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Review of Legislation Pertaining to Combating Trafficking in Human Beings in Bosnia and Herzegovina

This review was conducted for the OSCE ODIHR by Dr. Galma Jabic, lecturer at the Istanbul Bilgi University, Faculty of Law, Turkey

and for the Council of Europe by Santiago Ripol Carnilla, Professor of Public International Law at the Pompeu Fabra University (Barcelona), Spain

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<thead>
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<th>Description</th>
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<tr>
<td>Art.</td>
<td>Article</td>
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<td>BD</td>
<td>Breko District</td>
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<td>BiH</td>
<td>Bosnia and Herzegovina</td>
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<td>CC</td>
<td>Criminal Code</td>
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<td>CoE Convention</td>
<td>Council of Europe Convention on Action against Trafficking in Human Beings</td>
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<td>CPC</td>
<td>Criminal Procedure Code</td>
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<tr>
<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
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<td>IO</td>
<td>International Organization</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<tr>
<td>KM</td>
<td>Konvertibilna Marka (Official currency of BiH)</td>
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<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
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<td>MOI</td>
<td>Ministry of Interior</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>Par.</td>
<td>Paragraph</td>
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<td>RS</td>
<td>Republika Srpska</td>
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<td>SAP</td>
<td>State Action Plan</td>
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<td>SIPA</td>
<td>State Information and Protection Agency</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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I. INTRODUCTION

1. By letter dated 19 September, 2008 the State Co-ordinator for Anti-Trafficking in Human Beings and Illegal Immigration of the Cabinet of Ministers of Bosnia and Herzegovina, requested the OSCE ODIHR to conduct a review of the entire legislation of the State in order to assess its compliance with international standards, which reviews the ODIHR is able to undertake based on its mandate as spelled out in Part III, paragraph 9.1 of the OSCE Action Plan to Combat Trafficking in Human Beings, which states that “the ODIHR and where appropriate the field operations, will continue to promote and support legislative review and reform efforts in compliance with international standards”.

2. The State Co-ordinator also made mention, that to the extent possible, the review should be conducted in co-ordination with the Council of Europe, in particular, in view of the coming into force of the Council of Europe Convention on Action Against Trafficking in Human Beings.

3. The OSCE ODIHR decided that the review would be conducted in the most comprehensive manner possible, using both internal and external expertise as well as the expertise of the OSCE Mission to Bosnia and Herzegovina. Furthermore, as outlined in the section on “Scope of Review” below, the OSCE ODIHR decided to review not only the entire legislative framework governing the issue, but also to include a section which would assess the degree to which existing legislation is currently being implemented.

4. On 23 to 27 November, 2008, the OSCE ODIHR expert, together with experts from the OSCE Mission to Bosnia and Herzegovina, conducted a study visit to Sarajevo. The purpose of the visit was to hold a series of interviews with authorities and other stakeholders, including representatives of non-governmental organizations in order to establish the exact parameters of the legislation and regulations governing prevention and prosecution of trafficking in human beings and protection of victims of the crime, as well as the degree to which the said legislation and regulations are being implemented.

5. The current OSCE ODIHR review has been prepared in response to the above request. It was peer reviewed by a Council of Europe Expert, who in his review generally confirms the points made in the OSCE ODIHR review.

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1 Ref No 01-1/01-50-255/08.
II. OSCE ODIHR REVIEW OF LEGISLATION PERTAINING TO COMBATING TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA

1. SCOPE OF REVIEW

6. This review (also referred to as “report”) outlines and analyzes to what extent current legislation in BiH satisfies requirement set forth by the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter referred to as the (“CoE Convention”) and to some extent evaluates the implementation of this legislation. The adoption and implementation of the standards expressed in the CoE Convention are reflected also in the OSCE Commitments related to combating trafficking in human beings, in particular the OSCE Action Plan to Combat Trafficking in Human Beings. The main sources consulted in the preparation of this review are:

- Laws, by-laws, regulations, and other legal documents issued by government bodies;
- Published statistics and reports prepared by governmental and other state agencies;
- Court files and decisions;
- Reports prepared by non-governmental organizations (NGOs) and intergovernmental organizations;
- Interviews with relevant state officials, and NGO representatives.

7. This report constitutes a comprehensive review of all legislation and regulations pertaining to prevention and prosecution of trafficking as well as protection of victims of the crime.

8. The report is divided into two sections. The first section analyzes the legal and policy framework in place and evaluates it in reference to the CoE Convention, while the second section presents an overview of issues in the implementation of the relevant legislation. Each section is composed of three parts that focus on prevention, prosecution and protection. Based on the analysis, summary of recommendations has been presented at the beginning of each section. The Appendix, contains a list of laws which come within the ambit of the review.

9. Notwithstanding its comprehensive nature, the OSCE ODIHR would like to make mention that the review is without prejudice to any recommendations that the OSCE ODIHR may make in the future.

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4 Interviewees are not referred to by name for the purposes of protection of privacy.
SECTION I: Legislative Measures For The Prevention And Prosecution Of Trafficking In Human Beings And Protection Of Victims Of Trafficking In Human Beings In Bosnia And Herzegovina

2. EXECUTIVE SUMMARY OF RECOMMENDATIONS FOR

SECTION I

10. Based on the assessed legislative measures it is recommended as follows:

A. The relationship between NGOs and IOs within the State Group should be clarified. In particular in view of the fundamental principle of a interdisciplinary and multi-sector approach to combating trafficking in BiH, as enunciated in key policy documentation of the State [par. 16, 17, 18]

B. Research and data collection should be developed and prioritised in the State Action Plan for 2008-2012 in particular for use not only for intelligence purposes but also guidance in development of prevention strategies. Furthermore, guidelines on data collection could be developed to assist in this process [par. 23, 24, 25, 26 27 ]

C. A comprehensive policy that would address economic and social causes of trafficking problem in BiH is recommended to be developed and included into the SAP [par. 37]

D. The Operation Plan could be supplemented by a clear strategy on the manner in which gender mainstreaming will be accomplished [par. 40]

E. The Operational Plan should include special measures which concern prevention of trafficking in children [par. 40]

F. Policies with regard to good dissemination of information regarding travel, work and migration opportunities in BiH should be further developed. [par. 43, 44]

G. It is encouraged that the already prepared draft secondary laws on implementation of liability of tour operators for not ensuring appropriate documentation, in the form of penalties, are adopted [par. 51]

H. Consideration be given to amending the Criminal Codes of the Federation of BiH and of Brcko District to define human trafficking as a separate offense [par. 55]

I. Consideration be given to amending the Criminal Code of Republika Srpska to reflect the definition of trafficking in human beings as established by international instruments [par. 56]

J. The non-punishment of victims of trafficking in human beings is ensured [par.66]

K. The current regulations (Rulebook) which to some extent protect foreigners from criminal prosecution be mirrored for nationals of BiH in order to account for cases on internal trafficking [par. 67, 68]
L. Liability for the renting or use of premises for trafficking which involves any form of exploitation (and not just sexual exploitation) could be established. [par. 73]

M. It may be re-considered whether the extent of the liability for withholding of identification documents is sufficiently heavy. [par. 76]

N. The State CC may be supplemented by provisions punishing the forging and use of forged documents Damaging or destroying documents, or concealing them has not been addressed properly.[par. 78]

O. The State and Entity CC’s should consider introducing explicit provisions on the procuring or providing of forged documents. [par. 78]

P. The state CC should better define the term “instrumentalities” in Article 74 thereof, so as to ensure that it is clear which instruments fall within the scope of the provision [par. 96]

Q. The State CC should be supplemented by including as aggravating circumstances trafficking committed by public officials in the execution of their functions and when the life of the victim is threatened [par. 108, 109]

R. It should be considered that convictions handed down in other countries for the crime of trafficking be acknowledged in the sentencing of courts in BiH [par. 110]

The definition and status of a “protected person”, provided in the Rulebook on Alien Victims of Trafficking in Persons, in the context of reflection delay, should be clarified and established by law. [par. 127, 128, 129]

S. Victims of trafficking who are benefiting from the reflection delay, should also receive the appropriate documentation which would provide an indication that they are able to remain on the territory on BiH for that period of time [par. 129, 130]

T. In order to ensure clarity and certainty in the law, relevant articles of the Rulebook should be adapted to reflect the Law on Aliens and Asylum properly, or alternatively a bylaw addressing the issue of the basis on which residency permits may be issued, should be developed [par. 134, 135, 136]

U. The provisions on granting of residenc permits based on the “personal situation” of the victims, contained in the Law on Aliens and Asylum, should be clarified and supplemented. [par. 138]

V. The so-called “Vlasic Procedure”, should be clarified in order to ensure that it is not in violation with international standards. [par. 141]

W. The Rulebook on Alien Victims should stipulate what minimum conditions must be provided in these shelters, and set up a system (criteria, monitoring, verification) which would ensure that the accommodation provided is indeed adequate and appropriate and safe (security measures). [par. 146]

X. The Rules on provision of assistance to domestic victims of trafficking should be clarified. [par. 147]
Y. Article 10 paragraph 2 of the Rules on Provision of Assistance to Domestic Victims should be amended so that they are clear on what accommodation and protection should be provided to victims and victim-witnesses [par. 149]

Z. Article 10 paragraph 2 of the Rules on Provision of Assistance to Domestic Victims, should also be clarified [par. 150]

AA. The Law on Protection of Witnesses under Treat and Vulnerable Witnesses should be revised to include precise provisions on what in these cases shall constitute appropriate and safe accommodation [par. 151]

BB. Material assistance to victims of trafficking should be explicitly provided for [par. 153]

CC. The system of provision of legal aid and assistance to both to domestic victims and foreign victims, and in both criminal as well as civil proceedings needs to be revised and supplemented [par. 165, 166, 167]

DD. Provisions on access to medical assistance for foreign victims should be amended to ensure that emergency medical assistance can be provided also in cases where the victim is not living in a shelter. [par. 169]

EE. It should be considered to provide psychological support to victims of trafficking in human beings, whether domestic or foreign [par. 172]

FF. The possibility of joinder as a party to the criminal proceedings against his/her trafficker, of a victim or a non-governmental organization representing (on his/her consent) his/her interests should be considered in BiH. [par. 176]

GG. Rules on Domestic Victims should be supplemented to include the possibility of presumption that a victim is a child in the case that their age is not known and not possible to be established at the time of identification. [par. 191,192]

HH. The Rulebook on Alien Victims and Rules on Domestic Victims may be supplemented to include special provisions regarding protection of the private lives of children [par. 193].

II. Consideration may be given to introducing special provisions on protection of child victim-witnesses in the Law on Witness Protection [par. 199]

JJ. The system of obtaining compensation for loss and damages suffered by victims as a result of the crime of trafficking should be revised. In addition, consideration should be given to the establishment of a fund which could be the source of payment of compensation to victims- and which is finances through seized assets or proceeds of crime from perpetrators [par. 200-205]

3. PART A: LEGISLATION RELATING TO PREVENTION

11. Chapter II (Articles 5 through 9) of the CoE Convention addresses different measures that are aimed at improving prevention related activities and improving cooperation, ranging from creating possibilities for legal migration into the country, to
control of the travel documents. Some of these issues are addresses in BiH through legislation, yet many preventive measures can be found in policy documents, such as action plans, rather than legislation.

**Interagency Cooperation and Involvement of Civil Society**

12. According to the first paragraph of Art. 5 of the CoE Convention, States are required to strengthen or establish the national coordination mechanism consisting of various bodies, in order to improve cooperation across different agencies. Further, paragraph 6 of the same article stresses the importance of involving non-governmental organizations and other civil society organizations committed to anti-trafficking efforts into development and implementation of prevention measures, where appropriate.

13. In BiH, in July 2003 the Council of Ministers issued a Decision on the Procedures and the Manner of Coordinating Activities on Anti-Trafficking in Human Beings and Illegal Migration in BiH and the Establishment of the Function of the State Coordinator for BiH, thereby setting up a single body at the level of the state responsible for coordination of trafficking related activities. A State Group comprising of representatives from all ministries involved in anti-trafficking activities was formed, headed by the State Coordinator. Later, three subgroups, dealing with activities related to protection, prevention or prosecution, were established in order to further coordinate the efforts, as well as a special group dealing with trafficking of children. Liaison Officers from all law enforcement structures in BiH (such as State Information and Protection Agency (SIPA), Border Police, entity and cantonal MOIs, as well as Brcko District Police) were also selected, creating a line of direct communication with all police agencies. Links with international organizations were quickly established as well.

14. The figure below shows the internal organization and the structure of the coordination mechanism. In order to further improve the cooperation between agencies and within the State Group, the Operation Plan for 2008-2012 (which is a part of the State Action Plan 2008-2012) foresees an establishment of a separate Department within the State Ministry of Security, that would provide expert

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5 It should be noted however, that the Decision in the paragraph II states that the Council of Ministers “may” also appoint a Deputy. However, nowhere in the text of the decisions in “Office” of the State Coordinator mentioned, or a secretariat.

6 Website of the State Coordinator is [http://www.anti-trafficking.gov.ba/?lang=eng](http://www.anti-trafficking.gov.ba/?lang=eng)


8 Website of the agency is [http://www.granpol.gov.ba/Home.aspx](http://www.granpol.gov.ba/Home.aspx)

9 Links to FBiH and cantonal MOIs can be found at the following website [http://www.fup.gov.ba/joomla/index.php?option=com_content&task=section&id=13&Itemid=82](http://www.fup.gov.ba/joomla/index.php?option=com_content&task=section&id=13&Itemid=82), the website of RS MOI is [http://www.mup.vladars.net/index_lt.htm](http://www.mup.vladars.net/index_lt.htm)

10 Website of Brcko District police is [http://www.bdcentral.net/Vlada/Members/policija](http://www.bdcentral.net/Vlada/Members/policija)


technical and administrative support to the State Group and all other agencies involved in the implementation of the Action Plan\textsuperscript{14}.

15. Further to the above, it can therefore be stated that a coordination body that includes representatives of all relevant Ministries and relevant agencies, as required by the CoE Convention has been established.

16. Nevertheless, one issue that is slightly unclear is the nature of the relationship of NGOs and IOs with the state group, given that those organizations are directly involved in provision of protection services (NGOs provide shelters, and IOM, for example, provides repatriation services) and yet not formally included into the State Group. This effectively would mean that these organizations, even though directly involved in policy implementation are not involved in policy making, leaving a gap when it comes to coordination of the efforts. This is why it is important to evaluate how in practice this relationship actually works in order to determine whether this type of relationship is sufficient, or whether in needs to be further formalized.

17. It should also be noted that State Action Plan for 2008-2012 (SAP) clearly states that an interdisciplinary and multi-sector approach is one of the fundamental principles of the anti-trafficking response in BiH, and that it is to involve all relevant actors, including all local authorities, NGOs and IOs).\textsuperscript{15}

18. Finally, this principle is also echoed in the Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings Who Are Citizens of BiH (hereinafter the Rules on Domestic Victims). In the Rules on Domestic Victims multidisciplinary approach is set forth as one of the basic operational principles\textsuperscript{16},

\textsuperscript{14} State Action Plan, p. 20.

\textsuperscript{15} State Action Plan, p. 5.

\textsuperscript{16} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 3: Basic Operational Principles,

\textsuperscript{4} Multidisciplinary approach; in accordance with the Rules, during the conducting of the procedure, the authorized institutions in BiH and authorized organizations shall cooperate at all phases of the procedure, exchanging available information, so that they could consider all details of the case and
requiring that all relevant bodies and organization cooperate and share information regarding their activities.

19. SAP also treats the inclusion of civil society into the anti-trafficking efforts as a guiding principle of action, and recognizes the contribution of civil society to the efforts to combat trafficking.17

20. Based on these, it is clear that principles of cooperation and inclusion of the civil society are the basis of the anti-trafficking policy. Format establishment of the Office of the Coordinator and the State Group indicates that the multiagency cooperation is not only an informal principle but a formalized mode of operandi.

Policies and programs to prevent trafficking

21. Paragraph 2 of the Art. 5 of the CoE Convention lists a number of different measures that are to be used in prevention efforts and development of prevention policies. Those include research and data collection, awareness raising and educational campaigns for the public, social and economic initiatives, and training programs aimed both at potential victims as well as professionals dealing with the victims.

Research and data collection

22. According to Explanatory Note No. 103 of the CoE Convention, research should be seen as a long terms preventive strategy, as research can help develop effective preventive methods. While data is often collected as a method of generating intelligence, systematic collection of data on different aspects of human trafficking is an integral part of the research process as well, as should also be considered in this regard.

23. Unfortunately, research as such has not be given a prominent place in the State Action Plan for 2008-2012. It is only mentioned in the operation plan, under the objective of reducing the risk of trafficking among vulnerable groups. There, research into risk factors that lead to trafficking is noted as one of the measures that are to be taken in 2008-2012 period.

24. Related issues of monitoring and data collection and exchange are mentioned in the SAP, however research is fundamental for monitoring trends, and developing new approaches to combating trafficking. It should be noted that Ministries that deal with science and research are Entity level Ministries (in RS Ministry of Science and Technology18, in FBiH Ministry for Higher Education, Science and Technology19, Brcko District does not have such a Ministry), meaning that there is no unified state policy when it comes to research and development. These Ministries do provide different types of support for research to scientific and research institutions, yet nothing is specifically available for research into trafficking related issues. This does not mean that research in human trafficking is excluded but rather that there are no specialized or dedicated research programs or special incentives for researchers to

their interdependence through comparison and synthesis of the findings, and jointly find the best solution for any case involving trafficking in human beings.

17 State Action Plan, p. 5
18 Website of the Ministry is http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mnk/Pages/Splash.aspx
19 Website of the Ministry is http://www.fmon.gov.ba/index.php
focus on this topic. Given that the State Action Plan for 2008-2012 also does not provide any guidance in terms of what the research needs are, it is safe to say that at this point no priorities in the field of research have been identified, and no mechanisms that would ensure that research does get conducted have been set.

25. The issue of data collection is addressed by both SAP as well as other documents. In its Operational Plan, SAP states that developing a state information system that would regulate collection processing and protection of trafficking related data is among the objectives in the coming period.\(^{20}\) This is to be accomplished through three measures: 1) Collecting and distributing information regularly 2) Establishing a database on human trafficking 3) Establishing a database containing data on human trafficking victims.\(^{21}\) These measures are directed at data that can be used as intelligence, such as information on traffickers and victims, yet with proper protections, such data could also potentially be used for research and development of preventative measures as well.

26. The Rules on Domestic Victims also address the issue of data collection. According to Art. 6\(^{22}\) of the Rules, unified forms to be completed every time a domestic victim is identified are to be developed, and SIPA is to be responsible for compiling the statistics and running the database. Again, it is evident from the article that the purpose is to collect data that can be used in law enforcement activities, rather than for the purpose of research and development of preventative measures.

27. Further to the above, it is recommended that well drafted guidelines on data collection could assist in ensuring that data could be used for research purposes and development of preventative measures.

**Awareness Raising, Education Campaigns, and Training Programs for Vulnerable Groups and for Professionals**

28. According to Explanatory Note No. 103 of the CoE Convention, awareness raising activities and educational campaigns are especially important in countries of origin, where they are aimed at potential victims. While BiH is not necessarily known to be a country of origin, the increasing number of victims of internal trafficking over the last few years\(^{23}\) testifies to the importance of such campaigns. Further, such campaigns can also be directed at the general public, and can also be used as information campaigns aiming at potential users (customers), educating them about human trafficking.

\(^{20}\) State Action Plan, p. 10

\(^{21}\) State Action Plan, p. 22

\(^{22}\) The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 6: Unification of data

(1) The central database on victims of trafficking in human beings and perpetrators of criminal offenses related to trafficking in human beings shall be established on the unified basis by creating a unique form which is to be completed during identification of the victim of trafficking in human beings. This form shall follow the system being developed in the State Investigation and Protection Agency of BiH (SIPA) within the competent Department monitoring the issues of trafficking in human beings in BiH.

(2) The SIPA shall compile statistical and other reports that will be used by the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH. All other police departments shall periodically deliver data on criminal offenses related to trafficking in human beings. Other authorized institutions in BiH and authorized organizations shall deliver data periodically as well.

\(^{23}\) State Action Plan, p. 6.
29. The Operational Plan envisions launching of such awareness raising campaigns that would target potential “users” of the victims, with an objective to reduce demand for sexual services of trafficking victims.\textsuperscript{24} The same Operational Plan also envisions activities directed at school-age children, whereby children at risk, such as children out of school or children from the Roma communities, would be directly targeted and provided with education on human trafficking issues, in order to reduce their risk of victimization.

30. In addition to these, The Rules on Domestic Victims lists “Sensitizing the Public”\textsuperscript{25} within the Chapter III as one of the prevention measures. It envisions that such sensitization activities are to be carried out by authorized institutions in BiH, with aim of familiarizing the public with the problem and reducing the prejudice.

31. It should also be noted that in BiH NGOs and IOs (such as IOM) who are involved in combating trafficking have in the past, with the help of external funding, run a number of different awareness raising campaigns, and it is likely that such campaigns will continue. Yet, the lack of comprehensive state-wide policy with regard to this issue does mean that such efforts may remain uncoordinated, thus resulting in both overlaps and gaps.

32. The CoE Convention also places importance on the continuous training of professionals who are engaged in anti-trafficking efforts, either working directly with victims or otherwise (Explanatory Note No. 103).

33. Further to the above, the SAP states that the capacity building through training of professional groups is among the cornerstones of the support systems in BiH.\textsuperscript{26} Already efforts have been made to develop and implement training programs for the judiciary, law enforcement, NGOs, educators and others, yet it is recognized that such efforts still fall short of the current needs, and the turnover among the professional groups contributes to continued need for training programs. In fact, institutionalizing and standardizing training programs for professionals dealing with anti-trafficking efforts is set forth as one of the objectives of the SAP.\textsuperscript{27}

34. To fulfill this objective, the Operational Plan proposes a number of specific measures. These include developing teaching materials or manuals that would become integral part of the police curriculum, developing materials that would become part of the curriculum for judges and prosecutors, developing teaching materials for professionals working in the field of social work, and introducing the topic of human trafficking into training programs for teachers.\textsuperscript{28} Proposal of such measures indicates that training of professionals is seen as an important part of anti-trafficking efforts.

\textsuperscript{24} State Action Plan, p 26.

\textsuperscript{25} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 18: Sensitizing the public

In accordance with the 2005-2007 State Action Plan for combating trafficking in human beings and illegal immigration in BiH and within the prevention program, the authorized institutions in BiH and authorized organizations shall conduct activities with the aim of sensibilization of the public regarding existence and recognition of the issue of trafficking in human beings, citizens of BiH, reduction of prejudice and organized information dissemination.

\textsuperscript{26} State Action Plan, p. 9

\textsuperscript{27} State Action plan, p. 10

\textsuperscript{28} State Action Plan, pp. 21-22
This approach is also echoed in the Rules on Domestic Victims, whereby it is stated that government and other organizations will continue to provide training, with an aim of improving cooperation, coordination, knowledge and standardization of the anti-trafficking activities in the country.\textsuperscript{29}

Social and Economic Initiatives

35. According to Explanatory Note No. 103 of the CoE Convention, social and economic initiatives should be seen as long term measures aimed at addressing underlining social and economic causes of trafficking, such as poverty in countries of origin. Given that BiH can be seen as country of both destination for international trafficking, and origin, given the increase in internal trafficking, such measures should address both the reasons behind BiH being a destination as well as a source country. It is relatively well established that lack of opportunity, inequality, discrimination, poverty and corruption are among the main factors associated with recruitment and trafficking from or within countries of origin. A lot less is known about countries of destination, and it is harder to pinpoint what social and economic factors contribute to countries becoming destination countries, other than low awareness, social context conducive to expansion of illegal activities (including pre-existing illegal networks and tolerant attitude towards the grey and black economy), and a legal framework in which human rights are not respected (including exploitative labor policies, quiet tolerance of violations of human rights, marginalization of certain groups or minorities, etc).

36. The SAP does not refer directly to any broad social or economic programs, although a few measures that can considered social and economic have been included into the Operation Plan. The first measure calls for introduction of anti-trafficking education in elementary and high schools, in a way that would make it a systematic and permanent part of the curriculum.\textsuperscript{30} This measure can be relevant for prevention of both trafficking into BiH, as well as within BiH. The second measure is related to registration of unregistered persons\textsuperscript{31}, and in particular children, in an attempt to improve the status of the disenfranchised groups, and therefore reduce the risk of them being recruited by trafficking rings. Further, the Operational Plan also includes plans to develop a multi-sector approach that would address the issue of children that work on the streets, by including them into the education system, again in order to reduce their risk of recruitment and consequent victimization.\textsuperscript{32}

37. It can be stated that a comprehensive policy that would address economic and social causes of trafficking problem in BiH has not been developed and has not been included into the SAP.

\textsuperscript{29} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 19: Education

The authorized institutions in BiH and authorized organizations shall continuously conduct training with the aim of planned and organized improving of cooperation and coordination of the authorized institutions and authorized organizations, undertaking of measures and activities to improve knowledge and standardization of activities and responsibilities related to prevention and combating trafficking in human beings.

\textsuperscript{30} State Action Plan, p. 25

\textsuperscript{31} State Action Plan, p. 26

\textsuperscript{32} State Action Plan, p. 25
Human Rights Based Approach / Gender Mainstreaming /Child Sensitive Approach

38. Paragraph 3 of the Art. 5 of the CoE Convention states that parties should promote a human rights approach, use gender mainstreaming, and adopt child sensitive approach in the development and implementation of prevention related policies. Further, Paragraph 5 of the same article also requires that state undertake specific measures geared towards reducing the vulnerability of children to trafficking, by creating a protective environment for them.

39. The principle of respect for human rights is stated as one of the pillars of the anti-trafficking efforts in BiH. It is also recognized that trafficking is related to gender discrimination, making non-discrimination another pillar of the approach. These principles are reflected in the Rulebook on Protection of Alien Victims of Trafficking in Persons (hereinafter the Rulebook on Alien Victims) as well as the Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings Who are Citizens of BiH (hereinafter the Rules on Domestic Victims) with specific paragraphs.

40. Yet, it is unclear from the Operational Plan how gender mainstreaming is to be accomplished, as it proposes no measures that would address this issue in particular.

41. Further, while Operational Plan does address issue of children to some extent (in particular Roma children, unregistered children, and children outside of the educational system), it does not include any measures that focus particularly on children in a broader context (addressing the components of protective environment, as cited in the Explanatory Note No. 106 to the CoE Convention). This of course should not mean that those components are not addressed by more general social policies, however their absence in SAP indicates that the general child protection policies are not necessarily seen as an integral part of the anti-trafficking efforts, and vice versa. It should, however be noted that the Rulebook on Alien Victims and the Rules on Domestic Victims do provide for special protections for children. In the Rulebook on Alien Victims a whole separate chapter (Chapter 5) that lays down special protections applicable to children has been dedicated to the issue. In the Rules on Domestic Victims, protection of the best interest of the child is clearly presented as one of the basic operational principles.

