

PROMOTION OF THE RIGHTS OF TRAFFICKED PERSONS IN

BULGARIA

A Human Rights Based Approach



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NETHERLANDS HELSINKI COMMITTEE



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Legal Analysis

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The research has been conducted within the Project „Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support“ (HOME/2011/ISEC/AG/4000002581), implemented in Bulgaria by Animus Association Foundation and coordinated by the Netherlands Helsinki Committee, in partnership with Caritas Ruse – Bulgaria, ADPARE (Association for the Development of Alternative Practices for Education and Reintegration) – Romania, “Pro Refugio” Association – Romania and „Human Rights League” – Slovakia.

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COUNTRY STUDY
by Natasha Dobрева

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Animus Association Foundation
Sofia, July 2013

Abbreviations found in text:

Assistance and Compensation Act – The Act on the Assistance and Financial Compensation of Victims of Crimes

CC – Criminal Code

CoE – Council of Europe

CPC – Criminal Procedural Code

EU – European Union

FRA – Fundamental Rights Agency

NGO – Non Government Organizations

NRM - National Mechanism for Referral and Support of Trafficked Persons

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FOREWORD

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

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

One of the problems many countries have in common, including Bulgaria, Romania and Slovakia, is the lack of access of victims to legal counseling and aid. An adequate referral system which ensures that victims are informed about the relevant judicial proceedings and their rights from their very first contact with the authorities is missing. There are few lawyers trained in working with trafficked persons. State-funded legal aid is scarce and often limited to no more than the formal presence of a lawyer during the trial. Even if formally victims have a right to claim compensation for the damages they suffered, in practice such claims are rarely awarded and, if they are, hardly ever executed. Provisions that might protect victims are not effectively used and many actors in the judicial system, including police, prosecutors, judges and lawyers, lack knowledge about trafficking and its psychological, social and health impacts on its victims. As a result trafficked persons face major barriers in accessing justice and criminal proceedings often lead to their secondary victimization. At the same time, NGOs

are not trained in providing legal counseling and only have limited funds to pay for legal aid and representation.

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

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

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

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

During the project a leaflet will be developed for trafficked persons to inform them about their rights, including a list of trained lawyers who can provide specialized legal aid. The leaflet will be distributed among all actors that are or might come in contact

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with (potential) victims of trafficking, including NGOs, social welfare centres, police and embassies.

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

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

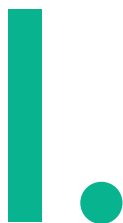
Netherlands Helsinki Committee
Julia Koster
Marjan Wijers

INTRODUCTION

This research assesses the current situation in regards to legal counselling and legal aid/representation of trafficked persons and their treatment as victims and witnesses in criminal and other relevant legal proceedings. The analysis of the rights of victims is based on the Minimum Standards as contained in the UN Protocol, the Council of Europe Convention on Action against Trafficking and other relevant international standards. The content of these rights on national level is described in the following main acts:

- The Criminal Procedural Code (CPC)
- The Action against Human Trafficking Act
- The Legal Aid Act and
- The Act on the Assistance and Financial Compensation of Victims of Crimes (Assistance and Compensation Act)

In addition, the following other relevant acts were examined: the Criminal Code (CC), the Regulations for the Application of the Social Assistance Act, the Child Protection Act, the Aliens Act, the Act on the Protection of Individuals at Risk in Relation to Criminal Proceedings, the Asylum and Refugees Act, and the National Mechanism for Referral and Support of Trafficked Persons (NRM). Fourteen trafficking case files were studied at the Ruse, Varna, Blagoevgrad and Sofia Courts, in addition to 44 court decisions in trafficking cases from the central case law system APIS. Official letters were received from the Supreme Cassation Prosecution Office, three District Prosecution Offices (Pleven, Sliven and Sofia), the National Legal Aid Bureau, the "Migration" Directorate, the Ministry of Justice, and the "National Security" State Agency. Furthermore, interviews were done with the following persons: 5 victims of trafficking; 16 NGO representatives; 2 police officers; 7 judges; 1 prosecutor; 4 lawyers representing victims; 4 experts from the National Commission for Combating Trafficking in Human Beings and the local commissions; 1 expert from the "Refugees" Agency.



FACTS AND FIGURES

In 2011, the Supreme Cassation Prosecution Office opened 138 investigation cases on human trafficking, involving 115 accused with sufficient evidence brought to court for 83 indictments.¹ The same year, the courts decided 131 cases for human trafficking (including cases that were brought to court in previous years), 119 defendants were sentenced and 3 were acquitted, with final decisions. Nine of these sentences were appealed. Of the 119 defendants who were convicted, 57 have started serving their prison sentences and 61 received postponed sentences.² In 2011, the Supreme Court of Cassation opened 5 cassation cases on human trafficking.³

A new department at the Supreme Cassation Prosecution Office was established – department No. 11 – specializing in crimes committed by children or where there are child-victims.⁴ The Prosecution Office also reported that in 2011, 70 children became victims of trafficking (57 of these victims were between ages 14 and 18 and 13 were under the age of 14), of which:

- 59 were victims of sexual exploitation (47 girls under 18, 2 girls under 14 and 10 boys under 14)
- 4 were victims of forced labour (3 girls under 18 and 1 girl under 14)
- 2 were victims of servitude (girls under 18)

¹ Report for the application of the law and the work of the prosecution and the investigation authorities in 2011, http://www.prb.bg/uploads/documents/docs_2914.pdf

² Annual report of the National Commission for Combating Trafficking in Human Beings for 2011, http://antitraffic.government.bg/images/documents/Polezna_informacia/Statistics_new/statistics_thb-2011.pdf

³ Report for the work of the criminal department of the Supreme Court of Cassation in 2011, http://www.vks.bg/Docs/VKS_Doklad_2011.pdf

⁴ The Prosecution's 2011 report.

In 2011, the office of the National Commission for Combating Trafficking in Human Beings received 56 reports on trafficking, involving 144 victims.⁵ The total number of identified victims of trafficking in 2011 is 541, of whom 448 are women and 93 are men. The number of victims of labour exploitation and male victims increased in comparison to 2010. The large majority of these complaints (404) concerned trafficking for the purpose of exploitation in prostitution. In addition, 91 of the identified victims reported forced labour (there is no information as to the industries), 17 were in servitude and 29 who sold their babies. There were no cases of trafficking of body organs.

In 2012, the Prosecution Office opened 143 investigation cases on trafficking and identified 579 victims. However, the National Commission for Combating Trafficking in Human Beings identified more victims. It received complaints on human trafficking involving 684 victims. Of these 684 victims, 574 were victims of sexual exploitation, 71 were victims of labour exploitation, 1 was a victim of servitude and 38 were pregnant women selling their babies. There were no cases on trafficking of body organs.⁶ The numbers of the Supreme Cassation Prosecution Office and the National Commission differ because not all of the complaints submitted to the National Commission were also reported to the Prosecution Office or if they were reported, not all of them resulted in the opening of criminal proceedings. While the National Commission counts identified victims, the Prosecution counts the victim-witnesses in the opened investigation cases.

In 2012, the courts sentenced 110 persons accused of human trafficking: 89 sentences entered into force and 21 defendants appealed. 53 defendants started serving their imprisonment sentences and 57 sentences were postponed.⁷ In 2012, the Supreme Court of Cassation opened 2 cassation cases for human trafficking.⁸

⁵ The National Commission's 2011 report.

⁶ Annual report of the National Commission for Combating Trafficking in Human Beings for 2012, <http://antitrafficking.government.bg/bg/2011-12-09-16-18-15/statistika>

⁷ Ibid.

⁸ Report for the work of the criminal department of the Supreme Court of Cassation in 2012, http://www.vks.bg/Docs/VKS_Doklad_2012.pdf



CRIMINAL LAW

The CC criminalises trafficking as a separate crime. It was criminalized in 2002, with the adoption of the new Chapter IX “Human Trafficking”. The main provision is Article 159a, paragraph 1, stating that

“[t]he person who recruits, transports, harbours or receives an individual or groups of persons with the purpose of being used for lechery practices, for forced labour, for removal of organs or for servitude, regardless of their consent, shall be punished with 2 to 8 years imprisonment and BGN 3 000 to 12 000 fine”.

Under this provision, a trafficker can be punished even if s/he did not use the ‘special means’ – coercion, force, deceit etc – provided in Article 159a, paragraph 2 as special elements of the crime leading to higher punishment. Under Article 159a, paragraph 1, the trafficker is criminally responsible even in cases where the victim was aware of the activity s/he would be involved in and consented to it, which is often the case. Therefore, any mediation for sex work, for example a taxi driver transporting a sex worker home or to her working place, or any mediation for removal of organs, for example an ambulance driver who transports a patient with an infected appendix to the hospital, is considered to be trafficking. The crime of trafficking resembles very much the crime of “recruitment for prostitution” set forth in Article 155 of the CC⁹. The Supreme Court of Cassation has held that in such cases

⁹ CC, Art. 155 “The person who persuades someone to prostitute or procures towards intercourse, shall be punished...”.
CC, Art. 156 “The person who kidnaps another person with the purpose to use her/him for lechery practices shall be punished...”

Article 159a absorbs Article 155, whereby there are not two separate crimes but only trafficking. The courts often apply Article 159a, paragraph 1, and there are many sentences imposed on traffickers who did not use the special means (coercion, force or deceit).

The special means are contained in Article 159a, paragraph 2:

“When the act under paragraph 1 was committed:

1. *with respect to a person below 18;*
2. *through the use of coercion or deceit;*
3. *through kidnapping or unlawful deprivation of liberty;*
4. *through the use of condition of dependency;*
5. *through abuse of power;*
6. *through promising, giving or receiving profits*

The punishment is deprivation of liberty from 3 to 10 years and a fine from BGN 10 000 to 20 000.

This provision lists more severe forms of trafficking punishable with longer term of imprisonment and a higher fine. According to the March 2013 draft law for amendments in the CC, the fact that a state employee committed the trafficking during work will be added as an aggravating circumstance under Article 159a, paragraph 2.¹⁰ Article 159a, paragraph 3, adopted in 2006, provides for the highest punishment (i.e. in cases where the victim is a pregnant woman with the purpose of selling her baby) of up to 15 years imprisonment and up to BGN 50 000 (EUR 25 000) fine. In cases as such, the trafficker is punishable even if the woman had consented to the sale of her baby. However, she separately bears criminal responsibility for another crime, namely, a crime against the marriage and the family, under Article 182b of the CC.¹¹

The special purpose “removal of organs” qualifies as trafficking regardless of the capacity of the person who commits the crime. The law states “anybody” – regardless of his/her profession, which means that even if the perpetrator is a medical specialist s/he bears criminal responsibility for human trafficking. In the opinion of the interviewed

¹⁰ Draft law for amendments in the Criminal Code, of 06/03/2013

<http://parliament.bg/bills/41/302-01-8.pdf>

¹¹ CC, Chapter “Crimes against the marriage and the family”, Art. 182b “A person of female gender who gives her consent for the sale of her child in the country or abroad shall be punished... The same punishment shall be imposed on a pregnant woman who gives her consent for the sale of her child before the birth.”

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judges, if a doctor recruits or transports persons with the aim to have their organs removed, s/he is criminally responsible under Article 159a.¹² Moreover, there is a separate crime committed which is “illegal transplantation”, set forth in Article 349a:

“The person, who violates rules established for removal and giving of human organs and tissues for transplantation, shall be punished ...”

The punishment under Article 349a is higher if the purpose of the transplantation is to gain profit. This provision was adopted before trafficking was criminalized in 1997, and it does not criminalize only surgeons, nurses or other medical specialists but anybody who breaks the legal procedure for transplantation. One of the interviewed judges suggested that the fact that the perpetrator is a medical specialist shall be added as an aggravating circumstance under Article 159a, paragraph 2 and provide for a greater punishment.

Forced labour and servitude are not separate crimes but two of the special purposes of trafficking within the CC.¹³ Slavery is neither a separate crime nor a purpose of exploitation. The law and the case law do not contain a definition of slavery and servitude. The research found only one servitude case, where the court held that the special purpose of Article 159a, namely, forced labour and servitude, was at stake because the victim was a child (aged 13). Thus, it was not possible (for the child) not to obey, because her parents sent her to live with strangers in another country. They organized her travel and did not make arrangements for her to return to Bulgaria. In her new home she was offered a choice of what to do, to commit thefts or to be a housekeeper.¹⁴

According to article 159b CC, trans-border trafficking is a crime as well:

“The person who recruits, transports, harbours or receives individual or groups of persons and transfers them across the border of the country with the purpose of Article 159a shall be punished with 3 to 12 years imprisonment and BGN 10 000 to 20 000 fine.”

¹² Interviews with judges of the Varna District Court of 02/07/2013 and 04/07/2013.

¹³ CC, Art. 159a cited in the text.

¹⁴ Verdict of the Pleven District Court of 31/01/2011 in criminal case No. 4143/2009.

The Action against Human Trafficking Act (paragraph 1 of the Additional Provisions) provides in more detail what the possible means of trafficking are:

“recruitment, transportation, transfer, concealment or acceptance of human beings ... by means of coercion, abduction, deprivation of liberty, fraud, abuse of power, abuse of a state of dependence, or by means of giving, receiving or promising benefits to obtain the consent of a person who has control over another person, when it is carried out for the purpose of exploitation”.

This provision cannot be used by the criminal courts for the definition of the crime “human trafficking” but serves to any other state authority, which might be, for example, identifying victims, considering requests for financial compensation, organizing training sessions, etc.

Apart from the traffickers, another group of persons is also criminally responsible in relation to the sexual or labour exploitation of the victims - the clients. The clients who purchase sexual services from exploited persons bear criminal responsibility (art. 159c):

“The person, who uses a victim of human trafficking for lechery practices, for forced labour, for removal of organs or for keeping her/him in servitude regardless of her/his consent, shall be punished ...”¹⁵

The research did not find a court case against a person who purchased a sexual service from a victim of trafficking (or a person who used the services of trafficked persons in other sectors). According to the NRM, an indicator for identification of a trafficked person is if the client noticed that “the prostituting woman seems nervous and anxious and says she is forced to prostitute”. Another indicator for the client is if he is told to pay the money not directly to the prostitute but to a middleman. As a difference, the clients of sex workers, adult prostitutes who work for themselves, are not criminalized. The Supreme Court of Cassation has held on two occasions that the clients of sex workers are not traffickers.¹⁶ The court reasoned “the person who has had a paid intercourse with a prostitute does not gain any profit for himself”

¹⁵ CC, Art. 159c.

¹⁶ See judgments of the Supreme Court of Cassation in cases 694/2009 and 712/2009 of 01/02/2010 and 16/02/2010, respectively.

while the trafficker “has in his mind a picture of his personal benefit from the future exploitation of the victim”. Thus, according to the Supreme Court, in those cases, there was no crime under Article 159a of the CC. However, the Supreme Court of Cassation did not comment whether there was a crime under Article 159c instead and what would be the relevant evidence for this crime in the specific cases or in general. Clients of child-sex workers are criminalized. Article 154a of the CC (adopted in 2009) provides that

“[t]he person who, by giving or promising a profit, commits lechery practices or intercourse with a minor prostitute, shall be punished...”

In conclusion, the provisions of the CC aim to protect the individuals from inhuman and degrading treatment and suggest that everyone has the freedom to choose their sexual partners (freedom from torture and right to respect for private life). Unfortunately, the formulation of Article 159a of CC deviates considerably from the definition of trafficking in the EU Directive and the UN Protocol, which take the use of coercion, deceit or abuse of power as a core element, and not the fact that some victims consent to the forms of exploitation. Many trafficking victims will consent to working as a domestic worker, factory worker, agriculture worker, sex worker, etc. The issue is whether there is coercion or deceit involved (which can be both in relation to the type of work and the working conditions). Since there is no requirement of coercion or deceit in Article 159a, paragraph 1, almost all sex workers, for example, will be trafficked. This would in practice mean a general criminalisation of clients. In order to comply with the EU Directive and the UN Protocol, the CC should exclude Article 159a, paragraph 1. Further, the CC does not include “slavery”, “begging” and “removing tissues and cells”. However, there is a draft law that provides for their inclusion within the trafficking definition in the CC. On 6 March 2013, the Council of Ministers brought to the Parliament a draft law for amendments in Article 159a of the CC, according to which “begging” and “removing tissues and cells” shall be added as a purpose of exploitation.¹⁷ This is a consequence of the need to address concrete cases in practice.¹⁸

¹⁷ Draft law for amendments in the Criminal Code, of 06/03/2013

<http://parliament.bg/bills/41/302-01-8.pdf>

¹⁸ In 2012, the Bulgarian and the Greek authorities investigated several cases where Bulgarian girls were transported to Greece where their ova were removed and sold (interview with an expert from the National Commission).

According to the examined case law, the majority of trafficking cases concern trafficking for the purpose of sexual exploitation. From the 44 court decisions that were examined, 43 concerned trafficking for the purpose of sexual exploitation. More specifically, the charges were “recruitment of persons with the aim to be used for lechery practices” or “transportation of persons with the aim to prostitute”. The Supreme Court of Cassation has held that the crime “recruitment for prostitution” (Art. 155) is absorbed by the heavier crime “recruitment with the purpose of lechery practices” (Art. 159a) and, thus, the defendant shall not be punished for two separate crimes but solely for trafficking.¹⁹

Only one case from those studied concerned trafficking for the purpose of forced labour and servitude. In that case, the defendants were found guilty in that they transported their minor daughter and another minor girl to Croatia against their will and forced them to commit crimes, in casu thefts.

The trafficking definition under the CC is clear enough for the courts to find that the crime has been committed. In regards to the determination of punishment, however, there are differences in the application of the law between courts. For example, there was a case where the court held that the fact that the victims did not consider themselves as victims, but voluntarily worked as prostitutes to earn money, was a mitigating circumstance in regards to the guilt of the traffickers. Thus, although the judges found the perpetrators guilty of trafficking, they did not impose the maximum prison punishment, because they felt that the sexually exploited persons “do not feel victims of the crime. They were simply after financial reparations and compensations.”²⁰

The view expressed by the judge in this particular case is a manifestation of the widespread impression in Bulgaria that the position of the middleman represents a “helpful service” for those who want to work in prostitution and that this service is something the sex workers cannot be without.

Those who want to work in prostitution shall have the entire disposal of the money earned through the sale of their services. More specifically, services to sex workers from third parties, such as drivers, guards,

¹⁹ See judgment of the Supreme Court of Cassation of 24/03/2009 in case 64/2009.

²⁰ „Participation of Children in Justice Proceedings – Bulgaria”, FRA, 2012

advertisers, landlords, etc., should be engaged freely and the costs should be proportional to the services rendered. In this respect, it should be outlined that in Bulgaria only 5% of people in prostitution work independently, without a middleman, while more than 95% of the sex industry is controlled by organized crime.²¹ In addition, state employees are often participants in the trafficking ring. Only persons in very low-class (street) prostitution work independently and they are the only class of prostitution where organized crime shows no interest due to the small amount of money it generates. The insignificant financial result of the very low-class (street) prostitution is in itself a protection of the persons in it against trafficking. Apart from that group, every person who works as prostitute is threatened, blackmailed, and eventually forced to pay part of his/her income to the organized crime groups.²² Therefore, it can be concluded that 95% of the prostitutes do not enjoy any protection against trafficking or other abuses and actually fall prey to trafficking within a short period of time. Fearing punishment from their traffickers or losing their income as prostitutes, they state to the police, when arrested, that they work for themselves. As it will be further discussed below, their statement of voluntary prostitution is enough reason for the police not to look for any indicators for identification of trafficked persons. As a result, the prostitutes who claim to work for themselves are never identified as victims of trafficking. For these reasons, it is true that prostitutes enjoy less legal protection against trafficking than other citizens.

