

# Swiss-Bulgarian Bilateral Guidelines for the Identification, Protection and Referral of Trafficked Persons



**BULGARIAN-SWISS JOINT EFFORTS TO PROVIDE  
IMMEDIATE AND UNCONDITIONAL  
PROTECTION OF TRAFFICKED PERSONS  
AND PREVENT TRAFFICKING IN HUMAN BEINGS**

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SWISS-BULGARIAN COOPERATION PROGRAMME  
ШВЕЙЦАРСКО-БЪЛГАРСКА ПРОГРАМА ЗА СЪТРУДНИЧЕСТВО



**FIZ**

• Advocacy and support  
for migrant women and  
victims of trafficking



**ANIMUS ASSOCIATION FOUNDATION** is a not-for-profit organisation in Bulgaria which provides direct services to victims of violence, including victims of trafficking. The organisation runs the National Helpline for Victims of Violence, a 24/7 Crisis Centre (which also functions as a **Transit Centre for Trafficked Persons**), as well as a variety of psychotherapeutic and social services. Animus is a member of La Strada International, a European network of independent non-governmental organisations working to combat human trafficking.



**FIZ - Advocacy and Support for Migrant Women and Victims of Trafficking** is a non-governmental organisation in Switzerland that advocates for the protection and rights of migrant women who are victims of violence and exploitation. The specialised **FIZ Makasi** programme provides support services for female victims of trafficking according to the Swiss Victim Assistance Act, including information on victim rights, crisis intervention, psycho-social counselling, risk assessment, sheltered accommodation, accompanying by a personal confidant in criminal proceedings, social integration support and assistance for voluntary return. FIZ Makasi is mandated by various cantons for the accompanying of victims of human trafficking.

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**A short version is available in English, Bulgarian, German, French and Italian on the websites [www.fiz-info.ch](http://www.fiz-info.ch) and [www.animusassociation.org](http://www.animusassociation.org).**

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**A**n 18-year old Bulgarian girl falls in love with an older man and follows him to Switzerland to work and earn money for their joint future. Once there, he forces her into prostitution. Another young Bulgarian woman is forced to seek financial support for her sick mother. Desperate, she trusts a strange woman who takes her to Switzerland promising to find her a job as a housekeeper in a hotel. In reality, she finds herself forced into prostitution.

These are only two of the real stories presented in the **Swiss-Bulgarian bilateral guidelines for identification, protection and referral of victims of trafficking**. These are only two of the many cases of human trafficking from Bulgaria to Switzerland. Many Bulgarians looking for opportunities for better livelihoods are trafficked for the purposes of sexual or labour exploitation in Switzerland.

You can find out what it takes for the two women to get out of a trafficking situation and what their future is on the pages of this document. You will learn how the Swiss institutions work in order to identify trafficked persons and offer them assistance. We will demonstrate how Bulgarian and Swiss organisations cooperate in order to ensure a safe return for the victims. You will find out what the fate of the two women in Bulgaria is and how Bulgarian authorities protect and support them.

The creation of the Guidelines was a joint initiative of Animus Association Foundation (Bulgaria) and FIZ (Switzerland). Both are leading organisations in their respective countries when it comes to direct support and care for victims of trafficking. They have cooperated more than once in supporting and protecting Bulgarian victims identified in Switzerland and returning to Bulgaria.

The aim of the Guidelines is to improve the cooperation between Swiss and Bulgarian institutions to protect and support trafficked persons by introducing existing good practice on identification, protection, and referral of victims of trafficking. But first and foremost, these Guidelines are designed to improve the situation of trafficked persons. Good bilateral cooperation between Bulgaria as a country of origin and Switzerland as a country of destination is the safest way for victims to get out of trafficking situations and recover. The Guidelines will contribute to the full and effective respect of victims' rights in both countries. They will receive adequate care in Switzerland; they will be informed of the opportunities for support in Bulgaria; their safe return and overall safety in their home country will be ensured. This is why victims are visible throughout the Guidelines not only in their personal stories, but more importantly through their points of view which have a special place in the **victims' notes or "v-notes"**. Whereas in legal terms persons who have been trafficked are considered "victims", we consider them first and foremost **survivors of trafficking** who have developed their own survival strategies in the face of violence and exploitation.

The Guidelines are created by a team of Bulgarian and Swiss experts. This includes representatives from Animus Association Foundation and FIZ Advocacy and Support for Migrant Women and Victims of Trafficking, the International Organisation of Migration in Switzerland (IOM Bern), the Federal Office of Police (fedpol), the Swiss Coordination Unit against Trafficking in Persons and Smuggling of Migrants (SCOTT or KSMM), the Bulgarian Ministry of Interior, the National Commission for Combating Trafficking in Human Beings, and the Ministry of Labour and Social Policy. The Guidelines are intended for people of different professions who work directly with victims of trafficking in human beings – police officers, counsellors, social workers, legal professionals, etc. The Guidelines are practically oriented so that experts from both countries can find information about existing measures and procedures and their implementation both in Bulgaria and in Switzerland. We hope that they will be useful to everyone engaged with the difficult task of combating human trafficking by encouraging them to support survivors of trafficking.

## LIST OF ABBREVIATIONS

<b>CC</b>	<b>Criminal Code</b>
<b>COE</b>	<b>Council of Europe</b>
<b>CPC</b>	<b>Code of Criminal Procedure</b>
<b>DG</b>	<b>Directorate General</b>
<b>EA</b>	<b>Employment Agency</b>
<b>EFTA</b>	<b>European Free Trade Association</b>
<b>EU</b>	<b>European Union</b>
<b>FDJPA</b>	<b>Federal Department of Justice and Police</b>
<b>fedpol</b>	<b>Federal Office of Police</b>
<b>FNA</b>	<b>Federal Act on Foreign Nationals</b>
<b>FOJ</b>	<b>Federal Office of Justice</b>
<b>GRETA</b>	<b>Group of Experts against Trafficking in Human beings</b>
<b>ICMPD</b>	<b>International Centre for Migration Policy Development</b>
<b>ILO</b>	<b>International Labour Organisation</b>
<b>IMAC</b>	<b>International Mutual Assistance in Criminal Matters</b>
<b>IOM</b>	<b>International Organization for Migration</b>
<b>JIT</b>	<b>Joint investigation team</b>
<b>KESB</b>	<b>Child and Adult Protection Services</b>
<b>KSM</b>	<b>Swiss Coordination Unit against Trafficking in Persons and Smuggling of Migrants</b>
<b>LI</b>	<b>Labour Inspectorate</b>
<b>MFA</b>	<b>Ministry of Foreign Affairs</b>
<b>MLA</b>	<b>Mutual Legal Assistance</b>
<b>MLSP</b>	<b>Ministry of Labour and Social Policy</b>
<b>Mol</b>	<b>Ministry of Interior</b>
<b>NAP</b>	<b>National Action Plan</b>
<b>NBLA</b>	<b>National Bureau for Legal Aid</b>
<b>NCCTHB</b>	<b>National Commission for Combating Trafficking in Human Beings</b>
<b>NGO</b>	<b>Non-Governmental organization</b>
<b>NRM</b>	<b>National Referral Mechanism</b>
<b>OASA</b>	<b>Federal Ordinance on Admission, Period of Stay, and Employment</b>
<b>OSCE</b>	<b>Organisation for Security and Co-operation in Europe</b>
<b>PO</b>	<b>Prosecutor's Office</b>
<b>RCS</b>	<b>Cantonal Return Counselling Services</b>
<b>SAA</b>	<b>Social Assistance Agency</b>
<b>SACP</b>	<b>State Agency for Child Protection</b>
<b>SAR</b>	<b>State Agency for Refugees</b>
<b>SEE</b>	<b>South-Eastern Europe</b>
<b>SEM</b>	<b>State Secretariat for Migration</b>
<b>TRM</b>	<b>Transnational Referral Mechanism</b>
<b>UN</b>	<b>United Nations</b>

# CHAPTER 1: INTRODUCTION

## 1.1. Leading principles of work with survivors of trafficking in human beings

The Guidelines on Identification, Protection and Referral of Victims of Human Trafficking are aimed at defending the human rights of trafficked persons in Bulgaria and Switzerland, thus a victim-focused approach has been adopted. In line with this goal, the organisations and persons applying the Guidelines agree to follow these general working principles, which are enshrined in the OSCE concept of Transnational Referral Mechanism (TRM), a co-operative agreement for the cross-border comprehensive assistance and/or transfer of identified or potential trafficked persons, and the OSCE Guiding Principles on National Referral Mechanisms (NRM):<sup>1</sup>

**Provide immediate and unconditional support to trafficked persons**, including access to accommodation centres and medical, legal, social and psychological support, regardless of a victim's decision on whether to cooperate with law enforcement or not;

**Prioritise measures to ensure safety and security** both for the trafficked persons and for the service providers;

**Provide objective and accurate information** on the trafficked persons' rights and responsibilities, without creating false expectations; inform the victims of their rights and possible actions and consequences in an accessible and understandable way;

**Observe strict confidentiality and data protection rules** by providing only the information necessary for the implementation of safety and support measures, with the consent of the victim; protect trafficked persons' sensitive data to avoid danger of discrimination;

**Treat all trafficked persons fairly, with dignity and without discrimination** based on characteristics such as ethnicity, race, sex, sexual orientation, religion, etc., or on a history of exploitation, abuse or work in the sex industry;

**Protect the interests of trafficked persons**, respecting victims' rights and prioritising their needs wherever possible in the given legal framework; implement all measures in a way that does not damage or hurt the well-being of trafficked persons;

**Ensure the participation** of the trafficked persons in all decisions related to them, taking account of their autonomy and providing support in their decision making;

<sup>1</sup>The National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM) was developed within a project of Animus Association Foundation and La Strada International, in cooperation with the NCCTHB "Creation of a National Referral Mechanism for Victims of Trafficking in Bulgaria" (2008-2010) financed by the MATRA Programme of the Dutch Ministry of Foreign Affairs. They have been slightly adapted for these Guidelines.

- **Obtain the informed consent** of the trafficked persons on all implemented measures; inform them of their rights and possible actions and consequences in an accessible and understandable way;
- **Treat trafficked persons individually**, according to their needs, interests, and circumstances, and prepare an individual action plan according to their specific needs, interests, physical and mental condition and resources;
- **Provide emotional support** to trafficked persons, with an attitude of understanding, acceptance and respect; establish a sense of safety, support for their strengths and respect for their freedom and autonomy;
- **Assume a no-blame position**, respecting Art. 26 of the Council of Europe (COE) Convention on Action against Trafficking in Human Beings for non-imposition of penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so;
- **Respect suffering** and be sensitive to the effects of violence and trauma on the lives and personalities of trafficked persons and to their different reactions;
- **Respect children's rights, interests and well-being**, and provide child victims of trafficking with adequate information and opportunity to express their wishes and concerns at every stage of the process and in accordance with their age and level of understanding. In any action taken, the best interest of the child should be the primary concern;
- **Do no harm!** Even with the best intentions, stakeholders may worsen the situation of the victim without even realising it. Any action taken while assisting or interacting with victims should consider the consequences for them.

## 1.2. Victims' rights: the international legal context

The documents presented below regulate the rights of victims of trafficking and determine States' major obligations under international law for combating trafficking in human beings.

- The **2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention against Transnational Organised Crime (the Palermo Protocol)** is a key international law instrument in the area of trafficking in human beings. It has been nearly universally ratified, including by Bulgaria (in 2001) and Switzerland (in 2006). The Palermo Protocol is the first international instrument that deals with all sectors of human trafficking and the first one which contains an internationally agreed and legally binding definition of trafficking. According to this definition, trafficking in persons is the "*recruitment*,

*transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*". The Palermo Protocol also contains criminalisation provisions, requiring the signatory countries to establish a criminal offence of human trafficking, sanctioning the conduct described in the definition. Importantly for these Guidelines, the Protocol outlines concrete measures for the protection of victims, including on the right to remain temporarily or permanently in the territory of the receiving state, as well as the safe and timely repatriation to the country of which the victim is a national or permanent resident.

■ The 2005 **Council of Europe Convention on Action against Trafficking in Human Beings** (the COE Convention) sets the standard for the implementation of anti-trafficking measures from a human rights perspective and focuses on victim protection. It has been ratified by all but five of the COE member states. Bulgaria has ratified the COE Convention in 2008 and Switzerland in 2013. The COE Convention employs the definitions of human trafficking and exploitation from the Palermo Protocol and further provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, and to be protected and assisted. It also differentiates between adults and children by not requiring abusive means in the definition of trafficking of minors. Special measures are provided for the assistance and protection of children who are victims of trafficking, including appointing a legal guardian to unaccompanied minors who represents their interests before all institutions, special protection during police investigations and legal proceedings, and working to create protective environments for children, making them less vulnerable to the danger of trafficking.

■ At the European Union level, **hence with regard only to Bulgaria but not to Switzerland, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims** (the Directive on Trafficking) is the most directly relevant legal instrument. The Directive on Trafficking replaced **the Council Framework Decision of 19 July 2002 on combating trafficking in human beings** and strengthened the rights of victims in criminal proceedings. It furthermore contains provisions on the prosecution of offenders and the establishment of national monitoring mechanisms. The Directive on Trafficking broadens the scope of trafficking in human beings, and explicitly includes additional forms of exploitation, such as forced begging, exploitation of criminal activities. It requests the Member States to provide appropriate protection and support before, during and after the criminal proceedings, as well as to take measures for the prevention of human trafficking and for victims' access to compensation. Since Switzerland is not a member of the EU, it is not bound by EU law; however, EU law may serve as a source of non-binding standards and principles.

Other international and regional treaties relevant to the rights of victims are listed in Annex 1. Annex 2 lists relevant EU legal acts applicable to Bulgaria, and Annex 3 lists relevant bilateral agreements between the EU and Switzerland. Annex 4 lists relevant applicable domestic acts in Bulgaria, and Annex 5 lists relevant domestic acts in Switzerland.

## 1.3. Key rights of the victims guaranteed by international law

### **RIGHT TO PROTECTION AND SUPPORT**

Victims are entitled to support, which is rendered with the victim's consent on an informed basis. Support may include safe accommodation, psychological and material support, access to emergency medical care, interpretation services, consultation regarding their legal rights and available legal services, support towards the protection of their rights and interests during criminal proceedings. Child victims of human trafficking are also entitled to access to education. Support is rendered regardless of the victim's willingness to cooperate in a criminal investigation.

### **RIGHT TO A RECOVERY AND REFLECTION PERIOD**

Trafficked persons are entitled to a recovery and reflection period to take an informed decision on whether to testify and cooperate in a criminal investigation. During this recovery and reflection period victims may not be asked any questions about the perpetrators or details of the offence, and they are entitled to shelter, psychological support to restore their emotional balance, and legal counselling.

### **ACCESS TO LEGAL AID**

Victims have the right to a lawyer to protect their rights, to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for the damage sustained.

### **RIGHT TO INFORMATION**

Trafficked persons have the right to information regarding their status, their rights, and the relevant judicial and administrative procedures, including information on available remedies. This information must be provided by every official who has identified the person as a victim of trafficking in human beings, as well as by social workers and lawyers.

### **RIGHT NOT TO COOPERATE WITH LAW ENFORCEMENT**

Victims have the right not to cooperate with the prosecuting authorities.

### **RIGHT TO PROTECTION OF PRIVACY**

Victims have the right to protection of their private life and identity. They have the right to request that their life and identity are protected during criminal proceedings and that the press and public are excluded from the courtroom.

### **RIGHT TO PROTECTION OF PHYSICAL INTEGRITY**

Victims have the right to protection of their physical integrity. They have to give informed consent to any medical or other physical examination.

## **RIGHT TO PROTECTION MEASURES AND TO BE TREATED WITH RESPECT AND DIGNITY**

If victims testify in criminal proceedings, they have the right to protection measures for their safety and to be treated with respect and dignity. Trafficked persons have the right to be protected from threats, insults, intimidation and any other assault before, during, and after the investigation and prosecution. The police should check whether the safety and security of the victim is ensured.

## **RIGHT TO COMPENSATION**

Trafficked persons have the right to adequate and effective remedies. This includes the right to compensation for material and non-material damages suffered. Compensation for damages may include payment of costs for medical, physical or psychiatric treatment, transportation, temporary housing, lost income or the money the victim earned for the trafficker, legal fees, and payment for non-material damages resulting from emotional distress, pain and suffering sustained by the victim as a result of the crime committed against them.

## **NON-DETENTION OF TRAFFICKED PERSONS**

Trafficked persons should not be detained or held in closed shelters or other welfare centres akin to detention. Victims should not be detained as irregular/undocumented migrants, as a result of their engagement in illegal activities, such as prostitution or unauthorised work.

## **NON-PROSECUTION AND NON-PUNISHMENT OF TRAFFICKED PERSONS**

Victims of trafficking should not be charged or prosecuted for prostitution or illegal acts they were compelled to commit.

## **TEMPORARY AND HUMANITARIAN RESIDENCE PERMIT**

Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities. If return would compromise their life and safety, trafficked persons have the right to apply for asylum or a residence permit on humanitarian grounds.

## **REPATRIATION AND GUARANTEES OF NON-REPETITION OF TRAFFICKING IN HUMAN BEINGS**

Victims have the right, if they wish so, to return to their home country without unnecessary or unjustified delay and with their safety taken care of. The safety of the trafficked person and their family should be taken into account in any decision for repatriation.

# **1.4. Context in Bulgaria and Switzerland**

## **BULGARIA**

### **SOCIOECONOMIC CONTEXT / PUSH FACTORS / VULNERABLE GROUPS / TRENDS**

According to data from Eurostat, while the majority of victims of trafficking in the EU come from Africa and Asia, Bulgaria is among the main EU countries of origin for victims of trafficking within the EU, together with Romania, the Netherlands, Hungary and Poland. The country is

primarily a country of origin for trafficking in human beings, and to a lesser extent a country of transit and destination. Bulgaria follows the main profile of an EU country of origin with approximately 80% of the registered victims being women and approximately 70% of the registered victims being trafficked for the purpose of sexual exploitation.

According to the last two annual reports (for the years 2015 and 2016) of the National Commission for Combating Trafficking in Human Beings (NCCTHB), the majority of Bulgarian victims are trafficked to **Germany, Italy, Greece, Cyprus, France, UK, Austria, Sweden, Belgium, the Netherlands and Switzerland**. Many of the victims have been exploited internally, within Bulgaria, before being trafficked internationally.

### **Socioeconomic context:**

The country has been undergoing a slow and difficult transition period from communist society to a liberal democratic society. Bulgaria joined the European Union in 2007, yet it is still among the poorest countries in Europe and remains the EU Member State with the lowest standard of living. Bulgaria's EU integration progress remains slow, especially in the spheres of the judiciary, education and the social system. In the past five years, the country has faced political instability and lack of continuity between six governments (three interim and three regular ones), especially as regards reform policies in the fields of health, social protection and education. The last EC Country Report on Bulgaria<sup>2</sup> indicates that despite some progress in certain financial and economic sectors, remaining weaknesses in the labour market continue to hinder growth. At the same time there is a high rate of inactivity and long-term unemployment, and an alarming number of young people who are not in employment, education or training. The high share of people living at-risk-of poverty or social exclusion remains a major economic and social challenge. The social protection system does not provide adequate levels of support. The high-risk groups include children, the elderly, the Roma and people in rural areas. The shadow economy remains a key challenge. The education system does not fully equip students with relevant skills, and access to quality education is unequal. Key challenges in the healthcare system include limited accessibility, low funding, and weak health outcomes.

Pursuant to a recent study of the push and pull factors for trafficking in human beings from Bulgaria to Western Europe,<sup>3</sup> poverty is the major **push factor** and a key motivation for people in Bulgaria to consider migration as a possibility to improve their living conditions and pursue a better life. In addition to high unemployment rates in the country, especially among the young people, low wages in the public sector enhance corruption among public officials and thus provide infrastructure for criminal networks to function. High relative poverty is directly related to lack of alternative opportunities. Those living in conditions of extreme poverty are more susceptible to become subject to exploitative practices and abusive conditions, because these conditions are not more extreme than the ones in which they originally lived. Lack of alternative opportunities is even more severe in the context of

<sup>2</sup>Country Report Bulgaria 2017. 2017 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, COM (2017) 90 final

<sup>3</sup>Relevant Push and Pull Factors for Trafficking in Human Beings from Bulgaria to Western Europe. Research Report (December 2015), prepared by Dena Popova and Donka Petrova, Animus Association Foundation, in the framework of the same project.

small towns in the countryside in Bulgaria where there is an ongoing process of depopulation. Lack of education helps perpetuate the cycle of living without opportunities as poor families often send their children to work rather than to school, which leads to illiteracy and greater vulnerability. Within the Roma community, the lack of a supportive family environment, and harmful practices such as early marriage and sale of children as brides, or for prostitution or pick-pocketing are additional factors that increase vulnerability to human trafficking.

Demand for low-skilled cheap labour in Western Europe is one of the major **pull factors**. The need for unqualified workers in the service sector, agriculture, construction and sex industry continues to grow. Coupled with restrictive migration policies, this creates fitting conditions for organised human trafficking networks. Against this background, globalisation and technologies facilitate cross-border flow of information, ideas, trade and people, but also facilitate the operation of criminal (human trafficking) networks. People become familiar with living standards and opportunities in other countries and fall easy prey to false promises for a better life abroad.

### **Vulnerable Groups:**

Women (age 15-50) and young people (especially Roma, ethnic Turks, young people living in residential care institutions as well as in remote and rural areas, often with low education status) are the groups most at risk of becoming victims of trafficking in human beings. Victims of trafficking are frequently children from dysfunctional families who have been victims or witnesses of domestic violence. In the last two years, adults are increasingly trafficked for the purpose of forced labour (labour exploitation or domestic servitude) or begging. Women and children (including boys) victims of trafficking are most often exploited sexually or for begging.

### **Trends:**

According to the 2015 and 2016 annual reports of the NCCTHB in Bulgaria, trends regarding human trafficking remain consistent. Bulgaria continues to be mainly a country of origin and to a lesser extent a country of transit for trafficking in persons. Trafficking for the purpose of sexual exploitation remains the most wide-spread form of trafficking in human beings, followed by trafficking for labour exploitation and the other forms of exploitation. In recent years, there is a clear upward trend in cases of trafficking for labour exploitation: from 67 pre-trial proceedings launched in the first nine months of 2016 for human trafficking, 12 were for trafficking for labour exploitation. Another clear trend is the growing number of victims of trafficking with specific needs such as mental and physical disabilities, chronic illnesses and mental disorders. In addition, there is a growing number of registered male victims of trafficking with different sexual orientation or self-identification involved in sexual exploitation.

### **Animus Association Foundation observes the following trends in its work with victims of trafficking:**

■ Many victims of trafficking strive to stay in the country of destination and fewer than in recent years seek assistance for their return to Bulgaria. One possible explanation is the free movement of persons following Bulgaria's admission to the EU and the legal opportunity for Bulgarians to work and reside in Switzerland for up to 90 days per year (as of 1 June

2016). Another factor that may affect victims' decision to stay in the country of destination is the lack of awareness of their legal rights and the assistance to which they are entitled in Bulgaria as victims of trafficking.

Sexual exploitation is more easily detected by professionals who identify victims of human trafficking than other forms of exploitation. The victims who are forced into prostitution more readily identify themselves as victims and seek the support of state authorities and NGOs for assistance and protection.

Victims of trafficking in human beings for labour exploitation are more difficult to detect, both in terms of identification by professionals and self-identification by victims.

## Overview of the legal and policy framework in the field of action against trafficking in human beings in Bulgaria

Bulgaria is party to the UN Convention against Transnational Organised Crime and the 2000 Palermo Protocol, as well as to the COE Convention and a number of other COE treaties relevant to human trafficking. In addition, as a full EU Member State since 1 January 2007, all EU law is binding in Bulgaria. For a full list of relevant binding legal acts, both international and regional, cf. Annexes 1 to 3.

In 2002, trafficking in human beings was criminalised in Bulgaria and a new Section IX "Trafficking in People" under Chapter II "Crimes against the Person" was introduced in the **Criminal Code** (CC). In accordance with the Palermo Protocol and COE Convention, the definition of trafficking in human beings in the Bulgarian Criminal Code includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("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"); and the purpose of exploitation ("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"). In the case of children, it is immaterial whether the means referred to above have been used.

On 1 January 2004, **the Law on Combating Trafficking in Human Beings** (hereinafter "the Anti-Trafficking Law") entered into force. The law defines the legal obligations of the different state authorities involved in combating trafficking in human beings and the relations between them, and promotes co-operation with NGOs. It further provides for the setting up of a national commission and local commissions for combating trafficking in human beings, and creates the legal mechanism for the development of an annual national programme which is to be approved by the Council of Ministers. The law also contains a variety of measures to prevent trafficking in human beings and to protect and assist its victims, including the setting up of shelters for temporary accommodation for victims of trafficking and centres for their protection and support, and the granting of special protection status to victims for the period of criminal proceedings.

In 2009, amendments to the **Criminal Code** criminalised the use of the services of a victim of

trafficking, and in 2013 the definition of trafficking in human beings in the Criminal Code and the Anti-Trafficking Law were made identical. Furthermore, the list of forms of exploitation was expanded to include forced begging and the removal of tissues, bodily fluids or cells. A non-punishment clause was added to the Criminal Code, in line with the COE Convention. Last but not least, a non-criminality clause for acts performed by victims of trafficking was introduced in 2013.

Prostitution in Bulgaria is neither legal, nor expressly criminalised; however, organising it (through brothels, prostitution rings or other forms of procuring) is prohibited. Under the Bulgarian Criminal Code, the following are defined as criminal acts: pimping/persuasion into prostitution; organising and offering venues for prostitution; forced prostitution and the prostitution of minors; and trafficking people for the purpose of prostitution. There is a 1975 provision that addresses “unearned income through immoral means”, which applies to sex workers: able-bodied persons of age who continuously fail to engage in socially beneficial work or those who receive income through unwarranted or immoral means are subject to up to two years of imprisonment or probation. Sex workers, especially street-based, may be detained for 24 hours for violating the public order or for having no IDs. According to experts, the “idler clause” is an anachronism that should be repealed.<sup>4</sup>

**The National Mechanism for Referral and Support of Trafficked Persons (NRM)** was set up in November 2010, after several years of preparatory work involving representatives of all relevant governmental, non-governmental and international organisations, following an initiative by Animus Association Foundation/La Strada Bulgaria in 2008. The NRM is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, in partnership with civil society. It outlines the roles and procedures of all stakeholders and provides concrete measures and steps for the identification and referral of trafficked persons. In 2016, the NRM was revised to reflect ongoing legal developments and changing trends and approaches in the area of trafficking in human beings. In July 2016, the NRM was officially endorsed by the Council of Ministers and now has the status of a bylaw.

**The Law on Child Protection** and its implementing regulations provide the legal basis for the protection of all children, including children at risk (which includes victims of trafficking), and regulates the rights of children in administrative and judicial proceedings. The identification of child victims of trafficking in human beings and their referral to assistance follows the rules and procedures described in the **Co-ordination Mechanism for Referral, Care and Protection of Unaccompanied Minors and Child Victims of trafficking in human beings Repatriated to Bulgaria** (first adopted in 2005 and periodically updated since). It sets up a system for inter-institutional referral of cases and creates obligations for co-operation between stakeholders involved in the fight against trafficking in children. In implementing the Co-ordination Mechanism, stakeholders are guided by the principles of the best interest of the child, inter-institutional information exchange and collaboration, and a multidisciplinary approach at national and local level.

<sup>4</sup>“For and against legalisation of prostitution”, study by European Initiative Foundation and Risk Monitor, 2011, p. 77 (in Bulgarian); accessible at [http://riskmonitor.bg/js/tiny\\_mce/plugins/ajaxfilemanager/upload/Reports/RM-19-Prostitution\\_Legalzation\\_BG.pdf](http://riskmonitor.bg/js/tiny_mce/plugins/ajaxfilemanager/upload/Reports/RM-19-Prostitution_Legalzation_BG.pdf); last visited 10 April 2018.

The co-ordination of the implementation of the mechanism is executed by the Minister of the Interior and the Chair of the State Agency for Child Protection.

**The Law on Legal Aid** (last amended in January 2017) provides for free legal aid to victims of domestic violence, sexual violence and trafficking in human beings who are placed in a shelter or crisis centre. In addition, regardless of whether they are accommodated in a state-delegated residential service or not, victims are entitled to free primary legal aid (i.e. advice and/or preparation of documents to initiate a case) if their income is below the poverty line (which is determined by the National Statistical Institute annually; for 2018, the poverty line stood at BGN 321 per month). There is a toll-free National Legal Aid Helpline where victims may seek advice on their rights and what possible action they may take.

Other relevant Bulgarian laws and bylaws are presented in brief in Annex 3.

