**RESPONSE BY THE REPUBLIC OF CROATIA**

**Call for input from the Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

 **f. What measures are in place to prevent slavery/exploitation in camp/refugee**

 **centre settings**?

The Criminal Code (Official Gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18 and 126/19) prescribes the criminal offense of slavery in Article 105, and the criminal offense of trafficking in human beings in Article 107 as follows:

Slavery

Article 105

(1) Whoever, in violation of the rules of international law, puts another in a position of slavery or a similar position or holds him/her in such a position, buys, sells, hands over to another or mediates in the purchase, sale or handing over of such a person, or incites another to sell his/her freedom or the freedom of the person he/she provides for or takes care of, shall be sentenced to imprisonment for a term of between one and ten years.

(2) Whoever transports people who are in a position of slavery or a position similar thereto,

shall be sentenced to imprisonment for a term of between six months and five years.

(3) Whoever commits the offence referred to in paragraphs 1 and 2 against a child, shall be sentenced to imprisonment for a term of between three and fifteen years.

Human trafficking

Article 106

(1) Whoever, by means of the use of force or threat, of deception, of fraud, of abduction, of abuse of authority or of a situation of hardship or dependence, or of the giving or receiving of payments or other benefits to achieve the consent of a person having control over another person or by any other means recruits, transports, transfers, harbours or receives a person, or exchanges or gives over control over a person for the purpose of exploiting his/her labour by means of forced labour or services, slavery or a relationship similar thereto, or for the purpose of exploitation of prostitution of the person or of other forms of sexual exploitation, including pornography, or of contracting an illicit or forced marriage, or of taking parts of the person's body or of using the person in armed conflicts or of committing an unlawful act shall be sentenced to imprisonment for a term of between one and ten years.

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever recruits, transports, transfers, harbours or receives a child, or exchanges or gives over control over a child for the purpose of exploiting his/her labour by means of forced labour or services, slavery or a relationship similar thereto, or for the purpose of exploitation of prostitution of the child or of other forms of sexual exploitation, including pornography, or of contracting an illicit or forced marriage, or of illegal adoption, or of taking parts of a child's body, or of using the child in armed conflicts.

(3) If the criminal offence referred to in paragraph 1 of this Article was committed against a child or the criminal offence referred to in paragraphs 1 or 2 of this Article was committed by a public official in the performance of the duties of his/her office, or the said offence was committed against a great number of persons or the life of one or more persons was consciously put at risk, the perpetrator shall be sentenced to imprisonment for a term of between three and fifteen years.

(4) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever, knowing that a person is a victim of trafficking in persons, uses the said person's services which are the result of one of the forms of his/her exploitation set forth in paragraphs 1 and 2 of this Article.

(5) Whoever, with the aim of enabling the commission of offences set forth in paragraphs 1, 2 and 3 of this Article retains, seizes of possession, conceals, defaces or destroys another person's travel document or identification document, shall be sentenced to imprisonment for a term of up to three years.

(6) A perpetrator who attempts to commit the criminal offence referred to in paragraph 5 of this Article shall be punished.

(7) The consent of the very person who is the victim of trafficking in persons to exploitation shall be irrelevant to the existence of this criminal offence..

With regard to persons residing illegally in the territory of the Republic of Croatia, criminal protection is further ensured by prescribing the criminal offense of illegal employment in Article 135 of the Criminal Code.

Illegal employment

Article 135

Whoever employs a person who is illegally residing in the territory of the Republic of Croatia, which person is neither a citizen of an EU Member State nor enjoys the right of free movement in the European Union, in working conditions characterised by exploitation or knowing that the person is a victim of trafficking in persons, or that he/she is under the age of eighteen, or whoever over a long period of time or repeatedly employs such persons or simultaneously employs a great number of them shall be sentenced to imprisonment for a term of between six months and five years.

1. **For States which are parties to the Convention Relating to the Status of Refugees 1951 and the Convention Relating to the Status of Stateless Persons 1954, are refugees and Stateless persons granted the same treatment in relation to, for example, remuneration, hours of work, overtime arrangements, annual leave, collective bargaining and social security benefits in accordance with common Article 24? If not, why not?**

The Criminal Code in Chapter XII - Criminal offenses against labor relations and social insurance prescribes the criminal offense of non-payment of salary (Article 132) and the criminal offense of violation of social insurance rights (Article 134).