Low class, street prostitution, aside from the interest of the organized crime, is the target of most police raids. The police often arrest street prostitutes for 24 hours, for reasons that they do not have an identity document, or even press charges against them under Article 329 of the CC, stating that:

“A full age person who continuously stays uninvolved in publicly useful labour, receiving non-labour income in a forbidden or immoral manner, shall be punished...”

²¹ G. Petrunov - Criminal analysis, “Legalizing prostitution – Pros and Cons”, RiskMonitor Foundation, 2011, p. 18.

http://riskmonitor.bg/js/tiny_mce/plugins/ajaxfilemanager/upload/Reports/RM-19-Prostitution_Legalization_BG.pdf

²² Ibid.

Publication of case law

There are two central systems in place to collect and publicise case law – “Ciela” and “Apis”. They are run by private actors, which sell software programs with periodic actualization. Courts, law firms, NGOs and others have access to these systems. The National Commission for Combating Trafficking in Human Beings (hereafter “the National Commission”) publishes statistics on the number of cases, accused persons, victims, etc. on their website. It also publishes news about arrests, investigations and court sentences in trafficking cases.



POSITION OF VICTIMS IN CRIMINAL PROCEEDINGS

The criminal proceedings are marked by the conflict between the trend towards avoiding re-victimizing during interrogations, on the one hand, and the need to find out what in fact happened, on the other hand. The fact that the truth is often in the details provokes the collision between the need to perform procedural actions for investigation of the facts and the causing of inevitable discomfort to the victim. More specifically, in practice this collision causes the following significant problems in regards to the position of victims in criminal proceedings:

1. initial informal conversation without rights guarantees;
2. numerous interrogations subsequently;
3. excessive length of the proceedings.

First contact and informal interrogation

The first contact with victims who were rescued or escaped from trafficking is with front line police officers. They cooperate with state-funded or private-funded shelters to which they refer the victims. In order to make an official identification of the victim and to grant his/her accommodation in a shelter, the police officers perform an initial conversation with the victim. The initial conversation is not a formal interrogation because its purpose is not to investigate the crime

but simply to identify and refer the victim – it is only part of the administrative proceedings under the NRM, but not a part of the criminal proceedings under the CPC. The difference between (the purpose of) the initial conversation and the formal criminal interrogation can be illustrated by their numbers:

- the front police officers hold thousands of initial conversations with victims²³ ;
- in 2011, 541 victims were identified;
- in 2011, 138 investigation cases were opened, which means that (roughly) 138 victims/witnesses were formally interrogated.

Often the initial conversations take on a larger scope that involve police officers extracting from the victim's information about the traffickers, the traffickers' whereabouts, their methods of recruitment and transportation, the other participants in the trafficking ring etc. Thus, the authorities in fact perform a classic interrogation aimed at collecting data about the perpetrators and the crime, despite the fact that these "statements" cannot be used as evidence. This is done because often soon after the first contact with the victim, the victim disappears and cannot be found anymore. S/he either chooses not to stay in a shelter and to return directly to her/his home or stays in a shelter for one or two days and then leaves refusing to cooperate with the authorities.²⁴

In June 2013, a Bulgarian woman escaped from a situation of sexual exploitation in Vienna (Austria). On her entry in Bulgaria, the border police officers waited for her and had a conversation, asking her, inter alia, and questions such as how and when she left the country and with whom she left.²⁵

²³ Interview with a front line police officer of 26/04/2013: "I have held 1200 conversations with victims."

²⁴ In May 2013 a female victim of trafficking was accommodated in the shelter of the Animus Association but stayed only one night after which she left refusing to cooperate. In 2012, only one victim of national trafficking gave her consent to be accommodated in this shelter and since the beginning of 2013 – another one. In the Silistra shelter, since the beginning of 2013, only two victims of national trafficking consented with

²⁵ Interview with a victim, of 09/07/2013.

The problem is that in practice the authorities perform the initial conversation in the grey zone between the administrative proceedings under the NRM and the criminal proceedings under the CPC. As a result, the CPC guarantees against re-victimization are not observed. After the identification of the victim, the authorities are under an obligation, according to the Action against Human Trafficking Act, to inform the victims of their basic rights, such as the right to a reflection period, the right to free legal aid and the procedure to receive it, the right to compensation and the competent authorities to which to turn to, etc. This is very rarely done in practice and the victims learn about their basic rights often from other victims and sometimes from social workers or do not learn about them at all. In conclusion, the initial conversation can easily become a way to interrogate a witness prior to inform him/her about the rights and without the presence of a lawyer. In addition, it is unclear for the victim whether s/he is questioned in a capacity as a witness or in a capacity as the accused – in case that s/he is identified in the course of her/his detention for theft or prostitution, for example.

The line where the victim - from a suffering person who receives psychological help and legal advice during the reflection period – becomes victim/witness in criminal proceedings is quite vague in practice. The problem is that the authorities are interested in keeping it that way. In their immediate efforts to learn as much as possible who the traffickers were and how the crime was committed, the authorities literally force the victim to give statements, without informing her/him about the right to a reflection period or by informing them in an imprecise and non-understandable manner.²⁶

Number of interrogations

A natural continuation of the inability of the police to recognize in the trafficked person the victim and not the witness is their absolute insensitivity towards the number of interrogations. In many cases, where the victim already agreed to participate in the proceedings and testify, s/he cannot give good statements with valid evidence material, due to the fear of recalling and describing repeatedly in detail what

²⁶ Interview with a social worker of 28/05/2013: "The police officers came to the shelter and told the women: "You have to identify the perpetrator at the police station!"

happened. Thus, the authorities shall summon the victim for additional interrogation, whenever they consider that some information is lacking and some description of the events has been incomplete or when they find a new witness in the case and learn some new facts. The NRM provides that

“the investigator should be prepared in advance about the trafficked person’s condition and treat him/her with tolerance and understanding. ... The interrogations shall be confined to the necessary minimum.”²⁷

In practice, the average number of interrogations of victims of trafficking during pre-trial investigation is 4 times.²⁸ There are children who have been interrogated more than 7 times for the same crime.²⁹ The additional interrogations sometimes include confrontations with the accused - investigation action under the CPC aimed at comparing the statements of two participants in the proceedings regarding the same event. Furthermore, the prosecutor might decide that there is a risk of losing contact with the victim in the future. In that case, the prosecutor will order yet another interrogation – before a judge – where the victim must repeat everything once more. An interviewed prosecutor explained the following:

“In order to have a criminal case started, in order to open it, it is necessary to dispose of enough data. In my practice, we have opened, as we say, folders, checks upon the report of some person. In a large number of the cases, this report is too vague – this and that person was driving me, he drove me, I did this and that and therefore I ask for your cooperation – roughly said it is like this. From there, we need to take from this person additional explanations, we do not have yet a criminal case opened. These explanations are a little bit more detailed. When we collect enough data and we open criminal proceedings, begin, as you ask, the interrogations – and according to the circumstances, that have to be clarified,

²⁷ The NRM, cited above, page 82-83.

²⁸ Interview with the Chair of “Open door” Centre, Pleven, of 15/04/2013: “The police interrogate the victim 3 or 4 times on the same case.” Also, interview with the Chair of Women Association “Ekaterina Karavelova” (Silistra) of 04/06/2013: “The victims are being questioned at least 4 or 5 times. When the police find some new witness, they summon the victim for a fresh interrogation”. Also, interview with a prosecutor from the Varna Regional Prosecution Office of 02/07/2013: “it is possible as of my practice for the maximum number of interrogations during pre-trial to be up to 3”.

²⁹ Article: “Blue room” will help for the sparing hearing of the children in Stara Zagora., 22/05/2013,

<https://www.samaritans.bg/news/sinya-staya-shte-pomaga-za-shtadyashoto-izslushvane-na-deca-v-stara-zagora>

it is possible as of my practice the maximum number of the interrogations during pre trial to be up to three. ... the Bulgarian CPC provides for a possibility, a person, after s/he was interrogated by the investigative officer, to perform an interrogation before a judge. ... This mechanism was used a lot. After s/he gives statements, we interrogate him/her before a judge and we continue the investigation."

During the trial, the victim will be summoned again for an open hearing in the courtroom where s/he has to tell the same story before the judge (unless the defendant consents to use the statements made by the victim before a judge during the pre-trial investigation; this possibility is further discussed below). Usually, the victim is questioned one time in the court stage, but additional interrogations are possible in view of the concrete circumstances of the case.³⁰ Not only are the interrogations numerous, but they deeply traumatize the victim, as no measures are taken to avoid re-victimization. At the outset, often the police officers who investigate trafficking cases are men³¹, while the big majority of these cases are for the purpose of sexual exploitation or for baby sale where the victims are women.³² What is more disturbing is that the investigators do not consider the need to avoid direct confrontation between the victim and his/her traffickers as a relevant issue in their methods of interrogation. There have been cases, although old ones, where the victim was interrogated at the police department, in the same room with her trafficker sitting next to her³³ or where the victim participated in 6 consecutive confrontations, with each of the 6 accused.³⁴

Length of criminal proceedings

Another problem, which the victim faces, is the excessive length of the pre-trial and/or court proceedings. The pre-trial investigation in

³⁰ Interview with the coordinator of the shelters in Pazardzhik, of 09/05/2013: "The victim participated in the trial only as a witness. She attended 2 hearings."

³¹ Interview with a social worker of 28/05/2013: "I have not attended an interrogation of victim of trafficking performed by a female police officer."

³² According to the annual report of the National Commission for 2011, 541 victims were identified, 448 were female, 404 were trafficked for prostitution and 29 were pregnant women selling babies. The research examined 44 court cases, in 43 of them the victims were women trafficked for prostitution.

³³ Interview with the Chair of "Open door" Centre, Pleven, of 15/04/2013.

³⁴ In case 937/2007 of the Blagoevgrad District Court, the confrontations took place in December 1999 and January 2000. The victim attempted to commit a suicide when she was summoned for the first confrontation.

trafficking cases usually takes several months, up to 1 year.³⁵ However, sometimes it lasts 2 or 3³⁶ years or can even be pending for 6 or 7³⁷ years. Similarly, the proceedings before the court can be very lengthy. In trafficking cases there are usually not just one defendant but also a group of several defendants. Their presence in the open hearings is mandatory, as the crime qualifies under national law as a “heavy” one. Therefore, the hearing will be postponed if a defendant or if an attorney fails to attend the hearing.³⁸ The traffickers widely abuse the statutory right of the defendants accused in heavy crimes to participate personally in their trial and take advantage of this right in order to postpone as much as possible the delivery and the execution of the verdict.³⁹ There have been cases of a blatant delay of the proceedings, only at the first level court, for example, case 937/2007 of the Blagoevgrad District Court or case 35/2006 of the Elin Pelin District Court, where the first level proceedings lasted 4 and half years.

In case 937/2007 of the Blagoevgrad District Court there are 7 defendants and 7 attorneys – in total 14 persons on which the start of the hearing depends. It is enough that one of them is not present for the case to be postponed. It does not matter whether the reason for the absence is good or not – in the latter case the court would impose a fine to the person. The first level court proceedings were pending for a period of 4 years and 6 months. Throughout this period, the case was postponed 21 times. The appeal proceedings are pending for the last 9 months and during that period the case was postponed 6 times.

³⁵ Case 793/2004 of the Ruse District Court: 7 months investigation; investigation case 3413/2011 of the Sofia Regional Prosecution Office: 7 months; case 6/2010 of the Sliven Regional Court: 3 months investigation; investigation case 5499/2007 of the Varna Regional Prosecution Office: 12 months.

³⁶ Investigation case 1289/2006 of the Varna Regional Prosecution Office (1 year and 8 months); case 1878/2007 of the Pazardzhik District Court (2 years investigation); case 439/2011 of the Ruse Regional Court (3 years investigation); case 950/2007 of the Varna Regional Court (3 years investigation).

³⁷ Case 201/2005 of the Razgrad District Court (6 years investigation); case 937/2007 of the Blagoevgrad District Court (7 years investigation).

³⁸ CPC, Art. 269.

³⁹ Interview with attorney-at-law representing victim, of 15/04/2013: “There is a serious game of postponing the cases, as they are a group of defendants. The Sofia District Court schedules 2 hearings per year.” The case this attorney talks about was brought to court in 2008 and is still pending.

One of the problems that arise because of the excessive lengths of the proceedings is that victims lose confidence in the judicial system and withdraw their statements. The victims of trafficking communicate information to each other and share their experiences about the criminal proceedings they have been involved in. There is a wide disbelief in the positive outcome of the criminal proceedings in Bulgaria among the victims. They define the (participation in the) proceedings as “boring” and such that creates a “loss of emotions” for them and they do not believe that they will receive any compensation. The victims who are Bulgarian nationals feel much safer and therefore are more willing to cooperate with foreign authorities in cases of trans-border trafficking. This is because they have received information that guilty verdicts are delivered more frequently abroad, while they do not know of any traffickers who are sentenced in Bulgaria.⁴⁰ According to the 2012 annual report of the National Commission, 95% of the victims withdraw or change their statements when the case reaches the stage of the court proceedings.

The main cause for the absence of a more sensitive approach towards the victims is the lack of training. Furthermore, even if training sessions are organized, the access to them for front line police officers and investigators is very limited. For example, in March 2008 the National Institute of Justice organized a 3-day training on trans-border crimes, including human trafficking and the victim's profile. However, only one police officer attended the training, while the rest of the participants were prosecutors and judges. The National Commission held 6 training sessions in 2012 in different towns in the country on basic issues such as the definition of trafficking, methods of investigation, referral mechanisms for the victims, without specifically focusing on their rights. These training sessions were attended by police officers at the Chief Directorate for Combating Organized Crime (CDCOC) and border police officers. Training had a positive influence on the practices of the border police officers to interrogate victims, who had been identified abroad and repatriated, immediately after they arrive in Bulgaria. Instead, the border police officers started escorting them to the

⁴⁰ Interview with the Head of the Sofia shelter, of 15/04/2013: “The victims do not trust the authorities, they do not believe that they will receive compensation. In cases of international trafficking they cooperate more often. They feel safer to testify because there are more guilty verdicts [than in Bulgaria]. The girls pass information to each other, they self-inform themselves.” Also, interview with a lawyer representing victims, of 24/04/2013: “I have not heard of a trafficking case in the Pernik court, I have not heard of any traffickers sentenced.”

shelter first and waited for their recovery before initiating a conversation.⁴¹

Child victims

In addition to those three problems above, there are specific problems in regard to the position of child victims in criminal proceedings. In most cases, the child victims are exploited/sold by their parents or relatives. Therefore, the first question that arises after the child is being rescued and separated from her/his parents is who will be responsible for the well being of the child and who will defend his/her rights and interests in legal proceedings. In practice, the parents authorize the Director of the childcare institution, where the child is being taken care of, to be the person responsible for the well-being of the child. The Social Assistance Directorate has the right to submit a request to the court for accommodation of the child outside the family (in a foster family, shelter, crisis centre, home, etc.)⁴² and also submit a request to the court for limitation/deprivation of the parental rights.⁴³ Article 15, paragraph 8 of the Child Protection Act provides that “the child has the right to legal aid and appeal in all proceedings affecting his/her rights and interests” but there is no clear practice on how the child can access legal aid. In regard to the child’s participation in court proceedings, there are special provisions in the CPC, as well as a separate piece of legislation that includes procedural norms – the Child Protection Act. Interrogating child victims can be extremely traumatizing because children are very much burdened by causing someone’s sentencing, especially when it concerns their own family. Therefore, for these young victims, the idea itself that they have to not only give the information that will incriminate the perpetrators who may be their family but also face the burden that they feel they will have to be the ones to solve the situation.⁴⁴

Position of victims of trafficking compared to victims of other serious crimes

The position of victims of trafficking is comparable with the position

⁴¹ Interview with a social worker, of 15/04/2013.

⁴² Child Protection Act, Article 26, paragraph 2.

⁴³ Child Protection Act, Article 21, paragraph 1, point 14.

⁴⁴ „Participation of Children in Justice Proceedings – Bulgaria”, FRA, 2012, Annexes: vi, vii.

of victims of other serious crimes. There is no special training for the representatives of the judicial system regarding the rights of trafficking victims or special laws on victims of trafficking. The Assistance and Compensation Act applies not only to victims of trafficking but also to victims of other serious intentional crimes such as homicide, severe body injury and rape.

There are no special NGOs providing support to solely victims of trafficking or private-funded shelters for victims of trafficking only. The private-funded shelters accommodate mainly victims of domestic violence and were initially established for such cases. Some of them were opened as early as the late '90 even before "trafficking" was criminalized in Bulgaria (2002). The two state funded shelters, specifically for victims of trafficking, were opened very recently – in 2011.

The special act that concerns trafficking only, the Action against Human Trafficking Act, does provide a special status, to differentiate from victims of other serious crimes and provide special protection to victims of trafficking that cooperate with the authorities. The special protection, however, consists of extending accommodation in the shelter for the duration of the criminal proceedings. Such an extension, however, can be granted on the basis of other acts too, for example, on the basis of the Social Assistance Act. According to §25 of the Additional Provisions of the Rules for Implementation of the Social Assistance Act,

"shelter is a housing for social services for persons who suffered violence, trafficking or other form of exploitation, provided for a period of 6 months"

In practice, victims of trafficking can remain accommodated much longer than 6 months, even if there are no criminal proceedings opened regarding their case.⁴⁵ In addition, as it concerns legal aid, the Action against Human Trafficking Act refers to the general Legal Aid Act, whereby the victims of trafficking shall comply with the same requirements set forth for victims of other serious crimes.

⁴⁵ Interview with the Head of "Samaritans", Stara Zagora, of 28/05/2013: "There is a girl victim of trafficking who is one and a half year now in our shelter; there is no investigation into her case."

Handling of complaints

The complaints filed by trafficked persons are taken with different degrees of seriousness depending on the different regions in the country and the different levels in the police hierarchy. If the complaint is filed to a low level police officer in a small town, for example, to the Director of a District Police Station, it would not be taken seriously and would not be investigated. The reasons for this are multiple: low level police officers are not trained on the definition of trafficking, more specifically, on the irrelevance of the victim's consent; they are corrupted; they refuse to interfere in the matter if the victim is of full age because she had given her consent, etc. On the other hand, if the complaint is filed in the capital of the country, to a police officer from the Directorate for Action against Organized Crime, it would be taken very seriously and immediate actions would be taken to search for the victim.

In November 2009, a family from the village of Lukovit learned that their 22-year old daughter left to Frankfurt, Germany, with her "boyfriend" who was known in the village for his criminal activity. She called them on the phone and told them briefly that she was all right and that they should not search for her. The parents informed the Director of the Lukovit Police Station but he replied, "the girl is of full age and knows what she is doing" and refused to investigate. The parents then contacted a lawyer from Sofia and filed a complaint to the Director of the Directorate for Action against Organized Crime in Sofia. They specified the name and the phone number of the "boyfriend"; the city where the girl was and attached a photo of her. The Directorate initiated a search in cooperation with their German colleagues. After several days, the girl was found and she returned to her family in Lukovit.

Definition of victim and victim status

The definition of a victim under Article 4e of the Council of Europe Convention on Action against Trafficking in Human Beings is implemented in Bulgarian legislation. The definition is laid down in the Action against Human Traffic Act, Paragraph 1, and point 5 of the Additional Provisions:

"Victim" is every person who has been subject to human trafficking".

This act defines women and children as the persons most at risk in human trafficking - Chapter 1, General Provisions, Article 1:

"This Law shall provide for: ... measures aimed at protection and support of victims of trafficking, especially women and children."

In a broader aspect, Article 74 of the CPC defines victim as

"the person who suffered material or non-material damages from the crime".

