TRAFFICKING IN HUMAN BEINGS: LEGAL ASPECTS AND FORMS OF **REPORTING IN KOSOVO**

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ABSTRACT

Human trafficking is the modern form of slavery and a serious breach of human rights. In the countries of former Yugoslavia after the war period, this phenomenon has undergone a large scale of growth. The changes in the Balkan Peninsula, after the 90's, as a result of tensions, wars and armed conflicts in the former Yugoslavia have brought great changes not only in the political map of the region, but also in social and economic situation of the country. After the end of war in 1999, the number of cases of trafficking in human beings in Kosovo has began to increase, although initially it was thought that this problem affects only women and girls originating outside Kosovo, but since 2000, different international agencies governments have introduced that the number of girls and women of Albanian origin is constantly growing. Kosovo, economic and human resources and connections with surrounding countries, enables socio-economic development while maintaining multi-ethnic structure, and its aims towards Atlantic integration. Kosovo, as other European countries and the countries of the world is deeply affected by the phenomenon of human trafficking, particularly of women and girls trafficked for sexual exploitation. In this scientific paper, we shall present, the legal aspects of trafficking in human beings, with special emphasis on Kosovo reflecting forms of reporting these criminal acts etc.

Keywords: Kosovo, Human Trafficking, prostitution, victims etc.

INTRODUCTION

Although slavery has been abolished, this does not mean that it no longer occurs. Everywhere in the world, people are exploited by others. This happens within national borders as well as beyond the borders. Poverty and inequality, unemployment and political instability mean that there are people who, in the hope of a better life, fall victim to criminals and networks that exploit them unscrupulously.¹ Reports released by Human Rights Watch in 2002 and Amnesty International in 2004, also revealed extensive trafficking and within the region beginning in the 1990s to meet demand generated by an expanding pool of United Nations and NATO international peacekeepers, private subcontractors, and relief workers.²

Trafficking of human beings is organized by secret criminal groups, who are also involved in other types of organized crime. The structure of these groups differs a lot, starting from amateur unorganized groups up to organizations with international character. Trafficking of women and females through crossing border from one country to another for the purposes of sexual exploitation is a modern form of slavery and presents a serious violation of human rights. United Nations Protocol (known as Palermo Protocol) of the year 2000, in order to

Korvinus, A., (2005), (Dutch National Rapporteur on Trafficking in Human Beings), Trafficking in Human Beings, Third report of the Dutch National Rapporteur, Bureau NRM, The Hague, , pp. 3.

² Friman, H. R., & Reich, S., (2007), Human Trafficking, Human Security and the Balkans, Pittsburgh, PA: University of Pittsburgh Press, pp. 2

prevent trafficking gives this definition, where the meaning "trafficking of human beings" means: recruitment, transportation, transfer, sheltering or hosting persons, through threat or use of force, or other forms of constraints, tricks, deceptions, abuse of power or a vulnerable position, or giving or taking of payments or benefits with the aim to achieve the consent of a person, by having the control over other person, for the purposes of explorations.³

Trafficking in human beings presents high risk for individuals as well as for the society in general. The consequences at material or phisical aspect of this deviant social phenomena is manifested in the dignity and wellbeing of people, especially of the new generation who are the most frequent victims of this phenomena.⁴ As reported by Financial Action Task Force (FATF) "one of the attractions" of Trafficking in Human Beings is said to be that human trafficking and the "smuggling of migrants" are "seen as relatively "low risk-high reward" crimes", with good profits to be made, and "the prospect of limited penalties if caught".⁵ Council of Europe bodies are reporting that "human trafficking and illegal migration/human smuggling represent a core business of international criminal organizations", and are "now thought to be among the most lucrative of their world-wide activities", together posing "a global challenge of the same proportions as the illegal trafficking of drugs and firearms".⁶ Before 1999, only a few establishments in Kosovo existed which were known to be brothels or strip bars where mainly foreign women worked. It was alleged that foreign men frequented the hotels housing prostitutes, while Kosovo Albanians frequented some five other places operating as brothels, but with the first influx of international journalists and aid workers in 1998, the numbers of brothels increased.⁷