## ANTI-TRAFFICKING INSTITUTIONAL FRAMEWORK IN BULGARIA

■ **The National Commission for Combating Trafficking in Human Beings** (NCCTHB) is the national coordination body that brings together the efforts of all institutions and organisations against trafficking in human beings and in support to victims of trafficking. It is a body within the Council of Ministries and is chaired by a Deputy Prime Minister. Members of the Commission are Deputy Ministers of all relevant Ministries (Foreign Affairs; Labour and Social Policy; Interior; Justice; Health; Education, Youth and Science) and deputy-chairpersons of other public bodies (State Agency for National Security, State Agency for Child Protection, Prosecutor's Office, Supreme Court of Cassation). The activities of the Commission are implemented by a permanent **Secretariat** headed by a Secretary. There is a **Permanent Working Group** of experts within the Commission which has a consulting and advisory role.

The Commission is responsible for defining and implementing the national anti-trafficking policy and strategy.<sup>5</sup> It designs and implements national annual programmes and formulates relevant objectives in the field of prevention, training of experts, reintegration of trafficked persons, research and analysis, international cooperation and improvement of legislation. The NCCTHB manages the only specialised services for victims of trafficking. Its services are located in three regions of Bulgaria:

- In **Sofia** – shelter for temporary placement and centre for support and consultation of victims (in one place), and Crisis centre for children
- In **Burgas** – shelter for temporary placement and centre for support and consultation (in one place), and shelter for long-term reintegration;
- In **Varna** – shelter for temporary placement and centre for support and consultation (in one place),

The NCCTHB hosts a **multi-disciplinary permanent team** working on strategic and

<sup>5</sup>In January 2017 the Council of Ministers adopted a National Strategy for Combating Trafficking in Human Beings (2017-2021), which will serve as the main strategic document in the field of combating trafficking in human beings.

complicated cases. This consists of experts from all institutions that are part of the NRM.

The Commission is part of the informal **Network of National Rapporteurs and/or Equivalent Mechanisms** to the EU Anti-trafficking coordinator<sup>6</sup> and part of the National Anti-Trafficking Coordinators from South-Eastern Europe (SEE),<sup>7</sup> an initiative coordinated by ICMPD.

By the end of 2017 there were 10 **Local Commissions for Combating Trafficking in Human Beings** (LCCTHB) established under the umbrella of the NCCTHB within 10 municipalities in the country (Blagoevgrad, Burgas, Varna, Veliko Tarnovo, Montana, Pazardzhik, Pleven, Plovdiv, Russe and Sliven). They are headed by deputy-mayors and are responsible for the implementation of the national anti-trafficking policy at the local level.

■ **The Ministry of Interior** (Moi) identifies, prevents, counteracts, detects, and investigates cases of trafficking. There are special anti-trafficking sectors (or task forces) in several of its divisions. Most active are the Directorate General (DG) Combating Organised Crime and DG Border Police. The National Police Directorate is involved in trafficking cases where there is no organised crime as well as when children are involved. The Migration Directorate exercises administrative control over foreign nationals' stays in country. It is further involved in the identification of third-country national victims of trafficking in human beings.

■ **The Ministry of Foreign Affairs** (MFA) identifies, through its diplomatic and consular representations in the countries of destination, trafficked persons, and supports their return.

■ **The Ministry of Labour and Social Policy** (MLSP) is active through three of its units:

■ The **Social Assistance Agency** (SAA) provides support through providing social services during the process of trafficked persons' reintegration.

■ The **Employment Agency** (EA) is involved in the process of trafficked persons' reintegration and empowerment through employment opportunities and labour inclusion.

■ The Executive Agency **Labour Inspectorate** (LI) identifies cases of labour exploitation and prevents trafficking for labour exploitation.

■ **The State Agency for Child Protection** (SACP) is responsible for the reintegration of child victims of trafficking. It coordinates the implementation of the "*Coordination mechanism for referral, care and protection of repatriated Bulgarian unaccompanied minors and child victims of violence*".

■ **The State Agency for Refugees** (SAR) identifies trafficked persons among non-EU citizens who apply for asylum or international protection in Bulgaria and ensures their access to services.

■ **The Prosecutor's Office** (PO) investigates cases of trafficking on a pre-trial level. In cases in which an organised crime group is involved, the investigation is done by the Specialised Prosecutor's Office.

<sup>6</sup>[https://ec.europa.eu/anti-trafficking/national-rapporteurs\\_en](https://ec.europa.eu/anti-trafficking/national-rapporteurs_en) last visited 10 April 2018

<sup>7</sup><http://www.icmpd.org/our-work/capacity-building/trafficking-in-human-beings/meetings-of-the-national-anti-trafficking-coordinators/> last visited 10 April 2018

The **International Organisation for Migration** in Bulgaria (IOM Sofia) provides for the safe return of trafficked persons and runs different programmes for short-term and long-term assistance.

**Non-Governmental Organisations** provide a full range of services for the support and reintegration of trafficked persons, such as crisis intervention, psychological and social support, accommodation, legal counselling, etc. As of January 2017, there are a total of 22 crisis centres for victims of violence, of which eleven crisis centres for children, ten crisis centres for children and adults, and one crisis centre for female victims of domestic violence. Crisis centres are regulated by the Rules on the Implementation of the Social Assistance Act and are defined as a set of social services, including residential care, social and psychological support, crisis intervention and legal counselling. Placement in a crisis centre is for duration of up to six months. Crises centres are funded by the Agency for Social Assistance, which is responsible for the provision of all social services in the country and organizations tenders to delegate the running of the centres to civil society organisations. In addition, there are three specialised shelters for trafficked persons registered in accordance with the Law on Combating Trafficking in Human Beings. Information on organizations that support victims of trafficking can be found in Appendix 6

## HELP-LINES THAT IDENTIFY AND SUPPORT VICTIMS OF TRAFFICKING:



**ANIMUS ASSOCIATION FOUNDATION** - The National Helpline for Survivors of Violence

**+359 (0) 2 981 76 86 or +359 (0) 800 1 86 76 (toll free from Bulgaria)**

**A21 CAMPAIGN FOUNDATION** - The Bulgarian National Helpline against Human Trafficking

**+359 (0) 800 20 100**

**SACP** - The National Helpline for Children

**116 111**

**IOM** – Help-line

**+359 (0) 2 939 47 77**

### FRAMEWORK / MIGRATION / PULL FACTORS/TRENDS:

Switzerland is a destination and transit country for trafficking in human beings. For many years, Bulgaria has been among the four main countries of origin of the victims. In recent years most trafficked persons originated from **Romania, Hungary, Thailand** or **Bulgaria**.<sup>8</sup>

#### Framework:

Swiss national identity is not based on a common language, but on intercultural factors such as the belief in direct democracy and in high levels of local and regional autonomy. Switzerland is a confederation of 26 cantons that are granted a maximum of political self-determination. While the Swiss Criminal Procedure Code and the core laws regarding victims of trafficking are national, each canton also has its own legislative and executive bodies and court systems. With this far reaching form of federalism, most of the key competences and responsibilities in combating human trafficking (e.g. prosecution, victim assistance, residence permits) lie with the canton. Exceptions to this rule are asylum procedures and prosecutions in cases of organised crime, which are both national competences. There is no national referral mechanism, but 18 of 26 cantons have implemented regional referral and cooperation mechanisms.

#### Migration:

Switzerland has long been a country with high immigration. More than 80% of migrants living in Switzerland today have a European passport and hail from Western Europe, mostly from Italy, Germany, or Portugal. In April 2017, Bulgarians comprise only 0.4% of Switzerland's registered migrant population, or 8,206 Bulgarians in absolute numbers.<sup>9</sup> Generally, Swiss migration policies are shaped by the European integration process. In 2009, Switzerland extended the Free Movement of Persons Agreement to Bulgarian and Romanian nationals, but a seven-year clause allowed the state to exert regulations over incoming migration from these countries. In 2016, free movement came fully into force, but again with a safeguard clause that allows for the imposition of temporary restrictions until 2019 if annual immigration of Bulgarian and Romanian people increases by at least 10%. As of June 2017, after net immigration from Bulgaria and Romania had doubled in 2016 compared to 2015, Switzerland has activated this clause and restricted the issuing of long-term work and residence permits. As a result of a right-wing initiative against alleged "mass immigration" which was approved in February 2014 by 50.3% of voters, the legislative framework might become more restrictive in the future.<sup>10</sup> The initiative specifies that Switzerland should autonomously and more restrictively manage the immigration of foreigners.

<sup>8</sup>See TIP report 2016 <https://www.state.gov/documents/organization/258876.pdf>, (last visited 9 April 2018), which holds that victims of trafficking in Switzerland originate "primarily from Central and Eastern Europe – particularly Romania, Hungary, and Bulgaria – although victims also come from Brazil, Cameroon, China, the Dominican Republic, Nigeria and Thailand" (p. 356).

<sup>9</sup>Statistics on foreign population, April 2017: <https://www.sem.admin.ch/sem/de/home/publiservice/statistik/auslaenderstatistik/archiv/2017/04.html> (last visited 9 April 2018),

<sup>10</sup>Richter/Ruspini/Mihailov/Minchev/Nollert (2016) *Migration and Transnationalism between Switzerland and Bulgaria*, DE: Springer, p. 23.

## Pull factors:

Compared to the EU, Switzerland has a relatively low unemployment rate (3.2% in 2017)<sup>11</sup> and a very high per capita income. It is among the three richest European countries and its national economy is among the most stable in the world. 75% of the labour force works in the service sector, mostly in businesses, tourism, gastronomy and banking.<sup>12</sup> There is a growing demand for domestic workers, especially in the care of the elderly.

## Main pull factors are:

- **Switzerland's wealth**
- **Low unemployment rate**
- **High demands for low skilled labour**
- **Geographical closeness** (cheap transportation)
- **Cheap modes of communication**
- **Switzerland's reputation** for the respect of human rights
- **Demographic factors** (ageing population)

## Forms of exploitation:

It is difficult to quantify the number of persons affected by different forms of exploitation. Generally, it is assumed that the number of unreported cases of victims remains high. What we know is that in 2016, FIZ Advocacy and Support for Migrant Women and Victims of Trafficking assisted a total of 233 trafficking cases. Almost 90% had been trafficked for sexual exploitation, and at least 10% for labour exploitation in the catering, care or cleaning sector. There are regional differences however. In Geneva, the number of persons trafficked for labour exploitation outnumbers those trafficked for sexual exploitation.

The fact that most victims of trafficking are identified in the sex industry is partly a result of Switzerland's former legislation: until December 2006, the Swiss Criminal Code only criminalised human trafficking for sexual exploitation and awareness-raising work targeted mainly the sex trade. In recent years, there have been more efforts to raise awareness of trafficking for labour exploitation, but identification, protection and rights for those concerned still remain more limited. A recent study mandated by KSMM suggests that trafficking for the purpose of labour exploitation exists in the following sectors: the construction industry, the catering and hotel sector, the domestic services and the agricultural sector as well as illegal activities such as begging, theft, burglary and drug trafficking.<sup>13</sup> The study mentions **covert, psychological violence and dependencies** tied to illicit work and wage dumping as most common means of control. Labour inspectorates do not have an explicit legal mandate to control and report

<sup>12</sup>Federal Statistic Office, February 2016.

<sup>13</sup>Probst/Efionayi-Mäder/Bader (2016), *Arbeitsausbeutung im Kontext von Menschenhandel*, Neuchâtel: Swiss Forum for Migration and Population Studies 65d, p.60.

violations of the Criminal Code on human trafficking.<sup>14</sup> So far, Swiss laws against illicit work have not been framed as an explicit measure to fight human trafficking.

## OVERVIEW OF THE LEGAL AND POLICY FRAMEWORK IN THE FIELD OF ACTION AGAINST TRAFFICKING IN HUMAN BEINGS IN SWITZERLAND

In addition to the COE Convention on Action against trafficking in human beings, Switzerland is party to the **UN Convention against Transnational Organised Crime** and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children. Switzerland is also Party to the UN **Convention on the Rights of the Child** and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, and the **Convention on the Elimination of All Forms of Discrimination against Women** and its Optional Protocol, as well as conventions elaborated under the International Labour Organisation (ILO) and a number of COE treaties in the criminal field, which are relevant to actions against human trafficking.

Since 2006, trafficking in human beings is criminalised under **Article 182** of the Swiss **Criminal Code** (CC; RS 311.0). It replaces former Art. 196 CC, which only penalised trafficking in human beings for the purpose of sexual exploitation. Art. 182(1) CC reads as follows, “Any person who as a supplier, intermediary or customer engages in the trafficking of a human being for the purpose of sexual exploitation, exploitation of his or her labour or for the purpose of removing an organ is liable to a custodial sentence or to a monetary penalty. The soliciting of a person for these purposes is equivalent to trafficking.” Although its wording is less extensive than the definition in the Palermo Protocol, legal provisions are generally interpreted in conformity with international law. Further, the Message of 11 March 2005 on the adoption of the second Optional Protocol to the Convention on the Rights of the Child<sup>15</sup> specifies that “labour exploitation” notably covers the notions of forced labour or services, slavery or practices similar to slavery, though without expressly referring to forced begging or criminal activities.

While prostitution in Switzerland is legal and regulated by high administrative requirements, **Art. 195 CC** can be relevant for trafficking in human beings for the purpose of sexual exploitation. It penalises the exploitation of sexual acts and the encouraging of prostitution of minors and adults. According to section c) of 195 CC any person who “restricts the freedom to act of a prostitute by supervising him or her in the course of his or her activities or by exercising control over the location, time, volume or other aspects of his or her work as a prostitute” is liable to a custodial sentence of up to ten years. Further, **Art. 196 CC** penalizes sexual acts with minors against payment: “Any person who carries out sexual acts with a minor or induces a minor to carry out such acts and who makes or promises payment in return is liable to a custodial sentence not exceeding three years or to a monetary penalty”.

For further relevant Swiss federal legislation see Annex 5.

The second National Action Plan (NAP) against Trafficking in Human Beings has been approved by the KSMM Steering Committee for the period 2017-2020. It contains 28

<sup>14</sup>Cf. opinion of FIZ to the revision of the Federal Act on measures to combat irregular work (BGSA), 30.7.2015, accessible under: [http://fiz-info.ch/images/content/VernehmlassungBGSA\\_StellungnahmeFIZ.pdf](http://fiz-info.ch/images/content/VernehmlassungBGSA_StellungnahmeFIZ.pdf).

<sup>15</sup>FF 2005 2667 [https://www.admin.ch/opc/fr/federal-gazette/2005/index\\_17.html](https://www.admin.ch/opc/fr/federal-gazette/2005/index_17.html) (last visited 9 April 2018); in Switzerland such Messages are taken into account for the interpretation of legal provisions.

objectives in the areas of prevention, prosecution, protection of victims, and partnership. One objective is to describe the tools and procedures available for protection of victims of trafficking from their identification to their (re)integration. The aim is to standardise the implementation of these tools and procedures on victim support and protection in the different cantons.

## ANTI-TRAFFICKING INSTITUTIONAL FRAMEWORK IN SWITZERLAND

The **Unit Trafficking in Human Beings** / Migrant Smuggling of the Federal Criminal Police, coming under the Federal Office of Police (fedpol) is responsible for all exchanges of police intelligence at the national level, including between cantons, and at the international level. Requests from other countries are forwarded to the competent cantons. The Unit supports the cantonal police authorities where necessary and ensures coordination between criminal procedures in cases involving several cantons or other countries. It provides analysis and the processing of information and judicial data, as well as preparation of files. Further tasks are the organisation and management of international meetings, police operations and central office duties.

The **Swiss Coordination Unit against Trafficking in Persons and Smuggling of Migrants** (SCOTT or KSMM) was established by the Federal Department of Justice and Police (FDJPA). As the federal and cantonal information and analysis centre, KSMM's tasks are strategic rather than operational: it defines national concepts and coordinates the activities of all competent authorities and public agencies involved in the fight against human trafficking and migrant smuggling. KSMM has set up several working groups to facilitate the fulfilment of the NAP and to formulate relevant objectives in the fields of prevention, training of experts, reintegration of trafficked persons, research and analysis, international cooperation and improvement of legislation. KSMM's **Steering Committee** is composed of representatives of the federal authorities (Foreign Affairs, Border Guard Corps, Office of the Attorney General, State Secretariat for Migration, Justice, Police, State Secretariat for Economic Affairs), cantonal authorities (Police Commanders, Public Prosecutor's Office, Gender Equality delegates, Victim's Help, Migration Authorities), as well as, in an advisory role, IOM Bern and the NGOs FIZ Advocacy and Support for Migrant Women and Victims of Trafficking, Au Coeur des Grottes, and ECPAT Switzerland. The **Permanent Office** of KSMM is located within the Federal Office of Police (fedpol) and represented in most cantonal roundtables.

18 of the 26 cantons (Aargau, Basel-Landschaft, Basel-Stadt, Bern, Fribourg, Geneva, Lucerne, Neuchâtel, Obwalden, Schwyz, St. Gallen, Solothurn, Thurgau, Ticino, Valais, Vaud, Zug and Zurich) operate **Roundtables** or other coordination mechanisms to combat trafficking in human beings. The Roundtables are composed of different stakeholders such as the police, public prosecutors, migration authorities, specialised victim support organisations/NGOs) who meet regularly to coordinate among themselves and to set up cantonal referral mechanisms.

The **State Secretariat for Migration** (SEM) has the final responsibility for matters covered by legislation on foreign nationals and asylum seekers in Switzerland.

■ Financed through SEM the **International Organisation for Migration** in Switzerland (IOM Bern) has been implementing specialised assistance for the safe voluntary return of victims and witnesses of human trafficking, including preparation and organisation of the return, as well as financial start-up and reintegration assistance.

■ The **Cantonal Return Counselling Services** (RCS) make the application for return assistance to the SEM. Depending on the canton, return counselling is provided either by the migration authorities themselves or by NGOs.

■ Cantonal **Victim's Help** offices provide finance and arrange for the support of victims of crimes through recognised victim counselling centres and specialised non-governmental organisations, according to the Federal Act on **Assistance to Victims of Crime** (Victim Assistance Act).

■ Every canton has its **Social Assistance Services** which are responsible for granting social and economic reintegration to persons with legal status in Switzerland, including victims of trafficking.

■ Every canton has its **Child and Adult Protection Services** (KESB), the authorities that are responsible for granting the necessary protection or guardianship to persons who are not in a position to obtain independently the support they need, such as minors or mentally and psychologically impaired persons.

■ The two main specialised **Non-Governmental Organisations** (NGOs) that provide comprehensive services in support of trafficked persons are **ASTREE** in French-speaking Switzerland and **FIZ** in German-speaking Switzerland. FIZ is Switzerland's most senior advocacy organisation for victims of trafficking. Its victim protection programme **FIZ Makasi** offers 24 places in several safe houses for women, transgender persons and their children, who can stay for at least 6 months and, depending on the referring canton, as long as needed. **ASTREE** is based in Lausanne and has up to 10 places for men, women and children. Further, Au Coeur des Grottes in Geneva offers shelter and support for all women and their children in difficult situations, including victims of trafficking, and Trafficking.ch – Trafficked Victim Unit recently set up the safe house **FORTIS** with up to 12 places that offer shelter and support to trafficked men, women, and children (for further shelters see annex 7). In Italian-speaking Switzerland Antenna MayDay offers counselling to all migrants including sex workers and victims of trafficking in collaboration with SOS Ticino.

HELPLINES FOR VICTIMS OF TRAFFICKING (DURING OFFICE HOURS):



**FIZ** counsels, protects and identifies victims of trafficking:

+ 41 (0)44 436 90 00

**ACT 212** invites the public to report (potential) cases of THB:

+41 (0)840 212 212

The **Centre Social Protestant CSP** gives free legal advice:

+ 41 (0)800 20 80 20

## CHAPTER 2: BULGARIAN VICTIMS OF TRAFFICKING IN SWITZERLAND – SUPPORT AND RIGHTS

### 2.1. Detection and identification of trafficked persons

#### 2.1.1. What are the defining features of human trafficking?

According to the Palermo Protocol Trafficking in Human Beings (THB), three components need to be in place cumulatively: the **action** of recruiting, the **means** of coercion and the **purpose of exploitation**. Regardless of a person's consent to their exploitation, they are victims of human trafficking if they are offered a job based on false promises, deception or fraud (action), when debts or excessive costs for an agent or other services ought to be paid off, or the person is manipulated or abused (means) with the purpose of exploiting them sexually, on the labour market, or removing their organs (purpose). If a person under the age of eighteen is recruited for such a purpose, it is considered "trafficking in persons" even if this does not involve any of the means mentioned.<sup>16</sup>

AKTION	MEANS	PURPOSE
<ul style="list-style-type: none"><li>■ Recruitment</li><li>■ Transportation</li><li>■ Transfer</li><li>■ Harboursing</li><li>■ Reception of persons</li><li>■ Exchange or transfer of control over those persons</li></ul>	<ul style="list-style-type: none"><li>■ Threat</li><li>■ Use of force</li><li>■ Coercion</li><li>■ Deception</li><li>■ Fraud</li><li>■ Abduction</li><li>■ Abuse of power of a position of vulnerability</li><li>■ Giving or receiving payments/benefits to achieve the consent of a person in control over another person</li></ul>	<ul style="list-style-type: none"><li>■ Exploitation of another person's prostitution or other forms of sexual exploitation</li><li>■ Forced labour or services, including forced criminality</li><li>■ Slavery or practices similar to slavery</li><li>■ Servitude</li><li>■ The removal of organs</li></ul>

It is important to **distinguish between self-determined sex work and human trafficking for the purpose of sexual exploitation**. Sex workers sell sex for many reasons, but the key distinction is that they do it on their own terms. They themselves decide what services they offer, and they are not coerced into staying in the business but have chosen this from among the options available to them.

The dividing line between trafficking in human beings for the purpose of **sexual exploitation** and for the purpose of **labour exploitation**, can be blurry. On the one hand, trafficked persons who are exploited on the labour market, including in **domestic services**, are often sexually

<sup>16</sup>Art. 3 of the Palermo Protocol

abused by traffickers who intend to bend their will and make them amenable. On the other hand, women exploited in brothels are often coerced into cleaning or catering duties, hence into labour exploitation.

### 2.1.2. What are the mechanisms of exploitation in Switzerland?



VIKTORIA

**ACTION:** Viktoria lived in a small apartment with her parents in Bulgaria. Their meagre salaries were barely sufficient for the three of them. After completing an apprenticeship, Viktoria decided to work as a cleaning help in nearby tourist destinations. She had occasional jobs, especially during high season. One summer a female co-worker introduced her to Milan, a married father with a family. Milan took the two young women out in his car and Viktoria, barely nineteen years old, fell in love with him immediately. Soon he professed his love for her and promised to get divorced. Viktoria did not tell her parents about their affair.

A few months later, just before Milan's departure for Switzerland, he asked Viktoria to join him in order to prostitute herself. Milan told her that she needed to earn money for them to live together and that she could keep half of the earnings. Viktoria agreed not knowing that he had promised the same to Ana, a middle-aged mother of two, who had worked in prostitution before.



SVETLA

**ACTION:** Svetla has a difficult life in Bulgaria. She is the oldest of four children. Her mother is sick and urgently needs money for medical treatment. Svetla wants to help her mother but has not finished school and cannot find a job in the small town where she lives. A woman she meets in a café downtown recruits her as housekeeper in a hotel in Switzerland.

Promises of love and care are a well-known strategy for recruiting women (and in some cases men) who are in search of a better life. The recruiters are usually men who abuse the **economic and emotional needs** of young women. But also, tied to the "feminisation of poverty" in Eastern Europe, a **personal crisis** such as a divorce can bring about a situation, in which a mature woman, burdened with family obligations is susceptible to such false promises.

In the case of Svetla, **her responsibility** as the eldest daughter to support her sick mother made her neglect the risk and accept a false proposal to earn good money abroad. In Viktoria's case, her **youthfulness and a lack of perspective** made her vulnerable to empty promises of love and ready to agree to a relationship based on dependency. **Viktoria knew she was supposed to work in prostitution herself. However, she was deceived regarding the working conditions.**



VIKTORIA

**MEANS:** Together with Ana and a male friend of Milan's, they travel to Switzerland by car. The very night they arrive in Switzerland, Ana is supposed to introduce Viktoria into the sex trade at a hotel in a city. Viktoria refuses to serve clients. That night, she tells them that she has realised that she would never be capable of doing the job that she was supposed to do. When she asks Milan to allow her to return to her family, he refuses and tells her she will get used to the job. Subsequently, he takes her to an apartment in the countryside and he hits her several times daily.



SVETLA

**MEANS:** The woman who recruited Svetla organises the trip and travels together with her. After they arrive in Switzerland, Svetla realises she has to work in prostitution. The woman forces her to follow her instructions. She threatens her and pushes her out onto the street.

Threats, psychological abuse and manipulations, demonstrations of power etc. can be as oppressive and effective as physical and sexual violence in asserting authority over a person. Sometimes trafficked persons are made to witness how their co-workers are mistreated, say after a failed attempt to escape. The means deployed to keep them dependent and servile are wide-ranging and changing. Some traffickers motivate and keep their victims in an exploitative situation by allowing them to keep at least some of their earnings.



VIKTORIA

**EXPLOITATION:** A few days later, Viktoria is returned to the city and starts to work in prostitution under Ana's supervision. Milan dictates the prices and demands that they work without condoms. Initially, he drives them to the city on a daily basis. Later, they have to pay 100 Swiss Francs per day to rent a shared room without sanitary facilities. Soon the situation becomes unbearable and Viktoria runs away. Not knowing where to go and whom to contact, however, she eventually responds to Milan's incessant calls. He brings her back to the apartment. That is where Ana witnesses how Milan undresses and beats Viktoria so brutally that she cannot move anymore for several days.

### 2.1.3. Early identification: How can a trafficked person be detected?

In Switzerland, the identification process is not divided into "informal" and "formal". There is no institution or central body that formally defines who is a victim of trafficking or not. Identification of a trafficked person is a **multi-layered and time-consuming process** that includes several actions that happen simultaneously. It involves different actors who are able to interpret hints of human trafficking and work together closely in order to give access to support and protection.

Early identification (detection) is difficult, because trafficked persons hardly ever report themselves as victims of trafficking. Instead, when trafficked persons confide in a third person, they mention inflated debts that do not decrease, tasks they do not want to fulfil anymore or little deceptions, humiliations or blackmailing against themselves or their children. Viktoria's detection started with her colleague's realisation that Viktoria's life was at risk.



**VIKTORIA**

Viktoria does not manage to escape from Milan, her supposed lover, on her own terms. Instead, her older colleague Ana confides in an outreach worker from a communal counselling service for sex workers. Ana tells the social worker that her main concern is to free Viktoria, whom she cares about because she could be her daughter. Ana herself feels overly pressured. Milan does not allow her to attend her mother's funeral in Bulgaria and holds Ana responsible for the money Viktoria is unable to make. Milan says that Ana must work for three more months before she can return. If not, he will kill her children.

Most trafficked persons distrust officials and are afraid of informing the police, especially if their travel or working permits are in the perpetrators' hands. This fear is fuelled by traffickers who pretend to have good connections with state authorities or misinform the victims, for instance about the legal status of self-determined sex work in Switzerland. **The less connected and informed a person is concerning their rights as a (sex) worker and the less secure their residence status is, the higher the likelihood that they will not confide in an official.**

Initial signs that a person could be a victim of trafficking may be picked up by a range of attentive professionals **at borders and embassies, in hospitals, on the premises of entertainment and social services, in apartments, in various shelter facilities, on the streets, at information and registration desks and in various work spaces.**<sup>17</sup> They may be alerted by the fact that a person seems to act under constraint or is under constant pressure, even if it's not clear where the pressure is coming from. In some cases, there are hints of rape, coercion, or the deprivation of personal freedom. Not only professionals, but also attentive members of the public, **sex workers, their clients, co-workers and roommates, friends and family,** may recognise the plight of a trafficked person.

<sup>17</sup> *The following list has been adapted from the Mirror Project: Developing agreed methodology for identification and referral for trafficking for labour exploitation: guaranteeing victims the access to protection – MIRROR, Madrid 2009, p. 15/16.*



SVETLA

Svetla manages to escape on the first day. Her documents remain with the traffickers. She meets a random person on the street and manages to explain to him that she needs help using Google Translate. The person buys her a train ticket to another town in Switzerland. When she arrives, another person helps Svetla get to the police where she explains her situation. She is identified as a trafficked person. The police officers take her to a women's shelter.

Victims of trafficking rarely recognize themselves as such. It is important for employees from different institutions who are likely to come across a victim to be well trained about what the traffic indicators are.

NOTE !

Do's and don'ts in **approaching presumed trafficked persons**

- create unobserved situations
- let the person talk freely, allow for digressions in the conversation
- offer support in satisfying their primary needs
- do not dig into their history but facilitate contact with a victim assistance organisation or ask for the person's consent to contact a specialised NGO on their behalf.

