

Combatting Trafficking in Persons *Bulgaria's Response to a Global Crisis*

Neysa Nankervis

STUDENT WORKING PAPER



UNIVERSITY *of* NOTRE DAME



THE CENTER *for* CIVIL *and* HUMAN RIGHTS

This paper was prepared for the Spring 2016 seminar, “Legal Remedies for Human Trafficking,” taught by Alexandra Levy and Christine Cervenak. The author remains responsible for the substantive content.

Permission is granted to make digital or hard copies of part or all of this work for personal or classroom use, provided that copies are not distributed for profit or commercial advantage and that copies bear this notice and a full citation on the first page. The proper form for citing papers in this series is:

Author, “Title” (The Center for Civil and Human Rights, Year).

COMBATting TRAFFICKING IN PERSONS: BULGARIA'S RESPONSE TO A GLOBAL CRISIS

INTRODUCTION

Bulgaria is a primary source country for human trafficking, meaning victims are often found and recruited within its boundaries.¹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, which Bulgaria has adopted,² defines trafficking in persons to include the recruitment, transportation and transfer by means of the threat or use of force or other forms of coercion for the purpose of exploitation.³ In Bulgaria, trafficking in human beings for the purpose of sexual exploitation remains the prevailing form of exploitation, however, the number of trafficking victims for labor exploitation and forced begging continues to grow as well.⁴

Bulgarian citizens are susceptible to trafficking largely due to economic reasons, financial crisis, lack of education, unemployment, racism and ethnic discrimination, corruption

¹ Office to Monitor and Combat Trafficking in Persons, 2015 Trafficking in Persons Report, U.S. DEP'T OF STATE, (2015), available at <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm>, pg. 101.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> [hereinafter Protocol], Article 3.

³ The complete definition of 'trafficking in persons' is as follows:

“[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

⁴ GRETA(2015)32. Report Concerning the Implementation of the Council of Europe Convention on Action Against Trafficking in Human Being by Bulgaria (GRETA Report), 7 available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630d6c>

and organized crime. In its most recent Trafficking in Persons Report, the U.S. Department of State listed Bulgaria on a Tier 2 Watch List, which includes countries whose governments are not in full compliance with minimum standards but they are making significant efforts to come into compliance. Tier 2 Watch List members also include countries where there is a significant number of victims of trafficking and a failure to provide evidence that the country is increasing efforts to combat the offenses.⁵ The 2015 report indicated that Bulgaria does not currently comply with the minimum standards for the elimination of trafficking under the Trafficking Victims Protection Act and the Protocol and hasn't increased their efforts to do so since the last reporting period.⁶

This paper will identify some of those efforts that Bulgaria still needs to accomplish in order to comply with international standards. Part I of this paper will briefly summarize two particular international standards that provide guidelines for human trafficking laws in Bulgaria. Part II will discuss the relevant acts and laws that Bulgaria has enacted to combat human trafficking and to provide protection for victims. Part III is divided into the following three categories based on certain provisions of the Protocol: Criminalization, Protection and Prevention.⁷ Each section will summarize the minimum standards states should follow within these categories based on the Protocol. It will also include supplemental information based on the Basic Principles on the Right to an Effective Remedy, which are provided by the UN General Assembly. Each section will also list the gaps in Bulgarian legislation and what the Government needs to do to fully comply with the standards. Finally, Part IV of this paper will identify even

⁵ U.S. DEP'T OF STATE, *supra* note 1, pg. 47.

⁶ *Id.* at 101.

⁷ This is not a complete list of categories under the Protocol.

further obstacles that the Roma population faces in accessing legal aid for human trafficking violations.

INTERNATIONAL STANDARDS

The Palermo Protocol, which was adopted in 2000, provides a set of guidelines to assist states in drafting and adopting appropriate legislation and measures to help combat human trafficking in persons.⁸ The Protocol recognizes the need to have international standards and a universal approach to addressing human trafficking, which includes measures to prevent trafficking, punish traffickers, and protect victims.⁹ Bulgaria Parliament ratified the Palermo Protocol in 2001 without any reservations.¹⁰

In addition, due to an overall lack of effective remedies for victims of human trafficking, The Office of the United Nations High Commissioner for Human Rights drafted basic principles on the right to an effective remedy for these offenses.¹¹ The principles seek to provide clarity among trafficking regulations and victim's rights, and detail the substantive content of model rules and obligations that UN member states should follow.

RELATIVE BULGARIAN LAWS

Pursuant to Bulgaria's Constitution of 1991, international treaties that are ratified under the constitutional procedure and entered into force are part of Bulgaria's domestic legal order.¹²

⁸ Palermo, *supra* note 2., see generally.

⁹ *Id.*

¹⁰ Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

¹¹ U.N. General Assembly, Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons, ¶ 7(i), A/HRC/26/18 (May 2, 2014). Bulgaria joined the United Nations in 1955, <http://www.un.org/en/member-states/>.

