

THE CRIMINAL OFFENSE OF TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF KOSOVO: A COMPARATIVE SENSE

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Abstract - Bosnia and Herzegovina and the Republic of Kosovo, as two countries that lived through the events of war and suffered a large number of different victims and material losses during the war period, took almost identical paths in the direction of nation building.

Although these two countries have made significant progress in some segments, due to their historical past, also had the opposite side of the coin: stagnation, underdevelopment, corruption, lack of rule of law, high level of unemployment, poverty, various forms of organized crime, etc. One of the forms of organized crime is human trafficking, which occurs in these two countries with some special characteristics due to various factors that have influenced it.

For this negative social phenomenon, especially in the form of sexual exploitation of women and children, interest is expressed in every country, but these two countries differ from other Southeast Europe countries due to the large number of victims of human trafficking that is, because of sexual exploitation especially women and children after the end of the war events, which means that the expansion time of this phenomenon, the age of the victims, scope and manner represent special characteristics for Bosnia and Herzegovina i Republic of Kosovo.

Methods: The article uses system-structural, formal-logical, comparative-legal, statistical and dialectical research methods. Based on the methods, we realized the purpose of this paper which is to research, analysis and introduce in comparative sense, forms and causes of human trafficking in Bosnia and Herzegovina and the Republic of Kosovo.

Results and Conclusions: The analysis was realized within two main thematic areas: Sexual exploitation especially women and children and causes of human trafficking in Bosnia and Herzegovina and the Republic of Kosovo after the end of the war events.

The relevant state institutions in BiH and Republic of Kosovo should be systematically engaged with the aim:

1. To eliminate or reduce the causes of human trafficking and,
2. Rehabilitation and compensation of victims of human trafficking.

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INTRODUCTION

Human trafficking as a global phenomenon of this century has affected almost all countries of the world, some as countries of origin, others as countries of transit or as countries of destination. It has been proven from various international reports and scientific literature that human trafficking as a form of organized crime most often occurs in the so-called countries of the "second world" and "third world", countries where there are still elements of underdevelopment in the socio-economic, political and cultural sense, countries where the rule of law is lacking and countries that have faced with wars.

Therefore, Bosnia and Herzegovina and the Republic of Kosovo, like most of the countries of the Western Balkans, belong to the "second world" category, because their economic, political and cultural relations are a step back compared to the countries of the "first world" but a step forward as far as "third world" countries are concerned. In this sense, although Bosnia and Herzegovina and the Republic of Kosovo are part of Southeast Europe and are generally on the same level as other countries in many segments, when it comes to human trafficking, these two countries differ from other countries by the increase in the number of victims of sexual exploitation, especially women and children.

1. Global and regional criminal legal framework for combating human trafficking

Talking about human trafficking as one of the most difficult forms of limiting human freedom, special attention should be paid to the responses of the criminal justice system focused on suppression and prevention, more precisely, the criminalization of behavior contained in the international definition of human trafficking. Human trafficking is a form of criminality and victimization in the etiology of which almost all macro and micro criminogenic and victimogenic factors, social and individual problems of people from the global and local margins are acquired conditioned by global and local social changes.³ Understanding and defining human trafficking was a problem in the late nineteenth century. Human trafficking was first addressed in the International Agreement for the Suppression of the "White Slave" Trade in 1904. The white slave trade referred exclusively to the prostitution of white women and girls.⁴

The first international document and the most famous source that contains the definition of the term "trafficking in human beings" is the Protocol on the Prevention, Suppression and Punishment of Trafficking in Human Beings, Especially Women and Children (hereinafter: Protocol)⁵ which was adopted by the General Assembly of the United Nations in its Resolution no. 25 of November 15, 2000. The Protocol supplements the United Nations Convention against Transnational Organized Crime⁶

³ Pajić, D., Zaštita osjetljivih svjedoka u krivičnom postupku, Anali Pravnog fakulteta Univerziteta u Zenici, 3 (06), 2010. godina, p. 101.

⁴ Milković, I., Trgovina ljudima kao najteži oblik kršenja ljudskih prava, Zbornik radova Pravnog fakulteta u Splitu, god. 57, 4/2020, p. 1101.

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, available at <https://eur-lex.europa.eu/eli/dec/2006/618/oj?locale=en> (visited on October 23, 2022).

⁶ United Nations Convention against Transnational Organized Crime. See Council Decision 2001/87/EZ: from December 8, 2000, available at <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A32001D0087> (visited on October 23, 2022).

whose purpose is to improve cooperation in a more efficient way in terms of preventing and fighting transnational organized crime.⁷

The Protocol defines trafficking in persons as the recruitment, transportation, transfer, harboring and acceptance of persons, by means of the threat or use of force or other forms of coercion, kidnapping, fraud, abuse of power or a position of helplessness, or the giving or receiving of payments or funds to obtain the consent of a person who has control over another person, for the purpose of exploitation. Exploitation shall include, as a minimum, exploitation of prostitution or other forms of sexual exploitation, forced labor or services, slavery or relationships similar to slavery, subjugation or removal of organs.⁸ By the provisions of Article 5 of the Protocol, the member states committed themselves to the criminalization of human trafficking, attempts at such trafficking, complicity in such trafficking, as well as to the criminalization of organizing or directing other persons to commit this criminal offense.⁹ The Protocol contains a general legal framework for the assistance and protection of victims of human trafficking. However, these provisions are quite general and leave a wide margin of discretion to the states when implementing the aforementioned guarantees. For this reason, we could say that the approach that can be seen in the Protocol is dominantly oriented towards the criminal prosecution of the perpetrator, and less towards the protection and assistance of the victim (perpetrator oriented approach).¹⁰

