

ANTI-TRAFFICKING FRAMEWORK IN MONTENEGRO

*Dragana Babić**

I. INTRODUCTION

In recent years, the country of Montenegro has been recognized as a country of origin, transit and destination for men, women and children who were victims of human trafficking. The number of potential victims identified as being at risk of becoming victims of illicit marriage and sexual exploitation has increased.

By monitoring regional and international trends in the manifestation of this phenomenon, as well as by analysing statistical indicators at the state level, it was observed that young people, especially children without parental care, children with disabilities and difficulties in development, i.e. persons with disabilities, children with behavioural disorders, children and adults due to abuse of alcohol, drugs or other intoxicants, as well as children and adults if there is a risk of them becoming victims of or if they are victims of abuse, neglect, domestic violence and exploitation, workers engaged in occasional and temporary work, illegal migrants, foreigners who seek international protection, are especially vulnerable categories when it comes to human trafficking.

The Department for the Fight against Trafficking in Human Beings of the Ministry of the Interior (MoI) continuously implements activities aimed at combating human trafficking, both through a strategic framework and through specific activities that it implements in cooperation with competent institutions as well as with relevant civil society organizations and international partners.

II. RELEVANT INTERNATIONAL DOCUMENTS

Regarding relevant international conventions, it is important to underline that Montenegro is a signatory to the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol), the United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Pornography, the Council of Europe Convention on Action against Trafficking in Human Beings, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known as the Lanzarote Convention), as well as the UN Convention on the Elimination of All Forms of Discrimination against Women (also known as CEDAW), and in that part the MoI Department for Fight against Trafficking in Human Beings participates in reporting related to the implementation of these important international conventions.

III. KEY NATIONAL LEGISLATION

Priorities in combating trafficking in human beings are ensured by passing a set of laws in the field of justice: the Criminal Code of Montenegro, the Criminal Procedure Code, the Law on Foreigners, the Law on Confiscation of Criminal Assets, the Law on Health Care, the Law on Social and Child Protection, the Law on International Legal Assistance in Criminal Matters. Specifically, trafficking in human beings is prescribed under Chapter XXXV of the Criminal Code of Montenegro as a criminal offence against humanity and other legal goods protected by international law. Consequently, the criminal-legal protective object of this crime is

* Advisor, Department for Fight Against Trafficking in Human Beings, Ministry of the Interior, Montenegro.

humanity, which should be understood here in the light of respect for human rights and fundamental freedoms that protect various legal goods: human life, their bodily integrity, fundamental freedoms and human rights, dignity of the human person, moral, health, property and other values.

Article 444¹ of the Criminal Code of Montenegro Trafficking in Human Beings reads as follows:

- (1) Whoever, by means of use of force or threat, or kidnapping, fraud or deception, of the abuse of power, trust, dependence, a position of vulnerability, withholding, taking away or destroying personal documents, counterfeiting personal documents, procuring or manufacturing of counterfeit documents or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, commits any of the following: recruits, transports, transfers, surrenders, sells, buys, negotiates the sale of, harbours or receipts another person for the purpose of exploitation of his labour, forced labour, submission to servitude, slavery or practices similar to slavery, commission of criminal activity, prostitution or other forms of sexual exploitation, beggary, exploitation for pornographic purposes, for conclusion of an unlawful marriage, removal of organs for transplantation, or for exploitation in armed conflicts, shall be punished by a prison sentence for a term from one to ten years.
- (2) The offence set forth in paragraph 1 of this Article shall be deemed committed against a child even where the perpetrator did not use force, threat or any other of the foregoing methods of commission.
- (3) Where the offence set forth in paragraph 1 of this Article is committed against a child, or where the offence set forth in paragraph 1 of this Article is committed by a public official while discharging his official duty or where the life of one or more persons is endangered with criminal intent, the perpetrator shall be punished by a prison sentence for a minimum term of three years.
- (4) Where the offence set forth in paragraphs 1 to 3 of this Article resulted in a serious bodily injury of a person, the perpetrator shall be punished by a prison sentence for a term from one to twelve years.
- (5) If the act set forth in paragraph 3 of this Article resulted in a serious bodily injury of a child, the perpetrator shall be sentenced to imprisonment of at least five years.
- (6) Where the offence set forth in paragraphs 1 and 3 of this Article results in the death of one or more persons, the perpetrator shall be punished by a prison sentence for a minimum term of ten years.
- (7) Whoever commits the criminal offence set forth in paragraphs 1 to 3 of this Article on a regular basis, or where the offence was committed in an organised manner by several persons, shall be punished by a prison sentence for a minimum term of ten years.
- (8) Whoever uses the services of a person knowing that the person was the subject of the offence set forth in paragraph 1 of this Article shall be punished by a prison sentence for a term from six months to five years.
- (9) Where the offence set forth in paragraph 7 of this Article is committed against a child, the perpetrator shall be punished by a prison sentence for a term from three to fifteen years.
- (10) The consent of victim who was the subject of the offence set forth in paragraphs 1 to 3 of this Article shall have no impact on the qualification of that criminal offence.
- (11) A person who, as a direct victim, was forced to participate in criminal activities set forth in paragraph 1 of this Article shall not be punished for the acts referred to in paragraph 1 of this Article.

