

[www.lastrada.org.mk](http://www.lastrada.org.mk)

# THE RIGHT TO COMPENSATION FOR TRAFFICKED PERSONS IN R. MACEDONIA



**Association for action against violence and trafficking  
in human beings - Open Gate/La Strada Macedonia**

# THE RIGHT TO COMPENSATION FOR TRAFFICKED PERSONS IN R. MACEDONIA



...toward common values!

Annual program of Open Gate was made possible by Civica Mobilitas Programme – implemented by CIRAA and financially supported by SDC

The views expressed herein are those of the authors and do not necessarily reflect the official position nor of the United Nations Global Initiative to Fight Human Trafficking. The designations employed and the presentation of the material do not imply the expressions of any opinion whatsoever on the part of the United Nations Global Initiative to Fight Human Trafficking or the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authors, or concerning the delimitation of its frontiers or boundaries. Mention of firm names and commercial products does not imply the endorsement of United Nations.

June 2011, Skopje

The research **THE RIGHT TO COMPENSATION FOR TRAFFICKED PERSONS** is produced by the Association for action against violence and trafficking in human beings – Open Gate/La Strada Macedonia.

We express special gratitude to La Strada International for their expert support throughout implementation of the project and creation of the publication.

Skopje, June 2011

Authors:

Jasmina Dimishkovska Rajkovska; Maja Varoshlija; Suncica Dimirijoska; Aneta Trajkovska

All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of Open Gate as the source.

This publication is part of the project COMP.ACT – European Action for Compensation for Trafficked Persons that has been made possible by the financial support of UN.GIFT.

CIP - Cataloguing in publication  
National and University Library "Sv. Kliment Ohridski", Skopje

347.513:343.431 (497.7)

RIGHT to compensation of trafficked persons in the Republic. Macedonia / [authors Jasmina Dimishkovska Rajkovska ... and others.]. - Skopje: Association for action against violence and trafficking in human beings – Open Gate/La Strada Macedonia. June, 2011 - 43 pages: 23 cm

Authors: Jasmina Dimishkovska Rajkovska, Maja Varoshlija, Suncica Dimitrijoska, Aneta Trajkovska

ISBN 978-9989-2751-2-8

1. Dimishkovska Rajkovska, Jasmina [author]

a) Right to compensation – for trafficked persons-  
Macedonia

COBISS.MK-ID 88646666

## Table of Contents

INTRODUCTION .....	6
About the Project .....	6
1. THE NEED FOR ASSISTANCE AND COMPENSATION.....	7
2. INTERNATIONAL LEGISLATION .....	9
3. NATIONAL LEGISLATION .....	12
4. ACTION PLAN .....	13
5. TYPES OF COMPENSATION .....	16
6. PARTICIPANTS IN THE PROCEEDINGS.....	16
7. PROCEDURE .....	18
8. ASSET SEIZURE AND CONFISCATION .....	21
RESEARCH .....	21
1. RESEARCH METHODOLOGY .....	21
2. RESEARCH SUBJECTS.....	23
3. RESEARCH DATA ANALYSIS.....	24
4. LEGAL PROCEEDINGS IN THE PROCESS OF COMPENSATION .....	29
CONCLUSIONS .....	35
RECOMMENDATIONS.....	37
APPENDIX 1.....	39

## **ACRONYMS**

<b>CPC</b>	Criminal Procedure Code
<b>LJJ</b>	Law on Juvenile Justice
<b>CC</b>	Criminal Code
<b>OSCE</b>	Organisation for Security and Co-Operation in Europe
<b>UN</b>	United Nations
<b>PP</b>	Public Prosecution
<b>CL</b>	Contract Law
<b>NGOs</b>	Non-Governmental Organisations
<b>MJ</b>	Ministry of Justice
<b>MLSP</b>	Ministry of Labour and Social Policy
<b>RM</b>	The Republic of Macedonia
<b>NRM</b>	National Referral Mechanism
<b>SCSW</b>	State Centre for Social Work
<b>CE</b>	Council of Europe
<b>IOM</b>	International Organization for Migration
<b>ICMPD</b>	International Centre for Migration Policy Development
<b>PTP</b>	Pre-Trial Procedure
<b>AA</b>	Appointed Authority
<b>SOP</b>	Standard Operative Procedures
<b>MoI</b>	Ministry of Interiors
<b>UCTHBSM</b>	Unit for Combating Trafficking in Human beings and Smuggling migrants

## **INTRODUCTION**

The issue of compensation for trafficked persons in the Republic of Macedonia is a relatively new and unexplored one, and it has only recently been raised considering the increasing number of trafficked persons who seem to be marginalised and are in need of help and protection. The content of this publication is based on a limited number of reports and data about cases in R. Macedonia where compensation was granted. The information outlined in this publication is based mainly on communication with the relevant institutions and stakeholders involved in assisting and protecting trafficked persons. It is also based on our personal experience gained through intensive work with trafficked persons as well as our collaboration with various international organisations and NGOs.

This publication aims to conduct a detailed system analysis of the process of claiming compensation for trafficked persons. More specifically, it scrutinises the legal framework which grants the right to compensation and governs the procedures followed by the relevant institutions/organisations. In other words, it examines the way in this entire system operates.

Key findings for the research are:

- Laws that penalize the crime of trafficking in human beings are compatible with international documents in relation to the compensation for trafficked persons.
- Compensation as a measure remains unused for trafficked persons.
- Criminal Court of the Republic of Macedonia has imposed rulings on compensation, but trafficked persons have not received any material or non-material compensation.

### **About the Project**

In 2008, many NGOs throughout Europe tackled the issue of entitlement to compensation for trafficked persons. La Strada International and Anti-Slavery International, along with various other NGOs, conceived the idea of establishing a so-called European Coalition, which would consist of a variety of stakeholders: NGOs

offering immediate help to trafficked persons, European Organisations, unions of legal professionals, lawyers, trade unions, migrants' rights organisations, academics, and various international organisations, all of which will work on both national and international level in order to cause a radical change in the relevant systems so as to facilitate the victims' access to compensation.

The European Coalition COMP.ACT was founded in Berlin, Germany, during the European Consultative Meeting. At the start of the project in January 2010, this coalition counted 14 members: Austria, Belarus, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Germany, Ireland, Italy, R. Macedonia, Moldova, Poland, Spain, the United Kingdom and Ukraine. All these countries are listed as both source and destination in terms of trafficking in human beings.

The project aims to include the trafficked person's right to compensation as part of the national and international measures for combating trafficking in human beings, and to develop tools and instruments that will secure the implementation of these measures, enabling access to compensation for trafficked persons.

The project includes research, preparation of manuals and guidebooks, trainings, pilot cases and international advocacy in at least 14 European countries. Furthermore, the project initiated practical research activities on national level, in order to facilitate the process of awarding compensation for trafficked persons. On international level, on the other hand, there are initiatives striving to include compensation in the agenda of the relevant international organs and their action plans, which would ensure a greater degree of commitment on the part of the governments and would guarantee compensation to trafficked people.

## **1. THE NEED FOR ASSISTANCE AND COMPENSATION**

Sadly, the access to compensation is not regarded as one of the key elements in assisting and supporting a trafficked person. Even the existing services do not seem to meet all the needs of a trafficked person. A trafficked person's rehabilitation process can be observed in two stages: the period of recovery, and the period during which the trafficked persons restores their life. At each of these stages, the trafficked person

needs a change<sup>1</sup>. In the period that follows immediately after the rescue, the trafficked person has short-term needs such as safe accommodation, food, clothing, medical attention, legal aid and representation, as well as help and support in all stages of the procedure. After meeting all these basic, yet short-term needs, the next crucial step would be to satisfy the mid-term needs of the individual in order to keep an element of continuity in the process of rehabilitation and restoring the trafficked person's life. This implies providing a trafficked person with the following services: continuous medical protection, counselling and therapy to improve the trafficked person's mental health, education, the opportunity to learn a foreign language, vocational training. Long-term needs, on the other hand, include developing skills for integration and reintegration (the ability to make decisions, managing personal finances, etc.), risk assessment and establishing contact with family members and friends.

