

CRIMINAL OFFENSE OF HUMAN TRAFFICKING IN CROATIA AND SERBIA

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Abstract

Human trafficking is one of the cruelest crimes against humanity and other goods protected by international law and one of the most brutal violations of fundamental human rights. *Modus operandi* of recruiting and exploiting victims of trafficking has become increasingly perfidious and brutal. Trafficking in human beings is a global problem and a phenomenon of today's society and time. The paper provides an overview of the international legal framework for combating trafficking in human beings and provides a comparative overview of the solution of national criminal legislation in the Republic of Croatia and the Republic of Serbia. The authors point out the criminal law solutions of Croatia and Serbia in the suppression of human trafficking, as well as the similarities and distinctions in terms of incriminations and prescribed criminal sanctions. In the concluding remarks, an assessment of the *de lege lata* situation in Croatia and Serbia was given, and, accordingly, possible proposals for a *de lege ferenda* in the fight against human trafficking were given.

Key words: human trafficking, types of exploitation, victims, situation analysis, Croatia, Serbia

1. INTRODUCTORY REMARKS

Human trafficking, as one of the most cruel crimes against humanity and other goods protected by international law, is one of the most lucrative and profitable forms of criminal activities today, which severely violates fundamental human rights. Although it can develop within one country, in most cases human trafficking is widespread to several countries, the country of origin, the country of transit and the

country of final destination, so that the whole process of human trafficking develops in several stages. The first phase involves the recruitment of victims in the country of origin, but it should be noted that the *modes* of recruitment have become increasingly perfidious, especially with the development of new technologies. The second phase concerns the transport of victims, from the country of origin through the countries of transit, all the way to the country of destination. When they arrive in their destination country, victims fall under various types and forms of exploitation, from the most frequent sexual exploitation of women, girls and children, through labor exploitation, forced labor or services, slavery or similar relations, and exploitation for prostitution or other forms of sexual exploitation, including pornography or for the purpose of illicit or forced marriage, use in armed conflicts or for the purpose of committing an unlawful act, but also for the purpose of taking body parts of the victim.¹ Given that this criminal activity takes place under a huge veil of secrecy, the exact number of victims can not be determined, we can only conclude that the crime of human trafficking has an extremely large *dark number of real victims*, while the number of identified victims is only a number *in concreto* of individual crimes that have been found out.

Human trafficking and victims of its severe crime against humanity and other goods protected by international law are the topic of this paper. Below are presented international documents in the fight against human trafficking and an overview of solutions of national criminal legislation in the Republic of Croatia and the Republic of Serbia. According to the review, a distinction was made in terms of incriminations and statutory criminal sanctions. Then, an analysis of court practice was made in relation to the criminal offenses of human trafficking and the type of exploitation of victims in Croatia and Serbia. Concluding remarks in the paper are reserved for the analysis of *de lege lata* situation in Croatia and Serbia and possible *de lege ferenda* proposals in combating human trafficking.

2. FUNDAMENTAL INTERNATIONAL LEGAL FRAMEWORK IN COMBATING HUMAN TRAFFICKING

The basic international legal framework for combating human trafficking includes:

1- UN Convention against Transnational Organized Crime with its Protocols, Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention, then

2- Brussels Declaration on Preventing and Combating Trafficking in Human Beings,

3- Council of Europe Convention on Action against Trafficking in Human Beings and

¹ Božić V, *Kaznenopravni problemi transplantacije dijelova ljudskog tijela suočeni s ilegalnim tržištem ljudskih organa*, Hrestomatija hrvatskoga medicinskog prava, Pravni fakultet Sveučilišta u Zagrebu, Zagreb, 2016, Poglavlje u knjizi, Presađivanje dijelova ljudskog tijela, pgs. 625-657.

4- Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

The UN Convention against Transnational Organized Crime (Palermo Convention) was adopted in Palermo from 12 to 15 December 2000.² The Republic of Serbia ratified the UN Convention against Transnational Organized Crime with Additional Protocols on 22 June 2001,³ and the Republic of Croatia ratified the said UN Convention on 24 January 2003.⁴

I Protocol of the United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children, gives an international definition of human trafficking that includes several forms of exploitation of victims. Thus, the exploitation of victims includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or acts similar to slavery, subjugation or removal of organs.⁵ The said Protocol I is significant for it provides assistance and protection to victims of human trafficking and is especially credited for the international cooperation of the signatory states in combating this severe crime.

