

REGULATION NO. 2001/4

UNMIK/REG/2001/4

12 January 2001

ON THE PROHIBITION OF TRAFFICKING IN PERSONS IN KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

For the purpose of creating specific legislation for the prosecution and punishment of perpetrators of the crime of trafficking in persons and related criminal acts, and the assistance and protection of victims of trafficking and of related criminal acts,

Hereby promulgates the following:

CHAPTER I: CRIMINAL ACTS AND PENALTIES

Section 1

DEFINITIONS

1.1 For the purposes of the present regulation:

- (a) (a) “trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
- (b) (b) “exploitation” as used in subparagraph (a) shall include, but not be limited to, the exploitation of 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.

1.2 The consent of a victim of trafficking in persons to the intended exploitation set forth in section 1.1 shall be irrelevant where any of the means set forth in section 1.1(a) have been used against a victim of trafficking.

1.3 The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in section 1.1(a).

Section 2

TRAFFICKING IN PERSONS

2.1 Any person who engages or attempts to engage in trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of two (2) to twelve (12) years' imprisonment.

2.2 Where the victim of trafficking is under the age of 18 years, the maximum penalty for the person engaging in trafficking shall be up to fifteen (15) years' imprisonment.

2.3 Any person who organizes a group of persons for the purpose of committing the acts referred to in paragraphs 2.1 and 2.2 shall be liable upon conviction to a penalty of five (5) to twenty (20) years.

2.4 Any person who, through negligence, facilitates the commission of trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of six months to five (5) years' imprisonment.

Section 3

WITHHOLDING OF IDENTIFICATION PAPERS

Any person who, acting or purporting to act as another person's employer, manager, contractor or employment agent, intentionally withholds that other person's personal identification documents and/or passport commits a criminal act and shall be liable upon conviction to a penalty of six (6) months to five (5) years' imprisonment.

Section 4

USING OR PROCURING SEXUAL SERVICES OF PERSON IN A SITUATION OF SEXUAL EXPLOITATION

4.1 Any person who uses or procures the sexual services of a person with the knowledge that that person is a victim of trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of three (3) months to five (5) years' imprisonment.

4.2 Where the person providing the sexual services referred to in section 4.1 is under the age of 18 years, the maximum penalty for the person convicted of using or procuring such services shall be up to ten (10) years' imprisonment.

CHAPTER II: INVESTIGATION, CONFISCATION AND COURT PROCEDURES

Section 5 INVESTIGATIONS

5.1 The taking of a statement by a law enforcement officer or investigating judge shall in no way inhibit or delay the voluntary repatriation of an alleged victim of trafficking.

5.2 Appropriate measures shall be taken for witness protection during any investigation and/or court proceedings arising under the present regulation.

Section 6 CONFISCATION OF PROPERTY AND CLOSURE OF ESTABLISHMENTS

6.1 Property used in or resulting from the commission of trafficking in persons or other criminal acts under the present regulation may be confiscated in accordance with the applicable law. The personal property of the victims of trafficking shall not be confiscated wherever it can be immediately identified by the law enforcement officer as such.

6.2 Where there are grounds for suspicion that an establishment, operating legally or illegally, is involved in, or is knowingly associated with trafficking in persons or other criminal acts under the present regulation, an investigating judge may, upon the recommendation of the public prosecutor, issue an order for the closing of such establishment.

6.3 A reparation fund for victims of trafficking shall be established by administrative direction and shall be authorised to receive funds from, inter alia, the confiscation of property pursuant to section 6.1.

Section 7 COURT PROCEEDINGS

7.1 Except with the leave of the president of the panel of judges, it shall not be permissible for a defendant charged with a criminal act under the present regulation to introduce evidence of the alleged character or personal history of the alleged victim.

7.2 A defendant may petition the president of the panel of judges to allow the introduction of evidence of the alleged character or personal history of the alleged victim. Upon receiving such petition, the president of the panel of judges shall conduct a hearing in camera during which the defendant and the prosecution shall have the opportunity to be heard.

