



UNMIK/DIR/2005/3
11 February 2005

ADMINISTRATIVE DIRECTION NO. 2005/3

**IMPLEMENTING UNMIK REGULATION NO. 2001/4
ON THE PROHIBITION OF TRAFFICKING IN PERSONS IN KOSOVO**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under section 13 of UNMIK Regulation No. 2001/4 of 12 January 2001 on the Prohibition of Trafficking in Kosovo,

For the purpose of clarifying the responsibilities of the Victim Assistance Coordinator, establishing funds to provide financial assistance and reparation to victims of trafficking, creating a Review Panel to examine appeals of decisions by the Victim Assistance Coordinator and providing auxiliary assistance to victims of trafficking and witnesses from outside of Kosovo,

Hereby issues the following Administrative Direction:

Section 1
The Victim Assistance Coordinator

1.1 The Victim Assistance Coordinator (“the Coordinator”) who shall be appointed by the Special Representative of the Secretary-General pursuant to section 9.1 of UNMIK Regulation No. 2001/4, shall be assigned to the Department of Justice.

1.2 The Coordinator shall, *inter alia*:

(a) Develop in coordination with the Ministry of Finance and Economy a strategy for obtaining funds from, *inter alia*, court fines, confiscated property (pursuant to section 6.1 of UNMIK Regulation No. 2001/4), individual and donor contributions, the Kosovo Consolidated Budget and other sources;

(b) Create the mechanisms for providing financial assistance and reparation to the victims of trafficking in the form of funds;

(c) Establish the criteria and procedures for evaluating applications by victims of trafficking for assistance and reparation, render decisions on such applications and facilitate the provision of such assistance;

(d) Provide support to victims of trafficking participating in judicial proceedings pursuant to section 10.1 of UNMIK Regulation No. 2001/4;

(e) Coordinate with UNMIK authorities and other relevant parties on policies and actions relating to trafficking in persons;

(f) Issue a bi-annual report on trafficking in persons in Kosovo, including data on the scope of the problem and the number, status and disposition of cases prosecuted under the applicable criminal law;

(g) Raise awareness about the issue of trafficking in persons and the rights of victims of trafficking;

(h) Seek advice on cases and issues pertaining to victims of trafficking who are minors, mentally ill or otherwise disabled; and

(i) Under the supervision of and subject to clearance by the DSRSG for Police and Justice, cooperate in regional and international efforts to combat trafficking and to provide assistance to victims of trafficking.

1.3 In carrying out his or her responsibilities, the Coordinator shall work closely with UNMIK authorities, law enforcement authorities, the Provisional Institutions of Self-Government, inter-governmental and non-governmental organizations and other relevant parties as necessary.

Section 2

Trafficking Assistance and Trafficking Reparation Funds

2.1 A Trafficking Assistance Fund is hereby established for the purpose of providing financial assistance to victims of trafficking.

2.2 The Trafficking Assistance Fund is authorized to receive funds from the Kosovo Consolidated Budget as well as from donor contributions. All contributions to the Trafficking Assistance Fund shall be credited to a budget line under the Kosovo Consolidated Budget which shall be specifically earmarked for the purpose of providing financial assistance to victims of trafficking.

2.3 A Trafficking Reparation Fund is hereby established for the purpose of providing reparation to victims of trafficking.

2.4 The Trafficking Reparation Fund is authorized to receive funds from the confiscation of property pursuant to section 6.1 of UNMIK Regulation No. 2001/4, the Kosovo Consolidated Budget as well as from donor contributions. All contributions to the Trafficking Reparation Fund shall be credited to a budget line under the Kosovo Consolidated Budget which shall be specifically earmarked for the purpose of providing reparation to victims of trafficking.

Section 3 Review Panel

3.1 A Review Panel shall be established to review appeals of decisions by the Coordinator on applications for assistance or reparation.

3.2 The Review Panel shall be composed of:

(a) A Supreme Court judge; and

(b) Two members with professional expertise in trafficking in persons from the Ministry of Labour and Social Welfare, UNMIK Police or a relevant inter-governmental or non-governmental organization.

3.3 The members of the Review Panel and alternates for each of the three members shall be appointed by the Deputy Special Representative of the Secretary-General for Police and Justice. Appointments shall be for a period of one year, which may be renewed for an additional year only.

