



POSITION AND RIGHTS OF VICTIMS IN CRIMINAL PROCEEDINGS

**Analysis of the judicial practice of 2023
for the crimes of mediation in prostitution,
human trafficking and
trafficking in minors for adoption**

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I Introduction

ASTRA – Anti-Trafficking Action has been monitoring court practice for the criminal offenses of human trafficking, mediation in prostitution and trafficking of minors for adoption since 2011. The annual analysis of judicial practice focuses on the position and rights of victims of these crimes in criminal proceedings, as well as on phenomena and trends in judicial practice that may significantly affect the protection and rights of victims. The analysis is **based on available data obtained from adjudications in criminal proceedings in 2023**, which were obtained from competent courts in the Republic of Serbia.

The analysis, as in the previous period, has been carried out with **the aim of monitoring the position, degree of achieved and protected rights of the victims in court proceedings**, which is important not only from the aspect of individual cases but also as an indicator of the degree of respect for the human rights of victims in court proceedings and the compliance of legislative, strategic and institutional framework with the obligations from ratified international documents. In addition, the analysis aims to **map the key features in the prosecution and punishment of perpetrators** of the crimes and to **highlight the most important trends** in judicial practice on an annual or multi-year level.

The annual analysis of judicial practice seeks to provide an **objective overview** of the current situation and identify phenomena and trends in the judicial practice that may be significant for a comprehensive overview of the position of victims in court proceedings, as well as for overcoming potential obstacles to improve the rights of victims. Continuous monitoring of the practice from the perspective of the position and rights of victims in criminal proceedings enables us to perceive **the degree of application and efficiency of certain legal solutions and the uniformity of court practice, as well as the progress achieved in realizing the rights of victims** in certain segments of protection. Harmonization of the legal, strategic and institutional framework with international standards in this area and consistent application of the existing legal framework are a clear indicator of the governments' commitment to its obligations, to the fight against human trafficking and the effort to protect the position of the victims in criminal proceedings, with an increased attention to minor victims.

Anti-Trafficking Program of the RS for the period 2024-2029¹ within its overall goal, includes activities to strengthen the criminal prosecution system, while safeguarding the protection of victims, especially women and children. The program singles out, as its special goal, an improved efficiency of criminal prosecution while ensuring access to justice and procedural protection of victims of human trafficking, especially women and children during criminal proceedings. By listing practical challenges, the program draws attention to the following: that the criminal prosecution relies mostly on the testimony of the victim of human trafficking, while other evidence is insufficiently used; cases of reclassification of the criminal offense of human trafficking into less serious criminal offenses such as mediation in prostitution; and a high degree of secondary victimization related to the position of victims of human trafficking in the proceedings (due to participation in lengthy court proceedings, inconsistent application of available protection measures, as well as inadequate application of procedural options to allow access to compensation for victims of human trafficking). It is also noted that the legal framework and practice, primarily in relation to the procedural protection of victims, are not fully aligned with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, as well as with the Council of Europe Convention on Action against Trafficking in Human Beings. To that end, it is planned that, to improve the efficiency of criminal prosecution and the quality of protection provided to victims of human trafficking during court proceedings, a law will be passed to additionally regulate the anti-trafficking area, and to harmonize codes related to the matter of crime.

National strategy on the rights of victims and witnesses of crime in the Republic of Serbia for the period 2020-2025² underlines the importance of overall measures for the protection of victims in order to avoid contact between the victim and the perpetrator, to ensure the protection of the victim during the implementation of evidentiary actions and the protection of the victim's privacy, whereby the problem of multiple questioning of the victim is seen as one of the problems in the criminal justice system, along with the need for education of the judiciary and the inconsistent application of victim protection measures in practice.

Numerous international reports indicate that some aspects of the protection and rights of victims are still difficult to achieve, despite certain progress, improvement of the legal, strategic and institutional framework.

The third GRETA report on Serbia,³ among other things, has emphasized that further steps are necessary to provide victims of human trafficking with better access to justice and effective legal remedies. The report underlines that victims' access to compensation is still rare and that it is necessary to ensure that victims of human trafficking are systematically informed about their right to compensation, and to establish a national compensation scheme (Compensation Fund) that would be available to victims human trafficking. The noted problems in practice that are underlined also include the issue of requalification to less serious crimes, failure to

¹ "Official Gazette RS", No.25/2024

² "Official Gazette RS", No.30/18

³ The report of the Group of Experts on Action against Trafficking in Human Beings of 2005, responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, GRETA(2023)09, published on June 16, 2023, is available online at <https://rm.coe.int/greta-evaluation-report-on-serbia-3rd-evaluation-round-greta-2023-09-a/1680ab9bc6>

inform victims about concluded plea agreements, along with the need to impose adequate sanctions on the perpetrators.

In *the US State Department's Trafficking in Persons Report (TIP Report) for 2024* of June 2024⁴, it is pointed out that Serbia does not fully meet the minimum standards for combating human trafficking but makes significant efforts in that direction. The report indicates that perpetrators are often given more lenient penalties, and that despite the “especially vulnerable witness” status granted to victims, the implementation and access to justice remain inadequate, including a lack of measures to protect victims’ confidentiality, legal representation and a victim-centred approach, especially related to specialized support for child victims.

As the analysis of judicial practice in the previous years indicated that, despite positive developments in certain areas, the position of the victim in court proceedings is still not fully aligned with relevant international standards, the continued monitoring and analysis of judicial practice is an opportunity to identify key problems and obstacles in realizing the rights of victims of human trafficking, be it related to improving the existing legal solutions or taking steps towards a more consistent implementation of the existing norms. Improving the position of victims in terms of confidentiality, security in court proceedings, as well as in terms of the right to compensation, is especially important considering the vulnerable position of victims of human trafficking and the importance of **preventing secondary victimization of victims** and building their trust in institutional protection.

In the text, the goals and methodology of the analysis are presented separately (**Chapter II**), as well as the data obtained from public prosecutor’s offices and courts (**Chapter III**). General data obtained from the analysed judgments are presented in relation to the types of crimes, types of decisions and imposed sanctions, duration of the proceedings, with a special presentation of the available data on the perpetrators and the injured (**Chapter IV**). The most important observations about the position and rights of victims in court proceedings were analysed in relation to the most important aspects such as: 1) privacy; information, support and representation of victims; 2) safety of the victims during the proceedings and hearing; 3) restitution of victims and 4) imposing adequate sanctions on perpetrators (**Chapter V**). The position and protection aspects of minor victims have been particularly emphasized (**Chapter VI**). Moreover, the analysis deals with the issues important for judicial practice and the position of victims in 2023: 1) crimes committed by a group or an organized criminal group; 2) plea agreement; 3) labour exploitation in court practice of the year 2023 (**Chapter VII**). At the end of the analysis, concluding observations were presented, which contain: 1) the most important observations regarding the position and rights of victims and court practice in 2023; 2) observed trends in court practice for the five-year period of the analyses (2019-2023); 3) recommendations (**Chapter VIII**). The analysis also contains two appendices, i.e. **Appendix 1** - Analysis of misdemeanour proceedings for the offense under Article 16 of the Law on Public Order and Peace (prostitution) and **Appendix 2** - Special analysis of data received from public prosecutor’s offices on the implementation of the especially vulnerable witness status for 2021, 2022 and the first half of 2023 with ASTRA’s letter addressed to the Supreme Public Prosecutor.

⁴ Serbian translation of the Report is available at ASTRA’s website at the link https://drive.google.com/file/d/1m_nOn2SHE5BFnkW9sGLgCbNvCX9KX6vV/view

II Goals and Methodology of the Analysis

The analysis of court practice of the year 2023 is focused, as in previous years, on a **comprehensive overview of the position and rights of victims in criminal proceedings and the most significant aspects of court practice for the crimes of Human Trafficking under Article 388 CC, Mediation in Prostitution under Article 184 CC and Trafficking in Minors for Adoption under Article 389 CC.**

One of the main **goals of the analysis** is an objective assessment of the position of victims of the crimes of human trafficking, mediation in prostitution and trafficking in minors for adoption in court proceedings, in order to assess the compliance of the domestic legal, strategic and institutional framework with relevant international standards. The position of victims, i.e. injured persons in criminal proceedings, was analysed in relation to the basic standards of trafficked victims' protection *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime of 2000*⁵ (Palermo Protocol) *Council of Europe Convention on Action against Trafficking in Human Beings of 2005*⁶. Monitoring the degree of implementation of existing legal norms in practice is also important for a consistent court practice and a need-assessment of continuous education of the judiciary, with the final goal of improving the position of victims in criminal proceedings. In addition to assessing the level of realised rights and protection of victims in criminal proceedings on an annual level, the analysis also aims to observe the main features in the prosecution and punishment of perpetrators for the crimes and to highlight the most important trends in the court practice on an annual or multi-year level.

Like the previous ones, the analysis of judicial practice for 2023 is based on quantitative (statistical) and qualitative **analysis of available data from court decisions made during 2023 in criminal proceedings** in the first instance trials or in appellate proceedings. Information on the number of proceedings conducted or resolved before competent public prosecutor's offices and courts, as well as court decisions that were the subject of analysis, were obtained in accordance with the Law on Free Access to Information of Public Importance. The information were requested from competent public prosecutor's offices (on the number of filed criminal reports, indictments and concluded plea agreements), first-instance courts (on the number of proceedings, decisions, or judgments and accepted plea agreements) and second-instance courts (on the number of second-instance proceedings and decision) in 2023, for the crimes of mediation in prostitution under Article 184 CC, human trafficking under Article 388 CC and trafficking of minors for adoption under Article 389 CC.

The analysis includes a total of 42 court decisions made in criminal proceedings during 2023, by competent first and second instance courts in the territory of the Republic of Serbia. The data obtained from the analysed court decisions were subjected to quantitative (statistical) as well as qualitative analysis, in order to get data important for assessing the position and rights of the victims. **The quantitative (statistical) analysis** refers to the jurisdiction of the courts, the type of criminal acts, the type of decisions and the amount of the penalties imposed, the duration of the

⁵ "Official Gazette of the FRY - International Agreements", no. 6/2001

⁶ "Official Gazette of RS - International Agreements", no. 19/2009

proceedings, as well as data on the perpetrators and the injured, and it has been based on the decisions made in the first-instance proceedings (20 first-instance decisions, of which 19 judgments and 1 decision). Second instance decisions (22 in total, of which 11 judgments and 11 decisions) were the basis for determining the type of decision and the duration of the proceedings. **Qualitative analysis**, based on statistical data and analyses of other available data from first-instance decisions, deals with the position and rights of victims through the most significant aspects (privacy, information, assistance and advocacy; security and protection during proceedings and hearings; restitution; adequate penalties for perpetrators); position and rights of minor victims and their protection in court proceedings; and finally, special issues that have been observed in this annual study as significant for the position of trafficked victims and related court practice. Main observations of the analysis and observed five-year trends as well as the recommendations are presented in the **conclusions** of the annual study.

In addition to international protection standards (guidelines provided by the *Palermo Protocol* and the *Council of Europe Convention on Action against Trafficking in Human Beings*), an overview of the existing legal solutions from the Criminal Code (CC)⁷, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles⁸ and Criminal Procedure Code (CPC)⁹ is provided. The **terms** “victim” “injured” or “injured person” are used in the text for victims. The term “child”, “minor” or “minor injured person” were used for injured persons under the age of 18. The term “perpetrator” was used as a general name for a suspect, defendant, accused and convicted, as per the meaning of the terms under Article 2 CPC.

⁷ "Official Gazette of RS", no. 85/2005, 88/2005-corr., 107/2005-corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019

⁸ "Official Gazette of RS", no. 85/2005

⁹ "Official Gazette of RS", no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - CC decision and 62/2021 - CC decision)

III Data Obtained from Public Prosecutor's Offices and Courts

A request was sent for the data for 2023 to the competent public prosecutor's offices and courts **in accordance with the Law on Free Access to Information of Public Importance**. The information were requested from the competent public prosecutor's offices (on the number of filed criminal reports, indictments and concluded plea agreements), first-instance courts (on the number of proceedings, judgements and accepted plea agreements) and second-instance courts (on the number of conducted second-instance proceedings and decision) for 2023 for the crimes of mediation in prostitution under Article 184 CC, human trafficking under Article 388 CC and trafficking of minors for adoption under Article 389 CC.

The letters received from the **basic public prosecutor's offices** (BPPO), showed that during 2023, 7 criminal reports were filed for the crimes of mediation in prostitution under Article 184 CC and 6 proceedings were ongoing. The following may be determined from individual letters received from the BPPOs which conducted the proceedings: First BPPO - 1 criminal report with ongoing pre-investigation phase; Second BPPO Belgrade - 1 criminal report with ongoing pre-investigation phase; Third BPPO Belgrade - 1 proceeding; BPPO Petrovac na Mlavi - 2 criminal reports, 1 of which was rejected; BPPO Niš - 3 criminal reports.

The letters received from the **higher public prosecutor's offices** (HPPO), showed that during the year 2023, criminal charges were recorded against 38 persons (of which 31 persons were charged under Article 388 CC and 7 persons were charged under Article 389 CC), criminal reports for 7 persons were dismissed, indictments were filed against 37 persons, investigations were ongoing against 11 persons, and plea agreements were concluded with 3 persons. The following may be determined from individual letters received from the HPPOs which conducted the proceedings: HPPO Belgrade - for the criminal offense under Article 388 CC - 14 proceedings, Article 184 CC - 1 criminal charge, upon which an indictment was filed; HPPO Novi Sad - criminal charges against 5 persons under Article 388 CC, of which 4 persons were indicted and plea agreements concluded with 3 persons, for the crime under Article 184 CC, an indictment was filed against 1 person; HPPO Šabac - 2 criminal charges under Article 388 CC and an indictment filed against 1 person; HPPO Negotin - under Article 388 CC - 1 proposal for security restriction measures; HPPO Kruševac - under Article 388 CC - 1 proceeding conducted with 2 persons indicted; HPPO Sremska Mitrovica - Under Article 388 and Article 389 CC, criminal charges were filed against 7 persons which were rejected, under Article 388 CC, indictments were filed against 5 persons; HPPO Požarevac - 2 criminal charges and 1 indictment under Article 388 CC; HPPO Kragujevac - 1 indictment under Art. 388 CC; HPPO Jagodina - 2 criminal charges under Article 388 CC against 5 persons and the investigation was ongoing; HPPO Smederevo - 1 investigative procedure under Article 388 CC; HPPO Subotica - 4 criminal charges under Article 388 CC against 6 persons; HPPO Zrenjanin - under Article 388 CC - 1 criminal charge against 1 person and 2 indictments against 6 persons; HPPO Zaječar - under Article 388 CC, 1 criminal charge was filed against 1 person and the investigation was ongoing.

The **Prosecutor's Office for Organized Crime** received 6 criminal charges under Article 388 CC and launched investigations against 6 persons, while under Article

184 CC, 12 criminal charges were received, 7 indictments were submitted and 4 plea agreements concluded.

The letters received from the **basic courts** (BC), showed that during 2023, 8 proceedings were conducted for the crimes of mediation in prostitution under Article 184 CC and 3 final decisions were made, while 5 proceedings were still ongoing. The following may be determined from individual letters received from the BCs which conducted the proceedings: First Basic Court in Belgrade - 2 criminal proceedings, 1 with final judgement; The Second Basic Court in Belgrade - 1 criminal proceeding that was not completed; The Third Basic Court in Belgrade - 3 criminal proceedings, 1 of which with final judgement; Basic Court in Bor - 1 criminal proceeding that was completed; Basic Court in Smederevo - 1 criminal proceeding in progress; The Basic Court in Prijepolje - 1 criminal proceeding was conducted, with final judgement.

The letters received from the **higher courts** (HC), showed that during 2023, 6 proceedings were conducted and 5 final judgments were passed for the crime of mediation in prostitution under Article 184 CC (all upon plea agreements); for the crime of human trafficking under Article 388 CC - 20 criminal proceedings were conducted and 12 final judgments were passed (3 plea agreements) and 2 non-final judgments, while 12 criminal proceedings were ongoing. The following may be determined from individual letters received from the HCs which conducted the proceedings: Higher Court in Belgrade - Special Department for Organized Crime - 5 criminal proceedings, 6 judgments were passed, of which 4 were final judgments for the crime under Article 184 CC; Higher Court in Novi Sad - under Article 388 CC, 1 proceeding was ended without a final judgement, 3 proceedings terminated with final judgements (all plea agreements), while 6 proceedings were ongoing; under Article 184 CC - 1 proceeding ended with a final judgement (plea agreement), while 1 proceeding was ongoing; Higher Court in Zrenjanin - 6 proceedings under Article 388 CC; Higher Court in Smederevo - under Art. 388 CC - 1 proceeding that was not completed; Higher Court in Niš - 2 criminal proceedings under Article 388 CC were conducted and concluded with a final judgement; Higher Court in Novi Pazar - 1 judgment was passed under Article 388 CC; High Court in Jagodina - 2 proceedings under Article 388 CC, of which 1 had non-final judgement and 1 was ongoing; Higher Court in Kruševac - 1 ongoing proceeding under Article 388 CC; Higher Court in Sremska Mitrovica - 1 judgment was passed under Article 388 CC; Higher Court in Požarevac - 2 proceedings initiated under Article 388 CC (CP register - previous proceedings); Higher Court in Šabac - 3 proceedings under Article 388 CC, of which 1 had final judgement and 2 were ongoing; Higher Court in Valjevo - 1 proceeding ongoing under Article 388 CC; Higher Court in Subotica - under Article 388 CC, 3 proceedings were conducted, 2 of had final judgements.

The letters received from the **appellate courts** on the number of conducted and completed appellate proceedings, showed that during the year 2023, 21 proceedings under Article 388 CC were conducted and 10 decisions were made. The following may be determined from individual letters received from the appellate courts which conducted the proceedings: Appellate Court in Novi Sad - 8 proceedings for the crime under Article 388 CC, which were completed, 1 case under Article 184 CC; Appellate Court in Belgrade - 1 judgment under Article 388 CC; Appellate Court in Kragujevac - 1 finalised case under Article 388 CC; Appellate Court in Niš - completed 11 proceedings under Article 388 CC.

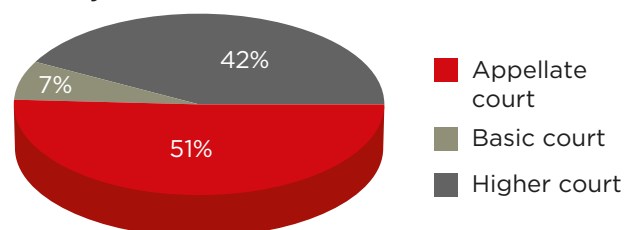
IV General Data Obtained from The Analysed Judgments

The subject of the analysis were the court decisions, that were submitted to us, made during 2023 in criminal proceedings for the crimes of mediation in prostitution under Article 184 CC, human trafficking under Article 388 CC and trafficking of minors for adoption under Article 389 CC. The data were attained by a quantitative (statistical) analysis of available data from first-instance court judgments (in terms of jurisdiction, types of crimes, types of decisions and amount of sanctions imposed, duration of proceedings, as well as data on perpetrators and the injured), as well as from of second-instance decisions in the appellate proceedings (type of decision, duration of the proceedings).

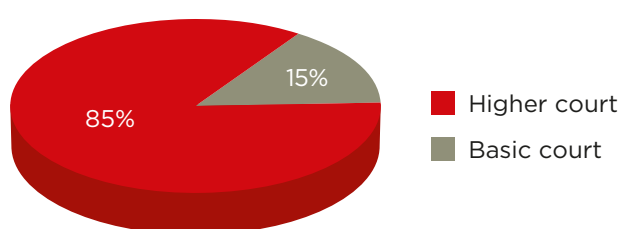
The availability of the data used in certain segments of the analysis is conditioned by anonymization of submitted court decisions, the content of the decision's explanation, as well as the manner of adjudication (in case of judgments made upon the plea agreement pursuant to Articles 313-319 CPC).

