

THE ROLE AND THE STATUS OF HUMAN TRAFFICKING VICTIMS IN CRIMINAL PROCEEDINGS, NORMATIVE FRAMEWORK AND THE STATE OF AFFAIRS IN SERBIA

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Abstract: In recent decades special attention has been paid to the status of human trafficking victims, with a particular focus on their role and active participation in criminal proceedings. This has resulted in the adoption of international documents such as Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197) and in the development of internationally agreed standards whose application should contribute to the protection of these extremely vulnerable victims of crime. Although it is generally not disputed that in most cases human trafficking victims do deserve to be granted a special status of a particularly sensitive witness, in practice there are significant problems that call into question the quality and usefulness of the protection provided for these persons. The paper consists of two key segments. The first segment is dedicated to the analysis of normative framework related to the protection of human trafficking victims in criminal proceedings, covering both the international context and the national context in Serbia. The second part of the paper includes an overview of the results of empirical research conducted in Serbia that point out to the practical problems in the field of victim protection, such as: inadequate techniques applied in the process of witness examination, inability to obtain compensation for the victims in criminal proceedings and victims *de facto* being disabled to take part in criminal proceedings ending in a plea bargain. The authors have applied normative-dogmatic and comparative methods. The aim of the paper is to provide some recommendations that could contribute to full implementation of the existing normative framework.

Keywords: human trafficking, witness, victim, criminal proceedings, protection, Serbia.

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INTRODUCTION

Victims of trafficking fall into a particularly vulnerable group of victims given the forms and intensity of victimization that they have experienced. These victims deserve special empathy because trafficking in human beings among others includes recruitment, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud or of abuse of power for the purpose of exploitation, all in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25 of 15 November 2000), Art. 3.

It is common knowledge that trafficking is carried out for the sake of sexual exploitation, although this form of exploitation is only one of many forms, since trafficking is also carried out for the purpose of labour exploitation, forced marriage, begging, warfare and organ theft (Shelley, 2010: 2). Victims of trafficking are often harshly exploited by abuse of trust or by becoming addicted, intimidated and threatened (Goodey, 2008: 422). Furthermore, trafficking in human beings is a crime committed in large number of cases by organized criminal groups, which means that there is a high risk for the safety of victims. Given all that has been said, it is clear why it is extremely important that victims of trafficking have to be adequately protected during their participation in criminal proceedings. Clarification of criminal matters and bringing those responsible to justice also largely depends on the protection of witnesses.

Bearing in mind the above-mentioned, the aim of the paper is to provide some recommendations that could contribute to the effective implementation of the existing normative framework in the field of protection of victims of human trafficking in criminal procedure.

INTERNATIONAL LEGAL FRAMEWORK

Over the last few decades, exceptional attention has been paid to the issue of human trafficking, which has been recognized as a global problem that threatens the progress of humankind and causes significant suffering. Therefore, multiple international documents have been adopted in this matter. Of particular importance is the Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children (Palermo, 2000, better known as the Palermo Protocol), which complements the United Nations Convention against Transnational Organized Crime (Palermo, 2000). The main purpose of this protocol is to provide protection and assistance to the victims of trafficking in human beings with respect for their human rights. The protocol refers to various forms of support for victims of human trafficking, so that assistance is not limited only to support during criminal proceedings, but it also includes support in the field of housing, counselling and psychological treatment. Specifically, when it comes to victims of trafficking as participants/witnesses in criminal proceedings, the protocol stipulates that authorities are obliged to protect privacy, identity and safety of victims in accordance with the law of a particular state. It is particularly important that national regulations provide for adequate notification of victims in the context of court proceedings and that they enable victims to participate in criminal proceedings, while at the same time respecting the defendant's right to defence (Art. 6).

