

HUMAN TRAFFICKING: WOMAN AND CHILDREN. CHALLENGES IN ALBANIAN LEGISLATION.

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ABSTRACT: *Human trafficking is a global human rights violation, constituting a severe criminal offense that disproportionately affects women and children. Albania, located in Southeastern Europe, has not been immune to this issue. In this paper, we explore the legal provisions and efforts made by the Albanian government to counteract the trafficking of women and children, shedding light on the nation's commitment to addressing this concern. This scientific work delves into the issue of human trafficking, with a specific focus on the trafficking of women and children in the Republic of Albania. It reviews the existing legal provisions aimed at combating trafficking in persons and highlights the challenges and ongoing efforts in addressing this concern. By analyzing the legal framework, law enforcement mechanisms, and recent developments, this article provides an in-depth overview of the situation in Albania.*

KEY WORDS: *Human trafficking; Human Rights; Criminal Code; International Organization for Migration (IOM); Criminal Procedure Code (CPC); victims of traffic.*

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1. INTRODUCTION

Human trafficking represents a "violation of the fundamental rights, the dignity and integrity of human beings", and it is one of the most negative phenomena that emerged during Albania's extended transition after the 1990s (Haarr, 2022). From this perspective, the legal examination and handling of criminal activities in this domain is an issue of crucial concern for all legal experts. *Human trafficking* is a severe and intricate offense encompassing the recruitment, conveyance, transfer, sheltering, or acceptance of individuals through force, coercion, deceit, or other exploitative methods. Trafficking aims to subject these individuals to various forms of exploitation, such as sexual exploitation, forced labor, involuntary servitude, organ removal, or other similar purposes.

The fundamental objective of trafficking is exploitation, and the manifestation of this exploitation can significantly vary based on the circumstances. It may involve sexual

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exploitation, forced labor, coerced marriage, recruitment of child soldiers, or illegal organ trafficking, among other forms. Traffickers employ diverse tactics to subjugate and exploit their victims, including physical violence, intimidation, imposition of debts, coercion, deceit, and the manipulation of vulnerabilities. These methods can be widely different but are consistently geared towards maintaining the control of the victims, who are frequently individuals facing vulnerabilities (including women, children, and marginalized groups) whom traffickers single out because of their susceptibilities, such as poverty, lack of access to education, or societal discrimination (Toney-Butler, Ladd and Mittel, n.d.).

Human trafficking is driven by financial gain, and it is often involving victims' movement across borders, and traffickers may operate in multiple countries, taking advantage of weak legal systems and corruption (EUROPOL, 2023). Traffickers seek to profit from exploiting their victims through forced labor, sexual exploitation, or other forms. In this context, local law enforcement agencies frequently find themselves at the forefront of combating this clandestine criminal activity. Serving as the initial responders, these agencies bear a significant responsibility in identifying and addressing human trafficking cases. Nevertheless, it remains a dearth of knowledge concerning how law enforcement agencies can structure their responses to human trafficking and their capacity in order to effectively meet the needs of victims trafficking (Clawson, Dutch and Cummings, n.d.).

Human trafficking represents an extremely severe violation of human rights, as it deprives individuals of their freedom, dignity, and the fundamental rights and protections to which all human beings are entitled. Human trafficking often requires international cooperation and coordinated efforts to combat it effectively. Efforts to counteract human trafficking involve preventive activities, prosecuting the traffickers, and protecting the victims. Many countries have enacted specific legislation and international agreements to criminalize human trafficking, protect victims, and prosecute traffickers. Additionally, awareness campaigns, victim support services, and international cooperation are crucial in addressing this serious crime and human rights violation. In the context of Albania, the issue of human trafficking persists, demanding focused efforts from both domestic governmental bodies and international non-governmental organizations (NGOs) as IOM, OSCE, INTERPOL¹, engaged in activities related to prevention, victim protection, and the prosecution of human trafficking crimes (Mancini et al., 2021).

2. METHODOLOGY

This paper employs research and analysis of the challenges related to human trafficking, with a particular focus on women and children, in the context of Albanian legislation. This paper uses a multifaceted approach, including a comprehensive literature review on human trafficking, analysis of the legal framework in Albania, and comparative analyses. This approach enabled a thorough exploration of the challenges within Albanian legislation related to human trafficking, with a particular focus on women and children, in the perspective of offering possible solutions to address this issue. This analysis also

¹ INTERPOL- is the world's largest international police organization which enables police in 192 member countries to work together to fight international crime.

explores the issues and hurdles that Albania faces in its efforts to fight against human trafficking with a focus on the welfare towards women and children

3. TRAFFICKING, INTERNATIONAL CONVENTION AND ALBANIAN ISSUES

Human trafficking, commonly called contemporary slavery, constitutes a grave criminal offense that flagrantly violates fundamental human rights and human dignity. This pervasive issue transcends national borders, affecting every country to some degree. Albania continues to grapple with the challenge of human trafficking, necessitating focused attention from both domestic governmental bodies and international non-governmental organizations dedicated to the prevention, victim protection, and prosecution of trafficking-related crimes.

