

# COMPARATIVE LEGISLATIVE ANALYSIS OF CRIMINAL LEGISLATION OF THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SERBIA IN TERMS OF HUMAN TRAFFICKING AS THE MOST BRUTAL VIOLATION OF FUNDAMENTAL HUMAN RIGHTS<sup>1</sup>

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**Summary:** Author analyzes criminal legislation of the Republic of Croatia and the Republic of Serbia in terms of human trafficking as the most brutal violation of fundamental human rights and as one of the leading forms of organized crime at the present time. She indicates legal solutions in the two aforementioned countries, their similarities and differences. The paper examines the situation in relation to the criminal offenses of trafficking in persons in the Republic of Croatia and the Republic of Serbia along with a review and analysis of final case law in relation to the types of exploitation and sentence. Accordingly, the author suggests measures that must be carried out with the aim of combating this form of organized crime and provides suggestions for possible changes.

**Keywords:** Human trafficking, types of exploitation, Croatia, Serbia

## INTRODUCTION

At the global level *trafficking in human beings* is one of the most brutal violations of fundamental human rights on one hand, and it is one of the most profitable criminal activities on the other. It is not limited to just one country, it is spread to the countries of origin, countries of transit and countries of destination, therefore, this criminal activity involves several phases: the phase of recruiting victims in the countries of origin, their transport through the transit countries to the destination country and, in the end, various forms of exploitation of victims in the country of destination. The ways of recruiting and exploiting victims, especially with the development of new technologies, are themselves becoming increasingly perfidious and brutal, which only leads to serious consequences. The exact number of victims is impossible to determine, we can only surmise what is actually the dark figure as identified victims are just a drop in the ocean. Women, men and children are abused and exploited by being traded in various ways, which violates their fundamental human rights and is therefore a reason why in national legislations this crime is among crimes against humanity and human dignity protected by international law. Mutual co-operation of countries in combating human trafficking is crucial, from prevention itself through the identification and protection of victims to the

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prosecution and punishment of perpetrators of this terrible crime. This paper will analyze the criminal legislation of two neighboring countries, Croatia and Serbia, with regard to human trafficking, to point out their legal solutions, similarities and differences and will try to give suggestions for possible improvements of positive regulations. Criminal offenses of trafficking in human beings in the Republic of Croatia and the Republic of Serbia were investigated and analyzed in relation to charged and convicted persons and sentences imposed, and victims and types of exploitations were identified. The conclusion states the situation in the Republic of Croatia and the Republic of Serbia in relation to the offense of trafficking in persons and, therefore, points to the necessary changes that will surely contribute to the successful suppression of human trafficking.

### TRAFFICKING IN HUMAN BEINGS ACCORDING TO BINDING INTERNATIONAL LEGAL DOCUMENTS

The most important international document which stipulates the obligation to criminalize trafficking in persons in the national legislation of EU member states, both the existing ones and those that want to be admitted to its membership, is the United Nations Convention Against Transnational Organized Crime with its Protocols<sup>3</sup>, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>4</sup> and the Protocol Against the Smuggling of Migrants by Land, Sea and Air<sup>5</sup>, supplementing the Convention. According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, *trafficking in persons shall mean the recruitment, transportation, transfer, harbouring 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 a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*<sup>6</sup>

The Republic of Croatia signed this internationally important document among the first signatory states, during the international conference in Palermo on December 12, 2000, ratified it on January 24, 2003,<sup>7</sup> and on September 29, 2003 the Convention entered into force.<sup>8</sup> The Republic of Serbia also signed the United Nations Convention Against Transnational Organized Crime on December 12, 2000<sup>9</sup>, declared the Law on Ratification of the United

<sup>3</sup> United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2225, p. 209.

<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2237, p. 319; Doc. A/55/383.

<sup>5</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2241, p. 507; Doc. A/55/383

<sup>6</sup> Art. 3.a. *Ibid.*

<sup>7</sup> The Ministry of Foreign and European Affairs, organized crime, available at: <http://www.mvep.hr/hr/vanjska-politika/multilateralni-odnosi0/mir-i-sigurnost/transnacionalne-prijetnje/organizirani-kriminal/>, (31/01/2016)

<sup>8</sup> Law on Ratification of United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Act, OG, IA No 14/2002, 13/2003, 11/2004, United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2225, p. 209.