The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197, 2005) builds on the United Nations Convention against Transnational Organized Crime and the Pro-



tocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in order to provide additional protection in relation to the protection already provided by the mentioned documents and in order to improve the standards of protection of victims of human trafficking. The objectives of the convention are to protect the human rights of victims of trafficking, to design a comprehensive framework for the provision of protection and assistance to victims and witnesses while guaranteeing gender equality and to ensure effective investigation and prosecution. The convention defines a victim as any natural person who has become the object of trafficking in human beings, while the notion of a child includes any person under the age of 18 (Art. 4). A significant part of the text of the convention refers to the protection of witnesses and victims in the context of criminal proceedings. Thus, Art. 28 stipulates that each state shall, within the framework of its national legislation, provide for appropriate measures to ensure effective and adequate protection against possible retaliation or intimidation, especially during and after investigations/criminal proceedings against perpetrators. In addition to the involvement of state bodies in the field of protection of victims of trafficking in human beings, the work of non-governmental organizations in this sphere should also be adequately supported and encouraged. With regard to the conduct of legal proceedings, convention stipulates that each contracting party shall adopt legislative and other measures to protect the privacy of the victim and, where appropriate, his or her identity and to prevent intimidation. In the case of child victims, special attention shall be paid to their needs, in accordance with Art. 30. Also, a special mechanism has been designed to monitor the implementation of the convention, which is embodied in the expert group for combating trafficking in human beings, known under the acronym GRETA. GRETA consists of a minimum of 10 and a maximum of 15 experts from different fields, taking into account gender equality and balance when it comes to the nationality of experts.

Specific types of support for human trafficking victims/witnesses in criminal proceedings have also been provided by Recommendation no. R (97) 13 of the Committee of Ministers to member states of the Council of Europe on Witness intimidation and the rights of the defence, which builds on documents such as Recommendation No. R (85) 4 on Violence in the family, Recommendation No. R (85) 11 on the Position of the victim in the framework of criminal law and procedure, Recommendation No. R (87) 21 on Assistance to victims and Prevention of victimization, Recommendation No. (91) 11 on Sexual exploitation, pornography, prostitution and trafficking of children and young adults and Recommendation No. (96) 8 on Crime policy in Europe in a time of change.

Recommendation no. R (97) 13 defines a witness as any person, irrespective of his/her status under national criminal procedural law who possesses information relevant to criminal proceedings. This definition also includes experts as well as interpreters. Intimidation means any direct, indirect or potential threat to a witness, which may lead to interference with his/her duty to give testimony free from the influence of any kind. This includes intimidation resulting either from the mere existence of a criminal organization having a strong reputation of violence and reprisal, or from the fact that the witness belongs to a closed social group and is in a position of weakness. Anonymity means that the identifying particulars of the witness remain totally unknown to the defendant.

The aforementioned recommendation stipulates that acts of intimidation of witnesses should be made punishable either as separate criminal offenses or as part of the offense of using illegal threats. While taking into account the principle of free assessment of evidence by courts, procedural law should allow for consideration of the impact of intimidation on testimonies. Witnesses should be provided with alternative methods of giving evidence that protect them from intimidation resulting from face to face confrontation with the accused by allowing witnesses to give evidence in a separate room, while respecting the rights of the defence (Recommendation no. R (97) 13, *General principles*). Also, criminal justice personnel should have adequate training in order to become capable to deal with the cases



where witnesses might be at risk of intimidation. In order to provide adequate protection, there may be a need to record by audio-visual means statements made by witnesses during pre-trial examination, use pre-trial statements given before a judicial authority as evidence in court when it is not possible for witnesses to appear before the court or when appearing in court might result in great and actual danger to the life and security of witnesses, their relatives or other persons close to them, reveal the identity of witnesses at the latest possible stage of the proceedings and/or release only selected details excluding the media and/or the public from the trial.

However, Recommendation (97) 13 also takes into account the need to strike a balance between witness protection and respect for the right to defence and fair trial. Therefore, anonymity should only be granted when the competent judicial authority, after hearing parties, finds that life or freedom of the person involved is seriously threatened or, in the case of an undercover agent, his potential to work in future is seriously threatened, as well as when the evidence is likely to be significant because the witness appears to be credible. However, when anonymity has been granted, the conviction shall not be based solely or to a decisive extent on the statement of anonymous witnesses (Recommendation (97) 13).

Furthermore, Recommendation (97) 13 provides for a wide range of measures to be applied in relation to vulnerable witnesses. It also implies that the best interests of the child should be protected throughout proceedings by a social agency and if appropriate through specially trained lawyers. Among other things, at the court hearing the examination of the witness should be closely supervised by the judge. If a cross-examination might have a serious traumatic effect on the witness, the judge should consider taking appropriate measures to control the manner of questioning.

