

# THE PRINCIPLES AND STANDARDS OF COMBATting TRAFFICKING IN HUMAN BEINGS IN THE REPUBLIC OF SERBIA<sup>1</sup>

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**Abstract:** There is no sense in idealizing and reducing to a stereotype the structure of solving this security issue, but on the other hand, this is a necessity for reasons of methodology and didactics, and for a more comprehensive assessment of the aspects and shapes of activities taken in this respect, the assessment of their adequacy and efficiency, and finding ways to improve them. Combating trafficking in human beings thus includes in principle: preventing the occurring, eradicating the volatile consequences and sanctioning and control of the leaders in the act of jeopardizing and improving the position of the victims.

The more or less post-offence character of formal social control results in neglecting the fact of social benefit and appropriateness of preventing and timely detection of trafficking in human beings. The effectiveness of the crime prevention system must primarily be aimed at eradicating the causes and conditions of this phenomenon appearing, persisting and development (*prophylaxis*) and cutting its roots in the first stages of development (*proactive effect*), as opposed to eradicating the consequences. This would give action on tackling trafficking in human beings a *preventive character*.

**Keywords:** trafficking in human beings, prevention, suppression, protection, assistance and support to victims, the Republic of Serbia.

## 1. Introduction

According to paragraph 3 of the Protocol for prevention, suppression and punishment of trafficking in human beings, particularly women and children, which

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<sup>1</sup> This paper is the result of the realisation of the Scientific Research Project entitled „The Development of Institutional Capacities, Standards and Procedures for Combating Organized Crime and Terrorism in the International Integration Conditions“. The Project is financed by the Ministry of Education and Science of the Republic of Serbia (No 179045), and carried out by the Academy of Criminalistic and Police Studies in Belgrade (2011–2014). The leader of the Project is Associate Professor Saša Mijalković, PhD

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supplement the United Nation Convention against transnational organized crime, human trafficking means enlisting, transport, transfer, hiding and receiving persons, by threat of force or by using force or other forms of compulsion, abduction, fraud, deceit, misuse of authority or difficult situation or giving or receiving money or benefits to gain an assent from person who have control over other person, with the aim of exploitation. Exploitation includes, as a minimum, prostitution of other persons or other forms of sexual exploitation, forced labour or serving, slavery or relation similar to slavery, human organs removal; victim's agreement to intentioned exploitation is insignificant in cases when any measure presented in sub-particle (a) is used; enlisting, transport, transfer, hiding or receiving of a child for purposes of exploitation are considered human trafficking, even if those do not include any of the means presented in sub-particle (a) of this article; a child is a person younger than 18 years of age (the United Nations, 2001).

Being in control of "severe form of crime", such as trafficking in human beings, is one of the priority interests and objectives of a modern state. Trafficking in human beings is banned by international and national laws, and is controlled primarily by crime prevention and criminal justice, i.e. activities of combating: preventing the problem from occurring, responding to the existing problem, and eradicating consequences. In the course of this the legal security of all involved in the criminal act - the citizens, victims and the perpetrators of crime - must be satisfied. In line with this, a new dimension comes in focus within the process of combating trafficking in human beings, which is to assess the situation of the victim correctly, to take their needs into consideration and to provide protection from potential, re-victimization.

The fact that trafficking in human beings is a very complex phenomenon leads us to the conclusion that the mechanism of combating this phenomenon is also complex. There is no sense in idealizing and reducing to a stereotype the structure of solving this security issue, but, on the other hand, this is a necessity for reasons of methodology and didactics, and for a more comprehensive assessment of the aspects and shapes of activities taken in this respect, the assessment of their adequacy and efficiency, and finding ways to improve them.

Combating trafficking in human beings, thus, includes, in principle:

- preventing the occurring, i.e. trafficking in human beings prevention;
- eradicating the volatile consequences and sanctioning and control of the leaders in the act of jeopardizing, i.e. repressing trafficking in human beings and
- improving the position of the victims, i.e. protection, assistance and support to victims of trafficking in human beings.

*Combating trafficking in human beings, therefore, includes trafficking in human beings prevention, its repression and providing protection, assistance and support to victims, within the activities undertaken by the actors of the national security systems of several countries or international organizations.*

In the practice of crime prevention and security activities, in the media, literature, and also certain legal and strategy documents, we often use the phrase *combating trafficking in human beings*. The word *combat* is characteristic for solving security challenges, risks and threats of armed, military character, while trafficking

in human beings is a security issue of unarmed, unmilitary character. Beside this, the phrase primarily has a repression echo, i.e. it stressed the idea of repressing, and eradicating volatile consequences of a jeopardizing phenomenon, where prevention and protection, assistance and support to victims are put into the other plan (*and even neglected*). Instead of using the word combat, it would be more suitable to use the word *tackling* as it is the common denominator of all the three areas of solving the issue of trafficking in human beings.

