

NEDOSTACI U PROCESUIRANJU SLUČAJEVA DJEČJEG UGOVORENOG BRAKA



Vlada
Crne Gore





NEDOSTACI U PROCESUIRANJU SLUČAJEVA DJEČJEG UGOVORENOG BRAKA

IZDAVAČ:

NVO Centar za romske inicijative
Ul. Šetalište Alekse Backovića b.b.,
81400, Nikšić, Crna Gora,
email: crink@t-com.me

ZA IZDAVAČA:

mr sci. Fana Delija, izvršna koordinatorka

LEKTURA:

Ana Simović Ješovnik

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UVOD

Nasilje nad ženama i djevojčicama u romskoj i egipćanskoj zajednici predočava problem višestruke diskriminacije sa kojom se, zbog rodni normi, stereotipa i predrasuda u društvu, suočavaju Romkinje i Egipćanke. Unutar porodice još uvijek je veoma izražen patrijarhat koji dodatno negativno utiče na pripadnice i zajednicu u dijelu rodne jednakosti, obrazovanja, ugovorenih brakova, nedostatka pristupa pravdi, neadekvatnih i nekvalitetnih zdravstvenih usluga, nepismenosti, neuključiva-

nja u javni i politički život i drugih brojnih faktora. Takođe, nasilje nad ženama ima neposrednu vezu sa nedozvoljenim brakovima djevojčica i tradicionalnim prihvatanjem rodne nejednakosti, koja predstavlja jedan od najstarijih i najprisutnijih vidova nejednakosti, kojim se djevojčicama uskraćuje pravo da se čuje njihov glas, obezvređuje se njihovo pravo na izbor, a djevojčice bivaju stavljene u neravnopravan položaj u odnosu na dječake.

Uprkos naporima Centra za romske inicijative, koji ukazuje na problem dječjeg braka i koji se od 2011. godine intenzivno bavi identifikacijom, prevencijom i ulaganjem značajnih napora da se svaka, pa i najmanja sumnja na ugovoreni dječji brak prijavi nadležnim organima - često rizikujući živote romskih i egipćanskih aktivistkinja i zaposlenih - i dalje postoji institucionalno neprihvatanje činjenice da dječji brak ne može biti samo problem romske i egipćanske zajednice, već je u pitanju problem društva u cjelini, kojim se najgrublje ugrožavaju osnovna dječja prava.

METODOLOGIJA ANALIZE

Svrha ove analize je da se sagledaju dileme i problemi tokom procesuiranja prijavljenih događaja od strane Centra za romske inicijative u odnosu na događaje koje su registrovani i prijavljeni nadležnim državnim organima. Takođe, analiza predstavlja i ono što je naučeno kroz iskustvo u praćenju toka tužilačkog i sudskog postupka za konkretno prijavljene događaje, kao i proces reintegracije žrtava dječjeg ugovorenog braka u Crnoj Gori na osnovu isповijesti žrtava koje su boravile u skloništima za smještaj žrtava trgovine ljudima.

U analizi je korišćena sljedeća metodologija i obrada podataka: objedinjeni su registrovani događaji do kojih se došlo neposrednim radom na terenu od strane aktivistkinja, korišćeni su podaci dobijeni putem informacija od javnog značaja za prijavljene događaje, kao i pravni dokumenti i izvještaji iz relevantnih pravnih propisa. Takođe, korišćeno je pet pojedinačnih dubinskih intervjua napravljenih sa žrtvama koje su boravile u skloništima za žrtve trgovine ljudima.

Imajući u vidu specifičnost i kompleksnost same problematike koja je predmet ove analize, bio je neophodan pristup informacijama od javnog značaja pravosudnih organa, kako bi se pripremio sveobuhvatan materijal, kojim bi se došlo do informacija koliko ažurno pozitivna tužilačka i sudska praksa postupaju po našim prijavama u načelu.

Kako bismo saznali više o konkretnim uslovima tokom boravka žrtava dječjeg ugovorenog braka u skloništima na teritoriji Crne Gore i programima reintegracije koji su prema njima primijenjeni, obrađeno je pet dubinskih intervjua sa žrtvama koje su boravile u skloništima.

Ovom analizom uglavnom se stavlja fokus na ulogu i odgovornost zainteresovanih strana u rješavanju dječjeg ugovorenog braka i vrstama izazova sa kojima se suočavaju prilikom prijavljivanja događaja sa elementima krivičnog djela trgovine ljudima i vanbračne zajednice sa maloljetnikom radi sklapanja dječjeg ugovorenog braka u Crnoj Gori, za posljednje tri godine (2020, 2021. i 2022. godina).

Ujedno, analiza prikazuje:

- broj i kratak opis identifikovanih i prijavljenih krivičnih djela sa elementima trgovine ljudima - sklapanje nedozvoljenog braka;

- broj krivičnih djela za koja su pravosudni organi u Crnoj Gori podigli optužnicu za krivična djela sa elementima nedozvoljenog brak/dječjeg ugovorenog braka;

- broj krivičnih djela i analiza presuđenih krivičnih djela od strane nadležnih sudova u Crnoj Gori za krivično djelo trgovine ljudima sa elementima nedozvoljenog braka /dječjeg ugovorenog braka;

- informacije o eventualnim programima reintegracije žrtava dječjeg ugovorenog braka i njihovim iskustvima u određenim servisima podrške; prednosti, slabosti i mane koje se najčešće javljaju u licenciranim servisima za pomoć i podršku žrtvama trgovine ljudima radi sklapanja dječjeg ugovorenog braka, a koje obezbjeđuje država;

- preporuke koje nude prikaz više pravaca djelovanja u suzbijanju dječjeg braka.

Dio ove analize koji se tiče preporuka može poslužiti kao okvir za dalja istraživanja koja mogu biti sprovedena u cilju sakupljanja više dokaza o ranim i dječjim brakovima, od čega koristi mogu imati buduće intervencije, a koje će voditi daljem sprečavanju dječjih ugovorenih brakova.

1. NAJVAŽNIJI MEĐUNARODNI I NACIONALNI PROPISI KOJI PREPOZNAJU NEDOZVOLJENI BRAK KAO OBLIK KRIVIČNOG DJELA TRGOVINE LJUDIMA

Crna Gora je ratifikovala Konvenciju o pravima djeteta, Konvenciju o eliminisanju svih oblika diskriminacije nad ženama (CEDAW), Konvenciju Savjeta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici (Istanbulska konvencija) i prateće preporuke, ali se odredbe ovih međunarodnih pravnih akata ne primjenjuju u dovoljnoj mjeri. Dodatno, slučajevi sklapanja nedozvoljenih brakova pokazatelj su nepostupanja u skladu sa ratifikovanom Univerzalnom deklaracijom o ljudskim pravima, Međunarodnim paktom o građanskim i političkim pravima, Međunarodnim paktom o ekonomskim, socijalnim i kulturnim pravima i Konvencijom o pristanku na brak, minimalnoj starosti za sklapanje braka i registrovanju brakova.

Prepoznajući dječje, rane i prisilne brakove kao ozbiljno kršenje dječjih prava, Savjet Evrope je usvojio Rezoluciju 1468 (2005) Parlamentarne Skupštine Savjeta Evrope o prisilnim i dječjim brakovima i izrazio duboku zabrinutost zbog ozbiljnih i ponovljenih kršenja ljudskih i dječjih prava koja su rezultat prisilnih i dječjih brakova. Parlamentarna skupština Savjeta Evrope pozvala je nacionalne parlamente država članica Savjeta Evrope da minimalnu zakonsku starosnu granicu za sklapanje braka za žene i muškarce podigne na 18 godina i da, između ostalog, nadležni organi vrše obaveznu registraciju i upis svakog zaključenog braka u zvanični registar.

Nacionalni pravni okvir koji je usmjeren na primarnu zaštitu djece koja su u riziku od dečjih, ranih i prinudnih brakova čine Ustav Crne Gore, Zakon o socijalnoj zaštiti i Porodični zakon, ali i Krivični zakonik koji normira nekoliko krivičnih djela čiji se elementi mogu prepoznati u skoro svakom dečjem, ranom i prinudnom braku:

trgovina ljudima, prinudno zaključenje braka, vanbračna zajednica sa maloljetnikom (gdje su kao izvršioци prepoznata i lica koja omogućavaju zasnivanje vanbračne zajednice), oblјuba sa djetetom, oduzimanje maloljetnog lica, zapaštanje i zlostavljanje maloljetnog lica i trgovina maloljetnim licima radi usvojenja.

Krivični zakonik je jedan od najvažnijih nacionalnih pravnih propisa koga je neophodno izmijeniti u smislu inkriminisanja svake vrste zaključivanja braka, odnosno zasnivanja vanbračne zajednice, u skladu sa ograničenjima koja važe za djecu. Od posebnog je značaja ukazati na postojeće zakonsko rješenje krivičnog djela **trgovine ljudima** iz člana 444 KZ CG, kojim se prepoznaje radnja izvršenja ovog krivičnog djela kada se ista vrši sa ciljem sklapanja nedozvoljenog braka. S druge strane, imajući u vidu da porodično zakonodavstvo propisuje maloljetnost osobe, kao smetnju za zaključenje braka, u praksi se krivično djelo *trgovine ljudima prema djetetu* najčešće vrši ugovaranjem vanbračne zajednice sa djetetom, a za čije zasnivanje se Porodičnim zakonom, takođe, predviđaju iste pretpostavke, odnosno smetnje. I pored činjenice da je zakonodavac dio kriminalne zone kod ovakvog protivpravnog ponašanja obuhvatio krivičnim djelom iz člana 216 KZ CG *Vanbračna zajednica sa maloljetnikom*, čini se da je nužno u krivičnom djelu *trgovine ljudima* proširiti zaštitu djece od iskorišćavanja i propisati da se krivično djelo *trgovina ljudima* može izvršiti i sa ciljem zasnivanja vanbračne zajednice, tim prije što se krivičnim djelom iz člana 216 KZ CG inkriminiše radnja već nastupjele posljedice, odnosno već zasnovane vanbračne zajednice, čijim nastupanjem, ukoliko je nastala suprotno pozitivnim propisima koji regulišu ovu oblast, šteta za dijete može biti nesaglediva i nepovratna.

Sagledavanjem nacionalnog pravnog okvira kojim se reguliše oblast trgovine ljudima i ugovaranja dječjih ugovorenih brakova odnosno vanbračnih zajednica, a prepoznajući modele ugrožavanja prava djeteta kroz ugovaranje braka odnosno vanbračne zajednice, nameće se kroz praksu konstantna potreba za izmjenama Krivičnog zakonika Crne Gore. Takođe, uvažavajući činjenicu da se radi o blanketnosti određenih krivičnih djela, potrebno je u određenim odredbama izmijeniti i Porođični zakon Crne Gore.

Porodični zakon Crne Gore je takođe jedan od pravnih propisa koji je neophodno izmijeniti, posebno u dijelu osnovnih odredbi. Naime, potrebno je dodati da se brak zasniva na slobodnoj odluci punoljetnih lica, uz ravnopravnost, uzajamno poštovanje i međusobno uvažavanje, sa 18 godina života, kao i jasnije precizirati druge odredbe ovog propisa, i to one koje se odnose na ranije sklapanje braka od zakonom dozvoljene granice od 18 godina života, od koje su neke sadržane i u drugim zakonima (npr. Zakon o vanparničnom postupku).

Prema Smjernicama za postupanje nadležnih institucija u slučajevima prepoznavanja i procesuiranja dječjih ugovorenih brakova i vanbračnih zajednica u Crnoj Gori, kao jednom od najznačajnijih državnih uputstava nadležnim institucijama koje je donijelo

Ministarstvo unutrašnjih poslova 2017. godine zajedno sa predstavnicima radne grupe sačinjene od predstavnika drugih institucija, dječji ugovoreni brakovi predstavljaju neprihvatljivu pojavu u okviru koje dijete stupa u takvu zajednicu s drugim djetetom ili s odraslom osobom. Radnu grupu su činili članovi/ce Uprave policije, Odjeljenja bezbjednosti Nikšić i Podgorica, Ministarstva rada i socijalnog staranja, Ministarstva za ljudska i manjinska prava, Ministarstva zdravlja, Ministarstva prosvjete, Višeg suda Podgorica, Osnovnog državnog tužilaštva Podgorica, Kancelarije za borbu protiv trgovine ljudima koja je u sastavu Ministarstva unutrašnjih poslova, Zaštitnika ljudskih prava i sloboda Crne Gore, Centra za socijalni rad Podgorica i predstavnice dvije nevladine organizacije - Centar za romske inicijative i Ženska REA mreža „PRVA“. Smjernicama za postupanje i procesuiranje bilo je zamišljeno da se jača saradnja državnih tijela koja su direktno uključena u pitanje borbe protiv sklapanja nedozvoljenih brakova, kroz određene operativne postupke koji su definisani ovim dokumentom.

Nažalost, operativni postupci predviđeni ovim Smjernicama najčešće se ne primjenjuju u praksi jer su njihove odredbe suviše uopštene i pozivaju se na postojeći zakonodavni nacionalni okvir koji, kao što vidimo, ima manjkavosti.

Studija slučaja 1

Snežana iz sjevernog dijela Crne Gore, stara 14 godina

Tokom ljeta 2021. godine nalazila se u skloništu, ali joj nije poznato tačno koliko vremena je tamo provela. Odvela je policija jer se u tom trenutku nalazila kod svoje sestre i zeta koji žive van mjesta gdje je ona živjela sa roditeljima. Pošto nije dobro razumjela jezik koji se koristi u Crnoj Gori jer govori albanskim jezikom, ni njoj, a ni njenoj sestri policajci nijesu dobro objasnili o čemu se radi, čak je jedan od njih lupao hemijskom olovkom o svoj radni sto u kancelariji. Kada je smještena u sklonište od strane socijalnih radnica, tamo je boravilo još šestoro ili sedmoro djece, i to sve djevojčice, osim jednog dječaka koji je bio u posebnoj sobi. Bila je sa tim djevojčicama u istoj sobi i veoma rano su ustajale, često čak oko šest časova ujutro. U skloništu su morali da rano ustaju i svi su imali svoj pribor za ličnu higijenu. Doručak joj se nije dopadao, niti hrana, jer je nekad čorba bila za doručak. Ručak nikada nije bio dobar, uvijek jedna te ista čorba, malo mesa, viršle, jaja i nije bilo voća. Nakon obroka svi su morali da operu suđe i da srede svoju sobu i kuhinju gdje su jeli, a druge obaveze nijesu imali. Dok se bili u skloništu nijesu smjeli da razgovaraju na albanskom jeziku, jer kada bi između sebe razgovarali, vaspitačice bi se „drale na njih“ i poslale bi ih u ćošak. Samo su nju makar pet-šest puta slali u ćošak. Ona ne zna kako se ta žena koja im je bila vaspitačica zove i preziva, jer nije mogla da joj zapamti prezime. Tjerala ih je i da idu u školu, ali nijedna od njih, osim jedne djevojčice, nije to željela.

Jednom su sve djevojčice po kazni nedjelju dana bile u sobi u kojoj nijesu imale televizor. Ponekad su u skloništu dobijale na korišćenje laptop kako bi se igrale, a ponekada su ih izvodili u dvorište škole koja je bila u blizini, kako bi im omogućili da prošetaju, a tada se sa njima nalazila vaspitačica. Njoj je u tom skloništu bilo baš dosadno jer nije imala ništa za igru. Često bi se sakrile u prostoriju gdje se nalazio laptop, kako bi se javile svojim kući, to su radile krijući se, da ih ne uhvate vaspitači. Uspjela je tri ili četiri puta da se javi kući, krijući se od vaspitačica, tako što je slala poruku na telefone ukućana preko instagrama. U skloništu je niko nije tukao, a nije joj se niko ni udvarao ili upućivao neke neprimjere poruke. Uvijek su morali da spavaju oko deset uveče i isključivali su im svijetlo.

Studija slučaja iz NVO Centar za romske inicijative

2. KRATAK OPIS IDENTIFIKOVANIH I PRIJAVLJENIH SLUČAJEVA OD STRANE CENTRA ZA ROMSKE INICIJATIVE

Organizacija je u periodu od 2020. do početka 2023. godine registrovala i prijavila nadležnim državnim organima 23 događaja u kojima je postojala osnovana sumnja da je izvršeno krivično djelo trgovine ljudima sa elementima ugovorenog dječjeg i nedozvoljenog braka.

” Pošto nijesam dobro razumjela jezik koji se koristi u Crnoj Gori jer govorim albanskim jezikom, ni meni, a ni mojoj sestri nijesu dobro objasnili o čemu se radi, čak je jedan policajac lupao hemijskom olovkom o svoj radni sto u kancelariji.

2020:

■ Timu za formalnu identifikaciju žrtava trgovine ljudima, Centar za romske inicijative početkom 2020. godine prijavio je sumnju na postojanje krivičnog djela trgovine ljudima maloljetnog lica iz centralnog dijela Crne Gore i maloljetne NN djevojčice iz Srbije, starosti 14 godina. Sumnjalo se da je brak ugovorio roditelj za iznos od 5.000 evra, a novac je pribavio

podizanjem potrošačkog kredita kod banke. Prema saznanjima Centra za romske inicijative, u događaj je bilo uključeno i jedno punoljetno lice koje se bavi krivičnim djelom zelenaštva, a ovo krivično djelo je učinio kao saizvršilac, putem pomaganja, jer je prevezio žrtvu do graničnog prelaza, sa koga je prvi put bio vraćen od strane policije. Nakon kraćeg vremena,

maloljetna žrtva je, najvjerovatnije uz pomoć svojih roditelja, prevezena kod maloljetnog dječaka za koga je udata. Žrtva je kasnije bila smještena u Dječji dom „Mladost“ u Herceg Novom. U navedenom slučaju, Osnovni sud je donio presudu da se učinilac krivičnog djela kažnjava kaznom zatvora u trajanju od 45 dana, koju će izdržavati u kućnim uslovima.

