



HUMAN TRAFFICKING – A COMPERATIVE ANALYSIS OF THE ALBANIAN LEGISLATION WITH THE ITALIAN ONE

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Abstract:

Human Trafficking is a pervasive phenomenon which has increased in recent decades. Human Trafficking, in particular that of women, is ranked as the first three profitable businesses, after drug and weapons trafficking. Human society is familiar with the phenomenon of human trafficking and its exploitation in various forms throughout time. Given that human trafficking was spread very fast and was considered a major problem, most states quickly began to undertake immediate measures to respond to this threat. To create a contemporary penal procedural legislation which may answer the demands of the time, our drafters of the Criminal Procedural Code are set on a considerable extent in the Italian criminal procedural legislation. Therefore, the aim of this study is to achieve a critical analysis of the Albanian legislation on the phenomenon of trafficking in human beings also to compare it with the Italian penal legislation.

Keywords: trafficking, criminal legislation, victim of trafficking

1. Introduction

Since the introduction of organized societies (countries) there are presented phenomena, which have violated seriously human rights. Undoubtedly, one of the phenomena that was practiced for a long time and brought numerous human suffering was the appearance of slavery. Slavery survived all time, being modified by the content, by the manner, as well as by name. With the term slavery we understand the condition or the position of an individual on which are exercised the attributes of the right of

ownership or some of these attributesⁱ. Slavery is the most severe form of violation of human rights and the source of many other socio-pathological phenomena. The Initiative for combating and preventing slavery, at the level of states, as well as at the international level started in the XVII century.

Unfortunately, even at the beginning of XXI century, despite the high level of human development, putting people in slavery status for various reasons, is still present, but in different forms. In order to combat and prevent these criminal phenomena, regional and international organizations have sanctioned human trafficking as a criminal offense in their legal acts. Alongside the general economic and social advances in society, more and more has strengthened the view that preventing and combating crime of trafficking in human beings, cannot be successfully achieved only within countries. There should be developed certain strategies, which allow the application of measures at international level. To achieve such purpose, States decided to transfer some responsibilities to regional and international organizations, which have the task of maintaining peace, preventing wars, preventing crime, and the slave-trafficking especially in human beings.

2. Criminal Code of the Republic of Albania

The Government of Albania has taken some steps to improve its efforts to identify and protect victims of trafficking. Albanian government has made legislative changes in connection with human trafficking in the Criminal Code of 1995, with Law No. 8733, dated 24.01.2001. Changes have also been made to Law No. 9188, dated 12.02.2004, under the approximation of national legislation with the Palermo Protocol.

Law No. 8733, dated 24.01.2001, added Article 110 / a "Trafficking of Human Being". The social reality and the ratification of the Palermo's Protocol "To prevent, suppress and punish human trafficking especially in women and children", supplementing the Convention of the United Nations "Against Transnational Organized Crime", made it necessary to amend the Penal Code.

With Law No. 9188, dated 12.02.2004, the legislator clearly defined offenses of trafficking in human beings and predicted as specific figures of criminal offense of trafficking of humans², trafficking of women³ and trafficking of minors⁴. Lawmakers became more sensitive to the special protection of women and girls, by providing specific provisions of their trafficking but also punishment for the perpetrators⁵.

ⁱ Convention related to slavery, Article 1

2.1 Code of Criminal Procedure

(Law No. 7905 of March 21, 1995, Code of Criminal Procedure of the Republic of Albania, amended by Law No. 8813 of June 13 , 2002 and Law No. 9278, version of September 9, 2004)

Code of Criminal Procedure of the Republic of Albania specifies two categories of victims of crimes:

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

The victims, the person aggrieved by the criminal offence have the right to apply for prosecution of the guilty person (perpetrator) and reimbursement of the injury (caused). Code of Criminal Procedure of the Republic of Albania provides the rights of the injured accuser. It determines the type of offenses² for which the person aggrieved by the criminal offence has the right to submit a request directly to the court. (Article 58, Article 59). Article 59 of the Criminal Procedure Codeⁱⁱ conclude that the offense of trafficking in human beings and all other offenses associated with this phenomenon, are followed by the procedure and may not be followed by an appeal court. Consequently, victims of human trafficking can only claim for compensation through civil lawsuit in a criminal or civil lawsuit process. In this case, they have the status of a party in the trial and may be represented by a lawyer in connection with their claim in the criminal process. However, there is no legal provision for their protection with a lawyer.ⁱⁱⁱ

