body conducting the criminal process as the material evidence or on other grounds; the originals of official documents belonging to him/her; the property belonging to him/her, withdrawn from the person who has committed a socially dangerous offence, stipulated by the criminal law;

2. The civil claimant shall:

1) Appear on calls (summons) of the body conducting the criminal process;

2) Ensure presentation to the court of copies of the claim equal to the number of civil defendants;

3) Present his/her (its) available things, documents and samples for comparative examination on demand of the body conducting the criminal process;

4) Obey to lawful orders of the body conducting the criminal process;

5) Not to disclose the data on the circumstances, which have become known to him/her (it) on the criminal case, if he/she had been warned about it by the body of criminal prosecution or the court.

3. For disclosing the data of the preliminary investigation or of the closed judicial session without a permit of the body conducting the criminal process, the civil claimant shall be held responsible in conformity with Article 407 of the Criminal Code of the Republic of Belarus.

4. The civil claimant can be interrogated as a witness.

5. The civil claimant shall enjoy the rights belonging to him/her and execute the duties assigned on him/her either personally or through his/her representative.

6. In the order, stipulated by the present Code, the rights of a minor claimant shall be exercised by his/her lawful representative along with him/her or

instead of him/her; and those of an incapacitated civil claimant – by his/her lawful representative instead of him/her.

Article 54. The Civil Defendant

1. Seen as a civil defendant shall be an individual or a legal entity, who by operation of law and in connection with the lodged claim in the course of the criminal proceedings may be brought to material liability for actions of the accused, who has inflicted damage by a socially-dangerous act as stipulated by the criminal law, and in whose relation the body conducting the criminal process has made a decision (definition) on recognizing him/her to be a civil defendant.

2. Should at filing a claim the grounds be absent for recognizing a person to be a civil defendant, the above decision is made immediately upon laying down such grounds.

3. Should it be established, after recognizing a person to be a civil defendant, that the person cannot be brought to material responsibility for the actions of the accused or for other reasons there are no grounds for the person to stay in the status of the civil defendant, the body conducting the criminal process shall stop by its motivated decision (definition) any further participation of the person in the criminal process as the civil defendant.

Article 55. Rights and Duties of the Civil Defendant

1. With the aim to protect his/her (its) interest in connection with the filed claim, the civil defendant shall have the right to:

- 1) Know the substance of the claim lodged against him/her (it);
- 2) Give explanations on the filed claim;
- 3) Present proofs;
- 4) Challenge and present petitions, including on taking measures to ensure his/her safety, and that of the members of his/her family, close relatives and other persons, whom he/she reasonably defines as close people, as well as of his/her property;
- 5) Use his/her mother tongue or an interpreter's services;
- 6) Make voluntary monetary investments in toe court deposit to secure the claim lodged against him/her;
- 7) Object to actions of the body of criminal prosecution and demand that his/her objections are put into the protocol of the investigatory or other procedural action conducted with his/her participation;
- 8) Get acquainted with the protocols of investigatory and other procedural actions with his/her participation, and make remarks as to correctness and completeness of records in protocols; at participation in the investigatory or other procedural action, demand entering into the protocol of the above action or court session of records on the circumstances, which in his/her opinion shall be noted; get acquainted with the protocol of the court session, and make remarks thereon;
- 9) After the moment of receiving a notification about the end of the preliminary investigation, get acquainted with the criminal case, and write out of it any volume of information; and, upon permission of the investigator or in-

quirer, make copies of the materials of the criminal case that he/she finds interesting, except for those stipulated in part 8, Article 193, of the present Code;

10) Take part in the judicial session of the first instance court, including in examining evidences of the criminal case, and in the sessions of the courts of the cassation and supervisory instances, and in criminal proceedings on newly discovered facts;

11) Speak or reply brief in the judicial debates at the absence of his/her representative;

12) Receive notifications from the body conducting the criminal process about the decisions made that touch on his/her rights and interests; and receive, on his/her request, free-of-charge copies of these decisions, as well as a copy of the sentence, definition (decision) of the court of the cassation or supervisory instance, or any other final decision of the court;

13) Lodge complaints against actions and decisions of the body conducting the criminal process, including appeal against the sentence or other final decision of the court in the part referred to the claim lodged against him/her;

14) Recall a complaint lodged by him/her or his/her representative;

15) Submit objections to protests of the state accuser, public prosecutor and complaints of other participants of the criminal process, brought to his/her knowledge by the body conducting the criminal process, or which become known to him/her as a result of other circumstances;

16) Express, at the judicial proceedings, his/her opinion as to petitions and offers moved by other participants of the criminal process, and on the issues considered by the court;

17) Object to actions of the opposite party or the chairman;

18) Have a representative and stop the powers of his/her representative;

19) Admit the civil claim at any moment of the criminal proceedings;

20) Receive compensation of the damage caused by the actions of the body conducting the criminal process;

21) Receive back the property, withdrawn from him/her by the body conducting the criminal process as the material evidence or on other grounds, as well as the originals of official documents belonging to him/her.

2. The civil claimant shall:

1) Appear on calls (summons) of the body conducting the criminal process;

2) Present his available things, documents and samples for comparative examination on demand of the body conducting the criminal process;

3) Obey to lawful orders of the body conducting the criminal process;

4) Not to disclose the data on the circumstances that has become known to him/her on the criminal case, if he/she had been warned about it by the body of criminal prosecution or the court.

3. For disclosing the data of the preliminary investigation or of the closed judicial session without a permit of the body conducting the criminal process, the victim shall be held responsible in conformity with Article 407 of the Criminal Code of the Republic of Belarus.

4. The civil claimant can be interrogated as a witness.

5. The victim shall enjoy the rights belonging to him/her and execute the duties assigned on him/her either personally or through his/her representative.

Chapter 14

Other measures of procedural coercion

Article 132. Imposition of Arrest on Property

1. With the aim to ensure enforcement of the judgement with regard to the civil claim, other property collection or possible confiscation of property, the body of inquiry, an inspector, the prosecutor and the court shall have the right to impose arrest on the property owned by the suspect, the accused or the persons bearing material responsibility under the law for their actions. Imposition of arrest on the property, which is in the house or other lawful household, shall be made only upon the consent of the proprietor or adults living there, or upon a sanction of the public prosecutor, his/her deputy, or by a statement of the court.

(Part 1, Article 132, in the wording of the Law of the Republic of Belarus of 04.01.2003, No. 173-Z)

2. Imposition of arrest on the property means announcement to the proprietor or the owner of the ban to dispose, and in necessary cases – to make use of this property, or withdrawal of the property and placement for storage.

3. When the property is put under arrest, a motivated decision shall be made and the protocol of inventory of the property shall be compiled.

4. No arrest can be imposed on the mortgaged property and on the first-need items, the list of which is provided in the Appendices to the Criminal-Executive Code.

5. In imposition of arrest on the property, a specialist appraising the property may take part.

6. The arrested property may be withdrawn and handed over for storage to a representative of local administration, organization, which operates the housing fund, to the owner of this property or another person, who should be warned about their responsibility for the safety of this property against their signature.

(In the wording of the Law of the Republic of Belarus of 11.07.2007, No. 251-Z)

7. If arrest is imposed on the monetary assets, kept on accounts and in deposits in banks and credit institutions, all transactions with the above accounts shall be stopped within the limits of the monetary funds, placed under arrest.

8. Imposition of arrest of the property shall be cancelled by the decision (definition) of the body, in charge of the proceedings on the criminal case, when there is no further need to apply this measure.

Chapter 17

Civil claim in criminal process

Article 148. Civil Claims Considered in Criminal Process

1. The criminal process shall consider the civil claims filed by individuals and legal entities, and by the public prosecutor, on compensation of the physical, property or moral damage, caused directly by a crime or a socially danger-

ous act, as stipulated by the criminal law, committed by a mentally incompetent person.