■ Službenicima Uprave policije, Centar za romske inicijative u prvoj polovini 2020. godine prijavio je sumnju na više krivičnih djela izvršenih nad punoljetnim ženskim licem sa Kosova, koje se prethodno prvo privremeno nalazilo na teritoriji Glavnog grada Podgorice, a kasnije i na teritoriji druge opštine. Nad licem je u prethodnom periodu izvršeno više različitih krivičnih djela sa obilježjima seksualnih delikata, kao i krivično djelo trgovine ljudima sa elementima sklapanja nedozvoljenog braka, a od strane više lica. Registrovani događaj je zabrinjavajući kako se dogodio u vrijeme prvog talasa pandemije još uvijek nepoznatog virusa korona, što je kasnije rezultiralo apsolutno neprofesionalnim odnosom policijskih službenika i službenika Uprave za inspeksijske poslove prema aktivistkinji za ljudska prava Centra za romske inicijative i prema samoj žrtvi ovih krivičnih djela, koja je usljed nesnalaženja državnih organa vraćena počiniocu krivičnog djela. Žrtva je bila smještena u prostorijama SOS telefona za žene i djecu žrtve nasilja, kao i u Skloništu za žrtve trgovine ljudima. Prema podacima Višeg suda, navedni predmet se i dalje nalazi u njihovom radu.

■ Službenicima Uprave policije i Timu za formalnu identifikaciju žrtava trgovine ljudima, Centar za romske inicijative sredinom 2020. godine prijavio je saznanje da je maloljetnom ženskom licu iz Podgorice, starosti 14 godina, organizovano svadbena veselje i da se ona nakon veselja nalazi kod drugog lica koje živi u Podgorici. Tom prilikom službenicima policije pružene su raspoložive informacije o boravku djevojčice i uslovima za sklapanje nedozvoljenog braka u dijelu iznosa od 8.000 evra, koje su uzeli roditelji djevojčice prilikom ugovaranja braka. Boravak kod drugog lica je bio privremeno obezbijeđen sve do ilegalnog napuštanja teritorije Crne Gore radi odlaska u Njemačku. Žrtva je bila smještena u Skloništu za žrtve trgovine ljudima. Prema podacima Višeg suda, navedni predmet se nalazi u radu ovog suda.

■ Službenicima Uprave policije, Centar za romske inicijative početkom 2020. godine, nakon neposrednog saznanja dobijenog od roditelja jedne maloljetnice, prijavio je da se ona samovoljno udaljila od kuće i da se ista nalazi u Nikšiću kod maloljetnog lica, radi zasnivanja nedozvoljenog braka. Nakon više pokušaja da se primijene odredbe Porodičnog zakona u dijelu sklapanja braka bez saglasnosti roditelja, žrtva je ostala da i dalje živi u uspostavljenoj vanbračnoj zajednici sve do danas. Kao ishod života u vanbračnoj zajednici, maloljetnica je postala majka. Prema usmenim informacijama koje su dobijene od Uprave policije, ovaj predmet je odbačen.

■ Službenicima Uprave policije dva Regionalna centra bezbjednosti „Jug“, Centar za romske inicijative krajem 2020. godine, prijavio je osnovanu sumnju, koju je dobio od strane lokalne medijatorke, da je maloljetna djevojčica samovoljno napustila porodicu u

cilju zasnivanja vanbračne zajednice u Tivtu, sa punoljetnim licem, starosti 21 godinu. Žrtva je bila smještena u Dječji dom „Mladost“ u Herceg Novom. Prema usmenim saznanjima kojima raspolazemo, navedeni događaj je odbačen.

” Ja govorim istinu i ne plašim se nikoga, dosta sam trpjela nasilje, odakle ste mi vi pomogli da se vratim, a sad trpim nasilje u Domu.

2021:

■ Službenici Uprave policije sa područja Regionalnog centra bezbjednosti „Sjever“ upoznati su početkom 2021. godine od strane predstavnika jedne osnovne škole i Centra za romske inicijative da je maloljetna djevojčica, starosti 13 godina, uz pomoć svog oca, udata u Srbiji. Prema početnim saznanjima Centra za romske inicijative, brak maloljetnog lica trebao je biti sklopljen za iznos od 4.000 evra, a prethodno je već jednom otac pokušavao maloljetnoj kćerki ugovoriti brak. Nakon provjera preko NCB Interpol i preduzetih mjera policije Republike Srbije, ista je pronađena u jednom sandžačkom gradu kod sestre, nakon čega je vraćena u Crnu Goru. Prema obavještenjima policijskih službenika, u radnjama navedenog događaja nema elemenata krivičnog djela.

■ Predstavnici Centra za romske inicijative upoznati su početkom 2021. godine od strane predstavnika MUP-a Crne Gore – Odjeljenja za unutrašnju kontro-

lu policije – da su obaviješteni od strane porodice da je maloljetnica, stara 17 godina, samovoljno napustila porodičnu kuću u Podgorici u cilju zasnivanja vanbračne zajednice sa punoljetnim licem iz Nikšića. Predstavnici Centra za romske inicijative podnijeli su prijavu postupajućem Odjeljenju bezbjednosti, nakon čega je uz pomoć Centra za socijalni rad i službenika policije maloljetna žrtva vraćena roditeljima. Osnovni državni tužilac se izjasnio da ne postoje elementi krivičnog djela čije gonjenje se preduzima po službenoj dužnosti.

■ Predstavnici Centra za romske inicijative upoznati su početkom 2021. godine od strane punoljetnog lica iz Nikšića da je on voljan stupiti u brak sa maloljetnom djevojčicom, starom 15 godina, ali i da želi da prijavi prethodno sklapanje nedozvoljenog braka njegove vjerenice sa NN licem, nametnuto od strane njenih roditelja u Njemačkoj za iznos novca od 20.000 evra. Imenovana je

bila smještena u Skloništu za žrtve trgovine ljudima. Prema informacijama od strane Uprave policije dostavljenim Centru za romske inicijative, protiv jednog lica podnesena je krivična prijava zbog osnovane sumnje da je počinio krivično djelo iz člana 444 KZCG – Trgovina ljudima, u cilju sklapanja nedozvoljenog braka. Predmet je u radu kod Višeg državnog tužilaštva u Podgorici i podnesen je zahtjev za sprovođenje istrage.

■ Predstavnici Centra za romske inicijative su početkom 2021. godine dobili obavještenje od Centra za socijalni rad da se maloljetna djevojčica, starosti 16 godina, samovoljno udaljila iz porodične kuće u cilju sklapanja nedozvoljenog braka sa maloljetnim dječakom. Nakon što je pročitala na društvenim mrežama da je roditelji traže, maloljetnica se samovoljno prijavila službenicima policije Centra bezbjednosti, nakon čega je podvrgnuta tretmanima iz nadležnosti Centra za socijalni rad i programima podrške Centra za romske inicijative (psihološko savjetovanje, obavljanje razgovora sa članovima porodice, uključivanje u individualne i grupne radionice). Prema saznanjima dobijenim iz jednog Odjeljenja bezbjednosti, ne postoje elementi krivičnog djela za koje se gonjenje preduzima po službenoj dužnosti.

■ Predstavnice Centra za romske inicijative, krajem 2020. godine, došle su do saznanja da se maloljetna djevojčica iz Nikšića, stara 16 godina, samovoljno udaljila iz porodične kuće u cilju zasnivanja nedozvoljenog braka sa ma-

loljetnim dječakom iz Podgorice. Nakon preduzetih mjera i radnji od strane službenika Uprave policije i pronalaska navedenog maloljetnog lica, Centar za socijalni rad je, prema navodima roditelja djevojčice, iste obavijestio da su oni dali saglasnost da djevojčica nakon završenog devetog razreda može da zasniva bračnu zajednicu, što je Centar za socijalni rad negirao. Kao krajnji ishod postupanja institucija sistema, djevojčica je prije punoljetstva postala majka. Prema usmenim informacijama koje su dobijene od Uprave policije, ovaj predmet je odbačen.

■ Službenicima Uprave policije Regionalnog centra bezbjednosti „Centar“, Centar za romske inicijative je u prvoj polovini 2021. godine prijavio sumnju da je maloljetna djevojčica, stara 16 godina, samovoljno napustila porodičnu kuću, odnosno da se nije vratila iz škole. Roditelji su prijavili službenicima policije da su došli do saznanja da se djevojčica nalazi kod drugog lica, starosti 24 godine, koje je već u bračnoj zajednici iz koje ima troje djece. Nakon zahtjeva Centra za romske inicijative za hitno postupanje, tek nekoliko dana kasnije, imenovana je pronađena u stanu navedenog lica, o čemu je obaviješten nadležni državni tužilac Višeg i Osnovnog državnog tužilaštva, iz kojih su se izjasnili da ne postoje elementi krivičnog djela čije gonjenje se preduzima po službenoj dužnosti, jer je period u kome je maloljetna djevojčica boravila kod punoljetnog lica bio kratak za postojanje krivičnog djela (za postojanje vanbračne zajednice je potrebno da postoji kontinuu-

itet trajanja vanbračne zajednice, laicitet i drugi zakonski uslovi), pa je imenovana vraćena roditeljima.

■ Predstavnici Centra za romske inicijative su u prvoj polovini 2021. godine došli do saznanja od strane očuha iz jednog primorskog grada da se maloljetna djevojčica, starosti 15 godina, samovoljno udala za punoljetno lice u centralnom dijelu Crne Gore. Prilikom prijave imenovani je naveo da raspolaže saznanjima da maloljetno lice pruža seksualne usluge za novac i da posjeduje njenu elektronsku prepisku sa mobilnog telefona. Događaj je prijavljen službenicima Uprave policije. Od strane predstavnika Centra za socijalni rad, imenovana je predata Centru za socijalni rad u drugom gradu, odakle je vraćena zakonskom staratelju. Odmah nakon jednog dana, maloljetno lice je prijavilo nasilje u porodici od strane drugog člana porodice – djeda, koji joj je od ranije zakonski zastupnik, nakon čega je smještena u Dječji dom „Mladost“ u Herceg Novom. Nemamo informacije o okončanju postupka.

■ Odsjeku za borbu protiv trgovine ljudima i ilegalne migracije Uprave policije i Timu za formalnu identifikaciju žrtava trgovine ljudima, Centar za romske inicijative je sredinom 2020. godine prijavio sumnju na postojanje krivičnog djela trgovine ljudima, čija je žrtva maloljetna djevojčica, o čemu su informacije dobili od djevojčicine babe, koja je bila zakonska hraniteljka maloljetnog lica. U prijavi se navodi da raspolažu saznanjima da je biološka majka maloljetnog lica, starog 14 godina, koja je lišena roditeljskog prava, posredovala u sklapanju nedozvoljenog bra-

ka svoje kćerke koja je prethodno kod nje boravila na Kosovu. Nakon nekoliko dana od prijave, zakonska hraniteljka je navela da želi da povuče podnijetu prijavu i tom prilikom je navela policijskim službenicima da biološka majka djevojčice nije ugovorila brak, već da je djevojčica to željela samovoljno. Prema saznanjima kojima je raspolažao Centar za romske inicijative, nesrodno punoljetno lice koje se bavi nelegalnim transportom žrtava trgovine ljudima je maloljetnu žrtvu i njenog brata transportovalo ilegalnom rutom na Kosovo. Nakon toga, djevojčica do danas nije vraćena u hraniteljsku porodicu, iako je kratko boravila u Sigurnoj ženskoj kući na Kosovu. U događaju je interesantno da je, nakon preuzimanja maloljetnice iz Sigurne ženske kuće na Kosovu od strane njene hraniteljke, djevojčica predata porodici gdje je već prethodno bio ugovoren brak i ona i budući suprug su nakon toga nestali u nepoznatom pravcu, a djevojčica do danas nije pronađena, niti je spriječen nedozvoljeni brak. Prema navodima Vrhovnog državnog tužilaštva u Podgorici, u svim opisanim radnjama i do sada prikupljenim podacima protiv bilo kog lica ne postoje elementi za bilo koje krivično djelo iz nadležnosti državnog tužioca za koje se gonjenje preduzima po službenoj dužnosti.

■ Službenicima Uprave policije, Centar za romske inicijative u drugoj polovini 2021. godine prijavio je sumnju na postojanje elemenata krivičnog djela trgovine ljudima, učinjenog na štetu maloljetnice stare 13 godina, koja je živjela u sjevernom dijelu Crne Gore. Maloljetnica duži vremenski period nije pohađala redovni i obavezni

školski sistem. Prema saznanjima kojima su raspolagali predstavnici Centra za romske inicijative, maloljetnica je bila udata u Nikšiću za punoljetno lice starosti 25 godina, koji je djever njene sestre. Osnovni i Viši državni tužilac su se izjasnili da ne postoje elementi krivičnog djela čije gonjenje se preduzima po službenoj dužnosti. Imenovana je takođe bila smještena u Sklonište za žrtve trgovine ljudima, a zakonskim zastupnicima je podnijeta prekršajna prijava zbog prekršaja iz oblasti Zakona o zaštiti od nasilja u porodici – zanemarivanje maloljetnog djeteta.

■ Službenicima Uprave policije, Centar za romske inicijative krajem 2021. godine je prijavio sumnju na postojanje elemenata više krivičnih djela počinjenih nad maloljetnicom, starosti 16 godina, od strane nepoznatog punoljetnog lica starosti oko 26 godina, kojoj su roditelji prethodno ugovorili nedozvoljeni brak. Saznanja koja su predstavnici Centra za romske inicijative dobili od strane zajednice sa sjevera Crne Gore ukazuju da je maloljetna žrtva optužila svog, u tom trenutku neidentifikovanog, supruga da je silovao, što je isti kasnije pred više lica iz zajednice negirao. O navedenom događaju obaviješten je Osnovni državni tužilac, koji se izjasnio da ne postoje elementi krivičnog djela čije gonjenje se preduzima po službenoj dužnosti, jer je žrtva u obavještenjima policiji negirala sve optužbe.

■ Službenicima Uprave policije, Centar za romske inicijative u martu i decembru 2021. godine prijavio je da su obaviješteni od strane roditelja maloljetnice da je njihova kćerka, stara 16 godina, samovoljno pokušala stupiti u bračnu zajednicu sa punoljetnim licem starosti 25 godina, a koji je prethodno bio u braku iz koga ima jedno dijete. U toku provjere slučaja, predstavnice Centra za romske inicijative su došle do saznanja da žrtvu punoljetno lice zloupotrebljava u cilju seksualne eksploatacije, jer je zavisnik od psihoaktivnih supstanci i droge. Prilikom pokušaja roditelja da vrate djevojčicu kući, ista je službenicima policije prijavila da je pobjegla od kuće, jer su prethodno roditelji htjeli da joj ugovore brak u Njemačkoj, nakon čega je smještena u Sklonište za žrtve trgovine ljudima. Postupak po ovoj prijavi je odbačen jer je ona u daljem dijelu postupka izjavila da nije govorila istinu prilikom prijave. Maloljetnica se nakon izlaska iz Skloništa ponovo samovoljno udaljila iz porodice i stupila u partnersku vezu sa punoljetnim licem za koje je kasnije utvrđeno da je isto ustupalo drugim licima za prostituciju. Prema dobijenim informacijama od strane Uprave policije, dostavljenim Centru za romske inicijative, protiv punoljetnog lica je podnijeta krivična prijava zbog osnovane sumnje da je počinilo krivično djelo iz člana 444 KZCG – Trgovina ljudima, u cilju vršenja prostitucije. Predmet je u radu kod Višeg državnog tužilaštva u Podgorici.

” U skloništu je bilo najviše suza. Nekad bi nas kaznili i za kaznu bismo bili zatvoreni u toalet, po par sati zatvoreni u mraku.

2022:

■ Službenicima Uprave policije – Odsjeka za trgovinu ljudima i ilegalne migracije, službenicima MUP-a Crne Gore – Odjeljenja za trgovinu ljudima i Centru bezbjednosti u sjevernom dijelu Crne Gore, predstavnice Centra za romske inicijative su početkom 2022. godine prijavile da raspolažu saznanjima o dječjem ugovorenom braku između dvoje maloljetnih lica, koji su oboje u tom trenutku bili starosti 12 godina. Uprava policije je u dostavljenom odgovoru povodom zahtjeva Centra za romske inicijative navela da su policijski službenici, preduzimajući službene mjere i radnje, obavili razgovore sa više punoljetnih lica, kao i sa maloljetnim licima, u prisustvu stručnog radnika Centra za socijalni rad, nakon čega su pomogli u organizovanju njihovog smještaja u Sklonište za žrtve trgovine ljudima. Prema informacijama iz Uprave policije – Kabinet direktora policije, dostavljena je informacija da su službenici Uprave policije podnijeli krivičnu prijavu protiv dva lica zbog postojanja osnovane sumnje da su izvršili krivično djelo iz člana 444 KZCG – Trgovina ljudima. Predmet se nalazi u radu Višeg državnog tužilaštva u Podgorici i podniet je zahtjev za sprovođenje istrage protiv dva lica, početkom 2022. godine.