II Protocol to the United Nations Convention against Transnational Organized Crime, Protocol against the Smuggling of Migrants by Land, Sea and Air contains a provision on impunity for the victim, stating that migrants will not be subject to criminal prosecution due to the fact that they are the object of the incriminated criminal offense.⁶

The Brussels Declaration on Preventing and Combating Trafficking in Human Beings was adopted in October 2002 and is a significant international document for two reasons. The first reason is that the Declaration on Combating Trafficking in Human Beings includes all factors that may occur in the process of trafficking in human beings, from the country of origin of the victim, the country of transit, to the country of destination, and also involves all persons who may appear in the process of trafficking in human beings, from the recruitment of victims, their transport from the country of origin through the countries of transit to the country of destination, all the way to the exploitation of victims. Another reason for this is that the Brussels

² United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2225.

³ The Law Ratifying the United Nations Convention against Transnational Organized Crime and additional Protocols, Official Gazette of SRY – International Treaties, No. 6/2001.

⁴ The Law Ratifying United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, which complement the United Nations Convention against Transnational Organized Crime, National Journal, International Treaties no. 14/2002, 12/2003 and 11/2004.

⁵ Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children.

⁶ Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air.

Declaration is considered the first international document that fully regulates the problem of human trafficking.⁷

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted on 16 May 2005 in Warsaw.⁸ It is significant in that it applies to all forms of trafficking in human beings and in that it understands human trafficking as a criminal offense and as the most unscrupulous violation of fundamental human rights.

The Republic of Croatia passed the Law Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings on 27 June 2007,⁹ and two years later, in 2009, the Republic of Serbia passed the Law Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings.¹⁰ A group of experts on the fight against trafficking in human beings (“GRETA”), of at least 10 and at most 15 members, was established by the Convention with the task of monitoring the implementation of the Convention by the signatory states.¹¹ The Convention requires the State parties to incriminate the criminal offense of trafficking in human beings into their national criminal legislation, as well as to prescribe as criminal offense forgery of a travel or identity document and the acquisition or production of such a document, and the retention, confiscation, concealment, damage or destruction of a travel or identity document of another person when committed with the intent and purpose of facilitating trafficking in human beings.¹²

Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims replaces the Council Framework Decision of 19 July 2002 on combating trafficking in human beings. (2002/629/JHA).¹³

The Directive stipulates that victims of trafficking should be protected from prosecution or punishment for criminal offenses such as the use of forged documents, as criminal offenses related to prostitution or immigration, which they were forced to commit as a direct result of being victims of trafficking.¹⁴ The aim of these

⁷ Government of the Republic of Croatia, National Committee for the Suppression of Trafficking in Human Beings, *National Plan for the Suppression of Trafficking in Human Beings*, Zagreb, 2002, pg. 6.

⁸ Council of Europe Convention on Action against Trafficking in Human Beings, available at: https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp, accessed on 01.07.2020.

⁹ The Law Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings, National Gazette, International Treaties No. 07/07.

¹⁰ The Law Ratifying the Council of Europe Convention on Action against Trafficking in Human Beings, Official Gazette of RS – International Treaties, No. 19/2009.

¹¹ Article 36. *Ibid.*

¹² Article 19. and Article 20. *Ibid.*

¹³ Council Framework Decision of 19 July 2002 on combating trafficking in human beings, OJ L 203 of 1.8.2002, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133137>, accessed on 01.07.2020.

¹⁴ See more: Farrell A, McDevitt J, Fahy S, *Where are all the victims? Understanding the determinants of official identification of human trafficking incidents*, *Criminology & Public Policy*, 2010 May, 9(2), pgs. 201-33.

provisions is to enable victims to protect their fundamental human rights, to prevent and unable further victimization of victims and to encourage victims to testify in criminal proceedings against perpetrators of criminal offenses of trafficking in human beings.¹⁵ The Directive also prescribes the confiscation of illegally acquired property by persons legally convicted of trafficking in human beings. This Directive brings an integrated, holistic approach to human rights in the fight against trafficking in human beings, adopts various forms of trafficking in human beings and aims to ensure that every form of trafficking in human beings is addressed through the most effective measures.¹⁶