In addition, it is important to underline that the article cited above is the amended version according to

¹ "Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004, 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011 – another law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 – another law, 44/2017, 49/2018, 3/2020, 26/2021 - correction, 144/2021 and 145/2021 and 110/2023

the recent Law Proposal on Amendments to the Criminal Code of Montenegro which was adopted by the Parliament of Montenegro on 11 December 2023. The Law Proposal entered into force on 12 December 2023, and it has contributed to further protecting the rights of human trafficking victims in the criminal justice system. The Law Proposal was aligned with the Council of Europe and UN conventions as sources of international criminal law. The Law Proposal is harmonized with all European Commission comments.

Article 25 amends the article that refers to the meaning of terms, that is, Article 142 of the Criminal Code. Thus, the term of child is harmonized with Article 1 of the UN Convention on the Rights of the Child. Namely, although the practice is fully harmonized with the requirements from Article 1 of the aforementioned Convention regarding the definition of a child as a person under the age of 18, terminological harmonization is also carried out in the Criminal Code in this way.

Article 81 of the Law Proposal, in addition to the terminological harmonization of the term of child, in the criminal offence referred to in Article 444 Trafficking in human beings, in paragraph 1, kidnapping is added, as one of the ways of committing this criminal offence. In addition, another more severe form of this crime has been added, which will exist if, as a result of the act referred to in paragraph 3 of this Article, serious bodily harm to a child occurred, and a prison sentence of at least five years is prescribed.

Appreciating the importance of the issue of impunity of the victim and in addition to the general provisions on coercion and extreme necessity contained in the Criminal Code of Montenegro, an explicit provision on impunity of the victim was added in the form of a new paragraph.

IV. KEY NATIONAL STRATEGIC FRAMEWORK

When it comes to the national strategic framework in relation to this phenomenon, the Government of Montenegro, at the session held in February 2019, adopted the Strategy for Combating Trafficking in Human Beings for the period 2019-2024.² The document in question defines the directions of the national policy of combating human trafficking in the areas of: prevention, protection of victims, criminal prosecution, as well as in the area of partnership, coordination and international cooperation.

The Strategy takes into account all the most important international conventions that deal with this area, as well as reports from relevant international partners who carefully monitor and analyse the efforts that countries undertake in the fight against human trafficking and provide useful recommendations for their improvement. At the same time, a functional connection with the adopted strategies and plans at the national level, which are important for the fight against human trafficking, was provided. The vision of the Strategy is a just, humane, gender-sensitive and empowered society that protects people from all forms of human trafficking. The mission of the Strategy is Montenegro's commitment to maintaining transparent, responsible and proactive initiatives against human trafficking in accordance with international human rights standards. By realizing the goals of the Strategy for the fight against human trafficking for the period 2019-2024, the efficiency and functionality of the system of prevention, identification, protection, assistance and monitoring of victims of human trafficking will be improved with a special focus on children, as well as the efficiency of investigations, criminal prosecution and adequate punishment in accordance with the criminal legislation of Montenegro.

The Strategy provides a victim-centred approach, which correlates with the goal of ensuring effective prosecution of perpetrators of human trafficking. Starting from the fact that it is very difficult to detect victims of human trafficking, of which children are the most vulnerable ones, but also to provide a quality model for their protection and reintegration, the Strategy focuses on the age and gender specificities of the crime itself, providing an adequate response to their vulnerability.

Since the adoption of the aforementioned Strategy for Combating Trafficking in Human Beings for the period 2019-2024, five Action Plans for the implementation of the Strategy have been adopted for 2019, 2020, 2021, 2022 and 2023, for which reports on their implementation were drawn up and adopted by the

² <https://www.gov.me/dokumenta/e0ada5d7-b0b4-4e84-a60c-12f6c4ddcf8a>

Government. The last, 2024 Action Plan for the implementation of the Strategy, was adopted on 17 May 2024.