2.2 Family Code

The Family Code plays a fundamental role for the protection of the family. Today we face a number of legal problems in family relationships. The Family Code provides the age 18 years for the spouses, with their free and full consent for marriage. Marriage, is invalid when is done without free consent, without having intention for a life as husband and wife, or concluded under the legal age provided by this Code^{iv}. The Family Code provides equal rights and duties for the spouses on the dissolution of marriage. This constitutes a guarantee for a healthy family and protected from dangerous social phenomena. Between the rights and obligations that the Family Code provides for the spouses, may be mentioned the right to "compensatory contribution" (Article 147) and "the right to use the apartment" (Article 153). These are important

ⁱⁱ H. Islami, A. Hoxha, Ilir Panda, Criminal Procedure, Tiranë, 2003, pg. 141-143

ⁱⁱⁱ Bozo. Aurela. Development and implementation of Albanian legislation, in the fight against human trafficking with a focus on protecting and guaranteeing the rights of victims of trafficking in human beings. Tirane, 2008, pg 20-25

^{iv} Family Code, articles 33, 34, 36, 37, 39.

rights for the protection of women and children. Given that human trafficking is a new phenomenon of the transition period, in our society, it found Albania without an anti-trafficking legal framework, to assist in the immediate way to trafficked women. From the first law that was designed to trafficking in 1995 until today, it is noticed that the phenomenon of trafficking in human beings is significantly reduced but not completely eliminated. In recent years, the authorities have taken a number of important measures to combat human trafficking (THB). One of the measures taken is the establishment of the Office of the National Coordinator for Combating Trafficking in Human Beings, the National Anti-Trafficking Task Force, the National Referral Mechanism and regional anti-trafficking committees. On the other hand in the Prosecution Office for Serious Crimes, which under Article 75 / a of the Criminal Procedure Code has the subject matter jurisdiction to conduct prosecutions of criminal offenses related to trafficking in human beings, it set up a session who investigates only specific elements of criminal offenses related to human trafficking. The creation of these structures, is estimated from various organizations and has strengthened the coordination of all relevant actors. I think that these created structures are more efficient because of the close cooperation to each other and being in a constant contact. For several years, I think and believe, that will be implemented the national strategies along with perennial action plans which aim to cover all aspects of the fight against human trafficking. In particular, there are made a lot of efforts to prevent trafficking, especially trafficking of children. On the other hand, there have been made numerous training events with other institutions in order to identify victims of trafficking. However, to achieve a comprehensive approach in order to combat human trafficking in Albania, I think that the Albanian authorities should strengthen measures against human trafficking. I think that holding under constant surveillance trafficking related issues, as well as the continuous improving the national data base allowing the prosecution of trafficking trends is of a particular importance.

3. Italian Penal Code

Italian Penal Code currently contains no specific criminal provisions on trafficking.^v Italian judicial authorities for clamping the trafficking of human beings today, operates with other provisions that qualify as a criminal offense a category of behaviors that are presented during the process of trafficking, mainly through behaviors that place an individual in slavery or in similar conditions with it, and through legal provisions related mainly to sexual exploitation. Italy is one of the few states that considers

^v Italian Penal Code, articles 600 and further..

"trafficking" as a form of slavery and intends to strike it mainly through criminal provisions that strike slavery and slavery-like forms. In the Italian Criminal Code, Book Two, Chapter III "crimes, against personal freedom" Section I "offenses against personality" provided a series of provisions relating to slavery: Article 600 of the Criminal Code provides: "Anyone who reduces a person in slavery or in a state similar to slavery is punished from 5 to 15 years." Article 601 of the Criminal Code provides: "Anyone who traffics or however makes slave trade or persons who are in conditions similar to slavery is punished from 5 to 20 years imprisonment." Article 602 of the Criminal Code states: "Whoever, beyond further cases provided in the previous articles, extradite or submit a person found in a status of slavery or slavery-like conditions or owns or possesses or maintains able slavery or conditions similar to it, is punished by imprisonment from 3 to 12 years." Although the Italian Penal Code ^{vi} does not provide what is meant by the concept reduction (transitions) in "slavery" or "conditions similar to slavery", Italian jurisprudence refers to concepts that are elaborated in the Convention of the United Nations Anti-Slavery of 1926 and the Complementary Convention for the Abolition. Italian Jurisprudence with Decision of Sections States of the Court of Cassation in 1996 argued that the list of cases to situations similar to slavery that are provided in Supplementary Convention Against Slavery of 1956 should not be understood as a list of taxation but as a list of examples and to determine similar conditions to slavery should be analyzed case by case each factual situation, if the actions of the defendants led to the transformation of the person subjected to the material conditions of slavery, namely the full and total submission of him to another person, just like slave to his master.

