

# **Comparative Analysis of Legal and Policy Frameworks on Trafficking in Human Beings: Addressing current issues in the OSCE area**

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**Research Report:**

**Comparative Analysis of Legal  
and Policy Frameworks on  
Trafficking in Human Beings:  
Addressing current issues in the  
OSCE area**

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## **SECTION 1**



## INTRODUCTION

The fight against human trafficking, particularly in the context of persons with disabilities, is a complex and multifaceted issue that spans across various legal jurisdictions. The Organization for Security and Co-operation in Europe (OSCE) has been at the forefront of addressing this issue, aiming to enhance the legal frameworks of its participating states to provide better protection for vulnerable populations, including persons with disabilities. This research seeks to understand how different OSCE participating states handle the requirement of proof of means in human trafficking cases involving persons with disabilities and whether disability is considered an aggravating factor in these and other crimes.

Human trafficking, as defined under international law, comprises three essential elements: the act, the means, and the purpose. The “means” element refers to the methods used by traffickers to control and exploit their victims, including coercion, deception, force, threat, or fraud. However, the legal requirement to prove these means varies significantly across different jurisdictions, particularly when the victims have a disability.

In many OSCE participating states, general trafficking laws apply to all individuals without specific articles for persons with disabilities. This approach can be problematic as it does not account for the unique vulnerabilities and circumstances of disabled individuals. Some countries recognize disability as an aggravating factor for specific crimes (including human trafficking offenses), enhancing penalties for perpetrators who exploit disabled victims,

while others do not have such provisions, potentially leaving gaps in legal protection. For example, in Belgium, the criminal offense of human trafficking does not require proof of means but considers such means as aggravating circumstances, especially in cases involving persons with disabilities. Similarly, Finland does not require proof of means in trafficking cases involving minors, reflecting a more protective stance towards vulnerable populations. Hungary, Montenegro, and Serbia also have specific provisions where proof of means is not essential if the victim is a minor, highlighting a trend towards making it easier to prove cases involving particularly vulnerable groups. In contrast, the criminal codes of some countries explicitly list disability as a circumstance of aggravation, emphasizing the heightened vulnerability of disabled individuals. Taking Eastern Europe as an example, the Czech Republic and Estonia include provisions that consider the exploitation of a person's vulnerability due to disability as an aggravating factor, although they do not always distinguish between physical and mental disabilities. Latvia and Lithuania use broad terms like "helpless state" to encompass various forms of disabilities, while Moldova explicitly mentions physical and mental handicaps as aggravating circumstances, providing a more inclusive legal framework. Moreover, countries like France and Italy have detailed provisions that recognize the particular vulnerability of disabled victims in various offenses, including human trafficking, sexual harassment, and torture. These legal frameworks often require that the vulnerability be "apparent or known" to the perpetrator, a criterion that can sometimes be challenging to prove but underscores the need for awareness and recognition of disability in criminal offenses.

On the other hand, some OSCE participating states do not explicitly list disability as an aggravating factor in their criminal codes. For instance, Belarus and Bulgaria's criminal codes focus on general principles of legality and equality before the law without specific mention of disability as an aggravating circumstance. Similarly, countries like Poland and Slovakia have vague or nonexistent

listings of aggravating circumstances related to disabilities, which can result in insufficient legal protection for disabled individuals.

The absence of specific legal provisions addressing the vulnerability of disabled persons in human trafficking cases can have significant implications. It often means that the unique challenges faced by disabled victims are not adequately recognized or addressed within the legal system, potentially leading to lighter sentences for perpetrators and inadequate support for victims. The variation in legal approaches across OSCE participating states highlights the need for a more inclusive legal framework that adequately protects persons with disabilities from human trafficking. Recognizing disability as an aggravating factor and easing the proof requirements for means in trafficking cases can significantly enhance the protection and support for disabled victims. This research underscores the importance of continuous legal reforms and international cooperation to ensure that the rights and vulnerabilities of disabled individuals are adequately addressed in the fight against human trafficking.



## **In which OSCE participating states does the criminal code/national legislation not require proof of means in cases of trafficking of persons with disabilities?**

The crime of human trafficking has three elements: **act**, **means**, and **purpose**. The element of **means** explains how victims of human trafficking are transported. Traffickers use coercion, deception, force, threat, or fraud to traffic people from one place to another. OSCE participating states have applied general trafficking laws that do not include specific clauses for persons with disabilities but instead cover all individuals. In these jurisdictions, the standard proof of **means** applies equally to persons with disabilities as it does to other victims. However, some countries consider disability an aggravating factor in the offence of human trafficking, while others have specific provisions recognizing the increased vulnerability of persons with disabilities, though these provisions do not specifically address cases of human trafficking. Most OSCE participating states require proof of **means** for a case to be considered human trafficking. However, for some, it is not essential to prove the element of **means**. Below are some examples of countries that do not require proof of **means** in cases of trafficking in human beings.

### **a) Belgium**

The criminal offence of human trafficking under Belgian law only requires two constituent elements, as stated in Article

433quinquies of the Criminal Code<sup>1</sup>, ‘Coercive Means’ are not an essential component of the criminal offence of human trafficking under Belgian law but rather operate as aggravating circumstances in cases involving persons with disabilities.<sup>2</sup>

### **b) Finland**

Proof of the element of means is not essential in Finland in cases involving persons under the age of 18. Section 3(2) of the Criminal Code states that a person who takes control of another person under 18 years of age, or who recruits, transfers, transports, receives, or harbours that person for the purposes mentioned in subsection 1, shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1)–(4) have been used. Furthermore, according to Section 3(a), if it is proven that any means such as violence, threats, or deceitfulness are used instead of or in addition to the means referred to in Section 3, then that constitutes an aggravating factor for the offence of human trafficking.<sup>3</sup>

### **c) Hungary**

Similarly, in Hungary, the element of means acts as an aggravating factor for the offence of trafficking in human beings according to Article 192(3) of the Criminal Code, which states that the penalty shall be imprisonment for between two and eight years if trafficking in human beings is committed: a) against a

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<sup>1</sup> Article 433quinquies of the Criminal Code of the French Republic (1867, as Amended up to 2007).

<sup>2</sup> “Belgium - European Commission.” [https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/belgium\\_en](https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/belgium_en)

<sup>3</sup> 3 The Criminal Code of Finland (39/1889, amendments up to 927/2012 included 650/2004).

person held in captivity; b) by force or threat of force; or c) by deception.<sup>4</sup>

#### **d) Montenegro**

In Montenegro, the only exception to the requirement for proof of means in cases of human trafficking is when the offence is committed against minors, as provided in Article 444 (2). This article states that ‘the offence set forth in paragraph 1 of Article 444 of the criminal code shall be deemed committed against a minor even if the perpetrator did not use force, threat, or any other of the aforementioned methods of commission.’<sup>5</sup>

#### **e) Serbia**

Proof of means is not required when the offence is committed against a juvenile in Serbia. Article 388 (2) of the Criminal Code states that when the offence of human trafficking referred to in paragraph 1 of this Article is committed against a juvenile, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat, or any of the other mentioned methods of perpetration.<sup>6</sup>

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<sup>4</sup> Hungary Act C of 2012 on the Criminal Code.

<sup>5</sup> Article 444(2) of the Republic of Montenegro; Official Gazette of the Republic Montenegro 70/2003, 13/2004, 47/2006 and Official Gazette of Montenegro 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017 and 49/2018.

<sup>6</sup> Serbia CRIMINAL CODE (Official Gazette of the RS, Nos. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009).



**In which OSCE participating state does the criminal code/national legislation list disability/being disabled as a circumstance of aggravation? Do any examples distinguish between disabilities of a physical or mental nature?**

## **1. EASTERN EUROPE AND THE BALTIC STATES**

### ***1.1 Countries that do list disability as a circumstance of aggravation***

#### **a) Czech Republic**

The criminal code of Czech Republic has a long list of aggravating circumstances, out of which only articles d and h are related to what this research seeks to discover. Under Division 2 and Section 42 titled aggravating circumstances of the Czech Republic criminal code; article (d), stated that “committed the criminal offence by exploiting another person’s distress, duress, vulnerability, dependence or subordination” and article (h) showcased that “committed the criminal offence to the harm of a child, close person, person pregnant, ill, disabled, of high age or impuissant”. These two articles widely listed various categories of disability

without making any specific distinction between physical and mental disability.<sup>1</sup>

### **b) Estonia**

Article 58 of Division 4, under Chapter 3 of the Estonian Penal Code; presented a list of aggravating circumstances. Number 3 of article 58 stated that: “commission of the offence knowingly against a person who is less than eighteen years of age, pregnant, in an advanced age, in need of assistance or has a severe mental disorder”. The Estonia penal code has specifically mentioned about a person “in need of assistance or has a severe mental disorder” but didn’t mention physically disabled person. However, one could rely on the statement which says “in need of assistance” to include physically disabled persons.<sup>2</sup>

### **c) Latvia**

Latvia’s criminal code contains a long list of aggravating circumstances but from what is observed there has not been significant mentioning and categorization of disabilities. For instance, Section 48 of the Latvian Criminal Code states in article (6) “the criminal offence was committed against a person who has not attained eighteen years of age or against a person by taking advantage of his or her condition of helplessness or of infirmity due to old-age”. This article has not explicitly mentioned the term disability neither does it differentiate between physical and mental disabilities. The factors mentioned are; a person less than 18 years of age, under a condition of helplessness or infirmity due to old-age.

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<sup>1</sup> Criminal Code of the Czech Republic, 40/2009 Coll OHCHR.ORG (2009), [https://adsdatabase.ohchr.org/IssueLibrary/CZECH%20REPUBLIC\\_Criminal%20Code.pdf](https://adsdatabase.ohchr.org/IssueLibrary/CZECH%20REPUBLIC_Criminal%20Code.pdf)

<sup>2</sup> Estonian Penal Code, RT I 2001, 61, 364 Riigi Teataja (2001), <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

And this has not specifically captured the handicapped, blind or mentally ill persons.<sup>3</sup>

#### **d) Lithuania**

Like the other states, the Republic of Lithuania criminal code has not made a specific distinction between physical and mental disabilities. These two factors are somehow treated under the same circumstance for instance by using the words “illness”, “disability”, and phrases like “old age or for other reasons” and “helpless state”. Quoting from the criminal code; Chapter VIII (IMPOSITION OF A PENALTY), Article 60 titled Aggravating Circumstances and paragraph (6), states that “the act has been committed against a person who, due to an illness, disability, old age or for other reasons, was in a helpless state, without his request, or the act has been committed against a minor taking advantage of his dependency or through abuse of trust, authority or influence. This is considered a very inclusive statement that potentially includes almost all forms of disabilities, but doesn’t distinguish between physically and mentally disabled persons.<sup>4</sup>

#### **e) Moldova**

The Moldovan criminal code has to some extent come closer to the second part of the research question by mentioning both physical and mental handicap, which couldn’t be found in criminal codes of the other states. Chapter 8 titled (SPECIFYING PUNISHMENT), under Article 77 (Aggravating Circumstances) and sub-section (e) reads that “the commission of a crime against a person known to be under 14 years of age or against a pregnant woman or by taking ad-

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<sup>3</sup> Latvian Criminal Code, No.199/200 LIKUMI (1998), <https://www.vestnesis.lv/ta/id/88966-kriminallikums>

<sup>4</sup> Republic of Lithuania Criminal Code, No VIII-1968 UNODC (2000), [https://sherloc.unodc.org/cld/uploads/res/document/ltu/criminal\\_code\\_of\\_lithuania\\_html/Lithuania\\_Criminal\\_Code\\_2000\\_as\\_amd\\_2010.pdf](https://sherloc.unodc.org/cld/uploads/res/document/ltu/criminal_code_of_lithuania_html/Lithuania_Criminal_Code_2000_as_amd_2010.pdf)

vantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap, or another factor". The Criminal Code of Moldova is inclusive, considering the fact that it distinctly mentioned several forms of disabilities that are considered as aggravating circumstances.<sup>5</sup>

#### **f) Romania**

Similar to the Polish criminal code, the Romanian criminal code is not specific on the listing of aggravating circumstances, neither does it make any distinction on mental and physical disabilities. Article 89 of the Romanian criminal code inadequately forwarded that "commission of the offence against a person who is unable to defend him/herself or to express his/her will, against a minor under the age of 15 or against family members". And this is a manifestation of the lack legal protection of persons with disability.<sup>6</sup>

#### **g) Russia**

The Russian criminal code is similar to most of the Eastern European and the Baltic States dealt with in this research, there is no distinction between mental and physical disabilities. Moreover, the listing related to disabilities as capture in the Russian criminal code would be considered insufficient. For example, as stated under Art 63 of the Russian Criminal Code, titled Circumstances Aggravating Punishment, it said under subsection (h), "commission of a crime against a woman who is obviously in a state of pregnancy, or against

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<sup>5</sup> The Criminal Code of the Republic of Moldova, No. 985-XV UNODC.ORG (2002), [https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova\\_html/Republic\\_of\\_Moldova\\_Criminal\\_Code.pdf](https://sherloc.unodc.org/cld/uploads/res/document/criminal-code-of-the-republic-of-moldova_html/Republic_of_Moldova_Criminal_Code.pdf)

<sup>6</sup> The Romanian Criminal Code, #286/2009 LESGISLATIONLINE (2012), [https://www.vertic.org/media/National%20Legislation/Romania/RO\\_Criminal\\_Code.pdf](https://www.vertic.org/media/National%20Legislation/Romania/RO_Criminal_Code.pdf)

a minor, another defenceless or helpless person, or a person who is dependent on the guilty person”. However, it is assumed that the phrases; “another defenceless or helpless person” includes mentally, physically, visually retarded persons.<sup>7</sup>

## **h) Ukraine**

The Ukrainian Criminal Code recognizes disability as an aggravating circumstance in certain situations. But like other countries criminal codes mentioned in this research, the Ukrainian criminal code does not distinguish in any way between mental and physical disability. Circumstances of aggravation are listed under Article 67 (Circumstances Aggravating Punishment) of the Ukrainian Criminal Code; under the said article varieties of listing mentioned different forms of disabilities, for example; subparagraph(s), (6) the commission of an offense against a minor, an elderly or helpless person; (7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant; and (9) the commission of an offense through the use of a minor, a person of unsound mind or mentally defective person.<sup>8</sup>

Interestingly, paragraph 2 of Article 67 of the Ukrainian Criminal Code asserts that (2) “Depending on the nature of an offense committed, a court may find any of the circumstances specified in paragraph 1 of this Article, other than those defined in subparagraph (2), (6), (7), (9), (10), and (12), not to be aggravating, and should provide the reasons for this decision in its judgment”. For instance, when a court imposes a sentence for an offense related to sexual exploitation, it must consider the fact that the victim of the offense is a person with a mental or physical disability as an aggravating circumstance.

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<sup>7</sup> The Criminal Code of the Russian Federation, NO. 63-FZ WIPO.INT (1996), <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ru/ru006en.pdf>

<sup>8</sup> Criminal Code of Ukraine, No. 2341-III CIS.LEGISLATION (2001), [https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/criminal\\_code\\_0.pdf](https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/criminal_code_0.pdf)

## ***1.2 Countries that do not list disability as a circumstance of aggravation***

### **a) Belarus**

The Belarusian Criminal Code does not specifically list disability as a circumstance of aggravation. However, it's important to note that criminal liability in Belarus is based on several principles, including legality, equality before the law, and inevitability of responsibility, personal guilty liability, justice, and humanity. These principles ensure that individuals are held accountable for their actions based on their intent or negligence, regardless of their personal characteristics or circumstances.<sup>9</sup>

### **b) Bulgaria**

Like, in the Belarusian criminal Code, in the Bulgarian Criminal Code, disability is not explicitly listed as a circumstance of aggravation. The code primarily focuses on defining criminal offenses, penalties, and procedural rule.<sup>10</sup>

### **c) Hungary**

The Hungarian criminal Code does not have any sort of listings of aggravating circumstance like other states. However, Chapter 21 titled "Crimes Against Human Dignity and Fundamental Rights" specifically under Section 225 named "Degrading Treatment of

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<sup>9</sup> Criminal code of the Republic of Belarus, No. 275-Z Document from CIS Legislation database © 2003-2023 SojuzPravoInform LLC (1999), [https://ecojurisprudence.org/wp-content/uploads/2022/02/Belarus\\_-Criminal-Code-Belarus\\_236-1.pdf](https://ecojurisprudence.org/wp-content/uploads/2022/02/Belarus_-Criminal-Code-Belarus_236-1.pdf)

<sup>10</sup> Bulgarian Criminal Code, No. 26/2.04.1968 CMS (1999), [https://www.cms.int/sites/default/files/document/cms\\_nlp\\_bgr\\_criminal\\_code\\_1968.pdf](https://www.cms.int/sites/default/files/document/cms_nlp_bgr_criminal_code_1968.pdf)

Vulnerable Persons” has presented some factors in relation to vulnerable persons. For example, Article 1 of Section 255 states that “Any person who exhorts person by exploiting his vulnerability to engage in conduct to humiliate himself is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offense”.

