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Standard Operative Procedures for Protection and Treatment of Victims of Trafficking in Human Beings in the Republic of Macedonia

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Angelina STANOJOSKA – Kristina NIKOLOVA

Abstract

The victims of modern slavery have many faces ⁽¹⁾. They are men and women, adults and children ⁽²⁾. Yet, all are denied basic human dignity and freedom...in that kind of conditions it is hard for them to imagine that there might be a place of refuge. (Barrack Obama) ⁽³⁾.

The Palermo Protocol focused the attention of the global community on combating trafficking in human beings. For the first time, an international instrument called for the criminalization of all acts of trafficking and for the governmental response that should incorporate the “3P” paradigm: prevention, criminal prosecution and victim protection.

Macedonia as a state party of the Convention and its Protocol for trafficking in human beings did not remain immune to the modern slavery. That’s why as one of the obligations from the Protocol of Palermo, the Standard Operative Procedures were established.

The Standard Operative Procedures for protection and treatment of victims of trafficking in human beings were established with an aim to secure help and protection for the victims through a multi – institutional approach based on the human rights policy and directed to the victim as a framework for institutional cooperation.

The Standard Operative Procedures give a secure process of protection of the human rights of the victims and their treatment from the beginning (the identification as a victim) till the end of the criminal procedure.

Key words: Convention on Action against Trafficking in Human Beings, Criminal Procedure, Human Rights, Protection, Protocol of Palermo, Republic of Macedonia, Standard Operative Procedures, Trafficking in Human Beings, Treatment, Victim.

1. Introduction

From the begging of the human civilization, people tried to put on their own will above the others. Slaves have existed forever. Human history is full with examples of countries which were based on slavery, countries which thought that exploitation is not an exploitation, that those people deserve being slaves, because they are inferior compared with the others. As Aristotle (2006, pp.15) said “it is thus clear that, just as some are by nature

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³()Relazione tenuta in Prishtina, Kosovo, in data 11 settembre 2010 in occasione della “International Conferenc e: Penal Protection of Human Dignityin Globalisation Era, 11-13 September 2010, Prishtina, Kosova”.

free, so others are by nature slaves, and for these latter the condition of slavery is both beneficiary and just” (1).

The clock ticking and the development of the human civilization resulted with slavery abolition; the last country that abolished slavery was Mauritania, in 1980. But today, many years after, people understood that slavery can bring huge profit.

As Kevin Bales (2004, pp.15) explains “there some differences between slavery of the past centuries and the new slavery practice of our time, insofar as the latter ones are characterized by a very low purchase cost of slaves, very high profits for the exploiter, short term relationship between the slave and the exploiter, surplus of potential slaves and irrelevance of ethnic differences” (2)

The result of these characteristics is a third place in the global organized crime with a financial profit of 91.2 billion US dollars in 2007 (3).

Through the last years of the XX Century and the first decade of the XXI Century, there is no country that was or is immune on trafficking in human beings. It was and still is the same with Macedonia. Namely, in the 19 years of sovereignty, at the begging Macedonia was country of transit and in some cases of destination. Today, it is not strange to find internal trafficking inside its borders. Because of above mentioned and because of the obligations that the UN Protocol to Prevent, Suppress and Punish Trafficking in Human Beings brought for its Member States (4), in 2001 the Government of the Republic of Macedonia formed the National Commission for Combating against Trafficking of Human Beings and Illegal Migration (5).

The National Commission through the years of its existence has brought many documents for a more progressive and successful combat with the trafficking problem. Those documents were result of the complexity of this crime, the need for its prevention, prosecution and protection of its victims.

The Standard Operative Procedures give a secure process of protection of the human rights of the victims and their treatment from the beginning (the identification as a victim) till the end of the criminal procedure.

They were established with an aim to secure help and protection for the victims through a multi – institutional approach based on the human rights policy and directed to the victim as a framework for institutional cooperation. They give a full picture for Macedonia’s legislative that elaborates this area.

2. Standard Operating Procedures

At first, why Standard Operating Procedures: The SOP for treatment of victims of trafficking in human beings are established in order to provide support for and protection of all victims of trafficking in human beings through a comprehensive approach, based on human rights and focused on the victim by means of institutionalized cooperation framework (6).

The key documents for establishing SOPs include:

- Guidelines for the Development and Implementation of a Comprehensive National Anti-trafficking Response⁰, issued by the ICMPD;
- National Referral Mechanism. Joining the Rights of Trafficked Persons. Practical Handbook published by OSCE;

- Recommended principles and guidelines regarding the human rights and trafficking in human beings (as a result of the UN Protocol against Human Trafficking) published by UNHCHR;
- IOM Handbook for Direct Assistance to Victims of Trafficking in Human Beings;
- Report of the Expert Group on Trafficking in Human Beings prepared for the European Commission, as well as the documents of him Stability Pact Task Force;
- Criminal Code of RM (7);
- Law on Criminal Procedure (with the amendments still not in effect)⁸;
- Law on Foreigners (9);
- Law on Witness Protection (10)
- UN Convention against Trans-national Organized Crime with the Protocols;
- Convention on the Rights of the Child;
- Council of Europe Convention on Action against Trafficking in Human Beings (11);
- Juvenile Justice Law (with deferred application) (12);
- Family Law (13).

There are some areas that the SOP measures tackle: Identification of victims of human trafficking; Legal status of victims; Assistance for victims (before they return, as well as measures for integration in the country of destination); Return of victims; Assistance and reintegration of victims after their return to the country of origin; Criminal Proceedings involving victims as witnesses and Indemnification.