The CPC definition also includes family members of the victim whose death has been caused by the crime. Moreover, a person can be considered as a trafficking victim regardless of the fact whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the victim and the perpetrator.

There are specific rights attached to the status of victim. First, the identified victim of trafficking has the right to a reflection period, the right of one month accommodation in a shelter, the right to free psychological support and free legal consultations and the right to decide whether to cooperate with the authorities or not. The identified victim also has a right to a one-time financial compensation provided by the State for her/his material damages. The victim, who agrees to cooperate with the authorities, has the right to extend her/his accommodation in the shelter for the duration of the criminal proceedings. The victim who cooperates has the right to protection of her/his safety and her/his relatives' safety; the right to be represented by an attorney; the right to submit evidence; and the right to appeal decisions

of the prosecution and court authorities. Finally, the victim who agrees to participate in the trial has the right to claim compensation for damages and to act as private prosecutor. In sum, the following rights may be provided for a trafficking victim:

1. Rights of “identified” victim in the meaning of the NRM.
2. Right to state-funded compensation for material damages.
3. Rights of a “victim” and “witness” in the meaning of the CPC.
4. Right to claim compensation for material and non-material damages from the trafficker.

Self-identification as victim is not possible. Although a person can self-report the crime, in practice s/he will be treated formally as a potential victim only after examination of adopted indicators for identification. The status of a victim of trafficking issued by another member state of the Council of Europe Convention is recognized in Bulgaria. The police co-operates with NGOs in identifying victims. According to the NRM, NGOs perform unofficial identification, providing psychological support and accommodation in crisis centre/shelter. Further, the NRM provides that formal identification is made by the investigative authorities (police and prosecution). The CPC provides that the authority that opens the criminal proceedings shall serve the victim with a decree informing her/him specifically that s/he has the capacity of “victim” in the criminal proceedings, with corresponding rights.

IV.

RIGHTS OF VICTIMS

Below, the rights of victims in criminal and other legal proceedings are discussed, based on the standards as contained in the relevant international instruments, in particular the UN Trafficking Protocol and the Council of Europe Convention on trafficking. The standards are indicated in the boxes at the beginning of each section.

1. ACCESS TO LEGAL AID

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

Victims of trafficking have the right to be consulted and represented by a lawyer. If they cannot afford to engage such with their own finances, they have the right to ex officio (state-funded) lawyer, when they provide evidence of low income. This includes both criminal and civil proceedings. The legal aid is initial – consultation and filling in documents, and full – legal representation before the investigation authorities and before court in open hearing. The authorities shall inform the victim about her/his to have a lawyer and that an ex officio

lawyer can be appointed if the victim cannot afford such. However, they do not examine on their own initiative whether the person corresponds to the conditions for appointment of ex officio lawyer – the person must request this him/herself. When the prosecutor leading the investigation or the presiding judge makes a decision that there are grounds to appoint ex officio (state funded) lawyer to the victim, they must draw up an official record of that decision and send it to the local Bar Association. The Bar Association will then appoint the individual lawyer and inform the prosecutor or the judge. In the selection of these lawyers the Bar Association shall consider *“the professional experience, the lawyer’s qualification, the type of the case, its factual and legal complexity and the number of engagements of the lawyer”*.⁴⁶ Under Article 25 (5) of the Legal Aid Act, the victim can choose his/her ex officio lawyer. There has been such a case in practice.

In 2012, a female victim of trafficking was recruited for prostitution in the city of Dobrich and after her rescue was accommodated in the Varna shelter. During her reflection period, she was assisted by a lawyer from the “SOS-Families at risk” Centre (Varna), with whom she established a relationship of trust. As the investigation was opened in Dobrich, the victim had to apply for legal aid at the Dobrich Prosecution Office and the Dobrich Bar Association. She indicated in her legal aid application that she chose to be represented by her lawyer, who was also registered in the list of ex officio lawyers, although at the Varna Bar Association. The Dobrich Prosecution Office and the Dobrich Bar Association allowed the request. This case, however, did not reach the court stage.

⁴⁶ Letter from the Chair of the National Legal Aid Bureau of 13/05/2013.

Initial access to a lawyer is crucial for the fulfilment of the referral and support mechanism. However victims do not have access to a lawyer during the first contact with authorities (the police, the local commissions for combating trafficking in human beings and other). During the first contact, the authorities examine whether there are indicators for the victim to be identified as a victim of trafficking. If the identification is positive, the authorities will inform her/him that s/he has a right to a reflection period and during that period s/he has the right to consult a lawyer. However, it would be the victim's decision and initiative to make the request but it is not the responsibility of the state to automatically appoint a lawyer. As stated previously, the problem here is that often authorities take advantage of the first contact and interrogate the victim about the crime and the perpetrators, unofficially, without the participation of a lawyer.

The right of the victim to legal aid arises as of the moment of her/his identification as victim of trafficking.⁴⁷ The right of the victim to be legally represented in the criminal proceedings arises as of the moment s/he decides to cooperate with the investigation authorities.⁴⁸ In practice, victims do not apply for an exofficio lawyer. The interviewed prosecutor stated: "I am not familiar with a case, when victims of human trafficking have requested to be appointed a free attorney".⁴⁹ In the 14 case files that were studied in the registries in different courts in the country, none of the victims had applied for legal aid and none of them was represented by a lawyer.

The quality of the exofficio lawyers cannot be assessed. There is no independent check of the lawyers' qualifications and no control of the quality of their work, besides general disciplinary proceedings. As the Chair of the National Legal Aid Bureau comments, "the quality of the lawyer's work is directly dependent on his professional qualification for certain type of cases."⁵⁰ In the context of the current research, another reason for which the quality of the exofficio lawyers cannot be assessed is that the National Legal Aid Bureau does not keep statistics

⁴⁷ The NRM and the Assistance and Compensation Act, Art. 6.

⁴⁸ CPC, Art. 75. Also, the letter from the Chair of the National Legal Aid Bureau of 13/05/2013 states that "as early as in the stage of the pre-trial investigation, if the victim has not authorized a lawyer ... s/he will be granted an *ex officio* lawyer."

⁴⁹ Interview with a prosecutor from the Varna Regional Prosecution Office, of 02/07/2013.

⁵⁰ *Ibid.*

on whether the person, to whom an ex officio lawyer was appointed in criminal or civil case, is a victim or defendant.⁵¹ The Bureau does not differentiate between applications from victims and defendants and does not have a separate register of lawyers who wish to represent victims only. It only differentiates criminals in civil and administrative law. In practice, the same lawyers, who represent defendants, shall also represent victims, because they are registered in the criminal law list and they are experienced with the CPC.⁵² Thus, the number of the victims who received state-funded legal aid cannot be determined nor even estimated⁵³ but the probability that there has never been such a case is very high.

The other way in which victims have access to legal aid is through NGOs. NGOs acting in the field of human rights or violence against women, in particular, provide free legal aid to victims of violence in strategic cases. The legal staff of these NGOs is mostly trained in domestic violence cases and victims of trafficking are very seldom found in their field of expertise and interest. For example, from 15 NGOs examined, only 3 had provided legal aid to victims of trafficking in court proceedings and 2 in pre-trial proceedings.⁵⁴

Article 10 of the Assistance and Compensation Act guarantees specifically the right to free legal aid for victims referring to the more detailed provisions of the Legal Aid Act:

“The victims of crime can receive free legal aid under the conditions and the procedure of the Legal Aid Act.”

⁵¹ Ibid.

⁵² Round table “Problems in the application of the Legal Aid Act” of 09/11/12 with the participation of representative of the National Legal Aid Bureau.

⁵³ The 2012 annual report of the National Legal Aid Bureau indicates only the general number of the submitted legal aid applications – 280, without indicating whether they concern criminal or civil or administrative cases and whether the applicants are victims or defendants in criminal cases.

http://www.nbpp.government.bg/images/Otchetan%20doklad_2012.pdf

⁵⁴ 1. Bulgarian Helsinki Committee (Sofia) - 1 court case, ended in 2011. 2. Bulgarian Gender Research Foundation (Sofia) - 1 court case, pending. 3. Bulgarian Lawyers for Human Rights (Sofia) - no case. 4. Center Nadja (Sofia) – 1 court case, pending. 5. SOS Foundation (Varna) – 1 pre-trial case, ended in 2012. 6. Demetra (Burgas) – no case. 7. Ravnovesie (Burgas) – no case. 8. Eurorights (Plovdiv) – no case. 9. Thirst for Life (Sliven) – no case. 10. “Open Door” Center (Pleven) – no case. 11. Pulse Foundation (Pernik) – no case. 12. Caritas (Ruse) – 1 pre-trial case, ended in 2011 with agreement. 13. IGA (Pazardzhik) – no case. 14. Samaritans (Stara Zagora) – no case. 15. Women’s Association “Ekaterina Karavelova” (Silistra) – no case.

Under Article 22, paragraph 1, points 3 and 7 of the Legal Aid Act, the initial legal aid is free and shall be granted to “persons accommodated in specialized institutions for social services” and to “victims of ... human trafficking, who do not have finances and wish to have legal aid”. Therefore, the right to state-funded initial legal aid follows automatically from the victim status.

That is not the case with the full legal aid – the legal representation. The right to state-funded full legal aid follows from 1) the financial situation of the victim and 2) the interests of justice, in each particular case. According to Article 23 (2) of the Legal Aid Act, “the system for [full] legal aid includes also the cases, when ... the party in criminal ... case does not dispose with means to pay a lawyer, wishes to have such and the interests of justice require this”. The same two requirements are reiterated in the CPC, Article 100 (2):

“When the private prosecutor, ... the civil claimant ... submit evidence that s/he is not able of paying attorney’s fee, wishes to have a lawyer and the interests of justice require so, the trial court, which considers the case, shall appoint a lawyer.”

The application procedure for initial legal aid under the Legal Aid Act requires the filling in of a 1-page application form and 2-pages declaration for financial situation. At least one proof of low income must be attached, for example, an order from the Director of the Social Assistance Directorate certifying that the applicant receives monthly social assistance. The application procedure for full legal aid requires the filling in of a 1-page request and the submission of as much as possible proofs of law income, labor occupancy, health condition, family status, social assistance, etc. These application procedures are practically impossible for victims to follow because many of them are illiterate, have mental disabilities, or are from Roma origin and cannot read and write in Bulgarian, etc.⁵⁵ Thus, the access to the state-run legal aid for the victims is only theoretical.

On 1 September 2013, the National Legal Aid Bureau, which has re-

⁵⁵ Interview with the Head of the Pulse Foundation (Pernik), of 24/04/2013: “The police inform the victims about the procedure for applying for free legal aid realistically – showing that it is too bureaucratic. The victims are illiterate, with mental disabilities, of Roma origin.”

ceived a special grant for this purpose, starts a pilot project in regard to the provision of “initial” legal aid – legal counselling and processing of documents.⁵⁶ The Bureau will open two centres for initial free legal aid, in the towns of Vidin and Sliven, for citizens of socially vulnerable groups. Practicing lawyers, registered at the Bureau, will work there and will receive a monthly salary. The centres will have their own eligibility criteria for their clients, and broader and more flexible than the ones set forth in the Legal Aid Act. The clients shall not be required to present evidence for their financial situation, instead, a simple declaration for their income will be enough. The lawyers will provide legal consultation and assistance in the filling in and processing of documents and/or application forms. The grant is not intended for legal representation in court. The project will run for 1 year, until 1 September 2014. The NGOs/shelters/crisis centres on the territory of these two towns shall refer victims of trafficking during the reflection period to these legal aid centres. In order to guarantee the quality of the lawyers and their dedication to the project, it provides that the applicants for the job shall spend each month a certain amount of hours working pro bono.

There are specific provisions in regard to legal aid for child-victims. The person who has the parental rights (parent, guardian) shall accompany the child in the legal proceedings and shall apply on her/his behalf for legal aid. In case the parents are unknown or they are the traffickers, the person who shall take care of the child and represent his/her best interests is the Chair of the crisis centre/shelter, the Director of the “Social Assistance” Directorate or a foster parent. In the criminal proceedings (against the parents-traffickers) the court shall appoint a special representative-lawyer to the child-victim.⁵⁸ The Child Protection Act (Art. 4 (1) 11) specifically stipulates that the legal aid for children shall be free: “*protection of the child under this act shall be achieved through ... guaranteeing legal aid on behalf of the state*”. These provisions are applied in practice. If a private lawyer, for example a

⁵⁶ <http://www.nbpp.government.bg/novini/novini/sobshchienie-za-proiekt-na-nbpp-po-norviezhkila-finansov-miekanizm.html>

⁵⁷ Child Protection Act, Art. 21 (1) 14: “The “Social Assistance” Directorate shall submit claims for deprivation or limitation of parental rights in the interest of the child or shall participate as a party in proceedings that are already initiated.” Family Code, Art. 173 (1): “The Chair of the specialized institution where a child with unknown parents is accommodated shall become his/her guardian.”

⁵⁸ CPC, Art. 101 (1): “When the interests of the child are contradictory, the prosecution or court authorities shall appoint him/her a special representative – lawyer.” Interview with a judge from the Varna Regional Court, of 02/07/2013: “In particular – such an issue in a trafficking case in my practice has not arisen. The last case where I appointed a special representative was under Article 116 of the CC, where the father had killed the mother of three minor children.”

lawyer from an NGO does not represent the child – the court shall appoint her/him a special representative – ex officio lawyer. The interviewed judge stated that, although she had not had a trafficking case giving rise to such an issue, the last case where she appointed a special representative was in regard to Article 116 of the CC (homicide), where the father had killed the mother of three minor children.⁵⁹

When a social worker from the respective “Social Assistance” Directorate accompanies the child in court, for example, for the administrative proceedings in regard to the accommodation of the child in a shelter, usually the official has 14 days to prepare for the case. In 2008, there were 817 social assistance officials for a population of 1.4 million children, dealing with all cases of domestic violence, children at risk, children in institutions, children waiting for adoption or foster care. It is therefore “highly likely that two weeks are not sufficient time for preparation of the case of a trafficked child”⁶⁰ There is a difference between the appointment of a legal representative (guardian) of the child and the appointment of a special representative (lawyer) of the child. The Director of the “Social Assistance” Directorate, the Chair of the crisis centre/shelter, the guardians of the children (usually their relatives) are not legally trained persons (lawyers) but they act as care providers and decision makers, taking into account the child’s best interest, including by exercising in practice the rights granted to the children by law. Therefore, the legal representatives must exercise the child’s right to have a lawyer and to apply on his/her behalf for legal aid.

Three main problems arise in practice in regard to legal aid for victims of trafficking:

1. the state-funded legal aid is too bureaucratic to apply for;
2. initial legal aid (preliminary consultation with a lawyer before the victim decides whether to cooperate) is not applied in practice and
3. the quality of the state-funded legal aid is low as is the remuneration.

⁵⁹ Interview with a judge from the Varna Regional Court, of 02/07/2013.

⁶⁰ “Thematic study on child trafficking” FRA Slavka Kukova, 2008.

Most victims of trafficking come from the poorest and most illiterate layers of society. They live in closed social environments and have almost no contact with state representatives, except for hospitals, schools, and the “Social assistance” Directorate. They have no idea how the judicial system functions. They often believe that they have no chances for integration into society because society is “arranged and distributed in advance, so the effort to try winning their place in it is worthless”.⁶¹ Therefore, they have no motivation to try to “re-arrange” the order, as they know it, by co-operating with the authorities. If this first obstacle is overcome and the victim finds motivation to co-operate, s/he is immediately facing the need for professional help. The problem is that the way to get such help in the first place is so complex for an illiterate person that it requires, in itself, professional help. Therefore, the victims cannot apply for free legal aid alone.

The earlier the stage of the criminal proceedings, the greater the need for legal advice. The first conversation or interrogation of the victim can be rather inhuman when it is held without the presence of a lawyer or a social worker. The police officers often imply to the victims that “it was their own choice”, that “they are responsible for their situation” and that “they should not be helped because they prostitute voluntarily”.⁶² Also, the police officers often use vulgar language that embarrasses the victims and only after a request from a social worker to use more sensitive language, do they change their attitude. As stated by a social worker:

“The language of the police officers is quite vulgar. It is a constant practice that we accompany the victims on their interrogations at the police station. ... It happens that we ask the police officers to soften the tone or to wait and they show consideration. I have not communicated with a woman-police officer in a trafficking case.”⁶³

The effective CPC (in force as of 29 April 2006) introduced for the first time the right of the witness to be assisted by a lawyer during pre-trial interrogations. This amendment was adopted in order to guaran-

⁶¹ A. Stambolova – Psycho-social typology, “Legalizing prostitution – Pros and Cons”, Riskmonitor Foundation, 2011.

⁶² Interviews with the Chairs of Pulse Foundation (Pernik) of 24/04/2013 and Ravnovesie (Burgas) of 04/06/2013.

⁶³ Interview with social worker, dated 28/05/2013.

tee the right of the witness to remain silent on questions whose answers might incriminate her/him.⁶⁴ In regard to such questions, the witness has a right to consult a lawyer.⁶⁵ The investigation authorities must inform witnesses about this right⁶⁶ in a manner that they can understand, but this is not done in practice. The research did not find a case where trafficked persons who did not wish to participate in the investigation as “victim” but were only questioned in a capacity of “witness” have been consulted by a lawyer during their interrogation.

The early participation of a lawyer in the investigation is valuable, not only as a guarantee against degrading treatment and incriminating questions, but also in relation to a future compensation claim. Victims have specific rights and possibilities during pre-trial investigation, about which the authorities have no obligation to inform them, for example, the right to request a freezing of the trafficker’s assets.⁶⁷ The pre-trial investigation, as stated above, might take several years to be finished and in the meantime the trafficker’s assets could be decreased or transferred to other persons. Nevertheless, legal assistance is generally associated only with representation in the courtroom. The widespread understanding of NGO representatives and state officials is that lawyers are only needed when the case is brought to court. If the lawyer interferes in the case as late as in court stage, however, essential rights of the victims may not be employed during the investigation stage.

The two biggest problems in practice in regards to the quality of legal aid for victims of trafficking is that 1) the state-funded legal aid does not guarantee lawyers who specialize in victim’s rights and 2) it is a low paid job. As indicated above, the National Legal Aid Bureau has not established a separate register for lawyers who specialize in victims’ rights and wish to represent only victims in criminal proceedings and not defendants. Only a common criminal law register exists. Furthermore, the average remuneration fee is 105 Euro per case.⁶⁸ This is

⁶⁴ CPC, Art. 122 (2): “The witness has a right to be consulted by a lawyer, if s/he thinks that with the answers of the given question his/her rights under Art. 121 are infringed (not to incriminate him/herself). If such a request is made, the investigating authority or the court shall guarantee this opportunity.”

⁶⁵ CPC, Art. 122 (2).

⁶⁶ CPC, Art. 139 (2).

⁶⁷ CPC, Art. 73 (2).

⁶⁸ According to the 2012 annual report of the National Legal Aid Bureau, BGN 8 791 199 (EUR 4 508 307) were spent on 42 246 cases.

http://www.nbpp.government.bg/images/Otchetet%20doklad_2012.pdf

an extremely low fee for complex and lengthy cases like trafficking cases. Due to the small remuneration, the ex officio lawyers take too many cases at once, which inevitably affect the quality of their work.

During the pre-trial investigation, social workers usually do not play a role in providing legal information to victims of trafficking. The practice differs according to the regions of the country. Some NGOs have in their staff a lawyer, for example, the Women Association “Ekaterina Karavelova” (Silistra) and the Pulse Foundation (Pernik). Others have at least one expert (psychologist) who is trained well enough to provide basic legal counselling to the victims (usually the Chair of the organization). However, in general, social workers are not able to provide even the most basic information about the future trial and the victim’s participation in it. The interviewed NGO’s representatives unanimously consider that the counselling to victims should be a team effort and a combination between the psychologist’s approach and the lawyer’s knowledge.