NORMATIVE FRAMEWORK IN THE REPUBLIC OF SERBIA

Code of Criminal Procedure

Code of Criminal Procedure-ZKP, Official Gazette, no. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 and 62/21, stipulates that particularly sensitive witnesses may be those who have been seriously traumatized by specific crime due to their age, life experience, lifestyle, gender, health condition, or due to nature, manner or consequences of the crime, as well as other circumstances of the case, Art. 103, Para. 1.

The above-mentioned implies that the position of a sensitive witness may be based on objective and subjective characteristics of the witness or on the combination of both (Brkić, 2014: 212). Given the nature, gravity and consequences of human trafficking, we conclude that victims of trafficking undoubtedly tend to be among the most sensitive witnesses.

If a witness may be additionally (secondarily) victimized by the act of testifying in criminal proceedings, the body of procedure (public prosecutor, presiding judge or individual judge) may *ex officio*, or at the request of interested parties or at the request of witness himself, determine the status of a particularly sensitive witness. No special appeal is allowed against the decision by which the procedural body adopts or rejects the request for the witness to be granted the status of a particularly sensitive witness, which implies that dissatisfied party may challenge the decision only within an appeal against the verdict in a criminal matter.



Obtaining the status of a particularly sensitive witness provides the witness with different and more favourable position in criminal proceedings compared to the usual position of a witness, which is also reflected in the specific method of examination and in other forms of protection and assistance. Examination of a particularly sensitive witness is possible only through the body of the procedure which must treat the witness with special care, while trying to avoid possible harmful consequences of the criminal procedure on physical and mental health of the witness (Art. 104 ZKP). However, it has been pointed out in the literature that there is an error in ZKP because it does not exclude the possibility of asking suggestive questions while cross-examining particularly sensitive witnesses (Škulić, 2015: 12).

Given the leading role of the body of the procedure during the examination of a particularly sensitive witness, it is his professional conduct that will have the greatest impact on the quality of testimony and on the protection against secondary victimization and additional trauma for the victim/witness.

Special protection of a particularly sensitive witness involves the application of specific measures. There are some measures that prevent direct encounters of particularly sensitive witnesses with the defendant and other participants in the proceedings. Thus, the witness is examined in a separate room, away from the space in which the defendant, defence counsel and other participants in the proceedings are seated. A witness may also be examined by use of technical means for video and sound transmission, so that the possibility of contact with the defendant is excluded. Hence, if the body of the procedure decides to examine a particularly sensitive witness by using audio-visual technology, the examination shall be conducted without the presence of parties and other participants in proceedings, pursuant to Art. 104 ZKP. The process of examination of particularly sensitive witnesses may also include experts of various profiles who have the knowledge and skills necessary for adequate communication with vulnerable persons. Psychologists, social workers or other professionals may appear in the role of an interrogator during all phases of criminal proceedings. An expert may conduct direct interview with a particularly sensitive witness, while the procedural body monitors the examination and if necessary, asks additional questions through the expert. On the other hand, the body of the procedure itself could examine a particularly sensitive witness, while the expert only monitors whether the witness has been examined in an appropriate manner.

Particularly sensitive witnesses may not be confronted with the defendant unless the defendant requests so and the procedural body allows it taking into account the degree of sensitivity of the witness, as well as the right of the defendant to have a fair trial. In such cases only two persons are allowed to face each other at the same time - that being the witness and the defendant or two witnesses, in such a way that they stand opposite each other while giving their statements alternately. Confronting particularly sensitive witnesses can be extremely stressful for victims/witnesses, which is why it should not be insisted on it, but *vice versa* - avoided if possible.

ZKP allows the identity of a witness to be kept secret if the specific circumstances of the case require so. Such a witness is given the status of a protected witness. This measure of protection should be applied in a restrictive manner, so that it must not deny or limit the right to defence and to a fair trial, which are guaranteed by Art. 6 of the European Convention on Human Rights (Rome, 1950). According to Art. 106 of ZKP, the court may decide to grant a witness the status of a protected witness if the life, health or liberty of the witness, or a person close to him/her, is so endangered that it justifies the restriction of the right to defence, while at the same time the witness is considered to be credible. Information on the identity of the witness may be denied even to the defendant and his defence counsel, although the identity of the witness must be revealed to the defendant and his defence counsel no later than 15 days before the main trial in terms of Art. 106 Para. 3 ZKP.



