

**Upholding the Rule of Law and Due Process in Criminal Justice Systems
Human Dimension Seminar, Warsaw**

**Side Event Report
“Criminal Justice and the trafficking victim”
10th May 2006**

Background

Supporting trafficked persons’ access to remedies and rights is one of the main components of the ODIHRs Anti-Trafficking Programme. During the 2005 Human Dimension Implementation Meeting ODIHR organized a side event on the right to *non-refoulement* of trafficking victims and steps taken by destination countries to ensure that trafficked victims are not subject to ill treatment or re-trafficking on return to their countries of origin (“*Is the return of trafficked victims always safe?*”). Also, in 2005, ODIHR produced an overview of international standards on the rights of trafficking victims and victim-witnesses in criminal proceedings. This overview was to serve as guidance for the monitoring of trafficking trials in a number of OSCE mission countries, including Moldova, and to generate information on the protection of rights of victims during proceedings and the availability of remedies. Further, in 2006/2007 ODIHR is due to conduct a number of assessments in countries of origin, including Albania, Romania, Moldova and Ukraine, to explore rights awareness amongst returned trafficked victims and access to protection and remedies.

This event on *Criminal Justice and the trafficking victim* provided a forum for the exchange of practice on how the trafficking victim experiences the criminal justice system. It also aimed to raise awareness amongst policy makers of some of the issues currently undermining trafficked persons access to justice. It brought together a panel of practitioners from Moldova, Romania, Albania and Germany to highlight issues from their experience and present ways forward.

Panel Participants

- Ms. Claudia Burgsmueller, Attorney-at-Law, Wiesbaden/Germany;
- Mr. Frank Dalton, Head of Rule of Law Unit, OSCE in Albania (presenting on behalf of Ms. Aurela Anastasi, Director of the Center for Legal Civic Initiatives, Tirana/Albania who was unable to attend);
- Ms. Iana Matei, Director of the NGO Reaching Out, Pitesti Romania;
- Mr. Ion Vizdoga, Director of the Centre for the Prevention of Trafficking in Women, Chisinau/Moldova;

Introductions

The meeting was introduced and moderated by Ms. Shivaun Scanlan, the Senior Advisor on Anti-Trafficking Issues for the ODIHR. The introduction highlighted a number of points for the discussion, including:

- The significant disparities between the numbers of presumed or identified victims of trafficking and prosecutions of traffickers;
- The continuing heavy (if not exclusive) reliance/dependence on victim testimonies for prosecutions;
- The reluctance of trafficking victims to cooperate with law enforcement and testify in criminal proceedings
- The lack of sensitivity towards trafficked victims by criminal justice professionals;
- The frequent reports of the criminalisation of victims of trafficking;
- The absence of compensation payments for trafficking victims
- The lack of legal assistance or representation for victims of trafficking in criminal proceedings
- The increasing number of prosecutions of young female traffickers, but need to look at quality of these prosecutions

Overview of presentations

Criminal Justice and the trafficking victim in Romania

Iana Matei described victims' encounters with the criminal justice system and its effects on victims from her long experience of managing a shelter for trafficked persons in Romania. She emphasised firstly the important role of destination countries in securing access to justice for trafficked persons. She indicated that instead of being identified and protected in destination countries, Romanian victims are often expelled from countries of destination so that the real exploiters against whom they might provide testimony, are not arrested or prosecuted. Instead the victim's collaboration in origin countries is often only in pursuit of the 'little guys' in trafficking, ie the recruiters and transporters and not those who stand to make the most from trafficking and arguably do the most harm in the destination countries.

The length of trafficking proceedings and the low sentencing or acquittals in many trafficking proceedings also deter trafficking victims from cooperating with law enforcement and testifying in proceedings against the traffickers. From Ms Matei's experience of assisting victims, including during preparation for and during criminal proceedings, she finds that victims are still not adequately informed about their rights by the authorities who have first contact with them, such as law enforcement, prosecutors. Likewise, victims often do not have access to legal assistance and representation. Both prosecutors and judges still lacked an understanding of their duty to inform victims and victim-witness about their rights and often failed to protect the identity of the victim.

She concluded by noting that there is a need to provide victims of trafficking with information about their rights and assistance in a safe environment to enable them to take an informed decision about whether to access justice and to provide them with the necessary protection and assistance if they decide to do so.

Criminal Justice and the trafficking victim in Moldova

Ion Vizdoga gave an overview of the institutional and legal framework to combat trafficking in Moldova. He also presented an overview of recent research conducted in Moldova analysing trafficking and related trials in the country from 2002 to 2005.

The number of trafficking investigations, criminal proceedings before the court and convictions had noticeably increased in Moldova: from 42 investigations in 2002 to 239 investigations in 2005, from 8 criminal court proceedings in 2002 to 191 in 2005, from 22 convictions in 2002 to 108 convictions in 2005.

The analysis of these cases had shown that 86% of the victims were women with an average age of 21 years. 83% of criminal proceedings were initiated on the basis of a complaint submitted by the victim. 72% of the evidence submitted during the criminal proceedings was of a declaratory nature (39% victim statements), 12% was material evidence (documents). Only in 15 % of the cases was international judicial cooperation used, even though all of the cases involved trafficking across borders (with Turkey and the Russian Federation as the main destination countries). 78% of the court hearings were public. In no case, were protected victim hearings used to ensure the confidentiality of the identity of the victim. In 45% of the cases the prosecutor asked for (and obtained) re-qualification of the offence as a less serious offence.