¹² Available in English and Bulgarian at <http://www.parliament.bg/en/const> (Article 5, Член 5)

In addition, the Constitution contains several provisions on children's rights, including protection from the state and society.¹³

Bulgaria's Criminal Code specifically criminalizes human trafficking.¹⁴ Moreover, the Law on Combatting Human Trafficking (LCHT) is an important piece of Bulgarian legislation for combatting human trafficking.¹⁵ It provides the institutional framework for the offense, and defines what measures should be used for the protection and support of victims of human trafficking.

In addition, Bulgaria uses a National Mechanism for Referral and Support (NRM), which is a framework that state actors can use to carry out their obligations to protect trafficked persons. Several institutions, including NGOs, prepared the NRM and the National Trafficking Commission approved it in 2010. The NRM provides information on how to identify victims, prepare risk-assessments, and protect and promote the human rights of trafficked persons.¹⁶

Lastly, the Bulgarian Child Protection Act (CPA) provides that at-risk children should be afforded special protection.¹⁷ A child is at-risk when he or she has been a victim of abuse, violence, exploitation or any other inhuman or degrading treatment or punishment. Any child

¹³ Id.

¹⁴ Трафик на хора, Престъпления Против личността, Раздел IX (http://www.vks.bg/vks_p04_04.htm). Author's Translation: Trafficking of People, Crimes Against the Person, Section IX (New, SG No. 92/2002 (Available in English at http://www.vks.bg/english/vksen_p04_04.htm#Section_IX__).

¹⁵ Закон за борба с трафика на хора (<http://www.lex.bg/laws/ldoc/2135467374>). Author's Translation: Combatting Trafficking in Human Beings Act, Promulgated, State Gazette, No. 46/20.05.2003, amended SG 86/28.10.2005, effective 29.04.2006, supplemented, SG No. 33/28.03.2008, available in English at <http://www.hsph.harvard.edu/population/trafficking/bulgaria.traf.03.pdf>.

¹⁶ NATIONAL MECHANISM FOR REFERRAL AND SUPPORT OF TRAFFICKED PERSONS IN BULGARIA (2010), available at <http://lastradainternational.org/lisidocs/Bulgarian%20NRM.pdf>.

¹⁷ Закон за Зкрила на Детето, <http://www.lex.bg/laws/ldoc/2134925825>. Author's Translation: Child Protection Act, available in English at <http://www.legislationline.org/documents/id/6203>.

who is identified as a victim of human trafficking would fit under this definition, meaning they should be afforded the special protections allotted in the CPA.¹⁸

Criminalization

The Protocol provides that States shall adopt legislation in order to criminalize intentional human trafficking, attempting to commit, participating as an accomplice, or organizing or directing others to commit the offense.¹⁹

Bulgaria is technically in full compliance with the criminalization portion of the Protocol. In 2002, the Bulgarian Criminal Code was amended to criminalize the recruitment, transportation, harbor, or receiving of individuals for sexual activities, forceful labor, dispossessions of bodily organs, or holding someone in forceful subjection, regardless of consent.²⁰ It was most recently amended in 2013 to expand the list of exploitative purposes to include forced begging and removal of tissues, cells or body fluids.²¹ Aggravating circumstances include where the victim is under the age of 18, when the victim is pregnant and the purpose is to sell the child, or when coercion or kidnapping is used.²²

There are also several provisions in Bulgaria's Criminal Code that specifically address parental liability for selling your own child. Under the 'Crimes Against Marriage, The Family, and Youth' section of the Code, a parent or relative who receives compensation in return for

¹⁸ Id. Допълнителни разпоредби §1, Author's Translation: Additional Provisions §1.

¹⁹ Palermo, *supra* note 2, at Article 5.

²⁰ Престъпления Против личността, Трафик на хора, Раздел IX (http://www.vks.bg/vks_p04_04.htm). Author's Translation: Trafficking of People, Crimes Against the Person, Section IX (New, SG No. 92/2002) (Available in English at http://www.vks.bg/english/vksen_p04_04.htm#Section_IX__).

²¹ Author's Translation. Draft law for amendments in the Criminal Code, of 06/03/2013, available in Bulgarian at <http://parliament.bg/bills/41/302-01-8.pdf> (pg. 7).