<sup>9</sup> Among the first countries that have signed the Convention, in addition to Republic of Croatia and

Nations Convention Against Transnational Organized Crime and the Additional Protocols on June 6, 2001<sup>10</sup>, which entered into force on June 30, 2001.<sup>11</sup>

In addition to the United Nations Convention Against Transnational Organized Crime and its Protocols, internationally important documents<sup>12</sup> stipulating the ban on trafficking in human beings include the Council of Europe Convention on Action against Trafficking in Human Beings<sup>13</sup>, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victim,<sup>14</sup> and the Brussels Declaration on preventing and combating trafficking in human beings.<sup>15</sup>

Other relevant international documents on the Prohibition of Trafficking in Persons and the Slavery Convention 1926,<sup>16</sup> Forced Labour Convention of 1930,<sup>17</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949,<sup>18</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956,<sup>19</sup> Convention on the Elimination of forced Labour of 1957,<sup>20</sup> International Covenant on Civil and Political Rights 1966,<sup>21</sup> Convention on the Elimination of All Forms of Discrimination against Women 1979,<sup>22</sup> Convention on the Rights of the

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Serbia, were: Albania, Argentina, Austria, Azerbaijan, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Colombia, Cyprus, Denmark, Finland, France, Germany, Italy, Russian Federation, Sweden, The former Yugoslav Republic of Macedonia, Uganda and Togo.

10 Declared is the Law on Ratification of United Nations Convention against Transnational Organized Crime and additional protocols, available at: [http://www.tuzilastvorz.org.rs/html\\_trz/PROPISI/konvencija\\_un\\_protiv\\_org\\_krim\\_lat.pdf](http://www.tuzilastvorz.org.rs/html_trz/PROPISI/konvencija_un_protiv_org_krim_lat.pdf), 31/01/2016

11 Law on Ratification of United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Act, OG SFRJ, IA No 6/2001

12 See more about this in: Božić, V: Trafficking in human organs as a form of organized crime, PhD Dissertation, University of Zagreb, Faculty of Law, 2012, p. 70.-87.

13 Council of Europe Convention on Action against Trafficking in Human Beings [https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp](https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp), (31/01/2016) Law on Ratification of the Council of Europe Convention on Action against Trafficking in Persons, OG RH, IA no. 07/07 Law on Ratification of the Council of Europe Convention on Action against Trafficking in Persons, OG RS, IA no 19/2009

14 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:32011L0036>, (31/01/2016)

15 Brussels Declaration on preventing and combating trafficking in human beings <http://www.belgium.iom.int/STOPConference/Conference%20Papers/brudeclaration.pdf>, (31/01/2016)

16 Slavery Convention signed at Geneva on 25 September 1926, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>, (31/01/2016)

17 ILO Forced Labour Convention, 1930 (No. 29), [http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms\\_346435.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms_346435.pdf), (31/01/2016)

18 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Approved by General Assembly resolution 317 (IV) of 2 December 1949 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>, (31/01/2016)

19 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>, (31/01/2016)

20 C105 - Abolition of Forced Labour Convention, 1957 (No. 105), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C105](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105), (31/01/2016)

21 International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, (31/01/2016)

22 Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979,

Child 1989,<sup>23</sup> Worst Forms of Child Labour Convention 1999,<sup>24</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in 2000,<sup>25</sup> the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2000.<sup>26</sup>

## TRAFFICKING IN HUMAN BEINGS IN CRIMINAL LEGISLATION OF REPUBLIC OF CROATIA

Trafficking in human beings was criminalized by Art. 106 of the Criminal Code of Croatia<sup>27</sup>. The criminal offense consists of three constituent elements:<sup>28</sup> *activities*,<sup>29</sup> *means*<sup>30</sup> and *purpose*.<sup>31</sup>

The prison sentence **from one to ten years** shall be imposed on anyone *who by force or threat, deception, fraud, kidnapping, abuse of power or difficult position or relationship of dependence, by giving or receiving financial compensation or benefits to achieve the consent of a person having control over another person, or who otherwise recruits, transports, transfers, harbors or receives a person or exchanges or transfers control of the person to take advantage of its work through forced labor or servitude, establishing slavery or similar status, or to its exploitation for prostitution or other forms of sexual exploitation, including pornography, or for unlawful or forced marriage, or for taking parts of its body, or for its use in armed conflicts or the purpose of committing unlawful acts*<sup>32</sup> and the one who recruits, transports, transfers, harbors or receives a child or exchanges or transfers control of the child for taking parts of its body.<sup>33</sup> The same penalty shall be imposed on those who use the services of victims through forms of exploitation, knowing that the person is a victim of human trafficking.<sup>34</sup> There does not

<http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>, (31/01/2016)

23 Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, (31/01/2016)

24 C182 - Worst Forms of Child Labour Convention, 1999, (No. 182), [http://www.victorproject.eu/media/uploads\\_file/2014/05/05/p18n5qjk611p9fi8rs121vq31d0625.pdf](http://www.victorproject.eu/media/uploads_file/2014/05/05/p18n5qjk611p9fi8rs121vq31d0625.pdf), (31/01/2016)

25 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>, (31/01/2016)

26 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>, (31/01/2016)

27 Criminal code of Republic of Croatia, Official Gazette no.125/11, 144/12, 56/15, 61/15, See also Turković K., Novoselec P., Derenčinović D., i dr.: Komentar Kaznenog zakona, Zagreb, Narodne novine, 2013.g.