The end of the war in Kosovo in June 1999, marked the collapse of a dictatorial regime and brought freedom to the Albanian nation. Freedom brought with itself the begining of problems that until that period apeared as minor problems. After 1999, in Kosovo was concentrated a large number of military and civilian personnel from many countries and organizations both governmental and non-governmental organizations of different countries of the world. No doubt that Kosovo during this period represent the ideal market to organized criminal groups to gain large sums of money in the name of meeting the needs of internationals. This period marks the first period of trafficking in human benign from former Soviet Union countries towards Kosovo, especially women with purpose of sexual exploitation. Kosovo during this period appears as a destination place and in special cases as a transit country to Western Europe. Kosovo is currently a place of origin, destination and internal trafficking in girls and women for sexual exploitation. Whereas the existence of trafficking in Kosova women and girls has been known since 1999, the existence of trafficking in Kosovar women and girls has only recently been fully acknowledged.⁸

³ Exploitation includes in minimum, exploitation of others for prostitution, or other forms for sexual exploitation, labor or other forced services, slavery or similar practices to slavery.

⁴ Salihu, I., (2009), *Criminal Law, special part*, Pristina, pp. 289

⁵ Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants, July 2011, available at http://www.fatf-gafi.org/pages/ 0,3417,en_32250379_32235720_1_1_1_1_0. html .

⁶Europol, Trafficking in Human Beings in the European Union: A Europol Perspective, June 2009, FATF-MONEYVAL typologies meeting held in Moscow from 6 to 8 December 2004.

⁷ UNICEF, Trafficking in Children in Kosovo, A study on protection and assistance provided to children victims of trafficking, Kosovo, June 2004, pp.6.

⁸ UNICEF, Trafficking in Children in Kosovo, A study on protection and assistance provided to children victims of trafficking, Kosovo, June 2004, pp.1.

The need to access this criminal phenomenon in Kosovo was ninavoidable and very necessary, so in 2004 the Provisional Criminal Code of Kosovo and the Provisional Code of Criminal Procedure entered into force and presented a strong foundation to combat human trafficking in Kosovo. The rapid advancement of society in Kosovo but also due to legal lacks of the legislation in force, the Criminal and Procedural Code of Kosovo was changed to enter into force in 2013. The Criminal Code of the Republic of Kosovo (2013), offenses against trafficking in human beings are provided in Chapter of offenses against international law, precisely in Chapter XV and in Chapter XX, has defined a number of criminal offenses related to human trafficking and from Article: 231, 238, 241 and 242.

THE DEFINITION OF TRAFFICKING IN HUMAN BEINGS AND ITS FORMS IN THE REPUBLIC OF KOSOVO

International law is a powerful conduit for combating human trafficking. The most reputable and recent instruments of international law that have set the course for how to define, prevent, and prosecute human trafficking are the United Nations Convention against Transnational Organized Crime and its two related protocols: the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which entered into force in 2003-2004.⁹ There are several international and regional conventions relating to combating trafficking in human beings as follows: Convention on the Prohibition of the white slave trade, 1910, the Convention for the punishment of trafficking in women and children of 1921, the Convention for the punishment of trade with adult women of 1933, the Convention for the punishment and prevention of human trafficking and their exploitation for prostitution of 1949 and the Convention for the prevention of trafficking and exploitation of others, 1950 etc.¹⁰

The 2000 UN Optional Protocol of the Convention against Transnational Organized Crime (UNCTOC), "trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or the use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving and receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, exploitation for the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery servitude or the removal of organs".¹¹

It firmly states that both recruitment - transportation, and exploitation are serious crimes that are to be punished accordingly.¹² Trafficking can be internal, within state borders, or external, meaning that the victim crosses the national boundaries of his/her origin country and into a destination country. Exploitation of the victim can also take place in what is referred to as transit countries, countries that the victim enters *en route* to the intended destination. Depending on the scale of the operation more than one group of perpetrators are involved. As

⁹ King, L. (2013). International law and human trafficking. Topical Research Digest: Human Rights and Human Trafficking, pp. 88-90.