The analysis includes a total of **42 court decisions** made in criminal proceedings during 2023. The decisions, in accordance with the previous work methodology, were obtained pursuant to the provisions of the Law on Free Access to Information of Public Importance from basic, higher and appellate courts in the Republic of Serbia. Out of the total number of court decisions, **20 court decisions, or 19 judgements**, were passed in the **first instance proceedings**, 3 judgements passed by the competent basic courts (the First Basic Court in Belgrade, the Third Basic Court in Belgrade and the Basic Court in Prijepolje), 16 judgments were passed by competent higher courts (Higher Court in Belgrade - Special Department for Organized Crime, Higher Court in Novi Sad, Higher Court in Niš, Higher Court in Sremska Mitrovica, Higher Court in Zrenjanin, Higher Court in Subotica, Higher Court in Novi Pazar, Higher Court in Šabac) and **1 decision** involving the safety measure of compulsory psychiatric treatment and confinement in a medical institution was pronounced (Higher Court in Subotica). The subject of the analysis have also been 22 decisions made in the second-instance or appeal proceedings by the competent appellate courts, or 11 judgments (Appellate Court in Belgrade, Appellate Court in Kragujevac, Appellate Court in Novi Sad and Appellate Court in Niš) and 11 decisions (Appellate Court in Novi Sad and the Appellate Court in Niš).

All decisions - court jurisdiction



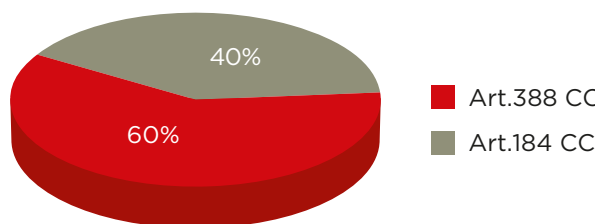
First-instance decisions - court jurisdiction



Appellate Court in Kragujevac, Appellate Court in Novi Sad and Appellate Court in Niš) and 11 decisions (Appellate Court in Novi Sad and the Appellate Court in Niš).

Out of the total number of first-instance decisions, 8 first-instance decisions (40%) referred to the **crime of mediation in prostitution** under Article 184 CC, of which

First-instance decisions - crimes

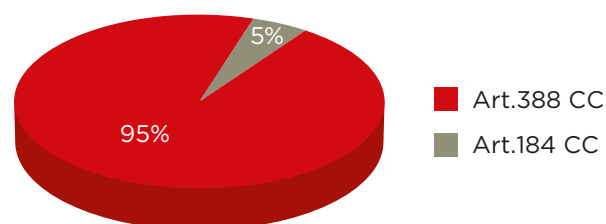


3 decisions (judgements) were made by basic courts and 5 decisions (judgements) by higher courts. Of the total number of decisions related to Article 184 CC, in 50% of cases (4 decisions) the proceedings were conducted before the Special Department for Organized Crime, i.e. in addition to the crime under Article 184 CC, there was a crime of allying for the purpose of committing

crime under Art. 346 CC. In one case, in addition to Art. 184 CC, the decision referred to endangering security under Article 138(1) CC. For the **crime of human trafficking** under Article 388 CC, 12 first-instance decisions (11 judgements and 1 ruling) were made, which was 60% of the total number of first-instance decisions, of which in two cases, in addition to Article 388 CC, the judgements referred to other criminal offenses: in one case, it is a case of concurrence with the crime of rape under Article 178(3) CC, in the other case one of the perpetrators was convicted only for the crime of sexual harassment from Article 182a (2) CC. Not a single decision was made for the crime of trafficking in minors for the purpose of adoption under Article 389 CC.

Of the total number of second-instance decisions, 1 decision referred to Article 184 CC, which was 5% of second-instance decisions, while 21 second-instance decisions or 95% referred to Article 388 CC.

Second-instance decisions - crimes

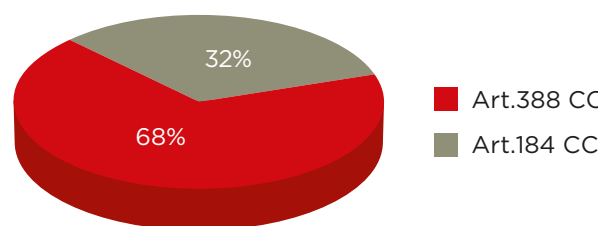


1. First-instance decisions

1.1 Indictment

Out of a total of 20 first-instance decisions (19 judgments and 1 ruling) that were subject of the analysis, 3 decisions (judgments) were made by basic courts and 17 decisions by higher courts (16 judgments and 1 ruling). In terms of **indictments**, the first-instance decisions included 25 indicted persons, of which 8 persons were accused of mediation in prostitution under Article 184 CC (32%), of which 4 persons were charged with the offense under Article 346 CC, and 17 persons were charged with the crime of human trafficking under Article 388 CC (68%).

Indictments

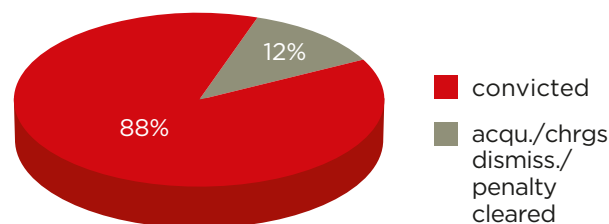


1.2 Type of decisions

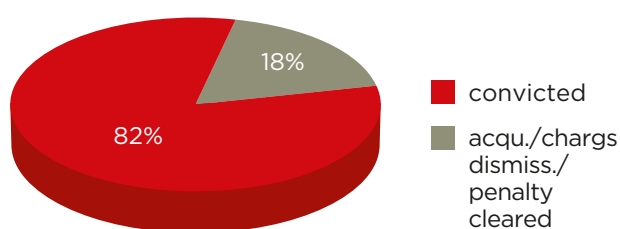
Regarding the **type of decision**, the first-instance court in most cases issued guilty verdicts - out of a total of 20 first-instance decisions, 16 guilty verdicts were issued, 1 judgement with 2 defendants convicted and 1 defendant acquitted, 1 judgement acquitted the defendant, 1 judgment rejected the charge, and 1 decision imposed a security measure on the perpetrator.

Regarding all the indicted persons, out of a total of 25 indicted, 22 persons or 88% cases were convicted (21 persons were convicted and 1 person was sentenced with the security measure of compulsory treatment and confinement in a medical institution); in the remaining 12% of cases the defendants were acquitted, or the charge was dismissed (2 persons) or penalty cleared (1 person). The percentage of convictions of 88% for 2023 is slightly lower compared to the data from the analyses for previous years (for 2022 it was 94%, for 2021 - 90%, for 2020 - 88%, for 2019 - 89%).

Type of first-instance decisions by perpetrators - all crimes



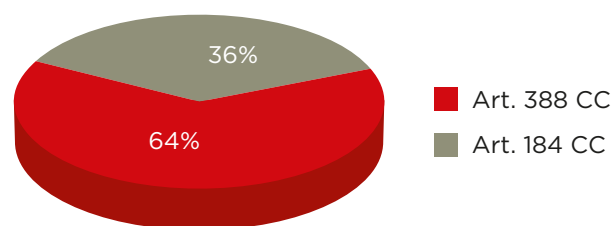
Type of first-instance decisions by perpetrators - human trafficking



Regarding the **type of decision for the crime of human trafficking**, out of a total of 17 indicted persons, 14 persons (82%) were convicted (13 persons were convicted and 1 person was sentenced with the security measure of compulsory treatment and confinement in a medical institution), while for the remaining 3 persons (18%), 1 person was acquitted, for 1 person the penalty was cleared and for 1 person the charge was dismissed.

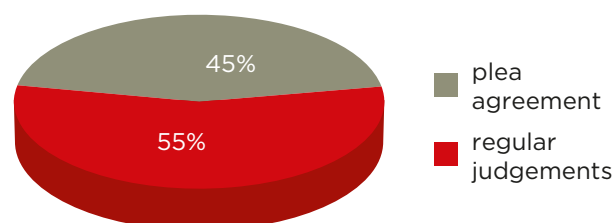
When only the data from the **convictions** are analysed, 8 persons (36%) were found guilty of the crime of mediation in prostitution and 14 persons (64%) were found guilty of the crime of human trafficking, and 1 among them was convicted to the security measure of compulsory medical treatment. Of the total number of persons convicted under Article 184 CC, in 50% of cases it was about organized crime, i.e., the judgement also referred to Article 346 CC, while in 1 case, in addition to Article 184 CC, the person was convicted of endangering safety under Article 138(1) CC. Out of the total number of persons convicted under Article 388 CC, 1 person was additionally convicted for the crime of rape under Article 178 (3) CC, while according to the form of the crime of human trafficking, it can be determined that 5 persons were convicted of committing the offense under Article 388 (1), 5 persons for the offense under Article 388 (3), 1 person for the offense under Article 388 (6) and 3 persons for the offense under Article 388 (9) CC. No decision was made for the crime of trafficking in minors for adoption under Article 389 CC.

Convictions - crimes



Out of 20 first-instance judgments, **9 judgments were made by accepting the plea agreement** pursuant to the provisions of Articles 313-319 CPC, which accounts for 45% of the total number of first-instance judgments. One such judgment was passed before a basic

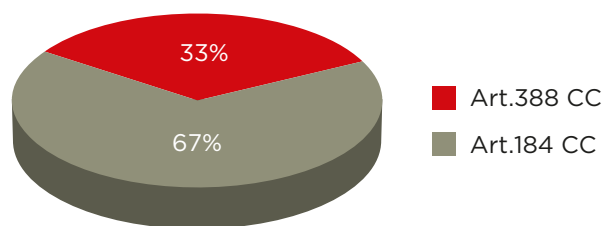
Plea agreements - first-instance judgements



court (11%) and 8 before higher courts (89%). Out of a total of 9 judgements following the plea agreement, 6 referred to the crime of mediation in prostitution (67%), and 3 to the crime of human trafficking (33%).

Separate data for the crime under Article 184 CC showed that the judgements based on the plea agreement in 50% of cases were rendered before the Higher Court - Special Department for Organized Crime. Out of the total number of 25 perpetrators in all first-instance judgments, the number of perpetrators in judgments made by accepting the plea agreement is 9.

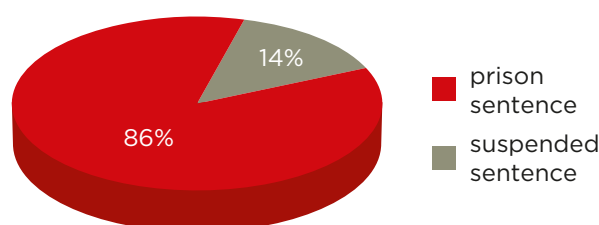
Plea agreements - type of crimes



1.3 Data on sanctions

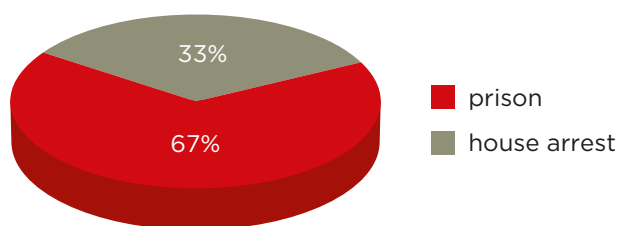
Data on the **types of sanctions** indicate that the persons who were found guilty (21 persons) were sentenced to imprisonment, whether to an “effective” prison sentence or a suspended sentence - a warning measure under Article 65 CC. An effective prison sentence was determined for 18 perpetrators (86% of cases), while a conditional sentence was determined for 3 perpetrators (14%).

Sanctions - all crimes



Out of the total number of 18 perpetrators who were sentenced to **effective prison sentences**, 6 were sentenced to home imprisonment (33% of cases), with (2 cases) or without (4 cases) electronic monitoring.

Effective prison sentence - all crimes

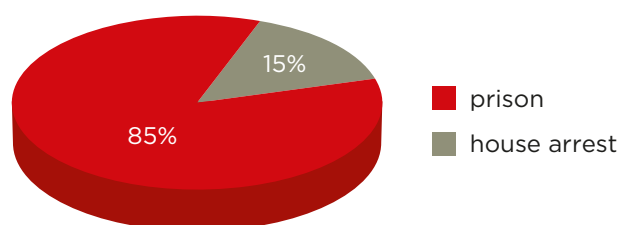


Against 8 perpetrators, along with the prison sentence, a fine of RSD 100,000.00-200,000.00 was imposed. Regarding the convictions, 6 defendants were ordered confiscation of items under Article 87 of the CC, and 3 defendants were ordered the measures of seizure of objects and prohibited communication with the victim under Article 89a CC; confiscation of property benefits was ordered by the court against 1 perpetrator. In the first-instance decision related to 1 defendant, for the committed illegal crime under Article 388 CC, the security measure of compulsory psychiatric treatment and confinement in a medical institution pursuant to Article 81 CC was imposed.

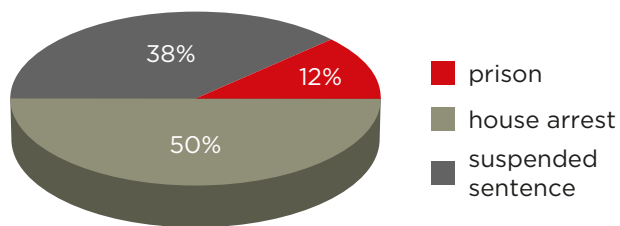
and 3 defendants were ordered the measures of seizure of objects and prohibited communication with the victim under Article 89a CC; confiscation of property benefits was ordered by the court against 1 perpetrator. In the first-instance decision related to 1 defendant, for the committed illegal crime under Article 388 CC, the security measure of compulsory psychiatric treatment and confinement in a medical institution pursuant to Article 81 CC was imposed.

An analysis of the type of sanctions for the **crime of mediation in prostitution** indicates that 5 perpetrators were sentenced to effective imprisonment, of which 4 were sentenced to house arrest without electronic monitoring (in all the cases, they were convicted

Sanctions - human trafficking



Sanctions - mediation in prostitution



(with electronic monitoring).

Regarding the **length of prison sentences for all crimes** (regardless of whether those were “effective” prison sentences or the security measure - suspended sentences), the data indicate that the highest established individual prison sentence was 7 years and 7 months, the shortest 5 months, while the average length of an individual sentence was 2 years and 5 months. The longest cumulative sentence was 9 years and 6 months, and the shortest was 6 months. It may be concluded that a prison sentence of less than 3 years was imposed in 52% of cases (11 perpetrators), a prison sentence of 3-5 years in 29% of cases (6 perpetrators), while a prison sentence of more than 5 years was imposed in 19% of cases (4 perpetrators).

Regarding the **length of sentences imposed for the crime of human trafficking**, the lowest individual prison sentence imposed was 1 year, the highest individual prison sentence was 7 years and 7 months, and the average individual prison sentence was 4 years and 1 month. For the criminal offense of human trafficking, in 23% of cases, a prison sentence of less than 3 years was imposed (3 cases), in 46% of cases, sentences were imposed in the range of 3-5 years (6 perpetrators), and in 31% of cases, over 5 years (4 cases).

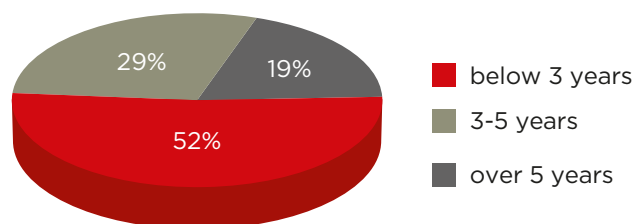
A detailed overview of sanctions is presented in tables in Chapter V, Section 5 “Sanctions”.

1.4 Duration of first-instance proceedings

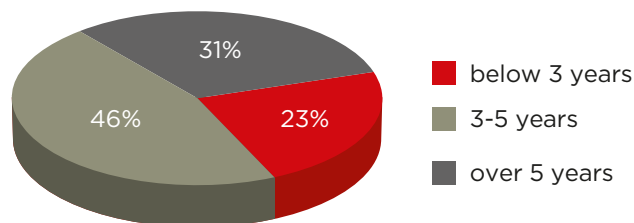
The duration of the first-instance proceedings was analysed relating to the period from the filing of the indictment to the date of the first-instance judgement. According to the mentioned criteria and according to the available data, the maximum duration of court proceedings was 9 years, while the shortest proceeding lasted 27 days (excluding the time for plea agreements). The average duration of a proceeding was around 3 years and 8 months.

pursuant to Article 184 and Article 346 CC). 3 perpetrators were sentenced to suspended sentences. In all 8 cases, along with the prison sentence, a fine was imposed. For the criminal offense of **human trafficking**, of the 13 defendants who were sentenced to effective imprisonment, in 2 cases the sentence was served in the defendant’s house

Length of prison sentence - all crimes



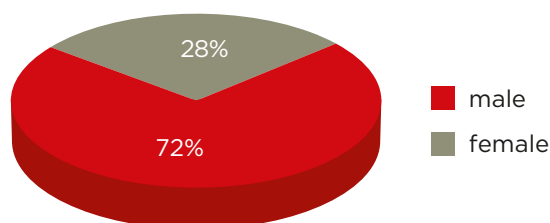
Length of prison sentence - human trafficking



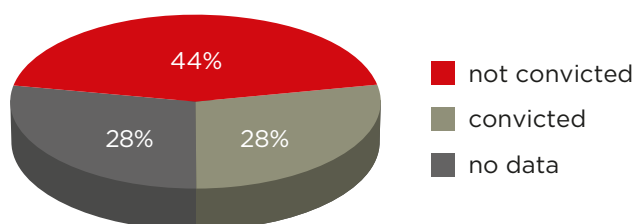
1.5 Data on indicted persons

Having analysed the **data on the perpetrators** (a total of 25 persons) that were available in the first-instance judgements, we determined that out of the total number of perpetrators, 18 or 72% were **male** and 7 or 28% were **female**. Regarding data on **previous convictions**,

Gender of the indicted



Previous convictions

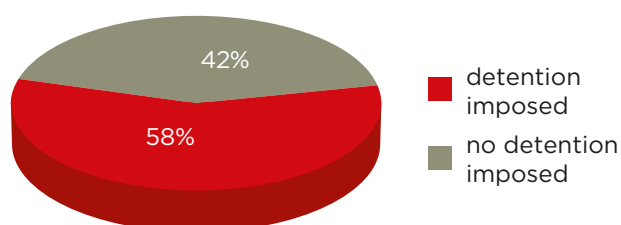


having analysed the judgments, we have determined that 7 defendants have been previously convicted (28%), 11 have not been previously convicted (44%), while for 7 defendants (28%) the fact could not be determined from the text of judgments due to anonymization of the submitted judgments.

Regarding the **marital and family status** of the perpetrators, available data indicate that 9 perpetrators (36%) were married or cohabiting, 7 defendants were not (32% were not married, were divorced or widowed), while for 9 persons those data could not be determined due to anonymization of judgments. A total of 52% of perpetrators had children, 4% did not, while no data was available for 44% of perpetrators. In terms of **educational status**, 12% of perpetrators had not completed primary education, 4% had primary education, 40% had completed secondary school, 12% had completed college or university, while for 32% of perpetrators no such data was available.

Based on the available data from first-instance judgements, we could determine that **detention** was ordered in 52% of cases, with the longest duration of 2 years and 4 months.

Detention



1.6 Data on injured persons

Based on the available data from first-instance judgements, we may determine that detention was ordered in 52% of cases, with the longest detention of 2 years and 4 months:

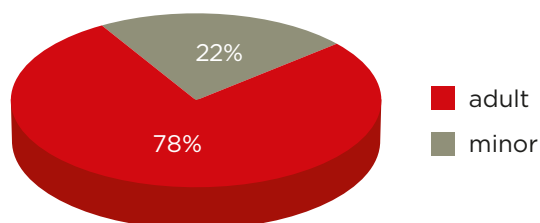
- **in 4 judgments of the Higher Court - Special Department for Organized Crime, related to Article 184 and Article 346(4) CC, the persons listed as those who engaged in prostitution (some named, some listed as unknown persons) did not have the formal status of injured**
- **from a number of judgments, it is not possible to determine the exact number of injured persons due to the anonymization of the texts of the judgments**
- **explanations of court decisions in a number of cases do not contain enough information relevant to the position and rights of victims in criminal proceedings**

• **1 judgement of the High Court in which 2 defendants were found guilty of the offense under Article 388 (1) CC, refers to a larger number of injured persons (47 persons) who were exposed to labour exploitation. Some data of importance to the injured parties could not be precisely determined due to the anonymization of the judgement, which especially influences the type of exploitation and data on the injured persons, victims of the crime of human trafficking. The judgement is presented and analysed separately in the chapter "Labour exploitation in judicial practice of 2023"**

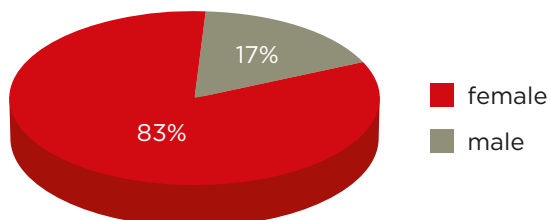
During the further presentation of the data in the analysis, which refer to the injured persons, the data were statistically processed and presented only for the persons who formally had the status of injured persons in the judgments and whose number could be determined with certainty.