The failure to list disability as a circumstance of aggravation can negatively impact the lives of disabled people. Because it shows that, disabled persons are not legally protected. Below is a perfect example of case of a disabled person published on the Amnesty International website; wherein, one appeal court suspended a prison sentence for rape on the grounds that a child had not been able to prove that she did not physically resist for fear of her attacker.<sup>11</sup>

“Barbara was 15, had epilepsy and a learning disability, when she was raped by a 40-year-old man. He was sentenced to three-and-a-half years in prison, but on appeal his sentence was suspended and reduced. The appeal court ruled that physical violence “could not be established without doubt from her testimony, but only from that of the psychiatric specialist, who gave the opinion that the determined manner of the perpetrator, and his superior strength, restrained her from defending herself effectively.”<sup>12</sup>

#### **d) Poland**

Like the Hungarian Criminal, the Polish criminal code is quite vague in the manner in which it handles conditions or circumstances of aggravation. It basically does not provide any sort of listing of aggravating circumstances. However, from what it is understood it is left to the court to determine aggravating circumstances. For

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<sup>11</sup> Criminal Code of Hungary, Act C of 2012 UNHCR & refworld (2012), <https://www.refworld.org/legal/legislation/natlegbod/2012/en/78046>

<sup>12</sup> Amnesty International, Hungary Cries unheard, The failure to protect women from rape and sexual violence in the home, p3, (2007), <https://www.liberties.eu/en/stories/polish-government-insufficient-consideration-has-been-given-to-the-opinion-of-people-with-intellectual-disabilities/11243>

instance, Article 57 titled Mitigating and Aggravating grounds of the Polish criminal code indicates under subsection (1) if there are several independent grounds for the extraordinary mitigation or aggravation of a penalty, the court may mitigate or aggravate the penalty only once, having considered all the mitigating or aggravating grounds.<sup>13</sup>

The case of a mentally disabled person published on the web page of Liberties.eu manifested how disabled people lacked legal protection in Poland. The victim alias M.P. suffers from mental disability and he is assisted by a psychologist. M.P.'s mother noticed blood on his body and his behaviour was different after returning from one of his sessions. As a result, his family filed a criminal case in domestic courts, but the proceedings ultimately ended in the therapist's acquittal. The main reason of this decision was the fact that the courts found the testimony of the victim unreliable due to the state of his mental health. This evidently showed the lack of protection of disabled persons.<sup>14</sup>

#### **e) Slovakia**

The Slovakian Criminal Code under its list of aggravating circumstances does not actually contain anything that is related to any condition of disability. In that case, the Slovakian Criminal Code does not consider disability as an aggravating circumstance. According to the code, the circumstance that constitutes the statutory element of a criminal offense may not be considered as a mitigating circumstance, an aggravating circumstance, the circumstance warranting a lower than minimum statutory penalty, or the

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<sup>13</sup> Criminal Code of the Republic of Poland, Nr 88, poz. 553 LEGISLATIONLINE (1997), [https://legislationline.org/sites/default/files/documents/f6/Polish%20CPC%201997\\_am%202003\\_en.pdf](https://legislationline.org/sites/default/files/documents/f6/Polish%20CPC%201997_am%202003_en.pdf)

<sup>14</sup> M.P vs Poland, Helsinki Foundation for Human Rights, Poland Admits Violating the Rights of an Intellectually Disabled Person, (2017), <https://www.liberties.eu/en/stories/polish-government-insufficient-consideration-has-been-given-to-the-opinion-of-people-with-intellectual-disabilities/11243>

circumstance warranting a higher penalty. Therefore, disability is not explicitly listed as an aggravating factor in the Slovakian criminal legal framework.<sup>15</sup>

## 2. WESTERN EUROPE

### *2.1 Countries that do list disability as a circumstance of aggravation*

#### **a) Austria**

In Austria, criminal acts targeting individuals with disabilities are commonly regarded as aggravating factors. Sections 33(1) 5,7 and 33(2)4 of the Criminal Code outline ‘special aggravating circumstances’, including hate crimes and offences perpetrated against defenceless or helpless individuals.<sup>16</sup> Although the term ‘disability’ is not explicitly stated, actions directed at persons with disabilities appear to be considered aggravating circumstances, regardless of mental or physical impairment.

#### **b) Belgium**

The Act of 26 November 2011 amended the Belgian Criminal Code by extending criminal law protection of vulnerable persons against abuse. Within these amendments, ‘disabled persons’ were not specifically delineated as a distinct category. Therefore, penal-

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<sup>15</sup> Code of Criminal Procedure of the Slovak Republic, No. 301/2005 Coll LEGISLATIONLINE (2005), [https://legislationline.org/sites/default/files/documents/51/Slovakia\\_CPC\\_2005\\_excerpts\\_en.pdf](https://legislationline.org/sites/default/files/documents/51/Slovakia_CPC_2005_excerpts_en.pdf)

<sup>16</sup> “Criminal Code of the Republic of Austria (1974, as amended 2020) (English)”, Legislationline, <https://legislationline.org/sites/default/files/2023-09/criminal%20code%20of%20Austria%20%28German%29.pdf>

ties are increased if the offence is committed against disabled people, and the situation of vulnerability being established case by case for specific offences<sup>17</sup>. This includes hate crimes and violent acts (i.e., murder, injury, torture, or degrading treatment) when committed against a person “whose vulnerability due to [...] illness, infirmity, or physical or mental disability was evident or known to the perpetrator”<sup>18</sup>. Yet, in cases of sexual abuse, prostitution-related offences and human trafficking, the offender awareness of the victim’s condition does not constitute a prerequisite for prosecution.

### c) France

French criminal law recognises the victim’s vulnerability as an aggravating factor, defined as “a person whose particular vulnerability, due to [...] illness, infirmity, physical or mental disability [...] is apparent or known to the perpetrator”<sup>19</sup>. This formula applies to various offences in the Criminal Code, including those against physical and psychological integrity (i.e., torture), acts of violence (i.e., sexual harassment), offences against personal dignity (i.e., human trafficking). To be considered, vulnerability must be “particular” and “apparent or known” to the perpetrator. However, providing these criteria is often challenging, as illustrated by a 2010 ruling of the Criminal Division of the Court of Cassation.<sup>20</sup> In this case involving the exploitation of a person with Alzheimer’s, the Court

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<sup>17</sup> Lijnen, Nele. *Violence contre les personnes handicapées*. Session 2013-2014, Senate of Belgium, Written question no. 5-10354, answered on 10 March 2014, <https://www.senate.be/www/?MIval=Vragen/SVPrint&LEG=5&NR=10354&LANG=fr> (accessed on May 3, 2024).

<sup>18</sup> C.Pén. (Belg.), art 405bis (1), No. 1867-06-08/01, LEGISLATIONONLINE (1867, as amended 2021), [https://legislationline.org/sites/default/files/documents/6e/BELG\\_CC\\_fr.pdf](https://legislationline.org/sites/default/files/documents/6e/BELG_CC_fr.pdf)

<sup>19</sup> Code Pénal [C. pén.] [Penal Code] art.222-3(2) (Fr.), (as amended 2020), [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000033975327/2020-12-16](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000033975327/2020-12-16)

<sup>20</sup> Cour de cassation [Cass.] [supreme court for judicial matters] crim., Sept. 15, 2010, Bull. crim., No. 09-87.975 (Fr.), <https://www.legifrance.gouv.fr/juri/id/JURITEXT000022921451>

strictly applied the criteria for recognising vulnerability, since the defendant, at the time of the events, was unaware of the victim's vulnerability.<sup>21</sup> *Femmes pour le Dire Femmes pour Agir* association suggests that jurisprudential doctrine on protecting minor victims could be helpful, acknowledging a "presumption of vulnerability" for disabled victims.<sup>22</sup>

#### d) Germany

German criminal code mentions the disability of the victim as an aggravating circumstance for a number of specific crimes, including sexual abuses, torture, continued exercise of force and abuse/neglect by caregivers (professional and non-professional)<sup>23</sup>. The handicap must be such as to render the victim 'defenceless'.<sup>24</sup> In a 2019 Report by the Criminal Law Commission, it was recommended that broader sentences be ensured for these, to allow for a more accurate assessment of the severity of individual cases.<sup>25</sup> Finally, the latest round of monitoring by the Committee on the Rights of Persons with Disabilities revealed that despite its wealth of resources, still has to overcome the "ableist approach towards disability".<sup>26</sup> To this end, Germany was recommended to consult and actively involve these organisations in the reform programme.

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<sup>21</sup> *Ibidem*.

<sup>22</sup> F., Alice, *La Vulnérabilité Du Handicap Vue Par Le Code Pénal*. Écoute Violences Femmes Handicapées (2021). Accessed March 6, 2024. <https://ecoute-violences-femmes-handicapees.fr/wp-content/uploads/2021/02/La-vulnerabilite-du-handicap-vue-par-le-Code-penal-Alice-Falcon.pdf>.

<sup>23</sup> Strafgesetzbuch [StGB] [Penal Code] (Ger.), [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html).

<sup>24</sup> Strafgesetzbuch [StGB] [Penal Code] §92, §107b (3a) (1), §225 (3)(1).

<sup>25</sup> Task Force Strafrecht. *Task Force Strafrecht - Bericht Der Kommission Strafrecht* [Criminal Law Task Force - Report of the Criminal Law Commission]. Die Österreichische Justiz (January 15, 2019). [https://www.justiz.gv.at/file/2c94848a687ad8450168eba75b0c3538.de.0/bericht\\_kommission%20strafrecht\\_15.1.2019.pdf](https://www.justiz.gv.at/file/2c94848a687ad8450168eba75b0c3538.de.0/bericht_kommission%20strafrecht_15.1.2019.pdf)

<sup>26</sup> OHCHR. *Experts of the Committee on the Rights of Persons with Disabilities Welcome Germany's Increase in Social Benefits, Raise Questions on the Guardianship*

## e) Ireland

In Irish public policy, disabled individuals are often categorised as an ‘inherently vulnerable group’<sup>27</sup>, leading to specific aggravating circumstances. According to the Sentencing Guidelines and Information Committee, targeting a vulnerable victim in crimes like rape, robbery, defilement and burglary constitutes an aggravating factor.<sup>28</sup> In *People (DPP) v DO’D* is stated that the greater the victim’s mental impairment, and thus their vulnerability, the higher the offender’s culpability.<sup>29</sup> Since there is little case law on the matter, there is “no reason why a sentencing judge in Ireland could not regard the fact that the crime was committed against a person with a disability as an aggravating factor.”<sup>30</sup> However, it’s worth noting that there’s no obligation for a court to consider it as an aggravating factor either.<sup>31</sup>

## f) Italy

In the Italian Criminal Code, penalties are heightened when crimes target individuals with “physical, mental, or sensory handi-

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*Law and Coercion in Psychiatric Facilities*. UN Office of the High Commissioner (August 30, 2023). <https://www.ohchr.org/en/news/2023/08/experts-committee-rights-persons-disabilities-welcome-germanys-increase-social>.

<sup>27</sup> Haynes, Amanda, and Jennifer Shweppe. Rep. *Lifecycle of a Hate Crime. Country Report for Ireland*. Dublin, Ireland: Irish Council for Civil Liberties (ICCL) (2017). <https://www.iccl.ie/wp-content/uploads/2018/04/Life-Cycle-of-a-Hate-Crime-Country-Report-for-Ireland.pdf>

<sup>28</sup> *Sentencing Guidelines and Information Committee - Sentencing Guidance for the General Public*. The Judicial Council (2022). <https://judicialcouncil.ie/assets/uploads/Sentence-Information-the-General-Public.pdf>.

<sup>29</sup> Haynes, Amanda, and Jennifer Shweppe. Rep. *Lifecycle of a Hate Crime. Country Report for Ireland* (2017).

<sup>30</sup> Kilcommins, Shane, Claire Edwards, and Tina O’Sullivan. *An International Review of Legal Provisions and Supports for People with Disabilities as Victims of Crime*. Irish Council for Civil Liberties, November 2, 2017. <https://www.iccl.ie/resources/an-international-review-of-legal-provisions-and-supports-for-people-with-disabilities-as-victims-of-crime/>.

<sup>31</sup> *Ibidem*.

cap”.<sup>32</sup> Article 36 of Law 104/1992 provides for a special aggravating circumstance, with special effect, leading to an increase - from one third to one half of the criminal sanctions for offences spanning from obscene acts to all offenses categorised as crimes against the person, crimes against property, and recruitment, aiding and abetting, exploitation of prostitution.<sup>33</sup> Moreover, Article 61(1)(5) of the Criminal Code introduces the concept of ‘diminished defence’ as a common aggravating circumstance. This occurs when the perpetrator exploits situational factors, including time, place, person, and age, to impede the victim’s ability to defend themselves publicly or privately.<sup>34</sup> Jurisprudence uniformly asserts that for this principle to apply, it is crucial that the objective conditions exist, and the perpetrator is not only aware of them but also intentionally exploits them<sup>35</sup>.

### **g) Liechtenstein**

Liechtenstein’s Criminal Code, under section 33, addresses “special aggravating circumstances.” Disability is explicitly considered an aggravating factor only when victims are targeted due to their affiliation with this group (i.e., hate crime)<sup>36</sup>. Additionally, aggravating factors may arise when offenders exploit the “defense-

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<sup>32</sup> L. n. 194/1992, art.36. (It.)

<sup>33</sup> Chirico, Stefano, and Salvatore Buscarino, *L’odio contro le Persone Disabili*, Poliziamoderna (October 2020). [https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://poliziamoderna.poliziadistato.it/statics/19/inserto\\_ottobre\\_2020.pdf&ved=2ahUKEwjU99nOuf6FAxVp9gIHHUU\\_DLUQF-noECB0QAQ&usg=AOvVaw1YqonWNxwMl8usqMrWZuWV](https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://poliziamoderna.poliziadistato.it/statics/19/inserto_ottobre_2020.pdf&ved=2ahUKEwjU99nOuf6FAxVp9gIHHUU_DLUQF-noECB0QAQ&usg=AOvVaw1YqonWNxwMl8usqMrWZuWV).

<sup>34</sup> Nanna, Rosmina. *Circostanze Aggravanti in Rapporto a Disabilità e Debolezza Della Persona Offesa*. Studio Legale Avv. Filippo Castellaneta (July 18, 2020). <http://www.avvocatocastellaneta.it/articoli/diritto-e-ragione/circostanze-aggravanti-in-rapporto-a-disabilita-e-debolezza-della-persona-offesa-dott-ssa-nanna>.

<sup>35</sup> *Ibidem*.

<sup>36</sup> Strafgesetzbuch vom 24. Juni 1987 (StGB) [Criminal Code of 24 June 1987], §33(1)5, No. 1988-037. [https://legislationline.org/sites/default/files/documents/64/LICH\\_CC\\_eng.pdf](https://legislationline.org/sites/default/files/documents/64/LICH_CC_eng.pdf).

lessness or helplessness of another person”<sup>37</sup>, and when the perpetrator exploits the victim’s “special need of protection” due to “special circumstances”<sup>38</sup>. Notably, no distinction is made between physical and mental disabilities.

## **h) Luxembourg**

The Act of 28 March 2023 amended the Luxembourg Criminal Code, introducing a general aggravating circumstance in Article 80 for crimes, offences and contraventions motivated by one or more of the elements listed in Article 454, which includes disability.<sup>39</sup> Additionally, certain offences warrant aggravated sentences when the victim is “a person whose particular vulnerability, due to age, illness, infirmity, physical or mental disability or pregnancy, is apparent or known to the perpetrator”. This rule applies to offences such as attack on the person, threat, human trafficking, sexual exploitation, sexual harassment, breach of trust and fraud.<sup>40</sup>

## **i) Malta**

According to the Maltese Penal Code, disability itself is not considered an aggravating circumstance. However, three special circumstances apply when offenses involve persons with disabilities. Crimes falling under ‘Wilful offences against the person’<sup>41</sup> may

<sup>37</sup> Strafgesetzbuch vom 24. Juni 1987 (StGB), §33(1)7.

<sup>38</sup> Strafgesetzbuch vom 24. Juni 1987 (StGB), §33(3)2.

<sup>39</sup> *Loi du 28 mars 2023 complétant le Code pénal par l’introduction d’une circonstance aggravante générale pour les crimes, délits et contraventions commis en raison d’un mobile fondé sur un ou plusieurs des éléments visés à l’article 454 du Code pénal*, Journal Officiel du Grand-Duché du Luxembourg, No.8032 (April 3, 2023). <https://legilux.public.lu/eli/etat/leg/loi/2023/03/28/a185/jo>

<sup>40</sup> Code Pénal [Criminal Code]. No. 1879-06-18/01. (Lu). <http://data.legilux.public.lu/eli/etat/leg/loi/1879/06/18/n1>

<sup>41</sup> “Criminal Code of the Republic of Malta (1854, as amended 2021) (English)”, Sub-title III, Legislationline, [https://legislationline.org/sites/default/files/documents/c1/Malta\\_CC.pdf](https://legislationline.org/sites/default/files/documents/c1/Malta_CC.pdf)

see increased penalties if committed against individuals unable to adequately defend themselves due to their physical or mental infirmity. Additionally, disabled persons who fall under the definition of “vulnerable person”<sup>42</sup>, constitute an aggravating circumstance in sexual offenses<sup>43</sup>, human trafficking<sup>44</sup>, and threats of private violence and harassment<sup>45</sup>. Finally, Section 257F provides for aggravating circumstances in the case of abuse of elderly or dependent persons. A “dependent adult” refers to an individual of age with physical or mental infirmities limiting their normal activities or rights protection, including those with disabilities.<sup>46</sup>

#### **j) Monaco**

The Munich Criminal Code mandates enhanced penalties for offences against disabled individuals, particularly those categorized as “crimes against the person”. These include intentional assault, school harassment, rape/sexual harassment, invasion of privacy and family life, and exploitation in all its forms. Article 278-1, addressing “fraudulent abuse of a vulnerable person,” encompasses both physical and mental disabilities. Moreover, if this offense is perpetrated by the *de facto* or *de jure* leader of a group, the punishment is further aggravated. A common criterion for all these circumstances is the demonstration of the offender’s awareness of the specific vulnerable condition of the victim, which justifies the increase in penalty.

#### **k) Netherlands**

The Dutch Penal Code offers heightened protection for vulnerable victims. Explicit recognition of harm to physically or mentally

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<sup>42</sup> Criminal Code of the Republic of Malta, Section 208AC (2).

<sup>43</sup> Criminal Code of the Republic of Malta, (Sub-title II).

<sup>44</sup> Criminal Code of the Republic of Malta, (Sub-title VIII bis).

<sup>45</sup> Criminal Code of the Republic of Malta, (Sub-title IX).

<sup>46</sup> Criminal Code of the Republic of Malta, Section 257F (4).

disabled individuals as an aggravating circumstance is limited to Sections 243 and 247, under Part XIV addressing “Serious Offences against Public Morals”, acknowledging their potential inability to express their will fully.<sup>47</sup> Nevertheless, other circumstances can also provide protection for disabled persons, such as “grievous bodily harm”. For example, if a disabled victim suffers beatings or injuries, the offender’s penalty may be significantly higher than usual. Thus, the duration of the incapacity to perform personal work is an important factor in determining the punishment level.<sup>48</sup>

### 1) San Marino

The San Marino Criminal Code imposes aggravated punishment for sexual assault against a ‘differently-abled’ person<sup>49</sup>, as well as acts of lust perpetrated against an individual whose physical or mental condition impedes their ability to resist<sup>50</sup>. Furthermore, penalties may be heightened for the following offences against a person with mental infirmity or deficiency: forced sterilization, female genital mutilation, sexual freedom violations, group sexual assault, forced marriage, and ill-treatment of someone with familial, sentimental, or authority ties.<sup>51</sup> Finally, if someone induces or causes an individual “not punishable or suffering from partial mental infirmity” to commit a crime, they will be subject to one of the common aggravating circumstances outlined in Art. 90 of the Criminal Code.

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<sup>47</sup> “Criminal Code of the Kingdom of Netherlands (1881, as amended 2012) (English)”, Legislationline, [https://legislationline.org/sites/default/files/documents/f3/Netherlands\\_CC\\_am2012\\_en.pdf](https://legislationline.org/sites/default/files/documents/f3/Netherlands_CC_am2012_en.pdf)

<sup>48</sup> Bart Gagelmans, *Verzwarende Omstandigheden Slagen En Verwondingen - Straffen*, Advocaat Op Maat, January 20, 2023, <https://www.advocaatopmaat.be/verzwarende-omstandigheden-slagen-en-verwondingen/#:~:text=Een%20verzwarende%20omstandigheid%20is%20een%20bij%20wet%20bepaalde%20factor%20die,de%20het%20slachtoffer%20heeft%20ervaren>

<sup>49</sup> Law no. 17/1974, Art.172. (SM).