It is important to mention the Council of Europe Convention on Combating Trafficking in Human Beings (hereinafter: the CoE Convention), which aims to prevent and combat trafficking in human beings and protect the human rights of victims of trafficking. The CoE Convention applies to all forms of human trafficking, regardless of whether it is national or transnational and regardless of whether or not it is related to organized crime. The CoE Convention defines human trafficking as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹¹ It is significant that the CE Convention contains a comprehensive approach to measures to protect and promote the rights of victims, guaranteeing gender equality, as well as special chapters dedicated to substantive and procedural criminal legislation.

As an integral part of the Constitution of Bosnia and Herzegovina¹² and documents that have an international character and significance for the topic of human trafficking is the Convention on the Elimination of All Forms of Discrimination Against Women from 1979.¹³ According to the aforementioned Convention, "discrimination against women" means any difference, exclusion or limitation made on the basis of gender, the consequence or purpose of which is to threaten or prevent women from recognizing, enjoying or using human rights and basic freedoms in the political, economic, social, cultural, civil or other fields area, regardless of their marital status, on the basis of the equality of men and women. Convention on the Rights of the Child from 1989, entered into force on September 2, 1990.

Member States are obliged to respect and ensure every child in their territory the rights provided by the Convention without any discrimination against the child, his parents or legal guardians

⁷ The Presidency of Bosnia and Herzegovina, with a decision that entered into force on March 27, 2002, ratified the Protocol and the Convention of the Council of Europ. (Službeni glasnik BiH - Međunarodni ugovori broj: 3/02).

⁸ Article 3, paragraph 1 of the Protocol.

⁹ Tomić, Z., Krivično pravo II, posebni dio, drugo izmjenjeno i dopunjeno izdanje, Pravni fakultet Univerziteta u Sarajevu, Sarajevo 2007. godina, p. 440.

¹⁰ Derenčinović, D., Nisu na prodaju-O pravima žrtava trgovanja ljudima nakon presude Europskog suda za ljudska prava u predmetu Rantsev protiv Cipra i Rusije, Godišnjak Akademije pravnih znanosti Hrvatske, vol. 1, br. 1, 2010. godina, p. 58., available at <https://hrcak.srce.hr/clanak/101893> (visited on October 23, 2022).

¹¹ See Article 4 of the Convention (Službeni glasnik BiH-Međunarodni ugovori broj:14/07).

¹² Constitution of Bosnia and Herzegovina (Aneks IV Općeg okvirnog sporazuma za mir u BiH i Službeni glasnik BiH br. 25/2009 - Amandman I).

¹³ Adopted at the United Nations General Assembly on December 18, 1979, as the first comprehensive internationally recognized document on women's rights. It entered into force as an international treaty on September 3, 1981.

with regard to their race, skin color, sex, language, religion, political or other belief, national, ethnic or social background, property, developmental disabilities, family background or any other circumstances.

Unlike the Declaration on the Rights of the Child from 1959, which has moral force, the Convention on the Rights of the Child is a legal act that has the force of law and obligates the parties to comply with its provisions, and includes the right to monitor its implementation in countries that have accepted and ratified it. It is also important to mention the European Convention on Human Rights¹⁴ which, although it does not mention human trafficking, but in Article 4, provides the prohibition of slavery and forced labor.¹⁵

Namely, human trafficking is increasingly defined and viewed as "modern slavery", which is particularly important in terms of the mentioned provision from Article 4 of the Convention. People are treated as commodities that can be bought or sold or subjected to forced labor with little or no pay, most often in the sex industry, but also in other fields. Human trafficking restricts the victims' right to freedom of movement and they undergo violence by torturing the victim. The practice of the European Court of Human Rights defines slavery as the obligation to provide services under duress and is recognized as a particularly difficult form of deprivation of freedom and the impossibility to change such a situation.¹⁶

In relation to Bosnia and Herzegovina (hereinafter: BiH) and its constitutional arrangement, human trafficking is criminalized in all criminal laws both at the state level, as well as at the level of the entity and Brčko District of BiH.

This is according to the Criminal Code of BiH¹⁷ (Chapter XVII - Criminal acts against humanity and values protected by international law) Article 186 prescribes the criminal offense International human trafficking, and Article 186a. Organized international human trafficking.

In relation to the Criminal Code of the Federation of BiH¹⁸ (Chapter XIX-Criminal offenses against sexual freedom and morality) the criminal offense of Human Trafficking is prescribed by Article 210a, and Organized Human Trafficking by Article 210b.

Criminal Code of the Republic of Srpska¹⁹ (Chapter XIII-Criminal offenses against the freedom and rights of citizens) articles 145, 146 and 147 prescribe the criminal offenses of Trafficking in Human Beings, Trafficking in Children and the criminal offense of Association for the purpose of committing the criminal offenses of Human Trafficking and Child Trafficking. Criminal Code of the Brčko District of BiH²⁰ (Chapter XIX-Criminal offenses against sexual freedom and morality) the criminal offense of

¹⁴ European Convention on Human Rights (Narodne novine Međunarodni ugovori br. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10).

