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HUMAN TRAFFICKING IN BOSNIA AND HERZEGOVINA - CRIMINAL LAW, JUDICIAL PRACTICE AND IMPLICATIONS FOR HUMAN SECURITY

Human trafficking represents one of the most serious forms of human rights violations in Bosnia and Herzegovina. The Criminal Code of Bosnia and Herzegovina criminalises human trafficking as an offence in the category of crimes against humanity and values protected by international law. The drafters of the international conventions, which served as a model to the domestic legislators, did not approach human trafficking solely as an organised crime or transnational crime, for the reason of which the criminal codes in Bosnia and Herzegovina also criminalise domestic human trafficking. The starting point of this paper is the interrelatedness between plea bargaining in procedural law and lenient penal policies, which represents an obvious problem with profound security implications for Bosnia and Herzegovina. In this context, we begin with the analysis of the notion of human security, the essential element of which is the protection of human rights and, thus, the rights of victims/agrieved parties in criminal proceedings. Human trafficking is a result of structural inequalities at the global level and within a country's boundaries.

Keywords: human trafficking, plea bargaining, victims/agrieved parties, human security.

1. INTRODUCTION

Human trafficking is a global phenomenon which has been present in Bosnia and Herzegovina over the last three decades. Since the end of the war (1992-1995), Bosnia and Herzegovina succeeded in reconstructing its law enforcement institutions at both the state and entity levels. Bosnia and Herzegovina signed and ratified international conventions prohibiting human trafficking and, consequently, criminalised human trafficking in national

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legislation. From this perspective, Bosnia and Herzegovina has fulfilled its international obligations regarding this severe form of human rights violation. However, certain problems have been identified in judicial practice. Judicial practice shows that lenient sentences have been imposed on human traffickers. The acquisition of legal qualifications for the same offence and the principle of *in dubio pro reo* led prosecutors' offices and courts to opt for the application of a lighter legal qualification favouring the perpetrator of the offence and the imposition of more lenient sentences. Additionally, plea agreements have become a standard practice in prosecuting human trafficking cases in Bosnia and Herzegovina.

The imposition of extremely lenient sentences for human trafficking is not only a criminal law issue but also an issue of protecting the human rights of the victims. The paper examines the widespread judicial practice of pronouncing judgments for human trafficking below the statutory minimum through the theoretical prism of the notion of human security. Human security places a human being at the centre of its analysis, where human rights and human development are the positive values that security policy should protect (Ejdus, 2012, p. 216). States have an obligation to respect the guaranteed human rights of individuals and to respond adequately to threats to these rights. The state bears responsibility for a lenient penal policy with regards to the offence of human trafficking because such policy points to a lack of appropriate mechanisms for the protection of victims/agrieved parties' rights, as guaranteed by the international conventions applicable in Bosnia and Herzegovina.

This paper develops around two research questions: which aspects of procedural law lead to the lenient penal policy, and what are the implications of such practices for the human security of human trafficking victims in Bosnia and Herzegovina.

The paper consists of four sections. The first section presents the background of the problem and the scope of human trafficking in Bosnia and Herzegovina. The second section discusses the phenomenon of human trafficking from the perspective of human security. The third section gives an overview of international conventions prohibiting human trafficking, which have been ratified and signed by Bosnia and Herzegovina. The fourth section gives a brief overview of the substantive criminal legislation in Bosnia and Herzegovina and its judicial practice on the fight against human trafficking.

2. BACKGROUND AND THE LEVEL OF THE HUMAN TRAFFICKING PROBLEM IN BOSNIA AND HERZEGOVINA

Human trafficking has been a long-term problem in Bosnia and Herzegovina. Since the end of the war (1992-1995), this type of criminal activity has varied in scope and modalities. Human trafficking for sexual exploitation is the dominant form in Bosnia and Herzegovina. In addition to sexual exploitation, forced begging, which mainly concerns Roma children, is also present (Vranješ, Lalić & Šikman, 2021, 60). In the first years after the end of the war, Bosnia and Herzegovina was primarily a transit and destination country for victims of human trafficking for sexual exploitation purposes. The victims came from Eastern European countries, mostly from Ukraine, Moldova, Romania, Bulgaria and the states which emerged after the breakup of the Socialist Federal Republic of Yugoslavia (SFRJ). In the meantime, these patterns have changed significantly, and the number of victims from Eastern European

countries has significantly decreased. Meanwhile, Bosnia and Herzegovina has become a country of transit and origin for victims of human trafficking (US Embassy in Bosnia and Herzegovina, 2017. US Department of State, 2018. US Department of State, 2021).