33 State Action Plan, p. 4.
34 State Action Plan, p. 5.
35 The Rulebook on Protection of Foreign Victims of Trafficking in Persons Article 5: Prohibition of Discrimination
Victims should not be subjected to discrimination on any grounds including gender, race, color, sex, language, religion, national or social origin, minority, property status, age, physical or psychical disability, status acquired by birth or any other status.
36 The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 3: Basic Operational Principles
(1) Non-discrimination and human rights compliance is the basic protection standard which all authorized institutions in BiH and authorized organizations shall equally ensure for all victims and victim-witnesses.
37 The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 3: Basic Operational Principles
Migration Policies, Border Control and Opportunities for Legal Immigration

42. The CoE Convention calls for a number of different measures related to cross-border migration to be taken with the aim of preventing trafficking. For instance, Art. 5 Par. 4 requires that, to the extent possible, legal migration into the countries should be made more accessible, in particular through dissemination of accurate information regarding migration possibilities. It should be noted that this paragraph calls for good dissemination of information, rather than relaxation of immigration policies. Furthermore, Art. 7 Par. 1 calls for parties to strengthen border control in a way that it prevents and detects human trafficking, and in Par. 5 requires that measures that would allow for denial of entry or revocation of visas for persons implicated in trafficking offenses are put in place. And finally, Art. 8 requires that parties adopt measures that would ensure that travel documents issued by the party are of good quality and not easy to be forged, altered or tempered with. All these measures are relevant for international trafficking only and serve as a general repetition of the provisions found in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), hereinafter referred to as the “Palermo Protocol”).

43. With regards to dissemination of accurate information, the State Ministry of Foreign Affairs through its website offers information, in English, regarding requirements for entry, visa regime, and application forms and procedures for visa applications. Further, the website includes contact information for BiH Embassies and Consulates around the world. Unfortunately, at this time this information is not available in other languages, making it inaccessible to potential victims. It should also be noted that BiH does not have Embassies in Ukraine and Moldova, which are the two main source countries for victims identified in BiH, but it does have one in Romania. This means that for Moldova and Ukraine, the possibilities for providing good information regarding migration opportunities into BiH are relatively limited. The SAP however, does call for the strengthening of cooperation between BiH and other countries, but mainly so in the area of cooperation with regard to judicial matters and in the context of victim repatriation.

44. Further to the above, there is room for development of more policies with regard to good dissemination of information regarding travel, work and migration opportunities in BiH.

45. Border control in BiH is carried out by the Border Police which is responsible for monitoring borders and border crossings, and admitting individuals into the country at the border crossings. The Law on Movements and Stay of Aliens and Asylum (hereinafter Law on Aliens and Asylum), however, set the conditions of entry into the country for foreigners, and conditions under which such entry can be

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

38 Website of the Ministry is http://www.mfa.gov.ba/

39 State Ministry of foreign Affairs, http://www.mfa.gov.ba/HTML/ENG/BiH_Ambasade_eng.html

40 State Law on Movements and Stay of Aliens and Asylum Article 19: General entry conditions
(1) An alien may enter BiH if he or she has a valid passport or other identification document that he or she may use for crossing the State border of BiH, provided that its validity does not expire on the day of entry into BiH (a valid travel document).

(2) In addition to the main general requirements referred to in paragraph (1) of this Article, the alien must meet the following basic general requirements for entry into BiH:

a) that he/she is in possession of a valid visa for entry or stay in or transit through the territories of BiH, the validity of which does not expire on the day of entry into BiH, if he or she does not enter BiH with a travel document issued the country whose nationals are exempted from the obligation of obtaining visas [Article 12 (Exemption from the obligation of obtaining visas)]; or

b) that he/she is in possession of a residence permit prescribed by this Law.

(3) In addition to the basic general requirements prescribed by paragraphs (1) and (2) of this Article, for entry into BiH the alien must also fulfill other general requirements for alien entry into BiH, as follows:

a) that he/she has the sufficient means to support himself/herself during the time of intended stay in and exit from BiH, including also health care means or proof that he/she is able to obtain them legally, which is proved as stipulated in Article 23 of this Law (Evidence of the existence of means of subsistence) of this Law,

b) that he/she is in possession of documents or that he/she may provide information on the basis of which it can be reasonably concluded what the purpose and conditions of the intended stay in BiH are, if possible and necessary;

c) that he/she is in possession of an entry visa, if so required, of a neighboring country of his/her destination or a neighboring country through the territory of which he/she continues the travel,

d) that he/she is in possession of a vaccination certificate, if coming from the territory on which there is epidemics of a contagious disease,

e) that no expulsion measure, cancellation of stay or prohibition of entry to BiH territory has been imposed against him/her, provided that the period of the imposed measure or the prohibition are still in force,

f) that he/she has not been registered in the records of competent authorities as an offender and in particular as an international offender,

g) that there are no reasons other than those referred to in sub-paragraphs e) and f) of this paragraph, indicating that his/her presence in the territory of BiH would constitute a threat to national security of BiH, legal order, public order and peace, public health in BiH or international relations of BiH.

(4) The aliens who are pursuant to Article 21 of this Law exempt from an obligation of obtaining a visa for entry into the territory of BiH and therefore do not have to meet the requirement prescribed in paragraph (2), must meet other general requirements for entry provided by paragraph (3) of this Article while entering BiH.

(5) The aliens who must be in possession of a visa in order to enter BiH, must also meet other general requirements for entry provided by paragraph (3) of this Article while filing an application for issue of their visas.

(6) When so being required by reasons of protecting national security of BiH, legal order, public order and peace or public health in BiH or other reasons arising from the international obligations of BiH, in addition to the entry requirements prescribed by paragraphs (1), (2) and (3) of this Article, the Council of Ministers may prescribe additional requirements for alien entry into BiH.

(7) The required minimum amount of funds for sustenance referred to in paragraph (3) sub-paragraph a) of this Article shall be regulated by a bylaw.

41 State Law on Movements and Stay of Aliens and Asylum Article 25: Reasons for entry refusal

(1) An alien shall be refused to enter BiH if he/she fails to meet the entry requirements referred to in Article 19 (General entry conditions) nor shall they be subject to application of the international treaty or decision referred to in Article 20 (Entry on special conditions) of this Law.
on persons wishing to enter the country. In particular, it prohibits those registered as international offenders from entering the country. This means that there are legal grounds for prohibiting those individuals previously identified as human traffickers from entering the country, even if they fulfills all other conditions for entry. It should also be noted that BiH requires entry visas for citizens of countries that have so far been identified as main source countries of victims identified in BiH (such as Ukraine, Moldova, and Romania42), and given that traffickers are often from the same countries as victims, this means that there is an additional opportunity for screening.

47. What must be noted, however is that BiH has long and rather porous border with Republic of Serbia, making it much easier for trafficker to enter the country from Serbia, both legally (due to the lack of visa regime with Serbia) as well as illegally (due to porous borders).

48. Furthermore, the issue of border control in not addressed in any way by the State Action Plan for 2008-2012.

49. Passports in BiH are issued by local authorities (cantonal MOIs in FBiH43, MOI of RS in RS44, and Public Register in BD45), whereas the technical characteristics of passports and other travel documents issued are determined centrally by a State level Agency for Identification Documents, Data Register and Data Exchange.46 In this way, despite the fact that passports are issued by a number of different bodies, quality and technical characteristics of passports are managed from a single centralized agency, allowing for better control and oversight. Therefore, regardless of whether someone lives in FBiH, RS or BD, all citizens of BiH use identical passports, made to the same standards. It is expected that in 2009 BiH will start issuing biometric passports47, which prevents easy forgery and alternations.

(2) An alien may be refused to enter BiH even if he/she fulfills the entry requirements referred to in Article 19 of this Law, if:

a) while entering the country he/she avoids to show the documents required for crossing the border to the authorized officer competent for the control of the border crossing, or he/she avoids to explain the circumstances relating to the fulfillment of the conditions for entry into BiH, or otherwise deliberately avoids the border control;

b) there are reasonable grounds to believe that he/she will be performing activities for which a work permit is required, without possessing such a permit, particularly with regard to an alien who has already been refused entry to BiH for the above mentioned reasons; or

c) there are reasonable grounds to believe that his/her stay in BiH shall not be used for the purpose indicated by the alien.

42 State Ministry of Foreign Affairs, 
  http://www.mfa.gov.ba/HTML/Ambasade/Preporuke_eng/Vize_eng.html

43 Links to cantonal MOIs can be found at this website 

44 The website of RS MOI is http://www.mup.vladars.net/index.lt.htm

45 Website of this agency is http://www.javniregistar.com/

46 Website of this Agency is http://cipsweb.iddeea.gov.ba/en_o_agenciji.php

Control and Supervision of Third Parties

50. The CoE Convention, in Art. 7 Pars. 2-4, requires that parties adopt measures to prevent means of transportation by commercial carriers from being used for human trafficking, by setting up requirements such that carriers are responsible for determining that all passengers have necessary travel documents required for entering the country, and by providing for sanction for those violating these rules. In the Explanatory Notes (Note No. 114), however, it is stated that commercial carriers cannot be held responsible for checking authenticity of such documents, but rather just whether travelers are in their possession.

51. Article 18 of the Law on Aliens and Asylum addresses this issue. According to this article, carriers are obliged to ensure that conditions set forth in the Art. 19 Pars. 1 and 2 of the Law (see footnote) have been satisfied by passengers. This means that passengers must have their passports before the carrier can deliver them to a BiH border crossing. Furthermore, the carrier is liable for covering the costs of return transportation of the foreigners when denied entry into BiH (when denial of entry resulted from not fulfilling conditions set forth by Art. 19).

52. Similar measures are applicable to tour operators. Article 154 of the Law on Aliens and Asylum stated penalties that are to be imposed on real and legal persons (carriers and/or tour operators) who act in violation of Art. 18. By setting these

48 State Law on Movements and Stay of Aliens and Asylum Article 18: Obligations of carriers and organizers of tourist or similar travel

(1) A carrier may bring an alien to a border crossing post only if the alien has fulfilled the general requirements for entry into BiH, as referred to in Article 19 (General entry conditions), paragraphs (1) and (2) of this Law.

(2) The carrier shall:

a) transport from the border crossing post and return to the first state from which it transported the alien to BiH, the alien to whom entry into BiH has been denied because he or she fails to meet the basic general requirements for entry into BiH referred to in Article 19, paragraphs (1) and (2) of this Law, and shall do so without delay and at its own expense, and

b) cover the costs of stay the alien in BiH, referred to in sub-paragraph a) of this paragraph.

(3) The obligations of the carrier referred to in paragraphs (1) and (2) of this Article shall not apply to an alien arriving at the territory of BiH directly from the territory where his or her lives or freedoms were endangered and who has requested international protection from BiH.

(4) A tour operator arranging a tourist or similar travel in BiH shall have the obligation to cover for the aliens receiving such services, the costs of their removal from BiH and costs of their stay in BiH, provided that the aliens are coercively removed by reason of failing to meet the basic general requirements for entry into BiH referred to in Article 19, paragraphs (1) and (2) of this Law, and at the same time the alien is unable cover these costs him/herself.

(5) These matters shall be further regulated by a bylaw of the Council of Ministers, upon the proposal of the Ministry sent after an opinion was obtained from the Ministry of Transport and Communications of BiH.

49 State Law on Movements and Stay of Aliens and Asylum Article 154: Misdemeanour penalties for violations of the provisions of Article 18

(1) Fine in the amount of KM 2000 to KM 5000 shall be imposed for a misdemeanour against a natural person who as carrier contrary to Article 18 (Carriers' obligations) paragraph (1) of this Law, brings to a border crossing of BiH an alien who does not meet the conditions for entry into BiH stipulated by Article 19 (General entry conditions) paragraphs (1) and (2) of this Law.

(2) A legal person that commits this offense referred to in paragraph (1) of this Article as a carrier shall be fined KM 3000 to KM 10000.
fines, the Law satisfies the requirements set forth by the CoE Convention as well as the commitment set out in Part IV, par. 5.1 of the OSCE Action Plan, which states that states commit themselves to “adopting or reviewing laws, administrative controls and procedures relating to the licensing and operation of sectors of business that, according to intelligence, may be involved in trafficking, such as employment, tourist, au pair, adopting or mail-order bride agencies, as well as hotels and escort services”.

51. It is also expected that this issue will be further regulated by means of secondary regulations. Art. 158 requires that the Council of Ministers enacts by-laws that will facilitate implementation of the provisions in practice. A draft of such regulation has been prepared, and currently is in the process of evaluation.

4. PART B: LEGISLATION RELATED TO PROSECUTION

Liability for Trafficking

52. Trafficking in human beings has been defined as a distinct offense by the Criminal Code of Bosnia and Herzegovina (hereinafter, State CC), since 2003. The current version of the Article 186 of the State CC that defines the offense has been introduced through an amendment (Law on Amendments to the Criminal Code of Bosnia and Herzegovina) that came into force on 6 January, 2005. Consequently, the current version of the relevant article reads as follows:

(1) Whoever, by means of use of force or threat of use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position or of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbours orreceipts a person, for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of organs or of the other type of exploitation, shall be punished by imprisonment for a term between one and ten years.

(2) Whoever recruits, transports, transfers, harbours or receipts a child or a juvenile for the purpose of the exploitation referred to in paragraph 1 of this Article,

shall be punished by imprisonment for a term not less than five years.

(3) Whoever organises or directs at any level the group of people for the purpose of perpetration of the criminal offenses referred to in paragraphs 1 and 2 of this Article,

(3) For misdemeanour referred to in paragraph (1) of this Article, a responsible individual within the legal person shall also be fined KM 2000 to KM 5000.

50 State Law on Movements and Stay of Aliens and Asylum Art. 158: Deadlines for enactment of by-laws of the Council of Ministers under this Law

(1) The Council of Ministers shall, upon the proposal of the Ministry forwarded after obtaining the opinion of the Ministry of Transport and Communications BiH, enact a by-law under Article 18 (Carriers' obligations) paragraph (5) of this Law which in further detail regulate the matters regarding obligations of a carrier who brings an alien to a border crossing of BiH, within six months from the day this Law enters into force.
shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

(4) The circumstance whether a person consented to the exploitation referred to in paragraph 1 of this Article is of no relevance for the existence of a criminal offense of trafficking in persons.

53. When the current definition is compared with the paragraph a) of the article 4 of the CoE Convention, and Article 3 of the Palermo Protocol it is evident that definition adopted by the BiH law is very similar to that one put forward by both international instruments. However, the State CC deals with the issue of consent, in a different way, that is, by simply stating that consent is irrelevant, while the CoE Convention states that the consent is irrelevant if one of the means described by the definition has been used (Art. 4 Par. b).

54. Regarding children, the CoE Convention definition states that consent is irrelevant in all cases (Art. 4 Par. c). In this sense, the State CC is more progressive than both abovementioned international instruments as it simply states that consent is in all cases irrelevant, when means are present or not, or whether the victims is an adult or a child.

55. The Criminal Codes of the Federation of BiH (hereinafter FBiH CC) and of Brcko District (hereinafter BD CC) do not define human trafficking as a separate offense, while the Criminal Code of Republika Srpska (hereinafter RS CC) defines only human trafficking for the purpose of prostitution (Art. 198) as a distinct offense. While the term “trafficking” is used in this article, an examination of how trafficking is defined in this article makes it clear that this definition does not fit that of Palermo Protocol or CoE Convention. In fact it could be said that the term is misused, as it actually refers to pimping and enticing into prostitution. Paragraph 2 of this article does refer to forced prostitution, yet it does not fulfill the action (transfer, recruitment, harboring) element of the trafficking term, as defined by both Palermo and CoE Convention definitions. This article, in fact, is in wording almost identical to

51 RS CC Article 198: Trafficking in Human Beings for the Purpose of Prostitution

(1) Whoever, in order to achieve material gain, entices, incites or lures another into prostitution or whoever, in any way, enables turning a person over to another for the exercise of prostitution or whoever, in any way, takes part in organizing or managing prostitution,

shall be punished by imprisonment for a term of between six months and five years.

(2) Whoever, in order to achieve material gain, forces another into prostitution by force or threat with force or with infliction of harm or deceives another into prostitution,

shall be punished by imprisonment for a term of between one and five years.

(3) The punishment under paragraph 2 of this article shall be applied to anyone who, in order to achieve material gain, has forced or incited a person into prostitution in the manner set out in paragraph 2 of this article by taking advantage of any hardship the person may be suffering by being a foreigner in the country or who professionally engages another person to do so.

(4) Whoever commits any criminal offense under paragraphs 1 and 3 of this article against a child or juvenile,

shall be punished by imprisonment for a term of between one and twelve years.

(5) No account shall be taken of any record of prostitution of any person who has been enticed, incited, lured or forced into prostitution under this Article.
those defining the offense of enticing into prostitution in FBiH CC and BD CC. Hence, despite the fact that this article does exist in the Criminal Code of the RS, it does not satisfy the provisions on definition set out in the Palermo Protocol and the CoE Convention. The misuse of the term can give raise to confusion in the application of the law, and can be misleading when it comes to statistics regarding prosecutions in association of human trafficking.

57. Consequently, it can be concluded that trafficking in human beings is defined as a separate offense only at the State level, and not at the Entity or BD levels. While entity criminal codes define a number of other offenses that when put together address human trafficking, it should be kept in mind that definition on the State level is effectively sufficient. Article 11\textsuperscript{52} of the State CC states that the State Criminal Code applies to anyone who perpetrates the offense in question within its territory, meaning that despite the fact that human trafficking is not properly (or at all) defined in entity codes, effectively the offense exists for any area of the country. In this sense, and in line with Explanatory Notes of the CoE Convention, it can be said that the Article 18 of the CoE Convention has been satisfied.

**Liability for Auxiliary Crimes**

58. A number of acts that may be associated with trafficking are defined by the Criminal Code of BiH, such as:

- Establishment of Slavery and Transport of Slaves (Article 185)\textsuperscript{53};
- International Procuring in Prostitution (Article 187)\textsuperscript{54};

\textsuperscript{52} State CC Article 11: Applicability of Criminal Legislation of Bosnia and Herzegovina to Those Perpetrating a Criminal offense within the Territory of Bosnia and Herzegovina

(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates criminal offense within its territory.

(2) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offense aboard a domestic vessel, regardless of its location at the time of perpetration of the offense.

(3) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offense aboard a domestic civil aircraft while in flight, or aboard a domestic military aircraft, regardless of its location at the time of perpetration of the offense.

\textsuperscript{53} State CC Article 185: Establishment of Slavery and Transport of Slaves

(1) Whoever, in violation of the rules of international law, places another in slavery or in a similar status or keeps him in such a status, buys, sells, hands over to another person or mediates the purchase, sale or handing over of such a person or induces someone else to sell his freedom or the freedom of the person he provides for or takes care of, shall be punished by imprisonment for a term between one and ten years.

(2) Whoever, in violation of the rules of international law, buys, sells, hands over to another person or mediates in the purchase, sale or handing over a child or a juvenile for the purpose of adoption, transplantation of organs, exploitation by labour or for other illicit purposes, shall be punished by imprisonment for a term not less than five years.

(3) Whoever, in violation of the rules of international law, transports persons who are in a position of slavery or in similar status, shall be punished by imprisonment for a term between six months and five years.

\textsuperscript{54} State CC Article 187: International Procuring in Prostitution
• Unlawful Withholding of Identity Papers (Article 188)\(^5\);  
• Smuggling of Persons (Article 189)\(^6\);  
• and Torture and Other Cruel, Inhuman or Degrading Treatment (Article 190).\(^7\)

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

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

(3) If the criminal offense referred to in paragraphs 1 and 2 of this Article is perpetrated against a child or a juvenile, the perpetrator
shall be punished by imprisonment for a term between one and ten years.

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

\(^5\)State CC Article 188: Unlawful Withholding of Identity Papers
Whoever, with an aim of limiting the freedom of movement or exercising power over a person unlawfully withholds another person’s identification or travel paper\(^5\),
shall be punished by imprisonment for a term between six months and five years.

\(^6\) State CC Article 189: Smuggling of Persons
(1) Whoever, out of gain, transports across the state border one or more persons that do not comply with the requirements for legal entry across the state border, or whoever enables another person to cross the border illegally,
shall be punished by imprisonment for a term between six months and five years.

(2) Whoever, out of gain, enables a person who is not a citizen or permanent resident of a receiving state to remain in the territory of that state without complying with the requirements for legal stay,
shall be punished by a fine or imprisonment for a term not exceeding three years.

(3) If, during the perpetration of the criminal offense referred to in paragraph 1 of this Article, life or safety of persons transported across the state border was endangered or was likely to be endangered, or they were treated for the purpose of exploitation or in another inhuman or degrading manner, the perpetrator
shall be punished by imprisonment for a term between one and eight years.

(4) If, during the perpetration of the criminal offense referred to in paragraph 2 of this Article, life or safety of persons to whom illegal stay in the territory of a receiving state was enabled was endangered or was likely to be endangered, or they were treated for the purpose of exploitation or in another inhuman or degrading manner, the perpetrator
shall be punished by imprisonment for a term between six months and five years.

(5) Whoever organizes or directs at any level a group of people for the purpose of perpetrating the criminal offense referred to in paragraphs 1 and 2 of this Article,
shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

\(^7\) State CC Article 190: Torture and Other Cruel, Inhuman or Degrading Treatment
An official or another person who, acting upon the instigation or with the explicit or implicit consent of a public official person, inflicts on a person physical or mental pain or severe physical or mental suffering for such purposes as to obtain from him or a third person information or a confession, or to
59. The Criminal Procedure Code of BiH (hereinafter *State CPC*) allows the indictments to include more than one charge, or charges for more than one offense (Art. 227 Par. 2\(^{58}\)), and similarly allows for a verdict to be reached for each charge separately, meaning that an offender could potentially be charged a number of offenses relevant to the particular circumstances of the offense.

60. Offenses such as rape or assault are not dealt with by the State CC. A number of different offenses that can be considered as auxiliary are defined as punishable under entity and BD criminal codes, such as (but not limited to):

- Prohibited Transplanting of Parts of a Human Body (FBiH CC Art. 231 RS CC Art. 217) (such article missing from BD code);
- Rape (FBiH CC Art. 203, RS CC Art. 193, BD CC Art. 200);
- Forced sexual intercourse (FBiH CC Art 206, BD CC Art. 203);
- Murder (FBiH art 166, RS. Art. 148, BD CC Art. 163);
- Illegal abortion (including forced) abortion FBiH CC Art. 171, RS CC Art. 154, BD. Art. 168);
- Grievous bodily harm (FBiH CC Art. 172, RS CC Art. 156, BD CC Art. 169);
- Unlawful deprivation of freedom (FBiH art 179, RS CC Art. 166, BD. Art. 176);
- Enticing into prostitution (FBiH CC Art. 210, BD CC Art. 207) / Trafficking in human beings for the purpose of prostitution (RS CC Art. 198);  
- Money laundering (FBiH CC Art. 272, RS CC Art. 280);
- Documents forgery (FBiH CC Art 373; RS CC Art. 377, BD CC Art. 367),
- Breach of right arising out of employment (FBiH CC Art. 280) / Violation of fundamental rights of employees (RS CC Art. 226) / Violations of labor relations rights (BD CC Art. 274).

61. Prostitution as such, (both from the position of the client and of the position of sex workers) is not criminalized by either State or Entity Criminal Codes. Rather enticing into prostitution and pimping are criminalized. However, according to RS Law on Public Order and Peace, public solicitation is treated as misdemeanor (Art. 7) in RS. The same law does not define paying for sex or receiving payments for sex as misdemeanors. The Law on Public Order and Peace of BD, establishes receiving payment for sex as a violation (Art. 3 Par. 14, punishable by a fine), while paying for sex is not considered a violation. No similar law exists on the level of FBiH, and individual cantons pass their own laws on public order and peace. The Law on Public Order and Peace of Tuzla canton, for example, includes approaches similar to that of BD, whereby receiving payment is a misdemeanor (Art. 3 Par. 19; punishable by a fine or up to 60 days in jail), while making payments is not. The same is the case with

\(^{58}\) State CPC Article 227: Contents of the indictment  
(2) An indictment may cover more than one criminal offense or more than one suspect.
the Law on Public Order and Peace of the HN canton (Art. 9, fine or up to 60 days in jail).

62. It ought to be noted that Article 19 of the CoE Convention calls upon state parties to consider criminalizing the use of services of trafficking victims in cases whether the client/user of services knew that the person in question is indeed a trafficking victim. This is a non-binding provision of the CoE convention. It is also noteworthy that the CoE Convention does not refer only to use of sexual services, thus, use of labour services of all kinds should be included if a state decides upon introducing such provisions.

63. Further to the above, there is no legislation, at State, Entity or Cantonal level which, deals with this particular issue. In this sense, users of services of trafficked victims are currently not subject to prosecution, whether they knew about the victim’s status or not.

**Liability for Attempts, Aiding and Abetting**

64. Article 26 of the State CC\(^{59}\) refers to attempts, and states that offenses for which potential punishments is three or more years are subject to same prosecution and same punishments even when the offense has not been completed, although punishment may be reduced. Given that trafficking carries a sentence of up to 10 years, it is clear that attempted trafficking can be subject to prosecution under this article.

65. When it comes to the issue of aiding and abetting the articles 29, 31 and 32 of State CC are relevant.\(^{60}\) These articles deal with issues of accomplices to crime,

\(^{59}\) State CC Article 26: Attempt

(1) Whoever intentionally commences execution of a criminal offense, but does not complete such offense, shall be punished for the attempted criminal offense when, for the criminal offense in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offenses when the law expressly prescribes punishment of the attempt alone.

(2) An attempted criminal offense shall be punished within the limits of the punishment prescribed for the same criminal offense perpetrated, but the punishment may also be reduced.

\(^{60}\) State CC Article 29: Accomplices

If several persons who, by participating in the perpetration of a criminal offense or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offense, shall each be punished as prescribed for the criminal offense.

State CC Article 31: Accessory

(1) Whoever intentionally helps another to perpetrate a criminal offense shall be punished as if he himself perpetrated such offense, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offense: giving advice or instructions as to how to perpetrate a criminal offense, supplying the perpetrator with tools for perpetrating the criminal offense, removing obstacles to the perpetration of criminal offense, and promising, prior to the perpetration of the criminal offense, to conceal the existence of the criminal offense, to hide the perpetrator, the tools used for perpetrating the criminal offense, traces of the criminal offense, or goods acquired by perpetration of the criminal offense.

State CC Article 32: Limitations in Responsibility and Punishability of Collaborators

(1) The accomplice shall be considered criminally responsible within the limits set by his own intent or negligence, and the inciter and the accessory within the limits of their own intent.
accessory to crime, and limitations of the responsibility of collaborators to the offense. These articles stipulate that participation in the offense, contributing to the offense, joint preparation of the offense, helping another to commit an offense, and similar, are all punishable as proscribed by the offense in question. In this sense, criminal code on BiH is in line with the requirements set forth by the CoE convention.

Non-punishment of Victims

66. The Criminal Code of BiH does not at any point deal with the decriminalization and non-punishment of victims of crimes, whether in relation to trafficking in human beings or otherwise. Duress is not specified in State CC as an affirmative defense, therefore criminal law by itself does not guarantee that victims will not be prosecuted or punished for any potential offenses that they may have committed in the process of their victimization. The situation is the same with entity and Brcko district Criminal Codes.

67. However, the Rulebook on Alien Victims in Art. 4 states the following:

Acting organs will not initiate procedures against the victims of trafficking due to their illegal entry or stay or for the act of prostitution or for possession or using of forged documents provided such acts were committed as a consequence of trafficking in persons.

To some extent this protects foreign victims from criminal prosecution and other procedures, yet this protection is limited to actions mentioned in the article: a) illegally entry and(or) stay; b) acts of prostitution, and c) using of forged documents. Thus for example, a victim trafficked from abroad and forced to commit petty crimes, for example, would not be protected against prosecution for such crimes. Further, the Rulebook in question applies solely to foreign victims.