<sup>50</sup> Law no. 17/1974, Art.173. (SM).

<sup>51</sup> Law no. 31/2018, Art.5. (SM).

### **m) Spain**

The Spanish Criminal Code establishes hate crimes against persons with disabilities as a generic aggravating circumstance, under Article 22(4). Furthermore, the same code expressly refers on up to thirteen occasions to the special vulnerability of the victim as a specific aggravating circumstance in criminal offences of all kinds: against independent human life, against individual health, against liberty and even against public health.<sup>52</sup> The penalty is further increased if, under Section 57(2), if the offence is committed against a disabled individual bound to the offender by family or special care relationship. Also, a review of 58 judgments handed down between 2015 and 2019 lead to the conclusion that the victim's disability was the main cause of the special aggravating vulnerability appreciated by jurisprudence in crimes against sexual freedom and indemnity<sup>53</sup>.

### **n) United Kingdom**

In UK, S.66 SA 2020 gives the court the power to increase the sentence of any offence that is aggravated by hostility on the grounds of a disability (or presumed disability) of the victim, where "disability" means any physical or mental impairment. In cases in which s.66 SA 2020 does not apply, proof of victim's vulnerability due to disability enhances the offence severity for sentencing purposes<sup>54</sup>. Indeed, where victims are perceived as easy targets given their vulnerability, prosecutors should follow the approach used in *R v Bridge* [2012]. Many guidelines, including those for Robbery,

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<sup>52</sup> Clara Moya Guillem, *La Especial Vulnerabilidad Como Circunstancia Agravante. Resultados de Una Investigación Sobre La Jurisprudencia Penal Española*, Revista de Derecho Penal y Criminología, 3, no. 24 (May 13, 2021): 14-15, <https://doi.org/10.5944/rdpc.24.2020.28085>.

<sup>53</sup> *Ivi*, p.27-28.

<sup>54</sup> "Disability Hate Crime and Other Crimes against Disabled People - Prosecution Guidance," The Crown Prosecution Service, 2020, <https://www.cps.gov.uk/legal-guidance/disability-hate-crime-and-other-crimes-against-disabled-people-prosecution-guidance>.

Theft, Burglary, Sexual Offenses, Domestic Violence, Assault, and Fraud, qualify increased offence and sentence severity whenever the offender targets a vulnerable victim due to disability or causes a higher degree of harm to a disabled victim.<sup>55</sup>

## ***2.2 Countries that do not list disability as a circumstance of aggravation***

### **a) Holy See (Vatican City State)**

The Vatican does not include aggravating circumstances concerning the victim's disability.

### **b) Switzerland**

The Swiss Criminal Code lacks adequate aggravating circumstances relating to persons with disabilities. Actually, the only relevant reference is to Article 67 of the Code. This article provides that a person who is sentenced to a custodial sentence of more than six months or to indefinite incarceration or involuntary commitment for offences committed during the exercise of a professional activity or organised non-professional activity shall be prohibited from carrying on the exercise when it involves regular contact with especially vulnerable persons for up to 10 years.<sup>56</sup> Disabled people may fit in the definition of 'especially vulnerable people' if, because of their "long-term physical, mental or psychological impairment are dependent on help from others in their daily activities or way of living"<sup>57</sup>. Finally, any other forms of aggravation of punishment for crimes committed against persons with disabilities are not envisaged.

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<sup>55</sup> Ibidem.

<sup>56</sup> Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] Dec. 21, 1937, SR 757 (1938), *as amended by* Gesetz, Oct. 4, 1991, AS 2465 (1992), art. 67, para. 2 (Switz.).

<sup>57</sup> Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] (1992), art. 67, para. a (6) (Switz.).

### 3. SOUTHEASTERN EUROPE, THE CAUCASUS, CENTRAL ASIA AND THE MEDITERRANEAN

#### *3.1 Countries that do list disability as a circumstance of aggravation*

##### **a) Albania**

Albania's legal framework emphasizes the protection of individuals with disabilities, particularly in criminal law where disabilities can intensify the severity of offenses. The Criminal Code includes specific provisions:

- Article 79 treats the murder of individuals with disabilities as particularly egregious.
- Article 88 prescribes strict penalties for causing severe injury to those with disabilities.
- Article 103 targets sexual offenses against individuals unable to resist.

Noteworthy that Albania's legislation does not differentiate between physical and mental disabilities in these aggravating circumstances. Furthermore, national policies like the Cooperation Agreement to Establish a National Referral Mechanism focus on safeguarding disabled victims. International reviews from the Council of Europe and the European Union applaud Albania's strides in disability rights but stress the need for continued improvements to meet international norms. These include boosting accessibility, employment prospects, and the quality of education for individuals with disabilities, underscoring a comprehensive approach to inclusion and justice.<sup>58</sup>

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<sup>58</sup> 1995. "criminal code of the republic of albania." *United Nations Office on Drugs and Crime*. 01 27. Accessed 02 01, 2024. [https://track.unodc.org/uploads/documents/BRI-legal-resources/Albania/27\\_Albania\\_Criminal\\_Code\\_1995\\_am2017\\_en.pdf](https://track.unodc.org/uploads/documents/BRI-legal-resources/Albania/27_Albania_Criminal_Code_1995_am2017_en.pdf).

## b) Andorra

The Andorran criminal code explicitly identifies disability as an aggravating factor in criminal offenses, with Article 30 stressing that discriminatory actions based on disability amplify criminal responsibility. Accordingly:

- Article 107 deals with increased penalties for non-consensual abortion when the victim is disabled.
- Article 115 details stricter sentences for abuse and injuries inflicted on disabled individuals.
- Articles 136 and 146 apply enhanced penalties for hazing and aggravated assault against disabled individuals.

These provisions collectively illustrate Andorra's commitment to ensuring justice for individuals with disabilities, recognizing their increased vulnerabilities. Article 338 addresses discrimination across various public domains, including employment and services, making discriminatory practices based on disability punishable by law, thereby fostering an inclusive environment. The GRETA evaluation praises Andorra for its legislative and policy advances in combating human trafficking, noting the inclusion of protective measures for disabled victims.<sup>59</sup>

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<sup>6</sup>Government, UK. 2024. "Country policy and information note: human trafficking, Albania." *GOV.UK*. 03 22. Accessed 02 05, 2024. <https://www.gov.uk/government/publications/albania-country-policy-and-information-notes/country-policy-and-information-note-human-trafficking-albania-february-2023-accessible>.

<sup>2</sup>023. "NATIONAL ACTION PLAN FOR THE FIGHT AGAINST HUMAN BEINGS TRAFFICKING 2021-2023." *Tdh Albania*. 02 22. Accessed 02 05, 2024. <https://www.tdh-albania.org/sites/default/files/2023-02/NATIONAL%20ACTION%20PLAN%20%28eng%29%20web.pdf>.

<sup>o</sup>ffice to Monitor and Combat Trafficking in Persons. 2023. *2023 Trafficking in Persons Report: Albania*. Accessed 02 01, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/albania/>.

<sup>59</sup> Andorra's legislative body. 2005. "Penal Code of Andorra - unodc sherloc." *United Nations Office on Drugs and Crime*. 02 21. Accessed 02 10, 2024. [https://sherloc.unodc.org/cld/document/and/2005/penal\\_code\\_of\\_andorra.html](https://sherloc.unodc.org/cld/document/and/2005/penal_code_of_andorra.html).

<sup>T</sup>he United States Government. 2022. "2022 Country Reports on Human Rights

### **c) Armenia**

Armenia's commitment to equality and non-discrimination, especially regarding individuals with disabilities, is evident in its criminal justice approach. Armenia emphasizes equal treatment under the law, avoiding any discrimination based on disability. The Armenian Criminal Code, through articles such as Article 143 and Article 226.2, focuses on penalizing violations of legal equality and acts of discrimination, including those related to disability. This legislative strategy aims to uphold the dignity and rights of individuals with disabilities by embedding principles of equality directly within the justice system. Beyond national legislation, Armenia actively participates in international conventions and collaborations to combat human trafficking and discrimination. This global engagement is part of a broader strategy to protect vulnerable groups, including people with disabilities, from exploitation and injustice.<sup>60</sup>

### **d) Azerbaijan**

In Azerbaijan, disability is explicitly considered an aggravating circumstance in the criminal code.

Article 126: This article addresses severe health harm, imposing heightened penalties when such harm results in disability. This highlights the legal system's commitment to protecting disabled individuals and ensuring crimes against them are met with appropriate severity. Azerbaijan's efforts are bolstered by national and

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Practices: Andorra." *State Department*. Accessed 02 11, 2024. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/andorra>.

<sup>60</sup> "CRIMINAL OF THE REPUBLIC OF ARMENIA." *United Nations Office on Drugs and Crime*. Accessed 03 01, 2024. [https://track.unodc.org/uploads/documents/BRI-legal-resources/Armenia/21\\_-Criminal\\_Code\\_of\\_RA\\_2003\\_-\\_EN.pdf](https://track.unodc.org/uploads/documents/BRI-legal-resources/Armenia/21_-Criminal_Code_of_RA_2003_-_EN.pdf).

<sup>61</sup> OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS. 2023. *2023 Trafficking in Persons Report: Armenia*. Accessed 03 01, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/armenia/>.

international assessments. The 2023 Trafficking in Persons Report and GRETA's Third Report emphasize the need for improved legal frameworks and support mechanisms, such as legal aid and socio-economic inclusion, to ensure disabled victims have access to justice and protection. These assessments underscore the importance of comprehensive support for disabled individuals within the legal system, reflecting Azerbaijan's commitment to addressing their unique vulnerabilities and ensuring their rights are safeguarded.<sup>61</sup>

### e) Cyprus

The 2017 amendment to the Criminal Code of Cyprus marks a significant development in the country's legal framework regarding hate crimes and discrimination. This amendment allows courts to consider prejudice against various groups, including individuals with disabilities, as an aggravating factor in sentencing. This legislative update is part of a broader effort to combat racism, xenophobia, and other forms of discrimination, underscoring Cyprus's commitment to protecting vulnerable groups from targeted offenses. Prior to the 2017 amendment, the Criminal Code of Cyprus already had provisions addressing hate crimes and discrimination. However, the specific inclusion of disability as an aggravating factor was a notable enhancement, aiming to provide better protection for individuals with disabilities. The amendment aligns with

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<sup>61</sup> 2015. "CRIMINAL CODE OF THE AZERBAIJANI REPUBLIC." *TRACK*. Accessed 03 01, 2024. [https://track.unodc.org/uploads/documents/BRI-legal-resources/Azerbaijan/2\\_-Azerbaijan\\_Criminal\\_Code.pdf](https://track.unodc.org/uploads/documents/BRI-legal-resources/Azerbaijan/2_-Azerbaijan_Criminal_Code.pdf).

<sup>62</sup>reta. 2023. "Third EVALUATION REPORT, AZERBAIJAN." *Council of Europe*. 06 06. Accessed 03 15, 2024. <https://rm.coe.int/greta-evaluation-report-on-azerbaijan-3rd-evaluation-round-access-to-j/1680ab761d>.

<sup>63</sup>tate.gov. 2023. *2023 Trafficking in Persons Report: Azerbaijan*. Accessed 03 15, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/azerbaijan/>.

international human rights standards and demonstrates a proactive approach to safeguarding the rights of all citizens.<sup>62</sup>

#### **f) Greece**

In Greece, the Criminal Code explicitly includes disability as an aggravating factor when determining penalties for crimes. This provision is part of the country's broader legislative framework aimed at combating discrimination and protecting vulnerable groups. Article 81A of the Greek Penal Code, introduced in 2019, specifically addresses hate crimes and includes disability among the criteria for aggravating circumstances. This means that if a crime is committed with motives related to the victim's disability, the offense is considered more severe, and the penalties imposed are harsher. This provision covers both physical and mental disabilities without distinguishing between the two.

The inclusion of disability as an aggravating factor ensures that crimes motivated by prejudice against individuals with disabilities are taken seriously within the judicial system, ensuring that justice is appropriately served.<sup>63</sup>

#### **g) Mongolia**

In the Mongolian Criminal Code, disability (without distinction between physical or mental) is a special aggravating circumstance

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<sup>62</sup> The Government of Cyprus. 1959 . "CYPRUSCRIMINAL CODE." *EUR-Lex*. Accessed 02 17, 2024. <https://eur-lex.europa.eu/legal-content/EL/TXT/PDF/?uri=NIM:289553>.

<sup>60</sup> OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS. 2023. *2023 Trafficking in Persons Report: Cyprus*. Accessed 02 17, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/cyprus>

<sup>63</sup> "Disability Older Persons." OHCHR. Accessed 03 03, 2024. <https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/OlderPersons/GREECE.docx>.  
<sup>1</sup>ibrary, NCJRS Virtual. 1973. *Greek Penal Code*. Accessed 03 09, 2024. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/greek-penal-code>.

in the crime of domestic violence. In fact, Article 11.7(2) provides for up to double the penalty in this circumstance. Domestic abuse must be ‘systematic’ to be considered as such. Finally, a general aggravating circumstance is ‘a crime against a person being materially or otherwise dependent having knowledge of his incapacity to defend himself’, where the victim could be a person with a disability.<sup>64</sup>

### **h) Montenegro**

In Montenegro, disability is explicitly considered an aggravating circumstance in the criminal code. Accordingly:

- Article 42a: Offenses committed out of hatred due to disability are aggravating factors unless already an element of the offense. Crimes against vulnerable groups, including persons with disabilities, are also aggravating.
- Article 159: Discrimination based on disability can result in up to three years of imprisonment. If the offense involves hate towards a group defined by disability, the punishment increases to up to five years, and up to eight years if committed by a public official.
- Article 168a: Persistent stalking of a person with a disability result in stricter penalties, including imprisonment of three months to five years.

### **i) North Macedonia**

In North Macedonia, disability is explicitly considered an aggravating circumstance in criminal offences:

- Article 39: Crimes committed against individuals based on mental or physical disability are treated as aggravating

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<sup>64</sup> “Criminal Code of Mongolia (2002, as Amended 2019) (English),” Legislationline, accessed May 21, 2024, [https://legislationline.org/sites/default/files/documents/c1/MONG\\_CC.pdf](https://legislationline.org/sites/default/files/documents/c1/MONG_CC.pdf).

circumstances, influencing the severity of sentencing. This ensures that offenses motivated by prejudice against disabilities are met with harsher penalties.

- Article 131: Penalties for causing severe bodily injury increase if the victim is disabled, particularly in cases involving hate crimes or family violence. This provision emphasizes the additional harm caused by such offenses against vulnerable individuals.
- Article 394-d: Discrimination or spreading hate against disabled individuals via computer systems results in stricter penalties. This aims to combat online hate speech and protect disabled individuals from targeted harassment.

These legal provisions underscore the importance of protecting disabled individuals and ensuring that crimes against them are met with appropriate severity, reflecting a commitment to their safety, equality, and justice. This approach helps deter discrimination and violence, promoting a more inclusive society.<sup>65</sup>

## **j) Serbia**

In Serbia, disability is explicitly addressed in the criminal code in various contexts, including as an aggravating factor in specific offenses. Indeed:

- Article 128: Denying or restricting rights based on disability, among other characteristics, is punishable by up to three years in prison. If committed by an official, the penalty increases to three months to five years.
- Article 167: Organizing or leading a strike that endangers human life or health, or property, can result in imprison-

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<sup>65</sup> 018. "Criminal Code ("Official Gazette of the Republic of Macedonia" ." MK. 04 28. Accessed 03 13, 2024. [https://vlada.mk/sites/default/files/dokumenti/zakoni/criminal\\_code.pdf](https://vlada.mk/sites/default/files/dokumenti/zakoni/criminal_code.pdf).

State.Gov. 2023. *2023 Country Reports on Human Rights Practices: North Macedonia* . Accessed 03 20, 2024. <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/north-macedonia/>.

ment of up to three years.

- Article 179: Sexual exploitation of a person with a mental disorder or disability is severely punished, with imprisonment ranging from five to fifteen years, especially if serious bodily harm or other severe conditions result.
- Article 397: Actions to evade military service resulting in temporary or permanent disability are punishable by imprisonment of three months to eight years, depending on the severity.

These articles emphasize protecting individuals with disabilities and ensuring that offenses against them are met with stringent penalties.<sup>66</sup>

### **k) Slovenia**

In Slovenia, the criminal code addresses disability explicitly in several contexts concerning juvenile offenders.

- Article 74: Educational measures include committal to an institution for physically or mentally handicapped youth. These measures aim to ensure the proper development and rehabilitation of juvenile offenders, with institutional measures applied only when necessary.
- Article 80: Juvenile offenders may be committed to a juvenile detention center if more efficient measures are required, considering the nature and gravity of the crime.
- Article 83: Committal to institutions for physically and mentally handicapped youth can be modified or terminated if new circumstances arise that would have influenced the original decision. The court may replace or discontinue measures to better achieve educational goals.

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<sup>66</sup> mpravde.gov. 2019. "REPUBLIC OF SERBIA CRIMINAL CODE." *mpravde.gov*. Accessed 03 23, 2024. [https://www.mpravde.gov.rs/files/Criminal%20%20%20Code\\_2019.pdf](https://www.mpravde.gov.rs/files/Criminal%20%20%20Code_2019.pdf).

State.Gov. 2022. *2022 Country Reports on Human Rights Practices: Serbia*. Accessed 03 15, 2024. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/serbia>.

These provisions ensure that juvenile offenders with disabilities receive appropriate and specialized care tailored to their needs.<sup>67</sup>

## 1) Turkey

In Turkey, the criminal code includes disability as an aggravating circumstance in various offenses:

- Article 82: Aggravated life imprisonment for offenses committed against individuals who cannot protect themselves due to a corporal or spiritual disability.
- Article 86: Increased penalties for intentional harm to a person with a disability, with imprisonment from two to five years.
- Article 94: Public officers causing severe bodily or mental harm to disabled individuals face eight to fifteen years of imprisonment.
- Article 96: Causing suffering to a disabled person increases imprisonment from three to eight years.
- Article 102: Sexual offenses against disabled individuals result in heightened penalties.
- Article 109: Unlawful restriction of freedom against a disabled person results in doubled imprisonment terms.