Compensation is often disregarded in terms of the trafficked person short-term needs. However, it is important to bear in mind that once the trafficked person starts restoring their life, compensation becomes a crucial element in the process. It helps the trafficked persons cope with the physical, emotional and financial loss. Having received compensation, the trafficked person can afford adequate treatment and therapy. The compensation helps them get a fresh start.

Furthermore, the right to compensation can be seen as having preventive function- it prevents re-victimisation of the person. This is a possible jeopardy, particularly when a trafficked person fails to find a suitable job or a way to support themselves. In such cases, compensation helps the process of reintegration, facilitating the financial side of it.

The restoring (healing) role of compensation is an important element in the rehabilitation process, not only because of the financial benefits it brings, but also because it gives the trafficked person a feeling that justice has been done, that one horrible crime has been stopped and that they are actually the victim of this wrongful and illegal activity, and as such, deserve to be compensated for it. The feeling of justice being served can be intensified in cases where the compensation comes straight from the trafficker.

---

<sup>1</sup> *Comprehensive Services for Survivors of Human Trafficking: Findings from Clients in Three Communities*, Urban Institute, June 2006.

Even though in theory trafficked people have the right to compensation, in practice the story is much different. The reality is that, legally, compensation is not regarded as being fundamental in the process of rehabilitation, nor it is considered a key element in the adopted policies and measures for preventing trafficking in human beings.

## **2. INTERNATIONAL LEGISLATION**

In order to combat organised crime more successfully, the international community has explored a significant number of initiatives and activities. This is particularly true of combating human trafficking as one of the most egregious violations of human rights. A number of documents, drafted and adopted by OSCE, IOM, ICMPD, UN and CE focus on providing a more detailed and precise definition of the terms “trafficking in human beings” and “victim’s rights”.

In that manner, the Republic of Macedonia has signed and ratified several international conventions on trafficking in human beings.

R. Macedonia has signed the United Nations Convention Against Transnational Organized Crime (The Palermo Convention) on 12<sup>th</sup> December, 2000, which was ratified on 12<sup>th</sup> January, 2005. Another convention is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (The Palermo Protocol on Trafficking), signed on 12<sup>th</sup> December, 2000 and ratified on 12<sup>th</sup> January, 2005.

In terms of compensating trafficked persons, the R. Macedonia has signed and ratified two international documents: United Nations Convention Against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

### **2.1 Council of Europe Convention on Action against Trafficking in Human Beings**

1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.<sup>2</sup>
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that grant victims of trafficking in persons the right to an attorney and free legal help;
3. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered;
4. Each State Party shall ensure that its domestic legal system contains measures to guarantee compensation for victims, such as establishing compensation funds for victims of trafficking in human beings or other measures or programmes designed to provide assistance and social integration of the victim by implementing the measures stipulated in Article 23.

## **2.2. United Nations Convention against Transnational Organized Crime**

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.<sup>3</sup>
2. Each State Party shall ensure that its domestic legal system contains measures that offer the possibility of obtaining compensation for damage suffered for all victims of the criminal offences covered in this Convention;
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

The R. of Macedonia has in its domestic law implemented the signed conventions regarding compensation for trafficked persons. In other words, the legal framework exists. The problem lies in the fact that the offender does not possess any property, or at least not legally, in their name; or the offender is in possession of illegally built property which has not been appropriately recorded in the country's Land

---

<sup>2</sup> Article 15 – Compensation and legal redress

<sup>3</sup> Article 25 - Assistance and protection of victims

Registry. All this imposes immense difficulties during the criminal investigation and legal proceedings and serves an impediment in entitling the trafficked person to compensation.

By adopting this Protocol, the country has made a significant step forward in the process of defining the crime of trafficking in human beings at a time when it is described in one rather broad framework and all forms of human trafficking are included: sexual exploitation, forced and exploitative labour, servitude and slavery. Not only women and children, but virtually anyone can fall pray to trafficking in human beings. And it does not necessarily include crossing the border of one's homeland<sup>4</sup>.

One cannot disregard the fact that Article 418-a, subsection 1 of the Criminal Code (CC) of the Republic of Macedonia implied copying the entire text from Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which supplements the Convention Against Transnational Organized Crime<sup>5</sup>. That very same Article of the Macedonian CC was amended once the government passed the Criminal Law Amendment Act in 2004.<sup>6</sup>

In 2007, the Ministry of Justice conducted detailed analyses of the degree of compatibility of the national legislation with the provisions stipulated in the Council of Europe Convention on Action Against Trafficking in Human Beings and completed a report, outlining several recommendations for amending the existing legal and legislative framework prior to the ratification of the Convention. Acting upon these analyses, the legal framework in combating trafficking in human beings was significantly amended which meant compliance with the standards set in 2005. The CC and the Criminal Law Amendment Act were changed in terms of amending and improving the existing measures for identification and protection of children - (potential) trafficked persons<sup>7</sup>.

The Council of Europe Convention on Action Against Trafficking in Human Beings was ratified on 14<sup>th</sup> April, 2009. The implementation of the afore mentioned conventions in the Macedonian legislation is a signal that the country has made

---

<sup>4</sup> Extract from "Suppression of Trafficking in Human Beings through the practice of domestic courts, page 13

<sup>5</sup> Extract from "Suppression of Trafficking in Human Beings through the practice of domestic courts, page 17

<sup>6</sup> Article 418-a, subsection 1 of the Criminal Law Amendment Act of the Republic of Macedonia, 2004.

<sup>7</sup> Extract from "National Strategy for combat trafficking in human beings and illegal migration in RM 2009- 2012, page 29.

remarkable progress in terms of its commitment towards providing access to compensation for trafficked persons.

### **3. NATIONAL LEGISLATION**

Trafficking in human beings has been enlisted as a criminal offence in the Macedonian legal legislation as part of Article 418-a, via amendments and changes to the Criminal Code (25<sup>th</sup> January, 2002). This Article was amended in March, 2004, and the legal framework was further strengthened in 2005, when the Witness Protection Act was adopted.

When it was first discovered that among trafficked persons there are under-aged children, and that their number is increasing, the CC was amended to combat this harrowing trend. A new criminal offence was introduced- the one of Trafficking of minors 418-g, which pays special attention to the protection of under-aged victims and prosecution of the traffickers. The minimum penalty envisioned for this felony is 8 years incarceration.

According to the existing laws, the trafficked person or “any individual- a victim of a criminal offence who has suffered damage, including physical or mental assault, emotional pain, material loss or other pain or violation of their fundamental human rights and freedoms as a result of the crime inflicted upon them”<sup>8</sup> is entitled to claim restitution and compensation.

According to the newly adopted Criminal Procedure Code, a trafficked person or “a victim of human trafficking is any individual who has suffered damage, including physical or mental assault, emotional pain, material loss or other pain or violation of their rights and interests as a result of the crime inflicted upon them”<sup>9</sup> and as such is entitled to claim restitution and compensation.

Trafficked persons are entitled to compensation - remuneration or non-monetary damages. Generally, a trafficked person can use two main methods of obtaining compensation: through criminal proceedings or through civil action.

---

<sup>8</sup> Source: Criminal Law Amendment Act (The Public Enterprise Official Gazette of the Republic of Macedonia, No. 83 from 10<sup>th</sup> October, 2008), Article 130, paragraph (5).

<sup>9</sup> Article 21, item 4 of the Criminal Procedure Code, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 150 from 18<sup>th</sup> November, 2010, which will be implemented exactly 2 years from the day of its enforcement.

The Criminal Procedure Code<sup>10</sup> governs the following issues: which individuals can claim compensation and restitution, the conditions and the way in which this can be done, as well as to whom they should submit their claims. A new paragraph has been included, concerning the trafficked person. More specifically, when a trafficked person is the one who submits the claim for restitution, they should specify whether they have been awarded compensation or they have submitted a claim, accordingly Article 43, paragraph 1 of the amended Criminal Procedure Code<sup>11</sup>.

In the criminal proceedings, compensation for under - aged trafficked persons has been regulated separately, with the Law on Juvenile Justice (LJJ)<sup>12</sup>. Its amendments<sup>13</sup> on the other hand, offer legal remedies for compensating the under-aged individual as a victim of violence and other criminal offences, the crime not being specified as trafficking in human beings. All this is stipulated in Article 141, and the monetary compensation awarded to the victim should be provided from the budget of the Ministry of Justice.

