

IDENTIFICATION, THE INITIAL REFERENCE AND INTERVIEWING VICTIMS IN TRAFFICKING

Besim Kelmendi

Phd candidate in the European University of Tirana

ABSTRACT

Nowadays, rightfully, trafficking in human beings is known as a modern slavery, because forms of using the victims of trafficking were adapted to the modern way of life and conditions such a life demands. Anyway, life of the rich, on one side and the desire for a better life of the poor or people living in conditions below a normal life, on the other side, continue to be in contradiction with one another, because, as far as the rich want to rise their capital and luxury, the poor and middle strata of population intend to rise their level of life, consisting of a better job, a better house or car and a better future. The purpose of this paper is to highlight the importance of the identification of victims in trafficking, the manner how this identification is performed, when and who carries out the identification. The paper includes not only legal definitions, but also obligations of all institutions that deal with the law enforcement, in cases in trafficking of human beings, highlighting the promulgation of laws and other sub-legal acts as well as national strategies and plans for the application of those strategies. The initial reference, too, shall be elaborated briefly in this paper, in order to understand, how it is performed and who performs the initial reference, to comprehend the importance of reference at the identification stage. Furthermore, another significant importance is dedicated to the interview of victims of trafficking at the identification stage, since conclusions may be drawn from the elaboration of this issue on the best ways how an interview with victims of trafficking is performed, either during the first interview, or during an official interview, which methods should be used, what are the stages of the interview, who are the partners in the interview and how the interpreters may be used in the interview. Conclusions of this paper may be used not only by scientific researchers but also by practitioners in the institutions that are engaged in the enforcement of law in cases of prevention and fighting the trafficking.

IDENTIFICATION OF VICTIMS OF TRAFFICKING – GENERAL OVERVIEW

Initial identification presents the most important stage and meanwhile also the most difficult stage until the end of the regular judicial procedure. The importance lies in the fact that the early identification helps the prevention of later stages in trafficking, where consequences are much more harmful for victims, and it also helps the identification of perpetrators of criminal act in trafficking the human beings, venues where the victims are trafficked, the way of trafficking or use, other victims if there are any and their rescue from trafficking.

The hardship in identification lies on the fact that victims are not always willing to cooperate, they are endangered if the level of care is not adequate, the interviewing is too difficult because of traumas the victim has experienced, selection of the interviewer and the interpreter, if necessary, it is not easy because the acceptance by victim to cooperate will be very important, he/she might refuse to respond before an assigned interviewer or interpreter.

Failure to identify properly a trafficked person, may result in another denial of the rights of that person¹.

Regarding the importance of the identification of victims of trafficking, it can also be proved by the commitment of member states of European Union, which countries are obliged to undertake such measures in order to support the development of general indicators of the Union on the identification of victims of trafficking, through the exchange of best practices of all relevant stakeholders, particularly, that of public and private-social services², such a commitment by EU is a good message for West Balkan countries which aspire to become members in EU, therefore, in order to fulfil these goals, West Balkan countries should undertake not only measures that EU countries undertake but much more, thus, to show their commitment in prevention and fighting of trafficking with human beings.

Furthermore, the INTERPOL, too, because of the importance of identification, has foreseen several measures to be undertaken to fulfil identification, emphasising that the key issue of law enforcement officers is the adequate and quick identification of victims³, although according to INTERPOL often the only method for identification of victims is at the stage of exploitation, since the real intentions of traffickers are exposed only at this stage and that they are visible for monitoring by intelligence and police activities⁴.

Regarding the identification of victims in Kosovo, this issue is regulated not only by action plan for application of national strategy against trafficking, but, also by Law on prevention and fighting the trafficking in human beings and protection of victims of trafficking, according to which law⁵, is foreseen about who can perform the official identification of trafficked victims as well as what are the duties of relevant ministries for undertaking actions that lead towards the identification of these victims.

When the question is about the need to support victims in the aspect of health, in Albania⁶, whereas, in world all anti-trafficking stakeholders give a significant importance to the correct and as quick as possible identification of victims in trafficking, because victims of trafficking:

- need assistance and specialised protection;
- are very likely to have acute health problems, both physical and/or mental, which the regular migrants or smuggled persons do not have;
- suffered from aggravated and serious crimes and it is very likely that they are currently in danger;

¹ United Nations, Economic and Social Council, recommended principles and directives on human rights and trafficking in human beings, E/2002/68 appendix 1, f.6

² Directive number 2011/36/EU of European Parliament and Council on Prevention and Fighting the trafficking in Human Beings and Protection of Victims, 5 April 2011, point 4, p.1

³ Trafficking in human beings, best practice guidance manual for investigators, produced by the INTERPOL, working group on trafficking in human beings, second edition 2007, guidelines 2 p.56

⁴ The same in p.58

⁵ Law on Prevention and Fighting the trafficking in Human Beings and Protection of Victims, 2013, article 12 p.9

⁶ Instruction on Implementation of Standard Procedures of Action on the Identification and Reference of Victims in Trafficking and Potential Victims in trafficking, p.5-6, published in

<http://www.shendetesia.gov.al/files/userfiles/Broshura.pdf>, access on 29.11.2014

- need special and necessary actions for managing the risk, either for them, or for the support staff of organisations/institutions.