On the occasion of the European Anti-Trafficking Day, Europol and Eurojust signed a joint statement in 2011 on tackling trafficking, calling on countries to protect victims more effectively, to treat vulnerable groups of victims of trafficking appropriately and to commit themselves that different practices and traditions between countries will not jeopardize the rights of victims of trafficking in human beings.¹⁷

A 2012 Eurojust Action Against Trafficking in Human Beings Report emphasizes that one of the main problems in the investigation and prosecution of criminal offenses of trafficking in human beings is the initial identification of cases and victims, imposing several solutions based on the fact that victim support and protection should always be in the first place, that victims should not be prosecuted or punished for offenses they were forced to commit while being victims of trafficking, and that any possible suspicion of trafficking in human beings should be professionally checked to reduce the risk of neglecting the identification of victims.¹⁸

Relevant international instruments in the fight against trafficking in human beings include: Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/PUP¹⁹ as well as Council Directive 2004/81/EC of 29 April 2004 on residence permits issued to third-country nationals who are victims of trafficking in human beings.²⁰

¹⁵ Introductory statement (14) of Directive 2011/36/EU, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32011L0036&from=HR>, accessed on 01.07.2020.

¹⁶ Božić V., *Steps towards combating trafficking in human organs in South Eastern Europe, with particular reference to the case of "Kosovo"*, 7th International scientific conference „Contemporary Trends in Social Control of Crime“, Ohrid, Macedonia, 2016, Skopje, University St. Kliment Ohridsk – Bitola, Chairman Faculty of Security - Skopje, 2016, Conference Proceedings, p.131-152.

¹⁷ Europol Joint Supervisory Body, *Victims of trafficking in human beings, data protection perspective*, pg. 8.

¹⁸ *Ibid.*

¹⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/PUP, Official Journal of the European Union L 315/57, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32012L0029&from=HR>, accessed on 01.07.2020.

²⁰ Council Directive 2004/81/EC of 29 April 2004 on residence permits issued to third-country nationals who are victims of trafficking in human beings, Official Journal of the European Union L 261/19,

3. TRAFFICKING IN HUMAN BEINGS IN CRIMINAL LEGISLATION OF THE REPUBLIC OF CROATIA

Trafficking in human beings is a criminal offense against humanity and human dignity, incriminated in Article 106 of the Criminal Code of the Republic of Croatia (CC of the Republic of Croatia) and located in Chapter IX of the CC of the Republic of Croatia.

The criminal offense of trafficking in human beings is committed by a person *who uses force or threat, deception, fraud, kidnapping, abuse of power or difficult position or relationship of dependence, giving or receiving monetary compensation or other benefits* for the consent of a person controlling another person, or otherwise recruits, transports, takes across, hides or receives a person or exchanges or transfers control over a person for:

- exploitation of her work through forced labor or service,²¹ or
- the establishment of slavery or a similar relationship, or
- the purpose of her exploitation for prostitution or other forms of sexual exploitation, including pornography, or
- entering into an illicit or forced marriage, or
- taking parts of her/his body, or
- use in armed conflict, or
- the purpose of committing an illegal act.²²

The law prescribes one (1) to ten (10) years of imprisonment for this basic type of criminal offense. The basic form of the crime understands also who recruits, transports, takes across, hides or receives a child, or exchanges or transfers control over a child for the purpose of exploiting his/her labor through forced labor or service, establishing slavery or a similar relationship, or for exploiting him/her for prostitution or other forms of sexual exploitation including pornography either for the purpose of illicit or forced marriage or for illegal adoption, or for the purpose of taking parts of his/her body, or for the purpose of his/her use in armed conflicts, for which the law provides the same punishment.²³ A child is considered to be a person under the age of eighteen.²⁴

available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32004L0081&from=HR>, accessed on 01.07.2020.

²¹ See more: Božić V., *Labor exploitation as the most common form of the crime of trafficking in human beings in spite of the state border control and the labor market*, Collection of Papers, Faculty of Law Niš, 2016, pgs. 335-352. See also: Rijken C, *Combating trafficking in human beings for labour exploitation*, Tilburg University; 2011. See also: Turner-Moss E, Zimmerman C, Howard LM, Oram S, *Labour exploitation and health: a case series of men and women seeking post-trafficking services*, Journal of Immigrant and Minority Health. 2014 Jun;16(3). pgs. 473-80.

²² Article 106 paragraph 1 of the Criminal Code of RC, Official Gazette Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19.