68. The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human being, which is the only instrument dealing specifically with the domestic victims of trafficking, does not include similar provision, meaning that domestic victims of trafficking are in no way protected from prosecution in relation to offenses that they may have committed while being trafficked. Thus, for example, while prostitution (selling sex) is not defined as criminal offense by State CC, some cantons and BD defines it as violation of public order, as discussed earlier, and it is punishable by jail. From technical legal point of view, a domestic victim of trafficking would not be protected from receiving this sentence despite the fact that she was a victim of trafficking.

69. In this regard, it can be said that current legislation is not in line with the CoE Convention Art. 26, as domestic victims are not protected in any way from prosecution and punishments, and foreign victims are only protected for certain actions and not others.

(2) The court shall refrain from imposing a punishment on an accomplice, inciter or accessory that has voluntarily prevented perpetration of the criminal offense.

(3) The personal relations, characteristics and circumstances to which the law attaches the exclusion of criminal responsibility, or by reason of which it permits or provides for the remission of punishment or its mitigation may be taken into consideration only if they are inherent to such perpetrators, accomplices, inciters or accessories.
Corporate liability

70. Chapter XIV of the State CC deals with the criminal liability of the legal persons. Relevant articles in this chapter state that legal persons, both domestic and foreign, shall be liable for criminal offenses committed within the territory of BiH (Art. 123 Par.161). Article 124 states the basis of liability as follows:

For a criminal offense perpetrated in the name of, for account of or for the benefit of the legal person, the legal person shall be liable:

a) When the purpose of the criminal offense is arising from the conclusion, order or permission of its managerial or supervisory bodies; or

b) When its managerial or supervisory bodies have influenced the perpetrator or enabled him to perpetrate the criminal offense; or

c) When a legal person disposes of illegally obtained property gain or uses objects acquired in the criminal offense; or

d) When its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees.

71. This above provided definition is in line with CoE Convention, as defined by Explanatory Notes No. 247-251. First it makes legal persons liable for criminal actions performed on their behalf, whether by persons in leading positions, or by others influenced by persons in leading positions, or as a result of failure of supervision of the employees. Finally, Paragraph 3 of Article 125 of the State CC stipulates that corporate liability does not exclude individual liability, which is also

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61 State CC Article 123 Territorial Applicability of this Code regarding Criminal Liability of Legal Person

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offenses perpetrated within the territory of Bosnia and Herzegovina.

(2) Domestic and foreign legal persons shall, pursuant to this Code, also be liable for a criminal offense perpetrated outside the territory of Bosnia and Herzegovina if the legal person has its seat in the territory of Bosnia and Herzegovina or if it carries out its activities in the territory of Bosnia and Herzegovina, or if the offense was perpetrated against the State of Bosnia and Herzegovina, its citizens or domestic legal persons.

(3) Pursuant to this Code a domestic legal person shall also be liable for a criminal offense perpetrated outside the territory of Bosnia and Herzegovina against a foreign state, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 12 (Applicability of Criminal Legislation of Bosnia and Herzegovina for Offenses Perpetrated Outside the Territory of Bosnia and Herzegovina) of this Code.

62 State CC Article 125: Limits of Liability of a Legal Person

(1) With the conditions referred to in Article 124 (Basis of Liability of a Legal Person) of this Code, a legal person shall also be liable for a criminal offense when the perpetrator is not criminally liable for the perpetrated criminal offense.

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offense.

(3) For criminal offenses perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 124, item d) of this Code, and in that case the legal person may be punished less severely.

(4) When in the legal person except from the perpetrator there is no other person or body that could direct or supervise the perpetrator, the legal person shall be liable for the criminal offense within the limits of the perpetrator’s liability.
required by the CoE Convention. Therefore it can be concluded that legislation is in line with the CoE Convention with regard to the matter of corporate liability in criminal matters. These provisions, by the nature of the fact that they are the part of the criminal code refer only to criminal liability.

**Liability for ownership of premises used for trafficking**

72. In addition to more general provisions mentioned above, liability in relation to the ownership of the premises used for trafficking is also indirectly addressed though prostitution related articles in local laws on Public Order and Peace. That is, RS Law on Public Order and Peace treats renting space for the purpose of prostitution (both letting and leasing) a violation punishable by a fine or up to 60 days in jail. Legal persons and businesses can also be liable in this sense, as well as responsible officers of the business in question (Art. 7). Further, BD Law on Public Order and Peace takes similar approach making it a violation to let space for the purpose of prostitution, as well as some cantons (Tuzla). Other cantons, such as HN do not deal with the issue of letting space for prostitution in any fashion.

73. Further to the above, and in order to meet the requirements of the CoE Convention it is recommended that liability for the renting or use of premises for trafficking which involves any form of exploitation (and not just sexual exploitation) be established. For instance, the renting and use of premises for sweatshop operations, could also fall within the ambit of such provisions.

**Liability for Acts Related to Falsification of Documents**

74. The CoE convention also requires that forging, procuring and providing of such (fake) travel or identity documents, as well as retaining, removing, concealing, damaging or destroying of personal identity documents (whether originals or forgeries) is a criminal offense. These issues have been addressed to a certain extent by both State CC as well as entity criminal codes.

75. The State CC criminalizes unlawful withholding of identity papers (Art. 188\(^{63}\)). This article specifically aims at cases when such papers are withheld for the purpose of limiting the freedom of movement or exercising power, which is often the case in human trafficking incidents. This is punishable by 6 month to 5 year imprisonment.

76. The issue of withholding documents is also addressed by the Law on Aliens and Asylum in Art. 149 Par. 2.\(^{64}\) This article states that legal or natural persons, carriers or those providing accommodation services, or travel arrangement services to

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\(^{63}\) State CC Article 188 : Unlawful Withholding of Identity Papers

Whoever, with an aim of limiting the freedom of movement or exercising power over a person unlawfully withholds another person’s identification or travel paper, shall be punished by imprisonment for a term between six months and five years.

\(^{64}\) State Law on Movements and Stay of Aliens and Asylum Article 149: Misdemeanor penalties for violations of the provisions of articles 13, 49, 61, 66 and 74

(2) Legal or natural persons who are carriers or who provide the accommodation services or travel arrangement services, shall be fined, for minor offense, KM 100 to KM 500 if they withhold or attempt to withhold the travel document or identification document of an alien contrary to Article 13, paragraph (2) of this Law.

(3) For minor offense referred to in paragraph (2) of this Article, a responsible individual within the legal person shall also be fined KM 100 to KM 500.
foreigners shall be fined if they withhold or attempt to withhold travel or identification documents of a foreigner. Fines prescribed are not particularly high (100-500 KM) considering the effect that withholding of such document can have on a person in a foreign country. It may therefore be considered whether the liability is sufficiently heavy.

77. The State CC does not address the issue of document forgery. This is, however, addressed by entity and BD criminal codes in a more less an identical fashion (FBiH CC Art 373; RS CC Art. 377, BD CC Art. 367), by punishing creating forged or altering genuine documents or using such document with a fine of with up to three years in prison.

78. Consequently it can be concluded that Art. 20 of the CoE Convention has not been fully addressed by the legislation. Forging and use of forged documents is addressed by entity laws, while withholding documents has been addressed by both State CC and the Law on Foreigners. Damaging or destroying documents, or concealing them has not been addressed properly. Further, procuring or providing of forged documents has not been explicitly addressed either.

**Sentences and Punishments Prescribed by the Law**

79. Art. 23 of the CoE Convention stipulates that punishments that are prescribed for an offense of human trafficking and other associated offenses need to be “effective, proportionate and dissuasive”. Further it requires that measures that enable for confiscation or otherwise deprivations of instrumentalities and proceeds of the offense or property are in place, for both legal and real persons. Finally, it also requires that measures that enable temporary or permanent closure of establishments involved in human trafficking, or that deny activity of the perpetrator are in place, again for both legal and real persons. Further, for legal persons it requires that they should be subject to “criminal or non-criminal sanctions or measures, including monetary sanctions.”

**Real persons**

80. When it comes to real persons, these issues are tackled by the State CC through a few different instruments: Criminal punishments, security measures, confiscation of material gains, and loss of rights as a consequence of conviction.

81. As already mentioned, the sentence for trafficking in persons as defined by State CC is one to 10 years, or long term imprisonment for those who organize a group of people with aim of committing this offense. Art. 23 of the CoE Convention requires that sentence envisioned for trafficking should involve deprivation of liberty such that it “can give rise to extradition”. A sentence of 1-10 years satisfies the first requirement. The State CPC sets forth the condition of extradition of non-BiH citizens to other countries from BiH (Art. 415) and to BiH (Art. 428), and the length of

65 State CPC Article 415: Requirements for Extradition
(1) The requirements for extradition shall be as follows:
a) that a person whose extradition has been requested is not a citizen of Bosnia and Herzegovina;
b) that a person, whose extradition has been requested, has not been granted an asylum in Bosnia and Herzegovina, or that the person in question had not filed a motion for asylum until the moment of filing the request for extradition in Bosnia and Herzegovina;
c) that the offense on the basis of which the extradition has been requested was not committed in the territory of Bosnia and Herzegovina, against it or its citizen;
sentence is not among the conditions, making it thus possible, given that all other conditions stipulated in this article are satisfied, to extradite persons to other countries for prosecution.

82. For other relevant offenses, sentences envisioned are as follows:

- International Procuring in Prostitution (State CC, Art. 187): 6 month – 5 years imprisonment; or 1-10 years imprisonment when victims is a child or a juvenile;
- Unlawful Withholding of Identity Papers (State CC, Art. 188): 6 months- 5 years imprisonment;
- Smuggling of Persons (State CC, Art. 189): 6 month – 5 years imprisonment, or 1 - 8 years imprisonment when safety of persons transported in endangered;

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d) that the offense on the basis of which the extradition has been requested constitutes a criminal offense under the domestic legislation as well as under the legislation of the state in which it was committed;
e) that the offense on the basis of which the extradition has been requested is not a political or military criminal offense;
f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the domestic legislation before the alien is taken into custody or examined as a suspect or accused, that the alien whose extradition has been requested has not been convicted for the same criminal offense by a domestic Court or that he has not been validly released by the domestic Court with regard to the same offense, unless conditions have been obtained for a renewal of the criminal proceedings as provided for by this Code, or that no criminal proceedings were instituted in Bosnia and Herzegovina against the alien for the same criminal offense, and if the proceedings were instituted for an offense committed against a citizen of Bosnia and Herzegovina it is required that compensation insurance was deposited for the claim under property law of the injured party;
g) that the identity of the person whose extradition has been requested is verified;
h) that there are sufficient evidence for a suspicion that the alien whose extradition has been requested committed a criminal offense or that there is a valid verdict;
i) that the extradition of an alien has not been requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views and that his extradition has not been requested on the grounds of a criminal offense that carries a death sentence under the legislation of the country which has requested the extradition unless the state which has requested the extradition has granted a guarantee that no death sentence shall be pronounced or executed.

(2) Domestic legislation, in terms of Item d) of Paragraph 1, of this Article shall be understood to mean the legislation of Bosnia and Herzegovina, legislation of the Federation of Bosnia and Herzegovina, legislation of Republika Srpska and legislation of the Brčko District of Bosnia and Herzegovina.

(3) Domestic Court, in terms of Item f) of Paragraph 1, of this Article shall be understood to mean all Courts in the territory of Bosnia and Herzegovina in charge of criminal matters.

66 State CPC Article 428: Filing Request for Extradition

(1) If criminal proceedings are conducted in Bosnia and Herzegovina against the person who is situated in a foreign state, or if a domestic Court has imposed a sentence on the person who is situated in a foreign state, the Minister of the competent Ministry of Bosnia and Herzegovina may submit the request for extradition.

(2) The request shall be submitted through diplomatic channels and documents and data referred to in Article 416 of this Code shall be attached to it.
or 10 years imprisonment or more when one organizes or directs a group for the purpose of committing this offense;

- Torture and Other Cruel, Inhuman or Degrading Treatment (State CC, Art. 190): 1-10 years imprisonment;
- Establishment of Slavery and Transport of Slaves (State CC, Art. 185): 1-10 years imprisonment;
- Withholding travel of identity documents (Law on Aliens and Asylum, Art. 149 Par. 2): Fine 100 KM- 500 KM.
- Document forgery (FBIH CC Art 373; RS CC Art. 377, BD CC 367): fine or up to 3 years of imprisonment.

83. Objective criteria for determining whether a particular sentence or its range is “effective, proportionate and dissuasive” do not exist, and research on deterrent effects of punishment still does not provide any definitive answers, except that longer sentences do not necessarily result in deterrence. Consequently, it is hard to make a definitive evaluation as to whether the sentences listed above fulfill the criteria set forth by CoE Convention in this regard, and ultimately whether they achieve their aim.

84. For real persons two different types of security measures that may be imposed are relevant: Ban of Carrying out Certain Occupations (Art. 73\(^{67}\)) and Forfeiture (Art. 74\(^{68}\)).

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\(^{67}\) State CC, Article 73: Ban on Carrying out a Certain Occupation, Activity or Duty

(1) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed to a perpetrator who perpetrates a criminal offense with regard to property entrusted or accessible to him by virtue of his occupation, activity or duty, if there is a danger that such role could induce the perpetrator to perpetrate another criminal offense through the abuse of the occupation, activity or duty with regard to the property entrusted or accessible to him.

(2) The security measure of ban on carrying out a certain occupation, activity or duty may be imposed for a term which exceeds one but does not exceed ten years, counting from the date the decision becomes final, with the provision that the time spent serving the punishment of imprisonment shall not be credited towards the term of this security measure.

(3) As in the case referred to in Article 43 (Community Service) paragraph 5 of this Code, the execution of imprisonment may be ordered against the perpetrator of a criminal offense who, while performing community service as a substitute to imprisonment, fails to act in accordance with the ban on carrying out a certain occupation, activity or duty.

(4) The perpetrator of a criminal offense who does not act in accordance with the ban on carrying out a certain occupation, activity or duty during a probation period set in a suspended sentence, may be treated pursuant to the provision of Article 63 (Revocation of Suspended Sentence Caused by Failure to Fulfil Particular Obligations) of this Code.

\(^{68}\) State CC Article 74: Forfeiture

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offense, or to those that resulted from the perpetration of a criminal offense, when there is a danger that those objects will be used again for the perpetration of a criminal offense or when the purpose of protecting the public safety or moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety or moral reasons so require, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture in the case of paragraph 2 of this Article.
When it comes to forfeiture, Article 74 of the state CC in paragraph 1 states the following:

Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offense, or to those that resulted from the perpetration of a criminal offense, when there is a danger that those objects will be used again for the perpetration of a criminal offense or when the purpose of protecting the public safety or moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

This article allows for forfeiture of “instrumentalities”, as required by Art. 23 of CoE Convention. However, it is unclear how this article of the CC would, and if at all, apply to premises where the offense has taken place, in the case of human trafficking a factory, bar, or a hotel, given that it refers to “objects” and not “real property” as such. While the same article can be used as a security measure against legal persons, as will be mentioned later, when it comes to real persons “deprivation of instrumentalities” through this article remains somewhat incompletely addressed.

The ban on carrying out certain occupations (Art. 73) has rather specific wording which makes it of limited usefulness. The paragraph 1 of this article is as follows:

The security measure of ban on carrying out a certain occupation, activity or duty may be imposed to a perpetrator who perpetrates a criminal offense with regard to property entrusted or accessible to him by virtue of his occupation, activity or duty, if there is a danger that such role could induce the perpetrator to perpetrate another criminal offense through the abuse of the occupation, activity or duty with regard to the property entrusted or accessible to him.

Given that the article clearly refers to property entrusted, it can be of limited use when dealing with traffickers. This article is formulated with offenses such as embezzlement in mind.

Chapter XII of the State CC deals with confiscation of material gain resulting from criminal offense and with loss of rights as a consequence of the conviction. When it comes to confiscation, according to relevant articles (Art. 110-112)

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69 State CC Article 110: The Basis of the Confiscation of Material Gain

(1) Nobody is allowed to retain material gain acquired by the perpetration of a criminal offense.

(2) The gain referred to in paragraph 1 of this Article shall be confiscated by the court decision, which established the perpetration of a criminal offense, under the terms set forth under this Code.

(3) The court may also confiscate the gain referred to in paragraph 1 of this Article in a separate proceeding if there is a probable cause to believe that the gain derives from a criminal offense and the owner or possessor is not able to give evidence that the gain was acquired legally.

State CC Article 111: Ways of Confiscating Material Gain

(1) All the money, valuable objects and every other material gain acquired by the perpetration of a criminal offense shall be confiscated from the perpetrator, and in case the confiscation is not feasible - the perpetrator shall be obliged to pay an amount of money which corresponds to the acquired material gain. Material gain acquired by perpetration of a criminal offense may be confiscated from persons to whom it has been transferred without compensation or with a compensation which does not correspond to the real value, if the persons knew or should have known that the material gain had been acquired by the perpetration of a criminal offense.

(2) If proceeds of a criminal offense have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation not exceeding the assessed value of the intermingled proceeds.
material gain acquired through criminal offense are subject to confiscation. Further, if confiscation is not feasible, the perpetrator shall be required to pay an amount corresponding to that of acquired material gain. If material gain has been converted to property, the gains converted into property may also be confiscated. In this way, the legislation enables for confiscation of proceeds of the offense.

100. Loss of certain rights may also be a consequence incident to conviction (Art. 114\(^70\)). Loss may be in reference to a loss of certain rights (such as cessation of the performance of a particular job in business enterprises, or cessation of the performance on a particular profession), or bar on the acquisition of certain rights (such as bar on the acquisition of particular permits or licenses).

**Legal persons**

101. When it comes to legal persons, State CC provides a number of different mechanisms that address the requirements of CoE Convention, such as criminal punishments, security measures, confiscation of material gain, and loss of certain rights.

\(\text{(3) Income or other benefits derived from the proceeds of a criminal offense, from property into which proceeds of criminal offense have been converted, or from property with which proceeds of criminal offense have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and extent as the proceeds of the criminal offense.}\)

**State CC Article 112: Protection of Injured Party**

(1) If criminal procedure has resulted in awarding property claims to the injured party, the court shall order the confiscation of material gain if it exceeds the awarded property claim of the injured party.

(2) The injured party who has been directed to initiate civil litigation in the course of criminal proceedings regarding his property claim, may demand that he be reimbursed from the amount of the confiscated value, provided that the civil case is started within six months from the day when the decision by which he has been directed to litigate took effect and if he demands to be compensated from the confiscated value within three months from the day when his claim was legally established.

(3) An injured party who did not report a property claim during the course of a criminal proceedings may demand compensation from the confiscated value, if he has begun litigating his claims within three months from the day when he found out about the judgment which confiscates a material gain, but no longer than within two years from the day when the decision on the confiscation of material gain took effect, or if within three months from the day when the decision by which his claim was established he demands compensation from the confiscated value.

\(^70\) **State CC Article 114: Types of Legal Consequences Incident to Conviction**

(1) Legal consequences incident to conviction relating to the termination or loss of certain rights are the following:

a) Cessation of the performance of particular jobs or functions in government agencies, business enterprises or other legal persons;

b) Termination of employment or cessation of the performance of a particular profession, occupation or activity;

c) Deprivation of decorations.

(2) Legal consequences incident to conviction which consist of a bar on the acquisition of particular rights are as follows:

a) Bar on the performance of certain jobs or functions in government agencies, business enterprises or other legal persons;

b) Bar on the acquisition of a particular office, title, position or promotion in service;

c) Bar on the acquisition of particular permits or licenses that are issued by a decision of government agencies.
102. Articles 131-134\textsuperscript{71} of the State CC define criminal punishments for legal persons. Those are fines (5,000KM- 5,000,000 KM), seizure of property, and dissolution. In addition to fines, when a legal person has caused material damage or has come in possession of unlawful material gain, the fine can be set to twice the amount of the damage of profit. Property may also be seized, as punishment, for criminal offenses for which punishment is 5 or more years, thereby including human trafficking. The State CC allows that half or a larger part of the property, or even the entire property, may be seized for this purpose. Dissolution of legal persons can be handed out as punishment when the activities of the legal persons were used for the purpose of perpetrating criminal offense.

103. Security measures envisioned by the State CC for legal persons also include a ban on performing a certain economic activity (Art. 137 and 139\textsuperscript{72}), as well as

\textsuperscript{71} State CC Article 131: Punishment for Legal Persons

The following types of punishment may be imposed upon the legal persons:

a) Fines;

b) Seizure of property;

c) Dissolution of the legal person.

State CC Article 132: Fines for Legal Persons

(1) Fines imposable on a legal person shall be no less than 5,000 KM and shall not exceed 5,000,000 KM.

(2) In the event that, by perpetrating the criminal offense, the legal person has caused material damage to another party or the legal person has come into possession of an unlawful material gain, the scope of the imposed fine may be twice as much as the amount of this damage or benefit.

State CC Article 133: Seizure of Property

(1) The seizure of property may be imposed for criminal offenses for which a punishment of imprisonment for a term of five years or more severe punishment is prescribed.

(2) From a legal person at least half of the property or the major part of the property or the entire property may be seized.

(3) In the event of bankruptcy proceedings being brought about as a consequence of the imposed seizure punishment, the creditors shall be permitted to settle their claims out of the mass of the seized bankruptcy assets.

State CC Article 134: Dissolution of the Legal Person

(1) Dissolution of a legal person may be imposed in the case that its activities were entirely or partly being used for the purpose of perpetrating criminal offenses.

(2) Besides the dissolution of a legal person, the property seizure punishment may be imposed.

(3) In addition to the dissolution of a legal person, the court shall propose the opening of a liquidation procedure.

(4) Creditors may be paid out from the property of the legal person upon which the punishment of dissolution has been imposed.

\textsuperscript{72} State CC Article 137: Security Measures for Legal Persons

In addition to the security measure of forfeiture referred to in Article 74 (Forfeiture) of this Code, the following security measures may be imposed for criminal offenses perpetrated by legal persons:

a) A publication of judgment;

b) A ban on performing a certain economic activity.

State CC Article 139: Ban on Certain Economic Activities
forfeiture (Art. 74) described earlier. As a security measure, a legal person may be banned from performing certain economic activity, for a period of 6 months to 5 years.

104. When it comes to confiscation, the State Criminal Code envisions that all material gain acquired through perpetration of crime may be confiscated (Art. 140). Confiscated material goods are not distributed to the victims directly, or used for victim services. Rather they become general property of the State.

105. Finally, legal persons may be barred from being issued permits or authorizations necessary for their business (Art. 141).

106. Art. 24 of the CoE Convention requires that the following conditions are treated as aggravating factors in determination of the sentence:

   a) when the life of the victim is endangered, whether deliberately or by gross negligence
   b) when the offense is committed against child
   c) when the offense is committed by public official in performance of duties
   d) and when the offense is committed by a criminal organization

107. The State CC does not include general rules for increasing the sentence. Therefore, only paragraphs of the provision criminalizing human trafficking are relevant for this evaluation.

108. The State Criminal Code, complies with two principles set out in international instruments, however it fails to comply with another two. Namely, when victim is a child, this is considered an aggravating circumstance by State CC (Paragraph 2 of the Article 186), and the minimal sentence that can be given in such case is 5 years (as

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(1) By ordering the security measure of a ban on certain economic activities, the court may prohibit a legal person from manufacturing certain products or performing certain businesses, or prohibit a legal person from performing certain activities of trade in commodities or from performing other economic activity.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain economic activity would present a threat to life and limb of people or be prejudicial to the economic and financial operation of other legal persons or detrimental to the economy, or if the legal person has already been sentenced for the same or a similar criminal offense over the past two years preceding the perpetration of the criminal offense.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day of the entering into force of the judgement.

73 State CC Article 140: Confiscating Material Gain from a Legal Person

If a legal person acquires material gain by the perpetration of a criminal offense, the material gain acquired by the perpetration of a criminal offense shall be confiscated from the legal person.

74 State CC Article 141: Legal Consequences Incident to Conviction for a Legal Person

(1) Legal consequences incident to conviction for a legal person are:

   a) Bar on work based on a permit, authorisation or concession issued by the authorities of foreign countries;
   b) Bar on work based on a permit, authorisation or concession issued by the institutions of Bosnia and Herzegovina.

(1) (2) Legal consequences incident to conviction for a legal person may take effect even when a fine has been imposed on a legal person for the perpetration of a criminal offense.
opposed to 1 year imprisonment for adult victims). Further, the offence of trafficking committed through the involvement in a criminal organization is considered an aggravating circumstance as well, and it increases the sentence to the range of 10 years to long term imprisonment (Paragraph 3 of the Article 186).

109. However, further to the above, the State CC stays silent with regard to situations when offense is committed by public officials, or when the life of a victim is endangered. Art. 48\(^75\) of the State CC on general principles of meting out punishment requires that the degree of injury is taken into account when deciding on the sentence, however the sentence must remain within the range prescribed by the relevant article of the offense, therefore this cannot really be considered as a condition for aggravation of the sentence.

110. Art. 25 of the CoE Convention requires that courts take into account previous sentences given in relation to trafficking related offenses by courts of other countries, the idea being that repeat offending should be punished harsher. Art. 48 Par. 2 of the State CC requires that courts take into considering previous convictions when deciding on a sentence, yet it does not allow for increase of sentence above the range prescribed by the relevant article regarding the offense. Other than that, the criminal law is silent as to whether convictions rendered by courts of other countries can be taken into consideration or not.

5. PART C: LEGISLATION RELATED TO PROTECTION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS

Protection of private life and personal data

111. The CoE Convention requires that the private life and personal data of the victims are protected, and that personal data is stored and used in conformity with the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereinafter, “Convention No: 108”) (Art. 11 of CoE Convention). Further, it also requires that measures that protect victims’ private life and identity in the course of judicial proceedings are in place, with special attention to children.

112. The Law on the Protection of Personal Data has been adopted at the State level (in force 31 May 2006), with the aim of ratifying Convention No: 108. In this way, the requirements set forth in Convention No: 108 have come into force. However, one

\(^{75}\) State CC Article 48: General Principles of Meting out Punishments

(1) The court shall impose the punishment within the limits provided by law for that particular offense, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular: the degree of criminal liability, the motives for perpetrating the offense, the degree of danger or injury to the protected object, the circumstances in which the offense was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offense, as well as other circumstances related to the personality of the perpetrator.

(2) In ruling on the punishment for the criminal offense in recidivism, the court shall take into special consideration whether the most recent offense is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronunciation of the previous conviction, or since the punishment has been served or pardoned.

(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.
of the deficiencies of this law that may be noted lies in Article 19\textsuperscript{76}, which states that data processing for journalistic purposes shall be carried out in accordance with a separate regulation and code of conduct. This is understood to mean that most provisions included in the law regarding the treatment and processing of such data are not applicable when it comes to data collection and processing for journalistic purposes. The protection of the data and identity of victims of crime in the media is however, addressed by guidelines and codes developed by the BiH Press Council. Although these documents are not legislation, they are self-regulatory instruments and this form of regulation is in line with Paragraph 3 of the Article 11 of the CoE Convention.