¹⁰ Salihu, I., Zhitija, H., & Hasani, F. (2014) Commentary, 1st academic edition, Prishtina, pp. 458.

¹¹ UN Optional Protocol on Trafficking in Human Beings of the International Convention against Transnational Organized Crime, Palermo Italy, 2000.

¹² Ionescu, M. (2007). A Human Security Approach to Anti-trafficking Policies in the EU: Tackling the Structural Sources of Vulnerability. European Studies, 6, pp. 212.

a process, trafficking can be broken down into two main stages: first, recruitment and transport; and second, exploitation.¹³

Further in this paperwork we shall discuss these criminal acts, presenting the provided statistics for the number of these criminal acts in general for the period of 2001-2014. The legal basis for preventing and combating trafficking in human beings in Kosovo is based on these legal acts, under legal and national documents as follows: Code of Criminal Procedure of Kosovo, Criminal Code, Law on prevention and combating trafficking in persons and protection of victims, the Law on Foreigners, National Strategies Against Human Trafficking and Organized Crime and their action plans, standard operating procedures for trafficked persons in Kosovo, minimum standards for the care of victims of trafficking and long-term strategy reintegration of victims. In this scientific paper we will talk about the legal aspects of criminal offenses as follows: a) Slavery, slavery-like conditions/forced labor, b) Trafficking in persons, c) the withheld of documents identifying victims of slavery or trafficking and d) Enabling or liability in prostitution. Following our submission will be examined these offenses, by reflecting the statistics provided on the number of such offenses in general for the period from year 2001 to 2014.

SLAVERY, SLAVERY-LIKE CONDITIONS AND FORCED LABOUR

While slavery and the slave were abolished long ago, new and more subtle forms of slaverylike practices are alarmingly on the rise in many parts of the world.¹⁴ Among them, in the last decades the international community has focused its attention on trafficking in persons, which must be one of the most worrying phenomena of the XXI century.¹⁵ In the paragraph 1 of article 169 of the Criminal Code of Kosovo is defined that: "Whoever, is in violation of international law including the European Convention of Human Rights, holds, maintains, places, purchases, or sells another person in slavery, slavery-like conditions, servitude or forced or compulsory labor, which includes, but is not limited to, holding a person in ownership, denving a person the fruits of his or her labor, coercing a person to provide their labor or denying a person the freedom to change his or her status or work conditions, shall be punished by fine and imprisonment of two (2) to ten (10) years". Paragraph 2 of article 169 of the Criminal Code of Kosovo is defined as: "Whoever, in violation of international law including the European Convention of Human Rights, for the purpose of committing the offenses provided for in paragraph 1 of this Article incites another person to renounce his or her freedom or brokers in the buying or selling of another person, shall be punished as provided for in paragraph 1. of this Article". The serious form of this criminal act is set by the law in paragraph 3 of article 169 of the Criminal Code of Kosovo, as folows: "when the offense provided for in paragraph 1 or 2 of this Article is committed against a person with whom the perpetrator has a domestic relationship, the perpetrator shall be punished by imprisonment of three (3) to ten (10) years". So in paragraph 3 of Article 169, even with international law but also national legislation, the legislator protected family member and for which work has defined an extremely large penalty. Paragraph 4 and 5 of Article 169 of the Criminal Code of Kosovo has defined two most severe forms of this offense specifically Paragraph 4 provides that if: "when the offense provided for in paragraph 1 or 2 of this Article is committed against a child, the perpetrator shall be punished by imprisonment of three (3) to fifteen (15) years.", while paragraph 5 of article 169, defines that: "When the

¹³ Ibid. pp. 212.