2. RIGHT TO INFORMATION

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

The very first contact between a potential victim and the Bulgarian authorities represents a short conversation with her/him during which the authorities shall search for the presence of any indicators for her/his identification as a trafficked person. The very first contact with the victim is usually at the moment when the victim has just escaped the situation of trafficking and has immediately sought protection.

In 2013, a young woman who was forced into prostitution on the highway between Sofia and Pernik had her first contact with authorities when she stopped a patrolling police car and escaped. In 2013, two Bulgarian women who were held in servitude and in inhuman conditions by their employer in Spain had their first contact with the Bulgarian authorities when they met the secretary of the local commission for combating trafficking in human beings in Blagoevgrad.

When the respective state official notes indicators, the victim is identified. As of that moment, the victim must be informed about the first group of rights that arise for her/him, namely:

- The right to a reflection period.
- The duration of the reflection period – 1 month.
- The right to psychological help and legal consultation during the reflection period.
- The right to be accommodated in a shelter for the duration of the criminal proceedings, if s/he cooperates with the authorities (reports the crime).
- The right to financial compensation for material damages from the State Fund.

The interviews with victims of trafficking show that they do not know about the reflection period and they do not know how long it is. It is true that sometimes victims rush to tell their story to the authorities, but that does not exempt the authorities from their duty to inform them about this first set of rights. Moreover, the information must be provided in a language that the victim can understand. After they have been communicating with the authorities, the victims often have no idea what their involvement in the conversation/procedure has been about. For example, they will confuse accusations against themselves with the case against the trafficker. They even confuse the investigation stage for the court stage, because the pre-trial

interrogation in front of a judge takes place in a courtroom, with the participation of all parties.

Apart from patrolling police officers and secretaries of the commissions on Action against Human Trafficking, other authorities, with whom the victims could have their first contact, are investigating police officers from the Action against Organized Crime Directorate or from the Border Police Directorate. In practice, the police officers from the different units of the Ministry of Interior do not work in cooperation on the same case and would not talk to the victim if their colleagues from other units already did. For this reason, for example, the Border Police Directorate and the Action against Organized Crime Directorate report different statistics regarding the number of identified trafficking victims.

The first contact with the victims is most often with NGOs – hotline operators or social workers. NGOs are authorized to identify victims and they are responsible for informing them about the initial rights that arise in regard to their victim status.⁶⁹ In practice, the victim is considered able to decide whether to cooperate with the authorities once s/he has received psychological support and/or is emotionally stable. However, this accounts for only half of the victim's readiness to decide whether to cooperate. The problem is with the other half, which is the legal counselling of the victim. During the reflection period, the victim must get information about the criminal proceedings, the expected outcome, and length of the trial, her/his participation in it, and the expected number of interrogations, any expected meetings with the traffickers, and the available measures for protection of privacy and safety, the possibilities to receive compensation for the damages suffered, and the right to free legal attorney to represent them in court. Only on the basis of this information can the victim give informed consent to cooperate with the authorities. This is indeed the purpose of the reflection period.

NGOs usually are not able to provide satisfactory information about the legal procedures and victims' rights because their employees are experts in other fields. Only a few of them are trained enough to give

⁶⁹ Assistance and Compensation Act, Art. 6.

basic legal information. In general, social workers are not able to inform victims about their rights, even the most fundamental ones. Some private-funded shelters contact lawyers from other NGOs to ask what the victim's rights are in a concrete case.⁷⁰ Some NGOs do have a lawyer and a legal program, however, the lawyer is either not a specialist in criminal law but in civil law, or is not a specialist in trafficking but in domestic violence or is not qualified to represent clients in court but only to consult them.

As for the police officers, there are three different pieces of legislation: the CPC, the Assistance and Compensation Act, and the Action against Human Trafficking Act. They contain provisions obliging the police officers to inform the victims about their initial rights as "identified" victims according to the meaning of the NRM (the rights that arise before they have the capacity of "victim" in the meaning of the CPC). While these provisions are sufficiently clear and precise, they are not applied in practice. The strongest source of information regarding the legal proceedings and rights seems to be 'self-informing' through conversations with other victims.

A special provision in the Assistance and Compensation Act obliges police officers, from their very first contact with the victim, to give her/him preliminary information about their rights. As stated above, this act was adopted to guarantee special support to victims of several explicitly listed heavy crimes, including human trafficking. Article 6 of this Act states that the police officers and the NGO's shall inform the victims about:

- their right to legal aid;
- the organizations where they can seek it;
- the conditions and procedure to receive free legal aid;
- the organizations where they can report the committed crime;
- the procedures that follow after the submission of the complaint and the victims' participation in them;
- their rights in the trial and the possibilities to participate in it;
- the organizations where they can apply to receive personal protection and protection for their relatives.

⁷⁰For example, the Pulse Foundation (Pernik) and the Women Association "Ekaterina Karavelova" (Silistra) refer legal cases to the Bulgarian Gender Research Foundation (Sofia).

In addition, the Action against Human Trafficking Act provides that

“[a]fter they identify the persons who are victims of trafficking, the investigation authorities must immediately inform them about the possibility to receive special protection, if in one month time limit they declare their consent to cooperate for the investigation of the crime.”⁷¹

A new provision in the CPC, specifically regarding the duty to inform, was adopted 3 years ago. On 28 May 2010 paragraph 2, of Article 75, of the CPC entered into force, which states:

“The authority that opens the criminal proceedings shall inform immediately the victim about that [his/her rights as a “victim” under the previous paragraph], if s/he has indicated an address for communication in the country.”

Under this provision, the investigative officer or the prosecutor that issued the decree for the opening of the criminal proceedings must inform immediately the victim, even before s/he is summoned to testify as a witness, about the following rights⁷²:

- to be informed about his/her rights in the proceedings upon the initiation of the authorities;
- to receive personal protection and protection of his/her relatives;
- to receive information about the development of the proceedings;
- to request the collection of evidence or to object to evidence;
- to appeal decisions that cease or end the proceedings;
- to have a lawyer.

When the victim participates in the investigation only in the capacity of a “witness” s/he has the right not to respond to questions whose answers might incriminate her/him. There is a special provision obliging the investigative officer to inform the witness about this right (Article 139 (2) of the CPC).

⁷¹ Action against Human Trafficking Act, Art. 26 (1).

⁷² CPC, Art. 75 (1).

One of the biggest problems, in practice, in regard to informing the victims is that very often they do not understand what the police tell them, due to their emotional condition, fear from the unfamiliar atmosphere in the police station, illiteracy or mental disability. For example, a victim seeks the help of an NGO, in which s/he is identified and accommodated in their crisis centre/shelter and the NGO then informs the police (this happens within the same day). The police, fearing that the victim will leave the shelter at any moment, arrive on the following day and starts questioning her/him in order to formally identify the victim. Immediately following the victim's rescue and accommodation, s/he is not sufficiently stable to talk. However, while the police aim to "minimize the consequences of the stress", are still persistent on getting information.

"The initial, informal conversation provides larger possibilities for communication, where the leading part is the establishment of psychological contact with the victim, setting of a trust relationship and, where possible, minimizing the consequences of the stress (if any) and only then extracting the necessary information. Further, the initial conversation can be manifest, secret or encoded. The initial conversation in any case must forego the interrogation, but it is not necessary to lead to any interrogation. Conversation is also possible after the interrogation, but it is ensuing and its purpose is to what extent the witness has given genuine testimonies in front of the investigation authorities."⁷³

Although the formal reason for this conversation is "identification", it can easily grow into inviting the victim to give statements, to submit a complaint about the crime, and to tell details about the traffickers and their methods. As a result, the first step, of informing the victim about the reflection period and the special status, if s/he cooperates, is practically omitted and the second step, of informing the victim that s/he has the capacity of "victim" in the criminal proceedings with corresponding rights, is omitted as well because s/he is already being questioned.

The proper order would be:

1. the NGO accommodates the trafficked person;

⁷³ Interview with a front line police officer, dated 10/06/2013.

⁷⁴ Action against Human Traffic Act, Art. 9 (2) and (3) and Art. 26 (1).

2. (state) official performs the first conversation with the trafficked person at the shelter and makes official identification as a victim of trafficking in the meaning of the NRM;
3. the victim takes several days – between 10 and 30⁷⁴ - to recover, until s/he receives psychological assistance. In the meantime, s/he applies for initial legal aid at the National Legal Aid Bureau (it must issue its decision no later than 14 days);
4. social worker or ex officio / NGO lawyer inform the victim of the right not to cooperate, respectively, of the special status if s/he cooperates, as well as of her/his position and possibilities in the future trial;
5. the victim files a written report about the crime, with the assistance of a social worker or ex officio / NGO lawyer, in which s/he describes the facts in detail and gives a correspondence address in the country;
6. the prosecution opens criminal proceedings on the basis of the submitted report (unless it has not already opened such on the basis of the fact that it directly alone revealed data for committed trafficking);
7. the prosecution informs the victim in written form that the criminal proceedings are opened, that s/he has a status of “victim” in these proceedings with a pack of rights and may want to take use of this status if s/he provides an address in the country for communication;
8. the victim submits a request to the prosecution declaring her/his wish to participate in the criminal proceedings as a “victim” in the meaning of the CPC, indicating address in the country;
9. the victim submits a request to the prosecution for appointment of ex officio lawyer, presenting proofs of her/his financial situation and, finally,
10. the prosecution summons the victim for interrogation in the capacity of witness.

The social workers from NGOs, where victims most often seek initial help, and the secretaries of the local commissions for combat against human trafficking, where the victims prefer to complain if they have a choice between them and the police, must be trained of the correct order of adding the trafficked person as a party in the criminal proceedings and interrogation. They should receive training to provide basic legal information for the victims.

3. RIGHT NOT TO COOPERATE WITH LAW ENFORCEMENT

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

The right to refuse cooperation does not imply the general right of witnesses to refuse to answer questions. It is a more basic right and has two meanings. Firstly, the victim can refrain from reporting the crime to the authorities and requesting the opening of criminal proceedings against the trafficker. Secondly, if the criminal proceedings are already opened upon the initiative of the authorities, the victim can refuse to give statements. The opening of criminal proceedings from the initiative of the authorities does happen in practice.⁷⁵ The Prosecution has the power to investigate the crime “human trafficking” ex officio and to open criminal proceedings once the matter has come to their attention, without the need of a specific complaint from the victim.⁷⁶ If the victim does not want to testify, they should respect this, however, the refusal of the victim to give statements can mean that the case is dismissed for lack of evidence.

On 2 June 2006, a police officer from the Action against Human Trafficking Agency in Paris, France, filed a written report to the Bulgarian Ministry of Interior, informing them that 8 women, Bulgarian nationals, transferred significant amounts of money through “Western Union”. On 27 April 2007, on the basis of agreement for exchange of information in criminal investigations on the territory of EU member-states, the French authorities

⁷⁵ For example, investigation case № 1679/2007 of the Ruse Police Department (criminal case № 275/2008 of the Ruse Regional Court) was opened on the basis of a report of the investigative officer; investigation case 1289/2006 of the Varna Regional Prosecution Office was opened on the basis of information of existing channel for trafficking of women, received through surveillance.

⁷⁶ The CC explicitly lists the crimes that cannot be investigated ex officio, but only upon the victim’s request, and trafficking is not one of them.

submitted a second report to the Ministry of Interior in Sofia, indicating the specific person, a Bulgarian national, who was receiving the money transferred by the women. The Action against Organized Crime Directorates in Sofia and Varna did a preliminary check, on the basis of which the Varna Regional Prosecution Office opened investigation case 3692/2007.

The right not to cooperate is not provided explicitly, but a number of legal provisions imply its existence, by providing some privileges for the victims of trafficking who agree to cooperate. For example, Article 25 of the Action against Human Trafficking Act provides that the trafficking victims who “expressed their consent to cooperate” shall be granted a privilege. Also, Articles 15 (5) and 17 (3) of the Assistance and Compensation Act provide that if the victim has reported the crime to the competent authorities s/he shall be granted privileges. There are no special consequences attached to the refusal to cooperate with the prosecution. In fact, the victim is not exempt from her/his obligation to meet with the investigative officer, once s/he is summoned to give statements – otherwise s/he risks being imposed a fine or escorted by police. However, when s/he meets the investigative officer, the victim can declare that s/he will exercise the right not to cooperate, with which the giving of statements will be exhausted. The minutes from these statements shall not be included in the investigation case file and it must be guaranteed that the accused will not learn about them and the victim will not be included in the list of witnesses.

According to Art. 119 of the CPC, if the victim of a crime is the spouse, the parent, the child, the sibling or the partner (cohabitant) of the accused, s/he can refuse to testify. In addition, under Art. 121 of the CPC, the witness is not obliged to answer questions that would incriminate her/him or her/his parents, children, siblings, spouse or partner (cohabitant). There is a special provision, Art. 139 (2), of the CPC, setting forth an obligation for the authorities to inform the witness about the above right. In practice, the rights of the witness, including the right put forth in Article 121, are stated in writing. The form for the minutes of the interrogation contains the rights of the witness listed in small

letters and the witness signs each page of the minutes, confirming that s/he has read the content and that s/he is, thus, informed. It is not clear if the authorities in addition, explain the rights orally, in a way that the witness can understand. The effective CPC, adopted in 2006, provides that the witness has the right to consult a lawyer, if s/he thinks that the answer of the question could incriminate her/him.⁷⁷ If the victim makes such a request, the investigation or court authorities shall guarantee a lawyer.

For example, women who sold their babies were criminalized in Bulgaria, in 2006⁷⁸, and they can incriminate themselves if they testify against the trafficker. Such women, who consented to sell their babies (i.e. were not forced to do so), would not enjoy the protection under the new Article 16a of the CC (the non-punishment clause), because the lack of intention (the subjective element) is what takes away the criminal responsibility, which was not present here. Thus, for example, if such woman testifies against the trafficker, who transported her through the border with the purpose to sell the baby abroad, she would incriminate herself and would have the right to consult a lawyer, before answering questions.

The possibility under Article 25 of the Action against Human Trafficking Act, to enjoy a long stay in the shelter, is not in practice a motivation for victims to cooperate with the authorities. This is because victims do enjoy a long stay on the basis of other acts, for example, the Social Assistance Act. The research did not find a case where the investigating prosecutor issued a decree ordering the victim's accommodation in the shelter for the duration of the criminal proceedings against the trafficker, on the ground of Article 25 of the Action against Human Trafficking Act. One of the interviewed victims, who escaped trafficking in June 2013, was told: "You can stay in the Burgas shelter as long as you wish."

In many cases, what motivates female victims to cooperate with the authorities is when they realize the traffickers have deceived them about the money they would be given for prostitution. In practice,

⁷⁷ CPC, Art. 122 (2).

⁷⁸ CC, Chapter "Crimes against the marriage and the family"; Art. 182b "A person of female gender who gives her consent for the sale of her child in the country or abroad shall be punished . . . The same punishment shall be imposed on a pregnant woman who gives her consent for the sale of her child before the birth."

after the opening of the criminal proceedings and the pressing of charges against the trafficker, a strategy of traffickers is that they give the woman the money she wants, i.e. the full sum of money that the clients were paying or any other sum agreeable to her. Afterwards, the trafficker would make a marriage proposal to the woman. This way, as a “spouse” she would be eligible for Article 119 of the CPC and be exempt from testifying. The investigation would be, thus, hindered.⁷⁹ In this regard, proper legal advising during the reflection period can be crucial for the motivation of the victim to cooperate. It can help the victim understand that if she fails to cooperate, the trafficker will keep the money he gained from her prostitution, while in the other scenario she can sue him for compensation. Moreover, the sum of the claimed compensation can be much higher than the amount of money that the trafficker would offer her in order to persuade her to change her testimonies.

In other cases, victims cooperate due to their temporary trouble, for example, if they were arrested while committing an illegal activity. Often in such cases the victim, after a short period of time, does not want to cooperate anymore, because s/he wishes to continue this activity. The Burgas shelter reported a case where a trafficked woman initially cooperated with the authorities but then wished to end the proceedings because the authorities found out that she committed other crimes (she robbed elderly people).

⁷⁹ „Trafficking of Roma in Eastern and Central Europe: Analysing the effectiveness of national laws and policies in prevention, prosecution and victim support”, ERRC, 2010.

4. RIGHT TO PROTECTION OF PRIVACY AND SAFETY

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

Privacy

There are two special measures in Bulgarian legislation for the protection of the privacy of the victims, a ban on photographing/videotaping and an exclusion of the public. Article 32(2) of the Constitution provides that everybody has a right to respect for his/her private life and

“no one can be followed, photographed, videotaped, recorded or subjected to other similar actions without his/her knowledge or despite his/her explicit disagreement”.

On the basis of this provision, the court can forbid the use of photo and video cameras inside the courtroom. However, it cannot forbid the presence of the journalists.

Furthermore, Article 263(2) of the CPC provides for exclusion of the public from the courtroom (hearing behind closed doors). Principally, a case dealing with sexual exploitation shall be heard behind closed doors and only the persons indicated in the law shall be allowed, without the presence of journalists, relatives or other third persons. This measure is widely applied in practice, in cases of trafficking for sexual exploitation. Another legal ground to hear the case behind closed doors is when one of the witnesses in the case is provided with a hidden identity. Art. 263 of the CPC provides:

“The hearing of the case shall be behind closed doors when it is necessary for protection of ... the morals, as well as in cases of [witness with secret identity]. This provision can also be applied when it is necessary to prevent the announcement of facts of the intimate life of the citizens.”

The court applies the provisions providing for a hearing behind closed doors on its own initiative, without the need of a specific request on behalf of the victim or the lawyer.

Safety: hidden identity and police escort

The CPC provides for two main safety measures, hiding the identity of the victim-witness and physical protection (guard). If these are not sufficient, then the measures of the Protection of Individuals at Risk in Relation to Criminal Proceedings Act can be applied, the most radical one being the complete change of identity.

Secret identity is the most common safety measure applied by the prosecution. In 2011, the prosecution hid the identity of 146 crime witnesses and in 2012, of another 139 witnesses.⁸¹ The measure is applied upon the victims' request, usually when they state before the prosecutor that they are worried or afraid. It is set forth in Article 123 (2) 2 of the CPC. The name, address and other personal data of the witness with a secret identity are not revealed in the case file, but instead the witness is identified through a number. There is a special way for the defendant to ask questions to such witnesses, without being able to see him/her and hear his/her voice. The interrogation of such witnesses has its specifics also for the investigation authorities and the interrogating officer or judge shall be specially trained. The questions must be formulated in such a way that they should cover the circumstances of the case but at the same time, they should not allow for a disclosure of the identity of the witness. The interrogating person must demonstrate a high level of professionalism and must interrogate in such a way that s/he shall simultaneously prove the factual situation and hampers the defendant from learning who the witness is.⁸²

⁸¹ Letter from the Supreme Cassation Prosecution Office, 26/06/2013; the numbers are collected for all criminal proceedings together, but not according to specific crimes.

⁸² Interviews with a judge of the Varna District Court of 04/07/2013 and a prosecutor from the Varna Regional Prosecution Office, 02/07/2013.

Not always the measure of “keeping the identity of the victim secret” is effective. Even if the witnesses have a secret identity, the trafficker can quickly find out who they are, because he knows, for example, which girls have escaped from prostitution.⁸³ Witnesses with a secret identity cause a number of practical problems in the proceedings and there are many cases where during the court stage the identity is revealed and the court removes them from protection.⁸⁴

Police escorts to hearings are available too, under Article 123 (2) 1 of the CPC, and are used in practice.