The end of the Cold War, the migration of the population from the East to the West, and the wars fought in the former SFRY in the 1990s are the main processes which influenced human trafficking in Bosnia and Herzegovina. In the last decade of the 20th century, the territory of the former SFRY was marked by conflicts that shaped the region's geopolitical map. The disintegration of the SFRY led to the creation of new states, and the region was militarily, politically and economically divided (Lalić, 2007, p. 112). The countries that emerged following the collapse of the SFRY have been seriously affected by organized crime and corruption. In the 1990s, organized criminal groups in Bosnia and Herzegovina and the region successfully exploited institutional weaknesses to carry out various types of criminal activities, including human trafficking. In this period, there was no political will in Bosnia and Herzegovina to solve the problem, which was manifested in the lack of an appropriate legal framework, the inadequate training of law enforcement personnel, widespread corruption in the public sector and porous state borders. This situation contributed, to a large extent, to the expansion of human trafficking in post-conflict Bosnia and Herzegovina (Rathgeber, 2002). During the war in Bosnia and Herzegovina (1992-1995), the economy was almost destroyed, illicit trade was widespread, and organised criminal groups emerged as the main suppliers of consumer goods in the market (Andreas, 2004). Similar patterns are evident in the post-war period. Human trafficking was carried out through well-established smuggling channels, and human beings were traded like other goods (Haynes, 2010). Government institutions, which were in the phase of formation and consolidation, were unable to provide an appropriate response in the years that followed.

The presence of peacekeeping forces was also one of the factors contributing to the expansion of human trafficking in the post-war period. Specifically, human trafficking is closely related to conflict, not only because of poverty and forced migration but also because of the presence of peacekeepers. In accordance with Annex 1 of the Dayton Peace Agreement signed in 1995, 76.000 peacekeepers were deployed in Bosnia and Herzegovina. The presence of international peacekeeping forces consequently led to the growth of the sex industry. In this period, a large number of nightclubs were opened, where women and children were sexually exploited, while the users of sexual services were, among others, the peacekeepers. Such a situation existed until 2000, when a female member of the American IPTF contingent in Bosnia and Herzegovina, Kathryn Bolkovac, publicly pointed out the involvement of members of the peacekeeping forces in human trafficking, which was a turning point in the institutional response to human trafficking (Human Rights Watch, 2002). From that moment on, this long-ignored problem has become one of the priorities of the international community in Bosnia and Herzegovina and domestic institutions.

Although the number of identified victims of human trafficking has significantly decreased in the meantime, the conflict in Bosnia and Herzegovina has had a long-term impact on its political culture, social cohesion and trust in government institutions. In the long term, the conflict has divided society along ethnic lines, which inevitably decreased the level of mutual trust and trust in common state institutions (Šalaj, 2009).

Today, there is no institutional vacuum anymore. On the contrary, there are many intuitions in Bosnia and Herzegovina which are responsible for tackling human trafficking: the Ministry of Security of Bosnia and Herzegovina, law enforcement agencies at the state or entity levels, judiciary at the state and entity levels, strike force for combating trafficking in human beings and organised illegal immigration.¹ Bosnia and Herzegovina has adopted the National Strategy for Combating Trafficking in Human Beings for 2020-2023 (Strategy for Combating Trafficking in Human Beings in Bosnia and Herzegovina for the period 2020-2023), including the Action Plan for the Implementation of the Strategy. In addition, Bosnia and Herzegovina has established a legal framework for prosecuting human trafficking at the state and entity levels. However, there are specific obstacles to an adequate response to the problem of human trafficking, such as mild punishment for traffickers below the statutory minimum, lack of financial support for anti-trafficking activities and coordination with NGOs to identify victims, insufficient financial support for day-care centres for street children and lack of socio-economic programs for the inclusion of victims, including financial compensation to the victim charged from the offender in the course of criminal proceedings (GRETA, 2022). A particular problem relates to the prevention of and combating human trafficking for labour exploitation, primarily in terms of strengthening institutional capacities and cooperation (GRETA, 2022, p. 44).