The guiding and most important principles that SOP are based on, and they are involved in every measure: Human rights-based approach; Interdisciplinary and inter - sectoral approach; Participation of the civil society; Government ownership; Sustainability; and Prevention of human trafficking. We can mention here that programmes need to be adjusted to the individual needs of each individual victim; the victim should be informed about entire process and everyone has the right to choose if and when he/she wish to be assisted; any individual presumed to be a victim of trafficking shall be treated as victim until the final confirmation; need to inform the competitive authorities; all entities involved in this process should act in line with principles of non-discrimination on the grounds of sex, age, social status, race, religion, political persuasion... in case of minors the assignment of a guardian is mandatory and all information should be kept as confidential and should be accessible to as few people as possible.

SOPs consist of five part: 1) Identification and Referral; 2) Initial care and Mid-Term Assistance; 3) Return; 4) Reintegration; and 5) Criminal Proceedings.

Each of these parts contains directions on: WHAT measures should be taken; WHEN the measures are going to be taken; WHO is to be responsible for the various described

measures; and HOW the described measures are going to be implemented and how the governmental institutions and civil sector organizations are to cooperate.

2.1. Identification and Referral

First SOP is identification and referral. That is a process in which, through a variety of indicators and an interview with the person, information is obtained on the basis of which it is assessed whether the person is a victim of trafficking in human beings. There are 7 measures in the identification process, with their WHAT, WHEN, WHO and HOW. Purpose of the identification is to enable the victim to find the appropriate supporting services/bodies in the fastest and most appropriate manner.

In measure 1 - **Initial Referral**, this document talks about informing the competent government bodies about a person presumed to be a victim of trafficking and referring the latter to a shelter, as soon as there are grounds for a suspicion that a person is a presumed victim. If there is a suspicion of trafficked persons, they should be reported to the competent authorities like THBS⁽¹⁴⁾ of MIA⁽¹⁵⁾; MLSP⁽¹⁶⁾; NRM⁽¹⁷⁾; NGOs⁽¹⁸⁾... In case when the presumed victim is a minor, the obligation of competent authority is to inform the CSW⁽¹⁹⁾ immediately, to appoint a special guardian.

Measure 2 - **Preliminary Provision of Information** is about giving information to the presumed victim and that should be an integral element of the entire referral process. Well provided information enables the presumed victim to restore confidence and decide independently. The same competent authorities should provide information and satisfy the urgent needs of the presumed victim immediately, like measure 1. The provision of information should be an open process (conversation) with no time limit, after the presumed victim has been informed of her rights, possibilities, forthcoming processes, option to refuse to cooperate, and most important-possibility to ask questions and express her requests. The information should be into the language that the victim understands.

Next is measure 3 - **Early risk assessment**, like a two-way conversation between the competent authorities and presumed victim-something like preliminary or initial interview. Because of urgent assistance, medical aid or other needs, stopping the insurance of the traffickers or third persons and establishing together the following steps required to ensure the safety and well-being of the presumed victim. This conversation can or should start immediately after the presumed victim has satisfied all basic needs and measures 1 and 2. If there is a problem with the location (not safe) or urgent medical aid or the victim asks for legal advice, or minor without guardian...the interview should not start. The same competent authorities in safe location do that interview. These measures are only implemented if the presumed victim is fully informed and has consented to them, or signing a statement that doesn't consent to them.

Measure 4 is **Language and translation**, just to help and understand the presumed victim with no appropriate language knowledge and her needs. There is an authorized court interpreters or some other professionals, who signs a statement for interpretation accuracy and confidentiality of the information received. If there are persons what are found with the victim, they should not be used as interpreters. In case of minor, this statement is to be signed by the guardian. Presumed victims who do not accept an interpreter are to sign a statement that they understand the language. Because of this specific situation, the interpreters should

have previous experience or be trained to work this, and to be informed about their obligations and responsibilities during and after the interview. Also, the presumed victims should/must be informed about interpreter's role.

Measure 5 - **Identification**, is a way to establish whether an individual(person) is a victim of trafficking in human beings, or is not, and we here is the same conversation with competitive authorities from one side, and the suspected victim from the other. As we know, if the presumed victim is ready, the interview can start, but if she/he is upset, anxious, hostile, aggressive, needs medical aid, asks for legal advice, doesn't understand the interviewer, minor without guardian, the interview shouldn't not be started. The most competitive is representative of CSW. In one identification process, we should keep in mind the articles from the Criminal Code of Republic of Macedonia - 418(a) ⁽²⁰⁾, 418(d) ⁽²¹⁾ and 122.

And the definitions that are part of the incriminations for trafficking of human beings in the Penal Code of Republic of Macedonia should take part in the process of the identification.

Next measure, number 6, is **Providing Information after Identification**. The accent here is on information that the competitive authorities give to victim no matter if he/she has been identified as a victim of trafficking in human beings. The information is about victim's rights and opportunity to express her concerns and ask questions. The competitive authorities inform the victim about the entire process, and need her agreement for every measure and step, immediately after the victim's status has been established. Here it is a possibility to get in touch with the country of origin's embassy, if the victims wish that. The case managers are important here, because all of information is provided to the victim by them. And the victims have two options: to testify, or not to testify. If they choose to testify, they get information about the temporary residence, process of collecting evidence, court proceedings and the right to claim non-material indemnification, testimony and protection options, information on the assistance available and the conditions of such assistance; If they choose to not testify, they get information on the return options, on risk assessment before the return and on the assistance available and conditions of such assistance.