Likewise, in a decision of the Court of Cassation 2004^{vii}, it was argued that the "concept" conditions similar to slavery "that is provided in legal provisions among which article 600 of the Penal Code, provides the particular situation of a person who is put in the conditions of a "res" owned by another; such a situation is when the victim, having suffered violence and psychological pressure, is placed in miserable conditions and obligations, such as to lead to prostitution through force and oppression that personal freedom through removal the ability to act in order to independent". Article 600-bis of the Criminal Code "Prostitution of Minors" punish promotion, favoring or exploitation of prostitution of a person under 18 years, including as punishment imprisonment from 6 to 12 years and a fine. The second paragraph of this article stipulates the punishment of persons that against money or other economic benefits

^{vi} Koça A., A comparative criminal- legal overview, on the human beings trafficking. Tiranë 2006, pg 36-41.

^{vii} Decision Nr. 21019, dt. 19.02.2004.

perform sexual acts with a minor between 14 and 16 years and between 16 and 18 years. Article 600 "Pornography of Minors" punishes criminal conduct that aims to exploit minors under 18 for the purpose of realization of pornography or pornographic performances, predicting severe sanctions with imprisonment from 6 to 12 years and significant fines up to 500 thousand lire. In the following paragraphs of this article, in details are provided as criminal offenses, the distribution of pornographic material to minors in all forms including telematics tools, or disseminating reports regarding the exploitation of minors under the first paragraph. Following the criminalization of pornography with minors is the article 600 of the Criminal Code which makes punishable the distribution or disposition of pornographic materials when someone is aware that they are realized through the exploitation of minors. Interesting is an Article 600- quinquies, "tourism initiative involving the exploitation of the prostitution of minors" which aims to penalize so-called sex tourism. The law nr. 75 of year 1958 or as it is known Merlin Law-This law has been aimed mainly to hit violent exploitation of prostitution and to make punishable the involvement of third parties in prostitution. According to this law although it is decriminalized private prostitution, also banned prostitution in public houses was previously controlled by the state. Likewise, the law punishes those who exploit prostitutes or those who run towards prostitution, including foreign women. According to this law^{viii} it is provided "promotion or transfer of a woman in another country or another state to exercise prostitution". The Law above though not addressed directly to trafficking, as it regards the exploitation of prostitution as a crime against public order and as a crime against the person without reflecting the nature of the serious violation of fundamental rights of the individual, in the Legislative situation in Italy, it gives its contribution to hit traffickers dealing with the exploitation of prostitution. Other criminal provisions in the service of the fight against trafficking are also those associated with sexual freedom, Law No. 286 of 1998 regarding immigration, Article 605 of the Criminal Code that penalizes illegal abduction or removal of freedom or provisions related to the establishment and participation in a criminal organization, Article 416 of the Criminal Code, creating and participating in a Mafia-type criminal organization Article 416-bis. From analysis of the above provisions,^{ix} we can draw some conclusions regarding Italian criminal law that is used to crack trafficking in human beings.

Italy has no penal provisions that directly criminalize human trafficking as it is defined in the Palermo Convention. Italy hits trafficking in humans through the

^{viii} Law no. 75 year 1958, Merlin Law, Article 3.

^{ix} Koça A. A comparative criminal- legal overview, on the human beings trafficking. Tiranë 2006, pg 36-41.

provisions on slavery considering trafficking as a form of slavery. Italian legislation focuses specifically on sexual exploitation considering some aggravated form of it as situations of slavery. In particular, Italian Code takes protection of minors from the threat of prostitution, pornography, etc. Criminal legal framework takes into account the terminal situation of trafficking while remaining vulnerable for hitting it in its initial situation.

4. Conclusions and Recommendations

Trafficking in human beings is a complex phenomenon influenced by many factors. Despite the taken measures, in general, the presence of victims of trafficking, nationally or internationally, is the main evidence of the presence of the phenomenon and its growth.

The criminal legislation comes in order to respect fundamental rights and individual freedoms as provided for in the Constitution. Protecting the dignity of the individual is an essential element in some of the figures of the offenses provided as such in our legislation. New developments in our criminal law are committed toward international acts. By definitions that are made to the trafficking of girls / women for sexual exploitation, in the Albanian criminal legislation, they appear to be fully in accordance with the relevant definitions of the Palermo Protocol.

