

KJI NEWSLETTER ***May 2004***

This newsletter is published to fully inform the magistrates of Kosovo on the activities of the KJI. This publication is distributed to judges and prosecutors throughout Kosovo. The Monthly KJI Newsletter features articles from KJI Staff relating to issues of interest to judges and prosecutors working in Kosovo. KJI will invite this year magistrates to contribute to this Newsletter and to publish their own articles or reports.

SUMMARY REPORT OF THE SEMINAR ON TRAFFICKING IN HUMAN BEINGS

On 14 and 15 April 2004 the Kosovo Judicial Institute held a two-day seminar on Trafficking in Human Beings. This training session was organized thanks to the support of specialized experts working for organizations and institutions which have a proven experience in this matter and which are dealing on a regular basis with Trafficking issues or cases.

The agenda of the seminar was developed according to the anti-trafficking training module, developed by the Stability Pact for South Eastern Europe for judges and prosecutors, within the framework of the Comprehensive Programme for Training, Exchange and Cooperation of the Stability Pact Force on Trafficking in Human Beings. There is a growing awareness that effective action against trafficking requires a co-ordinated multidisciplinary approach at national, regional and international levels involving all the key actors concerned, including judges and prosecutors.

The report below aims to summarise the subjects that were presented by the experts during the seminar, in order to inform and further enhance the ability of the Judiciary to understand the phenomenon of trafficking in persons as a human right violation and a criminal offence.

Local and international experts provided the audience with presentations on the importance of the phenomenon of Trafficking in Human Beings, the development and progress of international law related to this matter, the core elements of trafficking and the phases of the trafficking process, the applicable Human Trafficking legislation in Kosovo and its implementation, the response mechanism established in Kosovo to combat trafficking in human beings, the trauma and needs of victims, the special investigative techniques and specific aspects of criminal proceedings in trafficking cases, as well as the protection and assistance of victims during the prosecution and trial.

This report will hopefully contribute to further sensitize the magistrates, including those who did not attend the seminar, to the issue of trafficking in persons, a phenomenon which becomes very pressing in Kosovo. However, the magistrates present at the seminar raised a certain number of concerns they would like to see resolved in a short delay.

I. Trafficking in Human Beings: general overview and situation in Kosovo

1. General overview

The last ten years have seen a steady increase in trafficking in human beings, through and from South East Europe. This phenomenon has reached alarming proportions, mostly in the Balkans and neighboring countries. The US Department estimated in June 2003 that 800 000 to 2 000 000 women and children are trafficked across international borders every year. The International Organization for Migration estimates that 500 000 women are illegally forced to work as prostitutes in Europe. This constitutes a grave human rights concern and particularly challenges law enforcement and the Judiciary.

Trafficking in human beings is a global criminal business based on pure exploitation, driven by demand, with an estimated annual global turnover of trafficking is 7-8 billion USD. Trafficking does not only take place for sexual exploitation, but also labour exploitation,

organ donation, forced servitude, slavery, or practices similar to slavery, begging, theft and domestic work.

The general root causes of trafficking are mostly economic as individuals are searching for better opportunities due to poverty or because of war conflicts, persecution or violence and are deceived by false promises and lured by offers of high salaries. Root causes can also be found in the lack of legislation, corruption or gender discrimination... Trafficking affects both men and women, but women are affected in different ways than men, in terms of the sectors in which they end up, the abuses they suffer and the consequences thereof. Traditionally women have had less access to education and skilled labour markets. At the same time, the breakdown of traditional society roles has seen increasing numbers of women becoming responsible for the family income and seeking to maintain this through remittances from migration. Yet, although nowadays half of the migrants worldwide are women, migration policies and opportunities are male oriented. Female migrants are likely to have less access to the formal labour market and the accompanying regulated migration routes. Women are more likely to migrate into unskilled, unregulated sectors, in particular domestic work and the sex industry. Two sectors that have no or minimal protection and that are often even not considered work. Owing to the nature of the work and the forms of migration open to them, they are relegated to the

services of dubious agencies and middlemen, thus leaving them more vulnerable to trafficking and other forms of violence and abuse.

Another factor is the way prostitutes are stigmatized and the inhuman attitude that holds that once a woman is a prostitute she does not deserve anymore of the same protection against violence and abuse as other citizens. This attitude is consciously exploited by traffickers.

