

## The Procedural Aspects of Trafficking Examined by the Prosecutor

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### Abstract

Article examines the procedural aspects of the offense of trafficking under the laws of criminal procedure of Albania. We analyzed the criminal procedure related to the start of prosecution. We defined the concept of victim of the crime of human trafficking and we have presented difficulties arising in practice about protecting victims.

**KEYWORDS:** victim, crime, person, prosecutor

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### 1. INTRODUCTION

The offenses related to human beings trafficking are provided as such by the Penal Code and the subject competence of the exercitation of the penal prosecution in connection with these offenses, under the provisions of article 75 / a of the Penal Procedure Code is owned by the Prosecution Office for Serious Crimes, Tirana.

The penal legislation provides as criminal offenses for traffickig of human beings:

Trafficking of Persons, article 110 / a of the Penal Code<sup>1</sup>;

Trafficking of minors, article 128 / b of the Penal Code.

The above division is based on the subject damaged or more correctly the characteristics it has.

In the case of trafficking of persons under the provisions of article 110 / a of the Penal Code, the subject damaged by acts, called otherwise the “victim” is any person who is recruited, transported, transferred, etc., for the purpose of prostitution or other forms of exploitation.

In the case of trafficking of minors under the provisions of article 128 / b of the Penal Code, the injured subject or victim is any minor, female or male who is recruited, transported, transferred with the purpose of sexual exploitation or any other type of exploitation.

The prosecutor’s functions are defined in the legal provisions under article 24 of the Penal Procedure Code.

It is the duty of the prosecutor to exercise the penal prosecution, carry out investigations, to control the investigations, to represent the charge in judgment, to take measures for the enforcement of judgments, etc..

As we see, in each procedural step from the very first moment of the initiation of the penal case and ongoing, the prosecutor is a “co-traveller”, with the victim of trafficking. We express it in this way, as the victim of trafficking is interested to participate in each procedural phase.

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<sup>1</sup> Ismet Elezi, *E drejta penale. Pjesa e posacme*. P. S.H. 2015 Publishers, Tirane, 2005, p. 132.

The ways of initiating the penal proceedings are:

The receiving notice is made by the injured person / victim of trafficking;

The receiving notice is made by other people who are aware on the crime committed;

The cases of deportations from abroad of the victims of trafficking;

The cases of arrests in flagrante;

The referrals from the state police.

According to the way of starting of the proceedings, it is specified the continuity of the following of the procedural actions.

In the cases in which the denunciator is the victim of trafficking himself/herself, the interrogation of the victim constitutes the first step for the exercitation of penal prosecution.

In this case, the imposition of contact with the victim of trafficking is a great help since we have the possibility of obtaining the data in the way of dpd.

In the case in which the indictment is made by other people, the situation is more difficult, given that the third parties have been aware of the criminal act not in the way of dpd, and on the other side their information about the event is limited, or even worse, situation of their perception, that for the sake of truth, not in all the cases fits reality.

Combating against human beings trafficking is one of the biggest priorities for the society in general and for the exercising authority of the penal prosecution, in particular. Trafficking in human beings is part of the larger picture of international labour migration<sup>2</sup>.

The accusative organ directs the investigation and performs all actions it deems necessary in order to solve the issue, realizing so the exercitation of its constitutional duties.

The main task has to do with the performing of the necessary actions in order to disclose the criminal fact occurred, the authorship of the fact and the other collaborators involved in it. In the framework of the realization of these necessary actions required as evidence in the criminal trials are also the witnessed evidence.

## 2. THE NOTION OF VICTIM OF HUMAN TRAFFICKING

For purposes of analysis, we are firstly presenting a presentation of the notion of “witness”;

“Witness” shall mean any person who possesses the valuable information for the criminal proceedings for which he or she has testified or is able to testify, and that is not part of “the justice collaborator”.

When talking for the victim of the crime, who may be a witness in the criminal process, it is more than understandable the value that the testimony of the victim has.