7.3 Following the hearing in camera, the president of the panel of judges shall only grant leave to introduce evidence of the alleged character or personal history of the alleged victim if satisfied that the evidence is of such relevance, and its omission would be so prejudicial to the defendant, as to result in a miscarriage of justice for the defendant if not allowed to be introduced. In such cases, the president of the panel shall establish the limits within which such evidence or questions may be introduced.

7.4 In cases before the court involving charges of criminal acts under the present regulation, the court may permit the alleged victims and witnesses to present their evidence in camera or by electronic or other special means, as the court sees fit.

Section 8

DEFENCE AVAILABLE TO A VICTIM OF TRAFFICKING

A person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking.

CHAPTER III: VICTIM PROTECTION AND ASSISTANCE

Section 9

VICTIM ASSISTANCE COORDINATOR

9.1 Subject to section 9.2, the Special Representative of the Secretary-General shall appoint a Victim Assistance Coordinator who shall be responsible for coordinating the implementation of the present regulation, particularly the provisions set out in section 10 below. In the exercise of his or her duties, the Victim Assistance Coordinator shall liaise with the relevant law enforcement authorities, international and non-governmental or other organisations, and administrative departments as necessary.

9.2 Expenses arising from the implementation of the provisions under Chapter III of the present regulation shall be funded, to the extent resources are available, from donor contributions made specifically for this purpose and recorded as designated donor grants in the Kosovo Consolidated Budget. The Victim Assistance Coordinator may also request other funds to be allocated for these purposes in the Kosovo Consolidated Budget.

Section 10

ASSISTANCE TO VICTIMS OF TRAFFICKING

10.1 Upon the request of a person who provides to the Victim Assistance Coordinator reasonable grounds for belief that she or he is a victim of trafficking, the following services shall be provided to that person, subject to availability of resources provided in accordance with section 9.2:

- (a) (a) Free interpreting services in the language of their choice;
- (b) (b) Free legal counsel in relation to trafficking issues (criminal or civil);
- (c) (c) Temporary safe housing, psychological, medical and social welfare assistance as may be necessary to provide for their needs; and
- (d) (d) Such other services as shall be specified in an administrative direction.

10.2 The services and facilities for the assistance of victims of trafficking shall be available to such victims, in accordance with section 10.1, regardless of any charges of prostitution or of illegal entry, presence or work in Kosovo that may be pending against them.

10.3 Law enforcement officers shall advise persons who are suspected victims of trafficking at the earliest available opportunity of their right to request the services and facilities set out in the present section and shall contact the appropriate persons to arrange the requested assistance.

Section 11

NO DEPORTATION OF TRAFFICKING VICTIMS FOR CERTAIN CONVICTIONS

A conviction for prostitution or a conviction for illegal entry, presence or work in Kosovo shall not be the basis for deportation if the person who is to be deported is a victim of trafficking.

Section 12

EVALUATION OF REFUGEE STATUS

12.1 If a victim of trafficking expresses a wish to not be returned to her or his country of citizenship or previous habitual residence based on a claim of persecution, such a claim shall be evaluated by the appropriate authority, pursuant to the applicable law, who may determine that the victim may be granted residence in Kosovo or such other assistance as deemed appropriate.

12.2 Nothing in the present regulation shall affect the protection afforded to refugees and asylum-seekers under international refugee law and international human rights law, in particular, compliance with the principle of non-refoulement as set forth in Article 33 of the 1951 Convention on the Status of Refugees.

Section 13

IMPLEMENTATION

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 14

APPLICABLE LAW

The present regulation shall supersede any provision in the applicable law that is inconsistent with it.

Section 15
ENTRY INTO FORCE

The present regulation shall enter into force on 12 January 2001.

Bernard Kouchner
Special Representative of the Secretary-General