



UNODC

United Nations Office on Drugs and Crime

**UN.LOCKING IMPUNITY OF TRAFFICKERS
AND SUPPORTING JUSTICE FOR VICTIMS OF
TRAFFICKING IN PERSONS IN
SOUTHEASTERN EUROPE**

STUDY

**Assessing the state response
to human trafficking cases from the perspective of
fairness, efficiency and victim-centredness of criminal trial.**

Analysis of selected cases.

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ABBREVIATIONS

ACA - Agency for Court Administration
SGLA - State Guaranteed Legal Aid
NCSGLA - National Council for State Guaranteed Legal Aid
GPI - General Police Inspectorate
III - In-depth Individual Interview
SCM - Superior Council of Magistracy
CC - Criminal Code
CPC - Criminal Procedure Code
ECtHR - European Court of Human Rights
CCTHB - Centre for Combating Trafficking in Human Beings
THB - Trafficking in human beings
EU - European Union

EXECUTIVE SUMMARY

In order to contribute to the development of effective practices to protect and support victims of trafficking in human beings in the criminal trial, in 2021 UNODC started the implementation of the three-year project *"Unlocking Impunity of Traffickers and Supporting Justice for Victims of Trafficking in Persons in Southeastern Europe (SEE)"*.

The objective of the project is to strengthen the justice system in SEE countries and to manage trafficking cases in a fair, efficient and victim-centred manner. The project also aims to identify effective forms of cooperation between criminal justice practitioners in order to develop a prompt, effective and victim-centred response.

As a starting point of the project, the study *"Evaluation of the state response to cases of trafficking in human beings from the perspective of efficiency, effectiveness and victim-centredness of the criminal trial"* was carried out in January-March 2022, which aims to identify positive trends and constraints of the criminal justice system in the Republic of Moldova in terms of response to cases of trafficking in human beings. On the basis of this study, a set of recommendations and solutions will be developed for the development of a prompt, efficient and victim-centred criminal justice response to trafficking in human beings.

For the study, statistical data for the years 2017-2021 on criminal cases of human trafficking were analysed. The analysis of the statistical data allowed us to know aspects related to the legal classification of the acts (qualification), the profile of the victims of trafficking in human beings (age, background, occupation, etc.), the profile of the defendants/convicted persons and the duration of the sentences imposed, as well as to establish correlations between the criminal cases initiated and those terminated, closed or sent to trial. The information from statistical data collected from various institutions was complemented by information from the analysis of closed criminal cases (20 criminal files in the category of trafficking in human beings were analysed - 15 cases examined by the courts and 5 criminal cases that were closed/terminated) and by primary data collected through in-depth individual interviews with specialists (5 interviews). The selected criminal files were analysed by a group of 4 experts, acting as judge, prosecutor, criminal prosecution officer, lawyer, based on the case documentation sheet. On the basis of the examination of the criminal cases of trafficking in human beings randomly selected by the experts, there were obtained and consolidated data on the legal classification of the act (qualification); the protection of the rights of the victim of trafficking in human beings from the filing of the complaint to the final court decision; the services that the victim of trafficking in human beings benefited from during the criminal trial, including rehabilitation services for the victim; the results of criminal justice in cases of trafficking in human beings, also taking into account the length of the criminal trial; the analysis of the sentences of conviction: including the proportionality and efficiency of the sentences imposed, their fairness in relation to the material and physical harm suffered by the victim. ***A comprehensive analysis of the wide range of information collected has enabled the following conclusions and recommendations of the study to be formulated:***

The Republic of Moldova has made considerable efforts to bring the legal framework and institutional practices in line with international best practices in the field of focusing the criminal trial on the victim of human trafficking and his/her needs. These efforts have included the adoption of the regulatory framework for the rehabilitation mechanism for victims of crime,

as well as the amendment of specific laws, such as the introduction of a provision on the right of victims of trafficking in human beings to qualified legal assistance regardless of their income level.

The results of the study show that **the regulatory and legal acts of the Republic of Moldova have largely incorporated international requirements and standards on the response of the criminal justice system to cases of trafficking in human beings**, from the perspective of fairness, efficiency and victim-centredness of the criminal trial, **but the implementation practice has yet to be brought into full compliance with the regulatory and legal acts, in the spirit of international standards in the field.**

According to the statistical data collected from the police and the prosecutor's office, **over the last 5 years, the number of criminal cases initiated based on the components of the offence falling under the category of THB, is relatively constant**, with a decrease for the last two years of reference of this study, with regard to qualified offences under article 165 of the CC. The statistics also reveal a significant **reduction in the number of cases initiated under article 206 of the Criminal Code (Trafficking in children)** in the period 2017-2021.

In the period 2017-2021, **there was also recorded a decrease of about 50% in the number of criminal files submitted to the courts.** In the period 2017-2021, **234 criminal cases** were sent with indictments to the courts for substantive examination, which is about **50%** of the number of cases started. Although some statistical data on the response of the criminal justice system to trafficking in human beings are collected and some are even made public, however, each legal institution has a specific methodology for case registration and recording, which creates impediments to an objective comparison of national data with the situation in other countries. **It is recommended that the institutions forming part of the criminal justice system create a single electronic system for collecting statistical data, including data relevant to criminal proceedings from the stage of registration of complaints to the full execution of the sentence.** The statistical data collected in the single inter-institutional system should be disaggregated according to gender, age of the victim, suspected person, accused person, defendant, concrete qualifications of the offences, including art., para, let. of the Criminal Code, requalifications, including data on the time limit for examination at each stage of the criminal trial, the exercise of appeals, etc. The development of a single system will generate the possibility of access to statistical data in real time and will be a tool for criminal justice institutions (police, prosecutor's office, court) to identify gaps and positive practices at each stage of the criminal trial. **The generation of accurate and precise data will enable the leaders of criminal justice institutions to develop, plan and implement policies and measures that address these weaknesses, but also build on positive practices.**

There are a number of positive trends in the prosecution of cases of trafficking in human beings, as follows: **in every second case, the prosecution was based on the minutes of the detection of the offence by the criminal prosecution body**, and in only **23%** of cases were prosecutions initiated on the basis of the complaint. This trend can be seen as positive, reflecting the diligence and promptness of criminal prosecution bodies, but at the same time points to a **low reporting rate of trafficking cases by victims.** The low reporting rate may result in late referrals of victims, which creates difficulties in proving the guilt of the defendant and holding them accountable. During the investigation it was found that the interval between the commission of the crime and the referral to law enforcement varies between **15 days and 8 years.** In most cases (4 cases) the criminal prosecution body was notified 6 months after the

offence was committed, followed by 1 month and 3 years. **In every second case, the actions of accumulation of evidence by the criminal prosecution body up to the issuance of the ordinance to start the criminal prosecution were carried out within one day**, in 3 cases - within 15 days and only in one case - within 30 days, and the **time of criminal prosecution in cases of trafficking in human beings varies from 4 months to 3 years and 7 months**. Among the factors that cause the prosecution to take a long time are: the absence of the parties (most often the victim or witnesses, rarely the suspect/accused) when summoned to appear before the criminal prosecution bodies, the reason being that they often leave the country for very long periods (months or even years), and in their absence (without a hearing or confrontation with their participation) it is not possible to complete the criminal prosecution.

Despite positive practices, **in none of the criminal cases examined was the protection of injured parties ordered**. Similar tendencies are found at national level, but in 2020 only three persons were granted special protection as victims of human trafficking.¹

The low indicators for special protection for victims of trafficking in human beings are due to the extremely low number of requests for such measures, as the measure cannot be imposed without the consent of the beneficiary of the protection programme. It is recommended to consider the advisability of **amending the legislation so that the protection programme for victims of THB can be applied even in the absence of a request by the beneficiary, in the event of a high risk of a state of danger**. In conjunction with the amendment of the regulatory framework, it is recommended **to develop a risk assessment tool that would allow criminal prosecution representatives to apply protection programmes to THB victims independently of their will, if a medium or high risk is found**.

In rural areas, there is a higher risk of human trafficking for both women and men. Thus, in the 20 files analysed, **85%** of victims come from rural areas and **15%** from urban areas. These trends are also validated by the data presented at national level, with about **78%** of victims of human trafficking coming from rural areas.² The main reason for the emigration of victims of human trafficking is poverty and lack of employment, with 93% of the victims in the criminal files analysed not being employed. Victims of sexual exploitation most often come from socially vulnerable families and victims of begging are people with multiple vulnerabilities, due to disability, ethnicity, etc.

Accordingly, **programmes and activities to prevent trafficking in human beings should aim to eliminate or at least reduce the incidence of these factors and inform potential victims about how to refer cases to the criminal prosecution bodies and what services are available**. Consequently, **it is recommended that specialists and institutions involved in identifying victims and potential victims of THB should immediately and promptly report to the law enforcement authorities any signs of risk of trafficking and refer victims to specialised services, as lack of timely support and delayed reactions increase the risk of trafficking or re-trafficking**.

In the criminal files studied by the experts, **external trafficking was found to be prevalent**. Of the total number of adult victims, **19%** were exploited on the territory of the Republic of Moldova, while **81%** of victims were exploited abroad. **44%** of victims were

¹ The Evaluation Report for the Republic of Moldova. The third round of evaluation. Access to justice and effective remedies for victims of human trafficking, 2020.

² The National Report on the Implementation of the Policy to Prevent and Combat Trafficking in Human Beings for 2020, page 24.

sexually exploited, **44%** were exploited through labour and **12%** were exploited through begging, the main destinations being the Russian Federation, Turkey and the United Arab Emirates. At the national level in recent years, **there has been a change in priority destinations, such as the Russian Federation for several years, and a shift towards new destinations, such as the European Union countries, with fake Romanian passports being frequently used for this purpose.** Thus, according to the situation observed in 2021, in the criminal cases of trafficking in human beings, in terms of countries of destination, the European Union area is confirmed as a constant destination with a downward trend. **The main country of external trafficking in 2021 (in terms of the number of victims) is France, as a country of destination with 122 trafficked persons (115 men and 7 women) for the purpose of labour exploitation and 43 trafficked persons (21 women and 22 men) for the purpose of appropriating aid, allowances or social benefits.**

From the perspective of **analysing the gender profile of victims of THB**, at national level there is a **prevalence of male victims compared to female victims.** Out of the total number of **1189 victims** of human trafficking, **734** are male and **455** female. A possible explanation for these data is that during the period under investigation, trafficking in persons was more prevalent **for the purpose of labour exploitation**, i.e. in **construction work**, where men, even unskilled in this field, are predominantly involved. The prevalence of labour exploitation as a form of trafficking in human beings makes it necessary to complete/modify the regulatory framework so that the institutions invested with monitoring and control duties in the field of labour, occupational safety and health and labour migration have powers and tools to identify, assess and report cases of THB. Accordingly, operational procedures are to be developed that would regulate the algorithm of intervention of institutions with monitoring and control functions in the field of labour, occupational safety and health and labour migration in cases of trafficking in human beings in the form of labour exploitation.

Even though the number of male victims of human trafficking has increased significantly, **gender biases remain barriers to accessing psychological and placement services. However, the number of male victims of THB applying for SGLA is twice as high as for women.** In the files analysed in this research, **placement services were requested only by women.** A possible explanation for the reluctance of male victims to apply for placement is social perceptions regarding the role of men in society and gender bias, as well as the lack of such services until 2021. As a positive practice, it was mentioned that the Ministry of Health, Labour and Social Protection and the National Agency for Social Assistance, in partnership with the International Organization for Migration in Moldova, developed a specialized Service for male victims of trafficking in 2021. Given the prevalence of **THB-male victims in relation to female victims, the State will take all institutional and administrative measures to develop services and programmes tailored to the needs of male victims.**

A specific feature of human trafficking cases is that **in some cases some of the women are listed as defendants in some cases and as injured parties in others.** One of the reasons why victims end up becoming traffickers is the influence of the trafficker, when the trafficker persuades the victim to carry out part of the criminal acts with the idea that, when certain investigations come up, the victim will be put in the spotlight. **The lack of rehabilitation services, including long-term rehabilitation, can also be one of the reasons why victims end up normalising the fact of exploitation and recruiting other young girls on their own.**

Thus, in order to facilitate access to specialised services for both female and male victims of human trafficking, **it is recommended that information campaigns be organised to inform potential victims about their rights in the criminal trial, how to access protection and assistance services, and to reduce gender bias. At the same time, in order to facilitate the understanding of the information, it is necessary to develop and disseminate information materials for different groups of victims and potential victims of THB (men and women) and different types of exploitation, including materials adapted for victims with multiple vulnerabilities (e.g. persons with mental and sensory disabilities, illiterate persons, etc.).**

As the period of the study coincided with the beginning of the armed conflict in Ukraine, which generated a large influx of refugees and an increased risk of THB among them, we consider it necessary to point out that both authorities and NGOs have combined their efforts to provide psychological and social support services, etc. In this context, **there is a need to identify the range of services needed to prevent THB and assist victims, and to adapt these services to the needs of refugee victims** (e.g. identification of psychologists to provide services in the native language, etc.).

The new social context, generated by the armed conflict in Ukraine, makes it necessary **to adapt information materials and services to the needs of refugees.** In the context where the Republic of Moldova has received a large number of refugees from Ukraine, in order to prevent trafficking in human beings, but also to ensure their right to information, it is necessary **to develop and disseminate a standard package of information materials for refugees, including in Ukrainian language, with information on how to refer the criminal prosecution authorities, free phone lines and other services.**

The procedure for referring beneficiaries to specialised services offered by NGOs or the Government is essential for the success of the rehabilitation and reintegration process. However, **the analysis of the criminal files shows that 12 adult victims out of 45 have received assistance services.** Most of them received placement services and the fewest social and psychological support services. **The vulnerability, the difficulties of awareness of victimhood³, the fear of being labelled in the community and the lack of information for victims are obstacles to their access to services provided free of charge by both the State and NGOs.**

Another impediment to the provision of psychological assistance services, as well as to the gathering of evidence in the criminal trial, is **the lack of a regulatory framework governing the practice of psychology, including the system of licensing and accreditation of psychologists with the right to practice psychology.** This gap in the legislation also creates difficulties in the process of providing psychological counselling and assistance, and in the administration as evidence of the conclusions drawn by psychologists and psychological assessment reports of victims of crime⁴, including the THB. Even though art. 8-10 of the *Law no. 137 on the rehabilitation of victims of crimes* stipulates that victims of crimes can receive psychological counselling at state expense since March 9, 2017, **the mechanism of providing psychological counselling at state expense is not fully functional**, as not all structures

³ Process that can be facilitated within the assistance of a specialised service

⁴ Perevoznic I., Turcan A., Rusu L. Report on the analysis of the compatibility of the legislation of the Republic of Moldova with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence. Chisinau: S. n., 2019. 240 p. [cited 18.03.2022]. Available <http://cdf.md/files/resources/141/CDF%20Raport%20compatibilitate.pdf>.

responsible for implementing the provisions of the above-mentioned law have psychologists specialised in providing the described services. In order to implement the provisions of Law no. 137 on the rehabilitation of victims of crime, **it is recommended to finalise and approve the mechanism for providing psychological counselling at state expense and to draft/adopt the special law that would regulate the practice of the profession of psychologist, including the system of licensing and accreditation of psychologists with the right to practice psychology.**

From the perspective of ensuring the victim's right to be represented by a lawyer, the authorities are concerned to ensure, first and foremost, that defendants are provided with all the procedural guarantees appropriate to a fair trial, since failure to comply with this requirement could lead to the nullity/cancellation of procedural acts, and **providing victims with a lawyer is not always a major concern**, since it does not affect the further course of criminal proceedings or vitiate the evidence. Thus, in the cases analysed, **the number of adult victims of THB represented by a lawyer was only 18%**. Of the **45 victims who appeared in the files under investigation, 37 (82%) were not represented by a lawyer**, 3 - were represented by a lawyer under contract, 2 - by a lawyer providing legal assistance guaranteed by the state. The interests of 2 victims were represented by lawyers from NGOs active in the field, and in the interest of one disabled victim the People's Advocate for the Child's Rights intervened at the case referral stage. The situation in question affects THB victims in the realisation of their procedural rights, including the right to bring a civil action. Given the increased vulnerability of victims of THB, **it is recommended that the regulatory framework be amended so that victims of THB can also benefit from emergency legal assistance from the stage of filing a complaint under the conditions set out in Law no. 198 of 26.07.2007 on State Guaranteed Legal Aid⁵ for victims of domestic violence, victims of sexual offences.**

Victims of trafficking rarely make use of their right to bring a civil action in the criminal trial. In only **23%** of cases did victims claim damages; in **73%** of cases did victims not file a civil action. Lack of knowledge and sufficient understanding of the procedure for filing civil actions, lack of legal knowledge in the preparation of the claim, and the fact that in very few cases the victim is represented by a lawyer to consult him or her, gather evidence to justify the amount of damages claimed, prepare the claim and defend it in court are impediments to obtaining civil compensation. Many victims of trafficking refuse to bring a civil action in the criminal trial for fear of misinterpreting the realisation of this right, i.e. of being perceived as having reported the case for profit. Another immediate problem in obtaining civil damages is the uncertainty of enforcement and the difficulties that arise in connection with the enforcement of a court order for civil damages. The experts interviewed indicated that **the positive resolution rate of civil damages enforcement proceedings for victims of THB is not very high, as most debtors do not own assets that would warrant enforcement, and if they are in detention, they do not work and respectively have no income that can be pursued by the bailiffs.** This situation means that the enforcement of court orders for damages takes a long time and the victim who is a creditor is not compensated. In addition **to these barriers to obtaining civil damages, there are also the costs of enforcement and the impossibility of enforcing a judgment against debtors living on the left bank of the Dniester, a region not controlled by the Moldovan authorities.**

⁵ Official Gazette No. 157-160 art. 614, published on 05.10.2007. Version amended by LP113 of 09.07.20, OG199-204/07.08.20 art.400; in force 07.09.20.

Even though the provisions of the Law no. 137 of 29.07.2016 on the rehabilitation of victims of crime provide for the possibility of obtaining **financial compensation granted by the state to victims of the crime of THB**, so far there have been no proactive actions on the part of victims of THB to request such compensation. In the described situation, it is recommended to **initiate an evaluation of the compensation mechanism provided for by the Law no. 137 on the rehabilitation of victims of crime, in order to identify the factors that create barriers in accessing compensation by victims of crime, with subsequent amendments and additions to make it more efficient**. Accordingly, in order to ensure the effective application, in relation to victims of trafficking in human beings, of the legislation guaranteeing the right to financial compensation by the State for the harm caused by crime, **it is necessary to take measures to inform the injured parties of the procedure for granting financial compensation by the State for the harm caused by crime, so as to ensure access to compensation for all victims who have suffered**.

Compensation for non-material damage must respond to the need for both horizontal and vertical justice.⁶ Even if, with the modernisation of the Civil Code, article 2037 para. (3) that in determining compensation, the court shall tend to award compensation which, on the one hand, is of a size comparable to that usually awarded in similar circumstances and, on the other hand, takes into account the particularities of the case, the compensation awarded to victims of THB continues to be low. The **moral damages awarded by the courts to victims of trafficking in human beings range from MDL 5 000** (approximately EUR 245) to **MDL 45 000** (approximately EUR 2211). It is therefore **recommended that research be carried out into the amount of civil damages awarded to victims of trafficking in human beings in order to identify the gaps in the award of fair compensation and to establish the criteria for assessing the material and moral damage caused by crime**.

In terms of perceptions, **there has been a consistent shift in recent years towards law enforcement agencies' compliance with the requirements of ensuring the dignity of THB victims and the inadmissibility of using inappropriate verbal and non-verbal language towards them**. However, the process of examining THB cases in court still does not meet all privacy requirements. **80% of the cases analysed were examined by the courts in public hearings, and in several cases, the identity and personal details of victims of trafficking can be easily determined or are identifiable**, through physical presence in the court premises or analysis of court documents published on the court portal.

Court infrastructure does not always protect victims from stigmatisation and/or intimidation by defendants, their sympathisers, relatives, activists, etc. Accordingly, it is recommended that **possibilities for reasonable accommodation of prosecution and court premises be identified, such as separate entrances and waiting areas for victims/injured parties and defendants/accused persons, metal detectors at the entrance to the court, services to accompany victims when leaving the court, legal, social and psychological services concentrated under one roof**.

Traditionally, criminal cases involving trafficking in human beings are given priority in most countries. This priority has not been observed in the case of the Republic of Moldova. **The time taken to examine cases is in most cases quite long, some exceeding 5 years**. In the research the time taken to examine a case of trafficking in human beings in all courts ranged

⁶ Case law study: pretium doloris - by way of moral damage (coord. Octavian Cazac), 2021, Chisinau. Available: animus.md

from 6 months to 8 years and 6 months. The substantive examination of the case ranged from 24 days to 3 years and 2 months and the examination in all courts lasted between 6 months and 8 years and 6 months.

Adjournments of court hearings are still widespread in the examination of criminal cases of trafficking in human beings, as the law allows a fairly wide margin of discretion to be enjoyed by the parties in the process of appointing the case for examination and at adjournment of hearings. None of the cases under examination has been concluded with a decision on the merits or on appeal in a hearing. Only one case was settled with the delivery of a sentence in 3 hearings, while in the other cases the number of hearings varied between 6 and 57. The fact that the criminal trial has been going on for several years, with numerous court hearings, has a negative impact on victims of trafficking, who may be exposed to repeated confrontations with the perpetrators and to re-victimisation. Such situations may also contribute to victims' lack of confidence in the criminal justice system, which is why **it is recommended that levers be identified to ensure that cases are examined within reasonable time limits, including by assessing the appropriateness of indicating in the Criminal Procedure Code time limits for the examination of THB cases.**

The results of the study show **a high rate of prison sentences** in the cases examined in this study. However, the number of convictions handed down by the courts is expected to decrease in the years 2020-2021. **Every second person convicted of human trafficking is male.** During the period analysed, of the 151 defendants, 81 (54%) were male and 70 (46%) female. The tendency of Moldovan courts in human trafficking cases is to impose custodial sentences. Thus, in **75%** of the cases examined, after going through all the appeals procedures, they **were convicted and given a custodial sentence.** The worrying fact is that out of the 15 cases examined, only in 4 cases was it established that the defendants were actually serving a prison sentence. This situation shows **a high rate of evasion of prison sentences.** Among the factors favouring evasion are the long duration of the examination of criminal trials, which exceeds 12 months and obliges the court to release the defendant from pre-trial detention, the proximity of the Transdniestrian region, which is a favourable niche for evasion from law enforcement bodies, as the Moldovan authorities do not have control over this region. In the situation described above, in order **to prevent traffickers from evading prison sentences, it is recommended that research be initiated into the enforcement of court sentences in which prison sentences have been imposed in cases of trafficking in human beings and to identify the factors that encourage convicts to evade serving their sentences.**

Organised crime generates significant amounts of illicit revenues and proceeds globally and in Europe. The main criminal activities in Moldova are corruption, tax evasion, illicit drug trafficking, trafficking in human beings, smuggling of arms and illicit goods, cybercrime, tobacco smuggling and large-scale financial crime. Although the Republic of Moldova has invested substantially in policy reform measures in recent years to combat the link between corruption, organised crime and illicit financial flows, they still exist.⁷ Although the Republic of Moldova has a two-tier confiscation system that allows for special and extended confiscation, which applies to natural and legal persons, the use of confiscation in cases of

⁷ Illicit Financial Flows and Asset Recovery in the Republic of Moldova, UNICRI, Chisinau, 2021, available on the website: <https://unicri.it/sites/default/files/2021-08/Illicit%20Financial%20Flows%20and%20Asset%20Recovery%20in%20the%20Republic%20of%20Moldova%20RO-MD.pdf>

trafficking in human beings is the exception rather than the rule. **In the criminal cases covered by this study, no cases were identified where confiscation was applied.** The study of judicial practice shows that in cases of trafficking in human beings, movable property is usually confiscated. In most cases, the courts have ordered the confiscation of money derived from the commission of trafficking offences. However, there are also cases where the object of confiscation was other property and the courts have differed in their rulings.⁸ In this context, there is still a clear need to strengthen and improve the capacity and results of the seizure and confiscation of assets derived from such illicit activity, including THB, and to channel these recovered assets to priority development needs, such as those in the health and education sectors, etc. Accordingly, all institutional and administrative measures should be taken to ensure that the use of extended confiscation and special confiscation is the rule and not the exception in THB cases. Identify, strengthen and implement mechanisms to improve efficiency in the seizure, confiscation and liquidation of assets acquired through the offence of THB. Enhance the capacity of professionals to carry out the identification, seizure and confiscation of assets derived from offences through the development of recommendations, methodological guidelines and regular training for justice system staff to enable an enhanced capacity to carry out thorough investigations of assets derived from THB offences alongside traditional criminal prosecutions. Training should also consider coordination with international partners to ensure regular exchange and dialogue on best practices (as well as the resolution of ongoing cross-border cases) in tracing, freezing, seizing and confiscating assets derived from offences.

⁸ Renita Gh., *Confiscation in cases of human trafficking and pimping*, Materials of the Conference on the occasion of the 60th anniversary of the founding of the Faculty of Law of the State University of Moldova, Chisinau, 2020 available on the website: <https://juridicemoldova.md/9679/confiscarea-in-cauzele-de-traffic-de-persoane-si-proxenetism.html>

INTRODUCTION

Trafficking in human beings is among the most serious human rights violations faced by contemporary society around the world, and the Republic of Moldova, unfortunately, is no exception.

Statistical data show that there is a prevalence of organised crime, including trafficking in human beings, partly linked to the location of countries in South Eastern Europe: Albania, Moldova, Montenegro, Northern Macedonia and Serbia (countries involved in the above-mentioned project), which provides significant opportunities for traffickers to profit from the exploitation of trafficking victims both in these regions and abroad, and partly due to the presence of a large number of individuals from socially marginalised groups.

The role of the criminal justice system in the state's response to human trafficking cases is crucial. However, effective victim protection requires the involvement of a range of responsible institutions and organisations to send clear and consistent messages of zero tolerance towards human trafficking. By ensuring that an effective support system is in place, placing the rights and needs of the victim at the centre of all measures taken through the effective cooperation of all relevant agencies, institutions and organisations, the State sends the message that trafficking in human beings is a serious crime that is treated seriously, and that effective prevention, protection of victims of THB violence and accountability of traffickers are ensured.

In recent years, the Republic of Moldova has made considerable efforts to bring the legal framework and institutional practices in line with international best practices in the field of focusing the criminal trial on the victim of human trafficking and his/her needs. However, there are still many areas for improvement.

The initiation of this research arose from the need to strengthen the criminal justice system in South Eastern European countries and to manage human trafficking cases in a fair, efficient and victim-centred manner.

The present study is developed within the framework of the three-year (2021-2024) project *"Unlocking Traffickers' Impunity and Supporting Justice for Victims of Trafficking in Human Beings in South Eastern Europe (SEE)"*, which started in Moldova and is implemented by UNODC.

The aim of the study is to assess the State's response to human trafficking cases from the perspective of fairness, efficiency and victim-centredness, after detecting and identifying indicators of human trafficking.

The main findings and recommendations of the study will be presented, discussed and validated in a public event (roundtable), where representatives from the criminal justice and academic fields will be invited to validate the findings and recommendations proposed after conducting the national analysis and assessment of human trafficking cases, to propose recommendations and proactive solutions to address gaps and challenges in this area.

We are convinced that the information contained in this study is of interest to the theorists and practitioners in the field of justice who are responsible for responding to cases of trafficking in human beings, as well as to the authorities involved in the process of drafting and implementing the regulatory framework in the sphere of victim protection and assistance and to the representatives of NGOs in this field.

I. RESEARCH FRAMEWORK

1.1. Aim and objectives of the study

The aim of the study is to assess the State's response to human trafficking cases from the perspective of fairness, efficiency and victim-centredness, after detecting and identifying indicators of human trafficking.

Specific objectives of the study:

- To analyse statistical data on the evolution of criminal cases of human trafficking, in the period 2017-2021;
- To analyse criminal cases of trafficking in human beings in order to provide objective information related to trends in judicial practice in the period 2017-2021;
- To identify the factors that are most often taken into account by courts in sentencing offenders convicted of committing trafficking in human beings;
- To analyse the treatment of victims of trafficking in human beings from the stage of filing a complaint until sentencing;
- To identify the main obstacles to ensuring effective assistance and protection of victims in these cases;
- To formulate recommendations for improving institutional mechanisms for responding to cases of trafficking in human beings in a fair, effective and victim-centred manner.