¹⁴ Scarpa, S. (2008), *Trafficking in human beings: modern slavery*, Oxford University Press, pp. 2

¹⁵ Ibid, pp.2.

offense provided for in this Article is committed by an official person abusing his or her position or authorizations, the perpetrator shall be punished by imprisonment of five (5) to twelve (12) years in the case of the offense provided for in paragraphs 1-3; or by imprisonment of five (5) to twenty years (20) in the case of the offense provided for in paragraph 4 of this Article". This offense according to the forms as specified in article 169 of the Criminal Code of Kosovo (2013) can only be performed intentionally. Protective object of this offense are all people without exception their gender or ethnic affiliation rightly so one can conclude that such actions are defined as a violation of human rights and freedoms to certain conventions in the world.

TRAFFICKING IN PERSONS

Treating people as commodities that can be bought or sold as slaves that are exploited ruthlessly by those who remove their passports and visas and withhold their earnings to get victims under the trafficker's ultimate control, is one of the fastest growing international crimes worldwide.¹⁶ Measuring the volume, scope, and patterns of sex trafficking is an extremely difficult process. The traffickers are very flexible, quickly changing routes to accommodate fluctuating supply and demand or to evade increased law enforcement measures.¹⁷ According to Criminal Code of Kosovo (2013), article 171, paragraph 1, os set: "Whoever engages in trafficking in persons shall be punished by a fine and imprisonment of five (5) to twelve (12) years". This form of criminal act is only performed intentionally and the protection subject is human being. The most severe form of this offense is defined in paragraph 2 of this article in which was stated that: "When the offense provided for in paragraph 1 of this Article is committed within a 350 meter radius of a school or other locality which is used by children or when the offense is committed against a person under the age of eighteen (18) years, the perpetrator shall be punished by a fine and imprisonment of three (3) to fifteen (15) years". Criminal act set in paragraph 3 of article 171 is set: "Whoever organizes a group of persons to commit the offense in paragraph 1. of this Article shall be punished by a fine of up to five hundred thousand (500,000) EUR and by imprisonment of seven (7) to twenty (20) years". In paragraph 4 of Article 171 of the CCK is defined committing this offense by official person for which more severe sanctions are determined.

Paragraph 5, set as follows: "If the offense from paragraph 1-4 of this Article results in death of one or more persons, the perpetrator shall be punished by imprisonment of not less than ten (10) years or life long imprisonment". The European Union has developed the Framework Decision of 19 July 2002 on human trafficking, the framework decision which contains provisions concerning the powers and proceedings in this field, these provisions relate to cooperation, which makes it necessary approximation of legal provisions under Article 34-2 paragraph b-TBE.¹⁸

WITHHELDING IDENTITY PAPERS OF VICTIMS OF SLAVERY OR TRAFFICKING IN PERSONS

This offense is defined in article 172, which in most cases is "accompanying" the offense of trafficking in persons as defined in article 171 of the Criminal Code of Kosovo. This offense

¹⁶ Vlachová, M. (2005), Trafficking in Humans: The Slavery of Our Age, Quarterly Journal, pp.2

¹⁷ Lindstrom, N. (2007), Regional Sex Trafficking in the Balkans, Transnational Networks in an Enlarged Europe, Problems of Post-Communism, vol. 51, no. 3, May/June 2004, pp. 49.

¹⁸ Pradel, J., Corstens, G. & Vermeulen, G., (2009), *E Drejta Penale Evropiane*, Papirus, Tiranë, pp.493-495

in the first paragraph states: "Whoever withholds another person's personal identification documents or passport knowing that the person is a victim of a criminal offenses provided for in Articles 169 and 171, shall be punished by imprisonment of one (1) to five (5) years". While in paragraph 2 of this article is set: "When the offense provided for in paragraph 1. of this Article is committed by an official person abusing his or her position or authorizations, the perpetrator shall be punished by imprisonment of three (3) to seven (7) years".

FACILITATING OR COMPELLING PROSTITUTION

Prostitution is one of the socio-pathological factors of criminality, which phenomenon has a long history. Prostitution is considered as the oldest craft, and which has undergone major transformations in the way of its development as socio-pathological phenomena. The expression prostitution under Article 228, paragraph 8, means offering or providing sexual services in exchange for payment, goods or services. When it comes to prostitution as socio-pathological phenomenon is thought for professional prostitution, where as characteristic of this type is keeping sexual intimate relationships in the form of artistry or craft where the main activity is the purpose of income benefits in the existence of a certain person.¹⁹ Prostitution as socio-pathological phenomenon since its history is developed in various forms. In the criminological literature and various studies on prostitution several types or forms of prostitution are mentioned, such as: ritual prostitution, religious prostitution, substitutional prostitution, prostitution with compensation, professional prostitution.