However, we cannot give more value to this evidence than to any other kind of evidence obtained during the investigation.

During our work we have found a “vulnerability” of the victims<sup>3</sup> / witnesses, element for which we are forced to take protective measures in order to reduce the effect of the crime on the victim testimonials.

<sup>2</sup> Venla Roth, *Defining Human trafficking and Identifying Its Victims*, Martinus Nijhoff Publishers, Leiden, 2012, p. 5.

<sup>3</sup> Joyce Hart, *Human Trafficking*, Rosen Publishing Group, New York, 2009, p. 6.

In performing his duties, including the protection of victims, the prosecutor becomes a “co-traveler” with a number of other institutions including NGOs.

The practice of recent years has highlighted a fruitful collaboration with NGOs, which have positively impacted the treatment of different cases in the framework of the protection of the rights of the witnessing victims in the process.

The close cooperation with NGOs, creates facilities in the framework of the proper implementation of the law, which provides a special treatment for the victims of trafficking.

In the daily practice, the offense, its subject and the victim must be treated as part of the same problem, interconnected between each other and not as separate issues, as it could have been handled at different times.

This is done in the function of the fight with efficiency against criminality and the implementation of the primary interest, “the protection of the society in general”.

The victims of trafficking have their progress, from the first moment of occurrence of the criminal offense and continuously.

Throughout this progress, we note that the victims of trafficking face, or rather pass on some stages that make their position more vulnerable.

What we must keep in mind and what brings out the spirit of the legislation in force, in approach even with the international law, it has to do with a dignified treatment of the people who are harmed by the offense.

Depending on the stages, in which pass the victims of trafficking in procedural terms an important moment to be treated is represented by the entirety of the legal provisions which ensure the protection of the victims of trafficking.

With the concept “crime victim”, we understand the persons who individually or collectively have suffered injuries, including here physical or mental injury, mental shocks, economic loss, or deterioration of their fundamental rights, through acts or omissions of the subjects of crime.

In the context of human trafficking and in reference of the ways of the performance of these criminal acts, trafficking victims shall be called those persons who are in a such positions related to the exploitation for prostitution, the implementation of other forms of sexual exploitation<sup>4</sup>, labor exploitation, exploitation for forced services, putting into slavery<sup>5</sup>, other forms of exploitation, and putting in use or organ transplanting.

In the context of a criminal process, trafficking victims have their legal rights and obligations.

They come from different parts of the world. They differ in age and gender. The jobs they are forced to do vary. But they share one thing in common. They were exploited-victims of human trafficking<sup>6</sup>.

### 3. THE START OF CRIMINAL PROCEEDINGS

<sup>4</sup>Sarah E. Mendelson, *Barracks and Brothels: Peacekeepers and Human Trafficking in the Balkans*, Center for Strategic and International Studies Publishing, Washington, 2005, p. 7.

<sup>5</sup>Yvone C. Zimmerman, *Other Dreams of Freedom: Religion, sex, and Human Trafficking*, Oxford University Press, New York, 2013, p. 4.

<sup>6</sup>Alexis A. Aronowitz, *Human trafficking, human misery: the global trade in human beings*, Greenwood Publishing Group, 2009, p. 31.

The criminal proceedings begin in two ways, through the charge made directly by the person injured or the victim of trafficking, and through the charge made by others.

In the first case the charges made by victims of trafficking represents a right to which the victim has the right to demand the exercitation of the criminal prosecution.

In some practical cases, victims of trafficking come into contact with various operating NGOs getting there first, knowledge about this right they have to require the exercitation of the criminal prosecution.

The NGOs in most cases have specialized people who provide legal advice and psychological support for the victims.

It has happened that the depositing of the charges in the prosecution office is made after appropriate consultations.

With the start of the proceedings, come the other stages, which consist in giving statements of the victim in front of the proceeding organ firstly and continue to take part in the process, by submitting a request for evidence.