Current trends indicate that human trafficking in Bosnia and Herzegovina is still an ongoing problem. Between 2017 and 2021, a total of 306 potential victims of human trafficking were identified. The largest number of potential victims, 282 out of 306, were citizens of Bosnia and Herzegovina. The remaining victims originated from Serbia, Montenegro, North Macedonia, Libya, Afghanistan, Syria, Iran, Sri Lanka and the Netherlands. Regarding the age structure, 62% were minors. According to the gender structure, 212 potential victims were female, 89 were male, and five were of unknown gender (GRETA, 2022, p. 9).

Bosnia and Herzegovina is located on the so-called “Balkan migrant route”. It is, to the greatest extent, a country of transit for migrants heading towards the European Union countries. It is estimated that between January 2018 and December 2020, about 70,000 migrants, including a great number of unaccompanied children, passed through BiH. Only three victims of human trafficking were identified among them in the mentioned period (GRETA, 2022, p. 9). However, it can be assumed that the number of actual victims of human trafficking in Bosnia and Herzegovina is actually higher, especially the number of victims of sexual exploitation, which takes place in private apartments and other secret locations (US Department of State, 2021).

Human trafficking in Bosnia and Herzegovina is a nexus of criminal activities, conflict, poverty, social inequalities and institutional weaknesses.

¹ Decision on the formation of the Strike Force for combating trafficking in human beings and organized illegal immigration was adopted by the Council of Ministers (*Official Gazette of Bosnia and Herzegovina*, no. 3/04). The Strike Force consists of representatives of prosecutors' offices, law enforcement agencies, the tax agency, the Financial Police, and the Border Police. The Strike Force cooperates closely with the National Coordinator for combating trafficking in human beings and illegal migration in Bosnia and Herzegovina. Additionally, it cooperates with international law enforcement agencies and non-governmental organizations in Bosnia and Herzegovina.

3. HUMAN TRAFFICKING – HUMAN SECURITY PERSPECTIVE

Human trafficking represents one of the most serious forms of human rights violations, which has serious physical and psychological consequences for the victims (Milković, 2020). The victims are mainly recruited from poor, politically unstable, and conflict-prone countries (Akee, Basu, Chau, & Khamis, 2010. Nelson, Guthrie, & Coffey, 2004). Human traffickers exploit these weaknesses and focus on the most vulnerable categories of the population as potential victims (Gjermeni *et al.* 2008; Jones, Engstrom, Hilliard, & Sungakawan, 2011. Shelley, 2010).

The roots of the idea of human security lie in the geopolitical changes which occurred in the late 1980s and early 1990s. The end of the Cold War and of the bipolar world brought new perspectives on security in the post-Cold War era. Instead of military threats that dominated during the Cold War, human security focuses on human rights and sustainable development. The notion of human security entered the political and academic discourse with the publication of the Human Development Report by the United Nations Development Program (hereinafter: UNDP) in 1994 (UNDP, 1994). Although much criticised in terms of its practical applicability, theoretical generality and vagueness (Lipovac & Glušac, 2011), the notion of human security triggered a series of theoretical debates, scientific research and practical policy activities. Human security refers to the protection of an individual's personal safety and freedom from direct and indirect threats of violence (Bajpai, 2000). The notion of human security, in the broadest sense, includes freedom from fear and want (UNDP, 1994). The essence of the notion of human security is a human being as the referent object of security, in other words, what is being protected.

The 1994 UNDP report gives a long list of threats to human security, which has seven dimensions: economic, food, health, environmental, personal, community, and political security.² Regarding its causes and consequences, the phenomenon of human trafficking, directly or indirectly, includes all seven dimensions of the notion of human security. Paragraph 3a of the United Nations General Assembly Resolution on human security of September 10, 2012, states that human security, among other things, includes:

“The right of people to live in freedom and dignity, free from poverty and despair. All individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential” (United Nations, 2012).