And the last measure, number 7 what offer **Deciding Period and Temporary Residence Permit**, where victims have a period to decide about cooperation and have time for rehabilitation and stabilization. The role of victim it is not a simple or casual. They have to decide to be witnesses or not... Few services must to offer in this period, like safe accommodation; medical, psychological and social help; advice and information on their legal rights; information on the appropriate court or administrative proceedings, as well as the right of foreign nationals to seek asylum; access to education; information for the possibilities for their return or temporary stay in Republic of Macedonia – all these services on language what victim understand. If the foreign victims decide to cooperate, next is temporary residence permit, because their presence in Republic of Macedonia is necessary for conducting the court proceedings and they demonstrate a clear intention to cooperate with the competitive authorities – just with one order: to discovery criminal acts and catch their perpetrators. In Republic of Macedonia a request for issuing a temporary residence permit for the victim of trafficking is submitted by the THBS ⁽²²⁾ no later than 10 days before the expiry of the decision-making period of the victim. This request must be signed personally by the victim, or in case of minors, by the guardians. The request is submitted to the BAS ⁽²³⁾. And there is a time limit – the decision-making period for domestic victims is up to 30 days counting from the day the victim is accommodated. Possibility to extend the decision-making

period shall be envisaged for juvenile victims. About foreign victims as from the moment of the initial referral, the presumed victim is allowed a decision-making period of two months, with the possibility of a prolonged this period in case of minors. The temporary residence permit is issued for a period of up to six months with the possibility of extension for another six months. As the other measures, the competent authorities or case manager make first step – inform the victim about decision-making period on the language what he/she understand, than the victim is allowed a decision-making period on the basis of the request submitted by the O from THBS within MIA⁽²⁴⁾, which includes the victims consent. The request is forwarded to the Head of the BAS, who decides on the request. After the expiry of the decision-making period and the validity of the temporary residence permit, if the circumstances surrounding the personal safety of the victim require so, the O of THBS – having obtained consent from the victim – submits a request to the Head of the BAS. At least, the decision-making period may be interrupted if: the victim has voluntarily, actively or upon his/her own initiative renewed the contacts with the persons who are reasonably suspected of having been involved in the commission of the criminal act of “Trafficking in human beings” or it is so required by the circumstances of the public order and national security of the Republic of Macedonia. The circumstances are established on the basis of a special request submitted by THBS. This request is to be forwarded to the Head of the BAS, who decides upon the request.

2.2. Initial Care and Mid-term Assistance

Second SOP is Initial Care – like first step in the package for assisting people exposed to traumatic events and is undertaken in the course of the decision-making period and Mid-term Assistance for the victim. Satisfying the basic need like accommodation, food, clothes, psychological counseling and psycho-social support, referring to legal aid (information about the legal provisions in relation to the temporary residence permit, possible legal problems upon the return to the country of origin), facilitating the contact with the consular office and with the authorities in the country of origin with the victim’s informed consent, providing documents (in cooperation with the consulate office), medical aid, safety measures, contacting the family and/or close relations at the victim’s request, informing the competent authorities – all these are part of Initial Care. During the Mid-term Assistance, the service providers are responsible for: providing safety, health care services and legal aid; assessing and satisfy the psychological needs; assisting the victim in restoring self-confidence and stability; and cooperating in planning and preparation of the victim’s future steps. Where Mid-term Assistance shall be given? Here is mentioned 3 options: In Macedonia, if the victim concerned is a Macedonian national; or In the country of origin, after the victim is returned (if the victim concerned is a foreigner); and/or In the country of destination, if the victim stays longer than the decision-making period on grounds of a granted temporary residence permit (for example, as a victim or a damaged party).

There are 4 measures and they include victim’s needs assessment, developing an assistance plan, consent with the implementation of the assistance plan and adjustment and stabilization.

In Measure 1- **victim’s needs assessment**, is already mentioned basic needs, risk assessment, health issues, and legal needs – by the case manager. The assistance plan (Measure 2) is a clear and detailed description of the suggested subsequent steps for support of the victim and this is a provisional plan. People who are involved here are: first, the case

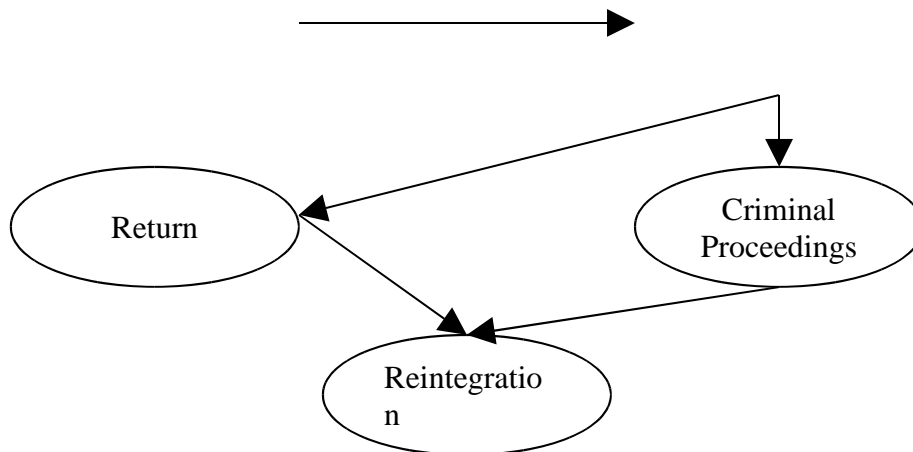
manager (professionals from CSW/O from THBS/ a representative from an NGO-shelter/O from BAS); the victim; the support family or the guardian (appointed by the CSW, in case of a minor or a person with problems in the psycho-physical development). Consent with the Implementation of the Assistance Plan is next (Measures 3), and this procedure is carried out in order for the victim to understand and consent to the offered help, conditions and terms. When the assistance terms and conditions have been explained to the victims, if he/she agrees to them, he/she must sign a request for assistance. The case manager from Centers for Social Work (CSW) is the same competitive. The victim should be given a clear description of the services offered in a language comprehensible to the victim, and time to read or have the consent form read to them and to review the options and make a decision. And the consent is limited to the services indicated in the request for assistance – any other types of tests needs separate consent procedures. In case the victim is a foreign national, the BAS notifies: the THBS, IOM ⁽²⁵⁾, Interpol (if the individual has no identity) and MLSP ⁽²⁶⁾, the Ministry of Foreign Affairs and NGOs ⁽²⁷⁾. The following are notified in case of domestic victims: THBS, MIA, NRM ⁽²⁸⁾ within MLSP, NGOs, family. And the adjustment and stabilization (Measure 4) process includes: package of medical services and required medical aid; psycho-social assistance and support with a view to: a) boosting the victim's feeling of independence and self-confidence; b) providing social and educational activities; c) acquiring knowledge and skills; d) preparing him/her for re-socialization and reintegration; e) safety risk assessment; f) individual psychological support; legal aid; financial aid (in accordance with the legal regulations); and opportunities for education/vocational training/regular education for minors. This measure should follow the Initial Care. There are numerous governmental and non-governmental service providers, including psychologists from CSW of MLSP and NGOs, social workers for support from CSW of MLSP and NGOs, authorized persons from the NRM of MLSP, medical professionals. The adjustment and stabilization care should be multi - sectoral and is proposed in cooperation with the competent authorities. The victim may submit an objection to the case manager and/or to the competent authorities related to any remarks they have concerning the services and procedures offered. The objection may be submitted: anonymously, verbally or in writing. The case manager and/or competent authorities are required to examine the allegations in the objection in the shortest period possible, and to inform the victim about the same. The allegations shall be reviewed institutionally. The submission of an objection should in no way have negative impact on the provision of services.

