

Pressing issues and problems with prosecution of traffickers of human beings in Macedonia



Introduction

The 4th brief in the series of Analytica's policy briefs that address the question of human trafficking identifies several key areas that represent major challenge for the state authorities in the prosecution of traffickers. The report gives an overview of the implementation of the Article 418 (human trafficking) of the Criminal Code and more specifically Articles 418 a and 418 v. It also looks on the implementation on the Law on Witness Protection and the Law on Criminal Proceedings in regards to the witnesses in human trafficking cases. Finally the paper points out the methods used by traffickers to suppress the victims and therefore minimize the chances of facing a trial. The report concludes with recommendations for more efficient combat against human trafficking.

The combating and prosecuting of traffickers of human beings has always presented a challenge for state authorities. This is a result of the skilled maneuvers of the traffickers and at the same time the difficulties authorities are having in bringing evidence to the court room. If we try to evaluate the processes of combating human trafficking we witness the process of identification of possible traffickers in human beings as one of the easiest tasks in the list. The coalition *All for Fair Trials*, which is an NGO working on monitoring the level of respect of human rights and freedoms tries to give a more detailed picture of the defendant in one of their documents, based on the research they have conducted:

"...the cases observed before the basic courts suggest that the potential perpetrators have the following characteristics: person of male sex, with secondary school level completed, belonging to the age group between 18 and 25 or between 36 and 40, of Albanian ethnicity, formerly convicted, owner of a night club."¹

This profile outlook may give us enough data to identify critical areas in terms of geographical location so we can say that Western Macedonia, especially the cities of Tetovo and Gostivar, are on the top of the list of places where most court cases against human trafficking have been filed².

When we speak of human trafficking in Macedonia, it naturally implies the trafficking of persons for the purpose of sexual exploitation. This has been proven by the fact that mainly women have been pointed out as a victims of human trafficking in Macedonian courts. There are very few sanctions until now on the basis of other forms of trafficking such as: organ transplantation, illegal adoptions, forced labor etc.

¹ Combating trafficking in Human Beings through the practice of the domestic courts, All for Fair Trials http://www.osce.org/documents/mms/2005/12/17412_en.pdf (accessed December 5) p. 45.

² Ibid. , p.12.

Legal aspects

As a signatory of the UN Convention against Transnational Organized Crime and the two Protocols³, Macedonia introduced: Article 418 within the Criminal Code from 2004 making illegal trafficking in sex and labor under Article a and 418 g.

The offense (the principal offense in Paragraph 1) from Article 418 a is committed by anyone who uses force, serious threats, delusions or other forms of coercion, by kidnapping, deceit and abuse of his/her own position or pregnancy or the position of weakness of somebody else, or the physical or mental disability of another, or, by giving or receiving money or other benefits in order to obtain agreement of the person that has control over another person, recruits, transports, transfers, buys and sells persons, harbors or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor, or servitude, slavery forced marriages, forced fertilization, unlawful adoption or similar relationship or illicit transplantation of human organs.⁴

The government during 2008 prosecuted 11 cases under Article 418 a and g involving 28 trafficking suspects, resulting in the conviction of 17 trafficking offenders. The average sentence imposed was five years imprisonment. The government prosecuted three cases on forced labor charges. These prosecutions resulted in eight sentences: four of four years, two of five years, one of six years, and one of seven years.⁵

There has been some improvement in regards to the length of the penalty thus trying to achieve tougher sanctions, especially in regulating the matter with minors.

In the light of providing better legislation and following the UN Declarations and Protocols, Macedonia has also regulated the matter of using sexual services. Therefore under Article 418 a Paragraph 4 says:

"The one that uses or enables another person to use sexual services from persons that he/she knows is a victim of human trafficking will be a subject to sanction from six months to five years".⁶

Even though Macedonia is one of the few countries that have established legal framework on this subject, there are several questions that can be raised from here. First and foremost, how well the person using the services can be informed about the

³ UN Convention against Transnational Organized Crime and the two Protocols <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed December 5)

⁴ Article 418 a, Criminal Code of the Republic of Macedonia 2009

⁵ US Dept. of State: Trafficking in Persons report 2009 <http://www.state.gov/g/tip/rls/tiprpt/2009/> (accessed December 5)

⁶ Article 418 a paragraph 4 of the Criminal Code of the Republic of Macedonia 2009

background of the person offering the services of whether he/she is a victim of human trafficking. We must not forget that human trafficking as part of the chain of organized crime makes efforts to adapt itself to the environment in which it functions, so this specific paragraph may not sufficiently regulate this matter and leaves a space for tactic response.