2. The claimant, when filing a civil claim, shall be exempt from the state duty.

3. The proving of the civil claim, filed in the course of the criminal proceedings, shall be made in the order, as stipulated by the present Code.

4. Should the procedural relations, which have arisen in connection with the civil claim, be not settled by the present Code, the norms of the civil procedural legislation shall be applied, provided they do not contradict the present Code.

Article 149. Filing of Civil Claim

1. The individual or legal entity, upon whom damage was inflicted by a crime or socially-dangerous act, as stipulated by the criminal law, committed by a mentally incompetent person, or their representatives, shall have the right to file a civil claim against the accused or the persons bearing material responsibility for his/her actions from the moment of initiation of the criminal case till the end of the judicial investigation. Dismissal of the claim, made in the course of the civil proceedings, shall deprive them of their right of repeated filing the same claim in the course of the criminal proceedings.

2. In defence of the interests of minors, as well as the persons recognized to be incapacitated in accordance with the established order, the civil claim can be filed by their lawful representative.

3. A civil claim may be filed both in written and oral forms. An oral statement shall be put in the protocol in the order, as stipulated by Articles 150 and 308 of the present Code.

(Part 3, Article 149, in the wording of the Law of the Republic of Belarus of 11.05.2000, No. 377-Z)

4. A non-establishment of the person, subject to attraction as the accused, shall not hamper the recognition of the person to be the civil claimant in the criminal process.

5. The person, who (which) has not filed the civil claim in the criminal process, and the person, whose claim has been left by the court without consideration, shall have the right to file the claim in the order of civil proceedings.

6. In the cases, when required from the viewpoint of defence of citizens' rights, or the rights of legal entities, state or public interests, the public prosecutor shall have the right to file the civil claim in the criminal process.

7. In the criminal process, the civil claim is considered by the court jointly with the criminal case.

8. Should no civil claim be filed, the court, when passing the sentence, shall have the right, on its own initiative, to settle the issue on compensating the damage caused by the crime.

Article 150. Recognizing to Be the Civil Claimant

1. Should it follow from the materials of the criminal case that an individual or a legal entity have suffered from the damage inflicted by a crime or a socially-dangerous act, as stipulated by the criminal law, committed by a mentally incompetent person, the body of criminal prosecution or the court shall

explain to them or their representatives the right to file a civil claim, to which end a protocol shall be drawn up or a written notification shall be made.

2. The individual or the legal entity, who (which) has filed the claim, shall be recognized to be civil claimants in the order, as stipulated by part one, Articles 52, 56 and 58 of the present Code. The person, who (which) has filed the claim, or his/her (its) representative shall be announced the decision (definition) on recognizing them to be the civil claimant and the rights, stipulated by Articles 53, 57, and 59 of the present Code, about what an entry is made in the decision (definition) to be certified by a signature of the civil claimant or his/her (its) representative.

Article 151. Refusal to Recognize to Be Civil Claimant

1. For the absence of the grounds, as stipulated by Article 149 of the present Code, for filing a civil claim, the individual or legal entity, who (which) has filed the claim, may be rejected to be recognized as civil claimants, on which fact the body conducting the criminal process shall draw a motivated decision or definition and explain the right to appeal against it.

2. The decision (definition) about refusal to recognize to be the civil claimant shall be announced to claimant against his/her signature. The refusal to recognize a person to be a civil claimant, at the stage of inquiry or preliminary investigation, shall not deprive him/her of the right to file a civil claim at the court session.

Article 152. Recognizing to Be Civil Defendant

After having defined the person, in charge of material responsibility for the damage inflicted by a crime or a socially dangerous act committed by a mentally incompetent person as stipulated by the criminal law, in case of filing a civil claim in the course of criminal proceedings, the body conducting the criminal process, shall recognize this person to be the civil defendant in the order established by Articles 54 and 58 of the present Code. The civil defendant or his/her representative shall be served a copy of the decision (definition) on recognizing him/her to be the civil defendant.

Article 153. Application of the Rules on the Grounds, Conditions, Volume and Way of Damage Compensation

When considering a civil claim filed within the criminal process, the grounds, conditions, volume and way of damage compensation shall be defined according to the norms of the current legislation. In the cases stipulated by the law the international treaties and legal provisions of the state, with which agreements on legal aid have been conducted, shall apply.

Article 154. Renouncing the Civil Claim

1. An individual or a legal entity, as well as the public prosecutor shall have the right to renounce the lodged civil claim.

2. The claimant's statement on renouncing the claim shall be put into the protocol of the investigatory action or court session. Should the renouncement of the claim be expressed in a written application, the latter shall be added to the files of the criminal case.

3. Renouncement of the claim is accepted by the body of criminal prosecution at any moment of the preliminary investigation of the criminal case, to

which end a statement is drawn up. Renunciation of the claim can be accepted by the court with passing a decision (definition) at any moment of the legal proceeding, but prior to retirement of the court to the consultative room for decision-making.

4. Acceptance of renunciation of the claim shall entail termination of proceedings thereof.

5. No forced renunciation of the claim shall be accepted.

Article 155. Decision on Civil Claim

1. At passing a sentence of guilty or a decision (definition) on enforcing safety and treatment, the court shall, depending on the proofs and value of the civil claim, satisfy the claim in full or reject it whatsoever. The scale of the property damage, subject compensation, is defined by the court on the basis of the cost of the property as of the date of passing the sentence or decision (definition), and the scale of the physical and moral damage – outgoing from the actual consequences.

2. In cases of satisfaction of the claim in full or in part, the court shall establish and specify in its sentence or decision (definition) the deadline for the voluntary execution of the sentence as regard to the civil claim. The compulsory enforcement is made in the order established by the legislation on enforcement proceedings.

3. Should it be impossible to make a detailed calculation under the civil claim without adjournment of consideration of the criminal case, the court may recognize the civil claimant's right to have the claim satisfied and transfer the value issue to consideration by way of civil legal proceedings.

4. In case of passing an acquittal or a decision (definition) to stop the criminal case or enforcing measures of safety and treatment, the court shall:

1) Reject the civil claim, should it fail to establish a socially dangerous act, stipulated by the criminal law, or participation of the accused or of the person, in relation to whom the issue was considered of forced measures of safety and treatment, in committing a crime or a socially dangerous act, stipulated by the criminal law;

2) Leave the claim without consideration, should the accused be acquitted for absence in his/her act of crime attributes or termination of the criminal case for the absence of grounds to apply any forced measures of safety and treatment to the person, who presents, by the character of the act committed by him/her and his/her state, no danger to the society.

5. At termination of the criminal case on the grounds specified in points 3–9, part one, Article 29, and Article 30 of the present Code, the court shall leave the civil claim without consideration.

6. Should on the grounds stipulated by point 2, part four, and by part five of the present Article, the criminal case be stopped in the stage of preliminary investigation or legal proceeding, the individual or legal entity, or their representatives, shall have the right to sue by way of civil legal proceedings.

Article 156. Securing the Civil Claim and Execution of Sentence with Regard to Confiscation of Property

1. Should there be sufficient data about causing damage by a crime or a socially dangerous act, stipulated by the criminal law, committed by a mentally

incompetent person, as well as in case of committing a crime, for which confiscation of property is stipulated, the bodies of criminal prosecution shall arrange to secure the civil claim and enforce the sentence with regard to confiscation of property, implying revealing of the property, which can be distressed; distressing, in the order, as stipulated by Article 132 of the present Code, the property of the accused or of the persons liable for the harm, caused by criminal acts of the accused or a socially dangerous act, stipulated by the criminal law, committed by a mentally incompetent person; and ensuring safety of the property until decision of the criminal case in the legal proceedings.