When can identification be performed?

A victim can be identified in different ways from the very first moment when he/she looks for a job, a visa abroad, a passport, to book a room in a hotel, when socialising with people who have suspicious past, especially, related with trafficking in human beings or smuggling of migrants, when he passes the state border, when signing a job contract, when found working without necessary documentation for that job, when, during control where he/she is employed, gives unclear information for himself/herself and the work he/she is doing, when he/she does not know the identity of the employer, when looking for medical care, when he/she does not speak the native language of the country he/she works in, or when he/she is not able to tell the way he/she came to that dwelling or workplace.

According to UNHCR, UNDOC and IOM, the identification can be performed also in cases when victim does not have personal documentation or the documents are with the third person or are falsified, he/she has entered illegally or lives illegally in a country, comes from a known country as a country of origin, when he/she does not even know the address he/she lives or works in, when entering suspicious premises or under escort, when buildings have secret exits, when doing secret trips, when he/she has injuries, when he/she has signs of physical maltreatment, has signs of fear and depression, when does not trust state bodies or when avoiding discussions⁷.

Who can perform the identification

Although there is an assuredness that identification should be performed by official organisation of a state, this assuredness has changed a lot recently, because there are many cases when identification is performed also by non-governmental organisations that support victims of trafficking or supposed victims of trafficking. Moreover, identification can also be performed by particular citizens.

If we start from official bodies then a conclusion may be drawn that the identification may be performed by: police, personnel of migration services, labour inspectors, health care personnel, customs employees, embassy or consulate employees, transport employees, school or faculty employees, hotel premises' employees, cultural and sports institutions etc.

According to the Convention of European Council for measures against trafficking in human beings⁸, Victims of trafficking should be identified in a formal manner as such, in order to prevent their treatment as irregular immigrants or as criminals. Identification is performed by trained professionals, particularly (police officers, social workers, labour inspectors, medical doctors, support service providers etc.) who follow the adopted procedures as well as relevant identification criteria.

⁷ Krivичno pravni sistem i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji, zajednički program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, za period 2006-2010, f.34

⁸ http://www.coe.int/t/dghl/monitoring/trafficking/Leaflets/Victims/ALB_victims.pdf, Convention of European Council on measures of anti-trafficking in human being, p.5, access 29.11.2014

In cases when children are involved, it is necessary that the police take measures to verify the identity of the child, his/her citizenship, finding his/her family, (if it is in his/her interest) establishing contact with the service its guardian provides him/her⁹.

If other ways of identification are regarded, it can be said that the initial identification may be performed also by other trafficked persons, family or relatives of victim, non-profitable or non-governmental organisations, either local or international and also the initial identification may be performed by victim him/herself.

How the identification can be performed

Initial identification can be performed in different ways, taking into consideration who does the identification and when. If we start from the fact who does the identification, then it could be said that identification can be performed through identifying legal documents while crossing the border, via verifying the documentation by police, verifying employment relation contract, work permit and workplaces by labour inspectors, by contacting the employer, family members or persons who were trafficked before.

If we start from the fact when the first identification takes place, then, identification may be performed through fulfilling necessary border crossing checks, during travelling or accommodating in a hotel, doing medical check-ups, conducting migration services, inspecting workplaces, conducting customs services, take a visa in embassies or councils, vehicle check during victims' transportation, check the participation at school or faculty and if the question is about foreign victims through communicating with them in native language at different checking times etc.

In order to perform the identification of victims, some actors who implemented a project funded by UNHCR, UNODC and IOM in Serbia, have also foreseen some questions for the identification that can be made to the victim, such as: what is the purpose of your travelling, who organised your travel, who arranged your documents, who covers the expenses, are the expenses covered or will be covered upon your arrival at destination, how are the expenses going to be covered when you arrive, who should you report to and when, what have you been promised for, what do you do, are you paid for the work you do, are you obliged to work, can you leave the job whenever you want, are you or your family being threatened, does anyone keep you locked or under escort¹⁰.

It is worth mentioning here also some other indicators for the identification of victims in trafficking, which were identified by American authors, who work as prosecutors or special agents¹¹. They listed these indicators on basis of place and way of use. Nonetheless, according to them, regarding the place of use, as for instance brothels, in which the purpose of use is providing sexual services, as indicators of identification may be taken amounts of money, condoms and lubricants, stripper, clients' book, legend or invoice book, separated rooms, attendance by men, as well as many liquid paper towels or toilet papers.

⁹ Krivicno pravni system i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji, zajednicki program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, za perion 2006-2010, f.37

¹⁰ Krivicno pravni system i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji, zajednicki program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, za perion 2006-2010, page 35

¹¹ Higdon, Robert, Bradsher, Frank, Brostrom, Frank and Beers Thomas, 2009, training of task forces against trafficking in human beings, trafficking on drugs and public corruption, sponsored by OPDAT, ICITAP and State Prosecutors Office for eastern circle of North Carolina, Prishtina, p. 7 and 8.