“When the minor victim has to participate in court hearings we always ask help from the police – a security guard – because we expect that the parents will be present and they are the traffickers.”⁸⁵

Police guards can be appointed both as a protection measure to a concrete witness under Article 123 (2) 1 of the CPC and as “a situation measure for security of the order in a court hearing”.⁸⁶ In 2011, the prosecution appointed police escorts to 6 witnesses and in 2012 to 3 witnesses.⁸⁷ Police escorts apply usually upon request - the victim or his/her lawyer must specifically ask for it.

There is a special witness protection programme set forth in the Protection of Individuals at Risk in Relation to Criminal Proceedings Act. The measures under this act include: physical protection (personal and of the members of the family and the property), temporary accommodation in a safe place, change of residence, job, or school, and complete change of identity. It is applicable to persons whenever they cannot be protected with the means provided by the CPC. The act explicitly provides that the following participants in the criminal proceedings can receive special protection:

“witness, private prosecutor, civil claimant, when their testimonies, explanations or information ensure evidence of essential significance in criminal proceedings for (...) human trafficking (...) as well as all crimes

⁸³ Interview with a judge of the Supreme Cassation Court, 11/06/2013.

⁸⁴ Interview with a judge of the Varna Regional Court, 02/07/2013.

⁸⁵ Interview with the coordinator of the shelters in Pazardzhik (IGA), 09/05/2013.

⁸⁶ Interview with judge of the Varna Regional Court, 02/07/2013.

⁸⁷ Letter from the Supreme Cassation Prosecution Office, 26/06/2013; the numbers are collected for all criminal proceedings together, but not according to specific crimes.

*committed upon order or decision of organized criminal group.*⁸⁸

In 2011, 12 witnesses were granted protection measures under this act: 9 persons had their residence, work place, or school changed and 3 persons were temporarily accommodated in a safe place. In 2012, 8 witnesses had their residence, work place, or school changed and 1 person was granted a personal physical protection.⁸⁹ One of the interviewed judges applied a measure under this act in a trafficking case: the witness requested to be taken out of her place of living with her children, but only after 2 months she wished to leave the protection program.⁹⁰ No person has had their identity changed.

Reasons why the protection measures under the Protection of Individuals at Risk in Relation to Criminal Proceedings Act are not used much in practice are not only because the victims sometimes do not have information about those measures or because they feel sufficiently safe when the trafficker is in custody, but also because the organization for ensuring such measures is complex. It requires coordination between different institutions, documentation and reasoning, and control of the proposal by a higher authority or court etc. An important factor is also the unwillingness of victims to restrain their habits and personal freedom. The interviewed judge who had allowed a measure under this act (the previous paragraph) stated that the reason why that witness left the protection program was that she could not adapt to the limitations in contacts and the different way of life.

Safety: other measures

Both the CPC and the Action against Human Trafficking Act provide that the personal data of the victim should be kept secret and that the victim's anonymity shall be guaranteed.⁹¹ Ensuring the address of the victim secret (when her/his identity is not hidden) is not provided explicitly, it is a question of tactics of the prosecutor.

Article 67 of the CPC provides for protection order – a ban to approach

⁸⁸ Protection of Individuals at Risk in Relation to Criminal Proceedings Act, Art. 3 and 4.

⁸⁹ Letter from the Ministry of Justice, of 21/06/2013. The information they give does not concern victims of traffic specifically, as was requested, but all the cases in which witness protection was granted.

⁹⁰ Interview with a judge of the Varna Regional Court, 02/07/2013.

⁹¹ CPC, Art. 123 (2) 2 and Action against Human Trafficking Act, Art.20.

the victim. This possibility can be applied only when there have been charges raised against concrete person (when there is an “accused”). The procedure for imposing this ban can be initiated ex officio by the prosecutor or upon request of the victim. The request shall be considered by court, in open hearing with the participation of the parties. The ban ceases after the completion of the trial with final verdict or when the proceedings have been ended on another ground.

Articles 139 (8) and 141 of the CPC provide for hearing of the witness through audio or video link. Audio link is non-applied in practice, as the same efforts are necessary for the organization of an audio link as for the organization of a video link, which more completely satisfies the interests of justice. Therefore, when necessary the judges organize a video link.⁹² These provisions are not applied automatically but upon a victim’s request. The victim must substantiate this request well and the court must give clear reasons why it allows it, so that it does not breach the rights of the defence.

In discussing the measures for protection of privacy and safety of the victim, none of the interviewed judges lost the other perspective: the protection of the defence rights of the accused. They reiterated that it is not clear *“how a verdict finding the defendant guilty can be delivered without important evidence”*, unless there are other witnesses who can substitute the testimonies of the victim.⁹³ They also reiterated that it is more credible to allow a video than an audio link

*“in order to be able to control the attitude of the victim and the possibility to be manipulated or assisted by somebody else in the course of the interrogation.”*⁹⁴

Some judges do not consider an interrogation through a video/audio link a protection measure because it would not attribute to the victim’s safety and because *“in the courtroom nobody will be beaten or offended.”*⁹⁵ According to their view, they should only be applied if it is technically impossible to bring the person to the courtroom.

⁹² Interview with a judge of the Varna Regional Court, , 02/07/2013.

⁹³ Interview with a judge of the Ruse Regional Court, , 07/06/2013, and a judge of the Sofia City Court, of 08/05/2013.

⁹⁴ Interview with a judge of the Supreme Court of Cassation, , 11/06/2013.

⁹⁵ Interview with a judge of the Ruse Regional Court, , 07/06/2013.

The victims feel most secure and protected from the traffickers when they have a direct and constant contact with a state official, for example, the prosecutor in charge of the investigation or a police officer from the respective Action against Organized Crime Department.⁹⁶ They feel safe when they can call these officials at any time and in practice they actually use this possibility, for example, when they want to give additional statements or when they receive threats.

NGO representatives from different regions and some state officials believe that the victims associate their ultimate safety with the pre-trial arrest of the trafficker or his/her imprisonment under a guilty sentence.⁹⁷ However, there are two dangers for the victim even in this situation. First, the people from the defendant's circles are at liberty and they can threaten the victim instead of the trafficker him/herself. One of the interviewed victims stated that she is most afraid not of her pimp, against whom charges are being pressed, but of the man who had recruited her in the first place and introduced her to the pimp but who was never investigated.⁹⁸ Secondly, due to the excessive length of the pre-trial investigation the trafficker is most likely released from custody before the beginning of the trial. The chances are high when this happens that the victim will change her/his statements. In principle, the time limit for investigation is 2 months, which can be extended with another 4 months.⁹⁹ After this period (2-6 months), the case should be brought to court where the victim shall be interrogated for the last time. In many cases, however, the pre-trial investigation lasts 1 or 2 years, in exceptional cases 6 or 7 years. On the other hand, the statutory time limit of pre-trial detention of a person accused of human trafficking is 1 year, after which s/he shall be released. The pre-trial investigation thus often lasts more than the maximum custody period. When the trafficker is released from custody, s/he contacts the victim and either makes threats or offers money.

Victims of trans-national trafficking, whereby the trafficker is held in custody, investigated and sued in another country, are the ones that

⁹⁶ Interview with the Chair of the Open Door Center (Pleven), 15/04/2013.

⁹⁷ Interview with a front line police officer of 10/06/2013: "The trafficking victims are more confident and willing to cooperate, as well as to protect their interests, if the accused person is in custody."

⁹⁸ Interview with a victim of 05/06/2013.

⁹⁹ CPC, Art. 234.

feel most safe because they know that he is far from them. However, they still have concerns about what will happen after the defendant returns to Bulgaria:

“The woman is a victim of trans-national trafficking and the trafficker is serving a 5 years prison sentence abroad. She still fears what will happen after that. In fact, I met her for lunch today and we talked about this.”¹⁰⁰

In addition, as a measure of safety, the victim can be accommodated in a “protected house”, a measure provided in the Social Assistance Act¹⁰¹, for example, after the trial, when the accommodation period in the shelter is finished. The shelters for adult victims, as well as the centres for temporary accommodation for homeless people who are often recruited for begging, are equipped with cameras through which the social workers and/or the police officers monitor any suspicious persons who go around and wait outside the building.

The police (Border Police, “Migration” Directorate, Chief Directorate for Combating Organized Crime) make a risk assessment of the safety of the victims at their first contact or after the identification. They consider whether there is a danger of repeated recruitment and/or for violence against them or their family members. More specifically, the police officers examine whether the victim has been threatened with reprisals, whether the victim’s family members were threatened, the victim has been followed, etc. The risk assessment includes an assessment of the necessity of accommodation in a shelter. Adult victims could prefer to go home, but the police could also recommend that they stay in a shelter for their safety. The risk assessment is a constant process and takes into consideration any new circumstance of significance for the case.

Re-trafficking

Protection of the privacy and safety of victims is also to prevent their re-trafficking and their repeated recruitment for sexual/labour exploitation or begging. During and after trial, many female victims are under constant danger of being recruited again by the defendants or

¹⁰⁰ Interview with the Chair of “Dinamica” Centre (Ruse), 24/04/2013.

¹⁰¹ In 2012, the courts in Austria delivered a final verdict against the trafficker of a woman who was accommodated in the Varna shelter. After the trial, she was replaced and accommodated in a “protected house” in Sofia.

other persons from their circles. They are either being forced and threatened or promised a good income. Often, when they leave the shelter, they go back to live with their pimps and start prostituting for the same persons again. They are financially dependent and do not have their own housing and income. Some victims continue using social services – residential type, on the basis of the Social Assistance Act and social programs for reintegration in which they are included.

In 2012, a woman, who was raised in a home for state care of abandoned children, escaped from a situation of trafficking with the purpose of sexual exploitation and sought help at the “Dinamica” Centre (Ruse). She received one-time aid from the “Social Assistance” Directorate and applied to the Mayor for rent of municipally owned housing for persons in extreme need. She is now renting a room in a municipally owned apartment.¹⁰²

Roma victims of trafficking for prostitution are in a worse and the most dangerous position as after their escape from prostitution they are rejected by their families and community. They are not trained to do any other work. In 2010 the International Organisation of Migration provided vocational training for Roma girls in hairdressing and cooking to help them hold jobs alternative to prostitution.¹⁰³ Homeless people are also in a specifically vulnerable position because when their accommodation period (6 months) in state housing expires and they go back to the street, the traffickers easily coerce them to beg again, in exchange for, for example, a small amount of money (5/10 lev), assistance in the re-issue of an expired identity card; cigarettes/alcohol; a cheap cell phone or a voucher for phone conversations.¹⁰⁴

¹⁰² Interview with the Chair of “Dinamica” Center (Ruse), 24/04/2013.

¹⁰³ „Trafficking of Roma in Eastern and Central Europe: Analysing the effectiveness of national laws and policies in prevention, prosecution and victim support”, ERRC, 2010.

¹⁰⁴ Interview with a homeless person accommodated in a state housing, 07/06/2013.

Protection of child-victims

There are specific provisions in regard to the protection of the privacy and safety of child-victims. It should be noted at the outset that all shelters for persons below 18 are closed. The children are locked in and not allowed to go outside without an adult companion. The shelters are usually located next to a police station. If the social workers notice the traffickers or another suspicious person or car waiting outside the shelter, they call the police who inspect the site. Special officers from the Ministry of Interior can accommodate child-victims in special housing, prohibiting contact with persons who may have a harmful influence over the child.¹⁰⁵ They can also provide physical protection to the child, for a period of up to 48 hours.¹⁰⁶ The measure is applied in practice - if a child-victim is summoned for a court hearing in a trial against parents-traffickers, a police officer will provide physical protection for the day of the hearing.¹⁰⁷

Two additional special measures for the protection of the privacy and safety of child-victims are the seizure of their passport and the guarantee of a minimum number of interrogations (1, if possible). The Identity Documents Act provides for the seizure of the passport of a child-victim, so that s/he cannot be re-trafficked abroad (Article 76a, adopted in 2005). This provision states that

"[u]nder age persons, with respect to whom Bulgarian or foreign authorities reported that they were involved or used for [begging, prostitution, sexual violence] shall be banned from leaving the country, shall be refused issuing of a passport and the issued ones shall be seized."

This provision lost a lot of its significance in 2007, when Bulgaria joined the European Union and passports were no longer necessary to travel within the borders of the EU. This measure can be applied for a maximum period of 2 years as of the date of the order imposing it.

An important measure to protect the privacy and safety of children was adopted in 2010. The new Article 181 (1) 6 of the CPC provides that a child-victim who was interrogated in the pre-trial investigation

¹⁰⁵ Child Protection Act, Art. 39 (1).

¹⁰⁶ Ibid, Art. 39 (2) and 41.

¹⁰⁷ Interview with the coordinator of the shelters in Pazardzhik (IGA), 09/05/2013, cited above.

in front of a judge and in the presence of the accused and his/her lawyer shall not be summoned and interrogated again during the court stage. This guarantees that, firstly, the child shall not be forced to recall the events once again and, secondly, that the child shall not be confronted with the perpetrator of the crime. In practice, the pre-trial interrogation takes place in a special mirror room (“blue room”), after a psychologist informs the child beforehand what will happen and what s/he will be asked about. Only the child and the psychologist are inside the room, while the judge, the investigator, the defendant, his/her attorney and the parents/guardians observe and listen to the interrogation behind the mirror glass. These persons have audio connection with the psychologist who wears an earphone. He listens to their questions and re-formulates them into a language that the child can understand. The interrogation is videotaped and later used in the court proceedings as evidence.¹⁰⁸ In Sofia, there is one court mirror room, located in the building of the Family Law Department of the Sofia District Court and two “blue rooms”, in the building of the Sofia “Police” Directorate and in the home for state care of abandoned children “Pencho Slaveikov”. The number of towns in the country where “blue rooms” are opened is increasing.

Apart from the police officers, the social workers at the “Social Assistance” Agency and the “Protection of the Child” Agency have powers to protect the safety and privacy of children. The “Social Assistance” Agency makes an assessment of the needs of the child and an action plan, with the social workers at the shelter. The plan may include measures for support of the parents aiming at minimizing the risk of re-trafficking. In making the plan, the authorities shall also hear the child, if s/he is more than 10 years old.¹⁰⁹ The Chair of the “Protection of the Child” Agency may make a proposal to the Minister of Interior to impose the administrative measure under Article 76a of the Identity Documents Act (seizure of passport). Article 4 of the Child Protection Act provides several measures for the general protection of children at risk, such as, police protection, accommodation at relatives or foster parents, adoption, etc.

¹⁰⁸ Interview with the Chair of “Caritas” (Ruse), 25/06/2013.

¹⁰⁹ Child Protection Act, Art. 15 (1).

5. RIGHT TO WITNESS PROTECTION AND TO BE TREATED WITH RESPECT AND DIGNITY

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

There are no special provisions in regard to the right to be treated with respect and dignity of victim-witnesses in criminal proceedings. The general constitutional norm applies that *“everyone has the right to protection against unlawful breach of his honor, dignity and good name.”*¹¹⁰

Pre-trial

There are no explicit requirements in the CPC regarding how the pre-trial interrogation of the victim should be held and how the questions should be put. Article 139 (2) of the CPC shortly states that the investigative officer *“shall invite the witness to give statements in good faith”*. In theory, the police officers are trained that *“the questions shall not be leading and such that injure the personal dignity”* and in all cases the questions shall be *“sparing”*.¹¹¹ In practice, these instructions are not always followed. As stated above, social workers, who accompany victims to their interrogations at the police station, report that sometimes the police officers use vulgar language and act disrespectfully by accusing the victims of having contributed to their situation.

The issue of avoiding a direct (face-to-face) confrontation between the victim and the suspect during the investigation is a question of

¹¹⁰ Constitution, Art. 32 (1).

¹¹¹ Interview with front line police officer, dated 10/06/2013.

tactics by the investigative officers. In practice, the investigation officers would try to avoid the identification parade by first showing the victim photographs of the suspect. Only if the results of the photograph identification are not certain, the police will perform an identification parade. The mirror interrogation room (“blue room”) at the Sofia “Police” Directorate, for example, is used for the identification parade whereby the victim is hidden behind the mirror glass and the suspects are inside the room.¹¹²

The police would not summon the victim and the suspect for interrogations on the same date, in order to avoid their meeting in the police station. This applies also to the final step of the investigation, which is the presentation of all the case materials. If the victim and the accused are summoned on the same date for the presentation of the case materials, the suspect will wait in a separate room and not in the common areas (corridors) of the police department, where the victim could meet him/her.

The right of the victim to be treated with respect and dignity corresponds to the authorities’ duty to strive to minimize as much as possible the number of interrogations. A reminder of what happened is part of the process of re-victimization. As indicated above, in the course of the pre-trial investigation victims are interrogated 4 times on the average.¹¹³ The number of interrogations can be higher in a case of trans-national trafficking where two or more countries perform a joint investigation and a joint investigation team is established. During the trial victims are usually interrogated 1 time but additional interrogations and/or confrontations may be needed, for example, in case of new factual findings that need to be confirmed. There is a big number of cases, as well, where the victim is not questioned at all during the trial, because the trafficker has consented to the facts as found by the prosecution and has confessed to the crime. In this case, the court applies the so-called “short investigation” and does not question any of the witnesses.

¹¹² Interview with the Chair of “Caritas” (Ruse), dated 25/06/2013.

¹¹³ Interview with the Chair of “Open door” Centre, Pleven, 15/04/2013: “The police interrogate the victim 3 or 4 times on the same case.” Also, interview with the Chair of Women Association “Ekaterina Karavelova” (Silistra), 04/06/2013: “The victims are being questioned at least 4 or 5 times. When the police find some new witness, they summon the victim for a fresh interrogation”. Also, interview with a prosecutor from the Varna Regional Prosecution Office, 02/07/2013: “it is possible as of my practice for the maximum number of interrogations during pre-trial to be up to 3”.

Victims are allowed to be accompanied by a person of their own choice with whom they trust during interrogations. The practice in different regions of the country is that when the victim is accommodated in a shelter, the police officers would come there for the initial, informal conversation and it will take place in the presence of the social worker assigned to the victim's case. For the interrogation, the social worker would accompany the victim to the police station. Such is, for example, the practice in Varna, Sofia, Stara Zagora and Pleven. Also, the secretaries of some courts acknowledge the social worker or the psychologist as a representative of the victim and, thus, provide him/her information about the development of the victim's case.¹¹⁴

The biggest problem, in practice, in regard to the treatment of victims by the judicial system is the tension between the necessity to perform investigation actions to find the truth and the inevitable discomfort that the interrogations cause the victim. A method that can alleviate this is the submission of a written, detailed report of the crime. During the reflection period (10-30 days), the victim can establish a relationship of trust with a specific social worker or lawyer (or both). With the help of this trusted person, the victim can compose a draft of the story of the committed crime against her/him in detail, which indicates names of possible witnesses, names of persons from the circles of the trafficker, phone numbers, etc. The submission of a written report of the crime has the advantage that it can decrease the number of interrogations, because sometimes the victim omits some details and forgets facts, which s/he must later testify in an additional interrogation. If the victim submits a written report, the chances of her/him only being interrogated once are significant.