All results from the assessment should be reviewed with the victim, because of rights, and every step in future to be the best for her, and investing all efforts to encourage the victim to take an initiative.

2.3. Return

Identification

Care and help



The third Standard Operative Procedure in the chain of the five above mentioned is Return. It is a procedure composed by eight measures that need to be completed to have a complete and successful process of victim's returning.

The returning process should always be voluntary and safe, and it has two different options depending of the victim's citizenship (if the victim is a domestic one or a foreign one).

If the victim is a domestic one, the process of returning is made through the National Referral System in cooperation with the Trafficking in Human Beings Sector in the Ministry of Internal Affairs and a Non – Governmental Organization or it can be a individual returning at the victims expense.

If the victim is a foreign one, the process of returning can be made between two Governments, two NGO's, or two International Organizations. Also it can be returning on the victims cost or it can be a mixed system (Government and NGO, NGO and IO, etc.).

In cases of a victim that is under the age of 18 years (a juvenile one), she must be not returned in her country of origin till the moment when the country of origin has fulfilled all the necessities (find her family, provide an accommodation).

The measures that must be fulfilled to have a successful returning in the country of origin are:

1. **Decision – making Process for the Return of a Victim** – The process of returning always starts with an informed decision of the victim. The victim must have all the information about the legal possibilities in the country of destination, if she decides to stay, then about the possibilities in the country of origin, if she decides to return. The information is given through decision making period, that is 30 days for a domestic victims and 60 days for a foreign victims;

2. **Risk Assessment and Possibilities for Social Inclusion** – It is a measure whose importance must be looked inside of the essentiality of the safety. With the risk assessment we give answer of questions connected with the victim's opinion about her safety into the country of origin, questions connected with the police assessment of the safety situation and the situation with the “traffickers”, and at the end questions connected with the social inclusion of the victim (are there possibilities for a re – victimization of the victim);

3. **Developing a Risk Management Plan** – With this measure the competent bodies and organizations make a plan in which they establish the risks for the victim and her family. It is a document made with a purpose to minimize the risk and manage with it effectively. It is developed in two parts. The first part is designed by the Trafficking in Human Beings Sector in the Ministry of Internal Affairs, which part is related to the risk and

safety assessment. And the second part is made by the National Referral Mechanism, which one is related with the victim's social inclusion;

4. **Finding the family** – It is a measure that will be brought to life only if the victim has lost contact with her family. Actions should be undertaken to establish contact with the family and of course those actions should be taken in the same time with the safety and risk assessment;

5. **Documentation** – In cases when the victim has made a voluntary decision to return in her country of origin, the competent bodies and organizations included in her returning must get in touch with the appropriate embassies and other institutions in order to get information how to obtain the appropriate traveling papers for the victim. And of course at the end to get those documents. Here is very important the passport not to contain any state that the person is a victim of Trafficking in Human Beings or Illegal Immigrant.

6. **Sharing Information with the Victim** – The aim of this measure is to share information with the victim to ensure secure returning and reintegration, and avoid victim's re – victimization. Through this process the victim is and should be fully informed for the *assessment results (risk and safety), identity status and travel papers, transport process, information about the first days in the country of origin;*

7. **Sharing Information with the Victim before Departure** – It is a measure with which the process of return gets a fully informed country of origin about all the victim's necessities. The information is shared between the country of destination and the country of origin. The sharing starts at least 8 days before the return or in extraordinary circumstances when the victim's safety is endangered, this time frame can be shorter, but not shorter than 48 hours. Information that is shared contain *name of the victim, date of birth and place of residence, current health condition, safety and risk assessment, short overview of the needs of assistance, anticipated date and time of departure.* After receiving this information, the organization in the country of origin decides whether the victim will receive assistance.

8. **Safe Transport / Transfer** – The transport of the victim starts from the shelter center and it ends to the place of residence in the country of origin. Through this process, the victim must be provided with all the basic needs for a safe and commode return. Things like *travel and identification documents, travel ticket, telephone numbers in case of emergency, and information on how to recognize the person meeting the victim upon arrival and during the transit, personal belongings and accompanying person.* If the victim is included into the Witness Protection Program, than she is accompanied by the Witness Protection Unit from the shelter center to the necessary place.

As we mentioned at the beginning of this part, return is a very important procedure not only for the victims, but also for the countries included in the case. With fulfilling the eight measures that are part of the SOP – Return, the victims get an opportunity to make decision on their own, decisions that have to do with their own life and to choose whether they will continue with their lives in the country of origin or they will look for a better life in the country of destination. Also we have to admit that without these measures the re – victimization would be a lot of easier. And of course that is the thing that must be avoided, what is the basic aim of the third SOP.