Human trafficking is the antithesis of the notion of human security. It deprives the victims of their freedom and dignity, and they often live in poverty and in difficult conditions that threaten their personal safety. Victims do not have an equal opportunity to enjoy all their rights on par with the other citizens. The possibilities for the development of their human potential are often missing. The scale of the phenomenon of human trafficking at the global level, which represents violations of human rights in the countries of origin, transit, and destination of victims of human trafficking, is worrying. The size of the population at risk

² For more details, see: *Human Development Report 1994: New Dimensions of Human Security* (UNDP, 1994, pp. 22-33).

of becoming potential victims of human trafficking is also a reason for deep concern (Clark, 2003). Human trafficking cannot be viewed outside the context of the state, whose institutions are obligated to provide protection to vulnerable categories of its population. As stated in the Resolution of the General Assembly of the United Nations, it is the responsibility of every state to “ensure the survival, livelihood and dignity of [its] citizens” (United Nations, 2012). The notion of human security should serve as conceptual foundations for an institutional framework that would protect vulnerable categories and provide full support to victims of human trafficking. The role of the international community is to provide the necessary support to governments upon their request so as to strengthen their capacities to respond to current and emerging threats (Clark, 2003),³ including human trafficking.

4. INTERNATIONAL CONVENTIONS ON COMBATING HUMAN TRAFFICKING RATIFIED BY BOSNIA AND HERZEGOVINA

International documents identify human trafficking as a crime against humanity and values protected by international law. Human trafficking violates the right to life and the right to freedom. Human trafficking is contrary to the prohibition of forced labour and slavery. International conventions prescribing the prohibition of human trafficking are important instruments with a strong impact on the countries that have signed and ratified them. Bosnia and Herzegovina has ratified the following international instruments on the prohibition of human trafficking: the United Nations Convention against Transnational Organized Crime (2000), the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989),⁴ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000),⁵ the Forced Labour Convention No. 29 (1930),⁶ the Rome Statute.⁷

³ The idea that the state protects its citizens is not new and dates back to ancient times. What is new is that the issue of human rights and human development is now viewed in the context of international security. Human rights, human development and security are viewed from a supranational perspective. They are not a matter of national security, but the security of an individual.

⁴ The 1989 Convention on the Rights of the Child is an integral part of the Constitution of Bosnia and Herzegovina and is contained in its Annex I.

⁵ Bosnia and Herzegovina became a member of this protocol on the basis of the Decision on Ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in 2002, *Official Gazette of Bosnia and Herzegovina*, no. 5/02.

⁶ The Forced Labor Convention, No. 29, *Official Gazette of Bosnia and Herzegovina*, International Agreement, no. 25/1993, and other international conventions on the right of workers have been ratified by BiH, such as the Convention on the Employment of Women Before and After Childbirth, the Night Work (Women and Minors) Convention, the Employment Injury Benefits Convention, including other international conventions available at: <https://lnss-bosnia-herzegovina.libguides.com/c.php?g=667337> (6. 10. 2022).

⁷ The Rome Statute was ratified by the Decision of the Presidency of Bosnia and Herzegovina with the previously obtained consent of the Parliamentary Assembly of Bosnia and Herzegovina and published in the *Official Gazette of Bosnia and Herzegovina*, International Agreement, No. 2/02. On the basis of Article IV 4, paragraph 4(a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina adopted the Law on the Implementation of the Rome Statute of the International Criminal Court and Cooperation with the International Criminal Court at the session held on October 19.

The regional instruments ratified by Bosnia and Herzegovina which prescribe the prohibition of forced labour and slavery are the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention on Human Rights)⁸ and the Council of Europe Convention on Action against Trafficking in Human Beings.⁹ In addition, important regional documents focused on the suppression of child sex tourism are the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (also known as the Lanzarote Convention), the Council of Europe Convention on Contact Concerning Children, and the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.¹⁰ The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism,¹¹ signed and ratified by Bosnia and Herzegovina in 2020¹², was adopted with the aim of confiscating proceeds acquired by the perpetrator from human trafficking through the prevention and fight against human trafficking.

5. CRIMINAL LEGISLATION ON COMBATING HUMAN TRAFFICKING AND JUDICIAL PRACTICE IN BOSNIA AND HERZEGOVINA

The criminal legislation of Bosnia and Herzegovina is aligned with international conventions concerning the prohibition of human trafficking. Confirmed international agreements are regarded as part of the legal order of a country, while the instruments for the implementation of international agreements are the norms of national legislation prescribing sanctions for a specific criminal offence. Due to the implementation of international norms concerning the prohibition of human trafficking, Bosnia and Herzegovina criminalised human trafficking for the first time in 2003. The first definition of human trafficking contained in national legislation was harmonised with the definition of human trafficking laid down in the Palermo Protocol, but subsequent amendments to the criminal codes of Bosnia and Herzegovina ensured compliance with the definition contained in the Council of Europe Convention.