**RISK GROUPS**

Migrant workers, minors and sex workers with restricted work or residence permits are particularly vulnerable to exploitation. They lack legal rights and have little bargaining power in low paid and/or low regulated labour sectors such as care, construction, gastronomy and domestic workers (including in diplomatic households); this is in addition to racial and ethnic discrimination. However, it is important not to stereotype potential victims of this crime. A group that is easily overlooked when thinking of vulnerable persons, are those experiencing socio-economic marginalisation because they do not conform to norms of gender and sexuality. **Stereotypical images of what a victim looks like or how a victim should behave may prevent us from seeing the vulnerability in a person** who is not considered to be part of a particular risk group.



VIKTORIA

Based upon Ana's confessions regarding her own situation and the situation of Viktoria at the communal counselling service for sex workers, the outreach social worker informed her about specialised services for victim support. With Ana's consent, the social worker contacted the city's specialised police unit. Owing to Ana's detailed information, the police were able to find Viktoria in the apartment in the countryside, where she had been abused. Both women were brought to the specialised NGO FIZ. While Viktoria decided to embark on the FIZ victim protection programme, Ana had a few counselling sessions, before she decided not to cooperate and disappeared.

One of the most effective bodies who can detect and refer sexually exploited victims are **specialised anti-trafficking police units** that do not have a repressive mandate and have received training on assisting trafficked persons in the red-light district. Specialised police officers emphasize the importance of **non-verbal and verbal language skills** to establish a basis for communication with the potential victims, and the need for specialised translators who speak the victim's first language.

Based upon a suspicion, the cantonal migration agency can allow for a recovery and reflection period of a minimum of 30 day (see 2.2.1.).

#### 2.1.4. Main actors in the identification process

There is no institution in Switzerland that has the unique competence to define who is a victim of trafficking or not. The main actors in identification of victims of trafficking are **specialised police units and specialised NGOs**. Assessing the key elements of the trafficking elements in their respective daily work, specialised counsellors, and cantonal and municipal police officers know the mechanism for recruiting, transfer, coercion and exploitation.<sup>18</sup> Close cooperation between state and non-state actors is vital in the process of identifying a trafficked person.

Being identified as a victim of trafficking does not automatically imply that the trafficked person is granted victims' rights. The latter are granted by different state authorities. Residence is regulated by the **Foreign National Act**, and victim support in the cantonal **Victim Assistance Act**. In Switzerland, 99% of all trafficked persons are foreigners with no or limited residential status. Thus, the final power to determine whether a person can **actually claim the rights** of an identified victim lies within the authority of the cantonal **migration authorities** and - at certain stages - the State Secretariat for Migration (SEM) and the cantonal **Victim's Help** office.

The following state and non-state actors are crucial in the process of identifying a victim:

**Law enforcement authorities:** Upon suspecting that a person could be a victim of trafficking, the police and prosecuting authorities inform a specialised victim support organisation.<sup>19</sup> If they decide to open criminal proceedings and consider the victim's stay in the country necessary, they apply for a short-term permit.

**Victim support services:** Specialised NGOs and victim counselling centres identify the victim in the process of counselling and apply (on behalf of the victim) for Victim's Help. They can also apply for certain residence permits, namely a recovery and reflection period of at least 30 days and/or a long-term residence permit on the grounds of serious personal hardship.

<sup>18</sup>Presumed victims of trafficking in the Swiss Asylum Process are identified in an internal process of the SEM, which is not further outlined in these guidelines.

<sup>19</sup>See the Directives to the Foreign National Act 5.6.8.2.1 (version 6.3.2017).

The decisions of the following authorities determine different aspects of the support offered to victims:

**Cantonal migration authorities:** The cantonal migration authorities decide on the residence status of the victim, which in turn largely determines to what extent a victim can benefit from Swiss support services.

**Federal migration authorities:** The State Secretariat for Migration (SEM) makes the final decision regarding a victim's long-term residence permit and decides who can benefit from the return assistance programme.

**Victim's Help:** Cantonal Victim's Help Offices determine whether a person is eligible to receive free counselling and shelter as well as assistance with medical, psychological, social, financial or legal matters.

**Social Services:** Concerning longer-term support, the cantonal Social Services decide on whether or not to finance subsistence level and integration measures such as language courses. This matters since a victim's integration enhances the chance to obtain a residence permit in case of serious personal hardship.

## 2.2. Residence regulations for victims of trafficking

Questions concerning rights of residence are vital, since a number of rights can effectively only be claimed if the victim is in possession of a legal residence status.

### NOTE !

Victims of trafficking are not automatically entitled to a residence status; there is no guarantee that they will receive a residence permit. Without a permit they are limited in how they can effectively benefit from their victim's rights and support in Switzerland.<sup>20</sup>

**Based on the Foreign Nationals Act (FNA) and its directives, the following permits can be applied:<sup>21</sup>**

- recovery and reflection period
- short-term permit
- permit in the case of serious personal hardship
- permit for temporary admission

### 2.2.1. Recovery and reflection period

When there are reasonable grounds to believe that the person concerned is a victim of trafficking, the cantonal migration agency may allow for a recovery and reflection period of a minimum of 30 days. Primarily, the reflection period allows the recovery from the immediate effects of the

<sup>20</sup>Point 21 of the National Action Plan 2017-2020 aims at amending the Federal Ordinance on Admission, Period of Stay, and Employment (OASA) in such a way that victims of trafficking may be granted stay in Switzerland if this is necessary for receiving the benefits they are entitled to under the Victim Assistance Act.

<sup>21</sup>Directives to the Foreign National on victims and witnesses of human trafficking, chapter Act 5.6.8 (version 6.3.2017)

exploitation. It should enable the victims to free themselves from the perpetrator's influence and to take an informed decision on whether to cooperate with the competent authorities or not. If there are well-founded indications that the immediate recovery will take more than 30 days, a longer period can be requested from the beginning. The survivors of trafficking themselves can apply for the recovery and reflection period. Usually, however, it is the law enforcement authorities or victim counselling service with a corresponding authority that applies on behalf of the victim.

#### NOTE !

In order to protect the victim, neither the reason for the stay nor the victim's residential address should be apparent from the written confirmation of the migration authorities.<sup>22</sup>

The granted time period should enable the victims to free themselves from the perpetrator's influence and take an informed decision on whether to cooperate with the competent authorities or not. If the victim does not cooperate, they are obliged to leave Switzerland and return to Bulgaria or move to another country where they have a secured residence status (see 2.2.3 for a permit in case of serious personal hardship).

The **recovery and reflection period can be revoked** by the migration authorities if:<sup>23</sup>

- a victim decides against cooperation
- a victim contacts the suspected perpetrators voluntarily
- a victim violates public order and security in any serious way
- there are new findings according to which the person is not a victim or witness of trafficking.

#### V-NOTE !

A **prolonged recovery and reflection period is only granted on additional "well founded indications"**. Yet, a period of 30 days tends to be too short to recover and make an informed decision on whether to take legal action against traffickers – a decision that may have far-reaching consequences for the safety of the victim and their family. In order to allow a traumatised person to evaluate their situation, keep safe from the traffickers and make a decision, a recovery and reflection period of a minimum 90 days is recommended to be granted right from the beginning.

If the victim agrees to cooperate from the beginning, the prosecuting authorities can apply for a short-term permit with the migration authorities straight away - which implies that the victim cannot benefit fully from the recovery period. Victims in an often precarious psychological condition then directly enter a pressing period of interrogation, while facing potential threats from the perpetrators.

<sup>22</sup>This recommendation is enshrined in the directives to the FNA, chapter 5.6.8.2.2.3 (version 6.3.2017)

<sup>23</sup>According Art. 35, Paragraph 3 of the Federal Ordinance on Admission, Period of Stay, and Employment (OASA)

## 2.2.2. Short-term permit (L)

If the victim is willing to cooperate, the law enforcement authorities can apply for a short-term permit with the migration office of the canton where the victim was exploited. Generally, the public prosecutor's office leads the investigations and is thus in the position to apply. In some cantons the police can apply for a permit as well. **The purpose of the short-term permit is to make sure that criminal proceedings can be launched, and victims' testimonies can be used as evidence in court.** If the law enforcement authorities need the victim to stay on in Switzerland, they can apply for an extension. Where several cantons are involved in police investigations, one of the cantons assumes responsibility for conducting proceedings and is competent to issue the short-term permit. Actual practices for short-term permit applications vary from canton to canton.

### V-NOTE !

Criminal proceedings concerning human trafficking are complex and extensive. In most cases, they take more than 6 months. That's why it is recommended to **issue short-term permits for a minimum of six months** with the option of extension. From a victim's perspective it is recommendable to give the opportunity for an uninterrupted six-month **time horizon for healing.**

A temporary transfer of the victim to another canton might become necessary in order to better protect and accommodate the person concerned. This is not regarded as a change of canton; the original canton remains in charge of issuing or extending the residence permits. This measure can be taken only after consulting with the competent cantonal authorities.

A short-term permit allows for the possibility of employment, provided the potential employer issues a request to the cantonal migration and labour market authorities. **A work permit** is only issued for the duration of the remaining weeks or months of the short-term residence permit. Receiving a work permit is premised on victims having safe and adequate accommodation.

### V-NOTE !

An occupation is desirable as it contributes to the victim's social and vocational integration. However, **chances to find work are limited as victims are required to look for employment opportunities without a (pre-existing) work permit.** Further, short-term permits make it very difficult to find stable accommodation.<sup>24</sup>

## 2.2.3. Permit in case of serious personal hardship

A victim of trafficking may file with the cantonal migration authority an application for a residence permit on the grounds of serious personal hardship.<sup>25</sup> An application may be filed **any time after the expiry of the recovery and reflection period.** It can be submitted by the victim, by their legal representation or by a victim counselling centre or NGO. The

<sup>24</sup>Directives to the Foreign National Act, chapter 5.6.8.2.4 (version 6.3.2017)

<sup>25</sup>Directives to the Foreign National Act, chapter 5.6.8.2.5 (version 6.3.2017)

victim's cooperation is not conditional on an application, but in practice chances are much higher if the victim has cooperated with law enforcement authorities. The criteria for consideration include amongst others **serious impairments to health** (that cannot be treated adequately in the country of origin), **the impossibility of social reintegration or a risk that the person could become a victim of trafficking once again on return (re-trafficking)**.

If an application is accepted by the cantonal authority, it is forwarded to the State Secretariat for Migration (SEM) who takes the final decision. If the SEM consents to it, the applicant is granted a residence permit B. For EU/EFTA nationals this permit is valid for up to five years, if the person is in possession of a long-term employment contract. For victims of violence the permit is usually issued for one or two years and can be extended regardless of the person's employment/financial situation.

#### V-NOTE !

In some cases a permit on the grounds of serious personal hardship was revoked or was not renewed because the person fully depended upon Social Assistance Services.



#### TWO WOMEN

The procedure of receiving a permit on the grounds of serious personal hardship can take a long time. In one case, two Bulgarian women have been waiting for a reply from the respective cantonal authorities for two years. The uncertainty concerning their residential status makes it difficult for them to stabilize and fully integrate.

### 2.2.4. Temporary admission (F)

If a survivor of trafficking does not qualify for a residence permit, but it is impossible or unreasonable to expel the person (e.g. due to the danger coming from the traffickers in the country of origin) the cantonal authorities can request the SEM to decree a temporary admission.<sup>26</sup> Victims of trafficking receive an F permit, which is valid for up to a year and can be renewed by the canton of residence every twelve months. Temporarily admitted persons are **restricted regarding their mobility**. As a basic rule, they are not permitted to leave Switzerland and are assigned to live and work in one canton only.

The steps regarding the application for different residence permits and the cooperation among the different stakeholders involved have been laid down in a multidisciplinary process under the name of **COMPETO**.

#### NOTE !

**COMPETO** aims at standardising the tasks and responsibilities of the migration services, the police and NGOs, and promotes co-operation among the different stakeholders on matters concerning resident status and permits. It consists of a one-page diagram that shows how and at what point the different stakeholders interact. In the directives issued by the State Secretariat for Migration, the application of the COMPETO process is recommended across cantons.

<sup>26</sup> Directives to the Foreign National Act, chapter 5.6.8.2.7 (version 6.3.2017). Temporary admittance is governed by the provisions of the Federal Act on Foreign Nationals (FNA, Art. 83ff).

## 2.3. Victim rights: assistance and protection

**Victim's Help** is a statutory assistance that governs the support of victims of crimes in Switzerland, **regardless of whether or not the victim has cooperated with the law enforcement authorities.** Victim's Help can be claimed by individuals who have been physically, sexually or mentally affected through a criminal offence committed in Switzerland. Parents, spouses, children, and other persons close to the victim are entitled to Victim's Help.<sup>27</sup>

Every canton has a Victim's Help office that is responsible for the implementation of the **Federal Act on Assistance to Victims of Crime** and a cantonal victim counselling centre. Most cantons entertain several victim counselling centres with different profiles and specialisations, including non-governmental organisations. One of the main tasks of the Victim's Help office is the funding and monitoring of these services and the assessment of individual requests for financial support.

### 2.3.1. Right to counselling and material support

The Victim Assistance Act decrees that all victims of violent acts, whether or not the victim files a complaint, are entitled to free, confidential counselling. Counselling services can be made use of anonymously and with translation assistance if needed. Counsellors support the victim in recovering from the consequences of the crime, they inform about the victim's rights and the (legal) services available, they arrange for the help of experts (lawyers, therapists etc.) and accompany the victim to interviews in criminal court proceedings if the victim wishes.

Trafficked persons have a right to immediate assistance. Under certain circumstances they can claim longer-term assistance:

During the first 21 to 30 days, the victim receives **unconditional immediate assistance** in order to cope with urgent needs, such as temporary accommodation, transportation, medical and psychological care, legal support and possibly further support such as special safety measures. The victim counselling centre in charge submits the request for immediate aid on the victim's behalf.

Depending on the victim's financial situation, the costs for **longer-term assistance** or professional help besides the assistance offered by the victim counselling centres, may be covered through Victim's Help (shelter/housing, legal fees, medical and therapeutic costs etc.). Longer-term aid is **harder to obtain** and is only awarded if no other institution, insurance, or person can be held accountable.

#### NOTE !

In several cantons, requests for longer-term assistance to the Victim's Help office or the Social Assistance Services require that a person has at least a short-term permit.

<sup>27</sup> Under certain circumstances it is possible to receive Victim's Help even if the crime was committed outside Switzerland, but the victim was a resident of Switzerland at the time according to Art. 17 of the Victim Assistance Act.

### 2.3.2. Right to compensation for material and non-material damages

Victim counselling centres are obliged to inform trafficked persons about their right to claim compensation. The right to compensation exists regardless of victims' involvement in criminal proceedings and even if there are no criminal proceedings at all.<sup>28</sup>

Trafficked persons are entitled to claim **compensation for material damage**, if they are unable to work as a consequence of the crime or if they suffered a loss of income. The amount depends on their financial situation. Material damage is only compensated if the victim's financial means do not exceed a limit set by law.

Victims are entitled to claim **compensation for pain and suffering** (non-material damage). This type of compensation is aimed at counterbalancing the personal damage resulting from severe emotional distress and persistent impairments suffered by the victim due to the criminal violence experienced. It is granted regardless of the victim's financial situation.

#### V-NOTE!

Victim counsellors should advise the victims **to collect and keep evidence** (if possible) for the **material damage caused by the crime**. Loss of income can include the **money from forced sexual services** which the victim was forced to hand over to the trafficker.

#### The cantonal Victim's Help office is entitled to pay out compensation provided that:

1. Criminal proceedings have taken place and the convicted perpetrator/s lack sufficient resources to pay compensation;
2. No criminal proceedings have taken place but there is very strong evidence that the person fell victim to a relevant and serious offense and there is sufficient legal evidence.

It is difficult to provide legal evidence without criminal proceedings. However, a victim's allegations can be examined on the basis of medical notes, social security files, etc.<sup>29</sup>

#### V-NOTE!

If victims cannot obtain compensation from the perpetrator, they can claim it from the compensation office in the canton where the crime was committed. They may receive a maximum of **2/3** of the compensation awarded by civil courts.<sup>30</sup> In case of survivors who return to their home country, the **amount is reduced to the cost of living in the country of return**.

<sup>28</sup> <sup>29</sup> Cf. [http://www.opferhilfe.zh.ch/internet/justiz\\_innere/opferhilfe/de/wer\\_ist\\_opfer/nachweis\\_der\\_straftat.html](http://www.opferhilfe.zh.ch/internet/justiz_innere/opferhilfe/de/wer_ist_opfer/nachweis_der_straftat.html) (last visited 9 April 2018)

<sup>30</sup> Cf. 2/3 rule: Baumann/Ananbitarte/Müller Gmünder, *Genugtuungspraxis Opferhilfe*, in: *Jusletter* 1. June 2015, p. 4. See [http://www.sodk.ch/fileadmin/user\\_upload/Fachbereiche/Opferhilfe/Grundlagen/2015.06.01\\_Jusletter\\_Genugtuungspraxis\\_OHG\\_de.pdf](http://www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/Grundlagen/2015.06.01_Jusletter_Genugtuungspraxis_OHG_de.pdf) (last visited 9 April 2018)

Generally, applications for compensation for material and non-material damage must be submitted within **five years** of the crime (or knowledge of the crime) in the canton where it took place. Longer periods are allowed for victims who suffered sexual offences as minors.<sup>31</sup>

#### HINWEIS OPFER

When a Bulgarian institution establishes that a survivor of trafficking was not informed about their victim's rights in Switzerland, or was unable to claim such, they should get in touch with a victim counselling centre or specialised NGO in Switzerland that may be able to support the victim in claiming compensation retroactively.



DANA

A Southern-European NGO contacted the specialised Swiss NGO FIZ when they realised that Dana had been trafficked to Switzerland, where she was being exploited in prostitution. Following a Swiss police check, she was interviewed as a witness before returning to her country. FIZ followed up and learnt that in fact Dana's perpetrators had been charged with trafficking in Switzerland and criminal proceedings were underway. In cooperation with the South-European NGO, a FIZ counsellor informed Dana of her victims' rights in Switzerland. The deadline to apply for compensation from Swiss Victim's Help had already passed, but FIZ submitted an application to the higher court of appeals and was able to obtain compensation for Dana from the perpetrators' confiscated funds. The perpetrators were sentenced to a long prison term.

### 2.3.3. Protection and rights in criminal proceedings

The Swiss **Code of Criminal Procedure (CPC)** provides, *inter alia*, for the protection of victims and witnesses of human trafficking in criminal proceedings. Victims and witnesses are entitled to special rights to information, protection and participation. Minors and victims of sexual offences have additional special rights.

#### 2.3.3.1. Rights to information

Victims of trafficking have the following rights to information:<sup>32</sup>

- During the first interview with the police or the public prosecution, the victim is provided with the following information:
  - Addresses of counselling services for victims and an outline of their role;
  - The different (financial) support options available to victims;
  - The deadline for claiming compensation
- Extensive guidance about the victim's rights and responsibilities during criminal proceedings: e.g. the right to refuse to give evidence or the possibility to join the public prosecution as a private claimant.
- If the victim agrees, their name and address will be passed on to a counselling service.
- Prompt information about any court order enforcing or cancelling remand in custody

<sup>31</sup>For details see Art. 25 and 26 of the Swiss Victim Assistance Act.

<sup>32</sup>Art. 305 of the Swiss Criminal Procedural Code (CPC)

or in the event of the flight of the accused.

- The indictment and any final report is sent to the private claimant/victim.
- Upon written request, the law enforcement authorities of some cantons provide information regarding the start-date of the prison sentence, enforcement modalities, release, flight, and termination.

### 2.3.3.2. Protection rights

These protection rights apply irrespectively of whether the victim joins the public prosecution as a private claimant or not. However, the trafficked person must expressly refer to these rights. The relatives of victims can claim protection rights if they lodge civil claims against the perpetrator.

#### General protection rights:<sup>33</sup>

- Presence of a personal confidant (see 2.4.3) in all steps of the proceedings, including interviews, if the victim so wishes.
- Avoidance of an encounter or confrontation with the defendant if the victim demands it.
- Closed court hearings, where necessary in the interest of the trafficked person's safety.
- No references to the victim's identity outside the public hearings without the victim's consent, unless the public's contribution is required for the investigation of crimes.<sup>34</sup>

In addition to the **confidant**, whose support is mainly of a psycho-social nature, the victim can be accompanied by a **legal counsel (male or female)** in order to receive advice on their procedural rights. However, free legal aid is not guaranteed (see 2.3.3.4).

#### V-NOTE!

The physical presence of the defendant in the same room can be **extremely distressing** for traumatised victims. Alternative measures such as video transmission between the courtroom and another room where the defendant makes their statements need to be considered. Chance encounters between the parties, e.g. in the corridors of official buildings, must be prevented.

The court is not obliged to hold closed hearings. Sometimes it holds open hearings on the grounds of an **overriding interest in public disclosure**.

#### V-NOTE!

Victims must submit a **special request** if they want closed court hearings.

Authorities and the media are not allowed to reveal information (such as initials combined with origin, age, place of origin) that could lead to the trafficked person's identification outside

<sup>33</sup>Art. 152 and 70 of the Swiss CPC

<sup>34</sup>Art. 74 of the Swiss CPC

the court room. Exceptionally, the disclosure of such information may be authorised:

- if the involvement of the public is required to solve the crime or find the perpetrators
- if the victim (or their surviving relatives) agrees.<sup>35</sup>

#### V-NOTE !

If a victim agrees to the publication of their case, the true need for disclosure must still be assessed and the victim's **full awareness** regarding the potential consequences needs to be ensured.

Courts and the media are not always aware of the dangers of disclosure for survivors of trafficking. In one case, the location of a victim's residence was listed in the court documents that were directly provided to the perpetrator. In another case non-anonymised indictments were sent to the media. In several cases sensational media reports have revealed the victims' identities and put them and their relatives at risk.

### Special protection rights of victims of sexual offences:<sup>36</sup>

- As a rule, there should be no confrontation between the victim and the defendant against the former's will;
- The victim should be interviewed by a person of their own sex if they so wish;
- The translation of the interview by a person of the same sex as the trafficked person should be made possible in case of sexual offences if the victim requests it and this does not cause a delay to the proceedings;
- The right to refuse to respond to intimate questions;<sup>37</sup>
- The appointment of court members with at least one person of the same sex as the victim if so requested.<sup>38</sup>

### Specific protection rights of victims aged under 18:

Special rules apply for minors at the time of the interview, including confronting the perpetrator if it is clear that this could lead to severe psychological distress.<sup>39</sup>

- As a rule, the young person should not have to face the defendant unless the victim expressly states that this is their wish;
- The interview must be performed by a specially trained investigator in the presence of a person who has undergone psychological training, and (unless there is a confrontation between the parties), the interview must be recorded on video;
- If possible, a minor should not be interviewed more than twice during the entire procedure.
- The confidant may be excluded from the proceedings if they could influence the minor.

<sup>35</sup>Art. 74 of the Swiss CPC

<sup>36</sup>Art. 153 of the Swiss CPC

<sup>37</sup>Art. 68 of the Swiss CPC

<sup>38</sup>Art. 335 of the Swiss CPC

<sup>39</sup>Art. 154 of the Swiss CPC

### 2.3.3.3. Participation rights

Trafficked persons only have the right to lodge civil claims for material or non-material damages if they actively participate in the criminal proceedings. As a prerequisite to exercise this right, victims have to constitute themselves as a private claimant by the end of the preliminary proceedings (i.e. by the time of the release of the bill indictment) at the very latest. The public prosecutor advises the person of this possibility after the opening of the preliminary proceedings.

As a **private claimant**, the trafficked person may bring a **criminal action** and/or a **civil action**, i.e. as a party to the proceedings:<sup>40</sup>

■ In case of a criminal action, the aim is to prosecute and punish the person who has committed the crime. As a private claimant, the victim becomes a party to the proceedings and therefore has additional rights in the proceedings, e.g. the right to access files or participate in the collection of evidence, but they have **no right to free legal representation**;<sup>41</sup>

■ With the civil action, the victim consequently brings a civil claim that is based on the criminal offence in the criminal proceedings. It includes the exemption from procedural costs and right to free legal representation under certain conditions (see 2.3.3.4).

In principle, a referral to the civil court only comes into question if a comprehensive ruling on the civil claims is deemed overly complex. In case of human trafficking for sexual exploitation, civil claims for damages are generally still referred to a civil court.

#### V-NOTE !

It is rare for victims of human trafficking for the purposes of sexual exploitation to be compensated for income loss in the sex trade, as it is difficult to provide evidence for the amount that had to hand over to the perpetrators. However, in the case of a **loss of income from a victim's forced sex work, the court has the option of quantifying or estimating the total income earned.**<sup>42</sup>

### 2.3.3.4. Legal aid and cost risks in criminal and civil proceedings

#### FREE ADMINISTRATION OF JUSTICE

Free administration of justice applies to the annulment of procedural costs and access to free legal aid. At the very earliest, free legal representation is provided from the moment the victim joins the public prosecution as a private claimant in the framework of criminal proceedings. The time of the submission of the claim is decisive. It can be claimed only by **private claimants**,

<sup>40</sup> Art. 118 of the Swiss CPC

<sup>41</sup> Art. 136 of the Swiss CPC

<sup>42</sup> This option was made use of in the verdict of Zurich's cantonal court of appeal from May 16th 2012 (file no. SB110598, p. 105). It ruled that withheld earnings can be compensated despite the lack of supporting documents.

**who file a civil claim** (for compensation), upon the following cumulative conditions:<sup>43</sup>

- **the victim does not avail of any financial resources**, and
- **the civil proceedings stand a prospect of success.**

Legal representation is approved if the presence of a lawyer is required to defend the trafficked person's rights (e.g. on the basis of complicated facts and legal issues) and the victim cannot cover the costs of legal representation without jeopardising their livelihood. If the application for free legal aid is rejected, an appeal can be lodged at the higher-instance court.

For trafficked persons who do not file civil claims or are not capable of **effectively defending** their claims before the criminal authorities, Victim's Help may provide for full or partial legal aid, under certain conditions.

#### NOTE !

In the case of victims of human trafficking or other offences prosecuted ex-officio who do not speak an official language of Switzerland, the **costs for legal representation at first instance are usually covered by Victim's Help**. Speaking a foreign language is an additional barrier, which practically makes it impossible for trafficked persons to defend their interests alone.

### Claim to witness compensation

If a trafficked person does not participate in the criminal proceedings as a private claimant, they will be questioned as a witness. As such they can claim reimbursement for loss of income and expenses.<sup>44</sup>

### Cost risk in criminal actions

Since human trafficking is an offence prosecuted ex officio, victims taking part in the criminal proceedings as private claimants cannot be ordered to pay procedural costs or damages to the defendant. However, if they constitute themselves as criminal claimants only and not as civil claimants, they are not entitled to legal representation. Depending on the circumstances **it is possible** that the lawyer's costs will be covered partially or fully by the **Victim's Help**.<sup>45</sup>

### Cost risk in civil actions<sup>46</sup>

Victims who initiate a civil action are entitled to free legal representation. However, if the case is dismissed or if the defendant is acquitted, they may have to pay procedural costs. Payment of the costs is also considered in the event of the withdrawal of the civil action by the private claimant before the finalisation of the main proceedings, in the case of the rejection of the civil action or in the event of a referral to the civil court. The costs charged are limited to collection of evidence mainly resulting from requests made by the claimant concerning the civil claims. No costs will be charged if the collection of proof was required by the authorities or if the requests for evidence mainly served the prosecution.

<sup>43</sup> Art. 393 ff of the Swiss CPC.

<sup>44</sup> Art. 167 of the Swiss CPC

<sup>45</sup> Art. 5 of the Swiss Victim Assistance Act

<sup>46</sup> Art. 427 of the Swiss CPC

## NOTE !

If the **victim** is charged expenses in criminal and/or civil actions, **Victim's Help may** cover those costs partially or in full. Whether and to what extent this is possible must be discussed with Victim's Help office **in advance**.

### Cost risk in the appeal proceedings<sup>47</sup>

The parties must cover the **costs of the appeal procedures** according to their **success or failure**. The party whose appeal was dismissed or withdrawn is also considered unsuccessful. If a victim of human trafficking appeals a first-instance ruling, they run the risk of paying costs if they are unsuccessful. This is already the case if they request the confirmation of the ruling delivered by the lower instance. If the victim has some funds and thus no access to free legal aid, this can be very costly. The only way a victim can avoid this is by expressly stating that they abstain from making their own claims.

## V-NOTE !

In appeal proceedings, the victim may be sentenced to pay compensation for expenses to the perpetrators. **Only if Victim's Help guarantees in advance** that it will also cover such potential costs, is the victim relieved of the cost risk. Generally, if the victim has a lawyer, we recommend that they announce an appeal at first-instance, in order to be sure to receive a written, detailed statement of reason and be in the position to study the ruling and properly assess the chances of an appeal.

