

PROMOTION OF THE RIGHTS OF TRAFFICKED PERSONS IN SERBIA WITH EMPHASIS ON LEGAL SUPPORT A HUMAN RIGHTS-BASED APPROACH

AIMS AND ACHIEVEMENTS

The project *Promotion of the Rights of Trafficked Persons in Serbia with Emphasis on Legal Support – A Human Rights-Based Approach* has been carried out by ASTRA – Anti Trafficking Action - from 2009 to 2012 in partnership with the Netherlands Helsinki Committee and in cooperation with various Dutch and Serbian experts. The project was financed by the MATRA programme of the Netherlands Ministry of Foreign Affairs and consisted of three parts: the establishment of a network of trained lawyers to provide legal aid to victims of trafficking, the monitoring and analysis of court cases with a focus on the position and treatment of victims and the collection and publication of case law on human trafficking.

The primary aim of the project was to ensure that trafficked persons in the Republic of Serbia are timely informed about their rights as victims and witnesses and that they are properly represented in criminal and civil proceedings, from the very start of any proceedings. To this aim a network of 27 attorneys was established who, over a period of three years, attended a basic training and participated in expert meetings on human trafficking and the protection of the rights of victims. The expert meetings covered access to compensation, the practice of the European Court of Human Rights in regard to human trafficking, and the health and psychological consequences of human trafficking. During the project period the attorneys provided legal aid and representation in 191 cases and represented 165 victims of trafficking.

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- In addition, 25 law students were trained in human trafficking and victims' rights in court proceedings. Following the training, they monitored 95 trials on human trafficking, with a focus on the treatment of trafficking victims as witnesses/injured parties. The findings were carefully analyzed together with court judgments in trafficking cases collected over the period 2005 – 2012. This led to a set of concrete recommendations to improve the position of trafficking victims in court proceedings.
 - In cooperation with "Paragraf" parts of selected sentences were published on the Paragraf database. The collected case law will be highly valuable as reference for professionals, providing them with insight in court judgments on trafficking and examples of good practices. This database will particularly serve judges, prosecutors and attorneys who may encounter cases of human trafficking in their work.

The most valuable achievement of this project is the establishment of a network of attorneys covering the entire territory of Serbia, whose members are trained and sensitized to work with victims of human trafficking and who can represent victims of human trafficking in court proceedings. The network of attorneys is available to all human trafficking victims in Serbia who are in need of legal advice or court representation. Furthermore, the network is available for all state authorities and non-governmental organizations, who may encounter human trafficking victims in their everyday work. The formation of the network solves the lack of specialized attorneys in some parts of the country and creates the conditions for trafficking victims to be represented in court by skilled attorneys, which rarely happened before.

Along with the establishment of the network a Manual for lawyers was created, in Serbian and in English language, which represents the working principles and *modus operandi* of this network. It is primarily made for those attorneys who provide legal advice to or represent victims of human trafficking as injured parties in judicial proceedings. The focus of the Manual is on the protection of the rights of victims, the promotion of international standards in this area, legal options in the Republic of Serbia, as well as on positive experiences and practices. The Manual will therefore also be useful to other professionals that might encounter human trafficking victims and victims of other types of violence in their work.

MAIN FINDINGS

The problem of human trafficking is not only an issue of prosecution and criminal law, but also of claiming human rights of people who were deprived of their basic security and dignity. During the project the following challenges were identified:

- 1. Failure to implement the existing legal provisions related to the protection of victims, especially those protecting the identity, privacy and safety of victims;**
- 2. Lack of support to victims, since access to legal aid is fully dependant on NGOs and foreign donations.**

In addition to the failure to apply existing laws, three areas still require harmonization with the relevant international standards:

- 1. The law should ensure that trafficked persons are not prosecuted and punished for offences they committed as a result of their being victims of trafficking;**
- 2. The law should define the concept of victim of trafficking;**
- 3. Access to free and qualified legal aid should be guaranteed independent from NGOs and international donations.**

Despite the existence of legal provisions, the general rule is that victims are questioned in the presence of the defendants, that they have to endure repeated direct confrontations with their traffickers, that they are forced to repeat their testimonies time and again, that the public is rarely excluded from hearings of the victim, and that victims are never awarded compensation for the damages suffered. Moreover, the defendants can be extremely intimidating and insulting, without the judges and prosecutors interfering. As a result, already stigmatized victims are victimized for the second time by the criminal proceedings, and often feel that it is they who stand trial instead of the defendants. These findings call for continued monitoring of court cases, especially in view of the envisaged changes in the Criminal Procedure Code, so as to see how these changes will impact the practice.

The lack of protection of the victims not only causes additional harm to the victims, but also influences the quality of their statements. One of the known problems in trafficking cases is that the victims are not able or willing to testify, that their statements are inconsistent or that they withdraw their statements. This may be caused by trauma, but is often also the result of threats and intimidation from the part of the traffickers. Therefore, better protection of the victims is both in the interest of the victims and of the criminal justice system.

RECOMMENDATIONS

The above findings lead to the following recommendations, in addition to the three points where legislative changes are called for:

- In order to ensure that victims feel free to declare and to avoid their secondary victimization, judges and prosecutors should make active use of the possibilities to protect the identity, privacy and safety of victim/witnesses as provided for by the law. This includes actively protecting the victim from intimidations and threats, intervening in case of questions that are irrelevant to the case, avoiding repeated hearings of the victims and their direct confrontation with the defendants, applying the possibility to award victims of trafficking the status of vulnerable witnesses, and making use of technical possibilities like hearing the victim through video links.
- Next to ensuring better protection of victims from threats and intimidation from the defendants, criminal cases should not depend on statements of the victims solely. Instead of waiting for victims to show up, the police should develop more proactive investigative methods, focusing on the perpetrators and the criminal networks, rather than on the individual victims.
- Permanent education of judges and prosecutors is needed on the consequences of trafficking for the victims, the impact of trauma on the ability of victims to testify in a detailed and consistent way, and on the methods of questioning victims. It is important to realize that trafficking mostly takes place in a network setting and that it is based on violence and threats that do not stop when the person is out of the direct trafficking situation.
- In order to protect the rights of victims, victims should not be fully dependant on NGOs for access to free and qualified lawyers. Lawyers and prosecutors should work together, whereas prosecutors should establish contact with the victim, build a relationship of trust and actively inform the victim on what to expect.
- Support of NGOs before, during and after proceedings is crucial. The need for support and protection of safety does not disappear at the end of the proceedings.
- Compensation is a key element of justice for the victims. To this end, judges should make use of the possibility to award compensation as part of the criminal case. Lawyers should actively claim compensation on behalf of the victims and present evidence of the damages suffered by them to facilitate a court decision, and the police should include the damage suffered by the victims in the victims' statements. In addition, a Compensation Fund should be established.
- Financial investigations should become an integral part of criminal prosecution to hit traffickers where it hurts most. Compensation of the victim should be a priority for the use of confiscated assets.