113. The issue of how media uses personal data is especially important in the context of criminal proceedings. This is due to the fact that victims who agree to testify in trials, according to State CPC, before having their testimony taken are asked their full name, place of birth and other identifying information (Art. 86 Par. 3\textsuperscript{77}). Furthermore, trials are held publicly (Art. 234\textsuperscript{78}), and therefore at the least basic information on the identity of the victim can be accessible to anyone, including members of the media, attending the trial when a particular victim is testifying. Any further details of his or her testimony would be accessible as well. While all other data collected by other agencies is protected through the Law on the Protection of Personal Data, the information that becomes public during the public trial and victim’s testimony is open and available to anyone present at the trial hearing.

114. However, based on the CC and CPC, the judge or the panel of judges, however, can decide to close the trial to the public, even without a specific request by any of the parties.\textsuperscript{79} Article 235 states clearly that this can be done in order “to protect

\begin{itemize}
\item \textsuperscript{76} State Law on the Protection of Personal Data Article 19: Data Processing in Mass Media
\item (1) Data processing for journalistic purposes, the purposes of artistic or literary expression, shall be carried out in accordance with a separate regulation and codes of conduct
\item (2) Provisions of this Law shall not apply to data processing for the purposes referred to in Paragraph (1) of this Article, except for the provisions concerning the data security and confidentiality as well as liability for damages.
\item \textsuperscript{77} State CPC Article 86: Course of the Examination of a Witness
\item (3) (…) the witness shall be asked the following questions: his name and surname, names of father and mother, occupation, residence, place and date of birth, and relation to the suspect, accused or injured party. The witness must also be cautioned that it is his duty to inform the Prosecutor or the Court regarding a change of address or residence.
\item \textsuperscript{78} State CPC Article 234: General Public
\item (1) The main trial is public.
\item (2) Only adults may attend the main trial.
\item (3) Persons attending the main trial must not carry arms or dangerous weapons, except for the guards of the accused and persons who are permitted to do so by the judge or the presiding judge.
\item \textsuperscript{79} State CPC Article 235: Exclusion of the Public
\end{itemize}

From the opening to the end of the main trial, the judge or the Panel of judges may at any time, ex officio or on motion of the parties and the defense attorney, but always after hearing the parties and the defense attorney, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect the personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness.
the personal and intimate life of (...) the injured or to protect the interest of a minor or a witness”. This means that judges have the discretion to close a trial, without the necessity of a special motion of either of the parties. Judges are therefore the key protectors of the identity of data on victims in criminal proceedings, in particular since the CC and CPC do not address the specific issue of how the media is to handle data collected during the trial – thus, unless the trial is closed to the public, the media can establish the identity of the victim and also information on her/his experiences and abuse.

115. Further to the above, it is noteworthy that the issue does not remain completely unregulated in BiH. Although the use of data collected in a trial, by the media is not specifically addressed by the Law on Protection of Data, it is addressed in the Press Code, adopted by BiH Press Council\(^80\), which requires journalists to follow certain rules in reporting the news and it also obliges editors to ensure that these rules are followed in the materials used in the press. Article 9\(^81\) of the Press Code requires that stories that involve a personal tragedy are treated sensitively, and individuals affected are treated with sympathy. Article 10a\(^82\) of the Press Code deals with the protection of witnesses, but only for witnesses in war crime trials and is not applicable for other types of offenses, and therefore not applicable to trafficking victims.

116. Additionally, Article 11\(^83\) deals with the protection of children and minors. According to this article, newspapers and periodicals are required to never identify children under the age of 15 who are involved in criminal cases, either as witnesses or defendants, while it also calls on journals to exercise general caution when reporting on cases involving children.

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\(^80\) Association "BH Journalists", Bosnia-Herzegovina Journalist Union, Association of Croat Journalists in Bosnia and Herzegovina, and Association of Journalists in Republika Srpska have all adopted this code. Full text of the Press Code can be found at [http://www.vzs.ba/en/?ID=2](http://www.vzs.ba/en/?ID=2), in English.

\(^81\) Press Code Article 9: Privacy

The press shall avoid intrusions and enquiries into an individual's private life, unless such intrusions or enquiries are necessary due to the public interest.

Treatment of stories involving personal tragedy shall be handled sensitively, and the affected individuals shall be approached with sympathy and discretion.

\(^82\) Press Code Article 10a: Protection of Witnesses

Newspapers and periodicals shall take the utmost care when reporting on witnesses in war crime process, respecting rules and regulations in terms of unidentifying the protected witnesses. Newspapers and periodicals shall generally avoid identifying of witnesses in court trials for war crimes, as well as identifying of their relatives and friends, unless their identification is necessary for complete, fair and accurate reporting on court trial, and if such identifying shall not cause misinterpretation of truth or trial process.

\(^83\) Press Code Article 11: Protection of Children and Minors

When treating children and minors, journalists have an obligation to be extremely careful, respecting ethical norms and Convention on children rights based on the welfare of a child. Journalists are obliged to protect identity of child in procedures that do not involve public at all. Journalists should not interview or photograph children under the age of 15 on matters involving the child's family in the absence of or without the consent of a parent or other adult responsible for the child.

Newspapers and periodicals must exercise caution and responsibility in identifying children under the age of 15 who are victims in criminal cases.

Newspapers and periodicals must not, under any circumstances, identify children under the age of 15 who are involved in criminal cases at witness or defendants.
117. The BiH Press Council has also adopted Media Guidelines for Dealing with the Police. Article 8 of the Guidelines states that journalists may be held responsible for the consequences of releasing information on the identity of victims of violence. Article 8 also stipulates that information on minors not be released until revealed by the police. Further, information on victims of rape may never be revealed without victim’s permission. All these situations may be relevant for the victims of trafficking, and if followed, may protect the victims to a large extent.

118. Finally the Recommendations for Court Media Reporters Regarding Reporting on Investigations and Court Process, also issued by the BiH Press Council, in Article 8 remind journalists not to publish names of sexually abused victims or victims of violence.

119. All of the above mentioned documents recommendations are internal guidelines and suggested rules, rather than legislation, meaning that when it comes to media, how they handle the information regarding victims of trafficking is regulated through internal mechanisms.

120. Further provisions pertaining to the protection of data may be found in the Rulebook on Alien Victims. The Rulebook is based on the Law on the Foreigners and Asylum, and Art. 3 on the Protection of Privacy and Identity of the Victims of addresses the matter of the protection of private life and personal data in the following way:

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

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

121. Article 3 of the Rulebook makes it clear that personal data on foreign victims collected in the process of providing them assistance is to be treated as confidential, further enhancing the protection of the personal data of the victims, and clarifying and possible confusion regarding the access to the data. The Rulebook, and therefore above mentioned articles, would only be relevant for victims who are foreigners.

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84 Full text of these guidelines can be found at [http://www.vzs.ba/en/?ID=243](http://www.vzs.ba/en/?ID=243), in English.

85 Media Guidelines in Dealing with the Police Article 8

Journalists bare responsibility in cases of revealing identity of victim of violence. Identity of children under 18 years, either victims or perpetrators of crime act should be protected until the police reveal their names. Identity of victims of hatred crimes, especially rape victims, must not be revealed without victim’s permission. Identity of deceased persons can be revealed only with permission of the close family, or after the formal identification.

86 Full text of these recommendations can be found at [http://www.vzs.ba/en/?ID=158](http://www.vzs.ba/en/?ID=158), in English.

87 Recommendations for Court Media Reporters Regarding Reporting on Investigations and Court process, Article 8

[Reporters are reminded to] (...) not publish names of sexually abused victims or victims of violence, suicide, or publish materials that might help to identify the victim, unless the victim of violence and/or family of suicide victim allows it, and if disclosure is necessary for the investigation
122. The Rules on Domestic Victims also address the issue of confidentiality when it comes to domestic victims, in Art.3 Pars. 2 and 5, as follows:

**Article 3: Basic Operational Principles**

(…) 

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

(…) 

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

123. It should also be noted that State CPC sets special rules when dealing with issues of sexual misconduct, when it comes to examination of evidence, and the type of evidence that may be presented in the trial. Article 26488 of the State CPC prohibits anyone from asking the injured party about her/his previous sexual experiences, and any such information even if obtained would be excluded from evidence. Further, in order to prevent any such information from coming to light, a closed hearing must be conducted to examine the evidence, and any relevant evidence must be sealed.

**Reflection delay**

124. Article 13 of the CoE Convention addresses the issue of a recovery and reflection period. It requires that such a period should last a minimum 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Within this period states should not be able to expel a victim from their territory.

125. The issue of reflection delay is addressed only by the Rulebook on Alien Victims of Trafficking in Persons, in Art. 11 Par. 2, as follows:

(2) A person for whom there is a reason to believe to be victim of trafficking will be given status of protected person for period of 30 days - which will be considered as period of reflection to adopt a decision on filing the request for approval of stay in accordance with the Article 6 of the Rulebook.

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88 State CPC Article 264: Special Evidentiary Rules When Dealing With Cases of Sexual Misconduct

(1) It shall not be allowed to ask an injured party about any sexual experiences prior to the commission of the criminal offense in question. Any evidence offered to show, or tend to show the injured party’s involvement in any previous sexual experience, behaviour, or sexual orientation, shall not be admissible.

(2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.

(3) In the case of the criminal offense against humanity and values protected by the international law, the consent of the victim may not be used in a favor of the defense.

(4) Before admitting evidence pursuant to this Article, the Court must conduct an appropriate hearing **in camera**.

(5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the Court orders otherwise.
126. As can be seen from the text of the provision, victims are given a chance to wait for 30 days before deciding whether to apply for temporary residence permit on humanitarian grounds. During this time period, the victim would have all rights addressed by the Article 14 of the Rulebook, including shelter, health care, etc.

127. Explanatory note 178 of the CoE Convention states that “Parties are required to create a legal framework allowing the victims to remain on their territory during the duration of the period (…) Each Party shall (…) provide victims, without delay, with the relevant documents authorizing them to remain on its territory during the recovery and reflection period.” It must be noted that the Rulebook states that during the reflection period, the victims, would be given a status of “protected person”, however, what this means remains undefined.

128. The Law on Aliens and Asylum defined “Protected person” only in the context of asylum (international and temporary protection), in the Chapter VII of the Law. Accordingly, international protection is defined in Article 105 Par. 1 as follows:

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

and temporary protection in Article 126 Par. 1 as follows:

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

129. Clearly, neither of the above mentioned definitions of protected person are relevant, and therefore the Rulebook is referring to a status that is not defined by law. In other words, the victims would be given status that from legal perspective does not

89 The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 14: Rights of the victims of trafficking

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

- Adequate and safe accommodation;
- Medical assistance;
- Counseling and information especially in segment of his/her rights and obligations in the language she understands;
- Legal assistance to the victim during criminal and other procedure in which the victim is achieving his/her rights;
- Information on access to diplomatic-consular representative offices of the countries of victim origin or usual stay;
- Information on possibilities and procedure of repatriation;
- Different types of training and education depending on financial capabilities.

(2) The responsible organs when securing the rights from the paragraph 1 of this Article will also take into account the age, sex and special needs of the victim, paying special attention to specific needs of children, including adequate accommodation, education and care.

(3) Assistance to the victims of trafficking from paragraph 1 of this Article can be provided by NGO’s that concluded the protocol on co-operation with the Ministry of Security.
exist. Therefore, it can be concluded that legal framework is not in place, and needs to be further developed. Given that victims during this period remain in this legal “limbo” it would be impossible for authorities to issue any kind of document authorizing their stay during the reflection period. None of the relevant Laws or Rulebooks mention documentation for victims who are provided with reflection delay, or how victims would prove their status to the authorities that they have been granted reflection delay. Therefore, it can be concluded that the current legislation is not fully in line with the CoE Convention.

130. Further to the above, in the case that provisions on documentation are introduced in the future, and documents are issued – it should be ensured that these documents are discreet and do not expose victims to further victimization by indicating that the person whose name is on the document is “a victim of trafficking”. Rather the document should stipulate that the person has the right to remain in BiH for 30 days and access to certain services as prescribed by law.

**Residence permits**

131. The CoE Convention, in Article 14 addresses the issue of residence permits for victims of trafficking and the regulation of the issuance. According to this article, it is stated that victims can receive such permits when either competent authorities consider that their stay is necessary for their personal situation, or when they consider it necessary for the purpose of their cooperation with the investigation or criminal proceedings, or both. This means that parties can decide to adopt either one of the conditions as eligibility conditions, or in fact both. In other words, for example, offering residence permit in exchange for cooperation with the authorities as the only way of obtaining the residence permit is acceptable under the CoE Convention (see Explanatory Note No. 182). However, it should be noted that BiH also has obligations flowing from OSCE commitments, which state that states should consider providing victims with residence and work permits – without attaching a condition precedent of co-operation with law enforcement.90

132. The Law on Aliens and Asylum, in Article 52 lists the grounds on which temporary residence permits can be issued, and humanitarian grounds are among one of the conditions which result in eligibility (Par. 191). Such residence permit may be granted in following situations that correspond to conditions cited in Article 14 of the CoE Convention:

Art. 54:

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

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91 State Law on Movements and Stay of Aliens and Asylum Article 52: Grounds for issuing a temporary residence permit

(1) A temporary residence permit may be issued for justified reasons such as: marriage to or an extramarital community with a BiH citizen, family reunification, education, scientific/research, artistic, sports work and consultancy work, work of key personnel within a physical or legal entity, employment as specified in an issued work permit, private entrepreneurship, volunteer work or realization of projects significant for BiH, religious activities, medical treatment, for humanitarian reasons, and other similar justified reasons or reasons based on international agreements where BiH is a party to the agreement.
a) where an alien who has been a victim of organized crime and/or trafficking of human beings, for the purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence, or a country which will admit the alien;

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

133. From this article it is evident that in BiH, both of the possible conditions set forth by the CoE Convention have been included, meaning that victim may either be granted residence permit due to the need for her/his protection and rehabilitation, or in order to enable the conduct of court proceedings, when recommended so by the competent authority.\(^{92}\) In practice, not all victims who are given this status testify, but often they are given the residence permit if their information might be useful for the case. Therefore one interpretation may be that the residence permit is not used as an award for cooperation, but as a way to legally keep victim in a country if there is likelihood that her information might help the case.

134. The Rulebook on Alien Victims, that has been adapted to reflect the new Law on Aliens and Asylum also addresses the issue of temporary humanitarian residence permits for foreign victims of trafficking. In the Rulebook, however, Art. 6 Par. 1. states that:

The victim of trafficking, pursuant to Article 54, paragraph 1, item a) and in relation to Article 52, Paragraph 5 of the Law is entitled to the right for temporary stay for humanitarian reasons in duration of up to six months for the purpose of protection and assistance for recovery and return to the country of origin.

135. The second potential condition that can be used as basis – cooperation with the authorities with regard to investigation and court proceedings – is not mentioned at all. However, bylaws and regulations can not limit the rights created by law, and therefore despite the fact that the second condition is not mentioned in the Rulebook, it should be kept in mind that the possibility is still there.

136. Nevertheless, in order to ensure clarity, relevant articles of the Rulebook should be adapted to reflect the Law on Aliens and Asylum properly, or alternatively a bylaw addressing this issue specifically should be developed.

137. According to the Law on Aliens and Asylum, humanitarian temporary residence permits granted to victims of trafficking can be issued for a period of up to

\(^{92}\) State Law on Movements and Stay of Aliens and Asylum Article 55: Recommendation of a competent authority

For granting temporary residence on humanitarian grounds under Article 54 (Temporary residence on humanitarian grounds) par. 1, items a), b) and c), as well as par. 2 of this Law, the assessment of the authority before which the appropriate (administrative, court) proceedings have been conducted, or by recommendation of another competent authority, or the report of a health specialist from the appropriate health institution showing the necessity for his/her treatment and rehabilitation, shall be required in addition to other evidence relevant to assess the merit of the application.
6 months (Art. 52 Par. 5\textsuperscript{93}), and could be renewed and extended (State Law on Aliens and Asylum Art. 52 Par. 6\textsuperscript{94}; the Rulebook on Alien Victims, Art. 6 Pars. 3 & 4\textsuperscript{95}).

138. While on the face of it, it appears that the issue of temporary residence permits is in line with the CoE Convention, one detail that should be given more scrutiny is that of first condition – that the “personal situation” should be taken into consideration. Explanatory note No.184 states that personal situation requirement should take into account a range of different situations, potentially including, but not limited to victim’s safety, victim’s health, family situation, etc. In this sense, Art. 54 Par. 1 of the Law on Aliens and Asylum remains somewhat vague, as it lists the eligibility conditions as follows: “purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence, or a country which will admit the alien.” It is unclear whether evaluation of victim’s family situation or other factors would be taken into account when determining eligibility of the victim based on this paragraph.

139. It should be noted that permission to work or study does not come along with the temporary residence. Article 54 of the Law on Aliens and Asylum that deals with the temporary residence permits on humanitarian grounds states clearly that only those who are issued such residence due to the principle of non-refoulement receive an automatic right to work, as well as the right to education, health care, and social protection offered to the BiH citizens.\textsuperscript{96} Therefore, victims of trafficking are subject to the same procedures as all other foreigners attempting to obtain work permits and study visas in BiH.

140. Interestingly, the so-called “Vlasic Procedure” (Procedures for Treatment of Human Trafficking Victims in Bosnia and Herzegovina) which was developed in order to improve cooperation between stakeholders and different agencies that deal with the victims of trafficking and formalize the standard procedures of how victims are to be dealt with, includes some interesting paragraphs which to some degree put into question the willingness and the intent of the authorities to actually issue

\textsuperscript{93} State Law on Movements and Stay of Aliens and Asylum Article 52: Grounds for issuing a temporary residence permit

(4) Temporary residence issued on humanitarian grounds in cases as prescribed in Article 54 paragraph (1) item a) of this Law shall be granted for the period of up to 6 (six) months.

\textsuperscript{94} State Law on Movements and Stay of Aliens and Asylum Article 52: Grounds for issuing a temporary residence permit

(6) Renewal of the temporary residence may be approved at the alien's request, but only on the same grounds on which the alien was granted the temporary residence whose renewal he/she has requested.

\textsuperscript{95} The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 6: Temporary stay for humanitarian reasons

(3) The temporary stay on humanitarian grounds will be extended if three are reasons as prescribed by the Law.

(4) Alien – victim of trafficking shall file a request for extension of temporary stay on humanitarian grounds to the competent organizational unit of the Ministry of Security in seat at the latest 15 days before expire of the valid period of stay.

\textsuperscript{96} State Law on Movements and Stay of Aliens and Asylum Article 54: Temporary residence on humanitarian grounds

(3) An alien to whom a temporary residence permit has been granted on humanitarian grounds based on item d) paragraph (1) of this Article is entitled to work and shall have access to education, health care and social protection on the same conditions as BiH citizens (….)
temporary residence permits to the victims. It should be kept in mind that this
document should be understood as memorandum of understanding between different
stakeholders, and therefore does not have the same legal force as a law or by-law.
Nevertheless, if understood as a policy document, its impact is important. In the
Chapter A of the Vlasic Procedure, Paragraph 10 states as follows:

If the victim does not wish to be returned voluntarily to the country of origin,
or habitual residence, the Ministry of Security shall conduct an expulsion
procedure, in accordance with the Law on Movement and Stay of Aliens and Asylum.

141. Prima facie, it appears that according to this paragraph, a victim does not even
have the option to attempting to stay, finding a job or similar. Rather, he or she would
be given an option to be repatriated voluntarily or expelled forcibly. In the case that
the interpretation stated in the previous sentence is correct, this would clearly be in
violation of both the Rulebook, the Law on Aliens and Asylum, and a violation of
international obligations, pursuant to which the expulsion of victims of trafficking,
from the territory of the state, at least for the period of reflection delay is prohibited
(Article 13 (1) of the CoE Convention). It is therefore recommended to clarify to
which victims the procedure should apply. At the very least, it should not be
applicable to those victims who have been granted or are eligible for reflection delay
or residency.

142. The CoE Convention states that a temporary residence permit for children
should be granted when it is in the best interest of the child, and extended under same
conditions. Article 54 in Par. 1 addresses situations in which children are eligible for
receiving temporary residence on humanitarian grounds, by stating that:

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

(….)

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

While this article does not use the wording “the best interest of the child” Article 19
Pars. 4 and 5 of the Rulebook on Alien Victims makes such a reference. In these

97 Those are The State Coordinator for Combating Trafficking in Human Beings and Illegal Migration
for Bosnia and Herzegovina, The Prosecutor’s Office of Bosnia and Herzegovina, The Prosecutor’s
Office of the Federation of Bosnia and Herzegovina, The Prosecutor’s Office of the Republika Srpska,
The Prosecutor’s Office of Brcko District BiH, The Ministry of Bosnia and Herzegovina (The State
Investigation and Protection Agency, the State Border Service, Sector for Migration, and Sector for
Asylum), The Ministry of Interior of the Federation of Bosnia and Herzegovina, The Ministry of
Interior of Republika Srpska, The Police of Brcko District BiH, “IFS Forum Solidarnosti” Gracanica,
Association “Zena BIH” Mostar, Women’s Association “Lara” Bjeljina, Foundation “La Strada”
Bosnia and Herzegovina, Center for Therapy of Women “Medica Zenica”, Association “Vasa Prava”
Bosnia and Herzegovina, and IOM BiH.

98 The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 19: Special
protection of children

(4) All activities by competent organs must be undertaken in the best interest of the child,
understanding that each activity has to be conducted with utmost care and protection as necessary for
the welfare of the child including right and obligations of the child’s parents, guardians or other
individuals that may be legally responsible for the child and including the opinion of the child that is
evaluated in dependence of age of the child.
paragraphs it is stated that all activities must be undertaken in the best interest of the child, with special emphasis on the protection and the welfare of the child, and with holding the child’s interest as priority. In this sense, it can be concluded that the Art. 14 of the CoE Convention is satisfied.

143. Finally, the CoE Convention in Art. 14 Par. 5 requires that granting a temporary residence permit to victim of trafficking should be without prejudice to the right of the victim to seek asylum. In the Rulebook on Alien Victims, the Article 23 (which is identical to the same article in the Rulebook currently in force) deals with this issue, by stating that:

None of the provisions of this Rulebook shall influence rights, obligations and responsibilities of BiH authorities resulting from domestic legislation, international humanitarian laws and human rights wherever that is relevant, the Convention on Refugee Status from 1951 and its Protocol from 1967 and principals of non-refoulement;

Assistance to victims

144. Article 12 of the CoE Convention sets forth the minimum required assistance measures that need to be made available to the victims of human trafficking. In particular paragraph 1 of Article 12 refers to the following types of assistance:

- standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
- access to emergency medical treatment;
- translation and interpretation services, when appropriate;
- counseling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
- assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- and access to education for children.

The following chapters will analyze how these types of assistance are addressed in BiH. 99

Appropriate and Secure Accommodation

145. In the explanatory notes of the CoE convention, it is stated that individual circumstances of each victim need to be taken in account when deciding on what may be considered proper accommodation. Hence for example, a victim may already have accommodation, but that is not safe or secure, while another may have no place to stay what so ever. This is why it is important to keep in mind that just roof over the

(5) Actions dealing with rights and interests of children should be given priority. All actions concerning children victims of trafficking must be executed with utmost degree of urgency and efficiency. All such measures must be undertaken for the sake of protection of privacy and identity of the child being a victim hereto.

99 Last point, on access to education for children shell be dealt with in the chapter of Special Protections for Children.
head is not what was meant, but rather appropriate and safe accommodation. It should also be noted that ‘asylum centres’ also do not constitute appropriate accommodation.

146. The Rulebook on Alien Victims in Art. 14 Par. 1, lists rights of the victims and things (services and types of support) that must be ensured to victims. Adequate and safe accommodation is first on the list. It should be noted that it is required that accommodation is “appropriate” rather than “adequate”, since those two terms can have rather different interpretations. Art. 15 in Pars. 1 and 2\(^{100}\) explains how the shelters, through which the accommodation will be provided, will be established and by whom. According to these paragraphs, the Ministry of Security is required to establish shelters for victims of trafficking, and supervise their work. Such shelters may be established by NGOs who have cooperation protocols with the Ministry of Security. However, the Rulebook does not stipulate what minimum conditions must be provided in these shelters, nor does it set up a system (criteria, monitoring, verification) which would ensure that the accommodation provided is indeed adequate and appropriate. The last paragraph of the Art. 15 (Par. 6) only mentions that “Security to the premises of the shelter will be secured in accordance with legal regulations”, with no further detail on how the security of the premise is actually to be accomplished.

147. When it comes to domestic victims, the Rules on Domestic Victims are somewhat unclear. Article 8 states that physical protection of the victim is among the basic forms of protection of the victim. Further, in Art. 9 it is stated that:

> Individual protection is grounded on the consideration of needs and their interdependence, that is, assessment of needs for each individual case, taking into account a health condition, age, gender, national minority affiliation, social status and other individual needs based on medical examination of the victim or victim-witness.

This article indicates that individual needs of the victim are to be taken into attention when decisions are made as to how to provide protection to the victims, and what the needs of the victims are in this respect.

148. The Rules on Domestic Victims, mention accommodation of the victims in Art. 12 Par. 2:

> Pursuant to the valid laws regulating social protection in BiH a victim or victim-witness shall be provided with protective care and accommodation, which may be acquired through: shelter, i.e. facility used to accommodate the victims of trafficking in human beings and violence (safe house), other families or foster families and institutions of social and children protection;

\(^{100}\) The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 15: Adequate and safe accommodation

(1) Aiming to ensure rights from the paragraph 1 of this Article, Ministry of Security in accordance with the Article 67 of the Law will establish Center for assistance and accommodation of victims of trafficking (herein called shelter) and will conduct supervision over the work of the specialized institutions for accommodation of foreign citizens. The rules and procedures for operation of shelters will be regulated by a separate house order.

(2) In accordance with the needs the Ministry of Security may enter a Protocol with the NGO’s on use of capacities of NGO’s addressing mutual rights and obligations with full respect of provisions of this Rulebook.
This allows for some flexibility, and therefore individualization of offered accommodation.

149. Furthermore, in Art. 10 Par. 2 it is stated that,

If the victim or victim-witness is taken to the shelter or any other place, with prior assessment of physical threat for the victim or victim-witness, the authorized institution in BiH shall suspend protection and suggest return to his/her place of residence.

It is rather unclear what the above cited article means. The article seems to indicate that in all cases, it will be suggested that the victim is returned to the place of residence, from this shelter. The aim behind this paragraph is completely unclear, and not in line with the responsibility to provide protection to the victim.

150. Article 10 paragraph 3 states that:

When the victim or victim-witness does not want to return to his/her place of residence, the authorized institutions in BiH and authorized organization shall seek other solution to secure the victim or victim-witness in accordance with its capabilities, considering the fact that the victim or victim-witness would return to the environment in which he/she was exposed to the risk of exploitation.

From the above article it remains unclear what kind of “other solution” may be sought.

151. Law on Protection of Witnesses under Treat and Vulnerable Witnesses also address different types of protection mechanisms. Yet, this Law cannot be used as basis for protection of domestic human trafficking victims, as it is possible that for some cases prosecutions or even investigations against traffickers may never be initiated. Further victims of trafficking must have the right to adequate accommodation regardless of whether they are cooperating with the authorities and the courts or not. Finally, it is the Court that decides about one’s status as protected or vulnerable witness. This would effectively mean that decision about the protection could not be reached before the case makes its way to the criminal justice system, which may involve a time delay. The Rules on Domestic Victims addresses this issue to some extent, by stating that when the criminal proceeding is not instituted, the protection can be approved and launched by social welfare center or service, which “(....) could ask for help and protection by the competent police department irrespective of the status of the criminal proceedings” (Art. 10 Par. 7). Even when such protection is requested by social services, it is likely that this would result in delay, and even then from above cited Art. 10 Par. 7 of the rule it is clear that the social services could request protection from police, but this is not the same as ensuring protection by provide appropriate and safe accommodation. In the lack of more specific regulations, this means that the issue of appropriate and safe accommodation is not directly dealt with.

