

# TREATMENT OF VICTIMS OF TRAFFICKING IN COURT IN BULGARIA

## Monitoring Report



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# Treatment of Victims of Trafficking in Court in Bulgaria

## Monitoring Report

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# INTRODUCTION

## *Developing a Model for Monitoring Cases of Trafficking in Human Beings at Court*

In April 2014, a questionnaire for students-observers for monitoring cases of trafficking in human beings at court was developed. The questionnaire's primary focus was on the treatment of victims. Questions included information on the parties of the court proceedings (trial data), support of the victims, protection of privacy and safety of the victims, interrogation of the victim, communication and attitudes towards the victims, course of the trial, outcome of the trial and the issue of compensation.

Along with the questionnaire instructions were written for the students-observers. Students were required to be familiar with the national legal framework on trafficking in human beings, to get acquainted with the relevant national case-law on trafficking, to prepare sessions, make inquiries into the court registry services on the course of the monitored trials, and to keep the schedule set up by the supervisor for attending the court hearings. Instructions included appearing on time for the court

hearings; behaving in conformity with the set of rules established by the court; refraining from having strong reactions during the court hearings; keeping adequate distance from the parties and the participants in the proceedings; keeping confidentiality; observing the court hearings objectively and impartially and filling in detailed observations; reporting to the supervisors on time, etc.

### ***Training of Students to Monitor Cases of Trafficking in Human Beings At Court***

On 19-20 May 2014, a two-day training was organized in Plovdiv in which 12 students from the Plovdiv University “Paisii Hilendarski” participated and 5 students from the Russe University “Angel Kanchev”. The agenda included presentations of the international and European human rights standards on protecting the rights of trafficked persons; the national legal framework on the crime of trafficking in human beings; pre-trial and trial proceedings in trafficking cases; national statistics of trafficking cases; the practice of the District Prosecution Office in Plovdiv; the national protection of victims of trafficking; and a model of monitoring cases of trafficking in human beings at court. Furthermore the questionnaire for monitoring trafficking cases at court was discussed, as well as the supervision of the work of the student-observers; the judicial system through the eyes

of the victims; and the role of psychologists and social workers in protecting victims of trafficking.

The team of trainers included a judge in the Court of Appeal, a District Prosecutor, a lawyer, a psychologist and a social worker.

### *Summary of the Outcomes*

In total 40 court hearings in four different cities were monitored during the period May 2014 - April 2015. The hearings concerned 11 trafficking cases: 8 cases before the Court of first instance and 3 cases before the Court of Appeal. All cases concerned trafficking for prostitution/sexual exploitation. The outcomes of the court monitoring show that the position and treatment of victims in criminal proceedings in Bulgaria still does not comply with the international and European standards.

The Bulgarian courts do not protect the victims' private data and continue the practice of publicly disclosing all the information concerning their private life in the beginning of the trials. Thus, despite a series of court hearing behind "closed doors", the victims' identity and personal data are not protected. The existing witness protection programmes are not used or could not be used to support and protect the victims at all. In relation to the system of informing the victims of their rights, it should be concluded that it does not function according to the legislative requirements. The information is

usually untimely, inadequate and given only in the beginning of the investigation phase. The access to services for victims of trafficking in human beings is inadequate, in particular access to legal counselling and representation is limited.

There is a continuing trend that victims of trafficking are predominantly used as witnesses in the trials; very often their statements are the only or the strongest evidence during both the investigation phase and the trial phase. This trend is a result of the inadequate training of the police and the investigative authorities in cases of trafficking in human beings. In addition, cases where the victim is questioned before a judge in the investigation phase and the protocol is used as evidence in court are exceptions. In most of the cases the victim is required to testify at court and is questioned several times. There is a lack of use of alternative forms of questioning, such as the use of specialized premises (the so called “Blue rooms”) where mostly children are questioned in court proceedings and the required audio and video technique is available. In general, the Bulgarian courts continue to underestimate the victims’ rights during the trials and to perceive them as witnesses only, thus neglecting their victim status and the attached rights. This is not in accordance with the International and European standards. In only one case the victim was awarded compensation for the damages suffered.

## Outcomes Monitoring

In total, 11 court cases of trafficking, involving 40 court hearings, were monitored during the period May 2014 - April 2015: 8 cases before the Court of first instance and 3 cases before the Court of Appeal. Two of those cases were monitored both at first and second instance during the monitoring period. The total number of defendants involved in the monitored cases was 17: 2 women and 15 men. The total number of victims involved was 26: 25 women and 1 man. Two of the women were minors at the time when the crimes against them were committed.