28 See more about this in: Božić, V: Human smuggling and trafficking in Croatian criminal legislation and jurisprudence, Collected Papers of the Law Faculty of the University of Rijeka, (1991) v.36, 2015, no 2, p.845-874.,

29 The recruitment, transportation, transfer, harboring or receipt of persons

30 Threat, use of force or other forms of coercion, abduction, fraud, abuse of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person

31 For the purpose of exploitation; See more about this in: Derenčinović, D.: Not for sale - on the rights of victims of trafficking after the European Court of Human Rights ruling in the case Rantsev against Cyprus and Russia, Almanac of Academy of Legal Sciences of Croatia No.1/2010

32 Art.106 Par.1 CC RC

33 Art.106 Par.2 *Ibid.*

34 Art.106 Par.4 *Ibid.*

necessarily have to be any abuse for the offense of trafficking to be committed. It is sufficient that the perpetrator performs one of the activities (*purchases, transfers, transports, transfers, encourages or mediates in the purchase*) by any of the described means (*force, threat, fraud, kidnapping*). If there is abuse, it will only be an aggravating circumstance, which the court must take into account in sentencing.

If the victim agrees to exploitation, this has no impact on the existence of the crime of trafficking in human beings.<sup>35</sup> The victim of human trafficking is not criminally responsible and cannot be punished.<sup>36</sup>

**The aggravated form of the offense is punishable by imprisonment of three to fifteen years.** This will be the case if the offense is committed against a child or the offense is committed by an official in the course of practice or is committed against a larger number of persons or the life of one or more persons was knowingly endangered.<sup>37</sup>

**Imprisonment of up to three years shall be inflicted upon those who** allow the commission of the *crime of trafficking in human beings, maintain, suspend, conceal, damage or destroy a passport or identity document of another person*,<sup>38</sup> and the punishment shall also apply to those who try to commit the offense.<sup>39</sup>

## TRAFFICKING IN HUMAN BEINGS IN CRIMINAL LEGISLATION OF REPUBLIC OF SERBIA

Serbian Constitution explicitly prohibits that anyone can be bound in slavery or servitude and prohibits any form of trafficking in human beings and forced labor, which includes sexual or economic exploitation of persons in a disadvantaged position.<sup>40</sup> The criminal offense of trafficking in human is stipulated under Art. 388 of the Criminal Code of Serbia.<sup>41</sup>

**Imprisonment of three to twelve years** shall be imposed on anyone who by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, by retaining identity papers or by giving or receiving money or other benefit, recruits, transports, transfers, sells, buys, mediates in sale, hides or holds another person for the purpose of labor exploitation, forced labor, commission of offenses, prostitution or other forms of sexual exploitation, begging, pornography, establishing slavery or similar relations, removal of organs or body parts or service in armed conflicts,<sup>42</sup> and if the crime is committed against a minor a penalty of at least five years is prescribed<sup>43</sup> and in this case the perpetrator will be punished even if no force, threat or any other above-mentioned way of execution was used.<sup>44</sup>

35 Art.106 Par 7 CC RC

36 The same is stated by the Council of Europe Convention on Action against Trafficking in Human Beings, art.26. *Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.*

37 Art.106 Par.3 CC RC

38 Art.106 Par.5 *Ibid.*

39 Art.106 Par.6 *Ibid.*

40 Art. 26. Prohibition of slavery, servitude and forced labor, Official Gazette of RS, No 98/2006 <http://www.ustavni.sud.rs/page/view/139-100028/ustav-republike-srbije>, (31/01/2016)

41 Criminal code of the Republic of Serbia, Official Gazette of RS, No 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, *See also:* Stojanović, Z: *Komentar Krivičnog zakonika*, Beograd, 2012

42 Art.388/1 *Ibid.* [http://paragraf.rs/propisi/krivicni\\_zakonik.html](http://paragraf.rs/propisi/krivicni_zakonik.html), (31/01/2016)

43 Art.388 Par.3 *Ibid.*

44 Art.388 Par.2 *Ibid.*



**The aggravated form of the offense is punishable by imprisonment of five to fifteen years**, which will be the case if the offense resulted in grievous bodily injury,<sup>45</sup> **or imprisonment of at least ten years**<sup>46</sup> if there was a death of one or more persons. Aggravated form is prescribed if the offense is committed by a group, in which case a prison sentence of at least five years is prescribed<sup>47</sup>, or by an organized criminal group, with a penalty of at least ten years.<sup>48</sup>

**Prison sentence of six months to five years** shall be imposed on a perpetrator who knows or should have known that the person is a victim of trafficking, has abused its position or enabled another person to abuse its position for exploitation,<sup>49</sup> if the person is a minor it will be punishable by imprisonment of one to eight years.<sup>50</sup> Consent to being exploited does not affect the existence of the crime.<sup>51</sup>

## SIMILARITIES AND DIFFERENCES IN LEGAL SOLUTIONS AND PROPOSALS DE LEGE FERENDA

It is evident from Table No.1 that for the basic form of the offense the CC of Republic of Serbia prescribes a higher penalty, 3-12 years, both for the lower minimum and the upper maximum than the CC of Republic of Croatia, 1-10 years.