The decision determining the status of a protected witness shall state the pseudonym of the protected witness, the duration of the measure and the manner in which the measure will be implemented - modification or deletion of the identity data and application of audio-visual technology in the process of testifying. Information on the identity of the protected witness and persons close to him and other circumstances that may lead to the disclosure of their identity will be sealed in a special envelope marked with *Protected witness – strictly confidential* and afterwards sealed and handed over to the pre-trial judge.

Law on Juvenile Offenders and Criminal Protection of Juveniles

More detailed provisions on the status of juvenile victims and juvenile witnesses of criminal offenses are provided in the Law on Juvenile Offenders and Criminal Protection of Juveniles, Official Gazette RS, no. 85/05. Provisions of this law should be analyzed in connection to ZKP which defines a witness as a person who is likely to give information about criminal offense, perpetrator or other facts which should be established in the proceedings (Art. 91). It is not disputed that children in certain cases may be able to reproduce relevant facts about the crime, so there is no need for a special definition of a juvenile/child witness. Also, according to the positive legal framework in Serbia, a child is a person under the age of 14, and at the same time the term minor includes all persons under the age of 18. International legal framework implies that a child is a person under the age of 18, which is in accordance with the UN Convention on the Rights of the Child (New York, 1989). The aforementioned indicates that the Serbian legal framework does not differ from international protection standards.

The Law on Juvenile Offenders and Criminal Protection of Juveniles provides several detailed rules which guarantee complex protection to the juvenile witness during the implementation of criminal procedure. We will list those rules.

In the cases of specific criminal offenses to the detriment of juveniles, a judicial panel should be presided over by a judge who has acquired substantial knowledge in the field of children's rights and protection of juveniles. These crimes include aggravated murder, encouraging or assisting suicide, grievous bodily harm, kidnapping, human trafficking and others. The public prosecutor, who has also acquired special knowledge in the field of children's rights and protection, is authorized to initiate proceedings that include special protection of minors for some other criminal offenses too if he assesses that special protection is necessary to protect a minor.

Further along, according to the Law on Juvenile Offenders and Criminal Protection of Juveniles, it is envisaged that the investigation should be conducted by an investigating judge who has acquired special knowledge in the field of children's rights and protection. However, there is no longer an institute of an investigating judge in the domestic criminal procedure law and nowadays investigation is to be led by the public prosecutor, which implies that the public prosecutor should actually be the one that has been adequately trained. Also, specialized police officers who have acquired special knowledge in the field of children's rights and criminal protection of minors should participate in the investigation of criminal offenses to the detriment of minors, pursuant to Art. 151. The first impression about the system of formal reaction is based on the contact with the police, so that an inadequate response can lead to the withdrawal of the victim (Kesić, Bjelovuk & Žarković, 2017: 330-331), which emphasizes the importance of the role of police officers.

Public prosecutors and judges will treat a juvenile victim in a manner that takes into account his/her age, personality traits, education and other circumstances, while at the same time trying to avoid any



harmful consequences. The interrogation of juveniles is to be conducted with the help of a psychologist or other child experts. In the case of a juvenile witness who has been harmed by criminal offenses, the interrogation may be conducted no more than twice. However, only under exceptional circumstances, interrogation can take place more than twice. In such very unusual cases, special care should be taken of the protection of personality and development of the juvenile, under Art. 152.

If it is assessed that it is in the best interest of the juvenile, the principle of taking evidentiary actions directly before the court and the parties may not be applied. If considering the peculiarities of the criminal offense and personality traits of the juvenile it is deemed necessary, the judge shall order the juvenile to be heard using audio-visual technology, so that the hearing is to be conducted without the presence of parties and other participants. Entitled persons may ask the witness questions by means of a judge, psychologist, social worker or other child experts. Minors may also be interrogated at their home or other premises or in an authorized organization professionally trained for the examination of juveniles with the use of appropriate technology, so that the testimony is afterwards read/played at a trial. Also, the law stipulates that if a juvenile is examined as a witness who is particularly sensitive or is in a particularly difficult state of mind, it is prohibited to confront him and the defendant. If there is a need for identification of the suspect by juvenile, the suspect must be disabled to see the juvenile, thus preventing additional trauma and intimidation.