¹⁵ In the case of *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of January 7, 2010, the European Court of Human Rights concluded that human trafficking is covered by Article 4 of the European Convention, although that article does not explicitly mention it. In this domain, it is important to mention the judgment of the European Court of Human Rights in the case of *S.M. against Croatia* request no. 60561/14, judgment of July 19, 2018. The European Court of Human Rights once again pointed out that it is not necessary to precisely determine whether human trafficking constitutes slavery, servitude or forced labor according to Article 4 of the ECHR, for the reason that there is no doubt that it threatens human dignity and is contrary to the spirit and purpose Article 4 of the ECHR. In this regard, it is considered that human trafficking, whether it is national or supranational and whether or not it is connected to organized crime, falls within the scope of Article 4 of the ECHR. See more about it Ofak, L., Vajda, Munivrana, M., Preporuke za poboljšanje hrvatskog pravnog okvira i mjera za suzbijanje i prevenciju trgovanja ljudima, Zbornik Pravnog fakulteta u Zagrebu, 69, 2019. godina.

¹⁶ Mujanović, E., Datzler, D., Vučinić, H., Buha, M., Istraživanje sudske prakse procesuiranja trgovine ljudima u Bosni i Hercegovini (2003.-2021.), Centar za istraživanje politike suprotstavljanja kriminalitetu (CPRC), p. 22., Sarajevo, 2022. godina.

¹⁷ Criminal Code of Bosnia and Herzegovina (Službeni glasnik BiH broj: 3/2003, 32/2003 - ispr., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 i 35/2018).

¹⁸ Criminal Code of the Federation of Bosnia and Herzegovina (Službene novine FBiH broj: 36/2003, 21/2004 - ispr., 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 i 75/2017).

¹⁹ Criminal Code of the Republic of Srpska (Službeni glasnik RS broj: 64/2017, 104/2018 - odluka US, 15/2021 i 89/2021).

²⁰ Criminal Code of the Brčko District of Bosnia and Herzegovina (Službeni glasnik BD BiH broj: 19/2020 - prečišćen tekst).

Human Trafficking is prescribed in Article 207a, and the criminal offense of Organized Human Trafficking in Article 207b.

Achieving general prevention in relation to human trafficking is ensured through criminal laws, so we can say that it is a comprehensive legal arrangement, although BiH in relation to there is no specially established legislation on victims of human trafficking, but the procedural protection of victims of human trafficking who appear as witnesses in criminal proceedings is ensured by laws on the protection of witnesses under threat and vulnerable witnesses of BiH Federation of BiH, Republika Srpska and Brčko District of BiH, while out-of-process protection is prescribed by the Law on the Witness Protection Program in BiH.²¹

The incrimination of the criminal offense of human trafficking in the Republic of Kosovo is regulated by Article 165 of the Criminal Code of the Republic of Kosovo²² and the Law on preventing and combating human trafficking and protecting victims of human trafficking²³ which prescribes a comprehensive approach and which defines the authorities for preventing and fighting human trafficking and protecting victims of human trafficking, as well as investigation and prosecution, assistance and protection of victims of human trafficking as well as compensation for victims of trafficking.

In the legal framework, it is evident that BiH and the Republic of Kosovo are at the desired level because human trafficking is a criminal offense with all elements and in the form prescribed in the legislation of the respective states in accordance with international conventions, which implies that all three elements - the act of commission, the method of commission and the purpose - are prescribed as special elements in accordance with the two largest international conventions regarding human trafficking: the Protocol and the CoE Convention.

With that, the legislative framework has a special role in preventing and suppressing this form of crime,²⁴ but unfortunately, for the fight against this phenomenon of human trafficking, only a legislative and legal framework is not enough without its practical application, application in action, especially appreciating the proven great importance of national mechanisms. These are two parallel things,²⁵ and in cases of lack of one of the mechanisms, the fight against human trafficking is unsuccessful.

In this sense, it is quite natural to ask a legal but also a logical question, in what position are BiH and the Republic of Kosovo in the fight against this complex, negative, social phenomenon?

In order to have a clear picture, it is necessary to refer to various international reports to answer the question of where BiH and the Republic of Kosovo are in this sense.

According to the US State Department's report on human trafficking for 2022, which includes estimates for about 190 countries around the world, BiH and the Republic of Kosovo are still ranked second.²⁶ According to the above, each country is classified into one of four levels depending on the extent of the government's efforts to meet the minimum standards in the fight against human trafficking. The first level includes countries and territories whose governments are operating fully in accordance with the required minimum standards.

On the second level are countries and territories whose governments do not fully comply with the minimum standards, but make significant efforts to achieve it, and within the second level are

²¹ See more about it Rizvo, S., Hunček, S., Muratbegović, E., Smjernice za postupanje regionalnih monitoring timova za borbu protiv trgovine ljudima, available at <https://bih.iom.int/sites/g/files/tmzbd1076/files/documents/SMJERNICE%20ZA%20POSTUPANJEREGIONALNIH%20MONITORING%20TIMOVA%20ZA%20BORBU%20PROTIVTRGOVINE%20LJUDIMA%20U%20BOSNI%20I%20HERCEGOVINI.pdf> (visited on October 25, 2022).

²² Criminal Code of the Republic of Kosovo (Gazeta Zyrtare e Republikës së Kosovës nr.: 2/14).