Recruitment is commonly done through friends, family members or acquaintances (even females they have known for a long time), but also through different agencies. Traffickers benefit from the fact that the women who take the initiative to leave are fleeing poverty and bleak employment and often have families who are dependent on their income. The trafficking process does not stop as the trafficked persons is released or manages to escape the coercive situation. Also after the trafficking situation has stopped trafficked persons face a range of problems, including health, physical and psychological problems. Moreover, as in most cases the traffickers know where the victim lives, escape does not put an end to threats of reprisals to the victim and/or her/his family.

2. Situation in Kosovo

The victims of trafficking in Human Beings can be women and men, adults or children. In Kosovo, trafficked women are the major target primarily for sexual exploitation or forced prostitution.

Women from Moldova (58%), Romania, Ukraine, Bulgaria, Albania and Russia are forced into prostitution. Women are also trafficked within and from Kosovo. Indeed, Kosovo constitutes not only a transit country, but also a source and destination country of trafficking. IOM has already assisted the first 29 cases of Kosovar women and girls trafficked within Kosovo or abroad and forced into prostitution. However, IOM assisted 409 victims that were trafficked to Kosovo from February 2000 to the end of December 2003. In 83% of the cases, the trafficked persons were seeking better living conditions abroad, as they were paid less than 30 euros in their home country. Most of the jobs promised were in Italy. The victims came from all age groups; the average age was 22 years old. Most assisted cases (75%) had a professional background and previous experiences in various sectors either in their home countries or abroad. Out of these 409 persons, 29 were Kosovars. This indicated that Kosovo is indeed becoming a country of origin. A high percentage of these cases were minors coming from rural areas. A reintegration programme has been set up for them, led by the Ministry of Social Affairs.

Kosovo is offering a combination of factors conducive to trafficking due to its geographical situation and proximity to East European countries, the existing post-conflict situation, the large presence of an international community, its porous borders and limited border control, its newly established anti-trafficking legislation, established

smuggling routes and corruption. The main routes into Kosovo appear to be from the north across the Serbian border and Through FYR Macedonia.

II. International and Domestic legislative and policy approaches to anti-trafficking responses

Current legislative and policy responses are based on a three-pillar approach: prevention of the act of trafficking, prosecution of the perpetrators and protection of the victims of trafficking.

1. Prevention of trafficking

At the international and national levels, a lot of initiatives have been undertaken to prevent and combat trafficking.

a- At the international level

Before 2000, there was no internationally accepted definition of trafficking, although it was generally recognized as a serious violation of human rights. All countries had their own definition of trafficking, which posed a problem in addressing the issue properly in international cooperation and the proper identification of victims. Recently however, states have begun to link trafficking to key sovereignty/security concerns including migrant smuggling and organized crime.

In November 2000, the UN General assembly adopted three instruments designed to form the basis of a new international legal regime to fight international organized crime: the

Convention against Transnational Organized Crime, supplemented by two additional treaties (protocols), dealing respectively with trafficking in persons, especially women and children and with smuggling of migrants. These three treaties were opened for signature in Palermo, Italy in December 2000 and, after the required number of signatures and ratifications, respectively entered into force on 29 September 2003, 25 December 2003 and 28 January 2004. All the countries of Southern Eastern Europe have ratified those treaties.

The Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children (the Trafficking Protocol) establishes the first common international definition of "Trafficking in Persons" and is the first international legally binding instrument explicitly addressing preventive anti-trafficking measures as well as action in the field of protection and assistance of trafficked persons. It is primarily a law enforcement tool intended to facilitate international cooperation as it obliges state parties to penalize trafficking, prosecute traffickers, extradite suspects and share information. The Protocol contains a broad definition of trafficking, covering all forms of trafficking for sexual exploitation, forced labour, slavery, slavery-like practices and servitude. However, it leaves wide discretion to states concerning the implementation of its provisions on the protection and assistance of trafficked persons. The terms of exploitation of prostitution and sexual exploitation are not defined by the Protocol, meaning

this treaty is without prejudice to how state parties address prostitution in their respective domestic laws.