²² *Supra*, note 20.

marriage can be punished with imprisonment for up to a year or a fine.²³ In addition, if a parent or guardian compels their minor child to engage in prostitution of the victim, they can be imprisoned for up to two years or probation.²⁴ Lastly, a parent or guardian who compels their minor child who is below the age of sixteen to marry shall be punished with up to three years in prison or probation. If you receive compensation for allowing your minor child under sixteen to live as married with someone, you can be punished for up to two years or receive probation.²⁵

While attempt to commit trafficking is not expressly provided for in the Criminal Code, at Interpretative Decision by the Supreme Court of Cassation states that participation in one of the forms of the crime (recruitment, transportation, harboring or receiving) is enough to be punished under the trafficking statute, which effectively criminalizes an attempt to participate in trafficking.²⁶

Despite the criminalization of these offenses, in practice offenders often go unpunished. The prosecution of trafficking offenders decreased from 2013 to 2014 despite an increase in identified victims of trafficking.²⁷ In 2013, there were 114 defendants charged with sex trafficking and 5 for labor trafficking.²⁸ However, in 2014 the numbers decreased to 43 and 4

²³ Престъпления против брака и семейството, Раздел I (http://www.vks.bg/vks_p04_04.htm). Author's Translation: Crimes Against Marriage and the Family, Section I, Article 178 (New, SG No. 92/2002) (Available in English at http://www.vks.bg/english/vksen_p04_04.htm#Section_IX__).

²⁴ Престъпления против брака и семейството, Раздел II (http://www.vks.bg/vks_p04_04.htm). Author's Translation: Crimes Against Youth, Section II, Article 189 (New, SG No. 92/2002) (Available in English at http://www.vks.bg/english/vksen_p04_04.htm#Section_IX__).

²⁵ Id. Article 190 & 192.

²⁶ Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009. A summary of the interpretative decision in English is available at:

http://www.antitraffic.government.bg/images/documents/Polezna_informacia/EN/1263815111.doc (accessed on 26 November 2012). The full version of the interpretative decision in Bulgarian is available at: http://www.vks.bg/vks_p10_36.htm (accessed on 26 November 2012).

²⁷ GRETA, *supra* note 4, at 11.

²⁸ U.S. DEP'T OF STATE, *supra* note 1.

respectively. Only 34% of those charged were convicted.²⁹ While it is was hard to find decisive information regarding why this trend occurred, it appears to be due in part to a structural change in the Interior Ministry, which is in charge of national security and upholding law and order in Bulgaria. The firing of certain officers within the Ministry caused the agency to stop functioning properly, resulting in fewer prosecutions for trafficking cases.³⁰ However, in 2015 Parliament reversed this and a directorate to the Ministry was reinstated. Hopefully this will again stabilize the agency so that it can begin functioning more effectively.

Another potential reason why rates in prosecution have dropped, is the level of distrust with the government and unwillingness to even report crimes. In 2014, a Bulgarian think tank called The Study for Democracy reported in a recent study that corruption in Bulgaria is the highest it has been in 15 years.³¹ It was noted that such a high level of corruption “[made] criminal law enforcement initiatives ineffective and inadequate.”³² The report concluded that the judicial system is overloaded and that “law enforcement is often captured by private business and political interests, thus incapacitating and delegitimizing its actions.”³³

A Eurobarometer study done in 2014, found that out of over 2,000 Bulgarian citizens polled, essentially all respondents ranked corruption, judicial shortcomings, and organized crime

²⁹ Id.

³⁰ GERB Proposes Amendments to Interior Ministry Act, <http://www.bta.bg/en/c/DF/id/952702> (Nov. 12, 2014).

³¹ ANTI-CORRUPTION POLICIES AGAINST STATE CAPTURE 9 (2014), available at http://seldi.net/fileadmin/public/PDF/Publications/BG_CAR/CAR_2014_ENG_Final.pdf.

³² For example, in 2014 Bulgaria’s Corporate Commercial Bank was closed down. This was apparently due to the bank being an instrument for the political mafia in Bulgaria to use in order to blackmail Bulgarian businesses. See generally Bulgaria’s Failed Corpbank: The Former Owner’s Story, available at <http://www.forbes.com/sites/francescoppola/2015/10/05/bulgarias-failed-corpbank-the-former-owners-story/#2119cb627e79>.

³³ Id.

as important problems for their country.³⁴ Such political instability, widespread mistrust in government, and fear of corruption may provide insight into

In order to prevent and discourage offenders from orchestrating human trafficking offenses, Bulgaria needs to focus more on specifically targeting traffickers. While a country with such political instability might not see the prosecutions of traffickers as a prerogative, human trafficking is an epidemic in Bulgaria that needs to be prioritized.

Protection

The Protocol mandates that Bulgaria protect victims of human trafficking to the extent possible by implementing several measures (which can be found in the attached chart).³⁵ First, the Protocol calls for the protection of a victim's private life and identity. This area is adequately covered under the Anti-Trafficking Law and the Bulgarian Constitution. Article 20 of the LCHT guarantees the confidentiality and protection of personal data of the victim.³⁶ In addition, both the Code of Criminal procedure and the Law on the Protection of Persons Threatened in Relation to Criminal Proceedings, provide for the victim's anonymity and the guarantee that a victim's personal data will not be disclosed.³⁷ However, recommendations that victims shouldn't be interviewed and shouldn't encounter traffickers are, according to the State Department, not fully

³⁴ 97% of people polled said corruption was an important problem and 96% polled said judicial shortcomings and organized crime were important problems. Report in English available at file:///C:/Users/Neysa/Downloads/fl_406_en.pdf, pg. 4.