As author Paul Goldstein has classified the types of prostitution on the basis of commitment to the work and conditions of employment in the United Kingdom.²⁰ In our criminal law, a person who voluntarily exercises prostitution, the actions of that person are considered as minor offences and not as criminal offenses.²¹ Legislator in the first paragraph of Article 241, has determined that: "Whoever recruits, organizes, assists or controls another person for the purpose of prostitution shall be punished by a fine and imprisonment of up to three (3)*vears*". Commiting this criminal act is defined alternatively and the offense is considered committed only by undertaking one of the actions set in the first paragraph. Paragraph 2 as defense object has the so children, therefore in this paragraph is determined that: "When the offense provided for in paragraph 1 of this Article is committed within a three hundred and fifty (350) meter radius of a school or other locality which is used by children, the perpetrator shall be punished by a fine and imprisonment of six (6) months to five (5) years". The most grevious form of this criminal act is set in paragraph 3 as folows: "Whoever, by force or serious threat, or by holding another person in a situation of personal or economic dependency compels such person to engage in prostitution shall be punished by a fine and *imprisonment from one (1) to eight (8) years*". The perpetrator of this criminal act may be person of female and male gender. This act may be committed only with action.²²

THE NUMBER OF ARRESTED PERSONS IN KOSOVO FOR THE CRIMINAL ACTS RELATED TO TRAFFICKING IN OF HUMAN BEINGS 2001-2014

The data presented in this scientific work, are provided by the Kosovo Police. According to these data results that since 2001-2014, a total of 1,678 persons were arrested, out of whom

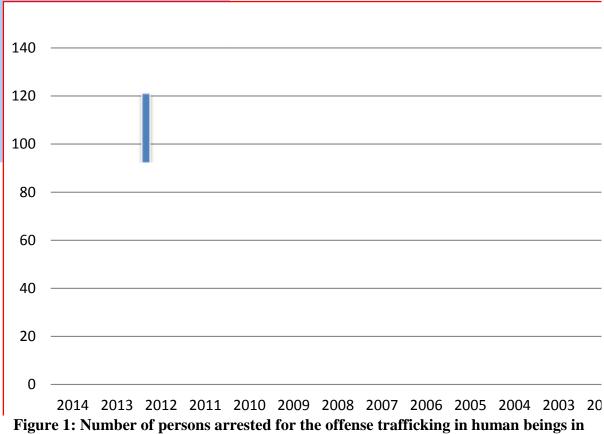
¹⁹ Halili, R. (2005), Criminology, Prishtine, pp. 288-298

²⁰ Giddens, A., (2002), Sociology, Çabej, Tiranë, pp. 201-204

²¹ Salihu, I. (2009), *Criminal Law (Special Part)*, Pristina, pp. 229.

²² Ibid, pp. 230.

776 persons for the offense of trafficking in persons offense, 293 Enabling into Prostitution, 414 for the offense of prostitution, 3 persons for placement of Slavery 192 persons for other offenses related to human trafficking.



Kosovo 2001-2014

THE VICTIMS OF TRAFFICKING IN HUMAN BEINGD IN KOSOVO 2001-2014

Trafficking for prostitution and forcing into prostitution cause many victims among women and constitute the largest number of trials with female victim. Recent studies indicate that women in the world, in the region and in the country, are victims of crimes than the author of these crimes.²³ Studies have shown that women are the main victims of trafficking. In particular, young girls in urban areas and rural areas are at the center of trafficking. But even children and men can be victims of trafficking. With one sentence summary, all can be victims of trafficking. Since the majority of the victims of trafficking are women, their main use is performing sexual services and intercourses with clients without their desire and their profitability, therefore forced to perform forced prostitution. Also, victims of trafficking can perform heavy work, or to remove from the body organs. Children are usually used for heavy work and begging on the streets.

