

International Administration of Kosovo as a Driving Factor in Appearance of Trafficking in Human Beings

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Abstract

Opinions, stances of the Albanian community about self-determination and the political demands for an independent political and territorial status of Kosovo by various colonial regimes, are longstanding. The disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) was followed with wars among its constituent parts, and after the international military intervention, the peace was established in the region. By the Resolution 1244 of the Security Council of the UNO, in its 4001 meeting, adopted in June 1999, Kosovo was set under the international civil administration, which was accompanied by the deployment of military defence structure of KFOR, reaching a number of 35 000 soldiers, and the UNMIK civilian structure comprising a staff of 15 000 officials. A lot of various international non-governmental and governmental organizations were also deployed to Kosovo, which tremendously increased the presence of persons with origin of other countries. Such a situation created some favourable conditions for the criminal groups in order to expand the phenomenon of trafficking in persons to such a place as Kosovo being until 1999, trafficking in persons appeared on a low capacity and dynamics, and mainly as a transitional country with the intent of sexual use, while domestic trafficking was still unknown. However, this criminal phenomenon has been constantly increasing and reaching a concerning level, especially after 1999, on the occasion of setting Kosovo under the international administration by the UNO, the territory of Kosovo was no longer considered only a transitional country but also as destination location for the victims of trafficking in persons. The introduction and prevalence of this criminal phenomenon is as a result of Kosovo getting opened to the world, the organization of national criminal groups in cooperation with international organized criminal network. Undoubtedly, the increased number of persons originating from other countries as personnel of the international organizations to Kosovo contributed in increasing the number of trafficking in persons, because it was established that many potential clients using victims sexually were foreign citizens. Moreover, the lack of legal infrastructure on the combat and prevention of trafficking in persons as defined by international legal acts.

Keywords: International Administration, Kosovo as a Driving Factor, Trafficking Human Beings

1. Introduction

Opinions, stances of the Albanian community about self-determination and the political demands for an independent political and territorial status of Kosovo by various colonial regimes, are longstanding. In the course of history, Kosovo has gone through various stages of functioning, thus always as a political-legal and territorial autonomous entirety, this is proved also by the period of Ottoman Empire ruling, wherein Kosovo functioned as a special administrative – legal unit established by the Turkish regulation of 1864, naming Kosovo Vilayet, which was one of four vilayets of the Ottoman Empire.¹ The constitutional – legal position of Kosovo constantly underwent changes based on the flow of political events after the end of world wars and the regional ones. The Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) 1974, likewise the Constitution of the Socialist Autonomous Province of Kosovo (SAPK) of 1974, determined Kosovo as: a political, territorial autonomous unit and a constituent element of Yugoslav federalization². The disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) was followed with wars among its constituent parts, and after the international military intervention, the peace was established in the region. By the Resolution 1244 of the Security Council of the UNO, in its 4001 meeting, adopted in June 1999, Kosovo was set under the international civil administration.³ The international administration of Kosovo by the Resolution 1244 was of an interim character and aimed

¹Sh. Rrahimi, *Vilayet of Kosovo*, published by Office of Textbooks and Teaching Materials of KSAK, Prishtina, 1989, pg. 12

²A. Bajrami, *Kosovo Law in Transition*, published by Prishtina University, Prishtina, 2002, pg. 48

³A. Bajrami, *Parliamentarianism*, Publisher by Fama College, Prishtina, 2010, page 381.

the establishment of proper democratic conditions for resolution of the final status of Kosovo.⁴ At that moment, a military defence structure of KFOR, reaching a number of 35 000 soldiers, and the UNMIK civilian structure comprising a staff of 15 000 officials, were deployed. A lot of various international non-governmental and governmental organizations were also deployed to Kosovo.⁵

Such a situation created some favourable conditions for the criminal groups in order to expand the phenomenon of trafficking in persons to such a place as Kosovo being until 1999, trafficking in persons appeared on a low capacity and dynamics, and mainly as a transitional country with the intent of sexual use, while domestic trafficking was still unknown. Before 1999, the territory of Kosovo was not a destination of victims of trafficking, but a transitional country for other countries (Macedonia, Serbia, Montenegro, etc.). However, this criminal phenomenon has been constantly increasing and reaching a concerning level, especially after 1999, on the occasion of setting Kosovo under the international administration by the UNO, the territory of Kosovo was no longer considered only a transitional country but also as destination location for the victims of trafficking in persons. The introduction and prevalence of this criminal phenomenon is as a result of Kosovo getting opened to the world, the organization of national criminal groups in cooperation with international organized criminal network. Undoubtedly, the increased number of persons originating from other countries as personnel of the international organizations to Kosovo contributed in increasing the number of trafficking in persons, because it was established that many potential clients using victims sexually were foreign citizens, as well as the lack of legal infrastructure on the combat and prevention of trafficking in persons involving the international personnel employed in Kosovo. Trafficking in persons causes direct and multiple damages to the quality of life to each society in which it appears, regardless of the fact whether the country of such society is the origin, transition or destination.⁶

