

## **Human trafficking and the Albanian legislation**

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### **Abstract**

During the years 1990-1991 Albania had opened a new market, that of human trafficking. Political changes after the regime had a visible impact on the values of society by bringing greater thirst for money. Those people who wanted to enrich themselves through illegal forms (although Albanian state at that time had an anti-trafficking legal framework) by trafficked, recruited, exploited girls and women. The phenomenon of exploitation of girls in the sex industry took this epidemic proportions because of a state who failed to control the streets of "commerce" or to protect the rights of girls trafficked outside Albanian territory.

The purpose of this study is the realization of a critical analysis of the Albanian legislation on human trafficking. Only in 1995 was passed the first law (No. 7895, dated 27.01.1995) on trafficking in the Albanian state. The objective of this study is the identification of advantages and disadvantages of Albanian legal framework on trafficking.

Expected results of the study consist in the fact that even though there have been changes in the legal framework that have developed the concept of trafficking law should be changed again think that articles of the Civil Code of Criminal reduce the phenomenon of trafficking in Albanian society

**Key words:** victims of trafficking, legislation, process, transition, sexual exploitation.

## **1.1 Introduction**

During the long and difficult transition in Albania: change of political system, the fall of the dictatorship and the advent of a new era, that of pluralism and Democratic caused Albanian people facing major challenges, getting familiar with one of the wounds large painful Albanian society: the phenomenon of trafficking of girls for sexual exploitation.

Currently, even after 23 years, Albania is still considered as an origin state for trafficking for sexual exploitation. Being aware of the phenomenon of trafficking as a difficult and complex problem, for a trafficked girl or woman to reintegrate into society, it is necessary the revision of legal framework, making an analysis of the legislation to see the advantages and limitations of current Albanian legislation.

Women trafficking have begun after 1990, in the absence of a full -trafficking legal framework. The first law on trafficking was adopted in 1995. Only after the year 2000, Albania begins to take tracing States laws of war and prevention against trafficking in people. In 2001, with the initiative of the Government's strategy to compile the fight against human trafficking, the government included actors from local government and from various NGO's. Gradually, the strengthening of Albanian legislation made the phenomenon of trafficking reduced but not completely eliminated. Even after these measures, the phenomenon of trafficking in human beings has changed just a little, returning in these last years of the invisible organized.

## **1.2 The evolution of the Albanian legislation**

For the first time in Albanian history, human trafficking is considered a crime in the Criminal Code of Albania, placing special provisions, the Law no. 8733 , 2001 , "On some amendments to Law no. 7895, dated 27.01.1995, the Criminal Code of Albania", which was added after Article 110 Article 110 / a " Trafficking in persons ". By this law, Section 114 was added after Article 114 / a "Trafficking in women for prostitution."

In the same period (2001) began the acknowledged of trafficking as a wound of the Albanian society and the state began to seriously hit this phenomenon through the implementation of legal reform, including provisions in the penal code, which predicted more severe penalties against Kathy phenomenon.

The most important international document that creates the basis for combating Trafficking in Persons is the UN Convention against Transnational Organized Crime and its two additional protocols ratified by Albania 11.07.2002 8920 law. With changes in the law no. 9188, dated 12.02.2004 to the Criminal Code provides three articles about trafficking<sup>1</sup>.

To be in full compliance with the Palermo Protocol, the Law no. 9188, dated 02.12.2004 "On some amendments to Law no. 7895 , dated 27.1.1995 " Criminal Code of Albania "amended " Article 110/au changed as follows<sup>2</sup>:

"Trafficking in persons" shall mean the recruitment, transportation, transfer , harboring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, malfeasance or benefit from the social, physical or psychological, or giving or receiving of payments or benefits to achieve the consent of a person who controls another person, for the purpose of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or similar forms of slavery, putting use or transplantation of organs and other forms of exploitation. The elements of Trafficking in Persons as defined in the Palermo Protocol are divided into 3 groups:

1. Action (activity, process): the recruitment, transportation, transfer, harboring or receipt of persons;
2. Means: threat, use of force and other forms of coercion, fraud, obtaining by force, devising or abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits;
3. The forms of exploitation: sexual exploitation, for forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs<sup>3</sup>

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<sup>1</sup> Articles 110 / a "Trafficking in persons"; 114 / b Trafficking in women and 128 / b "Trafficking in minors.