2.4. Reintegration

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, in Article 3(a) give a definition of this complex crime. Namely, *“Trafficking in Persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of*

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs ⁽²⁹⁾.

From the above mentioned definition we can see the complexity of the Trafficking in Human Beings as a crime. Because of that we have to have on mind the victim's suffering into its chain. Namely, every victim gets out of the trafficking process with physical, psychological and social consequences. They are result of the permanent abuse and exploitation of the victim.

Those consequences are the reason for establishing the fourth Standard Operative Procedure – Reintegration. It is a procedure which includes practical design and implementation of individual programs for each person individually, programs that are based on the victim's age and needs. These programs take place in the shelter center, of course in cooperation with an NGO.

Reintegration as SOP is a synthesis of two measures:

1. **Preparation for Reintegration** – This measure is antecedent of the Reintegration Plan. Its main aim is to provide a successful development of the plan. It takes place in the place of residence if the victim is a domestic one; or it takes place in the country of origin or the country of destination if the victim is a foreign one. This measure includes preparations and discovery of the individual needs of the victim in each case. And when we speak for preparation, we speak for *psychological counseling, legal advice, language learning, education or vocation training, counseling and assistance regarding employment*;

2. **Reintegration Plan** – The plan's development is in very close link with the sharing information between the two countries (origin and destination), because on this way they will learn more about the victim's needs. It is developed only in cases where the victims want to receive additional assistance, but if the victim is juvenile this plan is mandatory. The main aim of the existence of this kind of document is to avoid secondary victimization and to make an easier reintegration for the victim in the family, home, the local community, the society.

At the end of this part we must admit the importance of the victim's reintegration. Why? Without reintegration, victims will never get out of the shadow of society. They will be an easy target for the traffickers for a secondary victimization; they will be stigmatized for the rest of their lives; they will think that everything was their fault or that they deserve everything what have happened to them. With one word...through reintegration victims get answers to many questions and they what is more important...they get a second chance.

2.5. Criminal Proceedings

The criminalization of the Trafficking in Human Beings in Macedonia, in 2002 and its changes in 2004 ⁽³⁰⁾, brought with it a lot of necessities to be fulfilled to have a successful criminal procedure and of course, to have a protected victim through the whole process that must be based on her basic human rights.

At the beginning we have to underline that the victim of trafficking of human beings can be involved in the criminal proceedings only if she decides to cooperate with the law enforcement and the judicial authorities. If she does not want to cooperate, she can not be made by force or another way to accept the cooperation.

According to the articles in the Criminal Procedure Law of the Republic of Macedonia, each person – including the victim of trafficking in human beings summoned as a witness – is obliged to appear and give a statement. If there is a likelihood that, by giving such a statement or by answering certain questions, the witness would expose herself to danger for her life or personal integrity, she may refrain from presenting personal information. Also, the witness is not obliged to respond to certain questions if it is likely that by answering such questions she would expose herself or a close relative to grave disgrace, significant material damage or criminal prosecution ⁽³¹⁾.

Because of the incoming danger of secondary victimization of the (victim) witness, the last, fifth, Standard Operative Procedure contains five measures, whose implementation is a mosaic of many different state organs. These organs and bodies must collaborate through the whole process, to have a protected victim with guaranteed human rights. And when we speak for state organs, we mean on the Ministry of Internal Affairs (Trafficking in Human Beings Sector, the Investigative Judge, the Public Prosecutor, Victim's Lawyer, and the Team for Psychological Support).

The five measures incorporate full collaboration with the victim in the process of collecting evidences, than preparation of the victim for the trial, support through the process and afterwards, and at the end consultation for a Indemnification Claim. In the next rows of our text we will try to give a clear picture for them.

1. **Collecting Evidence with the Victim's Support** – This first measure starts only if the victim has accepted to collaborate with the law enforcement and the judicial authorities. Namely, after the victim gives consent for collaboration, the Trafficking in Human Beings Sector at the Ministry of Internal Affairs conducts a conversation with the victim – the victim gives a statement and verbally initiates the process. If the victim is a juvenile through the whole process there must be present a representative from the Centers for Social Work at the Ministry of Labour and Social Policy or a guardian for special cases through the National Referral Mechanism, also at the Ministry of Labour and Social Policy.

Here is very important to have a fully informed victim, because that is the base for a building trust between the witness (victim) and the state organs. To have a fully informed victim, first before the conversation starts, she should be informed of:

- the rights and responsibilities during the conversation with the officials from the Trafficking in Human Beings Sector at the Ministry of Internal Affairs;
 - the rights and responsibilities related to giving a statement in front of an investigative judge and of the main hearing;
 - the possibilities for claiming indemnity in the criminal proceedings;
 - the personal safety and the safety of her family or other persons close to her;
 - the confidentiality of the process and risk of disclosing information;
 - the possibility to have the perpetrator physically removed during the court proceedings;
 - that all the assessments will be made before conducting the interview;
- and
- that no contacts are not going to be established with the native country nor the consular offices in order to collect evidence without her consent.

In cases when the victim has returned to the country of origin, and additional information is needed, the Trafficking in Human Beings Sector will submit a request through SECI to locate the victim, and at the same time the Court shall submit a request for international legal aid to the Ministry of Justice or Ministry of Internal Affairs of the native country.

2. **Preparation of the Victim before the Trial** – the main goal of this preparatory measure is avoiding secondary victimization. And beside that, to make the victim aware of its rights, to completely inform her about the court process, about the roles of different persons included into the process, and of course, to provide physiological support for the victim. The rights of the victim through the whole process, rights that must be guaranteed are:

- the right to attend the main hearing;
- the right of adequate interpretation;
- the right not to respond to certain questions;
- the right to propose new evidence and to pose questions to witnesses, court experts and defendants;
- the right to elaborate the identification claim;
- the right to a closed trial;
- the right to have an attorney to represent her in the criminal proceedings.