### 2.3.4. The Witness Protection Programme

The Swiss Witness Protection Act (SR 312.2) sets forth the legal foundations and structures for the implementation of witness protection programmes for persons who are endangered due to their involvement in federal or cantonal criminal proceedings. It is the task of the national witness protection unit at the fedpol to ensure witness protection to persons outside of the actual proceedings and after a trial has ended.<sup>48</sup> Only the director of criminal proceedings (prosecution) can apply for extra-procedural witness protection on behalf of a victim. Trafficked persons themselves or their authorised representatives (e.g. specialised victim counsellors or lawyers) are excluded from this possibility.<sup>49</sup> Generally, requirements to enter this programme are very high.

## V-NOTE !

The Witness Protection Act covers the protection of "persons who are parties to criminal proceedings and are therefore in danger". This formulation is narrower than the one in the Council of Europe Convention (Art. 28). Admission to the witness protection programme is only granted if the victim's cooperation is considered highly relevant to the criminal proceedings.<sup>50</sup>

<sup>47</sup> Art. 428 of the Swiss CPC

<sup>48</sup> See the directive of the Swiss Witness Protection Act (version 25.10.2013)

<sup>49</sup> Art. 6 of the Swiss Witness Protection Act

<sup>50</sup> Art. 2 of the Swiss Witness Protection Act

## 2.4. Protecting and supporting victims in practice

In Switzerland, protection and support for victims of trafficking are generally offered by specialised NGOs. They take care of survivors of trafficking, who often find themselves with nowhere to live, no social network and no knowledge of the local language. At the beginning of the protection stage, there is an **initial interview** and **crisis intervention**.

Victim protection is usually organised around three stages:

1. **Reception stage** 30 days
2. **Intervention stage** 150 days
3. **Integration stage** from 180 days

During the reception and intervention stages, survivors of trafficking are accommodated in shelters. At all stages, it is important to view them as agents in their own right and not reduce them to their current status as victims. In addition to their (migration) history and (family) background, specificities such as their survival skills and experiences need to be taken into account.

### 2.4.1. The initial conversation

The aim of the **initial conversation** with the presumed victim is not aimed at conclusive identification but is intended to calm the person and **build trust**. The challenge of the first counselling session is to clarify the victim's needs and figure out what kind of assistance they are ready to accept. Later on, the counsellor supports the victim in deciding if they want to **request a recovery and reflection period**. Prior to the initial conversation, an interpreter is contacted (if needed) and provisional housing arrangements are made.

#### NOTE !

**Specialised interpreters** must be used for the conversations with the victim.

Counselling only takes place with the victim's consent. In order to consent, it is important for the victim to know what the victim support organisation stands for and that **the counsellor** is wholly concerned with the victim's wellbeing. This requires a holistic counselling attitude that foregrounds the victim's concerns. Thus, the counsellor's initial concern is to:

- stabilize and protect the victim
- provide them with basic supplies and primary care
- inform them about their rights and the next steps that could/need to be taken
- support them in using their right to self-determination.

## NOTE !

How to **build trust** when counselling victims referred through the police:

- **Clarify your role:** Let the victim know who you are and that you are in charge of supporting the victim.
- **Avoid criminalisation:** Do not interrogate or confront the victim with the fact that they may be working illegally or lack a resident permit.
- **Take distrust of institutions seriously:** As the victim may have bad experiences with the authorities, it is crucial to explain the non-repressive approach of a specialised police unit.
- **Ensure confidentiality:** Explain that the conversation stands under obligation of secrecy.

### 2.4.2. The reception stage

The one-month reception stage is usually the most intense in terms of victim support. In the beginning, counselling often takes the shape of **crisis intervention**. Upon arrival, the victims are often exhausted or in pain, they show signs of post-traumatic stress disorder (e.g. being aggressive, anxious, numb) or of decompensation (suicidal tendencies), which require the counsellor's knowledge and experience in psycho-traumatology and if necessary psychiatric care. During the reception period, the focus lies on physical and psychological stabilisation and the organisation of external resources such as residence permits, secure accommodation and financial support.

The reception stage usually represents the minimum duration required for recovery and reflection. The counsellor draws up an overview of the situation with the survivor of trafficking. The decisive factor concerns their safety: what could be the consequences for the safety of the victim and their dependants should the victim decide to **cooperate with the authorities**. It is important to remember that survivors are in danger and stand a risk of being exploited by the traffickers again whether or not they testify. During the counselling sessions, various scenarios are played out, in which the trafficked person must take a well thought-out and independent decision. It is important that they decide by themselves and in full awareness of the fact that Switzerland cannot guarantee a comprehensive and long-term protection for the trafficked person and their relatives. The trafficked person is thus informed and closely followed up during the difficult process of deciding whether to cooperate with the prosecution authorities or not.

### 2.4.3. The intervention stage

If a survivor of trafficking chooses to cooperate with the law enforcement authorities, they can move from the reception stage to the intervention stage. The counsellor stands by the victim's side for the duration of the investigation and criminal proceedings, which can last several months or years. The counsellor describes the steps of the proceedings, the roles and duties of the police and public prosecutor, and explains the victim's rights, obligations and risks connected to filing a claim. This is a stressful period for the victim who must repeatedly report on their experiences of exploitation and violence when questioned by

the authorities. The risk of re-traumatisation is high.

At this stage, the victim's so-called **confidant** is an important element of support. Usually, this person works for the victim support organisation and knows the trafficked person personally. Ideally, the confidant speaks the victim's language. The confidant accompanies the victim to the police and public prosecutor's office and provides **moral support** during interviews but is not allowed to answer questions or file claims. The interviews may take several hours and are very strenuous, especially in the case of confrontational interrogations during which the defendant has the right to ask the claimant/victim questions. If the interviewers do not consider the victim's specific position, the victim is projected back into the situation of exploitation, and may experience strong psychosomatic symptoms such as dissociation, stomach cramps, vomiting etc. The accompanying confidant is able to detect psychological destabilisation and intervenes at moments of crisis.



VIKTORIA

Upon entering the FIZ victim protection programme, Viktoria is given immediate medical assistance to recover from the physical violence she suffered. She stays at the safe house and receives intensive counselling (crisis intervention). All conversations are held via a specialised interpreter. With the help of her counsellor, she opts to make use of the recovery and reflection period.

Viktoria mentions having had a difficult childhood and talks about the violence she suffered when she was forced into prostitution. She reveals that she still loves Milan, the trafficker. While she is still very much afraid of him, she also has feelings of loyalty towards him and is highly ambivalent. Her counsellor helps her to gradually face the fact she has been deceived and exploited.

Another important topic is cooperation with the law enforcement authorities. Her counsellor helps her navigate the Swiss legal system. In this safe environment, Viktoria relaxes and manages to make a decision. She decides against pressing charges and chooses to return to Bulgaria through the federal return assistance services.

#### 2.4.4. The integration stage

If the victim's residence permit is extended, they can proceed to the integration stage. An extension is only granted **when the trafficked person is still required as a witness in ongoing investigations and criminal proceedings**. If not, this means that their return needs to be prepared, unless an application for a residence permit on the grounds of serious personal hardship is being submitted (see chapter 3).

Integration starts when the trafficked person is sufficiently psychologically stable and able to deal with most everyday tasks independently. The focus is on language learning and the step-by-step integration into **daily life** and work or training in Switzerland. Intervention is required in case of personal crises, suicidal tendencies or external threats. Psycho-social counselling and victim support continues. Moreover, trafficked persons are still at risk from the perpetrators or

the latter's entourage, and their hard-gained psychological stability remains fragile. As it usually takes two years before a court case takes place, proceedings against the perpetrators often happen during the integration stage. Victims usually do not have to appear in court. The counsellor regularly informs the victim of the stages of the proceedings.

#### V-NOTE!

Often, the indictment bill does not reflect the victim's hopes. Sometimes, a part of the violence endured is not reported because it cannot be proven. When the sentence is passed it seems lenient. In some cases, where the perpetrators are in custody already, they may be released shortly after the proclamation of the sentence. This is distressing for the victim.

Once the proceedings are over, continued residence is not guaranteed. Thus, following a first-instance sentencing, survivors of trafficking must be prepared to lose their right to remain in Switzerland. Thereby, whatever they built during the integration stage is called into question again.

During the integration stage, counsellors support their clients through looking for a training position, an internship, or a job. This is difficult without a secured long-term residence status. Moreover, many victims do not have a school-leaving certificate but want to earn money as quickly as possible in order to make a living and support their children or parents back home. However, usually they must participate in a work integration programme first. A fundamental prerequisite for integration on the job market is psychological stability, which is a hard-balancing act for traumatised persons.

#### 2.4.5. Safe accommodation

Safe apartments are part of the services provided by specialised victim protection organisations. They offer survivors of trafficking who are in crisis a safe place to stay where they receive counselling, support and a stabilising environment. The support and counselling provided by the FIZ victim protection programme responds to the specific needs of women who have been repeatedly traumatised, while taking into account their migration background and complex situation of danger. The cultural and linguistic needs of the residents are met by a multilingual support team, intercultural mediation and specially-trained interpreters.

#### NOTE!

To become a resident in a safe apartment, the victims **must remove themselves from the perpetrators' reach**. This is not easy, if the exploiters have been the victims' only social contacts for a long period of time, or if they **pretended to be in love** with the victims. For safety reasons, victims who have not yet been able to fully distance themselves from their exploiters spend a few days at a separate location, before entering the safe apartment.

Safety is an important issue that is raised during the admission interview for the safe apartment. The counsellor records the people and places the survivor of trafficking must avoid and takes necessary precautions. The **police are regularly involved in these safety scenarios**. Apart from the individually tailored protective measures, the group of residents is often reminded of the apartments' safety rules and taught how to react to unplanned situations. The shelters are open, however, the residents are not allowed to receive visitors or reveal the location of the

shelter.

The aim for the residents is to be able to settle in a protected environment, while gradually learning how to apply their own resources. In the beginning, daily tasks such as dealing with public transport or shopping in a supermarket can represent a big challenge. The residents are bound to a daily routine, they receive medical care for illnesses they have been suffering from for a long time and they are given the possibility to learn the local language.



SUZANA

Suzana was under 18 when she entered the FIZ victim protection programme. She was especially vulnerable due to her young age. A young man had lured her from Bulgaria to Switzerland with promises of joint plans for the future, before being forced into prostitution. The extent of the deception was huge. Suzana suffered from extreme emotional fluctuations. She was often depressed, hardly ate and complained of sleeping problems. She often cried and, in her conversations, she revealed her fears and shame. In the beginning, she did not dare leave her room, let alone participate in the group activities proposed by the programme. After several weeks of counselling and daily support, Suzana regained confidence and started developing new perspectives for her life.

#### 2.4.6. Risk assessment

The fact that the victims are **under threat** is a **permanent issue** and is regularly re-evaluated during the victims' participation in a protection programme. The **police** are actively involved in setting up protective measures. The presumed perpetrators try to exercise pressure in various ways in order to find out where the victim is staying. They attempt to prevent them from filing or force them to withdraw their complaints. If the perpetrator is arrested, then the family of the offender often starts putting massive pressure on the victims and their families.

#### NOTE !

**No long-term protection without self-protection.** It is important for the victims to learn how to protect themselves. Victims of human trafficking have often experienced so many violent transgressions that they have lost their own sense of self-protection. They often know nothing other than abusive behaviour. **Self-protection instincts and self-respect** must gradually be rebuilt.

#### Risk assessments are based on:

1. The risk level of the victim in Switzerland
2. The risk level of the victim in the country of origin
3. The risk level of the victim's relatives in Switzerland
4. The risk level of the victim's relatives in the country of origin

Risk assessments must be performed regularly, with the **inclusion and participation of the trafficked person**. In order to be able to assess future risks, it is necessary to have **the most information possible concerning the victim's history of exploitation and current situation**. It is crucial to take on board the knowledge and information provided by the victim. Following

the analysis of the risks, a risk management plan is drafted in cooperation with the victim so as to minimise the level of risk. The implementation of the measures requires the **victim's agreement**.

Risk assessments do not only aim to examine and analyse the possible threats/dangers presented by the perpetrators, but also **the victim's own psychological, physical and social circumstances** and the resulting risks of re-trafficking. For example, risk assessments are performed when victims are admitted to secure accommodation, before any change to living arrangements, before court proceedings, before returning to the country of origin, and/or when they reenter Switzerland to make a witness statement.

Usually, several state and non-state players are involved in the risk assessment in order to obtain the **comprehensive view of the potential risks**. As the protection of victims of trafficking falls under state responsibility, the authorities have to be actively involved in the risk assessment process. When reports are drafted for the attention of the police, return programmes or other aid organisations, victim protection organisations must ensure that **no personal data is released** unless the trafficked person **gives written and informed consent** and thus authorises the release of personal data for specific purposes.

#### NOTE !

All victims who escaped from a trafficking situation are at **risk of reprisals from traffickers**, irrespective of whether or not they have cooperated with law enforcement agencies.

### Risk assessment in case of threats from perpetrators

Risk assessments concerning potential threats by the perpetrators are carried out throughout the duration of the victim protection programme. The assessment focuses mainly on the perpetrators and their environment. Usually, perpetrators commit their offences as part of a ring of several individuals forming part of a chain of exploitation. This network includes those who recruit and transport the victims, obtain documents, as well as pimps and supervisors, and sometimes the brothel owners. The perpetrators' entourage may include friends and family, as well as people working in the same environment, such as bar personnel, who may not be involved in the crimes but could be in contact with the perpetrators.

#### Key questions in assessing the risk are:

- Is there any indication that people who have transported, recruited or exploited the victim are attempting to contact the victim or have done so?
- Are those involved in the trafficking ring aware of the victim's current location?
- Do those involved in the trafficking ring know where victim's friends or family live?
- Were friends or family members involved in the trafficking process?
- Have suspects already been arrested?
- Have arrested individuals already been released?
- Are there still suspects at large?
- Is there any indication as to where these people are and in what circles they are moving in?

#### NOTE !

For a **reliable risk assessment**, cooperation between a specialised victim protection organisation or counselling service and the police is important.

If it is too dangerous for the trafficked person to return, the victims' support services may request a residence permit based on personal hardship with the victim's authorisation.

## KACHAPTER 3: TRANSNATIONAL COOPERATION ON PROTECTION AND SAFE RETURN FROM SWITZERLAND TO BULGARIA

### 3.1. Typical return scenarios for victims of trafficking from Switzerland to Bulgaria

#### 3.1.1. Non-assisted return

When considering the different ways in which victims can return to Bulgaria, it is important to remember that the number of trafficked persons who are never identified remains large. Some survivors of trafficking who manage to change their situations without any institutional assistance remain in Switzerland, e.g. through marriage, while others return to Bulgaria on their own or move on to another country.

On the other hand, not every person, who is detected or identified as a survivor of trafficking, is ready to accept victim support or any other kind of assistance in returning. Often survivors who are identified (e.g. during a police raid), refuse to speak to a counsellor or disappear before entering a victim support programme. The **fear of perpetrators**, the distrust and **fear of exposure to the authorities** (in Switzerland or Bulgaria), as well as the **fear of losing the limited control over their lives that** they still have, prevent survivors of trafficking from accepting any kind of victim assistance.

#### NOTE !

It is essential that the first point of contact (police, social workers, field workers etc.) provides the possible victim of trafficking trafficked with information about available governmental and non-governmental victim support options in Switzerland. Even trafficked persons who do not seek help immediately, may remember the information they were given and contact a specialised NGO or a victim counselling centre at a later point in time.

#### 3.1.2. State-assisted return

In many cases, state authorities are the first to detect and attend to Bulgarian survivors of trafficking. Many survivors come into contact with the Swiss police and are referred to victim assistance services by them. However, some victims contact the Bulgarian **Embassy or Consulates**, especially if they have been deprived of their travel documents and want to return as fast as possible.

#### V-NOTE !

Before organising a victim's return, the state authorities, including **police officers, embassy and consular staff must offer the victim the opportunity to talk to a victim counselling centre in Switzerland** or at least provide victims with the contact information in an encouraging manner. This is the best way to ensure that the victim is informed in an adequate and victim-friendly way about their rights and the support that is available in the country where they have been exploited. If a victim refuses to speak to a counsellor, it is the responsibility of the authorities to **inform them about their rights**, before taking any further action. For Bulgarian victims an interpreter is often required as they are usually not fluent in any of the official languages of Switzerland (see chapter 2.3.)

## Initial assistance by Swiss police authorities

With the survivor's consent, state and non-state actors alike may refer the survivor to Switzerland's **Federal Return Assistance** for voluntary return (see 3.3). Basic information about this service should be provided by embassies, police and other state- and non-state actors. If a survivor decides to return using these services, collaboration between Swiss and Bulgarian institutions (regarding risk assessment and the organisation of a safe return and reintegration) is coordinated by the International Organisation for Migration (IOM) (See section 3.3. for the procedure of the federal return assistance).

In some cases, Swiss police have offered to pay the travel costs of victims who did not accept any victim support or voluntary return assistance and wanted to return directly. In this case it is highly recommended that the returnee is **provided with the contact address of a specialised NGO in Bulgaria and in Switzerland**. If the person has not committed any crime and has the necessary papers to return, the Bulgarian authorities would not be informed.



VANIA

Vania, a young woman with broken arms, a broken nose and bruises was brought to a Swiss hospital by ambulance. She was a victim of forced begging and refused to discuss what had happened or to answer any questions from either the hospital staff or the police. Vania gave the impression that she wanted to leave, and police officers noted that she seemed confused and disoriented. Since she did not want to be put in contact with neither any victim support organisations nor with any return assistance services, the police contacted the Bulgarian Embassy and informed them of the situation. Embassy staff and the police attaché covering Switzerland visited the young woman in the hospital and offered to organise her return to Bulgaria. Vania accepted the offer and returned.

## Initial assistance by Bulgarian state institutions

If the Bulgarian Embassy in Switzerland is involved in a victim's return, the Bulgarian Ministry of Foreign Affairs (MFA) is informed, and MFA in turn informs the National Commission for Combating Trafficking in Human Beings (NCCTHB) and the Ministry of Interior (Mol, DG International Operational Cooperation where INTERPOL and EUROPOL sectors are situated and DG Combatting Organised Crime). The victims are met at the airport in Bulgaria by Mol representatives who, with the victim's consent, conduct an **interview**. The interview seeks to establish whether the crime of human trafficking has been committed and whether the person in question is a victim of trafficking. The Mol representatives also inform the victim of available services and support, and the possibilities to be accommodated in a shelter or a crisis centre. If victim is willing to be accommodated, then the NCCTHB or a service provider is notified (see Chap. 4). If, during the interview, Mol officers establish that a crime has been committed, they will contact fedpol in Switzerland and a preliminary police check will be launched in both countries.

Information about the victims of trafficking is also sent directly to the Secretariat of the NCCTHB, for instance, by the victims themselves or their relatives. The Secretariat collects as much information about the victim as possible, such as where the victim is currently located, who is taking care of them, what the circumstances were in which they were trafficked, whether there are any immediate risks for the victim, etc. In compliance with the National Referral Mechanism,

the NCCTHB then outlines which measures are to be taken and by which institution.

#### V-NOTE !

Regardless of the route chosen for return, trafficked persons need to be informed about their rights, including that **they should not be held liable in Bulgaria for being involved in prostitution or any illegal activities performed by them as victims of trafficking and that they are entitled to immediate victim support** (cf. also section 4.3.3).<sup>51</sup> Further, the victim's consent needs to be received before contact is made with any other organisation. Adult victims of trafficking have the right to refuse referral or disclosure of any information related to their trafficking experience to third parties in Bulgaria.<sup>52</sup>

### 3.1.3. NGO-assisted return

Not every trafficked person is eligible for Federal Return Assistance (see 3.3). Reasons for ineligibility may be that victims have sufficient financial means themselves to return independently, or that they want to move to a country where their residence status is uncertain. Others, however, take an **informed decision against benefiting from** return assistance services. The reasons for doing so vary but can include the following:

- the victim distrusts all state institutions, incl. inter-state institutions, such as IOM;
- the victim lacks the time or patience to go through the process of applying for federal return assistance; and
- the victim refuses to consider themselves a victim altogether.

If a victim cannot or does not want to benefit from state-sponsored return assistance but has accepted the support of a specialised NGO or victim counselling centre, the counsellor can apply for funds through Swiss **Victim's Help**.

If the survivor agrees, their return will be prepared with close collaboration between Swiss and Bulgarian NGOs. The Swiss NGO identifies a possible receiving organisation in Bulgaria<sup>53</sup>, it examines their possibilities for support and finds out if the NGO or shelter has the capacity to take on the case. The Swiss organisation then provides the Bulgarian organisation with the relevant information about the trafficked person such as name, age, health condition, emotional state, risk factors, needs etc.

<sup>51</sup> Pursuant to Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so. There is no specific provision in the Swiss law on the non-punishment of victims of human trafficking. The Swiss Criminal Code only sets forth certain conditions (Articles 52 to 55) in which persons may be exempted from punishment or have criminal proceedings against them suspended. The Group of Experts on Action against Trafficking in Human Beings (GRETA) recommends that a specific provision on non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent they have been compelled to do so, should be adopted, or guidance should be issued to public prosecutors encouraging them to be proactive in establishing if an accused is a potential victim of trafficking (section 187 of GRETA Report on Switzerland, 2015).

<sup>52</sup> According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM); Standard Operating Procedure 1 Identification and Referral to Victims of Trafficking; Measure 1.4 Referral.

<sup>53</sup> See the organisations listed in Appendix 6.



SVETLA

In the women's shelter in Switzerland Svetla is in a very unstable psychological condition as a result of the traumatic experience she survived. She receives intensive emotional support and crisis intervention counselling with the help of an interpreter. But she wants to go back home in Bulgaria as quickly as possible and cannot wait for her trip to be organised. A Skype call is organised between Svetla and a counsellor from Animus. During the conversation the Bulgarian counsellor assures her that her trip to Sofia is being organised and somebody will wait for her at the Sofia airport. Svetla calms down and starts asking questions about her future and the counsellor from Animus gives her information on what to expect in Bulgaria and what opportunities there are for support.

In the process of preparing the victim for their return, the Swiss victim counsellor encourages the survivor to speak to a **representative of ANIMUS or another Bulgarian NGO via Skype or phone**, ideally with the person who will pick up the returnee from the airport. This direct contact aims to:

- build up trust between the survivor of trafficking and the Bulgarian counsellor;
- enable them to communicate directly in their native language, without the need for (cultural) translation;
- both lower fears and manage expectations;
- support the survivor to take an informed decision about return;
- discuss possibilities of reintegration;
- add important information related to risk assessment;
- support the Bulgarian counsellor in making adequate preparations and starting the risk assessment on the Bulgarian side.

If a victim is not yet ready to engage with a Bulgarian NGO, the Swiss counsellor provides them at least with the details of a Bulgarian NGO that they can independently turn to at a later stage.

### 3.2. Risk assessment for return and reintegration

Prior to a return and reintegration, risk assessment is required on two levels:

1. The assessment of current and future risks for the victim from the **perpetrators**. The aim is to ward off any **threats and possible** harm to the victim.
2. The assessment of risks to the victim on the basis of their current and future **social circumstances and vulnerability**. The aim is to reduce the **risk of re-trafficking**.

## NOTE !

**Re-Trafficking** is when a person has been trafficked on one occasion and managed to remove themselves from that trafficking situation, but was then **trafficked again**. Causes differ, but being left in a situation of **vulnerability** after escaping from exploitation increases the risk of re-entering trafficking. Relevant **risk factors include** poverty, marginalisation due to ethnic, social, economic, or gender inequalities, debts, young or old age, lack of family support, substance dependency problems, psychological or psychosocial difficulties because of trafficking experiences. Significant **vulnerability** to re-trafficking can occur **in both destination countries and countries of origin**.

The risk assessment starts before the victim's return to Bulgaria. It is usually initiated by the counsellor in Switzerland who evaluates the victim's situation and it is then coordinated by the institution that is in charge of organising the return. Often, several weeks or – in the case of extremely endangered and vulnerable victims – even months are required to fully evaluate potential risks. In the process, different types of information and indications are collected and analysed in consultation with state or non-state agencies in Switzerland and Bulgaria. **Specialised NGOs or victim counselling centres** in Bulgaria such as Animus have long-term experience in protecting victims and are aware of how the social, economic, political and legal situation affects a particular returnee. With the victim's consent (in the case of adult victims), governmental authorities have to be informed, namely the Secretariat of the **NCCTHB**, as the coordinator of the NRM, and in case of minor victims, the **Bulgarian State Agency for Child Protection** and The Ministry of Interior.

The basis of risk assessment, however, is the counsellor's evaluation of the victim's vulnerabilities, their personal trajectory and history of exploitation. All data concerning the victim's origin, social and family relations, educational and vocational background, psychological and physical condition, as well as details concerning the perpetrators and the circumstances under which the person was victimised are collected. This is only possible if a stable relationship of trust between the counsellor and the victim has been established.

The following issues have to be taken into account inter alia:

### **Risks in the context of the trafficked person's family and background**

- To what social, economic and family environment is the person returning?
- Whom can the person trust?
- Is the family aware of the crime and if so, how are they dealing with it?
- What is the family's financial situation?
- Are there any debts the person has to pay back?

### **Risks caused by the trafficking crime:**

- Who are the perpetrators?
- Is the family involved in the trafficking crime?
- Have there been any threats against the victim and its family?
- How and where do the perpetrators operate (loose network, criminal organisation)?
- What is the status of criminal proceedings? Have the perpetrators been arrested?

- Are there indications that the perpetrators and civil servants are working together?

### Risks caused by marginalisation:

- What has the victim's experience of discrimination and marginalisation been at home?
- Is it possible that the victim will be discriminated against, pursued or punished back home?
- To what extent is integration in the community, education and on the job market possible?
- How high is the risk that the victim will be stigmatised and marginalised due to their (failed) migration or due to having been a sex worker or trafficked for sexual exploitation?
- What are the victim's long-term prospects related to social integration and economic independence?

Following the analysis of information and indicators related to the risk of severe threats from the traffickers and the risk of re-trafficking (vulnerabilities), protective measures for return and reintegration are developed and implemented. If the victim returns through the federal return assistance services, it is IOM Bern which submits the information about possible risks related to return and reintegration of the victim in Bulgaria to IOM Sofia which takes care of the implementation of the protective measures in Bulgaria. If the victim returns with the support of NGOs in Switzerland and Bulgaria, the information on risk assessment is shared between the respective NGOs involved.

If a return to Bulgaria is considered too dangerous, the victim support organisation in charge, authorised by the victim, may submit an application for a **Swiss residence permit** in case of "serious personal hardship" (see Chapter 2). If the trafficked person wishes to leave or if there is no legal option for them to stay in Switzerland, resettling in a third country may be an option. Depending on the victim's possibilities of being granted a residence permit and having their stay legalised, this option can be supported by the federal return assistance services. Usually, the risk assessment ends with a **safety plan** that is drawn up together with the trafficked person. It specifies at least the safety measures the person needs to consider once they have returned. In cases where the person has not agreed to cooperate with a specific receiving organisation, information is provided about organisations where they can turn for help.<sup>54</sup>

## 3.3. The Swiss Federal Return Assistance

Under the Federal Act on Foreign Nationals (FNA), the **State Secretariat for Migration (SEM)** offers return and reintegration assistance to victims of trafficking, who want to voluntarily return to their country of origin or to a third country where the person has established legal status.

### 3.3.1. Beneficiaries and Eligibility

The Swiss national return and reintegration assistance is available to all victims and witnesses of trafficking who are without means and wish to return to Bulgaria as Bulgarian

<sup>54</sup> *Ibid.*

citizens or other nationals with established legal status in Bulgaria. In order to qualify for return assistance, there must be clear indications of human trafficking. The assistance is also available to trafficked persons who were exploited before reaching and being identified in Switzerland, and to victims of attempted trafficking, if there are indicators that the purpose was exploitation, even though exploitation ultimately did not take place.

**The main players in the organisation of assisted return from Switzerland to Bulgaria are:**

- International Organisation for Migration in Switzerland and Bulgaria (IOM Bern & IOM Sofia);
- Swiss State Secretariat for Migration (SEM);
- Specialised non-governmental victim protection organisations;
- Swiss cantonal return counselling services (RCS) and
- Bulgarian National Commission for Combating Trafficking in Human Beings (NCCTHB).

In order to apply for Swiss Federal Return Assistance, it is mandatory that the survivor of trafficking receives return counselling by the cantonal **Return Counselling Services** (RCS) or by the specialised NGO FIZ. Depending on the canton, return counselling is provided by the migration authorities themselves, by an appointed non-government agency, such as Caritas or the Red Cross, or by FIZ that is directly mandated by the SEM to provide return counselling as part of its specialised programme for victims of trafficking.

Migrants may benefit from this specific return assistance as soon as there is sufficient information indicating that they might be a victim or witness of human trafficking. It happens that return counselling is sought by migrants who have not been identified as victims of trafficking.<sup>55</sup> In cases where the return counsellor suspects that a returnee might have been affected by human trafficking, the counsellor asks the victim's consent to refer them to a victim counselling centre or a specialised NGO. In order to inquire about the person's eligibility for return assistance, the counsellor contacts IOM Bern or the **return assistance section of the State Secretariat for Migration** (SEM). Such preliminary inquiries can be made anonymously, without communicating the victim's name to IOM or to the authorities.