<sup>2</sup> This change was made in full compliance with Article 3 of the Palermo Protocol, which defines as follows: The Constitution of the Republic of Albania, Law 8417, dated 21.10.1998, Article 26, "No one shall be required to perform forced labor, përveçëse in cases of execution of a judicial decision, the performance of military service, a service that stems from a state of war, a state of emergency or a natural disaster that threatens the life or health of the people. "

<sup>3</sup> IOM. Manual IOM direct assistance ti victims of trafficking. Tirane.2007

## 2.1 ALBANIAN LEGISLATION AGAINST TRAFFICKING IN HUMAN BEINGS.

The Constitution of the Republic of Albania constitutes the highest law in the hierarchy of legal acts of the Republic of Albania. It establishes some rights, the prevention and protection of the phenomenon of human trafficking. Article 3 of the Constitution states that”..... Human dignity, rights and freedoms, are the basis of this state, which has the duty to respect and protect”.

The Albanian constitution stipulates certain provisions guaranteeing the rights and fundamental freedoms, as well as protection from violence: “The rights and fundamental freedoms are indivisible, inalienable and inviolable and underlie all the legal order<sup>4</sup>.” “Life is protected by law<sup>5</sup> “;” no one shall be subjected to torture, punishment or cruel, inhuman or degrading<sup>6</sup>. The Constitution stipulates that no one may be deprived of liberty except in the cases and according to procedures established by law (Article 27).

In terms of abduction, exploitation, torture as elements of an offense was dangerous to society is estimated that this phenomenon of trafficking presents important for guaranteeing the right to be free. Also, Article 26 of the Constitution stipulates the right of the individual not to perform forced labor<sup>7</sup>. This sanction has a special importance as long as forced labor exploitation, trafficking is an element of girls / women for the purpose of prostitution.

A significant provision of the Constitution is what provides that children, young people, pregnant women and new mothers are entitled to special protection by the state<sup>8</sup>. This sanction is of great importance, because in the majority of cases of girls / women trafficked for the purposes of exploitation are associated with physical and psychological violence.

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<sup>4</sup> The Constitution of the Republic of Albania, Article 54, paragraph 1

<sup>5</sup> Criminal Code of the Republic of Albania, Article 110 / a, amended by Law No. 9188, dated 12.02.2004, Article 1.

<sup>6</sup> Criminal Code of the Republic of Albania, Article 114 / b, amended by Law No. 9188, dated 12.02.2004, Article 2.

<sup>7</sup> Criminal Code of the Republic of Albania, Article 128 / b, amended by Law No. 9188, dated 12.02.2004, Article 3.

<sup>8</sup> Committing these offenses punishable by seven to fifteen years and a fine of three million derinë six million lek for trafficking of women and a fine of four to six million for the trafficking of minors . For the offense of trafficking in persons as a measure of punishment provided by five to fifteen years in prison and a fine of two million to five million.

### **2.1.1 Criminal Code of the Republic of Albania**

The Albanian State has made legislative changes regarding human trafficking in the Criminal Code of 1995, Law No. 8733, dated 24.01.2001. Changes were made to Law No. 9188, dated 12.02.2004, under the approach of domestic legislation with the Palermo Protocol.

With Law No. 8733, dated 24.01.2001 was added Article 110 / a, "Trafficking in persons ". What should be done is to spread out social reality and the ratification of the Palermo Protocol " To Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children", supplementing the United Nations Convention "Against Transnational Organized Crime " makes the necessary amendments Criminal Code. With Law No. 9188, dated 12.02.2004 the legislation clearly defined offenses of trafficking in human beings and predicted figures as separate offense of trafficking in persons, trafficking in women and trafficking in minors.

Lawmakers became more sensitive to the special protection of women and girls by providing specific provisions of their trafficking but also measure the highest punishment for their perpetrators.

### **2.1.2 Criminal Procedure Code**

(Criminal Procedure Code of the Republic of Albania Law 7905, dated 03.21.1995, as amended by Law no. 8813, dated 13.06.2002 and the Law 9276, dated 16.09.2004).

Criminal Procedure Code of RA specifies two categories of victims of criminal offense:

1. A person aggrieved by the offense
2. A person aggrieved by the offense as the injured accuser

Victims can sue violators measured against addressing judges as to its serious violence being categorized as a criminal offense. Criminal Procedure Code stipulates RA rights of the injured accuser<sup>9</sup>. It determines the type of offenses for which the affected plaintiff is entitled to submit a request directly to the court. (Article 58, Article 59).