2. Should the measures to secure the civil claim and execute the sentence with regard to confiscation of property be not taken at the stage of preliminary investigation, the court may rule, prior to the sentence or decisions (definition) come into legal force, on such measures to be taken in the order, as stipulated by the legislation on enforcement proceedings.

Article 157. Execution of Court Sentences, Decisions (Definitions) with Regard to Civil Claim

At satisfaction by the court of a civil claim, the sentence or decision (definition) on application of forced measures of safety and treatment as regard to civil claim shall be enforced in the order, as stipulated by the legislation on enforcement proceedings.

***On practice of consideration by the courts of civil claims
in criminal processes***

**Decision of the Plenum of the supreme court
of the Republic of Belarus
June 24, 2004, No. 8**

*Registered in the National Register of Legal Acts of the Republic of Belarus on
July 6, 2004, No. 6/411*

Having discussed the results of summing up the judiciary practice of considering civil claims in the criminal process, with the aim to ensure correct and uniform application of the law by the courts, the Plenum of the Supreme Court of the Republic of Belarus hereby decides to:

1. Draw attention of the courts to the fact that the correct settlement of the civil claim in the criminal process is an important guarantee of the timely compensation of the damage caused by a crime. Therefore, the court shall ensure a complete and objective consideration of the civil claim lodged in the course of criminal proceedings and decide it in strict conformity with the requirements of the material and procedural law.

2. The courts shall bear in mind that in the criminal process the civil claims are subject to consideration on compensation of physical, property or moral damage only in cases, when such damage was caused directly by a crime or another socially dangerous act, stipulated by the criminal law, committed by a mentally incompetent person.

The claims lodged on other grounds (for example, regress claims against the defendant according Article 950 of the Civil Code), shall not be subject to consideration in the criminal process.

3. The courts shall take into account that the list of persons entitled to lodge civil claims in the criminal process, is defined in parts 1, 2 and 6, Article 149, of the Code of Criminal Procedure (CCP). A civil claim can be lodged both in writing and orally in the period from the moment of initiation of the criminal case and till the end of the judicial investigation.

Lodging a claim in the course of appointing and preparation of the legal proceedings is possible only in writing, since running a protocol at this stage of the criminal is not assumed by the law.

The stated claims presented by a person in the oral form in the course of legal proceedings shall be subject to entering into the protocol of the judicial session, which reflects the subject, grounds and volume of the stated claims (Article 308 of the CCP).

In case when the claim is lodged by the public prosecutor, the persons, in whose interests it has been lodged, shall be duly informed.

4. Explain to the courts that, as a rule, the person who bears responsibility under the civil claim for the damage caused by the crime is the defendant. Pass-

ing a decision (definition) on recognizing the defendant to be a civil defendant is not required; however he/she, same as the civil defendant, shall be acquainted with the contents of the presented claim; and in the course of the legal proceedings he/she shall be given a chance to present explanations on the claim.

An individual or a legal entity shall be recognized to be a civil defendant only in the cases, when material liability can be assigned to them, by virtue of the law and in connection with the presented claim, for the defendant's actions (Articles 54 and 152 of the CCP).

5. Only the persons, in whose relation the body in charge of the criminal process has passed a respective decision (definition), shall be admitted to participation in the criminal proceedings as the civil claimant, civil defendant, legal and other representatives (part 1, Articles 52, 54, 56 and 58 of the CCP). These persons shall be explained their rights and duties as stipulated by the law of criminal procedure.

6. The legal representatives of the defendant, the person who has committed a socially dangerous act, and of the civil claimant, shall be involved to participation in the criminal proceedings, when it is necessary to ensure presentation in the criminal process of the interests of a minor or an incapacitated person. The legal representatives are the persons specified in parts 1 and 2, Article 56, of the CCP.

At deciding on petitions for admission to participation in the criminal process of other persons as representatives of the civil claimant or civil defendant, the courts shall be guided by the provisions of Articles 72 and 73 of the Code of Civil Procedure (CCivP).

7. If at appointment and preparation of legal proceedings or at judicial consideration of a criminal case it is established that the rights of a civil claimant, civil defendant, legal or other representatives have been granted to someone unreasonably, the court shall terminate, by its motivated decision (definition), further participation of such persons in the criminal process. At the same time, the court (judge) shall notify the person who can be recognized to be the appropriate civil claimant, about his/her right to lodge a civil claim, or to attract an appropriate civil defendant to participation in the case.

8. Draw attention of the courts to the necessity of taking timely measures as stipulated by the law to secure the claim; according to Article 132 of the CCP, these measures assume imposing arrest on property. These measures may be adopted at appointment and preparation of judicial proceedings, at consideration of the criminal case and after passing a verdict but prior to its enactment (entry into legal force).

At the stage of appointment and preparation of legal proceedings, the decision (statement) on the measures on securing the claim shall be sent by the judge to the body of criminal prosecution for enforcement (Article 284 of the CCP). The definition (decision) of the court about imposition of arrest on property, passed at the legal proceedings or prior to enactment of the verdict, shall be enforced in the order stipulated by the legislation on enforcement proceedings.

9. In the course of legal consideration of the criminal case the court shall clear out, whether the civil claimant or his/her representative support the pre-

sented claims and whether the defendant, civil defendant or his/her representative recognize the presented suit.

In case of refusal of the civil claimant or his/her representative from the claim, the court shall find out the motives of such refusal. The civil claimant shall be explained the consequences of accepting the refusal from the claim, stipulated both by part 4, Article 154, of the CCP and Article 164 of the CCivP.

The refusal from the claim shall not be accepted by the court, if it is forced; that is, it does not reflect the free will of the person; and at presence of the circumstances as specified in part 4, Article 61, of the CCivP.

The issue of accepting the refusal from claim and termination of the proceedings thereon shall be considered in the court consultation room (Article 319 of the CCivP).

The refusal of the public prosecutor (state accuser) from the civil claim shall not deprive the civil claimant, in whose interests the claim was presented, or his/her representatives to independently sustain the claim in the court.

10. The courts shall bear in mind that the character and the volume of damage caused by the crime, are among the scope of the circumstances, which are subject to proving on each criminal case, and the burden of proof of these circumstances in judicial proceedings is imposed by the law on the state or private prosecutor (accuser) (part 2, Article 102, of the CCP).

At the same time, the defendant cannot be obliged to present evidences in refutation of the subject, the grounds or the volume of the presented claim, since he/she shall bear no duties imposed by the law on the civil defendant.

At the same time, at consideration of a criminal case, the civil claimant, civil defendant or their representatives shall have the right to present proofs. These persons shall also present, on demand of the court, the exhibits and documents in their possession, should the court find it necessary for the correct consideration of the claim.

11. Draw attention of the courts that for making a decision on satisfaction of the civil claim in the criminal process, the establishment of the guilt of the defendant of committing a crime or of the fact of committing by a mentally incompetent person of a socially dangerous act, as stipulated by the criminal law, is mandatory. Therefore, the fact of recognition of the claim by the defendant or civil defendant as such is not the unconditional basis for satisfaction of the claim.

On the criminal cases considered under the truncated procedure of judicial proceedings, if the defendant, having admitted his/her guilt, has rejected, or partially rejected the civil claim, the proofs presented by the parties in support of this claim shall be subject to mandatory investigation.

12. According to the requirements of Articles 360 and 362 of the CCP, the court shall present, in the descriptive-motivation part of the sentence, the motives of the decision passed on the civil claim. On each point of the claim the court shall define the character of damage (physical, property or moral); present and evaluate, according to the requirements of Article 105 of the CCP the proofs relevant for the civil claim; and specify the norm of the corresponding material law, on the basis of which the civil claim shall be subject to consideration.