Material Assistance and Social Welfare

152. Article 12 of the CoE Convention obliges state parties to ensure that victims are provided material assistance. In the Explanatory Notes it is stressed that material assistance (in addition to accommodation and psychological assistance) is particularly relevant.
153. When it comes to foreign victims, Art. 14 of the Rulebook on Alien Victims lists the rights of the victims. However material assistance is not mentioned. Article 22\(^{101}\) does mention that expenses of “accommodation, recovery and repatriation” are to be covered from the State budget or other special funding sources, which could be largely interpreted to include any possible material assistance, however the fact that material assistance is never mentioned as a right or even a possibility represents a problem.

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

155. When it comes to domestic victims, the Rules on Domestic Victims address the issue of material assistance. In Art. 12\(^{102}\) on Social Security, it is stated that victims and victim-witnesses will be provided, among other things, financial aid, and if in need, one-time financial assistance. While once off- financial assistance can resolve the situation of the victims, it is nevertheless at form of material assistance.

Provision of translation services

156. Given that often foreign victims speak little to none of the language of the country where they are identified, it is of fundamental importance that translation and interpretation is available to them in all stages of their processing and status.

\(^{101}\) The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 22: Accommodation, recovery and repatriation expenses

The expenses for accommodation, recovery and repatriation shall be provided in the budget of institutions of Bosnia and Herzegovina in form of funding for special applications within the Ministry of Security as well as in the budgets of competent entity ministries; and budget of Brčko District; they can also be provided from other sources such as donations, projects, programs of governmental and non-governmental organizations both national and international that have to be harmonized with the competent Ministry of Security.

\(^{102}\) The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 12: Social security

(1) Pursuant to the valid laws regulating social protection in BiH, the authorized social security institutions shall provide to the victims or victim-witnesses a protective care and accommodation, financial aid, counselling and psychological support and professional assistance in terms of their inclusion into the program of resocialization.

(2) Pursuant to the valid laws regulating social protection in BiH, a victim or victim-witness shall be provided with protective care and accommodation, which may be acquired through: shelter, i.e. facility used to accommodate the victims of trafficking in human beings and violence (safe house), other families or foster families and institutions of social and children protection.

(3) If a victim or victim-witness is in need, he/she shall be provided with appropriate financial aid i.e. one-time financial assistance pursuant to the valid laws on social protection of the entities and Brčko District of BiH, as well as other help depending on possibilities of the authorized institutions in BiH and authorized organizations.

(4) A victim or victim-witness shall be included in the program of resocialization which is individually planned and prepared according to needs of the victim or victim-witness; the program shall include additional education, vocational training, assistance in employment and other social measures in accordance with the possibilities of the authorized institutions in BiH and authorized organizations.
determination, as this is the first step towards ensuring their access to justice and their rights.

157. The issue of language is mentioned in two places in the Rulebook on Alien Victims, including Art. 14 (Rights of the victims of trafficking), and Art. 17 (Counseling and information). Article 14\textsuperscript{103} that victims will be secured with information and counseling, in the “language that she (or he) understands”. Article 17\textsuperscript{104} reiterates this.

158. The right to participate in the criminal procedure in own language is also guaranteed by Art. 8\textsuperscript{105} of the State CPC. According to this Article, parties and

\textsuperscript{103} The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 14: Rights of the victims of trafficking

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

- Adequate and safe accommodation;
- Medical assistance;
- Counseling and information especially in segment of his/her rights and obligations in the language she understands;
- Legal assistance to the victim during criminal and other procedure in which the victim is achieving his/her rights;
- Information on access to diplomatic-consular representative offices of the countries of victim origin or usual stay;
- Information on possibilities and procedure of repatriation;
- Different types of training and education depending on financial capabilities.

(2) The responsible organs when securing the rights from the paragraph 1 of this Article will also take into account the age, sex and special needs of the victim, paying special attention to specific needs of children, including adequate accommodation, education and care.

(3) Assistance to the victims of trafficking from paragraph 1 of this Article can be provided by NGO’s that concluded the protocol on co-operation with the Ministry of Security.

\textsuperscript{104} The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 17: Counseling and information

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

The counseling will be provided thru a legal representative, office for legal aid or in any other way securing protection of victim’s rights.

\textsuperscript{105} State CPC Article 8: Language and Alphabet

(1) The official languages of Bosnia and Herzegovina - the Bosnian language, the Croatian language and the Serbian language and both alphabets of Latin and Cyrillic, shall be in equal official use in criminal proceedings.

(2) Parties, witnesses and other participants in the proceedings shall have the right to use mother tongue or the language they understand in the course of the proceedings. If such a participant does not understand one of the official languages of Bosnia and Herzegovina, provisions shall be made for oral interpretation of the testimony of that person and other persons and interpretation of official documents and identifications and other written pieces of evidence.

(3) Any above-referenced individual shall be informed of the right referred to in Paragraph 2 of this Article prior to the first questioning and may waive such right if he knows the language in which the proceedings are being conducted. A note shall be made in the record that the participant has been so informed, and his response thereto shall also be noted.
witnesses can choose to have proceedings and their testimony interpreted into the language that they understand, by court interpreters. Entity and BD CPCs include almost identical provisions. State Law on Aliens and Asylum, similarly in Article 12 Par. 2\textsuperscript{106} requires that authorities enable foreigners to follow the proceedings through translator and/or interpreter.

159. Very similar provisions are included in other laws, such State Law on Administrative Procedure (Article 18), FBiH and RS Laws on Administrative Procedure (Article 16 in both cases), etc. It should be noted, however, the both FBiH and RS Laws on Civil Procedure requires that party who required a translator or interpreter pays for such services (Art. 315 in both), while according to BD Civil Procedure Code, all parties have the right to translation and interpretation, and associated costs are covered by the Court (Art. 50).

Access to legal information, counseling and assistance

160. This subparagraph deals with victim’s access to legal information and legal advice. Only with proper information can victim be able to evaluate her situation and decide for herself whether to cooperate with the authorities, whether to pursue her case in courts, whether to return home or try to stay by requesting temporary residence permit. This subparagraph does not refer solely to representation in court (legal aid), but to access to information in general.

161. Regarding foreigners, this issue is addressed by three different articles of the Rulebook on Alien Victims. Article 14\textsuperscript{107} of the Rulebook states that victim, among other things, will be provided with counseling and information (with regard to her/his

\textsuperscript{106} State Law on Movements and Stay of Aliens and Asylum Article 12: Rights and obligations in the proceedings before the authorities

(1) At all stages of the proceedings the aliens shall be informed of the rights and obligations arising from this Law.

(2) The authority conducting the proceedings shall have to enable the alien who does not understand the language of the proceedings to follow the course of the proceedings through an interpreter or translator, whereas the requests to exercise the rights under this Law and evidence substantiating the request, as well as summons, rulings and other writs and documents, shall be served in one of the official languages of BiH.

\textsuperscript{107} The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 14: Rights of the victims of trafficking

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

- Adequate and safe accommodation;
- Medical assistance;
- Counselling and information especially in segment of his/her rights and obligations in the language she understands;
- Legal assistance to the victim during criminal and other procedure in which the victim is achieving his/her rights;
- Information on access to diplomatic-consular representative offices of the countries of victim origin or usual stay;
- Information on possibilities and procedure of repatriation;
- Different types of training and education depending on financial capabilities.
rights and obligations) and with legal assistance during criminal and other procedure. Further it states that victims will be provided information regarding their access to diplomatic-consular representative offices and on possibilities and procedure of repatriation.

162. Article 10 Par. 1\textsuperscript{108}, states that during the interview of the victim (conducted in order to determine the status of the victim), the victim should be briefed on her (or his) rights and obligations as well as the option of using independent legal counsel.

163. Finally, Art. 17\textsuperscript{109} once again reaffirms the victims’ rights to counseling and to be informed of their rights.

164. Regarding domestic victims, the Rules on Domestic Victims address some of the issues related to legal information, counseling and assistance as well. Article 8\textsuperscript{110}, provides that legal assistance is recognized as one of the basic forms of protection. Article 11\textsuperscript{111}, however, specifically deals with the provision of legal aid. According to this article, this legal aid would include provision of information regarding different types of judicial and administrative procedures, and also assistance with realization of social protection, compensation and other rights. Finally, Art. 17 Par. 3f\textsuperscript{112} states that

\textsuperscript{108} The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 10: Conduct of interview

(1) The officer in charge from the organizational unit of the Ministry of Security is obliged, when interviewing a foreigner to brief him on his rights and obligations as defined by the Law on Movement and Stay of Aliens (“Official Gazette of BaH” No. 29/03 – hereinafter called the Law) as well as about the possibility of using independent legal counselling, and about the right to follow procedures in a language he-she understands, that will be officially entered in the record.

\textsuperscript{109} The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 17: Counselling and information

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

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

\textsuperscript{110} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 8: Forms of protection

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

\textsuperscript{111} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 11: Legal aid

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

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

\textsuperscript{112} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 17: Action of the authorized institutions and authorized organizations

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

(….) (3) In the implementation of the required protection measures:
Social Work Center that is working with domestic victims may request free legal aid for the victims, from the authorities that provide such service.

165. It should be noted that none of the CPCs address the issue of legal aid for victims. Rather they only provide basis for appointment of defense attorneys for defendants. Although victims do not have standing in criminal proceedings which are ex officio, legal advice should nonetheless be afforded to them.

166. In terms of provision of legal aid in civil proceedings, the situation is even more fragmented. Law on Legal Aid had been drafted but it never passed in parliament, meaning that there is no coherent legal aid policy in the country. Some Cantons have opened centers for legal aid (like Canton 7). Legal aid is also provided by a number of NGOs that operate across the country.

167. Further, the Rulebook on Alien Victims and the Rules on Domestic Victims should further clarify how legal representation of victims would be handled before courts, both criminal as well as administrative and civil.

Provision of psychological and medical care

168. Article 12 Par. 1 of the CoE convention requires that victims are provided with emergency medical treatment, as well as psychological support and assistance. The CoE Convention in Art. 12 Par. 3 further requires that victims who are lawful residents of the country, are given access to full medical assistance.

169. The Rulebook on Alien Victims, in Art. 16\(^{113}\) states that victims, during their stay in the shelter, have the right to health protection, and that this health protection will be offered through health institutions that the Ministry of Security has made agreement with. Prima facie, this appears to suffice to meet the requirement of the CoE Convention. However, according to Law on Aliens and Asylum, as discussed earlier, victims of trafficking who are issued temporary residence permits on humanitarian grounds, do not automatically qualify for full access to health care (Art. 54). If those victims who did receive residence permits were to move out of the shelters, they would no longer be eligible for any type of health care as the Rulebook clearly states that health care will be provided during the victims’ stay in the shelter. It is recommended for these provisions to be supplemented to ensure that emergency medical assistance can be provided also in cases where the victim is not living in a shelter.

170. Regarding domestic victims, the Rules on Domestic Victims address to issue of health care in Art. 7 Par. 4 and Art. 13. According to Art. 7 Par. 4\(^{114}\), victim’s

\(^{113}\) The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 16: Health protection

(1) During his/her stay in shelter the victim has the right to health protection.

(2) The health protection will be provided through an agreement on health services between the Ministry of Security and health institution.

(3) If the accommodation and care for the victim of trafficking is provided in shelter trough a partner NGO, the health protection in the scope proscribed by the law will be secured in the way determined in the Protocol between NGO and the Ministry of Security.

\(^{114}\) The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 7: Identification and interview
psychosocial and physical condition is to be assessed prior to conducting interviews with the victims. Article 13\textsuperscript{115}, which deals specifically with health care, states that those victims who do not have health insurance will be provided with health care equal to that offered to those citizens with health insurance.

171. When it comes to psychological support, the situation is slightly more vague. The Rulebook on Alien Victims in Art. 14 which lists the right of the victims, does not mention psychological support and assistance in any way, meaning that foreign victims are currently not guaranteed access to any type of psychological support.\textsuperscript{116}

172. The Rules on Domestic Victims in Art. 8 list different types of protection that are available for victims, including education and resocialization but it is also stated that victims would also be provided with services in relation to “other needs in order to provide appropriate individual protection and help”. While this does not clearly mention psychological support, it could be interpreted to also include such support. Article 17 of the Rules on Domestic Victims also indirectly addresses this problem, in paragraphs 3g and 3h\textsuperscript{117}. These paragraphs state that social welfare services will seek permanent solutions for victims, by developing and implementing individual resocialization programs, and that health care institutions will, according to the needs

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\textsuperscript{115} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 13: Health care

If the victim or victim-witness does not have health insurance, he/she shall be provided with the health protection equal to protection given to insured persons.

The health protection shall be provided by the health care services of the entities and Brčko District of BiH. The resources for this purpose shall be ensured from the funds for special purposes within the Ministry for Human Rights and Refugees.

\textsuperscript{116} “Counseling” is mentioned, but in the context of legal counseling, and therefore should not be confused with psychological counseling.

\textsuperscript{117} The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 17: Action of the authorized institutions and authorized organizations

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

(….)

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

(g) With the aim of empowering the victims and victim-witnesses for further life, the social welfare centre or service will seek permanent solution by planning and implementing an individual resocialization program in accordance with needs of the victim or victim-witness. The resocialization program contains programs of further education, vocational training, assistance in employment and other social measures consistent with possibilities of the authorized institutions and authorized organizations and which are realized through contacts with the competent institutions in BiH (employment bureaus, nongovernmental organizations, institutions of the social welfare and children protection and other institutions, as needed).

(h) In accordance with individual needs of a victim or victim-witness, the authorized health care institutions shall prepare an appropriate program of health resocialization of the victim or victim-witness that will be implemented in cooperation with the social welfare centres with free assent of the victim or victim-witness. The program will define the duration and the manner of implementation. The social welfare centre and health care institution shall jointly identify a qualified and responsible person to monitor this program and the implementation.
of the victims, will prepare and implement health resocialization programs. These clearly, could and should include psychological support, however lack of clear reference to it means that this is open to interpretation. It can be concluded that for both foreign and local victims, legislation and the bylaws do not guarantee availability of psychological support.

**Provision of protection in criminal proceedings**

173. Article 30 of the CoE Convention addresses the protections that need to be offered to victims in the course of criminal proceedings, including protection of victim’s private life and identity, and victim’s safety and protection from intimidation. Explanatory notes 299-326 address specifically the issues that need to be addresses, including:

- Non-public hearings
- Use of audiovisual technology
- Use of recordings of testimony
- And use of anonymous testimony.

174. Further, Art. 28 of the CoE Convention requires that measures are adopted such that victims, and those who report the criminal offense in questions, as well as witnesses and members of the family of victims and witnesses are protected from threat, retaliation and intimidation both during but also after the prosecution of perpetrators.

175. It should be noted at the outset that the State CPC (Art. 267\(^{118}\)) obliges judges to protect witnesses (including victims) from insults, threats and attacks, and all the other relevant articles should be interpreted in this light.

176. Closing hearings to public has been discussed in the section on the protection of private and life and personal data of the victims. As already stated, State CPC requires that hearings are held publicly (Art. 234), however judge(s) presiding over the case can decide to close the trial to the public. It is important to note that judge can make this decision even if neither of the parties requests that the hearings be closed. What must be borne in mind is that the victim is not a party to the proceedings, and thus, in effect whatever the case may be - does not have the power to request closure of proceedings. As in many jurisdictions, the main problem of the victim in criminal proceedings, is that he/she does not have standing and is not a party, with well defined rights and obligations in the criminal process. The only exception from this being jurisdictions where private criminal claims may be brought, or joinder of the victim as a party to the process, together with the prosecutor is permitted. The possibility of

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\(^{118}\) State CPC Article 267: Protection of Witnesses from Insults, Threats and Attacks

1. The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.

2. The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of the witness before the Court. In the case of the fine, provisions of Article 242, Paragraph 1 of this Code shall be applied.

3. In the case of a serious threat to a witness, the judge or the presiding judge shall inform the Prosecutor for the purpose of undertaking criminal prosecution.

4. At the petition of the parties or the defense attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.
such joinder to the proceedings of the victim him/herself or a non-governmental organization acting in his/her name (on his/her consent, may be considered in BiH, especially in light of Article 27 (3) of the CoE Convention, which requires that state parties, at least weigh up this option.

177. Nevertheless, a judge can decide that closing the proceedings to the public would be in the best interest of the victim or the process, as stated in Art. 235 “(…) to protect the personal and intimate life of (…) the injured or to protect the interest of a minor or a witness”.

178. Article 86 of the State CPC deals with the procedures to be followed when taking testimonies from witnesses during the trial hearings, but also during investigative procedure (see Art. 219 Par. 3). Paragraph 6 of this article states as follows:

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

179. This article makes it clear that the use of audiovisual equipment is possible for a victim to provide testimony without actually being in the same room with the offender.

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

181. While these provisions from State CPC apply to all the witnesses that take part in the criminal investigation and judicial procedures, the Law on Protection of Witnesses under Threat and Vulnerable Witnesses provides additional protection.

182. According to this Law, witness under threat and vulnerable witness are defined as (Art. 3 Pars. 1 & 2, respectively):

119 State CPC Article 235: Exclusion of the Public

From the opening to the end of the main trial, the judge or the Panel of judges may at any time, ex officio or on motion of the parties and the defense attorney, but always after hearing the parties and the defense attorney, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect the personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness.

120 State CPC Article 90: Audio or Audio-Visual Recording of the Examination of Witnesses

The examination of witnesses may be recorded on audio or audio-visual equipment at all stages in the proceedings. It must be recorded in case of minors under sixteen (16) years of age who were injured by the offense, and if there are grounds to fear that the witness cannot be examined at the main trial.

121 For more detailed analysis of the victim protection procedures in BiH, see Stamper, S. (2007). A Comparison of Witness Protection Programs: Bosnia and Herzegovina & The United States of America – To Develop a Victim Witness Coordination System for Victims of Trafficking in Bosnia and Herzegovina, USAID, available at

Witness under threat:

(…) a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony.

Vulnerable witness:

(…) a witness who has been severely physically or mentally traumatized by the events of the offense or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a juvenile.

183. The abovementioned Law prescribes special measures for examination of such witnesses. First, such witnesses are to be offered psychological support during the procedure, including presence of appropriate professionals (Art. 6\textsuperscript{122}). Further, such witnesses are to be heard as early as possible, and using different methods from those set forth by State CPC (Art. 7\textsuperscript{123}). Judge is responsible for maintaining control over the manner of examination of such witness, and may even ask questions on behalf of the parties or attorneys (Art. 8\textsuperscript{124}). Similarly to Art. 86 of the State CPC, this Law also allows for examination of witnesses by using audio-visual technology, in a way that it will allow for questions to be asked to the witness, while not having her/him in the same room with the defendant (Art. 9\textsuperscript{125}). Article 10\textsuperscript{126} of the same Law creates a

\begin{enumerate}
\item[122] State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 6: Access to psychological and social assistance and professional help
\item[123] State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 7: Order of presentation of evidence at the main trial
\item[124] State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 8: Examination
\item[125] State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 9: Testimony by using technical means for transferring image and sound
\item[126] State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 10: Removal of the accused
\end{enumerate}

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of this body as well as psychological support to the witness, including the presence of appropriate professionals at examination or hearings.

In the course of the main trial, the Court may hear witnesses under threat and vulnerable witnesses at the earliest possible time and shall have the possibility of hearing those witnesses at the main trial in a different order from the one stipulated by the CPC BiH.

When determining whether there are justified reasons for examining a witness using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness, the need to provide for the protection of witnesses under threat and vulnerable witnesses shall also be taken into account.

Where there is a justified fear that the presence of the accused will affect the ability of the witness to testify fully and correctly, the Court may, either ex officio or upon the motion of the parties or the defense attorney, order that the accused be removed from the courtroom.
possibility of removal of the defendant from the courtroom, when there is fear that his presence will have an affect on the witness. The decision to remove the defendant can be made either on the motion of a request by a party, or without such request. Again, given that the victim is not a party to the proceedings, it is up to the prosecution to be weary of the victim’s rights and safety. According to this law, judges are also required to consider the protection of the witness and his/her family, when deciding whether to read the records of the testimony given in investigative phase (Art. 11127). The securing of the anonymity of the witnesses will be ensured as set forth in Arts. 12 and 13. Article 12 Par.1128 states that in certain situation, during the preliminary stages of the trial, personal details that could help to identify the witness and that would put witness in danger, may be kept confidential, yet must be released at some point, at the hearing at the latest. Article 13129 allows that the time period during which the identifying information regarding the witness can remain confidential for longer periods of time, when deemed necessary. The time of maintaining confidentiality may extend even up to 30 years.

(2) The accused shall be enabled to follow the testimony through technical means for transferring image and sound, or the testimony shall be recorded and presented to the accused.

(3) The defense attorney shall be present at the hearing. After the testimony has been presented to the accused but before the witness is released, the defense attorney and the accused shall have the opportunity to consult.

(4) A decision pursuant to paragraph 1 of this Article is subject to appeal by the parties and the defense attorney. The Panel of the Appellate Division shall consider the appeal within 72 hours following the day the appeal is received.

127 State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 11: Exception from the imminent presentation of evidence

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

128 State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 12: Limitation of the right of an accused and his defense attorney to inspect files and documentation

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

129 State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 13: Additional measures to provide for the anonymity of a witness

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

(2) The Court may, after hearing the parties and the defense attorney, decide that the anonymity of the witness be preserved by allowing the witness to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound.

(3) The Court may, at any time, revoke the decision from paragraph 1 of this Article, either ex officio or upon the motion of the parties or the defense attorney.
184. The CoE Convention introduces a novelty as regards protection of victim-witnesses and their families. Namely, Article 28 (4) of the Convention extends protection measures also to members of non-governmental organizations which may be involved in criminal proceedings on behalf of or together with the victim. In the case that proceedings in BiH were to permit such joinder to proceedings (as mentioned in paragraphs above), then the victim-witness protection law should also extend to these representatives.

185. Articles 19 through 23 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses addresses now judicial procedure would be conducted when a witness has been given status of “protected witness”. When there is significant risk to personal security of the witness and his/her family (Art. 14\(^{130}\)), at request of offender, his lawyer, prosecutor or judge (Art. 15 Par. 1\(^{131}\)), a witness may be given this status. Identity of protected witnesses are known only to the members of the judicial panel, and such witnesses never appear in any hearings in order to ensure that their identity remains anonymous (Art 19 Pars. 2b and 2c\(^{132}\)). Protected witnesses are not required to answer any questions that would reveal their identity (Art. 19 Par. 2d\(^{132}\)). Testimonies provided by the witness to the judge panel are to be read in the

\(^{130}\) State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 14: Witness protection hearing

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

\(^{131}\) State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 15: Motion for a witness protection hearing

(1) A motion for a witness protection hearing may be made by:

(a) a judge, the Presiding Judge or the judge of the Panel;

(b) the Prosecutor; or

(c) the suspect or the accused or his defense attorney.

(2) The motion must comprise:

(a) information establishing the identity of the witness and the proceedings in which the witness is to testify;

(b) facts indicating that the personal security of the witness or the family of the witness is at risk through his participation in the proceedings; and

(c) circumstances about which the witness is to be examined.

(3) If the motion is made by the Prosecutor or the suspect or the accused or his defense attorney, the motion must be submitted to the Court in a sealed envelope clearly indicating on its outside that it is a motion for witness protection hearing under Articles 14 through 23 of this Law.

\(^{132}\) State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 19: Hearing

(2) The witness shall be informed that

(a) he will be heard as a protected witness;

(b) his identity shall not be revealed to any person other than the members of the Panel and the minute taker of the Panel;

(c) he shall not appear in person before the Panel at any hearing other than the witness protection hearing;
trial hearing (instead of witness testifying in person) (Art 21\textsuperscript{134}), and in such written transcripts the witnesses are always to be identified with a pseudonym (Art 20 Pars. 1 & 2\textsuperscript{135}). If any additional questions need to be asked, such questions would be asked by the panel of judges directly to the witness, in a closed hearing, without other parties present (Art 22\textsuperscript{136}).

186. Finally, the BiH Witness Protection Program Law addresses the most extreme cases when it is necessary to change the identity of the witnesses in order to protect them or their family from possible harm. According to this law, witnesses who are determined to be key to investigation or prosecution can consent to protection and benefit from it if the witness him/herself or a member of his family “faces a danger to life, health, or freedom because of (witness’) willingness to testify”, noting “a witness may also be protected under the provisions of this law if the danger is only realized after the termination of criminal proceedings and if the danger is a result of the person having testified during the proceedings.” (Art. 2 Par. 2). Further family members of such witnesses may also be offered the same protection (Art. 2 Par. 3\textsuperscript{137}). Within the

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\textsuperscript{133} State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 19: Hearing

(3) The witness shall be informed that

(…) d) he is not obliged to answer questions that would indicate his identity or the identity of the members of his family.

\textsuperscript{134} State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 21: Use of a recorded testimony

(1) At the main trial of the criminal case, the Court shall have the testimony of the protected witness read out loud from the record of the witness protection hearing.

(2) The judge or the Panel shall not need the agreement of the parties in the case to have the testimony read out loud.

(3) With the consent of the Prosecutor and the accused and his defense attorney, the judge or the Panel may waive the reading of the testimony out loud.

(4) The witness may not be called to give testimony other than the testimony at the witness protection hearing.

\textsuperscript{135} State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 20: Record

(1) The record of the witness protection hearing shall not contain information relating to the identity of the protected witness.

(2) The record shall employ a pseudonym for the witness, as determined by the Panel, which shall be used during the criminal proceedings and in the decisions of the Court.

\textsuperscript{136} State Law on Protection of Witnesses under Threat and Vulnerable Witnesses Article 22: Additional Questions

(1) The Court may, either ex officio or upon the motion of the Prosecutor or of the accused or his defense attorney, decide that the protected witness be heard on additional questions:

a) to clarify previously given testimony; or

b) relating to information that was not covered by the previously given testimony and are material to the case.

(2) The Panel shall conduct an additional witness protection hearing at which the witness is asked the additional questions and the answers are recorded and read out loud in the manner provided for in Article 21 of this Law.

\textsuperscript{137} BiH Witness Protection Program Law Article 2: Area of application
framework of this law, witnesses or their family members who have been included into the witness protection program shall be provided with protection to ensure their safety along with other support (Art. 4), and may receive new identity and all necessary documents (Art. 7), as well as spending allowances (Art. 119).

187. It can be concluded that identity of witnesses and victims can be protected through mechanisms set for in State CPC, and for more serious cases, through mechanisms set forth in the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. Through these mechanisms it is possible, when determined to be necessary, to keep witnesses completely anonymous, but less severe mechanisms are offered as well. Finally, the BiH Witness Protection Program Law allows for even further protection of witnesses and their family, not only during, but also after the conclusion of the criminal procedure, when their safety is at risk.

**Special measures of protection for children**

188. In CoE Conventions, special protection measures for children are envisioned in a number of different articles, rather than grouped under one or a few articles.