⁸ Paragraph II, item 2 of the Constitution of Bosnia and Herzegovina stipulates that international standards, rights and freedoms prescribed in the European Convention on the Protection of Human Rights and Freedoms and its additional protocols are directly implemented in Bosnia and Herzegovina. These acts take priority over all other laws. The European Convention on Human Rights is part of the Constitution of Bosnia and Herzegovina.

⁹ Council of Europe Convention on Action against Trafficking in Human Beings, *Official Gazette of Bosnia and Herzegovina*, International Agreement, no. 14/07.

¹⁰ The Bosnia and Herzegovina Presidency adopted the Decision on the Ratification of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention) and Convention on the International Recovery of Child Support and Other Forms of Family Maintenance of 23 November 2007, *Official Gazette of Bosnia and Herzegovina*, International treaty, no. 11/12.

¹¹ The The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, *Official Gazette of Bosnia and Herzegovina*, International Agreement, no. 4/20.

¹² The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, *Official Gazette of Bosnia and Herzegovina*, no. 4/02.

Human trafficking is defined in Chapter XVII of the Criminal Code of Bosnia and Herzegovina and falls into the group of crimes against humanity and values protected by international law, while the codes of the two entities define human trafficking as a crime against the rights and freedoms of citizens. The offence of human trafficking with an element of foreignness is prescribed in the Criminal Code of Bosnia and Herzegovina, while the offences related to trafficking of citizens of Bosnia and Herzegovina and within the borders of Bosnia and Herzegovina, are found in the criminal codes of the two entities and the Brčko District of Bosnia and Herzegovina. Human trafficking is a complex criminal offence which consists of three elements with alternative forms of execution: a) the act, b) the means, and c) the purpose. All three elements of the offence of human trafficking (the act, the means, and the purpose) must be cumulatively fulfilled for the offence to exist.

However, all three cumulative conditions do not have to be met when the victim of human trafficking is a person under the age of 18. Regarding minors, the existence of the act and the purpose is sufficient for the existence of the offence of human trafficking. The Court of Bosnia and Herzegovina found that the offence of human trafficking is considered to be completed when some acts of crime with the aim of exploiting the person who is the object of the act have been undertaken, while for the existence of a completed criminal offence, it is not necessary that this goal be achieved.¹³ An essential element of the crime of international human trafficking is that the victim/agrieved person does not have citizenship or residence in the country of exploitation. Given that status of the victim was set alternatively in the law, *i.e.* it relates to his/her residence or citizenship as alternative conditions, the act of international human trafficking will be established if the victim has the citizenship of Bosnia and Herzegovina but does not have residence.

The consent of the victim of human trafficking to exploitation does not affect the existence of the offence of human trafficking. This position was taken by the Court of Bosnia and Herzegovina prior to the amendments to the 2001 Criminal Code of Bosnia and Herzegovina.¹⁴ Human trafficking is motivated by the financial gain of the perpetrator of the offence, yet the intention to obtain the proceeds from the crime is not an element of the offence of human trafficking. The offence of international human trafficking, per its nature, belongs to the group of permanent offences, which last as long as the state of subordination and various forms of exploitation for the purpose of exploitation last.

An efficient fight against human trafficking is also undermined by the fact that some forms of exploitation typical for human trafficking at the same time represent elements of another punishable crime. For instance, prostitution¹⁵ is one of the acts of execution, *i.e.* one of the forms of exploitation of the criminal offence of human trafficking,¹⁶ and at the same time, prostitution is criminalized within the group of offences against sexual integ-

¹³ Judgment of the Court of Bosnia and Herzegovina, no. KŽ-125/05 of December 16, 2005.

¹⁴ Judgment of the Court of Bosnia and Herzegovina, no. KŽK-1/07 of February 15, 2007.

¹⁵ Judgment of the Cantonal Court in Novi Travnik, no. 06 0 K 006325 14 K of March 4, 2015.