Out of the total number of 18 identified **injured persons** for all crimes, 4 injured persons (22%) were **minors** at the time of the crime. According to the available data of the analysed first-instance judgements on the injured, 17% were **male** (3 persons), while 83% (15 persons) were **female**.

Age of the injured

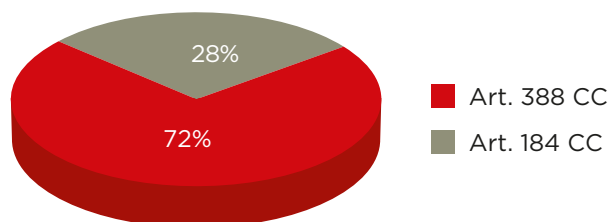


Gender of the injured



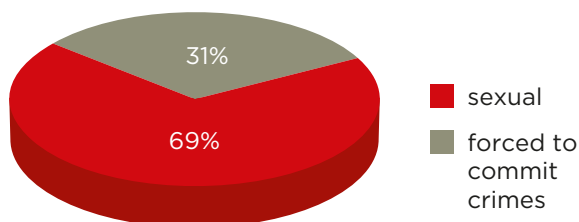
Regarding criminal acts, out of a total of 18 injured persons, 5 were **injured by the crime** under Article 184 CC (28%) and 13 by the crime under Article 388 CC (72%). Of the total number of victims of the criminal offense under Article 388 CC, 31% were minors.

Injured by criminal offences



Regarding **types of exploitation** in the crime of human trafficking, according to the data from the first-instance judgements, 9 out of a total of 13 victims of this crime (69%) were exposed to sexual exploitation, of which 1 case was an arranged child marriage. In the remaining 4 cases, it was the coercion to

Type of exploitation - human trafficking



commit crime (31%), of which in 1 case the injured party was a victim of the crime of rape at the same time.

Pertaining to the decisions on the **compensation claim**, out of a total of 18 injured persons, the court decided on the restitution claim in cases of 5 injured persons (28%) and awarded

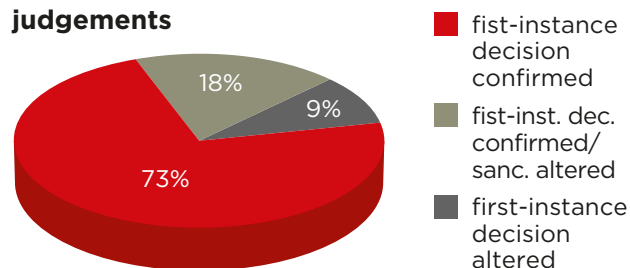
the restitution in 1 case (partially), 9 injured persons (50%) were referred to civil

proceedings to claim compensation, while for the remaining 4 injured persons (22%) there were no information on this aspect in the first-instance judgments.

2. Second-instance decisions

The analysis includes 22 court decisions (11 judgements and 11 rulings) made during 2023 in the second-instance proceedings by the appellate courts, of which 1 decision referred to Article 184 CC, which is 5% of second-instance decisions, while 20 second-instance decisions or 95% referred to Article 388 CC.

Second-instance decisions - judgements



Regarding the **type of decision** - judgement, out of a total of 11 second-instance judgements, the appellate courts issued 8 judgements confirming first-instance verdicts (73%), in 2 cases the judgements confirmed the guilt but the first-instance judgement was altered in terms of sanctions (18%), and in 1 case the first-instance judgment was altered in terms of the legal qualification of the offense (9%). Out of a total of 11 second-instance decisions, 7 decisions referred to the detention, while the remaining 4 decisions referred to the trial *in absentia*, the costs of the proceedings, and the decision on the security or education measure.

The longest **period needed to adjudicate** in the second-instance proceedings (from the date of the first-instance judgement to the date of the second-instance judgment) was 1 year and 9 months, and the shortest period was 2 months.

V Position and Rights of Victims

As in previous years, the analysis of judicial practice has focused primarily on the position of victims of crimes of human trafficking, mediation in prostitution and trafficking of minors for adoption, following the basic standards of protection and rights and assistance to victims of human trafficking set by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* of 2000 (*Palermo Protocol*) and *Council of Europe Convention on Action against Trafficking in Human Beings* of 2005. The **following aspects** were singled out as those of special importance for the position and rights of victims in criminal proceedings: **1) privacy, information, assistance and representation of victims, 2) safety of victims during proceedings and hearings, 3) restitution of victims and 4) imposing adequate sanctions on perpetrators.**

Assessment of the position and rights of the victims in the mentioned segments in the proceedings for selected crimes based on judgments passed in 2023, as well as in the previous few years, has been increasingly difficult due to several **factors** considering the availability of data on victims in written statements of judgments **(including justified anonymization of data on injured persons)**, which ultimately affects the visibility of the victims in the proceedings and makes it difficult to monitor their position and the degree of realization of guaranteed rights.

A significant number of judgments subjected to the analysis (45% of the total number of first-instance judgments) were **made by accepting the plea agreement**. Justifications of the plea agreement judgements usually do not contain adequately presented information regarding the position and rights of the injured persons (such as the presence of an attorney, the number and method of hearing, information on personal and family situation of the injured persons, etc.), except regarding the restitution claim.

Moreover, in the judgments related to **organized crime** (4 judgments of the Higher Court in Belgrade - Special Department for Organized Crime, which referred to Art. 184 and Art. 346 (4) CC, passed following plea agreements), persons listed as the persons who engaged in prostitution (no matter whether they were listed by name and surname, anonymized or as unknown persons) **did not have formally a position, i.e. the status of injured persons**. In the related first-instance judgements, these persons were not formally named "injured" or "injured witness", but "female persons" or "girls" who "engaged in prostitution" or who were "hired for prostitution". Although in the presentation of data related to the position and rights of the victims in the proceedings, only the data for persons who formally had the status of injured parties in the judgments are statistically presented, the situation indicates that potential victims can often remain "invisible" as participants in the court proceedings, or unidentified as possible victims of human trafficking and, thus, denied the relevant protection and rights. Regarding the formal status of the victims of the crime of mediation in prostitution under Article 184 CC, it is especially important to point out that those victims did not have the formal status of injured persons in 4 judgments related to organized crime (Art. 184 and Art. 346 CC), while in the other 4 judgments by competent courts for crimes under Art. 184 CC, the victims were formally named

“injured” (no matter whether those were regular judgments or the judgments following plea agreements).

Finally, in other cases, **the justifications of judgments were rather scarce in terms of the data related to the position of victims**, or injured persons in the proceedings, which is an increasing trend. In addition, this may be interpreted as an indication that the criminal proceedings for the criminal offenses analysed here are still insufficiently focused on the position and rights of victims. This underlines the need that the **procedural authorities adopt a victim-centred approach**, in accordance with international standards and the national legal and strategic framework, so that the victims are not treated only as a “source of information” about the committed criminal act. Thus, the secondary victimization and traumatization of victims would be avoided.

1. Privacy, information, assistance and representation of victims

International standards

The protection of the privacy and identity of the victims, as per Article 6 of the *Palermo Protocol* and Article 11 of the *Council of Europe Convention on Action against Trafficking in Human Beings*, is one of the basic prerequisites for the protection of victims in court proceedings. A government has an obligation to protect the privacy and identity of victims in relevant cases and in accordance with domestic laws. Assistance to victims, i.e. providing information and assistance in exercising the rights and interests of the victim in court proceedings (Article 6 of the *Palermo Protocol* and Articles 12 and 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings*) implies that it is necessary to provide counselling and information to victims about their legal rights, assistance to enable them to declare and consider their rights and interests in the appropriate stages of criminal proceedings, i.e. the right to legal counselling and free legal aid under the conditions prescribed by domestic law.

Legal provisions

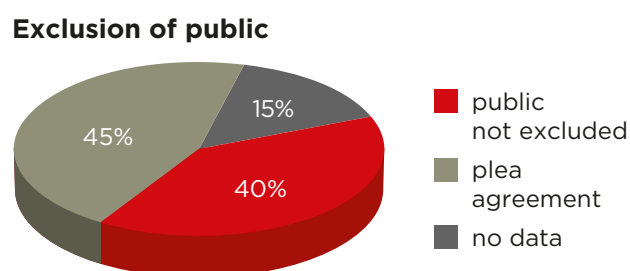
The provisions of the CPC stipulate (Article 363) that the court panel may *ex officio* or at the motion of the parties or defence attorney exclude the public for the entire main trial or a part thereof, if it is necessary for the sake of public order and morality, the interests of minors or the privacy of the participants in the proceedings. In this case, the panel may allow the presence of the expert public, or, at the defendant’s request, the presence of his spouse or close relatives, who are obliged to maintain the confidentiality of everything they learn at the hearing (Article 364). The provisions of the CPC on especially vulnerable witnesses (Article 104) provide for the possibility of hearing a witness without the presence of the parties or other participants in the proceedings in the room where the witness is questioned, if the witness is questioned by use of technical means of video and audio transmission. The CPC envisages the obligation of the procedural authorities to inform the participants in the proceedings about their rights, as well as to warn the participants who, out of ignorance, could miss an action or not use their rights, of the consequences of the omission (Article

8). The public prosecutor and the court must inform the injured party of his/her rights in the proceedings (Article 50), and the procedural authority may, if deems it necessary, protect the interests of an especially vulnerable witness, issue a decision on the appointment of a representative for the witness (Article 103 (3) CPC). In accordance with the provisions of the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles, a minor as the injured party must have an attorney from the first hearing of the defendant, and in the event that the minor does not have an attorney, s/he will be appointed from among lawyers who have acquired special knowledge in the child rights and the criminal protection of juveniles. The court president appoints the attorney by a decision and with the representation costs paid by the court budget (Article 154).

In accordance with the Law on Free Legal Aid (Article 18), a citizen of the RS, a stateless person, a foreign citizen with permanent residence in the RS and another person who has the right to free legal aid according to another law or a confirmed international agreement, may receive free legal aid. The aid is provided, among else, if the person seeks legal protection against human trafficking.

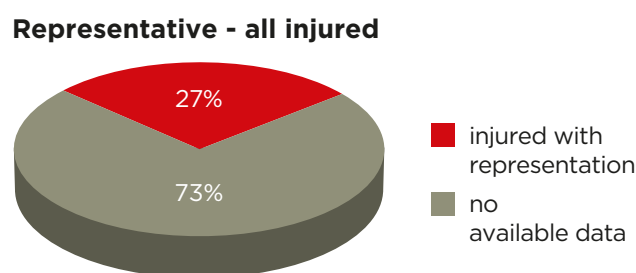
Data from the judgements

Of the total number of first-instance judgements, almost half (45%) referred to the acceptance of a plea agreement, in which cases, in accordance with Article 315 (3) CPC, the hearing is held without the **presence of the public**, and the public prosecutor, the defendant and the victim’s attorney are invited to the hearing. In the remaining cases, from 8 judgments we may conclude that public was not excluded, while from the other judgments this fact cannot be established.



Regarding the proceedings with minors as injured parties, it may be determined that the public was not excluded in 50% of cases.

Based on the available data from the analysed first-instance judgments, we may conclude that the existing provisions on the exclusion of the public are not applied to a sufficient extent. Inadequate application of legal provisions that would protect victims’ identity and privacy is to a large extent a consequence of the authorities’ lack of understanding of the sensitive position of victims of human trafficking and related crimes. Given that domestic legislation contains all the necessary institutions to ensure the protection of privacy and identity of victims in criminal proceedings, this aspect of victim protection is an example of inconsistent application of the existing legal provisions in practice.



The data from the analysed first-instance judgments do not contain enough relevant

data on the injured persons who had or did not have a **representative** in the proceedings, we may determine that the injured persons had a representative in 27% of cases, while no data is available on this aspect in the judgments of the other cases.

For minor injured persons, the data indicate that in all cases (4 persons) the minor injured persons had a representative and that the **Center for Social Work and/or the Center for the Protection of Victims of Human Trafficking** participated in the proceedings.

Given the gravity of the consequences they suffer and the overall sensitive position of victims of human trafficking and related crimes, it is necessary to pay more attention to this aspect of victim protection. The situation could be significantly improved if the procedural authorities would more often consider granting the status of especially vulnerable witness to injured persons, as most victims of the crime of human trafficking meet one or more of the legal conditions to get this status (age; life situation; gender; health; nature, manner or consequences of the commission of the crime; or other circumstances of the case).

2. Safety of victims during the proceedings and hearings

International standards

The obligation to provide a set of measures for the safety, security and protection to victims of human trafficking (Article 6 of the *Palermo Protocol* and Articles 12, 28 and 30 of the *Council of Europe Convention on Action against Trafficking in Human Beings*) represents one of the most important aspects in realizing the rights of victims in court proceedings. The provisions related to the protection of the rights of victims of human trafficking and the exercise of their rights in the proceedings must especially come to the fore during the hearing of the victim. The obligations of a state include ensuring the safety and protection of the victim, and in particular the adoption of legislative and other measures that are necessary to ensure effective and appropriate protection against intimidation, especially in court proceedings.

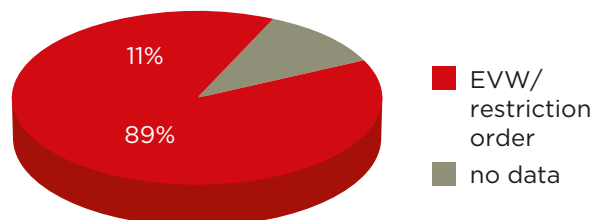
Legal provisions

The provisions of the CPC prescribe that the court must protect the injured party from an insult, intimidation or any other attack (Article 102). The protection of victims' safety can be reinforced by the application of the provisions on measures to secure presence of the perpetrator and unobstructed conduct of criminal proceedings under Article 188 CPC, which, in addition to detention, also prescribe the possibility of determining other measures, such as the measure of prohibition of approaching, meeting or communicating with a certain person and visiting certain places. Provisions of CPC on especially vulnerable witnesses (Articles 103 and 104) which refer to the status and manner of hearing especially vulnerable witnesses, stipulate a particular care, while the examination may be conducted with the assistance of a psychologist, social worker or other professional, or using technical devices for transmitting images and sound without the presence of other participants, in his/her

dwelling or other premises, or in an authorised institution. None of these provisions is binding (Article 104). Prohibition of confrontation of especially vulnerable witness with the defendant, is conditioned by the defendant's request for such confrontation, whereupon the proceeding authority may allow it, considering the level of the witness's vulnerability and rights of defence (Article 104).

The provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles also envisage only a possibility, not an obligation, of hearing a juvenile with the aid of technical devices for transmitting image and sound, and without presence of the parties and other participants in the proceeding. When conducting proceeding for criminal offences committed against juveniles, the authorities conducting the proceedings are obliged to treat the injured party with attention adequate to his/her age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his/her character and development, while questioning of a child or juvenile is conducted with the assistance of psychologist, pedagogue or other qualified person (Article 152). If a juvenile questioned as witness is a victim of a criminal offence specified in Article 150 of the law, the questioning may be conducted at most twice, and exceptionally more, if necessary to achieve the purpose of the criminal proceeding.

Safety and protection of victims - measures



Data from the judgements

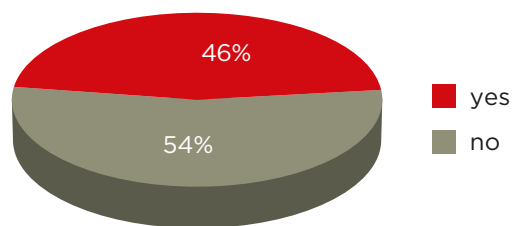
Safety and protection of victims at the very hearings, as well as outside the court are best secured when the defendant is **detained**, in case legal conditions for such detention have been fulfilled. Available data from first-instance judgements reached in 2023, show that during the first-instance proceedings, detention was ordered for defendants in 52% of cases.

As in the previous year, it can be said that the **data from first-instance judgments do not provide enough information regarding the application of measures** to protect victims in court proceedings, and especially regarding the manner or number of hearings of injured parties or the presence of attorneys. According to the available data from the analysed first-instance judgements of 2023, we may conclude that 1 minor injured person in the proceedings before the HPPO was granted the status of an especially vulnerable witness, while for 1 injured person (also a minor) a measure of prohibition of approaching and communicating with the injured party was recorded, as per Article 89a CC.

The status of especially vulnerable witness is recognised in very few cases, as it was also determined by the earlier years' analyses. It is important to emphasise that victims of human trafficking and related crimes do fulfil, in an overwhelming majority of cases, the legal conditions to receive this status in the proceedings (age, life experience, lifestyle, sex, health condition, nature, manner, or consequences of the committed crime). Therefore, the fact that in the judgments passed in 2023,

we have established that only 1 person was assigned the **status of an especially vulnerable witness**, as was the case in the analysed judgments for 2022 and 2021, is therefore worrying. Given the specific position of these victims, the actions by proceeding authorities, i.e. competent public prosecutor's offices and courts, must be aimed at providing safety and security to the victim, especially during hearings, in order to protect the victim's rights and avoid re-traumatisation, while simultaneously obtaining a quality testimony, in its essence and in terms of contents, in the interest of the proceedings' regularity and establishment of criminal responsibility.

Use of force/threats during the commission of crime



This is particularly important when we consider that most trafficked victims were, at the time of the commission of the crime, exposed to threats, as well as to physical and psychological violence, which has left serious consequences. In addition to the fact that as means of committing the crime of human trafficking in the analysed judgments, the abuse of trust and difficult life circumstances of the injured, along with the fallacy were most often used, in 46% of cases, the injured persons were exposed the **force (physical abuse) and serious threats (to the victims or their family members)**, which especially speaks of the victim's trauma of appearing in the court, as well as being questioned in the presence of the perpetrators.

Such a situation was recorded with **6 injured persons**: 1. a female victim - the perpetrator hit her in the head, beat her with hands, feet and wooden battens, hit her body with a wet towel, bathed her in cold water in the yard, stabbed her in the foot; 2. a male victim - the perpetrator threatened to beat and injure him, hit him on the face and body, and the crime of continuing rape was committed against the victim by the perpetrator who tied him up and used force on him; 3. a female victim - the perpetrator threatened the victim that he would "put a bullet in her head", slapped her and hit her on the head, bit her on the back, punched and kicked her body; 4. a female victim - the perpetrator pointed a knife to the victim's throat and threatened to "cut her ear off ", he hit her on the head and body with his fist and hand; 5. a female victim - the perpetrator punched the victim and threatened to "tear her head off " with a meat mallet; 6. a female victim - the perpetrator slapped the victim and threatened to harm her children and parents, hit her head and body with a chair, iron cord, fists, hands and feet, pulled her hair and dragged her on the floor, hit her with a frying pan and burned her on the breasts with cigarettes.

The data available from the analysed judgments do not provide a clear picture related to the way the injured persons were heard during the proceedings. In most cases, from the explanation of the judgment, it cannot be determined with certainty whether the injured person was heard directly before the court at the main trial, how many times, or, whether a previously given statement was used.

When it comes to minor injured persons (all victims of the crime of human trafficking), it can be determined that 2 injured persons were heard directly at the main trial, for 1 person there was information that a previously given statement was read, while for 1 person there was no specific information about the method of hearing. The fact that

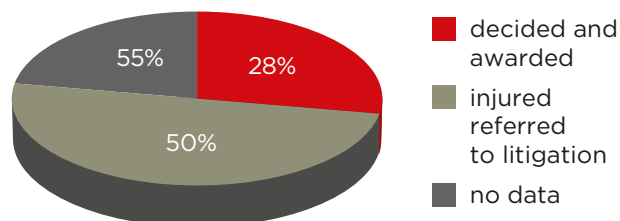
the status of an especially vulnerable witness does not automatically guarantee the protection from secondary victimization of victims is also shown by the fact that of the 2 minor injured persons who were heard directly before the court, in the first case it was a minor injured party who received the status of an especially vulnerable witness in the proceedings before the HPPO and against whom the crime of continued rape was committed, while in the second case the minor victim (victim of sexual exploitation) was questioned twice in the proceedings before the competent PPO and twice during the trial before the court.

3. Awarding restitution to the victims

International standards

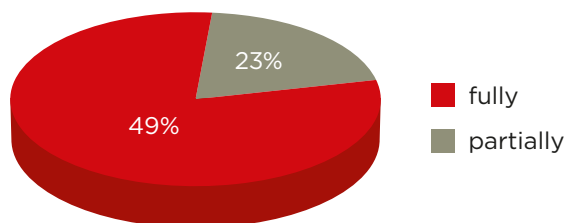
The right of receiving compensation for damage for human trafficking victims is included in international protection standards, as in Article 6 *Palermo Protocol* and Article 15 *Council of Europe Convention on Action against Trafficking in Human Beings*. Every state party is obliged to secure that its legal system contains measures that enable human trafficking victims to receive compensation for the damage suffered, i.e. to adopt legislative and other measures in order to guarantee compensation to victims, in accordance with the conditions stipulated by its national legislation (e.g. by establishing a compensation fund for victims).