All monitored cases concerned trafficking in human beings for prostitution/sexual exploitation. In four of the cases, the suspects were also charged with related offenses, such as kidnapping, deprivation of liberty, rape, lechery, drug/poison possession, etc.

Court cases were monitored in 4 different cities: 3 cases in Plovdiv, 2 cases in Petrich, 2 cases in Ruse and 4 cases in Varna. Two of the cases in Plovdiv were monitored at its first instance. They were decided by the court in October 2014 and February 2015 respectively, with a conviction of the perpetrators. They were both appealed. The third case in Plovdiv was monitored at its second instance. It was decided in November 2014, with a conviction. It is currently pending before the Supreme Court of Cassation. The two cases in

Petrich were monitored at its first instance. They are still pending.

One case in Ruse was monitored at first and, subsequently, at second instance. The first instance court issued its verdict in July 2014. The verdict was appealed. Thus, another case was initiated in the Court of Appeal which upheld the verdict in October 2014. The verdict has entered into force.

One of the cases in Varna, decided with a conviction in June 2014, was appealed and decided at second instance in December 2014. The verdict was upheld and entered into force.

The other two cases are still pending before the Court of first instance in Varna.

| <b>City</b> | <b>First instance</b> | <b>Appeal</b> | <b>Final verdict</b> | <b>Pending</b> |
|-------------|-----------------------|---------------|----------------------|----------------|
| Plovdiv     | 2                     | 1             |                      | 3              |
| Petrich     | 2                     |               |                      | 2              |
| Ruse        | 1*                    | 1*            | 1*                   |                |
| Varna       | 1* + 2                | 1*            | 1*                   | 2              |

\*This concerns 1 case which was monitored both in first and second instance

## ***Protection of Privacy***

The identity and personal data of the victims were publicly revealed during the court hearings. In most cases this included their full names, date of birth, place of living, place of work and their

identification number. In one case the publication of the decision of the court at the website of the judicial body concerned included not the initials of the victim-witnesses, as the law requires, but their full names.

Almost all court hearings were held in public, thus every person present in the court room could obtain the details of the victim's personal data and life. The procedure "behind closed doors" is used in cases where a State secret should be kept, special investigation techniques are used, a witness' identity should be kept secret, facts of peoples' intimate lives should be kept secret – on their request, or minors should be questioned as witnesses. There were only five hearings held "behind closed doors". In the monitored cases, the courts used this procedure when special investigation techniques were used (4 cases) and when facts for peoples' intimate lives were kept secret – on their request (1 case).

### ***Assistance to Victims: Information, Counselling and Legal Representation***

Under the Criminal Proceedings Code (CPC), victims of trafficking have the right to be legally represented during the criminal proceedings both in the capacity of civil claimant and witness (Articles 75(1) in fine and 122(2)). Moreover, the court can appoint an attorney to the victim *ex officio*, if she/he cannot afford to pay the legal bills, wishes to be represented and this is in the

interest of justice (Article 100(2) CPC). In addition, the Victims' Assistance and Financial Compensation Act provides explicitly for free legal aid to victims of trafficking, under the same conditions that "they do not have the financial means to pay an attorney, wish to have one and it is in the interest of justice to have one" (Article 23(2) Legal Aid Act in conjunction with Article 10 Compensation Act). These conditions shall be decided in each concrete case by the prosecution or court authority.

However, in none of the monitored cases a victim of trafficking requested free legal aid. Only in one case, monitored in both first and second instance, the victim was legally represented.

It was not clear in the monitored cases what type of information the victims had received on the proceedings and their rights before the judicial stage of the process. In only one case the victim was properly informed by the police during the investigation stage about her rights, including the right to compensation. This case was monitored at the second instance.

In the court, the judges gave information to the victims only in their capacity as witnesses. Only one of the victims, who was represented by a lawyer in both first and second instance, was recognised as a party in 2 of the 11 monitored cases (she was recognized both as private prosecutor and civil claimant). The other victims were solely questioned as witnesses, which

deprived them of their rights as victims, including legal and psychological/social support, as well as from compensation.

In most of the cases, the victims were completely alone during the hearings, namely not accompanied by a family member, social worker, psychologist or a lawyer.