1.2. Research methodology

To achieve the research aim and objectives, a methodologically complex approach was used which included the application of several key methods:

1. *Collection and analysis of statistical data for the years 2017-2021 on criminal cases in which prosecution was initiated on the basis of the articles:*

- **Art. 165** – Trafficking in human beings
- **Art. 165¹** – Use of the results of the work or services of a person who is a victim of trafficking in human beings
- **Art. 362¹** – Organisation of illegal migration
- **Art. 206** – Trafficking in children (from the perspective of re-qualification)
- **Art. 220** – Pimping (from the perspective of re-qualification)

The data indicated *above* were requested from the following institutions: CCTHB of the NII of the GPI of the Ministry of Internal Affairs, the General Prosecutor's Office, the National Administration of Penitentiaries (NAP).

The analysis of the statistical data allowed to know:

- The aspects related to the legal framing of the facts (qualification);
- Some correlations between the criminal cases initiated and those terminated, closed or sent to trial;
- The profile of victims of human trafficking (age, background, occupation, etc.);
- The profile of defendants/convicted persons and the size of sentences imposed.

2. Analysis of criminal cases on the basis of the nominated articles.

In order to validate the statistical data collected and analysed for the purpose of the study, 20 criminal cases in the category of trafficking in human beings were analysed (15 cases examined by the courts and 5 criminal cases that were closed/terminated). The selected criminal cases were analysed by a group of 4 experts, acting as judge, prosecutor, criminal prosecution officer, lawyer. In order to respect the confidentiality of criminal proceedings, only criminal files in which the court has issued a final judgment were analysed in this study.

The research carried out was based on the case documentation sheet. (*Annex 1*) All the information recorded in the sheet was processed and included in the study to validate the findings derived from the statistical data analysis.

The analysis of the criminal files forms the basis of Chapter 3 of this study, which presents the findings related to the justice system response to human trafficking offences from the perspective of fairness, efficiency and victim-centredness. The number of criminal files reviewed by experts in each court is reflected in *Figure 1*.

Figure 1. Number of criminal files examined by experts in this research



Based on the examination of criminal cases of trafficking in human beings randomly selected by experts, data were obtained and consolidated on:

- Legal classification of the offence (qualification);
- Circumstances of the commission of human trafficking offences;
- Protection of the rights of the victim of trafficking in human beings, from the filing of the complaint to the final court decision;
- Services provided to the victim of trafficking in human beings during the criminal trial, including victim rehabilitation services;
- Criminal justice outcomes in cases of trafficking in human beings, also taking into account the length of the criminal trial;

- Analysis of sentencing decisions: including the proportionality and effectiveness of the sentences imposed, their fairness in relation to the material and physical harm suffered by the victim.
- 3. *Conduct individual in-depth interviews with specialists (lawyers, psychologists, social workers, NGO representatives, etc.).***

During the research, 5 individual in-depth interviews were conducted with specialists (*Annex 2*). The interviews were attended by lawyers, psychologists, social workers, and representatives of NGOs active in the Republic of Moldova, including the Transdnestrian region.

The in-depth individual interviews allowed for a deeper understanding of:

- The criminal justice system's response to human trafficking cases based on case studies;
- Barriers faced by victims of trafficking in human beings in interacting with the criminal justice system (criminal prosecution, case trial, enforcement of sentence);
- Possibilities to facilitate the access to justice for victims of human trafficking.

Thus, the information from statistical data collected from various institutions was complemented with information from the analysis of completed criminal files and primary data collected through in-depth individual interviews with specialists. The research methods allowed triangulation of data, but also knowledge and understanding of the response of the criminal justice system to cases of human trafficking, including views on facilitating the access to justice for victims of this category of offence.

1.3. Research boundaries

Research boundaries

For the conduct of this study, we were able to obtain data collected by the police and prosecutor's office on human trafficking cases for the period 2017-2021. At the same time, the National Reports on the Implementation of the Policy to Prevent and Combat Trafficking in Human Beings for the years 2017-2021, published on <http://www.antitrafic.gov.md/>, were analysed. Although statistical data are collected and kept by the police and the prosecutor's office, the format of these data was difficult to analyse, as each legal institution has a specific methodology for registering and recording cases.

II. ANALYSIS OF STATISTICAL DATA WITH REFERENCE TO HUMAN TRAFFICKING OFFENCES

The aim of this chapter is to analyse the police and criminal prosecution office data in order to identify trends in how trafficking offences are handled by the authorities at each stage of the criminal trial.

The statistical data provided by the police and the criminal prosecution office reflect the number of criminal cases initiated, terminated or suspended and the number of cases sent to court with indictments. The information obtained from the police and the criminal prosecution office allowed differentiation by gender of both victims and defendants.

Table 1. Number of criminal cases initiated.

Criminal cases initiated	2017	2018	2019	2020	2021	Total 2017-2021
Art.165 CC - Trafficking in human beings	122	153	91	45	50	461
Art. 206 - Trafficking in children	41	37	30	21	13	142
Art. 165¹ - Use of the results of the work or services of a person who is a victim of human trafficking	0	0	0	2	0	2
Art. 362¹ - Organisation of illegal migration	33	21	28	35	20	137
Art. 220 - Pimping	55	40	31	30	23	179

The statistical data provided by the Prosecutor's Office show that, in the period 2017-2021, in the Republic of Moldova, the number of criminal cases initiated on the basis of the components of offences covered by the study and falling under the category of THB, is relatively constant, with a decrease for the last two years of reference of this study, with regard to qualified offences under article 165 of the CC. Thus, in the period 2020 there was a decrease of about **50%** in the number of criminal cases initiated under article 165 of the Criminal Code. At the same time, the statistics also reveal a significant reduction in the number of cases initiated under article 206 of the Criminal Code (Trafficking in children) during the period under review.

A possible explanation for the decrease in the number of criminal cases initiated under article 165 of the Criminal Code is that the pandemic has also significantly reduced migration. The blocking of borders, the suspension of flights and other urgent measures to protect the health of the population against the spread of the COVID-19 infection have led to the temporary restriction or suspension of the activities of companies in most sectors of the global and national economy. In addition, the cessation of cross-border trafficking has contributed to a decrease in cases of all forms of THB.⁹

⁹ National Report on the Implementation of the Policy to Prevent and Combat Trafficking in Human Beings for 2020, p. 28.

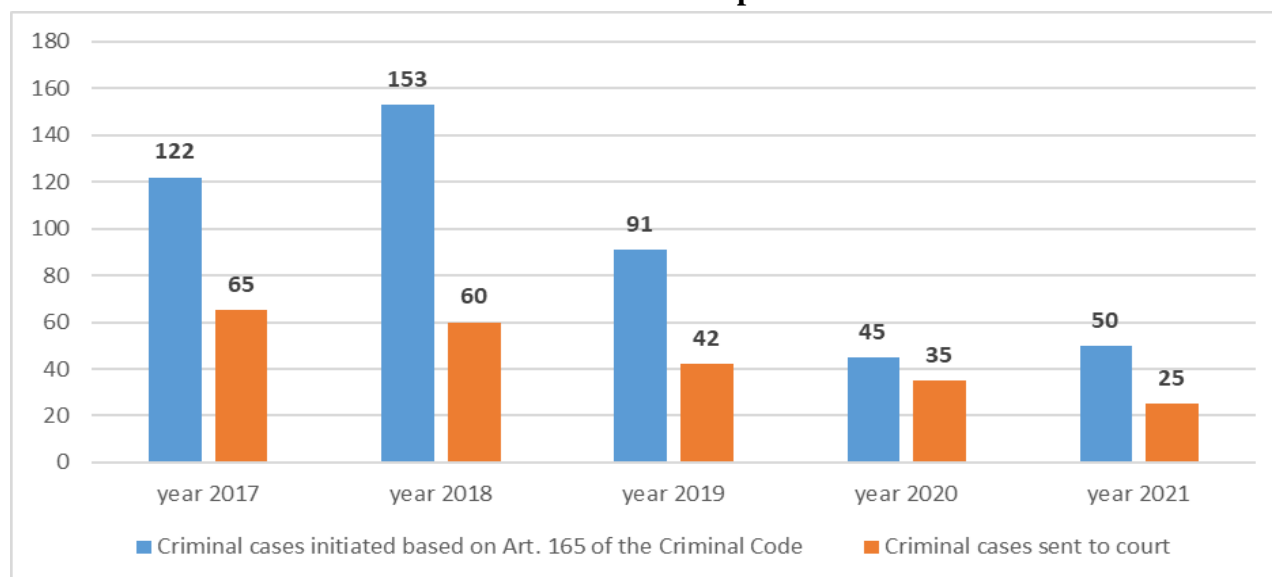
According to the data presented by the General Prosecutor's Office, in the period 2017-2021, in the Republic of Moldova, **461** criminal cases were initiated under article 165 of the Criminal Code (Trafficking in human beings). Most criminal cases were initiated in 2018 (153 criminal cases) and the fewest in 2020 (45 criminal cases).

Of the **461 criminal cases** initiated in the period 2017-2021, **234 criminal cases** were sent with indictments to the courts for examination on the merits, which is approximately **50%** of the number of cases initiated. A possible explanation for these data is that in the period 2020-2021 a state of emergency was established in the Republic of Moldova in connection with the spread of Covid-19 infection and during this period the work in the justice sector was suspended. The COVID-9 pandemic has affected the capacity of criminal prosecution officers and prosecutors to collect evidence, in particular, pro-active investigative measures, interviews of alleged victims of human trafficking, displacements to places where victims of trafficking are exploited, etc.¹⁰

Another possible explanation also refers to the evasion of the criminal prosecution body of persons suspected/accused of committing trafficking offences from criminal prosecution, which under **article 287¹** of the Criminal Procedure Code constitutes grounds for the suspension of the criminal prosecution. However, according to statistical data available on the platform www.date.gov.md, currently **131 persons¹¹** suspected / accused of committing the offence of THB are under search.

Given the fact that the constitutional authorities of the Republic of Moldova do not have effective control over the Transdnestrian region, this creates a high risk of escape of persons suspected/accused of committing offences, including trafficking in human being offences. The comparative situation with reference to the number of criminal cases initiated and referred to trial is reflected in *Figure 2*.

Figure 2: Number of criminal cases of trafficking in human beings (art. 165 CC) initiated and referred to trial in the period 2017-2021.



¹⁰ Ibid, page 23.

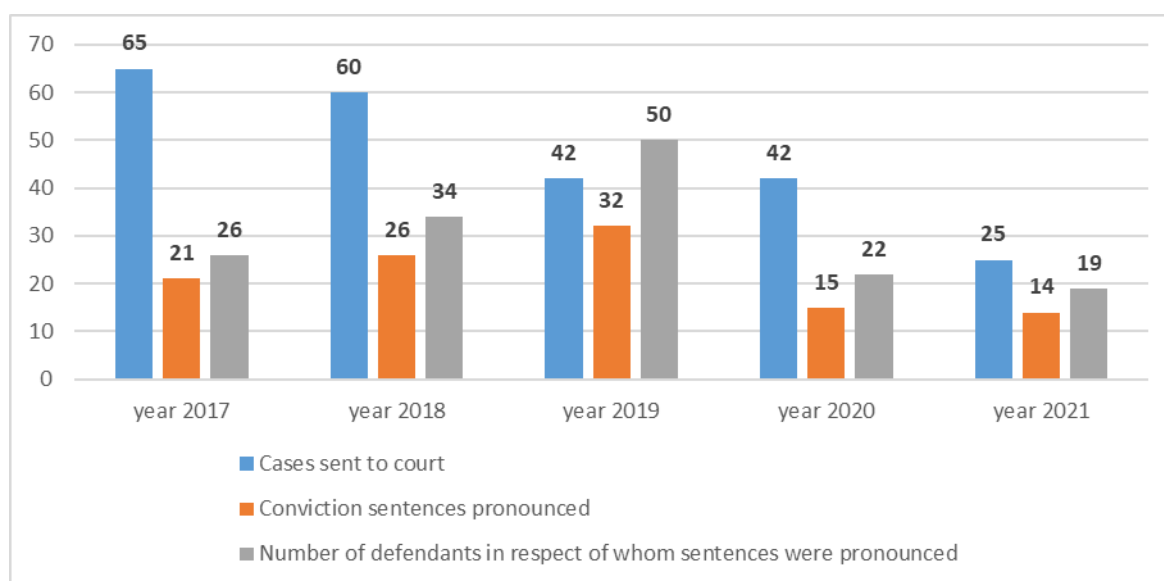
[file:///C:/Users/Admin/Desktop/proiect%20asiten%C8%9Ba%20victime%20trafic/proiect%20asiten%C8%9Ba%20victime%20trafic/Raport-integral-realizarea-politiciei-TFU-202055137%20\(1\).pdf](file:///C:/Users/Admin/Desktop/proiect%20asiten%C8%9Ba%20victime%20trafic/proiect%20asiten%C8%9Ba%20victime%20trafic/Raport-integral-realizarea-politiciei-TFU-202055137%20(1).pdf)

¹¹ <https://date.gov.md/ckan/ro/dataset/4987-date-statistice-privind-persoanele-anuntate-in-cautare-si-retinute-care-au-savirsit-infraciuni>

The correlation of statistical data on the number of criminal cases of trafficking in human beings (article 165 of the Criminal Code) initiated and referred to trial in the period 2017-2021 shows a decrease of about **50%** in the number of criminal cases referred to court.

Analysing the judicial practice for the period 2017-2021 on human trafficking offences, it was found that prosecutors referred **234 criminal cases** on human trafficking to court. Similarly, **108 convictions** were handed down in the reported period, concerning **151 defendants**.

Figure 3: Correlation of statistical data on the number of criminal cases referred to trial and the number of convictions issued in the period 2017-2021



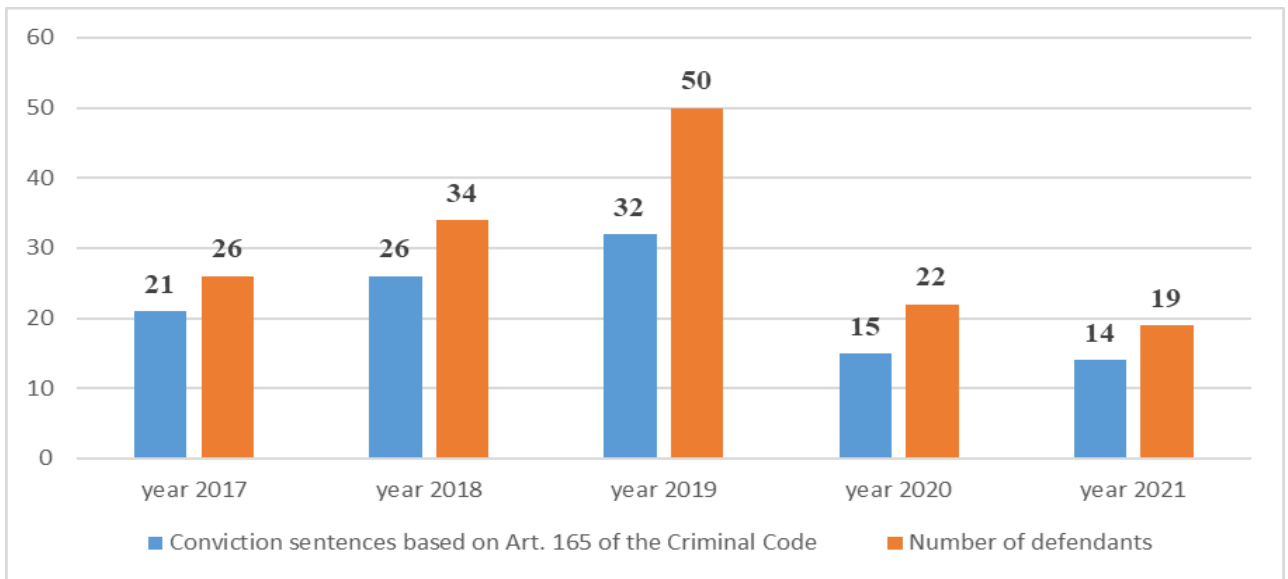
Of the **criminal cases** referred to court for trafficking in human beings, **108 convictions** were handed down in the reporting period against **151 defendants**.

Table 2. Number of persons convicted for human trafficking in 2017-2021

Year	Defendants (traffickers) sentenced	Persons sentenced to imprisonment	Persons sentenced to imprisonment with conditional release
2017	26	25	1
2018	34	32	2
2019	50	48	1
2020	22	21	1
2021	19	18	1

These data indicate **a high rate of convictions, including imprisonment** in the cases examined in this study. However, there is evidence of a decrease in the number of convictions handed down by the courts in the years 2020-2021.

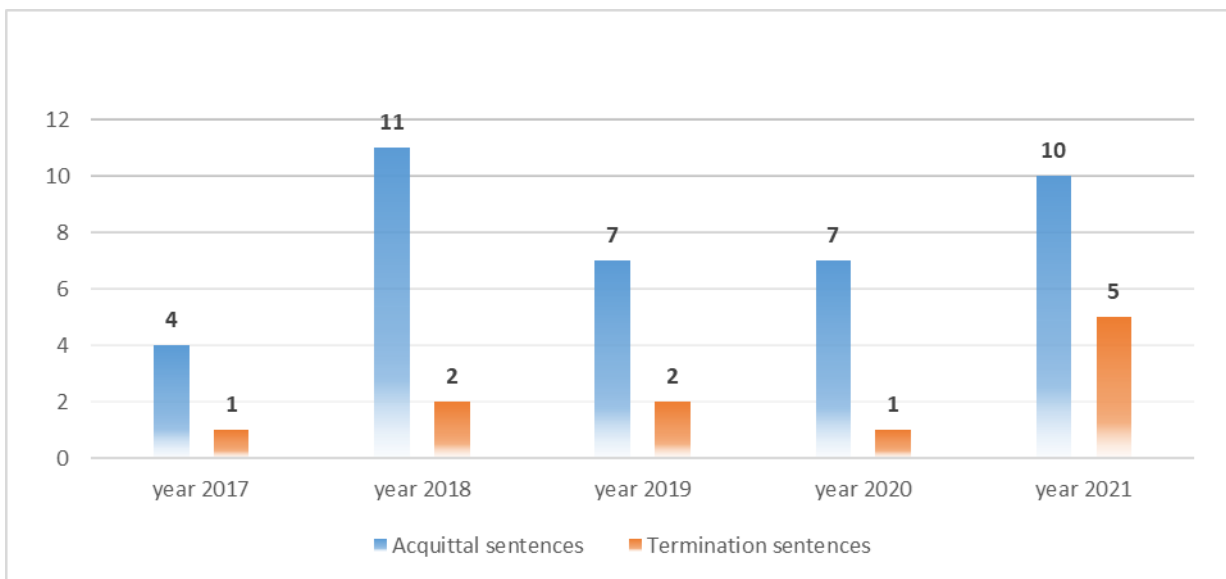
Figure 4: Number of convictions issued between 2017-2021.



It should be noted that in 2021 there was also an increase in the number of criminal cases in which acquittals were handed down (**10 acquittal sentences**) on the grounds that the offence did not meet the elements of the crime and termination (**5 termination sentences**). Among the reasons for the termination sentences were violation of the time limit for suspicion, invalidity of the ordinance for the resumption of the criminal prosecution, death of the defendant, existence of an irrevocable judgment on the same fact, the act does not constitute an offence but a contravention.

Out of the total number of terminated sentences, 2 criminal cases of trafficking in human beings were terminated because the act does not meet the elements of a criminal offence but is a contravention, i.e. in one case the defendant was found guilty under article 263 para. (1) of the Contravention Code (*Illegal conduct of entrepreneurial activity, 2017 wording*), and in the second case under art. 55 of the Contravention Code (Violation of labour legislation).

Figure 5: Number of acquittal/termination sentences issued between 2017-2021



2.1. Profile of victims of trafficking in human beings

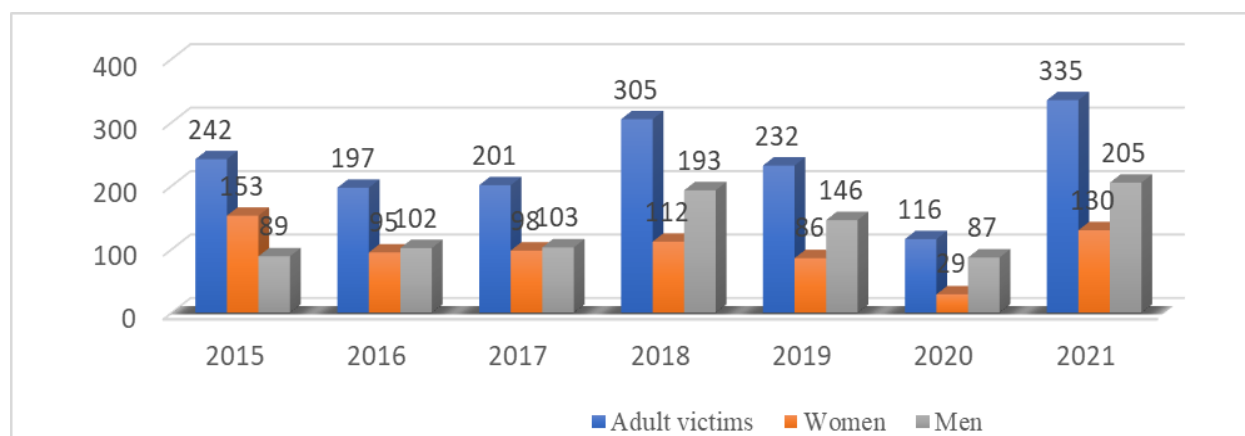
Analysis of statistical data reveals that most often the victim has no profession, no job and/or no permanent salary (income). The level of education does not go beyond the level of beginner or incomplete secondary education.

Age groups with high vulnerability to trafficking were found to be between 18-25 years.

Victims of sexual exploitation are usually women and come from socially vulnerable families.¹² Poverty and lack of opportunities are factors that deeply affect victims and increase their vulnerability to trafficking. Thus, economic motivation, expressed by the increased level of poverty in the victims' families, the difficulty to find a job in the community was reconfirmed as a vulnerability factor in the outcome of the study.

One of the people interviewed for the purpose of this study validated these findings, noting that "... The majority of victims have a low level of intelligence, although they acquire self-care and self-management skills, they find it difficult to express their thoughts in writing, they can confuse data, they can have learning disabilities, especially when put in overloaded situations, they find it difficult to accurately and precisely orient themselves in time, to be able to calculate and manage money. As a result - they can be easily manipulated, and the situation of threat, physical aggression, punishment for the trafficker contributes to the emotional state of the victim, make them experience constant fear, insecurity, anxiety and indisposition. These victims often come from socially vulnerable families, are in most cases illiterate and have no professional education". III_1

Figure 6: Dynamics of adult victim identification during 2015-2021

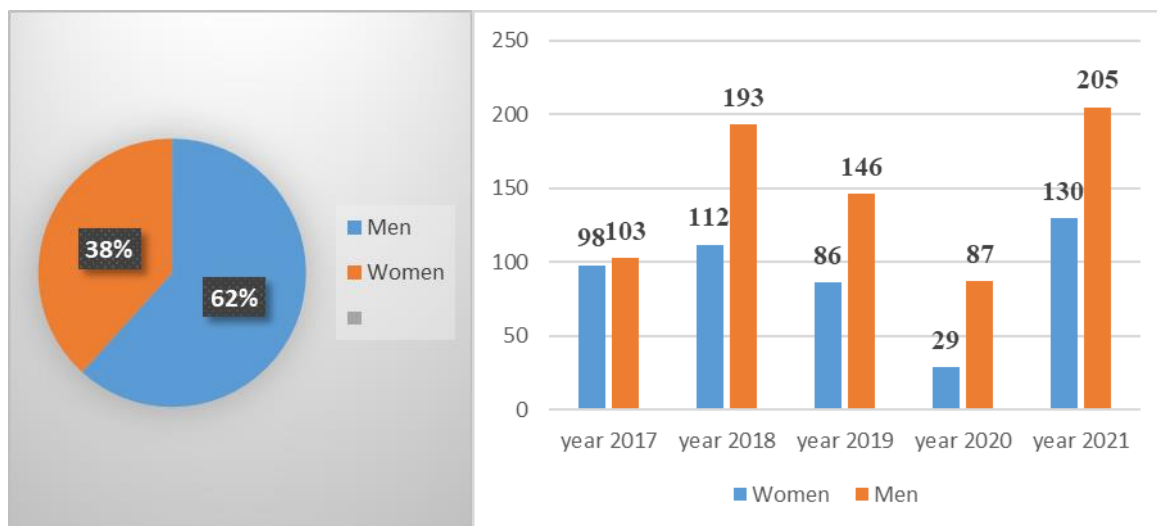


The correlation of statistical data reflecting the gender profile of victims of trafficking in human beings **shows a prevalence of men over women**. Of the total number of **1189 victims** of trafficking, **734** are male and **455** female. A possible explanation for these data is that during the period under study, and as Figure 6 indicates, at national level, trafficking is more likely to be **committed for labour exploitation**, namely in **construction work**, where men, even

¹² National Report on the Implementation of the Policy to Prevent and Combat Trafficking in Human Beings for 2020, p. 24

unskilled ones, are predominantly involved. The reason for this is that construction work requires more physical effort than in other fields, which women cannot do on an equal footing with men.

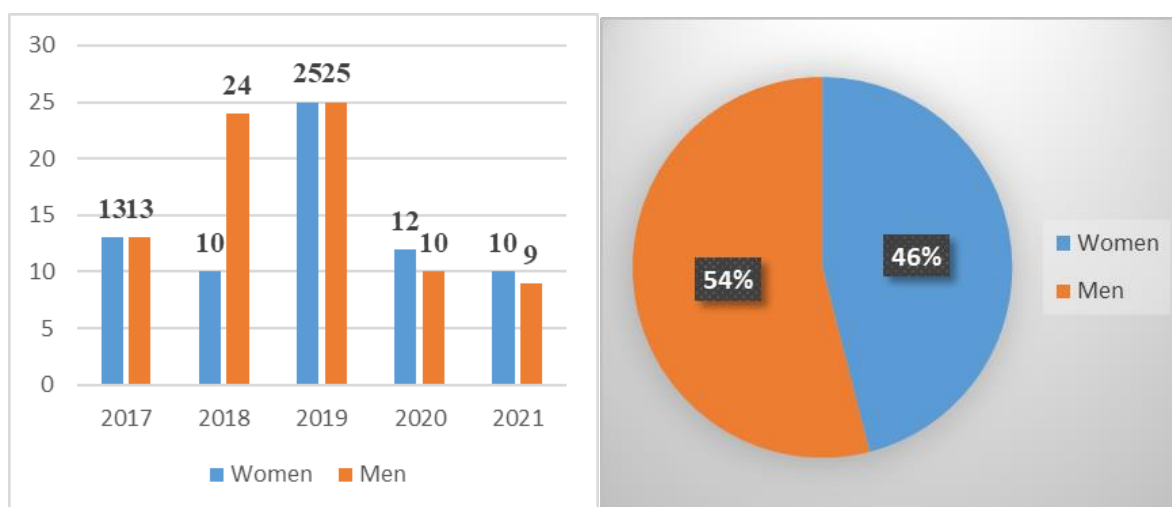
Figure 7: Gender profile of victims of trafficking in human beings during 2017-2021



2.2. Profile of the defendant in human trafficking cases

Every second person convicted of human trafficking is male. During the period analysed, of the 151 defendants, 81 were male (54%) and 70 female (46%) (Figure 7).

Figure 8: Gender profile of defendants



The profile of the trafficker differs according to the type of exploitation. Thus, **in the case of convictions for trafficking in human beings for the purpose of sexual exploitation, the defendants are usually male**, aged 20-45, without a stable occupation, communicable,

with psychological skills, and frequent visitors to leisure establishments. If we refer to child trafficking, the defendants are male, aged 20-45, or female, aged 25-38, who previously provided commercial sexual services, with the purpose of identifying and recruiting minors for commercial sexual services.