If the purpose of use is work or imposed services, according to the same authors, as indicators could be taken fences with locked doors, barbed wires, armed guardians, dogs, holding of documents by others, placement of iron rods at windows, life conditions, living in work stations, prohibited or controlled communication and movement under supervision.

Regarding indicators that interrelate with the trafficked victim him/herself, abovementioned American practitioners evidenced the following: physical injuries, signs of starvation, depression, loss of hope, fear, withdrawal, non-possession of documents, absence of relatives – family, lack of personal stuff, lack of private space, way of transport, lack of knowledge regarding community behaviours and knowledge of local language. All these indicators may serve not only for studies on trafficking in human beings, but also for all those who work in police station, prosecution, and courts, and whose priority job is treatment of criminal cases that relate with trafficking in human beings.

Initial reference

Initial reference means an information act at the first point of notification for a person that is supposed to be a victim in trafficking and this notification may be fulfilled via channels or different ways, such as: citizens, law enforcement officials, migration services, trafficked persons, families or relatives, labour inspectors, NGO employees, employees in the international organizations, health care employees, embassies or consulate offices, transporters etc¹².

European Council member states also at their local legislation should foresee a period for recuperation and think for at least 30 days, when there are grounds to believe that the question is about a victim. This time should be sufficient that the victim is recuperated and released from the impacts of smugglers or to make a decision on merits to cooperate with competent bodies. During this period there is no possibility to issue an order for the deportment of the victim¹³.

Every individual has the right to prefer when and in what amount he/she wants to be provided with assistance and for this he/she should be consulted prior to be provided with any support. However, an initial rejection of assistance must not lead to an irrevocable exception of access to assistance, because the victim may change his/her mind later¹⁴.

When the initial reference is done

Initial reference should be done immediately after it had been supposed or presumed that a person is a victim of trafficking. However, words can immediately create dilemmas in practice, because this depends on who does the initial reference and on the creation of conviction on his/her mind that the question is about a supposed victim and from the moment that conviction is created it is the immediate moment to do the initial reference.

¹² Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons – South – Eastern Europe, by International Centre for Migration Policy Development – ICMPD, 2009, p.36

¹³ Convention of European Council on fight against trafficking in human beings, No. 137, 2005, Article 13 paragraph 1, p. 8

¹⁴ At the footnote 125,

Who does the initial reference?

Depending on the country, also the institution varies as to which is to do the initial reference, but, in the countries of Western Balkans, this issue is almost unique, since this is done by police which in majority of countries has more or less the name designation as an anti-trafficking unit or similar, but, there is no exception of any possibility that the initial reference is done also by another institution formed exactly for prevention and fighting of trafficking such are offices of national coordinators for anti-trafficking which exist in all countries of Western Balkans. Moreover, initial reference may be done also by governmental or non-governmental organisations which provide services for trafficked victims, such as social services or shelter centres, or centres that provide clothing and food.

Why is the initial reference or giving and taking information in case of trafficking in human beings important?

The moment a person is identified as a potential or real victim, it is important that before starting with the initial or official interview, the victim to be provided with information on the legal opportunities she may have as a victim or witness, from identification, during criminal procedure and after criminal procedure, because in this way, the victim will be less anxious since now he/she knows what shall happen, she knows that he/she is respected and he/ she gets the feeling that is being looked after, he/she is returned the feeling of self-determination and helps individuals to direct again towards a world with a lot of opportunities¹⁵.

Based on the aforementioned, it could be said that trafficked victims should not be interviewed before they are informed on their rights in a criminal procedure and outside of it. So the victim should know that he/she can materialise the right for urgent needs or for: food, water, personal needs, clean clothes, rest, medical care, pain treatment, keep in touch with relatives etc. This information may influence the victim to feel more relaxed and less worried for her basic needs.

Interviews during the identification stage

Taking into consideration the time for identification it could be said that during this stage two kinds of interviews take place, initial interview and official interview. In both of the cases, the interviewing of trafficked victim should be done with sensitivity, professionalism and with full of respect for the human rights, it should be organised in such a way that the interview does not cause any other harm to victim, thus, to reduce the past trauma he/she had experienced to minimum at the time of trafficking, hence, the victim is assured with the opportunity of regular fair access to the justice system, to tell his/her experience as a victim in trafficking and to be the witness of all what happened to him/her during the time of trafficking, in order to place rightly and fully the factual state in that criminal procedure.

Purpose of the interview is to obtain information and evidence from victim, which will enable an investigation that leads to full facts of the issue, which raise the reliability and credibility of the victim during all criminal procedure and to identify, arrest and to prosecute the smugglers.

