

# Criminal law of Bosnia and Herzegovina on human trafficking

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## Abstract

The author of this article explores the question, what is human trafficking. In order to answer this question, definitions of human trafficking are examined, as well as the causes, types of trafficking, recruitment strategies, and the significant problems in conquering human trafficking internationally. Trafficking in human beings affects all regions and most countries of the world. According to official data, Bosnia and Herzegovina is a transit country, but certain reports indicate that it is becoming a country of origin and destination. In order to exemplify the issue of human trafficking on the concrete *case study*, there is further exploration of how the law of Bosnia and Herzegovina defines it, and how approaches to this problem. Taking into account the increase of human trafficking in the world, especially among countries in transition, it is extremely important to find effective solutions for the prevention of such cross-border criminal activity.

**Keywords:** Bosnia and Herzegovina, forced labour, gender violence, human trafficking, organ trafficking, sexual assault, sexual exploitation, violence against women, cross-border criminal activity, transit country, criminal law

## Prawo karne Bośni i Hercegowiny dotyczące handlu ludźmi

### Streszczenie

Autor niniejszego artykułu zgłębia pytanie, czym jest handel ludźmi. Aby odpowiedzieć na to pytanie, analizuje definicje handlu ludźmi, a także przyczyny i odmiany tego zjawiska, strategie „rekrutacji” ofiar oraz istotne problemy w zwalczaniu handlu ludźmi na arenie międzynarodowej. Handel ludźmi dotyczy wszystkich regionów i większości krajów świata. Według oficjalnych danych, Bośnia i Hercegowina jest krajem tranzytowym, ale niektóre raporty wskazują, że coraz częściej staje się też krajem pochodzenia i przeznaczenia. W celu zilustrowania problemu handlu ludźmi na przykładzie konkretnego studium przypadku, przeprowadzono badanie dotyczące tego, w jaki sposób prawo Bośni i Hercegowiny definiuje to przestępstwo i w jaki sposób podchodzi do zwalczania tego problemu. Biorąc pod uwagę wzrost handlu ludźmi na świecie, zwłaszcza wśród krajów znajdujących się w okresie przejściowym, niezwykle ważne jest znalezienie skutecznych rozwiązań w zakresie zapobiegania transgranicznej działalności przestępczej tego typu.

**Słowa kluczowe:** Bośnia i Hercegowina, praca przymusowa, przemoc ze względu na płeć, handel ludźmi, handel organami, wykorzystywanie seksualne, przemoc wobec kobiet, transgraniczna działalność przestępcza, kraj tranzytowy, prawo karne

Human trafficking is as old as human history. Slavery and slave labour were never eradicated. They changed only their forms and adapted to social conditions. In the modern world, trafficking in human beings, including children, is still present in many countries. People, especially children, are trafficked for the purpose of sexual exploitation, forced labour, forced begging and the commission of criminal offenses. Adults and children are also trafficked for the purpose of concluding forced marriages, or even organ trafficking.

Trafficking in human beings is a global phenomenon that strongly affects countries in political and economic transition or the post-conflict period, which are most often the main starting points for trafficking in human beings (Doležal 2007: p. 1399–1420). According to existing data, trafficking affects everyone: women, men, girls and boys, but most victims of trafficking are women and girls (Korićanac 2013). This gender-related characteristic is largely caused by the poverty of the female population and the violation of women's economic and social rights. Since the early 1990s, human trafficking has emerged and become a serious problem in the region of South Eastern Europe.

Ancient prostitution originated from the slave-owning social order and polytheistic cosmogony, so the prostitutes of that time were mostly slaves of rich citizens or believers dedicated to a certain polytheistic deity, in whose temple they sexually served visitors. The prostitutes did not have the money paid for their services, that money was used by the owners of the slaves and the administration of the temples. Some sociologists accept the rough division of ancient prostitution into forced, slave, and voluntary temple prostitution. Prostitutes themselves were more or less stigmatised everywhere, that is, negatively marked. The Roman rule is as much Greek supported prostitution as a normal segment of social life.

In the Middle Ages in Europe, in the period of feudalism and Christianity, the profile of prostitution as a social phenomenon changed. Ancient religious authorities and society, denote and accept prostitution as a necessary evil, to which human greed is channeled, in order to protect from it the sanctity of marriage and, generally, the desirable chastity of the female population. In the Middle Ages, prostitution most often appeared in two forms: civil and military. Civil prostitution implies the activities of brothels, and military – the integration of prostitution into long war campaigns in which prostitutes provided services to their members of the campaign. Military prostitutes in seventeenth-century Europe were organised in some armies into support units, mostly under the command of a commander of the appropriate military rank. In the modern age, the extent of prostitution has not diminished, only the form of its institutionalisation has changed. Military prostitution has disappeared, and activity has expanded beyond brothels into the entertainment and culture sectors.

Today, prostitution is widespread throughout the world. In recent decades, world poverty has generated numerous forms of mass suffering, including the growing

prostitution that most affects the most vulnerable groups, women and children. Globalisation has affected the development of organised crime, under the control of which prostitution becomes predominantly forced because it is recognised as a source of huge profits without special investment and risk. Thus, today prostitution takes the form of cruel exploitation of the marginalised multitude of women and children, who are thus enslaved, similar to the ancient past.