In case of a complete or partial satisfaction of the claim about compensation of the property or physical damage, the court shall present the corresponding calculations of its volume.

On the claims for compensations of moral damage, the court shall present, with account of the arguments of the claimant and objections of the defendant or the civil defendant, the motives of the passed decision, outgoing from particular circumstances, entailing the damage, as well as the requirements of reason and justice.

Depending on the established circumstances of the case and should it be necessary for the correct consideration of the claim, the court shall have the right surpass the limits of the value of lodged claims (Article 298 of the CCivP); however, not exceeding in this case the limits of the legal proceedings of the criminal case as established by part 1, Article 301, of the CCP.

13. When considering the civil claims presented to several defendants (civil defendants), the courts shall bear in mind that the joint liability on damage compensation shall be born by all the persons, who caused the damage by their joint criminal actions. If the crime was committed by several persons, they shall bear their joint liability for the caused damage by the episodes of the crime, in which their complicity has been established in any form (Article 16 of the Criminal Code).

No joint and several liability shall be imposed on the persons, although convicted under one case, but for independent crimes, not linked by the common intention, as well as on the persons, when some of them were convicted for profit-motivated crimes, for example, for plunders, and others – for service negligence, even if the actions of the latter had objectively in the certain measure helped the former to commit their crime.

If the defendant (defendants) has (have) committed a crime together with other persons, in relation to whom the criminal case was isolated into separate proceedings, or these persons have been exempted from criminal liability, the duty of damage compensation shall be imposed in full on the persons, in relation to whom the proceedings are held.

14. The courts should bear in mind that individuals and legal entities, on whom, according to the law, the material liability is imposed for the actions of the defendant, shall bear this liability in fractional (shared) order.

Under an application of the civil claimant and in his/her interests the court may also impose on the defendants, who have caused the damage by their joint actions, the shared not joint liability, if such order of collection will ensure a timely and complete compensation of damage.

15. Draw attention of the courts to the necessity of observance of the requirements of the procedural law at presenting the decision on the civil claim in the substantive section of the verdict. It should comprise the conclusion of the court about satisfaction or rejection of the claim completely or partially (part 1, Article 155 of the CCP).

When considering a claim presented by several civil claimants or to several defendants (civil defendants), the court shall specify, in what part the passed decision refers to each of them and whether the liability or the right of collection are joint ones. In the cases, when the body in charge of the criminal pro-

cess has taken measures to secure a civil claim, the court shall specify the order of execution upon the property, which was arrested, in the volume as necessary to execute the sentence in this part (Article 156 of the CCP).

In fulfilment of the requirement of part 2, Article 155, of the CCP on establishment in the sentence of the deadline for its voluntary enforcement, the court shall outgo from the interests of the person who suffered from the damage, and the character and the volume of the damage. The term as established by the court shall be counted from the date of enactment of the sentence.

16. The recognizing with the civil claimant of the right to have his/her claim satisfied, and transfer of the issue of the volume thereof to consideration on the order of civil legal proceedings may take place in exclusive cases, when without adjournment of the consideration of the criminal case it is impossible to make a detailed calculation under the civil claim. The formulation of such decision in the substantive provisions of the sentence shall correspond to the provisions of part 3, Article 155, of the CCP. In this case, the court shall initiate, on the basis of a copy of the verdict, which has come into legal force, a case in the order of civil legal proceedings within the term as established by Article 244 of the CCivP.

No unjustified transfer of the issue on the volume of compensation of moral damage to consideration in the order of civil legal proceedings shall be admitted.

17. Explain to the courts that in case of passing of a verdict of guilty, if the civil claim has remained non-submitted, the court shall have the right, upon its own initiative, to consider the issue on compensation of the property damage caused by the crime, when it is required for securing the legitimate rights and interests of the persons, who have suffered from the crime.

It is necessary to bear in mind that such issue can be resolved under the condition that the person bearing material liability for the damage, is the defendant him/herself; while the proofs, sufficient for correct definition of the damage volume, have been investigated at the legal proceedings.

18. To draw attention of the courts that at passing an acquittal or termination of the criminal case on application of forced measures of safety and treatment because of non-establishment of a socially dangerous offence, stipulated by the criminal law, or of unproved participation of the person in committing the offence, the court shall pass decision on refusal to satisfy the civil claim (point 1, part 4, Article 155, of the CCP).

If the offence has no crime attributes, or if there are no grounds for application of forced measures of safety and treatment, or at termination of the criminal case on the grounds, specified in points 3–9, Article 29, or Article 30 of the CCP, the civil claim shall be left without consideration.

19. At consideration of a criminal case in the cassation or supervision order the higher court shall have the right to reduce or increase the volume of compensation of the corresponding physical, property and moral damage, if there is no need to collect or additionally investigate the proofs, and if the circumstance of the case regarding the caused damage had been correctly established by court of the first instance, but a mistake was made in application of the

norms of the substantive law, which regulate the grounds, conditions, volume and method of damage compensation.

If a wrong decision of a civil claim on compensation of physical or property damage at passing the sentence of guilty was caused by unreasonable reduction of the volume of charge or incorrect re-qualification of the indictment to another Article of the Criminal Code, assuming responsibility for a less grave crime, the verdict shall be subject to cancellation in full, but only in case there is a complaint of the victim, his/her representative, or a cassation or supervisory protest on these grounds.

In case of quashing of the sentence regarding the civil claim, the case shall be sent to a new consideration for addressing the submitted claims by way of civil legal proceedings.

20. At quashing of a sentence with delivery of the case to a new consideration in relation to the person, linked with other defendants or convicts by collective and several responsibility, the whole volume of damage compensation shall be assigned to those defendants or convicts, in relation to whom the sentence was left without change.

If at a new consideration of the case the verdict of guilty is passed by the court, the latter may impose on the defendant the duty of damage compensation jointly with the persons earlier convicted for this crime.

21. The Regional, Minsk City and Belarusian Military Courts shall pay attention, when studying the judiciary practice on particular categories of cases, to consideration by the courts of civil claims and take measures to eliminate the revealed deficiencies. At consideration of cases in the cassation and supervisory order, they shall correct the admitted mistakes.

Chairman of the Supreme Court
of the Republic of Belarus
Secretary of the Plenum,
Judge of the Supreme Court of the Republic of Belarus

V.O. Sukalo

I.N. Minets

***On application practice by the courts of the legislation,
regulating compensation of moral damage***

**Statement of the plenum of the supreme court
of the Republic Belarus
September 28, 2000, No. 7**

*Registered in the National Register of Legal Acts Of the Republic of Belarus on
October 12, 2000 No. 6/258*

*In the wording of the Statement of the Plenum of the Supreme Court of
22.12.2005, No. 13*

Having discussed the materials of studying the judiciary practice on the cases dealing with compensation of moral damage, with account of the provisions of the new Civil Code of the Republic of Belarus, the Plenum of the Supreme Court of the Republic of Belarus has hereby decided to:

1. Draw attention of the courts that the right of the citizen to compensation (material reimbursement) of moral damage is guaranteed by the Constitution of the Republic of Belarus (Article 60) and is the way of protecting the civil rights, personal immunity and dignity in the order established by the law.

2. The general rules of compensation of moral damage as the method of protecting the personal non-property rights and other intangible benefits, established by Article 152 of the Civil Code of the Republic of Belarus, are applied since July 1, 1999; that is, from the enactment date of the Civil Code of the Republic of Belarus. With account of the provisions introduced by Articles 60 and 142 of the Constitution of the Republic of Belarus, on legal relations that had arisen before July 1, 1999, the moral damage is compensated only if such compensation had been stipulated by acts of legislation (Articles 7, 456 and 457 of the Civil Code of 1964 and the Rules of Compensation of Damage Caused to Citizen's Life and Health, published in accordance with the above Articles and approved by the Statement of the Cabinet of Ministers the Republic of Belarus of November 9, 1994, No. 172 (with amendments and additions of November 8, 1995), Laws of the Republic of Belarus «On Social Protection of Invalids in the Republic of Belarus» of November 11, 1991, «On Protection of Consumers' Rights» of November 19, 1993, «On Citizens' Applications» of June 6, 1996, and «On Advertising» of February 18, 1997).