Trial

As to the court interrogation, the presiding judge has the leading role in maintaining the order in the courtroom and observing the rights of all participants, including the victims. The court buildings are not equipped with separate waiting rooms for the victim(s) and the suspect(s). All the persons summoned for the hearing must wait on the benches in front of the courtroom. Apart from the defendants, there

¹¹⁴ In 2012, a social worker from Animus Association Foundation who assisted a victim of sexual violence received information on the phone from a secretary of the Sofia District Court regarding the development of her case.

is usually a large number of their relatives present, who constantly discuss the case and talk amongst themselves, to the victim, as well as before the beginning of the hearing, during the pauses and even during the hearing. They will try additionally to victimize the victim and make him/her feel guilty for bringing innocent people to trial. The rulings of the presiding judge are mandatory for everybody inside the courtroom. Threats, insults, intimidation and any other assault represent violations of the order in the courtroom. The presiding judge should be active if such violations occur. For severe violations and after a warning the judge can impose a fine up to BGN 500 (EUR 250) to any of the participants or the public.¹¹⁵ As a final measure, the presiding judge is authorized to remove the defendant from the courtroom¹¹⁶, protecting, in this way, the victim from having her/his honour infringed. One of the interviewed judges stated that an intensive presence in the courtroom of the officers of the “Court Security” Service and a certain distance between the victims and defendants were customary in her practice in trafficking or sexual violence cases.¹¹⁷ Unlawful actions by the defendant in the courtroom could be a reason to press separate charges, in different criminal proceedings against him/her, for example, for incitement to perjury. Another interviewed judge had a situation where the accused started threatening the prosecutor, the court and his ex officio lawyer. The judge pushed the panic button calling the “Court Security” officers.¹¹⁸

The defendant is allowed to question the victim about her/his past (sexual) history. This is the opinion of all of the interviewed judges. They argue that the trial is a place where the aim is to find the truth and the truth is often in the details. They also argue that in most cases the question about the victim’s sexual history is being clarified not through direct questions to the victim, but through the testimonies of other witnesses. In the opinion of one of the interviewed judges, learning the truth about this fact sometimes is important when the victim uses a specific channel to go abroad and is accommodated there through a middleman, who, however, legally recruits people to work abroad. In other words, according to this judge it is important to clarify whether at all trafficking was taking place or not, according

¹¹⁵ CPC, Art. 266 (2).

¹¹⁶ CPC, Art. 267 (1).

¹¹⁷ Interview with a judge of the Varna Regional Court, 02/07/2013.

¹¹⁸ Interview with a judge of the Varna Regional Court, 04/07/2013.

to the defence stand of the defendant.¹¹⁹ Another judge pointed out that under Article 159a, paragraph 1 of the CC, trafficking can be committed even without the use of coercion, thus the question of the past sexual history is relevant to examine whether there was consent from the victim, in the particular case, accordingly, whether the punishment should be lower (Article 159a, paragraph 1 provides for lower punishment than Article 159a, paragraph 2).¹²⁰ There are also opposite views, for example, in a judgment of 9/12/2011 on case 2510/2011 the Supreme Court of Cassation held that *“the question what a person was working before s/he became a victim of trafficking [in this case - whether the victim worked as a prostitute] is without any significance whatsoever for the qualification of an act as a crime under Article 159a (1) of the CC”*.

Regarding the tolerance of the interviewed judges to questions concerning the victim’s sexual history, the view of the interviewed prosecutor differ in that she finds them absolutely inadmissible and irrelevant. She argues that the defence would use such questions in an attempt to alleviate the guilt of the defendant. Article 117 of the CPC provides that the witness shall testify about all the facts that can help finding the truth in the particular case.

Formally, the CPC does not contain a provision allowing the court to read the victim’s pre-trial testimonies with the specific purpose “to avoid re-victimization”. The possibilities for this are explicitly listed in Article 281 of the CPC and cover the following situations:

- “1. there is a significant contradiction between the pre-trial testimonies and the trial testimonies;*
- 2. the witness refuses to give statements or claims that s/he cannot remember something;*
- 3. the witness, dully summoned, cannot appear in court for a long time period;*
- 4. the witness cannot be found, in order to be summoned, or has deceased;*
- 5. the witness does not attend the hearing and the parties agree with that;*

¹¹⁹ Interview with a judge from the Supreme Court of Cassation, 11/06/2013.

¹²⁰ Interview with a judge from the Varna District Court, of 02/07/2013.

6. the witness is minor and was questioned in front of the accused and his/her lawyer.”

Under the effective legislation, the victim is obliged to appear at the court hearing and when called for interrogation, s/he can rely on some of the above grounds, for example, to refuse to give statements or to claim that s/he cannot remember something. When the legal grounds are at stake, the court cannot refuse to read the pre-trial testimonies. In practice, in many cases the proceedings lead to this outcome – reading the pre-trial testimonies – because the details from the events are erased, contradictions arise, and, respectively, the legal ground is present. Sometimes the court proceedings last several years, when the verdict is remanded by the higher court and the case is sent back to the lower court for reconsideration, for example. In these cases, the victim is obliged, as s/he has the capacity of “witness” in the case, to come to the court again and again to give her/his statements. In this regard, one of the interviewed judges noticed that if the victim’s allegations are not supported by other witnesses and the victim refuses to testify before the court, the case may remain uncompleted with evidence, the logical effect of which is to acquit the defendant. This would probably further traumatize the victim.¹²¹ The reactions of the victim, such as crying, hesitation, fear, unwillingness to speak when close to the defendant, are indicated in the minutes of the court hearing. The effect on the victim’s psychological state, which the interrogations cause, can be included in the claim for compensation for moral damages against the trafficker.

Child-witnesses

There are specific provisions in regard to the protection and treatment of child-witnesses. As stated above, a child-witness who was questioned during pre-trial investigation in the presence of the accused and his/her attorney shall not be questioned again in court. As explained, normally the interrogation excludes a face-to-face confrontation between the child and the accused and takes place in a mirror room (“blue room”). The child’s pre-trial testimonies shall be read and accepted as evidence in the trial. The verdict cannot rely only on testimonies given during pre-trial investigation.¹²² Only in exceptional

¹²¹Interview with a judge of the Ruse Regional Court, of 07/06/2013.

¹²² CPC, Art. 280, paragraph 6 and Art. 281, paragraph 1, point 6.

cases, if the new interrogation is of essential significance for finding the truth, the child-witness shall be questioned further, in court. In case the child's interrogation in court cannot be avoided, Article 15 (4) of the Child Protection Act imposes an obligation for the presiding judge "to guarantee a proper atmosphere for interrogation of the child corresponding to his/her age". A state social worker must be present in the courtroom and, when necessary, other appropriate experts. These provisions are applied in practice. Child-victims are often trafficked by their parents, who become the defendants in the ensuing criminal proceedings. According to Article 101, paragraph 1 of the CPC, in such cases the prosecutor in charge of the investigation shall appoint, on their own initiative, a special representative to the child, *ex officio* lawyer. The investigation authorities cannot force the child to testify against her/his parents, as this would be in violation of Article 119 of CPC. It is a task of the *ex officio* lawyer to prevent such procedural violations, to submit objections and/or appeals and to advocate for fair trial. If the child is summoned for interrogation, an inevitable confrontation with his/her parents is expected. For these occasions, the Social Assistance Directorate and NGOs seek help from the Ministry of Interior. The Ministry of Interior assigns a police officer who accompanies the under age person to the court building.

6. RIGHT TO PROTECTION OF PHYSICAL INTEGRITY

Victims have the right to protection of their physical integrity. They have to give informed consent to any medical or other physical examination. Article 87 (1) of the Health Act provides that

"[m]edical interventions shall be performed after expressed informed consent of the patient."

However, in some cases the victim shall undergo a compulsory medical examination. More specifically, Article 144 (2) of the CPC provides

that medical examination is obligatory when the crime has caused bodily injury and a doubt exists regarding the severity of this injury. The right to protection of physical integrity is respected in practice. The problem is that, although the investigative officers cannot force the victim to undergo a physical examination, they can persuade her/him that this is the only way to obtain evidence in the particular case.

The Pulse Foundation (Pernik) reported a case of a woman who, while being trafficked in Greece, gave birth to a baby, which was taken from her. The investigative officer convinced her that she must undergo a gynaecological examination. The doctor, while confirming a child was delivered, could not establish when it happened. Thus, the pregnancy and the delivery could not be related with certainty to the period of the alleged trafficking and the authorities were not able to press charges. The woman was traumatized and highly disappointed with the police and the NGO.

HIV tests are not compulsory but can be an investigation method in a particular case. The fact that the victim is found to be HIV positive is not an aggravating circumstance under Article 159a, paragraph 2 of the CC, but such information could be used in the trial in order to request higher punishment and a higher amount of compensation for damages. A mentally disabled girl is currently accommodated in the Stara Zagora shelter. She is a victim of trans-national trafficking for the purpose of sexual exploitation, transferred to Spain, where she was infected with HIV. The Director of the Stara Zagora shelter is her guardian and she has been accommodated there for the last year and a half. The police officers tried to talk to the girl but could not extract any information and there are no investigation actions taken in regard to her case.

7. RIGHT TO COMPENSATION

Trafficked persons have the right to adequate and effective remedies. This includes the right to compensation for material and non-material damages suffered. Compensation for damages may include payment for costs of medical physical or psychiatric treatment, costs of necessary transportation, temporary childcare or temporary housing, lost income and due wages or the money the victim earned for the trafficker, legal fees, payment for non-material damages resulting from emotional distress, pain and suffering suffered by the victim as a result of the crime committed against her/him.

At the outset, it is possible to claim financial compensation for material and immaterial damages as part of the criminal proceedings to be paid by the offender. If compensation for damages is awarded, the victim her/himself is responsible for the enforcement of the court judgment. There is no state authority responsible for ensuring that the victim *de facto* receives the compensation awarded. The writ of execution, issued by the court, shall be presented to a private bailiff, who opens proceedings for investigation into the property of the defendant and collection of the debt. The State is not under a duty to collect the sum instead of the victim. The prosecution and the victim have the right to request the court to freeze assets of the accused during the pre-trial or during the court stage as a guarantee of the compensation claim.

The number of victims who have participated in trial as civil claimants is very low. The research found 5 cases in which 8 victims of traffic were awarded compensation for non-material damages, as follows:

1. Judgment of 16 December 2008, Pazardzhik Regional Court, BGN 10 000 to each victim. (In March 2002, the defendant recruited two women for sexual exploitation and transported them abroad.)
2. Judgment of 4 February 2010, Sliven Regional Court, BGN 25 000. (On 27 August 2009, the defendants recruited, hide and transported a woman for sexual exploitation.)
3. Judgment of 10 November 2010, Razgrad Regional Court, BGN 3 000 to each victim. (Between 3 and 7 December 2003, the defendant raped and recruited two minor girls for sexual exploitation. BGN 3 000 was the compensation sum claimed and the court awarded it fully.)
4. Judgment of 31 January 2011, Pleven District Court, BGN 30 000 to the defendants' daughter and BGN 20 000 to the other girl-victim. (Between June 2003 and April 2006, the defendants transported their 13 year old daughter abroad, forced her to commit thefts and forced her to marry when she was 13. They also transported and forced another minor girl to commit thefts.)
5. Judgment of 27 March 2012, Blagoevgrad District Court, BGN 35 000 in total. (Between 19 and 21 September 1999 the first two defendants raped the victim and deprived her of her liberty – BGN 15 000; for the same period, the third defendant deprived the victim of her liberty – BGN 3 000; for the same period, the fourth and the fifth defendants kidnapped the victim for the purpose of sexual exploitation – BGN 10 000 and BGN 7 000.)

It cannot be indicated in how many of these cases the victim de facto received the awarded compensation and the victims or their attorneys could not be found and contacted. The victim in the Blagoevgrad case has not received the awarded compensation, because the verdict is not yet final. The compensation probably would not be de facto paid, because the traffickers have no assets.

The legal ground of the victims' right to claim compensation from the offender, as part of the criminal proceedings, is Article 84 (1) of the CPC:

"The victim or the heirs who suffered damages from the crime can submit before the court a compensation claim for the damages and participate as civil claimant."

The court shall allow the civil claim for a joint consideration in the trial when according to Art. 88(2) CPC

“it cannot become a reason for a postponement of the criminal case.”¹²³

As stated above, victims very rarely benefit from this provision in practice. Even if the victim has decided to sue the trafficker for damages, the presiding judge in the criminal case can dismiss the civil claim if it is too complex, requires the collection of too much additional evidence and, thus, would delay or hamper the trial. Another reason for which this provision is rarely applied in practice is that in many cases the accused confesses and the prosecutor ends the investigation not with an indictment, but with a proposal for an agreement. As of that moment, the participation of the victim in the criminal proceedings ends and s/he has no other way but to initiate civil proceedings for compensation (as it will be discussed below, this option is more difficult and expensive). A civil claim for damages is not allowed in the court proceedings for control of the agreement. When the court confirms the agreement, it must notify the victim about the right to claim compensation for damages through civil proceedings.¹²⁴

As shown by the examples above, the courts allow for compensation for non-material damages for the pain and the emotional suffering caused from the crime. These claims are easy to prove. Usually the testimonies of one witness (a close friend or relative) and/or private expert opinion by the victim’s psychologists represent enough evidence. In theory, it is also possible to claim compensation for material damages, more specifically, for unpaid/due wages. In cases of labour exploitation, the material damages consist of the difference between the worker’s remuneration and the minimal salary for the country. In cases of sexual exploitation, the material damages consist of the money that the trafficker acquired through the crime, in casu the money that the victim earned through prostitution and gave the trafficker. This could be a well-founded claim as prostitution is not an illegal activity under Bulgarian legislation. Moreover, the Parliament partially legalized an activity very close to prostitution: the Local Taxes and Fees Act provides for an annual tax for the job “companion”.¹²⁵ Fur-

¹²³ CPC, Art. 88 (2).

¹²⁴ CPC, Art. 382 (10).

thermore, there is no ground for the defendant to receive the money that the victim earned. The interviewed judges were unanimous that such a claim and particularly the amount of the material damages are impossible to prove.¹²⁶ As there have not been cases in practice, the judges faced difficulty in answering whether the sum received from the clients can be proved via witnesses' statements. The views vary from:

"who received how much, by prostituting – it cannot be proved with witnesses' statements"

to

*"the entire circle of clients served during certain time period must be ranged over ... in order to accept these witnesses' statements as credible"*¹²⁷

Some judges do not regard prostitution as a legal source of income at all or consider that the lost wages are not a direct result from the crime "human trafficking", but from some relations between the prostitute and her/his pimp which have a civil law character and should be dealt with in a separate, civil proceedings. In practice, there have never been cases where victims of trafficking claimed compensation for the money they earned for their traffickers, neither in criminal nor in civil proceedings.

In 2013, a female victim trafficked with the purpose of exploitation in prostitution filed a compensation claim in criminal case 9403/13 of the Sofia District Court, for the money she earned for her trafficker. The compensation claim was for material damages in the amount of BGN 16 000 for 8 months work in prostitution. The court refused to accept the claim for joint consideration in the criminal proceedings with the reason

¹²⁵ Local Taxes and Fees Acts, Attachment № 4, p. 22.

¹²⁶ Interview with a judge from the Supreme Court of Cassation of 11/06/2013, and judges from the Varna District Court, 02/07/2013 and 04/07/2013.

¹²⁷ Interview with a judge of the Varna District Court, of 02/07/2013.

that “it concerns financial means gained through lechery activities. According to Bulgarian legislation sources of income, acquired in a way that contradicts to the sexual moral cannot be awarded. Furthermore, they are not element of the crime and fall out of the subject of proof”.

In theory, it is possible to claim compensation for material and non-material damages, through civil proceedings, to be paid by the offender. However, there is no documentation of any civil claim submitted by a trafficked person before civil court. There is no documentation of any labour case for unpaid/due wages submitted by a trafficked person either.¹²⁸ Civil/labour proceedings can take a very long time, sometimes years. The victim has to pay a significant state fee for the opening of the case, which is 4% of the claim. If the victim loses the case, s/he might have to pay for the costs of the entire procedure, including the costs for the lawyer of the trafficker. On the other hand, the victim disposes of much more time on the details to develop the case before the court, while during the criminal proceedings there is little time for the court to deal with the civil claim.

Finally, there is a State Fund to which victims can apply for financial compensation for material damages. This Fund is meant for victims of serious intentional crimes that have caused death or serious bodily injury, rape, human trafficking and crimes committed by organized criminal groups. National citizens, citizens from other EU states and non-EU states can apply to this Fund. Compensation can even be awarded if the trafficker is not known and the investigation has been ceased due to the failure of the authorities to identify him/her. Also compensation can be awarded if the trafficker is known but the investigation was ended because, for example, the statutory time limit expired or the trafficker deceased. The following costs can be compensated under the State-run scheme: medical treatment (medicines and examinations); the fee paid to a lawyer, in case the victim had not applied for legal aid, other court fees, or lost wages. The Fund

¹²⁸ The legal grounds of such cases would be Article 45 of the Contracts and Obligations Act and Article 245 (1) of the Labor Code.

shall compensate sums between BGN 250 and 5000 (EUR 125 and 2500). The application shall be considered, not by a court, but by a committee of experts who decides in a closed hearing on the basis of written evidence. For example a check for paid medication and examinations, travel tickets, invoices, labour contract etc. Article 6 of the Assistance and Compensation Act obliges police officers and NGOs to inform the victim about

“the authorities to which they can turn to in order to receive financial compensation from the State, the conditions and the procedure to receive it”.

In practice, however, victims do not understand this right and, as a consequence, do not collect nor keep the respective written evidence. Thus, they are not able to support their claim with documents for any future possible application (after the trial is ended, for example). When compensation is refused by the Fund, this might be another psychological collapse for the victim.

In this connection, a significant problem is the fact that under the State-run scheme trafficking victims can claim material damages only. Had the Fund provided for compensation of non-material damages as well, victims would not be required to collect any evidence (documents) in advance and an expert opinion by the private psychologist of the victim would be enough. This opinion can be issued also at the moment when the victim applies for the State Fund. The need of such change in the law is justified, in view of the fact that each year an enormous part of the Fund remains non-exhausted.¹²⁹ The Ministry of Justice allocates to the Fund BGN 1 million per year, but in 2010 the total amount of financial compensation paid to applicants was 43 250¹³⁰, in 2009 – 60 196¹³¹, in 2007 and 2008 – 110 000.¹³²

¹²⁹ No victim of trafficking was awarded financial compensation since the adoption of the Act in 2007 (See Annual Reports of the National Commission). In 2012, financial compensation was provided to only 12 citizens (Annual Report of the Ministry of Justice);

<http://www.compensation.bg/Pages/news/Default.aspx?evntid=25540>

¹³⁰ Interview with the Head of the National Council for Assistance and Compensation, 25/01/2011:

<http://www.compensation.bg/Pages/news/Default.aspx?evntid=25560>

¹³¹ Article, published on the official site of the National Council for Assistance and Compensation:

<http://www.compensation.bg/Pages/news/Default.aspx?evntid=25548>

¹³² Interview with an expert-member of the National Council for Assistance and Compensation, 23/11/2009:

<http://www.compensation.bg/Pages/news/Default.aspx?evntid=25545>

In considering which way of compensation is the most suited, the questions are: 1) what does the victim want; 2) is the trafficker known; 3) is the trafficker being prosecuted; 4) is the damage clear; 5) does the trafficker have any means to pay compensation; 6) is the victim (psychologically) capable of going through (lengthy) proceedings.

The biggest problem in practice in obtaining compensation from the trafficker is either that the money gained through the exploitation has been spent, whereby the trafficker does not have assets at their disposal, or, if that is not the case, the authorities and the victim have failed to freeze the assets in a timely manner. Articles 72 and 73 of the CPC provide for the right of the prosecutor and the victim, during pre-trial investigation, to ask the court to allow for guarantees in regard to a future civil claim. The interviewed judges often stated that they “have not noticed such requests” and “have not come across such cases”, and that these requests are applied in practice “very rarely” and “in connection to provided punishment - confiscation”. The prosecutor usually requests these guarantees if he also pressed charges for “money laundering”, in addition to human trafficking, but not if the charges are only for “human trafficking”. “Such requests are more frequent upon the initiation of a magistrate from another EU country”.

