

## CONTEMPORARY NORMATIVE PRESUMPTIONS OF COMBATING TRAFFICKING IN HUMAN BEINGS

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**Abstract.** *In the paper, the authors present the incrimination of the criminal offense of human trafficking in the legislation of the countries that belonged to the unified legal space of the former SFRY, as well as in the national legislation of the Republic of Serbia, and compare the legal solutions, highlighting examples of good practice and similarities from the comparative law of the indicated countries with domestic law. The geographical proximity of once unified SFRY area and a similar legal heritage carry potential for combating human trafficking in the Western Balkans.*

**Key words:** *human trafficking, Western Balkans, criminal legislation, prevention, comparative law.*

### 1. INTRODUCTION

The issues included in the crime prevention policy necessarily define the topics of preventing the occurrence of certain types of crime, the most significant of which is human trafficking (Јовашевић, Костић: 2012). Trafficking in human beings, as a type of crime and victimization, is an organized criminal activity for the purpose of obtaining material benefits. It includes a range of diverse and interconnected actions aimed at achieving this goal (Golubović, 2011). Seen as a continuous process and part of a branched network of organized crime, which begins at the moment of establishing the first contact with the victim and continues as long as the victim is exploited, human trafficking includes a number of different criminal actions: recruitment of victims who, fleeing from war, hunger and poverty, believe in the truth of false promises about a richer and more comfortable life in another place or another country; taking

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away, transferring and housing the victims who voluntarily or forcibly began their hellish journey to the promised "paradise"; mediation between sellers and buyers as traders of human misfortune; bringing the victim into a state of slavery and hopeless position; systematic subjection of the victim to the cruelest forms of forced labor and sexual exploitation in order to obtain the highest possible earnings (Obradović, 2011). Criminal acts that constitute human trafficking can be undertaken within the borders of one country but they are very often undertaken on the territory of two or more countries. Accordingly, trafficking in human beings can occur within the national borders or have a transnational, international character. It is the most significant form of violation of human rights of people in the subordinate position of victims (Kostić: 2007; Konstantinović-Vilić, Kostić: 2006).

Within the international framework, human trafficking became a subject matter of consideration during the 1990s, when the international community intensified work on finding adequate mechanisms to combat this extremely socially dangerous phenomenon. Numerous activities of international organizations and the adoption of a series of legal documents (recommendations, resolutions, conventions, protocols and declarations) influenced the prohibition of human trafficking both internationally and nationally. However, very few countries have specific laws against human trafficking. In addition, in most countries in the world, there are no legal provisions regulating the use of special police techniques or means in the investigation of complex crimes, such as human trafficking, and the ways of obtaining profits of criminal organizations. There are also complex legal terms about legal frameworks for the cooperation of police and judicial authorities in repressive actions against human trafficking due to the complex extradition issues, as one of the most important forms of international legal assistance in criminal matters whose implementation encroaches on national sovereignty (Đorđević, 2011: 1). Even when effective laws exist, human trafficking is primarily seen as an immigration issue rather than a dangerous criminal activity, such as drugs or arms trafficking. As it is often assumed that there is the consent of the person who was sold or bought, the sentences imposed on human traffickers, if they are prosecuted at all, are quite lenient or they are released on bail (Јовашевић, Костић, 2012:83).

A recent event in Serbia, which included the activation of the Amber Alert system (Amber Alert, 2025)<sup>1</sup> in the case of the disappearance of a two-year-old girl (Tanjug, 2025),<sup>2</sup> or the events in Serbia and Brčko where the police arrested a group involved in children trafficking (Buka, 2025),<sup>3</sup> once again raises the question of whether the phenomenon of human trafficking is realistic in the first quarter of the 21<sup>st</sup> century. The question is preceded by a dilemma about the existence of sufficiency of legal norms and international cooperation in combating this phenomenon.

The paper is divided into two basic parts: the first part refers to the normative framework and criminal jurisdiction on combating trafficking in human beings in the former SFRY legal space; in the second part, the authors focus on the necessity of linking scientific and public interest in suppressing human trafficking in Serbia and countries in the region. The authors compare the normative similarities and differences in the incrimination of human trafficking acts in these geographically connected areas, which may ultimately contribute to successful fight against human trafficking.

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<sup>1</sup> Amber Alert Srbija (2025), Šta je Amber Alert ? (What is Amber Alert?), accessed 6.3.2025.

<sup>2</sup> Tanjug (2025). Pronađena dvogodišnja Dunja Marković iz Uba; Dunjina baka veruje da je neko odveo i vratio na mesto na kom je pronadana (Two-year-old girl Dunja M. from Ub found; Dunja's grandmother believes someone took her and returned her to the place where she was found), Tanjug, 4.3.2025.

<sup>3</sup> Buka (2025). Kuća strave" otkrivena i u Srbiji, Brčko nije usamljen slučaj (House of Horrors discovered in Serbia, Brčko is not an isolated case), 1.3.2025 (accessed 6.3.2025).