Deciding on the compensation claim



Legal provisions

Awarded restitution



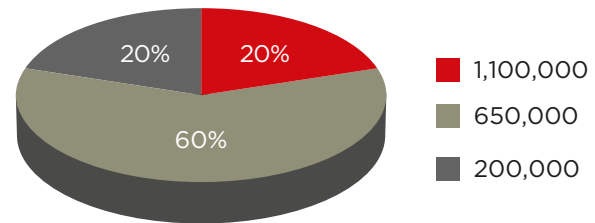
The provisions of the CPC (Articles 252-260) stipulate the obligation upon the authority conducting the proceedings to collect evidence necessary for deciding on an application for compensation prior to its submittal, unless it would significantly delay the proceedings. The provisions envisage the possibility

that in criminal proceedings, according to the provisions of the law governing the procedure of enforcement and security, temporary measures may be prescribed to secure a damage claim arising from the commission of a criminal offence. It is stipulated that in the decision declaring the defendant guilty, the court will award the restitution, in full or in part, and refer the defendant to civil litigation for the remaining part, with the restriction that if the facts of the criminal proceedings do not provide a reliable basis either for full or partial restitution, the court shall refer the authorised person to pursue the claim in full in civil litigation.

Data from the judgements

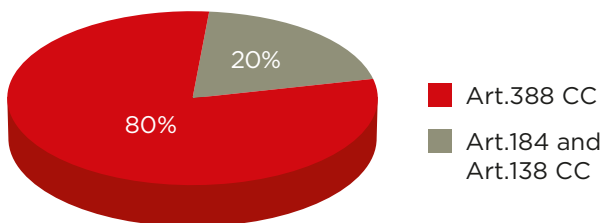
Based on the available data from the first-instance judgments, we may conclude that out of a total of 18 injured persons, **in cases of 5 injured persons (28%) the court decided on the compensation claim**, i.e. awarded the restitution to the injured parties (for 1 victim, partially), 9 injured persons (50%) were referred to civil litigation to pursue the compensation claim, while for the remaining 4 injured persons (22%) there was no information on this aspect in the first-instance judgements.

Restitution amounts



The restitution claim was awarded to 5 injured persons, through 3 judgments of higher courts, **all of which were passed following the plea agreement.**

Compensation - crime



In the **first judgment** of a higher court (for 3 injured persons), in which the defendant was found guilty of the crime of human trafficking, the restitution of RSD 650,000.00 was awarded to each injured party, which in all the cases referred to the fear suffered, the physical pain suffered and the violation of dignity,

honour, freedom and personal rights. All 3 victims were exposed to physical abuse and threats during the commission of the crime. The judgement shows that in all the cases psychiatric, psychological and forensic medical examinations of the victims were carried out. The judgement was made without justification pursuant to Article 261 (3) CPC because the parties waived their right to appeal after the announcement of the verdict.

In the **second judgment** of a higher court (for 1 injured person), in which the defendant was found guilty of the crime of human trafficking, the injured party was awarded restitution in the total amount of RSD 1,100,000.00, which referred to the fear suffered, physical pain suffered and the violation of dignity, honour, freedom and personal rights. During the commission of the crime, the victim was also exposed to physical abuse and threats, and the judgement shows that the psychiatric, psychological and forensic medical examinations of the victim were carried out. The judgement was made without justification pursuant to Article 261 (3) CPC because the victim waived the right to appeal after the announcement of the verdict.

In the **third judgement** (for 1 injured person - partially) of a higher court, in which the defendant was found guilty of the crime of mediation in prostitution and the offence of endangering security, the injured party was awarded restitution in the total amount of RSD 200,000.00. The restitution referred to the fear suffered and the violation of dignity, honour, freedom and personal rights, while she was referred to civil litigation for the difference of up to the requested RSD 700,000.00.

Given the solutions from the Criminal Procedure Code, the consistent implementation of the existing legal provisions would certainly encourage victims to file compensation claims in all cases, as well as their attorneys to request that compensation be decided in criminal proceedings. This is particularly important in order to avoid long and expensive civil proceedings and spare the victim from another proceeding, another testimony and another forensic medical expertise.

4. Imposing adequate sanctions on perpetrators

International standards

Article 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings* stipulates legislative and other measures that are necessary to ensure that the crime of human trafficking is punished with sanctions that are effective, proportionate and dissuasive.

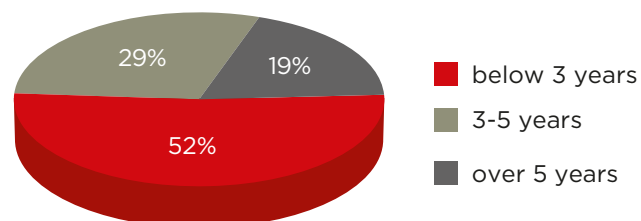
Legal provisions

According to the provisions of the Criminal Code, the court decides on a sanction within the legally stipulated limitations for the criminal offence, taking into account mitigating and aggravating circumstances, especially degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behaviour after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender (Article 54).

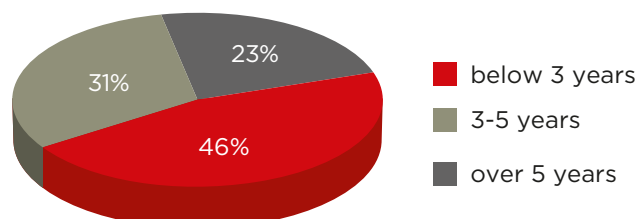
Data from the judgements

The data obtained from the first-instance court judgments show that all perpetrators, who were found guilty, were sentenced to prison, either to an **“effective” prison sentence (86% of the defendants)**, or a prison sentence with simultaneous warning measures – **suspended sentences under Art. 65 CC (14% of the defendants)**. Out of the

Length of prison sentences - all crime



Length of prison sentences - human trafficking



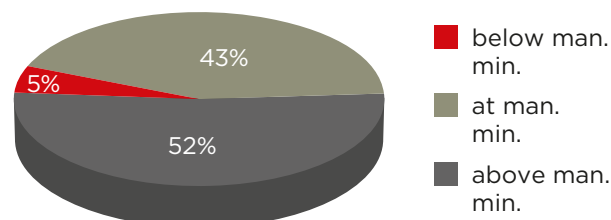
total number of 18 defendants who were sentenced to effective prison sentences, 6 were sentenced to house arrest (33% of cases), with (2 cases) or without (4 cases) electronic monitoring. In cases of 8 perpetrators, along with the prison sentence, a fine of RSD 100,000.00-200,000.00 was imposed. In the

convictions, the seizure of objects was ordered against 6 perpetrators pursuant to Article 87 CC, and 3 defendants were prohibited to access and communicate with the injured pursuant to Art. 89a CC; the seizure of objects was ordered by the court in the case of 1 perpetrator. In the first-instance decision made against 1 perpetrator, for the crime under Article 388 CC, a security measure of mandatory psychiatric treatment and detention in a health institution was imposed under Article 81 CC.

The analysis of the **type of sanctions for the criminal offense of mediation in prostitution** indicates that 5 defendants were sentenced to effective imprisonment, of which 4 were sentenced to house prison without electronic monitoring (in all cases, they were convicted pursuant to Articles 184 and 346 CC). Against 3 defendants, it was a suspended sentence. In all 8 cases, along with the prison sentence, a fine was imposed. For the **crime of human trafficking**, of the 13 defendants who were sentenced to effective imprisonment, in 2 cases the sentence was served in the premises where the defendants lived (with electronic monitoring).

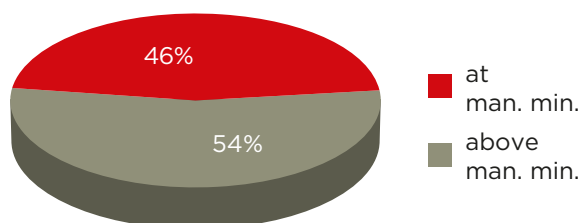
Regarding the **length of prison sentences for all crimes** (either “effective” prison sentences or the institute of security measures – suspended sentences), the data indicate that the longest established individual prison sentence was 7 years and 7 months, the shortest 5 months, while the average length of an individual sentence was 2 years and 5 months. The longest cumulative sentence was 9 years and 6 months, and the shortest was 6 months. We may conclude that a prison sentence of less than 3 years was imposed in 52% of cases (11 perpetrators), a prison sentence of 3-5 years in 29% of cases (6 perpetrators), while a prison sentence of more than 5 years was imposed in 19% of cases (4 perpetrators).

Prison sentences re. mandatory min. - all crimes



Regarding the **length of sentences imposed for the crime of human trafficking**, the shortest cumulative sentence imposed was 1 year, the longest cumulative sentence was 7 years and 7 months, and the average cumulative sentence was 4 years and 1 month. For the crime of human trafficking, in 23% of cases, a prison sentence of less than 3 years was imposed (3 cases), in 46% of cases, sentences were imposed in the range of 3-5 years (6 perpetrators), and in 31% of cases, over 5 years (4 cases).

Prison sentences re. mandatory min. - human trafficking



Data from the judgments passed during 2023 indicate an ongoing problem of imposing prison sentences at the level of the mandatory minimum or very close to it in most cases, both by the judgments following a plea agreement or the other judgments (see a detailed presentation of the sanctions in the tables). Thus, for all criminal acts, the perpetrators were sentenced below the mandatory minimum or at the mandatory minimum in 48% of cases. In the case of those accused of human trafficking, sentences at the mandatory minimum were imposed in 46% of cases.

As mitigating circumstances, courts have usually used previous non-conviction, as well as personal and family circumstances, even though these circumstances are often in contradiction with the very nature of the offence that the indicted person is accused of.

In order to properly review the presented data concerning the length of the imposed sentences, one must particularly have in mind the legally stipulated range for these criminal offences. What follows is the table with both legally stipulated and imposed sentences¹⁰ for individual cases.

Table 1: Judgments passed following plea agreements

Perp.	Crime	Stipulated sentence	Imposed sentence / sanction	Cumulative sentence
1.	Art. 184(1) CC Art. 184(1) CC	6m-5y and a fine 6m-5y and a fine	5m¹¹ and 100.000 5m and 100.000	8m to 3y and 200,000
2.	Art. 184(1) CC Art. 138(1) CC	6m-5y and a fine A fine or up to 1 y	6m and 120,000 50,000	6m and 170,000
3.	Art. 346 (4) re. (2) CC Art. 184(1) CC	6m-5y 6m-5y and a fine	8m 8m and 100,000	1y (house arrest w/out EM) and 100,000
4.	Art. 346 (4) re. (2) CC Art. 184(1) CC	6m-5y 6m-5y and a fine	6m 6m and 100,000	11m (house arrest w/out EM) and 100,000
5.	Art. 346 (4) re. (2) CC Art. 184(1) CC	6m-5y 6m-5y and a fine	6m 8m and 150,000	1y (house arrest w/out EM) and 150,000
6.	Art. 388(1) CC	6m-5y 6m-5y and a fine	6m 8m and 100,00	11m (house arrest w/out EM) and 100,000
7.	čl.388 st.1 KZ	3-12y	7y and 7m	
8.	Art. 388(1) CC	3-12y	3y and 6m	
9.	Art.388 (6) re. (1) CC	5-12y	5y and 4m	

¹⁰ In the tables, for the sake of clarity, penalties are indicated by abbreviations, so that, for example, "1y and 4m" means a prison term of 1 year and 4 months; "3m to 1y" means a prison sentence of 3 months, which will not be carried out if the defendant does not commit a new criminal offense within 1 year; "EM" means electronic monitoring; "SM" stands for security measure.

¹¹ In determining the sentence, the court referred, among other things, to the provisions of Article 56 and Article 57 CC on mitigation of penalty.

Table 2: other judgements

Perp.	Crime	Stipulated sentence	Imposed sentence / sanction	Cumulative sentence
1.	Art. 184(1) CC	6m-5y and a fine	1y to 3y and 100,000	
2.	Art. 184(1) CC	6m-5y and a fine	6m to 2y and 100,000	
3.	Art. 388 (1) re. Art.33 CC	3-12y	3y	
4.	Art. 388 (1) re. Art.33 and Art.61 CC	3-12y	3y i 6m	
5.	Art. 388 (1) re. Art.33 CC	3-12y	3y	
6.	Art.388 (3) re. (1) CC	5-12y	SM - security measure of compulsory psychiatric treatment and detention in a health institution ¹²	
7.	Art.388 (3) re. (1) CC re. Art. 30 and 33 CC	5-12y	6y	
8.	Art.388 (3) re. (1) CC re. Art. 30 and 33 CC	5-12y	5y	
9.	Art.388 (3) re. (1) CC re. Art. 30 and 33 CC	5-12y	6y	
10.	Art.388 (3) re. (1) CC Art.178 (3) re. (1) re. Art. 61 CC	5-12y 5-15y	5y 5y	9y i 6m
11.	Art.388 (9) re. (1) and (2) CC	1-8y	1y i 10m	
12.	Art.388 (9) re. (1) and (8) CC	1-8y	1y (house arrest with EM)	
13.	Art.388 (9) re. (1) and (8) CC	1-8y	1y (house arrest with EM)	

¹² The perpetrator committed the crime in a state of insanity caused by mental illness, as a result of which she was unable to understand the significance of her act and manage her actions.

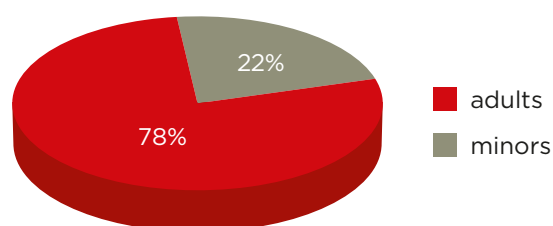
VI Position and Protection of Minor Victims

In the previous chapters of the analysis of the position of the victims of crimes under Article 184, Article 388 and Article 389 CC in criminal proceedings, the available data from first-instance judgement related to all victims (both adults and minors) were examined. In this chapter, as well as in the analyses of judicial practice for the period 2019-2022, **the data and observations concerning the position of minor injured persons are separately presented.**

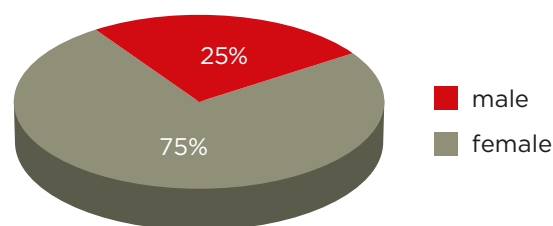
The fundamental international standards of importance for the position of victims of human trafficking, such as the *Palermo Protocol* and the *Council of Europe Convention on Action against Trafficking in Human Beings*, include the rights and aspects of the protection of victims of human trafficking that also apply to minor victims of this crime. In addition to protecting the privacy and identity of victims, providing information and assistance in exercising rights and interests in court proceedings, safety and protection of victims, special attention is paid to the need of child victims of human trafficking to get specialised protection that would consider their best interests, as well as the obligations to implement special prevention measures.

In addition, the protection of minor victims is additionally safeguarded by numerous international documents such as the *UN Convention on the Rights of the Child*¹³, *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which supplements the Convention*¹⁴ and *Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse*¹⁵, also in terms of confidentiality protection, right to assistance and information, safety and hearing. It is particularly important to recognise the vulnerability of child victims and to adjust the proceedings as to recognize their special needs, while ensuring that their best interests are prioritized in criminal proceedings, that is, to apply special protection measures for child victims in their best interests. *General Comment 14 issued by the Committee on the Rights of the Child No.14 (2013)*¹⁶ that asserts the right of the child to have his or her best interests taken as a primary consideration, in terms of the elements that must be taken into account when assessing the best interests of the child underlines the following: the situation of vulnerability that includes belonging to a minority group; refugees and asylum seekers; and victims of abuse and children in a street situation. The authorities must take into account the different types and degrees of vulnerability of each child in a specific situation and apply individual approach.

Minor injured persons - all crimes



Minor victims - gender



No. 15/90 and "Official Gazette FRY - International Agreements", no. 4/96 and 2/97

¹⁴ "Official Gazette FRY - International Agreements", no. 7/2002

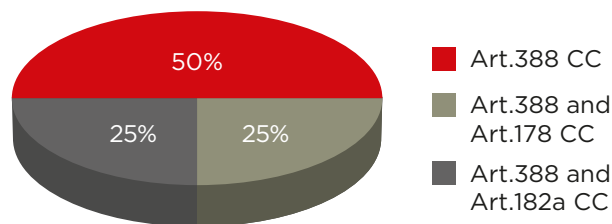
¹⁵ "Official Gazette RS - International Agreements", no.1/2010

¹⁶ CRC/C/GC/14, adopted at the 62nd session of the UN Committee on the Rights of the Child (January 14 - February 1, 2013)

The data indicate that out of the total number of 18 injured persons in the first-instance judgments for the crimes of mediation in prostitution and human trafficking, **22% of the injured persons were minors** at the time of the commission of the crime (4 persons). Of this number, 1 person was **male** and 3 were **female**.

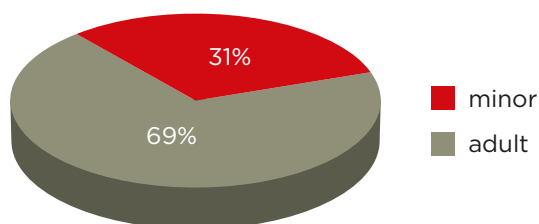
All minor injured persons were victims of the crime of human trafficking, and 1 person was additionally a victim of the

Minor victims - crime



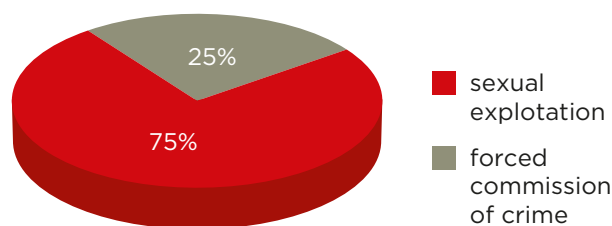
crime of rape under Article 178 CC, and 1 person of the crime of sexual harassment under Article 182a CC.

Minor victims - human trafficking



Of the total number of victims of the **crime of human trafficking**, 31% were minor victims. Regarding the types of exploitation of minor victims of human trafficking recorded in the first-instance judgments, 3 persons were exposed to sexual exploitation (of which 1 case referred to an arranged child marriage), while 1 person was forced to commit criminal acts (the person was also a victim of the crime of rape at the same time).

Human trafficking - type of exploitation of minor victims



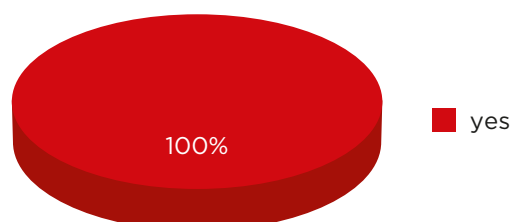
In the cases related to minor injured persons, all first-instance decisions were **convictions**, of which 3 were convictions and in 1 case a decision ordered a security measure of compulsory treatment and detention in a medical facility against the perpetrator of the crime.

The following aspects have been underlined as the important ones for the protection of child victims in criminal proceedings: 1) privacy, 2) assistance and representation, 3) security, protection and hearing, 4) situation of vulnerability. The aspects related to restitution and sanctions were not shown separately, given the detailed information presented in Chapter IV.

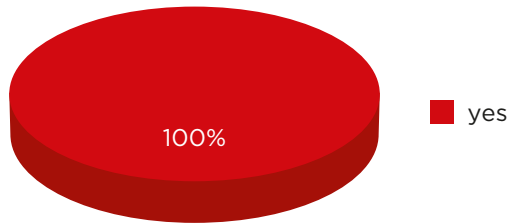
In terms of **privacy protection**, we may determine that the public was not excluded in cases of 2 minor injured persons, while in the other 2 cases that cannot be established.

In the aspect related to **assistance and representation**, the examination of court decisions in most cases cannot establish detailed data on all the issues, given that court judgments *per se* do not contain data that would be of importance regarding providing

Representation



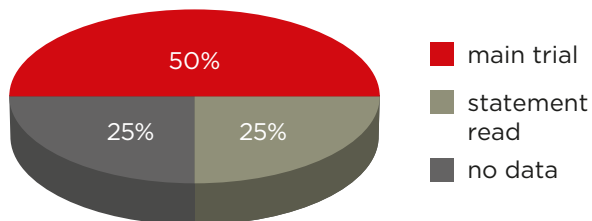
Participation of CSW and CPVT



Victims of Trafficking participated in all the cases.