The injured party during the proceeding phase has the right to become aware of the performed actions.

At any moment, we must consider treatment with dignity and professionalism of the crime victim.

One of the rights for the realization of which we have had cooperation with NGOs, it is the right that the victim has for compensation, or damage compensation.

According to our procedural forecasts, the witnessing victim in the process, or the aggrieved party does not have a defense of his own, and in the daily practice such a function is exercised by representatives of various organizations.

The subject of the offense has always a certain aim in the case of offenses related to human beings trafficking, the realization of monetary benefit, the realization of any other form of benefit.

The procedural legislation provides as a concept the term “aggrieved by the offense”, where besides other categories are included even the victims of trafficking.

#### **4. RIGHTS OF INJURID PERSON**

In the provisions of article 58 of the Code of Criminal Procedure we find sanctioned the rights that an injured person by the offense has.

The injured by a criminal offense has the right to request the prosecution of the guilty and compensation for the damage.

This right can be realized by enabling the presentation of the claims to the proceeding organ, requiring the taking of evidence.

In case of rejection of the claims made in front of the proceeding organ it has the right to appeal in the Court.

The rights belonging to the victim are extended to his heirs and in the absence of the legal capacity of the victim, this right belongs even to his legal representative.

Another element that is regarded as a right of the victim from the offense is even the civil lawsuit in the criminal process provided in the article 61 of the Code of Penal Procedure.

According to the provisions of this article, a person who has suffered material damage from the criminal act or his heirs have the right to file a civil suit in a criminal proceeding

against the defendant or against the civil defendant requiring property return and damage compensation<sup>7</sup>.

The victims of trafficking in addition to any other damages, suffer even, as we call them, economic damages.

At this point we will focus on a more detailed treatment for the character of the issue itself and the interest it presents.

All forms through which is realized human beings trafficking make that the trafficking victims, as long as they depend on the crime subjects are limited in all sorts of their rights, including here the economic ones.

A crucial problem to the case in this context is the definition in a fair way of the damage caused to these victims.

It is necessary to define and calculate not only the damage, its compensation but also the way of achieving this compensation.

In the daily judicial court, although we have numerous cases of criminal offenses related to human beings trafficking, the cases in which the civil claim in the criminal process has been reviewed and taken a final solution, at least in the practice of the First Instance Court for Serious Crimes, Tirana, are missing .

The reasons for such an outcome are different among which the development of the trial of the criminal case in the form of a shortened trial (article 403 and following of the Code of Penal Procedure).

In some cases, the subject or author who has committed the offense requires the application of the shortened trial.

While the accusation organ, given the legal provisions related to the case resolution in the existing state of the acts and for judicial economy accepts the development of the process with shortened trial.

The problem encountered relates to the fate that will pursue the civil suit filed by the injured party in the criminal process.

From the legal point of view, the solution can be implemented on both sides, i.e. to be accepted the review of the civil accusation in the criminal process and with shortened trial, or to separate the civil suit which then can be raised in the competent court.

Not only the shortened trial application leads to the separation of the civil lawsuit in the criminal process.

This can happen even in the cases when a criminal case is reviewed by ordinary trial. More complicated are the cases in which there is more than one defendant in the process, while the civil suit is related only to one of them.

Even in this case is set the separation of the civil lawsuit, which is then resolved in a civil process.

A problematic moment is linked with the “patience” represented by the injured. This means the extension in time to realize his rights.

The separation or seclusion of a civil lawsuit makes that the injured by the offense faces two lawsuits, the criminal process for the guilt proving of the defendant and the civil process related to the realization of the rights required by him.

In the case of the civil proceedings, the court to give a solution to the civil lawsuit is obliged to wait for the decision of the guilt about the crime committed by the subject.

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<sup>7</sup>Halim Islami, Artan Hoxha, Ilir Panda, *Procedura penale*, Morava Publishing, Tirana, 2006, p. 146.