In only one of the cases at the Court of Appeal, the victim received support by the court only in order to secure evidence, notably the victim was accompanied by the Judicial Police in order to undergo a combined psychological and psychiatric examination in the interest of the proceedings. This is a specialized medical conclusion to be drawn by an expert on her medical and mental status after the act of trafficking for sexual exploitation was committed. She was later accompanied by the Judicial Police to her relatives in order to ensure her safety. In one other case the victim was accompanied by her mother but the latter was not allowed to enter the court room as the hearing was held “behind closed doors”.

### *Protection of Safety*

Under the Bulgarian legislation, two kinds of witness protection programmes exist. The first one is set out in Article 123 of the Penal Procedure Code and holds that personal physical guards can be assigned to the witness by the responsible bodies of the Ministry of Interior or

the Prosecutor's office and/or that the identity of the witness can be kept secret. This type of protection is temporary. The second protection programme is under the Protection of Individuals Threatened in Connection with the Criminal Procedures Act. Such protection can be temporary or permanent and may include the following measures: personal physical guard of the individual or his/her property; accommodation at a safe place; change of the place of living, the working place or the education establishment, as well as a change of the identity.

Neither the judicial authorities nor the prosecutors or police have taken any measures to protect the safety of the victims during the monitored cases. None of the victims was protected during the court sessions. However, in the case mentioned above before the Court of Appeal the Judicial Police accompanied the victim for her medical examination and provided her with protection after the examination by taking her home to her relatives. In two of the monitored cases the victims testified that after the beginning of the penal proceedings they were pressured by the defendants, or their friends and relatives, to change their testimony. Furthermore, during the judicial inquiry some victims were questioned as witnesses in the presence of the defendant.

## *Hearing of the Victim*

In general, as most of the victims were, one way or another, involved in prostitution before the crime of trafficking was committed, all the parties in the court proceedings lacked sensitivity towards them, perceiving them only as “prostitutes” who did not require the same respectful treatment as other victims.

At the hearing of one of the cases at second instance in Plovdiv, the victim was questioned by the defendants’ lawyers about her sexual habits and taste, as well as how she could have been raped when she is a prostitute. There was also a question about the usual number of men she was having intercourse with during her “working day”. The court and the prosecutor, however, strongly opposed to such questions. They were not allowed and the victim did not have to reply. Both the court and the prosecutor were very sensitive towards the victim during their interrogation. However, from time to time, all the parties in the proceedings were treating the victim as “just a prostitute” and not as a victim. The motives of the court verdict partly express some of the attitude of the parties and the society as a whole stating that this trafficking case is not a “classic” one as the victim was a prostitute at the time of the trafficking, thus she was to expect some negative behaviour on behalf of her “male clients”. The punishment is in itself an expression of such attitude although a guilty verdict was pronounced. The three

defendants were found guilty and charged to 5, 3 and 2 years of imprisonment respectively.

In another case which involved 6 victims, one of whom a man, all of them were questioned rudely in the court room as they were involved in prostitution at the time the trafficking took place. Because they did not cooperate with the authorities by not being present at the hearing when they were summoned, some of them were fined with 100 BGN and were forced to testify through the Judicial Police. The court did not take into account their statements that the police officers who interrogated them in the beginning of the proceedings forced them to make particular statements.

In one of the hearings of a case involving two victims, the judge made a statement after the questioning of one of them saying: “You are in between the ditch and the sidewalk but, surely, sooner or later, you will fall in the ditch as you are a prostitute at the age of 20 and you are arrogant and brutal”.

In contrast, in a case when the victim was no longer a prostitute but having regular job, family and children, the parties questioned her with more respect to her dignity.

## *Compensation*

In 9 of the 11 monitored court cases no financial compensation was requested. All victims but one participated in the court proceedings solely as

witnesses. Only one victim was represented by a lawyer (in both first and second instance), and was constituted as both private prosecutor and civil claimant in both the instances.