Despite extensive endeavors by state institutions and various organizations to combat this phenomenon over the years, Albania still endures its status as "a source, transit, and destination country for men, women, and children subjected to trafficking for sexual exploitation and forced labor." Reports from the U.S. State Department and the U.S. government's Child Labor Report affirm that "the government has not met the minimum standards for eradicating trafficking" and "has shown limited progress in eliminating the most egregious forms of child labor." Additionally, data from the 2020 United Nations global report highlights that of every ten identified trafficking victims worldwide, approximately five are women and two are girls. Remarkably, about one-third of all trafficking victims worldwide are children, comprising girls (19 percent) and boys (15 percent), while adult men constitute 20 percent (UNDOC, 2020).

Albania is also a signatory to various international conventions and protocols that address human trafficking, including the United Nations Protocol to prevent, suppress, and punish trafficking in persons, especially women and children (*Palermo Protocol*)². These international commitments provide a foundation for the development of domestic legislation. Albania has made significant strides in improving its law enforcement efforts against human trafficking. Such efforts include establishing specialized units within law enforcement agencies, enhanced training for officials, and cooperation with international organizations and neighboring countries. Albania has adopted the *National Strategy on the Fight Against Trafficking of Human Beings and the Trafficking of Children (2014-2017)*, demonstrating its commitment to addressing the issue (Gjebrea, 2016).

Also, the 2021-2023 National Action Plan (NAP) to Combat Human Trafficking plays a crucial role in harmonizing the collaborative efforts of various stakeholders, encompassing both governmental and non-governmental entities, including international organizations, dedicated to the fight against human trafficking. Evolving from its forerunner, which was in effect from 2018 to 2020, this NAP considers the insights from the Monitoring Report that assessed the previous plan's implementation. However, it is tailored to accommodate the ever-evolving dynamics of trafficking while aligning with the new government's vision for addressing this issue. This approach aims to establish a well-

² Palermo protocol- The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as the Palermo Protocol) is the internationally accepted definition of human trafficking.

structured framework of strategic objectives in harmony with other national strategic documents and recommendations from international partners (UK Government et al., 2021).

The foundational international document for addressing Human Trafficking is the *UN Convention against Transnational Organized Crime*³, accompanied by its two additional protocols, ratified by Albania through Law 8920 dated 11.07.2002. This document primarily emphasizes the international adoption of criminal measures to combat this phenomenon. Another instrumental framework for tackling this issue is the Council of Europe's "Convention on Action against Trafficking in Human Beings," ratified by Albania via law no. 9642 on 20.11.2006. This convention places a significant emphasis on the protection of trafficking victims. These documents have laid the groundwork for shaping the domestic legal frameworks of the ratified countries, including Albania. According to the Convention of Palermo, **article 3**, the Definition of Trafficking in Human Beings is:

a) "*Trafficking in persons*" means the recruitment, transportation, transfer, concealment, or reception of persons through threat, use of force, or other forms of coercion, fraud, extortion, deception, or abuse of power or vulnerable position or giving or receiving payments or benefits to obtain the consent of a person controlling another person for the purpose of exploitation. Use includes, at a minimum, the use of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices like slavery, removal of organs or servitudes.

b) The consent of the traffic victim for the intentional exploitation mentioned in subsection (a) of this article will be inappropriate if the means provided for in subsection (a) were used.

c) Recruiting, transporting, transferring, hiding, or receiving a child for exploitation will be considered "trafficking in persons," even if it does not include the means provided in subsection (a) of this article. "Child" means any person under 18 years of age (UN, Human Rights Office of the High Commissioner, 2014).

As previously indicated, the Council of Europe's "*Convention on Action against Trafficking in Human Beings*"⁴ became effective in Albania on February 1, 2008. This convention constitutes a comprehensive treaty primarily focused on safeguarding the rights of trafficking victims, with its purpose explicitly outlined in Article 1 as follows:

1. Preventing and combating human trafficking while ensuring gender equality.
2. Protecting the rights of trafficking victims, establishing a comprehensive framework for their protection and support, and ensuring gender equality. It also emphasizes effective criminal investigation and prosecution.
3. Promoting international cooperation in addressing human trafficking (COE, 2015).