The other question that relates to this point is whether the sanctioning of this action can act counterproductive to the overall attempts of combating human trafficking, since many of the clients later, during the trials or before them, in the reporting period, act either as a witnesses or the one that reported the case. This paragraph neither motivates them to be involved in the hearings nor does it motivate them to report the case because of the criminality of the action, with fear that the person may be subjected to sanctions afterwards.

Even though there is a legal framework for this subject there is very small number of indictments raised in the courts in Macedonia.

Macedonian courts do not know of a case which has been initiated under the provision of Article 418 v, that deals with an organized group or a legal entity.⁷

Under this Article:

Anyone who organizes a group, a gang or any other type of association to commit the act of trafficking in human beings will be sentenced to prison of at least eight years. Additionally participation in a criminal group, as well as providing assistance to such groups is a punishable offense.⁸

There is a widespread feeling of acceptance that certain legal entities in the bigger cities, such as beauty salons, offer services for the purpose of sexual exploitation. It is worth mentioning the Paragraph 3 of the Article according to which the person that is part of the group (under Paragraph 1) has an opportunity to be exempt from a sanction if the person reports the group before he/she did a crime as a member of that group.

⁷ ⁷ Combating trafficking in Human Beings through the practice of the domestic courts, All for Fair Trials http://www.osce.org/documents/mms/2005/12/17412_en.pdf (accessed December 7)

⁸ Article 418 v of the Criminal Code of the Republic of Macedonia 2009

Victims of human trafficking – a key element for prosecution of traffickers

Macedonian authorities are facing problems when it comes to bringing the traffickers to the courts. This is the area that deserves the greatest attention. As said before traffickers may work together so that they can adapt to new environment very quickly. For that purpose there are several known methods that are being used by them in order for them to be able to counter police and judicial efforts. The primarily area that traffickers target are the victims themselves since they represent the key element as being witnesses for the trial of the defendants. Traffickers use different ways to make sure their attempt to silence the victims. Very often physical violence is used against the victim accompanied by threats made against them and even their families (when it comes to victims coming from Macedonia). The victims are put under a constant pressure for a long period of time with different sorts of intimidations.

There is a need here to underline the importance of the Law on Witness Protection and the Law on Criminal Proceedings, both regulating the different mechanisms that are available to the victims of human trafficking. First, we have to stress the importance of the provisions in regards to the additional reassurance of their well being and safety that the law brings. Many cases confirm that victims themselves are often the only witness and evidence that can be used against the defendants. The laws envisage several measures in this regard:

- 1) Under the Law on Criminal Procedure the witness has the possibility to be questioned in a specific manner such as using separate rooms as well as video conferencing.
- 2) Under the Witness Protection Law, the witness has the right to the following: maintaining the secrecy of identity, provision of personal protection, change of identity and change of residence.

Unfortunately, in practice very little has been implemented when it comes to human trafficking. The use of advanced technologies in order to protect the identity and enable security of the witness has stepped on different stepping stones, either from the judges themselves or from the incapability of the courts to obtain the needed technology.

When speaking about the provision of using separate rooms for questioning, we must take a closer look at the actual situation in the Courts in Macedonia in regards to the space available. There is a practice among judges that the court sessions are being held in judges' offices because of space limitation, thus full implementation of the law cannot be taken into consideration.

Apart from the form of intimidation and physical violence against the victims (possible witnesses) traffickers are using other ways of maneuvers against the state authorities' efforts to combat trafficking. These would include making false identification documents such as passports and IDs, as well as cooperating with the police authorities through bribe. The latter of which is especially a sensitive topic since many of the reasons why the victims of human trafficking do not report the traffickers to the police is because they are told by the traffickers that regardless of their attempts to turn them in to the police, their connections with the police will make the files disappear.

Conclusion

The Government of Macedonia demonstrated some important progress in its anti-trafficking law enforcement efforts in 2008 and 2009 by decreasing processing time for trafficking cases and securing increased sentences for convicted trafficking offenders.⁹

On the legal side, we may conclude that Macedonia complies with most of the international standards and has a harmonized legal framework for combating human trafficking. However there are certain challenges that deserve greater attention. Even though this progress has been noted, there are several areas of work that the government is strongly encouraged to work on such as:

1. Full implementation of the provisions of the laws that cover the segment of witness protection.
2. Special attention should be put on the organized groups working with human trafficking. No cases like this still exist covering this matter.
3. There is a need of a more adequate space for the trials and hearings.
4. Finally, courts should put all of their attention to reducing the period of delaying of the hearing of the cases. If the delay is longer than 60 days the case will be returned to the beginning of the procedure.

⁹ US Dept. of State: Trafficking in Persons report 2009 <http://www.state.gov/g/tip/rls/tiprpt/2009/> (accessed December 5)

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