In the ancient past, slave labour enabled the most advanced civilisations to exploit their scientific and cultural potentials and thus reach cultural and economic heights. In Egypt, for example, pyramids, palaces, and temples were built by hundreds of thousands of slaves, and ancient Sparta and Athens depended on forced labour. Most Athenian slaves were servants in households, and their happiness depended on the relationship they would develop with their owners. The Greek model of slavery was taken over by the Romans, who supplied their empire with free labour through conquests. The most privileged slaves in Rome were the secretarial staff of the rulers. The Romans also treated slaves with extreme brutality. One example of cruel treatment of slaves is arena battles better known as gladiatorial battles.

In the time after the fall of the Roman Empire, European civilisations abandoned the slaveholding model that replaced the feudal social order. Medieval feudal states rested on the work of peasants – serfs. Given that the medieval European area was the target of numerous conquests of peoples, from the Huns, Avars, Tatars, etc., these conquerors during their campaigns enslaved a large number of people, and prisoners, among whom children were not spared either, they become victims of all possible forms of exploitation. In the slaveholding and feudal stratification system there is a lack of awareness of the importance of the human person and his dignity (Cimerman, Gluić, Marinović 2005: p. 10).

Unfortunately, the problem of human trafficking, although attracting more and more attention to the political blue (communism) is far from being solved. The complex causes of this crime, insufficient awareness of the problem, lack of specific legislation in the state make it very difficult to combat trafficking. Thus, the aim of this article is to analyse this phenomenon from the legal point of view, to examine its causes, types, and to propose new ways of combating human trafficking.

If we start from the definition of trafficking, we can find one of the more widely accepted definitions given by the United Nations. According to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (well known as Palermo Protocol), which supplements the *United Nations Convention against Transnational Organized Crime* (UNTOC), trafficking in persons is defined as „the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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, for the purpose of exploitation.“ (Protocol 2000: art. 3).

The definition clearly states that trafficking includes not only the recruitment of victims but also their transportation from one place to another and their acceptance, so that

everyone involved in a person's movements for the purpose of exploitation participates in the trafficking process (Lalić 2007: p. 22). Dramatic experience, to which people involved in human trafficking have been exposed, can be inferred from this definition. This does not follow from the definition, but practice demonstrates that traffickers were mostly not only known to victims before they abused them, but were primarily people they trusted and often very close to those they later exploited (Korićanac 2013).

Article 187 of the Criminal Code of Bosnia and Herzegovina states: "Whoever, for profit or other benefit, induces, encourages or entices another to provide sexual services or otherwise enables his surrender to another for the purpose of providing sexual services or in any way participates in organising or leading the provision of sexual services in a State in which that person is not domiciled or of which he is not a national shall be punished by imprisonment for a term between six months and five years".

A special form of trafficking is organ trafficking. This branch of human trafficking is relatively new, but very cruel. Victims are forced to sell their organs and receive very little or no compensation. Postoperative care for the victim is rare, so victims often die. Organ recipients are most often wealthy residents of developed countries of the world.

## Human trafficking and Bosnian legislation

Trafficking in human beings is a major social problem that has far-reaching negative consequences, both for survivors of trafficking in human beings, their families and immediate environment, and for society as a whole. Trafficking in human beings is called modern slavery, and it is a criminal offense and a dramatic form of violation of basic human rights. However, in scientific practice, in Bosnia and Herzegovina, the problem of human trafficking has not been sufficiently studied, i.e. to the extent that there is a real need given the prevalence of this phenomenon and its negative social implications. The end of the XIX and the beginning of the XX century is a time of migration, where the problem of refugees and poverty arises. It is a time marked by the globalisation of organised crime, where criminal cartels represented a significant part of the world economy, generating social influence, power and thus posing a threat to the principles of humanity. However, the crime of trafficking in human beings rose sharply from the mid-to-late 1990s, when thousands of women were believed to have been exposed to organised groups of traffickers operating throughout the country. Most of the victims were from Eastern Europe.

To arrive at a particular location, often a bar or nightclub, victims were forced to provide sexual services to trafficking clients, which in many cases included members of international peacekeeping missions. At any attempt to refuse, victims would face severe physical violence, threats against family members of the victim, or even the murder of the victim by traffickers or their accomplices (see: OSCE 2009).

For example, in the same period, organised criminal groups from Asia sent women from China to the United States, as well as women from Eastern Europe to South American countries. This practice is known as „white slavery" (Lalić 2007: p. 5).

There are no precise data on human trafficking at the global or regional level. According to governmental and non-governmental experts in this field, it is estimated that between 700,000 and 2,000,000 women and children are trafficked worldwide each year as victims of human trafficking. These are preliminary estimates relating to international human trafficking, where countries such as Thailand or India are not involved (Lalić 2007).