189. First, when it comes to identification of victims, Art. 10 Par. 3 of the convention requires that when the age of the victim in uncertain, then the person will be presumed to be a child, and treated accordingly. Further, Par. 4 of the same article deals with how unaccompanied children identified as victims are to be treated, mentioning in particular, that they should be appointed a legal guardian that will act in the best interest of the child, take necessary steps to clarify the nationality of the child, and make efforts to find the family of the child, if that is determined to be in the best interest of the child.

190. These issues are addressed by the Rulebook on Alien Victims, and the Rules on Domestic Victims. In Art. 11 of the Rulebook on Alien Victims, it is stated that when the age of the victim cannot be established, it shall be assumed that the victim is a minor and will be treated as such. Further, according to the same article, a guardianship will be requested for the child. This issue is addressed in more detail by Art. 19 of the Rulebook on Alien Victims, whereby it is stated that all child victims are entitled to the same protection as children who are citizens of BiH. Further, an appointment of a temporary guardian who would act in the best interest of the child may be requested, and all activities and actions are to be taken in the interest of the child.

(3) Furthermore, with his consent a person may be protected in accordance with the present Law if the person is a family member as defined in paragraph 1 of article 83 of the BiH CPC of a witness as defined in paragraph 1 of this article or if the person is otherwise close to the witness and if he faces a danger to life, health, or freedom because of the witness’ willingness to testify, and if he is suitable for witness protection measures.

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

138 The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 11: Procedure and competence for accommodation of victim of trafficking

139 The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 19: Special protection of children

(1) All children in sense of definition from the Rulebook are entitled to special treatment and protection as other children who are citizens of BiH.
191. Regarding domestic victims of trafficking, Art. 3 Par. 3\(^{140}\) of the Rules on Domestic Victims states that the protection of the best interest of the child is an obligatory standard for all institutions involved. However, the Rules on Domestic Victims do not at any point deal with how those whose age is not certain are to be treated. With regard to protection measures mentioned in the CoE Convention, the Rules in Art. 15 Par. 2\(^{141}\) set forth that a child is to be separated from his/her family and to be appointed a guardian, if there is evidence that parents may have been involved in some types of negative activities. Further, in Art. 15 Par. 4\(^{142}\) it is stated that all children who are victims will be treated as children without parental care or neglected, regardless of their family status, which in practice would mean that such children are all in the care of the state.

192. It can be concluded that although the best interests of the child have been set forth as the major guiding principle by both documents mentioned above, the Rulebook on Alien Victim is closer to being in line with the CoE Convention. The situation of domestic child victims is therefore recommended to be improved.

(2) After a child is accommodated in the shelter the organizational unit of the Ministry of Security will inform administrative organ responsible for the social assistance, in place where the shelter seats, about the need for appointment of temporary guardian who will be responsible to represent child interests in proceedings until the final solution is identified.

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

(4) All activities by competent organs must be undertaken in the best interest of the child, understanding that each activity has to be conducted with utmost care and protection as necessary for the welfare of the child including right and obligations of the child’s parents, guardians or other individuals that may be legally responsible for the child and including the opinion of the child that is evaluated in dependence of age of the child.

(5) Actions dealing with rights and interests of children should be given priority. All actions concerning children victims of trafficking must be executed with utmost degree of urgency and efficiency. All such measures must be undertaken for the sake of protection of privacy and identity of the child being a victim hereto.

(6) If it is not possible to determine the age of child with security and there exist reasons that indicated that such child is a victim, then such child will be treated supposing that it is a child victim.

\(^{140}\) The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 3: Basic Operational Principles

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

\(^{141}\) The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 15: Protection of children

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

\(^{142}\) The Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings who are Citizens of BiH Article 15: Protection of children

(4) A child-victim or victim-witness shall be treated as a child without parental care or having been neglected in upbringing regardless of his/her family status.
Article 11 of the CoE Convention addresses the issue of protection of private life, and it states, in paragraph 2, that any details allowing the identification of child victims are not to be made public, through media or any other means. All the regulations regarding this issue have already been discussed above. It should be noted that when it comes to children, the Rulebook on Alien Victims and Rules on Domestic Victims do not include any special provisions regarding protection of their private lives, other than what is already applicable to adults.

In the Art. 11 of the Press Code, among other things, it is specifically stated that caution should be exercised when children age 15 or under who are victims of crimes are being identified, and that children who are under this age should never be identified if they are acting as witnesses in criminal cases. Even with this, the regulation remain incomplete, as children age 15-18 are left out the rule. As discussed previously, when it comes to media, further regulation is necessary.

Article 12 of the CoE conventions deals in particular with different modes of assistance that should be provided to victims. With regard to accommodation, the Rulebook on Alien Victims specifically addresses this issue, stating that all children without valid documents, regardless of their status as a trafficking victims are to be provided with accommodation, and children who are assumed to be victims, even if they do have valid documents, will be provided shelter as well. Accordingly to this article (Par. 3.) children should be assigned a separate area, separate from adults. The Rules on Domestic Victims do not include any special

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143 The Press Code Article 11: Protection of Children and Minors
When treating children and minors, journalists have an obligation to be extremely careful, respecting ethical norms and Convention on children rights based on the welfare of a child.

Journalists are obliged to protect identity of child in procedures that do not involve public at all.

Newspapers and periodicals must exercise caution and responsibility in identifying children under the age of 15 in matters involving the child's family in the absence of or without the consent of a parent or other adult responsible for the child.

Newspapers and periodicals must not, under any circumstances, identify children under the age of 15 who are involved in criminal cases at witness or defendants.

144 The Rulebook on Protection of Alien Victims of Trafficking in Persons Article 20: Accommodation of children in shelters

(1) Organizational unit of the Ministry of security in the field responsible for issues of aliens is obliged to accommodate a child-alien who does not posses valid documents on stay in Bosnia and Herzegovina into shelter without further delay and without escort of parents of custodians.

(2) For the best interest of a child, shelter shall also accommodate children without parental care or guardian with valid documents if there is reasonable assumption it concerns a victim of trafficking in person.

(3) If possible, children will be accommodated in separate shelter departments for children, separated from adults who are also accommodated in the shelter if that is not contrary to the best interest of a child.

(4) A child accommodated in the shelter enjoys all rights as victim of trafficking in person as well as special treatments enjoyed by children in accordance with the laws of BiH and International Convention of the Child Rights.

(5) A child will remain in the shelter until the proceedings of data verification are finalized and establishment of contact with the responsible department of the country of the origin or parent or guardian, and until safe repatriation is secured in accordance with the law and this Rulebook.
provisions with regard to accommodation of children. However, as previously stated, Art. 15 Par. 4 states that all child victims are to be treated as children without parental supervisions, and should gain their right through this status.

196. Children, in addition to the possibility of obtaining temporary residence permit based on the status of the human trafficking victims, can also obtain such status by the fact that they have been a victim of an organized crime, or have been abandoned, as is stated in Art. 54 Par. 1b. This would again be temporary residence permit issued on humanitarian grounds.

197. In terms of protection offered to minors in the course of the criminal procedure, it should be kept in mind that the minor in question here are victims/witnesses, rather than suspects, and therefore provisions relating to treatment of juveniles in the criminal justice system as put forth by the State CPC do not apply in this case.

198. Article 86 of the State CPC that deals with the examination of witnesses does mention minors specifically, stating, in paragraph 4 that special attention must be paid to ensure the procedure does not affect the child negatively, and that assistance of pedagogues or other professionals should be sought in such situations. Paragraph 6 of the same Article states that age is one of the factors that should be taken into account when deciding to use technical means in the process of the examination of the witnesses. This effectively means that it could be decided to use such equipment based on the young age of the witness, in this case a child, so that the child is in a different room during the process of examination and does not have to face the offender. Article 219 Par. 3 states that rules set forth by Art. 86 are applicable in the investigative procedure as well. Finally, all the procedures that are applicable for vulnerable witnesses, as discussed earlier, are also applicable to children who have been given the status of vulnerable witnesses. Article 3 Par. 3 of the State Law on Witness Protections states that:

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

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145 State Law on Movement and Stay of Aliens and Asylum Article 54: Temporary residence on humanitarian grounds

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

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

146 State CPC Article 86: Course of the Examination of a Witness

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

147 State CPC Article 86: Course of the Examination of a Witness

(6) Given age, physical and mental condition, or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness.
199. Accordingly, children who partake in the procedure can benefit from all the protections offered by this law. It should be noted that the Law on Witness Protection does not contain any additional specific provisions with regard to children and it may be considered to introduce revisions thereto.

**Compensation and legal redress**

200. Article 15 of the CoE Convention addresses compensation and legal redress, with the aim of ensuring that victims of human trafficking are provided with options to receive compensation for damage and injury suffered (see Explanatory Note No. 191). According to this article, it first must be ensured that victims have access to information on relevant procedures in language that they can understand, and that they have access to legal assistance and free legal aid. Both of those issues have been addressed in previous chapters, and therefore here will not be repeated. Nevertheless, it should again be stressed that issue of legal aid for victims in criminal and civil proceedings has so far has not been addressed in a comprehensive manner, from legislative point of view, and therefore from the outset it can be concluded that when it comes to legal aid for victims in procedures regarding compensation, regulations are not satisfactory. While Rulebook on Alien Victims and the Rules on Domestic Victims do include provisions that mention “legal assistance” or legal counseling, such service does not amount to legal advice and legal representation, and therefore is incomplete. Legal representation is especially important as it would allow that victim’s lawyers can pursue their claims in local courts effectively even after the victims departure from the BiH, which can be of crucial importance in cases that take long time.

201. The same Art. 15 of the CoE Convention, in Par. 3 further establishes the right of victims to compensation (see Explanatory Note No. 197). According to Explanatory Notes regarding this paragraph, such compensation should be inclusive of compensation for both material and non-material damage, and should be pecuniary. It is required that either criminal courts should be empowered to determine civil liability (joinder of the civil case into the criminal), and if that is not the case, then victims should be able to pursue their claims in civil courts. This paragraph refers to damages and compensation that victims should be able to seek from the perpetrator.

202. State CPC allows for compensation claims to be made in the course of the criminal procedure. Chapter XVII of the State CPC address this issue. According to relevant articles, such claims can be made when the claim has arisen because of the commission of the criminal offense, and a claim may pertain to reimbursement of damage, recovery of goods, or annulment of legal transaction (Art. 193). Therefore, damages for pain and suffering, as required by the CoE Convention, cannot be claimed in criminal courts. Compensation claims can be made at any point before the end of the main trial or the sentencing (Art. 195), meaning that this is not something that victims would have to decide on at the very beginning of the process. When pronouncing the defendant guilty, the court may award the entire claim, or only part

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148 State CPC Article 193: Subject of the Claim under Property Law

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

(2) A claim under property law may pertain to reimbursement of damage, recovery of items, or annulment of a particular legal transaction.
of the claim and refer the victims to civil courts for further action (Art. 198 Par. 2\textsuperscript{149}). If the decision of the court is acquittal, then the victim would be referred to civil courts for further action (Art. 198 Par. 3\textsuperscript{150}).

203. Damages\textsuperscript{151} for pain and suffering, among others, can be claimed in entity and district civil courts. Claims for damages may be made in association with destruction or damage of property, injury to health or body, or death, injury to reputation, honor, infliction of pain or fear, as well as a violation of any other property right. Damages may be both pecuniary and non-pecuniary. In cases of injury, compensation may be received for cost of treatment, loss of revenue, or compensation in the form of regular payment for continued inability to work. It is also possible to claim damage for pain and fear suffered, and in such cases the court assesses the form and the amount of the compensation.

204. The final Paragraph of the Art. 15 of the CoE Convention establishes that mechanisms that would ensure that victims actually obtain compensation should be in place, such as victim compensation funds, or alternative mechanisms such as social integration and social assistance programs that victims could benefit from. Therefore, this paragraph addresses compensation that may be obtained from the state in addition (or as an alternative) to damages from the perpetrator of the offense.

205. So far, in BiH no alternative pathways through which the victims would be able to obtain compensation have been developed, and the State Action Plan for 2008-2012 does not include development of such a mechanism either (such as a fund). A fund that would benefit from money and goods seized from the perpetrators has not been established, and there are no initiatives to do so.

\textsuperscript{149}State CPC Article 198: Ruling on the Claims under Property Law

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

\textsuperscript{150}State CPC Article 198: Ruling on the Claims under Property Law

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

SECTION II IMPLEMENTATION OF CURRENT LEGISLATIVE MEASURES IN BOSNIA AND HERZEGOVINA

6. EXECUTIVE SUMMARY OF RECOMMENDATIONS

In view of the assessment of practice in implementation of the current legislative measures in Bosnia and Herzegovina, it is recommended as follows:

A. The active participation on NGOs in anti-trafficking efforts may be further enhanced by the undertaking of initiatives to involve NGOs beyond their role as merely contractors for the authorities [par. 207]

B. The authorities of BiH should make greater efforts into research and data collection activities. The possibility of sharing data within and between law enforcement agencies should also be improved [par. 209, 210, 211]

C. A clear plan on awareness raising activities should be developed [par. 214]

D. It should be considered to make training mandatory, in particular for those members of law enforcement and other authorities that most frequently come into contact with victims. The training programmes should also include social workers. [par. 215]

E. The crime of trafficking should be considered to be included as a stable element in police academy curriculum [par. 26]

F. Training for judges and prosecutors should be conducted at all levels[par. 217]

G. A greater effort should be made to address awareness raising and social and economical programmes to the potential victims of trafficking [par. 220]

H. A human rights approach, rather than a focus on solely the law enforcement aspect of trafficking should be implemented in practice [par. 221]

I. Mechanisms for sharing information between courts and State Border Police, should be introduced so that it is no longer impossible for border police to identify persons who have been convicted in BiH of trafficking in the past. [par. 224]

J. Enforcement of the rules on obligations and liability of carriers [par. 225]

K. Application of jurisdictional rules on prosecution of trafficking cases should be made functional on a practical and not only legislative level [par. 227, 228]

L. Given the resulting practice, it should be considered to amend entity and BD criminal codes so that all but the first paragraphs of the articles regarding enticing into prostitution are removed, making it impossible to prosecute cases that have elements of coercion and deceit as enticing into prostitution case, forcing the entity and BD prosecutors and courts to forward such cases to State Courts. [par. 229]
M. The terms “child” and “juvenile” used in the definition of trafficking in the State CC should be harmonized in order to avoid confusion in practice. [par. 231]

N. The use of Article 187 of the State CC in practice, instead of prosecution of the crime of trafficking should be reconsidered and step should be taken to prosecute the crime of trafficking, and not resort only to undertaking a lesser crime for ease of collection of evidence [par. 232]

O. The sentencing practice in trafficking cases should be reconsidered. [par. 235, 236]

P. Steps must be taken to implement into practice existing provisions such as seizure of assets, or prosecution of legal persons if the crime is to be fought with effectively in BiH [par. 237]

Q. The issue of non-punishment of victims should be clarified in practice [par. 239, 240]

R. The responsibility for identification of victims and provision of protection to them, in practice, in particular concerning domestic victims, should be resolved. [par. 241, 242, 243, 244, 245,]

S. Protection of the identity and private life of the victim need to be ensured in practice. Any new modes of data collection must also be sufficiently secure to ensure that private life is respected. A general effort in raising awareness on this issue should also be undertaken to avoid the spreading of information on victims informally, but also formally in the media. [par. 246, 247]

T. The reflection delay should be understood in practice to mean a time when the victim is able to re-habilitate him or herself and not a time during which he or she is simply tolerated on the territory of BiH. Such understanding would allow for the possibility of ensuring that all efforts are made to provide the victim with the requisite assistance measures [par. 248]

U. Some basic guidelines on conditions that warrant the issuance of a residence permit based on the victims personal situation may be developed. [par. 249, 250]

V. It may be considered to provide those victims who are granted a temporary residence permit with access to the labour market, vocational training and social benefits. [par. 251, 252]

W. It should be considered to expand the available services to victims in a shelter or other appropriate accommodation [par. 256, 257]

X. The authorities are encouraged to set the minimum standards for accommodation that is provided to victims of trafficking (in consultation with the service providers themselves) [par. 258]

Y. Some form of material assistance should be provided to victims as an alternative to what is provided in the shelters [par. 259]
Z. Provision of translation services should be expanded to include all victims (even those who have some basic knowledge of Bosnian) and not only in the court room [par. 260]

AA. The system of provision of legal aid and information for victims, in practice requires improvement, in particular in the case of domestic victims [par. 261, 262, 263]

BB. The system of medical coverage for domestic victims of trafficking needs to be rectified [par. 265]

CC. Jurisdictional issues in prosecuting cases of trafficking and thus providing protection to victims participating in the criminal proceedings need to be resolved. [par. 267, 268]

7. PART A: IMPLEMENTATION OF PREVENTION MEASURES IN PRACTICE

Interagency Cooperation and Involvement of Civil Society

206. As discussed previously, work of different agencies is coordinated through the office of the State Coordinator. It should be noted however the powers of the State Coordinator are limited, as (s)he cannot delegate tasks to different ministries and their representatives, but can only facilitate their operations and make efforts to improve cooperation and information sharing. Hence, as it has been reported by members of the State Group, good cooperation is often based solely on good personal relationships between members of different ministries and their personal dedication. Given that all members of the State Group often have a number of other different responsibilities and duties within their ministries, the role that they play in the State Groups is often only one of the many, and often not the first priority.

207. It should also be noted that participation of NGOs in the working group is rather limited. Representatives of NGOs do have the right to sit in the meetings of the State Group, and their opinion is also solicited during the preparation of the operation plan. In other words, they are given the opportunity to actively participate. However, while initially NGOs displayed great enthusiasm, this reportedly has faded away, and currently they often do not participate in the meetings of the State Working Group and show little interest in such activities. Given that involvement of civil society should be one of the principles upon which anti-trafficking activities are conducted it is important to ensure active participation of the NGOs and develop ways for them to become active stakeholders in the problem rather than just service providing contractors for the government.

208. Currently there are new efforts in that direction. Ministry for Human rights and Refugees has recently opened a call for grant proposals from NGOs for their trafficking related activities, with total of 30.000 KM to be awarded to successful project proposals.152 In this way, by acting proactively, the Ministry is attempting to engage NGOs in the provision of services for human trafficking victims, and thereby increase their stake in the issue. Further, so far NGOs were mostly obtaining their

152 See the website of the State Coordinator for more information, http://www.anti-trafficking.gov.ba/?otvori=vijest&id=33
funds through international organizations. By obtaining funds through government, there are likely to develop closer ties and improve their cooperation.

**Policies and programs to prevent trafficking**

**Research and data collection**

209. As discussed earlier, there are currently no efforts by Government agencies, be it State Coordinator or individual ministries to support research into trafficking issues. OSCE Missions in BiH and other intergovernmental agencies have been active in this regard, however these activities were not part of the Government’s policy. This particular report has been prepared at the request of the State Coordinator, and as such it is unique.

210. When it comes to the collection of data, situation in practice is rather confusing. There have been a number of initiatives to develop and put to use databases that are intended to collect trafficking related data in uniform manner, for the purposes of policy planning, following trends and law enforcement activities. However, as has become apparent, currently none of these databases is being used effectively. There are number of reasons for this. Primarily, it must be noted that due to complex government structure BiH has a number of law enforcement agencies (20 law enforcement agencies), and no clear chain of command. Cantonal law enforcement agencies along with entity agencies are not obliged to report to the State Coordinator, meaning that any data sharing is voluntary, making it difficult to impose data collection techniques and methods, or demand data sharing. SIPA, as a State law enforcement agency had also made attempts to unify data collection and reporting, however similarly, despite different cooperation protocols that were made with entity MOIs, there was little success. Secondly, as different ministries have different needs, they focus of collecting different types of data, and not necessarily in ways that would make it easy to cross reference their information.

211. Currently a new database is being developed, with hopes that with this database problems faced with previous databases will be overcome. This new database is intended to enable inclusion of information from all relevant agencies regarding each particular trafficking case, to ensure that there are no repetitions when it comes to data aggregation but at the same time ensuring that all data is entered. It is still unclear, however, how different needs of different ministries will be addressed, as for example SIPA will still have the interest in collecting intelligence on traffickers, while Ministry for Human Rights and Refugees will have interest in collecting data on victims and assistance provided to them.

212. What is apparent is that there is a lack of understanding as to what purpose of the data collection should be. It is not mandatory that all data is shared between all ministries, as all ministries do not need all the data that gets collected, and in fact indiscriminate data sharing may leave to violation of privacy of victims. However, it is important to develop channels for reporting data that enable the State Coordinator to track the situation on the ground and allow for monitoring of trends. While development of a single database may sound like an obvious solution, it is hardly likely for it to be an effective one, given the difficulties this will create for individual ministries. It is of crucial importance that different ministries and stakeholders discuss their respective data needs, before they proceed to developing new data collection tools, as such tools have so far been have not brought results.
Awareness Raising, Education Campaigns, and Training Programmes for Vulnerable Groups and for Professionals

213. Awareness raising activities in BiH have mostly been carried out by different NGOs and intergovernmental and international organizations. It should be kept in mind that the State Coordinator does not have a separate budget, therefore any awareness activities carried out by the government agencies would need to be organized and funded by relevant ministries, and can only be supported and coordinated by the State Coordinator. It is possible that through before mentioned grant scheme for NGOs, in the following year some new NGO administered awareness activities will be developed, yet there is still lack of government guidance or clear activity plan with regard to this issue.

214. When it comes to trainings of professionals, a number of different trainings have been organized in the past, mostly in cooperation with intergovernmental organizations such as OSCE and IOM, as well as through office on the State Coordinator. Reportedly such trainings in general have focused on general legal issues, victim identification, and similar. Some more specialized trainings regarding investigating techniques for human trafficking cases have also been organized in cooperation with intentional partners.

215. It should be noted, however, that participation in such trainings is not at this point mandatory for professionals and government representatives working on the issue of trafficking, nor is it an integral part of the continuing education for government officials. Hence, consequently, police officers who come into contacts with victims, judges and prosecutors that deal with human trafficking cases, and social workers that work with victims are not required to attend human trafficking related trainings. While it is true that many of those officials have attended such trainings in the past, and thus are familiar with the issue, lack of training requirement means that there is a risk that those working with the victims or on this issue in general may not have good understanding of the problem. This is especially true for police officers new in the force, who could be the key to identification of the victims. Further, social workers have still not been a part of a larger training project, as they have only become relevant for trafficking issues in BiH with the increase in the number of identified domestic victims. There are plans to organize such trainings, and this will be the key to successful involvement of Social Work Centers, as currently they are reportedly rather uninterested in assisting victims and often an obstacle rather than a part of solution.

216. It should be further noted that human trafficking is not an integral part of the curriculum at the police academies (two entity and one for State Border Police), even though such trainings have been offered on ad-hoc basis. Inclusion of this topic into the mandatory curriculum would mainstream the topic, meaning that all police officers would receive basic training regarding the issue. Development of a single Institute for Education and Professional Upgrading of Personnel, as envisioned by the Action Plan for the Implementation of Mostar Declaration\(^\text{153}\), that would offer unified education and training programs for police officers from all law enforcement agencies in BiH, would make it easier to include human trafficking issues into the training of the law enforcement staff through a single institution.

\(^{153}\) This Action Plan is a result of a long term effort to restructure and unify police agencies in BiH. The action plan has been adopted on 22 November 2007. and full text can be found at
217. Regarding the judiciary, all members (judges and prosecutors) are required to participate in a certain number of trainings organized by Centers for Education of Judges and Prosecutors that operate on entity level.\textsuperscript{154} In the past, trainings regarding the issue of human trafficking have been organized through these Centers. As such trainings tend to be small, in order to offer higher quality education, not all judges and prosecutors have participated in these particular trainings. Another problem is that such a Center does not exist on the State level, and since Centers organize most of their trainings to satisfy specific needs of the continuing education for entity level judges and prosecutors, only a small number of trainings are organized specifically targeting State level judges and prosecutor.\textsuperscript{155} This is particularly problematic given the fact that human trafficking as such is an offense that is prosecuted at the State level.

218. On the positive side, under the leadership of the State Coordinator a Handbook for Education of Judges and Prosecutors on human trafficking issues has been developed and therefore a ready material that can be used in the trainings, regardless of who organizes them, is readily available.

219. Further, under the initiative of the State Coordinator materials to be used by teachers in primary and elementary schools when raising awareness among students with regard to trafficking have been prepared for publication. This material is titled “Prevention with the Aim of Raising Awareness of the Dangers of Trafficking in Human Beings”. The trainings of the teachers that would be using these material in the classroom was envisioned to take place in 2007, and Catholic Relief Service was to be an implementing agency, however these trainings are yet to take place.

Social and Economic Initiatives

220. In practice, there are currently no initiatives that address potential victims of trafficking specifically. This does not mean that there are no social programs in BiH, however these are currently not specifically tailored to address the problem of human trafficking. This is troubling given the fact that the number of local victims identified has been on the increase since 2003. As mentioned in previous paragraphs, in the future awareness raising programs for school children have been planned, yet this does not suffice in light of the possible social and economic programs that should be implemented that would directly address the underpinning causes of human trafficking and related victimization.

Human Rights Based Approach / Child Sensitive Approach

221. While importance given to human rights in the treatment of victims is expressly stated in most human trafficking related bylaws and rules, in practice it is evident that different agencies display different attitudes. As is often common, law enforcement agencies tend to focus much more on the security aspect of human trafficking, and tend to focus on the victims as a witness (someone who can provide information about the case), rather than as someone who needs to protected. Further, there have been reports that Social Work Centers, who are responsible for social work

\textsuperscript{154} They are required to participate in 4 days of training per year.

\textsuperscript{155} For overview of continued education and training options for judiciary in BiH, see Mujanovic, S.; A Step Towards Adequate Continuing Legal Education of the Judges of the Court of BiH and Prosecutors of the Prosecutor’s Office of the B&H. Available at: http://www.soros.org.ba/images_vijesti/stipendisti_2008/sejla_mujanovic_final_policy_study_en.pdf
and protection of victims and in particular children, tend to be unresponsive and uninterested in assisting the victims, and often even prejudiced against them (especially in cases of victims of trafficking for sexual exploitation). Finally, there have also been reports of minors who were potential victims of trafficking being prosecuted for minor offense of prostitution in local courts, rather than being protected and their cases referred to relevant agencies, reflecting a lack of understanding of the problem at the local level.

222. What appears to be the case is that while higher level officials from the Ministries do understand the human rights aspect of the problem, individuals operating on the ground, and therefore those who are in direct contact with the victims and often responsible for their protection, are less likely to see the issue in such terms. This further testifies to the importance of training of those individuals who are in direct contact with the victims, and of leadership that will set the tone for their everyday work.

Migration Policies, Border Control and Opportunities for Legal Immigration

223. In response to increasingly domestic nature of the trafficking problem in BiH, less importance has been given to the issue of border control and migration policies in the context of combating human trafficking. Hence there have been no recent efforts to run information campaigns in countries there used to be traditional source countries for trafficking into BiH.

224. When it comes to prohibition of entry to persons known to be involved in trafficking, while the legislative basis for such prohibition of entry does exist, in practice it is almost impossible to implement. Currently, there are no mechanisms for sharing information between courts and State Border Police, meaning that it is impossible for border police to identify persons who have been convicted in BiH of trafficking in the past.

Control and Supervision of Third Parties

225. While legislation that requires transport firms and travel agencies to ensure that all passengers that they carry do have necessary travel documents before bringing them to the border or alternative face sanctions, enforcement of this rule has not been a priority. So far there have been no known cases of third parties being held accountable in situations involving trafficking.