¹⁵ Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons – South – Eastern Europe, by International Centre for Migration Policy Development – ICMPD, 2009, f.20

As it is known there are enough reasons why victims in trafficking do not want to talk to people before the interviewer and do not want to be witness in a criminal procedure. This happens because they are afraid that they will be stigmatised and that they will be accused for crossing the border illegally, or that they work without a work permission etc.

Sometimes victims think that they are to be blamed, too, for what happened to them or they feel sorry for what had happened to them, they think that criminal procedure before courts will last too long and they want to return at their homes, respectively, to their families before the criminal procedure takes place, in which they are going to experience new discontents and degrading, because of meeting again with people who maltreated and degraded them as well as because of being obliged to express their evocations and details regarding traumas they experienced¹⁶.

Initial interview

Initial interview of trafficked victim presents one of the most challenging tasks for the investigator and in order to achieve the objectives of investigation, the interviewer should be capable of passing serious challenges, because the victim may be traumatised from what he/she had experienced during trafficking, whereas, in the interview he/she may be asked to provide new evidence for the event which are very personal and painful and recalling them re-traumatise him/her, also the victim may be in anxiety, yet, and fear of the smugglers and he/she may even have doubt about the interviewer, since he/she may have been trafficked for a long time, at which time he/she might have experienced many acts which present different criminal acts, such as rape, physical injuries, abduction or restriction in her/his movements etc.

Judicial practice indicated that there are also cases when the trafficked victim does not cooperate at the beginning, hoping to return the money, smuggler owe to them, which may be large amount of money or other personal stuff that may be under the possession of smugglers¹⁷.

It is very important how an initial interview is being managed, because it is well-known that the key of success in a criminal procedure related to trafficking in human being issues is the evidence by the victim, therefore, the capability of the interviewer to identify and obtain as much details as possible from the victim directly affects the success of the criminal procedure and increasing the possibilities that the victim enters in the program of assistance and support. Many victims have experienced serious abuses and it is expected that they still will, therefore, they may be affected by suggestive questions, that is why an interviewer has to be well prepared for the interview, he/she should explain to the victim the importance of the interview, should write correctly and as comprehensively as possible all what the victim says, should warranty to the victim a confidentiality for what he/she says and estimate positively everything the victim says.

¹⁶ Krivicno pravni system i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji, zajednicki program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, za perion 2006-2010, p.48

¹⁷ Criminal case at the Special Prosecutor of the Republic of Kosovo PPS.no.63/2011. In this case, victim hoped to have back his/her money in amount of 8000 Euros, which the smuggler owed to her, being investigated for her trafficking and he also was the owner of the night bar where the victim was working, but following several failures to materialise this debt, she began cooperation with the prosecution and the court and provided her testimony for the whole history of hers for the time period she was being trafficked.

Although the interview may be carried out by one interviewer, in order to be effective it should be prepared by more than one interviewer, thus, it should be a team work consisting of professionals who are familiar with the field of trafficking in human beings, who are skilled in formulating questions, are skilled for active and attentive listening, skilled for showing respect and compassion and to create good initial relationship with the victim, they are familiar with the culture of the victim including social, cultural and ethnic status, capable of being patient and flexible, be in good physical condition and psychological stability, have an attitude without prejudices to victim, be skilled to observe signs of anxiety and exhaustion, irregular breathing, griping hands, change of skin colour, because in such cases, a break has to take place immediately, and perhaps, the interview should even be postponed for another day.

Here we could mention also the fact that most of the victims do not enter the initial stage of the interview with any big trust towards the interviewer and should build trust and good relationship during a range of meetings. This situation can happen because the victim might belong to another ethnicity from that of the interviewer and if these two ethnicities have been in conflict of war with one another, such as the case of Kosovo and Serbia¹⁸, then the distrust will be much bigger and would need time to rehabilitate and understand that the interviewer is by the side of the victim and that his/her purpose is to shed light to the criminal case, discover and arrest smuggler and compensate the victim.

For creating a friendly relationship with the trafficked victim it is important that the same officers are always present, thus, the ones that started the interview, because, otherwise, it will not be realistic to expect the victim to be capable of building trust on the interviewer and provide the best pieces of evidence for a criminal procedure.

Another method to manage the initial interview is also to enable the victim to freely make a story about his/her history, letting him/her know that at this stage he/she does not have to tell any details, for example, when she was recruited for the first time and where, how many places she/he has been to, how did they transport him/her, what kind of physical activity did they force him/her to do, when did this end and who trafficked him/her.

The purpose of this method is to create a broad and comprehensive table with the words of victim, hereby, the victim is enabled to get the idea, the scale and duration of the issue. Except for the cases when circumstances require a different attitude, the interviewer should close the interview for that day and not to start immediately with the stage of questions at this moment.

Partners during the initial interview

In practice there are quite a lot of cases when the interview cannot take place without the presence of some other people, too. If the victim is a child, then the codes of criminal procedure usually require the presence of another person who represents the interests of the

¹⁸ Criminal case of District Court of Kosovo in Prishtina, P.nr.12/2003, the victim was a Serbian from Serbia, who was trafficked by her boyfriend to Albanian smugglers from Kosovo, who, afterwards sold her to abusers from Kosovo. Since her trafficking took place immediately after the war, the traumas she experienced were so intense that it took a long time for her to recuperate and get over in order to give her statement before investigators.

child, for example, parent, another adult member of the family or his/her guardian depending on the state.