■ Službenicima Uprave policije – Odsjeka za trgovinu ljudima i ilegalne migracije, Višem državnom tužilaštvu u Podgorici i Odjeljenju bezbjednosti u centralnom dijelu zemlje, predstavnici Centra

za romske inicijative početkom 2022. godine prijavili su da raspolažu saznanjima o dječjem ugovorenom braku između maloljetnice starosti 16 godina i punoljetnog NN lica za iznos novca od 10.000 evra. Žrtva je putem društvene mreže fejsbuk prijavila predstavnicama Centra za romske inicijative da joj je ugovoren brak od strane oca i da se nalazi u svojoj kući. U prvoj fazi događaja državni tužilac nije prepoznao elemente krivičnog djela, nakon čega se žrtva obratila školi, pa je smještena u Sklonište za žrtve trgovine ljudima. Prema informacijama iz Uprave policije – Kabinet direktora policije, službenici Uprave policije podnijeli su krivičnu prijavu protiv dva lica zbog postojanja osnovane sumnje da su izvršili krivično djelo iz člana 444 KZCG - Trgovina ljudima. Prema informacijama dobijenim od strane Višeg državnog tužilaštva, u ovom predmetu je podignuta optužnica krajem septembra 2022. godine.

■ Službenicima Uprave policije – Odsjeka za trgovinu ljudima i ilegalne migracije, Službenicima MUP-a Crne Gore – Odjeljenja za trgovinu ljudima i dvama odjeljenjima bezbjednosti južnog i centralnog dijela zemlje, predstavnici Centra za romske inicijative u prvoj polovini 2022. godine prijavili su da raspolažu saznanjima o sedam puta ugovorenom dječjem braku za maloljetnicu iz centralnog dijela države, staru 16 godina. Naime, maloljetna žrtva je više puta eksploatisana u cilju zasnivanja ne-

dozvoljenog braka od strane svoje braće koja žive u jednoj primorskoj opštini. Prema informacijama iz Uprave policije – Kabinet direktora policije, od strane Višeg državnog tužilaštva očekuje se konačna pravna kvalifikacija u zavisnosti od koje će se odrediti dalje postupanje službenika policije. Predmet je od strane Višeg državnog tužioca ustupljen na nadležnost Osnovnom državnom tužilaštvu na izjašnjenje da li u radnjama događaja postoje elementi krivičnog djela iz člana 216 KZ CG – Vanbračna zajednica sa maloljetnikom ili nekog drugog krivičnog djela.

■ Službenicima Uprave policije, predstavnice Centra za romske inicijative u prvoj polovini 2022. godine prijavile su da raspoložu saznanjima da je maloljetnom licu, starosti 15 godina, ugovoren nedozvoljeni brak. U dostavljenom obavještenju od strane Uprave policije navodi se da su službenici policije obavili razgovor sa četiri lica, kao i sa maloljetnim licem u prisustvu advokata, ali da su došli do informacija da je samo ugovorena vjeridba maloljetnog lica, ali ne i brak. Maloljetno lice je smješteno u Sklonište za žrtve trgovine ljudima od strane službenika Centra za socijalni rad, a nadležni Viši državni tužilac se izjasnio da ne postoje elementi krivičnog djela čije se gonjenje preuzima po službenoj dužnosti, što je prema kasnijim saznanjima rezultiralo pokretanjem krivične prijave od strane porodice i njihovih advokata protiv državnih organa.

■ Službenicima Uprave policije, Centar za romske inicijative je u prvoj polovini 2022. godine, prijavio je da raspoložu saznanjima da je za maloljetnu djevojčicu, starosti 15 godina, od strane roditelja pokušano ugovaranje nedozvoljenog braka u Njemačkoj i da roditelji putem društvene mreže vjebri imaju kontakte sa porodicom njenog potencijalnog supruga. Prema informacijama iz Uprave policije, dostavljena je informacija da se od strane Višeg državnog tužioca očekuje konačna pravna kvalifikacija. Prema podacima Višeg državnog tužilaštva iz druge polovine 2022. godine, predmet je odbačen.

■ Službenicima Uprave policije – Odsjeka za trgovinu ljudima i ilegalne migracije i službenicima Uprave policije iz centralne regije, predstavnice Centra za romske inicijative su početkom druge polovine 2022. godine prijavile da raspoložu saznanjima da je punoljetnoj ženi, koja je nastanjena u izbjegličkim zgradama u mjestu Vrela ribnička, a koja ima psihičko oboljenje, od strane drugog člana porodice – ujaka, koji živi na Kosovu, prodat stan u kome je živjela i ugovoren nedozvoljeni brak. Prema informacijama iz Uprave policije, od strane Višeg državnog tužilaštva se očekuje konačna pravna kvalifikacija jer su spisi predmeta dostavljeni posredstvom međunarodno-pravne pomoći nadležnom tužilaštvu Republike Srbije. Žrtva je uz pomoć službenika Uprave policije vraćena u stan. Od strane Višeg državnog tužilaštva dobijena je informacija da je ovaj predmet i dalje u fazi izviđaja.

■ Službenicima Uprave policije, predstavnice Centra za romske inicijative u junu 2022. godine prijavile su da raspolažu saznanjima dobijenim od strane roditelja da se maloljetna djevojčica sa sjevera Crne Gore, stara 15 godina, samovoljno udaljila od kuće u cilju sklapanja nezvoljenog braka sa punoljetnim licem koje se već nalazi u braku. O navedenom događaju obaviješten je mjesno nadležni Osnovni državni tužilac, koji se izjasnio da ne postoje elementi krivičnog djela čije gonjenje se preuzima po službenoj dužnosti.



Studija slučaja 2

Fjola iz centralnog dijela Crne Gore, stara 11 godina

Od sredine 2020. godine nalazila se u jednom skloništu, nakon što je vraćena iz druge države u Crnu Goru, gdje joj živi majka. Bila je žrtva nedozvoljenog dječjeg braka van Crne Gore sa jedanaest godina života. Kako je u tom periodu bila prisutna pandemija virusa korona, smještena je u samoizolaciju od skoro mjesec dana. Nakon navedenog, smještena je u sklonište u grupu kod porodične vaspitačice od koje je trpjela psihičko i fizičko nasilje. Jednom prilikom je vaspitačica uhvatila rukom za kosu i počupala je, što je mnogo zaboljelo, a zatim je vikala na nju i odgurnula je rukama od sebe. Korisnicu vaspitačica nikada nije zvala njenim imenom, već raznim drugim imenima, a najčešće je dozivala riječima: „Dođi, ljenčugo!“ Kada bi se usprotivila, vaspitačica je kažnjavala, tako što joj nije davala slatkiše koje su dobijala druga djeca, a nekada joj za kaznu nije davala ručak ili večeru. Hranu je tada vaspitačica sama jela ili je bacala. Kada nije bila poslušna, vaspitačica joj je zabranjivala da se javi telefonom svojoj majci, kažnjavala je na način što je djevojčica morala da čisti prostorije i kupatilo koje je koristila vaspitačica. Ako se dogodi da nešto pogriješi, tjerala je da ide na spavanje veoma rano, oko osam sati uveče, a budila je u šest sati ujutro, iako je spavanje za drugu djecu predviđeno poslije deset uveče, a buđenje u osam sati. Kada joj je Fjola jednom rekla da će nasilje prijaviti policiji, vaspitačica joj je rekla da njoj policija ne može ništa i da njoj kao korisnici niko neće ništa vjerovati, jer će pomisliti da djeca lažu. Kako je stalno od nje kažnjavana, isto je bilo i za Novu godinu, kada su sva djeca dobila poklone i patike, dok njoj vaspitačica nije dala ništa od toga. Nije joj dala ni zimsku garderobu, pa je kad je dolazila kod majke bila u ljetnoj garderobi. Inače, dnevni boravak i kuhinju je dijelila sa još dvoje druge djece, koja su bila sa njom a koja imaju smetnje u razvoju, pa je za sve štete koje bi ta djeca napravila vaspitačica nju kažnjavala. Vaspitačica je stalno tukla i malog dječaka sa smjetnjama u razvoju. Kad god je nju kažnjavala, uzimala joj je garderobu koja se njoj sviđala i kad je oduzme, više joj je nikad nije vraćala. Korisnica se žalila psihološkinji koja je vidjela kako plače, pa joj je ona rekla da je sa vaspitačicom razgovarala, i vaspitačica se jedno vrijeme bila smirila, ali kad je psihološkinja negdje bila odsutna, ona je onda bila gora prema njoj. Korisnica navodi da ona govori istinu i da se ne plaši nikoga, dosta je trpjela nasilje, odakle su joj, kako navodi, članice naše organizacije pomogle da se vrati, a sad ne želi da trpi nasilje u domu. Korisnica navodi da je srećna samo za vikend, jer ta vaspitačica nije tu, njoj je sve crno kad je vaspitačica tu.

Studija slučaja iz NVO Centar za romske inicijative

3. PROGRAMI RESOCIJALIZACIJE U CRNOJ GORI

U Crnoj Gori, kao ni u lokalnoj sredini u kojoj organizacija djeluje, ne postoji nijedno sklonište koje se bavi smještajem žrtava koje može omogućiti da se žrtve reintegrišu uz podršku stručnih radnica i saradnica. Dosadašnja praksa pokazuje da se žrtve nedozvoljenog braka od strane relevantnih institucija, usljed nedostatka kapaciteta, smještaju u skloništa koja nemaju adekvatne programe reintegracije žrtava dječjeg ugovorenog braka i nijesu servisi licencirani isključivo za tu namjenu. Studije slučaja koje su rađene za potrebe analize pokazuju da su uslovi za boravak korisnika/ca i programi reintegracije žrtava dječjeg ugovorenog braka zabrinjavajući za cjelokupan sistem dječje i socijalne zaštite.

„ U sobi gdje sam ja boravila bilo je tri kreveta i nas sedam djevojčica.

Mene je ošamario.

Praksa najčešće pokazuje da se žrtve dječjeg ugovorenog braka smještaju u:

■ dječji dom Bijela (Herceg Novi), koji se bavi zbrinjavanjem djece lišene roditeljskog staranja i djece čiji je razvoj ometen porodičnim prilikama, a jedina je ustanova ovog tipa na teritoriji Crne Gore, za koju se, s obzirom na njen tip, postavlja pitanje adekvatnosti re-

integracije djece žrtava nedozvoljenog braka i

■ NVO Institut za socijalnu i obrazovnu politiku „ISOP“, koji je u prethodnom periodu imao licencirano sklonište za žrtve trgovine ljudima u koje su mogle, pored djece,

biti smještene i odrasle osobe i djeca koja dolaze iz različitog društvenog konteksta (migranti, žrtve drugih oblika eksploatacije, izbjeglice i slično), pa se u takvim uslovima boravka mogao veoma lako nastaviti eksploatacioni proces žrtava dječjeg ugovorenog braka. Pomenuto sklonište je krajem

2022. godine zatvoreno od strane nadležnog ministarstva, o čemu je upoznata javnost. Može se pretpostaviti da u navedenom skloništu uslovi pod kojima su boravile žrtve nijesu bili adekvatni, što potvrđuju neki djelovi izjava lica koja su boravila u skloništu, a koji su prikazani u ovoj analizi.

Takođe, u sistemu dječje i socijalne zaštite postoji i:

■ JU Centar „Ljubović“ – ustanova socijalne i dječje zaštite u Crnoj Gori, koja se bavi institucionalnom zaštitom nezavodskog tipa djece sa problemima u ponašanju. U Centru se pruža usluga „smještaja u ustanovu socijalne i

dječje zaštite“, kao i usluga „dnevnog boravka za djecu i mlade sa problemima u ponašanju“. Prema raspoloživim saznanjima, do sada žrtve iz događaja koji su predmet ove analize nijesu smještane u ovu ustanovu.

Prema izvještaju Stejt dipartmenta (Trafficking in persons report) za 2022. godinu, izvještaju GRETA-e, ali i Konvenciji Savjeta Evrope o borbi protiv trgovine ljudima, naša zemlja bi trebalo da posjeduje dovoljan broj skloništa za žrtve trgovine ljudima. Uvažavajući činjenicu da je jedno sklonište zatvoreno, trenutno ne postoji nijedno specijalizovano sklonište za žrtve trgovine ljudima. Ovoj kategoriji žrtava pripadaju i djeca uključena u proces ugovorenog dječjeg braka (nedozvoljeni brak kao oblik krivičnog djela trgovine ljudima). Dakle, iz navedene preporuke jasno se vidi da je neophodno osposobiti, licencirati i osmisliti programe resocijalizacije žrtava za najmanje jedno sklonište. U izvještajima je jasno naznačeno da država Crna Gora mora podizati kapacitete kada je u pitanju smještaj odraslih i djece, koji su žrtve trgovine ljudima.

Takođe, Akcionim planom za primjenu Strategije za borbu protiv trgovine ljudima predviđeno je osnivanje tri skloništa na teritoriji države do kraja 2024. godine. Iz različitih javnih izvora i medija se može zaključiti koje rješenje predlaže nadležno ministarstvo. U nekim crnogorskim medijima kao odgovor Stejt dipartmentu od strane nadležnog Ministarstva za rad i socijalno staranje na skoro obavezujuće preporuke navodi se mogućnost izgradnje smještaja za žrtve trgovine ljudima u Zavodu za djecu i mlade „Ljubović“, što smatramo neozbiljnim rješenjem. (Portal „Dan“ od 07.10.2022. godine.)

Maloljetnim žrtvama dječjeg ugovorenog braka koja uživaju posebnu zaštitu neophodno je obezbijediti posebno sklonište, gdje ne bi trebalo da imaju dodira sa drugim maloljetnim licima koja su smještana kao registrovani maloljetni delinkventi.

Sušтина dosadašnjeg dijela sagledavanja ovih nedostataka u sistemu socijalne i dječje zaštite su programi resocijalizacije i smještaja žrtava nedozvoljenih brakova u Crnoj Gori koji se danas ne sprovode, jer nema skloništa za žrtve dječjeg ugovorenog braka. U

periodu rada na ovoj analizi, žrtve dječjeg ugovorenog braka bile su, bez adekvatne reintegracije, smještane u Sklonište za žrtve trgovine ljudima, gdje boravak zbog više poznatih razloga traje duže nego što je to objektivno potrebno.

Ovakav tretman nije dozvoljen, što jasno potvrđuje i Zaštitnik ljudskih prava i sloboda u jednom svom već donesenom zaključku (Izvješće broj: 01-802/21-7 od 31.12.2021. godine):

„Zaštitnik primjećuje da je maloljetna QQ zadržana u skloništu za žrtve trgovine ljudima i nakon što je Više državno tužilaštvo ocijenilo da nema elemenata krivičnog djela – trgovina ljudima. Ova okolnost istog trenutka ovo sklonište kvalifikuje kao neadekvatno za djevojčicu. Imajući u vidu složenost samog krivičnog djela na koje je postojala sumnja kao i rad i postupanje sa djetetom koje je eventualna/potencijalna ili stvarna žrtva ovog krivičnog djela uz sve specifičnosti u pristupu i postupanju sa žrtvom, veoma je upitna odluka da se maloljetna QQ zadržava u skloništu ovog tipa. Takođe je upitan uticaj okruženja odnosno drugih žrtava koje su tamo smještene, kao i pristup u radu sa njom s obzirom da je utvrđeno da nije žrtva.“

Kada sagledamo preporuku Zaštitnika ljudskih prava i sloboda da se žrtve dječjeg ugovorenog braka za koje se sumnja da su žrtve krivičnog djela trgovine ljudima, nakon što se konstatuje od strane državnog tužioca da nema elemenata ovog krivičnog djela, ne bi trebale zadržavati u skloništu, postavlja se pitanje gdje će se onda takve žrtve smjestiti jer nije rijetka situacija da državni tužilac u ranoj fazi izviđaja odbaci naše sumnje ili da prekvalifikuje događaj kao drugo krivično djelo, npr. vanbrač-

na zajednica sa maloljetnikom, te nam isti slučajevi unutar romske i egipćanske zajednice postaju „javna tajna“, pa za rezultat imamo da djeca nastave da žive u vanbračnoj zajednici sa navodima da su vraćeni biološkim roditeljima, a kao konačni ishod imamo da „djeca rađaju djecu“.

Dakle, jasno je da u postojećim skloništima ne postoje programi reintegracije žrtava, što potvrđuju izjave žrtava koje su obuhvaćene ovom analizom.

„ Kad je htio da nas kazni, dešavalo se da nas stavi u sobu sa muškarcima, bez veze bi me kaznio i više puta sam boravila sa muškarcima.