## 2. COMBATING TRAFFICKING IN HUMAN BEINGS BY THE NORMS OF CRIMINAL LEGISLATION IN NEIGHBORING COUNTRIES

The European Union - Western Balkans summit, which was held in Thessaloniki on 21 June 2003, was considered to be one of the most significant events in the context of the European integration of the countries in the region. On that day, the leaders of the European Union and its member states, the then acceding countries, and the leaders of the Western Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia and Montenegro) adopted the Declaration which (for the first time) unequivocally confirmed the European perspective for all Western Balkan countries. The Thessaloniki Summit (2003) was marked by the slogan "The future of the Balkans is in the European Union" appeared. A day earlier, on 20 June 2003, acting upon the initiative of Greece, the European Council approved the Thessaloniki Agenda for the Western Balkans. It will soon be 23 years since that event but, during that period, only Croatia became a member of the European Union in 2013 (EWB, 2023).

However, more than twenty years before the Thessaloniki Summit, another significant event was the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY). Slovenia and Croatia declared independence on 25 June 1991, which marked the end of the SFRY. By April 1992, two other republics, Macedonia and Bosnia and Herzegovina, adopted declarations of independence, leaving only Serbia and Montenegro in the federation. As explained on the website of the International Criminal Tribunal for the former Yugoslavia (ICTY), "on 27 April 1992, these two remaining republics declared the Federal Republic of Yugoslavia (FRY). In 2003, the FRY was reorganized and renamed the State Union of Serbia and Montenegro. This union formally ceased to exist after the declaration of independence of Montenegro on 3 June 2006 and Serbia on 5 June 2006" (ICTY, n.d.). In addition to the state independence of all former republics, these new states are part of the geographical space where the echos of different legal solutions permeate each other. In addition, there are similarities in terms of cultural understandings, actions and perspectives on different life challenges. Thus, a review of the criminal law normative solutions of all six newly established states will ensue as part of the most significant repressive fight against human trafficking.

*The Republic of Slovenia* declared its independence from SFR Yugoslavia in June 1991. It acceded to the European Union on 1 March 2004, as the first former SFRY country with such a status. In the criminal law of Slovenia, human trafficking is criminalized under Article 113 of the Criminal Code,<sup>4</sup> which provides the basic form, three more serious forms and two special forms of this criminal offence.<sup>5</sup> The Republic of Slovenia is a country where human

<sup>4</sup> The Criminal Code of Slovenia (KZ-1), *Official Gazette of the Republic of Slovenia*, no. 50/12-official consolidated text, 54/15, 6/16-amended, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22-Amendments to the Criminal Procedure Code, 16/23, and 107/24-decision of the Constitutional Court.

<sup>5</sup> Article 113 § 1 of the CC of Slovenia envisages that the basic form of this criminal offence, punishable by imprisonment for one to ten years and a fine, is committed by a person who, to exploit prostitution or other forms of sexual abuse, forced labor, begging, slavery, or slavery-like practices, committing criminal offenses, or trafficking in organs, human tissues, or blood, purchases, takes over, stores, transports, sells, delivers, or otherwise disposes of, or exercises control over another person, regardless of how it is carried out or the possible consent of the person. Article 113 § 2 of the CC prescribes a more serious form of the offence, punishable by imprisonment for a term of three to fifteen years, which exists when the basic form of the offence: a) is committed against a minor, b) is committed by force, threat, deception, abuse of a position of dependence or subordination or by giving or receiving any benefit to obtain the consent of a person who has control over another person, or c) is committed with the intention of forced pregnancy or artificial insemination. Article 113 § 3 refers to the criminal offence, punishable by imprisonment for up to three years and a fine, which is committed by a person who, with the intent

trafficking takes place but also a country of transit. In most cases, victims are exploited for prostitution and other forms of sexual abuse, while other forms of exploitation are less common. In 2023, the police investigated 74 suspected offenders of human trafficking; the criminal offense of human trafficking was confirmed in 25 cases and criminal charges were filed with the competent state prosecutor's offices. In that year, the police identified 21 victims of human trafficking and 60 potential victims of human trafficking. All identified victims were female, and citizens of Bosnia and Herzegovina, Montenegro, Croatia, China, Romania, Slovenia, Serbia, and Ukraine. The investigation was carried out against 16 persons, 11 of whom were men and 5 women, suspected of the crime of human trafficking, mostly Slovenian citizens.<sup>6</sup> If we look at the countries whose citizens were victims of human trafficking in the said period in Slovenia, it clearly indicates the importance of looking at the Western Balkans as a whole not only in terms of prevention but also in terms of combating human trafficking, the importance of harmonization of legal norms is desirable and ultimately necessary, as well as the importance of international cooperation in combating human trafficking in the former SFRY countries that were once part of a single legal order. In Slovenia, the crime of human trafficking is exclusively prosecuted by the Specialized State Prosecutor's Office. The presence of such a specialized state body for the prosecution of serious criminal offenses (such as human trafficking) is an example of good practice because its activities facilitate and speed up the prosecution of the perpetrators, enable the implementation of the procedure, and lead to serious consequences both for the individual and for society as a whole. In addition to the criminal offense of trafficking in human beings, the criminal legislation of the Republic of Slovenia also envisages the offense of trafficking in human body parts, sex cells, blood, and blood components (Article 181a of the CC of Slovenia).