If the offense is committed against a child, the CC of Republic of Croatia prescribes a higher sentence, 3-15 years, while the CC of Republic of Serbia prescribes a sentence of a minimum of five years, however, with a higher lower limit of the possible penalty. Similarly, if the offense is committed against a minor, a greater range of penalties is given by the CC of Republic of Croatia, from 1-10 years, while the CC of Republic of Serbia stipulates a minimum of 5 years in prison.

If trafficking is committed by a criminal association or an organized criminal group, the CC of Republic of Croatia prescribes a maximum sentence is 5-20 years in prison, while the CC of Republic of Serbia prescribes a minimum sentence of 10 years in prison.

The perpetrator who uses the services of a victim, for whom he knows to be a victim of human trafficking or enables this for somebody else, under the CC of Republic of Serbia will be punished by imprisonment of 6 months to 5 years, while the CC of Republic of Croatia prescribes a prison sentence of 1-10 years. The legislative body of Republic of Serbia should consider increasing penalties since this is a commission of an offense despite the knowledge that it involves a victim of human trafficking.

The CC of Republic of Croatia contains the criminal charges relating to an official, as the perpetrator, as an aggravated form, *delictum proprium*, which provides for a sentence of 3-15 years in prison, but the CC of Republic of Serbia does not contain this even though it existed in the previous CC of Republic of Serbia.<sup>52</sup> It would be desirable to return the aforementioned incrimination to the CC RS because it was perpetrated by a person who has a special role.

45 Art.388 Par.4 *Ibid.*

46 Art.388 Par.6 *Ibid.*

47 Art.388 Par.5 *Ibid.*

48 Art.388 Par.7 *Ibid.*

49 Art.388 Par.8 *Ibid.*

50 Art.388 Par.9 *Ibid.*

51 Art.388 Par.10 *Ibid.*

52 Art.111.b.2.CC RS, Official Gazette of RS, No 26/77, 28/77, 43/77,20/79, 24/84, 39/86, 51/87, 6/89, 42/89 i 21/90, 16/90, 26/91, 197/87, 75/91,58/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02,39/03, 67/03 <http://www.serbialaw.eu/sr/pocetna-strana/krivicno-pravo/krivicni-zakon-republike-srbije/#krivicni-zakon-republike-srbije>, (31/01/2016)

The CC RS stipulates the aggravated form of the offense if the injury occurred as a form of serious bodily injury or death, while the CC RC states the endangering of one or more of lives without any such consequences as the aggravated form. The solution of the CC RC could be adopted by the CC RS considering that it is a serious crime and the mere endangering of someone's life should already be an aggravating circumstance.

*Retaining, removing, concealing, damaging or destroying* of travel documents or identity documents of another person<sup>53</sup> is criminalized by the CC RC in accordance with the recommendations of the Council of Europe Convention on Action against Trafficking in Human Beings for the reason that the perpetrator of human trafficking may not be the perpetrator of such criminal activities. However, Croatia has not criminalized *forging* of travel or personal documents nor the *obtaining and making* of the same, for the purpose of committing the crime of human trafficking, such as the Convention states, therefore, it is proposed that this be rectified in the near future and entered into the CC RC. Under the current CC of Republic of Croatia, if travel documents are counterfeited for the purpose of committing the crime of trafficking in human beings, there will be a merger of the crime of trafficking in persons and the criminal offense of forging a document. The CC RS does not contain the aforementioned provision, but has provided for the retention of identity documents as one of the means by which one can commit an offense, however, insufficiently, for retention is only one form of manipulation of personal documents, and this incrimination should be brought in line with international documents.

The consent of the victim to exploitation is irrelevant both for the CC RC and CC RS, but it also does not explicitly include a provision on non-punishment and non-prosecution of victims of trafficking in human beings, which should be necessary to consider and prescribe.