When it comes to Bosnia and Herzegovina, according to the same author, BiH has become a route for human trafficking and other forms of smuggling to Western European countries. Bosnia and Herzegovina has also undertaken operational and legislative measures to strengthen its anti-trafficking capacity. In order to comply with international standards, this country has ratified the UNCTOC and its protocols, including the Palermo Protocol. Furthermore, in 2008, it ratified the *Council of Europe Convention on Action against Trafficking in Human Beings* and committed itself to full compliance with legal and other measures arising from these documents. It has also ratified International Labour Organization's conventions: No. 29 – on prohibition of forced labour<sup>1</sup>, No. 97 – on migration for employment purposes (revised)<sup>2</sup>, No. 105 – on abolition of forced labour<sup>3</sup>, and No. 142 – on migrant workers<sup>4</sup> (supplementary provisions). International standards oblige BiH to fully respect, not only in terms of legislative compliance and implementation, but also in terms of ensuring the institutional and operational capacity to prosecute and prevent trade, including trade for labour exploitation. These measures must ensure both the identification and protection of victims (see: OSCE 2011).

In 2003, when the Criminal Code of Bosnia and Herzegovina was adopted, it included a definition of trafficking in human beings under the Palermo Protocol. Recent amendments have ensured compliance with the *Council of Europe Convention on Action against Trafficking in Human Beings* at the state level, while the BiH criminal law provides a comprehensive definition of trafficking in human beings.<sup>5</sup> The same law includes provisions on related offenses, such as: offenses of enslavement and transportation of persons in slavery<sup>6</sup>, international recruitment for prostitution<sup>7</sup> and smuggling of persons<sup>8</sup>.

BiH criminal legislation at all levels ensures that victims of trafficking can file a property claim in criminal proceedings, as one form of compensation. The injured party is defined as a person whose personal or property rights have been endangered or violated by a criminal offense. In accordance with the relevant provisions, the court decides on the property claim in criminal proceedings, if this decision would not significantly prolong the criminal proceedings. Thus, this decision is left to the discretion of the court, which assesses in each individual case whether the decision on the property claim would significantly prolong the criminal proceedings.

<sup>1</sup> Forced Labour Convention, 1930 (No. 29).

<sup>2</sup> Migration for Employment Convention (Revised), 1949 (No. 97).

<sup>3</sup> Abolition of Forced Labour Convention, 1957 (No. 105).

<sup>4</sup> Human Resources Development Convention, 1975 (No. 142).

<sup>5</sup> CL BiH, „Official Gazette of BiH“, numbers: 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10;

<sup>6</sup> KZ BiH, član 185;

<sup>7</sup> KZ BiH, član 187;

<sup>8</sup> KZ BiH, član 189;

Such proposal for the implementation of a property claim may relate to compensation for material and non-material damage, return of property or annulment of a certain legal transaction (see: OSCE 2011). According to available data collected in last years from prosecutors, law enforcement agencies, social work centres and NGOs in Bosnia and Herzegovina, the biggest number of victims of trafficking (83 people) were identified in 2017 (see: UNODC 2020: p. 4). They were trafficked for the purpose of labour exploitation (7 victims), prostitution or other forms of sexual exploitation (10 victims), for the purpose of begging (52 victims), for conclusion of forced or contracted marriages (5 victims),<sup>9</sup> and other forms of exploitation of victims (4 fornication, 1 sexual intercourse with a child, 2 extramarital affairs) with a minor child (1 minor found at the border without documents and 1 adult does not specify the type of exploitation). Within the total number of victims of human trafficking in 2017, 36 victims were adults and 47 were minors, 58 victims were females and 25 were males, 2 victims were foreign nationals (1 adult – Dutch citizen, 1 minor – Libyan citizen), while the remaining 81 victims of human trafficking were citizens of Bosnia and Herzegovina. 26 victims of trafficking were assisted in safe houses, while protection and assistance were provided to 57 victims outside safe houses. Three voluntary returns (adults) from Slovenia and Croatia (labour exploitation) were made, and 1 reception of a potential victim of human trafficking from Hungary (a minor). Also, in the reporting period, acquittals were handed down against 3 persons. Competent institutions in Bosnia and Herzegovina and civil society organisations, in cooperation with international organisations and partner countries, in 2017 out of 91 activities planned by the *Action Plan to Counter Trafficking in Human Beings in Bosnia and Herzegovina for the period 2016–2019* managed to fully implement 65 activities, 7 activities were partially implemented and in 19 activities implementation was not started in the reporting period<sup>10</sup>.

## Palermo Protocol

This Protocol was open to all states for signature from 12 to 15 December 2000 in Palermo (Italy), and thereafter at United Nations Headquarters in New York until 12 December 2002.

The Article 3 of the Palermo Protocol states that trafficking in human beings consists of 3 basic elements that must be combined in order for the definition of trafficking to be met. These three basic elements are: *the act* of exploitation, *the manner* and *the purpose* of exploitation (see: Protocol 2000: art. 3).

The *acts of exploitation* include: recruiting, transporting, relocating, receiving and providing accommodation to victims of trafficking. The *manner* tells us how the crime was committed. Threats or the use of force are most often used, and kidnappings, frauds, deceptions and coercion also occur. People in various positions experience abuse of power, which is often accompanied by various forms of corruption. The *purpose of exploitation* is the last element of human trafficking, which is actually the ultimate goal of human trafficking. Prostitution, forced labour, slavery or slavery-like acts and organ harvesting are in this category.