*The Republic of Croatia* declared state independence on 25 June 1991 and became a member of the European Union on 1 July 2013. The Criminal Code of the Republic of Croatia<sup>7</sup> criminalizes human trafficking as a distinctive offense (Article 106 of the CC)<sup>8</sup>

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of committing the offense under paragraphs one or two of this Article, retains, takes away, hides, damages or destroys a public document proving the identity of a victim of human trafficking. Article 113 § 4 refers to the form of the criminal offense of trafficking in human beings committed by a person who knows that someone is a victim of human trafficking and uses the "services" of exploitation of that person; the prescribed punishment for this form of crime is imprisonment for up to three years and a fine. Article 113 § 5 provides that, if the offense from paragraphs one, two, or three is committed as a member of a criminal organization, or if a significant property benefit is gained, the perpetrator shall be punished by imprisonment for three to fifteen years, in addition to a cumulative fine. The same punishment, as prescribed in the previous paragraph, is imposed on an official or public servant who, in the performance of his/her duties, commits an act described in Article 113 § 1, § 2 and § 3 of the CC.

<sup>6</sup> Republic of Slovenia/Gov.SI (2024). Combating trafficking in human beings, Detection, investigation and prosecution (30.8.2024), <https://www.gov.si/en/registries/projects/combating-trafficking-in-human-beings/pregon/>.

<sup>7</sup> Criminal Code of Croatia, consolidated text, *Narodne novine* br. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024.

<sup>8</sup> Article 106 § 1 of the CC of Croatia prescribes the criminal offense of human trafficking, which is punishable by a prison sentence of one to ten years for anyone who, by using force or threat, deception, fraud, kidnapping, abuse of power or a position of weakness or dependence, or by giving or receiving a payment or other benefit to obtain the consent of a person controlling another person, recruits, transports, transfers, harbors, or receives a person. This also applies to anyone who exchanges or transfers control over a person with the intent to exploit them through forced labor, servitude, slavery, or similar relationships, or to exploit them for prostitution or other forms of sexual exploitation, including pornography, illicit or forced marriages, organ trafficking, or use in armed conflict, or for the commission of any unlawful act. The punishment specified in Article 106 § 2 also applies to anyone who recruits, transports, smuggles, harbors, or receives a child, or exchanges or transfers custody of a child, to exploit them in forced labor, servitude, slavery, or similar relationships, or for prostitution, sexual exploitation, pornography, forced marriages, illegal adoption, organ trafficking, or use in armed conflict. If the

and addresses it indirectly in several other provisions. First, under the heading "Crimes Against Humanity", Article 90 § 1 (item 3) criminalizes acts committed by individuals in violation of international law as part of a widespread or systematic deliberate attack against the civilian population. It includes the enslavement of a person in a manner that grants the perpetrator all or some of the attributes of ownership, including those applied in the context of human trafficking. A distinctive feature of the Croatian criminal law system is the criminalization of trafficking in human body parts and human embryos as a separate offense, prescribed in Article 107 of the CC.<sup>9</sup> Although Croatia initially appeared as a transit country when it comes to human trafficking, in recent years, Croatia has been increasingly emerging as the country of origin and final destination of human trafficking victims. Along with the Republic of Serbia, Bosnia and Herzegovina and the Republic of Slovenia, Croatia continues to be an important transit route used by human traffickers. Thus, in order to ensure efficient fight against this form of organized crime, there is a need for effective cooperation between these countries, as well as the harmonization of legal regulations and the actions of judicial authorities. In the period 2002-2022, a total of 410 victims of human trafficking were identified in Croatia: the lowest number of victims (6) in 2005 and the highest number of victims (76) in 2018. We can observe a growing number of human trafficking victims after Croatia acceded to the European Union, which is a direct consequence of the harmonization of regulations and standards with the EU law (RC/MUP, 2025).<sup>10</sup> When it comes to Croatia, we may also look at the practice of the European Court of Human Rights (ECtHR), which rendered a judgment in a human trafficking case *S.M. v. Croatia*<sup>11</sup> concerning a violation of Article 4 of the European Convention on Human

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act referred to in Article 106 § 1 is committed against a child, or if the act mentioned in Article 106 § 1 and § 2 is committed by an official performing his duties, or if the offense is committed against multiple individuals or endangers the life of one or more persons intentionally, the perpetrator is subject to imprisonment for a term of three to fifteen years (Art. 106 § 3). The punishment envisaged in the Art. 106 § 1 also applies to a person who, knowing that an individual is a victim of human trafficking, uses the services of that person, resulting in exploitation. Under Art. 106 § 5, anyone who retains, takes, hides, damages, or destroys a travel document or a document proving the identity of another person in order to enable the commission of the acts specified in Art. 106 § 1, § 2 and § 3 CC shall be punished by imprisonment for up to three years. An attempt to commit such acts is punishable under an explicit legal provision. The consent of the person who has been exploited is irrelevant to the existence of the criminal offense (Art. 106 § 7 CC of Croatia).