Facing with many judicial hearings does not affect well the psychological condition of the victim who often manifests fatigue.

We have an only case where the cooperation with NGOs has made it possible for the injured D. S, to gain by civil lawsuit a very significant amount of money as a damage caused by the offense.

The penal fact from which is aggrieved D.S, is related to the trafficking of the victim abroad, who at the time of trafficking was a minor, making that the act committed by the subject to be qualified under the legal provisions of article 128 / b of the Penal Code.

The Citizen D. S, under the influence of physical and psychological violence, marriage fraud, for creating a better life for several years has been, as it is called a “sex worker”, working on behalf of the defendant A. A.

At the conclusion of the preliminary investigation, in cooperation with the legal representatives of the Center for Legal Civic Initiatives, the injured filed a civil lawsuit in which required the compensation for the damage caused by the offense.

The civil lawsuit was presented by the injured at the preliminary investigation phase and by decision, the prosecutor accepted her entry in the file.

The civil lawsuit was submitted by the Prosecution Office of Serious Crimes, Tirana, together with the application for judgment and acts in connection with the criminal proceeding in charge of the defendant A. A, accused of committing the offense under article 128 / b of the Penal Code.

The defendant required a summary trial application, as a form of the trial development related with this issue, a request accepted by the Court.

As the presented civil suit could not be solved in the state that the acts of the file were, the court decided the withdrawal of the civil lawsuit which was later reviewed in the District Court of Tirana as a civil trial.

The Court of First Instance for Serious Crimes, Tirana, in its decision declared the defendant guilty, a decision that was used by Tirana District Court for the civil lawsuit, which it had taken into consideration deciding in favor of the victim.

This is the most concrete presentation of confrontation of the damaged, with two lawsuits, the criminal process and the civil one.

Each of the processes in the framework of respecting of the relevant procedures need a certain time, a time that was not easy at all, to be passed with “patience”, from the damaged .

The representatives of the NGO provided the representation in the absence of the injured, in the process, significantly affecting its progress.

Another problem arises after the decision of the Court that has accepted the civil lawsuit and it relates specifically to the execution of this decision.

The difficulty for execution traced back to such factors that consist of the subject of the offense being isolated.

Being isolated, the subject of the offense does not provide income and does not perform any type of activity.

## **5. DIFFICULTY ARISING IN JUDICIAL PRACTICE RELATED TO THE PROTECTION OF VICTIMS**

In many cases, the authors make the alienation of the property created from criminal acts, alienating it for concealment effect and other effects.

Often happens that the registration of their assets is made on behalf of other persons. In most cases the offenders register their property on behalf of other persons who under the informality that has characterized the Albanian society until nowadays, it is difficult to have a positive result .

There are many cases in which offenders as a result of their lifestyle lose the assets gained from criminal acts.

We presented a number of factors that hinder or render impossible the realization of the economic rights of victims of trafficking by compensating the damage.

The victim may require as a right the providing of the civil lawsuit, a right provided in Article 63 of the Code of Criminal Procedure.

This article provides the right that the person has to require the seizure of the property of the defendant, with claim insurance until the completion of the criminal case.

This is another right that our procedural expectations attribute to the victim of crime.

For purposes of illustration, we will focus on the treatment of another practical case in which we will present the difficulties encountered by the victim of trafficking as a result of the procedures followed during the preliminary investigations.

The damaged K. F. has filed a charge for the offense committed by the defendant A.G., offense qualified under article 114 / b of the Penal Code.

As a result of living together for several years, the injured and the defendant have a minor child.

By court decision before the start of the criminal proceeding, the injured K. F. has reached to recognize the paternity of the child and to obtain each month, a monthly pension in the form of nutrition obligation for the child.

The form with which the defendant forced the injured to prostitute for several years and the income went in his favor was related with his promise that he made to her that they both were a normal couple and at the very first moment that they would ensure a sufficient amount of income for a luxurious life she would get rid of prostitution.