If the victim is a foreigner, then, the services of an interpreter will be necessary and in the case of trafficked victim, this relates to a range of delicate problems, because victims in most of cases do not prefer to submit a statement in presence of many people. A psychologist and legal counsel also besides their undisputable contribution that they might provide in a social or professional treatment of the victim, they also have a key role also for the success of the interview and may be regarded as partners and allies of investigators and not as a threat of their control over the interview and further investigation.

In cases when in the initial interview, as it was stated above, the presence of all partners is not preferred, because the state of the victim may be suchlike that the presence of too many people in the room of the interview may disturb him/her or increase her/his stress and this factor always needs to be measured in the estimation process. When a psychologist or a trained counsel or legal counsel is present in the interview, the investigator should make sure that they are completely independent and in this stage uninvolved in the case they take part. Furthermore, they should be warned to not discuss the testimony of the victim or make statements and behave in that way that it may be interpreted as a pressure on the victim to cooperate. If the psychologist should discuss the evidence with the victim as a part of counselling process and recuperation or if the legal counsel should discuss about the details of the evidence in order to prepare the request for compensation on behalf of the victim, they are required to take detailed notes as to when and where these discussions took place and who were present.

The role of legal counsel is to represent legal interests of the victim and to intervene only if it is deemed necessary for the victim to warranty that the interview is being compiled in compliance with human rights and provisions of the criminal procedure code. Kosovo has advanced one step ahead compared to other Western Balkan countries in regards of the creation of institutions for assistance and support to trafficked victims, thus creating a Division on Protection and Aid for Victims, which basically was established within the scope of the Ministry of Justice and following the establishment of the Kosovo Prosecutorial Council on basis of memorandum of the date 30.09.2011, between the Ministry of Justice and the State Prosecutor, this division got transferred within the scope of the State Prosecutor (General Prosecutor). Duties of this Division are as in the following:

- (a) Provision of free services on translation to the language chosen;
- (b) Free legal counselling in relation to trafficking issues;
- (c) Temporary safe sheltering, psychological, medical and social welfare assistance as necessary in order to fulfil their needs; and
- (d) Other services which are determined through administrative directives¹⁹.

When the victim is under the care of international and non-governmental organisations, then, partners as a team should discuss and approve the strategy, which includes directions for most effective approximation to the victim, for factors and specific needs that should be treated, concrete directions on the maximum time of first sessions and for each concrete field of questions that should be avoided during the initial stage of the interview.

¹⁹ UNMIK Regular, 2001/4 of 12. January 2001, Article 10.p, f.5

4.3 Official interview

To have a successful official interview, it should pass through some stages, firstly, the interviewer should make the analyses of evidence and testimony of the victim, which he/she provided during the initial interview, thus, it will be made clear what the following steps shall be in the interview.

Kosovo has regulated by law the issue of identification, in which also the official interview takes place, foreseeing that the official interview of victims of trafficking is conducted by relevant units of police, prosecution, custodian of victims and centres of social work, when their suspicions are grounded so that they believe that a certain person is a victim in trafficking in compliance with Standard Procedures of Action compiled by relevant authorities, whereas, the Ministry of Justice in cooperation with relevant authorities draft a list of indicators in relation with trafficking in human beings, with the intention to facilitate the identification of victims by police, criminal, judicial and social authorities, who may be in contact with victims or potential victims. The list of indicators is adopted by the Government of the Republic of Kosovo. Moreover, the Government in accordance with the proposal of the Ministry of Internal Affairs, Ministry of Foreign Affairs and Ministry of Labour and Social Welfare, issues specific instructions on counselling services, border police and labour inspectors for early identification of the victims in trafficking²⁰.

Prior to holding the official interview it is important for the investigators to be familiar with the circumstances of the issue and identify the eventual criminal acts that might have been perpetrated against the victim. They should analyse the existing proofs in regards of the eventual criminal acts in question and to decide in which field the evidence should be which they are trying to get from the victim. After they carried out the analyses, officers of the interview should prepare a list with the “main points” as reference to facilitate during the interview. The list may include a simple analytical division of concrete elements that have to be proved in accordance with concrete articles of the Criminal Procedure Code, together with the list of possible subjects that should be studied during the interview with the victim in order to fulfil the elements of criminal act or of the evidence which verifies those elements.

In the official interview it is important to get information of evidence from the victim in relation with elements of the act (the first group of elements), so to get evidence whether the victim was recruited, transported, sheltered, accepted etc, what kind of means were used against the victim regarding the elements of the means (the second group of elements) which means that evidence should be taken in regards of whether any means of threat of violence was used against the victim or other forms of force, abduction, falsification, fraud or abuse of position or another sensitive position or giving or receiving payments or benefits in order to achieve the content of the victim and also to take evidence or the element of the purpose (third group of the elements), thus, for the form of abuse that was applied against the victim, whether they used the victim for prostitution or any other kind of sexual abuse, is there the question about services or imposed labour, slavery or similar actions with slavery, captivity or removal of organs.