8. PART B: IMPLEMENTATION OF MEASURES OF PROSECUTION IN PRACTICE

Prosecution of Human Trafficking and Related Offenses

226. As previously discussed, human trafficking has been defined as an offense in the State CC. While State CC is applicable in the whole of BiH, and therefore the fact that offense of human trafficking either has not been defined properly or at all at the Entity level should be irrelevant in terms of implementation and prosecution. In practice however, differing jurisdictions of State and Entity courts, and clashes of jurisdiction do create problems.

227. First it must be noted that State Courts that are in charge or prosecuting and trying the offense of human trafficking are not superior to entity courts, as if often assumed. Rather, these Courts are simply responsible for trying cases defined by the
State CC. In other words they could be described as specialized court that deals with only certain heavier crimes, as defined by State CC. Therefore it may be said that State Courts exists not in hierarchical relationship with the entity courts system, but in parallel.

228. In practice, this creates a problem, because of unclear rules on who decides which case will be prosecuted on the state level and which on the entity level. While it may appear clear that trafficking cases should be prosecuted at the State Court simply because this offense is not defined at the entity level, this is not always the case. First the rules are unclear as to how police investigating the crime decides which prosecutor to contact – State or Entity. There have been reports of entity police working with both State and Entity prosecutors, meaning that a lot depends on their own evaluation of whether the case is potentially a human trafficking case or not. Further, while Entity prosecutor may decide to forward a case to State prosecutor if it becomes clear that offense in questions is among those listed in the State CC, they are under no such obligation. A prosecutor can easily also decide to prosecute at Entity level for a different offense, such as enticing into prostitution. This lack of clear rules means that whether an offense will be prosecuted at State level or not, and whether it will be prosecuted as human trafficking offense or not depends largely on the attitude of the persons involved and their initiative.

229. An additional contributing factor to this confusion is that entity criminal codes in articles addressing enticing into prostitution include paragraphs that deal with forced prostitution, or deceit of those involved into prostitution. These offenses are practically not treated differently from

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156 FBiH CC Article 210: Enticing into Prostitution

(1) Whosoever entices, incites or lures another into prostitution, introduces a person to another for the exercise of prostitution or takes part in organizing or managing prostitution, shall be punished by imprisonment for a term of between one and five years.

(2) Whosoever, in order to achieve material gain, introduces another into prostitution by force or threat of infliction of harm, or by deceit, shall be punished by imprisonment for a term of between one and ten years.

(3) Any liability to punishment under paragraph 2 above shall apply to anyone who, in order to achieve material gain, has forced or incited a person into prostitution in the manner set out in paragraph 2 above by taking advantage of any hardship or other situation the person may be suffering, including being a foreigner in the country.

(4) Whosoever commits any offense under paragraphs 1 to 3 above against a child or juvenile, shall be punished by imprisonment for a term of between three and fifteen years.

(5) No account shall be taken of any record of prostitution of any person who has been enticed, incited, lured or forced into prostitution under this Article.

RS CC Article 198: Trafficking in Human Beings for the Purpose of Prostitution

(1) Whoever, in order to achieve material gain, entices, incites or lures another into prostitution or whoever, in any way, enables turning a person over to another for the exercise of prostitution or whoever, in any way, takes part in organizing or managing prostitution, shall be punished by imprisonment for a term of between six months and five years.

(2) Whoever, in order to achieve material gain, forces another into prostitution by force or threat with force or with infliction of harm or deceives another into prostitution, shall be punished by imprisonment for a term of between one and five years.

(3) The punishment under paragraph 2 of this article shall be applied to anyone who, in order to achieve material gain, has forced or incited a person into prostitution in the manner set out in paragraph
human trafficking, yet presence of such articles decreases the incentive to forward the cases to State Courts for prosecution as human trafficking cases. It has been suggested by officials in BiH that entity and BD criminal codes should be amended so that all but the first paragraphs of the articles regarding enticing into prostitution are removed, making it impossible to prosecute cases that have elements of coercion and deceit as enticing into prostitution case, forcing the entity and BD prosecutors and courts to forward such cases to State Courts.

230. Another problem reported is the current practice of the State Prosecutor’s Office. State Prosecutor’s Office consists of three Department: General Department (Department III), Department for Organized Crime, Economic Crime and Corruption (Department II), and Department for War Crimes (Department I). According to the Annual Report of the State Prosecutor’s Office for 2007, Department II is in charge of cases of human trafficking only if they involve more than 4 victims. 157 All other cases of trafficking are prosecuted by General Department. While it is important that special attention is paid to cases that involve larger number of victims and often involve larger criminal organizations, what is unfortunate is that due to organizational arrangements prosecutors with experience in this field work under the auspices of Department II, meaning that they are not involved in the majority of human trafficking cases. While good cooperation between government agencies should not be based solely on good personal relationships, given the track record of good cooperation that law enforcement agencies have had with this prosecutor, the current

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BD CC Art. 207: Enticing into Prostitution

(1) A person who entices, induces or persuades another person to engage in prostitution or in some other way facilitates the prostitution of that person for the benefit of another person, or in any other way organizes or manages prostitution, in order to acquire material gain, shall be sentenced from six months to five years of prison.

(2) A person who, by use of force or threat to use force or inflict large-scale damage, forces or deceives and induces another person to engage in prostitution in order to acquire material gain, shall be sentenced from one to ten years of prison.

(3) The punishment from paragraph 2 of this Article shall be imposed on a person who forces or induces another person to engage in prostitution, in the manner referred to in paragraph 2, taking advantage of her/his difficult situation while residing in a foreign country, in order to acquire material gain.

(4) A person who commits criminal offense referred to in paragraph 1 through 3 of this Article against a child or a minor, shall be sentenced from three to fifteen years of prison.

(5) The fact of whether a person induced, enticed, persuaded or forced to engage in prostitution was previously engaged in prostitution or not shall not interfere with the criminal offenses referred to in this Article.

situation is somewhat unfortunate. Further, prosecutors in Department III act without support teams, meaning that they have fewer resources to investigate and prosecute human trafficking cases.\textsuperscript{158}

231. A further source of confusion when it comes to prosecution of human trafficking cases has been Paragraph 2 of the article that defines human trafficking in the State CC, which states the following:

(2) Whoever recruits, transports, transfers, harbours or receives a child or a juvenile for the purpose of the exploitation referred to in paragraph 1 of this Article,

shall be punished by imprisonment for a term not less than five years.

“Child” and “Juvenile” are defined by Article 1 of State CC. Child is defined as a person under the age of 14 (Par. 10), while juvenile as persons under the age of 18 (Par. 10). Even though “child” is by definition also “juvenile” (or a minor), for some reason both terms have been included into the article, and this duplication is causing disagreements in practice. It has been reported that this article has been interpreted as being applicable only when the victim is a child, or under 14 years of age. While this clearly is an erroneous interpretation, suggestions have been made to simplify the article by removing “child” from the definition, leaving only “juvenile”, which includes all children under 18 in any case. Further, some have even suggested that the term “juvenile” should not be used, as such term is also used is State CPC for offenders under the age of 18. As such, the term has negative connotations and could create even further confusion. “Person under the age of 18” was suggested as an all encompassing neutral alternative.

232. A further problem of interpretation and use of the State CC definition arises from how international procuring for prostitution is defined by the State CC (Art. 187\textsuperscript{159}). It is hard to see how paragraphs 2 and 3 would in practice describe a situation different from a human trafficking situation, given that consent of the victim is irrelevant for trafficking. Consequently, prosecutors may be more likely to indict offenders on article 187, rather than work harder to collect sufficient evidence that would substantiate offense of human trafficking, which carries heavier sentences.


\textsuperscript{159} State CC Art. 187: International Procuring in Prostitution

(2) Whoever procures, entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen,

shall be punished by imprisonment for a term between six months and five years.

(3) Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment,

shall be punished by imprisonment for a term between six months and five years.

(4) If the criminal offense referred to in paragraphs 1 and 2 of this Article is perpetrated against a child or a juvenile, the perpetrator

shall be punished by imprisonment for a term between one and ten years.

(5) The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offense.
234. The above mentioned problems are problems of practice and implementation. Well coordinated and dedicated prosecutors, police and courts could easily manage to avoid all these problems in practice. However, if simplification and amendments of the current laws would improve the practice by eliminating certain confusions, it could be a useful path to follow.

235. According to the 2007 Annual Report on Combating Human Trafficking in BiH\(^{160}\), in 2007 there were a total of 11 indictments (8 confirmed) on related charges. Only one of those was in the State Court (meaning that there was only one indictment on human trafficking charge), while there were 8 in Federal courts, and one in RS and BD courts each. These relatively low numbers do testify to the need to improve criminal legislation and some of the initiatives mentioned above have already been brought up as suggestions for improvement.

236. When it comes to sentencing, current situation is also discouraging.\(^{161}\) In 2007, according to the Annual Report on Combating Trafficking in BiH for 2007, there was a total of 6 rulings. Three of those were in Federal Courts. In two cases conviction was obtained through plea bargaining agreement, and in case one sentence was conditional. In BD and RS courts there were no convictions. At the State Court, there were two convictions. One was not yet confirmed, while other was reached through plea negotiation agreement. Given the low likelihood of conviction and relatively lenient sentencing policy, it is questionable what if any deterrent effect criminal law has in BiH.

237. It is important to note that while criminal legislation allows for a number of different tools to be used against traffickers, in practice those are used only seldom, if ever applied. For example, to date no legal persons have been prosecuted for trafficking, despite the fact that legislation allows for such prosecutions. Further, confiscation of material gain has been used in only one case so far, against one single trafficker.\(^{162}\) It is unclear why all the tools and mechanisms are not being used, and this points to the need for even more detailed training of the judges and prosecutors in the field of human trafficking and in particular prosecution of human trafficking cases and related offenses. Such training should go beyond basic legal issue, and focus instead on different prosecutorial strategies that would include all the tools that are at the disposal of the prosecutors.

238. Finally, when it comes to criminalizing use of services of trafficking victims, law enforcement officials have expressed their concern that there could be unintended consequences of such legislation and have opposed the idea. They argued that criminalization would result in even lower likelihood of reporting of such crimes by those who have used services of the victims, and would lead to difficulties in investigation and prosecution, as such persons would be even less likely to testify or


provide information. Even if they did not necessarily know that the victims was indeed trafficked, out of fear of possible consequences such persons would be more likely to stay silent and not cooperate with the authorities.

**Non-punishment of Victims**

239. It was mentioned before that victims of human trafficking are not explicitly decriminalized by any of the laws or bylaws, meaning that they are also potentially subject to prosecution despite their victim status. Indeed, duress is not an accepted as a justification in any of the criminal codes in BiH. In practice, some prosecutors have called upon international standards directly, and this has often had success in the courtroom, in order to protect the victims. Yet, there have been cases of local victims being prosecuted in local courts for the misdemeanor of engaging in prostitution.

240. It is clear that this issue needs to be clarified in order to avoid any potential problems. Further, it is not sufficient that victims are decriminalized only in terms of the criminal liability. Victim may overstay her visa, work without permit, or similar, and should also be protection from any administrative proceedings that could result in adverse results for the victim.

9. **PART C: IMPLEMENTATION OF MEASURES OF PROTECTION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN PRACTICE**

241. One of the main problems with protection of victims is related to the questions regarding whose mandate it is to identify and provide protection to the victims. With foreign victims, the State Ministry for Security is the responsible ministry, however when it comes to domestic victims, the situation has remained unresolved. In general, Ministry of Security has been in charge of the foreign victims mostly because Department of Foreigners which deals with foreigners in the country is under its auspices. Yet the fact that Ministry of Security is the one responsible for foreign victims testifies to the general attitude towards the problem – it is seen as security problem, rather than as a human rights issue. When it comes to domestic victims, due to non-existence of state ministry for social protection or similar (social protection is regulated on entity and cantonal level), the State Ministry of Human Rights and Refugees has taken over the responsibility of leadership in this realm. However, due to the fact that Ministry of Human Rights is not the one providing services to the victims or regulating their status, the problem of responsibility and mandate has continued. The result of this is that it is still unclear who and how determines whether a domestic person is a victim of trafficking, which identification is the basis for further benefits, nor is the chain of decision making clear. This is very important, as benefits and services that a victim would receive can depend on this decision. This situation has been evaluated by most actors as utterly confusing.

242. Currently, the position of the Ministry for Human Rights and Refugees is that the decisions making process should not be centralized in one agency, and that no single agency should be responsible alone for determination of the victims’ status, as this may arguably result in wrong decisions. While this is described as a multidimensional approach to victim identification and protection, it in effect results in lack of clarity as to whose mandate it is to make the final decision. It would be unacceptable that each agency or institutions make their own decision, using vague, unknown, or differing criteria, as this would lead to inconsistencies in the protection measures offered, which is currently reportedly the case. It is important that all
benefits that victim has a right to are clear, and that it is clear who and how determines who is eligible and who not to receive such protections and benefits.

243. Among the ideas that have been tabled is that of the creation of a single agency that would (with input from all relevant institutions) make the decisions and decide on eligibility of a victim to services, regardless of victims is domestic or foreign, whether cooperating or not with the prosecution. This agency would also coordinate all the protection efforts.

244. This would require a reorganization and creation of a new governmental body, which is not likely to happen soon. Further, given the 2007 data, such body would be in charge of dealing with about 50 persons a year, which would make it very cost inefficient. Therefore, while it may be useful to explore how identification and victims services can be put under a single roof and under the jurisdiction of one single agency, establishing a dedicated agency would likely be unfeasible.

245. Another proposal was that there should be regional teams that are given the task of deciding on what services a victim is in need of, in way decentralizing the decision making process. Such teams would be composed of members of NGOs that provide services, social workers, medical staff, and police, which would ensure multidimensional approach. This approach however would require that many resources are pulled together. Given that already most government agencies are understaffed, it is likely that reaction of such teams would be delayed, which would be detrimental for the victims. Still, given that the current situation in not satisfactory, alternative approaches should be explored and tested.

Protection of private life and personal data

246. Regarding protection of private life, the practice is variable. Practitioners reports that often judges will close hearings to protect the victims, yet media still often receive information about victims, and reportedly do not always act in line with their own code – by publishing pictures or other identifying information regarding the victims.

247. However, some observations of how cases of identified victims are handled by officials who are involved in their protection are also a cause for concern. Officials who are involved with victim protection often talk to each other about victims in presence of other unrelated persons, and personal information regarding victims, that is collected in the process of identification of the victim and in their protection, is shared among so many different agencies. Further, the new form of data collection discussed earlier, is envisioned to be accessible to all officials who are involved in human trafficking issues, would likely include a lot of information regarding victim’s private life. Consequently, all information collected about the victim will be accessible even to those who are not required to know all the details. It is also not clear how access to that data will be regulated, or who will be able to access it, and how information will be used. Apparently, in efforts to improve data collection and sharing, victims’ right to privacy has somewhat been overlooked.

Reflection delay

248. 30 day reflection delay, as specified in the Rulebook on Alien Victims of trafficking is being implemented without much problem. As already disused, according to the Rulebook victims are given status of protected persons during this period. This status however is not defined in any way. In practice this basically means that victims are not given any official status at this time – they are simply given the
right to be in the country without getting expunged. Following this period, if victims however does not decide to apply for residence permit, she would be repatriated either voluntarily, or alternatively expunged from the country, as they are no other options for them (BiH does not secure 3rd country transfer or similar). Hence, 30 day reflection in practice is treated as a sort of buffer time, during which victims can decide to regularize her status by applying for temporary residence, decide to return home voluntarily, or be expelled from the country at the end of the term. During this time they are indeed provided with accommodation in the shelters and other support.

Residence permits

249. In practice, victims who request temporary residence permits are issued such permits, and the issuance can be based both on the basis of cooperation with the authorities in the prosecution offenders (traffickers), as well as based on victim’s need for rehabilitation. Reportedly, for rehabilitation victims are issues temporary residence up to 6 months, while for cooperation with the authorities up to one year. When the victim requests the temporary residence permit based on the rehabilitation needs, the safehouse that the victim is staying in is consulted about victim’s situation and medical health in order to determine the validity of his or her claims, but reportedly victim’s own wishes are the primary basis for decision. In other words, even though reportedly victims who desire to stay in BiH for the purpose for rehabilitation in general are given residence permits, there are no clear guidelines as to what types of situations warrant the issuance of a residence permit and what is more of a concern, what may warrant refusal. This may be beneficial, as it allows for individual assessment of the needs of each victim, yet the lack of even very basic guidelines is cause for concern.

250. In 2007 eleven foreign human trafficking victims were identified in BiH, nine of whom requested temporary residence permit. None were refused.163 It is not clear why the remaining two did not request residence permits. Still, these numbers indicate that in general majority of foreign victims do apply, and most if not all do receive the permits.

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

252. It should be noted that victims of trafficking are not required to live in the shelters once they have the residence permit. Residence permit regulates their status, and gives them all the rights that any other foreigner in the country has. Yet, most do not have anywhere else to go, and temporary residence permits does not automatically make them eligible for any additional social or economic benefits. It is therefore suggested that such access or access to the labour market or vocational training could improve the situation of victims. Finally, victims with temporary residence permits, in

case they wish to prolong their stay in BiH, are subject to all regulations that are valid for all other foreigners. Therefore, there are no special programs or regulations that would allow victims easy transition from temporary status to permanent residency. As a result, they either return voluntarily or are expelled once their temporary residence expires. It is unclear what, if any risk assessment is made before repatriation or deportation of the victim back to her home country.

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

**Assistance to victims**

**Appropriate and Secure Accommodation**

254. According to the recent report by USAID\(^\text{164}\), there are 7 different NGOs that run shelters for victims of human trafficking. Not all the shelters are dedicated to human trafficking victims only, and some also accommodate victims of domestic violence, and some shelters accept only domestic victims, as they are unable to provide service to foreigners. There is one shelter in Sarajevo which is a high security shelter, where victims who are testifying are housed, in order to ensure the highest level of security, and to ensure that they can easily be reached by the prosecutors. Centers for asylum seekers and other alternative accommodations are never used for victims of trafficking.

255. Different NGOs provide different levels of service. While some shelters are simply a room near the offices of the NGO, other shelters are a part of a larger complex, complete with outdoor space. Yet, as concluded by the USAID, most shelters are simply a safe place for a victim to stay while awaiting return, rather than active places of rehabilitation, and therefore their ability to provide “adequate” accommodation is questionable.

256. Accommodation of victims in shelters is funded by State Ministry of Security for foreign victims. For domestic victims, funding should in theory be provided via State Ministry for Human Rights and Refugees, in the absence of the state level Ministry for Social Work, or similar. The new call for grant proposals issued by the Ministry for Human Rights and Refugees that was mentioned earlier is intended to serve this purpose. In other words, funding for accommodation of domestic victims will be made available through awarded grants, while for foreign victims State Ministry of Security simply continue to distribute funds between shelters equally, as it has been doing so far. What is important is that financing has been provided by the government, meaning that NGOs depend less on grants from external sources and other donations, making them more sustainable.

257. Currently there are no government run shelters. It should be noted there are no government run shelters for any category of crime victims, not just for human trafficking victims. This means that burden of providing accommodation for the

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trafficking victims is completely on the civil sector, regardless of whether they are domestic or foreign, minor or adult.

258. It is expected that in the coming period government authorities will focus on developing minimal standards for shelters who want to sign a protocol (memorandum of understanding) with the government in order to house victims. This is currently not the practice, but the idea that minimal standards should be developed, and that only those shelters that satisfy those standards should engaged has been raised. This would bring some standard into the services provided and provide incentive for shelters to start offering more complete services and support to the victim.

Material Assistance and Social Welfare

259. Earlier, it was stated that material assistance for human trafficking victims is not envisioned by any legislation or bylaws. Indeed, in practice this holds. Victims have some access to good through shelters, but other than this assistance in kind, no other assistance is available for victims. This is especially important when it comes to foreign victims to obtain temporary residence permit and stay in the country for some time. Without permission to work, such victims are left without any means of survival, which actually increases their risk of being re-trafficked. Hence they are forced to remain in shelters through their stay in BiH, and are completely dependent on the assistance that they receive through shelter.

Provision of translation services

260. Allegedly, a majority of foreign victims identified tend to speak Bosnian well enough to get by, and that in most cases there is no need for a translator during the court proceedings. While this may be the case, nevertheless, it is important that victims can be provided all information relevant to them in a language that they understand. As much as they might be able to tell their story in Bosnian, it is very difficult to imagine that rudimentary knowledge of the language would be sufficient for them to understand everything else that is happening in the court room. Further, need for translator does not start and end in the courtroom. Victims need to be provided with legal assistance in language that they understand prior to coming to court, and need to have access to psychological support in language that they are most comfortable with. As already noted, currently only a minority of victims are foreigners, and majority are domestic, meaning that translation services are much less of an issue than before.

Access to legal information, counseling and assistance

261. As discussed before, legal aid is still completely unregulated area in BiH. Defendants in criminal courts can be appointed lawyers free of charge when they request so. Although it is well understood that the standing of the accused and a victim who is not party to the proceedings differs, the balance of interests needs to be struck. In administrative procedures (which would be, for example, a human trafficking victim applying for residence permit) or civil cases (for example victim pursuing her compensation claims in the civil court), where the victim is a party, him or herself - representation should be ensured.

262. Despite this, currently in BiH there is an NGO that provides legal aid to the victims of trafficking, NGO “Your Rights”. This NGO has offices in a number of different cities in BiH, as well as in Sarajevo. They do not only provide service to human trafficking victims, but also to a number of different categories of beneficiaries, from refugees, returnees, and others. Initial involvement of this NGOs
with human trafficking victims stems from its engagement with the State Ministry of Security, whereby they were contracted by the Ministry to provide legal aid to asylum applicants. Later, an additional protocol was signed with the Ministry to include also foreign victims among the beneficiaries of this service. Currently “Your Rights” still does not have any kind of protocol with the government regarding the provision of legal aid services to domestic victims (it is also unclear who they should make such protocol with), meaning that they are under no legal obligation to provide legal aid to that category of beneficiaries. NGO “Your Rights” provides both legal advice and consultation, as well as representation when needed. They also accompany victims to courtrooms when they are supposed to testify as witnesses in court cases.

263. Even though according to “Your Rights” they provide assistance when ever their assistance is requested, members of other relevant agencies reported that they are actually very hesitant, and need to be convinced to meet with the victim or get engaged with her case. It is understandable that “Your Rights” is hesitant to provide legal assistance to domestic victims in the absence of any protocol with any of the relevant ministries, and this problem should be clarified urgently.

264. Legal aid is provided to victims who are staying in the shelters. Once the victim is accommodated in the shelter, the management staff informs “Your Rights”, and they visit the shelter to meet with the victim. This does not mean that “Your Rights” as a matter of principle only provides assistance to victims referred by NGOs. Rather, they are extremely unlikely to get any other referrals or self referrals, that this mode of work has remained the only method that is currently effective. Advertising their services would perhaps improve the access of potential victims to information.

Provision of psychological and medical care

265. In terms of medical care afforded to victims, the State Ministry of Security covers all medical expenses for foreign victims, and there are funds dedicated for this purpose. When it comes to domestic victims, however, the situation is unresolved. Domestic victims are subject to the same medical insurance laws as everyone else in the country, meaning that their access to health care is based on being enlisted with the state insurance program. Victims often are not enlisted, meaning that they do not have automatically right to free healthcare. Currently, their medical expenses tend to be covered through shelters and NGOs that run them, financed by grants or as part of larger projects.

266. It should be noted however, that emergency medical care is free of charge and available for all, including the victims of trafficking. It is the extended care, or any additional medical procedures where the problem emerges.

Provision of protection in criminal proceedings

267. Different ways to protect the victim in the course of criminal proceedings have been discussed in terms of what is legislatively available in the section above. When it comes to practice what is clear is that a number of these provisions are difficult if not impossible to apply, limiting the effectiveness of victim protection measures.

268. The first issue that is important is that of jurisdiction of State and Entity courts. In practice, a number of cases that should have been forwarded to State Criminal Courts to be prosecuted as trafficking cases, are instead prosecuted at entity criminal courts as offense of enticing into prostitution. What this means effectively is that all protection available for victims on the State level become no longer applicable, unless if identical laws exist at entity level as well. While criminal
procedures are relatively similar, as well as the Law on Protection of Witnesses Under Threat (RS version is called the Law on the Protection of Witnesses in Criminal Procedure165, and FBiH version is called Law on Protection of Witnesses under Threat and Vulnerable Witnesses166), there is no mirror image of the State Law on the Witness Protection Programme on the entity level. This means that victims who are involved in cases in entity level courts simply cannot benefit from the law. Witness Protection law does get used only in extraordinary circumstances, and therefore in practice this may not present much of a problem, but it is also true that Witness Support Office167 at the State Criminal Court is much more advanced and better resourced than anything at entity level. Simply ensuring that all cases that involve trafficking are actually prosecuted at state courts, rather than entity courts, would resolve the situation. This is where earlier described proposals with regard to amendments of the State and entity Criminal Codes become even more relevant.

269. Reportedly, judges tend to rule in line with requests for different measure for protection of witnesses, including closing hearing to public and similar. However, and especially at entity level, courts do not have all the technical equipment that would make it possible to conduct hearings using audio-visual technology or similar.

270. When it comes to anonymous testimony, overview of some court cases shown that this has been used extensively by the courts. In some cases, in entity courts, witnesses testify dressed in a way that would make it difficult to recognize their identity, showing the courts have been making effort to accommodate requests for protection. Court transcripts also do not show names of those witnesses or any other identifying information when anonymous testimony is provided, which is important. In general we were informed that judges tend to provide protection measures when their request is well substantiated by the prosecutor. This means that good training of prosecutors can be very crucial in protection of the witnesses.

271. The State Witness Protection Program is run by SIPA. It is unclear to what extend the Witness Protection Program is being used (which probably testifies to its ability to keep the information about their protected witnesses secret). However, reportedly at least 6 persons that were cooperating with the prosecution in human trafficking related trials have been included into the State Witness Protection Program.168

The State Witness Protection Programme does not have cooperation agreements with any other countries, meaning that victims cannot be moved to a third country for protection purposes. There have actually been cases of victims who also cooperated with prosecution being transferred to third countries, but this has not been done through the official program.169

165 Published in Official Gazette of RS No 48; came into force on July 1st 2003.
166 Published in Official Gazette or FBiH 36/3; came into force on August 1st, 2003.
169 In one such case, three victims already were given state of refugees by UNHCR and their transfer was organised within the context of relocation program; also see Organized Crime and Corruption Reporting Project, 2008, Witness Protection: A Challenge for Small Countries, available at http://reportingproject.net/new/index.php?option=com_content&task=view&id=139&Itemid=43 .
Special measures of protection for children

272. When asked whether children victims are treated any differently from the adult victims, the initial answer received was basically “No”. However, due to legal regulations it must be noted that children, at least in some areas, do receive different treatment and have additional protections.

273. First, victims who are minors do not give preliminary statements to the police, and can only be taken for an interview by police under the order of the main investigator. This is to avoid further victimization and the need for numerous recounting of the experience by the victim. It is also very important that emphasis is placed on protection, and indeed minor victims receive shelter and basic assistance before they can be interviewed.

274. When it comes to accommodation, shelters do not really have separate accommodation spaces for minors. Yet, as can be seen from the recent USAID report, since capacity of the shelters is larger than the current need\textsuperscript{170}, victims often do end up staying alone in the shelter, and therefore do not mix with the adults. It may be of interest to explore whether it would be feasible to dedicate certain shelters to minors only or create specific and segregated areas of ordinary shelter for use by children.