Should the trafficked person not receive the compensation through the criminal proceedings, or the court feels the criminal proceedings cannot decide on compensation<sup>14</sup>, the trafficked person should claim compensation through civil action.

Claims on compensation are governed by the Contract Law<sup>15</sup>. Namely, in a civil lawsuit, the trafficked person is entitled to pursue a civil claim for compensation. This legal action is known as 'Just Monetary Compensation'.

Practice shows that courts in R. Macedonia seldom rule on confiscating the procurer's property and money, which actually means that there is no source of compensation.

#### **4. ACTION PLAN**

#### **A National Action Plan has been adopted for combating trafficking in human beings and illegal migration in the Republic of Macedonia (2009-2012).**

---

<sup>10</sup> The Public Enterprise Official Gazette of the Republic of Macedonia, No. 15/97, 44/2002 and 74/2004. Further information: Chapter 10, Restitution and Compensation, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 15/97; 74/2004.

<sup>11</sup> Article 111, paragraph 2 of the Criminal Procedure, passed on 18<sup>th</sup> November, 2010. It becomes effective 2 years from the day of its enforcement.

<sup>12</sup> Effective as of 20<sup>th</sup> July, 2007.

<sup>13</sup> Effective as of 13<sup>th</sup> November, 2010. Provisions of Article 141, 142, 146, concerning the sources of compensation (providing the finances) for under-aged trafficked persons, shall become effective on 1<sup>st</sup> January, 2012.

<sup>14</sup> Further information in the section entitled Procedure in this handbook.

<sup>15</sup> Passed on 11<sup>th</sup> July, 2008, Article 189, Paragraphs 190 and 191.

The main stakeholders in the action against trafficking in human beings and protection of trafficked persons in the R. of Macedonia have drafted and adopted the National Action Plan, which is to be implemented in the period between 2009 and 2012. This Plan covers several aspects which will facilitate the process of eradication of trafficking in human beings, and it will improve the quality of the protection given to the trafficked persons of this flagrant crime. The plan consists of the following:

## **1. SUPPORT FRAMEWORK**

### **1.1 Coordinating body**

Aims: Stronger coordinative role of the National Commission and improved transparency in executing the set activities;

Stronger executive capacity of the Secretariat;

### **1.2 Legal and regulatory framework**

Aims: Legislative has been harmonized with international standards;

Establishing a compensation fund for trafficked persons;

Accommodation and protection of trafficked persons has been resolved at institutional level;

The Standard Operative Procedures have been harmonised with the legal provisions and the existing practice.

### **1.3. International collaboration**

Aims: International collaboration and coordination has been promoted and enhanced.

### **1.4. Information management, monitoring and assessment**

Aims: A system for information management, monitoring and assessment has been established.

## **2. PREVENTION**

### **2.1. Identifying the causes of trafficking in human beings and illegal migration**

Aims: Risk groups and the causes of trafficking in human beings, trafficking in children and illegal migration have been identified.

### **2.2. Enhancing capacities for executing prevention activities**

Aims: The capacities for executing prevention of trafficking in human beings and illegal migration of both government and non-government bodies have been enhanced.

### **2.3 Raising public awareness and education**

Aims: Establishing a system of continuous education and raising public awareness about trafficking in human beings and illegal migration.

### **2.4 Reducing vulnerability**

Aims: Established mechanisms for reducing the causes of trafficking in human beings and illegal migration.

## **3. SUPPORT AND PROTECTION OF TRAFFICKED PERSONS AND MIGRANTS**

Aims: The SOP and NRM have been effectively implemented throughout the country.

### **3.1. Immediate support and protection of victims of trafficking and illegal migration**

Aims: The quality of the immediate support and protection, given to trafficked persons and illegal migration, has been improved and now complies with the minimum international standards.

### **3.2. Legal aid for trafficked persons and migrants**

Aim: Identified trafficked persons have access to free legal aid.

### **3.3. The activities of the subgroup for combat trafficking in children have been coordinated with the activities of the National Commission for Combating Trafficking in human beings and Illegal Migration.**

Aim: Established institutional mechanisms for safe repatriation and successful reintegration/social inclusion.

### **3.4. Research and Evaluation**

Aims: The programmes for protections have been researched and evaluated.

### **3.5. Trainings and building capacities**

Aims: Enhanced capacities for the human resources included in the process of protection.

## **4. INVESTIGATION AND PROSECUTION OF TRAFFICKING IN HUMAN BEINGS AND ILLEGAL MIGRATION**

### **4.1. Pre-trial procedure (proactive and reactive investigation)**

Aims: Proactive investigation is given priority in performing pre-trial measures; International criminal networks have been targeted and broken up.

#### 4.2. Criminal proceedings

Aims: Reduced scope of organised crime;

Improved status of the trafficked persons during the criminal proceedings.

### 5. TYPES OF COMPENSATION

The legal regulations of the R. Macedonia envision two types of repartition: material and non-material damages.

- *Material damages* include monetary compensation for physical or mental harm inflicted on the trafficked person;
- *Non-material damages* are non-monetary damages awarded for incurred physical or mental harm, fear, or when the individual has been physically or mentally incapacitated as a result of such victimization. In a civil action, the victim-the damaged party may claim a just monetary compensation for future non-material damages.<sup>16</sup>

### 6. PARTICIPANTS IN THE PROCEEDINGS

The following list of people take part in all stages of the process of claiming compensation: the claimant (the trafficked person), Ministry of Interiors, an agent the victim has appointed with power of attorney, the Investigative Judge, the Prosecutor, the Court, the executors, the Ministry of Justice and NGO representatives.

- The trafficked person, as the damaged party in the proceedings, can be the claimant in the action, or can appoint an agent via power of attorney who will act on their behalf. *Under-aged* trafficked persons will be represented at the litigation either by an agent or by their parents/legal guardians.
- MOI - Unit for Combating Trafficking in Human beings and Smuggling migrants (UCTHBSM) is involved in the pre-trial procedure during the process of identification of victims. The responsible police officer is pointing out all available rights, including the right to compensation. In terms of compensation, police officers' advices on the ways of claiming the same in future proceedings. This unit also performs accompanying of the trafficked person when giving

---

<sup>16</sup> "The Court, upon request from the claimant, can decide on awarding a just monetary compensation for future non-material damages, should it be certain that the damages are of long-term nature", Article 192, of Amendments in the Law on General Administrative Procedures.

testimony in the investigation procedure along with the legal agent, during which the police officer, “reminds” the trafficked persons of their rights and the right of compensation in the criminal proceedings.

- The *Prosecutor* is the sole and independent state organ which pursues the criminal offenders and executes other tasks, as the law so stipulates<sup>17</sup>. The National Prosecution of Organised Crime and Corruption is in charge of pursuing only felons connected to organised crime and corruption, as well as trafficking in humans and children. The prosecutor, furthermore, is responsible for initiating a pursuit after criminal charges have been filed by the Police, provided there is enough evidence to support the claims that a crime has been committed. There are circumstances when the Prosecution Prosecutor does not initiate an action or press charges. In order to successfully conduct the process, one must ensure a close and continuous collaboration between the Public Prosecution and the other stakeholders (the Police, the Judge, and the NGOs).
- A *legal representative* is a person appointed to act on behalf of the trafficked person in the legal proceeding and to protect their interests<sup>18</sup>. The trafficked person can announce they are claiming compensation via the legal representative, and can do so either during the criminal action or during the pre-trial process. The latest stage for claiming compensation is by the end of the main hearing.
- The *Investigative Judge* presides over the proceedings, during which the trafficked persons or their agent may announce the damaged party is claiming compensation. In case the trafficked person is a minor, this can be done by the parents/legal guardians.
- The *Criminal Court for organized crime* deals with cases of trafficking in human beings. If the trafficked persons or their agent/parents/legal guardians have not in the litigation insofar announced they would be claiming compensation, this can be done no later than the end of the main hearing. When the Court finds

---

<sup>17</sup> Article 2 of the the Public Prosecutions Act, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 150/07.