These provisions demonstrate Turkey's commitment to protecting individuals with disabilities by imposing stricter penalties for crimes against them.<sup>68</sup>

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<sup>67</sup> Ministry of Justice of the Republic of Slovenia. 2005. "CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA." *vertic.org*. Accessed 03 25, 2024. [https://www.vertic.org/media/National%20Legislation/Slovenia/SI\\_Criminal\\_Code.pdf](https://www.vertic.org/media/National%20Legislation/Slovenia/SI_Criminal_Code.pdf).

<sup>68</sup> *state.gov*. 2022. *2022 Country Reports on Human Rights Practices: Slovenia*. Accessed 03 21, 2024. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/slovenia/>.

<sup>68</sup> 2015. "PENAL CODE OF TURKEY." *venice.coe.int*. Accessed 03 27, 2024. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=C-DL-REF(2016)011-e).

<sup>68</sup> *state.gov*. 2022. *2022 Country Reports on Human Rights Practices: Turkey (Turkey)*. Accessed 03 19, 2024. <https://www.state.gov/reports/2022-country-repor->

### **m) Uzbekistan**

In Uzbekistan, the criminal code explicitly recognizes disability as an aggravating factor in crimes related to bodily harm:

- Article 104 (Intentional Infliction of Serious Bodily Injury): Severe injuries causing significant permanent impairments, like loss of sight or limb function, are considered serious bodily injury, with penalties ranging from three to five years of imprisonment.
- Article 105 (Intentional Infliction of Medium Bodily Injury): Injuries causing stable disability rates between 10-33% or long-term illnesses result in penalties of up to three years of correctional labor or imprisonment.
- Article 109 (Infliction of Trivial Bodily Injury): Minor injuries with minor stable disability result in fines, correctional labor up to one year, or arrest up to three months.

These articles illustrate Uzbekistan's structured approach to penalizing violence based on injury severity and disability impact, emphasizing disability as a key factor in determining penalties.<sup>69</sup>

### **3.2 Countries that do not list disability as a circumstance of aggravation**

#### **a) Bosnia and Herzegovina**

The term "disability" is absent from general legislation as an aggravating circumstance in criminal offenses. The code makes no

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ts-on-human-rights-practices/turkey/.

<sup>69</sup> 1994. "CRIMINAL CODE OF THE REPUBLIC OF UZBEKISTAN." *OHCHR*. 09 22. Accessed 04 02, 2024. [https://adsdatabase.ohchr.org/IssueLibrary/UZBEKISTAN\\_Criminal%20Code.pdf](https://adsdatabase.ohchr.org/IssueLibrary/UZBEKISTAN_Criminal%20Code.pdf).

<sup>s</sup>tate.Gov. 2022. *2022 Country Reports on Human Rights Practices: Uzbekistan* . Accessed 04 01, 2024. <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uzbekistan/>.

distinctions between physical and mental disabilities, either. This absence highlights a potential area for legislative development to ensure comprehensive protection and equality for individuals with disabilities, aligning Bosnia's legal framework with international human rights standards. Further research could explore the implications of this legislative gap on justice and equality for disabled persons in Bosnia.<sup>70</sup>

## **b) Croatia**

The Croatian Criminal Code contains several articles that implicitly support the rights of individuals with disabilities, though it does not categorize disability explicitly as an aggravating factor in crimes. Notably, Article 99 outlines penalties for causing severe bodily injuries that may lead to permanent disability. Article 114 addresses labour rights violations, including those related to disability benefits, while Article 115 enforces penalties for denying healthcare and disability protections. Article 365 specifically mentions penalties for self-inflicted injuries to avoid military service, especially if they result in permanent disability. These provisions indicate Croatia's commitment to protecting disabled individuals through a legal framework that indirectly recognizes disability rights.<sup>71</sup>

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<sup>70</sup> 1998. "CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA." *Advokat*. 11 28. Accessed 02 15, 2024. [https://advokat-prnjavorac.com/legislation/fbih\\_criminal\\_code.pdf](https://advokat-prnjavorac.com/legislation/fbih_criminal_code.pdf).

OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS. 2023. *2023 Trafficking in Persons Report: Bosnia and Herzegovina*. Accessed 03 01, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/bosnia-and-herzegovina/>.

<sup>71</sup> 2004. "REPUBLIC OF CROATIA, CRIMINAL CODE." *United Nations Office on Drugs and Crime*. Accessed 03 01, 2024. [https://sherloc.unodc.org/cld/uploads/res/document/hrv/criminal-code-1997-english\\_html/Croatia\\_Criminal\\_Code\\_1997.pdf](https://sherloc.unodc.org/cld/uploads/res/document/hrv/criminal-code-1997-english_html/Croatia_Criminal_Code_1997.pdf).

OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS. 2023. *2023 Trafficking in Persons Report: Croatia*. Accessed 03 01, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/croatia/>.

### c) Georgia

In Georgia, the Criminal Code does not explicitly list disability as an aggravating circumstance for crimes. The legal framework currently includes provisions addressing discrimination and hate crimes, particularly those motivated by factors such as race, religion, and sexual orientation, but it does not specifically address crimes motivated by prejudice against individuals with disabilities.

While the Criminal Code includes amendments for other forms of bias-motivated crimes, such as those based on sexual orientation or gender identity, there is no specific mention of disability being an aggravating factor. This suggests that Georgia's legal system has not yet fully incorporated protections against crimes targeting individuals based on disability, highlighting a potential area for legal reform to ensure more comprehensive protection and alignment with international standards on the rights of persons with disabilities.<sup>72</sup>

### d) Kazakhstan

Kazakhstan's criminal code does not list disability as an aggravating circumstance. Instead, the legislation provides specific considerations and exemptions for persons with disabilities in the context of penalties and sentences:

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gov/reports/2023-trafficking-in-persons-report/croatia/.

<sup>70</sup>004. "REPUBLIC OF CROATIA, CRIMINAL CODE." *United Nations Office on Drugs and Crime*. October. Accessed 03 01, 2024. [https://sherloc.unodc.org/cld/uploads/res/document/hrv/criminal-code-1997-english\\_html/Croatia\\_Criminal\\_Code\\_1997.pdf](https://sherloc.unodc.org/cld/uploads/res/document/hrv/criminal-code-1997-english_html/Croatia_Criminal_Code_1997.pdf).

<sup>72</sup> "CRIMINAL CODE OF GEORGIA." *LAW ON POLICE USE OF FORCE WORLDWIDE*. Accessed 03 02, 2024. [https://www.policinglaw.info/assets/downloads/Criminal\\_Code\\_of\\_Georgia.pdf](https://www.policinglaw.info/assets/downloads/Criminal_Code_of_Georgia.pdf).

<sup>9</sup>FFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS. 2023. *2023 Trafficking in Persons Report: Georgia*. Accessed 03 01, 2024. <https://www.state.gov/reports/2023-trafficking-in-persons-report/georgia>.

- Article 41 (Fine): Courts may delay fine payments for individuals experiencing financial difficulties due to temporary disability, acknowledging their economic vulnerabilities.
- Article 43 (Community Services): Community service is not assigned to persons with first or second disability groups, pregnant women, and elderly individuals, ensuring those with significant disabilities are not subjected to inappropriate or unmanageable tasks.
- Article 44 (Restriction of Liberty): Persons with first or second disability groups are exempt from compulsory work under restriction of liberty, recognizing the potential hardships they may face.
- Article 72 (Early Release): Persons with first or second disability groups are eligible for early parole under certain conditions, acknowledging the challenges they face in the correctional system.
- Article 152 (Labor Law Violations): Groundless termination of an employment contract with a disabled person on the grounds of their disability is punishable, protecting against employment discrimination and ensuring fair treatment in the workplace.<sup>73</sup>

### **e) Kyrgyzstan**

In Kyrgyzstan, the criminal code does not explicitly list disability as an aggravating circumstance. However, the legislation includes several provisions related to the treatment of persons with disabilities in the context of criminal liability and sentencing:

- Article 25 (Diminished Responsibility): Individuals in a state of diminished responsibility due to chronic mental illness or temporary mental disturbance are not subject to criminal liability. Enforcement of medical measures can be applied instead.

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<sup>73</sup> 1997. *Criminal Code of the Republic of Kazakhstan*. 07 16. Accessed 04 03, 2024. [https://adilet.zan.kz/eng/docs/K970000167\\_](https://adilet.zan.kz/eng/docs/K970000167_).

- Article 26 (Limited Sanity): Persons with limited sanity due to mental disturbance may face criminal liability but can also receive medical enforcement measures.
- Article 152 (Labor Law Violations): The law also prohibits groundless termination of employment based on disability, ensuring protection against employment discrimination.

These provisions focus on fair treatment and necessary accommodations for individuals with disabilities rather than considering disability as an aggravating factor in criminal sentencing.<sup>74</sup>

### **f) Tajikistan**

In Tajikistan, the criminal code does not specifically list disability or being disabled as a circumstance of aggravation. However, Article 111 does address intentional minor bodily injury resulting in significant health problems or major physical disability, such as the loss of one-third of the capability to work. This indicates that while disability resulting from a crime is recognized and penalized, disability itself is not explicitly considered an aggravating circumstance in the criminal code.<sup>75</sup>

### **g) Turkmenistan**

The Turkmenistan Criminal Code does not directly list disability as an aggravating circumstance in crimes. Article 49 outlines specific punishments and exempts certain groups, including those with first and second group disabilities, from these punishments. This indicates recognition of the special circumstances and needs of individuals with significant disabilities, offering them protections

<sup>74</sup> The Kyrgyz Republic. 2021. *CRIMINAL CODE OF THE KYRGYZ REPUBLIC*. 10 28. Accessed 03 15, 2024. <https://cis-legislation.com/document.fwx?rgn=136047>.

<sup>75</sup> 1997. *Criminal Code of the Republic of Kazakhstan*. 07 16. Accessed 04 03, 2024. [https://adilet.zan.kz/eng/docs/K970000167\\_](https://adilet.zan.kz/eng/docs/K970000167_).

<sup>2023</sup>. *CRIMINAL CODE OF THE REPUBLIC OF TAJIKISTAN*. 11 13. Accessed 04 13, 2024. <https://cis-legislation.com/document.fwx?rgn=2324>.

by exempting them from certain types of punishment. However, disability is not considered an aggravating factor in the commission of crimes; it is acknowledged mainly in the context of sentencing and punishment.<sup>76</sup>

#### **4. NORTHERN EUROPE, SCANDINAVIA AND NORTH AMERICA**

##### ***4.1 Countries that do list disability as a circumstance of aggravation***

###### **a) Canada**

The Canadian Criminal Code (Volume V. Sentencing, 718.2) brings up a list of principles that a court that imposes a sentence must take into consideration. According to it, it is considered an aggravating circumstance “(a) (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor”.<sup>77</sup>

###### **b) Denmark**

Disability is not expressly listed in the aggravating circumstances of the Danish Criminal Code (Section 81); however, the country ratified the Convention on the Rights of Persons with Disabilities on 13 July 2009 and entered into force on 23 August 2009.

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<sup>76</sup> 2013. Criminal Code of Turkmenistan . 11 09. Accessed 04 20, 2024. <https://www.wipo.int/wipolex/en/legislation/details/14676>.

<sup>77</sup> Canadian Criminal Code, Act current to 2024-05-01 and last amended on 2024-01-14.

<sup>h</sup><https://laws-lois.justice.gc.ca/eng/acts/c-46/section-718.2.html>

In the Combined second and third periodic reports submitted by Denmark under article 35 of the Convention, due in 2020, the part related to article 16 of the convention (freedom from exploitation, violence, and abuse), paragraph 15 (b), item 146 says that “According to Section 81 (11), the courts must – when deciding on a penalty – in general consider it an aggravating circumstance if the defendant has taken advantage of the defenceless state of the victim. The provision aims to protect groups that are vulnerable to crimes, such as persons with disabilities”.<sup>78</sup> The distinction between mental and physical disability can be found in the Danish Equality Act of 2010.<sup>79</sup>

### **c) Finland**

In chapter 6 of the Finnish Penal Code, Section 5 lists the grounds for increasing the punishment, and among them is ‘(4) commission of the offence for a motive based on race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability, or other corresponding grounds, and (511/2011)’.<sup>80</sup> The mention of distinction between mental and physical disability can be found in the updated Act on Services and Support Measures Organised on the Basis of Disability.<sup>81</sup>

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<sup>78</sup> Convention on the Rights of Persons with Disabilities. Combined second and third periodic reports submitted by Denmark under article 35 of the Convention, due in 2020. CRPD/DNK/2-3.

<sup>79</sup> [https://sm.dk/media/37966/danmarks\\_rapport\\_til\\_fns\\_handicapkomite\\_2020\\_t.pdf](https://sm.dk/media/37966/danmarks_rapport_til_fns_handicapkomite_2020_t.pdf)

<sup>79</sup> Equality Act 2010

<https://www.legislation.gov.uk/ukpga/2010/15/section/6>

<sup>80</sup> Finnish Penal Code

<sup>80</sup> [https://www.finlex.fi/en/laki/kaannokset/1889/en18890039\\_19951010.pdf](https://www.finlex.fi/en/laki/kaannokset/1889/en18890039_19951010.pdf)

<sup>81</sup> Act on Services and Support Measures Organised on the Basis of Disability

<sup>81</sup> <https://www.finlex.fi/fi/laki/ajantasa/1987/19870380>

#### **d) Iceland**

In the general penal code of Iceland, in Article 70 of Chapter VIII, factors that influence the severity of the punishment of crimes are listed. These factors include the victim's disability as an aggravating circumstance, however, any distinction between mental and physical disability, as set out below:

“When punishment is decided, the following factors, in particular, are to be considered. [...] 10. Whether the offence can be attributed to ethnic or national origin, colour, race, religion, disability, gender characteristics, sexuality, gender identity, or other similar factors. [...]”<sup>82</sup>

The mention of mental and physical disability is present in their Act on the Affairs of Disabled People.<sup>83</sup>

#### **e) Norway**

The Norwegian penal code does bring disability as an aggravating cause in Chapter 14, Section 77. In the elements ‘g’ and ‘h’, the code brings the expressions ‘mentally disabled’ and ‘particularly vulnerable persons to criminal offences’, as set out below:

g. was perpetrated by the offender exploiting or misguiding young persons, persons in a very difficult life situation, who are mentally disabled or in a dependent relationship with the offender.

h. affected persons who are defenceless or particularly vulnerable to criminal offences

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<sup>82</sup> General Penal Code of Iceland No. 19, February 12, 1940 (as amended on 22 June 2022) (Hate crime-related excerpts).

<sup>h</sup><https://hatecrime.osce.org/hate-crime-legislation-iceland>

<sup>83</sup> Act on the Affairs of Disabled People. Article 2

<sup>h</sup>[https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar\\_sidur/Act-on-the-Affairs-of-Disabled-People-No-59-1992-with-subsequent-amendments.pdf](https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Act-on-the-Affairs-of-Disabled-People-No-59-1992-with-subsequent-amendments.pdf)

In addition, the element ‘i’, the Code expressly mentions disability as an aggravating factor, as set out below:

- i. was motivated by a person’s religion or life stance, skin colour, national or ethnic origin, homosexual orientation, disability or other circumstances relating to groups with a particular need for protection.

Besides, the definition of disability and the mention of physical and psychological disability is mentioned in a recent country report regarding reducing disability barriers.<sup>84</sup>

### **f) Portugal**

Although not present in the list of aggravating circumstances, in the Portuguese criminal code, in the special part, Title I, the legislation about crimes against people in its first chapter, Article 132 treats qualified homicide, that is, a crime that is severely punishable when, among other circumstances, the agent commits the act against a particularly defenceless person due to disability. In addition, in the same code, in article 155, there is a case of aggravating crimes of threat (article 153) and coercion (article 154), if the crime is committed in the same previous circumstance.<sup>85</sup> The portuguese law<sup>86</sup> brings up mental and physical disability.

### **g) Sweden**

In Sweden’s Penal Code,<sup>87</sup> Chapter 29, Section 2, there is no express mention of disability in the list of aggravating circumstances.

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<sup>84</sup> Reducing disability barriers

<sup>h</sup><https://www.regjeringen.no/no/dokumenter/stmeld-nr-40-2002-2003-/id197129/?ch=1>

<sup>85</sup> Código Penal CP I DR

<sup>h</sup><https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1995-34437675>

<sup>86</sup> Portuguese Law n. ° 38/2004, August the 18<sup>th</sup>

<sup>87</sup> Swedish Penal Code

<sup>h</sup>[https://documents.law.yale.edu/sites/default/files/swedish\\_criminal\\_code.pdf](https://documents.law.yale.edu/sites/default/files/swedish_criminal_code.pdf)

However, there is a mention of an aggravating “(3) whether the accused exploited the vulnerability position of another person or the special difficulties of that person in protecting himself”, which could be interpreted by the judge as an aggravating factor that encompasses the disability. The only mention of the word ‘disability’ in the Code is present in the context of armed conflicts, expressly provided in Chapter 22, which states that “a person guilty of a serious violation of a treaty or agreement with a foreign power or an infraction of a generally recognised principle or tenet relating to international humanitarian law concerning armed conflicts shall be sentenced for crime against international law to imprisonment for at most four years. Serious violation shall be understood to include: 3. attacks on civilians or on persons who are injured or disabled”. Besides, Sweden’s national objective of disability is based on the UN Convention on the Rights of Persons with Disabilities,<sup>88</sup> which brings up mental and physical disability.

#### **h) United States of America**

The state’s legislation on the matter is generally very complete, mentioning disability as an aggravating cause that courts must consider when determining a sentence as expressed, for example, in the Alabama Criminal Code,<sup>89</sup> Chapter 5, Article 1, Section 13A-5-13, where the legislature states as the purpose of the section “to impose additional penalties where it is shown that a perpetrator who committed the underlying offence was motivated by the victim’s actual or perceived race, colour, religion, national origin, ethnicity, or physical or mental disability”. The same happens in many

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<sup>88</sup> UN Convention on the Rights of Person with Disability, <https://social.desa.un.org/issues/disability/crpd/article-1-purpose>

<sup>89</sup> Alabama Criminal Code  
<https://alison.legislature.state.al.us/code-of-alabama>

other Criminal Codes, such as Florida<sup>90</sup>, Massachusetts<sup>91</sup>, and Nevada<sup>92</sup>, among others. Additionally, the Americans with Disabilities Act<sup>93</sup>, which is a guide for Federal civil rights, defines disability as ‘physical or mental impairment that substantially limits one or more major life activities’, which means that when if the state’s code mentions the word ‘disability’, it must be considered mental and physical disability.

## 5. CONCLUSIONS

In conclusion, the research highlights the diverse and varied legal landscapes across OSCE participating states regarding human trafficking and the protection of persons with disabilities. The discrepancies in how different countries address the need for proof of means in human trafficking cases and the recognition of disability as an aggravating circumstance revealed the need for a more harmonized approach.