**NOTE !**

Support by the Federal Return Assistance does not depend on any cooperation of the victim with the law enforcement authorities.

In some exceptional situations, e.g. when the trafficked person was not informed about the possibility of voluntary return assistance, there is an opportunity to register for Federal Return Assistance **retrospectively**, after the return has already taken place.

<sup>55</sup> Cantonal return counselling and voluntary return assistance is offered to different target groups including rejected asylum seekers and in some cantons *sans papiers* and social welfare recipients.



NADIA

Nadia had been promised work in a restaurant as a waitress, but once in Switzerland she was forced to work in the sex trade. When she refused she was threatened with being sold to another trafficker. She was under constant observation and all her earnings were withheld. Her identity documents had been taken away from her. When the police found her, they referred her to FIZ' victim protection programme for support. Because of fear of the trafficker, however, she fled to a neighbouring country. When the trafficker was arrested she returned to Bulgaria on her own and without financial support. When she came back to Switzerland to testify, she was still offered the opportunity to benefit from Federal Return Assistance.

### 3.3.2. Services of Federal Return Assistance

The following services are provided:

- **Information** on rehabilitation and **reintegration** possibilities in Bulgaria;
- Facilitating the **exchange of information** on risk assessment between sending and receiving institutions responsible for the victim's safe return;
- Organisation of the **return journey** in cooperation with the relevant canton and swissREPAT<sup>56</sup> /IOM;
- **Reception** assistance and safe transportation to the final destination;
- **Financial start-up** assistance of CHF 1,000 per adult and CHF 500 per minor;
- Additional **in-kind assistance** of up to CHF 5,000 for a reintegration project;
- **Medical return assistance** (e.g. medication, referral to a rehabilitation program) for up to six months and
- Reintegration assistance and **follow-up support**.

### 3.3.3. Preparations for return

Preparation for return starts with careful assessment by a specialised NGO and/or cantonal **return counselling services** (RCS) of the victim's concerns related to a potential return. While a victim may want to return as quickly as possible, it is important to ensure that the return takes place as safely as possible and a thorough risk assessment has been done prior to return (as described in 3.2.).

#### NOTE !

Before return may take place, victims **must be informed about and understand their victim's rights** (see 2.3). If this has not happened already, the cantonal return counsellor refers the victim to a specialised victim support organisation.

**IOM Bern is in charge of obtaining relevant information on reintegration possibilities from IOM Sofia and passing it on to the return counsellor in Switzerland.** This information is discussed with the victim in the framework of return counselling.

<sup>56</sup>swissREPAT (SSR) administrates the organisation of the return flights for all the (voluntary and forced) return assistance services financed through SEM.

Prior to return, IOM Bern and IOM Sofia need to clarify various matters such as shelter accommodation arrangements, if needed, and the consultation with Bulgarian government and non-government actors concerning security issues and risk management. It is essential to ensure that important aspects related to the returnee's situation in Bulgaria, regarding **security issues, family and social network, accommodation, and reintegration after return** have been carefully addressed and documented. The information is processed and shared with the relevant actors in Switzerland and Bulgaria through IOM Bern.

#### NOTE !

If a specialised victim support organisation is involved, the necessary information is gathered by that organisation to **avoid compelling the victim to retell their story to various** new people.

#### V-NOTE !

Survivors of trafficking tend to have specific questions and worries concerning the situation in Bulgaria after return (e.g. regarding fears of stigmatisation). In support of the victim's decision-making process and in order to build trust, it is thus highly recommended that IOM Bern or the respective counsellor in Switzerland offer to **organise a phone or Skype conversation** between the returnee and a representative of IOM Sofia or the local partner organisation that is in charge of receiving the returnee in Bulgaria (see 3.1.3). The return plan (date, time, person accompanying the victims, final destination of the travel, contacts) is agreed between the victim, the Swiss counsellor, IOM Bern, IOM Sofia, the Bulgarian crisis centre if the victim has agreed to be accommodated in one, or the victim's relatives in case the victim is returning at home.

Upon victims' return to Bulgaria, the Bulgarian Border Police will interview them at the airport and inform them of their rights. However, victims can refuse to provide information (see Chapter 4.1.1). The counsellor in Switzerland should address this aspect with the victim during the return counselling process, in order to allow the victim to make an informed decision about the return and cooperation with authorities.



VIKTORIA

Prior to her return to Bulgaria, a representative of IOM discusses the details with Viktoria. The counsellor helps her consider whether she wants information about her return to be shared with DG Border Police at Sofia airport and whether she would like to talk to a policeman upon her return. The counsellor warns Viktoria that she cannot travel directly to her home town since the flight is late in the evening, and her native town is 300 km away from Sofia. Viktoria agrees that information about the day and time of her arrival is provided to DG Border Police and agrees to talk to the police about what happened to her. She agrees to stay overnight at Animus Transit Centre before leaving for her home town the next day.

### 3.3.4. Special cases: minors and victims with a guardian

In the case of victims who are minors, IOM ensures that:

- The victim has been assigned a legal guardian both in Switzerland and in Bulgaria and that they are both acting in the minor's best interests. Both guardians need to give their consent for the return.
- The minor victim's family situation is assessed in advance. If the family has not been involved in the trafficking and is willing and able to take care of the minor, IOM will be prepared to reunite the family. If not, local social services in Bulgaria will be involved in seeking a solution in the minor's best interests.

In case a return to the family is not possible, IOM ensures a durable solution (at least until adulthood) together with the competent authorities in the country of return. For Bulgaria, the relevant institutions are the **State Agency for Child Protection** and the **Child Protection Departments** with the **Social Assistance Agency** (see Chapter 4.5).

When assisting adult victims under legal guardianship, IOM ensures that both legal guardians in Switzerland and in Bulgaria are involved in the decision and preparation for the return.

### 3.3.5. Data protection

All data concerning persons leaving Switzerland with return assistance is treated strictly confidentially. Returnees can only be assisted if they agree that their personal data is transferred to the IOM office in Switzerland and in Bulgaria, and if needed to the Bulgarian partner organisations that are concerned with the victim's reintegration. This is confirmed by the victim's signature on the Consent form. **IOM Bern, IOM Sofia and their non-governmental partner organisations only transfer personal data to others upon the victim's express consent.**

#### NOTE !

**Data** about a potential risk of re-trafficking or other threats to the victim's life and health should be treated with the **utmost care** and attention.

### 3.3.6. Organisation of the return journey

The return journey is organised and booked by IOM Bern through its agreement and cooperation with swissREPAT. The return usually takes place by flight as this is the most direct, rapid and safe way of travelling. Approval for the flight booking is only given by IOM Bern once they are satisfied that preparations for the return have been completed properly and when it is clear which institution is in charge of assisting the person in Bulgaria.

#### NOTE !

The **cantonal migration authorities in Switzerland play an important part** in ensuring a safe return by suspending a deportation order or by prolonging a temporary residence permit for the time needed to assess the risks and prepare a safe return and sustainable integration.

During pre-departure, IOM Bern, in collaboration with the return counsellor and the specialised victim counsellor, clarifies whether the survivor of trafficking should be accompanied, who will receive them upon arrival and whether any special safety measures must be taken. Depending on the situation and the victim's consent, IOM Sofia can request specific police protection measures in Bulgaria to ensure the victim's safety (e.g. upon arrival at the airport). Victims are informed of what will happen upon their return, who will meet them and when.

In Sofia, the IOM contact person will be present at the airport with all the necessary information. When the returnee is not accommodated in a crisis centre or shelter, the contact person will either encourage them to get in touch in due course or will agree a date with them for a first follow-up conversation straight away.

IOM offers:

- Assistance for the issuance of travel documents if needed
- Accompanying to the airport in Switzerland and support until flight departure if needed
- Airport assistance in transit, should transit be needed
- Airport assistance upon arrival in the country of return
- Secondary transportation up to place of return
- In case of health issues: a medical escort by a doctor or a nurse
- If the returnee cannot travel alone or is a minor, escorting by a trusted person

#### NOTE !

It is easier to support and follow-up on returnees who have decided to stay in a shelter (at least for a few days or weeks) before returning to a private environment. The same applies to minors or adults with a guardian, where police and/or social services are involved in the risk assessment and reintegration. The risk of re-trafficking is highest when adolescent people who have just passed the age for legal guardianship decide to directly return to their old environment without evaluating their situation at a crisis centre first. In such cases, IOM Sofia or the case manager at the Animus transit centre may try to convince the survivor of trafficking to return to a shelter, if only for a few days in order to reconsider their situation and evaluate new possibilities.

### 3.3.7. Reintegration assistance

In Bulgaria, the support is organised by IOM Sofia, making reference to every possibility for support set out in the Bulgarian NRM. In some instances, in view of the provision of specific services, NRM actors such as Animus, the NCCTHB or other crisis and counselling centres are mandated to assist the case. The decision as to which organisation is responsible for the follow-up depends on several factors, such as place of return, special needs of the victim and capacity of the different organisations as well as the victim's consent to transmit their personal data to these institutions.

Having arrived at their place of return, **it is the victim's responsibility to make contact with IOM (or the assigned local partner organisation) again to discuss reintegration process and implementation of assistance.**

### Swiss federal reintegration assistance includes:

- **Initial cash assistance** which is provided upon return and in the first months after return in order to cover daily costs (food, sanitary products etc.).

- **Reintegration project**

An additional **in-kind assistance**<sup>57</sup> may be granted for the following types of projects (or a combination of them) based on the individual needs and the situation of the victim. This material reintegration assistance can be used for:

- Income generating micro businesses
- Purchase, rental or renovation of accommodation
- Vocational training
- Repayment of debts (based on official documentation clearly showing that the debts are not linked to the traffickers)
- Legal assistance
- Salary subsidy (under specific circumstances)



VIKTORIA

Viktoria discusses with a counsellor from FIZ her plans for the future in Bulgaria. She would like to start working but she cannot decide what exactly she would like to do. She would prefer to work as a seamstress, in the tourist industry or in the service sector. She would very much like to get a driving licence but she has problems with her eyes and needs to see a doctor. Together with the counsellor from FIZ, she draws up a reintegration plan, which includes vocational training and medical consultations. Viktoria's personal project will be funded by the Swiss state through IOM Bern. IOM Sofia will take care of the implementation in Bulgaria.

The aim of the reintegration project is to give the victim a sustainable perspective and reduce the risk of re-trafficking. The victim's objectives in terms of training or integration into the **job market** are assessed and a project is formulated with the support of the RCS or the specialised NGO FIZ, if possible. However, often, victims of trafficking cannot start a project such as professional training immediately after return as **they often first need to stabilize their situations and deal with pressing personal matters** (e.g. taking care of children, divorce etc.). This is why the **reintegration assistance may be requested up to one year after the return** with the assistance of IOM Sofia or their Bulgarian partner organisation. This allows the participants to first stabilize and recover, before making future plans. Once a reintegration plan is submitted and approved by the SEM, IOM Bern and IOM Sofia organise the necessary steps for the implementation (payments to the providers, counselling, etc.).

<sup>57</sup>This type of assistance is not paid cash to the beneficiary. Where possible, payments are made directly to the providers upon submission of invoices.

### ■ Medical return assistance

Medical return assistance to cover the purchase of medicines or medical treatments (incl. psycho-social counselling) may be requested before or after return for a maximum of six months. SEM can only cover costs for medicines or treatments that are **not reimbursed by the health insurance** or before registration with the health insurance in Bulgaria can be arranged (through the support of IOM Sofia or its partners). Medical assistance is granted in addition to the initial cash assistance and the in-kind assistance.

### 3.3.8. Monitoring

After the return of the trafficking survivor, IOM Sofia or its Bulgarian partner organisation provide support and assistance in the implementation of the reintegration project (see chap. 4). If the project implementation has not started within six months after return, IOM Sofia sends a short report on the current situation to IOM Bern, which in turn forwards the information to the SEM. Finally, after all payments have been made, a **monitoring interview** takes place on a voluntary basis, usually done by an onsite visit by IOM Sofia or the partner organisation in charge. This interview offers insight into the effectiveness of the longer-term assistance provided and the progress of the reintegration process.

## 3.4 Police and judicial cooperation and law enforcement from a victim's perspective

In Switzerland, the cantonal judicial and police authorities are in principle competent to investigate human trafficking cases. The **cantonal prosecutor** is competent to formally open criminal proceedings. In any case, two federal offices in the Swiss Federal Department of Justice and Police, the **Federal Office of Police (fedpol)** and the **Federal Office of Justice (FOJ)**, are competent for **international communications** in the matter. fedpol is in charge of the exchange of intelligence between police forces. The FOJ is the central authority and oversight authority in Switzerland for international cooperation (Mutual Legal Assistance MLA) in criminal matters.<sup>58</sup>

Both Switzerland and Bulgaria are **party to the Council of Europe's Conventions** in the matter and especially to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. This Protocol establishes the basis for **direct communication** between judicial authorities. As such, the Swiss cantonal prosecution authorities, if they need to take evidence by interrogations or searching of premises in Bulgaria for example, can issue a **request directly to the competent Bulgarian judicial authority**. The FOJ is the supervisory body in the matter.

Both Bulgaria as an EU member state and Switzerland as an associated third party are represented at Eurojust, the EU body competent for supporting and coordinating criminal investigations of transnational crime. Eurojust can be approached both by Bulgarian and Swiss prosecutors in cases of human trafficking and can provide judicial and practical assistance. In particular, Eurojust can organize coordination meetings with simultaneous

<sup>58</sup> Article 4 of the Second Additional Protocol to the Swiss Federal Act on International Mutual Assistance in Criminal Matters.

interpretation, if that is requested by Bulgarian or Swiss prosecutors who have identified a need to cooperate with each other. Such meetings allow the discussion and planning of a coordinated investigative strategy between prosecutors and police investigators of both countries. Eurojust reimburses the travel costs (flight) for two representatives from each country participating in such a coordination meeting and pays for the hotel accommodation. In exceptional cases, it is also possible for Eurojust to organize such coordination meetings either in Bulgaria or in Switzerland.

If personal data and **information on presumed perpetrators and victims** are needed, it is fedpol that requests them from Bulgarian authorities. fedpol is the national focal point for Interpol and Europol.

### 3.4.1. International Mutual Assistance (MLA)

In the course of a criminal investigation, it is often the case that **Swiss investigating bodies need information from or specific investigative action to be taken in Bulgaria**. Switzerland has concluded various bilateral and multilateral agreements, which govern cooperation in criminal matters. Since Switzerland is not a member of the European Union, the European Arrest Warrant (EAW) and the European Investigation Order (EIO) are not applicable to Switzerland. Thus, the **Schengen instruments** (Switzerland is an associated member to the Schengen Convention) and the instruments of the **Council of Europe's MLA Conventions** govern cooperation between Bulgaria and Switzerland. The general procedure<sup>59</sup> as established in the Bulgarian Criminal Code of Procedure and the Swiss Federal Act on International Mutual Assistance in Criminal Matters (IMAC) apply in a secondary manner. Cooperation between the two countries has already proved successful, as the following case shows:



**SILVIA AND NATALIA**

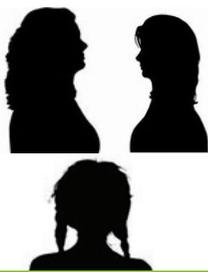
Silvia and Natalia approached a city police station in Switzerland. It turned out that they had been lured to Switzerland under false promises and forced into prostitution. The City Police notified the cantonal police which took up the matter and placed the women in a shelter. The two victims were interviewed by the cantonal public prosecutor who opened criminal proceedings. When it proved difficult to identify the perpetrators because only their nicknames were known, fedpol asked the Bulgarian authorities for assistance on behalf of the cantonal police. The latter, in spite of having only received few details on the perpetrators, succeeded in identifying them. The Swiss police were able to arrest them thanks to the Bulgarian assistance.

#### **International legal assistance comprises the following:**<sup>60</sup>

- Provision of documents;
- Investigative measures;
- Collection of evidence;
- Provision of information;
- Other types of legal assistance if established in an international agreement to which Bulgaria and Switzerland are party or under the terms of reciprocity.

<sup>59</sup>Sections III and IV of Chapter 36 “Proceedings in Relation to International Cooperation in Criminal Matters” of the Bulgarian Criminal Procedure Code (Bulgarian CPC).

<sup>60</sup>Article 471, para 2 of the Bulgarian CPC.



### THREE BULGARIAN WOMEN

In the framework of an investigation of trafficking in Switzerland involving three Bulgarian women, the Swiss prosecutor requested Mutual Legal Assistance from the Bulgarian authorities, namely the interviewing of a number of Bulgarian nationals. He put forward a list of questions and requested to be present during the interviews in Bulgaria which was granted. He was also allowed to put forward supplementary questions. The Bulgarian authorities sent the records of the interrogations to the Swiss Federal Office of Justice which in turn forwarded them to the cantonal prosecutor. The records then served as evidence and were used in the criminal proceedings.

In principle, international legal assistance may be refused on grounds of risk to sovereignty, national security, public order or other interests protected by law.<sup>61</sup> In cases where the Bulgarian or Swiss authorities are investigating a trafficking case involving exploitation in their respective countries, they are not obliged to notify their counterparts.

### V-NOTE !

Information concerning activities of a victim that are legal, not punishable and not indictable in Switzerland cannot be shared with a foreign police authority. For example, if Bulgaria requests information about a person legally engaging in prostitution in Switzerland, no data will be transferred.

### 3.4.2. Witness or expert witness appearing before a Swiss court

According to Bulgarian law, witnesses and expert witnesses may appear before foreign judicial authorities only if the requesting authority provides guarantees that the witness in question shall not be held liable for any act committed prior to being summoned.<sup>62</sup> If the Bulgarian authorities wish to ensure that such guarantees are also accepted and enforced by the Swiss authorities when hearing the witness on Swiss territory, a guarantee of safe conduct has to be obtained from the competent Swiss authority.<sup>63</sup> As a general rule, if a witness refuses to appear in a Swiss court, the witness can be summoned.<sup>64</sup> However, since this is a coercive measure, it has to be sought via a formal Mutual Legal Assistance Request.

### V-NOTE !

Bulgarian victims of trafficking are inclined to take part in proceedings in a foreign court as witnesses because they feel better protected when they are away from the traffickers and the traffickers' relatives who usually come from the same environment as the victims. Generally, if victims of trafficking feel threatened in either Bulgaria or Switzerland, they are afraid to testify against the traffickers.

As far as traffickers are concerned, if they are held in custody in Bulgaria, they may be interrogated as witnesses in Switzerland exceptionally at the discretion of the respective Bulgarian district court and only with their express consent. The traffickers can however be

<sup>61</sup>Article 2 of the European Convention on Mutual Assistance in Criminal Matters, Article 472 of the Bulgarian CPC, and Article 2 of the Swiss Federal Act on International Mutual Assistance in Criminal Matters.

<sup>62</sup>Article 473 of the Bulgarian CPC

<sup>63</sup>Article 204 of the Swiss CPC.

<sup>64</sup>Article 201ff of the Swiss CPC.

interrogated in Bulgaria by way of Mutual Legal Assistance.

### 3.4.3. Interview through video or telephone conference<sup>65</sup>

#### 3.4.3.1. Interview by video conference<sup>66</sup>

If a person is in Bulgaria and has to be heard as a witness or expert by the Swiss judicial authorities, but it is not desirable or possible for that person to appear in Switzerland in person, the Swiss judicial authorities may request that the hearing take place by **video conference**. The same applies vice versa – if a person is in Switzerland and may not appear in Bulgaria in person to be heard as a witness or expert, they may be heard by the Bulgarian judicial authorities by video conference. For this purpose, the competent Bulgarian authority has to submit a formal MLA request to Switzerland.

Formal MLA requests for hearings by video conference are granted provided that the use of the video conference is not contrary to the fundamental principles of Swiss or Bulgarian law.

Letters of request for a hearing by video conference must contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

The person who is required to appear is summoned in accordance with the rules and procedure laid down by the domestic law of the country where the person is located, respectively Switzerland or Bulgaria.

#### **With reference to hearing by video conference, the following rules apply:**

- The judicial authority of the country where the person is to be interrogated must be present during the hearing, where necessary assisted by an interpreter. It is their responsibility to correctly identify the witness and guarantee respect for the fundamental principles of domestic law.
- Where necessary, measures for the protection of the person who will act as a witness are to be agreed between the competent Swiss and Bulgarian authorities;

The hearing is to be conducted directly by, or under the direction of, the respective judicial authority.

#### 3.4.3.2. Interview by telephone conference<sup>67</sup>

If a person is in Bulgaria and has to be heard as a witness or expert by the Swiss judicial authorities, the Swiss judicial authorities may request the Bulgarian authorities to enable the hearing to take place by **telephone conference**, if the Swiss law so allows. The same applies vice versa – if a person is in Switzerland, they may be heard by the Bulgarian judicial authorities by telephone conference.

A hearing by telephone conference may only be conducted with the express consent of

<sup>65</sup>Article 474 Bulgarian CPC.

<sup>66</sup>Article 9 of the 2nd Additional Protocol to European Convention on IMAC.

<sup>67</sup>Article 10 of the 2nd Additional Protocol of the European Convention on International Mutual Assistance in Criminal Matters.

the witness or expert to be heard and provided that this is not contrary to the fundamental principles of Swiss or Bulgarian law.

The request for hearing by telephone conference must contain the name of the Swiss or Bulgarian judicial authority requesting hearing by telephone conference and the name of the persons who will be conducting the hearing.

### 3.4.3.3. Competent authorities in Switzerland and Bulgaria

**In Bulgaria, requests for video or telephone conference in the framework of pre-trial proceedings are performed by the National Investigation Service.** In the framework of **judicial proceedings**, the competent body for **telephone conference** is the equally ranking court (to the requesting court), and for **video conference** – the appellate court in the region of residence of the person to be interrogated.

If a person must be heard by video or telephone conference on Swiss territory by Bulgarian judicial authorities, the interrogation in **pre-trial proceedings** is conducted by an investigator from the Bulgarian National Investigation Service, and by the court in **judicial proceedings**.<sup>68</sup>

Bulgarian authorities should address requests for transnational video or telephone conferences directly to the cantonal prosecutor if it is known which cantonal prosecutor's office will be responsible for the case. The website [www.elorge.admin.ch](http://www.elorge.admin.ch) helps to identify the competent Swiss authority by searching on the city where the witness lives and will give evidence. This website also indicates the preferred Swiss official language into which the Bulgarian MLA request should be translated (German, French or Italian). If video or telephone conferences are requested in different Swiss cantons, the formal MLA request should be sent to the Federal Office of Justice (FOJ) in Berne. In any case, the Bulgarian desk at Eurojust and the Swiss Liaison Prosecutor at Eurojust can advise the Bulgarian authorities which Swiss authority should be the recipient of such a MLA request.

#### V-NOTE!

Despite the fact that the meeting is indirect, through videoconference, the interrogation is very stressful for victims and they may in the end refuse to testify. To prevent this, it is recommended that psychologists from the counselling centres in Bulgaria are involved to support the victims prior to, during and after the interrogation. If the interrogation takes place in Switzerland, the victim is entitled by law to be accompanied by a confidant.

<sup>68</sup> Article 474, paras 6 and 7 Bulgarian CPC.

### 3.4.4. Joint investigation teams (JITs), undercover agents, controlled deliveries, cross-border surveillance

Joint investigation teams (JITs) are foreseen in Article 20 of the 2nd Additional Protocol. In Bulgaria, the **Supreme Prosecutor's Office of Cassation** is the competent body as regards the setting up JITs.<sup>69</sup> In Switzerland, the **Federal Office of Justice (FOJ)** negotiates the model agreements on JITs, but the specific JIT is set up between the (regional) **prosecutor's office in Bulgaria and the cantonal prosecutor's office in Switzerland**. Their agreement has to be approved by the FOJ prior to the final joint signature. An MLA request from the competent Bulgarian authority to the competent Swiss prosecutor is necessary. The work, duration and composition of JITs are set forth in an arrangement between the competent bodies of the two countries. It is important to specify that JITs are subjected to a duty of confidentiality.

Evidence collected in Switzerland in a case of a JIT may be used in Bulgaria in pre-trial proceedings to enhance the investigation. However, if the evidence has to be used in judicial proceedings, Bulgaria needs to submit an MLA request to Switzerland.

Eurojust has a JIT secretariat specialised in supporting and advising prosecutors regarding the process of setting up a JIT and can also organize preparatory coordination meetings for that purpose. Eurojust also offers the possibility of financing a JIT with one or more EU member states as members. Third States associated with Eurojust such as Switzerland also have the possibility to seek the assistance of Eurojust when forming a JIT with EU member states or joining an already existing JIT. Applications for financing a JIT have to be submitted within indicated deadlines to the JIT secretariat of Eurojust.<sup>70</sup>

Regarding undercover agents, controlled deliveries and cross-border surveillance, the Supreme Prosecutor's Office of Cassation is the competent Bulgarian body to send and review requests.<sup>71</sup> The competent bodies in Switzerland are mostly the prosecuting authorities (both federal and cantonal).<sup>72</sup> Requests for controlled delivery and cross-border surveillance are performed by the competent investigating body, which may seek assistance from police, customs and other administrative authorities.

Finally, costs for the execution of requests for legal assistance shall not be subjected to reimbursement, except in exceptional cases.<sup>73</sup>

### 3.4.5. Transfer of criminal proceedings to Bulgaria

Requests for transfer of criminal proceedings from Switzerland to Bulgaria should be sent to the Supreme Prosecutor's Office of Cassation regarding pre-trial proceedings,

<sup>69</sup>Art. 476, para 3 Bulgarian CPC.

<sup>70</sup>See: <http://www.eurojust.europa.eu/Practitioners/JITs/Pages/JITs-sitemap.aspx>, last visited 10 April 2018.

<sup>71</sup>Art. 476, para 7 Bulgarian CPC

<sup>72</sup>Declarations of Switzerland regarding Articles 17-19 of the 2nd Additional Protocol.

<sup>73</sup> 20 of the European Convention on Mutual Assistance in Criminal Matters as modified by Art. 5 of the Second Additional Protocol.

and to the Ministry of Justice for judicial proceedings, which in turn refers the request to the competent criminal court, or the Sofia City Court if the competent body may not be determined. Several of the following grounds must be in place in order to admit a request for transfer of criminal proceedings to Bulgaria:<sup>74</sup>

- Double criminality of the offence;
- The perpetrator is liable under Bulgarian law;
- The perpetrator is permanently residing in Bulgaria;
- The perpetrator is a Bulgarian national;
- The offence for which the transfer is sought is not political or a war crime;
- The request does not seek persecution or punishment due to the person's race, religion, nationality, ethnic belonging, gender, civil status or political beliefs;
- Criminal proceedings have been launched in Bulgaria against the same person for the same or an identical offence;
- The transfer of proceedings is in the interest of ascertaining the truth and the essential evidence is in Bulgaria;
- The execution of sentence will improve the convicted person's opportunities for socialisation;
- The perpetrator's physical presence in the proceedings may be ensured in Bulgaria;
- The sentence, if delivered, may be executed in Bulgaria.

According to Swiss law, the transfer of criminal proceeding to Bulgaria (or another foreign state) is possible if the defendant(s) are in Bulgaria and their extradition to Switzerland is inappropriate or not permitted or if they have been extradited to Bulgaria and the transfer of the prosecution offers the prospect of better social rehabilitation.<sup>75</sup> The competent authority to send requests for transfer of criminal proceedings to Bulgaria is the FOJ.

Transfer of criminal proceedings is not mandatory. It is carried out if it would be more appropriate that criminal proceedings take place in the other country, for the purpose of establishing the facts, for determining the punishment or for effecting the sentence.<sup>76</sup> Transfer of criminal proceedings must always take into account victims' rights and interests. There have been several transfers of criminal proceedings between Bulgaria and Switzerland so far, including cases of human trafficking.

It is important to bear in mind that every procedural action performed by an authority of Switzerland, which is in compliance with the Bulgarian law, has the same probative value as if performed by a Bulgarian body.<sup>77</sup>

Switzerland is not a party to the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters, thus mutual assistance in criminal matters between

<sup>74</sup> Art. 478, para 2 Bulgarian CPC.

<sup>75</sup> Article 88 IMAC.

<sup>76</sup> Article 479, para 3, item 2 Bulgarian CPC

<sup>77</sup> Art. 478, para 4 Bulgarian CPC.

the two countries is grounded on the CoE European Convention on Mutual Assistance in Criminal Matters<sup>78</sup> and its Second Additional Protocols, as well as reciprocity (the Swiss Federal Act on International Mutual Assistance in Criminal Matters and Chapter 36 of the Bulgarian Criminal Procedure Code “Proceedings in Relation to International Cooperation in Criminal Matters”).

#### V-NOTE!

If an investigation of a trafficking in human beings case has been initiated in Switzerland, but both the suspect and victim are suspected to be in Bulgaria, Switzerland can transfer all information gathered to Bulgaria and ask the Bulgarian authorities to continue with the investigation.