<sup>18</sup> Extract from "Suppression of Trafficking in Human Beings through the practice of domestic courts, page 24

the defendant guilty of trafficking in human beings, the same court is also entitled to decide on compensation or to refer the trafficked persons to pursue their entitlement in a civil action. In case the trafficked person is under-aged, they are entitled to compensation which is awarded from the budget within the Ministry of Justice. This procedure of awarding compensation to minors has been included in the legal framework, but its implementation has been delayed. It becomes effective as of 1<sup>st</sup> January, 2012<sup>19</sup>.

- The *enforcement agents* are entrusted with the responsibility to execute the compensation claim, which has been awarded to the trafficked persons by an effective and executive order issued by the criminal court<sup>20</sup>.
- Following the amendments in the Law on Juvenile Justice, the *Ministry of Justice* has a significant role in the process of awarding compensation to under-aged trafficked persons. With the newly adopted changes, the role of the Ministry in this process is to provide the monetary compensation from its budget.
- *NGOs (Non-Government Organisations)* are engaged in the prevention of trafficking in human beings, but in a slightly different way. They place trafficked persons in shelter and provide them with the much needed help and support. Furthermore, they help the trafficked persons to establish communication with the relevant system institutions, provide medical assistance and an adequate legal protection, starting from the initial stages of the procedure. NGOs guide the trafficked persons throughout the process, facilitate the communication with the systems and engage the trafficked persons in a variety of re-socialisation and reintegration activities.

The process of awarding restitution for the trafficked person has been enabled through asset seizure and confiscation, and awarding the asset to the damaged party, i.e. the victim of trafficking in human beings.

## 7. PROCEDURE

---

<sup>19</sup> Amendments of the Law on Juvenile Justice (The Public Enterprise Official Gazette of the Republic of Macedonia, No. 145 from 5<sup>th</sup> January, 2010): "The provision of Articles 141, 142 and 146, paragraph 4 shall become effective on 1<sup>st</sup> January, 2012."

<sup>20</sup> In the Republic of Macedonia, no compensation claim awarded by a court order has ever been executed.

The procedure of claiming compensation, in which the trafficked person is the damaged party, starts with submitting a claim for restitution (compensation).

Individuals who can submit the claim are: the trafficked person - if the person is of full age, but if it's a minor, this is done either by the agent appointed by power of attorney or the victim's parents/guardians.

The aforementioned right to restitution can be claimed in two processes:

*Criminal proceedings:*

The individual appointed to submit the claim can do so either at the very beginning of the procedure, when the reports that crime was filed to the relevant institutions. The Public Prosecution reviews the reports and should decide whether there is an evidence of a felony, if so it submits a request for conducting a pre-trial investigation to an investigative judge.

If the individual appointed to submit the claim for restitution has not announced the claim in the reports, they can do that during the investigation to an Investigative Judge. The judge then conducts the investigation and returns the case to the Public Prosecution, which, in turn, files charges against the offender.

The individual appointed to submit the claim can do so either at the very beginning of the procedure, when the charges are filed by the relevant institutions. The Public Prosecution reviews the charges and should it decide that there is evidence of a felony, it submits a request to an Investigative Judge to conduct a pre-trial investigation.

If the individual appointed to submit the claim for restitution has not announced the claim during the criminal proceedings, they can do so during the investigation and to an Investigative Judge. The judge then conducts the investigation and returns the case to the Public Prosecution, which, in turn, files charges against the offender.

If the claim has not been announced to this stage of the procedure, the Court is obligated to inform the victim of their right to do so during the main hearing at the Criminal Court, but no later than the end of the main hearing at the Court of First Instance- Criminal Division.

When the offender is pronounced guilty, the Court decides on a full or partial award of compensation. If the evidence presented at the trial does not present enough grounds for a full or partial award of compensation, and further investigation for stronger evidence may present undue delay of the proceedings, the Court may rule

only on the criminal offence or the offence and a partial compensation. Additionally, the court will subsequently rule on compensation or the remaining part of the restitution. If the compensation amount cannot be defined with other evidence or if providing such additional evidence would imply considerable delay of the proceedings, the Court shall decide upon the compensation amount or the rest of the compensation in an additional ruling<sup>21</sup>.

The benefit of the criminal proceedings is that the Court executes its ruling on both the criminal charges and the compensation for the trafficked persons in one single procedure. Therefore, the legal proceedings are fast and cost-saving.

This type of proceedings has its downsides too: should the trafficked person be awarded a very small compensation or should the Court find the accused innocent, the trafficked person does not have the right to appeal - this can be done only by the Public Prosecution.

The Court can refer the damaged party/the trafficked person to a civil action.

### Civil proceedings

The individual appointed to submit a claim for compensation in a civil action does so by filing a lawsuit in a Civil Court, claiming just monetary compensation for the trafficked person, based on neuropsychological evaluation conducted by an expert appointed by the Court. "In deciding whether or not to award compensation, the Court shall consider the intensity of the injures and how long it had been inflicted upon the victim such as physical pain, emotional pain and suffering. The Court shall also consider the aims of the restitution, ensuring that the awarded compensation does not go counter to its character and social purpose"<sup>22</sup>.

The appointed person, who has submitted the claim, suggests an arbitrary, unspecified amount when seeking non-material damages.

Starting from the fact that giving arbitrary amounts when filing the application for non-material damage represents a deficiency of our legislation and therefore we propose to the legislator to amend this law with the new provisions.

The advantage of this procedure is that the victim has the right to regular and extraordinary legal remedy in case of a negative ruling. The negative side is that the

---

<sup>21</sup> Article 101, Paragraph 2 of the ammended Criminal Procedure Code, The Public Enterprise Official Gazette of the Republic of Macedonia, No. 74/04.

<sup>22</sup> Article 189 of the ammended Law on General Administrative Procedure.

procedure is often long lasting and costs are high and bear by the trafficked person.

## **8. ASSET SEIZURE AND CONFISCATION**

Asset seizure and confiscation in cases of trafficking in human beings is a very significant institute in our legislation.

The measure of confiscating property and money acquired through a criminal offence has been amended and supplemented with additional articles in the Criminal Procedure Code<sup>23</sup>.

The procedure implies that the State confiscates all assets and money which the perpetrators have illegally accumulated in the course of the unlawful act. In terms of trafficking in human beings, the overall sum generated by the activity is of key importance.

The seizure of criminal gains and assets is a fundamental tool in punishing the perpetrator and, in certain cases, can have as a stronger corrective effect than incarceration.

## **RESEARCH**

### **1. RESEARCH METHODOLOGY**

The following is a detailed analysis of the quantitative and qualitative methods used in the research in order to evaluate the access to compensation, to identify the obstacles on national level which trafficked persons face when claiming compensation, to issue further recommendations for overcoming these obstacles and for facilitating the process of claiming and awarding compensation.

#### ***Qualitative research methods used:***

##### **1. Content Analysis of:**

- **Laws** governing the punishment of trafficking in human beings as a criminal offence: the Criminal Code, laws governing compensation, the Criminal

---

<sup>23</sup> Further information: from Article 486 to Article 493-b of the amended Criminal Procedure Code, 2004.

Procedure Code, the Law on Juvenile Justice and the Amendments to the Law of Juvenile Justice.

- **Scientific and technical research papers** on trafficking in human beings, especially those on compensation for trafficked persons.

**2. Official statistical data** on numerous government and non-government organisations.

**3. Semi-structured deep interviews** with practitioners and representatives from: the Ministry of Interior, judges, investigative judges, the Public Prosecution, the Ministry of Labour and Social Policy, Social Work Centres, the Ministry of Justice and members of various NGOs.

**4. Observation** of the procedure for claiming compensation and the trafficked persons involved in it.

**5. A Case study analysis** of a trafficked person, focusing on the legal actions in which a trafficked person claims compensation.

**6. A meeting with focus groups**, discussing the following issues:

- The legal framework for claiming compensation and its compatibility with the international laws and regulations;
- The process of awarding compensation;
- Problems and recommendations for achieving greater efficiency in providing compensation to trafficked persons.

By using this technique, the team gained insight on two items: the procedure for claiming compensation and the skills these professionals have. Members of the focus group jointly inspected the procedure and shared their experiences.

The focus group was formed accordingly the existing standards: it contained 8 members and the meeting was 1 hour long. For this occasion, the research team designed questions that were short, concise, open, simple, neutral and non-suggestive.