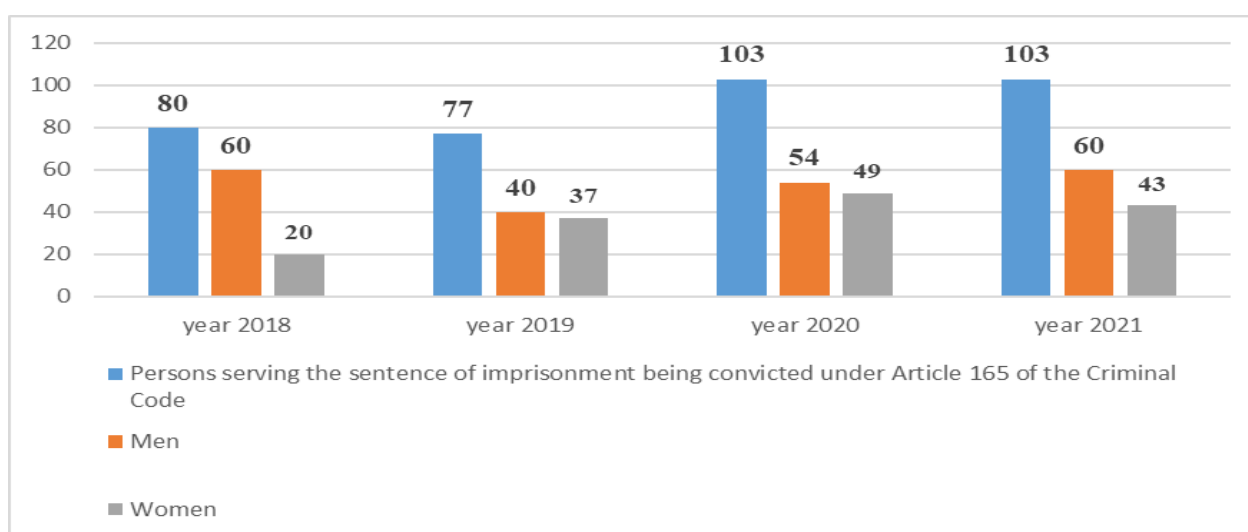
In addition, **in cases of trafficking in human beings, committed for the purpose of labour exploitation and begging**, as defendants are **usually male persons**, aged 26-60 years, without stable occupation predominantly, and in the last period administrators of labour employment companies in EU countries, communicable, authoritative, with psychological skills.¹³

Table 3. Gender profile of defendants

Year	Defendants (traffickers) sentenced	Persons sentenced to imprisonment	Women	Men
2017	26	25	13	13
2018	34	32	10	24
2019	50	48	25	25
2020	22	21	12	10
2021	19	18	10	9

The indicators of the profile of traffickers are also confirmed by the statistical data presented on the website of the National Administration of Penitentiaries: <https://anp.gov.md/rapoarte-de-bilant-semestriale-anuale> which shows that in 2021 in the prisons of the Republic of Moldova are serving a prison sentence being convicted under article 165 CC, **103 people** of which 60 men and 45 women, the same number of 103 people is found in 2020, the gender distribution being 54 men and 49 women. Figure 9 reflects the total number and gender profile of persons serving a prison sentence convicted under article 165 of the CC.

Figure 9: Persons serving a prison sentence, convicted under article 165 of the CC



¹³ National Report on the Implementation of the Policy to Prevent and Combat Trafficking in Human Beings for 2020, p. 25.

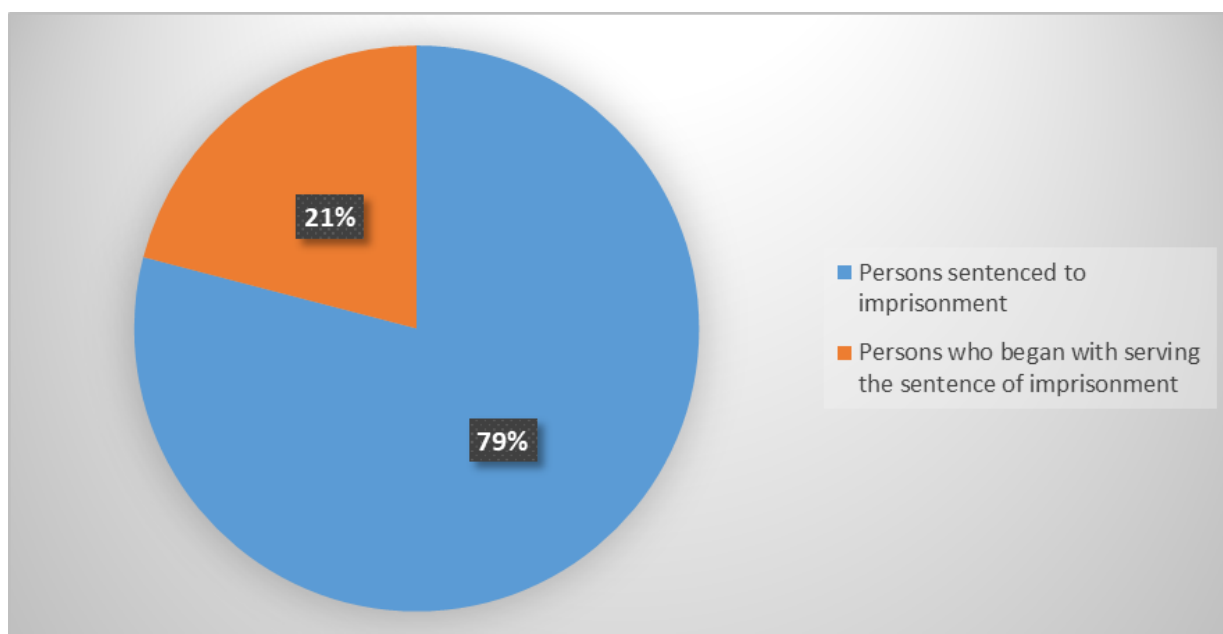
According to the information provided by the National Administration of Penitentiaries, **35 men and 5 women** began serving prison sentences for human trafficking during the reporting period.

Table 4. Number of convicted women and men who started serving a prison sentence during 2017-2021

	Women	Men
art. 165 – Trafficking in human beings	5	35
art. 165¹ – Use of the results of the work or services of a person who is a victim of human trafficking	0	0
art. 362¹ – Organisation of illegal migration	9	1
art. 206 – Trafficking in children	8	19
art. 220 – Pimping	0	3

It is worrying that of the 151 defendants sentenced to prison, only 40 have begun execution. (Figure 8). The correlation of the statistics on the number of defendants sentenced to prison with the number of persons, who during the reference period started serving their prison sentence for trafficking in human beings, shows an increased incidence of traffickers avoiding serving their prison sentence.

Figure 10: Correlation between the number of convicted persons and those who started serving a prison sentence

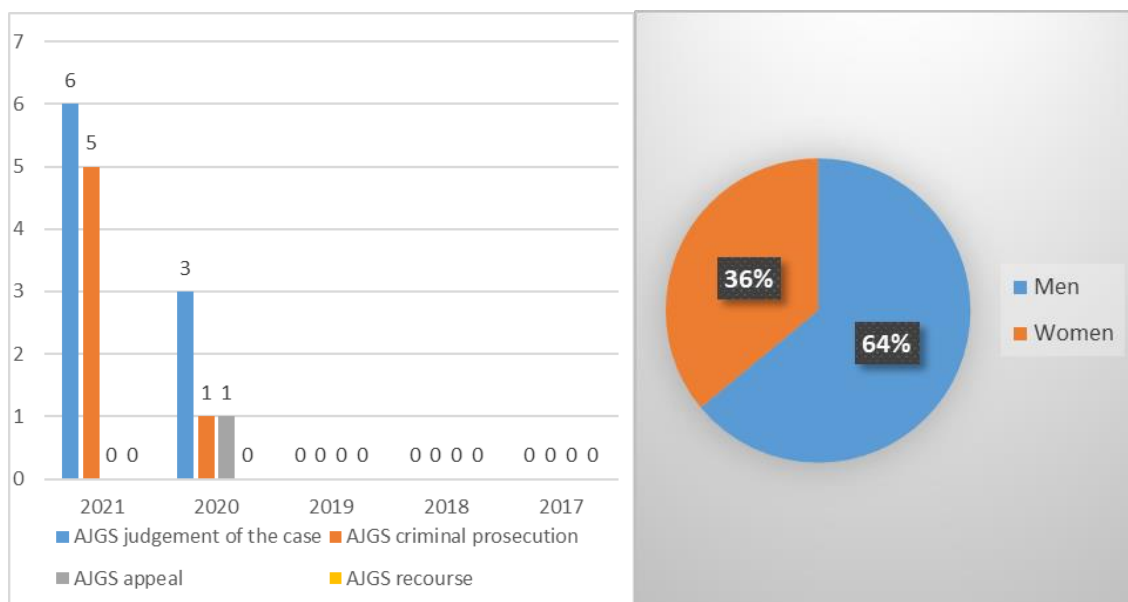


2.3. Data with reference to State Guaranteed Legal Aid

The number of male victims of THB who have applied for SGLA is twice that of women. The statistical data present on the page <https://statistica.cnajgs.md/> shows that the

representatives of these institutions have appointed lawyers who have provided SGLA in the period 2017-2022 for 16 victims of human trafficking. Out of the total number of victims of human trafficking, who received SGLA, **64%** are male and **36%** female. The number of requests for SGLA for victims of human trafficking is higher at the trial stage compared to the criminal prosecution stage.

Figure 11: Data on the provision of SGLA to victims of human trafficking



The statistics mentioned *above* indicate that very few victims of human trafficking apply for SGLA, even though it is provided free of charge.

III. ANALYSIS OF CONVICTIONS IN CASES OF TRAFFICKING IN HUMAN BEINGS

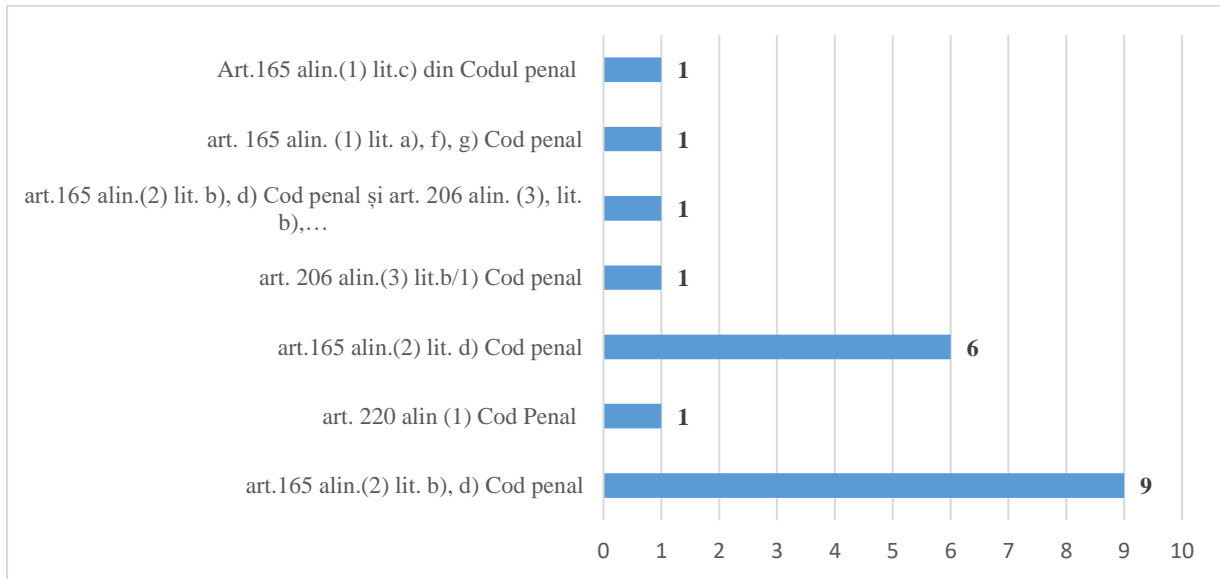
3.1. Qualification of offences in the sentences analysed

In the process of carrying out the study, criminal files examined by the courts between 2017 and 2021 were subjected to analysis. The criminal files under analysis were randomly selected from the portal of the national courts, based on the following articles of the Criminal Code: art.165 (Trafficking in human beings), art.206 (Trafficking in children), art. 220 (Pimping).

The information systematised in the analysis sheets was supplemented by information obtained from in-depth interviews with several anti-trafficking actors who agreed to share their experience in dealing with these categories of offence.

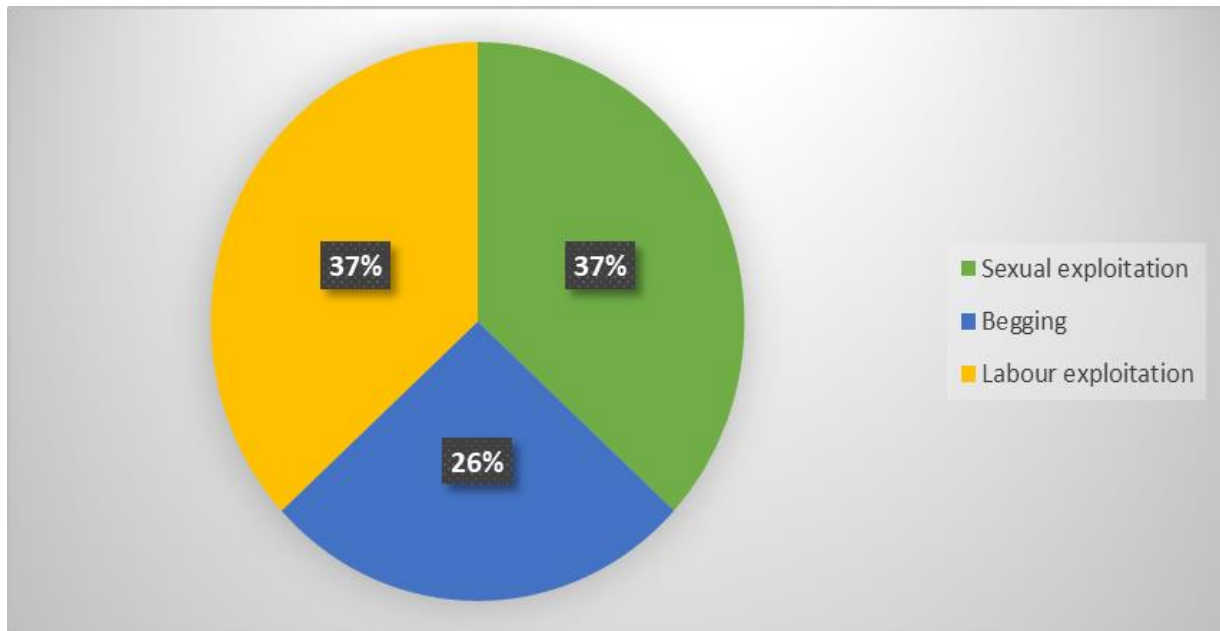
The experts were unable to analyse the criminal files on trafficking in human beings in the Transdnestrian region, which is outside the effective control of the Moldovan authorities.

Figure 12. Classification of offences in the 20 criminal files analysed in the present research



With reference to the type of exploitation, we note that in **37%** of the criminal trials analysed victims were trafficked for sexual and labour exploitation and **26%** were exploited through begging.

Figure 13. Forms of exploitation



The analysis of the criminal files allowed us to identify several aspects related to the victims - their living environment, occupation, the services they received, but also data reflecting the profile of the defendants.

3.2. Profile of victims of trafficking in human beings

In the process of analysing the 20 criminal files, there were identified 57 injured parties. In the files analysed, 23 women, 22 men and 12 children are injured parties.

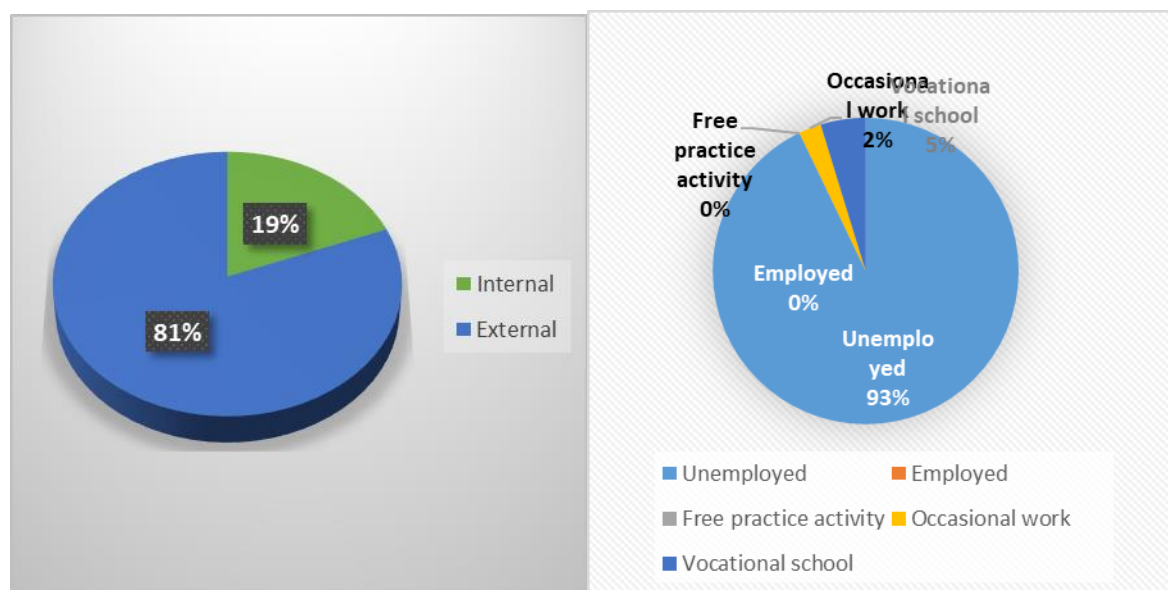
In the criminal files studied by the experts, out of the total number of adult victims, 19% were exploited on the territory of the Republic of Moldova, while 81% of the victims were exploited abroad. 44% of the victims were sexually exploited, 44% were exploited through labour and 12% were exploited through begging.

The main country of destination for victims of external trafficking is the Russian Federation, followed by Turkey, the Arab Emirates, Italy, Thailand, Ukraine and Georgia. An analysis of the sentences shows that the main reason for the emigration of victims of human trafficking is poverty and lack of employment, with 93% of the victims not being employed. Victims of sexual exploitation most often come from socially vulnerable families, and victims of begging are people with multiple vulnerabilities due to disability, ethnicity, etc. The majority of men in the cases analysed were victims of labour or begging exploitation. Respectively, in the cases analysed, 1 male was exploited through begging and 21 men became victims of labour exploitation. It should be noted that the facts in the cases investigated here took place in 2012-2015, and at national level in recent years, there has been a change of priority destinations, such as the Russian Federation for several years, and a shift towards new destinations, such as the European Union countries, where fake Romanian passports are frequently used.

Thus, according to the situation in 2021 in the criminal cases of trafficking in human beings, in terms of countries of destination, the European Union area is confirmed as a constant destination with a downward trend.

The main country of external trafficking (in terms of the number of victims) is France, with 122 persons trafficked (115 men and 7 women) for the purpose of labour exploitation and 43 persons trafficked (21 women and 22 men) for the purpose of obtaining aid, allowances or social benefits.

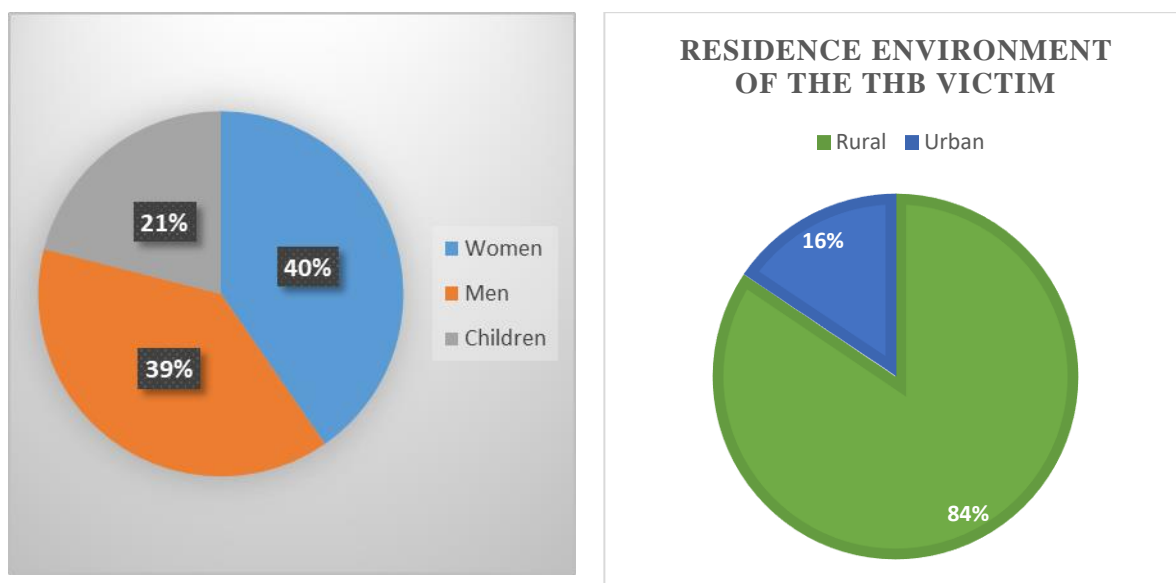
Figure 14. Type of trafficking and victims' occupation



In rural areas, there is a higher risk of human trafficking for both women and men. Thus, in the 20 files analysed - **85%** of victims come from rural areas and **15%** from urban areas (*Figure 14*).

The data analysed lead to the conclusion that there is a higher risk of this type of crime occurring in rural areas than in urban areas. These trends are also validated by the data presented at national level, about 78% of victims of human trafficking come from rural areas.¹⁴

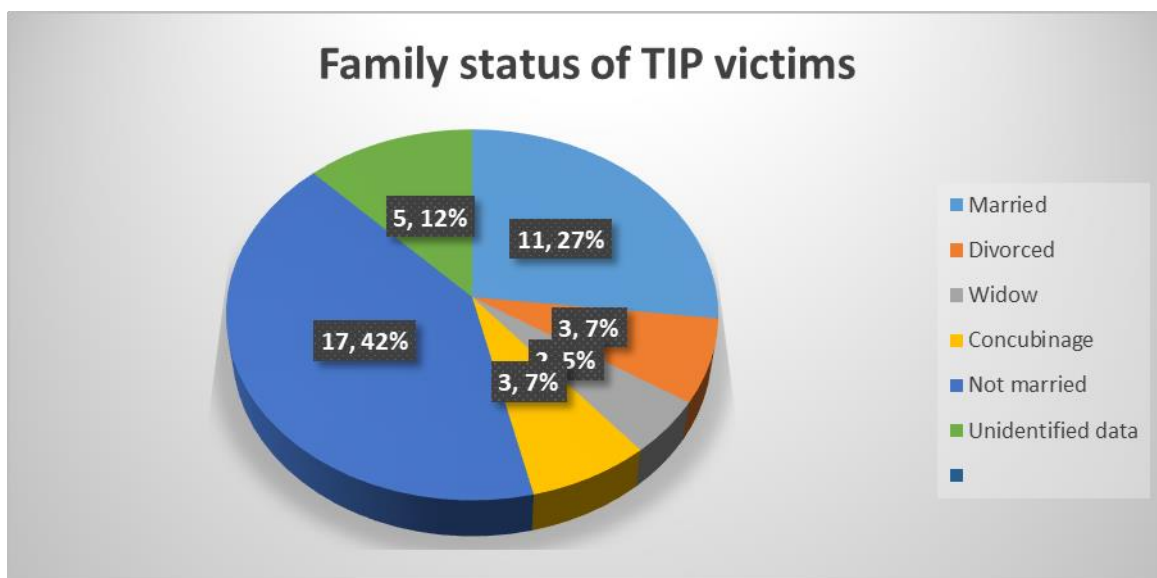
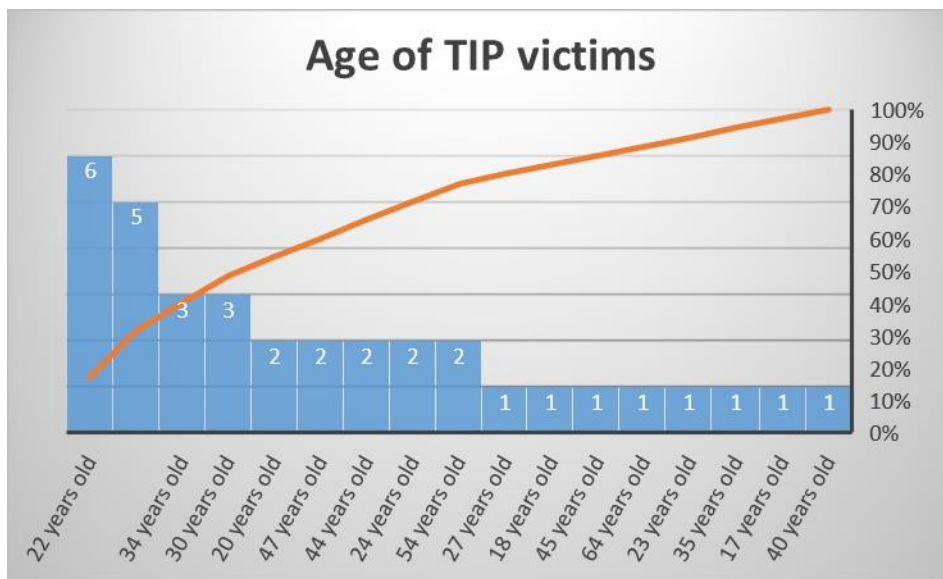
Figure 15. Gender profile of victims of trafficking in human beings and the environment of residence of victims of THB



The age of persons with injured party status in the cases of trafficking in human beings under analysis ranges from 17 to 44 years for women and 40 to 64 years for men. Similarly, it was established that **42%** of the victims were single, **11%** were in a marriage relationship, and **7%** were cohabiting or divorced, at the same time, in **12%** their family status was not identified, as it was not established at the stage of completing the survey data.

¹⁴ National Report on the Implementation of the Policy to Prevent and Combat Trafficking in Human Beings for 2020, p. 24.

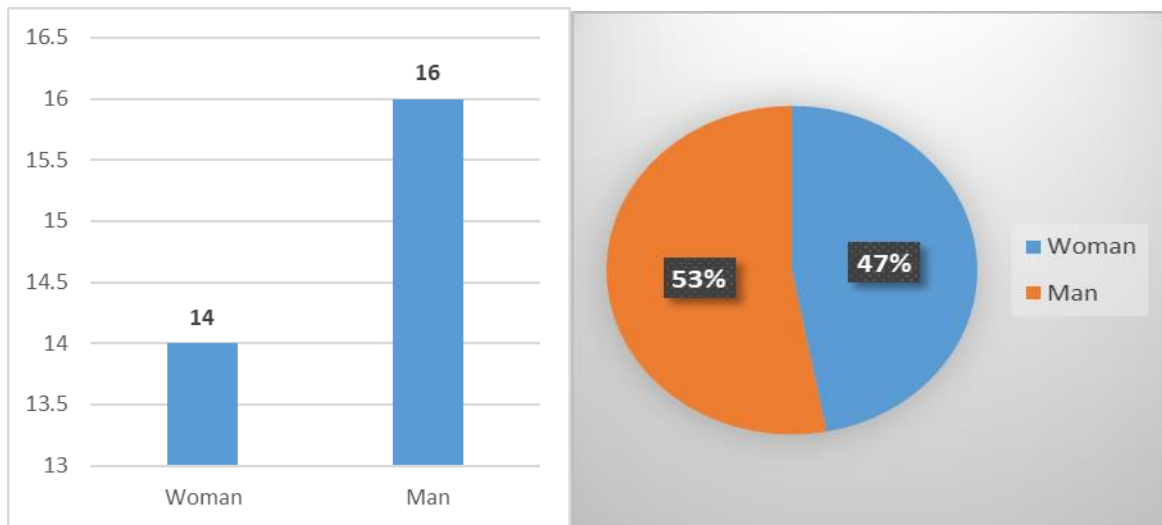
Figure 16. Family status and age of persons with injured party status in human trafficking cases



3.3. Profile of the defendant in human trafficking cases

In the human trafficking cases analysed in this research, **16** men and **14** women have been charged as defendants.

Figure 17. Gender profile of defendants in human trafficking cases



It is relevant to mention here that, in the analysis of the criminal files, there were identified situations in which **women appear in some cases as defendants and in others as injured parties**. Such a case was also identified in the analysis of the 20 files. *"...With reference to this aspect it is relevant to point out that usually, in such cases, initially the person in question is a victim of trafficking in human beings, but later, after a certain period of time, when the person agrees to carry out the activities for which he/she has been trafficked voluntarily, gets used to carrying out the activity in question, starts recruiting and attracting other persons to the activity in order to obtain additional income. In such situations, the provisions of article 165 para. (4) of the Criminal Code are not applicable, since the acts for which the person is charged were not committed during the period in which he/she was a victim of human trafficking..."*.