### 3.4.6. Transfer of criminal proceedings to Switzerland

In cases where criminal proceedings have been launched in Bulgaria against a foreign national or a person who permanently resides in a foreign country,<sup>79</sup> the criminal proceedings may be transferred to that country. The Supreme Prosecutor’s Office of Cassation for transfer of criminal proceedings is competent to file requests to that end in the pre-trial phase, and the Ministry of Justice for criminal proceedings in the judicial phase. The FOJ is competent to receive or issue such requests in Switzerland. According to Bulgarian law, transfer of criminal proceedings may be requested for any of the following reasons:

- Extradition of the perpetrator to Bulgaria is not possible, not allowed or has not been requested for a different reason;
- For the purpose of establishing the facts, determining the punishment or executing the sentence it is appropriate to conduct the criminal proceedings in the requested country;
- The perpetrator has been or will be extradited to the requesting state or for another reason his or her physical presence at the criminal proceedings in that state is possible.<sup>80</sup>

If the requested state allows the transfer of criminal proceedings, they may not be continued in Bulgaria.<sup>81</sup>

In Switzerland, transfer of criminal proceedings is regulated in the IMAC. Switzerland can admit a request regarding transfer of criminal proceedings if:

- extradition is not permitted;
- the defendant has to face charges in Switzerland for other more serious offences;
- it is guaranteed that the requesting State will not prosecute him for the same offence after acquittal or completing a sentence in Switzerland.<sup>82</sup>

<sup>78</sup> *In force for Bulgaria as of 1 July 2004.*

<sup>79</sup> *Article 479 Bulgarian CPC.*

<sup>80</sup> *Article 479, para 3 Bulgarian CPC.*

<sup>81</sup> *Article 479, para 4 Bulgarian CPC.*

<sup>82</sup> *Article 85 IMAC.*

In the case of a transfer, the offence shall be judged according to Swiss law unless the foreign law is more lenient.<sup>83</sup>

### 3.4.7. Mirror criminal proceedings

There is the possibility to open parallel criminal proceedings in Switzerland and Bulgaria against the same suspects, particularly if a transnational network of traffickers is involved and several victims have been identified in both countries. In Switzerland, this approach is called “mirror criminal proceedings”. The two proceedings are separate but coordinated. Information will be actively shared and law enforcement is more efficient. It is important to reiterate that the defendant shall not be pursued and condemned for the same crime twice (non bis in idem principle).<sup>84</sup>

### 3.4.8. Transnational police cooperation on the protection of victims

Apart from bringing perpetrators to justice, police and judicial authorities in Switzerland and Bulgaria are responsible for the physical safety of the victims and their families on their respective territories.

Transnational police cooperation can also establish mutually coordinated safety measures to protect survivors from intimidation and retaliation by traffickers. If survivors, who are being threatened by perpetrators, desire to return home, it is possible to be accompanied by the Swiss police to the point of departure (e.g. airport, bus station, etc.). Swiss police can also make sure through international police channels that survivors are provided with an emergency number for specialised anti-trafficking police in their home country or that the Bulgarian police meet them at the point of arrival to make sure they can travel safely to their respective shelter or other residence.

In some cases, due to serious safety reasons, the trafficked person might be escorted by Swiss police from the point of departure to the point of destination. However, usually survivors are taken care of by competent specialised NGOs or inter-state organisations in both countries. If in the framework of criminal investigation Swiss police or prosecuting authorities receive indications that in addition to the victims in Switzerland, there are further victims in Bulgaria who have already returned but are still under threat or the influence of traffickers, they share the information with their Bulgarian counterparts so that action might be taken.

#### V-NOTE !

If the trafficked person is requested to travel from another country back to the country where the trial or questioning takes place, safe transportation needs to be ensured and the relevant authorities of the countries must be involved.

<sup>83</sup> Article 86 IMAC

<sup>84</sup> APPLICATION OF THE NE BIS IN IDEM PRINCIPLE, Article 54 Schengen Convention: “A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.”

### 3.4.9. Support for Bulgarian victims involved in criminal proceedings in Switzerland

The criminal proceedings often continue in Switzerland after victims of trafficking have returned to Bulgaria. In most cases, a legal representative is appointed in Switzerland who continues to represent the concerns of the claimant in the ongoing proceedings. The specialised Swiss NGO in charge keeps in touch with the returnees and informs them regularly about the status of proceedings.

In some cases, the cantonal public prosecutor requests that the victim return to Switzerland in order to be questioned again as a witness, or in order to attend a confrontational hearing with the presumed perpetrator. With the victims' consent, the specialised Swiss NGO organizes the travel from Bulgaria to Switzerland in close cooperation with the specialised Bulgarian NGO. The Bulgarian NGO takes care of the travel documents, the purchase of the tickets, and any overnight stays in Sofia, as well as seeing them off and meeting them at the airport. Counsellors in Bulgaria provide emotional support in relation to the criminal proceedings. Victims are supported as well in collecting in Bulgaria documents required for the proceedings. The Swiss NGO makes sure that victims returning for additional questioning are safely accommodated and receive the support and protection services laid down in the Victim Assistance Act.

sicher untergebracht werden und die im Opferhilfegesetz vorgesehenen Unterstützungs- und Schutzleistungen erhalten.

## CHAPTER 4: PROTECTION, SUPPORT AND REINTEGRATION OF VICTIMS OF TRAFFICKING IN BULGARIA

### 4.1. Victims' return to Bulgaria: formal and informal Identification in Bulgaria and access to services

The human trafficking problem does not end with the victims' return to Bulgaria. Trafficked persons face new challenges – to recover and find new purpose in life so that they can start their lives all over again and avoid the risk of re-trafficking. Victims face not only psychological trauma and the emotional problems related to it, but also serious social and economic limitations. Different organisations in Bulgaria provide programmes and services in support of Bulgarian victims of trafficking returning from abroad. In many cases the issue is not victims' reintegration but their integration. Programmes aim at achieving a relatively stable social inclusion to prevent re-trafficking. The majority of the identified Bulgarian victims of trafficking have been sexually exploited (77%).<sup>85</sup> This is why the programmes and services developed in Bulgaria are prevailingly for girls and women exploited in the sex industry abroad.

#### NOTE !

Animus Crisis Centre in Sofia serves as a **Transit Centre for trafficked persons**. It is a **safe place where women and children victims of trafficking may be immediately accommodated**. The Centre also supports male victims. It provides **unconditional support** and works independently from the police and other public institutions. The Centre has a wide network of partners capable of assisting with victims' urgent problems.

There is a total of 17 specialised crisis centres for children and five crisis centres for adults and children in Bulgaria. Eight services specifically for victims of trafficking operate with the National Commission for Combating Trafficking in Human Beings: four shelters,<sup>86</sup> one transitional residence and three daily consultation centres.

Sometimes victims of trafficking choose not to return to Bulgaria. One possible explanation is the freedom of movement and opportunity to work in the Member States of the European Union, as well as in Switzerland.<sup>87</sup> Other factors that explain such a decision are the shame that victims feel to return home without any earnings; hopes of making some money by continuing working in prostitution on their own accounts; fears of being endangered by traffickers' entourage in Bulgaria; or the embarrassment of having to go through the identification procedures again. Other possible explanations may be that trafficked persons do not know their rights as victims of trafficking, or the mistrust of the institutions that the traffickers impute to them. Some victims fear that they will not be understood and supported. This is why it is essential that prior to their return victims receive from the

<sup>85</sup>According to data of GRETA for the period 2013 – 2015 cited in the 2016 Annual Report of the NCCTHB.

<sup>86</sup>Throughout the text the word "shelter" is used in its general meaning, and not within the meaning of the Implementing Rules of the Social Assistance Act, § 1, item 35 of the Additional Provisions where a shelter is a social service provided for up to three months to homeless people.

<sup>87</sup>Cf. agreement between the European Community and its Member States, on the one part, and the Swiss Confederation, of the other, on the free movement of persons.

Swiss organisations timely and realistic information about the support they may rely on in Bulgaria.

#### 4.1.1. Identification in Bulgaria

The National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (National Referral Mechanism, NRM) distinguishes between **formal** and **informal identification**. The two types of identification are performed by different authorities and confer different rights to victims of trafficking.

**Informal identification** is performed by various institutions and organisations that have made the first contact with the victim. These may be police officers, social workers, helpline counsellors, volunteers, field workers, including experts at the National Commission for Combatting Trafficking in Human Beings (NCCTHB). The informal identification gives victims immediate access to the support services and programmes envisaged in the Bulgarian NRM such as short-term accommodation in a crisis centre or shelter, psychological support, urgent social, medical and humanitarian aid, and legal counselling.<sup>88</sup>

**Formal identification** is performed by the authorities conducting the pre-trial proceedings (investigating police officers, prosecutors or investigators) and is aimed at launching investigation and criminal proceedings.<sup>89</sup> It is a prerequisite for victims to exercise some of their rights such as involvement in the criminal proceedings and being constituted as civil claimant and/or private prosecutor; obtaining financial compensation under the Crime Victim Assistance and Financial Compensation Act; special protection under the Protection of Persons Involved in Criminal Proceedings Act etc.

#### NOTE!

**Even if a person has been identified as a victim of trafficking in Switzerland, in Bulgaria that person must be identified once again by the Bulgarian authorities in pre-trial proceedings (formal identification) if she would like to take part in criminal proceedings in Bulgaria and seek compensation. Victims of trafficking identified in the country of destination, however, do not need to undergo an extra identification to obtain access to support and assistance programmes.**

An **interview** is required to determine whether a person is a victim of trafficking. There is a difference between an interview and an interrogation for the purpose of criminal proceedings.<sup>90</sup>

The **interview** seeks to establish whether the crime of human trafficking has been committed and whether the person is a victim of trafficking. During the interview questions pertaining to the major indicators for trafficking are asked such as fraud, use of force and exploitation, as well as questions to detect certain facts (who, when, how etc.). **The interview is conducted with the victim's consent.** The interview conducted in the course of a police check is not evidence and may not be used in pre-trial proceedings. After the interview with a police officer, victims are referred to a crisis centre.

<sup>88</sup> *National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM); Standard Operating Procedure 1 Identification and Referral to Victims of Trafficking; Measure 1.1 Identification*  
*Measure 1.1 Identification*

<sup>89</sup> *Ibid.*

<sup>90</sup> *According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM).*



**VIKTORIA**

Viktoria's plane lands late in the evening and she is met at the airport by representatives of IOM and Animus. A policeman talks to her and establishes that she is a victim of trafficking. She has already been identified and is returning through the Federal Return Assistance for trafficked persons. Although she consented to talk to the police, Viktoria refuses to sign the record from the interview and states that she does not want to be bothered in the future and give evidence.



**SVETLA**

Svetla's return is organised in advance in coordination between Animus, the Swiss NGO where Svetla is accommodated, IOM Bern and IOM Sofia. The case raises concerns since the preliminary conversations held with Svetla in the shelter in Switzerland proved that she is emotionally unstable. Svetla has agreed to be placed for one night in Animus Transit Centre and to talk to a psychologist. An IOM Sofia officer meets her at the airport and accompanies her to the Transit Centre.

In the course of preliminary conversations Svetla has consented to talk to the police at the airport. Upon her arrival, Svetla reiterates her consent. An officer of Directorate General Border Police talks to her about her experience. Svetla is calm and signs the record from the interview. She is informed that subsequently, if she so agrees, she may take part in the initiated criminal proceedings as a witness.

The interview or taking testimony, on the other hand, seeks to collect useful information for the investigation of the offence and criminal prosecution of the perpetrators. During the interrogation, specific questions aimed at the identification of the perpetrators, the place and instrumentalities of the offence are asked. The interrogation may not be conducted prior to expiry of the recovery and reflection period, unless the victim has expressly agreed to cooperate with the authorities for the detection of the crime. The record from the interrogation serves as evidence in court.

**V-NOTE !**

Both the interview and the interrogation are equally disturbing for victims. Before the interview they have to be informed about the consequences of talking to a police officer, namely that the interview may serve as a ground to initiate pre-trial proceedings for the offence of trafficking in human beings.

Representatives of DG Border Police interview every victim of trafficking about whose return to Bulgaria they are notified. Victims have the right to refuse to disclose that information to DG Border Police and to decline to talk to a police officer. To follow the victims' wish, the organisation that meets the victims in Bulgaria must be informed in advance. In those cases, victims are met in the arrival hall with all ensuing risks.

When identifying victims of trafficking in Bulgaria, it must be noted that the victim's (initial) consent to perform the activity which later turned into exploitation (e.g. prostitution) is irrelevant.<sup>91</sup> In the majority of cases, victims initially give their consent to perform the services which later turn into exploitation. For example, most young women in Bulgaria who become victims of sexual exploitation leave Bulgaria out of their free will, are pressured

<sup>91</sup> Article 159a of the Bulgarian Criminal Code

by various social and economic difficulties in order to become sex workers in Switzerland. Later it appears that they are deceived about the working conditions; their income is taken away by the traffickers and the victims are held in servitude through violence and threats. A careful examination and good cooperation between Swiss and Bulgarian authorities are necessary in order to identify victims of trafficking.

#### 4.1.2. Informing victims about their rights in Bulgaria



SVETLA

IOM Sofia representatives accompany Svetla to Animus Transit Centre. On the way to the Transit Centre they talk about her experience during the police interview at the airport and inform her about her rights as a victim, namely to decide whether to cooperate with the authorities for the detection of the crime or not. At this stage Svetla is not willing to be involved in any way and does not want to avail of her right to a reflection period. She wants to go home quickly. The Transit Centre counsellor provides further information to Svetla about her rights. It is difficult for Svetla to comprehend the situation at this stage.

Even when trafficked persons refuse to be accommodated in a crisis centre, social workers who meet them try their best to inform them about their rights. Pursuant to the NRM, everyone who establishes an initial contact with a victim of trafficking returning from Switzerland or another country of destination must inform them about their rights. Victims receive the following information and clarifications in the first possible instance:<sup>92</sup>

- Human trafficking occurs regardless of the victims' consent (especially when the victims have initially agreed to work a specific job or be involved in an activity);
- Non-punishment of the victims for crimes they have been compelled to commit as a direct consequence of being subject to trafficking;
- The right of a victim to a one-month reflection period to decide whether they want to cooperate with authorities for the detection of the crime;
- Victims' right to be accommodated in a crisis centre and receive psychological support and social, legal, medical and humanitarian assistance.

If the victim of trafficking does not want to be accommodated in a Crisis centre, representatives of Directorate General Border Police **provide space at the airport where social workers or the police may talk at peace with the victim before she leaves.** Once in Bulgaria, some of the victims want to go home to their families as soon as possible. In such cases social workers have to be creative. When the social workers accompany the victims to the bus station, for example, they use the albeit short span of time they spend with the trafficked persons to give them basic information about their rights as well as useful contacts in case of emergency.

#### 4.1.3. Immediate and unconditional access to services

Victims of trafficking are entitled to immediate and unconditional support from the moment they are identified in the country of destination or immediately upon their return to Bulgaria. Urgent and short-term support is not conditional on the victims' decision to

<sup>92</sup> According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM).

cooperate with the authorities. The short-term support may be extended to longer-term support and continued until the time victims are out of danger, i.e. not only concerning the risk of re-trafficking but also the risk of other forms of abuse.<sup>93</sup> Access to short-term services is free but victims rarely contact services on their own initiative. More often the partner organisation abroad, police, IOM or another institution that has identified the victims refers them to existing services in the country.

#### NOTE!

In 2016 Animus Association Foundation worked on 49 cases of human trafficking: 29 referred by partner organisations in the countries of destination; four by the Secretariat of the NCCTHB; 13 by IOM Sofia; and one by the police. Only two of the cases were self-referrals.

Despite the fact that victims are entitled to unconditional support, many of those returning to Bulgaria do not want to avail themselves of this support and take no interest in their rights. Some prefer to return immediately to their families. Others fear that once in a crisis centre or shelter, they will not be able to make free choices about their future. For a third group of victims the return to Bulgaria is only a temporary solution and they are quickly on their way back to the countries of destination. Victims who make use of the support services are increasingly people with very low capacity to manage on their own or with various physical or intellectual disabilities.

#### 4.1.4. Non-detention of trafficked persons

After being identified, victims of trafficking are not detained by the authorities. Shelters and crisis centres for adults are open-type and victims are placed there only with their explicit consent. Only if the victims' safety is at risk, they may be subjected to semi-open type of placement (being accompanied by someone when going out), and as a last resort – semi-closed or closed type of placement.



MILENA

Milena comes from a city near Sofia where the people who forced her into trafficking also live. She has been diagnosed with bipolar affective disorder and is in the state of hypomania. Initially, upon her request, she was accommodated in a crisis centre in her native town. However, it was established that she maintained contacts with the traffickers to whom she had disclosed the location of the shelter where she stayed. Due to the high risk of re-trafficking, she was moved to Animus Transit Centre. In view of the high risk of contacting the traffickers, a closed regime was imposed. After her condition improved, the regime was changed to semi-closed.

#### 4.1.5. Risk assessment

Risk assessment is an ongoing process and continues even after victims return to Bulgaria.

<sup>93</sup> Articles 25 and 27 of the Action against THB Act.



VIKTORIA

Viktoria is taken to Animus Transit Centre where she stays for the night. Viktoria behaves in a detached fashion and cannot talk about what she has been through. The counsellor on duty calms her down and conducts a short conversation with her. The counsellor asks few questions related to Viktoria's safety in her native town. Her answers confirm the preliminary assessment made by the counsellor from FIZ that it is still early for Viktoria to return home as there is a risk that the traffickers chase her down. On the following morning, through the assistance of IOM Sofia, Viktoria heads for the shelter run by the NCCTHB.



SVETLA

The case of Svetla is already known in Animus Transit Centre as the counsellors have talked with her while she was accommodated in a women's shelter in Switzerland. She is very eager to go home as soon as possible. She is overexcited and confused and thus vulnerable to re-trafficking. Therefore, the counsellor assesses her emotional state and her capability to make a fair judgment of reality. They take into account various factors in her environment and make a safety plan. Before leaving the Centre Svetla is provided with the number of the National Helpline for Survivors of Violence, which operates 24/7; a contact with the regional police office in her town and the telephone number of the Transit Centre.

**Upon trafficked persons' arrival in Bulgaria**, the risk is assessed in terms of the immediate danger to their life and health – whether they have any urgent medical needs that require immediate intervention, whether there is a risk of re-trafficking, previous or current instances of violent experience.<sup>94</sup> The information provided by FIZ or another Swiss victims' support organisation in this relation is very important. In case a high risk is established, information is provided in advance by the Swiss institutions to the Bulgarian partners who organize relevant special measures. For example, IOM Sofia may provide an escort, including a medical one, to ensure the safety of a victim. Urgent hospitalisation is provided if necessary.

**NOTE!**

A crucial part of the joint organisation of the trafficked person's safe return is to exchange with the receiving organisation in Bulgaria (such as Animus) – directly or indirectly through IOM – the information collected in the course of the risk assessment made by the victim support organisation in Switzerland (such as FIZ). This allows the counsellors in Bulgaria to prepare for the case. This is important further for the victim as they need not go over the traumatic trafficking experience again.

Victims are often agitated and confused when they arrive back home and there is a possibility they miss the social worker sent to meet them at the airport. There are also cases when the traffickers have been informed of the victims' return and await them at the airport. To prevent such incidents, a practice has been established where officers from the receiving organisation in Bulgaria together with the Directorate General Border Police meet the trafficked persons not in the arrivals hall but right after the place where the security check is performed.

<sup>94</sup> According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM); Standard Operating Procedure 1 Identification and Referral to Victims of Trafficking; Measure 1.2 Risk Assessment von Menschenhandel; Massnahme 1.2 Risikobeurteilung.

The process of risk assessment of victims returning to Bulgaria takes into consideration in the first place the information provided by FIZ or another Swiss victims' support organisation. Since the risk assessment is related to the re-integration of the victim, it is made with a long-term perspective which includes different activities and can be called **risk management**. The victims together with a consultant can assess which risk factors they can and cannot control. When preparing **victims' return** to their relatives in their places of origin, the risk assessment is made by the host organisation in collaboration with the local Social Assistance Directorate and regional police services. The process of risk assessment and management continues during the victim's stay in the crisis centre or shelter.

The risk management takes into account the following issues concerning the victims:<sup>95</sup>

- Do the victims have any urgent health needs or other specific medical needs?
- Is there a risk of re-trafficking or a risk that victims suffer other forms of violence (including in their family);
- Is the victims' family involved in the process of trafficking; Have victims suffered other forms of violence;
- Are people in their close environment sufficiently socially and emotionally competent to support them;
- Have the victims' relatives been threatened;
- Do traffickers know victims' whereabouts; do they know they are coming back;
- Do victims have a supporting environment;
- Victims' emotional stability;
- Are there any support services, organisations or programmes in the community;
- Can victims rely on help and support from the public institutions in the region;
- Other important aspects depending on the individual case.

The more information FIZ or another Swiss victims' support organisation provides on the above issues, the easier the risk assessment process is.

#### V-NOTE !

The victims' concerns are very important for the risk assessment as they know their situation best and has developed survival skills. However, it must be borne in mind that victims are often inclined to ignore the risk. This is why the risk assessment is a long process related to the victim's vulnerability assessment and should include both the opinion of the victim and the evaluation of various experts.

Victims can leave the Crisis Centre or the shelter anytime or when both experts and they agree that it is safe for them to return home and go on with their lives. Often victims have to stay longer in a shelter after they have stayed in a Crisis Centre because of the high risk as in the case of Viktoria.

<sup>95</sup> According to the NRM; Standard Operating Procedure 3. Social Inclusion and Reintegration; Measure 3.1 Long-term Psychological Support and Empowerment

## 4.2. Immediate and unconditional support for victims of trafficking in Bulgaria: specific rights

### 4.2.1. Crisis intervention, accommodation and work with victims' urgent needs

Victims of trafficking may receive urgent support and be accommodated in a crisis centre or a shelter for victims of trafficking. The crisis intervention targets the victims' most urgent needs. It takes place from three to six months.<sup>96</sup>

**The objectives are:**<sup>97</sup>

- **Protection:** victims are accommodated in a safe and secure place;
- **Prevention:** fast intervention prevents graver psychological and social problems and victims' involvement in new risk situations;
- **Support:** the psychological work reduces the pain and shock from the experience and enhances victims' opportunity to cope.



SVETLA

Through the telephone conversations held with Svetla prior to her return, she knows what to expect in Animus Transit Centre but nevertheless looks confused and tense. Her strong desire to go as soon as possible back to her family made her stay in the shelter in Switzerland very short, and her emotions are still very intensive. The crisis counselling aims at supporting Svetla to calm down and encourage her to share her experience. She is helped with questions to put her story about the events that led to the crisis in an orderly manner and understand better what happened to her. She receives emotional support and understanding that she is not to blame as she was a victim of crime.

Svetla is accompanied by a clinical social worker to the bus station, bought a ticket and accompanied to the bus to her native town. Later a counsellor from the Transit Centre contacts her to make sure she has arrived home safely.

Victims who have been accommodated in a shelter in Switzerland have usually overcome the shock of violence and return to Bulgaria in a relatively stable emotional condition. **Nevertheless, the return to their country is another change, which they have to adapt to.** Some of the victims, like Svetla, do not take this into account and wish to return to their families where they feel safe as soon as possible. Others find it harder to adapt to the return. They are ashamed that they have failed in their plans/attempts for a better future. They are afraid that the traffickers will find them and that their families will find out what they have been doing. They feel guilty that they have disappointed their families. They are desperate as they do not see any future for themselves. They do not have relatives to go to. Crisis intervention works with these particularly complex feelings which put the victims at risk of re-trafficking. It focuses on the victims' adaptation to the environment in Bulgaria, provides a fair judgment of the victims' resources and capacities and builds realistic

<sup>96</sup>According to the *Implementing Rules of the Social Assistance Act*.

<sup>97</sup>According to the *National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM); Standard Operating Procedure 2. Protection and Support; Measure 2.1. Crisis Intervention*.

expectations about their future in Bulgaria; it creates new development opportunities for realisation. Crisis intervention helps victims look at themselves differently – as people who have survived a very difficult situation and deserve care and respect.



VIKTORIA

Gradually Viktoria calms down. She talks only once with the counsellor at Animus Transit Centre, which turns out to be essential for her. This is the first time she talks in her native language about what she has gone through directly to the counsellor without using an interpreter. She tells her personal story. She is tired from the journey and desperate about what she went through. She is not ready yet to go back home although she would really like that. The crisis intervention focuses on her feelings of shame, fear and guilt. Another focus is the lack of perspectives and vision for the future. The counsellor supports Viktoria emotionally and starts building, together with her, a plan for the near future.

Depending on the victims' individual needs, the crisis intervention that is provided in the Crisis centres for victims of violence in Bulgaria includes the following elements:<sup>98</sup>

■ **Urgent accommodation** in a crisis centre; this is done voluntarily. Victims sign a declaration and commit to comply with the rules and regime in the centre. The goal is to internalise what has happened and to prepare for meeting their families.

■ **Urgent psychological support** to overcome the emotional anxiety related to the victims' return to Bulgaria; an assessment and management of the needs and the risk and planning the next steps for the victims' reintegration. The psychological support is voluntary and is provided by a counsellor (a psychologist or a social worker) in a protected environment.

■ **Providing urgent social, medical and humanitarian assistance**, which includes above all advocacy and contacts with competent institutions to resolve the victims' problems. The case worker may organize a multidisciplinary team comprising representatives of different organisations. The humanitarian assistance covers expenditures related to the trafficked persons' urgent needs such as purchase of medicines, payment of fees, transportation costs, covering essential necessities etc.

#### V-NOTE !

There are **three specialised shelters for victims of trafficking in the country**: in Sofia, Varna and Burgas. These are managed by the NCCTHB. Accommodation there aims at providing refuge, social, medical and psychological help, establishing contact with victims' relatives as well as the specialised institutions and organisations. Victims may stay in the shelters until the time criminal proceedings are completed, in case they take part in the proceedings. Victims are placed in shelters by the NCCTHB.

**Centres for support and consultation of trafficked persons** operate with the shelters. These provide consultations about administrative and judicial procedures that render support and protection to victims of trafficking in an understandable manner. The Centres further provide specialised psychological and medical help and facilitate victims' reintegration in family and social environment. The Centres are open also to victims who are not accommodated in a shelter.

<sup>98</sup> According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM)).

Most crisis centres and specialised shelters for victims of trafficking accommodate women. Only the specialised shelter in Sofa accommodates male victims. Male victims in need of assistance are usually victims of trafficking for the purpose of begging. Due to physical disabilities, intellectual disorders or vagabond way of life they are very vulnerable and need to be accommodated in specialised centres for disabled or homeless people. Often, they are accommodated in hospices for disabled elderly people.



VASIL

Vasil is a 60 years old male. He is referred to Animus by Caritas via IOM Sofia. He was identified by the police in in the country of destination as a victim of trafficking for the purpose of begging. The man has a disability and moves with the support of crutches. He is met at the airport and placed in a hostel. He receives support and consultations from the Transit Centre. After assessing the risk of re-trafficking and the opportunities for Vasil's reintegration, Vasil returns to his home town. People with Disabilities and Social Services Directorate and Social Assistance Directorate in his home town have been contacted in advance and Vasil receives financial and social support upon his return.

#### 4.2.2. Right to a recovery and reflection period

The accommodation in a crisis centre coincides with the 30-day recovery and reflection period to which victims are entitled upon their return to Bulgaria.

The Law on Combating Trafficking in Human Beings does not expressly provide for a recovery and reflection period, though the National Referral Mechanism explicitly refers to one.<sup>99</sup> Trafficked persons are entitled to a recovery and reflection period and they must be notified about this as soon as possible after being **formally identified** as victims of trafficking. In practice this usually takes place after pre-trial proceedings have been launched. At the time victims are informed that pre-trial proceedings have been initiated, they must be notified of their rights as well, including the right to a recovery and reflection period, and they sign a declaration to that end.

**During the recovery and reflection period victims may not be interrogated by the pre-trial proceedings authorities.** Sometimes this hampers the work of the investigating authorities, who are expected to conduct the investigation within two months, although this period may be extended up to four months in case of factual and legal complexities.<sup>100</sup> It is important to respect the reflection and recovery period though to allow victims to recover.



VIKTORIA

After the Transit Centre, Viktoria travels to the regional NCCTHB shelter, where she is accommodated. In the first days an action plan is prepared taking into account the risk assessment and Viktoria's personal wishes. Again, she is informed that she is entitled to a recovery and reflection period, which runs from the date of her return to Bulgaria. She receives all the care she needs. She undergoes a series of medical examinations and tests. She is prescribed glasses due to visual disturbances. She receives legal consultations.

Crisis centres try to apply in practice the victims' right to a recovery and reflection period

<sup>99</sup> According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM); Standard Operating Procedure 2. Protection and Support; Measure 2.2. Support during the recovery and reflection period.