Juvenile victims must have legal representatives from the first hearing of the defendant up to the termination of the proceedings. The obligatory engagement of a legal aid provides special guarantee that a juvenile will be able to exercise his/her rights, which is in concordance with relevant international documents.

By all means, an important feature of the criminal procedure for acts by which minors have been damaged is that the process must be urgent.

Protection of victims of human trafficking - State of affairs in Serbia

Research indicates that the level of protection provided to the victims of trafficking in criminal proceedings in Serbia is not sufficient (Žarković et al, 2011, Žarković, 2020, Kolaković-Bojović, Drobnjak & Banić, 2021). Truth be told, the state of affairs in this field is also grim in many other countries across the world (Wemmers, 2012).

The Supreme Court of Cassation of the Republic of Serbia has made an extensive analysis of ten convictions passed in the period from 2015 to 2019 for the crime of human trafficking. The analysis of the court records has indicated that injured parties/victims were not able to exercise their right to compensation in criminal proceedings and that they were generally referred to civil procedures in order to achieve material satisfaction.

Also, in only one case did the victim receive the status of a particularly sensitive witness, which was actually a case of an intellectually challenged sexually exploited 15-year-old girl. In the mentioned case, it was pointed out that there has been some good cooperation between the Center for Social Work and the Center for Protection of Victims of Trafficking in Human Beings – resulting in some services for the victim, which could imply that court and public prosecutor tend to be passive when it comes to the protection of victims. According to the aforementioned Analysis of the Supreme Court of Cassation of the Republic of Serbia, one could conclude that the court and the public prosecutor did not determine the status of a specially protected witness on their own initiative.



The question arises as to why special protection measures were lacking, given that in a significant number of cases covered by the analysis victims were juveniles, and that there have been multiple cases of sexual and labour exploitation, as well as of abuse of trust. Furthermore, there is no mention of special protection of juvenile victims in accordance with the Law on Juvenile Offenders and Criminal Protection of Juveniles, so that the question arises whether provisions guaranteeing special protection of this category of vulnerable witnesses/injured parties have been applied at all.

The non-governmental organization ASTRA has also analyzed court cases from the year 2019 which refer to the criminal offense of trafficking in human beings, as well as to criminal offenses of mediation in prostitution (art. 184 of Criminal Code of the Republic of Serbia - KZ, Official Gazette no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019) and trafficking in minors for adoption (art. 389 of KZ). The analysis covered a total of 29 court convictions, with the total number of victims being 37. It was determined that in 82% of cases there was sexual exploitation, forced labour in 12% of cases, while in 6% of cases victims were abused for committing crimes, while in the year 2020 all trafficking cases have included sexual exploitation (ASTRA, 2021). The average duration of the procedure in the year 2019 was three years and two months, which is not in accordance with the need for urgent action in order to adequately protect victims and to prevent additional trauma.

ASTRA report for the year 2019 has stated that the protection provided for victims could not be characterized as sufficient or good enough, even though generally adequate legal solutions are in place. First, it is unclear in which form victims have been given instructions from authorities about their rights and the possibilities for exercising them. Namely, Art. 8 of ZKP stipulates that the body of the procedure is obliged to instruct the defendant as well as other participants in the procedure about the rights that belong to them and also to warn them of possible consequences of not using their rights and privileges. Article 50 of ZKP stipulates that the injured party, among other things, has the right to be informed about the course of the procedure, the right to point out relevant facts and to propose evidence, as well as the right to appeal against certain decisions regarding criminal matter. However, there is significant doubt that legal instructions have been given to participants in a *pro forma* manner, which may adversely affect the position of the victim and the possibility of his/her active participation in criminal proceedings.

Furthermore, ASTRA notes that there are no adequate mechanisms for cooperation between justice system and civil society organizations functioning in the field of victim protection. In general, court records do not mention whether the victims were provided with any special protection in terms of housing, psychological assistance and other important areas, so that the main impression is that sufficient attention has not been given to the protection of human trafficking victims. It was noticed that, despite the fact that there are legal provisions for granting the status of a particularly sensitive witness to the victims of human trafficking, these provisions are only sporadically used (ASTRA, 2020). Namely, given the gravity and nature of the crimes in question, and the complex position of the victims, of which as many as 38% were minors, it remains unclear why victims are rarely granted the status of a particularly sensitive witness. Only six injured parties received the status of a particularly vulnerable witness, although the total number of victims was 37. Also, only 12 victims, of which five minors, were granted legal representatives for the sake of protection of their rights and interests, although the law recognizes the possibility of acquiring legal aid.