With regard to the types of exploitation identified in these cases, 61% of cases were for sexual exploitation and 31% for labour exploitation, servitude and slavery. 12% of the victims were identified before the actual exploitation took place.

64% of the identified traffickers were women with an average age of 29. 60 % of the traffickers investigated and prosecuted were characterized as recruiters and 29% as transporters for the offence of trafficking.

While 77 % of the traffickers chose private lawyers from their own resources, only 26% of the victims could afford lawyers to assist and represent them. 24% of victims were assisted by lawyers financed by the NGOs.

11% of victims were ordered compensation however compensation payment orders were practically never executed due to the inability to seize the assets of the convicted.

Mr Vizdoga concluded by noting that there was a serious lack of international judicial cooperation in trafficking cases. Equally, victims' confidentiality and protection needed to be better secured during criminal proceedings. The criminal procedure code also needed to be amended to improve the status of victims in criminal proceedings to allow victims to become a party to the proceedings to better protect their rights.

Criminal Justice and the trafficking victim in Albania

Frank Dalton presented findings and statistics from the monitoring of trials related to trafficking in human beings in Albanian courts, conducted by the Albanian NGO Center for Legal Civic Initiatives.

The main improvements in Albanian legislation in recent years included (a) the inclusion of trafficking as a criminal offence in the Criminal Code (2001, with amendments in 2004), (b) the establishment of the Court of Serious Crimes in 2004 and (c) the approval of the Witness Protection law.

Some worrying findings showed however that there was still a lack of definitional clarity between the criminal offences of trafficking in human beings and smuggling. The court monitoring also indicated that a lack of understanding of trafficking resulted in the criminalization of trafficking victims, with victims sentenced for the exercise of prostitution or provision of false testimony.

Other findings relating to the treatment of and the protection of victims rights showed that sometimes victims, in particular in the case of foreign victims, were not interviewed in accordance with accepted criminal procedure (e.g. without the provision of interpretation) which led to the early closure of cases. Victims also frequently refrained from filing criminal charges because their life or that of their families had been threatened by the traffickers. The 2004 Witness Protection Law had not yet been implemented effectively. The monitoring also found that the treatment of the victim by the judicial authorities was not sensitive and psychological assistance to victims during court proceedings rarely provided.

Analyzing the data relating to the traffickers, the high number of young females convicted was highlighted pointing again to the fact that the “small guys” were being targeted and that the system did not yet affect those who perhaps mattered more. A high number of female convicts might also indicate a certain number of former victims of trafficking, inadequately assisted during their own trafficking experience and caught up subsequently in the organisation of trafficking.

In conclusion, it was noted that the lack of confiscation of traffickers assets allowed traffickers to hire private lawyers and bribe state authorities. The financial resources of traffickers ought to be better targeted in order to reduce the financial incentives for committing trafficking. Compensation of victims of trafficking through civil claims should also be strengthened.

Criminal Justice and the trafficking victim in Germany

In her contribution **Claudia Burgsmueller** pointed to the disparity between the presumed cases of trafficking in human beings (in their 10, 000s), the known cases of THB (in their 1000s) and the ones that led to an investigation and/or conviction (few hundreds).

She indicated that in order to understand these disparities it is important to understand and analyze the conditions faced by victims if they come forward and decide to cooperate in criminal proceedings. The inability on the side of the authorities to provide them with a secure status, both physically and legally, was identified as one of the main reasons why victims are reluctant to testify in Germany. Residence permits issued for victims of trafficking in Germany, for example, are only temporary, often issued on a monthly or three-monthly basis. On a positive note, it was emphasized that the residence permit can and has been combined with permission to work which allows for a better rehabilitation of the victim.

Good cooperation between counselling centers, investigating police officers and specialized lawyers is crucial for effective legal assistance to victims of trafficking. It is similarly crucial that victims of trafficking are granted access to legal assistance at the earliest possible stage, preferably when identified as a presumed victim in police raids.

By way of compensation, in Germany prostitutes can now claim unpaid wages and a trafficked victim can make a civil claim for wages. This provides an incentive to the victim to describe events accurately during the criminal proceedings.

Summary of main findings:

- States, both countries of destinations and countries of origin, have not been able to make compensation accessible and effective for victims of trafficking. This is compounded by the fact that very rarely the assets of traffickers are confiscated. This not only deprives victims of their access to compensation. It also allows the traffickers to use these funds to invest in their own private legal representation and in corruption.
- Victims of trafficking do not have effective access to information about their rights and legal assistance. Only early access to specialized legal advice and assistance by a lawyer will give a victim the opportunity to have her/his rights protected before and throughout criminal proceedings.
- Victims still encounter pressure from law enforcement to file complaints and cooperate in the investigation/prosecution. However instead of being protected, victims still face stigmatization, punishment (fines, expulsion) and criminalization by the authorities.
- Where states provide legal and physical security for victims of trafficking, they are better in a position to cooperate with law enforcement. As a good practice, victims of trafficking should be given a three months reflection period to decide whether they want to cooperate in criminal proceedings. Only after such a reflection and recovery period are they able to participate in a meaningful way in proceedings.
- More is still expected of destination countries in terms of identifying and assisting trafficked persons and in prosecuting those responsible for exploitation in the destination country. The prosecution of large numbers of young female traffickers, potentially formerly trafficked victims, also needs to be monitored in countries of origin.