Non-payment of salary

Article 132

(1) Whoever fails to pay one or more workers salaries in full or in part shall be sentenced to imprisonment for a term of up to three years.

(2) The sentence referred to in paragraph 1 of this Article shall be imposed on whoever fails to provide information or provides incorrect information for the fixing of a salary and by doing so fails to pay the salary or pays it in part.

(3) There shall be no criminal offence referred to in paragraph 1 of this Article where the non-payment is the result of the impossibility to freely use funds in the employer's account or of the insufficiency of funds in the employer's account which did not come about in order to avoid the payment of salaries.

(4) Paragraph 3 of this Article shall not apply if the employer has not submitted a statement on non-payment of the due amount of salary in accordance with the provisions of a special act.

(5) If the perpetrator referred to in paragraph 1 of this Article pays the salaries due subsequently, he/she may be exempted from punishment.

(6) For the purpose of this Article, a salary shall mean the basic salary and any other consideration, whether in cash or in kind, which the worker receives in respect of his/her employment, in gross amount, including contributions from and on the salary according to a special regulation.

Violation of Social Insurance Rights

Article 134

Whoever denies another a pension, health or unemployment insurance right established by law or limits this right or withholds the payment of contributions for the employment of disabled persons, where this does not satisfy the elements of another criminal offence shall be sentenced to imprisonment for a term of up to one year.

1. **Are there mechanisms for ensuring that displaced persons victimized in contemporary forms of slavery can report such treatment without endangering their status or stay in the country**

All the offenses listed in the preceding questions are prosecuted ex officio. Pursuant to Article 204, paragraph 1 of the Criminal Procedure Act (Official Gazette 152/08, 76/09, 80/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17 and 126/19) everyone is obliged to report a criminal offense for which the procedure is initiated ex officio, and which has been reported to him/her or which he/she has learned about.

1. **Do displaced persons victimised by contemporary forms of slavery have effective access to justice, remedies and compensation? What barriers are encountered in practice? Are such remedies available even if/after the individual has returned to their country of origin?**

Pursuant to Article 43 of the Criminal Procedure Act, which prescribes a general catalog of victims' rights, a victim of a criminal offense has:

1) the right to access services for the support of criminal offenses victims,

2) the right to effective psychological and other professional assistance and support from a body, organization or institution providing assistance to victims of criminal offenses in accordance with the law,

3) the right to protection from intimidation and retaliation,

4) the right to protection of dignity during the examination of the victim as a witness,

5) the right to be heard without undue delay after the filing of a criminal charge and for further hearings to be conducted only to the extent necessary for the purposes of criminal proceedings,

6) the right to be accompanied by a person of trust in taking actions in which he/she participates,

7) the right to have medical procedures performed on the victim to the least extent and only if they are absolutely necessary for the purposes of criminal proceedings,

8) the right to file a motion for prosecution and a private lawsuit in accordance with the provisions of the Criminal Code, the right to participate in criminal proceedings as an injured party, the right to be notified of the rejection of a criminal report and the withdrawal of prosecution and the right to take over prosecution.

9) the right to be notified by the State Attorney of the actions taken regarding his/her report and to submit a complaint to the Senior State Attorney,

10) the right, at his/her request, to be informed without undue delay about the termination of custody or pre-trial detention, the escape of the defendant and the release of a convict from serving a prison sentence, and the measures taken to protect him/her,

11) the right to be informed at his/her request of any decision terminating criminal proceedings,

12) other rights prescribed by law.

If a victim of a criminal offense punishable by imprisonment for a term exceeding five years, suffers more serious consequences of a criminal offense, when submitting a property claim he/she is entitled to the professional assistance by counselors at the expense of budgetary funds.

A victim of a violent crime committed with intent has the right to financial compensation from the state budget in accordance with a special law. If the victim has previously obtained a property claim, its amount will be taken into account when determining the monetary compensation, and the court will do the same when awarding the property claim if the victim has previously obtained a financial compensation from the state budget.

The court, the state attorney's office, the investigator and the police are obliged to inform the victim in an understandable way about his/her rights when taking the first action in which he/she participates. In doing so, they will treat the victim with consideration and make sure that the victim understands the given notice of rights. The victim will also be instructed, in an understandable way, about the meaning of participating in the proceedings as an injured party.