Table No.1 *Prescribed punishment for the offense of trafficking in human beings according to CC RC and CC RS*

PENALTIES FOR CRIME OF TRAFFICKING IN HUMAN BEINGS		
	<b>Art.106 Criminal Code RC</b>	<b>Art.388 Criminal Code RS</b>
Basic form	1-10 years	3-12 years
If the offense is committed against a child <sup>54</sup>	3-15 years	Minimum 5 years
If the offense is committed against a minor <sup>55</sup>	1-10 years	Minimum 5 years
If there s serious bodily injury	3-15 years	5-15 years
If there s serious bodily injury of a minor	3-15 years	Minimum 5 years
If death of one or more persons occurred	3-15 years	Minimum 10 years
If the offense is committed by a group	-	Minimum 5 years

<sup>53</sup> In accordance with Art.20 of the Council of Europe Convention on Action against Trafficking in Human Beings [https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp](https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp), (31/01/2016)

<sup>54</sup> A child is a person under the age of eighteen years, Art.87 Par.7 CC RC, the same according to Art.112 Par.8 CC RS.

<sup>55</sup> According to Art.112/9 CC RS, a minor is a person between fourteen and eighteen years of age, while 112/10 CC RS says that a minor is a person under eighteen years of age.

If the offense is committed by an organized criminal group <sup>56</sup> criminal organization <sup>57</sup>	According to Art. 329 of CC, whoever as a part of a criminal association commits or incites others to commit a criminal offense shall be punished with <b>3-15 years of imprisonment</b> for an offense for which the prescribed upper limit of penalty is 10 or 12 years, and with <b>5-20 years of imprisonment</b> and for an offense for which the prescribed upper limit of penalty is 15 years	Minimum 10 years
If one uses the services of a victim, for whom one knows is a victim of THB, or allows it	1-10 years	6 months – 5 years
If one uses the services of a minor, for whom one knows is a victim of THB, or allows it	1-10 years	1-8 years
If the offense was committed by an official in the performance of his duties	3-15 years	-
If the life of one or more persons was endangered knowingly	3-15 years	-
If the offense is committed against a larger number of people	3-15 years	-
If in order to allow the offense, one maintains, takes away, conceals, damages or destroys a travel or identity document of another person	Up to 3 years	-
Punishment for an attempt to retain, confiscate, hide, damage or destroy a travel or identity document of another person	YES	-
Punishment for attempt	According to Article 34 of CC an attempt will be punished if the criminal offense is punishable by imprisonment of five years or more	According to Article 30 of CC an attempt will be punished for the criminal offense for which the law provides punishment of imprisonment of five years or more
Consent of a victim to exploitation	Irrelevant	Irrelevant

## RESEARCH AND ANALYSIS OF COMMITTED CRIMES OF TRAFFICKING IN HUMAN BEINGS AND VICTIMS IDENTIFIED

### A) IN THE REPUBLIC OF CROATIA

Croatia is increasingly becoming a country of origin and country of destination and transit for trafficking in human beings. As seen in the Table no. 2, in 2014 there were a total of 17 persons charged and four convicted, 3 men and 1 woman, for the criminal offense of THB. The highest imposed unconditional sentence was prison sentence of 5-10 years, and the lowest sentence of 6-12 months.

<sup>56</sup> According to Art.112/Par. 35 CC RS, organized criminal group is a group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more criminal offenses for which a punishment of imprisonment of four years or more is prescribed, in order to acquire direct or indirect financial or other benefits.

<sup>57</sup> Criminal Association, according to Art.328/4CC RC, is made of at least three people who have joined together with the common purpose of committing one or more criminal offenses for which a prison sentence of three years or more is prescribed, and it does not include the association of persons accidentally for directly committing one offense.



Table No. 2. *Persons charged and convicted for the crime of trafficking in human beings in 2014*<sup>58</sup>

ADULT PERSONS CHARGED AND CONVICTED FOR CRIMINAL OFFENCE OF TRAFFICKING IN HUMAN BEINGS IN CROATIA IN 2014	
CHARGED	
TOTAL	17
WOMEN	3
INDICTMENTS ISSUED	14
CONVICTED	
TOTAL	4
WOMEN	1
TOTAL PRISON SENTENCE	4
PRISON 10-15 YEARS	-
PRISON 5-10 YEARS	1
PRISON 3-5 YEARS	-
PRISON 2-3 YEARS probation	1
PRISON 1-2 YEARS probation	1
PRISON 6-12 MONTHS	1

In the period 2009-2013 a total of 41 charges were submitted for the offense of trafficking in human beings and 11 convictions were issued, as shown in Table No. 3. The situation with regard to charges and convictions with respect to a particular year is quite similar, the highest being 12 charges in 2013, and most convictions - 4 in 2009.

Table No. 3. *Adult persons charged and convicted for criminal offense of trafficking in human beings in 2009-2013*<sup>59</sup>

CHARGES AND CONVICTIONS FOR TRAFFICKING IN HUMAN BEINGS IN CROATIA FROM 2009-2013		
YEAR	CHARGED	CONVICTED
2009	7	4
2010	8	3
2011	8	1
2012	6	2
2013	12	1
TOTAL	41	11

During 2014, there were 37 identified victims of human trafficking, 29 women and 8 men in the Republic of Croatia. According to the type of exploitation, 6 people were exploited for work, 31 people sexually, and 3 persons were exploited at the stage of transit.