³⁵ Please refer to the attached chart for a more complete list of the specific provisions relating to the protection of victims of trafficking in persons.

³⁶ Promulgated, State Gazette, No. 46/20.05.2003, amended SG 86/28.10.2005, effective 29.04.2006, supplemented, SG No. 33/28.03.2008, available in English at <http://www.hsph.harvard.edu/population/trafficking/bulgaria.traf.03.pdf>. Id. at Article 20.

³⁷ Bulgaria's Criminal Procedure Code is available in English at http://www.vks.bg/english/vksen_p04_03.htm (Chapter 8, The Victim). The Law on the Protection of Persons Threatened in Relation to Criminal Proceedings is available in English at <http://www.legislationline.org/documents/action/popup/id/15526>.

endorsed by Bulgaria officials. Often they have to be interviewed several times, before policemen, prosecutors, and the court.³⁸

The Protocol also encourages states to provide victims with the necessary information related to proceedings and to take their views and concerns into account. Pursuant to the NRM, all victims are afforded support during a “reflection period” for 30 days whereby a victim of human trafficking is granted special protection status throughout the criminal proceedings.³⁹ According to the NRM, victims are always afforded this period regardless of their desire to assist with the investigation.⁴⁰ The Basic Principles also provide that victims should be given a reflection and recovery period with no qualification that they agree to cooperate with the investigation. The Principles repeatedly specify that victims have access to remedies, rehabilitation and recovery that is not dependent upon their capacity or willingness to cooperate in legal proceedings.⁴¹ However, the Bulgarian LCHT states that only victims who are willing to collaborate in the investigation will be granted this reflection period.⁴² Bulgaria needs to change its legislation to include that the reflection period should be available to any victim of human trafficking, regardless of whether they agree to cooperate with the investigation.

In Bulgaria, the recovery period is offered only after identification, whereas the Basic Principles provide for this period not only after they have been identified but also if they are presumed victims.⁴³ When afforded the reflection period, victims can receive the right to shelter, psychological support, free legal consultations, and the right to cooperate with the authorities or

³⁸ U.S. DEP’T OF STATE, *supra* note 1.

³⁹ *Supra* note 16, Part C Measure 2.

⁴⁰ *Id.*

⁴¹ U.N. General Assembly, Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons, ¶ 7(i), A/HRC/26/18 (May 2, 2014).

⁴² *Supra* note 15, Article 25.

⁴³ *Supra* note 15, Article 26.

not.⁴⁴ If victims are only informed about their special protection after identification, they are susceptible to being re-victimized in their initial interviews with officers. Without the reflection period victims may not be afforded a safe place to conduct the interview or legal counseling in order for them to make a decision whether to cooperate in the investigation. In order to ensure that victims are afforded the proper rights and protections under the NRM, Bulgaria needs to apply the recovery and reflection period to apply before someone is formally identified as a victim.

Next, the Protocol calls for Bulgaria to consider implementing measures that provide for the physical, psychological and social recovery of victims of human trafficking. Bulgaria desperately needs to focus on improving its shelters and accommodations for victims if it is going to adequately comply with the Protocol. The Bulgarian LCHT seemingly tries to follow this mandate. It includes a provision that temporary shelters and centers for protection and support shall be established for victims until the deadline of their criminal proceedings, but this applies only if a victim agrees to cooperate with the investigation. If they don't comply, victims can only stay in a shelter for 10 days, which may be extended to 30 days.⁴⁵

According to the LCHT, the shelters are supposed to include standard living and sanitary conditions, food and medications, emergency medical and psychological services, and opportunities to contact relatives.⁴⁶ The Basic Principles further specify that shelters should be safe and adequate and meet the needs of trafficked persons. However, across Bulgaria there is a serious lack of adequate housing for victims. According to the 2015 GRETA report, as of 2014 there were only two state-run shelters for women and funding for these shelters decreased from

⁴⁴ Id.

⁴⁵ LCHT Article 9

⁴⁶ LCHT Article 10

\$67,000 in 2013 to only \$40,000 in 2014.⁴⁷ In addition, the two shelters were only supposed to house 12 women at a time, but held as many as 29 victims in 2013. Unfortunately, in 2014 those two shelters were shut down after the NGOs contracts were terminated.⁴⁸

The United States Department of State recognized that Bulgaria has 15 crisis centers for child victims of violence, however, the amount of funding provided per victim is insufficient to cover their needs and keep the centers functioning adequately.⁴⁹ In addition, none of the centers are specifically designed for trafficking victims and the Bulgarian government hasn't funded specialized trafficking victim services.⁵⁰ There are also no shelters in place that provide assistance to male victims of trafficking despite the number of male victims.⁵¹ Bulgaria needs to ensure that they are providing safe and appropriate housing and centers for victims of trafficking. There needs to be a sufficient amount of shelters and centers around the country so any victim seeking a safe house will be able to find one.