<sup>9</sup> See more: UNODC 2020: p. 5.

<sup>10</sup> Data according to the Council of Ministers of Bosnia and Herzegovina.

The Palermo Protocol obliges states "to establish trafficking in human beings as a criminal offence, but does not provide guidelines for the severity of sanctions" (Kartusch 2001: p. 43).

## **Causes of human trafficking**

The causes of human trafficking are numerous, and the most important are poverty, war, natural disasters, ignoring the law. Globalisation has contributed to a faster and easier crossing of international borders, which has made the job of smugglers much easier. Many societies today are imbued with the belief that „women are second-class residents“. Their human rights are not respected, so they are very often victims of human trafficking or are sold by their own families.

The disintegration of the great 5 state formations, such as the Soviet Union or Yugoslavia, created a space-time vacuum of powerlessness. Due to the failure of the authorities and rights in these areas, many women and children became victims and were transported mostly to Western European countries.

One of the causes of human trafficking is the increase in international sex tourism and the legalisation of prostitution in some countries around the world. A large number of countries do not have defined anti-trafficking laws, so this is another incentive for traffickers to trade them. Unfortunately, a large number of people, who are supposed to fight human trafficking ultimately cooperate with money abusers and sell fake documents to victims.

## **Differences between human trafficking and migrant smuggling**

It is important that authorities know how to distinguish the trafficking crime from smuggling of migrants. Victims of trafficking may be exposed to immediate or long-term physical, sexual or health consequences not seen in smuggling. Trafficking victims are violated more than smuggling. Often victims of smuggling become victims of human trafficking. Smuggled migrants often find themselves in desperate and life-threatening situations. In such situations, there may also be some elements of trafficking, but no element of exploitation, which is an important difference from human trafficking. In the Criminal Code of BiH (Article 189, paragraph 1) is written: "Whoever intends to obtain for himself or another benefit, illegally translate or facilitate the transfer of one or more migrants or other persons across the state border or who for that purpose makes, procures or possesses false travel or personal documents will be punishable by one to ten years in prison".

## **Trafficking in human organs**

Organ trafficking is perhaps the least understood and researched form of trafficking. It is a growing international problem with a transnational dimension. Organ trafficking involves a crossroads between the criminal world of traffickers, poor donors, sick recipients

and unscrupulous medical staff. Organ trafficking needs to be understood in the context of transplant commercialism and transplant tourism. Both include the commodification of a human organ (often a kidney or liver) that is bought or sold for commercial or material gain. Live donors or cadavers (dead donors) can be traded. Trafficking in human beings for the purpose of organ removal is clearly defined by the Palermo Protocol to the *UN Convention against Transnational Organized Crime*. This document defines trafficking for organ removal as a specific form of trafficking, in which an internationally operating criminal organisation through deception and coercion attracts or coerces people into organ trafficking. Trafficking for organ removal refers to a living donor (Aronowitz, Isitman 2013).

From a legal point of view, this form of organ trafficking, like all other forms of trafficking, is a violation of fundamental human rights and the dignity of the individual, and is therefore defined as a criminal offense usually carried out by transnational organised crime networks: handling of any human organ, tissue or cell obtained and used outside the national legal system for organ transplantation (World Health Organization 2009). The concept of trafficking in organs, tissues and cells focuses on trafficking in human body parts derived from living or deceased donors. This type of trafficking has a wide scope and can occur as the purchase and sale of organs or tissues from living persons, but also as theft of organs or tissues, of the deceased. Trade of organs, tissues and cells involves the sale and purchase of body parts, which is prohibited and punishable under international conventions, as well as under national transplant laws (Bos 2015).

Deprivation of human organs and body parts is a form of slavery, whose victims are exploited by taking an organ from their body. There is voluntary giving of human organs and body parts and violent taking human organs and body parts. Removal of organs or parts of bodies is carried out to meet the health needs of persons, or for scientific research purposes. What characterises victims of forced abduction organs or body parts is that the victims are mostly from the area of war or territory affected by poverty, lawlessness and corruption, as well as the fact that mostly the same people were first abducted in different ways, imprisoned, and after the removal of organs – killed. Remains of the victim's body are thrown into one of the collective tombs, without a trace. Incitement and coercion to commit criminal acts is also a form of exploitation of victims of trafficking, forcing them to commit certain illegal actions, with the aim of gaining illegal property gain for one who carries out such a form of coercion and crime. Victims of trafficking also may be forced to participate directly or indirectly in war conflicts.

### **Sexual exploitation in human trafficking**

Sexual exploitation is generally administered by traffickers called pimps. They are violent, ruthless and consider victims of human trafficking their property, inanimate objects that will be sold over and over again. Victims of trafficking may be attracted to sexual



activity by a trafficker, who turns that he is their friend and who will eventually deceive the victims. Every aspect of the victim's life is controlled by traffickers, who often use alcohol or drugs to develop the victim's addiction as a form of control. Children are also not exempt from sexual exploitation<sup>11</sup>. Pimps target a vulnerable group of children and lure them into prostitution through psychological manipulation, drugs and violence. Pimps create seemingly loving and caring relationships with children to establish trust and loyalty, and so the pimp ensures that the child remains loyal even after rescuing the child.