Studija slučaja 3

Božo iz centralnog dijela Crne Gore, starosti 13 godina

U sklonistu je bio 11 mjeseci od kraja 2021. godine do kraja 2022. godine. Tada je imao 12 godina. Korisnik navodi da je teško kada je neko dvadeset i četiri sata zatvoren bez bilo kakvih aktivnosti, bez televizije, a u skloništu je bio samo jedan laptop, ali rijetko kad je bilo interneta za njegovo korišćenje. „U skloništu je bilo najviše suza.“ Kada je bio u skloništu, bilo je jedanaest ili dvanaest drugih korisnika/ca, ne zna tačno. Nije bilo mjesta za sve, djevojke koje su se nalazile u skloništu su morale da spajaju krevete i više njih je spavalo zajedno. Božo je bio u sobi sa jednim dječakom. U skloništu su morali da ustaju u sedam časova i nijesu smijeli više da spavaju sve do deset uveče, kada je predviđeno spavanje. Svi su imali sredstva za ličnu higijenu. Korisnicima - dječacima - bilo je zabranjeno da budu više od pet minuta u kupatilu, kad bi ušli da se kupaju ili istuširaju. Djevojčice su mogle da ostanu nešto duže, do 10 minuta. Korisnici/ce nijesu imali nikakve aktivnosti, morali su sami da peru sudove i da sami ručno peru svoju garderobu. Božo navodi da im je u skloništu bilo mnogo dosadno, znali su svi da se skupe u jedan ćošak i da plaču. Nekad bi ih vaspitači kaznili i za kaznu bi bili zatvoreni u toaletu, po nekoliko sati u mraku. Doručak su morali ponekad sami da spremaju, ručak su im donosili oko tri sata popodne, nekad je bio i oko četiri sata. Kada bi neko od korisnika/ca napravio neku grešku, onda bi svi bili kažnjeni i ne bi imali ručak, tako da bi tog dana jeli tek za večeru. „Za 11 mjeseci dok sam boravio u skloništu, nijesmo imali voća, ni slatkiše. Nekad su nas pustili da idemo da se kupamo na rijeku Zetu i tu blizu sam vidio jabuku i sa grane sam uzeo jednu jabuku i tada sam pojeo voće, nakon više mjeseci.“ Korisnik navodi da im je u skloništu, prema njegovoj percepciji, hrana bila baš loša. „Ja sam se bio razbolio od suve hrane, nešto mi crijeva nisu bila dobra, bio sam i kod ljekara zbog toga.“ Korisnik navodi da je u skloništu bila i djevojčica za koju su mu roditelji bili ugovorili brak i da su oni i tamo nastavili da budu zajedno, samo im je bilo zabranjeno da imaju seksualne odnose. „Ja sam sa mojom ženom bio sve dok se ona nije počela ljubiti sa drugim momkom koji je bio sa nama u istom skloništu.“ Vaspitačice rijetko ili nikad nijesu bile sa korisnicima, one bi se nalazile stalno u svojoj kancelariji. Korisnik navodi da su vaspitači počeli sa njima raditi domaće zadatke nakon četiri-pet mjeseci, kao i da nijesu pričali sa psiholozima u skloništu. „U skloništu je bilo svašta, tuča između nas korisnika, vaspitačica i direktor su ponekad tukli djevojčice, jedna vaspitačica se čak i drogirala, što smo prijavili, čak je bilo i silovanje.“ Božo navodi da je išao u školu dok je bio u skloništu, ali nije bio prihvaćen od strane druge djece, svi su ga zvali „Cigo, Cigo“. „Kada sam jednom u krugu škole igrao košarke, neki momci koji su znali često da me diraju, tog dana su me baš istukli, bila mi je slomljena ruka, nakon čega sam nosio gips oko mjesec dana.“ Direktor mu je zabranio da kaže

svojim roditeljima, koji nijesu znali da mu je bila ruka povrijeđena, sve dok nije izašao iz skloništa. Tokom boravka u skloništu, Boža je jedan dječak tukao, jer je bio stariji od njega, a bio je sa njim u sobi. To je radio jer se jedna djevojčica bila zaljubila u njega, a tom dječaku je bilo krivo. Radnice u skloništu bile su mnogo stroge prema njima, šta god bi pitali, one bi galamile na njih. Neke vaspitačice su ih čak zvale „Cigani jedni“. Jedna vaspitačica je tukla jednu djevojčicu pred svima njima šamarima, vukla je za kosu i posle je ošišala na kratko bez njene saglasnosti, ta djevojčica je plakala. I direktor je pred njima ošamario drugu djevojčicu. U skloništu je korisnike troje zaposlenih tuklo, vaspitačica, direktor i zaštitar koji ih je čuvao. Jedan dječak je silovao jednu djevojčicu i svi oni su to znali, ali je to sakriveno i Božo misli da to nijesu prijavili ni policiji, ni Centru za socijalni rad. Jednom su direktor i čuvar tukli dječaka koji je bio sa Božom u sobi. Jedna vaspitačica se drogirala, svi korisnici koji su bili u skloništu su vidjeli kako ona špricem sama sebi daje nešto u venu. Korisnici su to prijavili i posle toga više nije radila u skloništu. „Ja i ovaj dječak što je bio sa mnom u sobi, morali smo da radimo i fizičke poslove. Direktor bi došao po nas i vozio bi nas kod svojoj kući i mi bismo kod njega radili fizičke poslove, nosili bi džakove sa cementom, niko te ne pita da li hoćeš, moraš...“ Subotom i nedjeljom su bili potpuno sami, bez vaspitača. „Bilo bi nas baš strah i mi se svi skupimo zajedno. Jedne subote ili nedjelje, ne znam tačno kada, bili smo sami, baš sami, pa smo se puno uplašili i tada smo svi htjeli da iskočimo kroz prozor, jer je nešto lupalo u kupatilu, učinilo nam se da se otvaraju vrata od kupatila, pa smo čuli neke zvukove, cijelu noć nijesmo spavali, bili smo svi zajedno.“

Studija slučaja iz NVO Centar za romske inicijative

4. ANALIZA PRIJAVLJENIH DOGAĐAJA

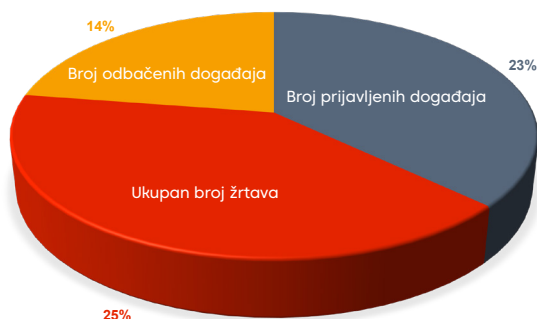
Najveći broj prijavljenih događaja ili podnijetih krivičnih prijava je odbačen. To u principu znači da nadležno državno tužilaštvo nije u prijavljenim događajima pronašlo elemente krivičnog djela za koje se gonjenje preuzima po službenoj dužnosti ili da su prijavljeni događaji odbačeni u ranoj fazi izviđaja, u neposrednom kontaktu policijskih organa i nadležnog tužilaštva. U prijavljenim događajima inicijalno je dostavljen osnov sumnje na krivično djelo trgovine ljudima, gdje je kod svih prijavljenih događaja dostavljen u trenutku prijave jedan broj raspoloživih podataka i činjenica koje ukazuju na postojanje takvog krivičnog djela.

Uvažavajući činjenicu da u toku ove analize nijesu preduzmani koraci studiozne analize pojedinačnih predmeta jer nijesmo uspjeli obezbijediti spise predmeta, ne može se cijeniti da li je nadležni tužilac i u kom stepenu preduzimao sve neophodne mjere kojim bi se dokazalo krivično djelo

učinjeno na štetu najčešće djeteta ili maloljetnika. Takođe, ne može se cijeniti ni da li su policijski službenici, tokom preduzimanja svojih radnji u toku izviđaja, preduzimali sve neophodne korake po saznanju za postojanje krivičnog djela (izviđajne i potražne radnje).

Prikaz ukupnog broja prijavljenih događaja ugovorenih brakova, broja žrtava i odbačenih događaja u periodu od 2020- do početka 2023. godine:

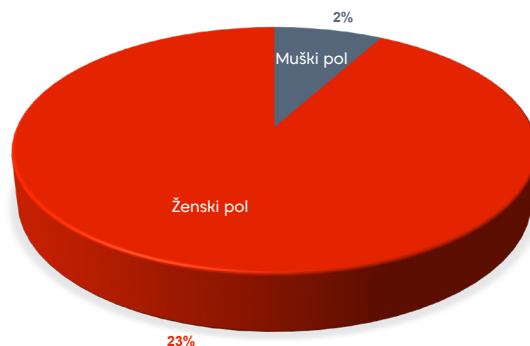
Broj prijavljenih događaja:	23
Ukupan broj žrtava:	25
Broj odbačenih događaja:	14



Najveći broj žrtava do koga se došlo u svim prijavljenim događajima čine osobe ženskog pola i to u 92% slučajeva, ili izraženo u apsolutnim brojkama 23, dok je registrovano 8% ili 2 žrtve muškog pola.

Dijagram koji pokazuje ukupnu strukturu žrtava po polu, bez obzira na okončanje postupka u periodu od 2020- do početka 2023. godine:

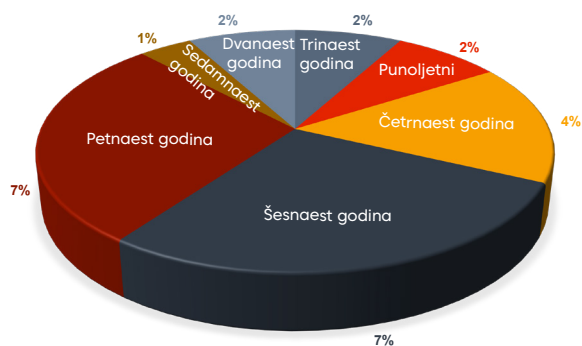
Muški pol	2
Ženski pol	23



Kada je u pitanju starosna struktura registrovanih žrtava dječjeg ugovorenog braka u periodu od 2020 – do početka 2023. godine, bez obzira na okončanje postupka, uočava se da je najveći broj žrtava starosne dobi između petnaest i šesnaest godina, odnosno 54%, dok procenat mlađih od tog uzrasta koji su postali žrtve u periodu od dvanaeste do četrnaeste godine iznosi čak 32%. Procenat starijih maloljetnika (17 godina) i punoljetnika koji su postali žrtve krivičnog djela iznosi 12%.

Starosna dob žrtava:

Dvanaest godina	2
Trinaest godina	2
Četrnaest godina	4
Petnaest godina	7
Šesnaest godina	7
Sedamnaest godina	1
Punoljetni	2
Ukupno:	25

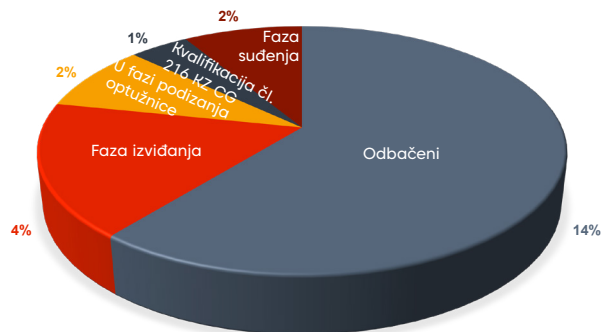


5. ANALIZA SLUČAJEVA U KOJIMA JE POSTUPAK U TOKU ILI JE PODIGNUTA OPTUŽNICA

U ovom dijelu analize prikazani su podaci koji su dobijeni od strane Višeg državnog tužilaštva u Podgorici, Višeg suda u Podgorici, Osnovnog suda u Nikšiću i Osnovnog suda u Beranama, izraženi u apsolutnim brojkama. U podacima koji su dobijeni po zahtjevu za slobodan pristup informacijama od javnog značaja dostavljen je kratak opis faze u kojoj se nalaze predmeti koji su razmatrani od strane nadležnih pravosudnih organa.

Struktura postupaka koji su u toku pred nadležnim pravosudnim organima ili su odbačeni:

Odbačeni	14
Faza izviđanja	4
Faza suđenja	2
Kvalifikacija čl. 216 KZ CG	1
U fazi podizanja optužnice	2



U fazi izviđaja nalaze se 4 krivične prijave za četvero osumnjičenih lica u kojima su žrtve 4 maloljetne osobe. Jedan od ovih predmeta je i dalje u nadležnosti Osnovnog državnog tužilaštva u Podgorici.

Više državno tužilaštvo je u formi informacije dostavilo podatke o krivično-pravnom statusu lica za krivična djela trgovine ljudima iz člana 444 KZCG – sklapanje nedozvoljenog braka.

■ Za krivično djelo iz člana 444 KZ CG Više državno tužilaštvo u Podgorici u fazi izviđaja i dalje tretira predmet protiv osumnjičenog punoljetnog lica, shodno zahtjevu za sprovođenje istrage od 10.01.2021. godine, u kome je oštećena maloljetna djevojčica, žrtva sklapanja nedozvoljenog braka kao oblika eksploatacije.

■ Za krivično djelo iz člana 444 KZ CG Više državno tužilaštvo u Podgorici u fazi izviđaja i dalje tretira predmet protiv osumnjičenog punoljetnog lica, shodno zahtjevu za sprovođenje istrage od 29.10.2021. godine, u kome je oštećena starija maloljetnica, žrtva sklapanja nedozvoljenog braka kao oblika eksploatacije.

■ Za krivično djelo iz člana 444 KZ CG Više državno tužilaštvo u Podgorici u fazi izviđaja i dalje tretira predmet protiv NN lica, u kome je oštećena maloljetna žrtva za koju je nadležnim organima Republike Srbije upućen zahtjev za međunarodnu saradnju u krivičnim predmetima.

■ Za nekvalifikovano krivično djelo iz oblasti Krivičnog zakonika, Više državno tužilaštvo u Podgorici ustupilo je predmet Osnovnom državnom tužiocu u Podgorici i dalje ga tretira u fazi izviđaja u kome je oštećena maloljetnica. Nadležna tužiteljka je sačinila akt u kome se izjašnjava da nema elementa krivičnog djela iz nadležnosti Višeg državnog tužilaštva. To znači da ne postoje elementi krivičnog djela trgovine ljudima, a da postoji mogućnost da se identifikuje neko drugo blaže krivično djelo iz nadležnosti Osnovnog državnog tužilaštva.

U fazi optužnice nalaze se 2 krivične prijave za 4 optužena lica, u kojima su žrtve 3 maloljetna lica. Od strane nadležnog organa nije navedeno da li je optužnica potvrđena.

■ Protiv optužena dva punoljetna lica zahtijevano je sprovođenje istrage 07.02.2022. godine, jer postoji osnovana sumnja da su počinili krivično djelo iz člana 444. KZ CG – trgovina ljudima, u cilju sklapanja nedozvoljenog braka u odnosu na oštećena dva maloljetna lica. Optužnica je podignuta 12.09.2022. godine.

■ Protiv optužena dva punoljetna lica zahtijevano je sprovođenje istrage 11.03.2022. godine jer postoji osnovana sumnja da su počinili krivično djelo iz člana 444. KZ CG – trgovina ljudima, u cilju sklapanja nedozvoljenog braka u odnosu na oštećenu maloljetnu djevojčicu. Optužnica je podignuta 22.08.2022. godine.

U fazi suđenja nalaze se 2 krivične prijave za 4 optužena lica, u kojima su žrtve 1 maloljetno lice i 1 punoljetno lice.

Pred Višim sudom u Podgorici nalaze se četiri predmeta ili krivična djela koja nijesu presuđena i nalaze se i dalje u fazi suđenja, što znači da optužena lica ne moraju „de facto“ biti i osuđena.

■ Predmet koji nosi poslovnu oznaku iz 2020. godine (događaj prijavljen u martu 2020. godine), u kome je podignuta optužnica protiv punoljetnog lica i stavljeno mu na teret izvršenje krivičnog djela trgovine ljudima iz člana 444, stav 1 KZ CG na štetu punoljetne žrtve, nalazi se u fazi suđenja i do početka novembra 2022. godine nije presuđen.

■ Predmet koji nosi poslovnu oznaku iz 2020. godine (događaj prijavljen u junu 2020. godine), u kome je podignuta optužnica protiv punoljetnog lica i stavljeno mu na teret izvršenje krivičnog djela trgovine ljudima iz člana 444, stav 3 KZ CG na štetu maloljetne djevojčice, nalazi se u fazi suđenja i do početka novembra 2022. godine nije presuđen.

Takođe, u odgovoru na zahtjev, nadležni organ dostavio je informaciju da se jedan predmet u kome je jedno lice žrtva nalazi u fazi kvalifikacije pred Osnovnim tužilaštvom u Podgorici. Osnovni sud u Beranama dostavio je podatke za jedan predmet iz kojeg se ne može zaključiti broj osumnjičenih lica i broj žrtava.

■ Predmet koji nosi poslovnu oznaku iz 2021. godine (nema podataka o prijavljenom događaju od strane CRI Nikšić, optužnica podignuta u novembru 2021. godine), u kome je podignuta optužnica protiv punoljetnog lica i stavlje-

no mu na teret izvršenje krivičnog djela trgovine ljudima iz člana 444, stav 3 KZ CG na štetu maloljetnog lica, nalazi se u fazi suđenja i do početka novembra 2022. godine nije presuđen.

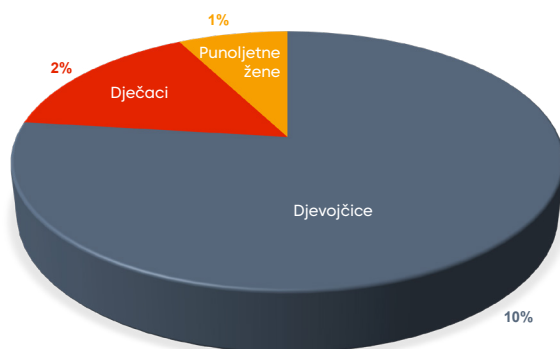
Ovaj događaj nije registrovan od strane Centra za romske inicijative i nije sagledavan u okviru ove analize.

Osnovno državno tužilaštvo u Beranama je podnijelo optužni predlog protiv jednog lica, „romske nacionalnosti“ - kako se navodi u dopisu - zbog krivičnog djela iz člana 216, stav 1 KZ CG – vanbračna zajednica sa maloljetnikom. Nijesu navedeni inicijali optuženog lica, kao ni inicijali lica oštećenog krivičnim djelom.