With the aim to ensure correct and timely settlement of arisen disputes, the courts shall clear out the following on every case on compensation of moral damage: the character of the disputable legal relation; by what legal norms it is regulated; when the legislative act, which stipulates the conditions and order of compensation of moral damage on this legal relation, was enacted; and when the actions, which have entailed its onset, were committed.

The claims on compensation of the moral damage caused prior to enactment of the legislative act that envisions the victim's right to its compensation, shall not be subject to satisfaction also in the case, when the claimant continues experiencing physical or moral sufferings after enactment of this act.

Should the illegal actions (inaction) of the defendant causing physical or moral sufferings to the claimant have begun prior to enactment of the law, which establishes the responsibility for causing moral damage, and continue after enactment of this law, the moral damage in such cases shall be subject to compensation.

3. Moral damage shall be subject to compensation in all the cases, when it has been caused by the actions violating the personal non-property rights of the citizen or encroaching on other intangible benefits, belonging to him/her from birth or by virtue of the legislative act.

The provisional list of intangible benefits can be found in point 1, Article 151, of the Civil Code. They also include: the rights to national identity, to a freedom of worship, to freedom of a choice of language of dialogue, education and training, other rights of non-property character guaranteed by the Constitution of the Republic of Belarus.

If compensation of moral damage is stipulated by the provisions of the Civil Code, regulating separate types of relations (Articles 153, 968-970), as well as in the norms of the Labour (Article 246) and Criminal (Article 44) Codes, or in other acts of legislation, the moral damage shall be compensated in the order and on the conditions, stipulated by these provisions or acts of legislation. However, if the requirement, outgoing from these relations, about protection of non-material benefits is based on the general norms of the Civil Code, the rules of liability as established by Article 152 of the Civil Code shall apply.

(Part 3, point 3 in the wording of the Statement of the Plenum of the Supreme Court of 22.12.2005, No. 13)

4. The right to compensation of moral damage in cases of dissemination of the data concerning one's private life, personal and family secrets shall arise under the condition of causing moral sufferings to the citizen, irrespective of the fact, whether the disseminated data is discrediting or not.

5. The courts shall bear in mind that unlike Article 7 of the Civil Code of 1964, which assumed the right of the citizen to compensation of moral damage only in case of dissemination in relation to him/her of the data, contradictory to reality, discrediting the honour, dignity or business reputation, by a mass medium, Article 153 of the new Civil Code such right is stipulated in all the cases irrespective of the form of dissemination of data.

6. Explain that citizens shall have the right to compensation of moral damage, caused by state bodies, bodies of local administration and self-government, as well as by their officials in cases of violating the non-property rights of citizens as a result of illegal actions (inaction) of these bodies and their officials, both as a result of adoption by these bodies of acts, which mismatch the legislation (Article 938 of the Civil Code) and in cases of violating rights and freedoms of citizens at consideration of their applications.

(Point 6 in the wording of the Statement of the Plenum of the Supreme Court of 22.12.2005, No. 13)

7. Draw attention of the courts that in the sphere of violation of citizens' property rights, moral damage shall be subject to compensation only in the cases stipulated by legislative acts (Law «On Protection of Consumers' Rights», Law «On Advertising» and the Criminal Code of the Republic of Belarus of 1999).

8. Moral damage shall be understood as the physical and (or) moral sufferings, experienced by the citizen (part 1, Article 152, of the Civil Code).

Physical sufferings are physical pain, functional frustration of the organism, change in the emotional-will sphere, other deviations from the usual state of health, which are consequences of the actions (inaction), encroaching on the intangible benefits or property rights of the citizen.

Moral sufferings are expressed, as a rule, in the feeling of fear, shame, humiliation, and in others adverse for the human in psychological aspect experiences, connected with loss of relatives, loss of work, disclosing of medical secret, impossibility to continue one's active public life, or with restriction or deprivation of some citizen's rights, etc.

9. When deciding on compensation of moral damage, the courts shall output from the general grounds of responsibility for causing damage.

In the cases, stipulated by Article 969 of the Civil Code, compensation of moral damage shall be made irrespective of the guilt of the damage-doer. The courts shall bear in mind that the right to compensation of moral damage, caused to the citizen as a result of his/her illegal conviction, illegal attraction to criminal liability, illegal application of placing under guards or recognizance not to leave as a measure of restraint, illegal imposing of the official penalty in the form of arrest or corrective works, shall arise only on the facts of committing these actions by the bodies of inquiry, preliminary investigation, prosecutor's office and the court after enactment of the Civil Code, that is, since July 1, 1999.

Compensation of moral damage in these cases shall be made from the treasury of the Republic of Belarus, and in the cases, stipulated by the legislation, from the treasury of the respective administrative and territorial unit by the corresponding financial bodies, acting on behalf of the treasury (Article 940 of the Civil Code).

10. The moral damage caused to a citizen's life and health by a source of increased danger, is compensated by the owner of the source of increased danger.

Owners of sources of increased danger shall compensate the moral damage, caused to third parties as a result of interaction of such sources (collision of vehicles, etc.), jointly and severally (point 2, Article 948, of the Civil Code).

When deciding on compensation of moral damage caused directly to owners of vehicles as a result of their interaction (collision), one should take the following into account:

- a) The moral damage, caused to one of the owners for the guilt of the other, shall be compensated by the guilty one;
- b) If there is only the guilt of the owner, who has suffered the moral damage, no damage shall be compensated to him/her;
- c) If there is guilt of both owners, the volume of compensation of moral damage is defined in proportion to the guilt of each of them and arisen consequences;
- d) If there is no guilt of the owners of the sources of the source of increased danger in causing mutual moral damage (irrespective of arisen consequences), none of them has the right to compensation.

11. Responsibility for the moral damage caused by a person in the age of up to 14 years of age shall be born by the persons specified in Article 942 of the Civil Code in the order and on the conditions as stipulated by this Article.

If moral damage has been caused by a person in the age from 14 to 18 years, the responsibility for compensation of this damage is imposed directly on this person. Parents, adoptive parents or trustees of this person shall bear responsibility in case the minor has insufficient earnings or property for compen-

sation of the moral damage, and unless they prove that the damage was caused not for their guilt (Article 943 of the Civil Code).

12. The rule stipulated in Article 937 of the Civil Code on responsibility of legal entities or citizens for compensation of damage, caused by their workers at execution by them of their labour (service, official) duties, shall also cover the cases of causing moral damage.

13. Compensation of moral damage is allowed only on the demand, submitted by the victim or by other persons acting in his/her interests in the order stipulated by the procedural legislation. The court shall have no right to consider the issue of compensation of moral damage under its own initiative.

14. Moral damage is compensated by the court in the monetary form, unless some other form of compensation of moral damage is envisioned by the legislation.

(Point 14 in the wording of the Statement of the Plenum of the Supreme Court of 22.12.2005, No. 13)

15. The claims on the volume of compensation of moral damage should be based on particular circumstances. Therefore, with reference to Article 243 of the CCivP, the claimant shall specify, in his/her application for compensation of moral damage, who, under what circumstances and by what actions (inaction) has caused his/her physical or moral sufferings, what the particular expression thereof is, and by what sum of money he/she evaluates the compensation of them.

The court shall have the right to consider the claim for compensations of moral damage both independently and together with the claims of property character, including in the course of criminal proceedings. The volume of compensation of moral damage does not depend on the volume of compensation of material damage.