²³ Article 106 paragraph 2 of the CC of RC.

²⁴ Article 87 paragraph 7, *Ibid*.

It should be emphasized that the criminal offense of trafficking in human beings was committed even if the victim was not exploited. In other words, a criminal offense is completed when the perpetrator commits one of the acts of criminal offense prescribed by the law, by one of the means provided by law - *force, threat, deception, fraud, kidnapping, abuse of power or difficult position or relationship of dependence, giving or receiving monetary compensation or other benefits - recruits, transports, takes over, hides or receives a person or exchanges or transfers control over a person*. If exploitation occurs, then the court must take care when pronouncing sentence, given that this is an aggravating circumstance.

Imprisonment from one to ten years is also prescribed by the law for anyone who uses the services of a victim that are the result of one of the forms of his/her exploitation knowing that he/she is a victim of human trafficking.²⁵

The victim's consent to exploitation is without any impact on the existence of the criminal offense of trafficking in human beings, given that the victim is not criminally liable and cannot be punished.²⁶

Attempted trafficking in human beings is punishable under the provision of the general part of the CC of the Republic of Croatia, according to which attempted trafficking is punishable if a sentence of imprisonment of five years or more can be imposed for a criminal offense.²⁷

The law also prescribes a qualified form of committing the criminal offense of trafficking in human beings, which will be in question if the criminal offense:

- was committed against a child, or
- the criminal offense was committed by an official in the performance of his or her duties, or
- was committed in relation to a larger number of persons, or
- consciously endangered the life of one or more persons.²⁸

For the qualified form of this criminal offense, the law provides for a more severe punishment, a sentence of imprisonment from three (3) to fifteen (15) years.²⁹

The law also prescribes obligatory punishment of a person who retains, confiscates, hides, damages or destroys a travel document or identity document proving the identity of another person, or attempts to do so, with the aim of enabling the commission of the criminal offense of trafficking in human beings.³⁰

The criminal offense of trafficking in human beings may also be committed within a criminal association, when a person within a criminal association commits or incites another person to commit a criminal offense. A criminal association consists of at least three persons who have joined together with the common goal of committing

²⁵ Article 106 paragraph 4, *Ibid*.

²⁶ See more: Božić V., *Žrtve nasilja u obitelji kao posebno ranjive skupine podložne trgovanju ljudima*, *Pravni život – časopis za pravnu teoriju i praksu* No. 9, 2017, pgs.233-248.

²⁷ Article 34, *Ibid*.

²⁸ Article 106, paragraph 3 of the KZ RH.

²⁹ *Ibid*.

³⁰ Article 106, paragraphs 5/6, *Ibid*.

one or more criminal offenses, for which a sentence of imprisonment of three years or more may be imposed, and which does not include an association consisting of persons accidentally connected for a direct commission of one criminal offense.³¹

The National Plan for the Suppression of Trafficking in Human Beings for the period from 2018 to 2021 highlights prevention measures, as well as measures to detect, prosecute and sanction perpetrators of criminal offenses of trafficking in human beings and provide assistance and protection to victims of trafficking in human beings.³² The National Plan for the Suppression of Trafficking in Human Beings for the period from 2018 to 2021 gives priority to strengthening the cooperation in criminal proceedings, to improving methods for identifying the victims and to ensuring the best interests of victims of trafficking in human beings.³³

At the national level, in the last few years, the Protocol on the Identification, Assistance and Protection of Victims of Trafficking in Human Beings,³⁴ the Protocol on the Treatment of Voluntary and Safe Return of Victims of Trafficking in Human Beings³⁵ and the Protocol on the Treatment of Unaccompanied Children, have been adopted.³⁶

In the table no.1 the basic and qualified forms of the criminal offense of trafficking in human beings with prescribed criminal sanctions, are presented.

³¹ Article 328, paragraph 4, *Ibid*.

³² See more: Republic of Croatia, *Interim report on the implementation of the recommendations of the UN Human Rights Council according to the Universal Periodic Review Mechanism (UPR)*, February 2019.

³³ Government of the Republic of Croatia, National Committee for the Suppression of Trafficking in Human Beings, *National Plan for the Suppression of Trafficking in Human Beings for the period 2018-2021*, Zagreb, 2018.