Countries like Belgium, Finland, and Serbia have taken significant steps by not requiring proof of means in cases involving minors or persons with disabilities, reflecting a more protective stance towards vulnerable populations. These provisions ease the burden of proof, recognizing the inherent vulnerabilities of these groups and aiming to provide more robust legal protections.

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<sup>90</sup> Florida Statutes. Title XLVI – Crimes. Chapter 775, Section 0863, item (1) (a)

<https://www.flsenate.gov/Laws/Statutes/2023/0775.0863>

<sup>91</sup> Massachusetts Advisory Sentencing Guidelines. Attachment D – Non-exclusive List of Mitigating and Aggravating Factors. Item (1)

<https://www.mass.gov/doc/advisory-sentencing-guidelines/download>

<sup>92</sup> Nevada Code. Chapter 200. NRS 200.033. Circumstances aggravating first-degree murder. Item (11)

<https://www.leg.state.nv.us/NRS/NRS-200.html#NRS200Sec033>

<sup>93</sup> Americans with Disabilities Act (ADA)

<https://www.ada.gov/resources/disability-rights-guide/#:~:text=An%20individual%20with%20a%20disability%20is%20defined%20by%20the%20ADA,as%20having%20such%20an%20impairment.>

On the other hand, the explicit inclusion of disability as an aggravating factor in countries like the Czech Republic, Estonia, and Moldova shows a clear acknowledgment of the additional risks faced by persons with disabilities. These legal frameworks ensure that crimes committed against disabled individuals are met with harsher penalties, reinforcing the need for heightened protection and deterrence against such offenses.

However, there are still many states within the OSCE where the legal protections for disabled individuals are insufficient. The absence of explicit provisions addressing disability as an aggravating factor, as seen in the criminal codes of Belarus, Bulgaria, and Poland, leaves significant gaps in the legal protection for disabled persons. This lack of recognition can lead to lighter sentences for perpetrators and insufficient support for victims, highlighting an urgent need for legal reforms. While it's important to explicitly mention disabilities in legal texts to ensure clarity and specificity, the inclusion of aggravating circumstances for crimes against individuals with disabilities underscores recognition of their increased susceptibility to victimization.

Moreover, a common element has been found amongst Germany, France, Belgium, Luxembourg, Monaco and Italy on the basis of "whose (particular) vulnerability is apparent or known to the perpetrator", which means that the offender must be aware of the particular weakness/vulnerable condition of the victim or having to prove that the perpetrator was aware of the victim's vulnerability. However, in practice, the conditions required to recognise the vulnerability of a disabled victim might be very rarely met, as they seem difficult to prove and often surface as challenges in securing justice for disabled victims.

In a nutshell, while there are notable examples of progress and good practice within the OSCE region, there is a pressing need for more consistent and comprehensive legal protections for persons with disabilities. Harmonizing the legal approaches to include explicit provisions for the protection of disabled individuals in hu-

man trafficking laws and recognizing disability as an aggravating circumstance can significantly enhance the protection and support for one of the most vulnerable groups in society. Continuous legal reforms and international cooperation are essential to ensure that the rights and vulnerabilities of disabled individuals are adequately addressed, providing them with the protection and justice they deserve.

## **SECTION 2**



**How is the remedy and remediation for victims of trafficking for labour exploitation approached in different countries (for example, EU, Western Balkans, America, UK)? What are the challenges in the access to remedy, the impact of the measures, and the degree to which the measures are being enforced?**

## **1. INTRODUCTION**

The European Union and Western Balkans ratified the Palermo protocol, according to which state parties must adopt necessary laws and measures, to recognise as criminal offences acts ascribable to trafficking in persons, including acting as an accomplice in such acts. Other important documents are the Council of Europe Convention and the European Trafficking Directive, both explicitly recognize the right of trafficking victims to compensation<sup>1</sup>.

While efforts to improve access to remedies for trafficked people often focus on compensation, the term ‘reparation’ describes a wide range of remedial measures including restitution, rehabilitation, satisfaction and guarantees of non-repetition<sup>2</sup>. If trafficked

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<sup>1</sup> Other documents are: The Trafficking in Persons Protocol, the BluePrint Document.

Anne T. Gallagher “The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy”

<sup>2</sup> Remedies can include:

persons are not identified, the right to an effective remedy cannot be realised and victims may be at risk of suffering ongoing and/or further harm. When a state's actions directly result in a breach of a victim's human rights, the State itself has an obligation to offer remedies to the casualty. Even in situations where the State is not directly involved in the trafficking or accountable for the infringement of a right guaranteed by international law, it is nevertheless its duty to look into, prosecute, and safeguard trafficking victims. Properly investigating allegations of human trafficking is therefore an essential precondition for protecting victims of trafficking and ending impunity for traffickers. The ability of victims of human trafficking to seek compensation and other remedies can be greatly aided by civil society organisations such as non-governmental organisations (NGOs), members of the legal community, trade unions, migrant rights advocacy groups, academics, and employer associations.

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- Restitution is concerned with restoring the victim to the original situation before the violation of their rights occurred.

- Compensation is money paid to a trafficked person in an attempt to remedy the damage the person suffered as a result of being trafficked.

- Rehabilitation and recovery can include medical and psychological care, legal and social services such as shelter, counselling, health services and linguistic support. Provision of this remedy should not be contingent on victims assisting law enforcement authorities, but in some countries it is.

- Satisfaction involves acknowledging violation of the victim's rights and taking steps to prevent continuing violations.

- Guarantees of non-repetition can overlap with measures to secure satisfaction for victims. Such guarantees require 'the effective investigation, prosecution and sanctioning of traffickers', as well as taking 'all measures necessary to protect the victim of trafficking in persons from re-trafficking, including through safe return, temporary or permanent residence status where applicable, and integration support'.

(INTER-AGENCY COORDINATION GROUP AGAINST TRAFFICKING IN PERSONS "Providing Effective Remedies for Victims of Trafficking in Persons" 2016.)

## 2. HUMAN TRAFFICKING IN EU

In Europe and the UK, the National Referral Mechanisms<sup>3</sup> are cooperation frameworks through which government agencies fulfil their obligations to protect and promote the human rights of victims, coordinating their efforts in partnership with civil society organisations.

Although the protection and assistance systems vary across countries, they share several common characteristics, namely:

- i. an established method for the (formal) identification of victims, which is the first step for the protection system to engage and provide support based on individual needs;
- ii. a wide range of support services that span from safe accommodation to counselling, healthcare, legal aid and repatriation assistance;
- iii. governance structures, that include multiple governmental and non-governmental agencies in the development and delivery of protection services.<sup>4</sup>

The NRM<sup>5</sup>:

- i. establishes clear roles and responsibilities of partner organisations;
- ii. sets common procedures for the identification of victims and their referral process;
- iii. structures the protection and assistance services for victims, together with minimum quality standards for service delivery.

The right to a remedy remains out of reach of most victims of trafficking, because of inadequate solutions provided by national

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<sup>3</sup> Austria, Denmark, Germany and Poland are the only European countries that have not adopted a NRM. INTER-AGENCY COORDINATION GROUP AGAINST TRAFFICKING IN PERSONS “Providing Effective Remedies for Victims of Trafficking in Persons” 2016.

<sup>4</sup> ILO “Protection and assistance of victims of labour exploitation” 2020.

<sup>5</sup> GRETA “Assistance to victims of human trafficking” Thematic Chapter of the 8th General Report on GRETA’s activities. 2018

laws, and often related to victims' lack of information about processes and procedures for accessing them.

In Europe two thirds of the cases studied result in compensation awards and only 1 out of 10 result in actual compensation. This remedy gap prolongs trauma and heightens the risk of re-victimization.

United Nations Convention against Transnational Crime (UN-TOC), obliges States parties to provide trafficked people with the legal possibility of obtaining compensation. An obvious weakness of the Protocol is that it does not establish a supervisory mechanism to examine its implementation by States Parties.

Civil society organizations, NGOs and trade unions can help victims of human trafficking obtain compensation for their injuries as well as lessen the vulnerability of migrant workers. COMP.ACT has been crucial in enhancing access to justice and compensation for victims of human trafficking, as well as the financial institution called The Knoble, a worldwide non-profit organisation of professionals fighting financial crime and raising stakes for those who commit it. Other efforts have been taken by ITUC, who conducted awareness-raising campaigns on labour exploitation issues, focusing on the building of the Qatar 2022 initiatives.

Victims' rights must be respected and protected. Victims have the right of not being arrested or charged with crimes relating to their status. In order to enforce their legal rights, they must have access to free legal advice, as well as clear and consistent information on the legal remedies available to them. Officials who have face-to-face contact with trafficked persons should be trained to provide clear information.

Pursuing judicial remedies is often costly: limited or no access to free legal aid is commonly cited as a barrier to victims of trafficking accessing remedies and NGOs often play an important role in providing or facilitating pro bono legal representation. In some countries, victims of trafficking are entitled to government funded legal aid for immigration and compensation claims.

States may allow victims of human trafficking to stay, either permanently or temporarily, for a variety of reasons. These reasons may include giving victims enough time to decide whether to assist law enforcement in their efforts to apprehend their traffickers, to participate in civil or administrative proceedings to obtain remedies, or to prevent them from being refouled. While more and more States are granting temporary residency cards to victims of human trafficking, this is often only granted if the victim is able and ready to help the authorities.<sup>6</sup>

The precarious immigration status of some victims of trafficking may pose significant barriers to their access to remedies. Victims who were exploited while working without authorization may be unable to recover unpaid wages or access other remedies, because their employment ‘contract’ is deemed void for illegality, and they are not usually willing to denounce the situations.<sup>7</sup>

States have introduced laws criminalising human trafficking, but prosecutions remain rare. Even when offenders are convicted, it is unusual for victims to be compensated. Where victims are compensated, extremely low sums are awarded, and are not proportionate to the magnitude of the harm suffered. No such rulings have been made in certain nations where traffickers have been found guilty and courts have the discretion to order them to compensate the victim. Prosecutors should be obliged to seek compensation orders whenever it is practical for courts to do so, in cases where the courts already have the authority to force convicted offenders to compensate victims of major crimes.<sup>8</sup> Challenges in obtaining compensation from offenders arise from inadequate training, resources and legal powers of authorities to undertake financial investigations to identify and seize proceeds of trafficking crimes as part of a law enforcement response.

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<sup>6</sup> ILO “Ending forced labour by 2030: A review of policies and programmes” 2018.

<sup>7</sup> ILO “Politiche per prevenire e contrastare lo sfruttamento lavorativo e il lavoro forzato in Europa” 2021.

<sup>8</sup> ILO “Strengthening action to end forced labour” 2017.

Even when offenders are found guilty and given orders to make restitution to their victims, these orders are either rarely carried out or the sum awarded is clearly insufficient.

Where compensation cannot reasonably be obtained from the perpetrator, States should consider introducing measures that allow victims to obtain State-funded compensation. Such schemes already exist in many States (including a significant number of States parties to the European Trafficking Convention), but are not always accessible. In some countries, resources are also available through a dedicated Government fund for victims of violent crimes as in the Czech Republic, the Netherlands and the United Kingdom. Also, Italy has a specific fund but the sum awarded to victims is extremely low.

Victims of labour exploitation have three main avenues to access compensation: (i) through criminal proceedings, when perpetrators are sentenced; (ii) through civil proceedings (for physical and moral damages); and (iii) through labour court proceedings (for the payment of wage arrears).<sup>9</sup> Employment tribunals or specialised labour courts exist in most countries in parallel to the general justice system, but in most of the cases the waiting time is the main challenge and it deters victims from going on with the proceedings.

Assistance services for victims of labour exploitation are comparable across national boundaries. Food and shelter, primary and specialised medical treatment, legal support, psychological support, material and financial assistance (cash benefits), and repatriation services are all included in the service portfolio. With the exception of Austria, Bulgaria, and Ireland, victims in all EU member states are granted a period of reflection (which can last anywhere from 30 to 90 days from the date of identification) during which they can recuperate, make plans for the future, and determine whether or not to assist with criminal investigations. National protection systems have different types of accommodation to better respond to

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<sup>9</sup> ILO “Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands” 2021.

the specific needs of victims. These include safe houses and temporary shelters for victims subject to a higher risk of re-victimization; local authority housing options; private rented accommodation; and housing with friends and family. National referral mechanisms provide in-house legal information and basic assistance. Response to more complex needs is provided through specialised services, made available by the referral network<sup>10</sup>.

### **3. HUMAN TRAFFICKING IN WESTERN BALKANS**

Human trafficking for the purpose of labour exploitation is an intricate issue, having a strong impact on Western Balkans countries. The influence of organized crime and corruption obstacles the EU inclusion process and generates a sense of insecurity, coupled with decreasing trust in institutions, among the population.

Political commitment from a formal point of view clashes with the practical lack of data, coupled with the absence of effective enforcement tools with a targeted coverage. This phenomenon, generally related to the scarcity of financial resources, triggers victims' possibility to access adequate compensation and remediation mechanisms, as envisaged by international regulations. The flow of individuals moving for trafficking purposes is feebly countered by the impact of insufficient regional and international cooperation pathways, sadly characterizing Western Balkans as area of origin, transit, and destination for trafficked victims.

Generally observing the legal framework of Western Balkans, all countries in the region arise to be member states of the Council of Europe and thus subject to the effects of the Council of Europe anti-trafficking Convention. Furthermore, the Western Balkans

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<sup>10</sup> In the Netherlands, for example, Co-Mensha and Fair Work offer basic legal advice to victims of exploitation and for specialised legal services they refer the victims to the Legal Aid Board or to service providers that are part of the referral mechanism. From: IOM "Remediation Guidelines for Victims of Exploitation in Extended Mineral Supply Chains" 2018.

(omitting Kosovo) have acceded to the United Nations Palermo Protocol, which involves direct and specific commitment from the signatory countries to hinder the phenomenon of human trafficking.<sup>11</sup>

Implementation of the Convention on Action against Trafficking in Human Beings is supervised by The Group of Experts on Action against Trafficking in Human Beings (GRETA), a monitoring body established by the Council of Europe (CoE). GRETA performs country assessments to analyse the measures taken by governments to prevent trafficking, prosecute perpetrators, and assist victims. Extensive evaluations are offered, considering strengths and weaknesses captured in each states' anti-trafficking measures, followed by the development of country-specific evaluation and recommendations for improvement.<sup>12</sup>

According to relevant international legal instruments, victims of human trafficking have the right to access justice and effective remedies, while states have the obligation to facilitate this process, regardless their direct responsibility for the harm.<sup>13</sup> By virtue of this principle, Western Balkans countries have established some form of domestic anti-trafficking legislation: Romania in 2001; Bosnia and Herzegovina and Croatia in 2003; Bulgaria, Montenegro,

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<sup>11</sup> UNITED NATIONS Office on Drugs and Crime. "Crime and its impact on the Balkans and affected countries." 2008. [https://www.unodc.org/documents/Balkan\\_study.pdf](https://www.unodc.org/documents/Balkan_study.pdf).

<sup>12</sup> Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings. "Group of experts on action against trafficking in human beings (GRETA) - Rules of procedure for evaluating implementation of the Council of Europe Convention on Action against trafficking in Human beings by the parties." 2014. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a983c>.

<sup>13</sup> Inter-agency coordination group against trafficking in persons (ICAT). "Issue paper - Providing effective remedies for victims of trafficking in persons." United Nations Office on Drugs and Crime. 2016. [https://www.unodc.org/documents/human-trafficking/ICAT/ICAT\\_Policy\\_Paper\\_3\\_Providing\\_Effective\\_Remedies\\_for\\_Victims\\_of\\_Trafficking\\_in\\_Persons\\_2016.pdf](https://www.unodc.org/documents/human-trafficking/ICAT/ICAT_Policy_Paper_3_Providing_Effective_Remedies_for_Victims_of_Trafficking_in_Persons_2016.pdf).

and the former Yugoslav Republic of Macedonia in 2004, Moldova in 2005; and Albania in 2007.<sup>14</sup>

In Albania, legal modifications have promoted victim rights and support mechanisms. The National Action Plan for Combating Trafficking in Human Beings 2018-2020 provides activities designed to improve victim identification, protection, and reintegration, with dedicated budget allocations. Standard Operating Procedures and a Victim Advisory Board, comprising survivors of human trafficking, have been established to deliver valuable insights and guidance.<sup>15</sup>

Bosnia and Herzegovina have demonstrated a dedication to fighting trafficking through amendments to the Criminal Code, that now include provisions criminalizing human trafficking. The adoption of the Strategy for Combating Trafficking in Human Beings for the period 2020-2023, in addition to the Action Plan for its Implementation, mirrors a comprehensive approach to addressing this issue.<sup>16</sup>

Montenegro has taken substantial actions with the establishment of Standard Operating Procedures for target recognition. The acknowledgement of victims of trafficking as privileged beneficiaries of free legal aid underscores the country's commitment to ensuring access to justice. Montenegro has additionally actively participated in international cooperation efforts, including agreements with Eurojust and neighbouring nations.<sup>17</sup>

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<sup>14</sup> UNITED NATIONS Office on Drugs and Crime. "Crime and its impact on the Balkans and affected countries." p.74, 2008. [https://www.unodc.org/documents/Balkan\\_study.pdf](https://www.unodc.org/documents/Balkan_study.pdf).

<sup>15</sup> GRETA Group of Experts on Action against trafficking in Human beings. "Evaluation report: Albania - Access to justice and effective remedies for victims of trafficking in human beings." Council of Europe. 2020. <https://rm.coe.int/greta-2020-09-fgr-alb-en/1680a0b84f>.

<sup>16</sup> GRETA Group of Experts on Action against trafficking in Human Beings. "Evaluation report: Bosnia and Herzegovina - Access to justice and effective remedies for victims of trafficking in human beings." Council of Europe. 2022. <https://rm.coe.int/greta-evaluation-report-bosnia-and-herzegovina-3rd-evaluation-round/1680a70b3b>.

<sup>17</sup> GRETA Group of experts on action against trafficking in human beings. "Eva-

Kosovo has made notable progress in modifying its legal structure coupled with applying steps in accordance with recommendations from GRETA. Joint inspections by law enforcement and labour inspectors, along with the development of a legal framework for the registration and licensing of private sector employers, demonstrate Kosovo's multifaceted approach.<sup>18</sup>

North Macedonia has created a comprehensive legislative framework, with regulations providing for recovery and reflection periods, renewable residence permits, and non-punishment provisions for victims. The country's commitment to addressing trafficking across various sectors is highlighted by the adoption of National Strategy and National Action Plans for Combating Trafficking in Human Beings and Illegal Migration, as well as a National Action Plan for Combating Trafficking of Children.<sup>19</sup>

In Serbia, the introduction of recovery and reflection periods, temporary residence permits, and provisions for victims' health care and legal aid represent favourable advancements. Specialized investigators and prosecutors dedicated to human trafficking cases have been appointed, and guidelines for victim compensation and training for judicial professionals have been released. Serbia has also undertaken proactive measures, including awareness-raising

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evaluation report: Montenegro - Access to justice and effective remedies for victims of trafficking in human beings." Council of Europe. 2021. <https://rm.coe.int/evaluation-report-on-the-implementation-of-the-council-of-europe-conve/1680a2a-efc>.