***Quantitative research methods used:***

The main instrument used in this research was a **questionnaire** which helped us gather the basic information we needed in order to conduct a detailed and precise analysis of the process of claiming compensation for trafficked persons.

By means of this questionnaire, we managed to collect personal information about all participants/professionals in the process of claiming compensation: the job

position they occupy, their level of education, years of professional experience, place of residence, as well as collaboration between the relevant institutions and details about the process itself.

The main instrument in the research was the questionnaire enclosed in Appendix 1.

## 2. RESEARCH SUBJECTS

This research consists of the following target groups: judges, investigative judges, public prosecutors, lawyers, and representatives from: the Ministry of Interior, the Ministry of Labour and Social Policy, Social Work Centres, the Ministry of Justice, executors, members of various NGOs and trafficked persons.

Judges	2
Investigative Judges	2
Public Prosecutors	2
Lawyers	3
Executors	2
Representatives from the Ministry of Interior	9
Representatives from the Ministry of Labour and Social Policy (the National Referral Mechanism)	2
Representatives from the Social Work Centres	3
Trafficked persons	4
NGO Members	6

*Table 1: Research Subjects*

Number of Subjects	Percent
Male 7	20%
Female 28	80%
Total 35	100%

*Table 2: Research Subjects*

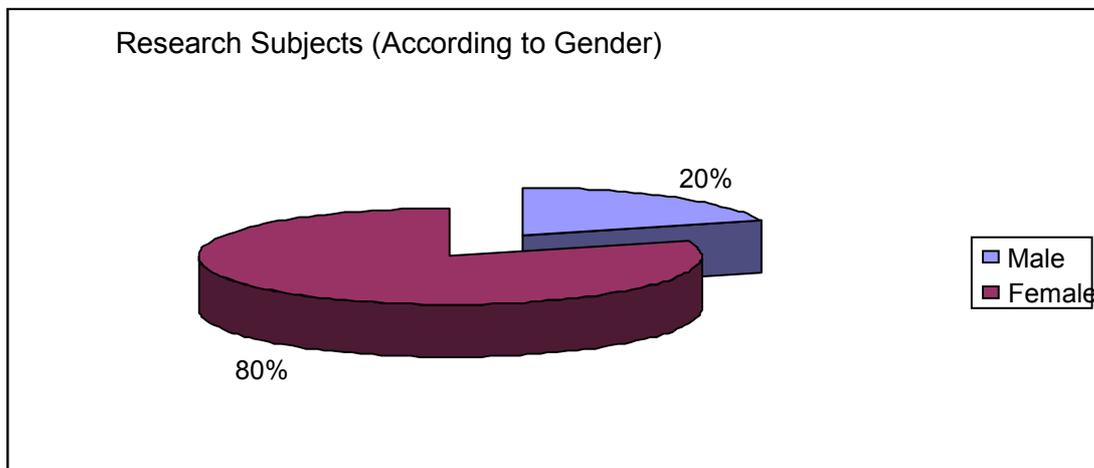


Chart 1. Graphic Representation of Research Subjects According to Gender

### **3. RESEARCH DATA ANALYSIS**

This research gathered good and valid data, which was processed and subsequently analysed. The information was first classified according to topics and categories, and later supplemented with the qualitative data collected during the research. In the end, all results were cross-referenced and analysed.

#### **Laws and Regulations**

In terms of the legislative, the *judges* who participated in the focus group pointed out that there are certain laws related to compensation of trafficked persons: the Law on Juvenile Justice and the Criminal Procedure Code.

Furthermore, the judges feel that the laws and regulations governing compensation have been harmonised with the international legislation.

Representatives from the *Ministry of Justice* explained that compensation has been included in the amendments to the Law on Juvenile Justice and the Criminal

Procedure Code, but the amendments become effective in 2012. This delay is due to several reasons. Firstly, many state bodies are relatively ignorant on the subject. Another issue is the absence of an operational programme for those organs within the Ministry of Justice which will be in charge of the budget, since this ministry will be providing the compensation money.

Another point that was assessed was the *awareness* of the **Public Prosecution** about the trafficked persons' right to compensation, accordingly the Criminal Procedure Code. It was learned that public prosecutors are well-informed about the existence of both types of compensation (material and non-material), as well as about the special provisions outlined in the Law on Juvenile Justice and its amended forms.

The representatives from the Public Prosecution also pointed out that there were significant shortcomings in the implementation of the pre-trial procedures stipulated in the existing law. This resulted in a strong initiative to amend the legal framework relevant to cases of trafficking in human beings.

For instance, in the case "South 1", where the pre-trial measures were used for the first time, the Supreme Court discovered a violation in the procedure of issuing an order to conduct surveillance, tracking, following, audio-visual recording, etc. This led the court to abolish the original verdict and to send the case for re-trial. On the upside, this event provoked a more detailed analysis of the rules and regulations regarding the pre-trial measures.

In 3 other cases, charges were pressed against authorised officials. This caused a change in Articles 418a, 418b and 418d, where Paragraph 4 was inserted.

### **Scientific and technical research papers**

In recent years, various institutions and organisations in R. Macedonia have been actively involved in combating organised crime, trafficking in human beings above all, for it is one of the most egregious violations of human rights.

In early 2002, the Macedonian government developed the National Programme for Combating Trafficking in Human beings, and in March 2006, it formally adopted the National Action Plan and the Strategy for Combat Trafficking in human beings<sup>24</sup>.

---

<sup>24</sup> Publication "Penitentiary response to organized crime" February 2007, page 9

In order to facilitate the implementation of the National Programme for Combating Trafficking in human beings and Illegal Migration, the NGO Coalition “All for fair Trial” launched the project “Observation of Legal Procedures in Cases of Trafficking inhuman beings in Macedonia”. The gathered information was later analysed and, in 2005, the NGO developed a study entitled “A Report on Combating Trafficking in human beings Based on the Judicial Practice”<sup>25</sup>.

Even in its initial activities in 2000, IOM’s mission in the R. Macedonia was to enhance the capacities of all institutions involved in combating trafficking in human beings. It worked hard to establish a close and active collaboration with the jurisdiction, as well as other national organs and institutions involved in criminal pursuit. The cooperation with the Association of Public Prosecutors of Macedonia resulted in the “Guidelines for Public Prosecutors in the Criminal Pursuit of Human Trafficking”.

### **Official Statistic Data**

In 2009, the National Commission for Combat Human Trafficking and Illegal Migration published its report, citing statistical data in terms of the number of criminal cases of trafficking in human beings in the R. Macedonia which had been processed up to then, the number of identified trafficked persons, their age and the number of perpetrators of this specific felony.

According to the 2009 Annual Report of The National Commission, a total of 8 cases of trafficking in human beings were registered. Furthermore, eight trafficked people were identified and criminal charges were filed against 17 offenders.

Of the 8 victims, 7 were under-aged. Six of these were of Macedonian nationality and were aged 14 to 17. In all identified and reported cases, victims were assisted by the National Referral Mechanism.

By 2009, when this report was completed, criminal processes were initiated for 2 of the cases. As for the remaining 6 cases, litigation was still pending - Prosecution had yet to initiate any legal proceedings<sup>26</sup>.

According to official statistics obtained from the Legal Adviser of the NRM Office within Ministry of Labour and Social Policy, in 2006 there was one order for

---

<sup>25</sup> Publication Report on Combating Trafficking in human beings Based on the Judicial Practice”. November 2005, page 11.

<sup>26</sup> [www.nacionalnakomisija.gov.mk](http://www.nacionalnakomisija.gov.mk)

compensation, in 2008 there were 3 orders; in 2011 there were two orders. That means a total of 6 orders for compensation for the period of 2006 until 2011, all for juvenile trafficked persons for internal trafficking.<sup>27</sup>

### **Subjects' Awareness of Compensation Scheme**

Bearing in mind that compensation can be material and non-material, this research investigated the type of compensation which is most often awarded to trafficked persons. There seems to be a discrepancy in this area. Namely, most judges (65%) feel that compensation of non-pecuniary damages prevails, while 35% are of the opinion that both types are equally awarded. However, they all agree that non-pecuniary damages have a greater effect.