16. At definition of the volume of compensation of moral damage, the court shall be guided by part 2, Article 152, and part 2, Article 970, of the Civil Code. Here, with the aim to ensure the requirements of reason and justice for every particular case the court should consider the degree of moral and physical sufferings of the victim, outgoing from the gravity (value) for him/her of the consequences and public estimate of them. Depending on the character of the disputable legal relation, one should take into account the circumstances of causing the moral damage, age of the victim, his/her health condition, life and financial conditions and other individual peculiarities.

In case of death of the victim, the volume of compensation of moral damage due to the persons who have the right for compensation, shall be defined depending on his/her degree of relationship with the victim, whether he/she was dependent on the victim, the character of mutual relations, and other particular circumstances relevant for assessing the degree of moral sufferings.

When defining the volume of compensation of moral damage, the courts shall consider the degree of the guilt of the damage-doer in the cases, when guilt is the basis for compensation of damage.

If an imprudence of the victim him/herself contributed to the onset or increase of moral damage, then, by reference to Article 952 of the Civil Code, the volume of compensation shall be defined with account of the degree of the victim's guilt.

The court shall have the right also to take into account the property (financial) status of the damage-doer.

17. With reference to Article 949 of the Civil Code, the persons who have caused moral damage by their joint actions, shall respond jointly and severally before the vic-

tim. However, under application of the victim and in his/her interests the court shall have the right to make them responsible in shares, having defined the shares with reference to the rules stipulated by point 2, Article 950, of the Civil Code.

18. The right to claim compensation of moral damage is not inherited; therefore, procedural assignment shall not be allowed on these cases.

Taking away one's life causes moral sufferings in victim's relatives and other close persons; therefore, their right to compensation of moral damage is not based on legal succession, and should such claims be put forward by them, they shall be subject to consideration in accordance with the general practice.

Protection of rights of minors, as well as of the citizens recognized as incapacitated, on compensation of moral damage shall be carried out by their legal representatives (parents, adoptive parents or trustees).

19. The courts should bear in mind that the claims of compensation of moral damage, outgoing from a violation of personal non-property rights and other intangible benefits, except for the cases stipulated by legal acts, are not covered by the period of limitation (point 1, Article 209, of the Civil Code).

Should the legislative acts envision compensation of moral damage in the sphere of violation of citizens' property rights, the period of limitation shall apply.

20. In cases, when drawing up of a motivation part of court judgement is required (Article 305 of the CCivP), it should specify the following: a reference to the law, by which the court was guided; reference to the actual circumstances of the case established by the court, as well as the motives, put into the basis of defining the volume of compensation of the moral damage, subject to collection.

21. The application on compensation of moral damage, as the claim based on protection of personal non-property rights, shall be paid by the state duty at a rate envisioned for payment of applications of the non-property character. Here, one should keep in mind that in the cases stipulated by the law claimants are released from payment of the state duty (for example, part 3, Article 6, of the Law of the Republic of Belarus «On Protection of Consumers' Rights» of November 19, 1993; and points 2 and 7, Article 4, of the Law of the Republic of Belarus «On State Duties» of January 10, 1992, with subsequent amendments and additions).

22. The adoption of this Statement shall invalidate the Statement of the Plenum of the Supreme Court of the Republic of Belarus of September 20, 1996, No. 10 «On Application of Legislation Regulating Material Compensation of Moral Damage» with amendments and additions of December 12, 1996, and September 23, 1999.

Chairman of the Supreme Court
of the Republic of Belarus
Secretary of the Plenum,
Judge of the Supreme Court of the Republic of Belarus

V.O. Sukalo

I.N. Minets

On application practice of code of criminal procedure norms, regulating victim's participation in criminal process

**Statement of the Plenum of the supreme court
of the Republic Belarus
June 30, 2005, No. 6**

Registered in the National Register of Legal Acts of the Republic of Belarus on July 12, 2005, No. 6/452

Aiming at correct and uniform application by the courts of the norms of the Code of Criminal Procedure regulating the victim's participation in the criminal process, and ensuring his/her rights and legitimate interests, the Plenum of the Supreme Court of the Republic of Belarus has hereby decided to:

1. Draw attention of the courts to the fact that strict observance of the norms of the law of criminal procedure, which regulate the victim's participation in the criminal process, is an important guarantee for enforcement by the person, who has suffered from the crime, of his/her inalienable right to access to justice and judicial defence.

In the course of preliminary investigation and judicial examination of every criminal case, all the measures stipulated by the law should be taken towards clearing out of the nature and volume of the damage caused by the crime (point 4, part 1, Article 89 of the Code of Criminal Procedure (CCP)), and towards establishment of the circle of persons who suffered the damage.

2. Explain the courts that by the sense of Article 49 of the CCP only the individual, who has suffered physical, property or moral harm directly from a crime (irrespective of the fact whether the crime was finished or just prepared or attempted) or from any other socially dangerous offence, stipulated by the criminal law, committed by a mentally incompetent person.

The individual shall be regarded to be a victim irrespective of his/her citizenship, age, physical or mental condition and other data about the person, of establishment of the person, who has committed the crime, and legitimacy of behaviour of the victim him/herself, except for the cases when the individual has suffered from the crime committed by him/herself, or the harm was caused in the course of his/her detention when committing the crime, if the powers required for detention were not exceeded.

The law of criminal procedure does not assume recognition of a legal entity's representative to be a victim, since the legal entity, which has suffered from a crime or some other socially dangerous act of a mentally incompetent person, shall enforce its rights by bringing a civil suit.

3. In the cases about the crimes entailing the victim's death, the persons, who are members of the victim's family (point 53, Article 6 of the CCP), his/her close relatives (point 1, Article 6 of the CCP) or legal representatives

(point 8, Article 6 of the CCP), who are enforcing the rights and executing the duties stipulated by Article 50 of the CCP, shall be admitted to take part in the criminal process as victims. One should keep in mind here that point 1, Article 6, of the CCP presents an exhaustive list of persons recognized as close relatives and admitted to participation in the criminal process as victims. Other relatives, as well as other persons referred to family members according to provisions of point 53, Article 6, of the CCP, can act in this capacity in case of joint residence and joint housekeeping with the deceased victim.

Should members of the family, close relatives and legal representatives of the victim fail to reach accord on who should enforce the victim's rights, they may also be recognized to be victims.

4. The courts shall keep in mind that an individual can be recognized to be a victim both under his/her application and under the initiative of the body in charge of the criminal process, but not earlier than a criminal case is initiated.

The decision to recognize an individual to be a victim shall be made immediately upon establishment of the grounds thereto, which is an important guarantee of the victim's timely access to justice and enforcement by him/her of procedural rights and execution of his/her duties.

The body in charge of the criminal process shall explain his/her rights and duties to the victim, as well as to provide a chance to file a suit on compensation of damage.

5. Should there be grounds for application of measures to ensure safety, the body in charge of the criminal process shall take such measures in relation to the victim, members of his/her family and relatives (Articles 65 of the CCP) both under their statement and under its own initiative. Particular safety measures shall be applied with account of the degree of the threat, irrespective of the category and circumstances of the committed crime and of the fact, whether the crime was committed by one executor, in complicity or by a group (an organized group).

The decision (definition) shall be sent to the body competent of ensuring security measures. If necessary, a notification in writing shall be sent to the victim or the decision on application of security measures shall be announced.

6. If a crime victim is a minor or an incapacitated person, then, the body in charge of the criminal process shall ensure participation in the proceedings of his/her legal representative. According to provisions of part 3, Article 57 of the CCP, the victim's legal representative has no right to make any actions against the interests of the person he/she represents. In this connection, the body in charge of the criminal process shall take steps towards prevention of such actions.