³⁴ The Protocol on Identification, Assistance and Protection of Victims of Trafficking in Human Beings, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Protokol%20za%20identifikaciju.%20pomo%C4%87%20i%20za%C5%A1titu%20%C5%Bertava%20trgovanja%20judima.pdf>, pregledano 01.07.2020.

³⁵ Protocol on the Treatment of Voluntary and Safe Return of Victims of Trafficking in Human Beings, available at: <https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Protokol%20o%20postupanju%20pri%20dobrovoljnom%20i%20sugurnom%20povratku%20%C5%Bertava%20trgovanja%20judima.pdf>, accessed on 01 July 2020.

³⁶ Protocol on the Treatment of Unaccompanied Children, available at: <https://mdomsp.gov.hr/UserDocsImages/djeca%20i%20obitelj/Protokol%20o%20postupanju%20prema%20djeci%20bez%20pratnje.pdf>, accessed on 01 July 2020.

Table No.1 - Forms of the criminal offense of trafficking in human beings and prescribed penalties

ARTICLE 106 CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS - CC RC	
Basic form	1-10 years
If the offense was committed against a child	3-15 years
If a serious body injury occurred	3-15 years
If death of one or more persons occurred	3-15 years
If the offense was committed within a criminal organization	If sentence of imprisonment of 10 or 12 years is prescribed for the offense – <i>sentence of imprisonment from 3 to 15 years</i> If sentence of 15 years of imprisonment is prescribed – <i>sentence of imprisonment from 5 to 20 years</i>
If he uses the services of a victim he knows to be a victim of trafficking or makes it possible	1-10 years
If the offense was committed by an official in the performance of his duty	3-15 years
If he consciously endangered the life of one or more persons	3-15 years
If the offense was committed in relation to a large number of persons	3-15 years
If retains, confiscates, hides, damages or destroys a travel document or identity document proving the identity of another person	Up to 3 years
Punishment for attempt to retain, confiscate, hide, damage or destroy a travel document or identity document proving the identity of another person	YES
Punishment for attempt	YES
Victim's consent to exploitation	Of no relevance

The State Department's 2020 Trafficking in Persons Report states that the Republic of Croatia has demonstrated increased efforts to identify suspects for trafficking and has made a significant commitment to prosecuting them compared to the previous reporting period, and that it has made significant efforts in the process of identification of victims of trafficking, which is why it remained at level 2 in the process of evaluating countries in the effectiveness of the implementation of the

plan in combating trafficking in human beings.³⁷ Furthermore, the report states that traffickers exploit Croatian citizens and foreign victims in the Republic of Croatia, but that they also exploit victims from Croatia abroad. Women and girls from the Balkans and Central Europe are sexually exploited by traffickers in Croatia, and women and girls from Croatia are sexually exploited both within Croatia and in other countries in Europe.³⁸

In the continuation of this chapter, we made an analysis of data obtained from the Ministry of the Interior of the Republic of Croatia in 2021 *in relation to victims* of criminal offense of trafficking by country of origin, citizenship, gender, age and type of exploitation, as well as in relation to *perpetrators* of criminal offense of trafficking in human beings by country of origin, citizenship, gender and age.

In 2021, a total of 19 victims of the criminal offense of trafficking in human beings were identified. A total of 10 male victims and 9 female victims, ie 52,63% men and 47,37% women, are victims of the criminal offense of trafficking in 2021. The data are visible in the table no. 2.

Table No. 2 - Number of identified victims by country of origin, citizenship and gender in 2021³⁹

COUNTRY OF ORIGIN OF VICTIMS AND CITIZENSHIP OF VICTIMS	Number	M	F
Republic of Nepal	4	4	-
Republic of Croatia	15	6	9
TOTAL	19	10	9

In the table no.3 data related to the number of identified victims by gender and age in 2021 are presented. The first thing we can notice is the fact that the identified victims are, mostly, 52,63%, aged 0 to 18 years (10), of which 5 are men and 5 women. In second place are victims aged 19 to 40 (6), of which 3 are men and 3 are woman.

³⁷ Trafficking in persons report 20th edition, US Department of State, June 2020, pgs. 172.-174.

³⁸ *Ibid.*

³⁹ Source: Ministry of Interior of the Republic of Croatia.