275. Protection of children is complicated by some lacks of clarity of law is to be applied in practice. One of the problems that was brought to our attention is related to placements of minor victims of human trafficking in shelters. Reportedly, by law, minors cannot be placed into the shelter without the consent of their parents, or without taking the custodianship over a child away from the parents. NGOs who run shelters are hesitant to accept minors unless if temporary custody has been given to the Social Work Centers, because then they could be accused of kidnapping the minor. Since parents are often involved in the exploitation of their trafficked children, it becomes clear how important it is that custodianship is handled fast in order to protect the children.

276. The motion to take the temporary custody of the children needs to be made by Social Work Centers, however, reportedly they are very hesitant to take such actions, and see it as simply more burden and more work that they did not sign up for. This problem reflects the general lack of dedication and commitment on the part of the Social Work Centers that was brought up by a number of actors. Social Work Centers have been reported to refuse to work after their regular working hours, or would simply not get engaged in the problem. A consultant was present in one situation when it was necessary to ensure that a minor victim was receiving necessary health care. This was actually supposed to be handled by Social Work Center, yet rather than resolving the issue, they had simply called the NGO representative and asked her to handle the situation, even though this was not her job.

277. These problems may be associated with general low level of knowledge regarding human trafficking among social workers, since they still did not participate in any larger scale training on the issue. Further Social Work Centers were included into the anti-trafficking activities later than other agencies, because they are involved only with domestic victims, and domestic victims of trafficking are a more recent phenomena. Hence, they still lack good understanding of what the problem is and how it needs to be handled. Further, the lack of centralized leadership is also a contributing

factor. Since Social Work Centers are organized on cantonal and entity level, there is no single State law or ministry responsible for policy implementation, and policy implementation as well as coordination is difficult and fragmented. This once again indicates that there is need for reorganization of the agencies involved, especially when it comes to protection of domestic victims, and especially when they are minors.

Compensation and legal redress

278. As discussed earlier, State CPC allows for victims and other parties that have suffered damages to request compensation in the course of the criminal procedure for reimbursement of damages, and recovery of goods. While victims, guided by the advice of the legal aid lawyers often do requests that damages are awarded in the course of criminal proceeding, judges in general refuse to rule on this issue, and refer the applicants to the civil courts. This means a heavier burden for victims. It is unclear why judges continue to refuse to rule on the issue. This may be one of the areas that can be improved with additional training of the judges.

279. So far, none of the victims have pursued their claims in civil courts, indicating that this is for some reason not an attractive option for them. What would be an incentive for victims to pursue their claims should be further explored in order to develop mechanisms that will improve their access to justice, and ensure that they can use all resources available when pursuing their claims.

[end - text of review]
## Appendix Legislation and other documents used in the report

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<tr>
<th>Legislation</th>
<th>Came into force</th>
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<tr>
<td>BD Criminal Code</td>
<td>July 1(^{st}) 2003</td>
<td>Official Gazette of the BD of BiH No. 10/03 Amendments no. 45/04 and 6/05</td>
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<tr>
<td>BD Civil Procedure Code</td>
<td>January 1(^{st}) 2001</td>
<td>Official Gazette of Brcko District BiH No. 5/00 Amendments 1/01, 6/02,11/05</td>
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<td>BD Law on Public Order and Peace</td>
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<td>Official Gazette of Brcko District BiH No. 2/02</td>
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<td>March 1(^{st}) 2003</td>
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<td>BiH Law on Administrative Procedure</td>
<td>September 24(^{th}) 2002</td>
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<td>BiH Law on Movements and Stay of Aliens and Asylum</td>
<td>October 14(^{th}) 2003</td>
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<td>January 28th 2002</td>
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<td>BiH Law on Protection of Witnesses under</td>
<td>March 1(^{st}) 2003</td>
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<td>Threat and Vulnerable Witnesses</td>
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<td>BiH Witness Protection Program Law</td>
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<tr>
<td>Decision on the Procedures and the Way of Coordinating Activities on Anti-Trafficking in Human Beings and Illegal Migration in BiH and the Establishment of the Function of the State Coordinator for BiH</td>
<td>August 15\textsuperscript{th} 2003</td>
<td>Official Gazette of BiH No. 24/03</td>
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<td>FBiH Law on Administrative Procedure</td>
<td>January 29\textsuperscript{th} 1998</td>
<td>Official Gazette of Federation BiH No: 2/98</td>
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<td>FBiH Criminal Code</td>
<td>August 1\textsuperscript{st} 2003</td>
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<td>FBiH Law on Civil Procedure</td>
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<td>HN Canton Law on Public Order and Peace</td>
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<td>2001</td>
<td>Can be found at <a href="http://www.vzs.ba/">http://www.vzs.ba/</a></td>
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<tr>
<td>Recommendations for Court Media Reporters Regarding Reporting on Investigations and Court Process</td>
<td>Adopted by BiH Press Council in December 2006</td>
<td>Can be found at <a href="http://www.vzs.ba/">http://www.vzs.ba/</a></td>
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<td>RS Law on the Protection of Witnesses in Criminal Procedure</td>
<td>July 1&lt;sup&gt;st&lt;/sup&gt; 2003</td>
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<td>May 28&lt;sup&gt;th&lt;/sup&gt; 2002</td>
<td>Official Gazette of RS No: 25/02</td>
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<tr>
<td>Rulebook on Protection of Alien Victims of Trafficking in Persons</td>
<td>November 10&lt;sup&gt;th&lt;/sup&gt;, 2008</td>
<td>Official Gazette of BiH: 90/08</td>
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<td>Tuzla canton Law on Public Order and Peace</td>
<td>August 14&lt;sup&gt;th&lt;/sup&gt; 2001</td>
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Other documents:


III. COUNCIL OF EUROPE EXPERT PEER REVIEW OF THE LEGISLATION CONCERNING ANTI-TRAFFICKING IN HUMAN BEINGS IN BOSNIA-HERZEGOVINA

SUMMARY

The purpose of this document is to fulfil the following commitment: “On the basis of the legislation that has already been assessed by an OSCE expert, prepare a peer review of the legislation concerning anti-trafficking in human beings in Bosnia-Herzegovina”.

This Report outlines and analyzes to what extent current legislation in BiH satisfies the requirements set forth by the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Convention).

The Report is divided into three Sections which correspond to the three main measures set out in the Convention. They will be studied following the classical way they are presented in, that is, the three Ps: Preventing trafficking, Protecting victims and, finally, Prosecuting traffickers.
SECTION I: CONCERNS RELATED TO “PREVENTING TRAFFICKING”

a) A national policy of prevention of trafficking in human beings

Chapter II of the Convention establishes as a general obligation for Parties to create a policy to prevent trafficking in human beings. This policy must be adopted at national level, assure co-ordination between the various bodies having responsibilities for this issue, and involve civil society committed to the prevention of trafficking in human beings and victim protection assistance.

1. Generally speaking, Bosnia and Herzegovina has complied with this general obligation. The State Co-ordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH, a post established in 2003, has the primary responsibility of monitoring and co-ordinating the implementation of the State Action Plan and related anti-trafficking activities at the many government levels in BiH.

It is composed of the representatives of all the Ministries which have competences on the areas connected with trafficking as well as by the representatives of the Federation, the Republika Srpska, and the District of Brcko. Moreover the several Working groups which have been set up are comprised of representatives of the state ministries and institutions, non-governmental and international organizations\(^{171}\).


b) Measures concerning border controls

Art. 7 of the Convention establishes that “without prejudice to International commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, border controls as may be necessary to prevent and detect trafficking in human beings”. Among other measures, this general duty implies the following obligations:

- dissemination of accurate information by relevant offices on the conditions enabling the legal entry in and stay on its territory (6.4),
- strengthening of co-operation among border control agencies (7.1),
- ensuring the integrity and security of travel or identity documents in order to assure that they cannot be falsified or unlawfully altered, replicated or issued (Art. 8).
- control of frontiers (visas,…).
- adoption of legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used to commit offences established in Chapter IV. In this sense, commercial carriers will have to check that passengers are in possession of those documents. If this is not the case, Parties should impose adequate sanctions. Moreover, such person can be refused entry to their territory (Art. 7.2-4).

\(^{171}\) http://www.anti-trafficking.gov.ba/
2. BiH has adopted pertinent regulations, namely the State Law on Movement and Stay of Aliens and Asylum (2003; amended in 2008), in which Articles 10 to 21 regulate the conditions and procedure for entry and stay of aliens in BiH. On the other hand, this information is easy to find. It has been published as the Guidebook on the access to information of the Border Police of Bosnia and Herzegovina in http://www.granpol.gov.ba, and it can also be found in other organizations’ web pages (for instance, the International Organization for Migrations, IOM).

In May 2007 the Law on travel documents was amended in order to introduce biometric passports. In September 2007 the Migration Information System came into operation. Nevertheless, according to SAP, “the issue of data protection and exchange remains unresolved” (2008-2012, p.10). Regarding visas, we must refer to the Visa Facilitation Agreement between BiH and the EC, which came into force in January 2008. Finally, Articles 18 and 19 of the Law on Movement and Stay of Aliens and Asylum defines carrier’s responsibilities and sanctions.

SECTION II: CONCERNS RELATED TO “PROTECTING VICTIMS”

a) Protection and assistance of victims

The Convention imposes the Parties to introduce several measures to protect and promote victim’s rights.

i) Measures concerning the identification of victims, which requires, firstly, the provision of trained and qualified personal, and, secondly, the establishment of a specific procedure.

ii) Once the (potential) victims have been identified, a recovery and reflection period of at least 30 days is opened. Its purpose is to allow “the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities” (Art. 13 CoE Convention).

During this period:

- it shall not be possible to enforce any expulsion order against victims,
- victims shall be entitled to the assistance rights,
- Parties shall take due account of the victims’ safety and protection needs.

iii) Victims who decide to cooperate with the authorities of the receiving State will enjoy a residence permit. Parties shall issue a renewable residence permit to victims too, if the competent authority considers that their stay is necessary due to their personal situation. Some rules concerning child victims have been established (Art.14).

iv) Repatriation or return of victims, preferably voluntary, to the country of nationality or residence (Art. 16). The authorities of this country will facilitate and accept the return without undue or unreasonable delay. The return shall take into account the rights, safety and dignity of the victim. As usual, the Convention includes some specific measures for child victims.
3. The legislation concerning anti-trafficking in human beings in BiH implements correctly the mentioned conventional obligations. Article 35 of the Law on Movement and Stay of Aliens and Asylum includes the option of granting temporary residence permits on humanitarian grounds to victims of trafficking and the obligation of preventing the deportation of recognised victims. Moreover, Article 37 provides a “special protection and assistance to victims of trafficking of human beings for the purpose of their rehabilitation and repatriation into the country of their habitual residence”.

Pursuant to Article 37, line 2, the Ministry of Security adopted the Rulebook on Protection of Victims of Human Trafficking (2004).

- Art. 2.f) indicates which authorities are in charge of applying the rules concerning the protection of alien victims of trafficking: “the Organizational Units of the Ministry of Security, prosecutor’s offices, ministries of the interior, inspection authorities, competent authorities for social security”.
- Arts. 8 – 10 establishes the procedure to be followed to identify a victim.
- Art. 6 states that any victim is entitled to temporary stay on humanitarian grounds in duration of up to three months for the purpose of protection and assistance in recovery and return to the country of origin. This temporary stay can be extended.
- Arts. 13 and 14 deal with the request for and approval of temporary residence. Contrary to the Law on Movement and Stay of Aliens and Asylum, the Rulebook on protection of alien victims does not make reference to temporary residence granted to a victim for cooperating with justice.

b) The Rights of victims

As stated by Art. 12, paragraph 1, of the Convention, “Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery”.
Paragraph 2 adds: “Each Party shall take due account of the victim’s safety and protection needs”. And, finally, paragraph 6: “the recognition of these rights of the victims “is not made conditional on his or her willingness to act as a witness”. As usual, vulnerable groups and minors shall be granted a privileged status.

4. The BiH legislation recognizes to all victims of trafficking the above mentioned rights. Article 14 of the Rulebook on Protection of Victims of Human Trafficking enunciates them:

“(1) For the purpose of providing special protection and assistance to the victims of trafficking related to the reception, recovery and repatriation, any victim shall be provided with the following:
- Adequate and safe accommodation;
- Health care;
- Information on his/her legal status and counselling in the segment of his/her rights and obligations in the language he/she understands;
- Legal aid to the victim during criminal and other proceedings in which the victim exercises his/her rights;
- Information on access to Embassy or Consulate of the country of victim’s origin or usual residence;
- Information on possibilities and procedure of repatriation;
- Different types of training and education depending on financial means.”

Furthermore, Articles 15, 16, 17 develop some of them, namely adequate and safe accommodation, health care, and information and counselling. It is important to highlight that the Rulebook implicitly includes among these rights, material assistance. Certainly, “the competent authorities shall take into account the age, sex and special needs of the victim, paying special attention to specific needs of children, including adequate accommodation, education and care”.

Articles 19-21 deal with the protection of children.

Expenses of accommodation (as well as expenses of recovery and repatriation) shall be provided by the budget of BiH institutions (Art. 22).

Finally, we should remember that “assistance to the victims of trafficking can be provided by non-governmental organizations that concluded the Protocol on cooperation with the Ministry of Security” (Art. 15, paragraph 3). In April 2005, the BiH Ministry of Security signed Protocols of Co-operation and Securing of Adequate and Safe Accommodations and Protection of Foreign Victims of Trafficking in BiH with five non-governmental organisations. The Protocols regulate the rights and obligations of both Parties with regard to provisions of assistance to victims in closed shelters. Additionally, the Ministry of Security and the NGO Vaša Prava signed an agreement to provide free legal assistance to victims of trafficking172.

5. Concerning repatriation, Art. 18 of the Rulebook on Protection of Aliens victims of trafficking in persons states:

“(1) The Competent Organizational Unit of the Ministry of Security in its headquarters in cooperation with the Organizational Unit of the Ministry of Security in the field and shelter management and through the Ministry of Foreign Affairs of Bosnia and Herzegovina will prepare and implement the repatriation of the victims of trafficking to the country of usual residence.

(2) The repatriation may be implemented with the assistance and cooperation of the International Organization for Migration (IOM), which will be regulated by the Protocol on cooperation between the Ministry of Security and IOM.”

The involvement of both national and international institutions will assure the complete respect of the rights, security and dignity of the victim. Nevertheless, obligations do not only arise for the residence State but also for the repatriation implementer, who is obliged to establish repatriation programmes, aiming at avoiding re-victimization.

The procedure of repatriation of a child is established with greater detail in Art. 21 of the Rulebook.

In 2007 the Council of Ministers adopted the Rules on Protection of Victims and Victim-Witnesses of Trafficking in Human Beings Who Are Citizens of BiH. Guaranteeing protection for local victims of trafficking was the biggest challenge for authorities, since all measures adopted – for instance, the Rulebook – concerned foreigners.

c) Security of victims

Besides the obligation for States to assure that victims may carry out a complaint before the competent authorities of their State of residence (Art. 27), the CoE Convention includes several rules concerning the protection of victims, witnesses and collaborators with the judicial authorities from potential retaliation or intimidation, in particular, during and after investigation and prosecution of perpetrators (Art. 28). In this sense, each Party shall adopt such measures as may be necessary, to ensure:

- that persons or entities are specialized in the fight against trafficking and the protection of victims (Art. 29.1);
- co-ordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings, where appropriate, through the setting up of coordinating bodies (Art. 29.2);
- special measures for the protection of victims’ private life and identity, as well as their safety and protection from intimidation in the course of judicial proceedings.

6. In general terms, BiH has implemented all these obligations. First of all, we must refer to the previously mentioned agreement between the Ministry of Security and the NGO Vaša Prava. This agreement provides free legal assistance to victims of trafficking.

Secondly, we have to make reference to the Task Force for Fight against trafficking in human beings and organised illegal immigration as a form of crime, which was established in 2004 (Official Gazette No. 3/04). It consists of representatives of prosecutor’s offices, authorities of internal affairs, taxation bodies, financial police, State Border Services, thus involving all those who could contribute to fight against trafficking in human beings and illegal immigration. Under the direct management of the Chief Prosecutor of BiH, the Task Force has competence to ensure cooperation of competent bodies and organizations, conduct investigations and form operative investigation teams working on collection and exchange of relevant data and information related to cases of trafficking in human beings and related illegal immigrations aimed at their prevention (http://www.tuzilastvobih.gov.ba).

Thirdly, the BiH Criminal Procedure Code (Official Gazette No. 3/03) faces the possible adoption of protection measures when there is a danger to life, health, or freedom of witnesses or because of the willingness to testify, and if the suitableness for witness protection measures (Article 86:
course of the examination of a witness; Art. 267: Protection of witnesses from insults, threats and attacks) should be mentioned.

The Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette No 3/03; amended in 2004 (Official Gazette No 61/04) and adopted following Art. 91 of the Criminal Procedure Code, establishes special protection for:

1. witness under threat: a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony;

2. vulnerable witness: a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a juvenile (Art. 3).

As stated by the Law, the Court may order such witness protection measures, provided for by this Law, if it is considered necessary, including: access to psychological and social assistance and professional help; exercise of an appropriate control over the manner of the examination of witnesses when a vulnerable witness is examined, particularly to protect the witness from harassment and confusion; testimony by using technical means for transferring image and sound; removal of the accused; protection hearing; anonimization, etc.

Finally, BiH passed in 2004 (Official Gazette No 29/04), the Witness Protection Program Law, “to provide for efficient protection of a witness during and after criminal proceedings in order to enable the witness to testify freely and openly in criminal proceedings before the Court of Bosnia and Herzegovina”. Among other means, a witness protection program would include the following measures: to use an assumed name in carrying out the person’s duties and to have documentation supporting those assumed names; to produce or temporarily alter for a person subject to protection, certificates or other documents necessary to create or maintain the identity temporarily altered (cover documents), and may process the altered data.

On the other hand, the Procedures on Treatment of Victims of Trafficking in Bosnia and Herzegovina, adopted on 29 July 2005 (the Vlasic Procedures), determine the means of mutual cooperation in the treatment of victims of trafficking between the competent institutions in Bosnia and Herzegovina, non-governmental organizations and the International Organization for Migration (IOM). Moreover, the NAP related to the protection of victims and witnesses, includes some measures in order to facilitate the development of the following issues: identification of victims, system of referring victims (according to defined procedures for both foreign and BiH citizens) and social support and protection.
SECTION III: CONCERNS RELATED TO “PROSECUTING TRAFFICKERS”

a) Defining the trafficking of human beings and other criminal offences

The main obligation which Parties have to deal with is the criminalization of several conducts, namely:
- trafficking in human beings (Article 18), and
- certain acts related to travel or identity documents committed for the purpose of enabling the trafficking in human beings (Article 20).

Art. 31, which deals with Jurisdiction, states that each Party shall adopt measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
- in its territory (or on board of a ship flying the flag of that Party, or on board of an aircraft registered under the laws of that Party);
- by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;
- against one of its nationals, as well as in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.

7. All the elements of crimes related to trafficking in human beings, as defined by Art. 4 of the CoE Convention, are:

1) Precluded actions (“the recruitment, transportation, transfer, harbouring or receipt of persons”),

2) Means used for (“the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”), and

3) Purpose “exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

These have been incorporated, even literally, in Art. 186 CCBiH:

“Whoever, by means of use of force or threat of use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers,
harbours or receipts a person, for the purpose of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of organs or of the other type of exploitation”.

8. The second criminal offence to be included in domestic law is: “Conducts relating to travel or identity documents (“forging a travel or identity document; procuring or providing such a document; retaining, removing, concealing, damaging or destroying a travel or identity document of another person”) when these acts are committed intentionally and for the purpose of enabling the trafficking in human beings” (Art. 20 of the Convention).

Under the title of “Unlawful Withholding of Identity Papers”, Article 188 of the CCBiH states:

“Whoever, with an aim of limiting the freedom of movement or exercising power over a person unlawfully withholds another person’s identification or travel paper, shall be punished by imprisonment for a term between six months and five years”.

It cannot be said that this article implements correctly the referred conventional disposition. Certainly, it does not deal with neither the acts (which the Convention details and does not limit to withholding) nor the purpose of the crime included in the Convention, (which is enabling the trafficking in human beings), not to forget the object: travel or identity documents (the Convention refers to both false and legal, depending on the action being considered).

The Convention also establishes additional offences relating to attempted commission of certain offences defined in the Convention and aiding or abetting commission of some (Art. 21) [Explanatory Report, paragraph 243]. These offences should also be implemented by the Parties.

9. Generally speaking, the implementation of these crimes has been carried out in a correct manner. Certainly, Articles 26 - 28 (attempt), 29 (accomplices), 30 (incitement), 31 (accessory) and 32 (limitation in responsibility and punishability of collaborators) of the CCBiH present the same attitudes towards any criminal offence.

Finally, Article 186, paragraph 4, CCBiH states that “the circumstance whether a person consented to the exploitation referred to in paragraph 1 of this article is of no relevance for the existence of a criminal offence of trafficking in persons”. This article follows the Convention, which clearly states that “this consent (…) shall be irrelevant” [Art. 4.b)].
10. BiH legislation has not followed this requirement. On the other hand, Article 26 CoE Convention establishes that “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.

Once again BiH Law has not considered this extreme, and its inclusion is not compulsory for the Parties.

On the contrary, the Criminal Codes of the Federation of BiH and of the Republika Srpska, as well as the Code of the Brcko District, do include references to or consider individually some criminal offences that the Convention does not include, like trafficking in human beings for the purpose of prostitution or enticing prostitution. As a result, it can be said that in BiH, the legal answers to the trafficking in human beings is multi-level and not unique.

Although this additional regulation is permitted by the Convention, it reveals a lack of harmonisation and coherence [partially solved by Art. 11, paragraph 1: “The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates criminal offence within its territory”] which can raise consequences, especially at the moment of prosecuting these acts and applying law that is organised at entity level (for instance, unequal treatment of victims).

Nevertheless, this lack of harmonization raises some problems at the moment of prosecute this criminal offence as the jurisdiction of the Prosecutor’s Offices, which coexists with other prosecutor's offices in BiH, established by the entities. There is no problem when the crime of trafficking in human beings has been committed because, as studied, this offence has only been ruled by the CCBiH and the jurisdiction of the Prosecutor's Office clearly. Questions arise when the offence committed is one of the crimes –more limited than trafficking but linked with it– sanctioned by the Criminal Code of one of the entities.

b) Sanctions and measures

11. It should be affirmed that CCBiH fulfils the conventional obligation of sanctioning the above mentioned offences. Before studying this issue, it is important to remind that Chapter XIV (Arts. 122-144) of CCBH establishes liability of legal persons. Article 131 states that “legal entities are also to be liable to sanctions which may be fines, seizure of property or dissolution of the legal person”. As a consequence, BiH legislation is accomplishing Article 22 of the Convention.

Article 23, paragraph 1, requires Parties to lay down criminal penalties which are “effective, proportionate and dissuasive”. 
The CCBiH accompanies each offence with a penalty which matches with the seriousness of the offences or the value of the protected legal being (like children). This is why trafficking in human beings is punished by “imprisonment for a term between one and ten years” whereas the same action committed on a child or a juvenile “shall be punished by imprisonment for a term not less than five years”, or in the case of organization or direction of a group of people for the purpose of perpetration of the criminal offences referred to will be by “imprisonment for a term not less than ten years or long-term imprisonment”. In other words, proportionality in the legal determination of the punishment seems to be adequately awarded.

Furthermore, Article 48, paragraph 1, CCBiH, establishes the general principles concerning punishments. This article matches BiH legislation with Articles 24 (aggravating circumstances) and 25 (previous convictions) of the Convention. Therefore, it is compulsory for (domestic) Courts to take into consideration “the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances)”, as well as “the past conduct of the perpetrator”.

12. Forfeiture with regard to objects used or destined for use in the perpetration of a criminal offence is considered by Article 74, CCBiH. It cannot be forgotten that the OSCE has appreciated some deficiencies concerning this article (Rapport, paragraph 96).

CONCLUSIONS

I. Bosnia and Herzegovina has complied with the general obligation of establishing a policy to prevent trafficking in human beings. Since 2003, three State Action Plans have been adopted. In order to monitor the implementation of the State Action Plans and related anti-trafficking activities at the many government levels in BiH, the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH post was established.

II. BiH has adopted pertinent regulation in order to attend the duties established by the Convention concerning border controls. Articles 10 to 21 of the State Law on Movement and Stay of Aliens and Asylum (2003, amendment in 2008) regulate the conditions and procedure for entry and stay of aliens in BiH. This information is not difficult to find. Articles 18 and 19 establish the commercial carrier’s responsibility in actions dealing with border control.

III. The legislation concerning anti-trafficking in human beings in BiH correctly implements the conventional obligations dealing with the protection and assistance of victims.

The Law on Movement and Stay of Aliens and Asylum grants temporary residence permits on humanitarian grounds to victims of trafficking, and prevents the deportation of recognised victims. Article 37 provides a “special protection and assistance to victims of trafficking of human beings for the purpose of their rehabilitation and repatriation into the country of their habitual residence”. These provisions have been ruled in detail by the Rulebook on Protection of Victims of Human Trafficking, where the principles and rights are detailed.

Contrary to the Law on Movement and Stay of Aliens and Asylum, the Rulebook on protection of alien victims does not make reference to temporary residence granted to a victim for cooperating with justice. It would be useful to harmonize this extreme.

Articles 14-17 of the Rulebook on Protection of alien victims of trafficking in persons recognize the assistance rights of victims, and the Government of BiH has signed several protocols with NGOs in order to provide adequate and safe accommodation and legal assistance to victims.

The involvement of both national and international institutions in repatriation processes assures the respect of the rights, security and dignity of the victim. Nevertheless, a repatriation program should be adopted.

V. The rules of the CoE Convention concerning the protection of victims, witnesses and collaborators with the judicial authorities from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators (Art. 28) have been correctly implemented.

The BiH Criminal Procedure Code faces the possible adoption of protection measures when there is a danger to life, health, or freedom of witnesses or because of his willingness to testify, and if he is suitable for witness protection measures.

The Law on Protection of Witnesses under Threat and Vulnerable Witnesses establishes special protection for witnesses under threat and vulnerable witness, and states that the Court may order such witness protection measures as it considers necessary. Furthermore, BiH passed in 2004 the Witness Protection Program Law and adopted the *Vlasic Procedures* in 2005.

VI. Whereas, Article 186 CCBiH has provided a correct definition for the crime of trafficking in human beings, Article 188 does not implement well enough Article 20 CoE Convention, concerning conducts relating to travel or identity documents.

BiH legislation has not followed the requirement provided by Article 19 of the Convention, obliging States to consider making the consumption of services provided by the victims a criminal offence.

The Criminal Codes of the Federation of BiH and of the Republika Srpska, as well as the Code of the Brcko District, include references to or consider individually some criminal offences that the Convention does not include, like trafficking in human beings for the purpose of prostitution or enticing prostitution. As a result, it can be said that in BiH the legal answers to the trafficking in human beings are multi-level and not unique. This lack of harmonisation has consequences in the prosecution of these crimes.

VII. BiH Law establishes liability of legal persons and includes criminal penalties which are proportionate and dissuasive.