

The Process of Proving for the Criminal Offenses of Human Beings Trafficking

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Abstract

Human beings trafficking as a phenomenon and as an offense is recognized by the Albanian society with the changes that occurred after the years 1990s.

Human beings trafficking is a crime that undermines the fundamental rights of the individual and a strong feeling against the global order. This phenomenon represents a difficult wound that transcends the boundaries of a region, including some regions. Some of the regions are known or defined as origin countries of the victims of trafficking and other regions are known as the countries of destination for the victims of trafficking. The concerns, issues and complexity that the used technique examines to protect the victims of trafficking, as well as the strategy for the criminal prosecution exercitation for these types of criminal acts are part of this paper.

The issues treated include:

- The initial case data on trafficking of the human beings,
- The identification of the trafficking case in relation to the legal provisions,
- The defining of a victim of trafficking and defining the scope of victimization
- The process of proving the criminal offenses related to human beings trafficking.

The purpose of this paper is to highlight the process of proving and problematic that is encountered in this activity as compared with the law provisions and in their practical implementation.

Human beings trafficking is a criminal industry driven by the market and like any other activity is based on the principles of the supply and demand.

It is a number of factors which make minors and adults vulnerable to human trafficking. However, human beings trafficking does not exist just because there are people who are vulnerable towards exploitation. Human beings trafficking is a phenomenon driven by the demand for labor or free service, or even for sexual services.

Human beings traffickers or the authors of these kinds of offenses represent the people who victimize the others with a direct intent in order to take advantage of the existing demand.

KEYWORDS: Human beings trafficking, the process of proving, taking of evidence, types of evidence.

1. The process of proving

An important issue in relation to these offenses, is related to the process of proving.

Each investigative activity follows its course to conclude with a decision making, analysing the collected evidence during this activity¹.

The analysis of the collected data during an investigation involves two important moments and that consist in the use of the collected evidence and its probative character. Regarding the term 'use of evidence', its definition and right understanding is an inherent element of the criminal process itself.

The performance of necessary actions in order to specify the criminal fact, its basing on evidence, clarifying of the possible author, and the merits of being the author of the criminal act, in evidence, is based on certain procedural rules required to be implemented. These procedural rules govern the taking of evidence and therefore their use in criminal trials. Each element of the criminal act and its authorship can be determined only by evidence. Evidence are the reports on the facts and circumstances relating to the offense, that are obtained from the sources provided in the penal procedural law in accordance with its set rules and serve to prove or not the committing of the offense, the consequences that derive from it, the guilt or innocence of the defendant and his level of responsibility.

The investigation process involves several stages, where the initial phase is related to the creation of an investigative plan, the second phase relates to the taking and collection of evidence and the final phase that is related with the decision to resolve the issue².

In the offenses related to the trafficking of human beings, the first phase of the investigation to establish the investigative plan includes the creation of the picture of the happened incident, identifying the persons involved in the event and the actual specification of the role of each participant, as well as the timing and place specification in which the event has occurred. It is also the collection of evidence, depending on the definitions, which can be of various types. After collecting evidence, their analysis becomes considering the proof of each of them and their interpretation in correlation with each other.

Human beings trafficking as modern times slavery requires an investigative activity extended in time and space.

The initial data for the case come from different sources and depending on the resources from which begins the penal prosecution is the determination of the investigative plan. The initial data include the identification of the case and the victim's identification of the case. The penal prosecution begins on the basis of the charge made by the victim of trafficking himself/herself, what makes it possible to have it easier to determine the case as well as the trafficking victim. In the case in which the penal prosecution begins with the initiative of the victim of trafficking, the penal prosecution and investigative activity exercitation is easier because we have at our disposal the injured person himself/herself, who is related with the occurred event, with the occurred event's author and has experienced himself each episode of this event. The questioning of the victim or the victim of trafficking constitutes the genesis of the investigative activity beginning from which we intend to receive the proper information as to the effect of the evidence of the criminal activity as well as the author of this activity. The examination process includes an important procedure as for the procedural rank and the importance it represents for the

¹ Rhonda Wasserman, *Procedural Due Process: A Reference Guide to the United States Constitution*, Greenwood Publishing Group, New York, 2004, pp. 104-107.

² Giovanni Conso, Vittorio Grevi, *Compendio di procedura penale*, Cedam, Padova, 2003, pp.306-309.

continuity of the process and also the other rank which consists in the security for the proper treatment of the trafficking victim.