²³ Law on prevention and fight against human trafficking and protection of victims of human trafficking (Gazeta Zyrtare e Republikës së Kosovës nr: 34/13).

²⁴ Beqiri, F., Trgovina ljudskim organima kao oblik organiziranog kriminaliteta, Doktorski rad, str. 248, Sveučilište u Mostaru, Mostar, 2021. godina.

²⁵ *Ibid.*

²⁶ Trafficking in Persons Report 2022, available at <https://www.state.gov/reports/2022-trafficking-in-persons-report/>, (visited on October 30, 2022).

countries whose governments do not fully meet the minimum standards but make significant efforts to align with those standards, and for which: the estimated number of victims of severe forms of human trafficking is very significant or significantly increasing, and the state does not take proportionate concrete actions or there is no evidence of increased efforts to combat severe forms of human trafficking from the previous year, including an increase in investigations, prosecutions and convictions for crimes of human trafficking, increased assistance to victims and less and less evidence of participation in severe forms of human trafficking by state officials, and on the third level are countries that do not fully respect minimum standards and do not make efforts.²⁷ From the foregoing, it can be concluded that both BiH and the Republic of Kosovo, as countries ranked at the second level, still need to invest additional effort and commitment in order to meet the minimum standards in the fight against human trafficking.

2. Comparative presentation and analysis of reported and registered victims of human trafficking in Bosnia and Herzegovina and the Republic of Kosovo

Referring to the international conventions and provisions of the criminal laws of BiH and the Republic of Kosovo that govern the area of human trafficking, as well as various international and domestic reports, it is important that in the further analysis of this negative social phenomenon, we approach it from several perspectives. It's clear and proved that human trafficking is present in all countries, but underdeveloped or developing countries, countries in transition, are the most susceptible. In this direction, some data presented at the global level were taken as a basis, and of particular importance are the data from BiH and the Republic of Kosovo, classifying victims of human trafficking based on age, gender, country of origin and purpose of exploitation, which may be exploitation for the purpose of prostitution or other forms of sexual exploitation, forced labor or service, slavery or a relationship similar to slavery, subjugation or removal of organs.

Considering that the human trafficking is one of the most horrific crimes committed. According to the latest data, fifty million people lived in modern slavery in 2021²⁸ (which is more than the entire population of Spain). It is a worrying fact that globally the number of people in modern slavery has increased significantly in the last five years; 10 million more people were in modern slavery in 2021 compared to global estimates from 2016.²⁹ Furthermore, analyzing the latest data on detected victims of human trafficking by form of exploitation in Central and Southeastern Europe, it is revealed that sexual exploitation remains the main form of exploitation with 64% of detected cases, while forced labor accounts for 18% of cases and other forms of exploitation for another 18%. The latter includes cases of forced crime, exploitative begging and forced marriages. Forced begging and forced criminal activity are more common in the Western Balkans, although they are also present in other parts of the region.³⁰ BiH is still the country of origin, transit and final destination for victims of human trafficking.³¹ Observing the movement of identified/potential victims of human trafficking in BiH for the period 2013-2020 certain oscillations are noticeable in the movement of the number of identified victims of human trafficking, so in 2013 that number was (16), in 2014 (48), in 2015 (35), in 2016 (48),

²⁷ *Ibid.*

²⁸ Global Estimates of Modern Slavery Forced Labour and Forced Marriage, 2022, available at www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_855019/lang-en/index.htm, (visited on October 30, 2022).

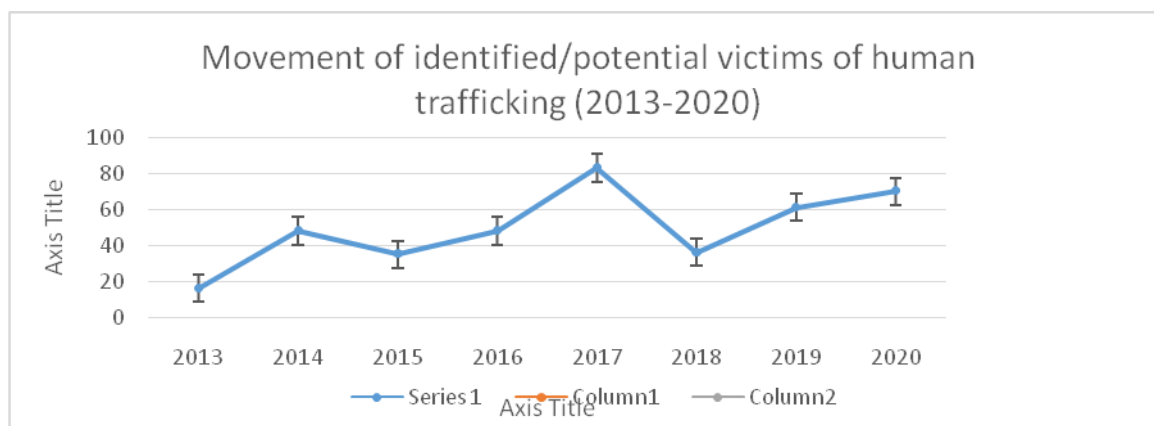
²⁹ *Ibid.*

³⁰ United Nations Office on Drugs and Crime (UNODC), Exploitation and abuse; the scale and scope of human trafficking in south eastern Europe, p. 6, May 2022, (visited on October 30, 2022).