For example, such phenomenon as *bacha bazi*<sup>12</sup> literally means „playing with boys“, but in reality it is slang for sexual slavery and child prostitution that flourishes in almost all parts of Afghanistan and some parts of Pakistan. Boys, often from 10 to 18 years old, are sold to rich and powerful patrons for entertainment and illegal sex. Because women are not allowed to dance in public places, boys are forced to perform dances that involve feminine movements and acting. Many rich and influential men have one or more boys for sexual exploitation. These boys are most often from very poor families, and rich individuals sometimes keep them in public as apprentices, housekeepers, workers in a shop, a hotel or some other business. Boys are sometimes „recruited“ through coercion, threats, fraud, intimidation or being lured false promises of a better life. Although the boy's „job“ should be dancing to entertain male audience, they are actually victims of sexual exploitation. The UN tried to raise awareness of this practice, however, without much success. The main problem in reducing and breaking the *bacha bazi* practice is the fact that no one is ready to speak about it publicly. The growing proliferation of these practices in Afghanistan has a number of causes: lack of rule of law, corruption, vagueness and lack of law, limited access to justice, widespread poverty, general insecurity, etc. (Aljazeera Balkans 2006).

In Bosnia and Herzegovina, in Article 186 par. 2 of the BiH Criminal Code is written: „Whoever recruits, alleges, transports, surrenders, hides or receives a person under the age of 18 for the purpose of exploitation by prostitution or other forms of sexual exploitation, forced labour or services, slavery or the like by intercourse, service, removal of parts of a human body or for the purpose of any other exploitation, in a State in which that person is not domiciled or of which he is not a national, shall be punished by imprisonment for a term not less than ten years“.

## Prevention of human trafficking

Taking into account the complex and diverse nature of trafficking in human beings and its main causes, an effective strategy to prevent trafficking in human beings must not be limited to punishment as a consequence of such trafficking. States are obliged to take appropriate measures to prevent trafficking in human beings. The need for a uniform multidisciplinary policy in preventing trafficking in human beings is recognised in all countries, as well as regional and international organisations. The foreword to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, as well as from the Council

<sup>11</sup> See more: <https://www.unodc.org/unodc/en/human-trafficking/faqs.html> (02.08.2021)

<sup>12</sup> „Bacha bazi“ literally means „playing with boys“ and is most often translated as „dancing boys“.

of Europe (see: Kartusch 2001), stressed the need for an integrative and coordinated approach to this problem consisting of prevention, protection of victims and punishment of perpetrators.

The prevention strategy should include short- and medium-term measures, such as information campaigns and raising the awareness of potential victims. In terms of the long-term perspective, the strategy should aim to improve the economic and social situation of groups that are particularly vulnerable in the countries of origin. In addition, restrictive immigration laws and policies in destination countries also contribute to an increase in illegal migration and trafficking, and expanding the possibilities for legal migration to find work or vocational training could have a protective effect against trafficking. Where to start? Clearly, from the very beginning, what is in this case raising the level of awareness about the issue of human trafficking (see: Kartusch 2001). Immigrants often do not have enough information, that is why they are forced to turn to intermediaries for help in finding a job abroad. These intermediaries can also be smugglers who simply help them cross the state border, but they can also be traffickers. Awareness-raising campaigns are therefore an essential element in providing sufficient information to potential victims of trafficking to enable them to make the right decisions regarding possible employment outside the countries in which they live. Such campaigns should include information on human trafficking, existing opportunities and conditions for legal migration, employment data in destination countries, real earnings in certain countries, so that potential immigrants can assess, how realistic the business offers they are received. Traffickers promise huge sums of money, and their victims do not have enough opportunity to find out whether these offers are real or not.

Such campaigns should be conducted in countries of origin in cooperation with NGOs, which should be provided with adequate financial assistance, while countries of transit and destination should support governments and NGOs in countries of origin in their efforts to implement such campaigns.<sup>13</sup> In addition to potential victims, information campaigns should be addressed to the general public, as well as to the legislature and other professional services, who are likely to be in contact with potential victims of trafficking (Kartusch 2001).

Members of high-risk groups should be provided with information on recruitment methods used by traffickers, on legal requirements for legal migration to other countries, on earning opportunities in those countries, on sexually transmitted diseases (especially AIDS, related to work in the sex industry), as well as organisations that citizens can contact for more information. Trafficking in human beings most often begins with migration, and the main causes of migration lie in economic and social inequality between countries and regions (see: United Nations 2014). People living in developing countries or countries in transition, who want to emigrate for work to improve an extremely low standard of living or for marriage, often become victims of human trafficking. The inferior position of women before the law and in society in general, often leads to women as a group, much more often than men affected by general poverty

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<sup>13</sup> [www.mnadvocates.org](http://www.mnadvocates.org)

and unemployment. All these circumstances lead to the fact that labour migration is increasingly made up of women. Therefore, it is necessary to take into account the issue of the role of gender in society, when planning strategies to improve the economic and social situation in the countries of departure. The combination of economic problems and gender discrimination is of particular importance for the analysis of the situation in Central and South Eastern Europe, as well as in the countries of the former USSR. Since the early 1990s, countries in transition, in Central, Eastern and South-Eastern Europe, as well as in the former USSR, have become the main starting countries for human trafficking, but also countries of transit and origin of such trafficking. Despite the progress made in the economic development of this region, poverty and unemployment rates increased significantly during the transition.