In 2010, on the basis of mutual legal assistance agreement, the Groningen Prosecution Office (the Netherlands) submitted a request to the Sliven Prosecution Office (Bulgaria) to freeze assets of a Bulgarian citizen accused of human trafficking with the purpose of sexual exploitation. The assets were located in the city of Sliven, Bulgaria, and were estimated at around BGN 600 000. After a year, when the case was brought to court and compensation was awarded, the assets that were already frozen in advance could serve for the enforcement of the verdict.

For the crime “human trafficking”, the minimum fine provided in Articles 159a-159c of the CC is BGN 3 000 (EUR 1 500) and the maximum – BGN 50 000 (EUR 25 000). If the trafficking represents recidivism or

involved a criminal organization, the fine is between BGN 20 000 and 100 000 (EUR 10 000 and 50 000) and the court may also order a confiscation, partial or full, of the property of the perpetrator.

The right to freeze assets under Articles 72 and 73 of the CPC arises when there is a provided sanction “fine”, “confiscation” or “deprivation in favour of the state”. The sanction “deprivation in favour of the state” is set forth in Article 53 of the CC:

“independently from the criminal responsibility, what was acquired through the crime shall be deprived in favour of the state, unless it must be returned or reimbursed”.

The interviewed prosecutor stated that in cases of trafficking, as the perpetrator will be sentenced to a fine (in addition to the imprisonment) and as the assets s/he had acquired through the crime will be deprived in favour of the state, the prosecution collects data concerning the financial situation of the accused and when there are assets, they have always applied the possibility under Article 72 of the CPC. The prosecutor stated, however, that the court had always rejected these requests as ill founded.

In 2012, the Supreme Court of Cassation issued an interpretive judgment regarding Article 72 of the CPC.¹³³ It held that, different from civil proceedings, the prosecutor shall not be required to present convincing written evidence. It argued that the prosecutor submits the request for a guarantee during the preliminary stage of the criminal proceedings, when not at all necessary and possible evidence is collected yet. The court, according to this judgment, when faced with such a request, shall assess

“whether at that moment there is evidence to accept that the charges are well-founded and there is enough degree of probability for the realization of the criminal responsibility of the accused, as well as whether without them [the guarantee measures] the enforcement of the verdict will be impossible or difficult”.

The Supreme Court of Cassation pointed out that the court’s assess-

¹³³ Interpretive judgment No. 2 of 11/10/2012 of the Supreme Court of Cassation in interpretive case No. 1/2012.

ment shall not be based on formal criteria only and shall not be confined to examining whether the prosecution issued a decree for pressing charges. In any case, before this question is decided, the court is obliged to assess the balance between the requested guarantee and the punishment, which will be used as a guide for the possible sanction.

The inability for the victim to de facto receive the compensation that the trafficker had been sued to pay is one of the reasons for the common distrust in the judicial system among the victims. They often say before the social workers that they do not believe that they will receive compensation, also that “the cooperation was boring” and they feel that it causes “a loss of emotions”. The victims communicate to each other negative results and examples from court cases (lengthy proceedings, agreements with the prosecution in case of a confession, postponed sentences, inadmissible or non-collected compensation claims, etc.). This is one of the reasons why after their pre-trial interrogation the victims become “practically non-discoverable”¹³⁴ and completely uninterested in seeking compensation.

8. NON-PROSECUTION AND NON-PUNISHMENT OF TRAFFICKED PERSONS

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

The effective legislation does not contain provisions to ensure that victims are not prosecuted and/or punished for offences they committed as a direct result of their being trafficked. However, there is a draft law and amendments to the CC that will be adopted this year. In particular, on 6 March 2013 the Council of Ministers brought to the Parliament a proposal for the adoption of a new Article 16a providing that:

¹³⁴ Interview with a judge of the Sofia City Court, 08/05/2013.

“There is no guilt in the crime committed by a person, victim of human trafficking, when s/he was forced to commit it in direct relation with her/his capacity of a victim.”¹³⁵

In order to comply with EU Directive 2011/36/EC, this amendment should be adopted by the Bulgarian Parliament in 2013. Article 16a shall be applicable, no matter if the trafficker is already found guilty or the trial against him/her is pending.

The interviewed judges were not aware of cases of trafficking victims sentenced for any crimes. The interviewed police officers, however, confirmed that there have been investigations against victims. The research found cases of women arrested for prostitution and charged for “earning income in immoral way” (crime under Article 329 of the CC), victims of trans-national trafficking sentenced for illegal crossing of the border, and a victim was sentenced for insulting the court.

In Bulgaria prostitution is not criminalized. However, in the last few years, the authorities, relying on Article 329 of the CC, started to arrest and sue prostitutes:

“A full age person who continuously stays uninvolved in publicly useful labour, receiving non-labour income in a forbidden or immoral manner, shall be punished...”

In 2010, for example, as a result of one police raid, 16 prostitutes were charged for “earning income in immoral way”, under Article 329 of the CC.¹³⁶ The police pressed charges because these 16 women had been arrested many times before for the same reason. Another 9 prostitutes were released because it was their first arrest. None of the women identified their middleman, but they all claimed that they were working for themselves. The authorities, thus, did not identify them as victims of trafficking. Also in 2013, 13 prostitutes were arrested as “suspects” under Article 329 (1) of the CC.¹³⁷ According to the statistics

¹³⁵ Draft law for amendments in the CC, of 06/03/2013

<http://parliament.bg/bills/41/302-01-8.pdf>

¹³⁶ Newspaper article

http://news.ibox.bg/news/id_1518875020

¹³⁷ <http://www.crimes.bg/%D1%85%D0%B2%D0%B0%D0%BD%D0%B0%D1%85%D0%B0-11-%D0%BF%D1%80%D0%BE%D1%81%D1%82%D0%B8%D1%82%D1%83%D1%82%D0%BA%D0%B8-%D0%B2-%D0%B1%D0%BE%D1%82%D0%B5%D0%B2%D0%B3%D1%80%D0%B0%D0%B4/11446>

of the Supreme Cassation Prosecution Office, in 2011 the total number of persons with guilty sentences under Article 329 (1) of the CC was 89 and in 2012 there was 66.¹³⁸ Article 329 (1) was until recently a dead norm, but now it is applied only in regard to prostitutes. For example, the case law of the Varna District Court on Article 329 (1) is only with regards to prostitutes.¹³⁹ In the course of the pending discussions regarding the new draft Criminal Code, the Risk Monitor Foundation (Sofia) lobbies for the abolishment of Article 329 (1).

There has not been a case where the accused prostitute was holding, at the same time, another job under a labour contract. In practice, all persons accused under Article 329 (1) did not receive income from any other job but solely from prostitution. While preparing such cases, the prosecution requires information from the National Social Security Agency on whether the accused have labour contracts registered, income declared, social security instalments paid etc. and, in addition, presents a big number of administrative penalties issued with respect to these persons (e.g. 10, 20, 30 administrative penalties for the same prostitute).¹⁴⁰

After the quick accumulation in the country (mostly case law of the Varna, Pazardzhik and Plovdiv District Courts) in the last few years of delivered sentences against prostitutes, in 2011 a judge from the Sofia City Court delivered a dissenting opinion holding that the CC does not contain a provision criminalizing prostitution. More specifically, the judge found that Article 329 (1) of the CC was adopted in a completely different legal environment (in 1968) and is not relevant and applicable at the present moment. The judge pointed out that the pre-democratic Constitution (abolished in 1991) provided that each Bulgarian citizen "is obliged to work and to create material and moral goods for the society" and that the state institutions were obliged to ensure work for young people between 15 and 30. Since the effective legislation does not impose on citizens the duty to work, the assessment of whether an adult person is fit for work, and has the possibility to hold a different job, other than prostitution, shall be made on the basis of the present economic reality. Therefore, the judge held that

¹³⁸ Letter from the Supreme Cassation Prosecution Office, 26/06/2013.

¹³⁹ Interview with a judge from the Varna District Court, 04/07/2013.

¹⁴⁰ Ibid.

“by doing an activity which is not explicitly banned by the legislation of the Republic of Bulgaria one cannot fulfil the elements of the crime under Article 329 (1) of the CC.”

Finally, the judge noted that not only was prostitution not criminalized, but the Parliament had partially taken measures for the legalization of an activity close to prostitution, namely, companion services, according to the Local Taxes and Fees Act, Attachment No. 4, point 22.¹⁴¹ This dissenting opinion influenced the case law of the lower court, the Sofia District Court, and started changing it.

In 2011, in the Sliven District Court a female victim of trafficking took part in the criminal proceedings against her trafficker as a civil claimant. Outside the courtroom, the defendant threatened her by telling her that he had bribed the judge. The woman got very emotional and told this to the judge during the hearing, by yelling, “You are all corrupted!” The judge recused himself from the case. However, he initiated criminal proceedings against her for defamation, which were successful, and the woman was sentenced. At present, she has a pending application before the European Court of Human Rights in regard to her sentence for defamation.¹⁴²

On 30 October 2003, two women, who had been trafficked to Macedonia for prostitution, escaped. Two unfamiliar persons took them across the border on foot, but not through the official checkpoint but through the woods, after which they were detained by the Bulgarian border police officers. The victims told their story to the border police officers and were identified as trafficked persons. However, they were transported to the Kyustendil District Court and sentenced in a speedy proceeding for “illegal crossing of the border”, a crime under Article 279 (1) of the CC by decision of the court of 31 October 2003.¹⁴³ These women later took part in the trial against their trafficker as civil claimants.¹⁴⁴ In the course of the pending discussions regarding the new draft of the Criminal Code, the Bulgarian Helsinki Committee (Sofia) lobbies for the abolishment of Article 279 (1), which is also

¹⁴¹ Dissenting opinion of judge P. Gountchev in criminal case No. 5725/2010 of the Sofia City Court; criminal case No. 7345/2010 of the Sofia District Court (№ 7345/2010).

¹⁴² Interview with the victim's attorney, of 08/04/2013.

¹⁴³ Judgment of the Supreme Court of Cassation in case 1964/2011 dated 26/10/2011.

¹⁴⁴ Ibid.

widely applied in regard to refugees. They argue that prosecuting people for illegally crossing the border is a simple crime that is easy to prove - once the person is on Bulgarian territory the crime is completed. The border police officers use it to increase their investigation rate, while there have been no investigations, for example, regarding customs declarations.¹⁴⁵

The biggest problem in practice in relation to the prosecution and punishment of victims of trafficking with the purpose of sexual exploitation is that, although the CC explicitly states that the consent of the victim is irrelevant, the authorities attach great value to it in the identification process. When faced with statements of voluntary prostitution, the police officers seem to turn down the need to seek indicators for identification of trafficked persons. However, even in cases where the women (allegedly) consented to prostitution, clear indicators for the identification of trafficked persons exist, the first and most important being the fact that the prostitute does not have identity documents. However, it is indeed the ground for which the women are often being arrested and imposed an administrative penalty. Many other indicators apply to the girls who allegedly prostitute for themselves: they are not able to leave their place of work, they have to be in permanent telephone contact with the middleman, their telephone conversations are controlled, they have visible marks of violence, they have tattoos, branding or other marks showing "belonging" to a certain trafficker, they are not allowed to refuse services to a client, they are in the brothel/night club 24 hours a day etc.

Should the authorities seek out these indicators they can redirect their efforts in investigating the middlemen, the persons who recruit the prostitutes and the persons who collect the money which the prostitutes earn etc., instead of re-victimizing the prostitutes with easy cases under Article 329 (1) of the CC. By applying this provision, the state victimizes sexually exploited persons, considering them as the persons responsible for the problems related to prostitution, instead of victims of a crime. The prosecution of prostitutes supports their marginalization and makes their social integration impossible. A history of previous convictions hampers significantly the search of an alternative job for those who want to escape prostitution.

¹⁴⁵ Interview with the Chair of the Bulgarian Helsinki Committee (Sofia) – Refugees Unit of 25/06/2013.

Child-victims

Articles 31 and 32 of the CC provides that children below 14 are not criminally responsible and children between 14 and 18 are criminally responsible if they can understand the nature and the significance of their behaviour and control their acts. Underage boys and girls, although not criminally responsible, are held responsible for “violations of public order”, which is a term broader than “crimes”, and evidently, includes prostitution. “Violation of public order” is one of the reasons for accommodation of children in a state-run home. Prostitution, although not a “crime”, can be considered a “violation of public order” and, thus, the authorities can accommodate children in prostitution in shelters. The directors of some shelters refuse to accommodate girls who “permanently” prostitute, because they do not want to mix them with the other children who were forced to prostitute, which would have a negative effect on the latter. Most shelters are not sensitive about this issue and accommodate both children who were forced to prostitute and children who do not consider themselves as victims and are not in a condition of crisis.

9. NON-DETENTION OF TRAFFICKED PERSONS

Trafficked persons should not be detained or held in closed shelters or other welfare centres akin to detention. Detention of trafficked persons, defined as “the condition of any person deprived of personal liberty except as a result of conviction for an offence”, can cover a wide range of situations. Victims may be detained as irregular/undocumented migrants, as a result of their engagement in illegal activities, such as prostitution or unauthorized work (even if correctly identified as victims), closed shelters for minors, etc .

In Bulgaria, victims can principally be detained for all of the reasons stated above. As indicated in the previous chapter, it happens that victims of trafficking are detained for 24 hours in custody as a result of their engagement in illegal activities, such as “illegal crossing of the border” or “earning income in immoral way” or “not having identification documents”. More disturbing is the situation with child-victims, because the shelters for children are always closed. As to irregular migrants, the Director of the “Migration” Directorate reported that there has been no case of trafficked persons detained in the Centres for Temporary Accommodation of Aliens, which, otherwise, are in conditions akin to a prison.

The shelters for adult victims are not closed. The victims are accommodated, if they consent to this. The front door of the shelter is locked but the victims have keys and can come in and out at any time. Only if a victim is at risk and needs to be protected, will her/his movement out of the shelter be restricted.

The shelters for child-victims are closed. The children are not allowed to go out without an adult companion.¹⁴⁶ Due to their limited budget, the shelters do not dispose of enough personnel to guarantee that each child shall go out regularly according to his/her personal needs. Except for school, the children are taken out in groups for walks, cultural events, etc.¹⁴⁷ The front door of the shelter is always locked and the windows have bars. To leave the shelter freely is considered an escape and the police shall be informed immediately and shall start a search. Almost all shelters are located close to a police station. Children shall be accommodated in state-run homes with a court decision. Article 26 of the Child Protection Act provides that

“[t]he child’s accommodation in ... social service housing or specialized institutions shall be done by court. Until the delivery of the court’s decision, the “Social Assistance” Directorate temporarily accommodates the child with administrative order. The request before court for accommodation out of the family shall be made by the “Social Assistance” Directorate, the prosecutor or the parent.”

¹⁴⁶ The Methodic Guides for the Social Service “Crisis Center”, adopted by the “Child Protection” Agency and the “Social Assistance” Agency, point 19.1. provides: “An accompanying adult from the personnel shall be provided to those who are enrolled in school and in their daily attending to classes.”

¹⁴⁷ „Thematic study on child trafficking [Bulgaria]”, EU FRA, Slavka Kukova, August 2008.

The court shall consider the request immediately and shall issue a decision within 1-month time limit. The maximum accommodation period is 6 months.¹⁴⁸

The usual practice is that the court decision confirms the administrative order, with which the "Social Assistance" Directorate will have already allowed for the accommodation of the child. There are rare exceptions, in cases, which the report from the social worker does not prove that accommodation in a shelter is the best solution or when a parent or relative disagrees with the accommodation, stating good reasons. In such cases, the court may decide that there is no risk for the child and that there is an alternative to the accommodation. Usually the child is summoned for the court hearing and questioned about the circumstances that provoked the accommodation in a shelter. If s/he is more than 10 years old, his/her statements must be heard. Often the speed of the events that happen with the children is faster than the speed of the jurisdiction. For example, in big towns, where the court's workload is bigger, such as for example the Sofia District Court, in which there are cases where the court delivers the decision after 6 months and after the accommodation in the shelter has ended.

The accommodation in closed shelters negatively affects the child's psychological health and often causes resistance and a wish to escape. Many children escape the shelters. The number of escapes is a clear indication that the accommodation is not a "service" but a "punishment". Another significant problem is that children are accommodated together in the same shelter for different reasons and this can cause them additional trauma. For example, a girl-prostitute who tries to escape and go back "to work" can be accommodated with a girl who was raped in order to be forced to prostitute. The biggest problem is that the amount of personnel of the shelters for children is insufficient to guarantee that each child goes accompanied out of the shelter regularly. There is a sad practice where the director of the shelter states in front of the children, that the reason they cannot go out of the shelter is due to some violation of the internal rules of the premise, but real reason is that there is no one to accompany them.¹⁴⁹

¹⁴⁸ Regulation for Application of the Social Assistance Act, Additional Provisions, p. 25 – definition of "crisis center".

¹⁴⁹ „Thematic study on child trafficking [Bulgaria]", FRA, Slavka Kukova, August 2008.

10. REFLECTION PERIOD, TEMPORARY AND HUMANITARIAN RESIDENCE PERMIT

Victims have the right to a reflection period of 3 months.

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

Reflection period

Adult victims have the right to a reflection period of 1 month.¹⁵⁰ This applies to both internal and cross-border victims of trafficking. Child-victims have a longer reflection period of 2 months.¹⁵¹

In practice, it is not clear how and who makes the decision to mark the beginning of the reflection period. The social workers will count as of the accommodation day in the shelter. According to the National Security Agency

*“the reflection period ... starts running as of the moment the investigation authority informed the victim about the existing of a possibility to receive special protection”*¹⁵²

The police officer who performs the initial conversation and the official identification of the victim should set the beginning of the reflec-

¹⁵⁰ Action against Human Trafficking Act, Art. 26 (1) and Art. 9 (3).

¹⁵¹ Ibid., Art. 26 (2).

¹⁵² Letter from the National Security Agency to the Caritas Foundation of 22/07/2013.

tion period. The process of identification and providing information about the initial rights should be documented, for example, via a letter of rights signed and dated by the victim. There is indirect data from the Chief Prosecution Office and the National Security Agency that there has not been a case where they have formally set a beginning of a reflection period.¹⁵³ The research did not find information if the reflection period was ever formally applied in practice, in regard to adult or child victims. The same data is confirmed from the interviews with the victims.

The victims have the right to access to free psychological and legal assistance during the reflection period. The psychological assistance can be either private-funded (NGOs) or state-funded (the Assistance and Compensation Act). When victims are accommodated in shelters, they get counselling by the psychologists who work there. Another possibility is to turn to a private psychologist, registered under the Assistance and Compensation Act, paid by the State Fund (the same Fund that allocates the financial compensations for material damages). For example the psychologist from the Centre “Nadja” (Sofia) works under this scheme and assists victims referred to her by the National Council for Assistance and Financial Compensation. It should be noted, however, that Article 17, paragraph 2, points 2 and 3, of the Assistance and Compensation Act requires that the victim indicate in her/his request for psychological help:

“the date, the place and the circumstances of the committed crime” and “the date on which the victim had informed the competent authorities about the committed crime”.

This is a deficiency in the law because it implies that the victim can seek psychological help only after s/he has cooperated with the authorities, but not before that, in casu while the reflection period is running, which is in violation of the CoE Convention and the EU Directive.

¹⁵³ In a letter from the Chief Prosecution Office of 10/06/2013 to Animus Association Foundation is stated: “The Prosecution of the Republic of Bulgaria does not dispose of statistical information on the third question [how many victims were granted a reflection period in 2011 and 2012], because such information is not being collected by the official statistical accounting.” In a letter from the National Security Agency of 22/07/2013 to the Caritas Foundation it is stated: “The National Security Agency cannot provide you an information regarding ... the number of the victims who were granted a reflection period whether to declare their consent to cooperate for the investigation of the crime, due to the fact that the National Security Agency does not collect, process and keep such information”.