²⁰ Law for prevention of trafficking in human beings and protection of victims in trafficking, 2013, article 12, p.9

Preparatory issues – prior to starting the official interview

Every interviewer prior to starting an official interview with the victim in trafficking should be informed in relation with the culture, national, religious, racial or ethnic issues of the victim. The interviewing prosecutor should introduce him/herself, present his/her function and role in that criminal procedure. If in the room are present the psychologist, lawyer and interpreter, but they had not been introduced to the victim before, they should introduce themselves before the victim in the same manner. The victim should be asked how he/she wants to be addressed. The aim is to create an appropriate atmosphere that up to a suitable scale for the situation might be informal, without lessening the importance of the interview that is going to be held in any way. It is important to not start immediately with explanations in relation with the process of the interview and the issue, in order to create a good relationship, generally important, the interviewers should spend a bit more time asking secondary questions so that the victim can feel him/herself more relaxed. General question for his/her health, interests, his/her current systemising, should mandatorily be submitted in order to stimulate the communication and remove barriers that exist for sure between the victim and the interviewer.

The victim should not have any doubts in relation with the importance his/her role in the procedure and that the role of the interviewer or other persons, the presence of which is necessary, is to assist him/her to confess his/her history in maximum details that are necessary for a criminal procedure. The victim should be informed if the technical equipment are going to be used for recording the interview, which should also be told and explained to the victim, he/she also should be informed if there will not be such a recording of the interview because if criminal acts are investigated in a criminal procedure for which a maximum sentence is foreseen to be three (3) more years, such as the case with trafficking in human beings, the statement in the preparatory procedure is audio recorded, video recorded or is transcribed, whereas, in cases when this sentence is less than three (3) years imprisonment, the statement in the preparatory procedure can be audio recorded, video recorded, transcribed or summarised in the minutes of preparatory investigation²¹.

The victim should be explained that the role of the investigation is to obtain evidence for him/her and to determine facts of the matter, to enable the entrance into the justice procedure and to be explained that this does not mean that smugglers will be sentenced or punished for sure, because these decisions are rather within the competencies of the court than of the prosecutor or police. The only warranty that may be provided to the victim by the interviewer is that all the measures will be taken within the competencies to investigate completely his/her information. If the victim has set as a condition the option to remain anonymous in order to cooperate in providing evidence the only warranty that the interviewer could assure him/her with is that he/she shall write a request to the court on his/her behalf and if this request is rejected by the judge, then the victim has the option either to continue to act as a witness or to relinquish from the cooperation and then he/she shall not be obliged to testify further.

The issue of enforcing the victim in trafficking to provide testimony should be regarded by two viewpoints, because, almost all Criminal Procedure Codes in the Western Balkan countries have foreseen provisions according to which every witness is obliged to provide evidence and tell the truth for what he/she knows in relation to what he/she has seen, heard,

²¹ Criminal Procedure Code of the Republic of Kosovo of 2012, Article 133, paragraph 1, p.59-60

or experienced, but also every witness has the right to not respond to those questions, where his/her answers would cause to the witness or his/her relatives a criminal prosecution, significant moral or material damage. Based on this attitude of the Criminal Procedure Codes, it results that victims have the possibility to not cooperate or reject to respond to those questions in which the response would cause criminal prosecution, significant moral or material damage not only to them but also to their relatives and this attitude is in compliance with the international standards according to which the victims cannot be obliged to cooperate with investigatory bodies or the judicial ones.

Next step is that the victims are explained the methodology of the interview. The victim should be informed that the interview can last for several sessions and this might take a long period of time. The victims are explained that the key to success is the provision of as many details of proofs as possible from them and this means that the interviewer during the interview is going to make a lot of questions in order to clarify or extend the facts they have provided and that many of the questions may look to them unimportant or senseless. The interviewer should explain that the purpose of questions is to obtain as many details which will enable the investigation for the verification of the story.

There are some reasons why it is important to spend time with the victim to provide her with these detailed explanations before starting the interview: (1) information and explanations help to soften the inevitable stress and fear from the unknown that the process of interview causes to the victim; (2) the more victim becomes familiar with the procedure and its component parts, the more actively he/she shall contribute to the interview; (3) this infers a commitment of a partner between the interviewer and the victim and; (4) this enables the interviewer to develop more the stage of preparing a good report and to consider the emotional state and knowledge capacity of the victim.