Unfortunately, there is a lack of understanding for the complexity of the position of victims, as a result of which exclusion of the presence of public at the trial is rarely applied, pursuant to Art. 363 of ZKP. Namely, from the opening of the trial session until the end of the main trial, the panel may *ex officio*



or at the suggestion of parties or defence counsel exclude the public for the entire main trial or for the part of it if it is found to be necessary in order to protect interests of national security, public order and morals, interests of minors and the privacy of the participants in the criminal procedure. Given the significant representation of juvenile victims, as well as the delicacy of the position of victims, one gets the impression that the provisions on the exclusion of the public are used quite restrictively.

Also, the possibility of using technical means when examining victims is insufficiently used, as well as victims are scarcely examined in special rooms, although such possibility has been provided by the law. The question arises as to why some forms of protection are not being used if it is known that the application of appropriate measures could contribute to suppression of secondary victimization and also to the acquisition of a meaningful statement which is very important for the full clarification of the criminal matter.

Although international documents suggest that victims should be provided with adequate compensation, this issue has been almost completely neglected in Serbian court practice. Thus, in most cases no attention has been paid to the claim for damages or in best case scenario—victims were referred to the litigation in order to exercise their rights. Given the position of the victims and the complexity, length and cost of litigation, it is clear that this is not an adequate solution. It should be borne in mind that victims often come from marginalized social groups and that they tend to be educationally neglected, as a result of which their coping in a complex legal system could be extremely difficult.

ASTRA report also indicates that victims of trafficking are regularly questioned at least twice – in the investigation phase and at the main trial, although there is a possibility to avoid re-examination. It was also noticed that the possibility of providing special protection for juvenile victims in accordance with the Law on Juvenile Offenders and Criminal Protection of Juveniles is poorly and insufficiently applied.

When it comes to protecting the safety of victims and preventing their intimidation by defendants, not much could be learned from court records. In 44% of cases the defendants were put into custody, which should guarantee a somewhat higher degree of security for the victims. However, there is no information on whether measures to prohibit approaching, meeting or communicating with certain persons and to prohibit visiting certain places have been applied, or some other similar measures in order to prevent witness intimidation or tampering with evidence. According to Art. 197, Para. 1 of ZKP if there are circumstances that indicate that the defendant could obstruct proceedings by influencing the injured party, witnesses, accomplices or undercover agents or that he could repeat the crime, complete the attempted crime or commit the crime he threatens with, the court may prohibit the defendant from approaching, meeting or communicating with a particular person or prohibit him from visiting certain places, but it remains unknown whether the application of these measures succeeds in achieving its purpose. It should be borne in mind that in several court cases ASTRA stated that some juvenile witnesses have changed their statements during the proceedings, which could be considered to be the consequence of intimidation by the defendants (ASTRA, 2020).

It is unknown whether and to what extent the rights of the injured parties have been exercised in cases concluding with a plea bargain. The general conclusion that emerges from report is that victims continue to be treated mainly as a source of information or knowledge about the crime, which denies them of their rights to be treated in a dignified and protective manner and especially calls into question the protection of minors. There is a lack of understanding of the specific situation of victims of trafficking in human beings and especially of the position of juvenile victims, which indicates the need to pay additional attention to the issue of protection of these extremely vulnerable persons.



CONCLUSION

Normative framework that defines the position of victims of human trafficking in Serbia is harmonized with relevant international standards in this field. It is provided by law for witnesses to be examined in a specific way that protects their privacy and security. There is a possibility of hiring legal representatives for victims in order to fully guarantee the exercise of their rights.

However, in practice the legal provisions on a particularly vulnerable witness are insufficiently used, which adversely affects the exercise of victims' rights. Also, victims rarely exercise the right to compensation for material damages in criminal proceedings, which negatively affects their future social integration and threatens their overcoming of trauma. Moreover, when it comes to minors one cannot be satisfied with the current state of affairs, because provisions of the ZKP and Law on Juvenile Offenders and Criminal Protection of Juveniles should be applied in a complementary way in order to achieve substantive protection.