The Public Prosecution, on the other hand, seems to have different information on the types of compensation awarded. 21% of public prosecutors think that both types of compensation are equally awarded. The majority, though, pointed out in the following ratio: 48% of compensation awarded is non-material and 28% is material.

	Non-material Damages	Material Damages	Of Both Type
<b>Judges</b>	65%	0%	35%
<b>Public Prosecutors</b>	48%	28%	21%

*Table 3: Opinion on the Type of Compensation Awarded*

---

<sup>27</sup> Interview with the Legal Adviser of the National referral Mechanism office, Skopje- April 2011

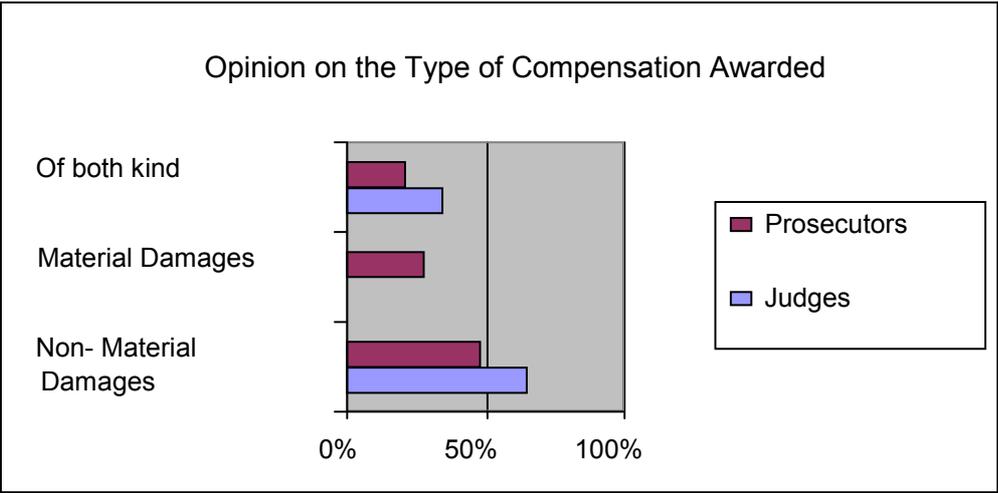


Chart 2. Graphic Representation of the Opinion on the Type of Compensation Awarded

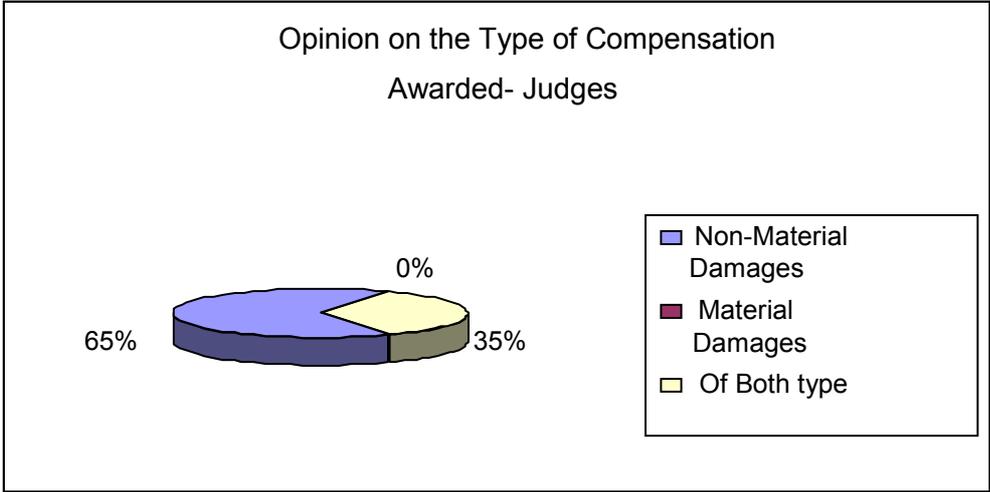
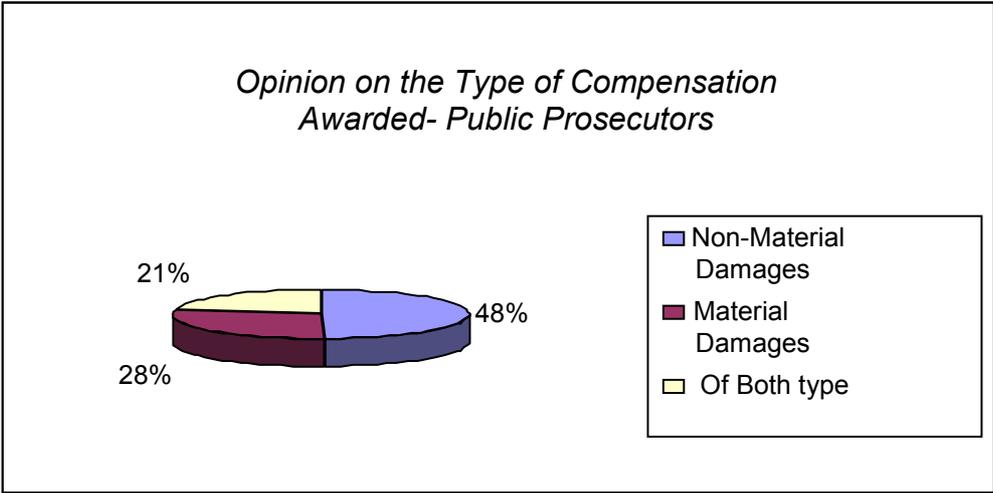


Chart 3. Graphic Representation of the Opinion on the Type of Compensation Awarded- Judges



*Chart 4. Graphic Representation of the Opinion on the Type of Compensation Awarded-  
Public Prosecutors*

The information obtained from the conducted research shows that the most common type of compensation awarded is the non-material one, because it is based on expert witness opinion or on just monetary compensation. Material compensation, on the other hand, is seldom awarded due to the absence of material proof.

Representatives from NRM feel that the amount claimed by the trafficked persons is a reasonable one, yet to this day trafficked persons have not received their compensation.

The lawyers who have worked with trafficked persons are well informed that their clients are entitled to compensation and restitution. They feel that social workers and the Police should inform the trafficked persons about all their rights and options in a clear and simple language, from the initial stages of the process.

*Employees at the State Centres for Social Work* have extensive experience in working with trafficked people since they are in charge of identifying victims of this crime. The professional staff from these centres has attended lots of trainings and professional seminars organised by various international organisations together with the Ministry of Labour and Social Policy- the National Referral Mechanism. Furthermore, the staff is also well-informed about the process of compensation for trafficked people.

#### **4. LEGAL PROCEEDINGS IN THE PROCESS OF COMPENSATION**

Compensation is normally awarded during criminal proceedings, i.e. it is the Criminal Court which rules on it. *Judges* were quick to point out that claiming compensation in the criminal proceedings is efficient and cost-effective, and it does not impose additional expenses on the trafficked person.

All judges agree that the best time to claim compensation is during the pre-trial investigation as “the victim’s recollections of the ordeal are still vivid and the pain is extremely strong”.

The same question was addressed to the lawyers included in the focus group. Their answers were not that unanimous. In fact, most of the subjects surveyed (85%) agree with the judges, i.e. feel that the best time to claim compensation is during the

pre-trial investigation. The remaining 15% are of the opinion that this should be done at the main hearing.