<sup>9</sup> Article 107 § 1 of the CC stipulates that a person who acquires, possesses, transports, transfers, keeps, receives, or transplants a human organ, tissue, cell, embryo, or fetus, knowingly or reasonably suspecting that these originate from a victim of human trafficking for organ removal (as defined in Article 106), shall be punished by imprisonment for a term of one to eight years. Under Article 107 § 2, a perpetrator who, through the use of force, threat, deception, fraud, kidnapping, abuse of power or a difficult position, or a relationship of dependence, acquires, possesses, transports, keeps, or receives a human organ, tissue, cell, embryo, fetus, or corpse to remove body parts, shall be subject to imprisonment for one to eight years. Anyone who acquires a human organ, tissue, cell, embryo, fetus, or corpse in exchange for money or other material benefit will be sentenced to imprisonment for a term of six months to five years. Under Article 107 § 3, those who induce or assist another individual to donate their organ, tissue, cell, embryo, or fetus in exchange for money or another material benefit will face the same penalty. If an individual removes or transplants a human organ, tissue, cell, embryo, or fetus, knowingly or reasonably suspecting that the donor received monetary or material compensation for the act, they will be punished with imprisonment for up to three years (Article 107 § 4). Anyone who advertises the offer or demand for human organs, tissues, cells, embryos, fetuses, or corpses in exchange for monetary compensation or other material benefits will be punished with the same sentence (Article 107 § 6 of the CC of Croatia).

<sup>10</sup> RH/MUP Ministarstvo unutarnjih poslova (2025). Postoji li trgovanje ljudima i u Hrvatskoj? (Does human trafficking exist in Croatia?), Ministry of Internal Affairs, Croatia, <https://mup.gov.hr/istaknute-teme/nacionalni-programi-planovi-i-projekti/nacionalni-programi-i-planovi/suzbijanje-trgovanja-ljudima/postoji-li-trgovanje-ljudima-i-u-hrvatskoj/282027> (accessed 7.3 2025)

<sup>11</sup> ECtHR case: *S.M. v. Croatia* [GC], application no. 60561/14 (judgment 25/06/2020), ECtHR.

Rights (ECHR).<sup>12</sup> The Court considered three issues: 1) whether there was an adequate legal and regulatory framework in Croatia for the protection of the applicant's rights under Article 4 ECHR; 2) whether the applicant was provided adequate help and support to reduce the fear and pressure during her testimony; and 3) whether the national authorities respected their procedural obligations.<sup>13</sup> Based on the ECtHR case law and this landmark case, it can be concluded that a successful fight against human trafficking shall include not only an appropriate substantive and procedural law but also the relevant action of state authorities throughout the procedure towards the victim who must be protected from secondary victimization.

*The Republic of North Macedonia* declared its independence on 8 September 1991. and acquired the status of a candidate for admission to the EU membership in 2005. The Criminal Code of Macedonia<sup>14</sup> criminalizes human trafficking by prescribing a minimum sentence of four years' imprisonment for anyone who recruits, transports, transfers, buys, sells, harbors, or receives a person for exploitation<sup>15</sup> by using force or serious threat, deception or other forms of coercion, including kidnapping, fraud, abuse of power or a position of weakness, physical or mental incapacity, or by providing or receiving money or other benefits (Article 418a § 1 CC). The Macedonian Criminal Code includes two notable peculiarities. First, legal entities may be held criminally liable for the commission of this crime, by imposing a fine as a penalty (Article 418a § 6 CC). Second, Article 418a § 7 CC prescribes the mandatory seizure of assets used in the commission of this crime (real estate and means of transportation). In the 2008 amendments to the Criminal Code, trafficking in minors was envisaged as a distinctive criminal offense under Article 418g of the CC, which prescribed punishment of at least eight years' imprisonment. In that regard, the UNICEF Report (2024)<sup>16</sup> presents worrying data about human trafficking in North Macedonia, particularly given the fact that children make up almost 70% of victims in North Macedonia; while the average victim age is 15, most victims are girls who are often

<sup>12</sup> CoE European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Council of Europe, Rome, 4.XI 1950, European Court of Human Rights Council of Europe.

<sup>13</sup> ECtHR Case: *S.M. v. Croatia* [GC], no. 60561/14 (25/06/2020) § 61.

<sup>14</sup> Criminal Code, *Official Gazette of the Republic of Macedonia*, no. 37/96; Act amending and supplementing the Criminal Code, *Official Gazette of the RM*, no. 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09 years, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013. Article 184 § 3 of the Act was repealed by Decision of the Constitutional Court of the RM U. no. 220/2000 published in the *Official Gazette of the RM*, Part of paragraph 2 of Article 101 was repealed by Decision of the Constitutional Court of the RM U. no. 210/2001 published in the *Official Gazette of the RM*, no. 16/2002. Article 423 of the Act was repealed by Decision of the Constitutional Court of the RM, U.no. 206/2003 published in the *Official Gazette of the RM*, no. 40/2004. Article 38-d of the Act was repealed by Decision U.no. 228/2005 published in the *Official Gazette of the RM*, no. 50/2006.

<sup>15</sup> Under Article 418a § 1 CC of Macedonia, this exploitation may involve prostitution, other forms of sexual exploitation, pornography, forced labor, slavery, forced marriage, forced insemination, illegal adoption, or similar relationships, including the illegal transplantation of human body parts. Article 418a § 2 introduces a specific aggravated form of this criminal offense, prescribing an equal minimum sentence of four years' imprisonment for anyone who, to commit the offense specified in the first paragraph, seizes or destroys an identity card, passport, or other identification documents. A person who knowingly uses or enables another person to use the sexual or other services resulting from the exploitation of a victim of human trafficking shall be punished with imprisonment ranging from six months to five years, provided they knew or should have known that the individual was a victim of trafficking (Article 418a § 3). If the offense described in Article 418a § 1, § 2 and § 3 is committed by an official while performing his/her duties, the perpetrator may face imprisonment for at least eight years (Article 418a § 4). It is also important to note that the victim's consent to exploitation does not negate the criminality of the act.