The Coordinating Body for Monitoring the Implementation of the Strategy for Combating Trafficking in Human Beings for the period 2019-2024³ is in charge of drafting the aforementioned documents, and it consists of representatives of state bodies, state administration bodies, judicial bodies, the Institution of the Protector of Human Rights and Freedoms, as well as a representative of an NGO. Representatives of the international organizations IOM, OSCE, UNICEF, the EU Delegation to Montenegro and the U.S. Embassy participate in the body's work as observers. When developing Action Plans, special attention is paid to recommendations from relevant international reports, such as recommendations from the Reports of the Council of Europe Group of Experts on Action against Trafficking in Human Beings on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, the U.S. Department of State Trafficking in Persons Reports, as well as from the Progress Reports of the European Commission.

V. OPERATIONAL LEVEL

On the operational level, in order to achieve a better track record in the investigation and processing of human trafficking cases, the Supreme State Prosecutor and the Director of the Police Directorate of Montenegro formed (in 2018) the Operational Team for the fight against trafficking in human beings. In April 2024, the Supreme State Prosecutor of Montenegro and the Minister of the Interior of Montenegro extended the competences of this Team, in addition to the fight against trafficking in human beings, to the fight against illegal crossing of the state border and smuggling of persons. This Team consists of representatives of the State Prosecutor's Office, the Ministry of the Interior and the Police Directorate. The key tasks of the mentioned Team are:

- more efficient processing of human trafficking, illegal crossing of the state border and smuggling of persons cases;
- coordination of activities and harmonization of work with other participants in combating human trafficking, illegal crossing of the state border and smuggling of persons;
- identification of victims of human trafficking in the chain of human trafficking, illegal crossing of the state border and smuggling of persons and other criminal acts committed by criminal groups;
- gathering information about financial assets acquired through human trafficking, illegal crossing of the state border and smuggling of persons and other criminal acts for the purpose of conducting financial investigations;
- carrying out international cooperation through direct contact with police services, especially in countries in the region, as well as with other international organizations, initiatives and participation in joint investigative teams, etc.

The results of the aforementioned Team, during the previous year 2023 alone, amounted to 16 criminal charges filed covering 28 persons, 7 indictments against 12 persons, while in the work of the competent courts there were a total of 15 cases, of which three have been resolved — one through a final and enforceable decision, and two in the first instance.

Following the best international practice, and in the desire to improve the identification of victims of human trafficking, at the Ministry of the Interior (in 2019) the Team for the Formal Identification of Victims of Trafficking in Human Beings was established by the Minister of the Interior. Permanent members of the Team are a representative of the Department for the Fight against Trafficking in Human Beings of the Ministry of the Interior, a representative of the Ministry of the Interior/Police Directorate – Group for Countering Crimes of Human Trafficking, Smuggling and Irregular Migration, a representative of the

³ The latest Coordination Body composition was established by the Decision of the Minister of the Interior No. 078/24-2410 of 31 January 2024.

Ministry of Labour and Social Welfare, who has a license to perform professional work, a representative of the organization of civil society that has a license to perform specialized professional work in social and child protection. If the person who is presumed to be a victim of human trafficking is a child, the expert worker of the Centre for Social Work – the case manager and/or guardian appointed by the Centre for Social Work – also joins the meetings. Team members are available 24 hours a day and, in case of need, will go to the field as support in a specific case. This Team grants the status of a victim of human trafficking after the implementation of certain standardized operational procedures contained in the National Plan for Formal Identification adopted by the Government, based on the violation of human rights and independently of the course of criminal proceedings.

Cooperation on the protection of victims is based on the Agreement on Mutual Cooperation in the Field of Combating Trafficking in Human Beings, which was signed in 2007 between state institutions and relevant NGOs. The Agreement was revised several times in order to be adapted to the current context and the competences of the institutions, and was last signed on 27 May 2024. The goal of this Agreement is cooperation on prevention, education, detection of perpetrators, prosecution of perpetrators, as well as identification, protection, integration, reintegration and rehabilitation of potential/victims of human trafficking, especially women and children, with full respect for their human rights. The Agreement will ensure the physical, psychological, health, social and child protection of victims of human trafficking, their integration into the new society, that is, reintegration, in case of voluntary return to the country of origin. The Signatories of the Agreement agree to provide assistance to victims of human trafficking, in accordance with this Agreement, regardless of the will of the victim of human trafficking to participate or not participate in the criminal proceedings for the criminal offence of human trafficking. The Signatories of the Agreement undertake to provide information on free legal assistance to the victim of human trafficking and other rights, in accordance with the jurisdiction and legal provisions.

Significant efforts in the fight against this issue are also reflected in the activities of regional cooperation, where bilateral cooperation with the countries of the region has been intensified in terms of prevention, identification of victims of human trafficking and prosecution of traffickers. In this regard, Montenegro signed bilateral protocols on cooperation in the fight against human trafficking with the countries of the region, i.e. with those countries whose citizens appear in the largest number of cases as (potential) victims or perpetrators of the criminal offence of human trafficking on the territory of Montenegro, namely with Albania, Kosovo, North Macedonia and Slovenia. These protocols regulate in a special manner the issues related to the identification of victims and potential victims of human trafficking and persons forced to work, especially during the construction and tourist season, cooperation in criminal proceedings and the procedure for the voluntary return of victims and potential victims of human trafficking, with special focus on child victims.