With the above-mentioned in mind, additional training of public prosecutors and judges on the specific needs and status of victims of trafficking is needed. Both public prosecutors and judges need to be sensitized for recognizing specific needs of these vulnerable witnesses for the additional protection, so that victims of trafficking do not depend solely on their own capability to seek help and support.

In cases when the procedure ends with a plea bargain, it should be possible to adequately inform the injured parties about it and to pay appropriate attention to the realization of compensation claims.

Mechanisms need to be devised for the more intensive cooperation between judiciary and civil society organizations, with the focus being on the victim with his or her needs and problems. In that sense, the authorities should keep in mind that providing protection for victims of human trafficking is practically an integral part of criminal proceedings for these crimes and that by providing support for victims they do not only express empathy, but actually fulfil obligations accepted by the state through ratifying relevant international agreements.

REFERENCES

1. ASTRA. (2020). Položaj žrtava u krivičnom postupku - Analiza pravosudne prakse za 2019. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, Downloaded on July 14, 2021 <https://www.astra.rs/analiza-pravosudne-prakse-2019/>
2. ASTRA. (2021). Položaj žrtava u krivičnom postupku - Analiza pravosudne prakse za 2020. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, Downloaded on August 25, 2021 <https://drive.google.com/file/d/1ZdVakPMLd8Ya-QQsDbWUCmZTM3fOmmpl/view>
3. Brkić, S. (2014). Posebno osetljivi svedoci. *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2, 211-227, DOI: 10.5937/zrpfns48-6708.
4. Council of Europe Convention on Action against Trafficking in Human Beings (CETS No.197, 2005).
5. Criminal Procedure Code of the Republic of Serbia, Official Gazette RS, no. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 and 62/21.



6. Criminal Code of the Republic of Serbia, Official Gazette RS, no. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.
7. Goodey, J. (2008). Human trafficking: Sketchy data and policy responses. *Criminology and Criminal Justice*, 8(4), 421-442. DOI: 10.1177/1748895808096471
8. Kesić, T, Bjelovuk, I. & Žarković, M. (2017). Odgovor policije na zločine iz mržnje. *Zbornik radova-Kriminalističke teme, Međunarodna naučna konferencija Crimen, Forensis, Securitas, Sarajevo, 5-6 oktobar 2017*, 5, 320-335.
9. Kolaković-Bojović, M, Drobnjak, T. & Banić, M. (2021). **Formativna analiza** - Izveštaj o postojećem zakonodavnom i normativnom okviru u oblasti pravosuđa po meri deteta u Srbiji i njihova primena u praksi. Beograd: International Rescue Committee, Serbia.
10. Law on Juvenile Offenders and Criminal Protection of Juveniles, Official Gazette RS, no. 85/05.
11. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25 of 15 November 2000).
12. Recommendation no. R (97) 13 of the Committee of Ministers to member states of the Council of Europe on Witness intimidation and the rights of the defense.
13. Shelley, L. (2010). *Human Trafficking: A Global Perspective*. Cambridge and New York: Cambridge University Press.
14. Supreme Court of Cassation of Republic of Serbia, (2020). Analysis of case law in trafficking cases 2015-2019, Downloaded on July 15, 2021 <https://www.vk.sud.rs/sites/default/files/attachments/Analiza%20odluka-trgovina%20ljudima-za%20sajt%20suda.pdf>.
15. Škulić, M. (2015). *Položaj žrtve krivičnog dela/oštećenog krivičnim delom u krivičnom pravnom sistemu Srbije*. Beograd.
16. UN Convention on the Rights of the Child (New York, 1989).
17. Wemmers, J. (2012). Victims' rights are human rights: The importance of recognizing victims as persons. *Temida*, 15(2), 71-84, DOI: 10.2298/TEM1202071W.
18. Žarković, M. et al. (2011). *Krivičnopravni sistem i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji*. Beograd: Zajednički program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji.
19. Žarković, M. (2020). Posebno osetljive kategorije oštećenih lica – pojam i krivičnoprocesni instrumenti zaštite. *Zbornik sa savetovanja Srpskog udruženja za krivičnopravnu teoriju i praksu, Zlatibor 17-19 septembar 2020*, LX, 521-537.