## 2. The Need to Overcome “Poor Crime Prevention Practice”

The practice of the domestic system of crime prevention and tackling trafficking in human beings is characterized by the strong dimension of repression on account of prevention. The reaction of the authorities of formal social control is primarily aimed at revealing and explaining crime associated with trafficking in human beings, revealing and proving the guilt of the criminal act and felony perpetrators, processing and sanctioning them in court (so-called retribution), which was, until recently, the “fate” of a large number of victims discovered. The ultimate goals of retribution are supposed to be perpetrator isolation, confiscation of assets acquired by committing a criminal act and discouragement from returning to the pattern of activity (so-called *special prevention*), which would discourage even the potential perpetrators (so-called *general prevention*) (Ignjatović, 2003).

The more or less post-offence character of formal social control results in neglecting the fact of social benefit and appropriateness of preventing and timely detection of trafficking in human beings. The effectiveness of the crime prevention system must primarily be aimed at eradicating the causes and conditions of this phenomenon appearing, persisting and development (so-called *prophylaxis*) and cutting its roots in the first stages of development (so-called *proactive effect*), as opposed to eradicating the consequences. This would give action on tackling trafficking in human beings a *preventive character*.

Present experience in tackling trafficking in human beings indicates that victims have been treated as perpetrators, which is in direct collision with international law and standards. The need to separate the activities, operations and measures of crime prevention in improving the position of victims into a special, and specific dimension of tackling trafficking in human beings, is an outcome of the need to provide maximum protection from sanctions of domestic law (the so-called *prevention of secondary victimization*), protection of physical safety, mental and moral integrity and assistance towards a swift reintegration into normal social everyday living. In this way we protect the fundamental human rights of victims in trafficking in human beings, which in effect has the prevention of victims returning into the network of trafficking in human beings (so-called prevention on tertiary victimization), and improve the position of victims by repressing these phenomena.

A proper treatment of victims in the course of criminal proceedings is accomplished, in accordance with the standards of the United Nations, the Council of Europe and the European Task Force for Assistance to Victims by providing the victim with all relevant information within the area of criminal investigation in which the victim takes an active part and on the criminal proceedings; affording the

victim the right to a hearing and for his/her opinion to be heard; providing legal assistance and support during the course of criminal proceedings; eradicating any feeling of uneasiness and guaranteeing complete personal safety and evading unnecessary prolongation of the criminal proceedings.<sup>2</sup>

But, the situation in Serbia was different, because the victims had unfair treatment. All improper and inhuman treatment by police officers and other actors of criminal justice, in violation of the victim's dignity and human rights is considered unfair treatment of victims during the course of criminal investigation and criminal proceedings. The most frequent forms of unfair treatment of victims were and still are: intensive and multi-fold interrogation; requests to undergo medical examinations; keeping victims in inadequate living conditions; placing the victims in custody prior to the trial and during the course of the trial; denying adequate legal and counsellor assistance; sanctioning for illegal acts committed in capacity of victims; denial of compensation of damages sustained within the criminal act committed, and other forms of violations of human rights - passive attitude towards violation of human rights or offending human dignity and similar acts (OSCE-ODIHR, 2004).

Protection of victims must be all-inclusive. Omissions in only one segment of protection can neutralize the effects of a part of, or the overall efforts of the system of crime prevention in this area of combating trafficking in human beings.

### **3. Principles and Standards of Conduct for Police Officers when Tackling Trafficking in Human Beings**

#### **3.1. Basic Principles in Tackling Trafficking in Human Beings**

The efficient tackling of trafficking in human beings demands continuity, self-initiative and responsibility in carrying out the activities and operations of crime prevention, in a legally and morally acceptable way. This entails the consideration of a number of principles, i.e. guidelines, which must be abided by all in the realization of crime prevention activities, both on the part of the jurisdiction of state authorities, and likewise the segment of citizens' activities.

We can divide the principles of tackling trafficking in human beings into general and specific ones.

*General principles* are the basic guidelines in the organization and operation of the crime prevention system in concrete areas of tackling trafficking in human beings: prevention, repression and protection and assistance to victims, taking into account the specific character of the goals, operation methods, subjects and objects towards which this operation is directed.

In tackling trafficking in human beings, it is essential that we take the following principles into account:

- *A comprehensive legal framework within which the system of crime prevention functions*, which implies the legal conformity of all spheres of tackling traffic-

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<sup>2</sup> All on the basis of the Recommendation of the Council of Europe Committee of Ministers, No R (85) 11 on the Position of Victims in Criminal Proceedings, of 1985, the United Nations Declaration on the Basic Legal Principles for Victims of Crime and Abuse of Power, of 1985, and the Recommendation of the European Task Force for Victim Support (Mawby, Walklate, 1994).

king in human beings, based on international norms and standards. The legal organization of this area is essential, primarily because of the nature of the functioning of the state and the need to implement crime prevention through a united system, in a unified way in all the aspects of social living, in accomplishing a universal goal;