	Pre-trial	Main Hearing
Lawyers	85%	15%

Table 3: Lawyers' Answers on the Best Time for Claiming Compensation

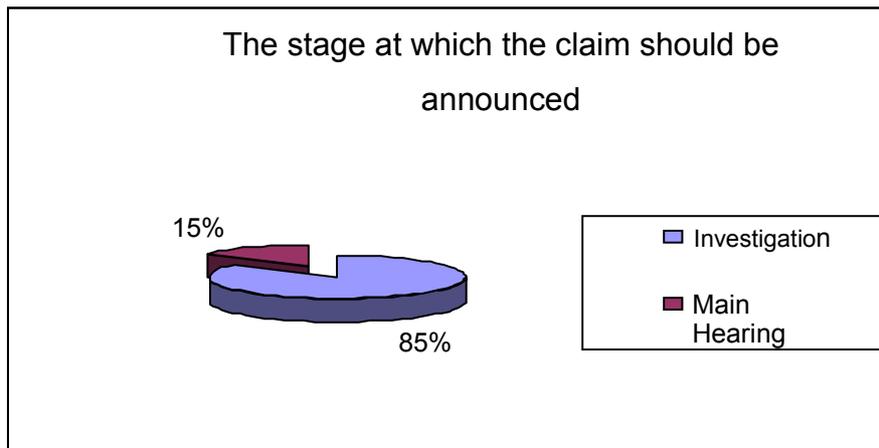


Chart 5. Graphic Representation of the Stage at Which the Claim should be announced

Practice shows that claiming compensation is mostly done during the main hearing, considering that the victim's lawyer has the expert's evidence, which court was ordered.

The representatives from the NRM pointed out that most of the time restitution is claimed during the pre-trial investigation.

All the judges we surveyed highlighted that the proceedings for criminal offences such as trafficking in human beings should be urgent and given immediate attention. The opinion of the expert witness is the criterion used in the process of determining compensation. Trafficked persons can exercise the right to claim compensation provided they have a lawyer who can announce the claim.

Compensation is determined according to the just monetary compensation. Alternatively, in the absence of expert witness opinion, the court offers its assessment.

"In practice, compensation is determined on the opinion provided by an expert witness, and the criterion used is the just monetary compensation. The reason behind this is that every case so far has included a testimony of an expert witness," says the lawyer of one trafficked person.

The judges surveyed have ruled on compensation for trafficked persons. In fact, practice shows that, in most cases, judges have ruled on awarding the requested amount to the trafficked person. This amount is usually 150,000.00 Macedonian denars (around €2,500.00) per victim. However, according to the surveyed subjects, the trafficked persons cannot collect the awarded sum due to obstacles in the executive procedure. Namely, the perpetrator does not possess any property, or at least not in their name.

The public prosecutors feel that the compensation amount should be much higher, around €10,000.00. Thus, the best stage to claim it is during the pre-trial investigation.

*“The victim has endured tremendous trauma which will undoubtedly have long-term effects: deteriorated health, social isolation and disintegration. This is why the amount should be higher”*, says one of the public prosecutors we surveyed.

The Macedonian legal system acknowledges asset seizure and property confiscation associated with criminal conduct.

The judges and public prosecutors that were included in the research pointed out that, in practice, asset seizure and property confiscation is seldom applied. Furthermore, judges do not have any information whether this method has ever been used, but they know that perpetrators have only had a temporary seizure of their assets, or have had all their bank accounts frozen.

*Enforcement agents* too are involved in the procedure of awarding compensation to trafficked persons. They should exercise their power after they have received the court’s decision, awarding compensation for damages inflicted on the trafficked persons. All surveyed enforcement agents pointed out that, to that day, they have not received any executive court order ruling on awarding compensation to a trafficked person. Thus, they did not suggest possible measures to improve this procedure, insisting that they cannot make any recommendations, as they have not executed any court orders yet.

When asked about providing compensation money from the state budget, representatives from the Ministry of Justice stated that so far, no such action has been done and no trafficked person has collected their compensation. “Although there is an Agency for Asset Seizure and Confiscation, which functions within the Ministry of Justice, the agency does not have direct authority in this area, so it has never

confiscated any assets. The agency has no record of ever being involved in the process of awarding compensation.”

The State Budget of the R. Macedonia does not set aside compensation money for trafficked persons/children. There is a Seized Property Management Directorate (within the MJ), but it does not have direct authority in this area, nor it has any background data.

### Collaboration

According to staff from the CSW, there is good collaboration between all stakeholders involved in the process of assisting trafficked persons.

The surveyed subjects from the *non-government sector* are not directly involved in the process of claiming and awarding compensation. They give trafficked persons *free legal help and advice on claiming compensation*. They too feel that they have collaborated extremely well with all institutions involved in working with trafficked victims: “We communicate on a daily basis with the Public Prosecution, the Ministry of Interior, the Ministry of Labour and Social Policy- the National Referral Mechanism and other NGOs.”

*„Mutual teamwork throughout the entire process - from the initial stages of identification to the final court epilogue”, says an NGO representative.*

### Trafficked persons

Seen from the trafficked person’s perspective, the role of compensation is a key and the need for it is understandable and justified. Trafficked persons seek compensation for the pain and suffering they have endured and this is their “closure” from the “ordeal”. Restitution should compensate not only for the physical and mental suffering, but also for the missed opportunities in life, such as the right to education or employment, as well as using one’s potential for earning a living.

In a number of cases of trafficking in human beings, the criminal offence was changed into procurement of prostitution. Some of the trafficked persons have been informed on their right to compensation and the process of claiming one, but they have very little trust in the legal system. They say...

*"I have problems proving I am a victim. I feel I should be compensated for all the hardship I endured- for the physical and emotional abuse", a trafficked victim says.*

## **Case Study**

The following case takes place in a provincial town in Macedonia. The victim, who is now full of age, was a minor (16 years old) at the time the crime was committed.

At the fragile age of 16, she met a boy who proposed marriage and offered her a better life abroad. Her boyfriend, promising a wonderful life in Germany, talked her into stealing €6,200.00 from her parents- money which they would allegedly need for passports and visas. She left her home and run away with her boyfriend.

From that moment onward, her life turned into a nightmare: hardship, trafficking, sexual exploitation. She was taken to various locations around Macedonia, where she was forced to give sexual favours for as much as 20 hours per day. She was physically abused, drugged and intoxicated. After a long ordeal, she was taken abroad by her the boyfriend's father. This was done illegally and without her consent. She was first taken to Kosovo and then to Germany and Norway, where she was locked in brothels, molested, and forced to consume large quantities of alcohol, drugs and various other stimulants. During a police raid in Norway, she got arrested and spent some time incarcerated. A few months later, she was transferred to Germany, to a reception centre.

The German officials contacted the Macedonian authorities and the girl was deported to her home country. Immediately upon her repatriation, the Ministry of Interior together with the NRM, took over the case and all safety measures were implemented. Considering that the girl's safety and the safety of her family were at high risk, the victim was placed at the Shelter for Domestic Victims of Human Trafficking, part of the Open Gate NGO.

The victim stayed at the shelter from May, 2006 until November, 2007. During her stay, she demonstrated visible signs of trauma. She was not herself, claiming she kept reliving the nightmare- kept seeing the images of the hell she endured, feeling afraid of every noise or touch. She would not be sleeping well, would wet her bed at night. She kept having vivid nightmares and had troubles focusing. She was

constantly feeling restless and empty. She felt she had destroyed her life, having no future plans. Worst of all was the feeling of shame she had brought to herself and her family, whose good name and dignity she had forever destroyed.

During her stay at the shelter, she was provided with the necessary psychosocial support, medical attention, and the proper medicine prescribed by a psychiatrist.

The Witness Protection Unit from the Ministry of Interiors was included in the protection and, along with a staff member from Open Gate, they would accompany her at all times- court hearings, at the Police or the Public Prosecution, and during meetings with her family, which took place at safe locations.

During her stay at the shelter, the victim had frequent meetings with the Public Prosecutor. As a witness and the damaged party, the victim worked closely with the Public Prosecution, and when the criminal charges were filed, she was the crown witness. During the pre-trial period and in the preparations for the hearing, the victim received support not only from the Public Prosecutor, but also from the entire personnel from Open Gate.

In December 2005, the victim appeared before an Investigative Judge. During the pre-trial period, her lawyer- appointed by power of attorney- announced her claim for compensation. However, it was announced that the amount of compensation would be specified after the expert witnesses stated their professional opinion, i.e. during the main hearing.

The victim was present in the courtroom at the main hearing from its beginning to its end- during the presentation of all evidence (material and verbal), i.e. during the hearing of the witnesses.

The victim was accompanied by staff from Open Gate and the Witness Protection Unit - the Ministry of Interior.

In May 2006, the victim, being the crown witness, gave her testimony. She gave detailed answers to all questions asked by the Court, the Prosecution and the Defence party. During the entire proceedings, her demeanour was impeccable. She was composed, never hesitated in answering the questions, nor did she feel intimidated by the threats issued by the perpetrators. She had the full support of the professionals from Open Gate, the Witness Protection Unit, and the Prosecution and from her family.