Based on the data from the analysed judgments, related to the **safety, protection and hearing of victims in criminal proceedings**, we may establish that 1 minor victim received the status of an especially vulnerable witness in the proceedings before the competent HPPO (it was at the same time the only

Minor victims - hearing at the trial



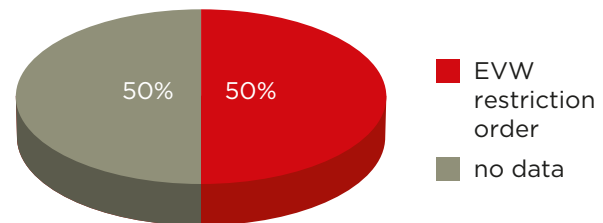
person who had the status of an especially vulnerable witness before the HPPO and the person for whom the security measure of a restraining order was issued), for 1 person statements were read, while for 1 person there were no data in this regard.

Having analysed the available data regarding the **vulnerability** of child victims, we may determine that in the case of all injured minors, there were difficult family and/or social circumstances (in 2 cases it was about persons placed in a foster family and in 2 cases about persons from dysfunctional families without CSR supervision). In all the cases, the perpetrators took advantage of the difficult circumstances of the minor injured persons (in 1 case the perpetrator knew that it was a victim of human trafficking), while in 1 case the injured party was exposed to both physical and sexual abuse.

It is important to point out that in order to improve the position of minor injured persons, it is necessary to implement consistently the existing legal provisions. The provisions of the Criminal Procedure Code stipulate (Article 363) that the court panel may *ex officio* or at the proposal of the parties or defence counsel exclude the public for the entire main trial or one part thereof, if they deem necessary for the sake of public order and moral, the interests of minors or the privacy of participants in the proceedings. In that case, however, the panel may allow the presence of the expert public, or, at the defendant's request, the presence of his spouse or close relatives, who are obliged to maintain the confidentiality of everything they learn at the hearing (Article 364). Also, the provisions of the code related to the especially

information about the implementation of rights and interests of the victim in court proceedings. The data from the examined first-instance judgments indicate that the minor injured persons were represented in all cases, and that the competent centres for social work and the Centre for the Protection of

Minor victims - protection and safety measures



case in the group of injured persons), and in the case of 1 minor injured person, the security measure of prohibition of approaching and communicating with the injured party was imposed. Regarding the method of hearing, available data from the first-instance judgments indicate that 2 minor injured persons were heard at the main trial (the

vulnerable witness (Article 104) provide for the possibility of questioning the witness without the presence of the parties or other participants in the proceedings in the room where the witness is being questioned, if the witness is being questioned using technical means for image and sound transmission, which should certainly be more consistently applied in cases of child victims of human trafficking.

It is also necessary to fully implement the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, especially the provisions by which a juvenile who is a victim will have a legal representative from the first questioning of the defendant, and if the juvenile does not have a legal representative, an attorney will be appointed by the president of the court from among attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles, while the costs of representation will be borne by the court budget (Article 154). The provisions of the same law prescribe that, if, due to the nature of the criminal offence and the juvenile's character the judge deems it necessary, he will order questioning of the juvenile with the aid of technical devices for transmitting of image and sound, and the questioning will be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person (Article 152).

It is necessary to consider, not only the obligation to provide minor victims with the protection and full exercise of their rights in court proceedings, but also that the authorities should adopt a victim-centred approach, or an individual approach to child victims that would take into account different types and degrees of risk for each child in the specific situation, as well as the obligation of preventive action when it comes to the criminal offense of human trafficking.

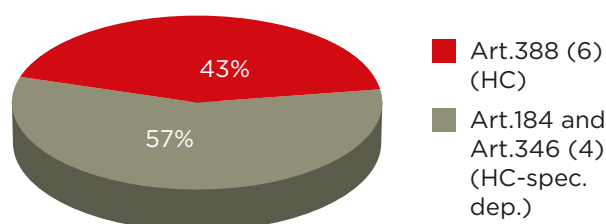
VII Issues Important for Judicial Practice and The Position of Victims in 2023

1. Crimes committed by a group or an organized criminal group

Pursuant to the meaning of the term under Article 112 CC, a “**group**” means at least three persons linked for the permanent or occasional commission of criminal acts, which does not necessarily have defined roles of its members, continuity of the membership or a developed structure. In contrast to a group, an “**organized criminal group**” is defined as a group of three or more persons, which exists for a certain period and acts consensually with the aim of committing one or more criminal offenses, punished with imprisonment of four or more years, to acquire direct or indirect financial or other gain. In the event of an organised criminal offence, the Public Prosecutor’s Office for Organized Crime and the Special Department of the High Court in Belgrade for Organized Crime are competent to conduct the first-instance court proceedings.¹⁷

The analysis of judicial practice for the crimes of human trafficking under Article 388 CC and mediation in prostitution under Article 184 CC of the year 2023, as in previous years, has noted a significant number of cases committed by a criminal group or an organised criminal group. Pursuant to Article 388 (6) CC, a perpetrator who is engaged in the commission of a crime under paragraphs 1-3 of this Article or in the case that the offense was committed by a group, a prison sentence of at least five years is stipulated, while in the case of an organized criminal group, a sentence of at least ten years is prescribed (paragraph 7). Since for the crime under Article 184 no stricter punishment is provided for a group or an organized criminal group, in case of such a crime, in court practice, in addition to Article 184 CC, the perpetrators are also charged with the commission of the crime of criminal alliance under Article 346 CC. The crime of criminal alliance under Art. 346 CC is carried out by a person who organizes a group whose aim is to commit criminal offences punishable by imprisonment of three years or more, if the law does not provide for a more severe penalty for such organization (paragraph 1), or a person who organizes the organized criminal group if the law does not provide for a more severe punishment for such organization (paragraph 2), and special penalties are prescribed for a member of a group, or an organized criminal group

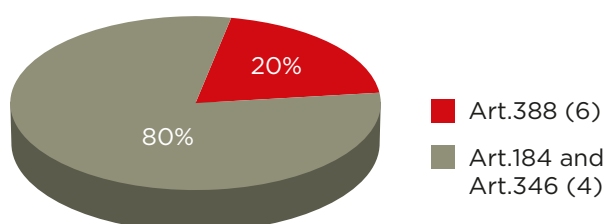
Indicted persons



(paragraphs 3-4).

Data obtained from the analysed first-instance decisions made in 2023 for **all proceedings conducted against persons charged with the commission of a crime by a group (or persons involved in human trafficking) or an**

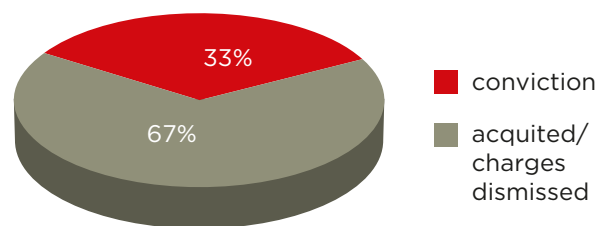
Persons found guilty (100% PA)



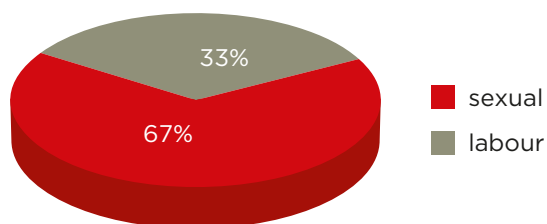
¹⁷ Law on the Organization and Competence of State Authorities in Suppression of Organized Crime, Terrorism and Corruption, "Official Gazette of RS", no. 94/2016, 87/2018 - other law and 10/2023

organized criminal group indicate that there were judgements in relation to 3 perpetrators for the offense under Article 388 (6) CC - (1 person was found guilty, 1 was acquitted and charges against 1 person were dismissed). For the crime under Article 184 (1) accompanied

Type of decision



Type of exploitation (by perpetrators)



by an offence under Article 346 (4) in connection with (2) CC, 4 judgments were passed, by which 4 persons were convicted. The injured persons in all the court decisions were of legal age. In all the cases, the convictions were made following plea agreements.

a) Aspects of proceedings for the crime under Article 388. (6) CC (human trafficking/group)

When it comes to the indictments for **crimes under Article 388 CC**, it is noted that in all 3 cases it was an indictment for the commission of the crime by persons engaged in human trafficking or by a group (Article 388 (6) CC), and not by an organized criminal group. In these type of proceedings, 1 person was convicted, 1 was acquitted, and charges against 1 person were dismissed. In 2 cases, the perpetrators were accused of committing the crime for sexual purposes, and in 1 case for labour exploitation.

Below is a **summary of judgments for Article 388 (6) CC**, with the note that these cases were not related.

Case 1: Conviction (human trafficking)

Out of the total number of persons indicted and processed for the crime under Article 388 (6) CC, only 1 perpetrator was convicted, with reference to 3 injured persons. The defendant was declared guilty of committing human trafficking, by abusing difficult circumstances of the victims' lives and using force and threats to recruit and restrain the victims for the purpose of prostitution (for 4-5 months). All three victims were kept in an apartment provided by the perpetrator and exposed to physical violence and threats. For a qualified form of the offence with stipulated sentence of 5-12 years of imprisonment, the perpetrator was sentenced to a **prison sentence close to the mandatory minimum** - for a period of 5 years and 4 months and was ordered to pay 650,000 RSD of restitution to each injured party.

Case 2: Charges dismissed (acting in a group)

In relation to 1 indicted person, the judgment dismissed the charges for the offense under Article 388 (6) CC, as the public prosecutor’s office had withdrawn the charges. The perpetrator was accused of acting as part of a group with 3 other persons, who by force and threat, by deceit and abusing difficult life circumstances of others, by withholding personal documents, transported and confined other persons for the purpose of prostitution. Although the indictment related to acting in a group and not an organized criminal group, there was a clear division of roles between the group members in terms of recruitment, transportation (to and across the border) and confinement of the injured persons. The public prosecutor dismissed the charge because the perpetrator was already legally acquitted of the charge by a decision of a foreign court due to the lack of evidence of guilt.

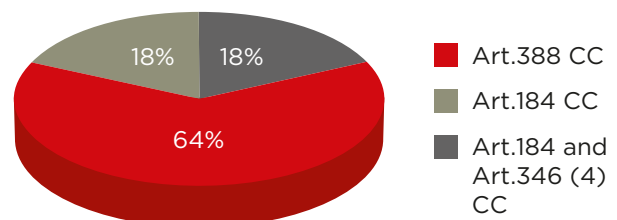
Case 3: Acquittal (acting in a group)

In this case, the first-instance proceedings before a high court were conducted based on the indictment against 3 persons, for the criminal offense under Article 388 (6), i.e. the crime of trafficking committed in a group, which referred to labour exploitation of a large number of injured persons. In the first-instance judgement, the court dismissed charges against 1 defendant, and found that it was not proven that he was part of a group with the other 2 perpetrators, with defined roles for each of them, who by taking advantage of difficult financial circumstances of unemployed workers - victims, by falsely promising favourable conditions and earnings in a company based in Belarus, misled the injured parties and recruited them to work in this company for the purpose of exploiting their work. The remaining 2 perpetrators were found guilty of the crime under Art. 388(1) CC as co-perpetrators (in terms of Article 112 CC, “group” means at least three persons linked for the permanent or occasional commission of criminal acts).

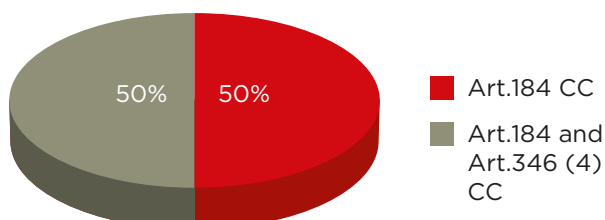
b) Aspects of proceedings for the crime under Art.184 and Art. 346 (4) CC (organized criminal group)

Out of the total number of analysed first-instance decisions, 4 proceedings were conducted for the **crime under Article 184 and Article 346 (4) CC**, in which the perpetrators were charged with the criminal offense of mediation in prostitution and the offense of criminal alliance. A total of 4 persons (2 males and 2 females) were found guilty by

Indicted for organizes crime (re. other crimes)



Indicted for organized crime (re. Art.184 CC)



individual verdicts of the High Court in Belgrade - Special Department for Organized Crime, for the commission of the crime of mediation in prostitution within an organized criminal group, which constitutes 50% of the total number of persons accused of the offense under Article 184 CC, that is, 18% of the total number of defendants for all offenses.

All judgments were made by accepting plea agreements. Against all 4 defendants, the court imposed cumulative prison sentences ranging from 11 months to 1 year. The sentences were to be **served in the house arrest (without electronic monitoring)**, along with a fine of 100,000 to 150,000 RSD and the security measure of confiscation of objects. Regarding the individual sentences imposed, all the perpetrators were sentenced **to imprisonment at the mandatory minimum or very close to it** - for the crime under Article 346 (4) in connection with (2) of the Criminal Code, with a stipulated prison sentence of 6 months to 5 years, the defendants were sentenced to prison sentences of 6 to 8 months, and for the crime under Article 184 (1), with a stipulated sentence of 6 months to 5 years and a fine, the perpetrators were sentenced to imprisonment of 6 to 8 months and a fine.

Persons who engaged in prostitution, regardless of whether they were listed by first and last name (anonymized in the submitted judgments) or as unknown persons, did not have the formal status of injured persons in the criminal proceedings. In the texts of the judgements, they were referred to as “female persons” or “girls” who “engaged in prostitution” or who were “recruited for prostitution”.

Below is a **summary of judgments for Article 346 (4) in connection with (2) CC and Article 184 (1) CC**. We note that these are persons who acted within the same organized criminal group.

Case 1: conviction (acting within an *organised criminal group*)

The first-instance decision established that the perpetrator acted as a member of an organized criminal group organized by the defendants XX and YY, which existed for a certain period of time and acted according to precisely defined roles and tasks with the aim of obtaining financial gain from the commission of the crime of mediation in prostitution (enticing a certain number of female persons to engage in prostitution and participating in their delivery to clients). The defendant was accused that he, as part of the action plan of the organized criminal group, in order to obtain financial benefits from the prostitution of several female persons recruited by the organizers XX and YY, acting on the order of the organizer XX, had the task of **renting and furnishing the apartments** where the female persons – “girls”¹⁸ stayed; **secured the girls and collected the money** from the females who engaged in prostitution, and for the tasks he received financial gain. Additionally, he participated in **delivering the girls and taking them by car to clients** as instructed by the organizer. He was sentenced to 8 months imprisonment for committing the crime under Article 346 (4) in connection with (2) CC and 8 months imprisonment and a fine in the amount of 100,000 RSD for the crime under Article 184(1) CC. The court sentenced him to a cumulative prison sentence of 1 year, which he was to serve at his home without the electronic monitoring, along with a fine in the amount of 100,000 RSD, and he was ordered the security measure of confiscation of objects.

¹⁸ The term used in all 4 judgments is also used in the summary of the judgments.

Case 2: conviction (acting within an *organised criminal group*)

The first-instance decision established that the perpetrator acted as a member of an organized criminal group organized by the defendants XX and YY, which existed for a certain period of time and acted according to precisely defined roles and tasks with the aim of obtaining financial gains from the commission of the crime of mediation in prostitution (enticing a certain number of female persons to engage in prostitution and participating in their delivery to clients). The defendant was accused that he, as part of the plan of action of the organized criminal group, in order to obtain financial gain from the prostitution of several female persons who had been recruited by the organizers XX and YY, acted by orders of XX, and had the task to **participate in the delivery, or to take by car** “female persons who engaged in prostitution” to the facilities where the prostitution took place upon an agreement between the clients and the “secretary” (a group member), **monitor** entrance of the “girls”“, wait for them after the completion of sexual service and take them back to the apartments. For the commission of the crime under Article 346 (4) connection with (2) CC, he was sentenced to a prison sentence of 6 months and for the offence under Art. 184(1) CC, to a prison sentence of 8 months and a fine in the amount of RSD 100,000. The court sentenced him to a cumulative prison sentence of 11 months, which he was to serve in the premises where he lived without the application of electronic monitoring, along with a fine in the amount of 100,000 RSD, and he was ordered the security measure of confiscation of objects.

Case 3: conviction (acting within an *organised criminal group*)

The first-instance decision established that the perpetrator acted as a member of an organized criminal group organized by the defendants XX and YY, which existed for a certain period and acted according to precisely defined roles and tasks with the aim of obtaining financial gain from the commission of the criminal offense of mediation in prostitution (enticing a certain number of female persons to engage in prostitution and participating in their delivery to clients). The defendant was accused that she, within the action plan of the organized criminal group, in order to obtain financial gain from the prostitution of several female persons who had been recruited by the organizers XX and YY, acting on the order of the organizer XX, had the **task of so-called “secretary”** or, in accordance to a predetermined plan, she answered the phone, the numbers of which had been published on an Internet portal and directly offered sexual services, or did that under the cover of escorting people of the opposite sex, arranged sexual services with the clients, including the place, time and price and kept record on “female persons engaged for sexual services”, clients, money earned, beginning and end of the provision of a sexual service, and informed the organisers on the above, so that further activities were undertaken, i.e. the driver notified of the addresses where to take and “collect” the girls. In addition, by order of the organiser, she **advertised prostitution and participated in delivery** of female persons to another person for prostitution. She was sentenced to 6 months imprisonment for committing the criminal offense under Article 346 (4) in connection with (2) CC and 8 months imprisonment and a fine in the amount of 150,000 RSD for the offense under Article 184(1) CC. The court sentenced her to a cumulative prison sentence of 1 year, which she was to serve in the premises where she lived without the application of electronic monitoring, along with a fine in the amount of 150,000 RSD, and she was ordered the security measure of confiscation of objects.

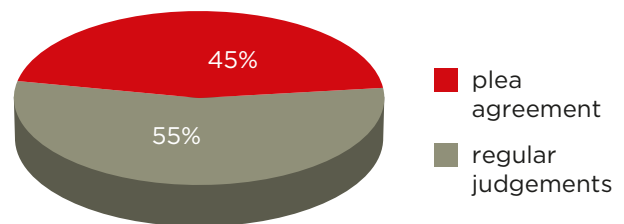
Case 4: conviction (acting within an organised criminal group)

The first-instance decision established that the perpetrator acted as a member of an organized criminal group organized by the defendants XX and YY, which existed for a certain period and acted according to precisely defined roles and tasks with the aim of obtaining financial gain from the commission of the criminal offense of mediation in prostitution (enticing a certain number of female persons to engage in prostitution and participating in their delivery to clients). The defendant was accused that she, within the action plan of the organized criminal group, in order to obtain financial gain from the prostitution of several female persons who had been recruited by the organizers XX and YY, acting on the order of the organizer XX, had the **task of so-called “secretary”** or in accordance to a predetermined plan, she answered the phone calls, the numbers of which had been published on an Internet portal and directly offered sexual services, or did that under the cover of escorting people of the opposite sex, arranged sexual services with the clients, including the place, time and price and kept record on “female persons engaged for sexual services”, clients, money earned, beginning and end of the provision of a sexual service, and informed the organisers on the above, so that further activities were undertaken, i.e. the driver notified of the addresses where to take and “collect” the girls. In addition, by order of the organiser, she **advertised prostitution and participated in delivery** of female persons to another person for prostitution. She was sentenced to 6 months imprisonment for committing the criminal offense under Article 346 (4) in connection with (2) CC and 6 months imprisonment and a fine in the amount of 100,000 RSD for the offense under Article 184(1) CC. The court sentenced her to a cumulative prison sentence of 11 months, which she was to serve in the premises where she lived without the application of electronic monitoring, along with a fine in the amount of 100,000 RSD, and she was ordered the security measure of confiscation of objects.