- *Legality in implementing activities, operations and measures of crime prevention*, i.e. consistency in implementing legal laws and regulations, thus minimizing the arbitrary approach by members of state authorities, exceeding and abuse of authority, and the protection of citizens' freedoms and rights, which are encroached on in the realization of crime prevention activities;
- *Morality and protection of human rights*, in implementing crime prevention by respecting the moral standards of the society, international community and professional ethics of the subjects of crime prevention. In this way we also protect human rights, which must be the focus of all efforts of the crime prevention system in tackling trafficking in human beings;
- *Unity of action of the crime prevention system*, through an equal and coordinated action of all actors in the government and non-government sectors, depending on their potential. In a synergy of all competent actors we cover all areas and reach the best results in tackling trafficking in human beings;
- *Institutionalized, inter-disciplinary and multi-sector approach to resolving the issue*, in the operation of major actors in crime prevention through a unique national mechanism, by engaging experts of different profiles, from different state departments and civil institutions;
- *Continuous approach of the crime prevention system*, whereby there are no time limits, but limits of the crime prevention and criminal justice problem. Measures for prevention of trafficking in human beings are implemented continuously, and measures for repression only when there is reasonable doubt that criminal acts have been committed, while victim protection and assistance are provided from the moment of their identification;
- *Internationalization of the crime prevention system operation*, by international cooperation in all areas of formal and informal social control of trafficking in human beings, in the countries of origin and the countries of transit and destination of victims;
- Protection, assistance and support of all the actors in the crime prevention system engaged in tackling trafficking in human beings, who are in potential danger, as a result of the line of work they are engaged in, and
- *A highly developed crime prevention culture of citizens and actors in the chain of crime prevention*, which is essential for an approach characterized by self-initiative, responsibility, accountability, continuity, legality, expertise and humaneness in the respect of human rights arising from tackling trafficking in human beings.

It is important to mention here that the role of several crime prevention subjects in tackling trafficking in human beings is based on certain principles defined by law and professional ethics.

Bearing all this in mind, the police are obliged to abide by national standards of police treatment in carrying out their duties, the rules defined by law, and other provisions and legal documents of the Republic of Serbia, as well as international agreements and conventions adopted by the Republic of Serbia. This applies, above all, to respecting the principles of duty to serve the people, respect of rule of law and repression of illegal action, achieving human rights, non discrimination in carrying out police duties, limitation and restraint in using means of coercion, prohibition of torture and use of inhuman and degrading treatment, providing help to those who have suffered injury, undertaking to protect classified information, obligation to reject illegal orders and resistance to bribe and corruption (Law on Police, Article 12).

The list of the principles of organizing and operating the crime prevention system in tackling trafficking in human beings by no means ends here. We have only attempted to mention the principles characteristic for this field. This, of course, does not mean that we should not take into account other principles, or that these other principles are also not compatible in resolving other crime prevention and criminal justice problems.

### 3.2. Principles of Prevention of Trafficking in Human Beings

The principles on prevention of trafficking in human beings is the first group of the so-called specific principles, which, in addition to the general ones, direct the operation of the system of crime prevention towards an efficient prevention of this phenomenon and its volatile consequences. We are talking about the following principles:

- “*Ante delictum*” time positioning, i.e. the sense in undertaking measures of prevention exclusively before the phenomenon of bringing in jeopardy and its consequences occur. In other words, measures of prevention must be continuous because there is a constant danger of these phenomena arising. Preventive measures can also be undertaken after the jeopardy arises, in order to circumvent the consequences, where they gain a *proactive character*: e.g. an individual is recruited into joining the trafficking in human beings network by false promise that he/she will get a job somewhere abroad and he/she agrees to a meeting at a certain address on a certain date. Or, an individual obtains false travel documents to go on a false tourist trip, where the organizer of the so-called ‘tourist trip’ intends to establish a slavery relationship with this individual, upon crossing the border. In the criminal legal practice, the very act of recruiting and individual is a criminal act of *Trafficking in Human Beings*. By using preventive measures (e.g. by informing the individual that he/she should give up this travel, by arresting the organizer, etc.), however, volatile consequences of establishing a relationship of slavery could be circumvented;
- ‘*Threefold measures of prevention*’, by directing them towards three complementary goals:
  - a) First, towards *awareness raising and education*, by improving the crime prevention culture of the potential victims and their families, the citizens, and actors in crime prevention;