However, the causes of human trafficking cannot be limited to poverty and difficult economic conditions. To be effective, anti-trafficking prevention strategies need to take into account that certain groups in society are particularly vulnerable to discrimination, thus increasing the risk of becoming a victim of trafficking. For example, women belonging to national minorities have additional problems because of their gender, but also because they belong to a minority group (multiple discrimination)<sup>14</sup>. Therefore, strategies addressing the causes of trafficking should also address the position of women and girls belonging to minority groups. The fact that they are more vulnerable to human trafficking requires a deeper analysis in order to develop an appropriate strategy to eliminate this form of multiple discrimination. Prevention of human rights violations is a very complex issue, so it is difficult to point out the most effective safeguards. However, the link between the position of high-risk groups in countries of origin and their vulnerability to trafficking is obvious, and NGOs and international organisations often point this out. The strategies for effective prevention of trafficking in human beings involve taking measures in relation to the causes that make certain persons potential victims of trafficking in human beings. Improving the position of groups of people (women and children), who are most often the target of traffickers, within social and legal systems requires a broad, multidisciplinary approach, and it is necessary to make an analysis of the full range of factors of this complex problem (Kartusch 2001).

### **Examples of good practice of preventing human trafficking in some European countries and the USA**

Recognising the need to raise awareness about human trafficking, Italy has funded TV campaigns on this problem in Albania, from which more and more people go to the European Union every year, mostly illegally across the sea. An agreement with the International Organization for Migration (IOM) was signed, which allows 5,000 Albanians to work in Italy for a year. The goal of the agreement is the legal employment of workers from Albania and the Balkans. Candidates for going to work in Italy must pass language

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<sup>14</sup> See: International Helsinki Federation for Human Rights, [www.ihf-hr.org/publicat.htm](http://www.ihf-hr.org/publicat.htm)

and professional training tests. All persons, who pass the tests are entered into the IOM database, which is sent to the Italian authorities and is available online for consultation with Italian employers.

If a suitable job is found in the database for a suitable candidate, he gets permission to go to Italy with an employment contract, which allows him to start working immediately. The U.S. *Trafficking Victims Protection Act* of 2000, H.R. 3244 ENR (Sec. 106 (b)) obliges U.S. authorities to initiate and implement public awareness programmes, especially among potential victims of trafficking, regarding the dangers of trafficking in human beings and the protection mechanisms available to victims of trafficking (Kartusch 2001: p. 19). Several states of the former USSR, such as Moldova and Ukraine, have established ministerial committees responsible for issuing licenses to those companies that organise the employment of people abroad. Boards can also revoke licenses if they detect actions by companies that violate the law. Potential immigrants have the opportunity to check with these committees whether a particular company offering a job abroad is licensed and registered in accordance with the law (Kartusch 2001). This law also punishes all forms of trafficking in human beings. This is one of the better examples of legal practice that recognises that human trafficking takes place not only in the field of the sex industry, but also in other areas of work and service provision. Taking into account that clear legislation is required for successful prevention, some countries (e.g. Austria, Cyprus, the Netherlands, Germany and Poland) have included trafficking in human beings as a separate criminal offense, but still limit the offense to prostitution or sexual exploitation.

In Kosovo, in January 2001, a definition from the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, was included in the legislation.<sup>15</sup> Punishing all participants, who are involved in human trafficking in any way, has a crucial impact on the prevention of human trafficking. Therefore, this is perhaps the most important part of all prevention strategies, to which great attention should be paid.

The adopted in Kosovo anti-trafficking law provides for a penalty of two to twelve years imprisonment for persons, who commit or attempt to commit the crime of trafficking in human beings. Under aggravating circumstances, the penalty is two to fifteen years in prison (if the victim is under eighteen years old) or five to fifteen years (if the perpetrator organised a group of persons for trafficking in human beings).<sup>16</sup>

U.S. trafficking law<sup>17</sup> provides for a sentence of up to twenty years in prison. With aggravating circumstances, e.g. if the consequence of trafficking is the cause of death of the victim, if the offense involved kidnapping or sexual abuse or was committed with the use of force, threat or coercion, or if the victim was under the age of fourteen, imprisonment may be life.

<sup>15</sup> Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, UNMIK/REG/2001/4, 12 January 2001 (according to Kartusch 2001: p.42).

<sup>16</sup> Regulation No. 2001/4 on the Prohibition of Trafficking in Persons in Kosovo, UNMIK/REG/2001/4, (Sec. 2), according to Kartusch 2001: p.42.