3.4 The proceedings of the Review Panel shall be conducted in accordance with the present Administrative Direction, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1949 and with the rules of procedures adopted by the Review Panel.

3.5 In accordance with the rules of procedures adopted by the Review Panel, a member of the Review Panel shall be replaced by an alternate member in cases where such Panel member's prior professional or personal knowledge of the applicant is such that he or she is unable or is perceived to be unable to participate impartially in the review of an appeal.

Section 4 Applications for Assistance or Reparation

4.1 A victim of trafficking may apply to the Coordinator to receive:

(a) Free interpretation services in the language of the applicant's choice;

- (b) Free legal counsel for civil or criminal proceedings relating to trafficking issues;
- (c) Temporary safe housing, psychological, medical and social welfare assistance as may be necessary;
- (d) Assistance in the reintegration of the applicant in society, including facilitating reintegration in the applicant's family and contacting appropriate community associations or inter-governmental and non-governmental organizations;
- (e) In the case of an applicant from outside of Kosovo,
 - (i) Assistance in arranging return to the applicant's country of citizenship or previous habitual residence, including provision, if necessary, of travel documents and necessary supplies such as luggage, clothing, and basic travel kit and organization of travel arrangements to the final destination; or
 - (ii) Assistance in contacting the appropriate inter-governmental or non-governmental or other organizations that provide medical, legal, psychological, social and financial assistance among others to victims of trafficking in persons in the applicant's country of citizenship or previous habitual residence.
- (f) Financial assistance from the Trafficking Assistance Fund, relating to the assistance referred to in paragraphs (a) – (e) of section 4.1 or to daily sustenance needs; or
- (g) Reparation from the Trafficking Reparation Fund, to compensate for harm suffered by the applicant.

4.2 An application under section 4.1(f) or 4.1(g) shall be made in writing and shall be accompanied by any available documentation or evidence. The application may be in the language of the applicant. The application shall contain the following information:

- (a) The name, date of birth and address of the applicant;
- (b) The name and address of legal counsel or a Victim Advocate assisting the applicant, if any;
- (c) The applicant's country of citizenship or habitual residence;
- (d) The circumstances under which the applicant was trafficked, including the date or time period when the applicant was trafficked, if possible;
- (e) The financial circumstances of the applicant, including a statement of financial or other assets in Kosovo and any dependants supported by the applicant;

(f) Any claim for damages, monetary grants or assistance submitted to a court or other entity or any damages, monetary grants or assistance awarded by a court or other entity arising out of or in connection with the incident of trafficking on which the application is based;

(g) Any assistance awarded by the Coordinator on an expedited basis, pursuant to section 7; and

(h) The type of assistance or the amount of financial assistance or reparation requested.

4.3 An application under sections 4.1(f) or 4.1(g) shall be submitted within six months from the date on which the exploitation of the applicant ceased. The Coordinator may accept applications submitted after this deadline if the applicant shows good cause for not meeting the deadline.

4.4 Nothing in the present Administrative Direction shall prevent a victim of trafficking from pursuing a claim for monetary damages in a competent court against any person engaged in the trafficking of such victim.

4.5 An application under sections 4.1(a)-4.1(e) may be submitted in writing or orally. The Coordinator may publish guidelines for the submission of such applications.

Section 5

Decisions on Applications for Assistance or Reparation

5.1 If the Coordinator determines that there are reasonable grounds to believe that the applicant is a victim of trafficking, he or she shall approve an award of such assistance and/or reparation as the victim requires, subject to the availability of resources in the Trafficking Assistance Fund and/or Trafficking Reparation Fund.

5.2 In determining the appropriate amount of financial assistance and reparation to award to a victim of trafficking, the Coordinator shall take into account, *inter alia*, the financial circumstances of the victim and other dependents, any damages, monetary grants or assistance already awarded to the victim and the balance of funds available for the financial assistance and reparation of other victims of trafficking.

5.3 The Coordinator shall issue a decision on an application for assistance or reparation within thirty (30) days from the receipt of such application. The decision shall be in writing and shall contain the grounds for the decision.