- b) Second, towards *decreasing the rate of 'vulnerability' of individuals and groups*, by eliminating victim-genus predisposition as an outcome of economic and social status and discriminatory practice in countries of origin of the victims, and
  - c) Third, towards the liberalization of immigration policy and enhancing the capacities of international traffic administrative control, thus raising the probability of legal migration and decreasing the probability of illegal border crossing, illegal movement and stay of individuals on a foreign land territory, thus decreasing the possibilities of the development of trafficking in human beings;
- *Generalizing the model of prevention of primary victimization*, which implies the use of a general, unified model of prevention of these phenomena on the territory of the whole country or one of its parts. Of course, if trafficking in human beings is more characteristic for certain regions of the country, it is essential to use a specific regime of prevention, moulded to the local objective and subjective etiological factors (so-called *specific prevention models, which are compatible to the uniqueness of crime issues arising and the socio-cultural environment in which they are applied*);
  - *Prevention flexibility*, which implies adapting the trafficking in human beings prevention measures to the structure of the cause and consequence, bringing about their occurrence and development. This, certainly, requires a continuous follow-up of etiological factors and state-of-affairs of these phenomena, as well as the effects of preventive measures undertaken, by the analysis of which we arrive to the conclusion that preventive programs need revision;
  - *Individualizing the prevention of tertiary victimization*, by adapting the prevention measures to the specific personalities and needs of individuals saved from the trafficking in human beings network. In this way we surpass the stereotype implementation of measures, and rationalize the process of prevention;
  - *Diversity of prevention measures*, i.e. the possibility of applying all means, activities and treatments that are not banned by positive law. This implies, at the same time, that measures of prevention do not have to be envisaged by legal standards, as is the case with repressive measures, and
  - *The large numbers of prevention subjects*, which means that, unlike in repressing trafficking in human beings and protection, and assistance and support to victims, all the subjects of state and non-state sector, including citizens, are able to participate in the prevention of these phenomena. Led by these principles, trafficking in human beings prevention becomes more comprehensive, because it takes into account the overall etiological dimension of these principles, and it becomes more appropriate in achieving the goals of prevention (Mijalković, 2007).

### 3.3. Principles of Suppressing Trafficking in Human Beings

In view of the degree of organization, classification and potential social danger of modern forms of trafficking in human beings, the approach towards their repression cannot be the same as the one in repressing other, less complex and dangerous

forms of peril. An efficient reaction of the crime prevention system requires that, in addition to the basic principles, the following ones are observed too:

- *Individualizing repression*, by repositioning activity, by selecting adequate repressive methods and adapting their application to concrete forms of trafficking in human beings or migrant smuggling, to their “time and space limits”, the nature of the concrete villain that has committed the criminal act and the concrete victim. Stereotype patterns and work routine can cause tragic outcomes on behalf of members of the crime prevention team, active and passive actors in the trafficking in human beings chain and other individuals involved;
- *Timely action*, which would decrease the extent of volatile consequences if cases of trafficking in human beings were discovered earlier, and became the subjects of crime investigation processes;
- *Confidentiality of action in undertaking concrete repressive measures*, whereby, due to the gravity and complexity of the trafficking in human beings phenomenon, the result of applying certain actions of criminal investigation can only be efficient providing these actions were undertaken in secrecy, and with due respect of the general principle of legality;
- *Step-by-step and proportionality approach in the use of repressive measures*, which implies the use of such measures that cause the least damaging consequences, i.e. the use of these measures in a way causing the minimum of damaging consequences;
- *Truthfulness*, which is the ultimate goal pursued from the moment of first noting that a criminal act had been carried out, throughout the investigation and until the main court hearing, carried out in order to find out the truth and pass the judgment based on sound facts (Mijalković, 2010).

This is the minimum of principles to be respected in the course of repressing other crimes too. Abiding by these principles makes repression of trafficking in human beings quicker, more appropriate and economic. On the other hand, it is necessary to follow the metamorphosis of the phenomenal forms of trafficking in human beings, and to adapt the methods of repression with the contemporary changes and requirements.

### **3.4. Principles of Protection, Assistance and Support to Victims of Trafficking in Human Beings**

Efficient measures of protection, assistance and support to victims of trafficking in human beings is of crucial importance for their physical and mental recovery, their safety and return to everyday living. Some principles have to be obeyed here too so that the victims do not have to depend on luck.

In the widest sense, we are talking about the principle of the *victim's best interests*. This briefly implies that every activity undertaken by the crime prevention members, which is associated in any way with the victim, should in no way hinder, slow down or limit the elimination of damaging consequences of primary victimization, respect of human rights, protection of personal safety and the safety of the victim's dear ones, nor the protection from any further traumatizing or victimization. This does not only



indicate the overcoming of the status of victim, but also eliminating the causes and consequences, which caused or contributed, in that concrete case, the individual to become a victim, but also raising the capacity of the victim to overcome existing problems and face the future (so-called *capacity building*).