Table No. 3 - Number of identified victims by gender and age in 2021⁴⁰

AGE OF IDENTIFIED VICTIMS	M	F
0-18	5	5
19-30	-	3
31-40	3	-
41-50	1	1
THE OTHER	1	-
TOTAL	10	9

Table no. 4 shows the number of identified victims by gender and form of exploitation in 2021. It should be noted that in the observed year sexual exploitation of victims does not lead as it would be expected, but exploitation for the purpose of committing illegal acts (7), of which number 4 are men and 3 women, as victims of criminal offense.

In the second place is sexual exploitation with 7 victims, of which number 6 victims are women and 1 victim are male. In the third place is labor exploitation with 6 victims identified, 5 man and 1 women.

As recorded forms of exploitation of victims in 2021 are also illegal/forced marriage (1).

Table No. 4 - Number of identified victims by gender and type of exploitation in 2021⁴¹

TYPE OF EXPLOITATION	NUMBER	M	F
GENDER	7	1	6 ⁴²
LABOR	6	5	1 ⁴³
COMMISSION OF ILLEGAL ACTS	7	4	3
ILLEGAL/FORCED MARRIAGE	1	-	1 ⁴⁴
TOTAL	21	10	11

⁴⁰ Source: Ministry of Interior of the Republic of Croatia.

⁴¹ Source: Ministry of Interior of the Republic of Croatia.

⁴² one victim was sexually and labor exploited, as well as forced/illegal marriage

⁴³ one victim was sexually and labor exploited, as well as forced/illegal marriage

⁴⁴ one victim was sexually and labor exploited, as well as forced/illegal marriage

4. TRAFFICKING IN HUMAN BEINGS IN CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

The criminal offense of trafficking in human beings is found in Chapter XXXIV Article 388 of the Criminal Code of the Republic of Serbia (CC RS).⁴⁵

The criminal offense of trafficking in human beings is committed *by a person who by force or threat, misleading or keeping mislead, by abuse of authority, trust, relationship of dependence, difficult circumstances of another person, by retention of identity documents or giving or receiving money or other benefits*, recruits, transports, transfers, hands over, sells, buys, mediates in the sale, hides or holds another person, for the purpose of:

- exploitation of his work,
- forced labor,
- committing criminal offenses,
- prostitution or other types of sexual exploitation,⁴⁶
- begging,
- use for pornographic purposes,
- establishing a slavish or similar relationship,
- for the purpose of confiscating an organ or part of a body, or
- or use in armed conflicts.⁴⁷

The law prescribes imprisonment from three (3) to twelve (12) years for this basic form of criminal offense. A person's consent to exploitation does not affect the existence of a criminal offense.⁴⁸

Attempt to commit the criminal offense of trafficking in human beings is punishable under the general provision of the CC RS, according to which attempted trafficking is punishable if it is a criminal offense punishable under the law by five years of imprisonment or more.⁴⁹

Unlike the CC RC, the CC RS separated a juvenile as a victim of a criminal offense and prescribed a sentence of imprisonment of at least five years if the criminal offense was committed against a juvenile, provided that the perpetrator is punished even if he does not use force or threat, i.e. when it is not a matter of delusion, abuse of trust, dependence relationship, difficult circumstances of another person, retention of identity documents or giving or receiving money or other benefits.⁵⁰ A juvenile is a

⁴⁵ Criminal Code of the Republic of Serbia, Official Gazette of RS Nos. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19.

⁴⁶ See more: Božić V., *Suzbijanje seksualne eksploatacije kao vodećeg oblika trgovanja ljudima u funkciji zaštite prava na život i temeljnih ljudskih prava*, Pravni život, časopis za pravnu teoriju i praksu, 2016, 583 1-780, pgs. 267-288. See also: Macy RJ, Graham LM, *Identifying domestic and international sex-trafficking victims during human service provision*, Trauma, Violence, & Abuse, 2012 Apr;13(2): pgs. 59-76.

⁴⁷ Article 388 paragraph 1 of the CC RS.

⁴⁸ Article 388 paragraph 10, *Ibid*.

⁴⁹ Article 30, *Ibid*.