<sup>17</sup> United States Code (Sec. 1590 and 1591), as amended by Victims of Trafficking and Violence Protection Act 2000 (Sec. 112), according to Kartusch 2001: p. 42.

In Belgium, facilities, where a criminal offense has been committed, may be legally closed during the trial, if there is evidence that social laws have been violated under the reasonable presumption that trafficking in human beings is involved. The Belgian Criminal Code (according to Kartusch 2001: p. 44, 52) also allows for the seizure of objects owned by the accused, resulting from trafficking in human beings. In cases of trafficking in human beings, seizure may be carried out even if the facilities in question are not owned by the accused. All earnings earned by the accused illegally (or the equivalent amount of money, if earnings are not available) may be confiscated. If a person has trafficked money or earned money for a criminal offense, that money becomes the property of the state upon completion of the trial. This state decision, however, cannot be applied if there are also victims of the crime. In such cases, the seized property is sent to a victim assistance fund instead of the state, which allows victims of trafficking, who are resold into forced prostitution, to file civil lawsuits against the trader for the payment of wages he forcibly denied (Kartusch 2001: p. 53). The Belgian Penal Code<sup>18</sup> provides for the deprivation of certain rights, such as the right to testify or the right to engage in public affairs, for persons who are proven to have participated in trafficking in human beings by engaging in their usual activities or associating with criminal organisations.

A large number of countries have introduced stricter legal penalties for trafficking cases committed by organised groups of criminals, e.g. Belgium and Kosovo. Austria has introduced as a separate criminal offense association, organisation and participation in criminal groups for the purpose of trafficking in human beings.

One of the main bearers of any prevention strategy is certainly the police. Albania and Latvia have established special anti-trafficking police departments. In Bulgaria, a special police unit has also been established within the National Border Police Services (NBPS) to investigate, gather evidence, conduct joint actions and exchange information with other state and international judicial services. In the United Kingdom, a unit within the London City Police (see: Kartusch 2001), among other things, conducts investigations into forced prostitution, trafficking in women and organised crime. The basic task of this unit is to ensure the safety and protection of victims. All investigations are mostly conducted on finding data and evidence and do not rely solely on the testimony of victims. The United States have established special anti-exploitation units (WETF) to prevent the exploitation of workers, as well as to investigate and punish, many of which are the result of human trafficking (*Hidden Slaves...* 2004). One of the biggest problems related to the crime of trafficking in human beings is that persons accused of committing that crime are often not citizens of the country in which they are being tried.

However, some European countries have also found answers to such problems (Kartusch 2001). For example, under the Austrian criminal law, criminal offenses of trafficking in human beings committed abroad may be under the jurisdiction of Austria if the criminal offense has endangered the interests of Austria (e.g. if the victim is an Austrian citizen) or

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<sup>18</sup> This Code governs the manner of conducting criminal investigations and prosecutions.

in a case, where the perpetrator cannot be extradited to another state, regardless of the criminal law of the foreign state where the crime was committed.

### **Recommendations for the prevention of human trafficking**

General measures for the prevention of trafficking in human beings should be based on research in the field of prevention, prosecution and protection. This is important because only on the basis of facts we can see the totality of the problem, ensure that police and judicial authorities carry out continuous collection of data on trafficking cases (number of reported cases and convictions, countries of origin, measures in which many victims turn to aid organisations, etc.) in order to implement more effective measures to prevent trafficking. Now, according to some data, we do not have enough research to show the real situation. It has already been pointed out that high-risk groups of people, who are susceptible to becoming victims of human trafficking, are actually women and to a lesser extent – children. Mechanisms of the protection of women and children, especially in cases of domestic violence, are the following: free medical, psychological and legal counseling, accommodation and legal aid. It is also necessary to create specially trained and equipped teams within the police force, as well as within the state legal apparatus.

Taking into account the fact that trafficking in human beings is a global phenomenon, it is necessary to use bilateral, regional and international cooperation in order to eliminate the causes of trafficking in human beings. One of the most important aspects of human trafficking is the criminal responsibility of all individuals involved in this process.

In addition, other provisions of the Criminal Code should be applied to perpetrators of the criminal offense of trafficking in human beings, such as forced marriage, torture, rape, sexual abuse, bodily injury, murder, etc. In addition to imprisonment, the practice of confiscating property closure of trafficking-related facilities (as in the Netherlands), abolition of the right to use state aid and tax relief, and introduction of judicial oversight. Criminal and civil liability should apply to all legal entities involved in trafficking in human beings, regardless of the liability of the natural persons involved.

Special emphasis should be placed on consistency in punishment, it is the responsibility of the government. The attention should also be drawn to the need to decriminalise victims of trafficking, if it turns out that these persons committed misdemeanors and criminal offenses, because they were victims of trafficking at the time. Since Bosnia and Herzegovina is on one of the routes, through which human trafficking takes place, it can be expected that victims of human trafficking will be discovered in its territory. These persons should be provided unconditionally and free of charge with any kind of assistance (medical, legal, psychological), because it should not be forgotten that these individuals are possible witnesses in court proceedings. If they agree to testify in court, they should be clearly provided with all information about their rights in court and also provided with free legal aid. The role of the state is considered to be extremely important, which in this case should take

all measures to protect the privacy and personal safety of victims of trafficking before, during and after criminal proceedings.