Obtaining compensation is possible within the penal procedure provided that the victim is constituted as a civil claimant and submits a civil claim. However, in just one of the cases (monitored in first and second instance) the issue of compensation for the victim was raised. This was the case in which the victim was represented by a lawyer. She was constituted as civil claimant and private prosecutor in both court instances. The victim filed a civil claim for compensation of material damage, claiming the profits yielded from her exploitation in Bulgaria and abroad, as well as non-material damage. There is no data as to the amount of money requested by the victim. In addition to the verdict concerning the convicted person's guilt, the Court awarded compensation for immaterial damages in the amount of BGN 60 000 (approximately 30.725 Euro). The claim for compensation of material damages was rejected with the motive as it is not possible to grant compensation for the money the victim had earned and was forced to hand over to the trafficker, as it concerned immoral earnings. In his complaint to the Court of Appeal the convicted person requested the first instance verdict to be revoked and the submitted civil claim to be rejected entirely. His appeal was rejected.

As a private prosecutor, the victim submitted evidence during the proceedings and requested a maximum punishment for the defendant.

### *Proceedings*

In most of the cases the court hearings were delayed due to the defendants' lawyers. The lawyers, e.g., were often getting "sick", for which reason the court was not able to conduct the hearings as the defendants expressed their will to be legally represented by their lawyers, or they submitted irrelevant procedural requests. Several times the lawyers requested irrelevant information, which the court, however, allowed every time.

With the exception of the case monitored at second instance in Plovdiv, in all cases the parties - judges, prosecutors, lawyers - communicated unofficially between themselves in and out of the court room and expressed almost friendly relations and knowledge of their personal lives: they had each others' phone numbers, discussed common vacations, common friends, common relatives, etc. In one of the cases, the judge was asking, unofficially, the prosecutor and the defendants' lawyer to make an agreement because she was not in a mood to decide the case.

Very often, the prosecutors in the cases changed which led to confusion as they did not know the

facts of the case and made irrelevant requests and remarks.

### *Court Decisions*

Four trafficking cases were finalized - two were decided at first instance court, appealed and upheld as verdicts on appeal which is their final court instance, one case is pending before the Court of Cassation, two cases were decided by the first instance court with a verdict and were appealed, four cases are still pending before first instance courts.

The defendants were charged for committing a total number of 61 crimes under the section of trafficking in human beings in the Bulgarian Criminal Code (Article 159a-159d). The biggest number of accusations towards one defendant was 14. In four of the cases, related offenses were charged, such as kidnapping, deprivation of liberty, rape, lechery, drug/poison possession, etc.

All defendants were found guilty of committing the crimes they were accused of. The court issued verdicts with punishments varying between 1 year of imprisonment to 8 ½ years of imprisonment together with fines varying between BGN 200 and BGN 35 000. In one of the cases decided at first instance the verdict was suspended, but it is appealed by both the defendant and the prosecutor.

In the finalized cases in which the verdicts entered into force, the defendants were sentenced to respectively 6 years for domestic trafficking (the maximum for the aggravated form is 10 years) and 8 ½ years for cross-border trafficking (the maximum is 12 years), as well as a fine of BGN 15 000 (the maximum is BGN 20 000) for domestic trafficking and BGN 35 000 (the maximum is BGN 50 000).

In a case in Varna, there were three accused persons: one of the defendants was sentenced to 6 years of imprisonment and a fine of BGN 12 000 (there were 14 indictments brought against him and he was found guilty on each one of them); the second defendant was sentenced to 6 years of imprisonment and a fine of BGN 20 000 (there were 3 indictments brought against him for acts perpetrated within the terms of dangerous recidivism and he was found guilty on each one of them); the third defendant was sentenced to 8 years imprisonment and a fine of BGN 30 000 (there were 8 indictments brought against him for acts perpetrated within the terms of dangerous recidivism and he was found guilty on each one of them).

In only two of the cases – one case was finalized at two court instances - compensation for immaterial damages was awarded to the victim. These are the only cases in which a victim was legally represented before the court of two instances.

Eight of the monitored eleven cases involve the use of coercion, violence or deceit in accordance with the International and EU definition and three of the monitored cases concerned consensual relations between adults.

### **Legislative Framework**

The definition of the crime “human trafficking” is provided in the Bulgarian Criminal Code (Chapter IX “Human Trafficking”) - Article 159 a, paragraph 1, according to which: *“[t]he person who recruits, transports, harbours or receives an individual or groups of persons with the purpose of being used for lechery practices, for forced labour, for removal of organs or for servitude, regardless of their consent, shall be punished with 2 to 8 years imprisonment and BGN 3 000 to 12 000 fine”.*

Under Article 159 a, paragraph 1 of the Criminal Code, the trafficker is criminally responsible even in cases where the victim was aware of the activity s/he would be involved in and consented to it, which is often the case. Under this provision, a trafficker can be punished even if s/he did not use the ‘special means’ – coercion, force, deceit etc – provided in Article 159 a, paragraph 2 as special elements of the crime leading to higher punishment.