⁵⁰ Article 388 paragraphs 2. and 3, *Ibid*.

person who has reached the age of fourteen and has not reached the age of eighteen.⁵¹

The perpetrator of a criminal offense who knows or could have known that a person is a victim of trafficking in human beings, so he uses his position or enables another person to exploit his position for the purpose of exploitation, shall be punished by imprisonment for six months to five years.⁵² However, if the victim is a juvenile, the perpetrator shall be punished with a much harsher sentence, a sentence of imprisonment from one to eight years.⁵³

The law provides for several qualified forms of the criminal offense of trafficking in human beings. If the criminal offense of trafficking in human beings is committed by a group⁵⁴ or the perpetrator is engaged in the commission of criminal offenses of trafficking in human beings, the law prescribes imprisonment for a term of at least five (5) years.⁵⁵ Twice the sentence, imprisonment of at least ten (10) years, is prescribed for the case when the criminal offense was committed by an organized criminal group.⁵⁶

If a person has been seriously injured by commission of a criminal offense, the perpetrator shall be punished by imprisonment for a term between five (5) and fifteen (15) years.⁵⁷ If the death of one or more persons is the result of the commission of the criminal offense of trafficking in human beings, the perpetrator shall be punished by imprisonment for a term not less than ten (10) years.⁵⁸

If we look at the incrimination of the criminal offense of trafficking in human beings in the CC RC, we can conclude that in the CC RS the legislator did not provide for incriminations related to certain qualified forms of the criminal offense of trafficking in human beings. Namely, the CC RS does not prescribe as a qualifying circumstance a situation when the criminal offense of trafficking in human beings is committed by an official in the performance of his duty, if the lives of one or more persons were knowingly endangered and if the offense was committed against a large number of persons.

⁵¹ Article 112 paragraph 9, *Ibid.*

⁵² Article 388 paragraph 8, *Ibid.*

⁵³ Article 388 paragraph 9, *Ibid.*

⁵⁴ A group is minimum three persons joined for permanent or occasional commission of criminal offenses which does not have to have defined roles of its members, continuity of membership or developed structure, Article 112 paragraph 22, *Ibid.*

See also: Simović M, Jovašević D, Simović V, *Krijumčarenje i trgovina ljudima, Evropski standardi i pravo Bosne i Hercegovine*, U: Međunarodna naučno-stručna konferencija „Svjetska izbjeglička kriza: izazovi i perspektive: zbornik radova“ Travnik: Pravni fakultet Univerziteta u Travniku, May 2016.

⁵⁵ Article 388 paragraph 6 of the CC RS.

⁵⁶ Article 388 paragraph 7, *Ibid.*

Organized criminal group is a group of three or more persons, existing for a certain period of time and acts in agreement with the aim of committing one or more criminal offenses for which a sentence of imprisonment for a term of four years or more is prescribed, for direct or indirect financial gain or other benefit, Article 112 paragraph 35, *Ibid.*

⁵⁷ Article 388 paragraph 4, *Ibid.*

⁵⁸ Article 388 paragraph 5, *Ibid.*

Table No. 5. - Forms of criminal offense of THB and prescribed punishments in CC RS

Article 388 CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS, CC RS	
Basic form	3-12 years
If an offense was committed against a child	Minimum 5 years
If an offense was committed against a juvenile	Minimum 5 years
If severe bodily injury occurred	5-15 years
If severe bodily injury of juvenile occurred	Minimum 5 years
If one or more persons died	Minimum 10 years
When the offense is committed by a group	Minimum 5 years
When the offense is committed by an organized criminal group	Minimum 10 years
If a person uses services of a victim knowing she is a victim of trafficking in human beings or enables it	6 months -5 years
If a person uses services of a juvenile victim knowing she is a victim of trafficking in human beings or enables it	1-8 years
Punishment for attempt	YES
Victim's consent for exploitation	Of no relevance

It should be noted that neither the retention, nor confiscation, damage nor destruction of a travel document or a document proving the identity of another person with the aim of enabling the commission of the criminal offense of trafficking in human beings is a criminal offense in the CC RS.

The State Department's 2020 Trafficking in Persons Report states that the Government of the Republic of Serbia has shown significant efforts to meet the minimum standards for combating trafficking in human beings, compared to the previous reporting period, and therefore remained at the second level in the evaluation process. This primarily refers to the increased number of criminal prosecutions of perpetrators of trafficking in human beings and the operationalization of the emergency reception center. The Republic of Serbia has also adopted standard operating procedures for the identification, referral and support of victims of trafficking in human beings, as well as the National Action Plan for the Suppression of Trafficking in Human Beings for the period from 2019 to 2020.⁵⁹ The report states that traffickers exploit Serb children, especially gypsies, within the country in sexual exploitation, forced labor, forced begging and petty crime. Traffickers sexually exploit women from Serbia within

⁵⁹ Trafficking in Persons Report: Serbia, 20th edition, US Department of State, June 2020.