¹⁶ Article 145 of the Criminal Code of Republika Srpska, *Official Gazette of Republika Srpska*, no. 64/17. Article 210(a) of the Criminal Code of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 36/03. Article 207(a) of the Brčko District of Bosnia and Herzegovina, *Official Gazette of the Brčko District of Bosnia and Herzegovina*, no. 19/20.

rity or the group of offences against the rights and freedoms of citizens.¹⁷ Also, in judicial practice in Bosnia and Herzegovina, the demarcation between the offence of neglecting and abusing a child and the offence of human trafficking is rather vague.¹⁸ All criminal codes of Bosnia and Herzegovina¹⁹ apply the principle of impunity to the victims of human trafficking who were forced to commit criminal offences.

The criminal proceedings against the accused for human trafficking were most often pursued as the regular criminal proceedings via some form of agreement. More precisely, a plea bargain was concluded in 41 (39.4%) cases out of a total of 104 analysed cases, which were brought before the courts in Bosnia and Herzegovina from 2003 to 2021 (Mujanović, Datzer, Vučinić, & Buha, 2022, p. 112). For example, in the criminal proceedings in the Ahmetović case,²⁰ which was conducted before the Court of Bosnia and Herzegovina, the accused, who physically abused and exploited a disabled victim for the purpose of forced begging and forced labour was, based on a plea bargaining, sentenced to 11 months of imprisonment suspended and placed on probation for three years. The imposition of a more lenient criminal sanction is also evident in the Hajrlahović case,²¹ which involved a girl forced into prostitution who was under the custody of the first defendant. There, the court accepted the prosecution's proposal to impose sanctions contained in the plea bargain, which were below the statutory minimum.

The courts' decision to accept plea bargaining agreements in human trafficking cases is not in accordance with the objectives of the penal policy of general and special prevention. Plea bargaining is present in numerous continental European criminal procedures, yet the tendency of widespread recourse to the practice of plea bargaining is sometimes described as an "infection" with plea bargaining. There is no one model of plea bargaining

¹⁷ Prostitution is criminalised within the group of offenses against sexual integrity, Article 169 of the Criminal Code of Republika Srpska, *Official Gazette of Republika Srpska*, no. 64/17. In the Criminal Code of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 36/03, as well as in the Criminal Code of the Brčko District of Bosnia and Herzegovina the Brčko District of Bosnia and Herzegovina, *Official Gazette of the Brčko District of BiH*, no. 19/20, prostitution is criminalised as a punishable offense within the group of offenses against sexual freedom and morality. The analysed cases contained in the Report on the prosecution of human trafficking cases in Bosnia and Herzegovina from 2003 to 2021 indicate that in 60 cases (57.7%), the criminal offense was qualified as the solicitation of prostitution regarding the manifest forms of human trafficking or related offenses (Mujanović, Datzer, Vučinić & Buha, 2022).

¹⁸ In the court case No. 71 0 K 156546 15 K of January 22, 2015, the Basic Court in Banja Luka found the accused guilty because she used a minor child for begging and grossly neglected her duty to care for and educate a minor child. The more serious form of the offense of neglecting children by forcing them into work is different from the offense of human trafficking, firstly because the perpetrator of the offence of child neglect and abuse can only be a person who has the duty of raising and caring for the child. Given that more severe forms of the offence of neglecting children are reminiscent of human trafficking, it is worrying that the law prescribes a more lenient punishment for this offense compared to the offense of human trafficking, which leaves to the competent authorities the choice to opt for a more favourable statutory criminalisation.

¹⁹ Article 145, paragraph 9 of the Criminal Code of Republika Srpska, *Official Gazette of Republika Srpska*, no. 64/17. Article 210 (a), paragraph 10 of the Criminal Code of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 36/03. Article 186, paragraph 10 of the Criminal Code of Bosnia and Herzegovina. Article 207 (a), paragraph 9 of the Criminal Code of the Brčko District of Bosnia and Herzegovina, *Official Gazette of the Brčko District of BiH*, no. 19/20.

²⁰ Judgment of the Court of Bosnia and Herzegovina, Almir Ahmetović of September 28, 2011.