<sup>18</sup> GRETA Group of Experts on Action against trafficking in Human beings. "Evaluation report: Kosovo - Access to justice and effective remedies for victims of trafficking in human beings." Council of Europe. 2021. <https://rm.coe.int/second-report-on-the-compliance-of-kosovo-with-the-standards-of-the-co/1680a418ee>.

<sup>19</sup> GRETA Group of Experts on Action against trafficking in Human beings. "Evaluation report: North Macedonia - Access to justice and effective remedies for victims of trafficking in human beings." Council of Europe. 2023. <https://rm.coe.int/greta-evaluation-report-on-north-macedonia-third-evaluation-round/1680a-aa573>.

campaigns and agreements with other countries to prevent trafficking for labour exploitation.<sup>20</sup>

Overall, these detailed steps underscore the Western Balkans' commitment to combating human trafficking through comprehensive legal frameworks, policy initiatives, and international cooperation efforts.

Despite this, the Group of Experts on Action against Trafficking in Human Beings (GRETA) has marked different imperfections and lacunes in the Western Balkans' strategy to target compensation and assistance. As an example, in Kosovo although the Standard Operating Procedures (SOPs) consist of information on the right to assert settlement and guarantee free legal and psychological assistance for sufferers, in practice results achieved remain below expectations. Prosecutors, law enforcement along with NGO delegates have shown that trafficked individuals frequently battle to provide evidence of violation, leading courts to deny payment asserts, together with reroute them to civil procedures.<sup>21</sup>

Similarly, in Albania the reintegration of trafficking victims is hindered by various legal and institutional barriers. The safety and security of victims are major concerns, as they continue to face threats even when their traffickers are imprisoned. While victims are protected while living in shelters, threats are often directed towards professionals or the victims' family members. The lack of measures against traffickers is attributed to the complexity of trafficking cases and Albania's weak judicial system.

There are concerns about the application of certain articles in the Albanian Criminal Procedure Code, which can lead to lenient

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<sup>20</sup> GRETA Group of Experts on Action against trafficking in Human Beings. "Evaluation report: Serbia - Access to justice and effective remedies for victims of trafficking in human beings." Council of Europe. 2023. <https://rm.coe.int/greta-evaluation-report-on-serbia-3rd-evaluation-round-greta-2023-09-a/1680ab9bc6>.

<sup>21</sup> GRETA group of experts on actions against trafficking in human beings. "Report on the compliance of Kosovo\* with the standards of the Council of Europe Convention on Action against trafficking in human beings." Council of Europe. 2016.

sentences and early release of traffickers. Corruption within the judiciary is also mentioned as a possible reason for these lenient measures. Additionally, victims often face challenges when testifying in court or at the prosecutor's office, as the process is emotionally taxing. They may have to face their traffickers in the courtroom without proper protective measures in place. Compensating victims for the harm done to them is another challenge, as traffickers often transfer their assets to avoid paying compensation.<sup>22</sup>

In spite of these difficulties, Kosovo has revealed development by finalizing a legislation on compensation, providing a compensation commission and defining a monetary plan. Nonetheless, the commission has examined a very low number of case reports, with compensation awarded only in one human trafficking case, highlighting recurring voids in the system.<sup>23</sup>

In Croatia, the European Court of Human Rights (ECHR) underscored investigatory deficiencies in a forced prostitution case.<sup>24</sup> The ECHR encountered that Croatian authorities fell short to comply with all lines of inquiry, threatening their capacity to detect the real nature of the partnership in between the victim and her declared abuser. This instance emphasizes the significance of complete examinations together with adherence to international definitions of human trafficking and forced labour.<sup>25</sup>

To guarantee victims' right to compensation it is necessary that traffickers, when identified, are made to indemnify their victims. Nonetheless, because of different barriers, such as the trafficker be-

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<sup>22</sup> Ramaj, Klea. "The Aftermath of Human Trafficking: Exploring the Albanian Victims' Return, Rehabilitation, and Reintegration Challenges." *JOURNAL OF HUMAN TRAFFICKING*, 2023: VOL. 9, NO. 3, 408–429.

<sup>23</sup> Qosaj-Mustafa, Ariana, and Donjeta Morina. "Compensation to victims of crime: response to domestic violence and human trafficking cases in Kosovo." Kosovar Institute for Policy Research and Development. 2018. [https://www.kipred.org/repository/docs/Final\\_English\\_Version\\_141863.pdf](https://www.kipred.org/repository/docs/Final_English_Version_141863.pdf).

<sup>24</sup> European Court of Human Rights. "Court finds shortcomings in Croatian authorities' investigation into an allegation of forced prostitution." 2020.

<sup>25</sup> Case of S.M. V. Croatia. Application no. 60561/14 (European Court of Human Rights, 25 June 2020).

ing untraceable or insolvent, complete settlement is unusual. Consequently, states must create available state compensation platforms making sure victims obtain settlement also if the perpetrator cannot pay. This might consist of advance payments from the state, with the opportunity of recouping the amount from the wrongdoer later.<sup>26</sup>

Furthermore, member states need to provide clear pathways for obtaining residence permits as a compensatory step, especially connected to criminal procedures together with the sufferer's individual circumstance or humanitarian premises. Public-private collaborations as well as complaint devices based I upon UN Guiding Principles for business-related human rights violations must likewise be urged.<sup>27</sup>

Article 47 of the Charter of Fundamental Rights of the European Union affirms the right to an effective remedy and a fair trial. This consists of accessibility to legal assistance for those in need, hampering accessibility to justice as well as representation for victims of human trafficking. The Western Balkan countries must continue to improve their legal and institutional frameworks, to ensure ad-hoc assistance and justice for trafficking victims, resolv-

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<sup>26</sup> Committee of Ministers; Steering committee for human rights. "Steering Committee for Human Rights (CDDH) - d. Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation." Council of Europe. 2022. [https://search.coe.int/cm/#{%22CoEObjectId%22:\[%220900001680a7b75b%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22}\]](https://search.coe.int/cm/#{%22CoEObjectId%22:[%220900001680a7b75b%22],%22sort%22:[%22CoEValidationDate%20Descending%22}]).

<sup>27</sup> Committee of Ministers; Steering committee for human rights. "Steering Committee for Human Rights (CDDH) - d. Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation." Council of Europe. 2022. [https://search.coe.int/cm/#{%22CoEObjectId%22:\[%220900001680a7b75b%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22}\]](https://search.coe.int/cm/#{%22CoEObjectId%22:[%220900001680a7b75b%22],%22sort%22:[%22CoEValidationDate%20Descending%22}]).

ing both instant demands as well as recovery and reintegration in the long run.<sup>28</sup>

#### 4. CONCLUSIONS

Human trafficking in the EU and Western Balkans remains a demanding matter, with many victims struggling to access justice and compensation despite comprehensive international and regional frameworks. National Referral Mechanisms (NRMs) and civil society organisations have fundamental roles in identifying and supporting victims, but differences in implementation and support services persist.

Challenges such as inadequate legal aid, precarious immigration statuses, and weak enforcement further obstacle victims' access to remedies. State-funded compensation plans, strong legal frameworks, and improved collaboration with NGOs are all necessary to close this disparity.

Reinforcing these attempts, side by side with promoting public awareness and training for officials, is essential for seeking justice and extensive support to trafficking victims. Full commitment and coordinated action are of primary importance to effectively combat human trafficking and protect the rights and dignity of all victims.

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<sup>28</sup> EU Charter of Fundamental rights. "Article 47 - Right to an effective remedy and to a fair trial."

**A Comparison of CSR and ESG:  
How do the public and private sectors address the  
requirements stemming from both principles regarding  
Combating Trafficking in Human Beings?  
Key features and differences.**

## **1. INTRODUCTION**

Numerous studies deal with the research of the ‘new global governance’ theories, in which nation-states’ supremacy in the international community (IC) has been challenged by other actors. Different actors, such as civil society, NGOs, IGOs, and private actors, such as businesses, have become increasingly influential in the various processes in IC. Moreover, these actors have accumulated significance and influence through their actions, resulting in various forms of power that positively and negatively affect broader society, regulatory systems, and overall developments in IC.<sup>123</sup>

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<sup>1</sup> Milan Babić, Jan Fichtner, and Eelke M. Heemskerk, “States Versus Corporations: Rethinking the Power of Business in International Politics.” *The International Spectator*, 52(4), 2017, p. 20–43, <https://doi.org/10.1080/03932729.2017.1389151>.

<sup>2</sup> Hiraku Yamamoto, “Governance including Government: Multiple Actors in Global Governance.” *Interdisciplinary Information Sciences*, 14(2), 2008, p. 117–131, [https://www.jstage.jst.go.jp/article/iis/14/2/14\\_2\\_117/\\_pdf](https://www.jstage.jst.go.jp/article/iis/14/2/14_2_117/_pdf)

<sup>3</sup> David Antony Detomasi, “The Multinational Corporation and Global Governance: Modelling Global Public Policy Networks.” *Journal of Business Ethics*, 71(3), 2007, p. 321–334, <https://www.jstor.org/stable/25075335>

Particular focus is thus placed on the role and influence of private economic actors such as businesses and especially transnational and multinational corporations (MNCs). When we talk about MNCs, we are actually talking about the most powerful actors in IC. Many MNCs accumulate revenues that exceed the GDPs of many nation-states. Accordingly, their economic power develops itself into the 'real' power. With the different techniques of lobbying and public campaigns, but also because today both home and host countries' economies are dependent on business operations, they also influence the decisions of governments on national and international levels.<sup>4</sup>

Business power also affects an additional problem, especially when we talk about the catastrophic situation in which we currently find ourselves, and it concerns environmental degradation and environmental but also other groups of human rights (HR) abuses. According to all scientific evidence provided by IGOs, NGOs, research institutes, and individual researchers, human actions concerning the economy are the main culprits of current climate change and environmental pollution, and there are numerous examples of resulting HR violations across the globe. Therefore, economic actors are also the biggest environmental and HR abusers. Still, precisely because of their power and consistent gaps in the regulatory system, which will be explained later, the businesses pass 'under the radar' without ensuring their corporate liability and accountability.<sup>5</sup> As supporters of the 'new global governance approach' point out, and after this brief introduction, it can be concluded that it is contradictory that the IC itself is still built on a

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<sup>4</sup> *ibid.*

<sup>5</sup> Tess Riley, "Just 100 companies responsible for 71% of global emissions, study says". *The Guardian*, 2017, <https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change>

<sup>6</sup> Mahsa Hosseini Moghaddam and Ali Zare, "Responsibilities of Multinational Corporations on Environmental Issues." *Journal of Politics and Law*, 10(5), 2017, p. 78–84. doi:10.5539/jpl.v10n5p78

realistic approach in which nation-states are the main actors. The approach to solving these problems, such as violation of HR and environmental degradation, can only be ensured by implementing the ‘shared responsibility’ principle, in which the private sector will share the burden of responsibility and thus see the importance of ethical business practices. Also, as it will be discussed, it is thus contradictory that there are so many loopholes in the current international regulatory framework concerning MNCs.<sup>7</sup>

Therefore, the topic of this essay, which is research regarding the main principles and implications of somewhat newly emerged Corporate Social Responsibility (CSR) and Environment, Social and Governance (ESG) approaches, goes precisely in the direction of strengthening partnerships between the private and public sectors. As it will be presented, this approach represents only one aspect of the regulatory system that, even now, and especially with additional development, can play a crucial role in correcting current deficiencies. As such, Combating Trafficking in Human Beings (CTHB) represents only one aspect of numerous corporate misconducts and violations of HR that can occur in different stages of global value chains (GVC). However, as a case study, it will perfectly represent the power of the presented self-regulatory approach. Furthermore, by focusing on this specific element, this essay will show that the problem itself is complex and that we cannot generalise the businesses and consider them all as negative actors in IC because they encounter numerous obstacles when trying to solve this and similar problems.

This paper will explain the functioning of such an approach and its understanding in the private and public sectors by providing an overview of the current development and potential improvement of the current framework and practice of CSR and ESG. At the same

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<sup>7</sup> Viljam Engström, “Who Is Responsible for Corporate Human Rights Violations?” Åbo Akademi University Institute for Human Rights, January 2002, <https://www.abo.fi/wp-content/uploads/2018/03/2002-Engstrom-Who-is-responsible.pdf>

time, the observed shortcomings will be pointed out, which must be corrected in order to utilise this approach's potential entirely.

Finally, in addition to the summary and conclusion, an attempt will be made to offer a short list of recommendations for both the private and public sectors. Through a brief overview of possible improvements and the emergence of positive practices, several simple steps both sectors can follow will be presented to improve the implementation and development of the CSR and ESG framework, especially in the context of CTHB.

## **2. SIGNIFICANCE OF THE TOPIC**

As discussed in this chapter, CSR and ESG self-regulating and monitoring approaches are essential for several reasons. One of the main issues is the problem of HR abuses arising from economic activities. These problems can arise from overlooking potential issues or deliberately circumventing rules and legal frameworks. Additionally, this chapter will reveal the exact figures concerning CTHB connected to the private sector and the efforts of the IC in this regard. Ultimately, this chapter will introduce the next chapter, which will focus on the potential of CSR and ESG approaches in solving these issues and how they can fill the current deficiencies in the regulatory framework.

### ***2.1. Human rights abuses by private sector and GVC as enabling factor***

Questions of the HR abuses conducted by the business sector have been an ongoing issue that cannot be easily fixed. The big problem is that it is often difficult to answer questions about whether businesses operate independently and to what extent the company is an extension of the state economy and thus whose responsibility is for HR abuses themselves, solely of companies or shared one with states, both home and host ones. Also, the

next problem is that in the globalised world, we can no longer find many examples of companies that are not, at least in some aspect, transnational or MNCs. This, in turn, opens new problems that arise in GVCs related to the company's operations and its subcontractors or manufacturers. Consequently, the question of responsibility for corporate misconduct arises again.<sup>8</sup>

As the European Union Agency for Fundamental Rights (FRA) points out, most HR and environmental abuses occur in developing countries where companies either easily avoid their responsibilities or the host country is unable or unwilling, for various reasons, to strengthen their national legislation. However, FRA points out that HR abuses also occur in developed regions like Europe. They also warn that the broader picture of transboundary effects of HR and environmental abuses must be considered. Moreover, the FRA enumerates various examples of HR violations, including fundamental HR and the spillover effect on all other HR groups and how they occur in almost all economic sectors. For example, in 2018, the FRA conducted extensive research that monitored 28 EU member states and Northern Macedonia and Serbia, thus discovering 155 incidents. However, as the FRA points out, this is only the 'tip of the iceberg' since numerous examples of HR abuses caused by the private sector are not reported or are inadequately handled, so it is difficult to analyse them.<sup>9</sup>

Various reports and news are published daily, primarily prepared and published by NGOs, focusing on the company's HR violations. The problem is that companies often try to evade their responsibilities by blaming the subcontractors. This is where a big problem arises, not only for the companies but for the IC itself. On the one hand, we can blame the companies precisely

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<sup>8</sup> Viljam Engström, "Who Is Responsible for Corporate Human Rights Violations?" *Åbo Akademi University Institute for Human Rights*, January 2002.

<sup>9</sup> European Union Agency for Fundamental Rights, *Business-related human rights abuse reported in the EU and available remedies*, FRA, 2019, p. 7-18, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-business-and-human-rights-focus\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-business-and-human-rights-focus_en.pdf)

because of the lack of implementation of the Due Diligence approach in their GVC. Still, on the other hand, we cannot attack the companies alone because the states are not performing their duty as primary duty bearers, which would have to regulate the companies themselves but also fight for the universal implementation of HR in all countries. In addition to the deficiencies in the regulatory system that will be identified later, we must point out that the monitoring and self-reporting process itself is expensive and a resource and time-demanding procedure, and sometimes even the companies themselves cannot face this problem alone.<sup>10</sup>

## ***2.2. Issue of trafficking in human beings in the context of private sector operations***

Numerous international organisations dealing with the CTHB, including the International Labour Organization (ILO), point out how the main ‘outcome’ of trafficking in human beings, alongside forced marriage and sexual exploitation, is precisely forced labour. According to the latest ILO report from 2022, In 2021, an estimated 49.6 million individuals were trapped in modern slavery, with 27.6 million in forced labour and 22 million in forced marriage. Within forced labour, 17.3 million suffer in the private sector, 6.3 million in commercial sexual exploitation, and 3.9 million under state-imposed labour. Women and girls constitute significant portions, with 4.9 million in commercial sexual exploitation and 6 million in various economic sectors’ forced labour. Children represent 12% of those in forced labour, with over half in commercial sexual exploitation. The Asia-Pacific region

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<sup>10</sup> Christian Scheper, “Multiplicity, the corporation and human rights in global value chains.” *Cooperation and Conflict*, 57(3), p. 329-347. <https://doi.org/10.1177/00108367221098495>

harbours the most forced labourers (15.1 million), while the Arab States exhibit the highest prevalence (5.3 per thousand people).<sup>11</sup>

Here, we follow up on the previously raised issue of the lack of Due Diligence approach implementation. It must be clear that although companies do not have to be directly involved in trafficking in humans, forced labour, or modern slavery, even in the cases of indirect HR violations, they hold part of the responsibility. Therefore, precisely due to the insufficient regulation and monitoring of companies' GVC, to a certain level, businesses can be considered responsible or profiting from such criminal activities.<sup>12</sup>

A notable example is the recent accusations against numerous textile companies, such as Inditex, for profiteering over forced labour in their GVC. For instance, Inditex was brought in front of the French court in the year 2021 for exploitation of forced labour of Uighur people in their manufacturing companies in China. Other companies were also accused of similar accusations, but the difference is that they admitted part of the blame and immediately cut ties with the mentioned manufacturers.<sup>13</sup> Indirect responsibility goes in many directions. So, for example, the global Hotel Chain Hilton was accused by NGOs and investigative journals in the year 2019 of prophesying sexual exploitation

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<sup>11</sup> International Labour Organization, *HUMAN TRAFFICKING. A handbook for Labour Inspectors*, International Labour Organization, 2008, p. 7, [https://webapps.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_097835.pdf](https://webapps.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf)