The attorney in communication with the public prosecutor, a team of psychological support appointed by an NGO and other representatives of governmental institutions are included in fluffiness of this measure.

If the trial is held in the country of destination and the victim has returned to the country of origin, if there are necessities the preparation of the victim will start in the country of origin. It starts at the request of the public prosecutor or the investigative judge from the destination country. SECI is the intermediate of the request.

This measure chronologically takes place before the beginning of the trial when the attorney will explain the course of the criminal proceedings. Also the victim must have a person that will companion her throughout the entire criminal proceeding and she should be reminded of all her statements that were given previously.

3. **Support to the Victim during the Trial** – to get a relevant statement from the victim, to minimize the safety risks and to minimize the risk of repeated traumatisation.

If the victim is a minor who due her age and level of mental development are not able to understand meaning of their rights, will not appear as witnesses and will not be heard as one. They may be heard as witnesses only if that won't be harmful for their psychological development. The number of hearings of minors as witnesses is twice, with a possibility to make a third hearing if the case require so. Through the process of hearing, depending of the victim's age and its development, psychologists, pedagogues or other type of experts are present. In case where the minor victim is under age of 16 may be summoned as a witness only if her parents or legal representatives are present, also here with a possibility to make an exception due to a need of urgent action or due to other circumstances ⁽³²⁾.

Through the trial process if the victim's safety is in danger statements can be given in a special room in order to avoid her personal presence or it can be given inside of the court room, but before that the accused must be removed from the room.

Also, recorded testimonies, video testimonies, statements given in separate court premises can be used during the trial in order to exempt the victim's appearance in the court room.

In the trial processes the victim must avoid contact with the perpetrator or individuals close to him, the support persons must be close to the victim when she testifies, the criminal proceedings must be closed for the public, and the possibility for including the victim in the Witness Protection Program, if there is need for that.

When the victim is repatriated in her native country and there is need for her appearance as a witness in the destination country, the Ministry of Internal Affairs submits a

request to SECI center for locating and ensuring the presence of the victim as a witness. The request should contain information for the victim, the trial and the accused person/persons.

We have to mention the vital role that SECI give to the Macedonian authorities in the 2004 in the cases for securing the presence of victims as witnesses in the criminal proceedings, when SECI received 20 requests for locating 48 victims of Trafficking in Human Beings for Sexual Exploitation. From this 20 requests, the victims from 15 were located and 11 of them gave consent to testify ⁽³³⁾.

If the victim needs to appear, activities will be undertaken to organize their arrival in Macedonia. SECI organizes the trip, but when the victim enters in the territory of Macedonia, her safety is an obligation of the Witness Protection Unit. Here we need to mention that when there are technical possibilities, foreign victims of Trafficking of Human Beings can be heard and give a statement by means of video – conferencing or hearing of the victim via telephone.

The first video conference ever carried out in the Republic of Macedonia, which provides for hearing of witnesses – victim in the proceeding before the Basic Court Tetovo was enabled with the joint efforts of the SECI Centre, the Ministry of Internal Affairs of the Republic of Macedonia, the Ministry of Internal Affairs of the Republic of Moldova, the Public Prosecutor’s Office of the Republic of Macedonia, the Ministry of Justice of the Republic of Macedonia, the Basic Court in Tetovo and FBI ⁽³⁴⁾.

4. **Support for the Victim – Witness after the Trial.**

Considering that the victim is usually exposed to a risk of intimidation and threats as revenge by the traffickers, providing special protection is needed.

After the trial ends, depending of the risk assessment, the witness – victim, who is a foreign national, may be returned to her native country or another country, or if the safety situation calls she may be included in a witness protection program.

The Public Prosecutor of the Republic of Macedonia gives the proposal for including into the Witness Protection Program of a witness – victim. With the proposal the Public Prosecutor must give all the information for the person that needs to be included in the Program. The consent for including in the Program decides a Council in a period of 30 days.

If a victim is included into the Witness Protection Program, one of the following measures may be applied:

- confidentiality concerning the victim’s identity;
- providing personal protection;
- change of identity;
- change of place of residence/temporary residence.

Also, if the safety situation calls beside the victim, her close relatives may be included in the Program if there is a significant threat to their life, health, freedom, physical integrity or property.

Domestic victims who will not enter the Witness Protection Program can use the services of a NGO and will be observed for a period of a year to avoid secondary victimization.

5. **Support for the Victim in the Indemnification Claim in Criminal Proceedings.** Reforms of penal legislation directed at protecting the interests of the victim, including, access of the victim to the penal justice system and its enforcement, restitution, compensation, social aid and protection against secondary victimization.