Ovaj događaj nije registrovan od strane Centra za romske inicijative i nije sagledavan u okviru ove analize.

Broj žrtava po polnoj strukturi za postupke koji se nalaze pred nadležnim organima:

Djevojčice	10
Dječaci:	2
Punoljetne žene	1



6. PRESUĐENI SLUČAJEVI

Veoma je mali broj presuđenih slučajeva sa elementima krivičnog djela sklapanja nedozvoljenog braka/ugovorenog dječjeg braka. To nesumnjivo potvrđuju podaci koji su dobijeni putem zahtjeva za slobodan pristup informacijama od javnog značaja iz nadležnosti Osnovnih ili Viših sudova u Crnoj Gori.

Opis presuđenog događaja: U prvom opisanom slučaju iz 2020. godine navedeno je da je Centar za romske inicijative početkom 2020. godine prijavio sumnju na postojanje krivičnog djela trgovine ljudima učinjenog na štetu maloljetnog lica i maloljetne nepoznate djevojčice iz Srbije, starosti 14 godina. (Pogledajte opis događaja u poglavlju broj 2 – prvi slučaj.) Kao što se uočava u sadržini opisa događaja, a kasnije i presudi Osnovnog suda u Nikšiću, učinilac krivičnog djela, otac dječaka je priznao izvršenje krivičnog djela iz člana 216 KZ CG – Vanbračna zajednica sa maloljetnikom, kao i da je podizanjem potrošačkog kredita od 5.000 evra „platio“ roditeljima maloljetne djevojčice da ona živi sa njegovim maloljetnim sinom u periodu od 26.01.2020. do 10.03.2020. godine, pravdajući takav postupak običajima u romskoj zajednici da se sinovi u toj zajednici mladi žene mladim djevojkama za novac, iako je znao za, kako se navodi u presudi, zabranjenost djela i bio svjestan svoga djela i htio njegovo izvršenje. Osuđeno lice – otac dječaka, osuđen je pravnosnažnom presudom na kaznu zatvora u trajanju od 45 dana, koja se izvršava u prostorijama za stanovanje okrivljenog i naknadom troškova u iznosu od 30 evra. Smatramo da je ovakva odluka zabrinjavajuća jer se na ovaj način uznapredovali proces suzbijanja nedozvoljenih brakova vratio za deset godina unazad, te da se ovaj način šalje lošu generalna poruku društvu, kao i romskoj zajednici, da se za zasnivanje dječjeg ugovorenog braka i izvršenje više krivičnih djela lica sankcionišu novčanom kaznom, uslovnom kaznom, kao i minimalnom kaznom nošenja „nanogice“ u objektu stanovanja, što predstavlja blagu kaznenu politiku sudova koja nije srazmjerna društvenoj opasnosti ovog fenomena i obeshrabruje djevojčice da ovakva krivična djela prijavljuju i suprostave se užoj i široj porodici.

Studija slučaja 4

Sanela iz centralnog dijela Crne Gore, starosti 17 godina

Sanela je u skloništu bila dva puta. U skloništu je prvi put boravila oko dva mjeseca i tada je imala između 15-16 godina, a drugu put kada je boravila u skloništu imala je mjesec dana manje od 17 godina. Kada je sa njom obavljen razgovor o okolnostima boravka u skloništim, Sanela je tek bila napunila 18 godina. U jednom od skloništa u trenutku boravka bilo je devetoro ili desetoro djece, od koji su bila trojica dječaka. Inače, kako Sanela navodi, u skloništu djevojčice imaju svoju sobu, a dječaci svoju. Dok je bila u jednom skloništu, nikad nije bilo voća ni kolača, njoj su hranu, kolače i voće stalno donosili njeni od kuće. Dešavalo se da u skloništu ne bude dovoljno mjesta, tada su svi korisnici bili zajedno, jer su u sobama samo po tri kreveta. Jednom prilikom je u skloništu bilo baš dosta korisnika/ca, pa su krevete spojili. Nekad je korisnice bilo sramota, pa navodi primjer kada je Sanela ljeti spavala u šortsu i bilo joj je neprijatno kad je bila s muškarcima u sobi. „Prvi put kad su me smjestili u sklonište, pošto nije bilo mjesta, ja sam spavala u sobu sa muškarcima. U sobu je bilo njih troje, ja i jedna drugarica, vaspitač je rekao da nema veze to što spava u sobu sa muskarcima, svi su jedna porodica. Kad bi nas kaznio, mi smo znale da se žalimo da nećemo u sobu sa muskarcima jer su bili neuredni. Mene bi bez veze kaznio, tako da sam više puta spavala u sobu sa muškarcima.“ Inače, kada su vaspitači htjeli da ih kazne, dešavalo se da ih stave u sobu sa muškarcima, to je bio vid kazne. U ženskoj sobi bila su samo tri kreveta, a njih sedam je spavalo u jednoj sobi, spajale bi krevete, kako bi sve legle na ležaje. Sanela navodi da su, kada bi ih kaznio, morali da čiste kupatilo. U skloništu su im vaspitači nalijepili spisak na ormar i onda su svi znali šta treba da rade, imali su spisak obaveza. „Trebali smo da ustanemo u 06:30, u 7.00 sati smo imali doručak, za doručak smo imali stalno hleb, džem, krem i rijetko kad viršle. Morali smo tačno u sedam da doručujemo, jer bi nam posle zaključavao kuhinju. Desilo bi se da ne ustanemo u 06:30 časova i onda bi nas kaznio i ne bi mogli ni da ručamo, već bi jeli tek kad bi bila večera. Ostali bi gladni cijeli dan.“ Sanela navodi da su nakon doručka oni koji su išli u školu učili, radili domaće zadatke, a oni koji nijesu išli u školu su ležali cijeli dan ili igrali karte koje su im dali vaspitači. Uveče bi svi legli u 22 sata. Imali su televizor u dnevnom boravku, ali nijesu mogli da gledaju televizor kad oni hoće, čak je jedno vreme dok je Sanela bila u skloništu direktor isključio skroz televizor i nijesu smijeli da ga više uključuju. Ponekad su imali mogućnost da koriste laptop, da bi mogli da igraju igrice, ali su neke djevojčice to zloupotrebljavale, tako što su ulazile na instagram. Dok je Sanela bila tamo nije više bio uključen televizor, a bio im je zabranjen i laptop. Vaspitačice su, kad bi boravile sa njima, stalno gledale u svoje mobilne telefone, niko nije radio nešto interesantno sa njima. „Znali su da nas ostave same i zaključane. Kad bi nas čuvala majka od jednog

zaposlenog, ona kad zaspe, nikoga više ne čuje, tada smo mogli i da skuvamo kafu, jednom smo još uzeli telefon i preko instagrama smo se čuli sa našima kući. Bilo nam je zabranjeno da izlazimo napolje.“

Sanela kao kazne u skloništu navodi kako su, kada je prvi put bila u skloništu, vaspitači na ćelavo ošišali jednu djevojčicu, a drugoj su kosu ošišali na kratko. Čak je i njoj prijećeno da će je ošišati na ćelavo. Drugi put kad je Sanela bila u skloništu, bilo je još gore. „Dok sam ja bila u sklonište, direktor je znao da fizički napadne žrtve, jednog momka je često zaključavao u ve-ce i tamo ga je tukao. Čak je i mene ošamario jer smo ja i jedna djevojčica u šali rekle da ćemo da pobjegnemo iz skloništa, neko je to njemu prenio i on je došao od kuće sav nervozan i prvo je na mene naletio i pred svima me ošamario, dok se ostalima drao. Kada me on ošamario, tu su bili i korisnici i socijalna radnica, njih troje, ali niko nije smio ništa da kaže. Šta god da bi se desilo u to skloništu, ja bi bila kriva. Dok sam tamo boravila stalno sam plakala. Ja nikome ne bih preporučila da ide u to sklonište.“

Studija slučaja iz NVO Centar za romske inicijative

7. ZAKLJUČAK

Normativni zakonski okvir u Crnoj Gori kojim se reguliše oblast nedozvoljenih brakova suočava se sa nedostacima koji su prepoznati posebno u dijelu neophodne izmjene Krivičnog zakonika Crne Gore i Pородičnog zakona, prije svega kako bi se smanjio prag tolerancije na rano zasnivanje vanbračnih zajednica i nedozvoljenih brakova. Nadležni državni tužilac trebalo bi da, shodno svojim ovlaštenjima, izdavanjem obavezujućih naloga i uputstava zatraži da mu službenici policije u izviđaju dostave raspoložive podatke, kao i da dodatno prikupe obavještenja od građana, kao i da naredi preduzimanje drugih radnji dokazivanja u izviđaju, samostalno i uz podršku drugih stručnih lica da preduzme druge mjere i radnje.

U dosadašnjem radu uglavnom se uočava da državni tužilac i organ državne uprave nadležan za unutrašnje poslove u principu ne preduzimaju sve raspoložive mjere i radnje dokazivanja kao što su:

- mjere tajnog nadzora,
- provjere porijekla novca u slučajevima kada je stečena protivpravna finansijska korist u novcu,
- saslušavanje eventualnih svjedoka, raspisivanje objave ili zahtjevi INTERPOL-u.

Sa druge strane, uočava se generalno loša praksa da se u načelu prilikom saslušanja lica u svojstvu građanina ili osumnjičenog lica, saslušava samo jedan roditelj (na primjer otac) ili neko lice koje je pomagač prilikom izvršenja krivičnog djela (koje prevozi ili omogućava ilegalan prelaz preko državne granice), ali ne i podstrekači, odnosno lica koja kao „staro vijeće“ (ujak, stric, kum, djed, komšija) podstrekavaju radnju izvršenja krivičnog djela na način što pregovaraju o cijeni ugovorenog braka između budućih prijatelja i odobravaju i rješavaju kasnije nesporazume između porodica nastale ovim povodom.

U dijelu analize koja se bavi procesuiranim predmetima prema nadležnim tužilaštvima generalno zabrinjava veliki procenat odbačenih krivičnih prijava u fazi izviđaja, odnosno u ranoj fazi krivičnog postupka. Takođe, zabrinjava i činjenica da procesi od početka izviđaja do početka suđenja traju dugo – od jedne do dvije ili više godina. Nadležni državni tužioci kvalifikuju sumnju na trgovinu ljudima ponekad kao drugo krivično djelo, čak i kod priznanja optuženog da je primio novac.

Iz sadržine analize uočava se da za jedan broj krivičnih prijava nije potvrđena optužnica, što u principu znači da takva krivična prijava može biti odbačena, što bi uticalo da se poveća broj odbačenih događaja obuhvaćenih ovom analizom.

U načelu se vidi da postupci u svim fazama traju veoma dugo ili se po njima ne postupa po pravnom načelu hitnosti, što često dovodi do toga da djevojčice mijenjaju iskaze, vraćaju se porodici, protokom vremena gube potrebu za istinom, vraćaju se u krug porodice i šire zajednice koja utiče da žrtva mijenja iskaze.

Kao što se kroz prethodna obrazloženja postupaka reintegracije može zaključiti, nedostaju programi reintegracije žrtava i dovoljan broj adekvatnih skloništa. Kada su u pitanju skloništa u koji-

ma su bile smještene žrtve koje su obuhvaćene ovom analizom, može se konstatovati da su u većoj mjeri bile smještene u Skloništu za trgovinu ljudima, koje nije imalo dovoljne smještajne kapacitete, nije imalo ili nije primjenjivalo programe reintegracije žrtava dječjeg ugovorenog braka, a neke žrtve su smještene u isto sklonište sa učiniocem, što je omogućila slaba procjena relevantnih institucija i nastavljena je prethodno započeta vanbračna zajednica ovih lica tokom boravka u skloništu.

Takođe, zabrinjava činjenica da se unutar zajednice Roma i Egipćana prilikom ugovorenog braka događaj prijavljuje nakon protoka određenog vremena kao samovoljno udaljenje djevojke od kuće, što se može sagledati sa dva aspekta – prvi je da roditelji nijesu u dovoljnoj mjeri ispoštovani prethodno uspostavljenim dogovorom oko davanja i primanja novca, a drugi izbjegavanje zakonodavnih normi, kako bi se oslobodili odgovornosti za učinjeno krivično djelo.

Takođe, analiza ukazuje na činjenicu da je rodna nejednakost prilikom zasnivanja dječjeg ugovorenog braka kod ženske djece u značajnoj mjeri prisutnija u odnosu na mušku djecu i ukazuje na prisutnost patrijarhata koji još uvijek vlada u zajednici Roma i Egipćana i uskraćuje pravo na jednakost, a ujedno dovodi do većeg nivoa rodno zasnovanog nasilja.

PREPORUKE

■ Još jednom se utvrđuje neophodnost podizanja opšteg uslova za sklapanje braka bez saglasnosti sa 16 na 18 godina starosti, kao i jasnije definisanje odredbi Krivičnog zakonika koje se odnose na precizniju terminologiju pojma nedozvoljenog dječjeg braka ili ustanovljavanje posebnog krivičnog djela koje može odgovoriti stvarnoj društvenoj opasnosti ove pojave.

■ Potrebno je u fazi izviđaja u radnjama policije i nadležnog državnog tužioca uključivati određene mjere i radnje koje se odnose na mjere tajnog nadzora, provjere porijekla novca u slučajevima kada je stečena protivpravna finansijska korist u novcu, saslušavanje eventualnih svjedoka ili raspisivanje objave ili zahtjeva međunarodnim policijskim i tužilačkim organizacijama, a takođe apsolutno isključenje uzimanja u obzir običaja iz romske zajednice prilikom donošenja odluke tužilaštva o prijavljenom događaju, kao i preduzimanje drugih vidova pomoći u međunarodno-pravosudnoj i policijskoj saradnji.

■ U izviđajnom postupku, prilikom prikupljanja saznanja ili saslušanja osumnjičenih, potrebno je saslušati i druga lica, a ne samo roditelje, već i članove „starog vijeća“ i druge eventualne svjedoke.

■ Potrebno je da se u načelu u predmetima sa sumnjom na dječji ugovoreni brak preduzimaju najhitnije energične mjere i radnje koje će na brz i efikasan način dovesti do pronalaska i procesuiranja učinilaca krivičnih djela.

■ Neophodno je da se u periodu od faze izviđaja do početka sudskog postupka što hitnije postupaju po predmetima sa elementima nedozvoljenog braka.

■ Potrebno je da se profesionalci iz oblasti dječje i socijalne zaštite, policije, tužilaštava i sudova kao i NVO kroz postojeće akreditovane obuke upoznaju sa sociološkim, socijalnim i kulturološkim sistemom funkcionisanja same zajednice i funkcionisanja institucija sistema.

■ Treba osnovati, uz adekvatne programe resocijalizacije, posebno sklonište za žrtve dječjeg ugovorenog braka, koje ne smije funkcionisati u objektima gdje borave drugi korisnici sa različitim problemima u ponašanju.

■ Treba donijeti reintegracione programe na jeziku koji razumiju žrtve dječjeg ugovorenog braka.

■ Potrebno je obraćanje posebne pažnje na djevojčice od strane institucija tokom boravka u skloništima, uz uvažavanje njihove rodne dimenzije, i obavezno da se obezbijede posebne prostorije u kojima djevojčice mogu boraviti van domašaja drugih korisnika različitog pola.

■ Treba obezbijediti uslove u skloništima da u istima ne dolazi do vršnjačkog nasilja između potencijalnih korisnika koji borave u skloništima.

SHORTCOMINGS IN PROCESSING CASES OF CHILD ARRANGED MARRIAGE





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NGO Centre for Roma Initiatives
Alekse Backovića, 81400, Nikšić, Montenegro,
email address: crink@t-com.me

FOR THE EDITOR:

Fana Delija, M. Sc., Executive Coordinator

TRANSLATION:

Maja Komnenović

PROOFREADING:

Ana Simović Ješovnik

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INTRODUCTION

Violence against women and girls in Roma and Egyptian communities reflects the problem of multiple discrimination faced by the Roma and Egyptian women and girls arising from gender norms, stereotypes and prejudice in the society. Families still harbour strong patriarchy, which additionally affects the female members and the community in terms of gender equality, education, arranged marriages, access to justice, inadequate and low-quality healthcare services,

illiteracy, lack of involvement in public and political life and numerous other factors. Violence against women is also directly related to girls entering into unlawful marriages and the traditional acceptance of gender inequality, one of the oldest and most common forms of inequality that deprives girls of the right to have their voices heard, minimizes their right to choose and puts them in an unequal position.

Despite the efforts of the Centre for Roma Initiatives (CRI), which has been pointing out the issue of child marriages, engaging in identification and prevention and putting significant efforts in reporting even the slightest hint of arranged child marriage to the relevant authorities since 2011, often putting the lives of Roma and Egyptian activists and employees at risk, the institutions still do not accept the fact that child marriages cannot be the problem of the Roma and Egyptian communities, but instead represent a problem of the entire society that severely affects basic child rights.

METHODOLOGY OF THE ANALYSIS

This analysis aims to review the dilemmas and problems related to the processing of the cases reported by the CRI of registered events reported to the competent authorities. It also presents the findings arising from the experience of monitoring the prosecutorial and judicial proceedings in such cases, as well as the process of reintegration of victims of arranged child marriages in Montenegro based on the testimonies of the victims placed in the shelters for human trafficking victims.

The following methodology and data processing were used for that purpose: compilation of the events registered by the activists in the course of immediate fieldwork; use of data obtained through the information of public importance concerning the reported cases, and use of legal documents and reports from relevant regulations. Five individual in-depth interviews with the victims staying in the shelters for human trafficking victims were also used.