Putting into operation the principle of the victim's best interests would identify the following principles:

- *Absolute physical safety* of the victim, and members of his/her family and other dear ones, from the moment of identifying the victim to the moment of reintegration into everyday social living, with respect to the victim's right to private life;
- *Unquestioned well-being of the mental integrity of the victim*, by engaging experts of particular profile (psychologists, psychiatrists, pedagogues, etc.) to eliminate the consequences of the victim's damaged mental health and the prevention of further deterioration, especially during the course of the criminal inquest. What is often neglected, however, is the elimination of the victim's mental problems which contributed to the victimization of the victim, which is of crucial importance for the victim's reintegration;
- *Bringing no harm to the victim's personality*, and thus the victim's moral integrity is protected. The honour, reputation and dignity of a personality are often jeopardized by severe insults and treatment of the suspects and the indicted, their friends and relatives, unprofessional treatment by the police, the prosecutor's office, members of the media and citizens' ruthlessness. Assault on moral integrity of the victim is definitely reflected on its mental integrity;
- *De-criminalization of the victim*, which indicates the ultimate necessity to protect the victim from criminal sanctions of his/her country of origin, transit or destination, for illegal activities that were the outcome of the position of the person that had been subject of trafficking. In this way the status of victim is given precedence over the status of perpetrator;
- *Victim's accessibility to the system of justice*, which enables the victim to use the national and international mechanisms in the protection of human rights and secure material and moral satisfaction, as well as compensation for damage sustained in the process of victimization;
- *Victim's willingness*, this principle enables the victim, upon identification, to freely decide on his/her future status, i.e. benefiting from the particular aspects of protection and assistance, and personal engagement in the police investigation and criminal proceedings against the perpetrators of the criminal acts. In this respect, there should be no conditionality in providing protection and assistance to the victim in return for his/her cooperation with the state authorities;
- *Non-discrimination of the victim*, this principle is binding for members of the crime prevention system to provide just and equal treatment and means of protection and assistance to all victims of trafficking in human beings, irrespective of their origin, national, religious, racial or ideological affiliation, gender and age;
- *Individualizing victim protection, assistance and support*, by adapting the protection and assistance programme with the urgent and long-term individual needs of the victim, so as to provide the best results. This must be applied, above all, to children, as an especially vulnerable category;

- *Continuity principle*, which implies the necessity of continuous protection, assistance and support, from the moment of identification as a victim to the moment of complete social reintegration, without the danger of potential re-victimization, and
- Continued development, building and internationalization of victim protection, assistance and support capacity to all categories of victims, which includes equipping the participants from government and non-government sectors to take swift and adequate action, irrespective of whether it is the case of children, women and men - victims of trafficking in human beings.

By respecting of above principles of victim protection, assistance and support, we are able to directly achieve the objectives of this dimension of tackling trafficking in human beings. The safety of the victim and working in the victim's best interests, thus, become a logical outcome of engaging in the system of crime protection. We protect the postulates of the rule of law and other achievements of a democratic society and satisfy the "higher interests of justice and morality" as well.

#### *2.4.1. The Liabilities of the State in the Process of Protection, Assistance and Support to Victims in Trafficking in Human Beings*

The expectations and demands of the international community in view of protecting, providing assistance and support to victims of trafficking in human beings are clear and unambiguous, and are contained in the following: developing adequate mechanisms in achieving the binding conditions and recommendation based on the best practice.

In the treatment of *victims of trafficking in human beings*, the state is obliged, to the extent provided by the domestic legal provisions, to:

- protect the private life and identity of victims, including, *inter alia*, the secret conducting of legal proceedings in connection with trafficking in human beings;
- make sure its legislature and/or administrative system contain measures to provide the victim, in particular cases, with information on relevant court and administrative proceedings and assistance enabling for their views and interests to be heard and taken into account at appropriate stages of the criminal proceedings against the perpetrators of the criminal act in question, in a way not to affect their right to defence;
- consider conducting measures that guarantee the physical, psychological and social recovery of the victim, including the cooperation with government and non-government organizations of the civil society, with accent on providing adequate housing and counselling and information, primarily referring to their legal rights, in a language they understand; medical, psychological and material assistance and employment, education and training;
- ensure the physical safety of the victims while they remain on its territory;
- make sure its domestic legal system contains measures providing the victim the possibility of receiving a compensation for damages sustained;
- consider adopting legal and other adequate measures to provide the victim to remain on its territory temporarily or permanently, led by humanitarian reasons and compassion, and

- bearing in mind primarily the safety of the victim, to enable and participate in the return of the victim to his/her country of origin (see Article 2, 6-8 of the *Protocol on Prevention, Repressing and Punishment of Trafficking in Human Beings, especially Women and Children*).

While meeting these conditions, we must bear in mind the age, gender and special needs of the victim, especially the special needs of children, including housing, education and care.

#### *2.4.2. Specific Liabilities of the State in the Area of Providing Protection, Assistance and Support to Children Victims of Trafficking in Human Beings*

It is essential to emphasize the so-called specific liabilities of the state in the area of providing protection, assistance and support to children victims trafficking in human beings. Our legislature deems as child every individual younger than fourteen years of age. There is an obvious disharmony between the national standards and international law, by which a child is every individual younger than eighteen years of age<sup>3</sup>, in which way special criminal justice protection is denied to individuals between the age of 14 and 18.

Bearing in mind their age and the possible damaging consequences to the rest of the lives, their physical and mental development, children should be afforded greater attention in their protection, assistance and support, but also in the process of prevention and repression of trafficking in human beings.