Importantly, this Convention encompasses "all forms of trafficking in human beings, whether national or transnational, whether or not linked to organized crime," as stipulated

³ The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

⁴ The Council of Europe Convention on Action against Trafficking in Human Beings was adopted in 2005 and came into force in 2008. This is an important binding treaty to effectively fight trafficking in human beings.

in Article 2. The definition of trafficking in human beings provided in Article 4 of the Convention aligns with that of the Palermo Protocol, and it also provides explicit guidance on measures to prevent trafficking and prosecute traffickers. Article 3 of the Convention makes it abundantly clear that State Parties have a well-defined obligation to implement measures that safeguard and promote victims' rights while ensuring gender equality. Significantly, it strongly emphasizes implementing measures aimed at deterring and discouraging the demand for trafficking. Also, this focuses on border controls, security measures, and document verification procedures. It is worth highlighting that the Convention's scope is all-encompassing and extends to all forms of trafficking, whether at the national or international level, irrespective of any ties to organized crime and regardless of the gender or age of the victims. These forms of trafficking encompass sexual exploitation, forced labor, and various other services (Council of Europe Treaty Series - No.197, 2015).

Notably, the Convention also establishes an autonomous monitoring mechanism, known as "GRETA," to ensure that Parties adhere to its provisions. Since GRETA's second evaluation, numerous laws and implementing regulations have been either newly adopted or modified, notably within the context of judicial reform. These changes include the enactment of Law No. 97/2016 concerning the Organization and Operation of the Prosecutor's Office, Law No. 37/2017 relating to the Criminal Justice Code for Juveniles, Law No. 18/2017 on Child Rights and Protection, Law No. 111/2017 on State Guaranteed Legal Aid, Law No. 70/2017 amending Law No. 10192, which addresses the prevention and combat of organized crime and trafficking through preventive property measures. Additionally, Law No. 35/2017 introduced amendments to the Criminal Procedure Code (CPC). Concerning the CPC amendments, they have bolstered the rights and standing of victims of criminal offenses (GRETA, 2020). For instance, Article 9/a has been included, imposing the obligation to involve victims as parties in criminal proceedings. Further refinements include the reformulation of Article 58 in the CPC, along with the introduction of Articles 58/a and 58/b, outlining specific rights for child victims, victims of sexual abuse, and victims of human trafficking. Furthermore, Article 340 of the CPC now allows for closed-door court hearings when necessary to protect witnesses (Alb Juris, 2023).

Human trafficking is a new offense that did not exist in our previous Criminal Codes before the 90s of the last centuries. The reason is that the phenomenon of human trafficking, due to the conditions themselves of the total isolation of our country in that period, not only did not exist but was also inconceivable by judges, prosecutors, and other legal professionals. Not only that, but surprisingly, the criminal offense of "Trafficking in persons" was not even foreseen as such by the Code Criminal, which entered into force on June 1, 1995, even though the phenomenon of human trafficking persons had become worrying for a good part of the Albanian society. The above criminal offense by the legislator in the new Penal Code of 1995 can be justified to some extent, with the lack of experience in this field. What cannot be justified is the fact that the legislator spent a full six more years after *the new Criminal Code*⁵ was approved. For the first time, it was considered a criminal offense, specifically in 2001, with law no.8733, dated 24.01.2001.

⁵ The Criminal Code is based on the Constitution of the Republic of Albania, general principles of the international criminal law, and international treaties ratified by the Albanian state. The criminal legislation is composed of this Code and other laws providing for criminal offences.

If we analyze the criminal offense of "Trafficking in persons," we can extract the following conclusions:

1. This criminal offense is a new criminal offense in the criminal legislation in Albania, and it was provided for the first time in 2001 in our Criminal Code, which shows that there is a lack of legal tradition in the correct sense of this criminal offense.

2. The criminal offense of "Trafficking in persons" is a formal criminal offense; therefore, it does not require the arrival of no consequence. It is enough for the subject to consume all the elements of the picture of this criminal offense so that it is considered fully committed.

3. The criminal offense of "Trafficking in persons" represents great social danger because it violates one of the most basic human rights and freedoms, such as personal freedom. In contrast, a secondary object of this criminal offense is also the life and health of the person (Shkolla e Magjistraturës, 2013).

Human trafficking, in Albanian legislation, is addressed in the Criminal Code of 2014, approved by law no. 7895, dated 27.1.1995, through several provisions, specifically Article 110/a, Article 114/b, and Article 128/b. Article 110/A explicitly categorizes human trafficking as a criminal offense, encompassing various purposes such as sexual exploitation, forced labor, and organ removal. The Criminal Code designates human trafficking as an offense under Article 110/A, carrying a penalty of 8 to 15 years of imprisonment. When this offense is committed with multiple offenders and involves physical violence, it is classified as an aggravated criminal offense, subject to a minimum penalty of 15 years. In cases where the trafficking results in the victim's death, the offender faces imprisonment for not less than twenty years or a life imprisonment sentence (Alb Juris , 2023).