³¹ Report on the situation in the field of human trafficking and the implementation of the strategy to combat human trafficking in Bosnia and Herzegovina for the year 2020. State coordinator for the fight against human trafficking, 2021, p. 3.

in 2017 (83), in 2018 (36), in 2019 (61) and in 2020 (70).³² The dark figure of human trafficking is believed to remain high.³³

Chart 1. Graphic representation of the number of potential victims of human trafficking in BiH (2013-2020).



By researching victimization (2003-2021) out of a total of 319 victims from 104 cases, the most common form is undoubtedly incitement to prostitution, even 672 actions were recorded related to incitement to prostitution, followed by various forms of human trafficking with 245 actions. Abandoning and abusing a child for the purpose of begging, excessive work and inducing them to commit criminal acts were recorded with thirteen acts, exploiting a child for pornography with six acts and establishing a slave relationship with two acts. Since the total number of victims is 319, it is clear that some victims were victimized by multiple actions.³⁴

According to data from final judgments in BiH (2003-2021), it was recorded that most victims were sexually exploited (90%), followed by forced begging (about 5%), and forced labor (slightly more than 4.5%).³⁵ Although, according to various reports, the Republic of Kosovo is at the same level in terms of human trafficking with BiH, when comparing the data, there are visible differences in relation to the forms of exploitation, which are not presented in the same way in both countries, but also in comparison with the data of the countries of Southeast Europe, they also differentiates.

The following table presents statistical data in the Republic of Kosovo regarding victims of human trafficking according to the form of exploitation.

Table 1. Victims of human trafficking according to the form of exploitation in the Republic of Kosovo (2016-2021)

³² See Reports on the situation in the field of human trafficking for 2014, 2015, 2016, 2017, 2018, 2019, 2020, available at http://msb.gov.ba/anti_trafficking/dokumenti/godisnji_izvjestaj/Archive.aspx?langTag=bs-BA&template_id=104&pageIndex=1 (visited on November 01, 2022).

³³ Mujanović, E., Datzer, D., Vučinić, H., Buha, M., *op.cit.*, p. 9. Although modern criminology has developed methods for assessing the so-called The "dark figures" of criminality (estimated number of unreported crimes), the actual scope and nature of child trafficking in BiH have never been seriously and comprehensively analyzed in order to arrive at some useful assessment. Therefore, the disparity between reported and unreported cases of child trafficking, as well as human trafficking in general, calls into question the official statistics and calls for additional victim research that could provide insight into the number of unreported crimes. see: Dottridge, M., Lola, Ninković, O., Sax, H., Vujović, S., Fenomen trgovine djecom u BiH, Vijeće Europe, lipanj 2021. godina, p. 13., available at <http://www.rs.cest.gov.ba/index.php/dokumenti/prirunik-qtrgovina-ljudimaq/3205-fenomen-trgovine-djecom-u-bosni-i-hercegovini/file> (visited on November 11, 2022).

³⁴ Mujanović, E., Datzer, D., Vučinić, H., Buha, M., *op.cit.*, p. 65.

³⁵ *Ibid*, p. 68-69.

Victims of human trafficking according to the form of exploitation	2016 ³⁶	2017 ³⁷	2018 ³⁸	2019 ³⁹	2020 ⁴⁰	2021 ⁴¹
Exploiting others for prostitution	26	18	10	11	19	19
Exploitation for pornography and other forms sexual exploitation	00	00	01	00	01	00
Exploitation for services or forced labour	09	07	02	02	02	00
Exploitation for begging	00	03	00	00	01	03
Exploitation for holding in slavery or similar conditions	01	04	01	01	02	00
Exploitation for forced marriage	00	00	01	01	01	00
Exploitation capture or removal of organs	00	00	00	00	00	00
Total	36	32	15	15	26	22

Considering the specified data, it is evident that there is very little difference in terms of the number of victims in general, but also in the forms of exploitation, where according to the data presented, the most common form of exploitation is prostitution,⁴² as the second most common form is forced labor and as good information is the fact that no form of exploitation for slavery or organ harvesting was presented in this period.

In this sense, it is more than necessary to continue with the analysis of the most common forms of exploitation of victims of human trafficking.

Exploiting others for prostitution - As a form of exploitation, prostitution in general, but also in BiH and the Republic of Kosovo, is more pronounced than other forms of exploitation of victims of human trafficking.

It is proven that on a global level, about 64% of discovered victims of human trafficking in the world belong to exploitation for prostitution, but this form is much more pronounced in BiH and the Republic of Kosovo, in relation to BiH, 90% of cases refer to exploitation for the purposes of prostitution, while in the Republic of Kosovo this form appears differently in relation to BiH, e.g. 2016, about 72.22%, 2017, about 56.25%, 2018, about 66.67%, 2019, about 73.33%, 2020, about 73.08%, 2021, about 83.36 %. As can be seen the numbers differ from year to year and unfortunately their number is increasing and approaching BiH data on the exploitation of victims for the purposes of prostitution.⁴³

³⁶ Reports in 2018 of trafficked persons in Kosovo, available at https://xk.usembassy.gov/wp-content/uploads/sites/133/TIP_Kosovo_2018-Alb.pdf (visited on November 06, 2022).