Prior to the victims’ examination, the body conducting the examination shall, in cooperation with the bodies, organizations or institutions for assistance and support to victims of crime, conduct an individual assessment of the victim. The individual assessment of the victim includes determining whether there is a need for special protection measures in relation to the victim and, if so, which special protection measures should be applied (special method of examining the victim, use of communication technologies to avoid visual contact with the perpetrator and other legal measures). When the victim of a criminal offense is a child, it will be assumed that there is a need to apply special protection measures and to determine which special protection measures should be applied.

In making an individual assessment of a victim, particular account shall be given to the personal characteristics of the victim, the type or nature of the offense and the circumstances in which the offense was committed. In doing so, special attention is paid to victims who have suffered significant damage due to the gravity of the crime, victims of a crime committed due to a personal characteristic of the victim, and victims whose relationship with the perpetrator makes them particularly vulnerable. The individual assessment of the victim appropriately includes, in particular, victims of terrorism, organized crime, trafficking in human beings, gender-based violence, intimate partner violence, sexual violence and sexual exploitation or hate crimes, and victims with disabilities.

The individual assessment of the victim is carried out with the victims’ participation and taking into account his/her wishes, including the desire not to use special protection measures prescribed by law.

The body conducting the procedure shall reduce the number of examinations of the victim for whom a special need for protection has been determined to a minimum.

Certain categories of victims are prescribed additional rights by Article 44 of the Criminal Procedure Code. Accordingly, the victim of the criminal offense of trafficking in human beings also has the right to:

1) talk to the advisor before the examination, at the expense of the budget,

2) to the proxy at the expense of budgetary funds,

3) to be interrogated by a person of the same sex at the police station and the State Attorney's Office and, if possible, to be interrogated by the same person in case of re-interrogation,

4) refuse to answer questions that are not related to the criminal offense, but to the strictly personal life of the victim,

5) require to be tested via audio-video devices,

6) the confidentiality of personal data,

7) request the exclusion of the public from the hearing.

The victim in relation to whom special protection needs have been identified also has the right to:

1) before the examination, talk to the advisor, at the expense of the budget,

2) to be interrogated by a person of the same sex at the police station and the State Attorney's Office and, if possible, to be interrogated by the same person in case of re-interrogation,

3) refuse to answer questions that are not related to the criminal offense, and relate to the strictly personal life of the victim,

4) require to be tested via audio-video devices,

5) the confidentiality of personal data,

6) request the exclusion of the public from the hearing.

1. **What mechanisms are in place to hold businesses, employers and criminals who Engage in exploitation of displaced persons accountable in your country?**

Prescribing the criminal offenses of slavery (Article 105 of the Criminal Code), trafficking in human beings (Article 106 of the Criminal Code) and illegal employment (Article 135 of the Criminal Code) ensures that persons who satisfy their elements are held accountable in criminal proceedings, that criminal liability may be established and a criminal sanction is imposed.

Also, see the answer to question 1.f).

The Law on Liability of Legal Entities for Criminal Offenses (Official Gazette 151/03, 110/07, 45/11 and 143/12) ensures that legal entities may, under the conditions prescribed by the aforementioned regulation, be liable for criminal offenses. A legal person shall be punished for a criminal offense committed by a responsible person if this offense violates a duty of a legal person or by which the legal person has achieved or should have obtained an illegal property gain for itself or another. Under these conditions, a legal person shall be punished for criminal offenses prescribed by the Criminal Code and other laws which prescribe criminal offenses. The liability of a legal person is based on the guilt of the responsible person. The responsible person is a natural person who manages the affairs of a legal entity or is entrusted with the performance of activities in the field of activity of a legal entity.

Article 22 of the Criminal Code prescribes necessity, which, depending on the circumstances, may constitute a ground for exclusion of unlawfulness or a ground for exclusion of guilt, as follows:

Necessity

Article 22

(1) An act committed in order to avert from oneself or from another a coinciding danger which could not have been averted in any other way, provided that the harm resulting therefrom does not exceed the harm threatened, shall not be considered unlawful.

(2) Whoever commits an unlawful act in order to avert from himself/herself or from another a coinciding danger not brought on by himself/herself, which danger could not have been averted in any other way, provided that the resulting harm was not disproportionately greater than the harm threatened and that he/she was not required to expose himself/herself to the danger, shall not be guilty. If such a person was required to expose himself/herself to the danger, he/she may be punished less severely.

(3) If the perpetrator was under an avoidable delusion about the circumstances referred to in paragraph 2 of this Article which exclude guilt, he/she shall be punished according to the rules on negligence where the law prescribes punishment for the commission of an offence by negligence.