Several international legal documents lay emphasis on the specific physical, mental and psycho-social damage sustained by children-victims in trafficking in human beings, their endangered position from exploitation, demanding in their laws, policies, programmes and intervention that children receive special treatment in relation to adults. The “children’s best interests” must have paramount bearing in taking action with reference to children which have been subjected to trafficking, whether this action is undertaken by public or private institutions of social protection, courts, administrative authorities, or legislative bodies. Children must be given adequate support and protection in view of their specific rights and needs. In this respect, states are advised to consider:

- Defining children trafficking by laws and policies in a way to reflect the need for their protection including adequate legal protection;
- Procedures for quick identification of children victims in trafficking in human beings;
- Protection of children from criminal sanctioning for acts which are the consequences of positions they had found themselves in;
- Procedures for finding the parents or guardians in situations when the children are not accompanied;
- Making adequate arrangements for protection in situations where safe return of children to their families is not possible;

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<sup>3</sup> Compare to Article 3 of the Protocol on Prevention, Suppression and Punishment of Trafficking in Human Beings, especially Women and Children. Article 1 of the Convention on the Rights of Children, which precludes that a child is every human being that has turned eighteen years of life, except if, in accordance with the law applied on the child, coming of age is not considered at an earlier age.

- Making it possible for the children to enjoy children's rights to having and stating their own opinions, in accordance with their age and maturity, on things affecting them, especially having a say on the possible return to their families;
- Adopting special policies and programmes of protection and support (physical, mental, legal, educational, support, medical aid and housing);
- Adopting measures of protecting children's rights and interests at all stages of criminal proceedings against perpetrators, and during the procedure for claiming compensation;
- Providing protection of the child's private life, identity and data;
- Adopting measures of adequate and specific legal and psychological training of persons working with children - victims in trafficking in human beings (the United Nations High Commissioner for Human Rights to the Economic and Social Council, 2002: Guidance No 8).

Similar action is recommended by the Optional Protocol on the Sale of Children, Child Prostitution and Pornography (Articles 8 through 10), Optional Protocol on the Involvement of Children in Armed Conflict (Articles 6 through 7), as well as the Council of Europe Ministers Committee Recommendation on Children Protection from Sexual Exploitation (Articles 28 through 36) (the Committee of Ministers of Council of Europe, 2000).

#### *2.4.3. Specific Aspects in Police Treatment of Minor Victims*

Treatment by members of the crime prevention units of children and minors is conditioned by the children's/minors' age, i.e. psycho-physical level of development. For this reason the treatment of minors cannot be and must not be identical to the treatment of adult victims. This also calls for the need to bring separate rules defining the specific aspects in the treatment by crime prevention units of this category of victims.

In this respect a separate *Protocol on Specific Aspects of Police Treatment in the Protection of Minor Victims from Abuse and Neglect* was brought (Ministry of the Interior of the Republic of Serbia, 2008), the basis of which is drawn out from the National Action Plan for Children (the Government of the Republic of Serbia, 2004) and the General Protocol on Children Protection from Abuse and Neglect (Ministry of Labour, Employment and Social Policy, 2005).

Part V.1.1 of the first above-mentioned document specifies that when a minor approaches the official premises of any department of the Ministry of Interior, independently or accompanied by parents, adoptees, guardians or some other person, wishing to report abuse (including trafficking in children) or neglect, it is essential to guarantee the following:

- That obtaining information from a minor in the capacity of a claimant in connection with a criminal act that is persecuted by law is carried out by official personnel equipped with special skills in the area of children's rights and criminal justice protection of minors, and exclusively in the presence of the parents or adoptees, and if the minor is under guardianship - in the presence of the guardian;
- In the presence of an expert - guardianship authority in the event of parents or adoptees, or the guardian being unavailable;

- In the presence of an expert - guardianship authority, in the place of the parents, adoptees or the guardian, in situations where the authorised official personnel equipped with special knowledge and skills in the area of children's rights and criminal justice protection of minors, have assessed that the presence of the above-mentioned subjects is not in the best interests of the child in question, in cases where criminal acts quoted in Article 150 of the Law on Minors - Perpetrators of Criminal Acts and Criminal Justice Protection of Minors, to the Disadvantage of Minors (which includes criminal acts of *Trafficking in Human Beings*, *Trafficking in Children for Purposes of Adoption and Establishing Enslavement and Transportation of Persons in Enslaved Position*) are committed, as well as events where their presence is deemed irritating for the minor in question and would greatly jeopardize the execution of a police task;
- The presence of other members of authorised personnel experienced in the field of working with minors, who are not members of the police nor involved in the event in question - an authorised member of a community home, psychologist, pedagogue of the school attended by the respective minor, or a duty 'house father' of the boarding school, in the event of not being able to secure the presence of expert personnel of the guardianship authority;
- When, upon carrying out an interview with a minor, it is found out that there is reasonable ground of suspicion that a criminal act, with elements of violence and neglect, was carried out against this minor, and the public prosecutor equipped with special skills in the area of children's rights and criminal justice protection of minors is informed about it, or is immediately submitted criminal charges or information about it by the parent, the adoptee or guardian of the minor, or a member of the expert personnel of the guardianship authority;
- That a minor accompanied by the parents, adoptees or guardian, i.e. member of expert guardianship authority or other personnel nominated by the guardianship authority, taking into consideration the opinion of the minor, is taken, by authorised personnel equipped with special skills in children's rights and criminal justice protection of minors, for an examination to an adequate medical institution, where a team of doctors will diagnose injuries. It is essential that the authorised personnel make an official report on the doctors' oral statement, referring to the extent and kind of injury, and submit it to the authorised officials dealing with the respective case;
- If on submitting the charge the parents or other persons should happen to have any medical documentation, this should be handed over to authorised official personnel and/or the competent public prosecutor;
- That the authorised official personnel advise the parent, adoptee or guardian on the services, institutions, social protection community home, advisories, medical institutions, government and non-government organizations, and other subjects providing assistance and support to minors who have been damaged by criminal acts or felonies, with the aim of their overcoming traumatisation and undergoing social reintegration, and