VI. PROTECTION OF (POTENTIAL) VICTIMS OF HUMAN TRAFFICKING

The Ministry of Labour and Social Welfare is responsible for providing social and child protection to (potential) victims of human trafficking, both for Montenegrin citizens and foreign nationals, through the Centres for Social Work and Social and Child Welfare Institutions. Assistance mechanisms according to the Law on Social and Child Protection⁴ include: Assessment of the social and economic situation, that is, the preparation of Findings and opinions as a basis for awarding one-time financial aid and other forms of protection in accordance with the law; Determining the legal basis for appointing a guardian; Development of individual service plans for potential victims of human trafficking; Accommodation in a shelter; Development of individual work plans with beneficiaries; Consulting services (counselling, therapy, mediation, SOS telephone and other services with the aim of overcoming crisis situations and improving family relations). In addition, the Ministry of Labour and Social Welfare provides financial resources for the financing of accommodation services in shelters through a public call, and it also provides funds on a monthly basis for each individual victim accommodated in shelter.

⁴ Official Gazette of Montenegro, No. 027/13 of 11.06.2013, 001/15 od 05.01.2015, 042/15 of 29.07.2015, 047/15 of 18.08.2015, 056/16 of 23.08.2016, 066/16 of 20.10.2016, 001/17 of 09.01.2017, 031/17 of 12.05.2017, 042/17 of 30.06.2017, 050/17 of 31.07.2017, 059/21 of 04.06.2021, 145/21 of 31.12.2021, 145/21 of 31.12.2021, 003/23 of 10.01.2023.

A state shelter for child and youth victims of human trafficking was opened in April 2024 for 10 beneficiaries and has access for persons with disabilities. The shelter was adapted in accordance with the international standards prescribed for the provision of this service, and a special emphasis will be placed on providing safety to the victims who will be accommodated in the shelter. The facility meets all safety standards in order to ensure the safety of the beneficiaries, namely: safety fence, as well as technical protection: video surveillance and access control to the facility. The interior of the building allows for unhindered separation of accommodation for users and in relation to gender.

Also in the beginning of 2024, the Ministry licensed a shelter for adult female victims of sexual exploitation, as a form of human trafficking. This shelter is run by an NGO and has three accommodation units.

VII. RELEVANT TRACK RECORD

Regarding the relevant track record in the area of human trafficking, with specific focus on human trafficking for the purpose of sexual exploitation, it is important to underline the trafficking in human beings case when in 2019, two persons were sentenced by a final verdict to 17 and 15 years in prison, respectively, for trafficking in human beings for sexual exploitation of a minor girl, which is the highest sentence imposed so far in Montenegro for human trafficking. Also, regarding the victim statistics, the Team for Formal Identification of Victims of Trafficking in Human Beings has identified a total of 91 victims in the period 2019-2023, out of which there were 10 persons identified as victims of sexual exploitation, all female (7 adults and 3 minors – where 1 adult female was identified as a victim of both sexual exploitation and exploitation for pornographic purposes, and where 1 minor female was identified as a victim of both sexual exploitation and exploitation for commission of criminal activity). Also, in 2023, the analysis of cases that were in the work of the Team for formal identification of victims of human trafficking shows a form of exploitation that was recorded for the first time in the practice of the Team – exploitation for pornographic purposes.

VIII. CHALLENGES THAT NEED TO BE FURTHER ADDRESSED

Despite the above defined national framework, and the achieved results in practice, there are challenges remaining to be addressed. This refers in particular to the necessity of further defining activities aimed specifically at protecting female victims of trafficking in human beings for the purpose of sexual exploitation, and continue with awareness raising activities in order to ensure that professionals have a more proactive approach in identifying (potential) victims of sexual exploitation and apply a gender-sensitive approach when dealing with (potential) victims. The challenges also remain in the part of the criminal procedure for human trafficking cases, where all actors need to carry out actions in order to avoid re-victimization and to ensure that the victims have access to all procedural rights. Another particular aspect is to find the best responses in order to reduce the demand for services of victims of sexual exploitation.

Finally, practice has also shown that the rise of online technologies and social media has created new avenues for traffickers to recruit and exploit victims, and the anonymity provided by the Internet facilitates the trafficking process, which renders detecting (potential) victims of human trafficking even more challenging. Therefore, in the upcoming period, the national anti-trafficking efforts will comprise more activities in this direction.