<sup>58</sup> Central Bureau of Statistics, adult offenders, application, prosecution and conviction in 2014 [http://www.dzs.hr/Hrv\\_Eng/publication/2015/SI-1551.pdf](http://www.dzs.hr/Hrv_Eng/publication/2015/SI-1551.pdf), (31/01/2016)

<sup>59</sup> According to Central Bureau of Statistics, <http://www.dzs.hr/>, (31/01/2016)

Table No.4. *Identified victims of trafficking in human beings by sex and age in 2014*<sup>60</sup>

\* 3 victims were exploited for both work and sexual purposes

TYPE OF EXPLOITATION 2014	W	M	Total	< 18 years	>18 years
Sexual	27	4	31		
Work	3	4	7		
Transit	2	1	3		
Total	29	8	37/41*	22	15

Thirty-seven (37) identified victims is so far the largest number of victims identified in one year. During the last ten years in Croatia a total of 122 victims of trafficking were identified as can be seen in Table No. 5.

Table No. 5. *Identified victims of trafficking from the 2005 to 2014*<sup>61</sup>

IDENTIFIED VICTIMS OF TRAFFICKING IN CROATIA FROM 2005-2014										
2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	TOTAL
6	13	15	7	8	7	14	11	4	37	122

The new report by the Group of Experts GRETA on action against trafficking in human beings for 2015 states that further steps are necessary to identify child victims of trafficking and victims of trafficking for the purpose of labor exploitation and also that the authorities should make efforts to further raise public awareness on THB.<sup>62</sup>

## B) IN THE REPUBLIC OF SERBIA

Serbia is a source, transit point, and destination for men, women and children vulnerable to trafficking for sexual exploitation and forced labor, domestic work and forced marriage. Women in Serbia are exposed to sexual exploitation by Serbian criminal groups in Russia, Italy, Germany and Switzerland, men are exploited for work in Russia, Azerbaijan, Slovenia and the United Arab Emirates, and the children, especially the Roma, are submitted to sexual exploitation, forced labor, begging or doing criminal offenses.<sup>63</sup> Serbia has an increased number of identified victims of THB, especially the victims of forced labor. Apart from victims from the RS, there have been records on victims from Montenegro, Bosnia and Herzegovina, Bulgaria, Romania and Moldavia. The failure of the state is reflected in not providing sufficient protection which was necessary for victims during criminal proceedings because they were thus subjected to intimidation and secondary traumatization. A smaller number of traffickers were convicted, and sentences were relatively small.

60 Source: Ministry of the Interior of Republic of Croatia, Statistics for 2014, available at: <https://vlada.gov.hr/UserDocsImages/Sjednice/2015/238%20sjednica%20Vlade/238%20-%2014.pdf>, (05/02/2016)

61 According to the Ministry of Interior of Republic of Croatia, <http://www.mup.hr/31.aspx>, (05/02/2016)

62 GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Croatia, Adopted on 20 November 2015, Published on 4 February 2016, [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/2nd\\_eval\\_round/GRETA\\_2015\\_33\\_FGR\\_HRV\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/2nd_eval_round/GRETA_2015_33_FGR_HRV_en.pdf), (07/02/2016)

63 Report on human trafficking in Serbia in 2015, available at: <http://serbian.serbia.usembassy.gov/izvestaji/izvestaj-o-trgovini-ljudima-2015-godina.html>, Trafficking in human beings Report, the Office for monitoring and combating trafficking, <http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm> (07/02/2016)

According to data by the Statistical Office of RS for 2014, as is apparent from Table No. 6, 17 adults were convicted for trafficking, of which the maximum penalty was imprisonment of 10-15 years, and the lowest sentence of 1-2 years.

Table No. 6. *Persons registered and convicted for the crime of trafficking in human beings in 2014*<sup>64</sup>

ADULT PERSONS CHARGED AND CONVICTED FOR CRIMINAL OFFENCE OF TRAFFICKING IN HUMAN BEINGS IN SERBIA IN 2014	
CHARGED	
TOTAL	21
WOMEN	2
INDICTMENTS ISSUED	17
CONVICTED	
TOTAL	17
WOMEN	2
TOTAL PRISON SENTENCE	16
PRISON 10-15 YEARS	3
PRISON 5-10 YEARS	5
PRISON 3-5 YEARS	3
PRISON 2-3 YEARS	4
PRISON 1-2 YEARS	1

In the period 2009-2013 a total of 254 people were charged and 115 people were convicted for trafficking in persons. Most were reported in 2010 (71), and most convicted in 2012 (34) as shown in Table No.7.