The special means contained in Article 159 a, paragraph 2 of the Criminal Code are:

*“When the act under paragraph 1 was committed:*

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

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

According to article 159 b of the Criminal Code, trans-border trafficking is a crime as well: *“The person who recruits, transports, harbours or receives individual or groups of persons and transfers them across the border of the country with the purpose of Article 159 a shall be punished with 3 to 12 years imprisonment and BGN 10 000 to 20 000 fine.”*

According to Article 159 c of the Criminal Code, *“The person, who uses a victim of human trafficking for lechery practices, for forced labour, for removal of organs or for keeping her/him in servitude regardless of her/his consent, shall be punished with 3 to 12 years imprisonment and BGN 10 000 to 20 000 fine.”*

## CONCLUSIONS

### *Protection of Privacy and Safety*

During the monitored trials no measures were taken to protect the privacy and identity of the victims. This shows a lack of sensitivity on the part of the relevant authorities and is an expression of the ongoing trend of treating trafficked persons as witnesses only, without regard to their rights as victims. The public exposure of the identity and personal data of the victim may have severe consequences for their opportunities to rebuild their lives.

The judicial authorities, the prosecutors or police did not take any measures during the monitored cases to protect the safety of the victims. Neither was the option for victims under the Combating Trafficking in Human Beings Act to be granted special protection, given that she/he agrees to cooperate with the authorities of the pre-trial procedure to disclose the perpetrator, applied. The reasons could be sought in the detention orders usually issued to the accused persons/defendants, but also in the lack of requests from the part of the victims who are not aware of their rights, no matter in what capacity they participate in the trials.

There is a clear need to improve the protection of the identity and safety of victims. This would only be better attainable through the earlier

official identification of the (possible) victim as such by the investigation authorities. Being granted a specific protection status should guarantee the victim the rights as laid down in the CoE Convention on trafficking and the relevant EU Directives.

Attention should also be paid to guaranteeing the protection of the personal data when announcing the judicial acts, especially when publishing them at the Judiciary's websites.

### *Interrogation of the Victim*

In general, the victims were questioned in front of the perpetrators. They were not questioned in specialized premises or through special video or audio means. In addition, most of them were questioned multiple times. This type of questioning – before the perpetrators - puts the victims in danger and increases the risk of secondary victimisation.

Although the Court strives to reduce to a minimum the number of the victim's interrogations, this is not the case with the pre-trial investigation authorities. It is actually impossible to trace the number of interrogations to which the victim is subjected. Repetitive interrogations inflict unnecessary additional trauma to the victims.

A positive note is the active attitude of the court and prosecution in prohibiting irrelevant

questions in regard to the sexual history and life of the victim.

In none of the cases the victims received psychosocial or other kinds of support in accordance with their right to such under the Council of Europe Convention on trafficking and the relevant European Directives.

### *Legal Representation*

None of the victims requested free legal aid. Only in one case, which was monitored in both first and second instance, the victim was legally represented. In practice, the investigation and prosecution authorities do not inform the victims of their right to be legally represented, for two reasons. Firstly, they consider the victim as a witness only and not as a party in the proceedings – civil claimant and private prosecutor. Secondly, the presence of an attorney during the investigation would bring transparency into their job, which the authorities strive to avoid as obvious from the victims statements after the court proceedings when some of them were questioned why they are not legally represented. During the pre-trial proceedings, the victims rarely understand that they have the right to be legally represented, moreover, that they have the right to free legal aid. Further, it is rather difficult for victims to actually receive free legal aid. The domestic case law concerning the criterion “in the interest of

justice” has not been developed. In addition, under the Legal Aid Act, the bar associations keep a separate register for attorneys who specialize in criminal law, but not a separate register for attorneys who wish to represent victims only.

In conclusion, due to the lack of proper information provided to the victims on their rights and the services they are entitled to, they were deprived of adequate protection and representation in the monitored cases. This is despite the fact that local commissions for combating trafficking in human beings are operating in two of the cities where the monitoring took place and the existence of local State funded Crisis centers for victims of domestic violence, as well as NGOs offering services for victims of trafficking in human beings.