Under the LCHT, health care provided to adult victims is limited to emergency situations and funding provided to these shelters by the Agency for Social Protection does not cover health care.⁵² This is highly problematic considering victims of human trafficking need more than emergency assistance. They often suffer long-term trauma that can only be addressed through consistent medical and psychological assistance. In order to comply with the Protocol and Basic Principles, Bulgaria needs to ensure that they have adequate funding that guarantees access to health care for all victims of human trafficking, and not just in emergency situations.

⁴⁷ GRETA, *supra* note 4, at 28.

⁴⁸ *Id.*

⁴⁹ Office to Monitor and Combat Trafficking in Persons, 2015 Trafficking in Persons Report, U.S. DEP'T OF STATE, (2015).

⁵⁰ *Id.*

⁵¹ *Supra*, note 27.

⁵² LCHT, Article 10. Available in English at <http://www.hsph.harvard.edu/population/trafficking/bulgaria.traf.03.pdf>.

Article 6 of the Protocol requires that Bulgaria's legal system allow victims of trafficking to possibly obtain compensation for their damage suffered.⁵³ Bulgaria's Criminal Code includes fines as punishment for those convicted of human trafficking offenses, however, it does not specify where those funds are to be allocated. Bulgaria's Law on Assistance and Financial Compensation to Crime Victims (L AFC) provides that victims of crime are entitled to free legal aid, however, it does is unclear if they receive free legal aid and support in helping file an application.⁵⁴ In addition, pursuant to the Law on Child Protection, child victims have the right to legal aid at all stages of legal proceedings.⁵⁵ However, according to NGOs, victims of human trafficking, practically speaking, have poor access to quality legal assistance, which prevents them from full exercising their right to compensation.⁵⁶

One difficulty encountered by victims is that under the L AFC state compensation scheme, victims have to provide copies of documents verifying information and damages, such as from a pharmacy or doctor.⁵⁷ While the Act does provide for sample application forms to be provided to victims to help guide them in the process, victims may still be unable to provide this documentation and their claims will not be supported.⁵⁸

Another limitation of the L AFC is its vagueness. While the Act provides that authorities must offer support to victims, it does not specify a timeframe for when they need to do this. The Act does not make it clear when this support will start, how long it will be provided for, if it goes

⁵³ *Supra*, note 2, at Article 6.

⁵⁴ Crime Victim Assistance and Financial Compensation Act (2006), Article 6(1), available at http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_cv_bul_en.pdf.

⁵⁵ Child Protection Act (2003), available at <http://www.legislationline.org/documents/id/6203>.

⁵⁶ GRETA(2011)19. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Being by Bulgaria (GRETA Report), 41.

⁵⁷ *Supra* note 54, Article 6(3), Article 17(3), and Article 18(6).

⁵⁸ *Id.*, Article 18(1)

on after trial is over, etc. It is also unclear whether victims receive free legal aid if they need help submitting an application for support under the Act.⁵⁹

In addition, victims can claim financial compensation for damages paid by the offender as part of criminal proceedings under the Criminal Procedure Code.⁶⁰ However, according to the Ministry of Justice in Bulgaria, there are several obstacles to this method.⁶¹ First, convicted traffickers often won't comply with compensation orders, so even if a victim is afforded compensation, it is often the case that the he or she is unable to collect from the trafficker. In addition, the trafficker may not have sufficient funds and assets to fully compensate the victim.⁶² While the Bulgarian Criminal Code allows for judges to freeze assets⁶³, judges interviewed for a 2013 report stated that they had never received such requests and it is applied very rarely in human trafficking cases.⁶⁴ Lastly, from my research, I could not find any state authority responsible for collecting the money due and victims are expected to collect on his or her own, which would mean that victims are potentially on their own to collect. The government needs to address these situations and conduct more research to determine how they can fully compensate victims. They need to ensure that all victims are informed of their right to ask for the freezing of accounts, and that judges are approving these requests when appropriate.

⁵⁹ *Id.*, Article 6(1).

⁶⁰ Criminal Procedure Code, available in English at http://www.vks.bg/english/vksen_p04_03.htm#Chapter_seven__ (Article 72).

⁶¹ Available in English at <http://www.compensation.bg/en/node/17>.

⁶² *Id.*

⁶³ *Supra*, note 60; See also GRETA, *supra* note 4, at 36.