³⁷ Maloku, Ahmet., & Maloku, Elda., PROTECTION OF HUMAN TRAFFICKING VICTIMS AND FUNCTIONALIZATION OF INSTITUTIONAL MECHANISMS IN KOSOVO. 16. 21-44, 2020. godina.

³⁸ *Ibid.*

³⁹ Reports in 2019 of trafficked persons in Kosovo, available at <https://childhub.org/sq/lajme-mbi-mbrojtjen-e-femijeve/kosova-raporti-i-vitit-2019-mbi-trafikimin-e-personave-ne-kosove> (visited on November 06, 2022).

⁴⁰ Reports in 2020 of trafficked persons in Kosovo, available at <https://childhub.org/sq/online-biblioteka-o-djecijoi-zastiti/kosove-raporti-i-vitit-2020-mbi-trafikimin-e-personave> (posjećeno 06.11.2022. godine).

⁴¹ Reports in 2022 of trafficked persons in Kosovo, available at https://xk.usembassy.gov/wp-content/uploads/sites/133/TIPReport2022Kosovo_Albanian.pdf (visited on November 06, 2022).

⁴² Today, prostitution takes the form of cruel exploitation of marginalized masses of women and children, who are thus in a slave position, similar to the past. Musa, I., TRGOVINA LJUDIMA-ROPSTVO 21. STOLJEĆA, Hum: časopis Filozofskog fakulteta Sveučilišta u Mostaru, Vol. 12 No. 17. - 18., p. 91., 2017. godina, available at <https://hrcak.srce.hr/200585> (visited on November 07, 2022).

⁴³ In the territory of the European Union, a trend was recorded according to which human trafficking for the purpose of sexual exploitation is the most common form (56%), while 26% of registered cases refer to labor exploitation of victims. see The Strategy for Combating Human Trafficking in Bosnia and Herzegovina (2020-2023), p.8., available

Necessary is to ask a question who are those victims and how does that activity take place?

Victims of human trafficking for the exploitation of prostitution - referring to statistical data, that is, to table number 1 and various reports made in the Republic of Kosovo regarding human trafficking and as a form of exploitation for prostitution, it follows that the majority of victims are female and that they are younger people, that is, to minors.

Table. 2. Age of victims of human trafficking in Kosovo (2017-2020)

Godine	2017 ⁴⁴	2018 ⁴⁵	2019 ⁴⁶	2020 ⁴⁷
Total number of victims of human trafficking	32	15	15	26
Number of child or minor victims of human trafficking	19	12	12	15
The number of child victims of human trafficking expressed in percentage	59.38%	80.00%	80.00%	57.69%

Table number 2 shows that the victims of human trafficking in the Republic of Kosovo are mostly minors, children, which fact should concern the state institutions responsible for the fight against human trafficking.⁴⁸

Of course, minors, respectively children are a social group that should be in educational institutions which means that they should be included in the educational process. From the other side, educational staff is obliged to bear the responsibility of monitoring them during the continuity of their education, their behavior, especially their deviant behavior and for any grounds of suspicion to inform the competent state authorities to take concrete measures against suspicious and illegal actions.

According to the Law on Criminal Procedure of the Federation of BiH,⁴⁹ Article 228, paragraph 2. (analogous to Articles 231, paragraph 2 of the Law on Criminal Procedure of BiH⁵⁰, Article 221, paragraph 2 of the Law on Criminal Procedure of the RS⁵¹ and Article 213, Paragraph 2 of the Law on

at http://www.msb.gov.ba/anti_trafficking/dokumenti/planovi/Archive.aspx?pagelIndex&pagelIndex=1&langTag=hr-HR (visited on November 09, 2022).

⁴⁴ Reports in 2019 of trafficked persons in Kosovo, available at <https://childhub.org/sq/lajme-mbi-mbrojtjen-e-femijeve/kosova-raporti-i-vitit-2019-mbi-trafikimin-e-personave-ne-kosove> (visited on November 07, 2022).

⁴⁵ Reports in 2020 of trafficked persons in Kosovo, available at <https://childhub.org/sq/online-biblioteka-odjecijoj-zastiti/kosove-raporti-i-vitit-2020-mbi-trafikimin-e-personave> (visited on November 07, 2022).

⁴⁶ Reports in 2019 of trafficked persons in Kosovo, available at <https://childhub.org/sq/lajme-mbi-mbrojtjen-e-femijeve/kosova-raporti-i-vitit-2019-mbi-trafikimin-e-personave-ne-kosove> (visited on November 07, 2022).

⁴⁷ Reports in 2020 of trafficked persons in Kosovo, available at <https://childhub.org/sq/online-biblioteka-odjecijoj-zastiti/kosove-raporti-i-vitit-2020-mbi-trafikimin-e-personave> (visited on November 07, 2022).

⁴⁸ For the nineteen-year research period in Bosnia and Herzegovina, the victimization of 74 minors was determined (or below four per year) and mostly for the purpose coercion to begging. see: Mujanović, E., Datzner, D., Vučinić, H., Buha, M., *op.cit.*, p. 66.

⁴⁹ Criminal Procedure Law of Federation of Bosnia and Herzegovina (Službene novine Federacije BiH broj: 35/2003, 56/2003 - ispravka, 78/2004, 28/2005, 55/2006, 27/2007, 53/2007, 9/2009, 12/2010, 8/2013, 59/2014 i 74/2020).