One of the reasons why victims become traffickers is the influence of the trafficker, where the trafficker causes the victim to carry out part of the crime with the idea that if certain investigations come to light, the victim will be put in the spotlight. It is difficult to separate the moment when the victim is exclusively a victim from the moment when the victim, in the belief of the trafficker's influence, also acts as a recruiter, a transporter.

In this context, it should be noted that the lack of rehabilitation services, including long-term rehabilitation, can also be one of the reasons why victims end up normalising the exploitation and recruiting other young girls on their own.

Case study no. 1

In May 2018, a criminal case was opened on the fact of committing the offence provided for in article 165 para. (2) letter d) of the Criminal Code, in which **Vivian** (name changed) was indicted in absentia, and announced for search. She was accused that during the months of April-May 2018, acting together with the Turkish citizen Alan, being in the town of Istanbul, Turkey, pursuing the purpose of commercial sexual exploitation of the person, intentionally, by abusing the position of vulnerability, manifested by the precarious

situation in terms of social survival, lack of financial means strictly necessary for survival, through the social networks www.odnoklassniki.ru and www.facebook.com recruited Tamara, in order to practice prostitution in a nightclub in Turkey, by the belief that she would be well paid for providing sexual services, as well as bearing the expenses for travel. After obtaining Tamara's consent to prostitution, they pursued their criminal purpose by arranging for her to be transported to the country of destination and procuring a ticket for her to travel on the air route "Chisinau - Istanbul", where she would later be met by Vivian. However, on 18.05.2018, the victim Tamara did not arrive at the destination, because during the check-in of the passenger on the flight route indicated above, the latter was removed from the flight and retained by the police collaborators.

In July 2018, Vivian was retained, informed of the charge and heard as a defendant.

In her statements as a defendant, Vivian stated some circumstances related to the trafficking of the victim Tamara, but additionally stated that "in the winter of 2014, when she was 17 years old, while communicating with **Virginia**, who was from the same village as her, the latter told her that she had been working in the United Arab Emirates, Dubai city, where she worked as a dancer for which she was paid USD 5000. **Virginia** suggested that Vivian go with her to the United Arab Emirates, Dubai city, at the same job, i.e. as a dancer in a nightclub, but Vivian refused. **Vivian** worked on a peasant farm (they grew tomatoes), she received a salary of MDL 4000 per month. While in Dubai, **Virginia** contacted **Vivian**, insisting she come to the UAE. At the insistence of her acquaintance Virginia and "Aiși", **Vivian** accepted the proposed service and received by bank transfer from them the amount needed to complete the passport. After receiving the sum of USD 200 by bank transfer, she had her passport completed. She later was informed by Vladimir (Virginia's contact person) that one of his relatives was providing sexual services for a fee under the patronage of "Aiși". Vivian was afraid to leave, but did not tell this to anyone. Later, she was taken by Vladimir to Chisinau International Airport, but on the way, while they were stopped near a "Lukoil" petrol station, she ran away under the pretext of going to the bathroom, as she did not want to go to the United Arab Emirates because she was afraid to go to the service proposed by Virginia and her patron "Aiși".

In connection with what **Vivian** stated about the facts that took place in relation to her in 2014, in October 2018, the criminal prosecution was initiated in which she was attributed the status of injured party.

In January 2021, Virginia was convicted of committing an offence under article 165 para. (2) letter (d) of the Criminal Code and was sentenced to 7 (seven) years of imprisonment.

However, in the criminal case initiated on the fact of trafficking the victim Tamara, **Vivian** was convicted in May 2020, being sentenced to imprisonment for a term of 7 (seven) years and 6 (six) months and is currently serving the sentence in Penitentiary no. 7 Rusca.

Vivian's criminal prosecution cases and the one in which she was an injured party of the THB were examined during 2018-2021.

"... A widely accepted principle is that a person should not be held responsible for a crime if he or she was forced to commit it. Article 165 para. (4) of the Criminal Code states that "The victim of trafficking in human beings shall be absolved from criminal liability for

offences committed in connection with that procedural capacity". However, it should be noted that, in Vivian's case history, from the analysis of the factors that contributed to the dynamics of the criminal actions committed by her, relevant data are identified that confirm that the necessary conditions for the defendant's release from criminal punishment were not cumulatively met, because the illegal actions that the defendant committed were not related to her status as a victim of human trafficking".

The second case, described by a lawyer who participated in the in-depth interviews, reflects the story of a minor "...raised in boarding schools and abused by about every second man she met in her life". In the in-depth interview, the respondent indicated that Anastasia (name changed) had experienced repeated rape and two failed pregnancies. A whole system of blind, dumb and deaf social and psychological support. Some police officers who forced the younger sister to confess against the older one, with threats, manipulation and promising her a new phone if she agreed to make these statements against her sister. And fifteen years in prison - because if you're a naive little girl, raised in orphanages, abused at every turn and plus everything - Roma, no one cares what happens to you." III_3

Case study no.2. Anastasia's story¹⁵

"...It was 2017 I think, autumn. I was asked to help a young woman convicted of pimping and trafficking in children. Trafficking in children - Art. 206 of the Criminal Code, is a terrible offence. I don't usually get involved on such cases, especially on the side of the accused/convicted. However, it has been explained to me that this is an absolutely different situation and I should at least listen to the girl. I went to Penitentiary 13.

After I got out of the prison, it was the first time in many years that tears came to my eyes. I saw a child there, a frightened little girl, who couldn't stop crying because her child, born in solitary confinement, had just died and because she had learned that she would spend the next 16 years in prison.

Her story is the story of many other people in similar situations. She grew up in a very vulnerable family, saw all kinds of abuse along the way and tried to escape the hard life she had. She met a prince, who promised her the moon and stars, but in a very short time, he lured her into prostitution and erotic video chat. It's hard to explain to uninitiated people why a naive child decides to stay with an abuser, there are myriad circumstances. Simply life in prostitution and abuse with a trafficker turned out to be better probably than anything she had seen before. The psychologists may be able to explain it better, if any of them read this post.

She was recruited when she was 15. Raped, beaten, kept locked up. Then the abuser bought her an iphone and told her that he loves her. I of course simplify, this was a terrible experience of about 2 years, where violence was intertwined with crumbs of pseudo-grace and small material joys. Eventually he convinced her to find other girls to do videochat,

¹⁵ https://diez.md/2022/01/19/15-primaveri-ale-anastasiaei/?fbclid=IwAR1IFqV5dGARrdxa7rWZu6faP0JgmTIQBOCwStjXKYrV3wrIV9_4KkbyRzI

which was extremely lucrative at that time. As she later found out, recruiting other girls falls under the offence of trafficking.

Criminal files have been opened. He bought his freedom and fled the country. She was left to carry the burden of the file with the terrible name - pimping and trafficking in children. Investigators didn't care that she was a victim, like so many others. They found her a scapegoat - since the main culprit had fled, someone had to be held accountable.

They put her in prison when she was already pregnant. The baby was born and died shortly after. She was left a little girl broken by life, left by everyone, blamed by the public, alone against the world and with a dead child in her arms. It's hard to hold back the tears when someone like that tells you, "I still hope that everything will be alright".

Unfortunately, it couldn't be well. The way our legislation is constructed in this area, abusive police practices and stereotypical attitudes towards women rule out any possibility of good in such cases. Moreover, her state-paid lawyer did not file an appeal and so Anastasia missed the deadline for filing her appeal and the hope that the higher courts might break the sentence and do justice. ". III_3

From the analysis of the cases reflected *above*, it appears that Vivian and Anastasia did not benefit from psychological and social support services when they were victims of THB, and after being trafficked, they returned to their environment with more vulnerabilities, stigmas and labels. In the absence of support services, the state of vulnerability, the difficulties of reintegration after the experience of victimhood acted as catalysts for their transformation from victims to traffickers.

In the cases analysed, there were no defendants who had previously been convicted of human trafficking, with disabilities, alcohol or drug addiction. Situations where defendants had previously committed other types of crimes were established in 2 cases.

3.4. Coercive measures applied in cases of trafficking in human beings

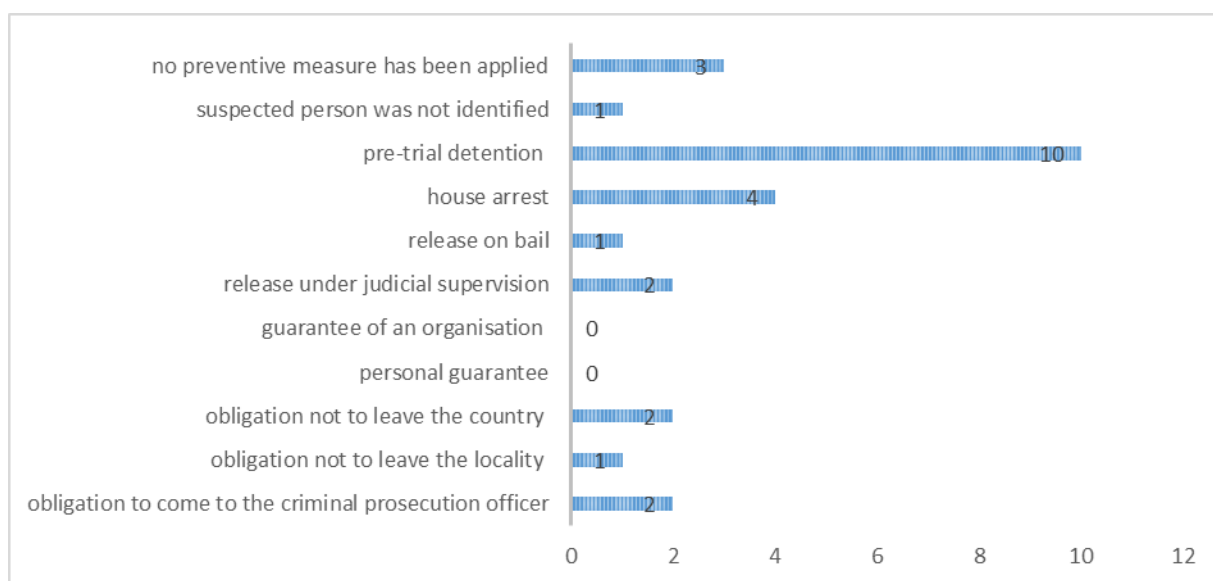
An analysis of the sentences shows that the most common preventive measure applied to defendants is pre-trial detention. Thus, in **10 cases**, the defendants were placed under pre-trial detention, which was extended for various terms or replaced by house arrest, the maximum being 12 months. Subsequently, one defendant was released on remand under judicial supervision. Interviews confirmed that in cases of trafficking in human beings, defendants are detained for a longer period, but this is justified and determined by objective factors, in particular the possibility of influencing the injured parties due to vulnerability and fear and the risk of evasion. A factor favouring the defendants' evasion is also the existence of the territory on the left bank of the Dniester, which is not controlled by the Moldovan authorities.

However, given that human trafficking cases are considered over long periods of time, and that pre-trial detention can be applied for up to 12 months after release, many defendants hide from criminal prosecution bodies or evade prosecution.

In the criminal cases analysed, the court argued the need for pre-trial detention on the grounds that:

- there is a reasonable suspicion that the defendant has committed the offence;
- there is a risk that the defendant will interfere with the normal course of the criminal proceedings and the gathering of evidence in the case, with a view to objectively investigating the criminal prosecution's suspicions regarding the defendant's participation in other criminal offences of the type under investigation;
- there is a risk that the defendant will evade the criminal prosecution body;
- there is a risk that the defendant will commit further offences.

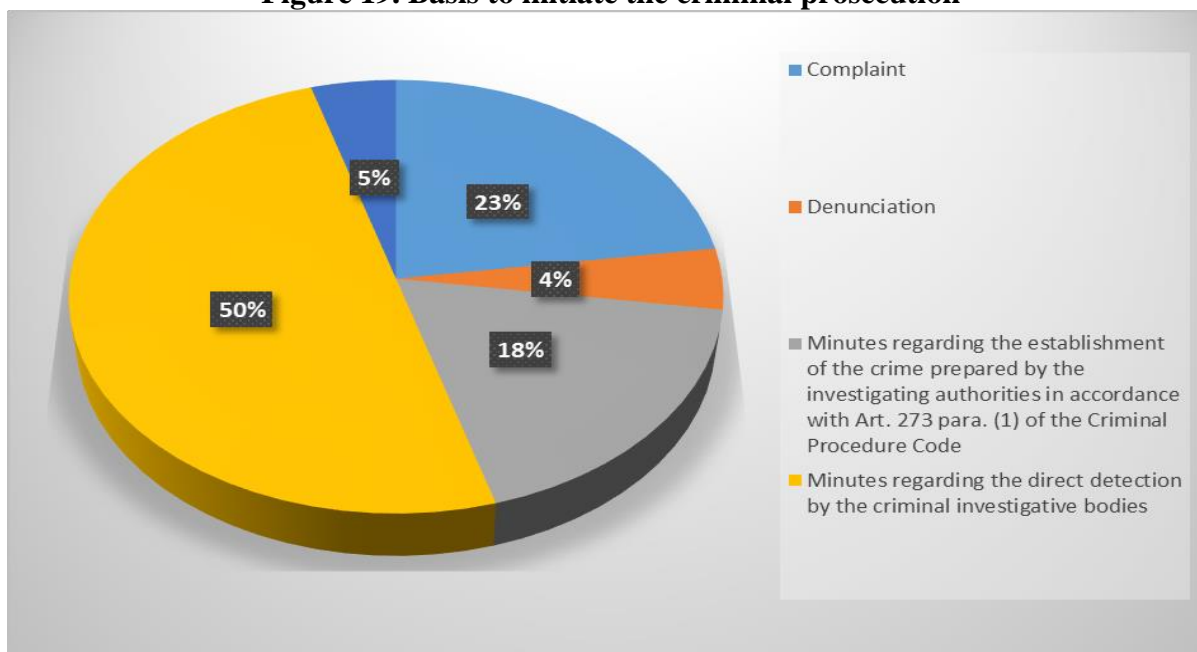
Figure 18. Coercive measures applied in human trafficking cases



3.5. Criminal prosecution in cases of trafficking in human beings subject to investigation

The analysis of the criminal files shows (*Figure 18*) that **in every second case, the basis for the initiation of the criminal prosecution was the minutes of the detection of the offence directly by the criminal prosecution body**, and only in **23%** of cases was the prosecution initiated on the basis of the complaint. This trend can be seen as positive, reflecting the diligence and promptness of the criminal prosecution bodies.

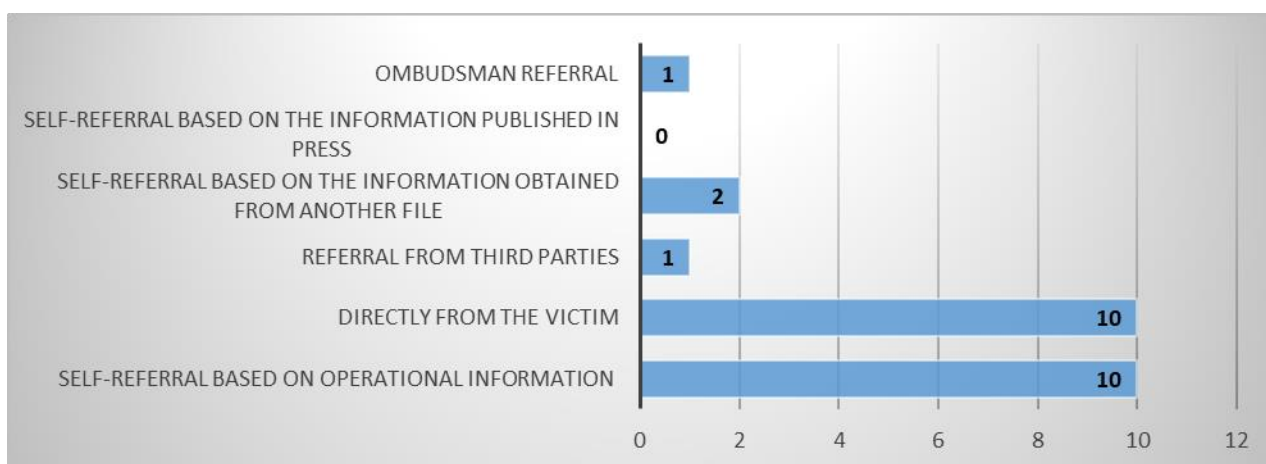
Figure 19. Basis to initiate the criminal prosecution

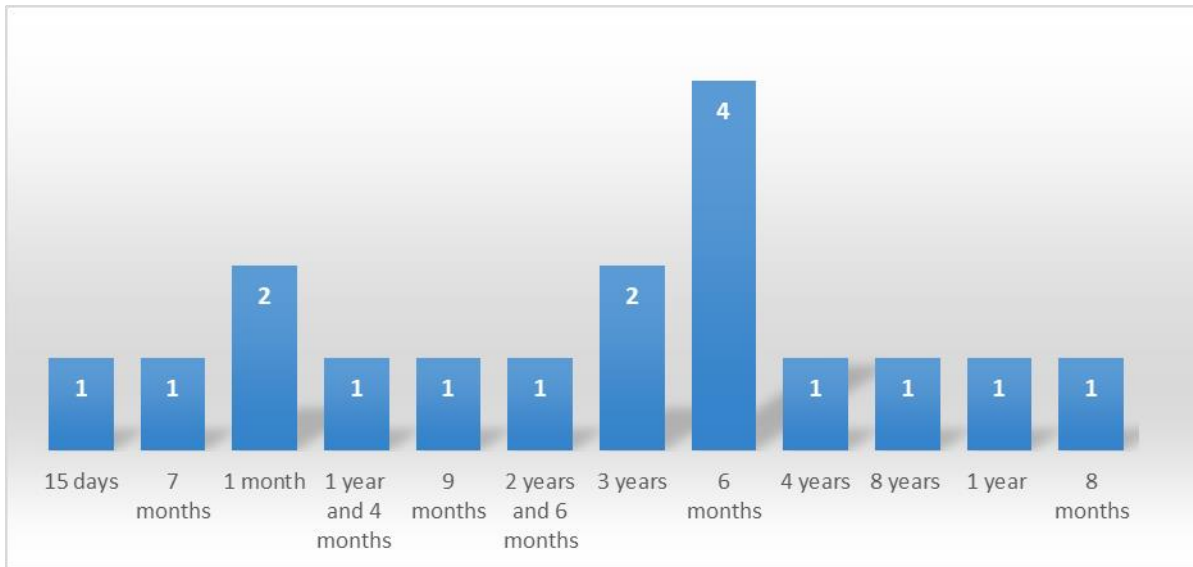


The under-reporting of cases of human trafficking can be explained by the fact that many of the victims are more vulnerable and do not know how to report it to the law enforcement authorities. *"...Some victims are not even aware that the exploitation to which they are subjected is a form of trafficking and are unaware that they are criminalised. Many victims of trafficking do not report cases of exploitation for fear of reprisals from traffickers and/or of being stigmatised. The situation described above leads to late referrals to law enforcement bodies, which can be an impediment to the prosecution and punishment of traffickers..."*. III_4

The analysis of court sentences shows that the interval between the commission of the offence and the referral to the law enforcement authorities varies between 15 days and 8 years. In most cases (4 cases) the criminal prosecution body was notified 6 months after the offence was committed, followed by 1 month and 3 years.

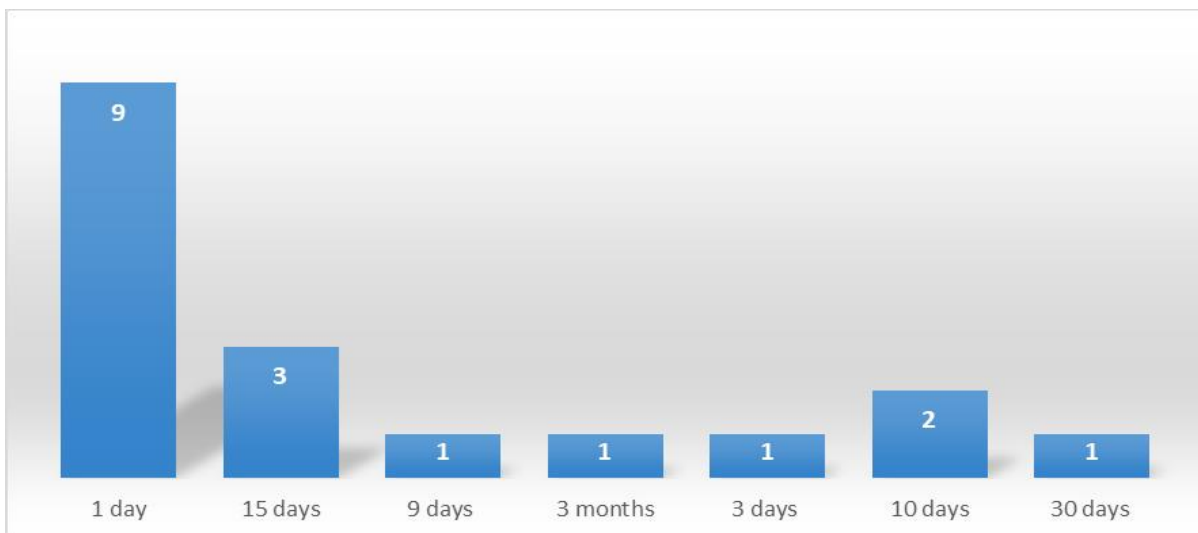
Figure 20. Referral to the criminal prosecution body





Even though in some cases the criminal prosecution body is notified after a long period of time after the crime has been committed, the criminal prosecution body's accumulation of evidence up to the issuance of the ordinance for the commencement of the criminal prosecution was carried out promptly. Thus, **in every second case, the criminal prosecution body's accumulation of evidence up to the issuing of the ordinance for the commencement of criminal prosecution was completed within one day**, in 3 cases within 15 days and in only one case within 30 days.

Figure 21. The time within which evidence was gathered by the criminal prosecution body before the issuing of the ordinance to initiate the criminal prosecution

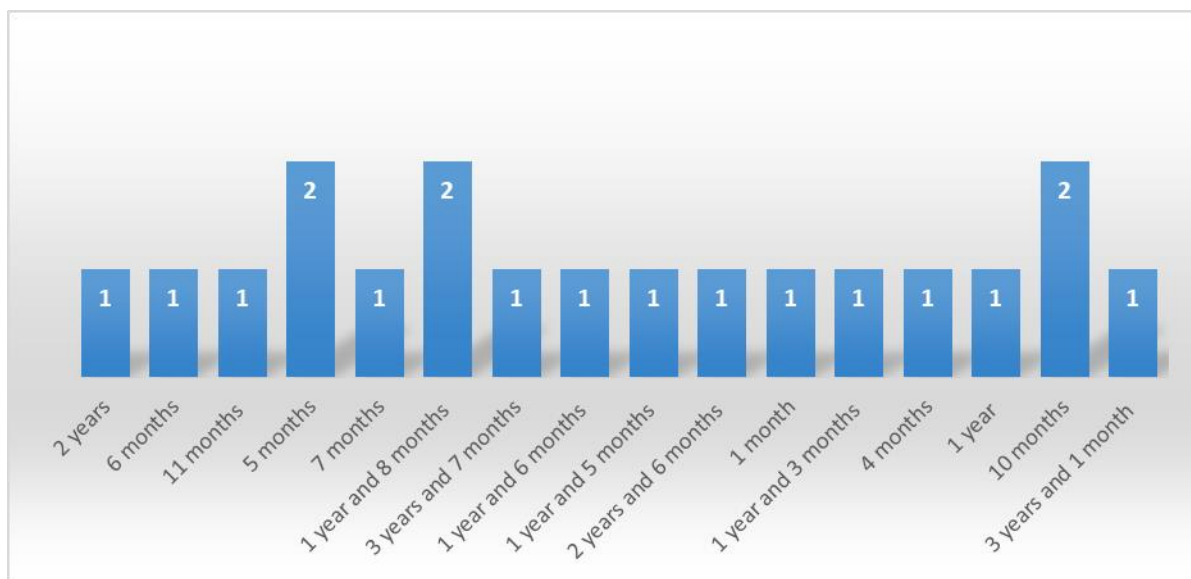


The analysis of the sentences shows that the time limit for criminal prosecution in human trafficking cases varies from 4 months to 3 years and 7 months. Among the factors that cause prosecutions to take time are: non-appearance of the parties (most often the victim or witnesses, less often the suspect/accused) when summoned to appear before the prosecution

authorities, the reason being that they often leave the country for very long periods (months or even years), and in their absence (without a hearing or confrontation with their participation) it is not possible to complete the criminal prosecution, and when the victims return to the country, knowing that they have previously been summoned, they ignore to present themselves, after which they again leave the country for indefinite periods).

In none of the criminal files examined was there a request for accelerated criminal prosecution.

Figure 22. Time limit for criminal prosecution



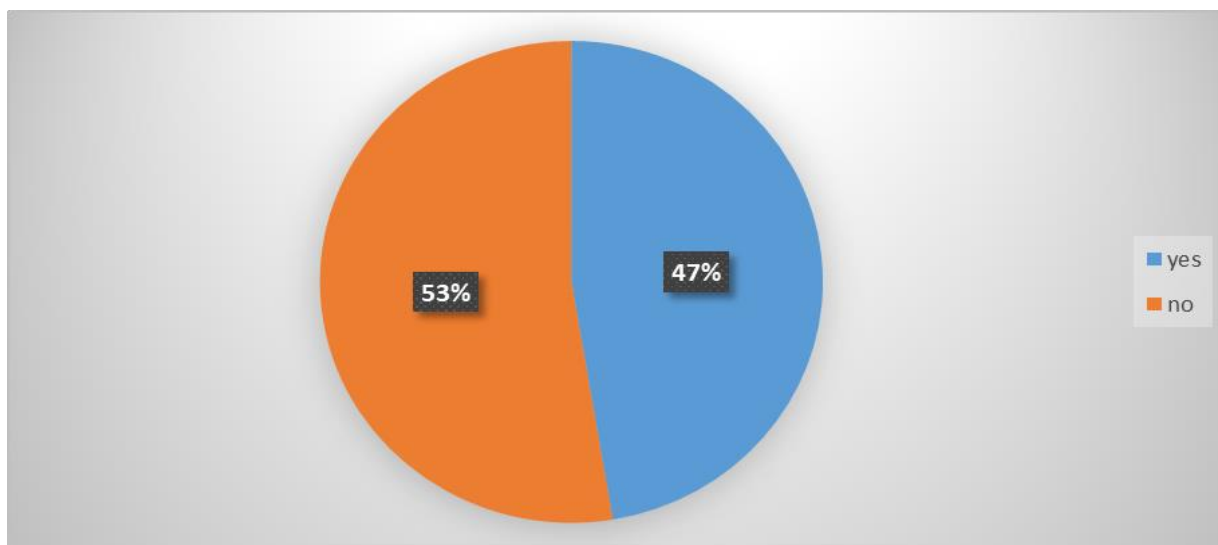
As trafficking in human beings is often a transnational crime, effective international cooperation is essential for the fulfilment of obligations regarding the right to justice and effective remedies. The analysis of criminal files shows that international cooperation was achieved in **53%** of the cases analysed.

An impediment to requesting international cooperation concerns the unstable statements of victims regarding the locations where they were sheltered, exploited in the destination country (lack of address or other landmarks, which could be subject to verification whether they were there during the period of exploitation, as well as lack of data (name/first name), other concrete data about potential traffickers or pimps in the destination country). In cases where victims do not know the locations of their whereabouts in the destination country the criminal prosecution officers and representatives of the criminal prosecution body are advised to use the free mapping application which can be accessed at <http://maps.google.com>, which can be used to identify places of shelter, exploitation of victims, transport routes of victims, locate other victims, offenders, etc.