Protection measures should also be ensured for members of non-governmental organisations that provide assistance to victims of trafficking. Taking into account that the case of trafficking in human beings is mostly persons residing illegally in a country, including BiH, it is considered that the deportation of victims of trafficking in human beings should be stopped if there is evidence of a possible threat of retaliation in the home country. To this purpose, Bosnia and Herzegovina should step up its efforts to improve cooperation with the countries of origin of victims of trafficking.

Prevention programmes can often look like a real solution of the problem „on paper“. However, in practice, their implementation is often an unfeasible endeavor. The difficulties that can be encountered are financial problems, inadequate working conditions, administrative beaurocracy, rigidity of the system, comfort and inertia of those who need to implement the programme in their institution. To make matters more complicated, the experts involved in the programmes clash over different views on the problem and ways to solve it. Therefore, it is considered that it is necessary to invest funds and efforts in the establishment of expert teams that would be exclusively focused on the implementation of preventive and other programmes to combat trafficking in human beings. Expert teams could be organised in regions, and each of them would monitor the work of certain local communities. Due to the fact that the prevention so far has resulted in failure, it is necessary to restructure the approach to the problem. The author's proposal would be to establish a special institute for such research, with an existing database of cases and victims of trafficking. Transparency of prevention programmes is very important, because it leaves no room for manipulation. It is certainly important to focus on schools<sup>19</sup> and colleges, because young people, who have no information about the problem, naively enter the world, not knowing what is behind certain ads with job offers nor to whom they can turn for help if they become victims. We also believe that we should act on the media's approach to the problem of human trafficking in terms of avoiding public intimidation, sensationalism, and especially the media lynching of the victim. It is paradoxical to crucify victims of human trafficking, who ended up in prostitution against their will, until no one wondered who the consumers of their services were and what happened to their morals and responsibilities.

## Conclusions

It is disappointing to know that the human race has progressed so much since the time of ancient slave-owning civilisations such as the ancient Greeks and Romans, and that in parallel with it, the form of trade that sells people as „goods“ has also progressed. However, this fact should not be so great discouraging, because all countries, at least on a declarative level, agree that human trafficking is a crime to be eradicated. As a result,

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<sup>19</sup> in all areas of BiH, especially rural ones, where people are often less informed than the urban population.



more and more countries are uniting to create plans, programmes and strategies to combat human trafficking. Congresses are organised, seminars, training sessions, and everything needed to warn of this problem, and then prompted to action. But is all that enough? Are there any other ways, instructions, patterns of action that are not taken into account? According to the above-mentioned data, and according to some other research, human trafficking is firmly on the „bronze pedestal“ on a global scale of the problem.

Yet, as long as there is the will, the people and the ways to fight human trafficking, there is hope that one day this problem will be solved to the end. Bosnia and Herzegovina has not shown that it is doing well in the direction of improving the prevention of trafficking in human beings, and therefore, on the basis of the previous recommendation, the fight against trafficking in human beings should begin. Human civilisation, however, is not as inhumane as it seems, because the problem of human trafficking is not left to each country and its ability to solve it without the help of other states. Trafficking in human beings may be „21st century slavery“, but slavery has already been defeated once, so there is no reason for this form of slavery. The author hopes that this work will be useful for other intellectuals, who will explore this topic well.

Trafficking in human beings is one of the most serious crimes that threatens basic human rights – the right to life and the right to liberty. Human rights are universal, indivisible and belong to every person. Therefore the deprivation of the right to liberty, a life worthy of human, cruel and inhuman treatment are unacceptable, and all measures must be taken to protect these rights. However, the world today is characterised by a large gap between the proclamation of human rights and the degree of their actual implementation. A list of the human rights is constantly expanding, but the political order appears to be less and less able to protect those rights. Human rights in most countries in the world are experiencing their agony. This is evidenced by the growing number of people being sold into slavery.

Today, when we speak about human trafficking, we call it as a developed form of organised criminal activity that includes many people intertwined interests. The goal of human trafficking is to make money through exploitation – e.g. sexual exploitation, forced labour, illegal adoption, forced begging, forced confinement marriage, coercion to commit criminal offenses, organ trafficking or someone another form. Children are the most innocent victims of human cruelty. They are victims of violence through work, pornography, prostitution, pedophilia, pederasty, begging, confiscation of organs and other parts of the body. Children under duress go to the army, marry, commit criminal offenses. Although child labour is prohibited, it is present in all countries, on all continents.

Despite the cooperation and adopted measures both national and international institutions and non-governmental organisations, the problem of human trafficking has not decreased, but has reached alarming scale. According to statistics, the number of victims of human trafficking is growing, as the causes that lead to human trafficking in society do not reduce. Socially conditioned causes (like poverty, high unemployment rate, lack



of education, domestic violence, educational neglect and neglect, the circumstances in which a person is a refugee or illegal migrant) are pushing more and more people to the margins of society, where someone can easily be a victim of crime.

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