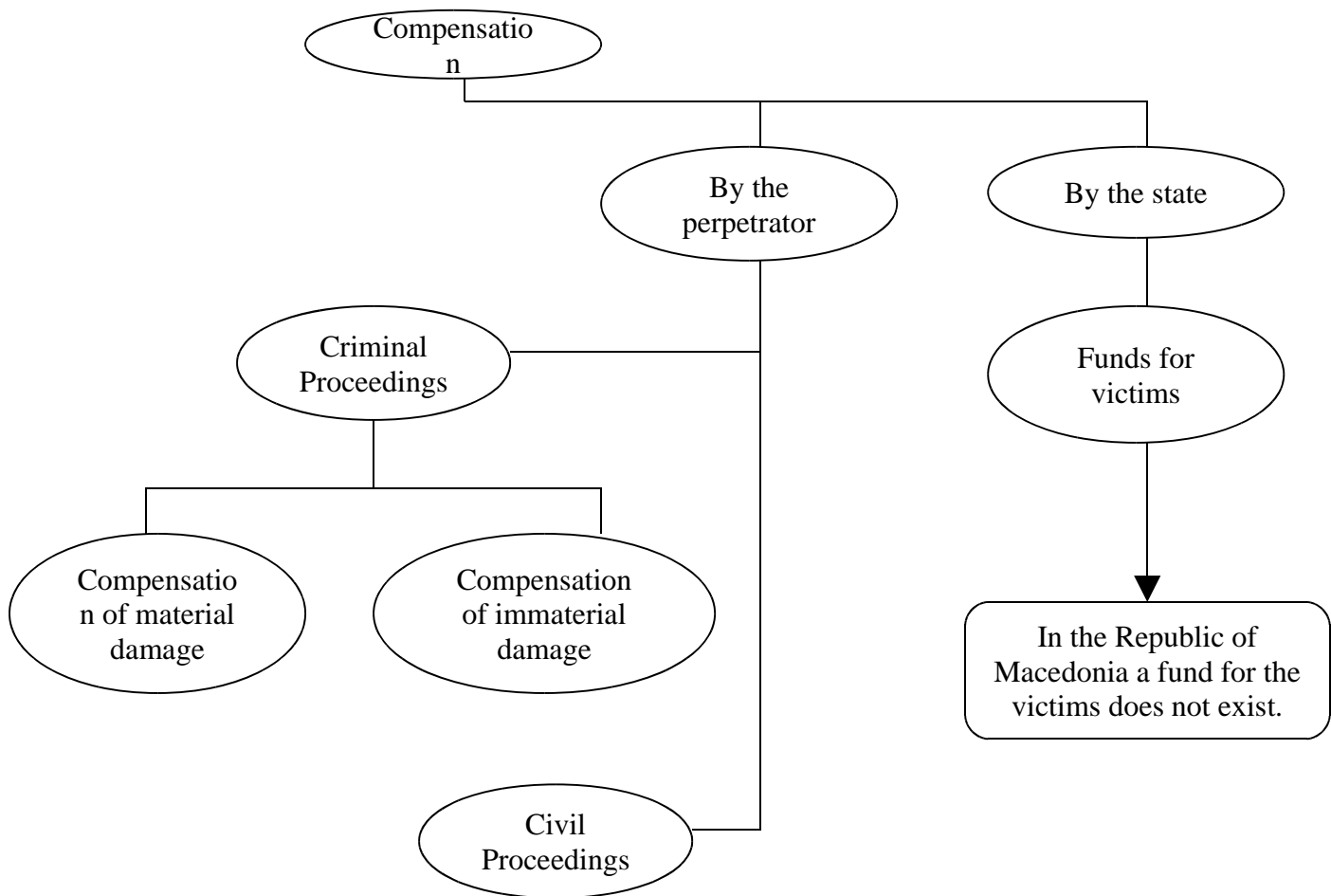
In the European Union Member States, the liability for compensation of damage caused by the perpetrator of criminal offence rests primarily with the defendant.

In the Republic of Macedonia the compensation is possible through the use of the provision on confiscation of property and/or material benefits obtained from the crime from the perpetrator of the criminal offence and returning it to the victim.

The confiscation of proceeds from crime is ordered from the court together with the decision that establishes the crime as committed by the accused. The compensation of the victim is obtained only if the victim fills an indemnification claim not before the conclusion of the main hearing at the first instance court. Minors can submit the claim even after the second hearing.

As we said the decision of compensation is brought together with the verdict by which the defendant is found guilty. Indemnification claims when trafficking of human beings is in question refer to compensation of material and immaterial damage.

Also, there is a possibility the court to decide the indemnification claim in part and to give instructions to the damaged side to claim the rest in a civil legal action.



Scheme of the phases and possibilities of compensation of the victims (of Trafficking in Human Beings) ⁽³⁵⁾.

3. Conclusion

With the ratification of the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, brought a new era in the combat against trafficking in the Republic of Macedonia.

The “3P” paradigm (prosecution, protection, prevention) became a base for all the actions in every member state. The trafficking was criminalized; many documents were brought to life.

One of them is the Standard Operative Procedures. They are an example for a rightful protection and work with the victims of Trafficking of Human Beings. That is a document that makes synthesis of all of the international documents and domestic law documents that have a connection with this area. On this way they give much clearer picture of everything that must be undertaken to give the victims safe return home, successful reintegration in the society, guarantee her basic rights through the whole process and through the criminal proceedings.

The Standard Operative Procedures for protection and treatment of victims of trafficking in human beings were established with an aim to secure help and protection for the victims through a multi – institutional approach based on the human rights policy and directed to the victim as a framework for institutional cooperation. They give a secure process of protection of the human rights of the victims and their treatment from the beginning (the identification as a victim) till the end of the criminal procedure.

Because of the things they have survived through the trafficking process and the physical and psychological consequences there is a need of this kind of document it is normal to protect them and to try to avoid their secondary victimization.

The victims of modern slavery have many faces. They are men and women, adults and children. Yet, all are denied basic human dignity and freedom...in that kind of conditions it is hard for them to imagine that there might be a place of refuge. (Barrack Obama)

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¹ Aristotle. *Politics* (Skopje:Slovo, 2006), 15

² Kevin Bales. *Disposable people: New slavery in the global economy* (Berkeley and Los Angeles: University of California Press, 2004), 15

³ Siddharth Kara, *Sex trafficking: Inside the business of modern slavery* (New York: Columbia University Press, 2009), 19

⁴ Republic of Macedonia became member – state of the UN Convention and its two protocols on 12 of December 2000

⁵ The National Commission for combating against Trafficking in Human Beings and Illegal Migration was founded in 2001 by the Government of the Republic of Macedonia

⁶ Document by National Commission for trafficking in human beings and illegal migration

⁷ Official Gazette of the Republic of Macedonia, No. 37/96, 80/99, 4/2002, 19/2004, 73/2006, 7/2008.