⁶⁴ *Id.*

Lastly, while civil proceedings are technically an avenue towards compensation⁶⁵, the victim has to pay a significant amount of money just to open a case.⁶⁶ As of 2015, the GRETA report found that there was no documentation of any civil claim submitted by a victim of human trafficking before civil court.⁶⁷

Bulgaria needs to ensure that its cases lead to effective and dissuasive sanctions. To do so the government needs to create campaigns to educate victims about the avenues they can take to pursue claims against their offenders. In addition, the legislature may have to go so far as to change the laws to ensure that victims are not heavily dissuaded to file a claim.

Prevention

The U.S. Department of State report indicated that the Bulgarian government's efforts to prevent trafficking have actually been on a decline.⁶⁸ In 2012 and 2013 the National Commission for Combatting Trafficking in Human Beings organized three national awareness campaigns. However, in 2014, only one awareness campaign was held.⁶⁹ Despite the LCHT mandating that local commissions be funded by the National Commission's budget, foreign donors rather than their own government instead mostly fund these organizations.⁷⁰ Budget cuts have inhibited the National Commission and reduced funding for preventative measures.⁷¹ In 2014, the total amount spent on activities organized by commissions was less than \$7,000.⁷²

⁶⁵ There is not a separate court for victims of forced labor to seek redress. The Bulgarian Criminal Code criminalizes those who employ children under 18 without a permit.

⁶⁶ Bulgarian Civil Procedure Code, available in English at http://www.vks.bg/english/vksen_p04_02.htm (Article 68). Supra note 57 at Article 192a.

⁶⁷ GRETA, supra note 4, at 36.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Supra note 4, at pg. 15.

Bulgaria needs to prioritize the combatting of human trafficking in persons. If they were to allocate a more significant amount of funding towards their National Commission, not only could they spread more awareness throughout the country but it would give victims confidence that their government is working to protect them.

ADDITIONAL BARRIERS FOR THE ROMA COMMUNITY

Trafficking victims are often recruited in areas with high unemployment rates and severe poverty. The marginalization and discrimination of the Roma population has led to inadequate education and a high unemployment rate among the community.⁷³ This places the Roma population in a particularly vulnerable position, as they are disproportionately represented under those vulnerability factors.⁷⁴ In addition, youths leaving specialized institutions are particularly vulnerable for recruitment⁷⁵ and Roma children in Bulgaria are especially at risk of being forced into begging and petty crime.⁷⁶ Roma men and clan bosses often force parents to assist in the trafficking of their children in order to pay back debts they owe.⁷⁷ The 2011 report on Bulgaria by the Group of Experts on Action against Trafficking in Human Beings reported that over 50% of trafficking victims were from the Roma community. Furthermore, police officers who were interviewed for the report believed the number was as high as 80%.⁷⁸

⁷³ Id.

⁷⁴ GRETA, *supra* note 4, at 7.

⁷⁵ RACE, *Trafficking for Forced Criminal Activities and Begging in Europe* (Sept. 2014), available at http://www.antislavery.org/includes/documents/cm_docs/2014/t/trafficking_for_forced_criminal_activities_and_begging_in_europe.pdf.

⁷⁶ Bulgaria, Novinar, 2012, *Children at risk most often become victims of trafficking*. Available at http://novinar.bg/news/detcata-v-risk-stavat-zhertva-na-trafik-naj-chesto_NDE0NDszNQ==.html.

⁷⁷ *Supra*, note 51.

⁷⁸ Group of Experts on Action against Trafficking in Human Beings (GRETA), 2011 Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria, para. 100. Available at: http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_19_FGR_BGR_en.pdf [Last accessed 18th May 2014].

It is difficult to find statistics regarding how many perpetrators of human traffickers are themselves Roma. The European Commission, with the help of several organizations, issued a report in 2014 listing statistics regarding victims and prosecutors. However, the report focused on EU citizenship of the traffickers rather than ethnicity. While the majority of human traffickers with a EU passport come from Bulgaria, specifics regarding their specific cultural identities are not listed.⁷⁹

Despite hard statistics indicating whether it is mainly Roma or Bulgarians who perpetrate these crimes, there are some indications that Roma clans are highly active in the area of human trafficking.⁸⁰ If this is true, it creates additional barriers in the prevention and prosecution of perpetrators. First of all, Roma clans may be more loyal than other criminal syndicates, as they are often close friends and family. Therefore, it would be more difficult to infiltrate and takedown these clans from within. In addition, Roma clans are often not static, instead moving from location to location within the country. This makes it harder for law enforcement to keep track of Roma criminal organizations. Law enforcement agencies throughout Bulgaria would have to work together to keep track of these organizations, and I did not come across any information indicating that this was currently happening.

Another potential barrier that I imagine would exist if there were a high number of Roma traffickers who trafficked other Roma victims, is that Bulgarians would feel less compelled to both help the victims and prosecute their offenders. There is a huge disconnect between

⁷⁹ http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20141017_working_paper_on_statistics_on_trafficking_in_human_beings_en.pdf, pg. 47.