⁵⁰ Criminal Procedure Law of Bosnia and Herzegovina (Službeni glasnik BiH" broj: 3/2003, 32/2003 - ispr, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/2009 - dr. zakon, 93/2009, 72/2013 i 65/2018).

⁵¹ Criminal Procedure Law of RS (Službeni glasnik RS broj: 53/2012, 91/2017, 66/2018 i 15/2021).

Criminal Procedure of the Brčko District of BiH⁵² health workers, teachers, educators, parents, guardians, adoptive parents and other persons who are authorized or obliged to provide protection and assistance to minors, to supervise, raise and educate minors, and who find out or assess that a minor is a victim of sexual, physical or any other abuse, they are obliged to immediately inform an authorized official or the prosecutor about this suspicion. Law of Criminal Procedure of the Republic of Kosovo⁵³ Article 79, paragraph 2 stipulates that social and health workers, teachers, educators and other persons who perform similar tasks and who know or discover that there is a reasonable suspicion that a child is a victim of a criminal offense, especially in the case of a criminal offense against sexual integrity, are obliged to report it immediately. If we compare these provisions, it is evident that all laws determine the same way of reporting a criminal offense by persons who have direct contact with children, so we can conclude from this that in case of reasonable suspicion regarding any criminal offense,⁵⁴ especially the criminal offense of trafficking people, must immediately report the same to the competent state authorities in order to initiate an investigation.

However, even the states try almost every day to prevent this phenomenon in the first phase, but human traffickers still find opportunities and alternatives to bring their victims to join the chain of human trafficking.

Traffickers recruit women and girls with the promise of marriage or employment as dancers and singers, and force victims into sex trade in private homes and apartments, night clubs and massage parlors.⁵⁵ What does it mean that human traffickers have changed their way of working from public houses as it was at the beginning of this illegal activity in the Republic of Kosovo.⁵⁶

Based on the above data, it is necessary to question this form of human trafficking, and to ask why this form of human trafficking is so pronounced in BiH and the Republic of Kosovo in relation to other countries of Southeast Europe.

3. Causes of human trafficking in Bosnia and Herzegovina and the Republic of Kosovo

It is a well-known fact that BiH and the Republic of Kosovo are two countries of Southeastern Europe that fought for independence, that is, secession from the former SFRY, and there were a lot of victims of different types of crime, so it can be said that the war has its influence on crime.

The impact of war on crime can be divided in three time periods: pre-war, war and post-war periods.⁵⁷ It is a well-known fact that when a crime exists or is reported, the victims of that crime are present, so that in every period of war there are different victims.⁵⁸ Thus, war and the circumstances of war appear as a strong factor in victimization. During war, a large number of people are usually victimized, from all walks of life. The characteristics of the victims of wars is the fact that one person can be a victim or victimized several times, such as being: injured, beaten, tortured, deported, taken hostage, forced into slavery, sexually abused, morally or physically degraded.⁵⁹

When it comes to these two countries, a very important fact must be considered, the number of military international members in both countries drastically increased, IFOR, SFOR,⁶⁰ in BiH and

⁵² Criminal Procedure Law of the Brčko District of BiH (Službeni glasnik Brčko distrikta BiH broj: 34/2013 - prečišćen tekst, 27/2014, 3/2019 i 16/2020).

⁵³ Criminal Procedure Law of Kosovo (Gazeta Zyrtare e Republikës së Kosovës / nr. 37 / 28 dhjetor 2012, Prishtinë).

⁵⁴ Beqiri, F., *op.cit.*, p. 189.

⁵⁵ Reports in 2022 of trafficked persons in Kosovo, available at https://xk.usembassy.gov/wp-content/uploads/sites/133/TIPReport2022Kosovo_Albanian.pdf (visited on November 6, 2022).

⁵⁶ By July 2003, there were over 200 bars, restaurants, clubs and cafes in Kosovo where women victims of trafficking were believed to be working in forced prostitution. see <https://www.amnesty.org/en/wp-content/uploads/2021/09/eur700102004sq.pdf> (visited on November 06, 2022).

⁵⁷ Petrović, B., & Meško, G., *Kriminologija*, p. 193., Sarajevo, 2008.

⁵⁸ Beqiri, F., *op.cit.*, p. 189.

⁵⁹ Halili, R., *Viktimologjia*, p. 89. Pristina, 2011.

⁶⁰ According to UN Security Council Resolution 1088 of 12 December 1996, SFOR was authorized to implement the military aspects of the Peace Agreement as the legal successor of IFOR. Initially, SFOR had about 32,000 soldiers in BiH - about half as many as IFOR. Building on the general compliance with the terms of the Peace Agreement, the smaller SFOR was able to concentrate on the implementation of all the provisions of Annex 1A of the Peace Agreement. See <https://www.nato.int/sfor/docu/d981116a.htm> (visited on November 11, 2022).