This can be verified in the best way by the cases assisted for rehabilitation of victims of trafficking who did not have Kosovo citizenship. A Turkish victim reported the UNMIK Police in Rahovec that she had been raped and forced to prostitution by a Kosovo man called N.C. She also stated that some of her clients were UNMIK Police Officers, stationed in Rahovec, and that she could identify them easily, she should even show where their apartments were.⁷

The international staff deployed in Kosovo not only incited smugglers to increase the number of victims of trafficking for sexual use as clients, but some UNMIK employees⁸ even contributed in increasing and developing this criminal offence, by providing assistance in transporting victims of trafficking. In one case, victims of trafficking stated that they were transported by UN white-coloured vehicles (known as their official vehicles) from Mitrovica to Fushë Kosovë. The vehicle was driven by a Russian member of UNMIK.⁹ The involvement of UNMIK staff in criminal offences – trafficking in persons in Kosovo – is verified also by the UNMIK press conference, held in Prishtina on 13 August 2001, which confirms the dismissal of four members of UNMIK, being the only punishing measure against them as a result of such involvement, which were considered as violation of code of conduct and norms.

Participation of some of KFOR and UNMIK staff members, at least as users of services provided by victims of trafficking, is indicated by the fact that mainly the public houses/bars being full of victims are situated at locations visited by KFOR and UNMIK members or in the vicinity of KFOR military bases and UNMIK. Participation of individuals of UNMIK personnel, who had immunity, in such a criminal phenomenon, was a serious obstacle in combating and preventing this criminal offence by the KSP, the prosecution office and local judges.

2. Kosovo Legislation on Trafficking in Persons

As stated above, the first report on existence of criminal phenomenon, such as trafficking in persons, in the Republic of Kosovo occurred in 1999. The applicable law of Kosovo at that time had no legal provisions sanctioning this criminal phenomenon. This legal gap was an obstacle to fight and prevent trafficking in persons. Such a circumstance was used by criminal organizations by increasing the level and dynamics of prevalence of trafficking in persons. The approach in fighting and preventing trafficking in persons, under the situation of lacking legal regulations, became a significant challenge for the law enforcement bodies and for the judiciary.

⁴ It should be emphasized that Kosovo declared its Independence on 17 February 2008, and on 15 June 2008, the Constitution of the Republic of Kosovo entered into force, while UNMIK started reconfiguration of its presence in this country.

⁵ B. Reka. *UNMIK as an international governance in post-war Kosovo: NATO's Intervention, UN Administration and Kosovar Aspirations*, p. 153

⁶ S. Gërxhaliu, *Trafficking and Prostitution of Women*, ADEA, Prishtina, 2003, p. 181

⁷ OSBE/SMSL. *Report*, p. 55

⁸ Clarification: No official evidence was published, which would contain the exact number of persons as staff members in UNMIK and KFOR, who were accused or convicted for commission of the criminal offence of trafficking in human beings for the period 2000-2006.

⁹ OSCE Report, *Kosovo of the Criminal Justice System*, 01 September 2000 – 28 February 2001.

Following the entry into force of the Regulation No 4/2001, on 12 January 2001,¹⁰ an instrument was provided, which addressed all forms related to combat and prevention of trafficking in persons, at the meantime the legal gap in the applicable law of Kosovo was eliminated.

The UNMIK Regulation No 4/2001, of 12 January 2001, established a part of legislation that could particularly serve for prosecution and punishment of the perpetrators of the criminal offence of trafficking in persons and for assistance and protection of victims of trafficking until drafting and approval of the Criminal Code of Kosovo. This regulation comprises of three chapters, divided into 15 articles. The Chapter I, which comprises of 4 articles, provides the definition of the criminal offence and the sanctions. The Chapter II, which comprise of 4 articles, deals with criminal prosecution, confiscation and court proceedings. The Chapter III, the last one, comprises of seven articles and it administers protection and assistance to the victims of trafficking.

In compliance with international conventions and other acts, the Criminal Code of Kosovo, which entered into force on 6 April 2004, in its chapter XIV, wherein criminal offences against international law were foreseen, has foreseen four articles sanctioning various forms of slavery: establishing slavery, slavery-like conditions and forced labour, Article 137 of the Provisional Criminal Code of Kosovo (PCCK), smuggling of migrants, Article 138 of PCCK, trafficking in persons, Article 139 of the PCCK and withholding identity papers of victims of slavery or trafficking in persons, Article 140 of the PCCK.¹¹ Because of the entirety that is reviewed this paper, a special significance in the paper is given to the explanation and interpretation of Article 139 of the PCCK,¹² trafficking in human beings.