Albanian Criminal Law and the overall structure established to prevent and combat trafficking while safeguarding trafficking victims are consistent with international legal principles. Our Criminal Code has undergone some changes in the criminal offenses of trafficking, but basically, it contains almost all the definitions given by the Palermo Protocol and the Warsaw Convention. Our criminal code provides as forms of trafficking in human beings, such as immigrants and women, for prostitution and as a separate form of trafficking of minors. Nonetheless, Albanian legislation has room for enhancement, whether to align more closely with the explicit provisions of international law or to adapt to evolving standards. Legislation is dynamic and should adapt to the changing needs of society (Mancini et al., 2021).

4. CHALLENGES OF ALBANIAN LEGISLATION

In recent years, there has been a significant increase in global efforts to combat various forms of coercion, such as slavery, forced labor, practices akin to slavery, and human trafficking. The primary attention was directed towards human trafficking (Plant, 2014). The legal framework in Albania, designed to tackle Human Trafficking, has been influenced by global legal standards dating back to the early 2000s. Over the past decade, substantial legal infrastructure has been put in place to combat Human Trafficking and protect the rights of trafficking victims within the national legal system. Simultaneously, new challenges have arisen, encompassing difficulties in upholding the heightened

standards for victim protection stipulated by European law and integrated into the Albanian legal (Shkolla e Magjistraturës, 2013).

Concurrently, novel challenges have materialized, compounding the complexities of addressing various forms of trafficking. These efforts pertain to implementing the highest standards for victim protection, as endorsed by European law and integrated into the Albanian legal framework. The Council of Europe Convention, entitled "On Action for Combating Human Trafficking," outlines the requirement for participating countries to enact legislative measures and take any other necessary actions to aid victims in their physical, psychological, and social rehabilitation. This rehabilitation process should enable victims to access protection programs, support their reintegration into the workforce, and provide opportunities for vocational education, all following the legal provisions (Simoni and Trimi, 2019). The time has now arrived for a comprehensive revision of these provisions to effectively address the practical needs that have emerged and align with the expectations of European Institutions.

While progress has been made, Albania faces several challenges in its fight against human trafficking. The notion of creating a dedicated law to safeguard trafficking victims has been previously deliberated, sparking a range of opinions both in support of and in opposition to this proposal. Recent years have witnessed notable progress in the enhancement of legislation about the rights of victims of criminal offenses, embracing the rights of those subjected to trafficking. Within the framework of Justice Reform, several laws have been enacted to address specific elements of ensuring access to justice, covering distinct fields and demographics. These encompass comprehensive laws governing justice institutions (as part of the legal reform package), legislation related to children's rights protection, the Juvenile Justice Code, amendments to domestic violence prevention laws, and various other laws related to social service reform, among others. These amendments reflect the presence of an established tradition of legal initiatives focused on regulating the protection of specific categories. The call for creating a dedicated law to combat human trafficking has been highlighted in multiple reports from institutions and international organizations. (Simoni and Trimi, 2019).

Limited financial and human resources can hinder effective law enforcement and victim support. Identifying and helping victims of trafficking, especially women and minors, remains a challenge due to the clandestine nature of the crime. Traffickers often exploit cross-border routes, necessitating strong international cooperation, which can be challenging. The Albanian government has demonstrated its commitment to combating the trafficking of women and minors through its legal framework, law enforcement efforts, and victim support programs. However, challenges persist, and a sustained approach is necessary to effectively eradicate this heinous crime. Albania must continue its dedication to preventing trafficking, protecting victims, and prosecuting traffickers to ensure a safer and more secure future for women and minors within its borders (Malangone, 2022).

5. CONCLUSIONS

The global struggle against human trafficking stands as one of the paramount challenges faced not only by nations but also by societies worldwide. Albania has made notable strides in its efforts to combat human trafficking, with significant progress achieved. The country has implemented various measures to address this issue by

collaborating with international organizations and non-governmental groups. Particularly commendable is the Albanian government's commitment to aligning its legislation with international standards about the care and status of crime victims.

The Albanian Government, in conjunction with the Ministry of the Interior, has unequivocally prioritized the prevention and eradication of human trafficking, along with the safeguarding and reintegration of victims, as central components of their operational focus. However, there are lingering challenges in the implementation phase. Gaps are evident in the enhancement of comprehensive support programs that provide essential medical, psychological, and social assistance to crime victims. The absence of an integrated victim support system in the country is a cause for concern, and regrettable incidents of victim and witness intimidation and violence have occurred. Notably, civil society organizations (CSOs), with donor support, have taken on a primary role in assisting vulnerable groups, often overshadowing government agencies. Furthermore, there is a need to enhance the culture of crime prevention in Albania. Establishing additional prevention programs is imperative, and the involvement of civil society and media in countering organized crime remains limited.

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