Before the interviewer asks from the victim to tell what had happened to him/her, he/she should agree with the victim for some simple rules in order to facilitate the progress, accuracy and integrity of the interview. The victim is told that he/she is permitted to ask for repeating a question, if he/she does not understand the question submitted, the victim may ask for clarification of a question or action that is made to him/her, that he/she shall not be accused of degraded if he/she cannot remember something, that the interview may include questions in relation to events that might be terrifying or painful for the remembrance of him/her, that they do not have to hurry to respond and may take a break at any moment of the interview if this is necessary, the victim should disclose clearly and fully everything he/she recalls and should not hide anything in the interview. Before the interview, the interviewer should make it sure that the victim has understood everything that was explained to him/her.

Duration and place of the interview

In cases of the official interviews with trafficked victims, there is very little probability that the full witness can be provided within a sole session of the interview. There are cases when several session are needed in order to take a full witness, these sessions can last for several days, weeks or months, if the victim is traumatised or in another undetermined emotional state, thus, it is not sure whether he/she shall cooperate with the interviewer or not.

The purpose of the interview is not to re-traumatise the victim, but besides the purpose of taking his/her testimony is also the assistance and support that the victim should be offered, therefore, the duration of the interview should always be in harmony with the circumstances

of each individual concrete case. There are cases when it is very short, but, there are cases when the interview takes too long, depending on the physical and psychological state of the victim as well as conditions and other circumstances in which the interview is held.

If it is possible, the sessions should be held at the days when the victim, too, does not have another engagement in relation with health or social issues, in a neutral place, but, if the criminal procedure code requires the interview to be recorded with video and audio recorder, then, the police ambulance can be the only place where the interview could practically take place. In cases when the victim is under the care of international or non-governmental organisation sector, the interview can be carried out at their place, too.

It is important that in no circumstances the interview takes place in the centres of shelter where the victims are accommodated, because this endangers the safety and life of other victims, due to the possibility of discovering the location of the shelter. Afterwards, the fact that the interviewer is present and is interviewing one of the victims, makes it clear to understand by the others in the shelter which of the victims is cooperating with the police and this puts into serious danger the safety of the victim.

The room of the interview should be away from the eyes and ears of other persons who are not part of the interview. During the interview, the door of the room must not be open because the interview may be interrupted, the room should be comfortable and furniture should be placed in such a way that it avoids the standard position in which the victim is always at the same side of the table and the interviewer on the other side. The room should be clean and forms and other unnecessary materials should be removed. The purpose is to create a professional ambiance. Breaks during the interview are very important and victim should be allowed to get out of the room of the interview, get e fresh air and smoke or have a drink, if he/he needs.

Methods of interviewing

In order to facilitate the process of interviewing, manners or methods of interviewing which lead the interviewer to desired success must be used. Method of interviewer must be based on principles of professionalism, professional conduct, respect and sensibility, but this does not imply that interviewer must behave in a family behaving way with the victim. It is important not to create the impression that she has less value and deserves less respect than other citizens due to the fact that she was a victim of trafficking.

Method of attention and active listening related to responses of the victim, in particular during the stage of her spontaneous memories, an impression must be created to the victim that the interviewer is appreciating what the victim is telling, and that this is important for criminal proceedings. The visual contact with the victim must be maintained with care, in order not to create the impression of mistrust or animosity with her. Reactions of the interviewer towards what the victim is saying must be followed by a sign of approval e.g. by following words “well”, “continue”, “tell me more about”, “please continue” or something like this, in order to encourage the victim to continue further and to increase her confidence.

It is of utmost importance to not interrupt the victim at these moments or during the sessions of spontaneous memories. Interruptions obstruct consequent memories and they must be avoided. There may be pauses at the time when the victim is trying to take herself in order to focus thinking and to speak about the event, but they must be allowed and the interviewer must not interrupt.

Stages of an official interview

To have a successful interview, it is preferred that the time of the interview is split into three stages:

In the first stage it is preferred to create a good relation with the victim in order to create mutual trust and to have a relaxing atmosphere for the later stages.

In the second stage it is preferred to enable the victim to express her spontaneous and free memories in a form of a story, and this is the key stage of the whole criminal process – because in this stage, the victim may tell her own story in her own words, spontaneously and without interruption. Usually during this stage victims give more accurate evidence.

The third stage is that of questions with the purpose of expansion and clarification of concrete points of evidence which are mentioned by the victim during the stage of free communication of the spontaneous memories.

Questions must be consecutively made, they must be short and simple, and difficult grammatical formulations must be avoided. This is even more important when a foreign victim is being interviewed, through interpreter. Questions must be made by a supportive tone in order not to sound as mistrust or negativity, or that could be perceived as judgmental. Interviewer must strive to use terms that the victim uses while describing her history and when the sexual exploitation is in question, what words and expressions are used by her for the clients and for the activity of prostitution. It is acceptable that a victim is encouraged and to make sure that she is doing her duty very well as long as this encouragement does not reach the level of efforts to incite the victim to continue beyond that what she desires to say.

Questions must be made by respecting the chronology of the event, because the histories of trafficking in human beings usually cover long periods of time and for the victim it is difficult to connect the events to the exact moment in time. If the victim is able to tell exactly the dates, this undoubtedly is evidence of the highest quality, but if she is not able to do that – then she must connect the specific event to other moments. For example, victim may be questioned whether she has gone away from home before or after a remarkable religious, cultural or family event, – e.g. birthday of the girl etc. The aim is to simply help the victim to connect the specific event to a certain identified period of time that is more important to her than any specific date.