Bearing in mind the specificity and the complexity of the subject matter, access to the judicial authorities' information of public importance was required in order to prepare the comprehensive materials needed to assess the promptness of the actions taken by the prosecution service and the courts in follow-up to our reports.

Five in-depth interviews with the victims who stayed in the shelters were analysed to learn more about the actual conditions of their stay and the implemented reintegration programmes.

The analysis primarily focuses on the roles and responsibilities of stakeholders in addressing the issue of arranged child marriages and the types of challenges they face when reporting the events with the elements of the criminal offence of trafficking in human beings and common-law marriage with a minor for the purpose of arranged child marriage in Montenegro over the past three years (2020, 2021 and 2022).

The analysis also contains the following:

- Number and brief description of identified and reported criminal offences with elements of human trafficking/unlawful marriage;

- Number of criminal offences where the judicial authorities in Montenegro raised indictments for the criminal offences with elements of unlawful marriage/ arranged child marriage;

- Number and analysis of the criminal offences adjudicated by the competent Montenegrin courts that involved the criminal offence of trafficking in human beings with elements of unlawful marriage/ arranged child marriage;

- Information on any reintegration programmes for victims of arranged child marriages and their experience with specific support services; common advantages, weaknesses and deficiencies in the operation of the state-licensed services assisting and providing support to victims of human trafficking for the purpose of arranged child marriages;

- Recommendations outlining multiple courses of action towards preventing child marriages.

The section that contains recommendations may inform further research to be implemented in order to collect more evidence on early and child marriages and possibly also future interventions that will lead to further suppression of arranged child marriages.

1. MAJOR INTERNATIONAL AND DOMESTIC REGULATIONS RECOGNIZING UNLAWFUL MARRIAGE AS A FORM OF THE CRIMINAL OFFENCE OF TRAFFICKING IN HUMAN BEINGS

Montenegro has ratified the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention) and the accompanying recommendations; however, the provisions of these international regulations are not being sufficiently implemented. In addition, the cases of unlawful marriages indicate the lack of implementation of the ratified Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

In recognition of child marriages, early marriages and forced marriages as serious violations of child rights, the Council of Europe adopted Resolution 1468 (2005) of the Parliamentary Assembly of the Council of Europe on forced marriages and child marriages and expressed great concern due to serious and repeated violations of human and child rights resulting from forced and child marriages. The Parliamentary Assembly of the Council of Europe called upon the member states' national parliaments to increase the minimum legal age for marriage to 18 for both men and women and called, inter alia, for mandatory registration and entry of each marriage into the official register to be performed by the competent authorities.

The national legal framework, focused on the primary protection of children at risk of child marriage, early marriage and forced marriage, consists of the Constitution of Montenegro, the Law on Social Protection and the Family Law, but also the Criminal Code (CC), which classifies several criminal offences whose elements can be recognized in almost every case

of child marriage, early marriage and forced marriage: trafficking in human beings; concluding a forced marriage; common-law marriage with a minor (identifying the persons enabling such common-law marriages as perpetrators); sexual intercourse with a child, depriving of a minor; neglect or abuse of a minor, and trafficking in children for adoption.

The Criminal Code is one of the most significant national regulations that need to be amended to incriminate all types of marriage/common-law marriage in line with the restrictions prescribed for children. It is especially important to indicate the existing legal provision on the criminal offence of **trafficking in human beings**, prescribed by Article 444 of the Criminal Code of Montenegro, which recognizes the commission of this criminal offence for the purpose of unlawful marriage. Family Law prescribes being underage as an impediment to marriage; in practice, however, the criminal offence of *trafficking in human beings involving a child* is most frequently committed through arranged common-law marriage with a child, which is subject to the same set of assumptions, i.e. impediments under the Family Law. Despite the fact that the legislator, to an extent, incriminated such unlawful actions under the criminal offence referred to in Article 216 of the Criminal Code of Montenegro, it seems necessary to expand the protection against exploitation awarded to children under the criminal offence of *trafficking in human beings* and prescribe the possibility of commission of the criminal offence of *trafficking in human beings* in the aim of common-law marriage. This is particularly valid as the criminal offence from Article 216 of the Criminal Code of Montenegro does not incriminate the act but rather its consequences, i.e. existing common-law marriage; if entered contrary to the applicable relevant regulations, common-law marriage may inflict immense and irreversible harm on the child.

The domestic legal framework regulating trafficking in human beings and arranged child marriages and common-law marriage, while outlining the models of child rights' violations through marriage/common-law marriage, points to the need for amending the Criminal Code of Montenegro. Also, given the blanket nature of certain criminal offences, some provisions of the Montenegrin Family Law need to be amended as well.

The Family Law of Montenegro is one of the legal regulations that should be amended, in particular its basic provisions. Namely, an addition needs to be made to stipulate that marriage is based on the free decision of adult persons, with equality, mutual respect and appreciation, setting the minimum age at 18. Some provisions need to be rendered more precise, especially those referring to entering into marriage before turning the minimum prescribed age of 18; some of them are contained in other laws as well (the Law on Non-Contentious Proceedings, for example).

According to the Guidelines for the relevant institutions for the identification and processing of arranged child marriages and common-law marriages in Montenegro, a major national guidance document intended for the competent institutions

adopted in 2017 by the Ministry of Interior in cooperation with the members of the working group composed of representatives of other institutions, arranged child marriages constitute an unacceptable phenomenon where a child enters a union with another child or an adult. The working group consisted of members of the Police Administration, Nikšić and Podgorica police stations, Ministry of Labour and Social Welfare, Ministry of Human and Minority Rights, Ministry of Health, Ministry of Education, Podgorica High Court, Podgorica Basic State Prosecutor's Office, Ministry of Interior's Office for the Fight Against Trafficking in Human Beings, Ombudsman of Montenegro, Podgorica Centre for Social Work and representatives of two NGOs - CRI and Women's REA Network "PRVA". The Guidelines for action and processing were envisaged to strengthen the cooperation between the state authorities directly involved in the fight against unlawful marriages through certain operational procedures outlined in that document.

Unfortunately, implementation of the operational procedures envisaged in these Guidelines is frequently lacking, as the provisions are too general and refer to the current legislative national framework which, as has been shown, contains some flaws.

Case study 1

Snežana, from the northern region of Montenegro, 14 years of age

She stayed in the shelter during the summer of 2021, but she could not say for how long. She was taken by the police, as she was at her sister and brother-in-law's home in another town. Since she did not understand well the language used in Montenegro and spoke Albanian, neither she nor her sister were clearly explained the situation by the police, and one of the officers even kept banging the pen against the desk in front of them in his office. When she was placed in the shelter by the social workers, there were six or seven children there, all of them girls except for one boy staying in a separate room. She shared the room with the girls and they woke up very early, often around 6 AM. They had to wake up early and they all had their own personal hygiene sets. She disliked the breakfast they had there and meals in general, because they sometimes had stew served for breakfast. Lunch was never good enough, always the same stew, very little meat, sausages, eggs, and no fruit at all. After the meal they had to wash the dishes and clean up their room and kitchen; they had no other duties. They were not allowed to speak Albanian in the shelter - when they spoke among themselves the carers would "yell at them" and send them to the corner of the room. She got sent there at least five or six times. She did not know the name or surname of the carer because she could not memorize that. She forced them to go to school, but none of them wanted to, except one girl.

One time all the girls were punished and had to spend the week in the room with no TV. Sometimes they got to use a laptop to play on, and sometimes they were taken to the schoolyard in the vicinity so they could go for a walk, in the presence of the carer. She was very bored in the shelter because there was nothing to play with. They would often hide in the room with the laptop to call home, and they would do that secretly, not to get caught by the carers. She managed to contact her family three or four times, hiding from the carers, by sending Instagram messages. She was not beaten in the shelter, and no one courted her or made any inappropriate remarks. They had to go to sleep around 10 PM, when the lights would be switched off.

Case study, CRI

2. A BRIEF DESCRIPTION OF THE CASES IDENTIFIED AND REPORTED BY THE CRI

From 2020 to 2023, this NGO registered and reported to the competent national authorities 23 events where there was reasonable suspicion that the criminal offence of trafficking in human beings with elements of arranged child and unlawful marriage had been committed.

” As I do not understand the language used in Montenegro, since I speak Albanian, neither me nor my sister were clearly explained the situation by the police, and one officer kept banging the pen against the desk at the police station.

2020:

■ In early 2020, CRI reported to the Team for Formal Identification of Victims of Trafficking in Human Beings a suspected commission of the criminal offence of trafficking in human beings against a minor from the central part of Montenegro and an anonymous 14-year-old girl from Serbia. The parent was suspected of

having arranged a marriage for 5,000 euros; the money had been obtained as proceeds of a bank loan. According to CRI findings, an adult person involved in loansharking was also involved as an accomplice who aided the perpetrator by driving the victim to the border crossing point, where that person was initially ordered by the police to return.

After a short period of time, the underage victim, most probably with the assistance of the parents, was brought to the underage boy whom she married. The victim was subsequently placed in the Children's Home "Mladost" in Herceg Novi. In this case, the Basic Court punished the perpetrator with a 45-day prison sentence to be served in home detention.

■ In the first half of 2020, CRI reported to the Police Administration officials suspected multiple criminal offences against an adult female from Kosovo, initially temporarily located at the territory of the Capital City of Podgorica and subsequently transferred to the territory of another municipality. Several criminal offences with elements of sex offences had been committed against that person, along with the criminal offence of trafficking in human beings with elements of unlawful marriage that involved multiple perpetrators. The case posed a concern as it occurred during the first wave of the pandemic of the novel Covid-19 virus; this resulted in a completely unprofessional treatment of the CRI activist and the victim by the police officers and employees of the Administration for Inspection Affairs, resulting in the victim being sent back to the perpetrator due to inadequate actions of the state authorities. The victim was placed at the premises of the SOS Telephone for Women and Children Victims of Violence and in the shelter for human trafficking victims. According to the High Court data, the case is still pending.

■ In mid-2020, CRI reported to the Police Administration officials and the Team for Formal Identification of Victims of Trafficking in Human Beings a wedding ceremony for a female person from Podgorica, aged 14, whereupon she was transferred to another person living in Podgorica. The police officers were provided available information on the girl's place of residence and the terms of the unlawful marriage, as the girl's parents had been given 8,000 euros at the time when it was arranged. She temporarily stayed with another person until her illegal departure from the territory of Montenegro to Germany. The victim was placed in the shelter for victims of human trafficking. According to the High Court data, the case is still pending.

■ At the beginning of 2020, CRI shared with the Police Administration officials the information obtained from a parents of a minor about her leaving the household and moving in with an underage person in Nikšić to enter an unlawful marriage. After multiple attempts to implement the provisions of the Family Law referring to entering into marriage without the consent of the parents, the victim stayed on in the established union and subsequently gave birth to a child. According to the verbal information from the Police Administration, this case was dismissed.

■ At the end of 2020, CRI shared with the officials of two “South” regional police units a reasonable suspicion imparted by a local assistant that an underage girl had willingly left her family to enter into a common-law

marriage with a 21-year-old adult from Tivat. The victim was placed in the Children’s Home “Mladost” in Herceg Novi. According to the verbal information available to us, this case was dismissed..

” I speak the truth and I am not afraid of anyone; I have suffered enough violence at the place you helped me leave, and now I am suffering violence again at the Home.

2021:

■ At the beginning of 2021, CRI and a representative of an elementary school informed the officials of the “North” regional police unit that a 13-year-old girl, with the help of her father, got married in Serbia. According to the initial CRI findings, the marriage was to be arranged for 4,000 euros, and the father had already attempted to arrange a marriage for his underage daughter before. Following the checks conducted via the NCB Interpol and the measures implemented by the Serbian police, the girl was found at her sister’s place in a town in the region of Sandžak and brought back to Montenegro. According to the information provided by the police officials, there are no elements of a criminal offence in this case.

■ At the beginning of 2021, representatives of the Ministry of Interior of Montenegro – Department for Internal Control shared with CRI representatives the information imparted by a family about a 17-year-old girl who had willingly left her family home in Podgorica to enter into a common-law marriage with an adult person from Nikšić. CRI representatives filed a report to the relevant police station; with the assistance of the Centre for Social Work and police officers, the victim was brought back to her parents. The Basic State Prosecutor declared that there were no elements for criminal prosecution *ex officio*.

■ At the beginning of 2021, CRI representatives were informed by an adult person from Nikšić that he intended

to enter into marriage with a 15-year-old girl and that he also wanted to report a previous unlawful marriage between his fiancée and an anonymous person, forced upon her by her parents in Germany in exchange for 20,000 euros. The girl was placed in the shelter for human trafficking victims. According to the information received from the Police Department, a report was filed against a person on the grounds of reasonable suspicion of the commission of the offence referred to in Article 444 of the Criminal Code of Montenegro – trafficking in human beings, for the purpose of unlawful marriage. The case is being handled by the High State Prosecutor’s Office in Podgorica and a motion for investigation has been filed.

■ At the beginning of 2021, CRI representatives were informed by the Centre for Social Work that a 16-year-old girl had willingly left her family home to enter into a common-law marriage with an underage boy. After seeing on social media that her parents were looking for her, the girl got in touch with the Security Centre officials and subsequently received treatment from the remit of the Centre for Social Work and CRI support programmes (psychological counselling, conversation with the family members, participation in individual and group workshops). According to the information received from the police, there are no elements of a criminal offence which is prosecutable *ex officio*.

■ At the end of 2020, CRI representatives were informed that a 16-year-old girl from Nikšić had willingly left her family home to enter into an unlawful marriage with an underage boy from Podgorica. After the actions and measures taken by the Police Administration officials and after identifying the girl’s location, the Centre for Social Work, according to the girl’s parents, informed them that they had consented with the girl entering into marriage after finishing the ninth grade; the Centre for Social Work denied these allegations. As the final outcome of the institutions’ actions, the girl gave birth before reaching adulthood. According to the verbal information received from the Police Administration, the case has been dismissed.

■ In the first half of 2021, CRI reported to the officials of the “Centre” regional police unit a suspected case of a 16-year-old girl who had willingly left her family home, i.e. had not returned home after school. The parents told the police that they had learned that the girl was staying with another person, aged 24, who was already in a common-law marriage and had three children. After the CRI’s request for an urgent intervention, only several days later the girl was found in the adult’s apartment, and the competent High State Prosecutor’s and Basic State Prosecutor’s offices were informed; the prosecutor claimed that there were no elements of a criminal offence prosecutable *ex officio*, since the time that

the girl had spent with the adult was not long enough to qualify as a criminal offence (common-law marriage implies continuity, secularism and other legal provisions), and the girl was sent back to the parents.

■ In the first half of 2021, CRI representatives were informed by a stepfather from a coastal town that a 15-year-old girl had willingly married an adult in the central part of Montenegro. He reported that the girl was providing sexual services in exchange for money and that he had a copy of the messages from her mobile phone. The case was reported to the Police Administration. The officials of the Centre for Social Work referred the girl to the Centre for Social Work in another town, upon which she was sent back to her legal guardian. After one day, the girl reported domestic violence committed by a family member – her grandfather, who was her legal guardian, and was thus placed in the Children’s Home “Mladost” in Herceg Novi. We have no information on the conclusion of the case.

■ In mid-2020, CRI reported to the Police Administration’s Department for Combating Trafficking in Human Beings and Illegal Migrations and to the Team for Formal Identification of Victims of Trafficking in Human Beings a suspected criminal offence of trafficking in human beings, with the victim being an underage girl. The information had been provided by the girl’s

grandmother, who was her legal foster carer. The report stated indications that the biological mother of a 14-year-old girl, who had been stripped of parental rights, had arranged an unlawful marriage for her daughter who used to reside with her in Kosovo. Several days after the report, the legal foster carer stated that she wanted to retract on the report and told the police officers that it was not the biological mother who arranged the marriage, but that the girl acted of her own free will. To the extent of CRI knowledge, an unrelated adult involved in the illegal transportation of human trafficking victims illegally transported the underage victim and her brother to Kosovo. To date, the girl has not returned to the foster family, even though she briefly stayed in the Safe House in Kosovo. It is interesting that, after her foster carer took her from the Safe House in Kosovo, the girl was taken to the family that she had entered through the arranged marriage. Her and her future husband’s location has remained unknown and the girl has not been found nor has the unlawful marriage been prevented. According to the claims of the Supreme State Prosecutor’s Office in Podgorica, none of the actions and evidence collected against any person contain elements of any criminal offence from the State Prosecutor’s jurisdiction which are prosecutable *ex officio*.

■ In the second half of 2021, CRI reported to the Police Administration officials the suspected presence of the elements of the criminal offence of trafficking in human beings where the suspe-

cted victim was a 13-year-old girl from the northern region of Montenegro. The girl had not been attending formal and compulsory schooling for a while. According to the information available to CRI representatives, the girl married a 25-year-old adult, her sister's brother-in-law, in Nikšić. The Basic and High State Prosecutor's Offices found no elements of a criminal offence prosecutable *ex officio*. The girl was also placed in the shelter for human trafficking victims, and a misdemeanour complaint was lodged against her legal guardians for neglect of a minor, a misdemeanour prescribed by the Law on Protection from Domestic Violence.

■ At the end of 2021, CRI representatives reported to the Police Administration officials a suspicion on the existence of elements of multiple criminal offences against a 16-year-old girl committed by an anonymous adult of some 26 years of age; the girl's parents had arranged her unlawful marriage. The information that the CRI representatives received from the community in the northern region of Montenegro suggested that the victim accused her husband – unidentified at the time – of rape, which he then denied before several community members. The Basic State Prosecutor was informed about this event, but found no elements of a criminal offence prosecutable *ex officio*, since the victim retracted on all the allegations when interviewed by the police.