KFOR,⁶¹ in the Republic of Kosovo, also administrative staff UNMIK⁶² in the Republic of Kosovo, in the Republic of Kosovo in addition, there was not a small number of international non-governmental organizations, at that time there was a general opinion that all international actors who were involved in BiH and the Republic of Kosovo had only a positive influence but unfortunately it seems that there was also a negative impact. This fact was established by Amnesty International, which reported that since the establishment of the international peacekeeping force (KFOR) in July 1999 and the establishment of the civilian administration of the United Nations Interim Mission in the Republic of Kosovo (UNMIK), the Republic of Kosovo has become the largest destination country for women and girls trafficked for forced prostitution.⁶³

Accordingly, we can conclude that the special cause that had an impact on the increase in the number of this form of human trafficking in these two countries are: hiring a large number of international personnel after the war, but this pattern is not the only one. Lack of educational opportunities, high unemployment rate, unavailability of social and health protection, as well as the absence of timely and effective protection of persons from violence and discrimination⁶⁴, in this sense the level of unemployment in BiH and in the Republic of Kosovo, is sufficiently expressed⁶⁵, also poverty.

The World Bank in cooperation with the Kosovo Agency for Statistics (ASK) published "Results of consumer poverty in the Republic of Kosovo in the period 2012-2017". In this report, two poverty lines are used, one limit that is considered adequate to meet basic needs and the lower limit of extreme poverty. According to the aforementioned report, it is estimated that 18% of the population of Kosovo lives below the poverty line, and 5.1% of the population lives below the extreme poverty line.⁶⁶

Data from 2015 show that in BiH about one million inhabitants live on the poverty line, and even 600,000 live below the line. About 700,000 people do not have the opportunity to provide themselves with food for dinner, and about 30,000 eat in the public kitchens. Although the poverty rate in BiH has been decreasing, half a million people still live below the poverty line which was also shown by the data from the research of the State Statistics Agency from 2017.⁶⁷

⁶¹ KFOR was firstly composed of approximately 50,000 men and women from NATO member countries, partner countries and non-NATO countries under unified command and control. By the beginning of 2002, KFOR was reduced to about 39,000 soldiers. The improved security environment enabled NATO to reduce the number of KFOR troops to 26,000 by June 2003, then to 17,500 by the end of 2003, and to about 3,500 today. see <https://jfcnaples.nato.int/kfor/about-us/history> (visited on November 11, 2022).

⁶² With its Resolution 1244 (1999), the Security Council established the mandate of the United Nations Interim Administration Mission in Kosovo (UNMIK). The mission is led by the Special Representative of the Secretary-General, who has civilian executive powers entrusted to him by Security Council Resolution 1244 (1999). see <https://unmik.unmissions.org/mandate> (visited on November 11, 2022).

⁶³ Women trafficked in Kosovo for prostitution, available at <https://www.amnesty.org/en/wp-content/uploads/2021/09/eur700102004sq.pdf> (visited on November 10, 2022)

⁶⁴ <http://www.atina.org.rs/rs/%C5%A1ta-su-uzroci-zbog-kojih-neko-postaje-%C5%BErtva-trgovine-ljudima> (visited on November 11, 2022)

⁶⁵ A significant proportion of the young population in the Republic of Kosovo is unemployed (55.0%) and the unemployment rate for women is higher (62.5%) than for men (51.8%). Strategy for Youth Ministry of Culture, Youth and Sport (2019-2023) p. 13. available at https://www.mkrs-ks.org/repository/docs/Strategy_for_Youth_2019-2023.pdf (visited on November 10, 2022). According to data from the 2020 Labor Force Survey, the activity rate in Bosnia and Herzegovina was 47.7% (reference age 20-64), the employment rate 40.1% (reference age 20-64), the unemployment rate 15.9 % (reference age 15-74 years), and the rate of inactivity is 52.3%. Of the total active population, 60.4% are men and 39.6% are women. Of the total number of employees, 61.7% are men and 38.3% are women, while men make up 53.7% and women 46.3% of the total number of unemployed. Unemployment particularly affects the age group from 25 to 49 years, which accounts for 60.6% of unemployed persons (22.9% falls on the age group from 15 to 24 years, 16.4% from 50 to 64 years and 0.1% on older of 65 years). Report on BiH for 2021, European Commission, Strasbourg, 19.10.2021, SWD(2021) 291 final, p. 84., available at https://europa.ba/wp-content/uploads/2021/10/izvjestaj-o-bosni-i-hercegovini-za-2021-godinu_1636467943.pdf (visited on November 10, 2022).).

⁶⁶ World Bank Europe and Central Asia Region Global Poverty and Equality Practice & Kosovo Statistics Agency Department of Social Statistics Living Standards Sector (2019). Results of consumer poverty in the Republic of Kosovo, p. 15. available at <http://ask.rks-gov.net/media/3186/stat-e-varferise-2012-2015.pdf> (visited on November 11, 2022).

⁶⁷ Kovačević, K., & Petrović, J., Siromaštvo i migracije (Bosanskohercegovačka perspektiva), Banja Luka, str. 45-46., 2018. godina.



CONCLUSION

Human trafficking is a phenomenon that as such represents the most severe form of criminal offenses against humanity and values protected by international law with the characteristics of organized transnational crime.

Both countries are in transition suitable ground for various criminal activities, including human trafficking, in which countries the statistics show an increase in victims of human trafficking. Comparing these two countries, it is clear that they are bound by similar causes that lead to human trafficking from the impact and consequences of war events, high levels of unemployment, problems of poverty, social inequality, etc.

Despite the existence of legal regulations, which could be said to be at a satisfactory level, with the need for further harmonization with international norms, both countries should continue to focus their efforts on the improvement of legal and institutional mechanisms through ensuring a multidisciplinary approach to the analysis of manifestations, ways of manifestation, causes that favor and lead to the constant increase of these negative phenomena.


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