Serbia, but also in neighboring countries and beyond in Europe, especially Austria, Germany, Italy and Turkey, while men, Serbian citizens, are exploited by forcing them to work in European countries including Austria, Belgium, Croatia, France, Germany, Italy, Luxembourg, Monte Negro, Russia, Switzerland and the United Arab Emirates.⁶⁰

In the continuation of this chapter, we made an analysis of data obtained from the Ministry of Interior of the Republic of Serbia and the Center for the Protection of Human Trafficking in 2021 *in relation to* victims of trafficking by gender and type of exploitation.

Formally, 46 victims of human trafficking have been identified. As in previous years, the majority of identified victims are women, as much as 80%, which indicates the presence of gender-based violence. According to the findings of the Center for the Protection of Victims of Trafficking in Human Beings, sexual exploitation is still the dominant form with a participation rate of 50%. In second place is multiple exploitation with 17%, and in third place is forced to beg with 10%. Of the identified persons, 37% are minors, and among them 94% are girls.⁶¹

Table No. 6 – Number of identified victims by type of exploitation, gender and age in 2021⁶²

TYPE OF EXPLOITATION	JUVENILES		ADULTS		TOTAL
	M	F	M	F	
SEXUAL	-	6	-	17	23
FORCED MARRIAGE	-	3	-	-	3
COMPULSION TO COMMISSION OF CRIME	-	1	1	-	2
LABOR	-	3	1	-	4
BEGGING	-	2	2	1	5
MULTIPLE	1	1	3	3	8
ECONOMIC	-	-	1	-	1
TOTAL	1	16	8	21	46

A total of 12 criminal charges were filed for the criminal offense of human trafficking under Article 388 of the RS CC, which included 23 suspects and 19 injured persons, victims of human trafficking. According to the type of exploitation,

⁶⁰ *Ibid.*

⁶¹ Source: Center for the Protection of Victims of Trafficking in Human Beings.

⁶² Source: Ministry of Interior and Center for the Protection of Victims of Trafficking in Human Beings.

seven criminal reports were filed for human trafficking for the purpose of sexual exploitation, while two criminal reports were filed for forced begging and multiple exploitation as forms of human trafficking. One criminal complaint was filed before it happened exploitation of victims.⁶³

5. CONCLUDING OBSERVATIONS

The paper gives a complete overview of the legal solutions of the criminal legislation of the Republic of Croatia and the Republic of Serbia in relation to the criminal offense of trafficking in human beings. Certain differences and similarities in incriminations and prescribed criminal sanctions and their amount are pointed out. Given the geographical connection and neighborly relations of these two countries, it is necessary to encourage and develop their mutual cooperation in combating trafficking in human beings, especially since the Republic of Croatia is the first EU member state to the West, on the Balkan route of trafficking in human beings and smuggling. All Southeast Bloc countries should not be put in the background, in which their cooperation is necessary in order to successfully combat trafficking in human beings, at all stages of the process, from detecting and identifying victims to prosecuting and punishing the perpetrators of this crime against humanity. In order to achieve preventive measures, it is necessary to continuously conduct public campaigns and educate citizens about this serious crime.

The fact is that the dark figure of this crime is extremely huge. The number of victims identified is only a small fraction of the real state of affairs, the real state of affairs that we will never know. However, the problem also arises because certain cases of recruiting victims for various forms of their exploitation are not understood in practice as trafficking in human beings unless the victim is exploited.

We are of the opinion that certain forms of exploitation of victims are not even recognized as forms of trafficking in human beings, but are classified as another criminal offense. Namely, we come to the problem of qualifying the criminal offense of trafficking in human beings. We will mention only some cases in practice when, for example, exploiting of a child for begging is not qualified as trafficking in human beings, but as a criminal offense of violation of children's rights, or, for example, when forcing a child to marry is qualified as a criminal offense of coercion to marry and not exploitation for the purpose of forced marriage as a form of trafficking in human beings. Accordingly, continuous education of judges and state attorneys (prosecutors) is necessary in order to identify all forms of trafficking in human beings and all *modes* of their exploitation in a timely manner.

⁶³ *Ibid.*

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