■ In March and December 2021 CRI reported to the Police Administration officials that they had received information from a girl's parents that their 16-year old daughter had attempted to enter into a marriage with a 25-year-old adult who had been married before and had a child from that previous marriage. When checking the case, CRI representatives learned that the adult was a substance addict and was abusing the victim for sexual exploitation. When the parents attempted to bring the girl back home, she told the police officials that she had run away from home because her parents had wanted to arrange a marriage for her in Germany. She was subsequently placed in the shelter for human trafficking victims. There was no follow-up on this report because the girl stated that she had not told the truth when initially making the report. Upon leaving the shelter, the girl once again left her family and entered into a partnership with an adult. It was subsequently revealed that that person pandered her to others. According to the information CRI received from the Police Administration, a criminal report was filed against the adult on the grounds of reasonable suspicion of commission of the criminal offence defined in Article 444 of the Criminal Code of Montenegro – Trafficking in Human Beings for the purpose of prostitution. The case is still being handled by the High State Prosecutor's Office in Podgorica.

” It was in the shelter where the most tears were shed. They would punish us sometimes so that we had to stay locked in the toilet for up to several hours, in the dark.

2022:

■ At the beginning of 2022, CRI representatives reported to the Police Administration's Department for Combating Trafficking in Human Beings and Illegal Migrations, the Ministry of Interior's Office for the Fight against Trafficking in Human Beings and the Security Centre unit in the northern part of Montenegro the information on an arranged child marriage between two minors, both 12 at that time. The Police Administration delivered a written response to the CRI's request stating that police officers had undertaken official measures and activities in this regard, interviewed several adults and minors in the presence of a professional from the Centre for Social Work and helped organize placement in the shelter for human trafficking victims. As per the information of the Police Administration – Office of the Chief of Police, officers filed a criminal report against two persons on the grounds of reasonable suspicion of the commission of the criminal offence defined in Article 444 of the Criminal Code of Montenegro – Trafficking in Human Beings. The case is being handled by the High State Prosecutor's Office in Podgorica; an investigation against two persons was requested at the beginning of 2022.

■ At the beginning of 2022, CRI representatives reported to the Police Administration's Department for Combating Trafficking in Human Beings and Illegal Migrations, the High State Prosecutor's Office in Podgorica

and a police station in the central region of Montenegro an arranged child marriage between a 16-year-old girl and an anonymous adult in exchange for 10,000 euros. The victim had shared with CRI via Facebook that her father had arranged her marriage and that she was at home. During the first stage, the State Prosecutor did not identify elements of a criminal offence; the victim then approached her school and was placed in the shelter for human trafficking victims. As per the information of the Police Administration – Office of the Chief of Police, officers filed a criminal report against two persons on the grounds of reasonable suspicion of the commission of the criminal offence defined in Article 444 of the Criminal Code of Montenegro – Trafficking in Human Beings. According to the information received from the High State Prosecutor's Office, the indictment in this case was raised at the end of September 2022.

■ In the first half of 2022, CRI representatives reported to the Police Administration's Department for Combating Trafficking in Human Beings and Illegal Migrations, the Ministry of Interior's Office for the Fight Against Trafficking in Human Beings and the two police stations in the central and southern region information on seven instances of arranged marriage involving a 16-year-old girl from the central part of Montenegro.

Namely, the underage victim had been repeatedly exploited by her brothers who lived in a coastal municipality and arranged unlawful marriages for her. As per the information of the Police Administration – Office of the Chief of Police, the High State Prosecutor’s Office is expected to decide on the final classification that will determine further police actions. The High State Prosecutor’s Office has transferred the case to the Basic State Prosecutor’s Office, which is to decide whether this event contains the elements of the criminal offence defined in Article 216 of the Criminal Code of Montenegro – Common-law Marriage with a Minor or any other criminal offence.

■ In the first half of 2022, CRI reported to the Police Administration officials an unlawful marriage arranged for a 15-year-old. The Police Administration provided feedback about interviewing four persons and a juvenile in the presence of a lawyer and established that only an engagement had been agreed upon, not marriage. The Centre for Social Work placed the minor in the shelter for human trafficking victims, and the competent High State Prosecutor decided that there were no elements of a criminal offence prosecutable *ex officio*. Subsequent information suggests that the family and their lawyers filed a criminal report against the state authorities.

■ In the first half of 2022, CRI reported to the Police Administration officials that the parents of a 15-year-old girl tried to arrange an unlawful marriage for her in Germany and were communicating with the family of the potential husband via Viber. The Police Administration shared the information that the High State Prosecutor’s Office was expected to conduct the final legal classification of the act. According to the data of the High State Prosecutor’s Office from the second part of 2022, the case was dismissed.

■ Early in the second half of 2022, CRI reported to the Police Administration’s Department for Combating Trafficking in Human Beings and Illegal Migrations and to the officials of the central region police unit that an adult woman suffering from a mental illness, resident of the refugee buildings in Vrela Ribnička, had her flat sold and an unlawful marriage arranged by a relative – an uncle from Kosovo. According to the Police Administration information, the High State Prosecutor’s Office is expected to decide on the final legal classification, as the case files were delivered to the competent Prosecution Office of the Republic of Serbia through mutual legal assistance. The Police Administration officers helped the victim return to her flat. The High State Prosecutor’s Office has shared that a preliminary investigation is still ongoing in the case.

■ In June 2022, CRI representatives reported to the Police Administration officials what they learned from the parents of a 15-year-old girl from the northern region of Montenegro who had left family home to enter into an unlawful marriage with a married adult. The Basic State Prosecutor's Office that has territorial jurisdiction in the matter was informed of the case and declared that there were no elements of a criminal offence prosecutable *ex officio*.



Case study 2

Fjola, from the central region of Montenegro, 11 years of age

From mid-2020, she stayed in a shelter after being returned to Montenegro from another country, where her mother lives. She was the victim of an unlawful child marriage outside of Montenegro at the age of 11. As this was the time of the Covid-19 pandemic, she spent almost a month in isolation and was then placed in a shelter, where she suffered physical and psychological violence at the hands of the carer. The carer once pulled her hair, which hurt her a lot; then she yelled at her and pushed her away. The carer never called her by her name; instead, she called her many different names, usually saying: “Come here, you sloth!” If she protested, the carer would punish her by not giving her the sweets the other children got, and sometimes she did not get any lunch or dinner as a penalty. The carer would eat the food herself or throw it away. If she was disobedient, the carer would not allow her to phone her mother, and she would punish her by making her clean the premises and toilet the carer used. If she made a mistake, the carer would make her go to sleep very early, around 8 PM, and wake her up at 6 AM, although the rest of the children were allowed to sleep from 10 PM to 8 AM. When Fjola once told her that she would report the violence to the police, the carer told her that the police could not do anything about it and that no one would believe her and would think that she lied. She kept receiving punishments, and the same thing happened also on the New Year’s Eve, when all the children got presents and sneakers and she did not get anything. The carer did not give her any winter clothes either, so she would visit her mother in her summer clothes. She shared the living room and the kitchen with two children with disabilities and was punished for all the damage they made. The carer also used to beat the small boy with disabilities all the time. When she wanted to punish her, she would take away the clothes she liked and never return them. Fjola complained to the psychologist who saw her crying; the psychologist told her that she had spoken with the carer and the carer backed down for a while. But then when the psychologist was away the carer treated her even worse. Fjola says she is telling the truth and is not afraid of anyone, that she has suffered enough violence at the place the members of our organization helped her escape from and that she does not want to suffer further at the Home. She says she is only happy during the weekend, when the carer is not around, because when she is there everything turns dark.

Case study, CRI

3. RESOCIALIZATION PROGRAMMES IN MONTENEGRO

There is no shelter for victims – either in the community covered by the work of the NGO or in Montenegro – that can enable reintegration with the help of professionals and assistants. The practice to date suggests that the relevant institutions, due to lack of capacity, place victims of unlawful marriages in shelters that do not have adequate programmes for reintegration and are not specifically licenced services. The case studies prepared for this analysis indicate that the conditions for the beneficiaries' stay and the reintegration programmes for victims of arranged child marriages pose a concern within the overall system of child and social protection.

” I stayed in a room with three beds for the seven of us.

He slapped me.

Practice shows that victims of arranged child marriages are usually placed in:

■ Children's Home Bijela (Herceg Novi), the only residential placement in Montenegro for children without parental care and children whose development is impeded by family circumstances, questionable in terms of its adequacy for the reintegration

of victims of unlawful child marriages;

■ NGO Institute for Social and Educational Policy (ISOP), which used to have a licenced shelter for human trafficking victims that could host, besides

children, also adults and children from various social contexts (immigrants, victims of other forms of exploitation, refugees etc.), which could lead to further exploitation of victims. The line ministry closed the shelter at the

end of 2022 and informed the public about it. Presumably, the conditions in the shelter were inadequate, as confirmed in some sections of former residents' statements presented in this analysis.

The child and social protection system also includes the following:

■ Public Institution "Ljubović Centre" – a social and child protection institution providing institutional non-correctional care to children with behaviour problems. The Centre provides the services of "placement in a social and child

protection institution" and "day care for children and youth with behaviour problems". According to available information, victims of the events covered by this analysis have not been placed in this institution to date.

According to the 2022 State Department Trafficking in Persons Report, GRETA Report and the Council of Europe Convention on Action against Trafficking in Human Beings, our country should have a sufficient number of shelters for human trafficking victims. With one shelter closed, there is currently no specialized shelter for such victims. This category also includes the children involved in arranged child marriages (unlawful marriage as a form of the criminal offence of trafficking in human beings). The recommendation referred to above clearly communicates the need to set up, license and design victim resocialization programmes in at least one shelter. The reports clearly point out that Montenegro has to enhance its capacities when it comes to the placement of adult and children victims of trafficking.

In addition, the Action Plan for the Implementation of the Strategy for Combatting Trafficking in Human Beings envisages the establishment of three shelters on the territory of Montenegro by the end of 2024. Various public sources and the media indicate the solution proposed by the competent ministry, with some Montenegrin media reporting on the possible construction of a shelter for human trafficking victims at the Children and Youth Centre "Ljubović" as the Ministry of Labour and Social Welfare's response to the almost binding recommendation coming from the State Department. We do not consider this to be an adequate option (Internet Portal "Dan", 07th October 2022).

Juvenile victims of arranged child marriages who enjoy special protection need a specialized shelter where they would not have contact with other juveniles placed as registered juvenile delinquents.

The crux of this review of deficiencies in the system of social and child protection is that resocialization and placement programmes for the victims of unlawful marriages in Montenegro are not being implemented due to the lack of shelters. At the

time when this analysis was being developed, victims of arranged child marriages were placed in the shelter for human trafficking victims, lacking adequate reintegration, spending longer time than needed there due to several already identified reasons.

Such treatment is not acceptable, as explicitly confirmed in the conclusion issued by the Ombudsman (Report No. 01-802/21-7 of 31st December 2021):

“The Ombudsman notes that the underage QQ was kept in the shelter for human trafficking victims even after the High State Prosecutor’s Office assessed that there were no elements of the criminal offence of trafficking in human beings. This circumstance instantly makes the said shelter inadequate for the girl. Bearing in mind the complexity of the suspected criminal offence, as well as the work and treatment of the child who is a possible/potential or a real victim of the criminal offence, with all the specificities in approaching and treating the victim, the decision to keep the underage QQ in this type of shelter is questionable. The influence of the environment, i.e. the other victims placed in the shelter, is also questionable, as well as the approach to work with the girl considering the finding that she was not the victim. “

In view of the Ombudsman’s recommendation that victims of arranged child marriage, once the State Prosecutor declares that there are no elements of trafficking in human beings, should not be kept in the shelter, the question arises as to where they should be placed. There are situations that are not rare when the State Prosecutor dismisses our suspicions during the early preliminary investigation stage or classifies the case as a different criminal offence, e.g. common-law marriage with a

minor. Such cases become an “open secret” in the Roma and Egyptian community and result in children continuing to live in common-law marriage despite the statements that they were sent back to their biological parents, the final outcome being that of “children giving birth to children”.

It is evident that the existing shelters do not have victim reintegration programmes, as confirmed by the statements of the victims included in this analysis.

” When he wanted to punish us, he used to put us in the same room with men. He would punish me for no reason and make me stay with men several times.

Case study 3

Božo, from the central region of Montenegro, 13 years of age

He spent 11 months in the shelter, from the end of 2021 until the end of 2022. He was 12 at the time. He says it is hard when someone is locked for 24 hours without any activity, without TV, with only one laptop in the shelter and rare access to the internet. "It was in the shelter where the most tears were shed". There were eleven or twelve other beneficiaries in the shelter at the time, he could not tell the exact number. There was not enough space and the girls who stayed in the shelter had to put their beds together and sleep together. Božo shared a room with a boy. They had to wake up at 7 AM and were not allowed to go to sleep before bedtime, i.e. 10 PM. They had their own personal hygiene sets. The boys were not allowed to spend more than five minutes in the bathroom when going in for a bath or shower. The girls could stay a bit longer, up to 10 minutes. They had no activities organized for them, they had to wash their own dishes and hand-wash their clothes. Božo says that they got very bored in the shelter, so they used to gather around in the corner and cry. Sometimes the carers would punish them so they had to spend up to several hours in the toilet in the dark. Sometimes they had to make breakfast, lunch would be brought around 3 PM, sometimes an hour later. If someone made a mistake, they would all be punished and had to go without lunch and eat only at dinner time. "During my 11-month stay in the shelter, we had no fruit or sweets. Sometimes they would let us go for a swim in the Zeta River. I once noticed an apple tree there and picked an apple to eat after many months". He says that in his view the food served in the shelter was very bad. "I got sick due to lack of a cooked meal, my stomach was bad so I had to see a doctor." He says that the girl his parents had arranged him to marry was also in the shelter and that they continued to spend time there together, yet they were not allowed to have sexual intercourse. "I was with my wife until she started kissing another boy from the shelter." The carers would rarely or never spend time with the beneficiaries; they would always stay in their office. He says the carers started helping them with the homework after four or five months, and that they did not talk to a psychologist while in the shelter. "All sorts of things happened in the shelter – fights between the beneficiaries, and the carer and the director would sometimes beat the girls, one of the carers even took drugs and we reported her, there was even a rape case." Božo says he went to school while staying in the shelter, but he was not accepted by the other children who used to call him Gipsy boy. "Once I played basketball in the schoolyard, and some boys, who used to pick on me, beat me up a lot that day – my arm was broken so I had to wear a plaster cast for a month." The director told him not to say anything to his parents, so they did not know that his arm was broken until he left the shelter. During his stay in the shelter,

Božo was beaten by an older roommate. He did that because a girl fell in love with Božo, and the other boy was jealous. The shelter staff were very strict and would yell at them if they asked them anything. Some of them even called them Gypsies. A carer slapped a girl in front of everyone, pulled her hair and cut off her hair afterwards against her will, so the girl cried. The director also slapped another girl in front of them. Three employees – a carer, the director and a guard – beat them. A boy raped a girl and everyone knew that, but it was covered up and Božo thinks it was never reported to the police or to the Centre for Social Work. One time the director and the guard beat the boy who shared the room with Božo. One carer was using drugs; everyone saw her using a syringe to inject something. They reported it and she no longer worked at the shelter after that. “I and my roommate had to do menial jobs. The director would pick us up and drive us to his home, where we had to work, to carry cement bags, and no one asked whether we wanted to do that, we had to...” They were left alone on Saturdays and Sundays, without any of the carers there. “We would get really scared, so we used to gather around. On a Saturday or Sunday, I am not quite sure what day it was, we were all alone, so we got very scared and wanted to jump out of the windows because something was banging in the bathroom, we thought that the bathroom door was being slammed open, we heard some noise, we could not sleep all night, so we stayed together. “

Case study, CRI

4. ANALYSIS OF REPORTED CASES

Most of the reported cases or criminal reports were dismissed.

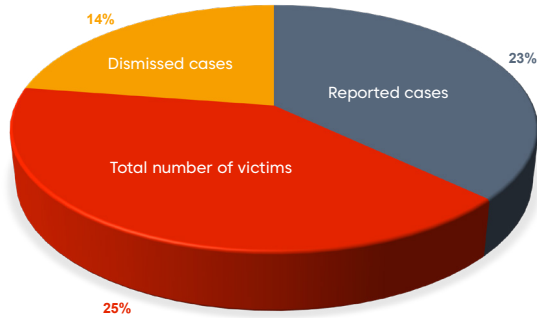
In essence, that means that the competent State Prosecution Office did not identify elements of a criminal offence prosecutable ex officio in the reported cases or that those cases were dismissed in the early preliminary investigation stage, in the course of direct communication between the police and the competent Prosecution Office. Reasons for suspicion of the criminal offence of trafficking in human beings were initially shared in relation to the reported cases, and some available data and facts indicating the presence of the criminal offence were shared at the time of reporting them all.

Mindful of the fact that no thorough analysis of individual cases was conducted for the present analysis, since we could not obtain the case files, we cannot say whether and to what extent the competent prosecutor took all the necessary measures to prove the criminal offence

committed against a child or a minor. It cannot be assessed either whether the police officers followed all the necessary steps after being informed of the criminal offence (investigation and search) when conducting their activities in the preliminary investigation.