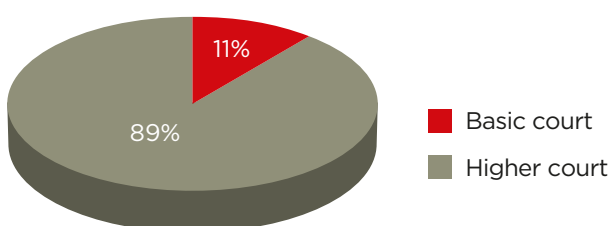
2. Plea agreement

Data from the judgments rendered in criminal proceedings in 2023 indicate that out of the total number of 20 first-instance judgments that have been the subject of the 2023 analysis, 9 judgments were rendered by accepting plea agreements as per the provisions of Articles 313-319 CPC, which accounts for **45% of the total number of first-instance judgements.**

Plea agreement (PA) - first-instance judgements



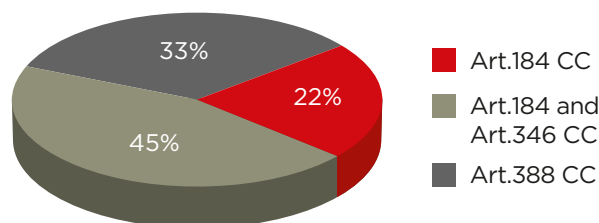
PAs - court jurisdiction



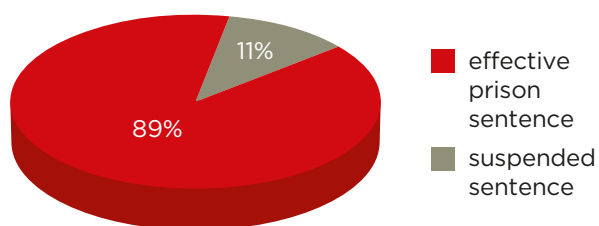
Out of the total of 9 judgments, 1 judgment was handed down before a basic court (11%) and 8 before higher courts (89%), of which 4 judgments were handed down before the Special Department for Organized Crime of the High Court. Out of the total number of judgements that were

passed by accepting plea agreements, 6 judgements referred to the **criminal offense** of mediation in prostitution (67%), and 3 to the criminal offense of human trafficking (33%). Separate data for the crime under Article 184 CC show that for this crime, the judgments based on plea agreements were passed in 2 cases pursuant to Article 184 and in 4 cases to Article 184 and Article 346 CC. The judgments passed following plea agreements included 9 perpetrators.

PAs - type of crime



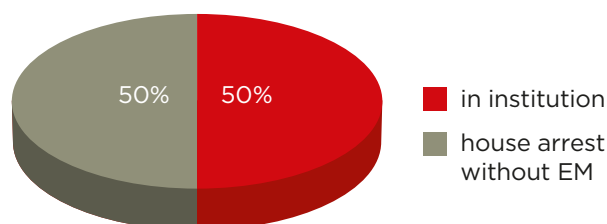
PAs - sanctions



When it comes to the **types of sanctions**, the judgments following plea agreements for all criminal offenses, show the following statistical data: an effective prison sentence was determined for 8 defendants, or in 89% of cases (of which 4 defendants were to serve their

prison sentences at home without the application of electronic monitoring), while in 1 case (11%) it was a suspended sentence. According to the judgments made following plea agreement, a prison sentence close to the mandatory minimum was determined in a significant number of cases.

PAs - effective prison sentences



Out of the total of 9 judgments that were rendered by accepting plea agreements, in **3 first-instance judgments the court decided on the compensation claim and awarded the compensation to the injured parties, in whole or in part.** Restitution was awarded to a total of 5 injured persons (for 4 injured persons in fully, for 1 injured person partially). The highest awarded amount of the restitution was in the amount of 1,100,000 RSD, which was awarded to 1 injured person, for 3 injured parties each the restitution was awarded in the amount of 650,000 RSD, while 1 injured party was partially granted the amount of 200,000 RSD, while for the difference of up to 700,000 RSD, the victim was referred to civil litigation. The restitution claims of the injured parties related to the fear suffered, the physical pain suffered and the violation of reputation, honour, freedom and personal rights.

In accordance with the provisions of the Criminal Procedure Code, a plea agreement may be concluded by the public prosecutor and the defendant from the moment of issuance of an order to conduct an investigation until the finalization of the main hearing, and the defendant must have an attorney at the time of conclusion of the agreement. If the authorised person has not filed a restitution claim, the public prosecutor will invite him/her to file the claim before the agreement is concluded (Art.313 CPC). The plea agreement will comprise a description of the criminal offence; a confession of the defendant that s/he committed the criminal offence; an agreement on the type, extent or scope of the penalty or other criminal sanction; an agreement on the costs of the criminal proceedings, on confiscation

of the pecuniary benefits from the crime and the restitution claim, if one has been submitted; a statement on the parties' and defence counsel's waiver of the right to appeal and the signatures (Art.314 CPC). The judge for the preliminary proceedings decides on the agreement, and if the agreement was submitted to the court after the confirmation of the indictment - the president of the panel, while the decision on the agreement is made at a hearing *in camera* attended by the public prosecutor, the defendant and his defence attorney (Art.315 CPC). The court will accept the plea agreement and declare the defendant guilty if it finds that the defendant has consciously and voluntarily confessed to the crime, that he is aware of all the consequences, that there are other evidences that do not contradict the defendant's confession, and that the punishment is in respect of which the public prosecutor and the defendant had reached an agreement was proposed in line with the criminal and other law (Art.317). The court's decision on the agreement is delivered to the public prosecutor, the defendant and his defence attorney, who have the right to appeal under the conditions prescribed by the law (Art.319 CPC).

The increasingly frequent application of plea agreements in practice requires special attention and assessment of this instrument's implications on the position and rights of injured parties, especially when it comes to such a sensitive category like the victims of human trafficking and related criminal offences covered in this analysis. Even though it is indisputable that the interests of cost-efficiency, effectiveness and quicker resolution of criminal proceedings justify such agreements, these reasons must not prevail over the injured parties' rights. It is therefore necessary to consider purposefulness of the amendments to the Criminal Procedure Code in this respect, considering the fact that after the initial introduction of the instrument of plea agreement in the CPC, the position and rights of the injured parties were additionally limited by the subsequent amendments. Those very amendments substantially limited the rights of the injured parties in the proceedings in relation to participation, influence on plea agreements' adoption, its contents and the possibility of overturning it with an appeal. The conditions were lifted which regulated the length of sentences for the criminal offences to which plea agreements could be applied, as well as that plea agreement must not infringe the rights of the injured party, or that the agreement was not contrary to the reasons of justice, that the injured party and his/her proxy were informed about the hearing at which the court would decide about the plea agreement, and that this hearing was public, and finally, that the injured party had the right to personally, or via a proxy, file a complaint against the decision of the plea agreement's adoption.¹⁹

Hence, the fundamental rights of victims established by the ratified international documents, such as the right to **information, protection and participation in the proceedings, were put into question**. The judgements that involve adoption of plea agreements do not only limit the realisation of the fundamental rights of victims, but they also reduce them to **"invisible participants"** in the proceedings, since justifications of such court judgments do not contain any data pertaining to the status, or realised rights of the victims, except sometimes, certain references to property claims lodged by the victims. Injured parties are denied their right to participate in the proceedings, since they are unable to influence the course and contents of the agreement in any way, whereby realisation of the victims' rights is put into question. Depending on the point at which the agreement is concluded and

¹⁹ These solutions were provided by the Criminal Procedure Code ("Official Gazette of the FRY", no. 70/2001 and 68/2002 and "Official Gazette of the RS", no. 58/2004, 85/2005, 115/2005, 85/ 2005 - other law, 49/2007 - other law and 72/2009)

adopted, the text of the judgment might not contain any information pertaining to the position of the victim in the proceedings, whether they were informed or had a proxy, how many times they testified, what were the contents of such testimonies, or whether they realised the right to lodge property claims.

3. Labour exploitation in judicial practice of the year 2023

Among the first-instance judgments that have been analysed as the court practice of the year 2023, and which were passed for the crime of human trafficking, only 1 judgment referred to labour exploitation.

Given that the judgment refers to multiple injured persons (47 persons) who were exposed to labour exploitation in a single judgment, and that certain data of importance for the injured could not be precisely determined due to the anonymization of the judgment, which has particularly affected the reviewing of types of exploitation and data on injured persons by the crime of human trafficking, the judgement is presented and analysed separately in this chapter.

In the specific case, the first-instance proceedings were conducted before the competent higher court following an indictment against 3 persons who were charged with the commission of the crime under Article 388 (6), that is the crime of human trafficking committed by a group, and referring to labour exploitation of multiple persons. In the first-instance judgement, the **court acquitted 1 defendant**, finding that it was not proven that he had been part of the group with the other 2 defendants, with defined roles for each of them, who by taking advantage of difficult financial circumstances of unemployed workers - victims, by falsely promising favourable conditions and earnings in a company based in in Belarus, misled the injured parties and recruited them to work in this company for the purpose of exploiting their work. The other **2 perpetrators were found guilty of the crime under Art. 388(1) CC** as co-perpetrators (1 defendant of the continued crime of human trafficking), given that in the sense of Article 112 CC, “group” means at least three persons linked for a permanent or occasional commission of criminal acts. The first-instance judgment was confirmed by the Appellate Court and became final.

Regarding 2 defendants who were found guilty under Article 388(1) CC, it was determined that in 2012, on the territory of the Republic of Serbia and the Republic of Belarus, they, as co-perpetrators, deceived and kept deceiving the injured parties by abusing difficult financial circumstances of the injured workers, by falsely promising favourable conditions and earnings in company X with headquarters in Minsk. They also recruited them to work in the company for the purpose of exploiting their work, in such a way that they were falsely promised on the territory of the RS that they would be paid 6 dollars per hour while working in the company, that they would receive an advance payment of 250 to 300 dollars immediately upon arrival, that their travel expenses to Minsk of 120 EUR would be reimbursed there, that they would have affordable accommodation and 3 meals a day, and that they would sign employment contracts upon arrival in Minsk. At the beginning of August 2012, the injured parties travelled to Minsk by organized bus transport to the company’s

construction site, where they were informed that there would be no reimbursement of travel expenses, that they would have 2 meals a day, but that they would very soon receive an advance payment, and the injured parties believed and gave them their passports to obtain work permits. The injured were placed in children's resorts with no proper sanitary conditions (there were no bathrooms nor WC cabins), nor other necessary conditions for dwell and rest, they were transported to work by the company's automotive vehicle, they often missed work not out of their own will, and at the times they had no meals. While they were working on the construction site they only had 2 meals a day and the meals were sparse, they did not have enough drinking water, they worked without necessary work tools and without protective equipment, without an employment contract, and since they did not even receive the promised advance payment, they realised that they had been deceived, but they were not able to return to Serbia with no money for the trip, so they turned to the Serbian Embassy for help. Only after an intervention of diplomatic representatives they were promised salaries, which were paid to some injured parties in a lesser amount. The condition for the payment to be made and their passports returned was to sign that they had been paid in full for their work and had no claims, which they had to do, and then, they left Belarus.

In the evidentiary proceedings, the court found that in the specific case **all the elements of the criminal offense** of human trafficking were present - the action (victims were recruited), the means by which the action was carried out (deception by abusing difficult circumstances of the victims) and the purpose (exploitation of the victims' work), and determined that the victim's consent was not relevant in these cases, nor was the duration of exploitation. Also, in the explanation, the court states that for **the difficult material circumstances to exist, it is not necessary that the injured persons are socially vulnerable category**, but it is sufficient that their material circumstances are such that they are of poorer financial status, and that in order to prove the element of exploitation, the circumstance that the injured parties were not paid wages at all or were paid particularly low wages is extremely important, especially considering the difficult working and living conditions to which the injured parties were exposed.

In the specific case, the court finds that in the mosaic of evidence, the strong ones include deception, vulnerability (including irregular status), limited freedom (delicate, through financial dependence and intimidation), low wages and non-payment of wages, exploitative working conditions (long working hours, absence of employment contracts, lack of work permits), difficult living conditions (overcrowded accommodation, lack of beds, lack of sanitary facilities, lack of privacy), circumstances that caused the injured to personally feel forced to work for the perpetrators.

The court sentenced the perpetrators to **imprisonment at the mandatory minimum, or very close to the minimum**, by sentencing the first defendant to a prison sentence of 3 years and 6 months, and the second to a prison sentence of 3 years. The court valued the family status and conduct of the defendants after the crime was committed as mitigating circumstances, and for one defendant, the fact that he had not been previously convicted. **For both perpetrators, the court considered the fact that some injured parties were not interested to pursue criminal charges as a mitigating circumstance.** An aggravating circumstance for both defendants was the fact that as many as 47 persons were harmed by the committed criminal act.

VIII Concluding Remarks

1. Major observations regarding the position and rights of victims and the judicial practice of 2023

Having analysed the available data from the judgments passed in 2023 related to the crimes of human trafficking and mediation in prostitution, we underline the following **statistical indicators of importance** for the position and rights of victims and trends in judicial practice of 2023:

- Convicted were 88% of perpetrators for all criminal offenses, and 82% of perpetrators for the crime of human trafficking;
- in 45% of cases, the judgment was passed by accepting PAs, of which 67% of the cases referred to the crime of mediation in prostitution;
- in 86% of cases, the perpetrators were sanctioned by an effective prison sentence, and in 14% of cases, a suspended sentence, while in the judgements following PAs, in 50% of cases, the perpetrators were sanctioned by house arrest without electronic monitoring;
- in 33% of cases, the perpetrator was to serve effective prison sentences in the premises where they live, and for the crime of mediation in prostitution in 50% of cases;
- prison sentences of 3-5 years were imposed in 46% of cases for the crime of human trafficking;
- the defendants were male in 72% of cases;
- of the total number of victims who had the formal status of injured and who were included in the statistical analysis, 83% were female, 22% were minors. The victims were exposed to sexual exploitation in 69% of cases;
- in committing human trafficking, most often there was an abuse of trust and difficult circumstances of injured parties, while 46% of the injured were additionally exposed to force and intimidation;
- the court awarded restitution to the injured persons in 28% of cases;
- for all criminal acts, the perpetrators were sentenced below the mandatory minimum or at the mandatory minimum in 48% of cases;
- 18% of the perpetrators were found guilty of organized crime.

Victims of the crimes analysed here are increasingly less visible in the judgments, as many judgments are made by accepting plea agreements, and due to the fact that the explanations of judgments usually do not contain enough information significant for the position and rights of victims. Also, although in the judgments related to the crime of mediation in prostitution, women engaged in prostitution have the formal status of victims, in the judgments for organized crime in which, in addition to this criminal offense, the perpetrators were also charged with the offense of criminal alliance, they are referred to as “female persons” or “girls” who “engaged in prostitution”. Therefore, potential victims may often remain “invisible” participants of court proceedings, or unidentified potential victims of human trafficking, and thus, denied the protection and rights that belong to them. This indicates the need that the **procedural authorities adopt a victim-centred approach**, in accordance with international standards and the national legal and strategic framework, so that the victims are not treated only as a “source of information” about the committed criminal act and so that secondary victimization and traumatization of victims are avoided.

Regarding the aspect of **privacy** protection of the victims, particularly concerning is the fact that the public is most often not excluded from the main trial - in 50% of cases. Data on the position of the victims during hearings in court proceedings and the measures taken to **prevent the secondary victimization of the victims** in the majority of cases are not available from the text of the first-instance judgments. Therefore, in the analysis of the year 2023, it is possible to note only one case when the injured person received the status of an especially vulnerable witness. Although these data contradict the official ones of the competent public prosecutor's offices²⁰, **the application of the institute of especially vulnerable witness does not necessarily mean adequate treatment and protection of the victims in practice** during the hearing. This is supported by the data from the analysed judgments, which indicate that out of 4 minor victims, who were victims of human trafficking, two were heard directly at the main trial, one of whom was granted the status of an especially vulnerable witness by the HPPO. The existing legal solutions should be applied consistently, but also improved. That would significantly contribute to the protection of victims in court proceedings, given that in committing the crime of trafficking, as we may see in the analysed judgements, the perpetrators mostly abuse trust and difficult circumstances of the victims and deceive them. In 46% of cases the victims were exposed to violence (physical abuse) and serious threats (to the victims or their family members).

A significant progress in judicial practice of the year 2023 was achieved in the aspect of the victims' right to compensation, so the compensation claims were decided and awarded to the injured persons in 28% of cases, whereby in all the cases those were the judgments made following plea agreements (in 80% of cases victims of human trafficking were injured parties). Although this ratio is far from satisfactory, the judgments represent a positive indicator of changes in judicial practice, given that in the past years the decisions on restitution in criminal proceedings have been noted only marginally.

Data from the judgments handed down during 2023 indicate a **continuous problem of imposed prison sentences at the level of the mandatory minimum or very close to it** in most cases, both in the judgements following plea agreements and in the other ones.

Minor injured persons, who constitute almost a third of victims of human trafficking, and who were exposed to sexual exploitation in 75% of cases, in half of the cases were heard directly at the main trial. The recommendations of the analysis aimed at improving existing legal solutions are particularly significant if one takes into account the **complex situation of vulnerability of minor victims**, which includes not only the specific position of all victims of human trafficking and the vulnerable position of minors, but most often also difficult family and/or social circumstances that were noted in cases of all minor victims in the judgments that were the subject of the analysis for the year 2023.

From the special review of **acts of organized crime** in the analyses, it can be concluded that half of the perpetrators were found guilty of the crime of mediation in prostitution and of the crime of criminal alliance under Article 346 (4) CC before the Special Division of the Higher Court for Organized Crime. What is special for the

²⁰ See Appendix 2 of the Analysis

judgments in these proceedings is the fact that they were all passed by accepting the plea agreement, and that the prison sentences were imposed at the mandatory minimum or very close to it. Furthermore, in all the judgments for organized crime, persons who engaged in prostitution, regardless of whether they were listed by name (anonymized in the judgments submitted to us) or as unknown persons, did not have the formal status of injured persons in criminal proceedings.

The analysis of the year 2023, as in previous years, indicates a significant number of judgments that were made by accepting the **plea agreement**, and an impact of the widespread application of this institute on the position and rights of injured persons, especially when it comes to the sensitive category of victims of human trafficking and related crimes that are reviewed in this analysis. Hence, in addition to the fact that the victims have restricted basic rights (information, protection and participation in the proceedings), they are in the position of “invisible participants” in the proceedings who cannot in any way influence the course and content of the agreement, and they very often do not have the formal status of an injured party, as it was noted in the cases of organized crime (mediation of prostitution).

Labour exploitation was the subject of only one first-instance judgment, which is presented in a separate chapter of the analysis, given that it refers to a larger number of injured persons and that certain data of importance to the injured could not be precisely determined due to the anonymization of the judgment, which would have affected general statistics on the position and rights of injured persons. The judgment speaks of the presence of labour exploitation, which in practice is rarely adequately recognized. This issue has been recognized as a problem in the recommendations of international bodies and in national strategic documents. Although in this case the perpetrators were again sentenced to mild punishment that is close to the mandatory minimum, the judgement contains significant findings regarding the elements of the crime of human trafficking, especially regarding the existence of difficult material circumstances of the injured persons and a detailed analysis of the conditions to which the victims of labour exploitation were exposed.

The concluding observations of the analysis of judicial practice of the year 2023 do not differ significantly from the conclusions of the analyses in the previous period in most aspects of importance for the position and rights of victims. The most important issues continue to be the need for more effective protection of victims during criminal proceedings and especially during hearings, with greater respect for the privacy of the victim and adequate assistance to victims and representation in the proceedings before the prosecutor’s office and the court. The progress achieved in the aspect related to the victims’ right to compensation is certainly an example of good practice, but it cannot be considered satisfactory, given that this is one of the victims’ rights which was almost completely absent in previous years. In addition to the above, the concluding observations draw particular attention to the continuous trend of imposing mild sentences that cannot be considered effective and adequate sanctions for the criminal acts that are the subject of the analysis.

Improvement of the protection and rights of injured persons in criminal proceedings requires a consistent implementation of existing legal solutions for the protection of trafficked victims and additional improvement of the normative framework, with a continuous transformation of the attitude of the procedural authorities towards

the victim in order to adopt a victim-centred approach, while respecting the balance of the parties in the proceedings and the interests of a reliable determination of the facts and efficient prosecution of the perpetrators.