<sup>100</sup> Article 234 of the Bulgarian Code of Criminal Procedure

and render psychological and social support to victims so that they can get stable. In addition, they provide or organize legal counselling so that victims can make an informed decision whether to cooperate with the authorities in the detection of the crime or not.

### 4.2.3. Right to legal counselling

During the recovery and reflection period victims receive free legal counselling in order to take an informed decision whether to cooperate with the authorities or not.<sup>101</sup> They learn how the criminal proceedings evolve; what their involvement would entail; what are their rights in it; how they may get a free legal aid lawyer; how long proceedings may take; what are the possible outcomes; what are the opportunities to guarantee their safety; and would they have to confront the traffickers etc.



**VIKTORIA**

During the recovery and reflection period Viktoria receives legal counselling by the attorney designated at the shelter, with a view to taking an informed decision whether to cooperate with the Bulgarian authorities for the detection of the crime or not. The different phases of the criminal proceedings and her role in it as a witness, civil claimant or private prosecutor are explained to her. Potential benefits and hiccups in case she agrees to be involved in the criminal proceedings or not are being weighed. Eventually Viktoria reaffirms her decision not to cooperate in the prosecution of the perpetrators.

In practice trafficked persons who are accommodated in crises centres or shelters or are in contact with some of the specialised anti-trafficking organisations have easy access to legal counselling. Depending on the case at hand, legal counselling may be provided by any of the following:

- The National Bureau for Legal Aid (NBLA).
- Lawyers with non-governmental and international organisations that work with victims of human trafficking (such as IOM Sofia, the Bulgarian Helsinki Committee etc.).
- Lawyers with the NCCTHB.
- An attorney with IOM.

#### **V-NOTE !**

V-note! Legal issues can prove to be very difficult to understand for victims as well as for many other people. This can increase their anxiety and thus they can refuse to cooperate as they feel incompetent and helpless. Non-judgmental and patient legal consultation with a lawyer in a way that victims are able to understand can be of great help for their empowerment. There are 23 Bulgarian lawyers trained to work with victims of trafficking. Most of them are registered with the National Bureau for Legal Aid or work closely with NGOs that support victims of trafficking. Since July 2017 they are listed in the Bulgarian National Referral Mechanism.

### 4.2.4. Right not to cooperate with the authorities

Pursuant to the Criminal Procedure Code, victims in their capacity of witnesses must appear when summoned to give evidence.<sup>102</sup> They have the right, however, not to cooperate with

<sup>101</sup> According to the National Mechanism for Referral and Support of Trafficked Persons in Bulgaria (NRM); Standard Operating Procedure 2. Protection and Support; Measure 2.2. Support during the recovery and reflection period.

<sup>102</sup> Article 120 of the Bulgarian Code of Criminal Procedure.

the authorities. Stating that they do not want to cooperate with the authorities is often a hard step for victims to make, this is why the support rendered by a social worker or a lawyer is essential in this regard.<sup>103</sup>

#### 4.2.5. Long-term accommodation, social inclusion and reintegration while in shelter

Long-term integration measures are taken with the victims' consent after expiry of the recovery and reflection period or the accommodation in a crisis centre/shelter (up to 6 months) and/or a shelter for victims of human trafficking with the NCCTHB. In case victims agree to cooperate with the authorities for the detection of the crime, their stay in the shelter may be extended for the time criminal proceedings are completed.<sup>104</sup> For victims who choose not to be involved in criminal proceedings there are also different long-term non-specialised measures and programmes in place depending on the organisations that work with victims of trafficking.



**VIKTORIA**

Viktoria After the recovery and reflection period expires, the preparation for Viktoria's safe return to her family begins. Talks are held with her parents so they can better understand what has happened to their daughter and that she needs substantial support from her family. Viktoria herself also receives consultations from a psychologist in order to overcome the emotional trauma and accept what happened to her without accusing herself. After two months at the shelter, Viktoria goes back to her native town and her family where she continues to live.

**According to the victims' individual needs, long-term support may include the following:**<sup>105</sup>

- Psychotherapeutic work for overcoming the symptoms of post-traumatic stress disorder
- Social counselling and advocacy
- Building social skills
- Developing labour skills (empowerment)
- Restoring victims' social and health insurance rights as well as medical examinations, consultations and treatment
- Support for resolving various family problems and enhancing victims parenting capacity.

Victims' successful reintegration largely depends on an available supportive environment.

<sup>103</sup>Victims' right not to cooperate with the authorities is not expressly provided for in the national and international legal acts but is rather deducted a contrario from the provisions concerning mandatory support for the victims during the recovery and reflection period. Thus section 176 of the Explanatory Report to the CoE Convention on Action against THB underscores that the decision to cooperate or not cooperate with the competent authorities does not exclude the obligation to testify when it is required by a judge, and that someone who is legally required to do so therefore cannot use Article 13, paragraph 1 (recovery and reflection period) as a basis for refusing to testify.

<sup>104</sup>Article 29 Action against THB Act.

<sup>105</sup>The available services are offered by NGOs and Community Services Centers and are financed by the state and municipal budgets via state-delegated activities and projects from different international donors.

Many of the victims come from communities who live in extreme poverty, and have limited resources to go on with their lives in a new way. Unfortunately, many of the victims have a violent background and have experienced violence as early as their childhood, often continuing to live in an environment where violence is a norm. The restorative process for people who grew up in constant deprivations, emotional negligence, or complex trauma is very difficult and requires continuous work, which the existing programs in the shelters and victims' counselling centres cannot provide and to which the victims themselves do not commit. The efforts of all professionals involved with cases of human trafficking focus on overcoming violence so that victims gain confidence and do not allow that their rights are gravely violated in the future. These services can also be used later on as the following case shows.



LILYANA

Lilyana was very close to being taken out of the country and sexually exploited. She managed to flee, risking her life and running away from the apartment where she was locked and severely abused. She was found in a helpless condition by the police and admitted to a hospital. An investigation started. Pre-trial proceedings were launched and Lilyana gave testimony. She tries to continue with her life as usual, however the nightmare of what she went through persists. Lilyana has intrusive memories and nightmares, she has fits of anger and crying outbursts. Five years after the violence she suffered, her condition becomes unbearable and she turns to Animus for support where she also receives free psychotherapeutic help. Work with her continues for more than seven years now.

Ensuring access to available social services in the community is an important part of the long-term work with victims.<sup>106</sup> These are general services, not specialised for survivors of trafficking, and victims must prove that they satisfy different (unrelated to trafficking) criteria such as low income or health problems in order to make use of these services. Most victims need the support of a social worker to take them through the application procedures for these social services and help them with the preparation of required documents. Victims may make use of the following services depending on their needs:

- Social benefits for trafficked persons with low income
- Community support services for victims who need psychological counselling for themselves and their children
- Temporary residential care for victims who need long-term shelter
- Mother-and-baby units for women who are pregnant or whose children are up to three years old
- Social rehabilitation and integration centres for persons with different mental or physical disabilities
- Protected housing for victims with mental retardation or mental disorders
- Family-type residential care for minor victims
- Temporary residential care for homeless victims
- Specialised institutions for victims with intellectual disabilities and mental disorders

<sup>106</sup>The available services are listed in Article 36 of the Implementing Rules of the Social Assistance Act.

Long-term support can continue for a few years depending on the victims' needs.

#### 4.2.6. Further continuous support

Long-term support for survivors returning from Switzerland to Bulgaria is provided by NCCTHB as part of the NRM and by IOM Sofia as part of the Federal Return Assistance (see section 3.3). All victims of trafficking may benefit from this assistance, regardless of whether they have been formally or informally identified and of their willingness to cooperate for the detection of the crime. Victims in an earlier stage of their recovery may make use of this assistance as well, where appropriate.

##### V-NOTE!

Continuous stay in a shelter may not be good for the victims. Many of them have grown up in institutions and do not have the abilities to take care of themselves. The shelter is just another institution where they feel safe and fear to leave and start autonomous life. The transition to an independent life is a slow and difficult process. The victims need continuous support to strengthen their resources. This may require (quite) some time after leaving the shelter.

##### NOTE!

The NCCTHB runs in Burgas the first specialised **Centre for Subsequent Reintegration of Victims of Trafficking**. It provides follow-up support for victims who have successfully recovered in the shelter but are still not sufficiently prepared for independent life and need further social mediation, advocacy and empowerment during the final stage of their reintegration. Victims can learn to live autonomously. They are accommodated in a self-contained house (for six persons) and receive support from counsellors on different issues.



VIKTORIA

Viktoria uses her Swiss in-kind reintegration assistance in Bulgaria to attend a seam stress class, as she had planned already before return. She successfully finishes a vocational training course and gets a certificate for a seamstress. She also receives some medical assistance. After having stayed in the shelter for some time, she returns back to live with her family. IOM Sofia continues to follow up closely her case in view of implementing the remainder of the assistance she is entitled to.

### 4.3. Specific rights and support for victims of trafficking who agree to cooperate with the authorities for the detection of the crime

Victims of trafficking who decide to cooperate with the Bulgarian authorities for the detection of the crime are entitled to specific rights aimed at protecting them against further victimisation and assist them as witnesses in criminal proceedings.

#### 4.3.1. Right to information

The Criminal Procedure Code expressly requires pre-trial proceedings authorities (investigating police officers, prosecutors and investigators) to inform victims of their rights in criminal proceedings as well as of their right to be notified of the progress of

criminal proceedings.<sup>107</sup>

The information is provided in a language that victims may understand.

### 4.3.2. Access to Social Services

Victims who have been formally identified and take part in criminal proceedings are entitled to additional support and long-term services (Article 25 Action Against Trafficking in Human Beings Act). Thus Bulgarian victims may have their **stay in shelters extended for the duration of the criminal proceedings which may take up to a few years**. The special status is granted by a prosecutorial decree upon a request filed by the victim.

### 4.3.3. Non-punishment and non-prosecution of victims of trafficking in persons

This specific right of victims of trafficking was introduced in 2013 by a new provision in the Criminal Code,<sup>108</sup> namely Article 16a, which stipulates that “[A]n act shall not be considered culpably committed if performed by a person who is a victim of human trafficking and who was forced to perform the act in direct relation to being such a victim.” In fact, if in the course of pre-trial proceedings it is established that the investigated offences have been performed by victims of trafficking who were forced to do that, no charges are pressed.

### 4.3.4. Access to legal aid and cost risks

Victims who have agreed to cooperate with the authorities and take part in the criminal proceedings are entitled to a free legal aid counsel to represent them in pre-trial and court proceedings if:

- They are without any means;
- They would like to have a counsel;
- The interests of justice so require.<sup>109</sup>

An attorney registered with the National Bureau for Legal Aid represents victims before the investigating authorities and the court. The attorney further advises victims whether to get constituted as civil claimants and/or private prosecutors in the course of criminal proceedings.

Victims may take part in criminal proceedings as witnesses, civil claimants and/or private prosecutors. They are entitled to a legal counsel not only in the criminal but also in civil proceedings if, for example, they want to sue the trafficker for material and non-material damage in civil proceedings. Legal aid for legal representation is allowed when one of the parties cannot afford to pay for a lawyer but wants to have one and the interest of justice so requires.<sup>110</sup> In the event of an unsuccessful action, the legal aid beneficiary does not have to reimburse the costs for legal counsel to the National Bureau for Legal Aid.

Free legal aid is provided also by lawyers with non-governmental organisations that run

<sup>107</sup> Article 75 of the Bulgarian Code of Criminal Procedure.

<sup>108</sup> Article 16a of the Bulgarian Criminal Code.

<sup>109</sup> Legal Aid Act, Article 23 (2).

<sup>110</sup> Legal Aid Act, Article 23 (3).

programs and projects for legal aid. Legal counsels assigned by the National Bureau for Legal Aid or non-governmental organisations are lawyers registered with some of the bar associations in the country and the National Legal Aid Register with the National Bureau for Legal Aid<sup>111</sup> (see 4.2.3).

#### V-NOTE!

Unlike perpetrators, survivors of trafficking do not have the resources and cannot afford a lawyer. In addition, they do not know the justice system and do not know how to look for free legal aid on their own. Access to a lawyer with the National Bureau for Legal Aid is extremely important so that the victim's interests can be protected within the criminal proceedings. However, this is a complex bureaucratic procedure that is initiated by the victims. Often, victims cannot handle it on their own and need the help and support of a social worker, an expert with the NBLA or a lawyer.



LILYANA

Lilyana In Lilyana's case the investigation takes more than seven years but no charges are pressed due to "lack of evidence". Lilyana is the only witness in the case. There is a risk that the proceedings are terminated as time-barred. Lilyana cannot afford to pay for a lawyer. A team of two lawyers experienced with human rights protection take up the case pro bono, following a recommendation from Animus. Shortly after their intervention the case gets to trial phase. Lilyana has a legal representative. She takes part in the criminal proceedings not only as a witness but as a civil claimant as well.

### 4.3.5. Right to compensation

The right to compensation in Bulgaria may be effected in several ways:

Financial compensation for material and non-material damage to be paid by the perpetrator may be sought **in the framework of the criminal proceedings**.<sup>112</sup> Victims may file a compensation claim (civil action) against the trafficker in the framework of the criminal proceedings. During the criminal proceedings, the victim is not required to pay the initial court fee, which is determined as a per cent of the claim and which fee is due when filing a civil action under the Civil Procedure Act (cf. below). To guarantee that the compensation is paid, the prosecutor and the victim have the right to seek attachment of the defendant's assets in the course of pre-trial and trial proceedings.<sup>113</sup>

It is possible to file a claim for compensation for material and non-material damage to be paid by the perpetrator in separate **civil proceedings**.<sup>114</sup> This is also the only opportunity for the trafficked person to claim compensation for non-material damage

<sup>111</sup> VCF. Ruling no. 136 of 27 June 2016 in case no. 2039/2016 of the Supreme Court of Cassation, Civil College, II Civil Division. The court has ruled that the case law set forth by ruling no. 671 of 11 December 2015 in private civil case no. 5715/2015 of III Civil Division and ruling no. 99 of 14 April 2016 of the Supreme Court of Cassation in private civil case no. 730/2016, I Civil Division should be endorsed as the correct one.

<sup>112</sup> Article 84 (1) of the Bulgarian Criminal Procedure Code

<sup>113</sup> Article 73 (2) of the Bulgarian Criminal Procedure Code.

<sup>114</sup> Pursuant to Article 45 of the Obligations and Contracts Act (tort/delict) following the rules of civil procedure.

if the criminal proceeding concludes in a settlement between the Prosecution and the Defendant.

Victims may receive compensation **only for material damage** under the **Crime Victim Assistance and Financial Compensation Act** but only after criminal proceedings have been completed. Compensation may be awarded even if the trafficker is unknown and the investigation has been terminated due to failure to detect him. Compensation may also be awarded in the event the trafficker is known but the investigation has been terminated due to his death or expiry of the limitation period. The following costs may be compensated under the publicly funded scheme: medical treatment (examinations and medication that is not covered by the Health Insurance Fund); transportation (e.g. transportation costs to appear in court); fees for legal counsel if the victim has not made use of free legal aid; other court fees; lost income (e.g. the victim has terminated her employment to pursue what the trafficker has promised her). The Fund compensates amounts up to BGN 10,000 (€ 5,000). After the state has paid the financial compensation, it brings an action under a right of recourse against the perpetrator or his heirs to restore the paid amount.

#### V-NOTE !

It is very difficult for survivors of trafficking to prove material damage due to trafficking – very often they were unemployed prior to the trafficking situation, hence they cannot claim loss of profit. They may instead claim loss of profit gained during the period of exploitation (especially in the sex industry). At the same time, non-material damage – the violence, humiliation and psychological trauma that they suffered, which is destructive for the victim's life and can be proven with the help of expert reports, is not compensated under the Crime Victim Assistance and Financial Compensation Act.

From the victims' point of view, the compensation is not unconditional, but is related to criminal or civil proceedings and is received only after the case is terminated with a final verdict. Victims need legal aid to exercise their right to compensation.

## 4.4. Victims' involvement in criminal proceedings in Bulgaria: prevention of secondary victimisation

The decision to take part in criminal proceedings is voluntary and informed and is taken after expiry of the recovery and reflection period. Victims may take part in the criminal proceedings as a witness, civil claimant and/or private prosecutor.

### 4.4.1. Pre-trial proceedings

**Pre-trial proceedings** in Bulgaria are initiated ex officio by the prosecutor or upon a signal by an interested party (the victim, her relatives etc.). Trafficking in human beings is a publicly actionable offence, which means that the state, i.e. the prosecutor's office, must investigate it regardless of whether a signal has been made or not. Initiating, respectively terminating criminal proceedings depends solely on the will of the prosecutor's office. It is not possible to terminate an investigation against the trafficker upon the victim's wish.<sup>115</sup> Pre-trial proceedings cannot be initiated if there are no legal grounds and sufficient data that a crime has been committed.<sup>116</sup>

<sup>115</sup> Article 207 (2) of the Bulgarian Code of Criminal Procedure.

<sup>116</sup> Article 207 (1) of the Bulgarian Code of Criminal Procedure

In Bulgaria the prosecutor's office is part of the judiciary and not of the executive. The prosecutor's office is a single centralised system where every prosecutor is subordinate to a higher-ranking prosecutor and all prosecutors are subordinated to the Prosecutor General. The prosecutor supervises the investigation as a supervising prosecutor. The prosecutor's office is independent from other institutions.

Victims of trafficking assist the competent authorities through their testimonies in collecting sufficient evidence in the case. **In Bulgaria testimonies are often the main evidence in the trial. This explains why victims are subjected to numerous interrogations** to get all circumstances of the case clarified.

If victims decide to testify, an interrogation is conducted by the investigating authority. It is of utmost importance that the victim is not retraumatised in the course of collecting evidence. In case victims are placed in a crisis centre or a shelter, the investigating police officer (or the investigator) may be prepared in advance about the victims' condition and treat them with due understanding. The victim's counsellor insists that the interrogations are kept to the required minimum. Trafficked persons may be interrogated before a judge in the course of pre-trial proceedings to avoid another interrogation in court.<sup>117</sup> However, in practice even if an interrogation has been conducted before a judge in pre-trial proceedings, **judges prefer to interrogate victims once again in court in the course of judicial proceedings.**

If there is a risk for the victims to leave the shelter where they are accommodated or if their health or emotional condition does not allow it, the meeting with the investigator can take place in the shelter/centre. The interrogation with the investigator is conducted in a protected environment and no other people may be present, even the victim's counsellor. Interrogation of minors is conducted in the presence of a psychologist or a pedagogue, and where appropriate in the presence of the minor's parent or guardian.<sup>118</sup>

Victims may be accompanied by a lawyer during the investigation to ensure that their specific rights as victims of trafficking are respected. The lawyer stands by the victim at any moment and takes measures to prevent further victimisation, making sure that victims' procedural rights are respected. In exceptional cases victims may be accompanied by a psychologist as well.

#### V-NOTE!

Victims of trafficking can suffer from severe violence, which is reflected onto their mentality. A defence mechanism that is often adopted is the distortion of the memory for the traumatic event or even its full denial. Conducting multiple interrogations can be re-traumatising and the victims' testimony can be partial, incoherent or contradictory. This is an unconscious process which cannot be controlled and the victims cannot be blamed for it.

If victims expressly wish to take part in pre-trial proceedings, they must specify an address for service in the country. For some victims this may be a problem as they cannot indicate such an address. In those cases, usually the address of the crisis centre or shelter where victims are placed is provided or the address of the lawyer assigned to the case respectively.

<sup>117</sup>Article 233 of the Bulgarian Code of Criminal Procedure.

<sup>118</sup>Article 140, para 1 of the Bulgarian Code of Criminal Procedure.

## 4.4.2. Judicial proceedings

Victims take part in judicial proceedings only as witnesses – they are not a party to the proceedings unless they expressly wish to be constituted as private prosecutors and/or civil plaintiffs. To this end they file an application at the latest by the launch of the judicial inquiry in the first-instance court (before evidence is appraised).<sup>119</sup> Afterwards victims may no longer be constituted as civil claimants or private prosecutors.

**Civil claimant** – as such, in the course of judicial proceedings victims file a civil action seeking compensation for material and non-material damage inflicted by the traffickers.<sup>120</sup> The civil action is “attached” to the criminal proceedings. Trafficked persons may exercise their rights as civil claimants with the support of a lawyer (namely to take part in the judicial proceedings; to seek to secure their civil actions; to get acquainted with the case and make extracts as required; to furnish evidence; to make requests, notes and objections and to challenge acts of the court that violate their rights and legitimate interests).<sup>121</sup> The court and pre-trial authorities have the obligation to explain to the victims that in judicial proceedings they may file a civil action for damage caused by the crime.<sup>122</sup>

**Private prosecutor** – trafficked persons may get involved in the proceedings on the part of the prosecution by requesting to be constituted as a private prosecutor. This allows better chances to review objectively the circumstances of the case. The private prosecutor has an accusatory function and in this respect it is similar to the public prosecutor. However, the private prosecutor is not required to follow the accusation of the prosecutor. For example, the public prosecutor may state that he or she no longer maintains the indictment but the private prosecutor may continue to do so.<sup>123</sup> To exercise their rights as private prosecutor, victims need a lawyer (to get acquainted with the case; make the necessary extracts; present evidence; take part in the proceedings; make requests, notes and objections, and challenge acts of the court that violate their rights and legitimate interests).<sup>124</sup>

Trafficked persons rarely take part in criminal proceedings as civil claimants or private prosecutors. They do not feel stable and secure enough to face the perpetrators and to claim compensations. Usually, they cannot afford a lawyer. They are entitled to a free legal aid counsellor to represent them in court in any case where the interests of justice so require, and if they do not have sufficient means to pay for it. However, even if they have a legal representative, the legal procedures are painful and traumatising and they would rather refuse to take part in them so that they can end this as soon as possible. The possibility to receive compensation is also not appealing enough as they are afraid that if they hurt the traffickers’ financial interests, then the traffickers would find a way to take revenge.

Defendants in criminal proceedings are considered innocent until proven guilty. This is why their task is not “to prove” their innocence but rather to question the prosecutor’s

<sup>119</sup> Article 85 (3) of the Bulgarian Code of Criminal Procedure.

<sup>120</sup> Article 84 (1) of the Bulgarian Code of Criminal Procedure.

<sup>121</sup> Article 87 (1) of the Bulgarian Code of Criminal Procedure.

<sup>122</sup> Article 73 (1) of the Bulgarian Code of Criminal Procedure.

<sup>123</sup> Article 78 (2) of the Bulgarian Code of Criminal Procedure.

<sup>124</sup> Article 79 of the Bulgarian Code of Criminal Procedure.

allegations. This makes victims' participation as witnesses very difficult. Their testimony is challenged or underestimated in a rude and degrading manner.



LILYANA

Lilyana In the court room Lilyana has to face eight perpetrators who treated her in a cruel and degrading manner. The perpetrators are all accompanied by their defence counsel. All these people aim to prove that Lilyana's testimony is unreliable as she acted inadequately. They try to make the argument that Lilyana is mentally ill. They rely on the fact that she was admitted to a psychiatric hospital right after she was found by the police. They further rely on her unstable emotional state during the trial.

At **first instance** the prosecutor presents testimonial evidence (the witnesses), then material evidence, if any, and finally expert witnesses' conclusions (medical etc.). This is why victims who testify may be interrogated several times, in both pre-trial and trial phase. In the trial phase victims also answer questions put forward by the defendant and his lawyer. Usually the judge does not proceed with the case unless all parties have been duly summoned and are present in the court room. This is often abused by the defendants and is often the main reason for the lengthy proceedings. This is tiresome for victims and they need emotional support to go through this stage.

The criminal proceedings may also end with a plea bargain between the prosecution and the defendant which is to be approved by the court and has the weight of a verdict. The plea bargain cannot be appealed before a second instance – it is final. When there are material damages inflicted by the crime, a plea bargain is possible only after the damage has been repaired or secured. If the victim has been constituted as civil claimant or private prosecutor, **a plea bargain may only be made with the victim's consent**. In case of a plea bargain the victim of trafficking may seek compensation for inflicted material and non-material damage through a civil action.



LILYANA

In the course of the first-instance judicial proceedings that lasted for five years Lilyana has been summoned 10 times to testify in court as court hearings have been postponed due to failure of some of the defendants or their defence counsels to appear. Each scheduled court hearing led to a severe emotional crisis. Her emotional instability forced her to take frequent leaves of absence from work. The high anxiety intensified her traumatic symptoms.

The first-instance sentence may be challenged by both parties before a second-instance court. The Supreme Court of Cassation is the court of last instance.

Since 2012 there is a **specialised criminal court, specialised prosecutor's office and an appellate specialised criminal court** in Bulgaria. In case the human trafficking offence is commissioned or **committed by an organised crime group**, it is investigated by a prosecutor from the specialised prosecutor's office or investigators in the investigation department of the specialised prosecutor's office or investigating police officers.

## V-NOTE !

The court trial can be a re-traumatising and re-victimising experience for victims. They have to prove that they are victims and they have suffered violence. This contradicts the expectation that the law always protects the victim and they will be protected unconditionally. The victim needs strong motivation, will and inner stability in order to withstand the sometimes hostile questioning in court. Victims can be confused when answering defence questions. This can have a consequent impact on the sufficiency of their evidence and conviction and sentence. This can intensify the feeling of failure and condemnation. The real recovery can only begin after an adequate conviction has taken place.

### 4.4.3. Personal data protection and confidentiality

Hearings are always held in closed session if a state secret or morality are to be preserved or if the identity of a witness is to be kept a secret.<sup>125</sup> In certain cases, the court can assess whether to hold a public or a closed hearing: when special surveillance means have been used in the obtaining of evidence,<sup>126</sup> or when minors are testifying.<sup>127</sup> Most of the hearings are open for the public; however, when intimate facts of victims' lives are disclosed, the court may order that hearings are held in closed session.<sup>128</sup> Victims may also be interrogated as anonymous witnesses.<sup>129</sup>

### 4.4.4. Support for victims: information, consultation and legal representation

The Criminal Procedure Code provides for the right of legal representation for victims of trafficking and crime victims in general in the course of criminal proceedings, both when they appear as witnesses and as civil claimants. Finally, the Crime Victim Assistance and Financial Compensation Act expressly provides for free legal aid for the victims of trafficking in case they cannot afford to pay the trial expenses but wish to be legally represented and the interest of justice so requires.<sup>130</sup> These conditions are reviewed by the pre-trial proceedings authorities (the prosecutor's office) or the court in each individual case.

## V-NOTE !

It is difficult for the victims to understand the procedure as they are not aware of their part in it and participate because they have to. The victims appear in the court room mostly as witnesses. Very rarely do they appear in their capacity as civil claimants. This can happen only in case they have a legal representative. Victims of trafficking rarely seek free legal aid on their own. This usually happens only when victims are supported by an organisation and have been legally consulted before that. This is why it is extremely important for the victims to be informed by all participants in the criminal proceedings (police, prosecution, court) about their rights and the criminal proceedings in a way they are able to understand.

<sup>125</sup> Article 263 (1) of the Bulgarian Criminal Procedure Code.

<sup>126</sup> Cf. interpretative ruling no. 4/2014 of the General Assembly of the Criminal College of the Supreme Court of Cassation regarding the terms and criteria when the court may rule that hearings in criminal proceedings are held in closed session when evidence collected through special surveillance means is reviewed. <sup>127</sup> Artikel 263 Absatz 3 Strafprozessordnung.

<sup>128</sup> Article 263 (2) of the Bulgarian Criminal Procedure Code.

<sup>129</sup> Article 123, para 2, item 2 of the Criminal Procedure Code. Cf. also interpretative ruling no. 2 of 16 July 2009 of the Supreme Court of Cassation, Criminal College regarding the defendant's right to defence vis-à-vis protection of witnesses in human trafficking cases by keeping their identity in secret.

<sup>130</sup> Article 8, para 1, item 3 of the for Crime Victims Assistance and Financial Compensation Act.

#### 4.4.5. Protection

Under the Bulgarian law there are two types of witness protection programmes – keeping victims' identity confidential and physical protection. Should this not suffice, the measures envisaged in the Protection of Persons Involved in Criminal Proceedings Act may be applied, the most radical of which is the provision of a new identity.

Protection measures are taken upon victims' request or upon a request by the investigating authority, with the victims' consent.<sup>131</sup> It is recommended that victims are supported by a lawyer so they make best use of the protection measures envisaged in the Bulgarian law.

The special Law on Combatting Trafficking in Human Beings also provides for a number of **protection measures** and support for victims of trafficking: assistance by diplomatic and consular services; special protection for **victims who have agreed to cooperate** for the detection of the crime (extended stay in shelters for the duration of the criminal proceedings and long-term residence permits for third-country nationals); special measures for child victims of trafficking etc.