<sup>12</sup> Jennifer Zerk, *Corporate liability for gross human rights abuses. Towards a fairer and more effective system of domestic law remedies. A report prepared for the Office of the UN High Commissioner for Human Rights, OHCHR*, 2012, p. 17-29, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/DomesticLawRemedies/StudyDomesticLawRemedies.pdf>

<sup>13</sup> Menaka Yerramilli de Rege, "Zara and the Uyghur Crisis: Is there Forced Labour in Inditex's Supply Chains?" GFLC, 2022 January 22, <https://gflc.ca/zara-and-the-uyghur-crisis-is-there-forced-labour-in-inditexs-supply-chains/>

resulting from human beings trafficking. Namely, these services and exploitation took place in their hotel rooms, and the hotel is held responsible for not checking what their clients are using their hotels for. The list of such and similar accusations is long, and new cases are discovered almost daily.<sup>14</sup>

### ***2.3. Persistent gaps in regulatory framework concerning the business sector and other issues faced by companies***

The regulatory framework concerning businesses and their possible negative impact on HR and the environment is well-developed, both at the international and national levels. However, numerous shortcomings and problems that companies encounter, if they want to implement the Due Diligence approach at any cost, represent enabling factors for continuing issues and the lack of companies' accountability and liability for their corporate crimes.<sup>15</sup>

The primary international documents that represent the basis of regulation in this regard are the International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration or ILO Tripartite Declaration), OECD Guidelines for Multinational Enterprises and the UN Global Compact and their accompanying documents. Although these documents serve as a strong base for further regional and domestic legislation development, they also leave significant gaps that cause further issues.<sup>16</sup> The main

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<sup>14</sup> Kate Hodal, "Major global hotel brands accused of profiting from sex trafficking," BHRRC, 2019 December 12, <https://www.business-humanrights.org/en/latest-news/major-global-hotel-brands-accused-of-profiting-from-sex-trafficking/>

<sup>15</sup> Special Representative to the Secretary-General on Business and Human Rights, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc A/HRC/8/5, OHCHR, 2008, <https://documents.un.org/doc/undoc/gen/g08/128/61/pdf/g0812861.pdf?token=losL353zETKQsEtET3&fe=true>

<sup>16</sup> *ibid.*

drawback is that it lacks a binding nature and thus has unclear responsibilities. Namely, according to the previously discussed issue, these documents still place the primary responsibility for implementation and regulation, i.e. legal subjectivity, on the states themselves. At the same time, companies remain objects of regulation.<sup>17</sup> Thus, the idea woven into SDG17, i.e., partnership for goals, is just an idea that is not legally binding on a global level.<sup>18</sup>

However, the regulatory structure itself is much more complicated. Companies are thus monitored from several other directions: from themselves, international organisations, NGOs, and civil society organisations. It is essential to mention that this kind of complicated regulatory structure without clearly defined responsibilities, often overlapping rules, and the complexity of the GVC, cause problems, especially for small companies that want to improve their operations, by creating costly procedures and overall confusion.<sup>19</sup>

Figure 1. List of some of the recognised gaps in the analysed regulatory framework representing issues for both private and public sectors<sup>20</sup>

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<sup>17</sup> Viljam Engström, “Who Is Responsible for Corporate Human Rights Violations?” Åbo Akademi University Institute for Human Rights, January 2002

<sup>18</sup> United Nations and The Partnering Initiative, *THE SDG PARTNERSHIP GUIDEBOOK. A practical guide to building high impact multi-stakeholder partnerships for the Sustainable Development Goals*, United Nations and The Partnering Initiative, 2020. [https://sustainabledevelopment.un.org/content/documents/26627SDG\\_Partnership\\_Guidebook\\_0.95\\_web.pdf](https://sustainabledevelopment.un.org/content/documents/26627SDG_Partnership_Guidebook_0.95_web.pdf)

<sup>19</sup> Viljam Engström, “Who Is Responsible for Corporate Human Rights Violations?” Åbo Akademi University Institute for Human Rights, January 2002

<sup>20</sup> The following table contains only a short and simplified presentation of the part of the deficiency in the regulatory framework concerning companies and their influence on HR and environment and serves to understand the context and significance of the topics covered in the following chapters. These conclusions are derived from the sources mentioned so far, but also from numerous others, since this is only part of the research that the author of this text is conducting for the purpose of writing his Master’s Thesis at the University of Padova.

Lack of legally binding nature of international documents	Overlapping rules causing confusion	Lack of legal subjectivity to private actors at the international level
Lack of state incentive to implement the international framework on a national level and monitor its implementation by economic actors	Uneven development of regional regulatory systems	The complexity of GVC operations creates barriers to monitoring and reporting both to states and businesses themselves
Uneven national legislation creating barriers to companies regarding HR protection	Lacking legally binding character of shared responsibility principle and Due Diligence approach	Lack of international, regional and national instruments and venues to raise the level of corporate liability and accountability

### 3. CSR & ESG AS A RISING SEGMENT IN THE REGULATORY SYSTEM

In the light of the previous debate concerning ‘new forms of global governance’, in our context, the CSR and ESG approach can be compared with, for example, the one additional aspect of the regulatory framework, Voluntary standard setting. Although they differ, both approaches are characterised by common aspects such as self-regulation, monitoring, and self-reporting. These regulatory approaches to corporate policies are thus an attempt by the private sector itself for stronger implementation of previously mentioned international but also regional and national rules and legal frameworks. These measures are implemented directly by the company or by third parties, such as external monitoring and consulting companies. As experts point out, this approach is an excellent way to strengthen accountability and take responsibility by companies themselves.<sup>21</sup> Still, critics warn of numerous dangers of the

<sup>21</sup> United Nations Conference on Trade and Development, *Reflecting on Sustainability Standards: Trade and Sustainability Crisis*, UNCTAD, 2022. p. 5-11, <https://>

self-regulation approach, such as green-washing practices or often false reporting and lack of accountability of external monitoring companies and the additional complexity of the already complicated regulatory system and further avoidance of the final adoption of legally binding international regulatory documents.<sup>22</sup>

### ***3.1. Corporate Social Responsibility (CSR)***

The notion of a corporate code of conduct emerged during the 1970s and 1980s as a response to mounting concerns articulated by governments of developing nations and HR organisations regarding primarily the practices of MNCs within the global market. Subsequently, with the evolution of a sustainable development framework within the international community, the terminology shifted towards CSR, though contemporary discourse also embraces the term Corporate Sustainable Responsibility.<sup>23</sup>

The United Nations (UN) defines CSR as a managerial paradigm wherein companies integrate social and environmental considerations into their business operations and stakeholder engagements. CSR embodies the endeavour by which a company strives to balance economic, environmental, and social imperatives, a framework often encapsulated in the “Triple-Bottom-Line-Approach”, while simultaneously addressing the expectations of shareholders and stakeholders. Thus, CSR delineates a company’s internal policies and strategies to ensure that its business endeavours pre-emptively mitigate adverse impacts on society and the environment.<sup>24</sup>

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ees.kuleuven.be/project/vss4fwood/news/UNCTADreport

<sup>22</sup> Federica Balluchi, Arianna Lazzini, and Riccardo Torelli, “CSR And Greenwashing: A Matter of Perception in the Search of Legitimacy,” *Social Science Research Network*, January 1, 2020, <https://doi.org/10.2139/ssrn.3721199>.

<sup>23</sup> Amba-Rao, Sita C. “Multinational Corporate Social Responsibility, Ethics, Interactions and Third World Governments: An Agenda for the 1990s.” *Journal of Business Ethics* 12(7), 1993, p. 553–72. <http://www.jstor.org/stable/25072436>.

<sup>24</sup> “Corporate Social Responsibility,” United Nations Industrial Development Organization, Accessed April 29, 2024. <https://www.unido.org/our-focus/advan>

While some critics dismiss CSR as mere ‘greenwashing’ aimed at consumers, it is crucial to acknowledge its role as a meaningful form of self-regulation through which businesses endeavour to forestall potential negative repercussions. Thus, it embodies, at least in part, a proactive stance towards societal and environmental stewardship. Furthermore, once a company develops its CSR internal policies, it is also easier to refer to them if the same company violates HR or environmental regulations, thus increasing corporate liability, at least at the national level.<sup>25</sup>

### 3.2. *Environment, Social, Government (ESG)*

ESG scores serve as a vital metric, providing insight into a company’s performance across environmental, social, and governance domains. These scores are derived from an array of criteria meticulously crafted to evaluate companies on these multifaceted dimensions. Third-party ESG rating agencies, employing diverse methodologies and scoring systems, facilitate this evaluation process. The accessibility of ESG scores through various online platforms, including brokerage platforms, financial portals, and rating agency websites, underscores their significance in contemporary investment decision-making.<sup>26</sup>

In simpler terms, ESG can be understood as a comprehensive checklist brimming with indicators that gauge a company’s adherence to CSR policies throughout its GVC. This assessment encompasses how well a company integrates and upholds national and international regulatory frameworks, its efforts to anticipate and

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cing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr

<sup>25</sup> Amish Shah. “How Companies Can Avoid Greenwashing And Make A Real Difference In Their Environmental Impact,” *Forbes*, 2022, August 8. <https://www.forbes.com/sites/forbesbusinesscouncil/2022/08/08/how-companies-can-avoid-greenwashing-and-make-a-real-difference-in-their-environmental-impact/?sh=1c67cab752b8>

<sup>26</sup> “Understanding the ESG Checklist,” AEI Consultants, Accessed April 28, 2024. <https://aeiconsultants.com/esg-checklist/>

address potential adverse effects of its operations, and its strategies for continual improvement.<sup>27</sup>

Notably, the impetus behind the widespread adoption of ESG reporting and rating stems predominantly from the financial sector. The realisation that sustainable development hinges upon directing financing toward environmentally and socially responsible projects has spurred the implementation of a series of stringent regulations at the international, regional, and national levels. Notably, the European Union (EU) has emerged as a vanguard in this regard, spearheading the development of robust legislative frameworks governing the financial sector's engagement with sustainability-oriented investments.<sup>2829</sup>

### ***3.3. CSR & ESG in the context of CTHB***

According to all previously presented information concerning the issue, the connection of trafficking in human beings and forced labour and modern slavery, and all presented aspects of both CSR and ESG, it is easy to notice the context in which stronger development and adherence to CSR policies and ESG reporting can also help in CTHB itself. Thus, primarily, the 'social aspect' of both CSR and ESG can be directed at eliminating possible cases of forced labour in the whole of GVC, especially by implementing all regulations and rules concerning areas of workers' rights through the previously mentioned Due Diligence approach.<sup>30</sup>

<sup>27</sup> Adam Hayes, "How to Tell If a Company Has High ESG Scores," Investopedia, July 27, 2023, <https://www.investopedia.com/company-esg-score-7480372>

<sup>28</sup> Thomson Reuters Regulatory Intelligence, *ESG: Fast-emerging challenges for financial institutions. A 2021 special report by Thomson Reuters Regulatory Intelligence* (New York, 2021), p. 3-14, [https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2021/09/ESG-2021\\_A4\\_Final\\_web.pdf](https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2021/09/ESG-2021_A4_Final_web.pdf)

<sup>29</sup> "EU Taxonomy Navigator," European Commission, Accessed April 28, 2024, <https://ec.europa.eu/sustainable-finance-taxonomy/>

<sup>30</sup> "Navigating the "S" in "ESG": An Overview of Forced Labor Regulatory Activity in the EU and North America," Compliance & Risk, Accessed April

Although a limited amount of comparable data is available to determine the extent to which corporate governance expressed through CSR and ESG contributes to the reduction of modern slavery and human trafficking, various interviews and comparisons of practices among companies in different sectors show significant positive moves being made. Companies are aware that any potential suspicion of such practices in any part of their GVC negatively impacts their ESG rating and investment portfolios. As a result, they are making every effort possible to improve their practices. However, while recognising the potential for positive spill-over on the rest of IC as stronger economic actors, they also acknowledge that they cannot tackle the problem independently.<sup>31</sup> This also highlights the lack of reliable data and the often costly and limited access to monitoring and scoring working practices in individual countries precisely because of the lack of state initiatives. ESG scoring has further positive outcomes, such as positive peer pressure, especially between companies in the same sectors, as it is important for companies with good practices that their colleagues improve their practices to characterise the entire sector as ‘environmentally and socially friendly’.<sup>32</sup>

Critics continue to point out that CSR and ESG are merely used to create a good corporate picture and ‘boost’ investment portfolios. Still, we must point out that the situation is not so negative because even though the economic gain may be in the first place during the creation of such strategies, it often has positive effects

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28, 2024 <https://www.complianceandrisk.com/blog/navigating-the-s-in-esg-an-overview-of-forced-labor-regulatory-activity-in-the-eu-and-north-america/>

<sup>31</sup> Boffo, R., and R. Patalano, “ESG Investing: Practices, Progress and Challenges,” OECD Paris, 2020, p. 37-55, [www.oecd.org/finance/ESG-Investing-Practices-Progress-and-Challenges.pdf](http://www.oecd.org/finance/ESG-Investing-Practices-Progress-and-Challenges.pdf)

<sup>32</sup> Vikram Chakravarty, Andre Toh, and Gilles Pascual, “How Companies Can Link ESG to Long-term Value,” EY, July 30, 2022, [https://www.ey.com/en\\_ph/real-world-strategy/how-companies-can-link-esg-to-long-term-value](https://www.ey.com/en_ph/real-world-strategy/how-companies-can-link-esg-to-long-term-value).

on the real situation on the field, so it cannot be characterised only as a negative one.<sup>33</sup>

#### ***3.4. Current Level of CSR and ESG development, positive practices and recognised issues***

Every company today has developed its CSR internal strategy, although individual strategies may differ, especially if we compare companies from different sectors. Also, the ESG rating system is a fully operating practice that is part of companies' investment portfolios, upon which financial sectors decide how to direct investments. Moreover, this rapid development of the practice was caused primarily by the push from the financial sector, which has been under increased scrutiny from both the government and the public sector for the last few years.<sup>34</sup>

In this part, as the author, I have to make a personal remark, i.e. point out the obstacles I encountered as a student who wanted to analyse the current development of the ESG sector. Moreover, these obstacles also speak of the overall shortcomings of the system itself. Namely, it is difficult to evaluate the success and functioning of such a system as a person who is not part of it. In general, it is difficult to access confidential information related to the financial portfolio of companies and information about how the same companies are rated by external rating and monitoring companies. This shows an additional issue of the current ESG regulatory framework that is treating such knowledge and practices as 'tradable goods', and it should, in fact, serve to improve serious practical problems and thus be available to everyone, including the general public, so that based on them, they can and base their consumer decisions.

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<sup>33</sup> "Here's Why We Must Still Focus on ESG, Despite the Backlash," World Economic Forum, January 4, 2023, <https://www.weforum.org/agenda/2023/01/the-importance-of-esg-sustainable-future-davos-2023/>.

<sup>34</sup> Adam Hayes, "How to Tell If a Company Has High ESG Scores," Investopedia, July 27, 2023.

This also supports numerous criticisms that the system is not ‘uniformed’. Many rating and consulting companies perform these practices for the businesses themselves due to the costly monitoring and rating procedures. According to the information it was possible to access, the indicators themselves, which form a kind of ‘check-list’, differ among consulting companies. They all take into account all current regulatory legislation, but the system is not completely equalised. This raises the question of the very level of success of this approach since, due to the unevenness of the indicators, it is impossible to create a kind of global ‘ranking list’ that would present a list of comparisons of the practices of all companies.<sup>35</sup>

Figure 2. List of indicators available to the public that form the ESG ranking scheme conducted by the consulting company PwC<sup>3637</sup>

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<sup>35</sup> Alexandra Kinywamaghana, “Can ESG Standards Solve the ESG Reporting Dilemma?,” Frankfurt School of Finance and Management, November 28, 2022, <https://blog.frankfurt-school.de/can-a-set-of-minimum-esg-reporting-standards-solve-the-esg-reporting-dilemma/>.

<sup>36</sup> Even though PwC does not reveal all the details of individual indicators, this structure helps us to understand the way of evaluating companies’ performances. Similar scheme can also be found in the webpage of Bloomberg consulting company.

<sup>37</sup> “How to Measure Your ESG Performance,” PwC, Accessed April 28, 2024, <https://www.pwc.com/ca/en/today-s-issues/environmental-social-and-governance/measure-esg-performance.html>.

<b>ENVIRONMENT</b>	<b>SOCIAL</b>	<b>GOVERNANCE</b>
<b>Decarbonisation</b>	<b>Workforce</b>	<b>Management</b>
Carbon emissions	Diversity and inclusion	Board structure and actions
Green products/infrastructure	Equality	Management compensation
Green operations	Human capital development	Anti-corruption
Clean tech	Health and safety	Ethical business model
<b>Water scarcity</b>	<b>Human rights</b>	<b>Corporate behaviour</b>
Water consumption	Supply chain labour standards	Transparency and reporting
Water recycling	<b>Community</b>	Risk and compliance
<b>Waste and pollution</b>	Infrastructure investment	Accountability/ownership
Pollution emission	Community empowerment	Partnership
Waste disposal and diversion	<b>Product responsibility</b>	
Energy consumption	Product safety	
Renewable energy	Data privacy	
Packing	Cyber security	
<b>Biodiversity fostering</b>	Responsible AI	
Land use		
Land preservation		
Water preservation		
<b>Sustainable supply chain</b>		
Supply chain transparency		
Sustainable procurement		
Sustainable materials		

Although it was not possible to access the exact indicators under each category mentioned in the table or an example of a real company's ESG rating report for the purposes of this research, the table itself highlights an important problem related to the topic of this work. This problem has been pointed out by many scholars, NGOs, IGOs, and economists from the field. The unbalanced development of indicators concerning different aspects of ESG is evident. Critics warn that the social aspect and its indicators are the least developed, or at least less developed, compared to the environmental aspect. The social aspect has been labelled as 'less fashionable' currently, especially because the financial sector is primarily looking for 'green investments'. As a result, companies are adapting to these environmental requirements to attract investments.<sup>38</sup>

Now is the right time to pay more attention to CSR and the ESG regulatory framework, especially due to many international and regional developments in this area. Numerous international organisations, such as the UN and its agencies, focus greatly on ESG, preparing new reports concerning various aspects. However, the real developments are taking place at the regional level. Numerous regions and regional IGOs, especially North America and the EU, began to take this area seriously and became aware of its shortcomings. Recently, starting with the adoption of the New European Green Deal framework, the EU has invested a lot of effort in developing additional directives and regulations concerning

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<sup>38</sup> Paloma Muñoz Quick, "Bridging the Human Rights Gap in ESG | Blog | Sustainable Business Network and Consultancy | BSR," Accessed April 28, 2024, <https://www.bsr.org/en/blog/bridging-the-human-rights-gap-in-esg>.

the business and financial sectors to ensure a just, sustainable and green transition.<sup>39,40</sup>

Aside from the new EU Due Diligence Directive and numerous frameworks for sustainable finance and taxonomy, on January 5, 2023, the Corporate Sustainability Reporting Directive (CSRD) entered into force. It modernises and strengthens the rules concerning the social and environmental information that companies have to report. This is a huge step forward because with this directive, for the first time, it is obliged to report and declare its practices in a harmonised way at the regional level, thus trying to solve the issues recognised above, above all uniformity, issue of accountability of external monitoring companies, lack of Due Diligence implementation and lack of corporate liability and many more. Companies subject to the Corporate Sustainability Reporting Directive (CSRD) will adhere to the European Sustainability Reporting Standards (ESRS), formulated in draft form by the EFRAG, known as the European Financial Reporting Advisory Group, an independent entity comprising diverse stakeholders. Published in the Official Journal on December 22, 2023, as a delegated regulation, the initial ESRS set applies universally to CSRD-covered companies, transcending industry sectors. These standards, aligned with EU policies, not only comply with but also contribute to international standardisation efforts. Furthermore, the CSRD mandates assurance on reported sustainability information and lays the groundwork for a digital taxonomy of sustainability data. After analysing these directives, it is concluded that the social aspect has risen to a new level. Thus,

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<sup>39</sup> “Corporate Sustainability Reporting,” European Commission, Accessed April 28, 2024, [https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en#what](https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en#what).