However, the Protocol succeeded in providing states with a definition allowing a broad interpretation taking into account the complexity of the issue. The definition consists of three parts: the acts, the means and the purpose. This definition recognizes all forms of trafficking and does not restrict the issue to prostitution and slavery. It does not focus on women and girls exclusively, but recognizes that women, men, girls and boys can all be victims of trafficking. What defines trafficking is the use of coercion or deceit and not the type of labour. The Protocol also makes a difference between adults and children, in the sense that in case of children no coercion or deception is required, since the status of the child and their vulnerability towards adult authority make them unable to be responsible in the same way of their decisions as grown ups. The Protocol does not require that the victim crosses an internationally recognized border, taking into account that persons are also being trafficked from one region to another, within one country.

The Protocol also establishes a clear distinction between the phenomena of trafficking and smuggling in migrants. Smuggling in persons is a crime against public order regulating the legal entry into a state, without a specific individual victim; whereas trafficking is a crime against the person and a violation of human rights. So smuggling deals with the protection of borders, whereas the

aim of smuggling is not to exploit a person but to facilitate illegal entry and stay. Unfortunately, as a lot of trafficked persons are coming in illegally, they are deported as such without being recognized as victims of violence, so their rights to security and support are violated by the institutions that bear the responsibility to protect them and to punish those that abuse and exploit them.

b – at the domestic level

At the domestic level, in Kosovo, a referral system has been established. A counter Trafficking Direct Assistance Co-Ordination group, which comprises the International Organization for Migration (IOM), the Organization for Co-operation and Security in Europe (OSCE), the Department of Justice/VAAU (Victim Advocacy and Assistance Unit), the organization Prevent Victims and Prevent Trafficking of Human Beings (PVPT), the Trafficking Police Investigation Unit (TPIU) and, on an ad-hoc basis, the Department of Social Welfare and the Centre for Protection of Women and Children (CPWC) , is responsible for assisting trafficked women in Kosovo and provides a forum for discussing individual cases and the needs of the beneficiaries. This inter-agency working group on Trafficking in Persons has adopted the joint Standard Operating Procedures for Victim Assistance (SOPs) to ensure that all programme areas are covered and all activities are properly coordinated. The SOPs describe the procedures to be followed

when assisting a trafficked woman from the point of identification to the moment she reaches the shelter. They also describe the referral system for the organizations involved and are updated and reviewed every six months or when immediate need arises.

TPIU conducts the investigation to identify the traffickers; when they have a reasonable doubt that one or several persons are involved in trafficking, they carry out an investigation, make the first contact with women and girls during bar raids, and arrest and detain the suspected traffickers. Consequently TPIU takes statements from the women. When they suspect that they have a trafficked person in custody, they call the OSCE regional trafficking focal points to conduct victims' interviews. OSCE will withdraw when this competency will be shifted to the Victim Assistance units of the Department of justice. OSCE determines whether the case should be referred to IOM for repatriation assistance and whether a shelter should be contacted for admission. TPIU makes arrangements

directly with the IOM and the shelter, which is run by organizations such as PVPT or the Centre for Protection of Women and Children. Once the victim is placed in the shelter, IOM proceeds with an extensive interview, and initiates and completes the return or reintegration procedures. There are four shelters opened in Kosovo. The shelter managed by PVPT deals with international victims and provides them with protection until they get repatriated (3 weeks to 3 months). This shelter is responsible for the basic needs of the beneficiaries including basic medical care, medical counseling and vocational training. Due to the security risk of victims being able to identify the location and compromise the integrity of the shelter, the shelter in principle does not accept victims of internal trafficking.

(The second part of this article will be published in the next Newsletter)

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Project activities May 2004

- Seminar on Evidentiary and Forensic in Sexual Assault cases
- Seminar on Protection against Domestic violence
- Seminar on Minor Offences
- Seminar on the Independence of the Judiciary
- Ad Hoc Seminar on the new Juvenile Justice Code of Kosovo
- Seminar on Property rights
- Induction course

Seminar on Sexual Assault Forensics

The Kosovo Judicial Institute, together with the US Department of Justice, will organize on 4 May and 6 May, a one-day seminar on evidentiary and forensic issues in sexual assault cases. This matter is of great importance since criminal offences against sexual integrity have been newly incorporated in the Provisional Criminal Code of Kosovo. The seminar will focus on the impact of sexual assault in the community, crime scene documentation, interviewing techniques and forensics. A case study based on the provisions of the new code will be presented and discussed. The experts contributing to this seminar will be a Special Assistant Attorney General, a Sexual Assault Nurse Examiner, an Education Coordinator of the Coalition against Sexual Assault, all coming from the State of Mississippi, and a Resident Legal Advisor from US DoJ. Criminal judges and prosecutors are invited to attend this session.