Another obstacle to requesting international cooperation is the non-cooperation of countries such as Turkey or the United Arab Emirates. Otherwise, with other countries from which Moldova has requested information on cases of trafficking in human beings under investigation, either through international police cooperation channels or through requests for international letters rogatory through the General Prosecutor's Office, no impediments have

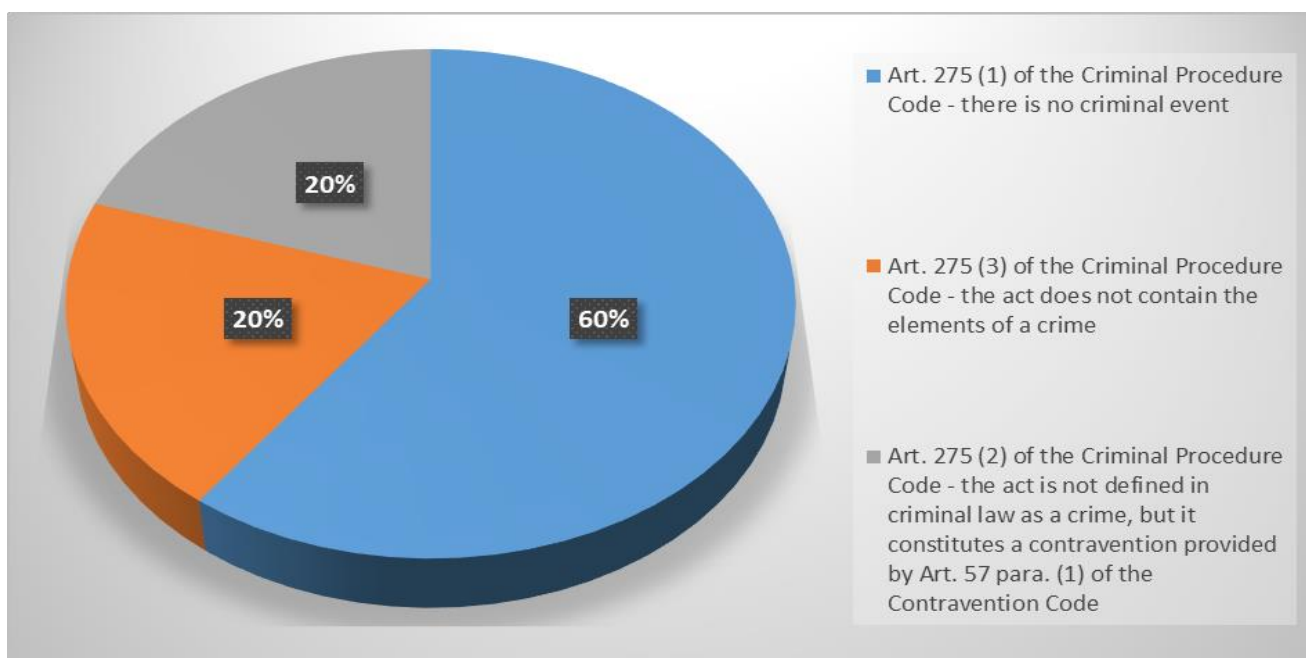
been identified, except that some responses are received over very long periods (from a few months to 1-2 years).

Figure 23. International cooperation



Out of the 20 cases analysed, there were issued 5 ordinances of discontinuance of criminal prosecution. **60%** of the ordinances of discontinuance of criminal prosecution were issued on the basis of article 275 point (1) of the CPC, on the grounds that the fact of the offence does not exist, followed by **20%** - where the act does not meet the elements of the offence or is not provided for by the criminal law.

Figure 24. Basis for discontinuation of criminal prosecution and closure of the case



Protection of victims of trafficking in human beings

Law no. 105 of May 16, 2000 on the protection of witnesses and other persons participating in criminal proceedings provides a wide range of protection measures for witnesses and victims of very serious crimes, including trafficking in human beings. The protective measures provided for by the law include exchange of identity, residence or place of work, as well as urgent measures such as personal protection, supervision of the witness's home or temporary placement in a safe place.

Even though the law provides for the possibility of obtaining protection, the analysis of the criminal files identified that **in none of the criminal cases examined was protection of the injured parties ordered**. Similar tendencies are found at national level, where in 2020 only three persons were granted special protection as victims of human trafficking.¹⁶ In the in-depth interviews it was explained that the low indicators for special protection of victims of trafficking in human beings are due to the extremely low number of requests for such measures, as the measure cannot be imposed without the consent of the beneficiary of the protection measure. Similarly, the extremely low number of requests for special protection of victims of trafficking in human beings may be due to insufficient information (methods of communication with the victim are not always identified and accommodated) on the purpose and procedure of these measures. *"...Given the profile of the victim of trafficking in human beings, the written presentation of rights, which is drafted in legal language, does not represent sufficient and adequate information to the victim..."*. III_5

Informing victims of trafficking in human beings

Informing victims about their rights by handing out written materials about these rights is not always sufficient and effective. Throughout the criminal trial, prosecutors need to ensure that victims of trafficking in human beings are informed about the law and their rights. This conclusion focuses in particular on the need to familiarise them with the various types of support services and legal measures available to them, the availability of protection and assistance measures, the different options available to victims, the risks they face, the requirements for legalising their presence on the territory of the State Party, the various possible forms of legal redress, the way in which the criminal law system works, as a first step that would facilitate their access to justice.

At the same time, the representatives of the criminal prosecution body must ensure that relevant information from the criminal prosecution procedure has been provided to victims of trafficking in human beings in a timely and accessible manner (including with respect to the principle of accessibility and reasonable accommodation).

One interview participant indicated that *"... informing victims about their rights and obligations is more like a formality. Yet, many victims cannot even read and write, not even to understand a legal text copied from the Criminal Procedure Code. This is why many victims*

¹⁶ Evaluation Report for the Republic of Moldova. Third round of evaluation. Access to justice and effective remedies for victims of human trafficking, 2020.

neither seek protection nor turn to specialised services, which are offered free of charge...".

III_3

It should be noted that during the period under review, the General Prosecutor's Office has developed several circulars, general methodological tools and standard forms on informing the victim and/or the injured party about his/her rights and obligations, in order to ensure full information about the rights of the parties to the proceedings.

At the same time, given the multiple vulnerabilities of victims of trafficking in human beings, in order to ensure that they have an overview of what will happen in the process¹⁷, what their rights are and how they can effectively exercise them¹⁸, it would be useful for the criminal prosecution representatives to use, where appropriate, including information materials (leaflets) explaining rights, obligations and available services in accessible language and through alternative communication/information methods, such as writing, drawing, pictograms or a combination of methods.

For the above reasons, when applying the provisions of *Law no.137/2016 on the rehabilitation of victims of crime*, it is important that prosecutors, criminal prosecution officers and collaborators of the detection body, who are the main competent subjects in providing information counselling, make known in an accessible way to the victims of crime the information referred to in letter a) - e) paragraph (1) art.6 and only afterwards draw up the minutes in accordance with paragraph (2) art.6 of the Law.

In continuation of the thought, we reiterate the need to strengthen the interaction of criminal prosecution bodies, prosecutor's office with non-governmental organizations and other organizations engaged in providing assistance to victims, in order to assist them in their physical, psychological recovery, taking into account their needs for safety and protection of victims, which will also ensure an effective investigation of each case.

These findings make it necessary to develop and disseminate information materials for the representatives of the criminal prosecution service and the courts to inform victims about their rights and specialised services, so that they are accessible to people with a basic level of education, but also to respect the principle of reasonable accommodation for victims with multiple vulnerabilities (e.g. people with mental and psychosocial disabilities, sensory disabilities, illiterates, etc.). In this case, materials developed with the use of pictograms and graphics can be used.

Another recommendation is to train the representatives of the criminal prosecution body, courts, lawyers with a focus on the standards and procedures of a coordinated response to THB victims, specific skills and knowledge of interaction and communication with the THB victim.

Access to specialised services for victims of trafficking in human beings

An analysis of criminal files shows that 12 adult victims out of 45 received support services. Most of them received placement services and the fewest received social and psychological support services (Figure 24).

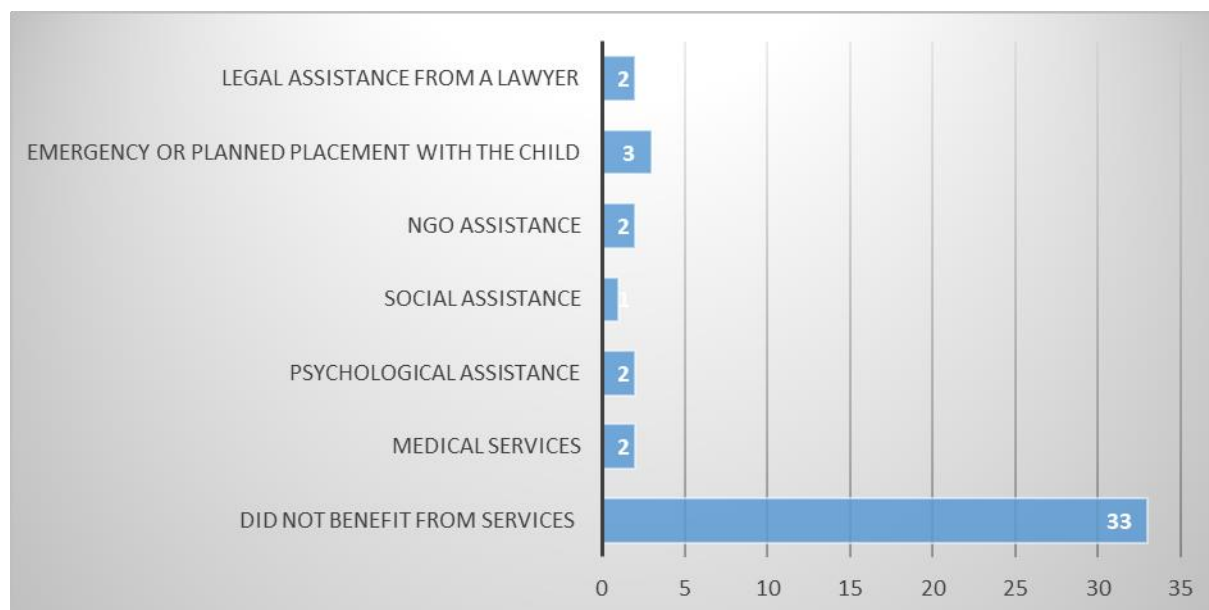
¹⁷ The need to issue an information leaflet should be assessed according to the needs of each individual.

¹⁸ Article 23 of the Constitution of the Republic of Moldova guarantees "the right of everyone to know his rights and duties" in the following terms: "(1) Everyone shall have the right to recognition everywhere as a person before the law. (2) The State shall ensure the right of everyone to know his rights and duties. To this end the State shall publish and make accessible all laws and other regulatory acts".

The referral procedure of beneficiaries to specialised services offered by NGOs or the Government is essential for the success of the rehabilitation and reintegration process.

Inadequate information to victims also seems to be an impediment to their access to services provided free of charge by both the State and NGOs. The interviewed specialists expressed the opinion that the level of awareness of support services is higher for victims living in urban areas. In rural areas, victims have limited legal information, and many are generally more vulnerable due to disability, ethnicity, poverty and lack access to information sources (internet, TV) etc.

Figure 25. Services received by trafficked persons



An impediment to the provision of psychological assistance services, as well as to the gathering of evidence in the criminal trial, is also the lack of a regulatory framework governing the practice of psychology, including the system of licensing and accreditation of psychologists with the right to practice psychology. This gap in the legislation also creates difficulties in the process of providing psychological counselling and assistance, and in the administration as evidence of the conclusions drawn by psychologists and psychological assessment reports of victims¹⁹ of crime, including THB. It should be noted that there have been several legislative initiatives²⁰ in this regard, but so far, no law has been adopted to regulate the free practice of psychologists, given that in the Republic of Moldova there is not even an officially adopted Code of Ethics for psychologists.

In this regard, it is necessary to develop a special law that would regulate the practice of psychology, including the licensing and accreditation system for psychologists with the right to practice psychology.

Another obstacle to accessing psychological support services for victims of trafficking is the insufficient development of such services at local level, especially in localities far from

¹⁹ Perevoznic I., Turcan A., Rusu L. Report on the analysis of the compatibility of the legislation of the Republic of Moldova with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence. Available <http://cdf.md/files/resources/141/CDF%20Raport%20compatibilitate.pdf>.

²⁰ https://gov.md/sites/default/files/document/attachments/intr12_151.pdf

large cities. Even though article 8-10 of the *Law no. 137 on the rehabilitation of victims of crime* stipulates that victims of crime can receive psychological counselling at state expense since March 9, 2017, these services are currently not accessible. The mechanism for providing psychological counselling at the state expense is not fully functional at the moment, as not all structures responsible for implementing the provisions of the above-mentioned law have psychologists specialised in providing the described services. However, it should be noted that at the time of the study, the national referral mechanism for the protection and assistance of victims of crime was being developed, and currently victims can receive psychological counselling from non-governmental organizations with expertise in victim assistance, if they have the necessary information.

Interview with the psychologist

"... It is regrettable that so few victims of human trafficking receive psychological support services. People who have traumatic experiences need long-term counselling in order to prevent revictimization, emotional stabilization, correct self-perception, restoration of positive relationships with others. In assisting these beneficiaries, psychologists face a number of problems in the rehabilitation and reintegration process. Often these people come from socially vulnerable families where parents/guardians have neglected or even bullied them. As a result, the emotional vulnerability associated with the abusive situation contributes to the development of feelings of inferiority, people may experience difficulties in social adaptation, may demonstrate victim behaviour or sometimes childishness, which prevents them from correctly perceiving the hidden intentions of other people. Furthermore, they may have difficulty in understanding the long-lasting consequences and social impact on them. Moreover, for this reason they often want to withdraw their claim to drop out of the court process, or change their statements, so participation in court processes is ineffective. At the same time, the psychological problems of these people can also be characterised by behavioural disorders with onset in childhood and adolescence: unsocialised conduct disorder, oppositional defiant disorder, depressive conduct disorder, anxiety disorders, somatoform disorders, obsessive-compulsive disorders, etc.

Psychological intervention for sexually abused victims aims to assess the impact of the abuse on the psycho-emotional state and crisis intervention in order to minimise the consequences of the abuse, create a positive oriented life scenario, modelling the hierarchy of values; verbalisation of feelings and their awareness; development of self-confidence, psycho-correction activities for behavioural problems; elements of art therapy; melotherapy, play therapy, psycho-drama, etc." III_1

Because of gender bias, male victims of human trafficking do not seek the services of a psychologist. *One interviewee for the purpose of this study validated these findings, noting that "...many men have the belief that it is a shame for a man to complain or ask for help from a specialist is an indicator of cowardice, vulnerability..." III_2*

...Some male victims of human trafficking, primarily from external trafficking, refuse to be assisted in specialised services, treating the situation of trafficking and exploitation as a personal failure...". III_1

With reference to placement services, **they are mainly requested by women**. In the files analysed, placement services **were requested only by women**. A possible explanation for the reluctance of male victims to apply for placement is social perceptions of the role of men in society and gender prejudice, as well as the lack of these services until 2021. We mention that in 2021, the Ministry of Health, Labour and Social Protection and the National Agency for Social Assistance, in partnership with the International Organization for Migration in Moldova, have developed a specialized Service for male victims of human trafficking.

The placement centre for male victims of human trafficking can accommodate 8 to 10 beneficiaries, taking into account precautionary measures in the context of the Covid-19 pandemic.

The specialists interviewed noted that the specialised service for male victims of trafficking often places men with the status of victims and presumed victims of trafficking in human beings, who have been exploited including on the territory of the Republic of Moldova.

III_4

In most cases, the main income of the men in need of placement is providing unskilled casual services to people in the village, often as seasonal farm labourers, on farms and in various stables. *"...We can see that this socially vulnerable group needs psycho-social support to overcome difficulties. In assisting these victims of THB the specialists face a number of problems in the rehabilitation and reintegration process. Most of the victims have a low level of intelligence, although they acquire self-care and self-management skills, they find it difficult to express their thoughts in writing, they may confuse data, they may have learning disabilities, especially when put in overloaded situations, they find it difficult to orient themselves accurately and in time, to be able to calculate and manage money. As a result - they can be easily manipulated, and situations of threat, physical aggression, and punishment contribute to the emotional state of the beneficiaries, make them experience permanent fear, insecurity, anxiety and indisposition. Most of the time these beneficiaries come from socially vulnerable families, in most cases they are illiterate and have no professional education."***III_1**

It should be noted that during the period under review, several information and awareness-raising campaigns were carried out with reference to the forms of THB, the risk factors, but also with regard to the rights of the victim in the criminal trial and the services available. Thus, during 2021, at the indication of the General Prosecutor's Office, the corps of officers from the territorial inspectorates of the police organized activities to raise awareness and communicate to the general public about the phenomenon of exploitation and its consequences, conducted visits to enterprises in the agricultural, livestock and construction sectors. The recommendations were aimed at the prevention of trafficking in persons for labour exploitation, both from the perspective of those who are employed and from that of employers, with their familiarization with the risks of the use of undeclared work, the failure to respect the rights of employed persons, including working and rest time, payment of wages, working conditions, with the priority of protecting the safety and health of workers at work, etc.

In order to facilitate access to specialised services for both female and male victims of human trafficking, it is recommended that information campaigns be organised to inform potential victims about their rights in the criminal trial and how to access protection and assistance services. At the same time, in order to facilitate the understanding of the information, it is necessary to develop and disseminate information materials for different groups of victims

and potential victims of THB (men and women) and different types of exploitation, including materials adapted for victims with multiple vulnerabilities (e.g., people with mental and sensory disabilities, illiterate people, etc.).

As the period of conducting the study coincided with the beginning of the armed conflict in Ukraine, which generated a large influx of refugees and increased the risk of THB among them, we consider it necessary to indicate that both authorities and NGOs have combined their efforts to provide psychological, social support services, etc. In this context, there is a need to identify the spectrum of services needed to prevent THB and assist victims, but also to accommodate these services to the needs of refugee victims (e.g. identification of psychologists to provide services in the native language, etc.).

The new social context, generated by the armed conflict in Ukraine, requires the adaptation of information materials and services to the needs of refugees. In the context where Moldova has received a large number of refugees from Ukraine, in order to prevent trafficking in human beings, but also to ensure their right to information, it is necessary to develop and disseminate a standard package of information materials for refugees, including in Ukrainian language, containing information on how to report cases to the criminal prosecution bodies, free phone lines and other services.

3.6. Prosecution of criminal cases of trafficking in human beings, subject to study

3.6.1. Publicity of court hearings and protection of victims

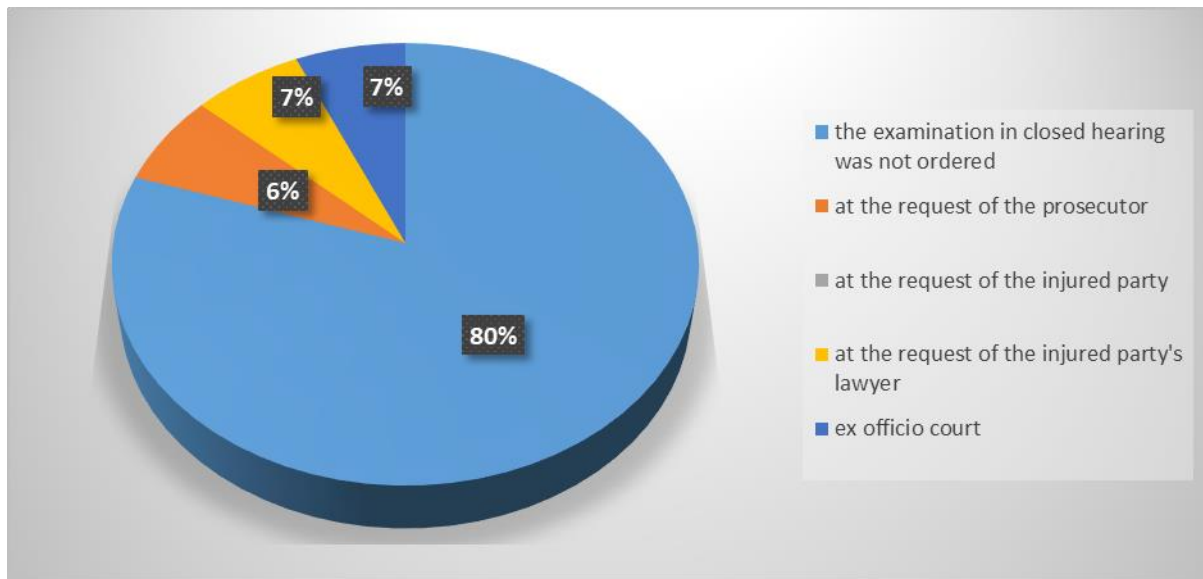
International standards and national legislation prescribe the public nature of court hearings. The trial of the case in closed session must be reasoned and conducted in accordance with all the rules of court procedure.²¹ Moldovan legislation provides for the possibility of holding the court hearing in camera during the whole or part of the trial in the interests of morality, public order or national security, when the interests of minors or the protection of the privacy of the parties to the trial so require, or to the extent deemed strictly necessary by the court when, due to special circumstances, publicity could prejudice the interests of justice.²²

The analysis of the criminal case files in the present research indicates that **in about 80% of the cases analysed, the courts examined the cases in open court. In 7% of the cases analysed, the court of its own motion ordered the examination of the case in closed session and in another 7% the closed session was ordered at the request of the state prosecutor.**

²¹ Perevoznic I., Monitoring of court cases on domestic violence, sexual violence and human trafficking, Women's Law Centre, 2018, p. 119

²² Art. 18 CPC

Figure 26. Publicity of court hearings



Protecting the privacy of victims of human trafficking is an important means of preventing stigmatisation and protecting their safety. The absence of such safeguards can lead to secondary re-victimisation or a diminished willingness of THB victims to cooperate with law enforcement authorities. The circumstances examined in trafficking cases are often intimate information, particularly in the case of sexual exploitation, and victims may feel afraid or ashamed to disclose these details when the hearing is public. In these circumstances, protecting the privacy of victims of human trafficking can be essential to ensure a fair trial.

The SCM regulation on how to publish court decisions on the national court portal and on the Supreme Court of Justice website²³ requires the publication of decisions on the court websites in order to ensure a transparent justice.

Subsequently, in order to protect privacy, the SCM Regulation requires the depersonalisation of personal data before the publication of decisions.²⁴ However, this analysis also found that **the identity and personal data of victims of trafficking in human beings in many cases can be easily determined or is identifiable** by analysing the procedural documents published on the court portal.

In this context, courts and administrative bodies must take steps to ensure that judgments are published and drafted appropriately to comply with the SCM Regulation, but also to ensure that the privacy and personal data of THB victims are protected.

3.6.2. Safety of trafficked persons in court premises and attendance at court hearings

In recent years, there has been an improvement in the quality of justice for victims of THB offences, particularly in cases involving child victims. This trend is also confirmed at

²³ Approved by SCM Decision No. 658/30 of October 10, 2017

²⁴ I. Chirtoaca et al, "Transparency of justice versus personal data" An analysis of the publication of court decisions in the Republic of Moldova, Centre for Legal Resources of the Republic of Moldova, Chisinau, 2020

national level. According to the *Report on the monitoring of court cases on domestic violence, sexual violence and trafficking in human beings*, the results of the court monitoring programme, carried out over a period of about 9.5 months, revealed some progress in the relations between the judiciary and the person subject to justice, especially victims of gender-based violence, including domestic violence and trafficking in human beings. The specifics of these categories of crime and their impact on victims and their entourage are better understood by some judges and trial participants.²⁵

However, **court infrastructure does not always protect victims from stigmatisation and/or intimidation by defendants, their sympathisers, relatives, activists, etc.** Although there has been a positive change in recent years in the attitude of prosecutors and judges to respect the dignity of victims and the inadmissibility of using inappropriate language towards them, the way in which court proceedings are organised still does not provide victims of crime, including the THB, with effective protection against intimidation, in particular when the victim has to wait in the courtroom hallway for the start of the trial or deliberation. When they do attend court, victims usually wait in the corridor for the trial to start, in conditions that sometimes do not fully meet safety needs.²⁶ Victims may be verbally assaulted by defendants, their relatives or supporters. The situation worsens when court sessions start later than planned.

The situation described *above* may influence the victim's willingness to participate in the examination of the case and to be cooperative with the representatives of the criminal justice system.

Similarly, during the research it was found that **the examination of cases of human trafficking often takes place in the absence of the injured party.** In 72% of the cases analysed, the victim/injured party attended only the hearing, in 7% the case was examined in his/her absence and in only 21% of the cases was the victim present at most of the hearings. These trends are also validated by the information received in the interview, one respondent reported that *"...usually the examination of these cases takes a very long time, the injured parties come to the hearing, they see that it is delayed and they lose confidence that they will get justice. In addition many of the victims are so poor that they cannot afford the luxury of paying for transport to come to court 20 times and the hearing to be postponed or interrupted. With their confidence and morale down the victims are going about their lives and focusing on providing for basic needs (money, food, family), not focusing on achieving the act of justice."*

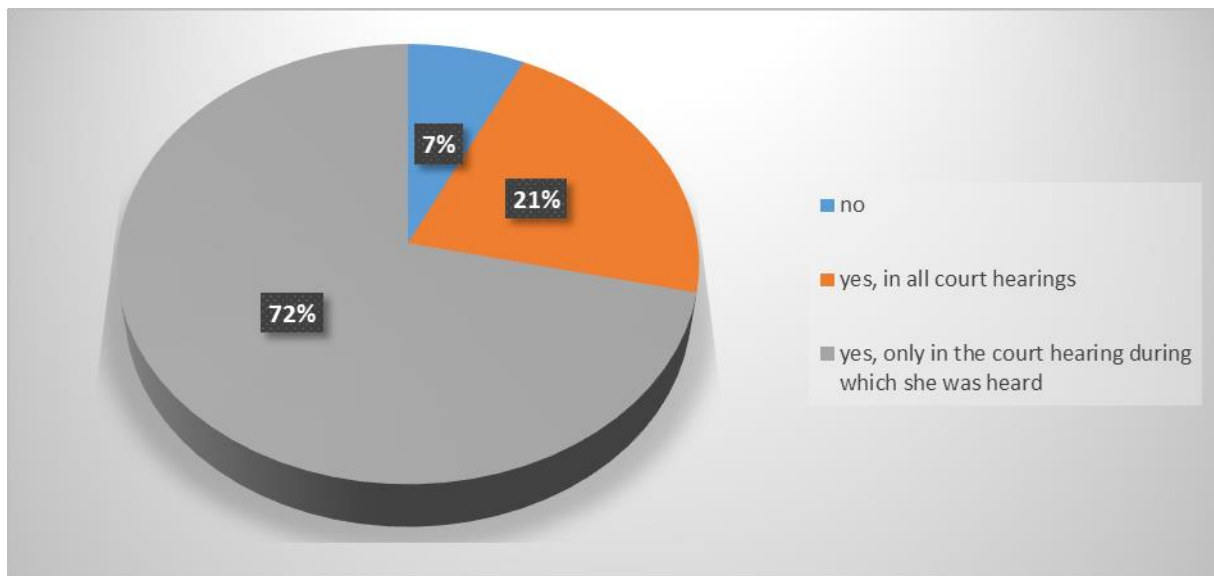
III_5

In order to ensure access to protection programmes for victims of THB, it is recommended to analyse the advisability of **amending the legislation so that the protection programme for victims of THB can be applied even in the absence of a request by the beneficiary, in case of a high risk of a state of danger.** In conjunction with the amendment of the regulatory framework, it is recommended **to develop a risk assessment tool that would allow the representatives of the criminal prosecution authorities to apply protection programmes to THB victims independently of their will, if a medium or high risk is found.**

²⁵ Perevoznic I., *Monitoring of court cases on domestic violence, sexual violence and human trafficking*, Women's Law Centre, 2018

²⁶ Perevoznic I., *Monitoring of court cases on domestic violence, sexual violence and trafficking in human beings*, Women's Law Centre, 2018, p. 119-120

Figure 27. Participation of the victim in the examination of the case on the merits



These findings make it necessary to refine the procedural mechanism so that victims are not re-victimised in their interaction with the justice system and the security of victims in the premises of criminal prosecution bodies and courts is ensured until and after the commencement of the proceedings/trials. In this regard, in order to ensure the safety of victims of THB, it is recommended that prosecution and court premises be accommodated/adapted so as to have separate entrances and waiting areas for victims/injured parties and accused persons/defendants, metal detectors at the entrance, accompanying services for victims leaving the court, legal, social and psychological services concentrated under one roof.

However, it should be noted that there are courts in the Republic of Moldova whose infrastructure is in line with the standards for the safety of THB victims. An example of good practice in this respect is the Ungheni Court premises, which has separate entrances and waiting areas for victims/injured parties and accused persons/defendants, as well as a metal detector at the entrance to the court.

The rights of victims of THB can only be effectively ensured through the establishment of an efficient, comprehensive and fair procedural mechanism. The National Criminal Procedure Act has been repeatedly amended and supplemented in order to improve the protection of victims of crime. Unlike the investigation of other crimes, the investigation of trafficking in human beings is distinguished by its specificity and aspects related to the multiple vulnerabilities of victims. In order to ensure this proportionality between the purpose of criminal proceedings and the effective realisation of the procedural rights of the THB victim, the procedural law is to contain certain additional safeguards.