⁸⁰ <file:///Users/billnankervis/Downloads/trafficking-in-human-beings-in-the-european-union-2011.pdf>, pg. 6.; [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140780/LDM_BRI\(2014\)140780_RE V1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140780/LDM_BRI(2014)140780_RE V1_EN.pdf), pg. 4.

Bulgarians and the Roma communities, and Bulgarians seem to be more concerned with helping their own than helping Roma girls and Roma victims in general.

While the Bulgarian government has taken some steps to increase outreach to Roma communities, much more needs to be accomplished. The Roma community will continue to remain highly susceptible to trafficking as long as they are discriminated against and marginalized, therefore, the government needs to work on integrating the Roma with the Bulgarian population. They will need to provide the Roma with proper healthcare, social services, and education in order to place them in the same position as the Bulgaria population. There also needs to be strong anti-discrimination campaigns across the country, and the government needs to afford the Roma community the same legal rights and remedies that are applicable to Bulgarians.

Campaigns also need focus on educating the community about the reality of trafficking and how to identify signs of potential trafficking schemes. Oftentimes parents send their children to work not knowing the conditions that their children will face. Bulgaria could show movies about human trafficking in the communities, hand out pamphlets, and attend community meetings to inform the public.

Educating youths about human trafficking is also a vital part of preventing the offense, as traffickers typically recruit victims at a young age while they are still vulnerable to outside influences. There should be strong campaigns in Roma schools, especially schools with high dropout rates. To accomplish these goals, the government is going to have to make changes to their budget in order to continue to fund the National Commission, which currently allocates very little funding to local commissions that combat human trafficking.

CONCLUSION

While Bulgaria has taken steps to combat human trafficking its domestic legislation still needs to more strongly reflect the international standards it purports to follow. Bulgaria needs to depend less on foreign money and work on improving their domestic funding for anti-trafficking organizations and institutions. If Bulgaria truly wants to commit to addressing the issue of human trafficking, it needs to work on strengthening its regulations concerning protection of victims, and ensure that victims are adequately compensated for their damages. Bulgaria officials also need to work on eliminating the social exclusion of the Roma minority, and create more measures to respond to the complex inequalities that the Roma face.

PALERMO PROTOCOL AS IT SHOULD APPLY TO BULGARIA (BG)¹	BULGARIAN RESPONSE
<p>CRIMINALIZATION</p> <p>BG shall adopt legislation to criminalize:</p> <ol style="list-style-type: none"> 1) Intentional human trafficking; 2) Attempt; 3) Participation; and 4) Organization of directing other persons to commit 	<p>CRIMINALIZATION</p> <ul style="list-style-type: none"> ➤ Full compliance
<p>PROTECTION</p> <ol style="list-style-type: none"> 1) BG shall protect privacy and identity of victims to the extent possible. 2) BG shall ensure that its legal or administrative system contains measures that provide to victims of trafficking: <ol style="list-style-type: none"> a. Information on relevant proceedings; and b. Assistance to enable victim’s views to be presented and considered at the appropriate stages of the proceedings against offenders 3) BG shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, in particular, the provision of: <ol style="list-style-type: none"> a. Appropriate housing; b. Counseling and information; c. Medical, psychological and material assistance; d. Employment, educational and training opportunities; 4) BG shall take into account the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children 5) BG shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory 6) BG shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered 	<p>PROTECTION</p> <ul style="list-style-type: none"> ➤ Full compliance with paragraph 1 ➤ Partial compliance with paragraphs 2 - 6
<p>PREVENTION</p>	<p>PREVENTION</p>

¹ The following chart includes only a summarization of various provisions of the Palermo Protocol; it is not a complete list. You can find the full text of the Protocol at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

<p>1) BG shall establish and endeavor to undertake the following to prevent and combat trafficking and to protect victims from re-victimization:</p> <ul style="list-style-type: none"> a. Establish comprehensive policies, programs, and other measures b. Undertake measures such as research, information and mass media campaigns and social and economic initiatives c. When appropriate, BG shall cooperate with non-governmental and other relevant organizations and other elements of civil society. d. BG shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the facts that make persons vulnerable to trafficking e. BG shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures to discourage the demand that fosters all forms of exploitation that leads to trafficking. 	<ul style="list-style-type: none"> ➤ Partial compliance ➤ Efforts have actually decreased in this area since 2014
---	---