- That the interview with the minor, if deemed necessary, is carried out in the presence of authorised official personnel from different organizational units competent for combating general crime.

On obtaining sufficient information, authorised official personnel are obliged to submit the findings and circumstantial evidence to the public prosecutor, equipped with special knowledge and skills in the area of children's rights and criminal justice protection of minors, and the authorised guardianship authority. Based on the assessment obtained, further action in police competence is carried out independently or together with expert personnel of the guardianship authority.

Provisions from this document were made operational by the above-mentioned *Minister of Interior Guidance on Police Treatment of Minors and Adolescents* (Minister of the Interior, 2006). Without the wish to repeat them, we shall only add that:

- The premises where interrogation of minors is carried out should be adequately equipped with content corresponding to their needs and interests. It is also necessary to put out in visible areas brochures, posters and leaflets, providing information on children's rights and obligations (Article 3);
- When carrying out adequate measures and action of official duty towards a minor, authorised official personnel should act tactfully, bearing in mind the level of maturity, other personal characteristics and protection of the minors' private life, attempting for these measures and action not to adversely affect the minor's further development (Article 4);
- Authorised official personnel in proceedings involving minors are obliged to act as quickly as possible, so that the proceedings end promptly, abiding by legal principles of legislature, humane treatment and respect of international norms and standards, especially the ones mentioned in the UN Convention on Children's Rights and European Convention on the Respect of Human Rights and Basic Freedoms (Article 5);
- In cases of injury, directly before taking official action, authorised official personnel are obliged to provide the child medical assistance at the nearest medical institution. If the child who has been provided medical aid does not remain at the medical institution, he/she is brought to the official premises, where possible, by a vehicle which does not bear visible signs of the police (Article 8);
- That the child is brought to the official premises to determine his/her identity and to collect information on the parent, adoptee or guardian, or determine which institution the child is in custody of, during the course of which swift action must be taken. The child remains at the official premises until the arrival of its parents, adoptees or guardians, or authorised member of the community home, or representative of the social care centre, taking over the child from then on. If these persons fail to appear or cannot be identified, or located, the child is handed over to authorised official personnel equipped with special skills in the area of children's rights and criminal justice protection of minors, who immediately place the child in the closest day-care police station, filling out the necessary paperwork, authorised by the immediate superior in line (Article 9);
- In an attempt to collect information, the child is summoned via its parents, adoptees or guardians, or authorised member of a community home or shelter the

child is put in. When the child responds to the summons, the process of obtaining information from the child in the capacity of a plaintiff in a criminal act persecuted by law, is carried out exclusively by authorised official personnel, equipped with skills in children's rights and criminal justice protection of minors, only in the presence of the persons via whom the summons was sent, i.e. expert guardianship authority in an event that the parent, adoptee or guardian are unavailable. Before commencing with the process of obtaining information, all present are acquainted with the reasons for which this is necessary. An official report or minutes are made, signed by all the individuals present (Article 11);

- If the child is the victim of a criminal act of trafficking in human beings or criminal acts with elements of human exploitation, the Coordination Centre for Victims of Trafficking in Human Beings is immediately informed, in order to provide the victim adequate assistance and support (Article 12).

The treatment by authorised personnel of the Ministry of Interior of minors (persons older than the age of 14 and younger than the age of 18) is similar, and we shall, therefore, not dwell in detail on the provisions that regulate.

Once authorised official personnel determine that *a minor - foreign citizen - is a plaintiff damaged by* a criminal act, i.e. felony, or is the perpetrator of the same delinquency, they are obliged to immediately inform authorised official personnel equipped with special skills in children's rights and criminal justice protection of minors. They further inform the competent authorised official personnel dealing with foreigners at the headquarters of the organizational unit. In criminal and misdemeanour cases referring to children and minors - foreign citizens, the proceedings are conducted in cooperation with a competent organization dealing with foreigners, which has exclusive jurisdiction for temporary custody and care of these individuals (Article 30).