5.4 Within ten (10) days from the issuance of the decision, the Coordinator shall communicate his or her decision and instructions on the applicant's right to appeal to the applicant and any legal counsel or Victim Advocate assisting the applicant.

5.5 A victim of trafficking who is awarded financial assistance and/or reparation shall be obliged to disclose such award at the earliest opportunity when seeking the award of damages, monetary grants or assistance from a court or other entity.

Section 6 Appeals of Decisions of the Coordinator

6.1 The applicant may appeal a decision of the Coordinator. The appeal shall be submitted in writing to the Review Panel within ten (10) days from the receipt of the decision by the applicant.

6.2 The Coordinator shall provide the Review Panel with all the relevant information and materials for it to make an informed decision.

6.3 The Review Panel shall issue a decision on the appeal as soon as possible, but in any case, within seven (7) days from the receipt of the appeal. The decision shall be in writing and shall contain the grounds for the decision.

6.4 Within ten (10) days from the issuance of the decision, the Review Panel shall communicate its decision to the Coordinator, the applicant and any legal counsel or Victim Advocate assisting the applicant.

6.5 The decision of the Review Panel shall be final.

6.6 The Coordinator shall ensure the implementation of the decision of the Review Panel as soon as practicable, but in any case, within thirty (30) days from the issuance of the decision.

Section 7 Expedited Applications for Assistance

7.1 A victim of trafficking may apply to the Coordinator to receive the assistance set forth in paragraphs (a) – (f) of section 4.1 on an expedited basis.

7.2 The application by a victim of trafficking to receive assistance on an expedited basis shall contain any available documentation or evidence and an explanation of why such assistance is urgently needed to protect the safety, health or well-being of the victim or to prevent irreparable harm to his or her other interests. If the application is for the assistance set forth in paragraph (f) of section 4.1 on an expedited basis, the application shall contain the information provided for in section 4.2.

7.3 The Coordinator shall approve the award of assistance on an expedited basis, subject to the availability of resources in the Trafficking Assistance Fund, if he or she determines that:

(a) There are reasonable grounds to believe that the applicant is a victim of trafficking; and

(b) The assistance is urgently needed to protect the safety, health or well-being of the victim or to prevent irreparable harm to his or her other interests.

7.4 The Coordinator shall issue a decision on an application submitted pursuant to section 7.1 within three (3) days from the receipt of the application.

7.5 The Coordinator shall immediately communicate his or her decision and instructions on the applicant's right of appeal to the applicant and any legal counsel or Victim Advocate assisting the applicant.

7.6 A decision of the Coordinator to reject an application to receive assistance on an expedited basis shall not prevent a victim of trafficking from submitting an application under section 4.

7.7 The applicant may appeal a decision of the Coordinator issued pursuant to section 7.4 within three (3) days from the receipt of the decision by the applicant.

7.8 The Review Panel shall issue a decision on the appeal as soon as possible, but in any case, within three (3) days of the receipt of the appeal.

7.9 The Review Panel shall immediately communicate its decision to the Coordinator, the applicant and any legal counsel or Victim Advocate assisting the applicant.

7.10 The Coordinator shall ensure the implementation of the decision of the Review Panel as soon as practicable, but in any case, within three (3) days from the issuance of the decision.

7.11 Sections 4 to 6 of the present Administrative Direction shall apply *mutatis mutandis* to applications to receive assistance on an expedited basis.

Section 8

Auxiliary Assistance to Victims of Trafficking and Witnesses from Outside of Kosovo

A victim of trafficking or a witness from outside of Kosovo who may be able to provide information during the investigation of cases involving trafficking in persons, may, where applicable, be granted temporary authorization to remain in Kosovo and appropriate protection, for such periods and on such conditions as the responsible authority deems fit.

Section 9
Assistance of Legal Counsel and Victim Advocates

Legal counsel or a Victim Advocate or a representative of a non-governmental, inter-governmental or governmental organization may submit an application for assistance or reparation, an expedited application for assistance or an appeal of a decision by the Coordinator on behalf of a victim of trafficking, with the consent of such victim.

Section 10
Entry into Force

The present Administrative Direction shall enter into force on 26 February 2005.

Søren Jessen-Petersen
Special Representative of the Secretary-General