<sup>40</sup> Adam Hayes, “How to Tell If a Company Has High ESG Scores,” Investopedia, July 27, 2023.

the monitoring indicators are additionally improved, which will positively affect the very issue of this research.<sup>41</sup>

Figure 3. European Sustainability Reporting Standards (ESRS)<sup>42</sup>

ESRS 1	General requirements
ESRS 2	General disclosures
ESRS E1	Climate change
ESRS E2	Pollution
ESRS E3	Water and marine resources
ESRS E4	Biodiversity and ecosystems
ESRS E5	Resource use and circular economy
ESRS S1	Own workforce
ESRS S2	Workers in the value chain
ESRS S3	Affected communities
ESRS S4	Consumers and end-users
ESRS G1	Business conduct

Each category related to a particular aspect of ESG reporting is then divided into additional subcategories and related indicators. Thus, for the significance of this work, it is important to point out that under the category ESRS S1-1, there is a special subcategory called ‘processes and measures for preventing trafficking in human beings’ with associated indicators that oblige companies to present the measures and actions they take to monitor possible and pre-

<sup>41</sup> “Corporate Sustainability Reporting,” European Commission, Accessed April 28, 2024.

<sup>42</sup> European Commission, *COMMISSION DELEGATED REGULATION (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards (Text with EEA relevance)*, European Commission, 2023, July 31, [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L\\_202302772](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202302772)

vent forced and child labour and thus achieve the highest level of CTHB.<sup>43</sup>

#### **4. FURTHER STEPS NEEDED TO BE TAKEN IN ORDER TO IMPROVE THE PRACTICE**

The legislative developments presented above will help the companies themselves, especially those that already have their CSR practice at the highest level but have encountered numerous obstacles due to issues of overlapping rules and expensive and time-consuming data gathering.

As was pointed out before, it is not possible to generalise all companies because, in many cases, there is a positive response when there are cases of accusations of profiting from direct or indirect involvement with forced labour and, thus, trafficking in human beings. As we have seen, it is no longer possible to observe a single desirable outcome that companies could have by supporting such practices because they can literally destroy the business itself, if for nothing else, then because of the creation of a negative image of the company and the loss of customers and investors.<sup>44</sup>

Connecting the previous discussion about the notion of shared responsibility and corporate governance significance and the potential of CSR and ESG regulatory approach in solving these issues, the following table will briefly present only some of the possible steps that can be taken by both companies and governments to guarantee a Due Diligence approach in the whole of GVC, but also particularly focused on the main issue of this essay, CTHB.<sup>4546</sup>

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<sup>43</sup> *ibid.*

<sup>44</sup> “Here’s Why We Must Still Focus on ESG, Despite the Backlash,” World Economic Forum, January 4, 2023.

<sup>45</sup> The conclusions and recommendations presented in the following table are based on the analyzed sources in previous chapters.

<sup>46</sup> For more useful instructions to the private actors themselves on how to access CTHB in the context of the issue presented in this research, it is useful to observe the second part ‘PART II. Step-by-Step Guide to Financial Investigations Related

<b>Business &amp; Financial sector and individual companies</b>	<b>Nation-state governments' individual or collective approaches in IC</b>
<p>Implement the current rules and legislations and develop comprehensive internal CSR policies.</p>	<p>Much more effort is needed in harmonising CSR and ESG indicators and regulations. The EU is a great example, but this is a regional effort. Steps are needed at the global level because the development of contrasting business regulations at regional levels deepens the problem of uneven development and overlapping regulations, which can cause additional barriers for the private sector when implementing them.</p>
<p>Do not avoid shared responsibility concerning practices throughout GVC. Instead, develop firm and comprehensive contracts with your subcontractors and manufacturers containing provisions clarifying possible legal actions in case of misconduct.</p>	<p>Develop a stronger regulatory framework on a global level so that a kind of global 'ranking list' can be developed and thus a common approach to this global problem.</p>
<p>Connect yourself with governmental and non-governmental organisations and initiatives focusing on CTHR; share the data, monitoring instruments and possible solutions.</p>	<p>States are primary duty bearers for implementing international rules and monitoring companies operating in their territory. Economic benefits can no longer exceed the protection of the environment and HR. Thus, all states must improve their domestic legislation, and those who are weak must be helped in order to balance the practice globally.</p>

to Trafficking in Human Beings (THB)' of OSCE Research from the year 2019 with the title 'Following the Money' available at the following link: [https://www.osce.org/files/f/documents/f/5/438323\\_0.pdf](https://www.osce.org/files/f/documents/f/5/438323_0.pdf). Although the report itself focuses primarily on the financial sector, the instructions are easily applied also to other related economic areas.

<p>When certain cases occur that imply indirect responsibility, it is important to take the correct steps. Provide all the information needed to governmental bodies and establish a remedy system for victims.</p>	<p>Increase monitoring of trafficking in human beings. Share the information and data and strengthen cross-border cooperation. This alone will identify problematic areas where additional progress is needed.</p>
<p>Publish data publicly, even CSR and ESG reports, to help governments, NGOs, and end consumers. Your positive practice and customer loyalty can also serve as a ‘peer-pressure’ mechanism for companies whose CSR practices are not the best.</p>	<p>Establish a ‘reward and praise’ system for companies with particularly advanced CSR and ESG practices. This will encourage companies to improve their practices, which will also strengthen CTHB in the corporate context.</p>
<p>Even if your company’s reports include examples of HR violations, publish them. Such information help IC focus on problematic areas and help avoid them. They also demonstrate your company’s accountability and willingness to improve practices, and consumers appreciate an honest approach.</p>	<p>On a global level, try to unify all the knowledge, regulations, and efforts of private companies and other actors regarding CSR and ESG regulation. An ESG regulatory framework cannot be a means to achieve comparative advantage between countries or IGOs. Only with a common, uniform approach can problems be reduced to a minimum, and it can also help the companies themselves more easily implement the same regulations and measure their success.</p>

## 5. CONCLUSION

CSR and ESG regulatory approaches present a relatively new but highly successful way of regulating and self-regulating companies regarding their sustainable practices. This approach further strengthens the approach to these problems based on partnership between the public and private sectors.

Focusing on the CTHB itself, CSR and ESG can be hugely beneficial in this regard, even if we start from the issue of forced labour as one of the main outcomes of trafficking in humans and its connection to private sector operations. However, at the same time,

there is a lack of studies and measurable and comparable data to determine the exact success of such an approach to CTHB.

As was shown, there are also numerous shortcomings in the current approach that need to be worked on to create a uniform stance. A good example is the recent development of legislation at the EU level. However, as this is a recent step, some time will be needed to evaluate the implementation. By all accounts, numerous positive developments can be expected, especially due to the more detailed development of the social aspect of ESG and the legally binding approach based on balanced practices. Moreover, a large additional positive outcome of these EU developments can be a positive 'spill-over' effect precisely because the entire legislative framework is based on Due Diligence.

Therefore, it is not simple or easy to evaluate the exact level of positive effect that CSR and ESG have, especially in connection with CTHB. However, real development is still happening, and this area requires special attention because it represents a large unused potential to combat those and other related issues in practice. As a final suggestion, as an excellent step forward, better support and co-financing of research within IGOs and academia is recommended from both the public and private sectors to more easily evaluate the effectiveness of state and public policies concerning issues presented in this research. Also, in this way, it would be easier to evaluate the success of this approach and determine the areas where additional work can be done to improve the situation further.

## Brief Disability-Aggravation Charts for The OSCE Participating States

Region	Country	Does the criminal code of the following States list disability/ being disabled as a circumstance of aggravation?	Notes	Percentage of the overall countries in the region that list disability/ being disabled as a circumstance of aggravation
<b>Eastern Europe and the Baltic States</b>	Belarus	no		62% of the countries include disability as a circumstance of aggravation in criminal legislation, while about 38% do not.
	Bulgaria	no		
	Czech Republic	yes	The Criminal Code of Czech Republic considers disability as an circumstance of aggravation.	
	Estonia	yes	The Estonian Criminal Code listed disability as a circumstance of aggravation	
	Hungary	no		
	Latvia	yes	In the Latvian Criminal Code, disability is listed as a circumstance of aggravation.	
	Lithuania	yes	Disability is explicitly listed as a circumstance of aggravation in the Lithuania Criminal Code	
	Moldova	yes	The Moldovan Criminal Code listed disability as a circumstance of aggravation and it is the only country in the Eastern Europe and Baltics state clusters who's criminal code mention both physical and mental handicap.	
	Poland	no		
	Romania	yes	Disability is considered a circumstance of aggravation in the Romanian Criminal Code, however the listing can be considered insufficient or limited due to the lack of specificity and proper mentioning forms of disability that could ensure concrete assurance of legal protection.	
	Russia	yes	The Russian Criminal Code listed disability as a circumstance of aggravation, but like the Romanian Criminal Code, the Criminal Code of Russia based its listing on terms of generalization for example, defenceless or helpless person	
	Slovakia	no		
Ukraine	yes	The Ukrainian Criminal Code recognise disability as a circumstance of aggravation, but like the rest of the countries listed above, the Ukrainian Criminal code does not distinguish between mental and physical disability, beside Moldova.		

Western Europe	Austria	yes	The term 'disability' is not explicitly mentioned as an aggravating factor. However, actions like hate crimes and offences perpetrated against defenceless or helpless individuals, directed at persons with disabilities, appear to be considered aggravating circumstances, regardless of mental or physical impairment.	88% of the countries include disability as a circumstance of aggravation in criminal legislation, while about 12% do not.
	Belgium	yes	Penalties are increased if the offence is committed against disabled people, and the situation of vulnerability being established case by case for specific offences. Victim's condition must be apparent or known to the perpetrator.	
	France	yes	French criminal law recognizes vulnerability due to physical or mental disability as an aggravating factor. This formula applies to a wide range of offences. Vulnerability must be "particular" and "apparent or known" to the perpetrator.	
	Germany	yes	Victim's disability is an aggravating circumstance for a number of specific crimes, including sexual abuses, torture, continued exercise of force and abuse/neglect by caregivers (professional and non-professional). The handicap must be such as to render the victim 'defenceless'.	
	Holy See (Vatican City State)	no		
	Ireland	yes	In Ireland, the more vulnerable the victim, the more serious the crime. Targeting a vulnerable victim in crimes like rape, robbery, defilement and burglary constitutes an aggravating factor. However, nothing explicitly requires the court to consider disability as an aggravating circumstance.	
	Italy	yes	Penalties are heightened for specific crimes when directed at individuals with "physical, mental, or sensory handicap". Victim's condition must be apparent or known to the perpetrator. Also, Article 61(1)(5) of the Criminal Code introduces the concept of 'diminished defence' as a common aggravating circumstance.	
	Liechtenstein	yes	Disability is explicitly considered an aggravating factor only for hate crimes. Penalty may be increased for other crimes if offenders exploit the "defenselessness or helplessness of another person".	
	Luxembourg	yes	A general aggravating circumstance is triggered for hate crimes targeting disabled people. Also, certain crimes are heightened when a vulnerable victim is offended. Vulnerability must be "particular" and "apparent or known" to the perpetrator.	
	Malta	yes	Disability itself is not considered an aggravating circumstance. However, victim's vulnerability and inability to adequately defend themselves may constitute aggravating circumstances for specific crimes.	
	Monaco	yes	Penalties are heightened for offences against disabled individuals, spanning from "crimes against the person" to "fraudulent abuse of a vulnerable person". Victim's condition must be apparent or known to the perpetrator.	
	Netherlands	yes	Disability is an aggravating circumstance in cases of sexual offences. Aggravating circumstances could be triggered for other offences if the victim is considered "vulnerable".	
	San Marino	yes	Criminal law only considers as aggravating factors acts against a person in a state of infirmity or mental deficiency, with no mention to physical disability.	
	Spain	yes	Hate crimes against persons with disabilities constitute a generic aggravating circumstance. Also, the special vulnerability of the victim is a specific aggravating circumstance for many crimes. The penalty is further increased if the disabled individual is bound to the offender.	
Switzerland	no	The Swiss Criminal Code lacks adequate aggravating circumstances relating to disability.		
United Kingdom	yes	UK has many guidelines for offences against disabled victims. Hate crimes motivated by the disability (or presumed disability) constitute an aggravating circumstance. Also, proof of victim's vulnerability due to disability enhances the offence severity.		

Southeastern Europe, the Caucasus, Central Asia, and Mediterranean	Albania	Yes	Both, general and circumstance of aggravation	Approximately 65% of the countries include disability as a circumstance of aggravation in criminal legislation, while about 35% do not.
	Andorra	Yes	Both generally and as an aggravating circumstance	
	Armenia	Yes	Both, general and circumstance of aggravation	
	Azerbaijan	Yes	Azerbaijan's Criminal Code recognizes disability as an aggravation factor in crimes, without distinguishing between physical or mental disabilities. International evaluations call for improved protections and accessibility.	
	Bosnia and Herzegovina	No	The Criminal Code of Bosnia and Herzegovina does not consider disability as an aggravating circumstance, nor does it differentiate between physical and mental disabilities.	
	Croatia	No	Croatia's Criminal Code doesn't explicitly mention disability as an aggravating factor, it is only focusing on penalties for severe bodily harm and denying disability rights.	
	Cyprus	Yes		
	Georgia	No	The Criminal Code of Georgia does not consider disability as an aggravating circumstance, nor does it differentiate between physical and mental disabilities.	
	Greece	Yes		
	Kazakhstan	No	Kazakhstan's legislation doesn't classify disability as an aggravating factor in crimes but includes measures to protect the rights and ensure equitable treatment of individuals with disabilities within its judicial and labor systems.	
	Kyrgyzstan	No	The Kyrgyzstan's Criminal Code does not consider disability as an aggravating circumstance, nor does it differentiate between physical and mental disabilities.	
	Montenegro	Yes	Based on the excerpts from the Criminal Court of Montenegro, the criminal code/national legislation does indeed list disability or being disabled as a circumstance of aggravation	
	Mongolia	Yes	In the Mongolian Criminal Code, disability	
	North Macedonia	Yes	The criminal code of North Macedonia explicitly lists disability as a circumstance that can influence the sentencing phase of a criminal procedure.	
	Serbia	Yes	The Criminal Code of Serbia does list disability/being disabled as a circumstance that can influence the severity of legal penalties in certain contexts.	
	Slovenia	Yes		
Tajikistan	No	In Tajikistan, the criminal code does not specifically list disability or being disabled as a circumstance of aggravation.		
Turkey	Yes	The Turkish Criminal Code explicitly recognizes disability as an aggravating factor in crimes, prescribing harsher penalties for offenses against individuals with disabilities.		
Turkmenistan	No	the Turkmenistan Criminal Code does not list disability as an aggravating factor in the commission of crimes. Instead, it exempts individuals with significant disabilities, along with other vulnerable groups, from certain types of punishment, reflecting a humane approach to sentencing.		
Uzbekistan	Yes	The Criminal Code of Uzbekistan does list disability, or the infliction of harm resulting in disability, as a circumstance that can influence the severity of legal penalties for crimes involving bodily injury only.		

Northern Europe, Scandinavia, and North America	Canada	Yes	The Canadian Criminal Code does list disability as an aggravating factor, with mention of mental and physical disability.	100% of the countries/regions include disability as a circumstance of aggravation in criminal and national legislation.
	Denmark	Yes	The Combined second and third periodic reports submitted by Denmark under article 35 of the Convention, due in 2020, mentions disability as an aggravating circumstance, and the distinction between mental and physical disability can be found in the Danish Equality Act of 2010.	
	Finland	Yes	The Finnish Penal Code does list disability as an aggravating factor, and the mention of the distinction between mental and physical disability can be found in their Act on Services and Support Measures Organised on the Basis of Disability.	
	Iceland	Yes	The general Penal Code of Iceland does list disability as an aggravating circumstance, and the distinction between mental and physical disability can be found in the Act on the Affairs of Disabled People.	
	Norway	Yes	The Norwegian Code does bring disability as an aggravating cause and there is a mention of mental and physical disability in the legislation.	
	Sweden	Yes	The Swedish Penal Code does not list disability as an aggravating factor, however, it mentions as an aggravation whether the accused exploited the vulnerability position of another person or the special difficulties of that person in protecting himself, which could be interpreted by the judge as an aggravating factor that encompasses the disability.	
	United States	Yes	The state's legislation of the country does list disability as an aggravating circumstance, in many cases, distinguishing between mental and physical disability. In addition, there is a Federal guide act that reinforces the distinction between mental and physical disability.	
	Portugal	Yes	Although not present in the list of aggravating circumstances, the Portuguese Penal Code aggravates the punishment of some crimes when the victim is disabled, such as qualified homicide, threat, and coercion. The mention of mental and physical disability is brought up by the Law n.º 38/2004, August the 18th.	
<b>TOT</b>				Yes: 73.33% No: 26.67%





Report 2024: **Comparative Analysis of Legal and Policy Frameworks on Trafficking in Human Beings: Addressing current issues in the OSCE area** tackles one of the most urgent questions in contemporary anti-trafficking policy: how to ensure meaningful protection for the most vulnerable, especially persons with disabilities. Through a comparative reading of legal frameworks, sentencing approaches, and victim protection strategies across OSCE countries, the volume highlights where legal systems have advanced and where gaps, ambiguities, and inequalities remain. From the proof of means requirement to aggravating circumstances, from remedies for victims to the responsibilities of public and private actors, this book offers a clear map of the challenges still ahead and the reforms they demand.