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<sup>9</sup> Offenses established by this provision are : beating , Article 90 of the Penal Code , serious injury by negligence , Penal Code section 91i , flowerbed injury by negligence , Article 92 of the K. Criminal violation of domicile , Article 112 of the K. Criminal defamation , Section 119 of the Penal Code , defamation , Section 120 of the K. Criminal unfair

In Article 59 of the Code of Criminal Procedure<sup>10</sup> conclude that the offense of trafficking in human beings and all other criminal offenses associated with this phenomenon followed by the procedure and cannot be followed by an appeal court. Consequently, victims of human trafficking can only claim for compensation through a civil lawsuit in a criminal proceeding or in a civil lawsuit. In this case, they have the status of parties' trial and may be represented by counsel in connection with their claim in the criminal process. But, no legal provisions for their protection lawyer mainly<sup>11</sup>.

### 2.1.3 Family Code

Family Code plays a dominant role for protecting members of the family by the phenomenon of human trafficking in the regulation of family relations. The Family Code provides for spouses age above 18 with their free consent and full marriage. On marriage without free consent, without intending to be shared as husband and wife, is related to the impact of an intimidation, and is associated under the provisions of the new Code<sup>12</sup>.

The Family Code provides equal rights and equal obligations to spouses in a marriage settlement, which will guarantee a family a healthy and protected from dangerous social phenomena. Between the rights and obligations of the Family Code provides for spouses, can distinguish the right to "compensatory contribution" (Article 147) and "the right to use the apartment" (Article 153). These rights are important for the protection of women and children.

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interference in private life , Article 121 of the K. Criminal proliferation of personal secrets , Article 122 K. Criminal Denial of living , Article 125 K. Criminal Making unfair child , Article 127 K. Criminal act of another edition in his own name, article 148 K. Criminal Reproduction without right of another person's work , Article 149 of the K. Criminal destruction of property and other assets , Article 254 K. criminal

<sup>10</sup> H. Islam , A. Hoxha , Ilir Panda , Criminal Procedure , Commentary , Tirana , 2003, p . 141-143

<sup>11</sup> Bozo. Aurela. Development and implementation of the Albanian legislation, in wartime against trafficking in human beings with focus on protecting and guaranteeing the rights of victims of trafficking in human njerëzore.Tirane, 2008, pp. 20-25

<sup>12</sup> Family Code, Sections 33, 34, 36, 37, 39.

### **3.1 Conclusion and suggestions**

I think that the changes that were made in the legal framework in recent years have expanded and developed further by the legal concept of trafficking related to sexual exploitation or other forms of exploitation for forced labor or services. Given the fact that human trafficking is a new phenomenon of the Albanian transition, in our society, Albania found without a legal framework for anti come to the immediate aid to trafficked girls. The first law that was drafted for trafficking in 1995 until today, it is observed that the phenomenon of trafficking in human beings is significantly reduced but not totally eliminated.

New developments in our criminal law are committed toward international acts. I observe that definitions that are made trafficking in girls / women, Albanian criminal legislation, are fully compliant with the relevant definitions of the Palermo Protocol.

Personally I think that the Code of Criminal Procedure needs to be improved by offering support victims of crime, especially violent crime victims to sanction their right to information and to have a legal defense.

As it is ordinary in the Albanian state that laws get foreign countries in developing and Albanian adopt legislation without taking into account that they are developing countries with a greater economic, social, cultural, while Albania continues to be a small place, with a low economic standard, with a closed patriarchal society. New developments in our criminal law are committed toward international acts. For example, the meaning and definition of trafficking in persons, women, the Albanian criminal legislation is in accordance with the relevant definitions of the Palermo Protocol.

I think that we should take measures to punish traffickers fairly and to fight the organized crime. It is very important that the Albanian state should implement national strategies against trafficking in human beings fairly and trafficking victims to feel safer in the future if the legislation is implemented.

Finally, I think that a trafficked girl would be facilitated in some way for the damage caused by the traffickers, in order to start a new life. A common way to compensate would be the Albanian state, by confiscating wealthy tutor / trafficker and by putting in function the girl that he had sexually exploited.

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