By analysing and comparing the definition provided in Article 139 of the PCCK with the definition provided in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, we identify 3 constituent elements of this criminal offence: actions, means and the purpose, which are presented as in the definition of Article 139 of the PCCK, as well as in Article 3 of Palermo Protocol, which is recognised as international definition. The two first elements are objective, while the third element is subjective. In order to find guilty and sentence a suspect for committing the criminal offence of trafficking in persons, three of these elements should be present. According to the fourth paragraph of Article 139 of the PCCK, this criminal offence is committed by a person who negligently facilitates the commission of trafficking in persons, whereas according to the fifth paragraph of this article, this criminal offence is considered to be committed by a person who uses the victim of trafficking for sexual service.¹³ The qualified forms of the criminal offence of trafficking in persons are foreseen by paragraphs 3, 6 and 7 of the Article 139 of the CCK. Along these serious forms of this criminal offence, I consider that that a more severe form should have been foreseen in cases when trafficking in persons is committed in a way that it causes danger to the life and security of trafficked persons.

Moreover, a more severe form of this criminal offence should be foreseen also the fact that if by a dangerous manner of trafficking in persons death was caused to one or more persons.¹⁴ Foreseeing these two forms, sanctioned by Article 139 of the CCK, by applied a severe punishable policy, would increase the efficiency in fighting and preventing the criminal offence of trafficking in persons.

All of these forms of this criminal offence, foreseen by Article 139 of the PCCK, may be committed by a person with criminal liability, except for the criminal offence foreseen by paragraph 7 of Article 139 of the PCC, which can be committed only by an official person.

With regard to the guilt, all forms of this criminal offence may be committed willingly, the only exception here is the form of the criminal offence foreseen by paragraph 4 of Article 139 of the PCCK, which may be committed as a result of negligence.

Article 139 of the PCCK also foresees criminal sanctions that may be imposed to the perpetrators of all forms of the criminal offence, trafficking in persons, foreseen by the paragraphs of this Article.

If a comparative overview is made to the UNMIK Regulation 4/2001 and Article 139 of the CCK, it is noted that in the Criminal Code of Kosovo some articles are not corporate, which have a special significance in fighting and preventing the criminal offence, trafficking in persons, and there is no clarity whether respective articles of the Regulation 4/2001 also after 6 April 2004, when the PCCK entered into force, are applicable. According to the statement of the legal advisor of the SRSG, in the Memorandum 2004 – 01323, a part that is referred to protection and assistance of the victim (Sections 2, 3 and 4) of the UNMIK Regulation No 4/2001, remains applicable, since they were not included in the CCK

¹⁰ See UNMIK Regulation 4/2001.

¹¹ See: *Provisional Criminal Code of Kosovo, adopted by the Kosovo Assembly, 2013.*

¹² *Provisional Criminal Code of Kosovo, Article 139.*

¹³ *This provision was applied for the first time in Sweden in 1998. This law is called "Women Peace" that sanctions the use of sexual services from victims of trafficking.*

¹⁴ I. Salihu. *Criminal Law, CC; Prishtina University, Prishtina, 2006, p.97.*

or in the Criminal Procedural Code of Kosovo.¹⁵

From the analysis of the provisions of the UNMIK Regulation No 4/2001 and the Article 139 of the PCCK, it comes out that Kosovo should amend and supplement its legislation in fighting and preventing trafficking in persons.

3. Conclusion

Trafficking in persons is still today an extremely concerning criminal phenomenon in all modern societies, including also the Kosovo state. Studies and analyses conducted so far have indicated that there are all form and types of this criminal phenomenon in Kosovo, which are present either with local victims or victims coming from other countries, as well as clients coming from Kosovo or from other countries transforming Kosovo from a transit country into a destination for trafficking in persons. Moreover, it appear that in Kosovo, this criminal phenomenon was present at locations where international bodies were deployed or at locations visited by the employees coming from other countries. Undoubtedly, this is related to the fact of impact by many factors (economic – social, political, educational, etc.) that make such a criminal phenomenon to happen. Eros and sentimental feelings are considered as inner psychological traits and their appearance in the client type of manner using sexual services of victims of trafficking is concerning for the entire modern society, because by trafficking in persons the integrity and dignity of a person is violated. However, this was regulated by the UNMIK Regulation No 4/2001, the Provisional Criminal Code of Kosovo (PCCK), and by other laws, but not directly. Nevertheless, the legislation should be amended by provisions concerning a certain rehabilitation and reintegration of the victims in society, in relation to protection of victims of trafficking, compensation of victims in criminal proceedings, meaning while examining the criminal matter and imposing the sentence to the perpetrator of the criminal offence – trafficking in persons, to decide also on compensation of victims of trafficking, establishment of a public fond to ensure compensation of victims of trafficking and the use of confiscated items in order to raise such a fund. Regulation of the status of victims of trafficking should define the incitement of trafficking in persons as a criminal offence.

The necessity to provide a legal basis for such amendments derived from the international conventions and other acts, such as UN Convention against International Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Framework Decision of the Council of Europe dated 12 July 2002 on Combat against Trafficking in Persons, European Convention on Action against Trafficking in Human Beings of the Council of Europe (2005 CETS No 197).

With regards to the consequences of this criminal phenomenon, of course they are huge consequences, including: psychological, social, ethical, economical and many other consequences.

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¹⁵ Trafficking of Children, UNICEF, Prishtina, 2004, p .15.