Subsequently, we indicate that during the period of the study by the Ministry of Justice, the public consultation process of the Law on the amendment of some normative acts aimed at ensuring the rights of victims in the case of crimes related to sexual life and domestic violence was initiated. This draft law includes proposals to amend the Criminal Procedure Act in order to guarantee a procedural mechanism for ensuring the procedural rights of victims of the above-mentioned crimes.²⁷

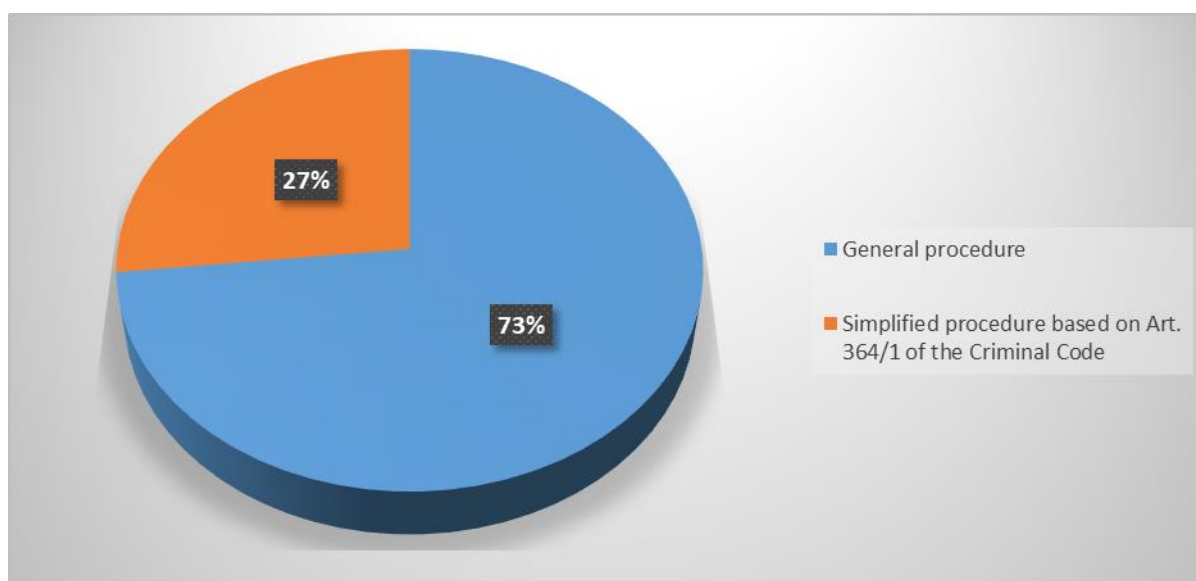
²⁷ <http://www.justice.gov.md/public/files/arij/anunturi/Proiect.pdf>

According to criminal procedure law, the rights of the victim are provided for in article 78 of the Criminal Procedure Code. However, taking into account the vulnerability of victims of THB, we consider that in order for them to have a fair trial and the most effective social reintegration, the law should guarantee them a procedural mechanism to ensure their procedural rights by providing them with special rights under conditions similar to those provided by law for victims of domestic violence and sexual offences. In this regard, the advisability of completing the draft law on the amendment of some regulatory acts aimed at ensuring the rights of victims in the case of crimes related to sexual life and domestic violence is to be examined, so that victims of domestic violence are granted special rights under conditions similar to those provided by law for victims of crimes of domestic violence and sexual life.

3.6.3. Procedure in which the criminal cases under study were examined

Out of the total of 15 criminal cases of trafficking in human beings included in the analysis programme, 11 criminal cases were tried under the general procedure and 4 cases under the simplified procedure, based on the evidence gathered during the prosecution phase. Thus, **73%** of the cases were tried under the general procedure and **27%** of the defendants requested examination under the simplified procedure. In none of the cases in which a simplified procedure was requested was the injured party present at the hearing. Also, no civil action was filed in any case.

Figure 28. Procedure in which the case was examined



3.6.4. Legal representation of victims of trafficking in human beings

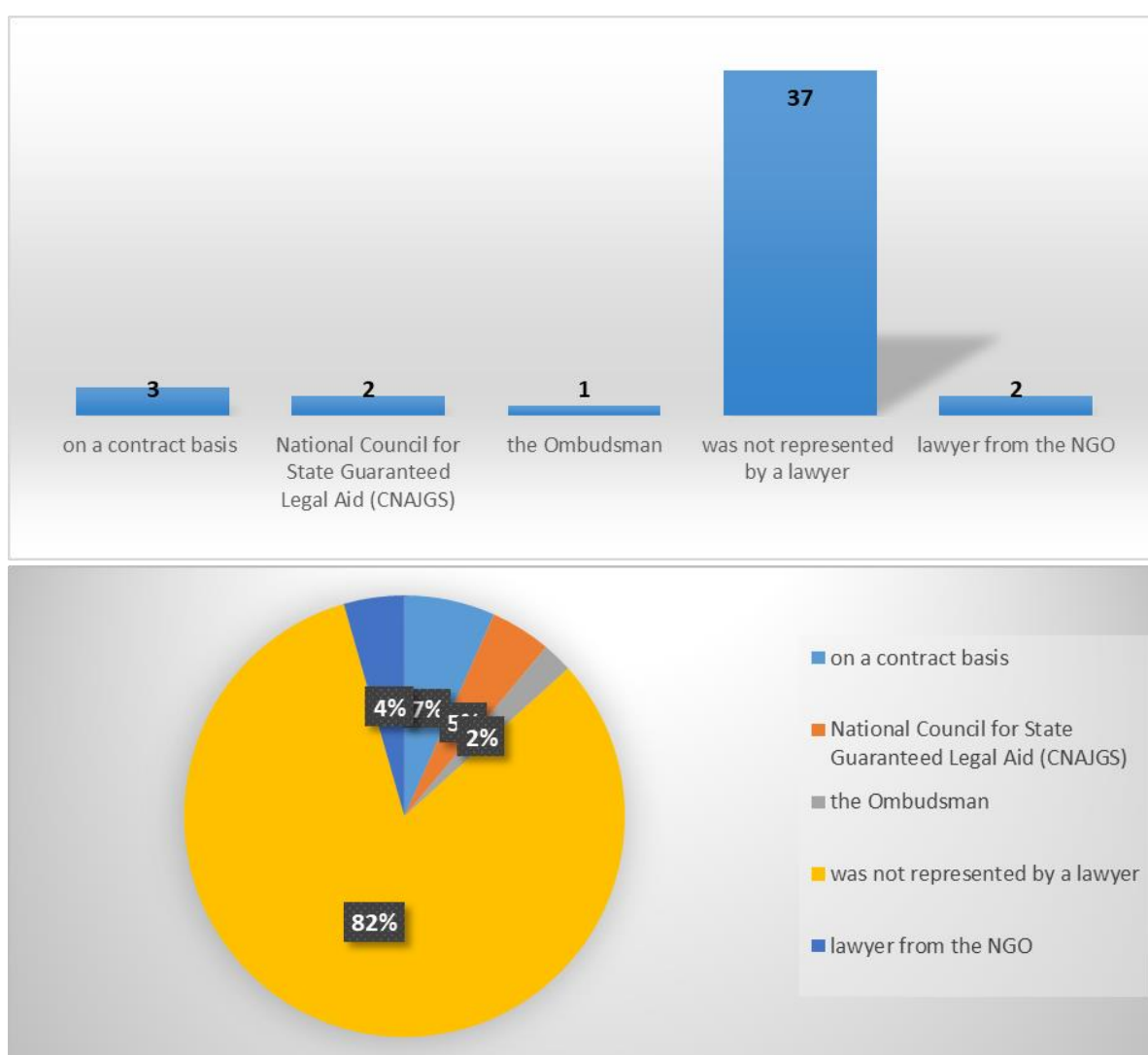
Law no. 241 of 20.10.2005²⁸ on preventing and combating trafficking in human beings provides for the right of victims to legal assistance.

²⁸ Official Gazette No. 164-167 art. 812, published on 09-12-2005. Version in force from 20.04.18 based on amendments by [LP32 din 16.03.18](#), [MO126-132/20.04.18 art.249](#)

Subsequently, Law no. 198 of 26.07.2007 on state guaranteed legal aid²⁹ in art. 20 letter g provides for the right of the victim of THB to qualified legal assistance regardless of the level of income.

However, the number of adult victims of THB represented by a lawyer in the criminal trials analysed is only **18%**. Of the **45 victims who appeared in the cases under investigation, 37 (82%) were not represented by a lawyer**, 3 were represented by a lawyer under contract, 2 - by a lawyer providing state guaranteed legal aid. The interests of 2 victims were represented by lawyers from NGOs active in the field, and in the interest of one victim with disabilities the People's Advocate for the Rights of the Child intervened at the case referral stage.

Figure 29. Legal representation of THB victims in the criminal cases analysed



The low number of SGLA beneficiaries with victim/injured party status is also due to the fact that these persons are only entitled to state guaranteed legal aid from the moment they

²⁹ Official Gazette No. 157-160 art. 614, published on 05.10.2007. Version amended by LP113 of 09.07.20, OG199-204/07.08.20 art.400; in force 07.09.20.

formally obtain the procedural status of injured party. Therefore, it is not sufficient to simply apply for state guaranteed legal aid, but it is mandatory to justify the procedural status by presenting the recognition ordinance as an injured party.³⁰

As a result of the amendments made to the Law no. 113 of 09.07.20, in force since 07.09.2020, there have been created good conditions to ensure early access of alleged victims of crime to state guaranteed legal aid necessary for filing a complaint in order to initiate the criminal prosecution.³¹ Thus, article 28 of Law no. 198 of 26.07.2007 on state guaranteed legal aid³² was amended by introducing paragraph (1¹), which provides for the possibility of receiving emergency legal aid in accordance with article 19 para. (1) letter b¹), at the request of the person or body that has been referred to the police or the police, in relation to the commission of domestic violence or sexual offences. In the light of the above amendments, emergency legal assistance is provided 24 hours a day, regardless of the income level of victims of domestic violence and sexual offences at the stage of filing a complaint.

Given the increased vulnerability of victims of THB, we consider it appropriate to amend and complete the regulatory framework so that victims of THB can also benefit from emergency legal assistance from the stage of filing a complaint under the conditions set out in Law no. 198 of 26.07.2007 on state guaranteed legal aid³³ for victims of domestic violence, victims of sexual crimes.

Another possible explanation is that the injured parties are not sufficiently aware of their right to the assistance of a lawyer providing state guaranteed legal aid, not to mention the possibility of hiring a private lawyer, which is not available to victims of domestic violence. The situation in question affects THB victims in the realisation of their procedural rights, including the right to bring a civil action.

In order to ensure that victims of THB are informed about the procedure for obtaining the assistance of a lawyer paid by the State, it is necessary to develop information materials on how victims can access the SGLA, so that they are accessible to persons with basic education, but also to victims with multiple vulnerabilities (e.g. persons with mental and psychosocial disabilities, sensory disabilities, illiterates, etc.). In this case, materials developed using pictograms and graphic representations can be used.

It should be noted that the National Council for State Guaranteed Legal Aid has a sufficient number of lawyers who grant SGLA, has specialised lists of lawyers who provide assistance to victims of crime³⁴, and in 2021 has developed methodological tools for lawyers who provide state guaranteed legal aid to victims of human trafficking³⁵. Also in 2021, NCSGLA initiated the process of developing quality standards for the work of lawyers providing qualified legal assistance on cases involving victims.³⁶

³⁰Annual Activity Report of the National Council for State Guaranteed Legal Aid for 2021, p. 28. Available at https://cnajgs.md/uploads/asset/file/ro/1671/Raportul_anual_de_activitate_pentru_anul_2021.pdf

³¹ Ibid, p. 28

³² Official Gazette No. 157-160 art. 614, published on 05.10.2007. Version amended by LP113 of 09.07.20, OG199-204/07.08.20 art.400; in force 07.09.20.

³³ Official Gazette No. 157-160 art. 614, published on 05.10.2007. Version amended by LP113 of 09.07.20, OG199-204/07.08.20 art.400; in force 07.09.20.

³⁴ https://cnajgs.md/ro/lawyers/avocat_specializat

³⁵ https://cnajgs.md/uploads/asset/file/ro/1584/ghid_avocati__2_.pdf

³⁶ Annual Activity Report of the National Council for State Guaranteed Legal Aid for 2021, p. 28. Available on the website https://cnajgs.md/uploads/asset/file/ro/1671/Raportul_anual_de_activitate_pentru_anul_2021.pdf

3.6.5. Compensation and civil damages

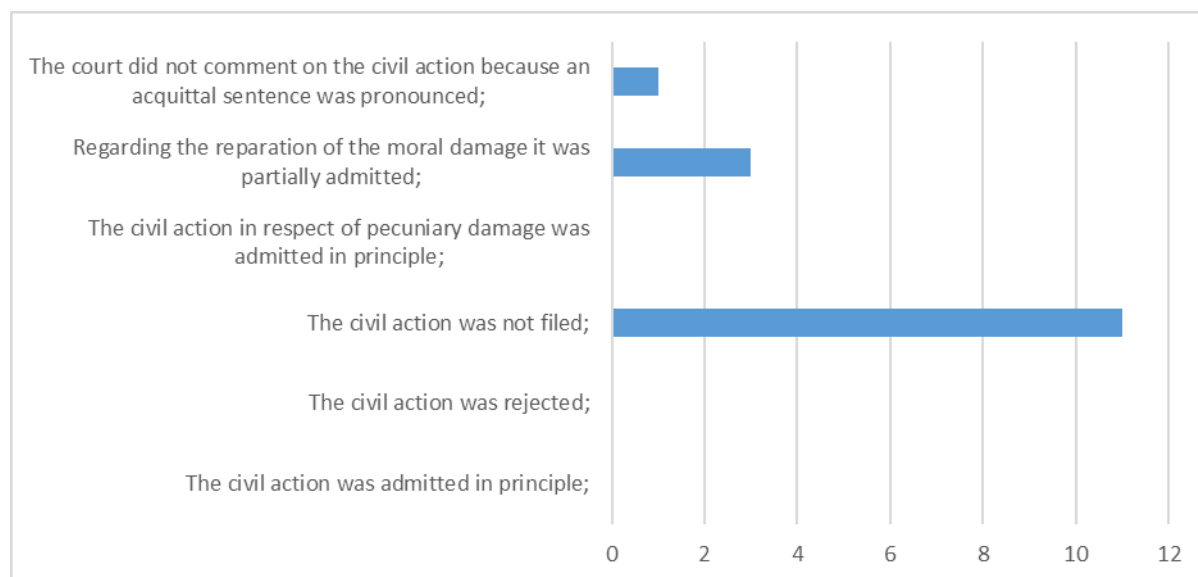
The Criminal Procedure Code and the Civil Code recognise the victim's right to plead for the damage caused to him/her, and the right to bring a civil action in the criminal trial and to be recognised as a civil party or by bringing a civil action under the rules governing tort liability. Thus, national legislation offers the victim of THB the possibility of recovering the damage caused by the offence of THB, both through civil and criminal proceedings. Civil action in criminal proceedings may be brought personally by the injured party or by his/her representative.

Subsequently, in the criminal trial the prosecutor is entitled to bring a civil action against the accused, the defendant or the person who bears material responsibility for the act of the accused, the defendant, in the interest of the injured person who is in a state of impossibility or dependence on the accused, the defendant or for other reasons is unable to realise his/her right to bring a civil action on his/her own.³⁷ This rule provides a guarantee for victims of THB, and as statistics and judicial practice show, the victims of THB are characterised by a greater degree of vulnerability, including due to their unequal position in relation to the defendant.

However, even if the trafficker is responsible for compensating the victims, **in practice THB victims are rarely fully compensated**, either because the trafficker has not been found, has disappeared or has declared bankruptcy.³⁸

The analysis of criminal files reveals that **few victims of trafficking make use of their right to bring a civil action in the criminal trial**. Thus, in only **23%** of cases did the victims claim damages, in **73%** of cases the victims did not file a civil action.

Figure 30. Number of civil actions brought by THB victims in the criminal trial



³⁷ art. 51 para. (2) Criminal Procedure Code

³⁸ Evaluation Report for the Republic of Moldova - Third Evaluation Round. Access to justice and effective remedies for victims of trafficking in human beings, 2020. Available at. <https://cancelaria.gov.md/ro/content/raportul-greta-fost-publicat-dupa-cea-de-iii-runda-de-evaluaire>

One possible explanation for the fact that victims of THB do not make use of the right to file a civil action is the lack of sufficient knowledge of this procedure, the lack of legal knowledge in drafting the claim, but also the fact that in very few cases the victim is represented by a lawyer who consults him/her, gathers evidence to justify the amount of damage claimed, drafts the claim and defends it in court. According to the *access to justice and effective remedies for victims of trafficking in human beings* Report, in practice, neither the prosecuting authorities nor the courts always ensure that information about the right to compensation is presented in a way that is clear, accessible and understandable to the victim.³⁹

A participant in the interviews indicated "*...many victims do not understand what a civil action is, even more so because they have no way of knowing how to write it, where to file it and what documents they have to present to justify the amount of damages claimed. Let's not forget that many victims of THB have a basic level of education, they barely understand where and how to sign and not just how to submit a reasoned claim. These vulnerabilities are an obstacle to claiming and receiving compensation and civil damages. That is why we must advocate for THB victims to be represented by lawyers*". III_5

Other specialists who participated in the interviews mentioned **that many victims of trafficking refuse to bring a civil action in the criminal trial for fear that the realisation of this right will be misinterpreted, i.e. that they will not be perceived as having reported the case** to the law enforcement authorities in order to obtain material benefits.

Another impediment to obtaining civil damages is the uncertainty of enforcement and the difficulties that arise in connection with enforcing a court order for civil damages. The specialists interviewed indicated that **the rate of positive outcome of civil compensation enforcement proceedings for victims of THB is not very high, as most debtors do not own assets that would warrant enforcement, and if they are in detention, they do not work and respectively do not have an income that can be pursued by the bailiffs**. This situation means that the enforcement of judgments, which have been enforced for damages, takes a long time and the victim who is a creditor is not compensated. In addition to these barriers to obtaining civil damages, there are also the costs of enforcement and the impossibility of enforcing a judgment against debtors living on the left bank of the Dniester, a region not controlled by the Moldovan authorities. This situation is also due to major problems arising from the accumulation of a degree of public dissatisfaction with some shortcomings of the enforcement system, such as: difficulties in identifying the bailiff administering an enforcement file; maintenance of some enforcement measures after the legal deadline; poor communication with some bailiffs; increasing number of unenforced files; etc.⁴⁰

In order to ensure the effective application, in relation to victims of trafficking in human beings, of civil legislation guaranteeing the right to compensation for material and moral damage, Law no 137 of 29.07.2016 on the rehabilitation of victims of crime was adopted, which establishes the legal framework and the functioning of the mechanism for the protection and rehabilitation of victims of crime, as well as the procedure for granting financial compensation by the state for damage caused by crime, including victims of THB.

³⁹ Ibid, p. 13

⁴⁰ <https://rm.coe.int/expert-report-enforcement-of-court-decisions-rom/1680a179f1>, p. 11

On the basis of Government Decision No. 965 of November 14, 2017, the Regulation of the Interdepartmental Commission for the financial compensation by the State of the damage caused by crime was approved⁴¹. The Commission as such was established on February 21, 2018.

Even though the provisions of the present law on compensation came into force on January 1, 2018, **so far no applications for financial compensation from the State to victims of THB crime have been made.**

In order to ensure the effective application, in relation to victims of trafficking in human beings, of the legislation guaranteeing the right to financial compensation by the State for the harm caused by crimes, it is necessary to take measures to inform the injured parties about the procedure for granting financial compensation by the State for the harm caused by crimes, as this will ensure access to compensation for all victims who have suffered.

The analysis of the criminal files reveals that the moral compensation awarded by the courts to victims of trafficking in human beings varies between MDL 5 000 (approximately EUR 245) - MDL 45 000 (approximately EUR 2211).

The conditions for compensation for non-material damage are the standard requirements of tort liability, i.e.: the damage, the wrongful act, the causal relationship between the act, and the damage and fault. In practice, difficulties often arise in the administration of evidence and in determining the amount of compensation for non-material damage caused by the crime, including the component of trafficking in human beings. These obstacles also arise because the legislation does not provide any mathematical formula for calculating moral prejudice.

The applicability of the principle of the court's assessment of the amount of compensation gives the court the discretion to determine the amount of moral damages for the victim according to its own best judgement. In determining the amount of compensation for non-material damage, the court is not bound by the amounts of compensation nominated by the parties or the experts they have brought in. On the basis of the relevant circumstances of the case, in determining the amount of compensation, the court must award the victim the amount which is likely to give him or her a fair satisfaction.

Compensation for non-material damage must respond to the need for both horizontal and vertical justice.⁴² The vagueness of the legal criteria for determining the amount of compensation leads to symbolic amounts of compensation for non-material damage compared to those awarded by the ECtHR. Even though, with the modernisation of the Civil Code, article 2037 para. (3) that when determining compensation, the court shall aim to award compensation which, on the one hand, is comparable in size to that normally awarded in similar circumstances and, on the other hand, takes into account the specific features of the case, the compensation awarded to victims of THB remains low. In the cases analysed, the highest amount awarded as civil compensation to the THB victim was **MDL 45 000** (approximately EUR 2211).

3.6.6. Reasonable trial

National studies show that in 2020, Moldovan courts will resolve all categories of cases at first instance, appeal and recourse in only 324 days, which is 39% faster than the CoE median

⁴¹ Official Gazette No. 399-410 art. 1075, published on 17.11.2017

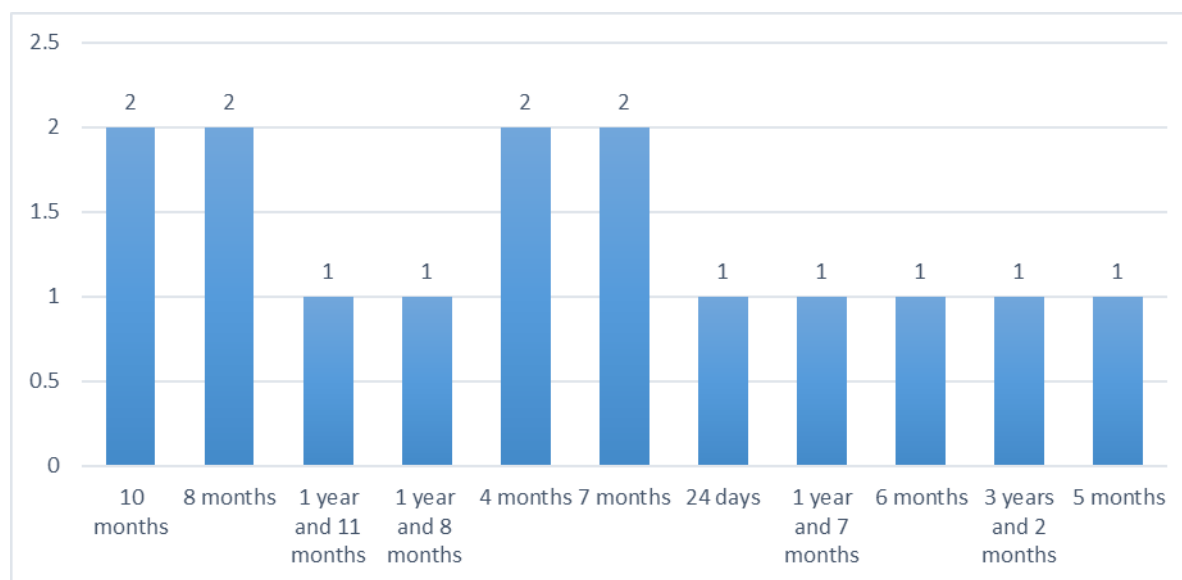
⁴² Case law study: pretium doloris - by way of moral damage (coord. Octavian Cazac), 2021, Chisinau. Available: animus.md

(529). The figures for 2020 confirm that the time taken to examine cases in Moldova has increased by 1-2 months, most likely due to the pandemic. Traditionally, criminal cases are examined with priority in all countries. This priority has not been observed in the case of the Republic of Moldova, where criminal cases are examined with the same speed as other cases. Even so, in 2020 criminal cases in the Republic of Moldova were examined at a slightly higher speed (325 days) than the CoE median (340 days).⁴³

However, the **time taken to consider a human trafficking case in all courts is between 6 months - 8 years and 6 months**. In the analysed files, the substantive examination of the case ranged from 24 days to 3 years and 2 months and the examination in all courts took between 6 months and 8 years and 6 months.

It should be noted that the criminal cases that were examined by the courts within the period of 6 months and 9 months were examined in simplified procedure under article 364/1 of the CPC and the sentences were not appealed. The situation attested in the research shows that **no improvement is observed in the speedy trial of criminal cases qualified under article 165 CC, compared to the situation in 2017**. According to the *Monitoring Report on the trials on cases of domestic violence, sexual violence and trafficking in human beings*,⁴⁴ prepared by the Women's Law Centre in 2017, the time for the examination of THB cases in most cases is quite long, some exceeding one year. In 45% of the cases monitored, the first hearing was called beyond the legal deadline, including in a few cases the legal deadline was exceeded several times. Often the date of the next court hearing exceeded 2 months, in other cases - even 3 months.⁴⁵

Figure 31. Timeframe for the examination of human trafficking cases in the court of first instance



⁴³ V. Gribincea, V. Mereuta, E. Popusoi, Justice in the Republic of Moldova in figures - a comparative overview, Legal Resources Centre from Moldova, 2021

⁴⁴ Available at: <https://cdf.md/category/publicatii/>

⁴⁵ Perevoznic I., Monitoring of court cases on domestic violence, sexual violence and trafficking in human beings, WLC, 2018, p.127

The analysis of the criminal files reveals that **in the court of appeal the time limit for examining a case of trafficking in human beings varies from 2 months to 6 years and 7 months**. Of the analysed files, one case that was examined on appeal for **6 years and 7 months** was of concern. (case study 3)

Case study 3

Case "E"

Court: Soroca Court

File number: No. 1-74/13 of 27.12.2013⁴⁶

Balti Court of Appeal

File number: 1a -23/2016 of 22.01.2020

Time and duration of the criminal trial:

- **Criminal prosecution 15.10.2012 - 26.02.2013**
- **Court of first instance 26.03.2013-27.12.2013**
- **Court of appeal 06.05.2014-22.01.2020**
- **Court of recourse 28.07.2020- 21.04.2021**

The victim: a rural woman who, due to financial vulnerability, decided to go abroad to work. The defendants recruited her by deception, offering her work in the construction industry, and arranged for the victim to be transported to the Russian Federation, city of Moscow, with the travel ticket being procured by a trafficker from money received by bank transfer from another trafficker in the Russian Federation. Arriving in the city of Moscow, the victim was met by the defendant E, who transported and housed her in an apartment, bought her clothes, then took her to the place of work where she was to provide sexual services for payment, explaining what she was to do. The victim was then forced by physical and mental force for two months to work as a prostitute, under the constant supervision of the defendant E.

Defendants: a man and a woman, unmarried, with no criminal record.

Charges: **Article 165 para. (2) letter (d)** of the Criminal Code (trafficking for the purpose of sexual exploitation)

Punishment imposed on the defendant by the court of first instance: The court of first instance reclassified the actions of both defendants on the basis of **article 220 para. (1) of the Criminal Code**, and imposed a fine of 600 (six hundred) conventional units - MDL 12.000

Reasons for sentence: In passing sentence, the court found that ... *the injured party was not recruited by the defendants, since recruitment, as an alternative to the offence of trafficking in human beings, must be carried out by coercion, and in the opinion of the court it is*

⁴⁶ Available on the website:

ile:///C:/Users/Admin/Desktop/proiect%20asitența%20victime%20trafic/3.%20Hotărîre%20Putină%20Crețchii%20CSJ%20era%20220%20condamnat%20165%20sex.pdf

confirmed that the consent of the injured party to act as a consumptive damsel was hers, her consent not being vitiated, the co-perpetrators not having resorted to coercion, fraud or deception, thus not having fulfilled the objective aspect of the offence of trafficking in human beings....

The sentence was appealed by the prosecutor.

Legal assistance: The victim was not represented by a lawyer.

Appeal hearing of the case: the case reached the Court of Appeal on **06.05.2014**. In this case, the postponement of the trial hearings was largely due to the absence of the defendants and their lawyers, the defendants' change of lawyers and the request for time to prepare the defence. Similarly, the hearing was postponed due to the resignation of the judge-rapporteur and the file was reassigned to another judge. After the defendant was placed in custody, the hearings became somewhat lucrative, even though each extension of custody was challenged in the higher court and when the case was returned again, a postponement was requested. Since after the conclusion of the trial the defendants changed their lawyers again, in order to respect the right of defence, the Court of Appeal allowed the lawyer's request for a resumption of the trial to hear in person all the witnesses indicated in the indictment.