The lack of accessible and competent legal aid for victims of trafficking might be one of the reasons for the poor number of indictments.

### ***Investigation***

The testimonies of the victims are still the main evidence. More efforts should be taken by the investigation authorities in collecting evidence other than victims’ statements. This would reduce the burden laid on the shoulders of the victim. Currently, victims find themselves in a position that they are used by the judicial

system, whereas the latter does not respect their rights.

### *Compensation*

Article 73(1) of the Criminal Proceedings Code (CPC) imposes on the court and the prosecution a duty to inform the victims of their right to file a claim for compensation of the damages caused as a result of the crime. Upon request of the victim, the competent court shall take measures during the pre-trial proceedings to guarantee the payment under the future civil claim (Article 73(2)), such as a ban to sale property, freezing bank accounts, etc. The prosecution authorities similarly have the right to request preliminary measures to guarantee the payment of fines<sup>1</sup> or of possible confiscation (Article 72). Pursuant to Article 84(1) CPC, the victim may file a civil claim for compensation of moral and non-moral damages in the course of the trial and has the right to join the trial as civil claimant. However, only one victim filed a claim for compensation and was constituted as a party in the monitored cases as a private prosecutor and civil claimant. She was also the only victim who was represented by a lawyer. The other victims were only considered as witnesses. Such a position in the proceedings deprives them of their rights as

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<sup>1</sup> Under Article 159a of the Criminal Code and the following articles, the crime of trafficking is punishable with both an imprisonment and a fine.

victims, including legal and psychological/social support, as well as from compensation.

It must be concluded that, firstly, victims are not properly informed about their right to claim compensation. Although the prosecution and court authorities have a statutory obligation to inform them about their right to take part in the trial as civil claimant, it most often remains unclear for victims what the substance of this right is. The investigation and prosecution authorities do not explain in a conversation with the victim her/his rights, in a language that they can understand. Instead, at the end of the investigation, the investigation authorities present the case file to the victim, whereby she is asked to sign a piece of paper, listing shortly her procedural rights. Most often, the victim does not read the content of that document. As to the court authorities, they send to the victim's address a written notification summoning her for the first hearing and pointing out, inter alia, shortly her procedural rights. This procedure is relevant for the criminal trial, while the chances that victims learn about the possibility to claim compensation under the Civil Proceedings Code are insignificant. In addition, the chances to get compensation through a civil case are negligible. Moreover, victims do not have information on the reasonable amount of compensation to claim and the appropriate evidence to submit. Most importantly, victims are unaware of the possible means to guarantee the actual payment

of the compensation awarded, after the verdict becomes final.

Secondly, the prosecution authorities hardly ever request preliminary measures aimed at guaranteeing the payment of the fine (and possibly the confiscation), which the trafficker will be obliged to pay the State under the final verdict. Such a preliminary measure would benefit the victim as well for the collection of the compensation which the trafficker will be obliged to pay her under the same verdict. The implementation of the verdict becomes problematic and even impossible, when the authorities have not imposed in a timely manner a preliminary measure. Even the domestic courts have criticized the prosecution authorities for their inactiveness and their failure to ensure any guarantee for the possible confiscation in favour of the State.

Thirdly, the Compensation Act does not provide for financial compensation of moral/immaterial damages. It only provides for financial compensation of a list of pecuniary damages, enumerated in Article 14. However, most of them are irrelevant for the crime of trafficking. For example, expenses for the funeral of the victim or lost income. In many cases, the fact that women are unemployed is one of the factors that made them vulnerable for becoming victims of trafficking. The Compensation Act also provides for reimbursement of legal bills. However, the

submission of a compensation claim during the criminal proceedings is free from court fees and the victims enjoy free legal aid. For these reasons, they hardly have any legal bills. Finally, the Compensation Act provides reimbursement of expenses for medical treatment, in case that they exceed the victim's health insurance. The reimbursement of such expenses is generally problematic, because the victims do not save any evidence whatsoever for the costs they have made for medical consultations and medicines, especially if they are not informed of the relevance thereof.

As the scheme for reimbursement of pecuniary damages is inefficient, the State should be able to grant compensation for moral damages. Determining the amount of compensation for moral damages in each particular case would not be hard, relying on the existing case law of the courts, which is, approximately EUR 5 000.

Fourth, the maximum amount of financial compensation provided in the Compensation Act of EUR 2 500 is insufficient, especially against the background of the value of the assets acquired by the State from the traffickers.