#### 4.4.6. Hearing of the victims

Following amendments in the Criminal Procedure Code<sup>132</sup> crime victims with special protection needs are interviewed in a manner whereby **contact with the accused party is avoided**, including through video or telephone conference.<sup>133</sup> Extended special protection needs are at hand when it is necessary to avoid further and repeat victimisation, intimidation or harassment, emotional or psychological suffering, or to preserve victims' dignity during interrogations.<sup>134</sup> Special protection needs are established through an expert assessment.<sup>135</sup>

#### V-NOTE !

The most difficult part for the victim in the court room is to face her traffickers and testify to what they had done to her. The feelings of fear and shame are so strong that most victims refuse to do it. In such moments the victims need psychologists whom they can trust. They can prepare victims for the hearing and subsequently help them overcome the emotions related to it. To make use of existing opportunities for a non-destructive questioning, victims must have a lawyer to justify the need of such questioning. The cooperation between the psychologist and the victim's lawyer is crucial for the trial to go well. The psychologist can help the lawyer justify the need of specialised measures using psychological assessment of victims' emotional state and vulnerability. A thorough participation of the trafficked persons in the court room is impossible without respecting their suffering and reducing the painful experiences related to the hearing.

Protected witnesses are interviewed in a separate room. Their testimony is read out loud in the court room keeping the witnesses' identity confidential. In case there are questions, they are put forward to the victims additionally.

<sup>131</sup> Article 123 (1) of the Bulgarian Criminal Procedure Code.

<sup>132</sup> Law Amending and Supplementing the Criminal Procedure Code promulgated in State Gazette no. 63/2017, in force as of 4 August 2017 for the transposition of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (the so called Victims' Rights Directive)

<sup>133</sup> Article 139, para 10 Bulgarian CPC.

<sup>134</sup> § 1, para 4 of the Additional Provisions of the Bulgarian CPC.

<sup>135</sup> Article 144, para 3 Bulgarian CPC.

## 4.5. Work on cases involving child victims of trafficking



TONI und  
ALEX

Two minor brothers, Toni and Alex, have been placed in a safe house by Swedish authorities after they were found begging in various towns across the country. The children had arrived six months before, together with an adult cousin of theirs, who had managed to take the brothers out of Bulgaria with a declaration signed by both parents. The Bulgarian Embassy in Sweden notified the State Agency for Child Protection, which immediately launched an assessment into the children's family environment through the police and social authorities at their permanent address. The local police and social services collect information about their family and relatives, the living conditions, the parents' employment, other brothers and sisters and whether or not the children had had access to education and health care services. After all the information was received, the repatriation of the brothers was organized. They were placed in a Crisis Centre for Child Victims of Trafficking for a period of six months. The parents were referred to local consulting services to increase their parental capacity. After six months the children were returned to the family as social workers continued to monitor their development. In order to avoid re-trafficking, the two boys were prohibited from leaving Bulgaria for a period of two years, as proposed by the SACP chairman. The cousin who had taken the boys to Sweden was detained by the Swedish authorities and charged with begging and trafficking in human beings. He is currently still in custody in Sweden.

### 4.5.1. Identification and return

In case a child victim of trafficking is identified, the **Coordination Mechanism for Referral and Care of Unaccompanied Minors and Child Victims of Trafficking Returning from Abroad** applies to all children – Bulgarian or other countries' nationals.

In case a child victim of trafficking is identified, the State Agency for Child Protection (SACP), Ministry of Interior (MoI) and NCCTHB are notified within 24 hours. Signals about child victims of trafficking are sent by Bulgarian or foreign competent authorities (Ministry of Interior, Ministry of Foreign Affairs, IOM, NCCTHB, helpline 116 111).

The safe return of child victims of trafficking is organised in coordination with Bulgarian and Swiss authorities. SACP organizes the reception of the child upon their arrival in Bulgaria and informs the Ministry of Interior and the Social Assistance Directorates of any returning child. All children are met by their representatives. Often, IOM supports the process by providing the funds for air plane tickets and accompanying them during the journey, if necessary. All returning children are accommodated in Crisis Centers for Children by the Social Assistance Directorates depending on the children's place of residence. If necessary, Social Assistance Directorate (through its Child Protection Departments) and the Ministry of Interior may provide police protection.

### 4.5.2. Risk assessment

Risk assessment is an essential element in the work with child victims of trafficking as they are often trafficked by their parents. Acting upon a signal in writing sent by the SACP, the Child Protection Department with the Social Assistance Agency conducts the risk assessment in coordination with the local police unit. To this end the public authorities conduct an on-the-spot inspection to study the family and social environment of the child.

On the basis of the risk assessment, an opinion is drawn stating the protection measures that are taken in relation to the child.

### 4.5.3. Protection and support of child victims of trafficking

Unaccompanied minors and child victims of trafficking may be placed in any of the 18 specialised crisis centres for children or the above-mentioned crisis centres for children and adults, or in the specialized Crisis Centre for Child Victims of Trafficking with the NCCTHB. Children are placed in the centres with an order issued by Social Assistance Directorate according to their permanent residence.

#### NOTE!

The only specialised centre for child victims of trafficking is in Sofia and is managed by the NCCTHB. Children may remain up to six months there. Placement in the specialised centre is done by the NCCTHB.

The welfare system for child victims of violence and children at risk in Bulgaria is clearly regulated. A Child Protection Department operates with every Social Assistance Directorate. The Child Protection Department in the child's residence is the competent authority. A case worker coordinates the work on every case of child victim of trafficking. Case workers from the Child Protection Departments are responsible for the assessment of every case, including the risk assessment. They determine the protection measures to be taken and draw up an action plan. Where necessary, other institutions are also involved in multidisciplinary work: police, prosecutor's office, school, health care services etc. The child's best interest and safety determine all actions taken.

#### **Upon accommodating a child in a crisis centre, the following documents must be submitted:**

- (1) order for the child's placement by the director of the Social Assistance Directorate;
- (2) a report including a social study of the child's relatives; and
- (3) an action plan for the long-term measures to be taken in relation to the child.

Accommodation in a crisis centre is a temporary and short-term measure. A child may stay in a crisis centre for up to six months. During this period active social work is carried out in the child's environment with the child's family. Should this not be possible due to risk of re-trafficking, other possibilities for placement are sought such as placing the child in foster care or a Family-Type Residential Care. Children may stay in a crisis centre longer than one month only following a court ruling by the competent regional court seized by the respective Social Assistance Directorate.

The crisis centres for child victims of violence are of a closed-type and during the first month of their stay children may go out only if accompanied by a social worker.

The crisis centre is in constant communication with the Child Protection Department that manages the case and informs it about all important events during the child's stay. After the service is completed, the crisis centre prepares a report to the Child Protection Department and SACP.

The case worker from the Child Protection Department, together with the crisis centre where the child is placed, takes a decision whether the child should be returned to the family environment or not after a comprehensive risk assessment of re-trafficking, violence,

negligence or other forms of abuse, and an assessment of the parenting capacity that is made by the competent Child Protection Department in the parents' residence. Children are placed in a Family-Type of Residential Care usually due to risk of re-trafficking, another form of abuse or low parenting capacity of their parents. Every case is monitored by the Child Protection Department at least for a year.

#### **4.5.4. Special measures for child victims of trafficking**

There are additional legal guarantees for child victims of trafficking to prevent re-trafficking and exploitation. In case there is a high risk of re-trafficking, SACP chairperson may submit a reasoned proposal to the Minister of Interior seeking that the child is prohibited to travel outside the country and be issued an international passport over a period of up to two years.

The recovery and reflection period for child victims of trafficking may be extended to 2 months upon a proposal by the SACP chairperson. Special protection of child victims of trafficking includes extended stay in shelters or long-term residence in Bulgaria for third-country nationals.

# ANNEXES

## ANNEX 1: Relevant international and regional legal acts

Treaties	Ratified by	
	BULGARIA	SWITZERLAND
<b>UN level</b>		
United Nations (UN) Convention against Transnational Organised Crime	✓	✓
Protocol to the UN Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children	✓	✓
UN Convention on the Rights of the Child	✓	✓
Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	✓	✓
UN Convention on the Elimination of All Forms of Discrimination against Women	✓	✓
International Covenant on Civil and Political Rights	✓	✓
International Covenant on Economic, Social and Cultural Rights	✓	✓
<b>COUNCIL OF EUROPE LEVEL</b>		
Council of Europe Convention on Action against Trafficking in Human Beings	✓	✓
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	✓	✓
Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms	✓	✓
Council of Europe Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols	✓	✓
Council of Europe Convention on Extradition	✓	✓
Council of Europe Convention on the Transfer of Proceedings in Criminal Matters	✓	✗
Council of Europe Convention on Cybercrime	✓	✓
<b>OTHER</b>		
ILO Forced Labour Convention	✓	✓

## International and regional non-binding documents:

- Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN Office of the High Commissioner for Human Rights (OHCHR)
- Organisation for Security and Co-operation in Europe (OSCE) Anti-Trafficking Guidelines.

## ANNEX 2: RELEVANT EU LEGAL ACTS

### EU legislation is binding only to Bulgaria as an EU Member State but NOT to Switzerland.

However, some aspects of EU secondary law are binding in relation to other legal treaties/agreements. These are duly noted in the table below.

	Binding for Switzerland <sup>136</sup>
Charter of Fundamental Rights of the European Union	No
2012/29/EU Directive on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA	No
2011/99/EU Directive on the European Protection Order	No
Council Directive 2011/93/EU of 13 December 2011 on combating sexual abuse and sexual exploitation of children, and child pornography.	No, only for aspects in relation to the European Convention on Extradition
2009/52/EC Directive on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals	No, only aspects related to Schengen Borders Code
2008/977/JHA Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters	Yes
2008/115/EC Directive on common standards and procedures in Member States for returning illegally staying third-country nationals	Yes
Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities	No
Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims	No

<sup>136</sup> <https://www.admin.ch/opc/fr/classified-compilation/0.36.html#0.362> last visited 9 April 2018.

## ANNEX 3: Relevant bilateral agreements between the EU and Switzerland

**There are a number of bilateral agreements<sup>137</sup> between the European Union and Switzerland that are relevant to the field of combating trafficking in human beings and protection and support for victims of trafficking. These are as follows:**

- Free Movement of Persons Agreement (AFMP), effective for free movement of Bulgarian nationals in Switzerland as of 1 June 2009; a safeguard clause allows for temporary restrictions of the issuing of long-term work and residence permits until 2019.
- Schengen (controls at external borders, common visa policy, SIS, data protection), operational as of 12 December 2008
- Dublin (registration of asylum-seekers and Eurodac finger-prints database), operational as of 12 December 2008
- Europol (cooperation between police authorities in the prevention of and fight against serious and organised international crime, and terrorism), effective as of 1 March 2006
- Eurojust (international cooperation on combatting organised crime; co-ordinates investigations and prosecution procedures between member states; facilitates the exchange of information, international legal assistance and the execution of extradition requests), effective as of 22 July 2011.

## ANNEX 4: Relevant Bulgarian legal acts

- **2004 Law on the Protection of Persons at Risk in Relation to Criminal Proceedings**, which provides for special protection measures for participants in criminal proceedings related to trafficking in human beings;
- **2006 Law on Assistance and Financial Compensation to Crime Victims**, pursuant to which trafficking in human beings is one of the seven most serious crimes against the person for which the state has the obligation to support and compensate the victims;
- **2000 Law on Child Protection**, which contains provisions for the protection of children at risk and the rights of children in administrative and judicial proceedings;
- **1998 Law on Foreigners in Bulgaria** (with subsequent amendments), which contains provisions regulating the issuing of residence permits to victims of trafficking;
- **1998 Law on Bulgarian Identity Documents** (with subsequent amendments), which provides for taking away the identity documents of children about whom there is evidence of past involvement into trafficking;
- **2004 Regulation governing the shelters for temporary accommodation and centres for protection and assistance of victims of human trafficking**, which sets out the assistance measures provided to victims of trafficking in human beings;
- **2004 Regulation on the organisation and activity of the National Commission for Combating Trafficking in Human Beings**;
- **2003 Implementing Rules of the Law on Child Protection and the Code of Conduct for the Prevention of Trafficking and Sexual Exploitation of Children in Tourism**.

<sup>137</sup>Cf. a full overview at <https://www.eda.admin.ch/dea/en/home/bilaterale-abkommen.html>. Last visited 9 April 2018

## ANNEX 5: Relevant Swiss legal acts

- **2007 Federal Act on Assistance to Victims of Crime (LAVI; RS 312.5)**, which governs assistance and financial support provided to THB victims, regardless of their nationality or legal status in Switzerland. It is supplemented by the **Federal Ordinance on Assistance to Victims of Crimes (OAVI; RS 312.51)**.
- **2005 Federal Act on Foreign Nationals (FNA; RS 142.20)**, which provides for the possibility of waiving admission requirements in order to regularize the stay of victims and witnesses of human trafficking and for assistance for return and reintegration for THB victims.
- **2007 Federal Ordinance on Admission, Period of Stay, and Employment (OASA; RS 142.201)**, which governs the stay of victims and witnesses of THB during the recovery and reflection period, during criminal proceedings against the traffickers and in individual cases considered as extremely serious.
- **1937 Swiss Criminal Code (CC; RS 311.0)**, which provides inter alia for the penalisation of trafficking in human beings (Art. 182) and of exploitation of sexual acts / encouraging prostitution (Art. 195).
- **2007 Swiss Criminal Procedure Code (CPC; RS 321.0)**, which provides inter alia, for the protection of victims and witnesses during criminal proceedings.
- **2011 Federal Act on the Extra-procedural Witness Protection (RS 312.2)**, which governs the protection of persons who suffer threat to life or physical condition due to their involvement in criminal proceedings outside procedural acts and after the procedure is closed. It is supplemented by the **Federal Ordinance on the Extra-procedural Witness Protection (RS 312.21)**.
- **1981 Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC; RS 351.1)**, which governs international mutual assistance. The IMAC applies where a treaty does not provide for mutual assistance measures. In case of conflict between a treaty and the IMAC the rule that is most favorable to the granting of mutual assistance must be applied (Federal Supreme Court Ruling). In the absence of a treaty the IMAC fully applies but a foreign state may not derive any right to cooperation from Switzerland.
- **2013 Ordinance on Measures to Prevent Criminal Offences in Connection with Human Trafficking (Ordinance against Trafficking in Human Beings; RS 311.039.3)**, which enables the Confederation to introduce or fund prevention measures aimed at combating THB in Switzerland, and it regulates the tasks and duties of the KSMM.

## ANNEX 6: Bulgarian stakeholders

### VICTIMS' SUPPORT SERVICES

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ANIMUS ASSOCIATION FOUNDATION  
Sofia 1000  
85 Ekzarh Yossif Str.  
[www.animusasscoiation.org](http://www.animusasscoiation.org)  
+ 359 2 983 52 05  
+359 2 983 53 05  
Email: [animus@animusassociation.org](mailto:animus@animusassociation.org)

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TRANSIT CENTRE FOR VICTIMS OF TRAFFICKING – 24/7  
+359 2 983 38 55  
+359 878 670 574  
e-mail: [crisiscentre@animusassociation.org](mailto:crisiscentre@animusassociation.org)

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NATIONAL COMMISSION FOR COMBATING TRAFFICKING IN HUMAN BEINGS (NCCTHB)  
Sofia 1797  
52 A, G.M. Dimitrov Blvd.  
[www.antitraffic.government.bg](http://www.antitraffic.government.bg)  
+359 2 807 80 50  
+359 2 807 80 59 (fax)  
Email: [office@antitraffic.government.bg](mailto:office@antitraffic.government.bg)  
Referral to the facilities managed by the NCCTHB can happen through the office of NCCTHB.

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SHELTER & CENTRE FOR SUPPORT FOR TRAFFICKED PERSONS IN SOFIA  
+359 2 807 80 50  
+359 2 807 80 59 (fax)  
Email: [office@antitraffic.government.bg](mailto:office@antitraffic.government.bg)

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SHELTER & CENTRE FOR SUPPORT FOR TRAFFICKED PERSONS IN VARNA  
+359 2 807 80 50  
+359 2 807 80 59 (fax)  
Email: [office@antitraffic.government.bg](mailto:office@antitraffic.government.bg)

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SHELTER & CENTRE FOR SUPPORT FOR TRAFFICKED PERSONS IN BURGAS  
+359 2 807 80 50  
+359 2 807 80 59 (fax)  
Email: [office@antitraffic.government.bg](mailto:office@antitraffic.government.bg)



CENTRE FOR SUBSEQUENT REINTEGRATION OF VICTIMS OF TRAFFICKING IN BURGAS

+359 2 807 80 50  
+359 2 807 80 59 (fax)  
Email: office@antitraffic.government.bg

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CRISIS CENTRE FOR TRAFFICKED CHILDREN IN SOFIA

+359 2 807 80 50  
+359 2 807 80 59 (fax)  
Email: office@antitraffic.government.bg

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INTERNATIONAL ORGANISATION FOR MIGRATION – IOM SOFIA

Sofia 1000  
77 Tzar Assen str.  
www.iom.bg  
+359 2 93-94-774  
+359 2 93-94-788 (fax)  
Email: iomsofia@iom.int

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A21 CAMPAIGN FOUNDATION

Sofia 1000  
24 san Stefano Str, Office 1  
www.a21.bg  
+ 359 884 45 46 56  
Email: info.bg@a21.bg

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**POLICE**

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DIRECTORATE GENERAL COMBATING ORGANISED CRIME, SECTOR TRAFFICKING IN PERSONS

1784 Sofia,  
133A Tzarigradsko Shose Blvd.  
www.mvr.bg  
+359 2 982 83 63  
Email: gdbop@mvr.bg

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DIRECTORATE GENERAL BORDER POLICE

1202 Sofia  
46 Knyaginya Maria Luiza Blvd.  
www.mvr.bg  
+359 2 983 18 65  
+359 2 988 58 67  
+359 2 982 53 90  
Email: nsgp@mvr.bg

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Directorate International Operational Cooperation  
1233 Sofia  
114Б, Maria Louisa Blvd.  
+359 2 982 61 82  
+ 359 2 982 43 68 (duty phone outside office hours)  
Email: europol@mvr.bg

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## **COOPERATION IN CRIMINAL MATTERS**

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SUPREME PROSECUTOR'S OFFICE OF CASSATION  
1061 SOFIA  
2 VITOSHA BLVD.  
+359 2 986 7671  
EMAIL: PRESS@PRB.BG

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FOR JUDICIAL PROCEEDINGS  
MINISTRY OF JUSTICE  
"International Legal Cooperation and European Affairs" Directorate  
Sofia 1000  
1, Slavyanska Str.  
www.mjs.bg  
+ 359 2 923 74 13  
Email: civil@justice.government.bg  
criminal@justice.government.bg

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## **FOR CHILD VICTIMS OF TRAFFICKING**

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STATE AGENCY FOR CHILD PROTECTION (SACP)  
1051 Sofia,  
2 Triaditza St.  
www.sacp.government  
+359 2 933 90 10  
+359 2 980 24 15  
Email: sacp@sacp.government.bg

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## **OTHER STAKEHOLDERS**

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MINISTRY OF FOREIGN AFFAIRS (MFA)  
1113 Sofia,  
2 Aleksandar Jendov St.  
www.mfa.government.bg  
+359 2 948 20 02  
+359 2 971 36 20

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**EMBASSY OF THE REPUBLIC OF BULGARIA IN BERN**

3005 Bern,

02-04 Bernastrasse,

+41 31 351 14 55

+41 31 351 14 56

+41 31 351 00 64 (faxes):

+41 798243822 (duty phone outside office hours)

Email: Embassy.Bern@mfa.bg

Working hours: Mo-Fr, 9.00 – 17.30

There is a Labour and Social Affairs Attaché with the Bulgarian mission to Bern

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**CONSULAR SERVICE**

+41 31 351 13 67

+41 31 351 00 64

Email: consular.bern@mfa.bg

Working hours: Mo-Fr, 9.00 – 12.00

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**NON-GOVERNMENTAL ORGANISATIONS PROVIDING SERVICES FOR TRAFFICKED PERSONS**

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■ **SOS – FAMILIES AT RISK FOUNDATION**

Varna 9002

21 Sinchez Str.

<http://sos-varna.org>

+359 52 60 96 77

+359 52 61 38 30 (fax)

Email: [sos@ssi.bg](mailto:sos@ssi.bg) ; [sos@mail.bg](mailto:sos@mail.bg)

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■ **DEMETRA ASOCIATION**

Burgas 8000

102 a Sheinovo Str.

[www.demetra-bg.org](http://www.demetra-bg.org)

+359 56 81 56 18

+359 56 83 66 57 (fax)

+359 896 82 15 91 (mobile)

Email: [demetra@unacs.bg](mailto:demetra@unacs.bg)

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■ **GENDER ALTERNATIVES FOUNDATION**

Plovdiv 4000

38 Fourth of January Str.

[www.gendernalternatives.org](http://www.gendernalternatives.org)

+359 32 260708

+359 879260101

Email: [office@gendernalternatives.org](mailto:office@gendernalternatives.org)

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■ OPEN DOOR CENTRE ASSOCIATION

Pleven 5800  
55 Neofit Rilski Str.  
www.opendoor.hit.bg  
+359 64 84 67 13  
+359 64 84 67 13  
Email: opendoor\_centre@hotmail.com

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■ EKATERINA KARAVELOVA ASSOCIATION

Silistra 7500  
51 Nicola Vaptzarov Str  
www.ekaravelova.net  
+359 86 820487  
+359 86 821495  
Email: ceta@mail.bg

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■ PULSE FOUNDATION

Pernik  
2 Sredec str.  
www.pulsefoundation.org  
+359 76 601010  
+359 76 603360  
Email: pulse.women@gmail.com

## HELPLINES



NATIONAL HELPLINE FOR VICTIMS OF VIOLENCE – 24/7

**+ 359 2 981 76 86**  
**0800 1 86 76 (call for free from Bulgaria)**

IOM SOFIA HELP-LINE

**+359 (0) 2 939 47 77**

BULGARIAN NATIONAL HUMAN TRAFFICKING RESOURCE LINE

**+359 800 20 100**

THE NATIONAL HELPLINE FOR CHILDREN - 24/7

**116 111**

## ANNEX 7: Swiss stakeholders

### SWISS NATIONAL ANTI-TRAFFICKING COORDINATION

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THE SWISS COORDINATION UNIT AGAINST THE TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS (KSMM)  
Federal Office of Police (fedpol)  
Nussbaumstrasse 29  
CH-3003 Bern  
<http://www.ksmm.admin.ch>  
Phone: +41 (0)58 463 57 02  
Email: [stab-ksmm@fedpol.admin.ch](mailto:stab-ksmm@fedpol.admin.ch)

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### VICTIMS' ASSISTANCE SERVICES

#### COMPREHENSIVE SPECIALISED PROTECTION AND SUPPORT FOR VICTIMS OF TRAFFICKING

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FIZ ADVOCACY AND SUPPORT FOR MIGRANT WOMEN AND VICTIMS OF TRAFFICKING

with its specialised shelter and support programme:

FIZ Makasi Counselling and Support for Victims of Trafficking in Women

Badenerstrasse 682

CH-8048 Zurich

<http://www.fiz-info.ch>

Phone: +41 (0)44 436 90 00

Email: [contact@fiz-info.ch](mailto:contact@fiz-info.ch)

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ASTREE ASSOCIATION DE SOUTIEN AUX VICTIMES DE TRAITE ET D'EXPLOITATION

Ruelle de Bourg, 7

CH-1003 Lausanne

<https://www.astree.ch>

Phone: + 41 (0)21 544 27 97

Email: [info@astree.ch](mailto:info@astree.ch)

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### FURTHER SHELTERS FOR VICTIMS OF TRAFFICKING

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AU COEUR DES GROTTES

Foyer pour femmes seules ou avec leurs enfants

Rue de l'Industrie 14

CH-1201 Geneva

<http://www.coeur.ch>

Phone: +41 (0)22 338 24 80

Email: [info@coeur.ch](mailto:info@coeur.ch)



TRAFFICKING.CH – TRAFFICKED VICTIM UNIT  
Safe house FORTIS – 24/7  
<https://www.trafficking.ch>  
Phone: +41 (0)79 903 21 13

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DACHORGANISATION FRAUENHÄUSER  
Postfach 1357  
CH-8031 Zürich  
<https://frauenhaus-schweiz.ch>  
Lists all the recognised women's shelters in Switzerland and Lichtenstein

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TEEN CHALLENGE SCHWEIZ  
Kirchweg 86  
CH-8750 Glarus  
<http://www.teenchallenge.ch>  
Phone: +41 (0)55 640 98 40  
Email: [leitung@teenchallenge.ch](mailto:leitung@teenchallenge.ch)

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## SPECIALISED COUNSELLING SERVICES FOR VICTIMS OF TRAFFICKING

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CENTRE SOCIAL PROTESTANT GENEVE CSP  
Rue du Village-Suisse 14  
Case Postale 171  
CH-1211 Genève  
<https://csp.ch/geneve/services/questions-de-traite-humain/>  
Phone: + 41 (0)800 20 80 20 (free legal advice)  
Phone: + 41 (0)22 807 07 00 (general office)

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ANTENNA MAY DAY SOS TICINO  
Via Merlinia 3a  
CH-6962 Viganello  
<http://www.sos-ti.ch/mayday.html>  
Phone: + 41 (0)91 973 70 67  
Email: [may.day@sunrise.ch](mailto:may.day@sunrise.ch)

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## GENERAL VICTIM SUPPORT SERVICES

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CANTONAL VICTIM COUNSELLING CENTRES (LAVI)  
<http://www.sodk.ch/en/fachbereiche/familien-und-gesellschaft/opferhilfe/wwwopferhilfe-schweizch/counselling-centres/>  
Lists the recognised Victims' Counselling Centres of all the cantons, including Victims' Counselling Centres in children and adolescents

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## **POLICE**

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Federal Department of Justice and Police (FCP)  
FEDERAL OFFICE of POLICE (FEDPOL)  
Coordination Division  
Operative Section KOR2  
Nussbaumstrasse 29  
CH-3003 Bern  
<https://www.fedpol.admin.ch/fedpol/en/home.html>  
Phone: +41 (0)58 463 11 23

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## **JUSTICE/PROSECUTION**

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Federal Department of Justice and Police (FCP)  
FEDERAL OFFICE OF JUSTICE (FOJ)  
International Legal Assistance  
Bundesrain 20  
CH-3003 Bern  
<https://www.bj.admin.ch/bj/en/home.html>  
Phone: +41 (0)58 462 11 20

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OFFICE OF THE ATTORNEY GENERAL OF SWITZERLAND (OAG)  
BUNDESANWALTSCHAFT  
Taubenstrasse 16  
CH-3003 Bern  
<https://www.bundesanwaltshaft.ch/mpc/en/home.html>  
Phone: +41 (0)58 462 45 79

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SWISS CONFERENCE OF PUBLIC PROSECUTORS  
Schweizerische Staatsanwälte-Konferenz (SSK)  
<https://www.ssk-cps.ch>  
Email: [info@ssk-cps.ch](mailto:info@ssk-cps.ch)

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## **RETURN SERVICES**

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Federal Department of Justice and Police (FCP)  
State Secretariat of Migration (SEM)  
Section Bases of Return and Return Assistance  
Quellenweg 6  
CH-3003 Bern-Wabern  
<https://www.sem.admin.ch/sem/en/home.html>  
Phone +41 (0)31 325 11 11

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## INTERNATIONAL ORGANISATION OF MIGRATION – IOM BERN

Thunstrasse 11  
Postfach 216  
CH-3000 Bern 6  
<http://www.ch.iom.int>  
Phone: +41 (0)31 350 82 11  
Email: [iombern@iom.int](mailto:iombern@iom.int)

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## CANTONAL RETURN COUNSELING SERVICE(RCS)

<https://www.sem.admin.ch/sem/de/home/rueckkehr/rueckkehrhilfe/rueckkehrberatung.html>  
Lists all the cantonal offices of the return counselling service

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## OTHER STAKEHOLDERS

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### CHILD AND ADULT PROTECTION SERVICES (KESB)

Konferenz für Kindes- und Erwachsenenschutz KOKES  
Generalsekretariat  
Werftstrasse 1  
Postfach 2945  
CH-6002 Luzern  
<https://www.kokes.ch/de/organisation/organisation-kantone>  
Phone: +41 (0)41 367 48 57  
Email: [info@kokes.ch](mailto:info@kokes.ch)

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### SOCIAL ASSISTANCE SERVICES

Schweizerische Konferenz für Sozialhilfe SKOS  
Monbijoustrasse 22  
Postfach  
CH-3000 Bern 14  
<https://www.skos.ch/recht-und-beratung/beratung-fuer-betroffene>  
Phone: +41(0)31 326 19 19  
Email: [admin@skos.ch](mailto:admin@skos.ch)

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## HELPLINES (DURING OFFICE HOURS):



**FIZ** protects and identifies victims of trafficking

**+ 41 (0)44 436 90 00**

**THE CENTRE SOCIAL PROTESTANT CSP** gives legal advice

**+ 41 (0)800 20 80 20**

**ACT 212** invites the public to report cases of trafficking

**+ 41 (0)840 212 212**