<sup>16</sup> UNICEF (2024). Children constitute 70 per cent of all identified victims of human trafficking from North Macedonia, <https://www.unicef.org/northmacedonia/press-releases/children-constitute-70-cent-all-identified-victims-human-trafficking-north-macedonia> (accessed 7.3.2025).

exposed to dual exploitation: sexual and labor. These disturbing facts are further aggravated by the growing trends in the digital age. The digital environment has created a favorable environment for human traffickers to be more difficult to detect, and on the other hand, to significantly increase their profits with the help of digitalization (UNICEF, 2024). Notably, during 2023, the government of North Macedonia increased its law enforcement efforts. The competent state authorities in North Macedonia, instituted 9 proceedings for the criminal offense of human trafficking: seven related to sexual exploitation and two related to labor exploitation. This is a positive development, considering that only four proceedings related to human trafficking were conducted in 2022, and that 18 defendants were prosecuted in 2023. Observing these data, it can be concluded that this crime is mostly committed in complicity. In this period, the courts in North Macedonia convicted 16 human traffickers, six of whom were sentenced to a term of imprisonment ranging from four to six years, while no data are available on the remaining ten offenders. As the imposed sentences are closer to the legal minimum, the data indicate a lenient punishment policy for this serious crime (US State Department, 2024).<sup>17</sup>

*The Republic of Bosnia and Herzegovina* declared its independence from SFRY on 5 April 1992. Bosnia and Herzegovina (B&H) consists of two entities: the Federation of Bosnia and Herzegovina, and Republika Srpska. Brčko District of B&H has a special status. On 21 March 2024, the Council of the European Union decided to open accession negotiations with Bosnia and Herzegovina on membership in the EU.<sup>18</sup> The Criminal Code of Bosnia and Herzegovina<sup>19</sup> defines the crime of international trafficking in persons as an independent criminal offense (Article 186, Chapter XVII: Criminal Offenses Against Humanity and Values Protected by International Law).<sup>20</sup> The criminal law of B&H includes the following provisions: a) a special form of this offense, where a prison sentence ranging from one to five years applies to individuals who forge, obtain, or issue travel or identity documents, or who use, retain, seize, alter, damage, or destroy the travel or identity documents of another person to facilitate international human trafficking (Article 186 § 4), b) the confiscation of objects, means of transport, and facilities used in the commission of the criminal offense (Article 186 § 8); c) criminal proceedings will not be initiated against a human trafficking victim who is forced to commit other criminal offenses, provided that such conduct is directly related to their status of a trafficking victim (Article 186 § 10). Organized international trafficking in human beings is envisaged as a separate criminal offense (Article 186a of the CC).<sup>21</sup> The 2022 CPRC report "Research on the Judicial Practice

<sup>17</sup> US Department of State (2024). Trafficking in Persons Report: North Macedonia, <https://www.state.gov/reports/2024-trafficking-in-persons-report/north-macedonia/> (accessed 7.3.2025).

<sup>18</sup> Parlamentarna skupština BiH (2024). Ključni događaji u odnosima EU i Bosne i Hercegovine (Key events in EU-B&H relations, <https://www.parlament.ba/Content/Read/126?title=Klju%C4%8Dni-doga%C4%91aji-u-odnosima-EU-i-Bosne-i-Hercegovine> (accessed 7.3.2025).

<sup>19</sup> Criminal Code of Bosnia and Herzegovina, *Official Gazette of B&H*, no. 3/2003, 32/2003- corr., 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018, 46/2021, 31/2023 and 47/2023.

<sup>20</sup> According to Article 186 of the CC B&H, a person who, through the use of force, threat of force, or other forms of coercion, including kidnapping, fraud, deceit, abuse of authority or influence, exploitation of a position of helplessness, or by giving or receiving payments or other benefits to gain consent from a person who has control over another, recruits, transports, transfers, harbors, or receives a person to exploit that individual in a country where they do not reside or of which they are not a citizen, shall be punished with imprisonment for a minimum of five years. This provision also covers any other form of exploitation (Article 186 § 7 of the CC of B&H).

<sup>21</sup> Under Article 186a of the CC, this crime is committed by an individual who organizes or manages a group or association which, through joint action, commits the criminal offense of international human trafficking. The penalty for this offense is a prison sentence of at least ten years or long-term imprisonment. Article 42b of the CC

of Prosecution of Human Trafficking in Bosnia and Herzegovina (2003-2021)", presented in Sarajevo in 2022 as part of a project implemented by the Crime Policy Research Center, was the first comprehensive analysis of the prosecution of human trafficking in Bosnia and Herzegovina. The subject of the analysis of this project was 104 finally concluded cases before the competent courts in Bosnia and Herzegovina, in which 319 persons were injured as victims, and criminal sanctions were imposed on 148 perpetrators of the criminal offense of human trafficking and related crimes (CPRC, 2022).<sup>22</sup> In this context, of particular importance is the case from the Canton of Tuzla, where a judge of the Cantonal Court in Tuzla convicted six human traffickers in November 2022 for organized child trafficking, sentencing one of the traffickers to 22 years of imprisonment and a total sentence of 52 years in prison for the other perpetrators of this serious crime. Although this case gives hope that human traffickers in B&H are being prosecuted and fairly punished, there are devastating facts that in previous years judges mostly prescribed sentences below the legal minimum, citing unreasonable mitigating circumstances on the part of the perpetrators. Human traffickers have often avoided serving prison sentences by referring to the provision of Article 42a of the Criminal Code of B&H which prescribes that a prison sentence of up to one year is replaced by a fine (Klix, 2023).<sup>23</sup>