Table No. 7. *Persons charged and convicted for the crime of trafficking in human beings from 2009-2013*<sup>65</sup>

CHARGES AND CONVICTIONS FOR TRAFFICKING IN HUMAN BEINGS IN SERBIA FROM 2009-2013		
YEAR	CHARGED	CONVICTED
2009	50	20
2010	71	20
2011	53	14
2012	55	34
2013	25	27
TOTAL	254	115

In 2014, there were 125 identified victims of trafficking, of which 24 women (19.20%) and 101 men (80.80%). Men were exclusively exploited for work, 78.40%, and women were mostly sexually exploited, 12%. The data is visible in table No.8.

<sup>64</sup> Republic Institute for Statistics: Adult offenders in the RS 2014, <http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=146>, (07/02/2016)

<sup>65</sup> *Ibid.*

Table No.8 *Identified victims of trafficking in human beings by sex and age in 2014*<sup>66</sup>

TYPE OF EXPLOITATION 2014	W	M	TOTAL	Minors	Adults
Sexual	15	-	15	7	8
Other type of exploitation	1	-	1	1	-
Work	-	98	98	-	98
Forced marriage	4	-	4	4	-
Forced begging	2	1	3	3	-
Illegal adoption	2	-	2	2	-
Coercion to commit criminal offenses	-	2	2	2	-
Total	24	101	125	19	106

Compared to 2014, in 2015, significantly fewer victims of human trafficking were identified, only 40, which is shown in Table No.9. The reason for the increase of identified victims in 2014 was the expansion of labor exploitation of men. In 2015, most types of exploitations were sexual exploitation of women 52.50% and forced begging 25.00%.

Table No.9. *Identified victims of trafficking in human beings by sex and age in 2015*<sup>67</sup>

TYPE OF EXPLOITATION 2015	W	M	Total	Minors	Adults
Sexual	21	-	21	8	13
Misuse for pornography	-	1	1	1	-
Work	2	1	3	2	1
Forced marriage	2	-	2	1	1
Forced begging	6	4	10	10	-
Illegal adoption	-	1	1	1	-
Coercion to commit criminal offenses	1	1	2	1	1
Total	32	8	40	24	16

There was a much greater number of identified victims of human trafficking in the Republic of Serbia in a period of ten years (2005-2014), as seen in Table No. 10, which amounted to 773 victims (not including data for 2015) compared to the number of identified victims in Croatia, as shown in Table No.4., which was 122 victims.

Table No. 10. *Identified victims of trafficking from the 2005 to 2015*<sup>68</sup>

IDENTIFIED VICTIMS OF TRAFFICKING IN SERBIA FROM 2005-2014											
2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	TOTAL
26	56	96	55	107	61	76	79	92	125	40	813

66 Center for protection of victims of trafficking, statistics for 2014, available at: <http://www.centarzztlj.rs/index.php/statistika>, (07/02/2016)

67 Center for protection of victims of trafficking, statistics for 2015, available at: <http://www.centarzztlj.rs/index.php/statistika>, (07/02/2016)

68 The Ministry of Interior of Serbia, Statistical data, available at: [http://www.mup.gov.rs/cms\\_lat/sadrzaj.nsf/trgovina-ljudima.h](http://www.mup.gov.rs/cms_lat/sadrzaj.nsf/trgovina-ljudima.h), (07/02/2016)

## CONCLUSION

In general, it can be concluded that the legal solutions in the national criminal legislations of the Republic of Croatia and the Republic of Serbia are in accordance with international legal documents on prescribing the prosecution and punishment of trafficking in human beings.

As for the charged and convicted persons for criminal offense of THB, the analysis shows that in Croatia there were fewer charges (17) and convictions (4) in 2014 than in Serbia, where there were 21 charges and 17 convictions. However, there is much more difference if we look at the five year period (2009-2013). In Croatia there were a total of 41 charges and 11 convictions, while in Serbia there were 254 charges and 115 convictions. If we look at the number of identified victims of THB, in the period 2005-2014, the Republic of Serbia leads with 773 victims, compared to Croatia where 122 victims were identified. Both in the Republic of Croatia and the Republic of Serbia the most common exploitation is for work and sexual exploitation of the victims of THB, with the Republic of Serbia still having a significant number exploited for forced begging.

Strengthening of international cooperation, especially between neighboring countries, is a necessary prerequisite to combat trafficking in persons, and identifying perpetrators and victims. More and more victims can be found among migrants, asylum seekers and unaccompanied persons, which demands necessary regular training of police, border police, judges, prosecutors, child-care facilities and other persons who come into contact with victims of trafficking. Due to the frequency of new forms and modes of recruitment of victims, but also of exploitation, it is necessary to conduct campaigns to raise public awareness about all forms of THB, especially for labor and sexual exploitation and trafficking of children. It is necessary to warn people who are going out of their countries to work because we should not forget that traffickers are increasingly using existing victims to force them to find new victims.