As to legal assistance during the reflection period, the situation in theory is very good. As stated above, the Bulgarian law guarantees explicitly that victims of trafficking shall receive state-funded, initial legal aid (consultation and preparation of documents prior to the beginning of any court proceedings). Article 22 of the Legal Aid Act reads:

“The legal aid under Article 21, p. 1 (consultation for initiation of court case) is free and shall be granted to ... victims of ... human trafficking, who do not have finances and wish to use legal defense.”

The two forms of initial legal aid - consultation for initiation of court case and filling in documents - absolutely include the cases of necessary counselling during the reflection period aimed at facilitating the victim in her/his decision whether to participate or not in the future criminal proceedings. As the right to initial legal aid follows automatically from the status of “victim of human trafficking”, the police authorities should give the victim a document confirming that s/he is identified as such. This could be, for example, the letter of rights signed by the victim on her/his first conversation with the police. With this document the victim shall apply for legal aid in the form of consultation directly to the National Legal Aid Bureau and not to the investigation authorities. The decision shall be taken within a 14-day time limit.¹⁵⁴ The research did not find a trafficking victim who received initial free legal aid under this procedure.

The private-funded legal aid during the reflection period is not good developed in practice either. Most NGOs do not have personnel trained enough to provide legal information (legally trained social workers, lawyers specializing in human trafficking, etc).

Temporary residence permit

Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal proceedings when they decide to cooperate with the authorities. They also are entitled to social, psychological, medical and financial assistance during the reflection period, similar to domestic victims, but there have been no such cases in the last two years. The Assistance and Compensation Act ap-

¹⁵⁴ Legal Aid Act, Art. 25 (2).

plies to citizens of EU and non-EU countries, when the crime is committed on the territory of Bulgaria.

Article 25 of the Action against Human Trafficking Act states that victims of trafficking who have consented to cooperate with the investigation of the crime shall receive a special status *“for the time limit of the pending of the criminal proceedings”* including *“temporary residence permit”*. The prosecutor shall issue a decree whereby he grants the special status and determines its duration.¹⁵⁵ Afterwards, the victim shall present this decree to the “Migration Directorate” which issues the temporary residence permit. The permission shall not be issued if the individual does not have identity documents and refuses to cooperate in the procedures establishing his/her identity.¹⁵⁶ The maximum time limit for this kind of permit set forth in the Aliens Act is 1 year¹⁵⁷ and does not apply in this situation. The Action against Human Trafficking Act is applied with priority, as a “special act” with respect to the Aliens Act. Despite the fact that the Aliens Act restricts the temporary residence permit to 1 year, foreign victims of trafficking can reside in Bulgaria for the duration of the criminal proceedings, even if it takes more than 1 year. In that case, the “Migration Directorate” shall renew the temporary permit. The provision of Article 28 (2) of the Action against Human Trafficking Act, states that

“for the time period of their stay in the country [the foreign victims] shall enjoy the rights of the aliens who have a permanent residence permit”.

The Action against Human Trafficking Act specifically states that the temporary residence permit includes the criminal proceedings. It does not state, however, that it includes also civil or administrative proceedings for compensation. The provisions regarding the special status of foreign victims have not been applied since the adoption of the Act, in 2003, and no victim was granted a temporary residence permit on this basis.¹⁵⁸

Humanitarian residence permit

If return would compromise the life and safety of foreign victims, they

¹⁵⁵ Action against Human Trafficking Act, Art. 30 (1): “The status of special protection is being terminated by the Body as per Art. 27, **before the deadline set by the Body has expired**”.

¹⁵⁶ Action against Human Trafficking Act, Art. 28 (3).

¹⁵⁷ Aliens Act, Art. 23 (3): “The temporary residence is up to 1 year.”

¹⁵⁸ Letter from the “Migration” Directorate to Animus Association Foundation of 06/05/2013.

have the right to apply for asylum or a residence permit on humanitarian grounds. Article 9 of the Aliens Act provides that a humanitarian status shall be granted to an alien who is forced to leave or to stay out of the country of origin, as there s/he is exposed to a real danger of torture or inhuman or degrading treatment or heavy personal threats to their life. This interference can arise from the actions of an organization to which the State cannot counteract (organized criminal group).

The interviewed expert from the “State Agency for Refugees” could not indicate any application for a residence permit on humanitarian grounds on behalf of persons trafficked with the purpose of labour exploitation.¹⁵⁹ She pointed out, as a reason for this, that the foreigners do not consider themselves as victims of labour exploitation but come to the country willingly and want to work here. These foreigners only report to the authorities that they used a “channel” to take them through the border, but not that they have been (illegally) recruited for some job.¹⁶⁰ Social workers report that the employees at the “State Agency for Refugees” are not trained to use and recognize indicators for the identification of trafficked persons and refuse to identify victims of trafficking, arguing that this is a task of the National Commission for Combating Trafficking in Human Beings.

In 2012, the Bulgarian Helsinki Committee (Sofia) Refugees Unit provided legal assistance to a Ukrainian female victim of trafficking for prostitution. They submitted, on her behalf, an application to the “State Agency for Refugees” for a permanent residence permit on humanitarian grounds, as there would be threats to her life if she would return to Ukraine. The application was dismissed as ill founded.¹⁶¹

The Asylum and Refugees Act provides that the best interest of the child is paramount and that an unaccompanied under aged foreigner, seeking protection on the territory of Bulgaria, should have a guardian

¹⁵⁹ Interview with an expert from the “State Agency for Refugees”, of 17/04/2013.

¹⁶⁰ CC, Art. 280: “The person who transports through the border of the country individual or group of individuals without a permission from the competent authorities or even with a permission, but not through the check points, shall be punished ...” It is a separate crime from trafficking, called “channeling”.

¹⁶¹ Interview with the Chair of the Bulgarian Helsinki Committee (Sofia) – Refugees Unit, 25/06/2013.

appointed under the provisions of the Family Code. If a guardian is not appointed, the unaccompanied foreign child should be represented during proceedings by a state social worker from the child protection department. Unaccompanied foreign children who have been granted refugee or humanitarian status are accommodated until the age of 18 with a foster family or in a child care institution, under the same procedure that applies for domestic children, with court decision.¹⁶² There were no such cases in practice.

11. REPATRIATION AND GUARANTEES OF NON-REPETITION

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

Victims can return home at any moment:

- immediately, after their identification, if they do not want to have a reflection period.
- after the expiration of the reflection period, if they decide not to cooperate for the investigation of the crime.
- or after they agreed to cooperate and received a right to residence permit.

In the latter case, there are some specifics. Firstly, if they leave the country, they have to apply for a visa in order to re-enter.¹⁶³ Secondly, the investigative authorities might want to summon them for another interrogation in front of a judge, so that they are not summoned again later during the court stage of the proceedings. This can delay their

¹⁶² Asylum and Refugees Act, Art.25 (2), 25 (5) and 33.

¹⁶³ Action against Human Trafficking Act, Art. 28 (2) in conjunction with the Aliens Act, Art. 35 (2).

departure from Bulgaria. Thirdly, if additional clarification of some questions or a confrontation is still needed in the court stage, they must be ready to participate in a videoconference.

Before the victim leaves the country, the authorities shall issue a decision on repatriation, whereby they shall assess the risk for her/his safety. In practice, the authorities make a detailed assessment of the risk of re-trafficking and examine criteria such as: whether the family members of the victim are involved in the trafficking, are the relatives threatened, do the traffickers know the victim's whereabouts and do they know that s/he is coming back, is the victim going to be stigmatized and socially isolated, can the victim rely on support by state institutions, etc.¹⁶⁴ The authorities shall base their assessment on different sources, such as reasons stated by the victim, information from state structures, and information from NGO's.

The National Commission reported 1 victim in 2012 repatriated from Bulgaria to their country of origin.¹⁶⁵ According to the information collected from different NGOs in the country, in 2011 and 2012 there were no accommodated/assisted foreign victims. In previous years, in the Sofia shelter female victims from Ukraine, Russia, Poland and the Czech Republic were accommodated.

A mentally ill victim from the Czech Republic was accommodated in the Sofia shelter. The ambassador of the Czech Republic visited her in the shelter and assisted the process of her repatriation. A humanitarian team, including a psychiatrist, was informed to escort her to the country of origin.¹⁶⁶

Foreign victims receive the same social, psychological, medical, legal and financial assistance as national victims. According to Article 3 of the Aliens Act, foreigners have all the rights and obligations under Bulgarian laws and ratified conventions, except for those that require Bulgarian citizenship. Also, Article 1 of the Assistance and Compensation Act provides specifically for the right to assistance and financial

¹⁶⁴ NRM, measure 3.2. "Safe return".

¹⁶⁵ See the 2012 annual report.

¹⁶⁶ Interview with the Head of the Sofia shelter, of 15/04/2013.

compensation “to crime victims Bulgarian citizens or citizens of EU countries”; as well as to victims of non-EU countries on the basis of the conditions of international conventions binding for the Republic of Bulgaria. In addition, there is a specific provision in the Legal Aid Act. Article 42 of this act that states that EU citizens or individuals possessing a valid residence permit issued by an EU country shall be granted legal aid, if their financial situation does not exceed the social level provided for Bulgarian nationals or in any case where, upon the discretion of the National Legal Aid Bureau, they cannot afford the costs. According to Article 21 of the CPC, the criminal proceedings shall be held in the Bulgarian language and individuals who do not speak Bulgarian can use their mother tongue or another language. In these cases, the authorities shall appoint an interpreter.

12. RECOMMENDATIONS

On the basis of the above analysis, the following recommendations are made.

Legal aid

- NGO lawyers should be trained to provide legal counselling to identified victims and to represent them before the investigation and court authorities.
- The good practice of “SOS Families at risk” (Varna) should be developed, whereby the NGO lawyer is also registered at the National Legal Aid Bureau and the victim can choose him/her as a representative under the state-run scheme.
- The National Legal Aid Bureau should provide for more narrow specialization responsible for the representation of victims, in full scope and in all stages. A list of specialized ex officio lawyers representing victims of crimes as indicated in the Assistance and Compensation Act (homicide, severe body injury, rape, human trafficking) should be opened. It would ensure the necessary level of quality and activeness of pro bono representatives.
- NGOs, shelters, crisis centres, local commissions for combating trafficking in human beings, etc. should refer identified victims to

the new centres for initial legal aid (consultation and documentation) of the National Legal Aid Bureau, which opened on 1 September 2013. This possibility is particularly useful for victims in the reflection period.

- Social workers should encourage victims to apply at the National Legal Aid Bureau for free “consultation for initiation of the court case” under Article 22 in conjunction with Article 21 (1) of the Legal Aid Act.
- Social workers should be trained to provide basic legal information to victims.
- Secretaries of the local commissions for combating trafficking in human beings should be trained to provide basic legal information to victims (the National Commission based in Sofia has branches in 9 other cities).

Identification

- The aim of the first conversation with the victim should only be for her/his identification as a trafficked person and should not include questions regarding the identity of the traffickers or their methods of recruitment and exploitation. The first conversation should not be an interrogation in disguise whereby the victim is induced to giving statements and filing a complaint against the trafficker.
- The first conversation should be documented. The police authorities should present to the victim a letter of rights, confirming the identification as a trafficked person including the initial rights of the victim (reflection period, duration, psychological assistance, legal counselling, special status in case of cooperation etc.). The victim should sign and date this document and keep a copy of it. (See the Annex below)
- The Ministry of Interior and the National Security Agency should draft an official form of the letter of rights of the identified victim.
- The start of the reflection period should be counted as of the date of the letter of rights. NGOs should not allow meetings between the victim and the police until the reflection period is fin-

ished.

- A template for filing a complaint for the crime committed could be distributed in the NGOs and the shelters, if the victim wishes to submit a complaint after the reflection period is finished.
- The Prosecution should draft a decree for the opening of criminal proceedings (which is to be served to the victims according to Article 75 (2) of the CPC) informing them in a clear and accessible manner and understandable language on their corresponding rights in the capacity of “victim” in criminal proceedings.

Witness protection and right to be treated with respect and dignity

- Victims should report the crime after a sufficiently long time period, when they are emotionally stable, for example, 10-30 days after the identification.
- The victim’s complaint about the committed crime should be done in written form, with the assistance of a social worker or a lawyer, at the shelter, or the assisting NGO or the lawyer’s office, not at the police station. The complaint should be as long and as detailed as possible. It should contain a description of the investigation actions requested, including names of witnesses.
- In the complaint, victims should not indicate their address but the address of the assisting NGO in the village where they live or the address of their lawyer or a post box.
- The investigation authorities should observe the 30-days reflection period. This would ensure that the victims will testify calmly and will tell a complete, detailed story of the events and, thus, an additional interrogation for something that might have been omitted would not be necessary.
- If the investigation authorities decide to question the victim before a judge and in the presence of the accused, the victim/the lawyer should request the interrogation to take place in a mirror room (blue room), following the same procedure as applicable for the interrogation of children.
- The procedure for interrogation of a child-victim in a blue room should become standard for interrogations of full age victims of

the crimes indicated in the Assistance and Compensation Act (homicide, severe body injury, rape, human trafficking).

Compensation

- The State Fund should include moral damages. There are two strong arguments for this: 1) each year only a small part of the allocated budget is being spent and 2) victims cannot collect the awarded compensations from the traffickers. The committee experts can rely on the courts' case law in determining the amount of compensation for moral damages in each particular case.
- When charges are pressed for "human trafficking", the prosecution authorities should investigate the assets of the traffickers and enforce their right, under Article 72 of the CPC, to freeze criminal assets. The victims can also benefit from this measure.
- In the court stage, the victim should separately request a guarantee of her/his claim via freezing of assets.
- The CC should be amended to provide for longer imprisonment or a prohibition for early release from prison if, after the trial, the trafficker fails to pay the compensation, which the court ordered him/her to pay to the victim (there is such possibility in the Dutch law).

Social workers

During the accommodation of the victims in the shelters/crisis centres and, more importantly, during the reflection period, the social workers should:

- inform victims of the possibility for compensation and their rights;
- inform the victims about the need to collect and keep evidence for the material damages caused by the crime;
- help the victims to fill in the necessary forms for legal aid if needed;
- help the victims to timely request the freezing of the assets of the accused.

Quality of law

- The Criminal Code would comply with the EU Directive 2011/36/EC and the UN Trafficking Protocol if Article 159a, paragraph 1, is abolished. This is so, because the core element of the crime for “trafficking in human beings” is not the fact that the victim’s consent is irrelevant but is due to the use of special means, such as deceit, state of dependency, a promise for benefits etc. in order to achieve the consent. Article 159a, paragraph 1, in practice means a general criminalisation of clients of sex workers (“person who ... transports ... or receives an individual ... for lechery practices ... regardless of [this individual’s] consent, shall be punished”). According to this provision sex workers can be trafficked. This means that the fact that a person chooses from her/his own decision to work as a prostitute automatically makes him/her a victim of a crime. Article 159a, paragraph 1, in practice also means a general criminalisation of medical personnel (“person who ... transports ... or receives an individual ... for removal of organs ... regardless of [this individual’s] consent, shall be punished”. This means that a patient who seeks medical help, which requires a removal of an organ, automatically becomes a victim of a crime and no one would want to treat him/her.
- “Victims of human trafficking” should be added in Article 119 of the CPC (persons who can refuse to testify).
- The measure under Article 76a of the Identity Documents Act (seizure of passport of child victims for a maximum period of 2 years) represents re-victimization; it sanctions the victim, instead of the trafficker. It represents unlawful restriction of the free movement of the child victim, who should be able to leave the country with her/his foster parents, for example.
- Life threats on behalf of the accused addressed to the victim-witness should be added in the CC as an aggravating circumstance under Article 159a, paragraph 2.
- Infecting a victim, trafficked with the purpose of sexual exploitation, with HIV should be added in the CC as an aggravating circumstance under Article 159a, paragraph 2.

annex: letter of rights

DECLARATION OF VICTIM OF HUMAN TRAFFICKING

Today, 20... , at a.m./p.m. I,

....., hereby declare that during my first conversation with the police authorities I was identified as a trafficked person and informed about the following rights and I declare that:

1. I to have a reflection period.
/wish / do not wish/

Signature:
/trafficked person /

2. During the reflection period, I for psychological assistance on my choice and my account.
/wish / do not wish/

Signature:
/trafficked person /

3. During the reflection period, I for free psychological assistance under the Act on the Assistance and Financial Compensation of Victims of Crimes.
/wish / do not wish/

Signature:
/trafficked person /

4. During the reflection period, I for legal consultation on my choice and my account.
/wish / do not wish/

Signature:
/trafficked person /

5. During the reflection period, I for free legal consultation for initiation of court case under Article 22 in conjunction with Article 21 (1) of the Legal Aid Act.
/wish / do not wish/

Signature:
/trafficked person /

6. I to apply for financial compensation for material damages under the Act on the Assistance and Financial Compensation of Victims of Crimes.
/wish / do not wish/

Signature:
/trafficked person /

7. The police authorities informed me that the duration of the reflection period is 1 month, during which I can stay in a shelter, and if I cooperate with them for the investigation of the crime, of which I am a victim, I have the right to be accommodated in a shelter until the end of the criminal proceedings.

For foreign victims only:

8. The police authorities informed me that if I cooperate with them for the investigation of the crime, of which I am a victim, I have the right to a temporary residence permit in the Republic of Bulgaria until the end of the criminal proceedings.

Signature:
/trafficked person /

9. I filled in the declaration with the assistance of the interpreter:

Signature:
/trafficked person /

Signature:
/interpreter /

The police officer shall fill in the declaration if the trafficked person is illiterate or unable to fill in alone, whereby the trafficked person shall make the statements, in the presence of a witness, who certifies their authenticity with his/her signature.

Police officer:
/names, position and the department of the Ministry/Agency where s/he works/

Signature:

Witness:
/names, identification number, address/

Signature:

Note: The declaration shall be filled in to two copies, one shall be attached to the police officer's report and the other shall be given to the trafficked person.

“Animus Association” Foundation works in support of victims of violence as well as children and families at risk. The organization was founded in 1994 by women psychologists, physiotherapists and social workers, with the aim of providing a space, where women and children survivors of violence can receive professional help. In 2001 it acquired the status of a public benefit organization.

The mission of “Animus Association” Foundation is promoting healthy communication among people and gender equality in Bulgarian society. We achieve our mission by setting the following goals: to develop accessible psychotherapeutic services and programs offering professional and competent help to victims of domestic and sexual violence and trafficking, as well as help to women, children and families; to establish social attitudes of tolerance towards difference, respect to suffering and non-acceptance of violence; to develop and implement projects and programs in support of women and children; to act as an intermediary between state institutions and non-governmental organizations in their efforts to respect and promote the rights of victims of violence.

For more than 15 years “Animus Association” Foundation has been providing direct support for victims of trafficking with the following programs: National Helpline for Victims of Violence, 24-hour Crisis Center, psychotherapeutic and social services, Initiative and Empowerment Program for Professional Development.

“Animus Association” Foundation is one of the founders of La Strada International – a European anti-trafficking network of independent NGOs that work in the field of combating trafficking in human beings and supporting its victims. Organizations from Belarus, the Czech Republic, Macedonia, Moldova, Poland, Ukraine and the Netherlands are members of the network. La Strada International works from a human-rights perspective in support of all trafficked persons, with specific focus on women in central, east and south-east Europe. La Strada International’s primary goal is to improve the position of women and to promote their universal human rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse.

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