Later, with the arrival of their child, the injured was forced to prostitute as a mean requested by the defendant that the latter recognized the paternity to the born child.

Only by exercising prostitution and providing huge amounts of money the injured has managed to get the paternity of the child by the defendant after the minor had reached the age of three years old.

The problem with which the injured faced after filing the charges was related to economic factors because as a result of the imprisoning of the defendant A. Ç. it was halted the monthly pension to the victim, as food obligation to her minor child.

While he/she faced even with psychological problems given that as a result of having a child with the defendant, the minor maintained family relationships with the family members of the defendant who began to affect the psychology of the minor child.

In this way the damaged was without money to live on and under the psychic pressure of her family.

This impacted negatively on the psyche of the victim making her fluctuate in the position held by her as a witness in the criminal proceeding.

And in this case, thanks to a fruitful cooperation with NGOs<sup>8</sup>, it was created opportunity of economic giving to the injured and providing psychological support in consultation with social workers.

This had a positive impact on the psyche of the victim, causing it to be persistent progress of the criminal process .

Such cases, or other conditions characterized by such difficulties are common, and their impact on the performance of the criminal process.

Normally that our primary goal is the punishment of the offender and as a result of the problems mentioned above this goal remains in some cases the only one.

However even for the realization of this goal we must appreciate the necessity of protecting the victim from the moment of suffering the criminal act and until the final resolution of the criminal case.

## **6. PROTECTING VICTIMS OF HUMAN TRAFFICKING**

Any person aggrieved by the offense needs an immediate protection.

As people to offer protection are considered all those persons who at the same time are considered as victims under the national and international laws and need for such a thing.

A separate problem with the case of the protection of victims is taking measures in order not to happen the so-called secondary victimization.

Those who have survived the offense in front of a not worthy treatment, in front of the lack of protection and in front of the unfair treatment by the justice organs such as the proceeding organ or the court, may prove even a second victimization by the justice system.

The phases in which the victims of trafficking pass during the criminal process include difficult moments to which the victim is found, who is forced to remember the difficult moments and face the offender.

To avoid such situations it must be shown care and professionalism.

We tried that in our daily work to be careful in handling the victim / witness, succeeding in some way.

When talking about the success, we start that from the first moment that is related with the victim's accommodation, (the accommodation in centers), his/her psychological treatment, (having contacts with psychologists and social workers repeatedly), creating a situation to a normal lifestyle, (the accommodation in the center is associated with specific program handler that includes education, employment, etc.), and tracking of the legal procedures for the representation of the civil lawsuit.

Putting victims of trafficking in such treatment conditions, we have the possibility of always keeping the victim updated on the criminal process, always interested.

The treatment of the crime victim, his/her legal protection is a major problem of the criminal justice system and one among our main goals.

The rights that belong to victims of crime with their forecast in international and national acts stay at the same level with the legal rights, and as such are considered an integral part of human rights.

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<sup>8</sup> Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective*, Martinus Nijhoff Publishers, Leiden, 2006, 104.

## 7. CONCLUSIONS

Various studies and practices that are done, show an efficient fight against crime.

Besides the trial and punishment of the author of the offense, it is necessary to provide help and legal protection even to the other subject of the criminal act.

For the realization of the aid, in order to provide the necessary legal protection should be taken into consideration the specific needs and delicate vulnerable position of the victim as a result of the impact of victimization on him/her.

We must consider that a victim's losses are numerous and of different types.

The practical cooperation with all the institutional bodies or not, is very important and inevitable.

Only thanks to this collaboration, we will be able to treat victims of trafficking under the relevant provisions.

On the other hand, what is more important, is the legal base adjustment towards the effective realization for the compensation of victims of trafficking .

Our legislation recognizes and protects the witness - victim of trafficking, but in the case of our practice for the offenses related to trafficking of human beings, we have only one case as such.

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