Seminar on Protection against Domestic Violence

The KJI will offer a seminar on the UNMIK Regulation 2003/12 on Protection against Domestic Violence, on 5 May, one year after it became operative. The members of judiciary have shown great interest in this matter since the Regulation established the new procedure both in civil and in criminal matters. Therefore, judges working in civil and criminal matters as well as public prosecutors who had not attended the previous seminar organised on 4 and 5 November 2003 will be invited for this session. The program addresses the responsibilities of the courts that have jurisdiction over these cases. The agenda includes the following topics: the importance of the Regulation 2003/12, a comparative overview of European and US legislations and judicial practices, the procedure according to the Regulation and the types of protection orders, the criminal offences of domestic violence, responsibility, court competences and punishments. The experts who will contribute to this seminar are local and international experts, a judge from the Pristine/Pristina District Court, a lawyer from Prizren/Prizren, a KJI judicial Trainer and a Resident Legal Adviser from the US Department of Justice.

A discussion about the implementation of this regulation will take place as the participants will present the cases they had to deal with over the past year and the practical difficulties they have been facing regarding the application of this regulation.

Seminar on Minor Offences

The KJI will organize on 13 May a specific legal education programme for judges working in Minor Offence Courts in Kosovo. This seminar will focus on the legal and procedural matters for which Minor Offence Courts are competent: traffic matters, public peace and order. Three judges coming from the High Court of Minor Offences in Kosovo will be speakers and trainers during that day. This seminar is the second session of the year organized for twenty five judges from Minor Offences Court.

Seminar on the Independence of the Judiciary

The Kosovo Judicial Institute and the Council of Europe will hold in Grand Hotel, on 14 May 2004, a seminar on the Independence of the Judiciary. This training session will focus on several topics. The first one will deal with the Judiciary as “third power” of a democratic state: Constitutional framework, definition of the “third power” and models of organization (standards and recommendations from the Council of Europe will be presented and compared with regulations/provisions that provide the organization, functioning and nomination of the Judiciary in Kosovo). Other presentations will be on the independence and the supervision of judges; possible political interventions of the executive power to the independence of judges, modalities of selection of judges and promotion, independence of judges in Kosovo. The experts contributing to this seminar will be one Albanian judge - expert from the Council of Europe, a German Judge, the chairman of the Judges Association in Kosovo, and a KJI judicial trainer. This training session addresses all judges of Kosovo.

Seminar on the Juvenile Justice Code of Kosovo

Following the promulgation of UNMIK Regulation 2004/8 on the Juvenile Justice Code of Kosovo, on 20 April 2004, and its entry into force the same day, KJI will organize an ad hoc seminar on the topic on 19 May 2004. This session will be addresses to Municipal Courts judges competent in this matter. The topics will deal with the applicable measures, punishments, and procedure foreseen by the Juvenile Justice Code, the execution of education measures and the trial of adults for criminal offences committed against children. The experts contributing to this seminar will be a local expert on criminal law, a judge from the District court of Mitrovice/Mitrovica and two judges from the Supreme Court of Kosovo.

Seminar on Property Rights

The Kosovo Judicial Institute, with the cooperation of the Council of Europe, will organize on 21 May a training session for judges working in civil matters. The topics will be focused on the respective competencies of Regular Courts, Housing and Property Directorate and Housing and Property Claims Commission. The head of Legal Process of the House and Property Directorate, a judge from the Municipal Court of Prishtine/Pristina, and an expert from the Council of Europe will contribute to this seminar.

Induction course

The KJI will hold an induction course for forty-three candidates that were recommended for prosecutorial posts, during the period of 24-27 May 2004. Those candidates will mostly be trained on the new Provisional Criminal and Procedure Criminal Codes of Kosovo. Other subjects as Forensic matters, Human Rights and ethics will also be presented to the participants.