²¹ Judgment of the Cantonal Court in Bihać, Ema Hajrlahović *et al.*, of January 20, 2011.

that is applied in all countries. Various criminal legislations have adapted plea bargaining to the social needs and justice needs of their countries. Therefore, there are different legal solutions, ranging from the most restrictive, allowing plea bargaining only for less serious crimes, to those providing for an agreement for all offences (Škulić, 2009, p. 290). The court is not obligated to accept a plea bargain and should make sure that a plea bargain is not to the detriment of the aggrieved party or the victim of the crime.

The law in Bosnia and Herzegovina stipulates that, when considering the plea bargain, the judge in the preliminary proceedings is obligated to verify, among other things, whether the accused understands that he/she is waiving the right to the criminal sanction to be imposed on him, which is understandable because it is the result of the arrangement between the accused and the prosecutor. Also, the court should determine whether the aggrieved party has been given the opportunity to plea before the prosecutor regarding the property claim. The aggrieved party also has the right to appeal the decision on the property claim. However, the question arises as to the meaning of the legal provision that stipulates the court's obligation to inform the aggrieved party of the results of plea bargaining if the aggrieved party has no right to appeal the decision on the proposed criminal sanction contained in the plea bargain that has been accepted.

In accordance with Article 1 of the European Convention on Human Rights, the victim could invoke the right to have the perpetrator convicted if found guilty, but the problem is that the victim does not have a procedural status; hence, it is deprived of any procedural rights. The question arises as to whether Article 13 of the European Convention on Human Rights could apply to the victim, which guarantees everyone whose rights and freedoms have been violated the right to an effective legal remedy before domestic state authorities even when the violation was committed by persons acting in an official capacity. Thus, the victim would be able to invoke the violations of Articles 2 to 8 of the European Convention on Human Rights in a situation where law enforcement officials, prosecutor's office, or court officials did not effectively carry out official actions regarding the criminal offence. However, there is a formal obstacle for the victim to lodge a petition to the European Court of Human Rights because the victim must first use all available procedural means in national legislation to defend his/her rights (Mrvić, 2018, p. 12). In criminal proceedings, the victim has the right to appeal the decision on the property claim and the decision on the cost of the criminal proceedings.

6. CONCLUSION

Human trafficking in Bosnia and Herzegovina has a long history, from the post-war period onward. In the meantime, Bosnia and Herzegovina has made significant efforts to build institutional capacities to combat human trafficking at both the state and entity levels. However, problems have been observed in judicial practice, which calls into question the state's ability to provide an adequate level of protection for human trafficking victims.

In the criminal legislation of Bosnia and Herzegovina, the prescribed penalties for human trafficking are not mild. Still, the criminal codes favour certain aspects of substantive law, such as extenuating circumstances, special prevention, the need for resocialisation, and

the application of plea agreements. There is also the problem of the victim's marginalised procedural position in the criminal proceedings, which has also brought to the lenient sentencing of the perpetrators. The problems pertaining to an effective fight against human trafficking lie primarily in the flawed procedural position of the aggrieved party, who has not been given many important procedural rights in criminal proceedings, such as the right to present evidence or lodge an appeal against the judgment. In order to successfully combat human trafficking, the practice of qualifying human trafficking as a less serious offence should be prevented by law.

In plea bargaining, the prosecutor may propose a sentence below the minimum punishment prescribed by law. The law does not prescribe an obligation for the court to accept the proposed sentence or agreement. We are of the opinion that the application of plea-bargaining agreements in human trafficking cases should be limited, at least in such a way that the court does not accept a sentence which is below the statutory minimum prescribed for the offence of human trafficking.

The concept of human security arose as a response to the inability of the state to fulfil its part of the social contract with the individual. In this context, the question may be asked as to what extent the existing institutional framework in Bosnia and Herzegovina successfully protects victims' rights, especially freedom from fear, as one of the two fundamental principles of the concept of human security. For this reason, it is necessary to review the existing judicial practice and focus on the human rights of the victim. The existing practices call into question the effectiveness of the institutional response to human trafficking and the ability of Bosnia and Herzegovina to protect the rights of human trafficking victims. The mild penal policy towards human trafficking perpetrators and the violation of the rights of the victim guaranteed by the international conventions is a matter of human security. The state does not provide victims with adequate legal protection, and the extremely lenient sentences for human traffickers are not in line with the goals of special and general prevention.

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