<p align="center">RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING</p>	<p align="center">BULGARIAN RESPONSE</p>
<p>RESTITUTION AND RECOVERY</p> <ul style="list-style-type: none"> 1) Victims of trafficking in persons have the right to an effective remedy for any harm committed against them. 2) All States, including countries of origin, transit and destination, shall provide adequate, effective and prompt remedies to victims of trafficking in persons, including non-citizens, within their territory and subject to their jurisdiction, when the State is legally responsible for any harm committed against them. <ul style="list-style-type: none"> a. The right to effective remedy includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. 3) Regardless of whether BG is responsible for the original harm, it shall provide and/or facilitate access to remedies as required by binding international law. 4) The right to an effective remedy shall be provided to victims of trafficking in persons without discrimination in law or in practice on any ground. 	<p>RESTITUTION AND RECOVERY</p> <ul style="list-style-type: none"> ➤ Partial Compliance ➤ While Bulgaria Law covers the principles, in practice the legislation is not always strictly enforced ➤ An example is #4. The basic principles say that there should be discrimination in law <i>or in practice</i>, but it is evident that Bulgaria officials discriminate against the Roma population. ➤ Under the Combatting Trafficking Act, victims have to provide copies of documents verifying information and damages. This is a procedural barrier. (Articles 5, 17, and 18). ➤ In civil cases, victims generally have to pay a fee to file a claim. (Civil Procedure Code, Article 68). ➤ Even with a judgment, collecting from the offender might prove difficult or impossible.

<p>5) The right to an effective remedy encompasses both the substantive right to remedies and the procedural rights necessary to secure access to them.</p> <p>6) The right to an effective remedy reflects a victim-centred and human rights-based approach that empowers victims of trafficking in persons and respects fully their human rights.</p>	
<p>ACCESS TO THE RIGHT TO A REMEDY</p> <p>1) Whether States are legally responsible for harm or otherwise have an obligation to provide and/or facilitate access to remedies under international law, procedural rights and preconditions for remedies include that victims of trafficking in persons:</p> <ul style="list-style-type: none"> a. Have a legally enforceable right to have access to remedies, including through criminal, civil, labour or administrative proceedings, irrespective of the victim’s immigration status, return to his or her country of origin or absence from the jurisdiction; b. Are promptly and accurately identified; c. Are fully and promptly informed, in a language and form they understand, of their legal rights; d. Are provided with a reflection and recovery period, whether as identified or presumed victims, with access to such services as housing and psychological, medical, social, legal, employment, professional and material assistance. <ul style="list-style-type: none"> i. Following the said reflection and recovery period, a victim of trafficking in persons should be provided with any residence status necessary, such as to allow the victim of trafficking to exercise his or her right to remain during proceedings or as a form of restitution; e. Are provided with assistance necessary to have access to remedies, regardless of their immigration status, including medical, psychological, social, administrative and qualified linguistic and legal assistance, such as free legal aid; f. Are not detained, charged or prosecuted for activities that are a direct consequence of their situation as victims of trafficking in persons, including for violations of immigration law; 	<p>ACCESS TO THE RIGHT TO A REMEDY</p> <ul style="list-style-type: none"> ➤ Partial Compliance ➤ Victims only receive a reflection period upon identification. (LCHT Article 26) ➤ Victims only receive a reflection period if they agree to cooperate in an investigation (LCHT Article 25) ➤ Bulgaria lacks adequate shelters and housing ➤ Only mandates health care in emergency situations (LCHT Article 10)

<ul style="list-style-type: none"> g. Have a right to remain lawfully in the country in which the remedy is being sought for the duration of proceedings; h. Have equal access to the right to remedy, including by ensuring that all investigations, prosecutions and other mechanisms are gender-sensitive; take into full account the different assistance and protection needs of women, men, girls and boys; address sexual and gender-based violence appropriately; ensure that victims are able to come forward to seek and obtain redress; prevent discriminatory evidence and afford equal weight to the testimony of women and girls; and avoid trauma, re-victimization and stigmatization; i. Have access to remedies that is not dependent upon their capacity or willingness to cooperate in legal proceedings; j. Have their rights, and the rights of their families and witnesses, to safety (including from intimidation and retaliation), privacy and confidentiality protected before, during and after proceedings. 	
<p>PREVENTING TRAFFICKING</p> <p>1) Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.</p> <p>States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development cooperation policies and programs, should consider:</p> <ul style="list-style-type: none"> 1) Analyzing the factors that generate demand for exploitative commercial sexual services and exploitative labor and taking strong legislative, policy and other measures to address these issues. 2) Developing programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups. 	<p>PREVENTING TRAFFICKING</p> <ul style="list-style-type: none"> ➤ Partial compliance ➤ It is from my personal experience, as well as research conducted for this paper, that Bulgaria does not take into account facts that increase vulnerability. ➤ In order to fully comply with the basic principles of developing campaigns and working with organizations to prevent trafficking, Bulgaria needs to increase funding and prioritize this in their budget if possible.

- | | |
|--|--|
| <ol style="list-style-type: none">3) Improving children's access to educational opportunities and increasing the level of school attendance, in particular by girl children.4) Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.5) Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.6) Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.7) Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons. | |
|--|--|