²³Salihu, I. (2009), Criminal Law (Special Part), Pristina, pp. 262.

THE NUMBER OF THE VICTIMS OF TRAFFICKING IN HUMAN BEINGD IN KOSOVO 2001-2014

The data provided by the Kosovo Police, present very important data eventhough do not meet the full picture of the current situation in Kosovo, since the victims of trafficking due to experiences through which they have passed and the existence of other objective and subjective circumstances, are closed to themselves and do not express willingness to cooperate with law enforcement agencies. After collecting and analyzing data that are provided by the Kosovo Police for the period 2001-2014, shows that the total number of identified victims of human trafficking in Kosovo is identified 798 victims by country of origin. Taking into account that in the graph below are shown the statistical data on the number of trafficking victims identified by UNMIK Police and Kosovo Police for the period 2001-2014, according to the origin of the victims and the total number of victims of identified for each year.

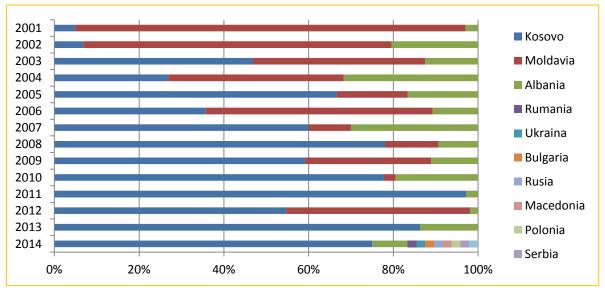


Figure 2: Victims of human trafficking in Kosovo, identified by country of origin 2001-2014

From the statistical data presented in Figure 2, it is understood that in Kosovo there was a decrease in the number of victims of trafficking from other countries in comparison to the number of local victims rises, especially this observed since 2007. The analysis conducted turns out that this change relates to external factors and internal factors. As external factor during this period have been the expand of the European Union in Eastern countries (Romania and Bulgaria, etc.), we also have visa liberalization process. While the internal factors of change of this phenomenon have political change to the status of Kosovo, the independence and the adoption of laws such as the law on foreigners, law on granting work permits and employment of foreigners in Kosovo, etc. measures which are considered as steps towards controlling the presence of foreigners in Kosovo.

THE AGE OF THE VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN KOSOVO 2001-2014

The purpose of criminal groups for trafficking in persons in this case in the majority of cases appear to be victims for the purpose of sexual exploitation in order to benefit funding. As

mentioned above, as victims of human trafficking are mostly females. The data provided by the Kosovo Police for the year 2001-214, concerning the number of victims, the number of arrested persons, criminal offenses related to trafficking are also provided by the age of victims for this period.



Figure 3: Age of victims of human trafficking in Kosovo 2001-2014

According to these statistics the age between 23-25 years old has the largest numbers of the victims with a total of 215 victims of trafficking in human beings from the year 2001-2014.

CONCLUSIONS

During the analysis and research of this paperwork we have reached to the conclusions and recommendations which first of all might be able to serve others as a reference point for research and scientific studies. Therefore, below we will present the conclusions:

- Organized crime and human trafficking today poses a serious threat to security in all democratic countries, especially has recently proved that no state is completely safe from organized crime and human trafficking activity regardless of the state's territorial size, power, religion, color, political regulation.
- The Republic of Kosovo has established an excellent legal infrastructure which is in full compliance with international standards in field of human trafficking.
- The Republic of Kosovo has been fully engaged in the prevention and combating the organized crime and human trafficking, but its wider goal is to become an important partner and inseparable part of international efforts against human trafficking.
- Kosovo has increased necessary institutional capacities for the prevention and combating human trafficking, creating adequate national mechanisms, necessary human resources, as well as physical, technical and technological infrastructure.
- Success in countering the organized crime, terrorism, drug trafficking and human trafficking as one of the most serious threats in the modern world is possible only by systematic, planned and coordinated engagement on the national and international level.

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