Use and selection of interpreters during the interview process

Experience has shown that use of interpreters in complex and long interviews of victims trafficking may create a range of delicate problems, because when a victim is a foreign citizen, use of interpreters is a necessary and important precondition of the interview and in such cases no interview for collection of evidence can be developed without presence of interpreters.

Considering that testimony which is given during the process of official interview has the character of evidence, interpreters can only be those who are well and appropriately trained, licensed ones or accredited for this specific job. In cases of trafficking victim interviews, interpreters must undergo a process of cautious verification before beginning of the interview, a clear allocation of functions of interviewer and interpreter must be explained. The interpreter should not come from the country of the victim, because experience has shown that this may cause security problems. Selected interpreters for this kind of job must be adequately trained and must have knowledge related to trafficking in human beings. Role

of interpreter is to remain unbiased at all times and to focus only on the duty of accurate and complete interpretation of questions and answers during the interview. They must remain neutral and show acceptable conduct at all times, they must be independent from all parties and they must not set up any relation to the victim, except the one required for fluent interpretation during the interview. In no circumstances should the interpreter try to encourage or incite the victim during the process of interviewing to give evidence by a certain direction.

The issue of interpreter gender, to be engaged in the interview, should also be looked at carefully, because if the victim is a woman or a girl, it is likely that the presence of a female interpreter would be more useful while conducting the detailed interview. However, similar to the interviewing officer, victim must be asked about her preferences, if interpreter may be reassigned to her availability as per her preferences.

CONCLUSION OF THE INTERVIEW

It is important for an interview to be concluded in a structured and comprehensive manner. Interviews must not conclude unexpectedly. The partnership between the victim and the interviewer must be taken into consideration – prosecutor must continue to the conclusion of the trial process, but afterwards as well, therefore it is important that the victim is made aware for the future steps in the criminal proceedings.

Prior to concluding the interview, the interviewer needs to check whether there are important points of testimony which escaped from his attention and whether anything else needs to be clarified. The interviewer needs to read the testimony of the victim before her and to check whether it is recorded and understood well. Reading of the record must be conducted as the victim has stated and not to have the testimony interpreted by the interviewer. Victim must be asked to correct the eventual mistakes which are made or the specific points which according to her are necessary as related to testimony. Victim must be asked whether the interviewing process was acceptable for her, has she fully understood and does she want to sign the minutes, in cases when victim refuses to sign the minutes, interviewer is obliged to note in the minutes the reason of refusing to sign.

In the end, the interviewer must explain the victim the details related to other steps of criminal proceedings, and for the possibilities of the program for protection and support such as sheltering, food, medical examination etc.

BIBLIOGRAPHY

- Convention of the Council of Europe on Combating Trafficking in Human Beings, No. 137, 2005,
- Convention of the Council of Europe for Measures Against Trafficking in Human Beings, http://www.coe.int/t/dghl/monitoring/trafficking/Leaflets/Victims/ALB_victims.pdf, accessed on 29.11.2014
- Criminal Case in Prishtina District Court, P.no. 12/2003
- Criminal Case in Special Prosecution of the Republic of Kosovo PPS.no. 63/2011.
- Criminal Procedure Code of the Republic of Kosovo of year 2012
- Directive number 2011/36/EU of European Parliament and Council on Prevention and Combating Trafficking in Human Beings and Protection of Victims, dated 5 April 2011.

- Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons - Guidelines on Implementation of Standard Procedures of Action for Identification and Referring Victims of Trafficking and Potential Victims of Trafficking, published in <http://www.shendetesia.gov.al/files/userfiles/Broshura.pdf>, accessed on 29.11.2014
- Higdon, Robert, Bradsher, Frank, Brostrom, Frank and Beers Thomas, 2009, training for task forces against trafficking in human beings, trafficking of drugs and public corruption, sponsored by OPDAT, ICITAP and the Office of State Prosecutor for Eastern District of North Carolina, Prishtina,
- Krivicno pravni system i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji, zajednicki program UNHCR, UNODC i IOM za borbu protiv trgovine ljudima u Srbiji, za perion 2006-2010,
- Law on Prevention and Combating of Trafficking in Human Beings and Protection of Victims of Trafficking, 2013,
- Law on Prevention and Combating of Trafficking in Human Beings and Protection of Victims of Trafficking, 2013,
- South – Eastern Europe, by International Centre for Migration Policy Development – ICMPD, 2009.
- Trafficking of human beings, best practice guidance manual for investigators, produced by the INTERPOL, working group on trafficking in human beings, second edition 2007, guidelines 2
- United Nations, Economic and Social Council, Recommended Principles and directives for human rights and trafficking in human beings, E/2002/68 Annex 1,
- UNMIK Regulation, 2001/4 dated 12. January 2001