Given that they the subject of evidence are those facts that are related to the accusation made to the defendant, facts that are related to the assignment of security measurements, facts that are related to sentencing and civil responsibility, as well as facts from on which depends the application of procedural norms during the investigation and trial, during the questioning of the victim of trafficking it is aimed the disclosure of these facts .

In this way, by questioning the victim are made known his procedural rights by ensuring the presence of a psychologist if the injured party is a minor or if deemed necessary due to the emotional condition of the injured. In our procedural provisions it is not directly regulated the interrogation of the victim of trafficking in the presence of a psychologist or in the presence of a defensor chosen by him. The injured is questioned evidencing the facts related to the accusation made against the defendant³. These facts must determine the specific actions that the suspected for a criminal offense has committed or the defendant in relation to the injured. The breakdown of the data obtained by the damaged aims to evidence the behavior of the defendant towards the victim, his goal, the defendant's behavior in relation to the service performed by the injured party and his conduct in relation to the benefits derived from this service.

We are mentioning the word “service”, because the exploitation of the victim of trafficking may be for different services such as for work, begging, for sexual services. When it comes to identifying the behavior of the defendant towards the victim of trafficking it must be considered to evidence whether the defendant has used elements that cause physical, psychological or sexual violation.

Initially defining the “service” which the victim of trafficking has been forced to carry out, we have determined the type of exploitation that has occurred. If a victim of trafficking has been subject to physical violence, and indicates for existing elements of this violence, it is necessary to realize the documentation not only the questioning of the victim but with actions that follow the interrogation such as medical-legal expertise of the victim of trafficking or the realization of scrutiny of the victim.

Each of the phases of the offense commitment for which the injured party or victim of trafficking tells in his statements, should be completed by specifying in details the time and place of its commitment, the method used and other people.

With the object of proving, we understand the entirety of the facts, the finding of which is necessary for the fair resolution of the case.

The phases in which passes the examination of the specific circumstances of the case and that make the process of proving are divided into three parts:

- 1) The taking of evidence; by taking the evidence we understand the finding and disclosure of evidence and their procedural fixing.
- 2) The review and verification of evidence; by which it means the individual examination of evidence and the verification of their authenticity.
- 3) The evaluation of evidence; it represents the final stage of analysis where each test has its weight and the completion is subject to the full interpretation of these evidence.

2. Types of evidence

³ Richard Glover, Peter Murphy, Murphy on Evidence, Oxford University Press, 2013, pp. 29-30.

Testimony: every person who is called in front of the court to testify with the quality of the witness is obliged: 1. to be present at the court in the the day and time specified. 2. To answer the questions made by the court truthfully. The witness cannot be forced to testify for acts for which responsibility may arise⁴.

The question of the defendant and private parties: among other evidence are the statements of the defendant, the civil plaintiff and the civil defendant as well. The notification from the question of the defendant is an important task of the prosecutor. The question must be conducted in the presence of the defensor of the defendant, when he requests it.

The confrontations: facing is allowed only by the persons who are asked.

The recognitions: through recognition, are verified the statements of the witness, the injured party or the defendant and is individualized the author of the offense or items related with him⁵.

The experiment: the experiment is the reproduction, as far as possible of the situation in which the fact has occurred or evaluated to have happened repeating the ways of its factual developmnet⁶. The experiment is carried out by the decision of the proceeding organ.

Its principal aims are to verify:

- a) The possibility of hearing and seeing;
- b) The possibility to see the manner of performance of certain actions and the time required to implement them.

- The expertising: aims to ascertain, clarify or prove the facts that are important for the criminal case, through the opinion given by specialists who have specific technical, scientific or cultural knowledge.

- The material evidence: material evidence are the items that have served as tools for the realization of the offense or on which are its traces, or have been subject to the defendant's actions and that comprise the benefit object from the offense, and any other item that may help to clarify the circumstances of the case .

Conclusions

Probation process is very important because only if this process is done according to legal provisions, it will reach the final result. This final result involves bringing to trial those responsible for human trafficking

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⁴ Michael Allen, *Criminal Law*, Oxford University Press, New York, 2007, p. 14.

⁵ Paolo Tonini, *Manuale di procedura penale*, Giufree, Milano, 2009, pp. 311-312.

⁶ Giovanni Conso, Vittorio Grevi, *Compendio di procedura penale*, Cedam, Padova, 2003, p. 330.