Overview of the total number of reported cases of arranged marriages, number of victims and dismissed cases, 2020-2023:

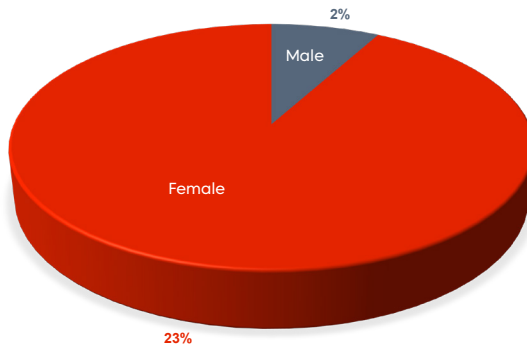
Reported cases:	23
Total number of victims:	25
Dismissed cases:	14



Women account for most of the victims in all the reported cases (92%), i.e. 23, while 8% i.e. 2 victims were men.

Chart showing the gender breakdown of victims, regardless of the outcome of the proceedings, 2020-2023:

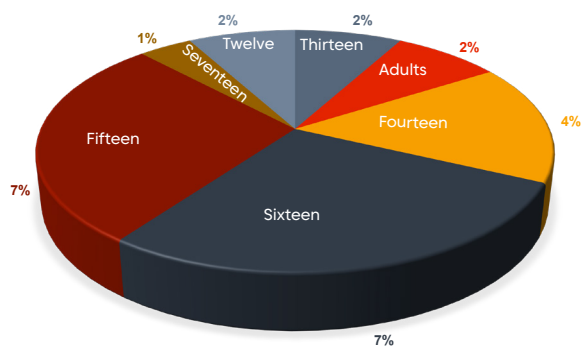
Male	2
Female	23



The age breakdown of the registered victims of arranged child marriages (2020-2023), regardless of the outcome of the proceedings, shows that the biggest share of victims was aged 15-16 (54%), while the share of victims aged 12-14 was as high as 32%. The percentage of older juveniles (17 years of age) and adult victims was 12%.

The victims' age:

Twelve	2
Thirteen	2
Fourteen	4
Fifteen	7
Sixteen	7
Seventeen	1
Adults	2
Total:	25

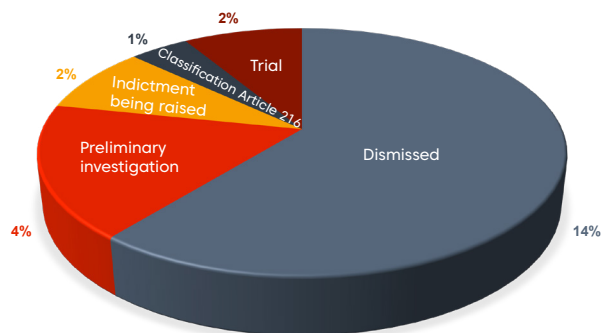


5. ANALYSIS OF PENDING CASES OR CASES WITH RAISED INDICTMENTS

This part of the analysis presents the numerical data received from the High State Prosecutor's Office in Podgorica, High Court in Podgorica, Basic Court in Nikšić and Basic Court in Berane. The data, obtained in response to the request for free access to information of public importance, contain a brief description of the stage of the process before the competent judicial authorities.

Breakdown of pending or dismissed cases:

Dismissed	14
Preliminary investigation	4
Trial	2
Classification Article 216 of the CC of Montenegro	1
Indictment being raised	2



Preliminary investigation is ongoing in four criminal reports against four suspects and involving four juvenile victims. One of these cases is still under the jurisdiction of the Basic State Prosecutor's Office in Podgorica.

The High State Prosecutor's Office delivered the data on the criminal-law status of the persons for the criminal offence of trafficking in human beings from Article 444 of the Criminal Code of Montenegro – entering into an unlawful marriage.

■ In relation to the criminal offence from Article 444 of the CC, the High State Prosecutor's Office in Podgorica is still conducting preliminary investigation in the case against the adult suspect as per the motion for investigation dated 10th January 2021, with an underage girl as the victim of unlawful marriage as a form of exploitation.

■ In relation to the criminal offence from Article 444 of the CC, the High State Prosecutor's Office in Podgorica is still conducting preliminary investigation in the case against the adult suspect as per the motion for investigation dated 29th October 2021, with a young adult as the victim of unlawful marriage as a form of exploitation.

■ In relation to the criminal offence from Article 444 of the CC, the High State Prosecutor's Office in Podgorica

is still conducting preliminary investigation in the case against the anonymous person, with an underage victim, where a request for mutual legal assistance in criminal cases was sent to the competent bodies of the Republic of Serbia.

■ In relation to the non-classified criminal offence from the Criminal Code, the High State Prosecutor's Office in Podgorica transferred the case to the Basic State Prosecutor's Office in Podgorica, with the preliminary investigation ongoing and an underage girl as the victim. The competent prosecutor drafted an act stating no elements of a criminal offence from the High State Prosecutor's jurisdiction. That means that there are no elements of the criminal offence of trafficking in human beings, but with the possibility to identify another lesser criminal offence from the Basic State Prosecutor's jurisdiction.

Two criminal reports against four accused persons are in the indictment stage, with three underage persons as the victims. The competent authority did not state whether the indictment has been confirmed.

■ Investigation against two accused adults was requested on 07th February 2022, on the grounds of reasonable suspicion that they had committed the criminal offence from Article 444 of the Criminal Code of Montenegro – trafficking in human beings in the aim of unlawful marriage, with two minors as the victims. The indictment was raised on 12th September 2022.

■ Investigation against two accused adults was requested on 11th March 2022, on the grounds of reasonable suspicion that they had committed the criminal offence from Article 444 of the Criminal Code of Montenegro – trafficking in human beings in the aim of unlawful marriage, with an underage girl as the victim. The indictment was raised on 22nd August 2022.

Two criminal reports against four accused persons are in the trial phase, with one minor and one adult being the victims.

Four cases or criminal offences which have not yet been adjudicated are still pending before the High Court in Podgorica, which means that the accused may not get de facto convicted.

■ The trial is ongoing for the case with the reference number from 2020 (the case was reported in March 2020), where an indictment was raised against an adult charged with the criminal offence of trafficking in human beings referred to in Article 444 (1) of the Criminal Code of Montenegro against an adult victim; the trial did not conclude by early November 2022.

■ The trial is ongoing for the case with the reference number from 2020 (the case was reported in June 2020), where the indictment was raised against an adult charged with the criminal offence of trafficking in human beings referred to in Article 444 (3) of the Criminal Code of Montenegro against a minor girl; the trial did not conclude by early November 2022.

In response to a request, the competent authority also delivered the information that a case involving one victim was in the classification stage at the Basic Prosecutor's Office in Podgorica. The Basic Court in Berane delivered information on a case that did not enable inference on the number of suspects and victims involved.

■ The trial is ongoing for the case with the reference number from 2021 (there is no information on the case reported by the CRI Nikšić, the indictment was raised in November 2021), in which the indictment was raised

against an adult charged with the criminal offence of trafficking in human beings referred to in Article 444 (3) of the Criminal Code of Montenegro against a minor; the trial did not conclude by early November 2022.

The case was not registered by CRI and was not included in this analysis.

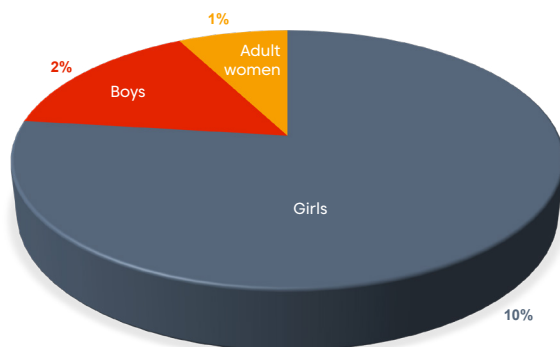
The case on trial before the Basic Court in Berane

The Basic Prosecutor’s Office in Berane submitted a bill of indictment against a person “of Roma nationality” – as stated in the letter – for the criminal offence referred to in Article 216 (1) of the Criminal Code of Montenegro – common-law marriage with a minor. The initials of the accused or the victim were not provided.

The case was not registered by CRI and was not included in this analysis.

Gender breakdown of the victims involved in the proceedings before the competent authorities:

Girls	10
Boys	2
Adult women	1



6. ADJUDICATED CASES

The number of adjudicated cases with the elements of the criminal offence of entering into unlawful / arranged child marriage is low. This is clearly confirmed by the data received in response to the request for free access to information of public importance under the jurisdiction of the Basic or High Courts in Montenegro.

Description of an adjudicated case: The first described case from 2020 stated that, at the beginning of 2020, CRI reported a suspected criminal offence of trafficking in human beings against a minor and an anonymous girl from Serbia aged 14 (please see the first case in Chapter 2). As inferred from the description of the case and the subsequent decision of the Basic Court in Nikšić, the perpetrator - the father of the boy, admitted the commission of the criminal offence from 216 of the Criminal Code of Montenegro – common-law marriage with a minor. He admitted that he used 5,000 euros that he got as a loan from a bank to “pay” the girl’s parents for her to live with his underage son from the 26th January 2020 to 10th March 2020. He justified the action by stating the custom in the Roma community whereby sons marry young girls at an early age in exchange for money, although he knew that, as stated in the court verdict, such actions were prohibited by the law and he was aware of his actions and was willing to engage in them. The father of the boy received a final conviction imposing on him a 45--day prison sentence in home detention and reimbursement of the legal costs in the amount of 30 euros. We believe that this decision is concerning, as it annuls ten years of progress in the process of suppressing unlawful marriages and sends a negative general message to society and the Roma community that arranging a child marriage and commission of multiple criminal offences could be sanctioned by a fine, suspended sentence or wearing the ankle tag at home. This represents a lenient sanctioning policy of the courts unproportional to the threat that these phenomena pose to society and discourages girls from reporting such criminal offences and standing up to their next of kin and other relatives.

Case study 4

Sanela, from the central region of Montenegro, 17 years of age

Sanela was placed in the shelter twice: the first time round she was 15 or 16 and spent some two months there, and the second time she was one month from turning 17. At the time when she was interviewed about those stays, Sanela had just turned 18. In one shelter, there were nine or ten children during her stay there, three of them boys. Sanela says that girls and boys had separate rooms in the shelter. There was no fruit or sweets in the shelter and her family kept bringing her food. There were instances when there was not enough space in the shelter, so all the beneficiaries stayed together, as each room had just three beds. One time when there were many beneficiaries in the shelter, they had to put their beds next to each other. The female beneficiaries were ashamed sometimes; she mentions as an example the situation when she had to sleep in her shorts during the summer and felt uncomfortable when sharing the room with the males. “When they placed me in the shelter for the first time, there was not enough space so I had to share the room with men. There were three of them in the room, me and another girl, and the carer said that it did not matter if we shared the room with men because we were all one family. When he punished us, we would complain about sharing the room with men because they were untidy. He used to punish me without a reason, so I had to share the room with men several times.” The carers used to put them in the same room with men as a form of punishment. The girls’ room only had 3 beds, and with seven girls sharing it they had to put their beds next to each other so they could all sleep on them. Sanela states that they had to clean the toilets as a punishment. The carers placed the list of chores on the cupboard so that they knew what they needed to do. “We were supposed to get up at 6:30 AM, have breakfast at 7:00 AM, and breakfast was always the same – bread, jam, nougat spread and rarely some sausages. We had to have our breakfast at 7 AM sharp, because they locked the kitchen after that. If we did not wake up at 6:30 AM, we would get punished by being made to skip lunch and eat only at dinner time. We would stay hungry the entire day.” Sanela says that, after breakfast, those who went to school studied and did their homework, and those who did not used to lay in bed all day or play cards with the deck the carers gave them. They would all go to sleep at 10 PM. They had a television set in the living room, but could not watch TV any time they wanted to: at one point the director even switched it off completely and they were not allowed to switch it on again. Sometimes they could use the laptop and play games, but some of the girls used it to access Instagram. The TV remained switched off until the end of her stay and they were not allowed to use the laptop. When staying with them, the carers spent their time on their mobile phones, no one got involved in

any interesting activities with them. “They used to leave us there alone and lock the door. When an employee’s mother took care of us, she would doze off and we could then make ourselves some coffee; once we took her phone and contacted our families via Instagram. We were not allowed to go out.”

Sanela states that during her first stay, she witnessed one girl who was punished by having her head shaved and another whose hair was cut short. She was also threatened her head would be shaved. Her second stay was even worse. “While I was there, the director would assault some of the victims: he often used to lock up one boy in the toilet and beat him there. He even slapped me once, because I joked with another girl about running away from the shelter. Someone told him that and he came from home very nervous, slapped me in front of everyone and yelled at the rest of us. Other beneficiaries and a social worker were present, three of them, but no one dared say anything. Whatever happened in the shelter, I was the one to blame. I used to cry all the time when I was there. I would not recommend anyone to go there.”

Case Study, CRI

7. CONCLUSION

The legal framework in Montenegro concerning unlawful marriages has gaps, identified in particular with regard to the necessary amendments of the Criminal Code and the Family Law to show less tolerance towards entry into common-law marriages and unlawful marriages. In line with its jurisdiction, the competent State Prosecutor's Office should instruct police officers, by issuing binding orders and instructions, to share the available information during preliminary investigation and to collect additional information from citizens; the Prosecution Service should also order the implementation of other evidentiary actions during preliminary investigation and undertake other measures and actions with the support of other professionals.

Current practice suggests that State Prosecution Service and the state administration authority competent for internal affairs are not implementing all the available evidentiary measures and actions, such as:

- Secret surveillance measures;
- Tracking the origin of money in cases involving illicit financial gain;
- Interviewing any available witnesses, launching calls or sending requests to INTERPOL.

On the other hand, there is a general bad practice of interviewing only one parent (the father, for example) or another person who acted as an accomplice in the criminal offence (transporting or aiding illegal transfer across state border) as members of the public or suspects; yet not the instigators, i.e. those persons who incite the commission of the criminal offence in their capacity as "council of elders" (uncle, godfather, grandfather, neighbour, etc.) by negotiating the price of the arranged marriage with the families and consent to and resolve any subsequent misunderstandings.

A general concern, in terms of the analysis of cases handled by the relevant Prosecution Offices, is the large share of reports dismissed during the stage of preliminary investigation, i.e. early stage in the criminal proceedings. An additional cause for concern is the excessive length of the processes from the start of the investigation to the start of the trial, as that takes one or two or even several years. The competent state prosecutors sometimes classify a suspected case of trafficking in human beings as another criminal offence, even when the accused has admitted to having taken the money.

The analysis shows that for some criminal reports indictments were not confirmed, which in principle means that such criminal reports may get dismissed; that would increase the number of dismissed cases covered by this analysis. In general, it is evident that all stages in the proceedings take too long or that the legal principle of urgency is not applied; that often results in the girls changing their statements, returning to their families and the community that pressure them into retracting, gradually losing interest in truth with time.

As the reintegration cases discussed above suggest, there is a lack of adequate

shelters and victim reintegration programmes. The victims covered by this analysis largely stayed at the shelter for human trafficking victims, which did not have sufficient accommodation capacity and did not have or did not implement reintegration programmes for victims of arranged child marriages. Due to faulty assessment of the relevant institutions, some of the victims were even placed in the same shelter as the perpetrator and resumed their common-law marriage during their stay.

It is worrying that arranged marriages in the Roma and Egyptian communities tend to be reported only after some time has already lapsed and presented as if the girl left the home of her own will. There are two aspects to this – the situation where the parents may be dissatisfied with how the agreed exchange of money went on, and the situation where they wish to circumvent the legal provision in order to avoid responsibility for the committed offence.

The analysis also shows the presence of significant gender inequality between female and male children in arranged child marriages, suggesting the presence of patriarchy that still predominates in the Roma and Egyptian community, denying the right to equality and leading to more gender-based violence.

RECOMMENDATIONS

■ It has been established once again that the legal age for entering into marriage without parental consent should be raised from 16 to 18 years of age, along with the need for the more precise provisions of the Criminal Code of Montenegro to specify the term of unlawful child marriage or, alternatively, prescribe a specific criminal offence that would reflect the actual danger this phenomenon poses to the society;

■ During preliminary investigation, the police and the competent state prosecutors should include some measures and actions related to secret surveillance, tracking the origin of money in cases involving illicit financial gain, interviewing witnesses or launching calls or sending requests to international police and prosecutorial organizations; the prosecutors' decisions on the reported cases must not take into account the customs of the Roma community; other forms of assistance through international judicial and police cooperation should be made use of;

■ When collecting information or interviewing suspects in the preliminary investigation process, additional persons should be interviewed - namely "council of elders" members and other possible witnesses, in addition to parents;

■ The cases of suspected arranged child marriage should generally involve the most urgent strong measures and actions that will enable expedient and efficient detection and prosecution of the perpetrators;

■ The cases with the elements of unlawful marriage should be addressed with maximum urgency from preliminary investigation to the beginning of the court proceeding;

■ Through the existing accredited training programmes, the professionals working in child and social protection, the police, the Prosecution Service, the courts and the NGOs should learn about the sociological, social and cultural systems operating in the community and the operations of the official institutions;

■ Besides adequate resocialization programmes, a special shelter should be set up for victims of arranged child marriages that may not operate within the facilities used by beneficiaries with various behaviour problems;

■ The reintegration programmes should be available in the language understood by the victims of arranged child marriages;

■ The institutions should pay special attention to the girls staying in the shelters and be mindful of the gender dimension; special premises must be designated for the girls so that they stay out of reach of the male beneficiaries;

■ Conditions should be provided in the shelters to prevent peer violence between the beneficiaries staying there.