The Criminal Code of Republika Srpska (RepS)<sup>24</sup> defines human trafficking as a specific criminal offense in Article 145 § 1.<sup>25</sup> The specific features of this criminal offense envisaged in the Code include the following provisions: a) a special form of the offense, punishable by a prison sentence ranging from two to twelve years, refers to the seizure, retention, falsification, or destruction of personal identification documents for the purpose of committing the offense outlined in the first paragraph (Article 145 § 2); b) the confiscation

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stipulates that, a sentence of long-term imprisonment ranging from 21 to 45 years may be imposed for the most serious forms of criminal offenses committed with intent. Additionally, any individual who acts within or assists the aforesaid group or association in the commission of this crime shall face imprisonment for at least ten years. The Code specifically emphasizes that the provisions concerning organized crime apply to members of organized groups or associations involved in human trafficking. Thus, Article 250§ 4 and § 5 of the CC prescribes that any individual who becomes a member of an organized criminal group which, through joint action, commits or attempts to commit a criminal offense as defined by the B&H laws, shall be subject to imprisonment for a minimum of one year. Furthermore, a member of an organized crime group who provides information that leads to uncovering the group may be granted immunity from punishment.

<sup>22</sup> CPRC/Criminal Policy Research Center (2022). Bosna i Hercegovina dobila prvu sveobuhvatnu analizu procesuiranja trgovine ljudima (B&H receives first comprehensive analysis on the prosecution of human trafficking), P. Puharić, 9.jun 2022, <https://www.cprc.ba/post/bosna-i-hercegovina-dobila-prvu-sveobuhvatnu-analizu-procesuiranja-trgovine-ljudima> (accessed 7.3.2025).

<sup>23</sup> Klix Vijesti (2023). Izvještaj State Departmenta o trgovini ljudima u BiH: Ponovo u "Zlatnoj Sredini (State Department Report on human trafficking in B&H), Klix News, 15.6.2023, <https://www.klix.ba/vijesti/bih/izvjestaj-state-departamenta-o-trgovini-ljudima-u-bih-ponovo-u-zlatnoj-sredini/230615136> 15.6.2023 (accessed 7.3.2025).

<sup>24</sup> Criminal Code of Republika Srpska (RepS), *Official Gazette of the RepS*, no. 64/2017, 104/2018-decision of the Constitutional Court, 15/2021 and 89/2021, 73/2023, *Official Gazette of B&H*, no. 9/2024-decision of the Constitutional Court of B&H, and *Official Gazette of the RepS*, no. 105/2024-decision of the Constitutional Court, 19/2025, and *Official Gazette of B&H*, no. 14/2025-decision of the Constitutional Court of B&H.

<sup>25</sup> Article 145 § 1 of CC of Republika Srpska prescribes a prison sentence ranging from three to twenty years for any individual who, through the use of force, threat or other forms of coercion, including kidnapping, fraud, deceit, abuse of authority or influence, a relationship of trust, dependence, or helplessness, or by exploiting the difficult circumstances of another person, recruits, transports, transfers, surrenders, sells, buys, mediates in the sale, hides, receives, or holds another person for exploitation. The offense encompasses a broad spectrum of exploitative purposes, such as exploiting labor, committing criminal offenses, prostitution, pornography, other forms of sexual exploitation, forced begging, servitude, establishing slavery or similar relationships, forced marriage, forced sterilization, organ or body part trafficking, and use in armed forces or other forms of exploitation.



of objects, means of transport, and facilities used in the commission of this criminal offense (Article 145 § 8); c) criminal proceedings will not be initiated against a victim of human trafficking who was coerced into participating in the commission of another criminal act, provided that such conduct is a direct consequence of their status as a trafficking victim (Article 145 § 9). Child trafficking is treated as a separate criminal offense, envisaged in Article 146 and defined in similar terms as the human trafficking offense provided in Article 145 of the CC RepS.<sup>26</sup> Although data on human trafficking in Republika Srpska are not available, there are some data on child trafficking. In 2021, a panel of the District Court in Banja Luka sentenced a human trafficker to a prison sentence of five years and six months for the criminal offense of child trafficking and extramarital union with a child (Article 184 of CC RepS). The victim was a 15-year-old girl who was lured through social networks to enter into an extramarital union with the perpetrator, who exploited her by forcing her to work as a street beggar. A particularly disturbing fact in this case that the victim's mother received money from the perpetrator's father to facilitate an illegal extramarital union, which she did out of self-interest (Faktor, 2021).<sup>27</sup>

*The Republic of Montenegro* gained its independence in a referendum in May 2006, when it seceded from the State Union of Serbia and Montenegro. The Stabilisation and Association Agreement of the Republic of Montenegro with the European Union entered into force in May 2010, after being ratified by all signatories. In the Criminal Code of Montenegro,<sup>28</sup> criminal offences related to human trafficking are envisaged in Chapter XXXV: Criminal Acts against Humanity and other goods protected by International Law, in Article 444 (Trafficking in Human Beings)<sup>29</sup> and Article 445 (Trafficking in Minors for

<sup>26</sup> However, in child trafficking, special methods of execution are not considered essential to the criminal offense itself. Another specific criminal offense is detailed in Article 147, titled Complicity to commit Criminal Offenses of Trafficking in Human Beings and Children. It envisages criminal liability and punishment for organizing a group or an organized criminal group with intent to commit trafficking in human beings and children..