If in the role of the plaintiff we were to find *a minor or adolescent disabled in psycho-physical development* or suffering from psycho-physical disorder all official action will be carried out in the presence of the parent, adoptee or guardian, and if possible in the presence of an expert from specialized institutions that provide these victims medical care and training. If the victim has been placed into such an institution, this action must be carried out in the presence of the authority in the custody and in the care of which the child has been placed (Article 31).

#### 4. Conclusion

Putting the above areas of action in tackling trafficking in human beings into operation and assessing the interaction of some of their segments brings about the following conclusions:

- It is difficult to differentiate the dimensions of prevention, repressing trafficking in human beings and protection, assistance and support to victims. The activities of the crime prevention system are multi-effective, and some phases may be more preventive in character, others more repressive and protective in assisting the victims;
- It is difficult to make a gradation of the above areas of tackling this phenomenon. International standards insist on the prevention of trafficking in human

- beings, underlining the necessity of their uncompromising, energetic and firm approach in repressing and unconditional protection of victims' human rights. the crime prevention system must be led by the idea of shifting the focus from repressive to preventive action, i.e. activities aimed at consequences, which will reduce the need for post-offence solving of consequences;
- The above areas of tackling trafficking in human beings are in a specific relationship of mutual influence and inter-dependence, as an outcome of one another, it being inter-functional. Such a repressive action, in addition to 'satisfying the interests of justice', has an effect of special and general prevention, with the ultimate goal of victim protection and assistance being the prevention of their secondary, i.e. tertiary victimization, etc;
  - The above-mentioned areas of tackling trafficking in human beings are complementary and come as a whole; by failing to implement any of them the reactions of the crime prevention system would be incomplete; efficiency of each of them affects the efficiency of the overall activities of tackling trafficking in human beings and other interconnecting phenomena;
  - Due to the specific nature of these dimensions of tackling trafficking in human beings, the reactions of the crime prevention system call for joint action of all participants in the government, inter-government and non-government sectors, and implementation of activities and measures of crime prevention based on national and international positive law, and achievements of domestic and foreign crime prevention theory and practice, and taking into consideration the social, political, economic, moral, educational and other overall circumstances of crime prevention;
  - Tackling trafficking in human beings is a specific 'vicious circle, the beginning and end of which overlap in prevention'. This is why prevention should actually be the primary field of action of the crime prevention system in solving this modern challenge and threat to security.

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## PRINCIPI I STANDARDI BORBE PROTIV TRGOVINE LJUDIMA U REPUBLICI SRBIJI

### Rezime

Trgovina ljudima je zabranjena međunarodnim i nacionalnim pravom, pa se kontroliše prvenstveno kriminalnom i kaznenom politikom, odnosno akcijama suprotstavljanja: sprečavanjem nastanka, odgovorom na nastali problem i otklanjanjem posledica. Pri tom se svakako mora zadovoljiti pravna sigurnost, kako građana tako i žrtava i izvršilaca krivičnih dela i prekršaja u vezi sa ovim zločinom. Time se u okviru suprotstavljanja trgovini ljudima izdvaja nova dimenzija, a to je pravilno sagledavanje položaja žrtava, uvažavanje njihovih potreba i zaštita od potencijalne, naknadne viktimizacije.

Besmisleno je idealizovati i šablonizovati strukturu rešavanja ovog bezbednosnog problema, ali je to, s druge strane, poželjno iz metodoloških i didaktičkih razloga, radi sveobuhvatnijeg sagledavanja vidova i oblika aktivnosti koje se s tim u vezi preduzimaju, ocene njihove adekvatnosti i efikasnosti i iznalaženja rešenja za njihovo unapređenje.

Tako suprotstavljanje trgovini ljudima principijelno obuhvata:

- sprečavanje nastanka, odnosno *prevenciju trgovine ljudima*;
- otklanjanje štetnih posledica i sankcionisanje i kontrolu nosilaca ugrožavanja, odnosno *suzbijanje trgovine ljudima* i
- unapređenje položaja žrtava, odnosno zaštitu, pomoć i podršku žrtvama trgovine ljudima.

Pretežno *postdeliktni karakter* formalne socijalne kontrole za posledicu ima zanemarivanje činjenice društvene korisnosti i svrsishodnosti sprečavanja nastanka i pravovremenog otkrivanja trgovine ljudima. Delovanje sistema bezbednosti moralo bi prvenstveno da bude usmereno ka otklanjanju uzroka i uslova nastanka, opstanaka i razvoja ovog fenomena (tzv. *profilaksa*) i njegovom „presecanju“ u početnim fazama razvoja (tzv. *proaktivno delovanje*), a ne ka otklanjanju posledica. To bi akcijama suprotstavljanja trgovini ljudima dalo prevashodno *preventivni karakter*.