

Why do trafficked persons not actually receive compensation?

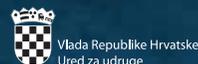
Although there are different mechanisms for compensation for trafficked persons in place and although the right to compensation is explicitly listed as one of the rights of trafficked persons in the most important international instruments, effective access to this right in practice is the weakest link in the protection of the rights of victims of human trafficking.

- When they are not obliged, judges avoid making decisions on victims' compensation claims in criminal proceedings on the grounds that it would result in considerable prolongation of the proceedings, that they are not qualified to assess the value of non-material damage, etc.
- A civil procedure is lengthy and expensive (court fees, lawyers' fees, forensic reports, etc.), and due to the need to present the case all over again and to prove sustained damage, it exposes the victim to secondary victimization and has an adverse impact on her/his recovery.
- Because of the flaws in the system of enforcement, the outcome of both civil and criminal proceedings (regarding the decision on compensation claim) is uncertain for the victim, because a positive court decision is not a guarantee that the victim will ever get awarded compensation.
- In the event that the perpetrator's identity is not established or that he/she is unavailable to the police or to the court, the victim cannot claim compensation. The same applies to a situation when the perpetrator does not have any property registered under his/her name – even if damages were awarded, the victim has nowhere to collect compensation.

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RIGHT FOR COMPENSATION FOR VICTIMS OF HUMAN TRAFFICKING



BALKANS ACT NOW! Projekat "Balkans ACT (Against Crime of Trafficking) Now!"

has gathered CSOs from Bosnia and Herzegovina, Croatia, FYR Macedonia and Serbia in order to build their capacities for independent and objective analysis and monitoring of anti-trafficking policies in their respective countries, and to advocate for the alignment of justice sector policies and practices with the standards, norms and values of the EU. Having conducted situation analyses in all partner Balkan countries, the project, inter alia, focused on access to compensation for victims of human trafficking.

After getting out of the chain of human trafficking, trafficked persons face numerous challenges as they try to recover and rebuild their lives. The level of protection and access to victims' rights – rights guaranteed by both international and national legislations – varies from country to country, but the weakest point seems to be victims' access to compensation.

Trafficking in human beings is prohibited by international instruments and domestic criminal legislation. International instruments that require the criminalization of human trafficking also guarantee the protection of victims, including their right to compensation.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime

ARTICLE 6

Assistance to and protection of victims of trafficking in persons

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Council of Europe Convention on Action against Trafficking in Human Beings

ARTICLE 15

Compensation and legal redress

3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

In most European countries, trafficked persons are able to demand compensation for material and non-material damages (physical pain, mental anguish, disfigurement, damage to reputation, honour, freedom or rights of person etc.) through two basic mechanisms:

- Compensation by the perpetrator: criminal proceedings, civil proceedings, labour courts.
- Compensation by the state or subsidized compensation mechanisms (compensation funds to victims regardless of the criminal proceedings and whether the identity of the perpetrator has been established).

Compensation by the state:

Croatia – Victim compensation claims are decided by the Board for Financial Compensation to Crime Victims, and the ministry in charge of judicial affairs is responsible for payments pursuant to the Law on Compensation to Crime Victims (Official Gazette of RC, no. 80/08 and 27/11).

Compensation by the perpetrator:

Bosnia and Herzegovina (BiH) – through criminal proceedings if the decision on compensation claim would not significantly prolong the proceedings in accordance with the Criminal Proceedings Law of Bosnia and Herzegovina (BiH Official Gazette, nr. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09), the Criminal Proceedings Law of the Federation of Bosnia and Herzegovina (Official Journal of the Federation of BiH, no. 35/03), the Criminal Proceedings Law of the Republic of Srpska (Official Gazette of RS, no. 01-724/12) and the Criminal Proceedings Law of the Brčko District (Official Gazette of BD, no. 33/13) or through civil proceedings.

FYR Macedonia – through criminal proceedings if the decision on compensation claim would not significantly prolong the proceedings pursuant to Articles 110 and 114 of the Criminal Procedure Code (Official Gazette of Macedonia, no. 150 of November 18, 2010) or through civil proceedings.

Serbia – through criminal proceedings if the decision on compensation claim would not significantly prolong the proceedings pursuant to the Criminal Procedure Code (Official Gazette of RS, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014) or through civil proceedings pursuant to the Law on Contracts and Torts (Official Journal of SFRY, no. 29/78, 39/85, 45/89 and 57/89, Official Journal of FRY, no. 31/93 and Official Journal of SMN, no. 1/2003 – Constitutional Charter).

However, few trafficking victims actually receive compensation

Why is compensation for trafficked persons important?

- Effective access to compensation is an indicator to what extent other rights of the victims are protected and respected in the country: right to information, right to legal, medical and psychological assistance, right to protection of physical integrity and security, etc.
- The realistic possibility to get compensation resulting from the violence, suffering and damage motivates the victim to take part in criminal proceedings against the traffickers as a witness. Such motivation is very important, bearing in mind that the victim is expected to participate in a trial that can last for years, where she/he has to face people who exploited her/him repeatedly, to testify in detail about her/his abuse, relive her/his traumatic experience and to answer humiliating and very intimate questions without receiving anything in return.
- The victim is empowered to recover and regain control over her/his life, which reduces the risk of re-trafficking.
- Perpetrators are additionally discouraged because their motivation for engaging in human trafficking is the high profits that can be gained through this type of crime. If the profits accumulated through the exploitation of victims are not taken away from the trafficker, he/she does not get the message that committing a crime does not pay off.