The current Code of Criminal Procedure adopted in 1995, at the time of its adoption, and in the historical context of the development of criminal law in Albania, represented a forward and important step in terms of democratization of the criminal procedure law, in ensuring rights and freedoms of the individual in criminal proceedings, in creating sustainable foundations of the rule of law, and to guarantee a fair trial to persons subject to criminal proceedings.

Obviously, at the time of drafting and adoption of the Criminal Procedure Code was necessary that the drafters of the code were based on proven models of legislation of foreign countries, in order to ensure the creation of a contemporary criminal procedural legislation that answers the demands of the time. In this regard, the drafters of the Criminal Procedure Code in the creation of new criminal procedural law were based on, significantly in Italian criminal procedural legislation.

The following recommendations are suggested to the Albanian penal code since we know it close and its irregularities affects directly these trafficking victims in our country. I think that the Criminal Procedure Code needs to be improved by providing support to victims of crime, in particular violent crime victims, to sanction their right to information and to have legal protection. It should be taken measures to punish in the

right way the traffickers and to combat the organized crime. It is very important that the Albanian state enforce law and national strategies against trafficking in human beings in the right way so that the traffic victim feel safer in the future if the legislation is implemented. Legislative changes are necessary to be made regarding the compensation for victims of trafficking, in order to be given solutions to problems that the institute of civil lawsuit represents in the criminal process. It should be paid more attention to “hit” the offender, not only with imprisonment but to seizure assets obtained from criminal activity , by confiscating their wealth and to put in function of the girl that he had sexually exploited. Such reasoning is closely related to the fact that the reason of their involvement in crime is due to benefit. I think that if she is compensated financially, this will somehow alleviate the damage caused by traffickers, in order to start a new life independently. This fact should be sanctioned by law. Also, it is always necessary to increase the professional level of police prosecutors and court officers. This may be achieved through training on various activities of education in the field of criminal offenses against human trafficking.

Interrogation of the victims should be conducted in the presence of a psychologist or social worker during the investigation and trial. This condition must be provided in specific provisions of the Code of Criminal Procedure. The curricula of faculties of law of public and private universities need to include more classes for the treatment of these figures of offenses.

References

1. Shegani A., The Harmonization of the Albanian criminal legislation in the field of Trafficking and Terrorism, pg 2.
2. Alen Buchanan. Justice, Legitimacy and Self – Determination – Moral Foundations for International Law. pg. 75
3. Convention related to slavery, Article 1
4. Penal Code of the Republic of Albania, Article 110 / a, amended by Law No. 9188, dated 12.02.2004, Article 1.
5. Penal Code of the Republic of Albania, Article 114 / b, amended by Law No. 9188, dated 12.02.2004, Article 2
6. Penal Code of the Republic of Albania, Article 128 / b, amended by Law No. 9188, dated 12.02.2004, Article 3
7. Penal Code of the Republic of Albania, Article 128 / b, amended by Law No. 9188, dated 12.02.2004, Article 3

8. Offenses covered by this provision are: beating, Article 90 of the Penal Code, serious injury by negligence, Penal Code Article 91i, Injury due to negligence, Article 92 of the Penal Code, violation of domicile, article 112 of the Penal Code, insult, article 119 of the Criminal Code, defamation, Section 120 of the Penal Code, Interference in private life, Article 121 of the Criminal Code, Spreading personal secrets, Section 122 of the Penal Code Denial of livelihood, Article 125 of the Criminal Code, Publication of another person's work in his own name, article 148 of the Penal Code, Reproduction of the work of another, Article 149 of the Criminal Code, Destruction of property by other means, Article 254 of the Criminal Code
9. H. Islami, A. Hoxha, Ilir Panda, Criminal Procedure, Commentary, Tiranë, 2003, pg. 141-143
10. Bozo. Aurela, Development and implementation of Albanian legislation, in war against human trafficking with a focus on protecting and guaranteeing the rights of victims of trafficking in human beings, Tirane, 2008,pg 20-25.
11. Family Code, Sections 33, 34, 36, 37, 39.
12. Italian Penal Code, Sections 600 and following...
13. Koça A., A comparative criminal-legal overview, on the human beings trafficking. Tiranë 2006, pg 36-41.
14. Decision No. 21019, dt. 19.02.2004.
15. Law no. 75 year1958, Merlin Law, Article 3.
16. Koça A., A comparative criminal- legal overview, on the human beings trafficking. Tiranë 2006, pg 36-41.

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