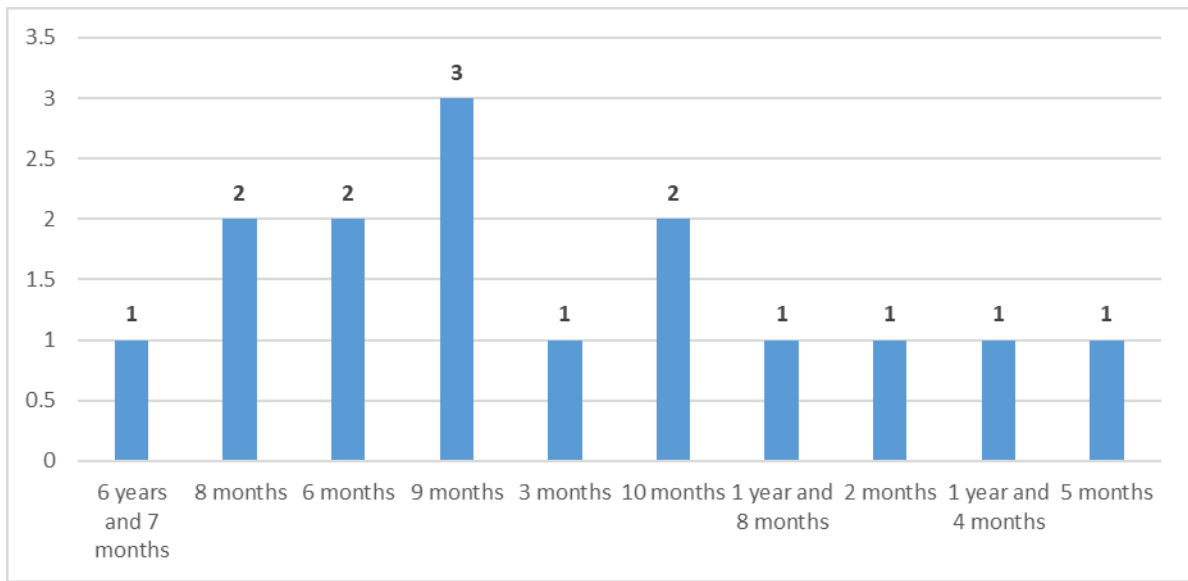
Decision of the court of appeal: the court decided to allow the appeal, quashing the sentence in part or in full, including ex officio, on the basis of article 409 para. (2) of the CPC, and handed down a new judgment, in the manner laid down for the first instance, as follows:

The defendant E. was found guilty of the offence provided for in article 165 para. (2) letter (d) of the Criminal Code and sentenced to 8 (eight) years of imprisonment in a closed penitentiary, with the deprivation of the right to carry out activities related to the migration of persons for 3 (three) years.

The defendant V. was found guilty of the offence provided for in article 165 para. (2) letter (d) of the Criminal Code and sentenced to imprisonment for 4 (four) years and 8 (eight) months in a closed penitentiary for women, with the deprivation of the right to carry out activities related to the migration of persons for 3 (three) years.

Under the pretext of exercising the right to defence, the defendant managed to delay the examination of the case and, because the law does not provide for detention for more than 12 months after his release, the defendant E. has absconded from serving his sentence. As for the defendant V., she is serving her sentence.

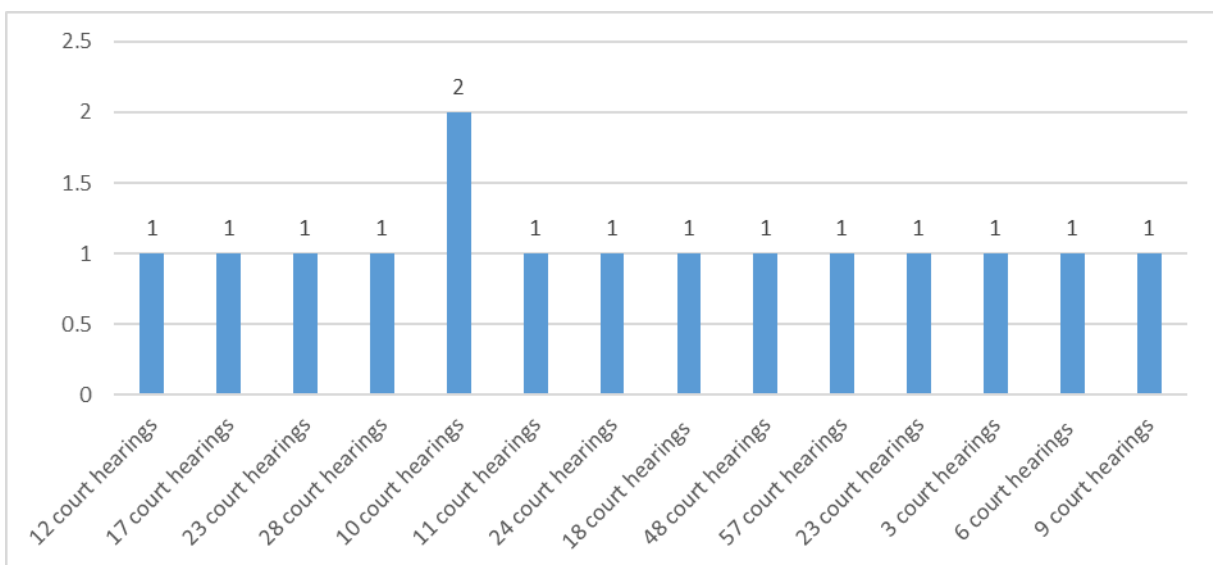
Figure 32. Timeframe for the examination of human trafficking cases in the court of appeal



Adjournments of court hearings are still widespread in the examination of criminal cases of trafficking in human beings, as the law allows a fairly wide margin of discretion to be enjoyed by the parties in the process of appointing the case for examination and at adjournment of hearings. It should be noted that none of the cases under consideration has been concluded with a decision on the merits or on appeal in a hearing.

The results of the research show that only one case was resolved with the issuing of the sentence in 3 hearings, while in the other files the number of hearings varies between 6 and 57. In one of the criminal cases analysed, 29 hearings were conducted by one judge at the stage of the examination of the merits, then after the application for recusal was granted, the case was transferred to another judge for further proceedings and, with the resumption of the judicial inquiry, the case was examined in the following 28 hearings.

Figure 33. Number of hearings at the stage of examination of the merits of the case.



The postponement of court hearings was in most cases due to the absence of the defence lawyer; absence of the defendant, including in cases where the defendant was not escorted; absence of the injured party; absence of the injured party's lawyer; non-appearance of the witness; absence of the interpreter.

It should be noted that the postponement of hearings creates a vicious circle, because in some cases, even if witnesses or injured parties initially turn up for the previously scheduled hearings, after several repeated postponements they stop coming.⁴⁷

The fact that the criminal trial has been going on for several years, with numerous court hearings, has a negative impact on victims of trafficking, who may be exposed to repeated confrontations with perpetrators and re-victimisation. Such situations may also contribute to victims' lack of confidence in the criminal justice system, and the State must identify ways to ensure that cases are examined within reasonable time limits, including by indicating in the Criminal Procedure Code deadlines for the examination of THB cases.

3.6.7. Sentence pronounced

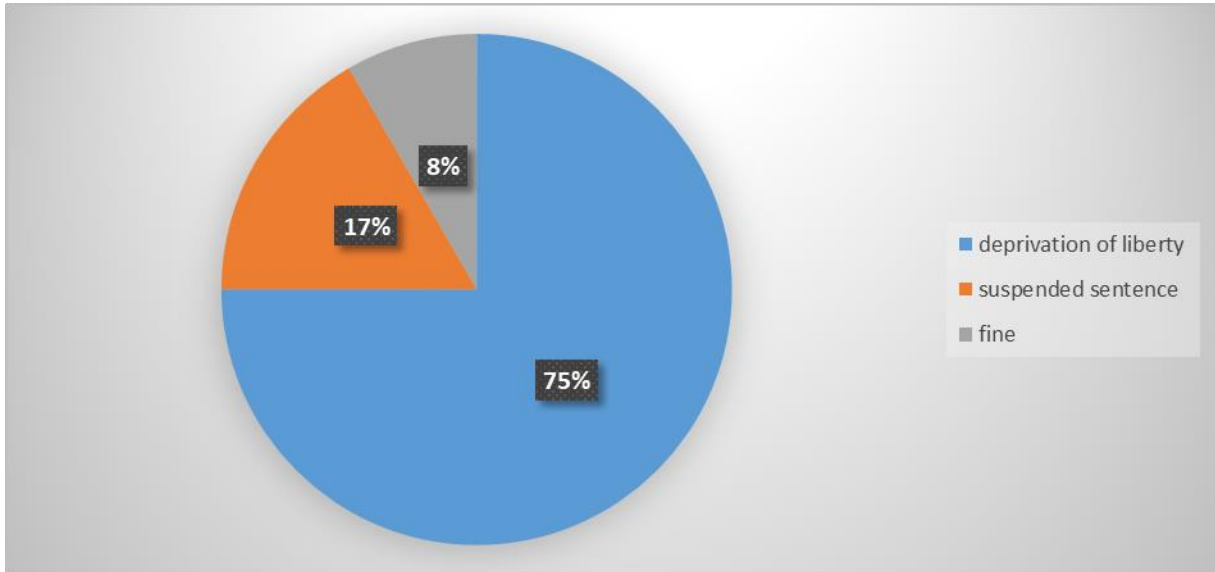
In the Republic of Moldova, the penalties provided for trafficking in human beings range from 6 to 12 years of imprisonment for offences involving adults (article 165 of the Criminal Code). Thus, the current criminal rules contain penalties that can be assessed as dissuasive and proportionate to the seriousness of the offences provided for in these rules. As regards the effectiveness of penalties, this is determined more by the functionality of the penalty enforcement mechanism.

The tendency of Moldovan courts in cases of trafficking in human beings continues to be the imposition of custodial sentences. As shown in *Figure 34*, in **75%** of the cases examined, after going through all appeals, they ended with the imposition of a custodial sentence.

According to the results of the research, out of the total number of criminal cases on human trafficking offences included in the research, only 2 cases of sentencing of defendants with application of article 90 CC and one case with a fine could be identified, in cases where convictions were pronounced, the court applied the prison sentence. The sentences in which non-custodial sentences were imposed were appealed by the prosecutor.

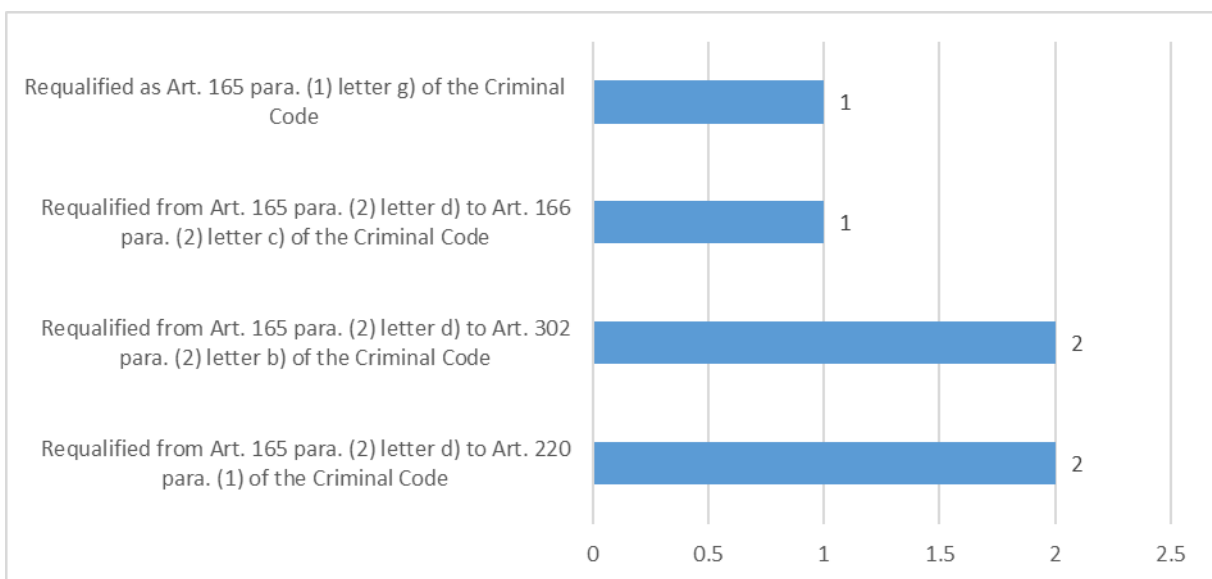
⁴⁷ Monitoring report on court hearings involving children, NICJR 2014. Available on the website: http://irp.md/uploads/files/2014-12/1417603200_raport-de-monitorizare_unicef-2014.pdf

Figure 34. Sentences imposed on defendants



It should be noted that the suspension of the execution of the sentence (art. 90 CC) was applied in cases where the court reclassified the actions of the defendants as either procuring or organising begging (art. 302 CC). Of the 15 cases examined by the courts, in 6 cases the actions of the defendants were reclassified. In the judgments in which the court reclassified the defendants' actions, it justified its decision by the fact that in the process of examining the evidence it was unable to confirm the victim's vulnerability and the trafficker's abuse of this situation. Another argument used by the court was that the victim had not been deceived about working or living conditions or that she did not know about the fact that she was a minor. *Figure 35* gives a detailed overview of the items in which the defendants' offences were reclassified by the first instance court.

Figure 35. Reclassification of facts by the court of first instance



The legal basis for the individualisation of the penalty is Chapter VIII of the General Part of the Criminal Code. To these provisions must be added the provisions of the CPC on the individualization of the criminal penalty of the accused at the trial of the case on the basis of the evidence administered during the criminal prosecution (art. 364/1 para. (8) CPC) or the reduction of the defendant's sentence as a reward for the violation of the defendant's right (art. 385 para. (5) CPC).

The criminal penalty is aimed at restoring social equity, correcting the convicted person, and preventing new offences from being committed by both the convicted person and others. In order for the penalty imposed on the defendant to achieve the above-mentioned aims, the criminal law lays down certain criteria for the individualisation of the penalty. The criteria for the individualisation of the penalty are the requirements, which the court is obliged to follow in the process of determining and applying the penalty. The CC establishes general and special criteria for the individualisation of the penalty. The general criteria for the individualisation of criminal penalties are set out in article 75 of the Criminal Code.⁴⁸

The results of the research show that Moldovan courts pay attention to the issue of proportionality of the penalty and seem to be aware of the importance of individualization of the penalty and the relevant criteria contained in article 75 para. (1) of the Criminal Code. However, the approach taken to the application of the individualisation criteria is rather formalistic.⁴⁹

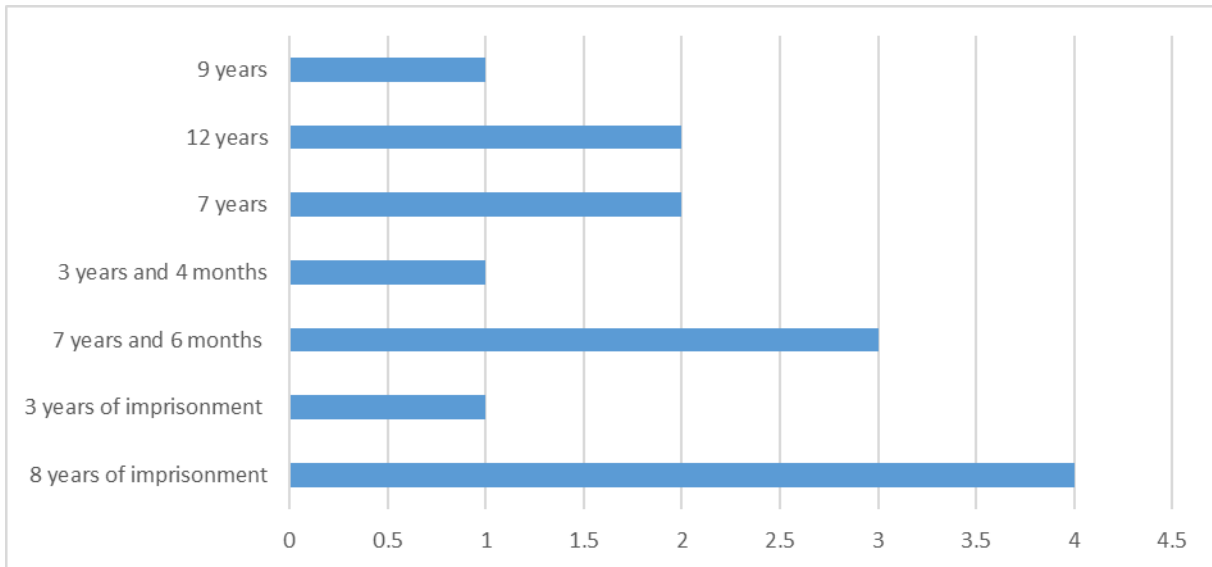
In the sentences analysed in the study, the courts have largely acceded to the prosecution's requests for aggravating circumstances. With regard to the application of mitigating circumstances, there is a tendency among courts to accept mitigating circumstances invoked by the defence or the prosecution. However, milder penalties are not applied as often as requested by the defence.

Data collected on the length of custodial sentences in trafficking cases show that they range from 3 to 12 years of imprisonment. Figure 36 gives a detailed overview of the length of custodial sentences imposed on defendants in the studied files.

⁴⁸ Ulianovschi Gh., Dolea I., et.a. Guide on the application of punishment, LRCM, Chisinau, 2014. Available at: <https://crjm.org/wp-content/uploads/2015/01/Ghid-cu-privire-la-aplicarea-pedepsei.pdf>

⁴⁹ Report on the enforcement of criminal penalties in the Republic of Moldova, Council of Europe, 2021. Available on the website: <https://rm.coe.int/report-criminal-sanctions-rom/1680a1c6f1>

Figure 36. Term of prison sentence



However, it should be noted that the above analysis of the data collected on the length of custodial sentences is based on sentences handed down for a limited selection of cases, as described in the methodology above.

Although the aim and objectives of the present research did not concern the quality of the reasoning of the judgments, in the context of the analysis of the sentences imposed in terms of their proportionality and effectiveness, their fairness in terms of the material and physical damage suffered by the victim, it is observed that **the arguments on which the court bases its decision do not always respond in a reasoned manner to the criticisms, means and instruments invoked by the parties.** This tendency is observed in the reasoning of judgments in general and also in the reasoning of individualisation criteria, proportionality and, in particular, mitigating and aggravating circumstances. Courts outside Chisinau seem to be the most problematic in this respect, while Courts of Appeal pay more attention to the adequate motivation of their decisions.⁵⁰ In the context of the *above*, the study has raised interest and concern in a case examined by the Ungheni Court, in which, for the actions of the defendant qualified under **article 165 para. (2) letter (b), (d) of the CC, the court sentenced the defendant to a fine of 500 c.u., which is MDL 25 000**, with deprivation of the right to hold office or perform activities of management of material goods for a period of 5 years. (Case study 4)

Case study 4

Case "C"

Court: Ungheni Court

File number: no. 1-535/18 of 20.03.2019⁵¹

Time and duration of criminal trial:

Criminal prosecution **05.10.2017-25.09.2018**

⁵⁰ Ibid, p.8

⁵¹ Available on the webpage:

file:///C:/Users/Admin/Desktop/proiect%20asiten%C8%9Ba%20victime%20trafic/proiect%20asiten%C8%9Ba%20victime%20trafic/sentinta%20165%20amenda.pdf

Court of first instance **25.09.2018-20.03.2019**

The victims: a woman and a man from a rural area, who were in a married relationship and because of financial vulnerability, decided to go abroad to work. The defendant C. told them that he could find them a job in Italy, but they had to pay 350 euros each. The victims gave their consent, the defendant C. told them the date and time they had to get on the bus and that in Rome a Roma woman would be waiting for them. When they arrived in Italy, the woman was assigned to a mini-hotel and worked as a cleaner and her husband as a construction worker, but they were not paid their wages, even though they worked hard.

Defendants: a man with higher education, single, not in the military, no criminal record.

Charges: Article **165 para. (2) letter (b), (d)** of the Criminal Code (trafficking for the purpose of labour exploitation)

Penalty imposed on the defendant: fine in the amount of 500 c.u., which amounts to MDL 25,000 (approximately EUR 1,220), with deprivation of the right to hold office or perform activities involving the management of material goods for a period of 5 years. It should be noted that article 165 para. (2) of the Criminal Code does not provide for a fine for this type of offence.

Reasoning of the sentence: In passing sentence, the court found that the defendant admitted guilt, the act was committed by him, he is guilty of committing it, the act constitutes a crime, it is correctly qualified by the prosecution under article **165 para. (2) letter (b), (d)** of the Criminal Code. Subsequently, the court found that the defendant has compensated the injured parties for the damage caused by the crime, has admitted guilt and requested examination under art. 364/1 CPC, regrets the crime, at the place of living is characterized positively. At the same time, the court applied to the defendant the provisions of article 79 para. (11) of the Criminal Code, which, taking into account the exceptional circumstances of the case, gives the court the possibility to apply a punishment below the minimum limit, prescribed by the criminal law for the respective offence, or a more lenient one, of another category, or it may not apply the mandatory additional punishment. In the present case, it is not clear which specific mitigating circumstance was the basis for the application of a more lenient penalty, the court merely stating that both a mitigating circumstance and an accumulation of such circumstances related to the situations referred to in article 79 of the Criminal Code may be considered exceptional.

Legal assistance: The victims were not represented by a lawyer.

From the analysis of criminal records, it is evident that long prison sentences for trafficking in human beings are common in the Republic of Moldova. **Of concern is the fact that out of the 15 files analysed, only in 4 cases was it established that the defendants were serving the actual prison sentence.** This situation shows a high rate of evasion of the sentence. The specialists who participated in the interview stated that among the factors that favour evasion are the long duration of the examination of criminal cases, which exceeds the 12-month term and forces the court to release the defendant from pre-trial detention, the proximity of the Transnistrian region, which is a favourable niche for evasion from law enforcement bodies as the Moldovan authorities do not have control over this region.

3.6.8. Confiscation in cases of trafficking in human beings

Organised crime generates significant amounts of illicit revenues and proceeds globally and in Europe. The main criminal activities in Moldova are corruption, tax evasion, illicit drug trafficking, trafficking in human beings, smuggling of arms and illicit goods, cybercrime, tobacco smuggling and large-scale financial crime. Although the Republic of Moldova has substantially invested in policy reform measures in recent years to combat the link between corruption, organised crime and illicit financial flows, they still exist.⁵² In this context, there remains a significant need to strengthen and improve the capacity and results of seizure and confiscation of assets derived from such illicit activity, including THB, and to channel these recovered assets to priority development needs, such as those in the health, education sector, etc.

The Republic of Moldova has a two-tier confiscation system allowing for special and extended confiscation, which applies to natural and legal persons. According to the provisions of the Criminal Code of the Republic of Moldova⁵³, special confiscation and/or extended confiscation may be applied in cases of trafficking in persons. Confiscation may concern movable and/or immovable property.

In the criminal cases covered by this study, no cases were identified where confiscation was applied. The results of the interviews show that even at national level the use of confiscation in trafficking cases is an exception rather than a rule. The study of judicial practice shows that in cases of trafficking in human beings, movable property is usually confiscated. In most cases, the courts have ordered the confiscation of money derived from the commission of human trafficking offences. However, there are also cases where the object of confiscation was other property and the courts have differed in their rulings.⁵⁴

Interview participants indicated that proving that assets are acquired through crime or are linked to criminal conduct is a complex and lengthy process, with criminal trials often taking years, postponing the issuance of final decisions for the confiscation of assets derived from organised crime and THB offences. Often the defendants do not have the assets, or they have been registered to third parties. Another obstacle relates to cross-border cooperation for the recovery of criminal assets, as success in this area often depends on the willingness of a foreign jurisdiction to accept and implement Moldova's requests. Despite the finding of some poor practices, overall, there are **positive trends**, such as the revision of the regulatory framework that would allow the recovery of criminal assets to align more closely with European standards and practices. **Correspondingly, all institutional and administrative measures are to be taken to reinforce the positive trends, namely:**

- Consideration should be given to establishing the use of extended confiscation and special confiscation as a rule rather than an exception in the examination of THB cases;

⁵² Illicit Financial Flows and Asset Recovery in the Republic of Moldova, UNICRI, Chisinau, 2021, available at: <https://unicri.it/sites/default/files/2021-08/Illicit%20Financial%20Flows%20and%20Asset%20Recovery%20in%20the%20Republic%20of%20Moldova%20RO-MD.pdf>

⁵³ Art. 106 and art. 106¹ para. (1) of the Criminal Code

⁵⁴ Renita Gh., Confiscation in cases of human trafficking and pimping, Materials of the Conference on the occasion of the 60th anniversary of the founding of the Faculty of Law of the State University of Moldova, Chisinau, 2020, available on the website: <https://juridicemoldova.md/9679/confiscarea-in-cauzele-de-traffic-de-persoane-si-proxenetism.html>

- Identify, strengthen and implement mechanisms that improve efficiency in the seizure, confiscation and liquidation of assets acquired through the offence of THB.
- Enhance the capacity of professionals to carry out the identification, seizure and confiscation of assets derived from crime through the development of recommendations, methodological guidelines and regular training for justice system staff to enable an enhanced capacity to carry out thorough investigations of THB assets alongside traditional criminal prosecutions. Training should also consider coordination with international partners to ensure regular exchange and dialogue on best practices (as well as the resolution of ongoing cross-border cases) in tracing, freezing, seizing and confiscating assets derived from crime.

CONCLUSIONS

- The provisions of the current legislation of the Republic of Moldova on the protection and assistance of victims of THB in the criminal trial are largely in line with international standards in this field. However, practices in responding to cases of trafficking in human beings demonstrate certain shortcomings, with the justice system not yet fully capable of meeting their special needs in a fair, effective and victim-centred manner.
- The number of criminal cases initiated on the basis of the components of offences covered by the study and falling under the category of THB is relatively constant, with a decrease for the last two years of reference of this study, for offences qualified under art. 165 of the Criminal Code. The statistics also show a significant reduction in the number of cases initiated under article 206 of the Criminal Code (trafficking in children) during the period analysed.
- In the period 2017-2021, there is also a decrease of about **50%** in the number of criminal cases submitted to the courts. Of the **461 criminal cases** initiated, in the period 2017-2021, **234 criminal cases** were sent with indictments to the courts for substantive examination, which is about **50%** of the number of cases initiated.
- The statistical data analysed indicate a **high rate of prison sentences** in the cases examined in this study. However, a decrease in the number of sentences of conviction handed down by the courts is observed for the years 2020-2021.
- At national level **there is a prevalence of male victims compared to female victims**. Out of the total number of **1189 victims** of human trafficking, **734** are men and **455** women. A possible explanation for these data is that during the period under review, trafficking in persons **was more prevalent for the purpose of labour exploitation**, i.e. in construction work, where men, even unskilled in this field, are predominantly involved.
- In rural areas there is a higher risk of trafficking for both women and men. In the 20 cases analysed, **85%** of victims come from rural areas and **15%** from urban areas.
- Although some statistical data on the response of the criminal justice system to human trafficking are collected and some are also made public, each law enforcement institution has a specific methodology for registering and recording cases, which creates obstacles to an objective comparison of national data with the situation in other countries.
- In the process of analysing the 20 criminal files, **57** injured parties were identified. In the cases analysed, **23** women, **22** men and **12** children were victims (in the cases where children were included, there was a concurrent qualification of 165 and 206 CC). The analysis of the profile of victims in cases of trafficking in human beings found that 51% were women victims, aged between 18-55.
- In some cases, part of the women appears as defendants in other cases as injured parties. One of the reasons why victims become traffickers is the influence of the trafficker, when the trafficker persuades the victim to carry out part of the crime with the idea that if certain investigations come to light, the victim will be put in the spotlight. It is difficult to separate the moment when the victim is exclusively a victim from the moment when the victim, as a result of the trafficker's influence, also acts as a recruiter or transporter. The lack of rehabilitation services, including long-term rehabilitation, can also be one of the reasons why victims end up normalising their exploitation and recruiting other young girls on their own.