At the main hearing, the Court asked for expert witness opinion provided by relevant institutions. The School of Medicine in Skopje prepared a lengthy written report which stated that the victim had been examined and she sustained visible bruises, inflicted at least a month before the exam. Furthermore, expert opinion was provided by the Forensic Institute and the Psychiatric Hospital in Skopje. Based on these expert witnesses, the victim, via her appointed agent, claimed the right to compensation.

The Court found 7 people guilty of felony according to Article 418a of the Criminal Code of the Republic of Macedonia and the trafficked person was awarded compensation.

Furthermore, the Court awarded the claimed compensation amount, by which the perpetrators were ordered to pay the victim material damages in the amount of 16,337.00 denars (around €270) and non-material damages in the amount of 216,666.00 denars (€3,500.00). According to Article 220 of the Criminal Procedure Code, the Court issued a temporary seizure of assets of the two of the perpetrators.

This case is listed as a textbook example of the crime of trafficking in humans- Article 418a of the Macedonian Criminal Penal Code and it is treated as one of the most serious criminal offences in our legislation.

After the trial, the victim resumed her stay at the shelter, and was included in the Open Gate reintegration programme. She received vocational training for hairstylist and cosmetician. A few months later, the victim expressed her wish to leave the country and spend some time abroad. Open Gate explored her network connections and enabled the victim a one-month stay abroad. In cooperation with the Witness Protection Unit, Open Gate helped the victim obtain a passport. Later, the trafficked person was faced with the fact that she can't live in her birthplace because of threats, decided to permanently leave the state and continue her life in another country.

## **CONCLUSIONS**

- Laws that penalize trafficking in human beings are compatible with international documents in relation to the compensation for trafficked persons. In the National Action Plan for Combating Trafficking in Human Beings and Illegal

Migration in the Republic of Macedonia (2009 - 2012), special attention is paid to the compensation of trafficked persons. In the Standard operating procedures<sup>28</sup> for dealing with victims of trafficking (SOP) in the procedure "Criminal procedure" - in the measure 5 it is stated the support of the trafficked persons to file a property claim in criminal proceedings.

- The Criminal Court has broad opportunities for imposing the compensation of trafficked persons provided by law. Court with a verdict that pronounce guilty perpetrator can decide for the property claim to the trafficked persons, but the low compensations are imposed.
- There are no criteria for determining the amount of compensation.
- Criminal Court of the R. Macedonia has imposed rulings on compensation, but trafficked persons have not received any material or non-material compensation.
- The most common obstacles in the implementation of the final sentence for the exercise of restitution are lack of real estate, no movable property, no securities, no transaction account on the name of the trader and lack of funds to pay for enforcement proceedings. In addition, no one wants to buy offenders' property due to the owners' threats and the authority / reputation they have in the residence place.
- Compensation as a measure remains unused for trafficked persons.
- The problem appears in its implementation due to lack of funds for the indemnity provided by the state.
- Regarding the provisions on confiscation of property obtained by crime, as well as provisions for the temporary provision of property or assets in relation with the case, they are rarely applied in practice of the Criminal Court for criminal offence trafficking, among the group of serious crimes in the area of organized crime.
- Activities with trafficked persons and provision of assistance and support are almost entirely provided by projects or donations to NGOs that are dependent on international donors and received projects. Breaks in the continuous

---

<sup>28</sup> SOP adopted on 127 Government session on 29 January 2008

monitoring of the situation led to difficulties in establishing the real situation in the area of trafficking in human beings in Republic of Macedonia.

- Employees in the Centers for Social Work and NGOs stated that due to fail in realization of compensation, trafficked persons have problems in the process of reintegration in community, and the realization of care, involvement in the educational process or employment.

## **RECOMMENDATIONS**

- It is essential to have consistent application of statutory provisions firstly concerning the compensation of trafficked persons, secondly establishing agreement between actors on the identified problems related to compensation so that finally actors may jointly lobby to improve the efficiency of the judicial system in the exercise of this right of the trafficked persons.
- It is necessary to elaborate the specific legal provisions of Contract Law in a special way for determining the amount of compensation especially non-material indemnity for the trafficked persons.
- Preparation of legal amendments in the Law of Succession in terms of adopting new provisions that will be related to the method, the deadlines for the transfer of property from the testator to the heir (trafficker), as the trafficked persons would easier realize the compensation.
- Compensation as powerful punitive measure against the traffickers and restorative measures for trafficked persons should be actively implemented.
- Establishment of a state fund for restitution where trafficked persons would receive compensation through activation of assets from the budget of the Ministry of Justice and other state bodies, and the state will then create the conditions for "recovery" from the offender/trafficker, i.e. by selling his property.
- Greater financial involvement of the governmental sector to monitor this type of crime in order to provide a database of information regarding the compensation of trafficked persons.
- More common use of the provisions of the Criminal Code on confiscation of property or proceeds obtained by crime due to easier, faster compensation to the trafficked persons from confiscated property to the perpetrator of this act.

- Compensation for the trafficked persons as measure in governmental policy in combat against trafficking in human beings requires active attention by the Government.
- It is necessary to ensure continued financial support for the trafficked persons, activities aimed at providing help and support for their reintegration.
- Greater awareness / education of all stakeholders / partners in the process obtaining of compensation for trafficked persons.
- Development of a manual to facilitate effective "execution" of compensation for trafficked persons, which can contribute to promotion of the rights of the trafficked persons in terms of compensation before the courts and greater willingness of the victim to participate in all stages of the procedure.





4. What kind of compensation exists in R Macedonia?

- a)
- b)
- c)

5. Have you identified the trafficked person until now?

- a) yes
- b) no

6. Does in your practice, pre-criminal procedure you have informed a trafficked persons about the right to compensation and the procedure for exercising this right?

- a) yes
- b) no

7. Does the trafficked person in front of you have announced the claim for compensation?

- a) yes
- b) no

If **yes**, how many of them sought .....

8. Are you informed how many trafficked persons realize such right?

- a) yes
- b) no

9. What is your opinion on whether there are obstacles in achieving this right of trafficked persons?

- a) yes
- b) no

If **yes**, why it is so .....

10. Are you informed whether the property is confiscated to the merchants / perpetrators of the criminal act, trafficking and have executive / verdict?

- a) yes
- b) no

If **no**, why it is so

11. Suggestions for overcoming the obstacles in achieving the victims' right on compensation:

12. Your experience in terms of speed of the procedure for criminal acts trafficking / trafficking of a minor?

- a) Urgent procedure
- b) Regular procedure

13. Are you familiar with cases where there was a change of legislation in the case of trafficking?

## MINISTRY OF JUSTICE

1. Do you allocate funds from the Budget for compensation of trafficked persons or



2. What are the rights you inform trafficked persons?

3. Does any of the trafficked persons sought compensation? /

a) yes

b) no

If yes, how much /----

4. Do trafficked persons have the legal right of property restitution - compensation?

a) yes

b) no

5. What kind of compensation exists in R Macedonia?

b) intangible

b) material

6. Have any of the trafficked persons asked for exercising the right to compensation?

7. Are both types of compensation equally used?

a) yes

b) no

8. If only one type is used why that one is usually used? \_\_\_\_\_

9. Which are the CSW's activities that participate in the process of realization of the compensation of trafficked persons?

10. What is your specific contribution to that plan?

11. What is the cooperation between the CSW and state institutions?

12. What are the problems that the CSW is facing with?

13. What are the suggestions for overcoming the obstacles in achieving the activities of the CSW in support for compensation for trafficked persons?

## **NON GOVERNMENTAL ORGANIZATIONS**

1. How much our law is compatible with international documents concerning the compensation for trafficked persons?

2. Which are the ratified international documents in respect of the compensation for trafficked persons?

3. The way civil society has an impact on improving the legal framework for compensation of trafficked persons?

4. Do you know some of the cases that changed the law regarding trafficking in human beings?

5. What are the NGO's activities that participate in the exercise of compensation to trafficked persons?

6. What is your specific contribution to that plan?

7. What is the cooperation between NGOs and state institutions?