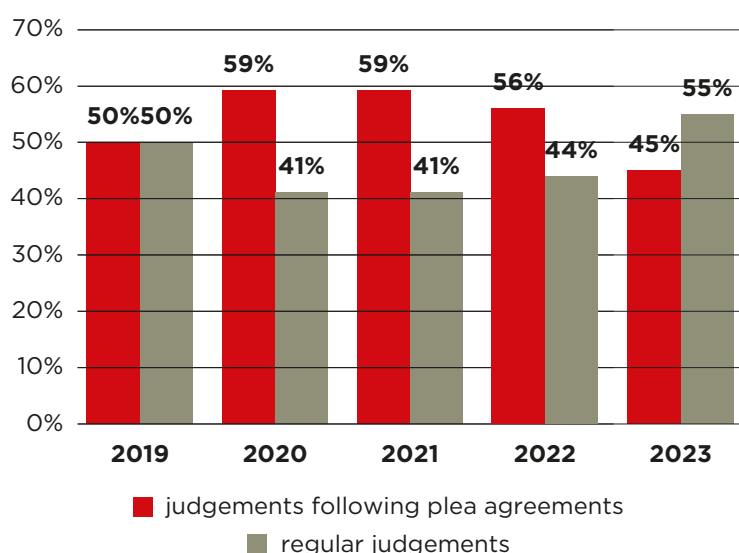
2. Observed trends in the five-year judicial practice analyses (2019-2023)

Regarding the ratio of judgements passed by accepting the plea agreement, it may be noted that in the recent five-year period, the number of the judgements following plea agreements (PA) consistently accounted for about a half of the total number of first-instance analysed judgements (50% in 2019, 59% in 2020 and 2021, 56% in 2022 and 45% in 2023). After a slight increase in the share of PA judgments in the period 2020-2021, there was a slight drop in the percentage in 2022 and a more significant drop in the percentage in 2023. The decrease in the ratio of PAs for the analysed year 2023 can be explained by the higher number of judgments for the crime of human trafficking compared to the offense of mediation in prostitution.

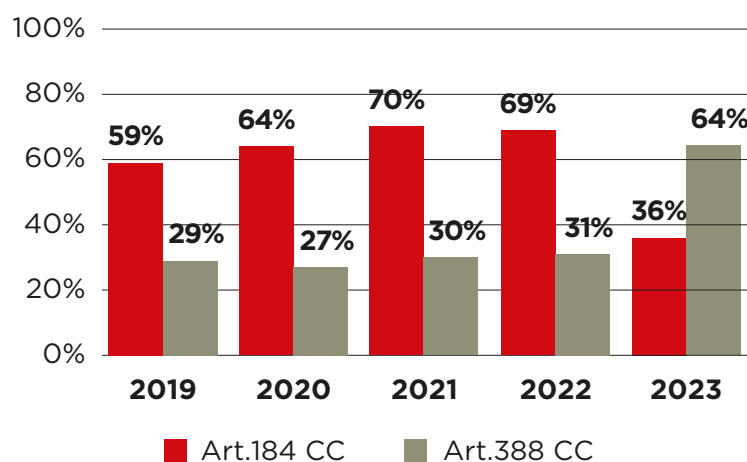
Regarding the **ratio of crimes that have been the subject of the analysis (Articles 388 and 184 CC)**, compared to the observed five-year period, during the year 2023, there has been a significant change. Following a constant increase in the share of persons who were found guilty of the criminal offense of mediation in prostitution under Article 184 CC, with a decrease in the share of the crime of human trafficking under Article 388 CC, the data from the analysed judgments of 2023 show that in the latter, the offense of human trafficking prevails with a significant increase of the ratio. Therefore, the number of perpetrators under Article 388 CC has been almost twice as high as in the previous two years (the percentage of perpetrators for the offense under Article 184 CC was 59% in 2019, 64% in 2020, 70% in 2021, 69% in 2022 and 36% in 2023; the percentage of perpetrators for the offense under Article 388 CC was 29% in 2019, 27% in 2020, 30% in 2021, 31% in 2022 and 64% in 2023).

When comparing the **amounts of prison sentences for the criminal offense of human trafficking** for the past five-year period, based on the data from the analysed

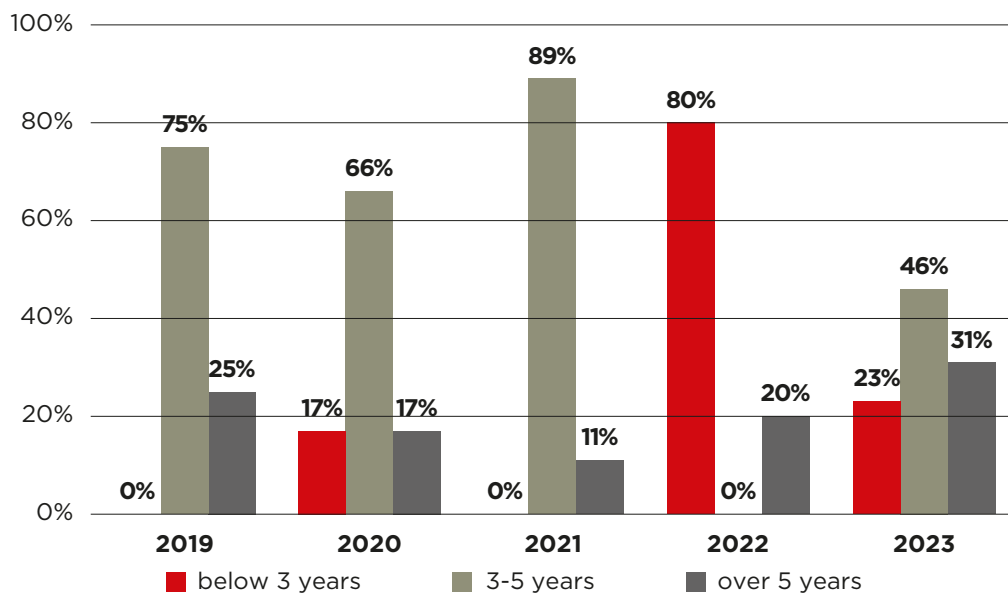
PA judgements (2019-2023)



Ratio of convictions for the crimes (2019-2023)



Prison sentences under Art.388 CC (2019-2023)



judgements, we may conclude that there has been a slight increase in imposing prison sentences of more than 5 years (25% in 2019, 17% in 2020, 11% in 2021, 20% in 2022 and 31% in 2023). When analysing the amount of prison sentences imposed in relation to the stipulated sentences for certain qualified forms, i.e. the provisions of Article 388 CC, we may note a constant trend of imposing lower duration prison sentences (at the mandatory minimum or very close to the minimum), so for the persons accused of the criminal offense of human trafficking, the mandatory minimum sentence has been imposed in as many as 46% of cases.

3. Recommendations of the analysis

In the field of application of the normative framework

- consistent application of the existing provisions of the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles, to protect the victims' rights to privacy, information, representation and security in criminal proceedings;
- consistent application of existing legal provisions to impose effective and proportionate sanctions in criminal proceedings;
- consistent application of legal provisions to protect victims' rights to restitution, which relate to deciding on compensation claims in criminal proceedings;
- unification of court practice in all the aspects mentioned above, as well as related to the criminal act of mediation in prostitution with regard to the status of victims as injured persons.

In the field of improving the existing normative framework

- amendments to the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles in accordance with international victim protection standards by prescribing obligations of assigning the status of an especially vulnerable witness to all minor injured persons, absolute prohibition of confrontation of the especially vulnerable witness and minor injured persons with the perpetrators and excluding the possibility of hearing the especially vulnerable witness and minor injured persons in the courtroom in the presence of the perpetrator;
- amendments to the Criminal Code and the Criminal Procedure Code for the purpose of complying with international standards in order to define the terms “child” and “victim”;
- amendments to the Criminal Procedure Code with regard to the provisions on the plea agreement in order to enable injured persons to participate and exercise their rights, especially with regard to being notified and having the right to appeal;
- harmonizing the existing legal and institutional framework with relevant international standards in exercising the victims’ right to compensation by adopting the Law on Victim Compensation and establishing the State Fund for Victim Compensation.

In the field of monitoring court practice and education

- continuous monitoring of court practice on the position, protection and exercise of the rights of victims of human trafficking and related crimes through monitoring and analysis of judicial practice;
- continuous education of holders of judicial functions to adopt a victim-centred approach, especially considering an individual approach to child victims.

Appendix 1

Analysis of misdemeanour proceedings for the misdemeanour under Article 16 of the Law on Public Order and Peace (Prostitution)

I Importance of applying the non-punishment principle

Observed trends and phenomena significant for considering the court practice in criminal proceedings are the basis for the review of misdemeanour proceedings related to Prostitution pursuant to Article 16 of the Law on Public Order and Peace²¹, in particular the form of this act that refers to providing the prostitution service, or “engaging in prostitution”. In addition to the significant share of sexual exploitation in the crime of human trafficking, which is reflected in the results of the analysis of judicial practice in criminal proceedings, a significant fact is also that **persons, mostly women, who provide services in prostitution in several cases, do not have the formal status of an injured person in criminal proceedings for the crime of mediating prostitution**. In those cases, the persons, in the judgments referred to as “female persons” or “engaged girls”, remain “invisible” participants in the criminal proceedings without any rights. Some of them might be possible unidentified victims of human trafficking. As a significant percentage of criminal proceedings for Article 184 CC ends with the application of plea agreements, this leaves little room for considering the position of persons who are in prostitution. Accordingly, these occurrences may leave the victims of human trafficking unrecognised, and as such they may be deprived of the protection and rights guaranteed to them by the international and domestic legal framework. On the other hand, **persons in prostitution are in the situation that puts them at the risk of potential human trafficking**.

The Council of Europe Convention on Action against Trafficking in Human Beings of 2005, in accordance with the basic principles of a particular legal system, envisages the possibility of not punishing the victims for their participation in illegal activities, to the extent that they were forced to do so (Art. 26). The application of the provisions of ratified international conventions, as well as the recommendations of competent international bodies in this area, is of key importance to ensure the realisation of rights and protection for victims of human trafficking. In a situation where the commission of a misdemeanour is a consequence of a human trafficking situation, the **prosecution and punishment of the victims represents an additional threat to their already sensitive position**. In order to properly perceive such situations, it is necessary to understand the complex and sensitive position of victims of human trafficking, as well as to ensure an adequate legal framework for the actions of the competent authorities. It is important to resolve the situation, or enable the application of the principle of non-punishment of victims, from the aspect of protecting and exercising the rights of victims of human trafficking, as well as from the aspect of the effective fight against human trafficking, because an additional misdemeanour or sometimes criminal prosecution of victims may affect their participation as victims or witnesses in criminal proceedings against those accused of human trafficking.

Given the indisputable obligation of the procedural authorities to initiate *ex officio*

²¹ “Official Gazette of RS”, no. 6/2016 and 24/2018

criminal prosecution if there is evidence that a crime has been committed, there is an obvious need to establish a mechanism that would enable the principle of non-punishment of victims, both regarding the mechanism of victim identification, and regarding the way the procedural authorities could act in such cases. An example of the implementation of the principle of non-punishment of victims of human trafficking related to temporary residence is the *Instruction on the conditions for granting temporary residence to foreign nationals who are victims of human trafficking*²² which was approved by the Minister of the Interior of the RS in accordance with international and regional standards for the protection of victims of human trafficking. The instruction stipulates that “if the victim of human trafficking entered the country in an illegal manner or resides illegally, the competent authority shall, before starting the procedure, determine the facts and circumstances that exclude or reduce the criminal or misdemeanour responsibility of the victims of human trafficking (determining the elements of force, threats and coercion, or extreme necessity or necessary defence)”. The instruction was adopted, among else, in accordance with the *Recommendations of the UN High Commissioner for Human Rights*²³, that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons”.

II Features of the misdemeanour proceedings for the misdemeanour of prostitution

Following the methodology of the main analysis, misdemeanour courts were asked to send the decisions made in 2023 for the offense under Article 16 (prostitution) of the Law on Public Order and Peace, as well as information on the number of proceedings conducted. Pursuant to Article 16 of the law, the offence of prostitution is committed by a person “who engages in prostitution, uses prostitution services or provides premises for the purpose of prostitution”, which is punishable by a fine of 50,000 to 150,000 RSD or a prison sentence of 30 - 60 days (paragraph 1). The offense is also committed by the person “who gives the premises to a minor for the purpose of prostitution” for which a prison sentence of 30 - 60 days is stipulated (paragraph 2). The decisions and information were requested and submitted in accordance with the Law on Free Access to Information of Public Importance. Given the basic principles of the proceedings, as well as the position and rights of the defendant in the proceedings, the data from the collected misdemeanour decisions were analysed in a way that would best demonstrate the position of the defendant for engaging in prostitution and the features of the proceedings for this offense.

According to the **data obtained from the first-instance courts** before which there were proceedings in 2023 for the misdemeanour under Article 16 of the Law on Public Order and Peace, the data are as follows: Misdemeanour Court in Belgrade - initiated 279 proceedings, made 13 acquittals and 240 convictions, as well as 117 rulings; Misdemeanour Court in Novi Sad - conducted and completed 3 misdemeanour proceedings; Misdemeanour Court in Kraljevo - 1 request submitted to initiate misdemeanour proceedings, which was resolved; Misdemeanour Court in Obrenovac - 1 proceedings with a final decision; Misdemeanour Court in Novi Pazar

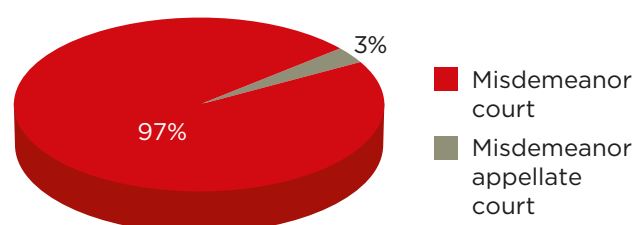
²² Minister of the Interior of the Republic of Serbia, *Instruction on the conditions for granting temporary residence to foreign nationals who are victims of human trafficking* of July 5, 2004

²³ UN High Commissioner for Human Rights “*Recommended Principles and Guidelines on Human Rights and Human Trafficking*” (E/2002/68/Add.1)

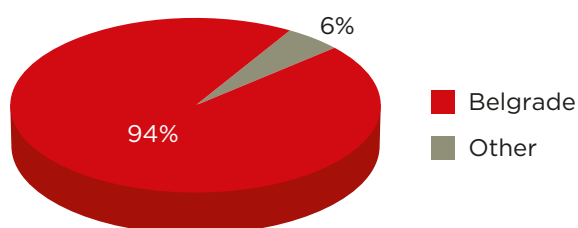
- 2 proceedings initiated and 1 decision made; Misdemeanour Court in Subotica - 1 proceeding was conducted according to a request from 2021, a judgment was passed, subsequently partially revised by the decision of the Misdemeanour Appellate Court Division in Novi Sad; Misdemeanour Court in Šabac - initiated 1 proceeding, which is still ongoing; Misdemeanour Court in Kruševac - 3 proceedings were conducted, 2 of which were decided on and one was final; Misdemeanour Court in Mladenovac - 1 ongoing proceeding; Misdemeanour Court in Niš - one proceedings concluded with a conviction; Misdemeanour Court in Požarevac - 1 final verdict delivered; Misdemeanour Court in Zaječar - 12 proceedings were conducted and 10 judgments were passed, 2 of which were non-final; Misdemeanour Court in Lazarevac - 1 final verdict was passed; Misdemeanour Court in Pancevo - 3 ongoing proceedings. According to the **data obtained from the second-instance courts** (only the Misdemeanour Appellate Court in Belgrade), 13 proceedings were conducted, of which 11 were decided on.

For the purposes of the analysis, a total of **371 decisions** (260 judgements and 111 decisions) **were collected** from the competent courts, of which 361 decisions were made by misdemeanour courts and 10 decisions by misdemeanour appellate courts. Out of a total of 361 first-instance decisions, the Misdemeanour Court in Belgrade delivered 341 decisions, the Misdemeanour Court in Novi Sad 3 decisions, the Misdemeanour Court in Subotica 1 decision, the Misdemeanour Court in Lazarevac 1 decision, the Misdemeanour Court in Niš 1 decision, the Misdemeanour Court in Zaječar 9 decisions, Misdemeanour Court in Kruševac 2 decisions, Misdemeanour Court in Požarevac 1 decision, Misdemeanour Court in Obrenovac 1 decision and

1st and 2nd instance decisions



Territorial jurisdiction of 1st instance courts

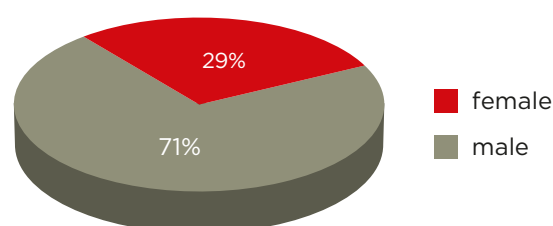


Misdemeanour Court in Novi Pazar 1 decision. The misdemeanour appellate courts submitted a total of 10 decisions, namely the Misdemeanour Appellate Court in Belgrade 5 decisions (2 judgements and 3 rulings), the Misdemeanour Appellate Court Division in Novi Sad 1 decision (judgement) and the Misdemeanour Appellate Court Niš Division 4 decisions (2 judgements and

2 rulings). All decisions referred to the offense under Article 16 of the Law on Public Order and Peace (prostitution), with additional offences in 7% of cases (most often related to the Law on Permanent and Temporary Residence of Citizens²⁴ or to the Identity Card Law²⁵).

The collected first-instance decisions refer to a **total of 375 defendants**, of which, according to the available data, only 2 were minor. **The data on the accused persons** indicate that in 29% of the cases the defendants were female and in 71% of the cases they

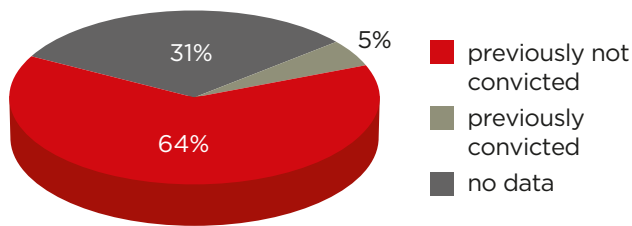
Accused persons by gender



²⁴ "Official Gazette RS", no. 87/2011

²⁵ "Official Gazette RS", no.62/2006, 36/2011 and 53/2021

Previous misdemeanour convictions

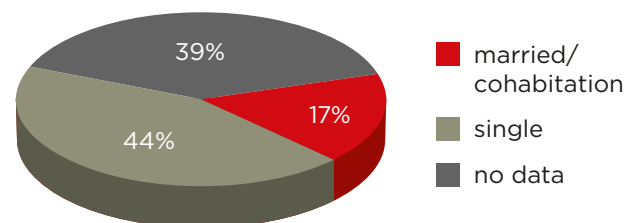


convicted for misdemeanours, and for 31% there were no available data on previous misdemeanour convictions.

Regarding marital and family status, the analysed data indicate that 13% of defendants were married and 4% in cohabitation, 5% were divorced, 1% widowed, 38% were single, while for 39% of defendants this information was not available in court decisions. Of the total number of defendants, 24% had children,

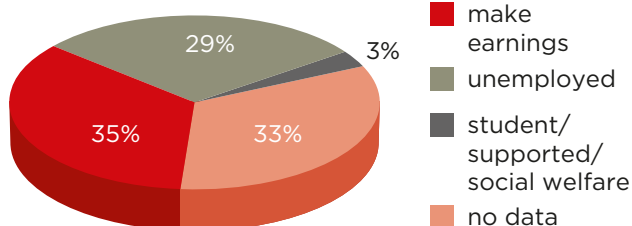
were male. A total of 5% of persons were foreign citizens, 79% of persons were nationals of the Republic of Serbia, 1% of persons had residence in the RS, while data for the rest of the persons cannot be determined (15% of persons). Of the total number of defendants, 64% were not previously convicted for misdemeanours, 5% were previously

Marital status of the accused



35% did not, while in 41% of cases this data was not available. Data on the employment status of the defendants indicate that a total of 35% of persons earned some income (16% employed, 3% self-employed, 14% occasional income and 2% "private jobs"), 29% of them were unemployed, 1% were students, in 2% of cases they were dependents or social

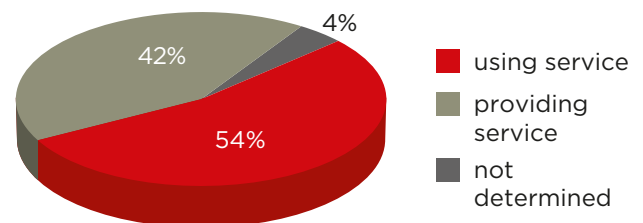
Employment status of the accused



welfare beneficiaries, while for 33% of the defendants there were no information about their employment status.

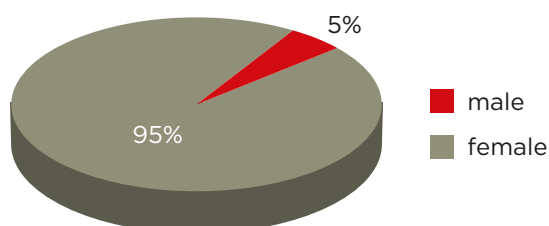
Out of the total number, 54% of the accused persons were accused of using the service, and 42% of them for **engaging in prostitution**, while in the remaining 4% of cases this circumstance could

Misdemeanour of prostitution - type



not be precisely determined. Persons accused of using the service were male in 100% of cases, while persons accused of engaging in prostitution were female in 95% of cases and male in 5% of cases.