- In the criminal files studied by the experts, external trafficking was found to be prevalent. Of the total number of adult victims, **19%** were exploited within the territory of the Republic of Moldova, while **81%** of victims were exploited outside the country. **44%** of victims were sexually exploited, **44%** were exploited through labour and **12%** were exploited through begging. In external trafficking, the main country of destination of victims is the Russian Federation, followed by Turkey, the Arab Emirates, Italy, Thailand, Ukraine, Georgia. It should be noted that the facts in the cases investigated here took place in 2012-2015, and at national level in recent years there has been a change in priority destinations, such as the Russian Federation for several years, and a shift towards new destinations, such as the countries of the European Union, with fake Romanian passports being frequently used for this purpose. Thus, according to the situation observed in 2021 in the criminal cases of trafficking in human beings, in terms of countries of destination, the European Union area is confirmed as a constant destination with a downward trend. The main country of external trafficking in 2021 (in terms of the number of victims) is France, as a country of destination with 122 trafficked persons (115 men and 7 women) for the purpose of labour exploitation and 43 trafficked persons (21 women and 22 men) for the purpose of obtaining aid, allowances or social benefits.
- The main reason for the emigration of victims of human trafficking is poverty and lack of employment, with **93%** of victims in the criminal cases analysed not being employed. Victims of sexual exploitation most often come from socially vulnerable families, and victims of exploitation through begging are people with multiple vulnerabilities, determined by disability, ethnicity, etc.
- The majority of men in the cases analysed were victims of labour or begging exploitation. Respectively, in the cases analysed, 1 male was exploited through begging and 21 men became victims of labour exploitation.
- The age of the victims in the cases of trafficking in human beings, subject to analysis, ranges: for women - between 17 and 44 years, for men - between 40 and 64 years. **42%** of the victims were single, **11%** were in a marital relationship, **7%** were cohabiting or divorced, and in **12%** their marital status was not identified, as the targeted information was not indicated in their survey data.
- **The number of male THB victims who applied for SGLA is twice as high as that of women.** The number of requests for SGLA for victims of human trafficking is higher at trial compared to at criminal prosecution.
- Women account for a higher proportion of requests for psychological assistance and placement services. **Gender prejudice** and social perceptions of the role of men **are the main barriers for male victims of trafficking to access psychological and placement services.**
- The lack of a regulatory framework for the practice of psychology, including the system of licensing and accreditation of psychologists with the right to practice psychology, is an impediment to the provision of psychological support services and the gathering of evidence in the criminal trial. This gap in the legislation also creates difficulties in the process of providing psychological counselling and assistance and in the administration of psychological findings and psychological assessment reports of victims of crime⁵⁵, including THB, as evidence.

⁵⁵ [Perevoznic I., Turcan A., Rusu L. Report on the analysis of the compatibility of the legislation of the Republic of Moldova with the provisions of the Council of Europe Convention on preventing and combating violence](#)

- **Every second person convicted of human trafficking is male.** During the period analysed, of the 151 defendants, **81 (54%)** were male and **70 (46%)** female.
- **The most common form of pre-trial detention for defendants is pre-trial detention.** In cases of trafficking in human beings, defendants are detained for a longer period, but this is justified and determined by objective factors, in particular the risk of absconding. However, given that, human trafficking cases are considered over long periods of time and pre-trial detention can be applied and extended for up to 12 months after release, many defendants abscond.
- **In every second case, the basis for the prosecution was the minutes of the detection of the offence directly by the prosecuting authority,** and in only **23%** of cases was the prosecution initiated on the basis of the complaint. This trend can be seen as positive, reflecting the diligence and promptness of the criminal prosecution bodies.
- **The interval between the commission of the criminal offence and the referral to the law varies between 15 days and 8 years.** In most cases (4 cases) the prosecution was notified 6 months after the offence was committed, followed by 1 month and 3 years.
- **In every second case, the evidence-gathering actions by the prosecution body until the issuing of the ordinance to start the prosecution were carried out within one day,** in 3 cases within 15 days and in only one case within 30 days.
- **In none of the criminal cases examined was the protection of injured parties ordered.** Similar tendencies are found at national level, but in 2020 only three persons were granted special protection as victims of human trafficking.⁵⁶
- An impediment to requesting international cooperation concerns the unstable statements of victims regarding their location in the country of destination (lack of address or other landmarks that could be subject to verification to establish whether they were there during the period of exploitation, as well as lack of data (name/first name), other concrete data on potential traffickers or pimps in the country of destination). Another obstacle in requesting international cooperation is the non-cooperation of countries such as Turkey or the United Arab Emirates. Otherwise, with other countries from which Moldova has requested information on cases of trafficking in human beings under investigation, either through international police cooperation channels or through requests for international letters rogatory through the General Prosecutor's Office, no impediments have been identified, except that some replies are received over very long periods (from a few months to 1-2 years).
- The examination of THB cases in court still does not meet all privacy requirements. **80% of the cases analysed were examined by the courts in public hearings, and in several cases, the identity and personal data of the victims of trafficking can be easily determined or is identifiable** by analysing the procedural documents published on the courts' portal.
- **Court infrastructure does not always protect victims from stigmatisation and/or intimidation by defendants, their sympathisers, relatives, activists, etc.**

[against women and domestic violence. Chisinau: S. n., 2019. 240 p. \[cited 18.03.2022\]. Available http://cdf.md/files/resources/141/CDF%20Raport%20compatibilitate.pdf.](http://cdf.md/files/resources/141/CDF%20Raport%20compatibilitate.pdf)

⁵⁶ Evaluation Report for the Republic of Moldova. Third round of evaluation. Access to justice and effective remedies for victims of human trafficking, 2020.

- There is a consistent shift in attitude towards law enforcement's compliance with the requirements of ensuring the dignity of victims of THB and the inadmissibility of using inappropriate verbal and non-verbal language towards them.
- A peculiarity of the trial of criminal cases of trafficking in human beings is that **the examination of cases often takes place in the absence of the injured party**. Thus, in **72%** of the cases analysed, the victim/injured party attended only the hearing, in 7% the case was examined in his/her absence and in only **21%** of the cases was the victim present at all the hearings.
- **Victims of trafficking rarely avail themselves of the right to bring a civil action in the criminal trial**. Thus, in only **23%** of cases did victims claim damages, in **73%** of cases the injured parties did not file a civil action. Many victims of trafficking refuse to bring a civil action in the criminal trial for fear that the exercise of this right will be misinterpreted, i.e. that they will not be believed to have reported the case for profit.
- The number of adult victims of THB represented by a lawyer in the criminal cases analysed is only 18%. Out of the **45 victims who appeared in the cases investigated, 37 (82%) were not represented by a lawyer**, 3 - were represented by a lawyer under contract, 2 - by a lawyer providing state guaranteed legal aid. The interests of 2 victims were represented by lawyers from NGOs active in the field, and in the interest of one disabled victim the People's Advocate for the Rights of the Child intervened at the stage of referral of the case. Thus, the authorities' concern to ensure, first and foremost, that defendants are provided with all the procedural guarantees appropriate to a fair trial is evident, as failure to do so could lead to the nullity/cancellation of procedural acts, and providing victims with a lawyer is not a major concern, as it does not affect the further course of criminal proceedings or vitiate the evidence.
- The time taken to examine cases in most cases is quite long, some exceeding 5 years. In the research the **time taken to examine a case of trafficking in human beings in all courts ranged from 6 months to 8 years and 6 months**. The examination of the merits of the case ranged from 24 days to 3 years and 2 months and the examination in all courts lasted between 6 months and 8 years and 6 months.
- **Adjournments of court hearings are still widespread in the examination of criminal cases of trafficking in human beings, as the law allows a fairly wide margin of discretion to be enjoyed by the parties in the process of appointing for examination of the case and in the adjournment of hearings**. None of the cases under examination has been concluded with a decision on the merits or on appeal in a hearing. Only one case was settled with the delivery of a judgment in 3 hearings and the number of hearings in the other cases varied between 6 and 57.
- The tendency of Moldovan courts in human trafficking cases is to apply custodial sentences. Thus, in **75%** of the cases examined, after going through all appeals, **they constituted a custodial sentence**. Of concern is the fact that out of the 15 cases examined, only in 4 cases was it established that the defendants were serving the actual prison sentence. **This shows a high rate of escape from prison sentences**. Among the factors favouring evasion are the long duration of the examination of criminal cases, which exceeds the 12-month period and forces the court to release the defendant from pre-trial detention, the proximity of the Transdnestrian region, which is a favourable niche for evasion from law enforcement bodies, as the Moldovan authorities do not have control over this region.
- Although the Republic of Moldova has a two-tier confiscation system that allows for special and extended confiscation, which applies to natural and legal persons, the use

of confiscation in cases of trafficking in human beings is an exception rather than a rule. **In the criminal cases covered by this study, no cases were identified in which confiscation was applied.**

- The situation in the appeal court is no different from that in the courts of first instance, as most of the cases covered by the research were examined in open court. Even when the court declares the hearing closed, given that the appeal is made with the participation of the persons summoned for a certain time, who usually wait in the same room for the preparation for the closed hearing to take place, anyway, the psychological integrity of the injured party is affected. Those who, in the meantime, leave the room at the court's request notice who remains and easily identify the injured party. For the most part, as found during the investigation, the appeal court adopted decisions sentencing the defendants to imprisonment with execution, with only one decision upholding the sentence with conditional suspension of the execution of the sentence. The Courts of Appeal and the court of recourse pay more attention to the adequate motivation of their decisions.

RECOMMENDATIONS

- Regular research and evaluation of the state's response to human trafficking cases from the perspective of fairness, efficiency and victim-centredness of the criminal trial, so as to collect and analyse the relevant data and information needed to ensure the adaptability of the system to the needs and interests of victims.
- Establishment of a single electronic system for collecting statistical data, including data relevant to criminal proceedings from the stage of registration of complaints to the full execution of the sentence. The statistical data collected in the single inter-institutional system should be disaggregated according to gender, age of the victim, suspected person, accused person, defendant, concrete qualifications of the crimes, including art., para., let. of the Criminal Code, reclassifications, including data on the time limit for examination at each stage of the criminal trial, the exercise of appeals, etc. The development of a single system will generate the possibility of access to statistical data in real time and will be a tool for criminal justice institutions (police, prosecution, courts) to identify gaps and positive practices at each stage of the criminal trial. The generation of accurate and precise data will enable the leaders of criminal justice institutions to develop, plan and implement policies and measures that address these weaknesses but also build on positive practices.
- Proactively identify potential victims, especially among vulnerable groups, through better training of police and labour inspectors to recognise the indicators of exploitation.
- Complete/amend the regulatory framework so that the institutions invested with monitoring and control duties in the field of labour, occupational safety and health and labour migration have powers and tools to identify, assess and report cases of THB. Accordingly, operational procedures are to be developed that would regulate the algorithm of intervention of institutions with monitoring and control functions in the field of labour, occupational safety and health and labour migration in cases of trafficking in human beings in the form of labour exploitation.
- Development of services and support programmes tailored to the needs of victims of male THB.

- Significantly increase the quality and availability of specialised victim services, including through training of staff working with victims.
- Targeting investigative activities not only nationally but also internationally to track down all members of criminal groups. Authorities should step up their efforts to strengthen cooperation with destination countries in the areas of prevention, victim protection and criminal prosecution of traffickers, building on existing mechanisms, as well as introducing additional procedures whenever necessary.
- Amendment and completion of the regulatory framework so that victims of THB can also benefit from emergency legal assistance from the stage of filing a complaint under the conditions set out in *Law no. 198 of 26.07.2007 on state guaranteed legal aid*⁵⁷ for victims of domestic violence, victims of sexual offences.
- Examination of the possibility of completing the draft law on the amendment of some regulatory acts aimed at ensuring the rights of victims of crimes related to sexual life and domestic violence, so that the victims of THB are granted special rights, under conditions similar to those regulated by law for victims of crimes of domestic violence and sexual life.
- Analysis of the advisability of **amending the legislation so that the protection programme for victims of THB can be applied even in the absence of a request by the beneficiary, in case of a high risk of a state of danger**. In conjunction with the **amendment of the regulatory framework, it is recommended to develop a risk assessment tool that would allow prosecutors to apply protection programmes to THB victims independently of their will, if a medium or high risk is found**.
- Elaboration and adoption of a special law that would regulate the practice of psychology, including the system of licensing and accreditation of psychologists with the right to practice psychology.
- Research and evaluation of the compensation mechanism provided for by *Law no. 137 on the rehabilitation of victims of crime*, with a view to identifying the factors that create barriers to access to compensation by victims of crime, with subsequent amendments and additions to make it more effective.
- Finalisation and approval of the mechanism for providing psychological counselling at state expense, with a view to implementing the provisions of Law no. 137 on the rehabilitation of victims of crime.
- Organisation of information campaigns for potential victims of THB on their rights, how to access protection and assistance services, taking into account the victims' profile, level of education and other vulnerabilities, and access to information sources.
- Development and dissemination of information materials for different groups of victims and potential victims of THB (men and women) and different types of exploitation, including materials adapted for victims with multiple vulnerabilities, such as people with mental and sensory disabilities, illiterate people, etc.
- Training of criminal justice professionals to make the criminal justice process more victim-centred, including on how to make more effective the application of legal provisions that in practice risk being seen as formal or as making the process more cumbersome.
- Training of criminal justice professionals to interact and communicate with victims, including through the application of alternative means, in order to overcome negative attitudes and entrenched prejudices about victims of trafficking.

⁵⁷ Official Gazette No. 157-160 art. 614, published on 05.10.2007. Version amended by LP113 of 09.07.20, OG199-204/07.08.20 art.400; in force from 07.09.20.

- Strengthen the capacity of lawyers providing state guaranteed legal aid to victims of THB to make legal aid real and effective, taking into account the principle of victim-centredness of the criminal justice process.
- Identify possibilities for reasonable accommodation of prosecution and court premises to have separate entrances and waiting areas for victims/injured parties and accused persons/defendants, metal detectors at court entrances, accompanying services for victims leaving court, legal, social, psychological services concentrated under one roof.
- Use by the courts of procedures that would ensure the examination of THB cases within reasonable timeframes and speed up the examination of a case, such as the practice of setting several hearings in a row.
- Monitor and enforce measures to ensure that decisions are published and drafted in an appropriate manner to comply with the publicity provisions, but also to ensure that the privacy and personal data of the THB victim are protected. The victim-centred approach to proceedings requires investment in proper data processing, as the protection of victims is directly linked to such processing.
- Conduct research to identify the scope of protection, the spectrum of services needed for THB prevention and victim assistance, and the accommodation of these services to the needs of refugee victims in the context of the armed conflict in Ukraine.
- Initiate research that would target the enforcement of sentences of imprisonment on human trafficking cases and identify factors that favour the escape of convicted persons from serving their sentences.
- Identification, strengthening and implementation of mechanisms to improve efficiency in the seizure, confiscation and liquidation of assets acquired through the offence of THB. Enhance the capacity of professionals to carry out the identification, seizure, confiscation of assets derived from crime through the development of recommendations, methodological guidelines and regular training for justice system staff to enable an enhanced capacity to conduct thorough investigations of THB assets alongside traditional criminal prosecutions. Training should also consider coordination with international partners to ensure regular exchange and dialogue on best practices (as well as the resolution of ongoing cross-border cases) in tracing, freezing, seizing and confiscating assets derived from crime.
- Initiate research into the volume of civil damages awarded to victims of THB, with a view to identifying gaps in the award of fair compensation and establishing criteria for assessing material and non-material damage caused by crime.

ANNEXES

Annex 1. Documentation sheet

CASE DOCUMENTATION SHEET		Annex 1
GENERAL DATA ON THE CRIMINAL CASE		
1.	SHEET NUMBER	
2.	Name, first name of the defendant	
3.	Name, first name of the injured party	Family situation: <ul style="list-style-type: none"> <input type="radio"/> Married <input type="radio"/> Divorced <input type="radio"/> Widowed <input type="radio"/> Cohabitation
4.	Age of the injured party	
5.	Residence environment of the injured party	<input type="radio"/> Rural <input type="radio"/> Urban
6.	Occupation of the injured party	
7.	Data on the examination of the case in order of recourse	<i>Indicate whether the case has been examined by the Supreme Court of Justice</i> Decision no. _____ of _____
8.	Data on the examination of the case in order of appeal	<i>Indicate the name of the Court of Appeal which examined the case</i> Decision no. _____ of _____
9.	Data on the court of first instance that examined the case	<i>Indicate the name of the court which examined the case</i> Sentence no. _____ of _____
10.	Time limit for the examination of the case	<input type="radio"/> Criminal prosecution _____ <input type="radio"/> Court of First Instance _____ <input type="radio"/> Court of Appeal _____ <input type="radio"/> Court of recourse _____
11.	Classification of the act	<i>Indicate the article, paragraph and letter of the Criminal Code on the basis of which the act was qualified:</i>
12.	The defendant was previously convicted of trafficking in human beings	<input type="radio"/> Yes, under art. _____ <input type="radio"/> No
DETAILS REGARDING THE SERVICES THE VICTIM BENEFITED FROM		

13.	Tick the services the trafficked person has benefited from	<ul style="list-style-type: none"> <input type="radio"/> medical <input type="radio"/> psychological assistance <input type="radio"/> social assistance <input type="radio"/> NGO assistance <input type="radio"/> emergency or planned placement <input type="radio"/> other (please specify) _____
14.	Tick if protective measures have been applied to the victim under art. 215 of the CPC	<ul style="list-style-type: none"> <input type="radio"/> Yes <input type="radio"/> No
15.	Data on the assurance of the victim's defence	<p>Tick if the victim of human trafficking was represented by a lawyer:</p> <ol style="list-style-type: none"> 1. Under contract 2. NCSGLA 3. Other _____ 4. Not represented by a lawyer
DATA ON THE CRIMINAL PROSECUTION		
16.	Indicate the basis for initiating the criminal prosecution	<p><i>Tick the basis for the initiation of the criminal prosecution:</i></p> <ul style="list-style-type: none"> <input type="radio"/> Complaint <input type="radio"/> Denunciation <input type="radio"/> Other _____
17.	How did the information reach the criminal prosecution body?	<ul style="list-style-type: none"> <input type="radio"/> Direct from the victim <input type="radio"/> Referral from other persons, _____ <input type="radio"/> Self-reporting based on information obtained in another file <input type="radio"/> Self-reporting based on press reports
18.	How soon after the offence was committed was the CPB notified?	
19.	Accumulation of evidence by the criminal prosecution body before issuing the ordinance for initiation	<p><i>Urgent actions to accumulate evidence by the criminal prosecution body until the issuing of the ordinance for the initiation of the criminal prosecution were carried out in:</i></p> <ul style="list-style-type: none"> <input type="radio"/> 3 hours <input type="radio"/> 1 day <input type="radio"/> 3 days <input type="radio"/> 10 days <input type="radio"/> 30 days <p><i>Indicate which prosecution actions have been carried out:</i></p> <p>_____</p>
20.	Indicate whether an ordinance of not initiating the criminal prosecution was initially issued	<ul style="list-style-type: none"> <input type="radio"/> No <input type="radio"/> Yes. If yes, please indicate the reasons for refusal of criminal prosecution <p>_____</p>

		<i>Indicate the institution which cancelled the ordinance of refusal to start and the reasons for the cancellation</i>
21.	Indicate whether the injured party was heard under article 110 of the CPC	<input type="radio"/> Yes <input type="radio"/> No
22.	Revictimization of the injured party in the criminal prosecution	<i>Indicate whether the victim has been subjected to unjustified criminal prosecution:</i> <ul style="list-style-type: none"> <input type="radio"/> Repeated hearings <input type="radio"/> Additional hearings <input type="radio"/> Confrontation <input type="radio"/> Verification of statements on the spot <input type="radio"/> Submission for admission <input type="radio"/> Other _____
23.	Identify whether measures have been taken to protect the victim's personal data when presenting the criminal file materials to the defendant (information about where he/she lives, etc.);	
24.	Indicate whether international legal assistance in criminal matters has been sought, to which countries	
25.	Indicate whether international police cooperation (INTERPOL, EUROPOL, FBI, BKA, etc.) has been carried out	
26.	Indicate whether a preventive measure has been applied to the suspect, accused or defendant.	<i>Tick which preventive measure has been applied to the suspect, accused, defendant:</i> <ul style="list-style-type: none"> <input type="radio"/> order not to leave the locality <input type="radio"/> order not to leave the country <input type="radio"/> personal guarantee <input type="radio"/> guarantee of an organisation <input type="radio"/> provisional release under judicial supervision <input type="radio"/> provisional release on bail <input type="radio"/> house arrest <input type="radio"/> pre-trial detention

		<i>Indicate the reasons for the application of the preventive measure</i>
27.	Indicate whether an application for accelerated criminal prosecution has been made in the course of criminal prosecution	<i>Indicate the grounds for granting/denying the request for accelerated criminal prosecution</i>
28.	Indicate whether an ordinance of discontinuance of prosecution has been issued	<i>Indicate the reasons for the discontinuation of the criminal prosecution</i>
		<i>Indicate the reasons for the cancellation of the ordinance for discontinuance of the criminal prosecution</i>
THE TRIAL OF THE CASE IN THE COURT OF FIRST INSTANCE		
29.	THE COMPOSITION OF THE COURT PANEL	<i>Gender of judges sitting on the panel:</i> <input type="radio"/> Female <input type="radio"/> Male
		<i>Specialisation of judges sitting on the panel:</i> <input type="radio"/> Specialised in criminal cases <input type="radio"/> Specialised in civil cases <input type="radio"/> Not specialised, examines all types of cases <input type="radio"/> Others_____
30.		<i>Indicate within how many days after the receipt of the file in court the first hearing was called:</i> <input type="radio"/> 1 day <input type="radio"/> 3 days <input type="radio"/> 10 days <input type="radio"/> 30 days <input type="radio"/> Others_____
31.	Indicate whether the case was ordered to be examined in closed session	<i>Please tick at whose request the case was ordered to be examined in closed session:</i> <input type="radio"/> No closed session ordered <input type="radio"/> At the request of the prosecutor <input type="radio"/> At the request of the injured party <input type="radio"/> At the request of the victim's lawyer <input type="radio"/> Court on its own motion

32.	Specify the procedure in which the criminal case was examined	<i>Tick the procedure in which the criminal case was examined:</i> <input type="radio"/> Simplified procedure (art. 364/1 CPC) <input type="radio"/> General procedure <input type="radio"/> Others _____
33.	Participation of the victim in the examination of the merits of the case	<i>Indicate whether the victim participated in the examination of the merits of the case:</i> <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Was present only at the hearing
		<i>Indicate whether the victim was heard at the stage of the examination of the merits of the case:</i> <input type="radio"/> Yes <input type="radio"/> No
34.	Sample administration	<i>Indicate whether new evidence was given at the hearing or whether any evidence was waived:</i>
35.	Indicate the number of scheduled hearings	
36.	Information on postponement of court hearings	<i>Tick if the meeting was:</i> 1. interrupted or postponed. Indicate the number of meetings postponed or interrupted _____. 2. Reason _____ for _____ interruption _____ or postponement _____
37.	Indicate the decision of the court of first instance	<i>Tick the solution of the court of first instance::</i> Sentencing: <input type="radio"/> Deprivation of liberty for a term of _____; <input type="radio"/> Conditional suspended sentence <input type="radio"/> Conviction with partial suspension of execution of the prison sentence <input type="radio"/> Other _____
38.		<i>Tick the solution of the court of first instance:</i> Acquittal sentence on the following grounds: <input type="radio"/> the existence of the offence was not established <input type="radio"/> the offence was not committed by the defendant <input type="radio"/> the defendant's act does not meet the elements of the offence <input type="radio"/> the act is not provided for by criminal law

		<ul style="list-style-type: none"> ○ there is one of the causes that removes the criminal nature of the act.
		<p><i>Tick the solution of the court of first instance:</i> Sentence terminating the criminal trial on the following grounds:</p> <ul style="list-style-type: none"> ○ the complaint of the injured party is missing, the complaint has been withdrawn or the parties have reconciled ○ the death of the defendant has occurred ○ the person has not reached the age of criminal responsibility ○ there is a final judgment against the same person for the same offence ○ there is a decision of the prosecution body on the same person for the same offence to discontinue the prosecution, to withdraw the person from prosecution or to close the criminal trial ○ there are other circumstances that exclude or condition the initiation of criminal prosecution and criminal liability.
39.	Data relating to the civil action	<p><i>Strike out the solution of the court of first instance in the civil action:</i></p> <ol style="list-style-type: none"> 1. <i>No civil action has been brought</i> 2. <i>The civil action was admitted in principle;</i> 3. <i>The civil action was dismissed;</i> 4. <i>The civil action was not filed;</i> 5. <i>The civil action has been admitted and material damage in the amount of _____ and non-material damage in the amount of _____ has been recovered.</i>
40.	Grounds set out in the sentence	<i>Briefly state the reasons given by the court in the sentence</i>
THE TRIAL OF THE CASE IN ORDER OF APPEAL		
41.	Data referring to the person who submitted the appeal	<p><i>Tick the person who submitted the appeal:</i></p> <ul style="list-style-type: none"> ○ the prosecutor, as regards the criminal and civil side ○ the defendant, as regards the criminal and civil side ○ acquittal or termination of criminal trial sentences may also be appealed on the grounds of acquittal or termination of criminal trial ○ the injured party, as regards the criminal side ○ the civil party and the civilly liable party, as regards the civil side ○ the witness, the expert, the interpreter, the translator and the defence counsel, as regards their legal costs

		<ul style="list-style-type: none"> ○ any person whose legitimate interests have been prejudiced by a measure or an act of the court
42.	Participation of the injured party in the examination of the case on appeal	<p>Indicate whether the injured party participated in the examination of the case on appeal:</p> <ul style="list-style-type: none"> ○ Yes ○ No ○ Was present only at the hearing
43.	Data relating to the hearing of the injured party on appeal	<p>Indicate whether the injured party was heard at the appeal stage of the case:</p> <ul style="list-style-type: none"> ○ Yes ○ No
44.	Data relating to the taking of evidence in the court of appeal	<p><i>Indicate whether new evidence was given at the hearing:</i></p> <ul style="list-style-type: none"> ○ <i>Yes. If so, indicate which evidence was submitted</i> ○ <i>No</i>
45.	Indicate the decision of the court of appeal	<p><i>Tick what the court of appeal's decision was:</i></p> <ul style="list-style-type: none"> ○ dismiss the appeal, upholding the judgment under appeal, if: <ul style="list-style-type: none"> a) the appeal was lodged out of time, except in the cases provided for in article 402; b) the appeal is inadmissible; c) the appeal is unfounded; ○ uphold the appeal, quashing the judgment in whole or in part, including ex officio, under article 409 para. (2), and deliver a new judgment in the manner prescribed for the first instance. ○ uphold the appeal, quash the judgment of the first instance and order a retrial by the court whose judgment was quashed.
		<p><i>Briefly state the reasons for the decision of the court of appeal</i></p>
46.	Data relating to the person lodging the recourse	<p><i>Tick the person who filed the recourse:</i></p> <ul style="list-style-type: none"> ○ the prosecutor, as regards the criminal and civil side; ○ the defendant, as regards the criminal and civil side. ○ the injured party, as regards the criminal side ○ the civil party and the civilly liable party, as regards the civil side;
47.	The decision of the court of recourse	<p><i>Tick what the court of recourse decided:</i></p> <ul style="list-style-type: none"> ○ dismiss the recourse as inadmissible, upholding the contested decision; ○ uphold the recourse, quash the contested decision in whole or in part and take one of the following

		<p>decisions:</p> <p>a) uphold the decision of the first instance, when the appeal was wrongly admitted;</p> <p>b) order the acquittal of the person or the termination of the criminal trial in the cases provided for in this Code;</p> <p>c) retrial of the case and pronouncement of a new decision, if the situation of the convicted person does not worsen, or, if necessary, order a retrial by the court of appeal, if the miscarriage of justice cannot be corrected by the court of recourse.</p>
		<i>State the reasons in the decision of the court of recourse</i>
48.	Information on the enforcement of the sentence	<p><i>Indicate whether the sentenced person is serving the sentence:</i></p> <p><input type="radio"/> Yes</p> <p><input type="radio"/> No</p> <p><i>If no, indicate the reasons</i></p>

Annex 2. Data on specialists with whom in-depth individual interviews were conducted

No.	Code	Field of activity	Professional experience, years	Current function
1.	III_1	Psychology	15 years	Psychologist
2.	III_2	Psychology	18 years	Psychologist
3.	III_3	Human rights	11 years	Lawyer
4.	III_4	Social work	10 years	Social worker
5	III_5	Human rights	12 years	Lawyer