<sup>27</sup> Faktor BiH (2021). Presuda Seferovićima na zatvorsku i novčanu kaznu zbog trgovine djecom (The Seferovic family sentenced to prison and a fine for child trafficking), 19.7.2021, <https://faktor.ba/nije-odabrano/nije-odabrano/presuda-seferovicima-na-zatvorsku-i-novcanu-kaznu-zbog-trgovine-djecom/95868> (accessed 7.3.2025).

<sup>28</sup> Criminal Code of Montenegro, *Official Gazette of the RM*, no. 70/2003, 13/2004-amended and 47/2006, and *Official Gazette of Montenegro*, no. 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013-amended, 14/2015, 42/2015, 58/2015-other law, 44/2017, 49/2018, 3/2020, 26/2021-expr, 144/2021 and 145/2021 and 110/2023.

<sup>29</sup> Under Art. 444 § 1 CC, the criminal act of trafficking in human beings, punishable by imprisonment ranging from one to ten years, is committed by an individual who obtain consent from a person who has control over another, through force, threats, deception, abuse of authority, exploitation of trust, dependency, or the victim's difficult circumstances, as well as by withholding, confiscating, or destroying personal documents, forging personal documents, acquiring or manufacturing counterfeit documents, or offering or receiving money or other benefits. This person recruits, transports, transfers, surrenders, sells, buys, mediates in the sale, hides, or holds another individual to exploit their labor, forced labor, subjecting them to servitude, slavery, or a similar relationship, engaging them in criminal activities, prostitution, or other forms of sexual exploitation, forced begging, use in pornography, entering into an illicit marriage, removing body parts for transplantation, or using a person in armed conflict. In cases involving children, how the act is committed does not affect the classification of the offense (Art. 444 § 2 CC). If the act is perpetrated against a child, by an official in the course of their duties, or if the life of one or more persons is intentionally endangered, the perpetrator will face a prison sentence of at least three years (Art. 444 § 3). Should serious bodily injury occur during the commission of the act, the punishment is imprisonment from one to twelve years (Art. 444 § 4). If the victim is a child, the sentence is no less than five years (Art. 444 § 5). In cases where the death of one or more individuals results from the act, the perpetrator faces a sentence of at least ten years (Art. 444 § 6). If the offense is committed in an organized manner by multiple persons, the ten-year sentence applies (Art. 444 § 7). Notably, a victim of human trafficking who is coerced into participating in criminal activities as a direct result of exploitation will be exempt from punishment (Art. 444 § 11 CC of Montenegro).

Adoption).<sup>30</sup> In the analysis on judicial practice in cases involving human trafficking in Montenegro from 2004 to 2019, the Supreme Court of Montenegro pointed out that sexual exploitation was the main form of exploitation of victims, while the confiscation of body parts, begging and forced marriage were not recorded in court decisions. The analysis noted that 18 final judgments were rendered on the criminal offense of human trafficking, and it was determined that the average duration of criminal proceedings at all levels of courts was two years, four months and two days. The most severe sentences were 17 and 15 years, and the mildest ones were 6 months. The perpetrators of the criminal offense of human trafficking were usually men (out of 48 defendants, 42 were men). On the other hand, the largest number human trafficking victims were women (out of 39 identified victims, 26 victims were women). In addition, out of the 48 defendants who were subject to criminal proceedings, 40 were sentenced to imprisonment, seven were acquitted, and one was dismissed due to the prosecutor's refusal to prosecute. Most of the accused (31 of them) were citizens of Montenegro. Most human trafficking victims in Montenegro were local citizens. Eight out of the 39 victims of human trafficking were minors (Bandović: 2021:48-66).

The data related to the criminal offense of human trafficking in Montenegro from 2023 show that only 22 legally binding decisions were made in the 19 years of incrimination of this criminal offense in the Montenegrin legislation. Only two of those judgments were related to exploitation through begging and entering into an arranged marriage. These data do not show a realistic picture regarding human trafficking in Montenegro because the reality is that the number of committed acts and victims, which can be seen on the street every day, is many times higher. In this sense, the data show that the dark figure of this crime is extremely high and that a large number of perpetrators are not prosecuted. The existing laws are not applied; in cases where they are applied, the application is not consistent. Victims of human trafficking seem to be invisible to the Montenegrin judiciary; judgments are rare and frequently below the statutory minimum. There are even judicial decisions of the Higher and Appellate Courts where human trafficking is qualified as a change in family status; for example, in one case, the perpetrator sold his newborn child in exchange for a car and was sentenced to a prison sentence of only ten months. In another case, the Prosecutor's Office of Montenegro qualified the coercion of the offender's children into begging and the coercion of his wife into prostitution as neglect and abuse of minors, domestic violence and soliciting prostitution (respectively); as a result, the perpetrator was sentenced to only 76 days in prison (CIN Montenegro, 2023),<sup>31</sup>

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<sup>30</sup> Under Article 445 of the CC, the criminal offense of trafficking in minors for adoption, punishable by a prison sentence of one to five years, is committed by anyone who takes a minor for adoption contrary to applicable law or who adopts a minor or mediates in adoption, or who, for that purpose, buys, sells or surrenders another person who has not reached the age of 14, or transports, provides accommodation or conceals such a person.