⁸ Official Gazette of Republic of Macedonia No. 15/2005.

⁹ Official Gazette of Republic of Macedonia No. 35/2006, 66/2007.

¹⁰ Official Gazette of Republic of Macedonia No. 38/2005, 58/2005.

¹¹ <http://www.coe.int/trafficking>

¹² Official Gazette of Republic of Macedonia No. 87/2007

¹³ Official Gazette of Republic of Macedonia No. 80/92, 9/96, 38/2004, 33/2006

¹⁴ Trafficking in Human Beings Section

¹⁵ Ministry of Internal Affairs

¹⁶ Ministry of Labour and Social Policy

¹⁷ National Referral Mechanism

¹⁸ Non-governmental Organizations

¹⁹ Centers for Social Work

²⁰ Article 418 (a) of the CC: (1) Anyone who misleads others by use of force or serious threats or uses other forms of coercion, abduction, deceit and abuse of position or of another person's pregnancy or vulnerability or the physical or mental disability of others, or, by giving or receiving money or other benefits in order to obtain the consent of a person with control over another person, or in any other way recruits, transports, transfers, buys, sells harbors or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar relationship or illicit transplantation of human organs, shall be punished with imprisonment of at least four years.

(2) Anyone who takes away or destroys another person's ID, passport or other identification document in order to commit the act referred to in paragraph (1) of this article, shall be punished with imprisonment of at least four years.

(3) Anyone who uses or enables others to use sexual services of, or to otherwise exploit, individuals who he/she knows, or is obligated to know, are victims of human trafficking shall be punished with imprisonment of six months to five years.

(4) The consent of the victim of trafficking in human beings to the intended exploitation referred to in a paragraph (1) shall have no bearing on the existence of the criminal act referred to in a paragraph (1).

(5) If the crime of paragraph (1) is committed by a legal entity, the latter shall be punished with a fine.

(6) An attempt shall be punishable.

(7) Real estate, items and transportation means used in the perpetration of the crime shall be confiscated.

²¹ Article 418 (d) of the CC: (1) Whosoever recruits, transports, buys, harbors or accepts a juvenile person for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery forced marriages, forced fertilization, illegal adoption or similar relationship or illicit transplantation of human body parts, shall be punished with imprisonment of at least 8 years.

(2) Whosoever commits the act referred to in paragraph (1) by using force, serious threat, by misleading or using other forms of coercion, abduction, deceit, abuse of position or of another person's pregnancy, vulnerability or physical or mental disability, or by giving or receiving money, or other gain in order to obtain the consent of a person who exercises control over another person, shall be punished with imprisonment of at least 10 years.

(3) Whosoever uses or enables others to use the sexual services of, or to otherwise exploit, a juvenile person who he/she knows or is obligated to know is a victim of trafficking in human beings, shall be punished with imprisonment of at least 8 years.

(4) Whosoever takes away or destroys another person's ID, passport or other identification documents in order to commit the act referred to in paragraphs (1) and (2) shall be punished with imprisonment of at least 4 years.

(5) The consent of a juvenile person to the actions referred to in paragraph (1) shall have no bearing on the existence of the crime referred to in paragraph (1).

(6) If the act referred to in paragraph (1) is committed by a legal entity, it shall be fined.

(7) Real estate, items and transportation means used in the perpetration of the crime shall be confiscated.

²² THBS-Trafficking in Human Beings Section

²³ BAS-Border Affairs Sector

²⁴ MIA-Ministry of Internal Affairs

²⁵ IOM-International Organization of Migration

²⁶ MLSP-Ministry of Labor and Social Policy

²⁷ NGO-Non-governmental Organizations

²⁸ NRM-National Referral Mechanism

²⁹ Article 3(a) from the Palermo Protocol

³⁰ Article 418 (a) of the Penal Code of Macedonia:

(1) Anyone who misleads others by use of force or serious threats or uses other forms of coercion, abduction, deceit and abuse of position or of another person's pregnancy or vulnerability or the physical or mental disability of others, or, by giving or receiving money or other benefits in order to obtain the consent of a person with control over another person, or in any other way recruits, transports, transfers, buys, sells harbors or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriages, forced fertilization, unlawful adoption or similar relationship or illicit transplantation of human organs, shall be punished with imprisonment of at least four years.

(2) Anyone who takes away or destroys another person's ID, passport or other identification document in order to commit the act referred to in paragraph (1) of this article, shall be punished with imprisonment of at least four years.

(3) Anyone who uses or enables others to use sexual services of, or to otherwise exploit, individuals who he/she knows, or is obligated to know, are victims of human trafficking shall be punished with imprisonment of six months to five years.

(4) The consent of the victim of trafficking in human beings to the intended exploitation referred to in a paragraph (1) shall have no bearing on the existence of the criminal act referred to in a paragraph (1).

(5) If the crime of paragraph (1) is committed by a legal entity, the latter shall be punished with a fine.

(6) An attempt shall be punishable.

(7) Real estate, items and transportation means used in the perpetration of the crime shall be confiscated.

³¹ Article 241 and 244 of Criminal Procedure Law, Official Gazette of Republic of Macedonia No. 15/05, 83/08.

³² Article 239 and 243 of Criminal Procedure Law, Official Gazette of Republic of Macedonia No. 15/05, 83/08.

³³ Coalition "All for fair trials". *Combating Trafficking in Human Beings through the Domestic Courts* (Skopje: Emitter, 2005), 25

³⁴ Coalition "All for fair trials". *Combating Trafficking in Human Beings through the Domestic Courts* (Skopje: Emitter, 2005), 42

³⁵ Coalition "All for fair trials". *Combating Trafficking in Human Beings through the Domestic Courts* (Skopje: Emitter, 2005), 53