Prostitution - indicted by gender



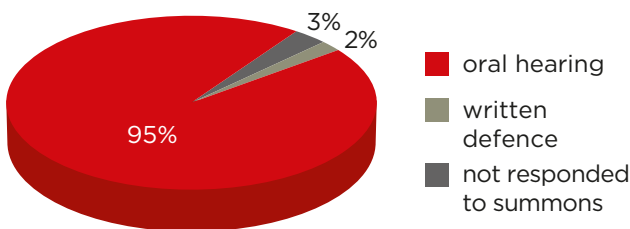
Regarding the **position and rights of the defendants**, data on the course of the first-instance proceedings were used, available in the explanations of the decisions of the

first-instance misdemeanour courts, by which the defendants were declared guilty for the misdemeanour or acquitted (269 defendants). The data do not include the defendants with suspended proceedings (106 defendants).

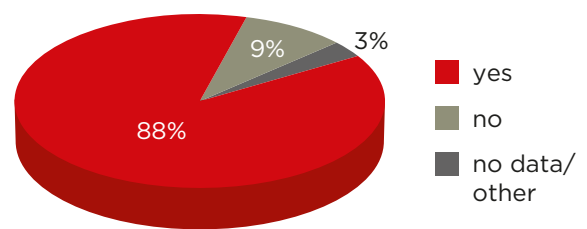
Regarding the **hearing of the defendants** in the proceedings, the data indicate that the defendants were heard orally in 95% of cases, a written defence was noted in only 2% of cases, while in 3% of cases the defendants did not respond to the summons. Pursuant to the provisions of the Law on Misdemeanours, the rules of procedure stipulate that, if a duly summoned defendant does not appear and does not justify his absence or does not provide a written defence within a certain period, and his hearing is not necessary for establishing the facts that are important for making a decision, the decision can be made without hearing the defendant.

Majority of the defendants confessed that they committed the offense, which was noted for 88% of the defendants, only 9% did not confess, while in 3% of the cases there were some other circumstances (there was no interrogation).

Hearing of the indicted

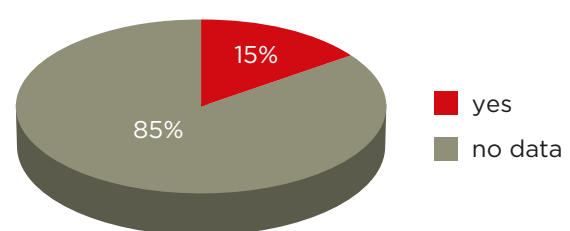


Confessed to misdemeanour

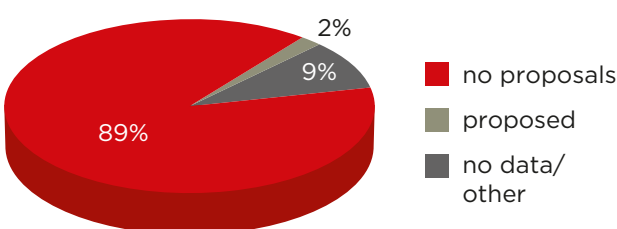


In addition to the fact that most convictions were based on the defendant's confession, defendants in this type of proceedings **generally do not exercise their right to present evidence in the proceedings**. Data regarding the presentation of evidence indicate that as many as 89% of the defendants did

Witnesses



Presentation of evidence by defendants



not have any evidence proposals, in 2% of cases the defendant proposed to present some evidence, while for 9% of cases there were no information on this. Hearing of witnesses was carried out in 15% of cases, while in 85% of cases there were no such data. Pursuant to the provisions of the Law on Misdemeanours, or the rules of procedure related to evidence, the applicant has the burden

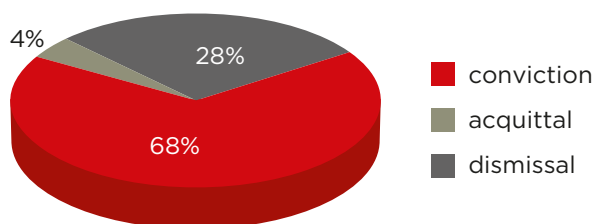
of proving the features of the misdemeanour and misdemeanour liability (Art. 89). Pursuant to Art. 118. of the Law, the defendant has the right to submit evidence and proposals.

Regarding the **type of first-instance decision**, statistical data for the total number of first-instance decisions show that the defendants were declared guilty of the misdemeanour in 68% of cases, 4% of them were acquitted, and in 28% of cases

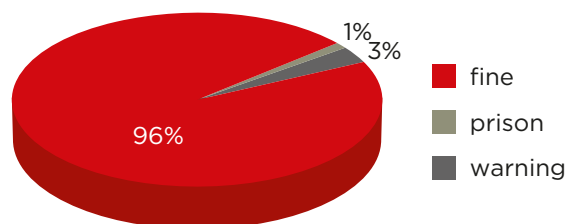
the proceedings were suspended. There were no cases of rejecting the requests to initiate misdemeanour proceedings.

Statistical analysis data related to imposed **sanctions** indicate that of the total number of first-instance convictions with the defendants found guilty, a fine was imposed in as many as 96% of cases (in 96% of cases, the fine of 10,000 to 50,000 RSD), prison sentence in 1% of cases, while in 3% of cases the defendants were reprimanded. The protective measure of confiscation of objects was ordered against 17 persons.

First-instance decisions



Sanctions

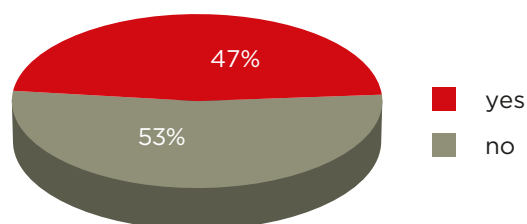


The court assessed various **mitigating and aggravating circumstances** when deciding on the sanction. The following circumstances were most often cited by the court as mitigating ones: type/severity/consequences of the offense (21%), personal/family and property circumstances of the defendants (11%), no previous punishment for the offense (29%), expressed regret/demeanour after the offense (33%) and confession to the offense/attitude towards the offense (6%). Among the aggravating circumstances, previous convictions for misdemeanours (43%) were most often mentioned, followed by the severity of the offense committed and the degree of culpability (57%).

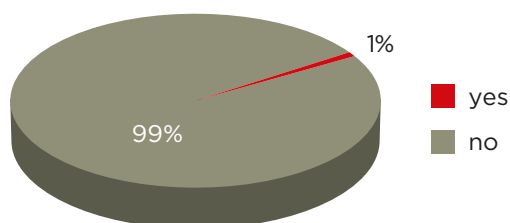
Statistical data indicate that of the total number of defendants, only 1% of defendants were **detained for 12 to 24 hours**. In accordance with Article 47 of the Law on Misdemeanours, the detention time of the perpetrator before the pronounced verdict is included in the imposed sentence, and a detention that lasted longer than 12 and shorter than 24 hours is considered one day of imprisonment, or 1,000 RSD fine.

Regarding the costs of the proceedings, 47% of the total number of defendants were waived the costs of the misdemeanour proceedings. Pursuant to Article 145 of the Law on Misdemeanours, the court can release the defendant from

Court expenses waiver



Detention of 12-24h included



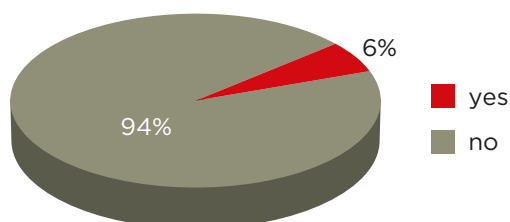
the duty to fully or partially reimburse the costs of the proceedings if the payment would call into question the defendant's support or the support of the person s/he is obliged to provide for by law.

The **execution of judgment before finality**, in accordance with Article 308 of the Law on Misdemeanours, was noted in 6% of cases out of the total number of defendants.

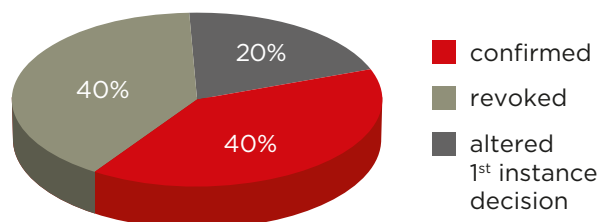
Of that number, 67% of the cases involved foreign nationals, 33% of the cases involved a more serious offense. The execution of judgment before its finality exists, among else, in the cases if the defendant cannot prove his identity or does not have a residence, does not live at the registered address, has a residence abroad, and the court finds that there is a reasonable suspicion that s/he will avoid the execution of the sanction; also if the defendant has been punished for a serious offense and there is a suspicion that s/he will continue to commit the offense or repeat it or avoid the execution of the sanction.

A total of 10 decisions from **second-instance misdemeanour proceedings** (5 judgements and 5 rulings) were collected, of which in 40% of cases the first-instance decision was confirmed, in 40% of cases the decision was revoked, while in 20% of cases the second-instance court changed the decision of the first-instance court.

Execution of judgements before finality



Second-instance decisions - type



Based on the presented data, for the year 2023, the following **main features of the misdemeanour proceedings** for the offense under Article 16 of the Law on Public Order and Peace (prostitution) have been identified:

- 94% of submitted first-instance decisions were under the jurisdiction of the Misdemeanour Court in Belgrade
- predominant form of the prostitution offence was the use of services (54%) compared to prostitution (42%), which represents a change compared to the previous three-year period (prostitution was the dominant form and related to 64% of cases in 2022, 58% of cases in 2021 and as much as 84% of cases in 2020)
- the accused persons for the offense of prostitution were mostly female (95%)
- misdemeanour decisions were in most cases based on the confession of the accused (88%)
- defendants generally did not use the right to present evidence (89%)
- in 28% of cases, the proceedings against the defendants were suspended
- convictions prevailed (68%) compared to acquittals (4%), while the proceedings were suspended in 28% of cases
- fines were prevalent (96%)
- 47% of defendants were waived the court costs
- in 6% of cases, the execution of judgment before finality was possible, pursuant to Article 308
- first-instance judgments were confirmed in appellate proceedings in 40% of cases

Appendix 2

Separate analysis of data obtained from public prosecutor's offices on the application of the especially vulnerable witness status for 2021, 2022 and the first half of 2023

Letter from ASTRA to the Supreme Public Prosecutor of October 19, 2023

Presentation of the obtained data on the application of the especially vulnerable witness status

The analysis deals with the implementation of protection mechanisms for victims with the status of an especially vulnerable witness, however, at the very beginning we would like to underline the findings that confirm that a large number, almost half, of the victims have not received the status of an especially vulnerable witness at all, which has limited their protection in the further stages of the criminal proceedings.

1. Regarding the criminal offense of rape in 2021, out of a total of 56 victims who were involved in criminal proceedings, only 20 of them had the status of an especially vulnerable witness (35.71%). In 2022, out of a total of 44 victims, only 22 of them had the status (55%), while in the first 6 months of 2023 there were 34 victims, 15 of whom had the status of an especially vulnerable witness (44.11%).

Out of 20 rape victims who had the status of an especially vulnerable witness in 2021, 13 of them were questioned with the use of technical means for image and sound transmission, while only 10 were questioned with the help of a psychologist, social worker or another professional. 2 victims were questioned in their apartment or another authorized institution, and 1 victim was confronted with the perpetrator. In 15 cases, the public was excluded.

Out of 22 rape victims who had the status of an especially vulnerable witness in 2022, only 8 were questioned using technical means for image and sound transmission, while 13 were questioned with the help of a psychologist, social worker or another professional. 1 victim was questioned in her apartment or other authorized institution and no victim was confronted with the perpetrator. In 12 cases, the public was excluded.

Out of 15 rape victims in the first half of 2023, who had the status of an especially vulnerable witness, only 9 of them were examined using technical means for image and sound transmission, while only 4 victims were examined with the help of a psychologist, social worker or another professional faces. 2 victims were questioned in their apartment or other authorized institution and none of the victims was confronted with the perpetrator. In 5 cases, the public was excluded.

2. Regarding the criminal offense of sexual intercourse with a helpless person in 2021, out of a total of 4 victims who were involved in criminal proceedings, only 1 had the status of an especially vulnerable witness (25%). In 2022, again 4 victims were

involved in criminal proceedings, and 2 had the status of an especially vulnerable witness (50%), while in the first 6 months of 2023, none (0) of the 4 victims had the status of an especially vulnerable witness.

1 victim who had the status of an especially vulnerable witness in 2021 was also questioned with the use of technical means for the transmission of images and sound, as well as with the help of a psychologist, social worker or another professional. None of the victims were questioned in their apartment or in another authorized institution, nor were they confronted with the perpetrator. In 2 cases the public was excluded.

Out of 2 victims who had the status of an especially vulnerable witness in 2022, none was examined using technical means for image and sound transmission, nor with the help of a psychologist, social worker or another professional. No victim was questioned in their apartment or other authorized institution and no victim was confronted with the perpetrator. The public was not excluded in any of the cases.

No victim had the status of an especially vulnerable witness in 2023, and in no case were the available mechanisms for the protection of witnesses and victims in criminal proceedings applied. Only in one case the public was excluded.

3. In relation to the crime of sexual intercourse with a child in 2021, out of a total of 32 victims who were involved in criminal proceedings, 20 of them had the status of an especially vulnerable witness (62.5%). In 2022, out of 21 victims, 15 of them had the status of an especially vulnerable witness (71.42%), and in the first 6 months of 2023, out of 6 victims, 2 had the status of an especially vulnerable witness (33.33%).

We note that one of the indicators for granting this status is precisely the age of the injured party, and in accordance with national and international regulations, it is a duty of the authorities to deliver special protection for minors involved in the proceedings. Here we can see a big discrepancy in the awarding of the status, even to minors, as well as in the implementation of other available protection mechanisms (analysed below).

Out of 20 victims who had the status of an especially vulnerable witness in 2021, 11 were questioned using technical means for image and sound transmission, while 19 were questioned with the help of a psychologist, social worker or another professional. No victim was questioned in their apartment or other authorized institution and no victim was confronted with the perpetrator. In 11 cases, the public was excluded.

Out of 15 victims who had the status of an especially vulnerable witness in 2022, only 4 were questioned using technical means for image and sound transmission, while 11 victims were questioned with the help of a psychologist, social worker or another professional. No victim was questioned in their apartment or in another authorized institution, while 1 victim was confronted with the perpetrator. In 9 cases, the public was excluded.

Out of 2 victims who had the status of an especially vulnerable witness in the first half of 2023, both were examined with the use of technical means for image and sound transmission, as well as with the help of a psychologist, social worker or another professional. No victim was questioned in their apartment or in another authorized institution, nor were they confronted with the perpetrator. In both cases the public was excluded.

4. Regarding the criminal offense of human trafficking in 2021, out of 38 victims who were involved in criminal proceedings, 32 had the status of an especially vulnerable witness (84.21%). In 2022, out of 19 victims, 18 of them had the status of an especially vulnerable witness (94.73%), while for the first 6 months in 2023, of the 17 victims involved in criminal proceedings, 13 had the status of an especially vulnerable witness (76.47%).

Out of 32 victims who had the status of an especially vulnerable witness in 2021, 23 were questioned with the use of technical means for image and sound transmission, while only 7 were questioned with the help of a psychologist, social worker or another professional. 1 victim was questioned in the apartment or in another authorized institution, and no victim was confronted with the perpetrator. In 12 cases, the public was excluded.

Out of 18 victims who had the status of an especially vulnerable witness in 2022, 12 of them were questioned using technical means for image and sound transmission, while 7 were questioned with the help of a psychologist, social worker or another professional. No victim was questioned in their apartment or in another authorized institution, nor confronted with the perpetrator. In 6 cases, the public was excluded.

Out of 13 victims who had the status of an especially vulnerable witness in the first 6 months of 2023, only 5 of them were examined using technical means for image and sound transmission, and with the help of a psychologist, social worker or another professional. No victim was questioned in their apartment or in another authorized institution, nor confronted with the perpetrator. In no case was the public excluded.

Letter from ASTRA to the Supreme Public Prosecutor of October 19, 2023

**Supreme Public Prosecutor's Office
Attn: Supreme Public Prosecutor Zagorka Dolovac
Nemanjina 22-26
Belgrade**

Date: October 19, 2023

Reference:

An overview of the analysis on the application of the especially vulnerable witness status as a mechanism for the protection of victims of human trafficking with a recommendation for improvement

Dear Ms Dolovac,

In ASTRA Anti-Trafficking Action, as part of our regular activities, we monitor and support victims of human trafficking in contact with the institutions of the system, including the judicial system, during their participation in criminal proceedings.

Since 2011, ASTRA has been conducting annual analyses of judicial practice for the crimes of human trafficking, trafficking of minors for adoption and mediation in prostitution.

We are a member of the Working Group for the development of the Strategy to prevent and suppress human trafficking, especially trafficking in women and children.

We are grateful for the acknowledgement of our efforts and struggle in this area, and the so far cooperation, which has been marked by the signing of the Memorandum of Understanding between ASTRA and the Republic Public Prosecutor's Office on September 13, 2012.

ASTRA's activities in the provision of direct support to victims of human trafficking include providing free legal aid, liaising with attorneys who represent them in proceedings as witnesses and/or victims of the crime of human trafficking, and attending hearings and giving statements as trusted persons. While providing the support to victims, we remain convinced that participating in court proceedings is very important and serious for the victims.

Depending on the treatment they receive while participating in criminal proceedings, the experience may be extremely empowering, being the first step in their recovery or, unfortunately, another act of violence and secondary victimization after they have left the human trafficking chain.

Thanks to the support of the American Embassy in Serbia, in the previous period, we successfully conducted, together with the Judicial Academy, four round table discussions within the project “Justice and dignity for victims of human trafficking in criminal proceedings”. In addition, we paid special attention to the status of an especially vulnerable witness as a mechanism for protecting victims during criminal proceedings. On that occasion, too, we found that the representatives of the Supreme Public Prosecutor’s Office were exceptionally interested and cooperative and helped us obtain the requested data, for which we are very grateful.

The goal of this short analysis was to find out the real occurrence of the granting the status of an especially vulnerable witness by prosecutors, as a form of the victim protection, but also the application of all relevant protection mechanisms that this status entails during the examination of victims, such as: use of technical means for image and sound transmission; help of a psychologist, social worker or another professional; hearing at the apartment or in another authorized institution; confronting the perpetrator; and exclusion of the public during the proceedings.

An overview of the situation was made for 2021, 2022, and the first 6 months of 2023 for the crimes of: rape (178 CC), sexual intercourse with a helpless person (179 CC), sexual intercourse with a child (180 CC), human trafficking (388 CC).

Based on the available data, we may conclude that the assignment and implementation of the institute for the protection of victims - the status of an especially vulnerable witness has not been applied to a sufficient extent. For certain crimes, and in certain years, the percentage of granting the status is high, e.g. for the crime of human trafficking (especially in 2022), but the implementation of other procedural types of victim protection that this status entails has decreased proportionally. The number of those who were not examined using technical means for transmitting images and sound, or questioned with the help of psychologists, social worker or another professional person has been growing. The same applies to the interrogation of victims in their apartment or another authorized institution, as well as the exclusion of the public. The only positive trend relates to confrontation of the victim with the accused, which most often does not happen.

However, a piece of data is of particular concern. In one case of child abuse (year 2022), the minor victim was confronted by the perpetrator, which, although the action is legally permitted, is certainly not in accordance with the principle of the best interest of the child or the Convention on the Rights of the Child.

With reference to the data presented in the overview of the analysis, we kindly ask you to consider recommending to public prosecutors that, in cases of criminal offenses of human trafficking, criminal offenses against sexual freedom, and, if necessary, other serious criminal offenses with elements of violence:

- It is mandatory, immediately upon initiation of criminal proceedings, to consider the requirements under Art. 103 CPC, for granting the status of an especially vulnerable witness, and to

- In case the conditions are met, mandatorily grant such status, and
- Examine especially sensitive witnesses in accordance with the provisions under Art. 104 CPC.
- That the public prosecutors, when the conditions under Art. 363 CPC are met, always propose the exclusion of the public from the main trial, to protect the interests and privacy of the victims, as participants in the criminal proceedings.

This recommendation would contribute to opening additional space for public prosecutors to apply other procedural forms of protection. Regular use of such protection can greatly contribute to the fair and dignified treatment of victims.