<sup>31</sup> CIN CG/ Centar za istraživačko novinarstvo Crne Gore (2023). *Žrtve trgovine ljudima nevidljive za pravosuđe: presude rijetke i ispod zakonskog minimuma* (Human trafficking victims are invisible to the judiciary: Sentences are rare and below the legal minimum), Center for Investigative Journalism, Montenegro, 22.jun 2023, <https://www.cin-cg.me/cin-cg-zrtve-trgovine-ljudima-nevidljive-za-pravosudjen-presude-rijetke-i-ispod-zakonskog-minimuma/>.

### 3. CONCLUSION

Contemporary trends in the prevention and repression of human trafficking point to a comprehensive approach that integrates legal, social, and technological measures. To effectively combat this global issue, states need to develop and implement complex legal frameworks that encompass both preventive and repressive strategies. Prevention should include education, raising awareness within communities, and developing mechanisms to protect potential victims. On the other hand, repression requires efficient laws, swift state response, and cooperation between countries, institutions, and non-governmental organizations at the international level. Additionally, the development of information technologies, biotechnology, and digital platforms opens new opportunities for committing this criminal offense, which necessitates constant adaptation of existing laws and methods of combat. In this context, cooperation between states, the use of modern technologies in evidence gathering and combating human trafficking, and the implementation of new strategies for victim protection are key elements in contemporary efforts to tackle this serious crime. Thus, states are changing their legislations, introducing approaches of state authorities, the public prosecutor's offices, courts and the police in collecting facts and evidence from particularly sensitive groups human trafficking victims (such as a forensic interview with a child) (Dimovski, 2022:1-11). Modern approaches to the prevention and repression of human trafficking must be flexible and adaptable to provide the most effective response to the challenges arising in the dynamic global environment. Media coverage of these phenomena should also play an important role in combating human trafficking (Stojadinović, 2024:96). Given the global nature of human trafficking, many countries have recognized the need to align their legislation with international standards, as well as to adapt existing legal frameworks to new challenges in combating this crime. The legislation of many developed and developing states now include specific criminal offenses related to human trafficking, as well as new offenses concerning the use of modern technologies in the commission of these crimes.

Human trafficking is one of the most serious crimes against fundamental human rights, which all former SFRY states have incorporated into their national legislations. Although the legal incriminations of this crime in the Western Balkans region are largely harmonized with international legal standards, there are certain specificities in the approach to sanctioning and preventing this offense. A comparative law analysis suggests that the Republic of Serbia has quite strict provisions regulating the criminal sanctions for human trafficking, as well as a high level of protection for minor victims. Croatia and Slovenia, as EU member states, lead in adopting European human rights protection standards, while Bosnia and Herzegovina and Montenegro have somewhat more lenient penal policies and more complex legal systems, which at times hinder the effective fight against this form of organized crime.

Finally, international cooperation is crucial in aligning legislation and introducing new legal mechanisms for combating human trafficking. The exchange of experiences and best practices between countries is the foundation for the development of effective laws that address increasingly sophisticated forms of this crime. Additionally, the integration of new technologies into the legislative framework allows for a faster response to emerging forms of human trafficking and makes the fight against this global issue more effective. The cooperation of Western Balkan countries in combating human trafficking is essential due to the transnational nature of this form of organized crime, which transcends national borders and requires a coordinated response. Given the region's geographical position, often serving as a transit route for human smuggling towards European Union countries, it

is essential to establish effective mechanisms for information exchange, joint investigations, and harmonization of legal frameworks. Furthermore, varying levels of alignment with international legal standards among the states in the region may hinder the effective implementation of laws and create legal loopholes that criminal networks can exploit. Therefore, strengthening interstate cooperation through joint prevention programs, harmonizing penal policies, and enhancing victim protection, particularly for minors, is crucial. Additionally, the development of regional initiatives and collaboration with EU institutions contribute to long-term stability and the rule of law, ensuring a comprehensive and sustainable approach to combating human trafficking.

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## NORMATIVNE PRETPOSTAVKE SAVREMENE BORBE PROTIV TRGOVINE LJUDIMA

*Autorke u radu prikazuju inkriminaciju krivičnog dela trgovina ljudima u zakonodavstvima zemalja koje su pripadale jedinstvenom pravnom prostoru SFRJ, kao i u domaćem zakonodavstvu, upoređuju zakonska rešenja, uz isticanje primera dobre prakse i sličnosti iz uporednog prava naznačenih zemalja sa domaćim pravom. Geografska blizina nekada jedinstvenog prostora i slično pravno nasleđe nose u sebi potencijal za borbu protiv trgovine ljudima na Zapadnom Balkanu.*

Ključne reči: trgovina ljudima, Zapadni Balkan, krivično zakonodavstvo, prevencija, uporedno pravo.