7. Draw attention of the courts that participation in the criminal process of the victim and his/her legal representative shall not exclude a chance for simultaneous participation in the case of the victim's representative, who is enforcing the rights and executing the duties as stipulated by Article 59 of the CCP.

Unlike the legal representative, whose recognition and admission to participation in the criminal proceedings does not depend on the will of the victim, only the person, authorized by the victim or his/her legal representative to represent his/her interests in the proceedings on the case, can be recognized to be the victim's representative (Article 58 of the CCP).

If necessary, the victim's legal representative can be interrogated on the circumstances of the case known to him/her as a witness, which should not entail any change of his/her procedural status. At the same time, by virtue of Article 87 of the CCP, giving witness' evidence by a person excludes his/her any participation in the proceedings on this criminal case as the victim's representative.

Interrogation of the legal or other representatives of the victim on the circumstances of the crime instead of him/her shall not be allowed.

8. Explain that the victim, his/her legal representative, or other victim's representative, shall acquire the corresponding procedural rights and execute the duties as defined by the law only after the body of criminal prosecution or the judge have passed a decision, and the court – a definition on recognizing them as such. The decision (definition) on recognizing to be a victim shall be made in relation to every person harmed by the crime.

Apart from observance of the general requirements to drawing up procedural decisions, the decision (definition) on recognizing to be a victim shall surely contain the data about what damage (or several types thereof) was caused by the criminal acts, and on cases about the crimes, which had entailed the death of the victim, – who from among the persons defined by the law shall be admitted to participation in the case as the victim.

The person recognized to be a victim shall be notified on the fact by announcing the decision (definition), of which fact an entry shall be made in the decision (protocol of the judicial session), or by serving a copy of the decision (definition).

9. The courts should bear in mind that when appointing and preparing the legal proceedings on the accepted criminal case, the court shall check, whether all the persons, who have suffered from the crime (socially dangerous act of a mentally incompetent person), are recognized to be victims, whether their procedural rights and duties have been explained to them and whether the body of criminal prosecution has ensured the appropriate conditions to enforce them.

In case the victim was restricted in enforcing his/her rights stipulated by the law (for example, not notified about the end of the preliminary investigation, or not ensured a chance to get acquainted with the materials of the case, or the victim's petition to admit his/her representative was unreasonably rejected), the judge (court) shall take the necessary steps to eliminate the admitted violations.

10. Draw attention of the courts to the necessity of absolute observance of the requirements of part 2, Article 279, part 4, Article 281, and Article 283 of the CCP about delivery to the victim of a copy of the decision about termination of the case, about timely notification of the victim about the place and time of start of the proceeding, and about sending to him/her of a copy of the decision about appointment of the proceedings, as well as a copy of the decision about the measure of restraint in relation to the defendant, if such measure was changed or cancelled by the judge, or extended in case the defendant is under guards or home arrest.

11. The courts shall take steps as stipulated by the law to ensure the victim's participation in the judicial proceedings. Should the victim fail to appear in the courtroom, the court shall decide, according to part 2, Article 296, of the CCP, whether to go on with the proceedings on the criminal case or adjourn them. The court should keep in mind here that the legal proceedings in the absence of the victim can be held only when the complete clearing out of all the

circumstances of the case and ensuring the defence of the rights and legitimate interests of the victim are possible in his/her absence.

The victim can be subject to attachment under a motivated decision (definition) of the court and should there be reliable data in confirmation of non-validity of the reasons of his/her non-appearance at the judicial proceedings.

12. In the course of legal proceedings, the court shall not only explain to the victim and his/her lawful or other representative their rights as fixed accordingly in Articles 50, 57 and 59 of the CCP but also to create the conditions stipulated by criminally-procedural legislation, which ensure opportunities for the above participants of the process to present evidences, move petitions, express their opinions in relation to the arguments and petitions of other participants of the process and take part in interrogating the defendant, other victims and witnesses.

13. When deciding on holding the judicial investigation under truncated procedure (Article 326 of the CCP), the court shall clear out not only the consent of the victim to such procedure, but also the range of evidences, which, in his/her opinion, should be examined. No encroachment on the victim's right to evidence at the judicial session shall be admitted.

14. Draw attention of the courts to absolute observance of the victim's constitutional right to refuse evidencing against him/herself, members of his/her family or close relatives.

The victim shall be interrogated according to the rules of interrogating the witnesses, stipulated by Article 330 of the CCP, and minor victims – with account of the peculiarities provided by Article 332 of the CCP. Upon the permit of the chairman, the victim shall have the right to evidence at any moment of the judicial investigation.

According to part 2, Article 93, of the CCP, the victim can be interrogated about any circumstances subject to proving on the criminal case, including on the proofs available in the case.

Should the case be considered in the absence of the victim for the reasons excluding his/her appearance, the court shall decide, according to Article 333 of the CCP, on announcement of his/her evidences given in the course of the pre-judicial proceedings.

15. The courts should bear in mind that if not only the victim, but also his/her representative, are taking part in the legal proceedings, then, the right to speak at the judicial debate or reply brief shall be provided to the victim's representative.

16. With the aim to ensure a possibility of appealing against the sentence, the victim who did not participate in the judicial session should be notified in writing about the passed verdict with explanation of his/her rights to get a copy, and of the procedure and terms of appealing against.

17. The courts of the cassation instance shall clear out, when taking cases to consideration, whether the victim and his/her representatives have been notified about the brought protest or cassation complaint lodged by other participants of the process, as well as about the date of considering the case by the higher court, and whether he/she (they) have been granted an opportunity to get acquainted with the protest or complaint and to bring objections on them, if they wish so. Having established that the above victim's rights have been broken, the court of the cassation instance shall take steps to eliminate the ad-

mitted violations, and – should it prove impossible – to return the case for this purpose to the court, which has passed the sentence.

18. One should keep in mind that any deprivation or constraint of the victim's rights guaranteed by the law at the judicial examination of the criminal case, should it hamper the court in comprehensive, complete and objective examination of the circumstances of the case and affect or could affect passing the lawful and justified verdict, is an essential violation of the law of criminal procedure entailing cancellation of the judgements passed on the case.

19. Draw attention of the courts that the victim is the only participant of the process who has directly suffered from the crime; therefore, ensuring protection of his/her rights and legitimate interests acquires special value. That is why, the courts should react with special court rulings to every case of violation or restriction of the rights guaranteed to him/her by the law.

Chairman of the Supreme Court
of the Republic of Belarus
Secretary of the Plenum,
Judge of the Supreme Court of the Republic of Belarus

V.O. Sukalo

I.N. Minets

Samples of procedural documents

Konevas Alina Leonidovna,
Daumana Str. 100–200
220033 Grodno

Notification

About recognition of a victim and right to lodge a civil claim

Hereby I notify you, that according to the art. 49 of the CCP of the Republic of Belarus, you are recognized as a victim of crime, under the p. 3 art. 181 of the Criminal code of the Republic of Belarus, committed against you by Pertoshkevich P. P., Sidorevich S.S., and Bobrukevich B.B., and the statement is duly issued on this issue.

As far as damage was caused by the crime, according to the part 4 of art. 49 and part 1 and 3 of art. 149 of the CCP of the Republic of Belarus you are entitled to lodge a claim on damage compensation in written or orally to the investigator.

Investigator,
Militia major
10.02.2010

P.P. Pratasavitsky

Protocol

of clarification of the right to lodge a civil claim

Grodno

February, 10, 2010

Investigator, militia major Pratasavitsky P.P., under the rule of part 1 art. 150 of the CCP of the Republic of Belarus and in compliance with the requirements of the art. 193 and 194 of the CCP of the Republic of Belarus has composed this protocol on the matter, that in the investigator's room he explains to Konevas Alina her right, stipulated by the art. 149 of the CCP of the Republic of Belarus, to lodge a claim against Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B. on compensation of damage caused by the crime committed by them.