Crucial for the protection of victims, both in the CC RC and the CC RS, is to insert a provision of impunity of victims for acts committed as a direct result of having been trafficked. Also, with the objective of maximum protection of victims and to avoid exposure to re-traumatization, victims should be ensured full protection when testifying in court.

There is a need for prescribing confiscation of movable and immovable property which is used for the commission of THB, such as transport means, facilities where the victims are located, as a separate provision of the criminal offense of THB.

The CC RS should also recognize unauthorized or forced marriage as a form of exploitation under the criminal offense of THB.

Various forms of exploitation of people violate their fundamental human rights, freedom and dignity, contrary to the rules of international law; therefore, a Law on Combating Trafficking in Persons is worth considering.

*De lege ferenda* it is necessary, both in the CC RC in CC RS, to prescribe an aggravated form of THB when crime is committed against a significantly weaker victim: pregnant women, people with disabilities, mentally and physically ill persons or mentally disabled persons.

Furthermore, trafficking in children should be provided as a separate criminal offense in all possible forms of abuse in accordance with the Convention on the Rights of the Child and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Also, for the most common form of exploitation, sexual exploitation, there is a need to enter a provision into the legal text that would distinguish it from other similar offenses, particularly related to the intermediary in prostitution, in order to avoid possible wrong practice of the legal qualification of the crime.



Finally, the conclusion is that if all the measures proposed in the paper are adopted, a big step in the fight against human trafficking would certainly be made.

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<b>Zorica Mršević</b> TRANSGENDER PRISONERS.....	150
<b>Božidar Otašević, Dragoslava Mićović</b> OPERATION MOJKOVAC A CENTURY LATER .....	160
<b>Marina Dimitrijević</b> THE STATE'S CONTEMPORARY APPROACH TO THE SUPPRESSION OF NON-COMPLIANCE WITH TAX LAWS.....	172
<b>Sasho M. Stojanovski, Metodija Dojchinovski, Biljana M. Stefanova</b> THE ROLE OF INTERPOL DEALING WITH CRIME AND TERRORISM .....	179
<b>Maja Nastić</b> PARLIAMENTARY OVERSIGHT OF SECURITY SYSTEM: The Case of Serbia .....	188
<b>Darko Dimovski, Ivan Ilic</b> HATE SPEECH IN THE EUROPEAN COURT OF HUMAN RIGHTS CASE LAW .....	197
<b>Jelena Slovic, Snezana Mojsoska</b> PREVENTION AS THE KEY MEASURE IN FINANCIAL FRAUDS.....	208
<b>Kire Babanoski</b> NATIONAL STRATEGIES FOR IMPROVING ROAD TRAFFIC SAFETY VS. REAL OPPORTUNITIES AND CHALLENGES IN REDUCING ROAD TRAFFIC ACCIDENTS .....	218
<b>Maja Miladinović, Miroslav Terzić, Stefan Miladinović</b> INTERNATIONAL COOPERATION IN THE PROTECTION OF WITNESSES IN CRIMINAL PROCEEDINGS FOR THE CRIMINAL ACTS OF ORGANIZED CRIME ...	226
<b>Predrag Terzić</b> THREATENING THE INSTITUTIONS OF LEGAL STATE IN SERBIA DURING THE REIGN OF PRINCE/KING MILAN AND KING ALEKSANDAR OBRENOVIC .....	236
<b>Dijana Jankovic</b> ALTERNATIVE SANCTIONS AND MEASURES IN THE SERBIAN LEGAL SYSTEM...	246
<b>Vanda Božić</b> COMPARATIVE LEGISLATIVE ANALYSIS OF CRIMINAL LEGISLATION OF THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SERBIA IN TERMS OF HUMAN TRAFFICKING AS THE MOST BRUTAL VIOLATION OF FUNDAMENTAL HUMAN RIGHTS .....	261
<b>Ante Orlović, Ivica Milković, Ante Gudelj</b> STRENGTHENING OF THE INSTITUTIONAL FRAMEWORK FOR COMBATING ECONOMIC CRIME IN THE REPUBLIC OF CROATIA – ABOLITION AND ESTABLISHMENT OF SPECIALIZED BODIES/ SERVICES.....	277
<b>Zdravko Grujić, Ivan Milić</b> PRISON OVERCROWDING – MITIGATING THE CONSEQUENCES .....	286
<b>Dragan Dakić</b> THE DISABLED AS A PROTECTED GROUP FOR THE PURPOSE OF GENOCIDE .....	296
<b>Darian Rakitovan</b> EXTENDED CONFISCATION IN ROMANIAN CRIMINAL LAW .....	306