### *Penal Policy*

Looking at the monitored cases, there seems to be a lack of consistency in the imposed sanctions. For example, in one case with one victim in which two aggravated forms of the

crime were indicted (deception and promise of benefit) the Court imposed 8 years imprisonment, whereas in another case with three accused persons and six victims, the Court imposed lower punishments, i.e. 8 years of liberty deprivation whereas the legal norm determines 5 to 15 years, as well as fine BGN 30 000 where the Penal Code provides for 20 000 to BGN 100 000.

However, the convictions in the finalized cases illustrate the Court of Appeal detailed analysis of the evidence presented, the application of the law as well as intention of the judicial authorities to effectively sanction perpetrators of trafficking in human beings when sufficient evidence is gathered during the proceedings before them. This trend is substantiated by the fact that the second-instance courts confirm the first-instance courts' verdict, despite that the first-instance courts and the pre-trial investigation authorities do not make use of the full legislative potential, given to them by the national and international law. The extremely low number of cases in the county is a good example of the trend the pre-trial investigation authorities not to make use of the full legislative framework and its tools in order to effectively investigate the crimes of THB. In general, the Court rendered conviction verdicts which indicated good quality of the evidence collected, good maintaining of the accusation that had been brought; good orientation of the Court in the evidence means collected during the court investigation and the

discussion of the evidence in order to form the judges' inner conviction.

Based on the monitoring results it seems that the Penal Policy in Bulgaria regarding the crime "trafficking in human beings" is conditioned by the following factors: the regulation of the crime in the Penal Code – Article 159 "a" – 159 "e" - regards the so called "internal trafficking", "external trafficking", person's exploitation in trafficking, dangerous recidivism/an organized criminal group; the punishments provided for these crimes are respectively: two (three or five) to eight/ten, twelve, fifteen or twenty) years of deprivation of liberty and a fine of BGN 3000 (10 000 or 20 000) up to BGN 12 000 (20 000, 50 000- or 100 000) or confiscation of part or of the entire property (when it comes to dangerous recidivism/an organized criminal group).

### ***Number of Cases***

Finally, the low number of court cases is striking. There is an obvious need for a more effective investigation and collecting of evidence so that more indictments could be brought to Court.

### ***Concluding Remarks***

Investigation authorities should profit to a greater extend from the possibilities provided for in the national and international legislation, in particular programmes for witness protection;

interrogation in the presence of a judge during the pre-trial phase, mandatory hearing of children in a specific protective space and by a trained professional; and video-conference interrogations.

At the same time there should be changes in the attitude towards the victim when s/he appears only in his/her capacity of a witness, especially in those cases where by means of promise of benefits or by means of misleading, the person has given his/her consent to be exploited in prostitution. Having only the status of witness deprives the victim of the possibility to participate effectively in the proceedings by maintaining the accusation (private prosecutor) or by requesting compensation of the damages sustained (civil claimant).

## RECOMMENDATIONS

- Victims should be informed properly about their rights from the very start of the case – by the police, prosecutors, lawyers - and should be supported to participate in the judicial proceedings as claimants and not only as witnesses;
- The investigation and prosecution authorities should be trained to inform victims of trafficking of their right to be legally represented;
- The State provided legal aid for victims, through the Legal Aid Act, should be standard for the participation of trafficking victims in the court proceedings;
- A separate register for attorneys who wish to provide free legal aid to victims of trafficking in the criminal proceedings should be established within the bar associations;
- The investigation and prosecution authorities should be trained to inform victims of trafficking properly, in oral conversation and in an understandable language, of the substance and the consequences of their right to claim compensation;

- The Compensation Act should be amended as to include financial compensation for moral damages;
- The amount of compensation granted by the State, which the State acquires from traffickers on the basis of final court decisions, should be increased significantly;
- Repetitive interrogations should be avoided and it should be ensured that victims are interrogated in a victim-sensitive manner. Unless there are specific reasons for a repeated interrogation, victims should be heard only one time in a “blue room” by experts prepared to work with trafficking victims;
- Information flyers explaining the victims’ procedural rights should be put in visible places in the buildings of the investigation offices, in hospitals and other places where victims of trafficking might come;
- A Code of Conduct for Hotline Consultants for victims of trafficking should be drafted, including a recommendation to inform victims of their right to have an attorney in the criminal proceedings.





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