Protocol is read by me. The essence of the right of claiming of compensation is clear to me.

Victim
Investigator
Militia major

A.L. Konevas

P.P. Pratasavitsky

Note. According to the part 3 of the art. 149 of the CCP of the Republic of Belarus, if a person states about lodging a claim on damage compensation while composing the protocol, this oral announcement must be reflected in the protocol. If the right for claiming compensation is explained while investigatory deeds (e.g. interrogation of a victim), this statement must be reflected in the protocol of investigatory deeds. In other cases a separate protocol should be composed.

To the Court of the Pervomajsky district of Grodno city
Claimant: Konevas Alina Leonidovna,
220033 Grodno Daumana Str. 100–200
Respondents: Pertoshkevich P.P. Sidorevich S.S.,
and Bobrukevich B.B
Placed in the investigatory isolator of Grodno
Department of Interior,
Grodno, Sverdlova Str., 8.
Sum of claim: 10 000 000 roubles and 4300 euro.

Civil claim

On compensation of damage caused by crime

In May 2009 Pertoshkevich P.P. acting jointly with Sidorevich S.S., Bobrukevich B.B. and unknown citizens of Germany, by fraud recruited me and took to Germany, where they placed me to the brothel «Paradise», located in the city of Hamburg, where I was exploited sexually for three months. While talking me into this trip, above-mentioned persons promised that in Germany I would dance and be engaged into consummation, and completely denied the possibilities of work in prostitution. They knew that I was a lonely mother with little son, and had no financial means, thus abovementioned persons paid all expenses connected to visa and travel documents. When I appeared at the brothel, my passport was taken off, and by threatening they forced me into prostitution, and I realized that I was misused. I had no documents, no normal cloths, no money, neither knowing language or culture of the country of destination, being in debt bondage, in absolute dependency on the abovementioned persons, I was put into such circumstances, that I can not do anything but providing sexual services.

Dishonored, at constant risk to health and threatened by possible assaults on my child, I was forced to become a prostitute. Due to the fault of the abovementioned persons, my visa was terminated, and I was forced to use false passport, that lead to deportation from Germany afterwards.

Illegal deeds of Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B. caused moral sufferings. My human dignity was humiliated, I lost basic trust in people, and my self-esteem is low now. Situation affected not only me, but my mother as well. We were and we are frightened by the abovementioned persons. Being anxious about security of my family, I lead life in isolation, and that imposes restriction on my liberty of movements. The above-mentioned circumstances interfere my rehabilitation and coming back to normal life.

Also, while being in Germany, I paid Pertoshkevich P.P. 4300 euro from money I have earned.

For the committed crime, Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B had been put on trial as accused by the Pre-trial investigation of the Department of Interior of the Grodno region.

Because of the committed crime I suffered moral and material damages, based on art. 152, p. 1 art. 933 and art. 949 of the Civil code of the Republic of

Belarus and under the rule of art. 148, p. 1 and 3 art. 149 of the CCP of the Republic of Belarus,

claim for:

Vindicate from Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B. conjunctly in my behalf 10 000 000 roubles – sum of material compensation of moral damage, and 4300 euro – sum of material compensation of material damage.

15.02.2010

A.L. Konevas.

**PROTOCOL
Of lodging civil oral claim**

Grodno

February, 10, 2010

Investigator, militia major Pratasavitsky P.P., under the rule of part 1 and 3 of art. 149 of the CCP of the Republic of Belarus and in compliance with the requirements of the art. 193 and 194 of the CCP of the Republic of Belarus took the oral announcement from Konevas Alina Leonidovna, victim on the criminal case № 1234509876, about the lodging of civil claim on compensation of damage caused by crime, committed by Pertoshkevich P.P. Sidorevich S.S., and Bobrukevich B.B.

Konevas A.L. claimed the following:

In May 2009 Pertoshkevich P. P. acting jointly with Sidorevich S.S., Bobrukevich B.B. and unknown citizens of Germany, by fraud recruited me and took to Germany, where they placed me to the brothel «Paradise», located in the city of Hamburg, where I was exploited sexually for three months. While talking me into this trip, above-mentioned persons promised that in Germany I would dance and be engaged into consummation, and completely denied the possibilities of work in prostitution. They knew that I was a lonely mother with little son, and had no financial means, thus abovementioned persons paid all expenses connected to visa and travel documents. When I appeared at the brothel, my passport was taken off, and by threatening they forced me into prostitution, and I realized that I was misused. I had no documents, no normal cloths, no money, neither knowing language or culture of the country of destination, being in debt bondage, in absolute dependency on the abovementioned persons, I was put into such circumstances, that I can not do anything but providing sexual services.

Dishonored, at constant risk to health and threatened by possible assaults on my child, I was forced to become a prostitute. Due to the fault of the abovementioned persons, my visa was terminated, and I was forced to use false passport, that lead to deportation from Germany afterwards.

Illegal deeds of Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B. caused moral sufferings. My human dignity was humiliated, I lost basic trust in people, and my self-esteem is low now. Situation affected not only me, but my mother as well. We were and we are frightened by the abovementioned persons. Being anxious about security of my family, I lead life in isolation, and that

imposes restriction on my liberty of movements. The above-mentioned circumstances interfere my rehabilitation and coming back to normal life.

Also, while being in Germany, I paid Pertoshkevich P.P. 4300 euro from money I have earned.

For the committed crime, Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B had been put on trial as accused by the Pre-trial investigation of the Department of Interior of the Grodno region.

Because of the committed crime I suffered moral and material damages, based on art. 152, p. 1 art. 933 and art. 949 of the Civil code of the Republic of Belarus and under the rule of art. 148, p. 1 and 3 art. 149 of the CCP of the Republic of Belarus,

Protocol is read by me. Recorded correctly upon my words. Have no claims and notice on the content of the protocol.

Victim

A.L. Konevas

Investigator

Militia major

P.P. Pratasavitsky

STATEMENT

On recognition of a civil claimant

Grodno

February, 15, 2010

Investigator, militia major Pratasavitsky P.P., considered the statement of claim on compensation of damage caused by crime, submitted by the victim upon the criminal case № 1234509876 Konevas A.L.

Established the following:

Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B aimed at fast and illegal beneficiation from regular incomes from human trafficking, beforehand unified into the manageable, sustainable, international group for joint criminal activity with unidentified citizens of Germany, visiting Minsk city in the late May, 2009, and using the vulnerable situation of Konevas A.L., by fraud recruited her and transported to Germany with the purpose of sexual exploitation, where she was placed at the brothel «Paradise» in the city of Hamburg, where Konevas A.L. was subjected to sexual exploitation within 3 months period. As a result of the described above deeds Konevas A.L. was recognized as a victim, suffered material and moral damage.

On the 15th of February 2010, Konevas A.L. lodged a civil claim on compensation of damage caused by crime, committed by Pertoshkevich P.P., Sidorevich S.S., and Bobrukevich B.B. in the amount of 10 000 000 roubles and 4300 euro.

In view of the above, under the rule of p.1 art. 52 and p. 2 art. 150 of the CCP of the Republic of Belarus,

resolved the following:

1. To recognize Konevas Aline Leonidovna as a civil claimant in the criminal process.

2. To declare the present Statement to the civil claimant and explain her rights and obligations, stipulated by art. 53 of the CCP of the Republic of Belarus.

Investigator
Militia major

P.P. Pratasavitsky

Statement is received by me on February, 15th, 2010.

Simultaneously, investigator has explained rights and obligations of the civil claimant, stipulated by art. 53 of the CCP of the Republic of Belarus, imposed by pre-trial investigation and consequences of the non-compliance of the obligations.

Civil claimant

A.L. Konevas

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