



Ministry of Foreign Affairs of the Netherlands

# PROMOTION OF THE RIGHTS OF TRAFFICKED PERSONS IN ALBANIA

## LEGAL ANALYSIS OF THE CURRENT SITUATION IN REGARD TO THE RIGHTS OF VICTIMS OF TRAFFICKING



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Prepared under the framework of the MATRA CoPROL project (DEU 25469) "*Promoting a Victim-Centered Approach in Trafficking Cases in Albania and Bosnia-Herzegovina*", financed by the Dutch Ministry of Foreign Affairs.

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This report is prepared in the framework of the MATRA CoPROL project (DEU 25469) “Promoting a Victim-Centered Approach in Trafficking Cases in Albania and Bosnia-Herzegovina”, financed by the Dutch Ministry of Foreign Affairs.

Center for Legal Civic Initiatives

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# FOREWORD

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The Centre for Legal Civic Initiatives is pleased to present its legal analysis of the current situation in Albania with regard to the protection of the rights of victims of trafficking. The aim of the analysis is to assess how the rights of trafficked persons are promoted and guaranteed. The analysis is part of a larger project on "*Promoting a Victim-Centered Approach in Trafficking Cases in Albania and Bosnia-Herzegovina*", implemented in cooperation between the Center for Legal Civic Initiatives, the Netherlands Helsinki Committee, the Albanian School of Magistrates and the Dutch Training and Study Centre for the Judiciary. The project is financed by the Dutch Ministry of Foreign Affairs in the framework of the MATRA CoPROL program (DEU 25469).

The protection of victims and the prevention of trafficking in human beings is the main goal of the Albanian legislation, which has witnessed a continuous development and improvement, particularly in the last 15 years. This development is due to the strengthening of international standards on the protection of victims of human trafficking, as well as the increasing obligations of the Albanian state arising from the international treaties it ratified, to prevent this type of crime. Special attention is paid to the European Union law in this area, which requires alignment of the Albanian legislation.

The analysis covers the treatment of trafficked persons as victims, witnesses and injured parties in the criminal process, the establishment of and respect for their procedural rights, their access to legal assistance and representation in court, their right to information, the right to security and privacy, the right to compensation, etc.

The analysis specifically aims at evaluating the Albanian legislation and the legal

measures and state policies undertaken by the Republic of Albania, as well as the judicial and administrative practices, while taking international standards as a benchmark. The report also identifies the discrepancies that exist between the existing legislation that establishes the rights of victims of human trafficking on the one hand, and its implementation to guarantee these rights in practice on the other hand.

In order to prepare this report, we also referred to several studies of other Albanian and international organizations, as well as state institutions. The data published by the Ministry of Justice on the prosecution of human trafficking offenses and cases of trafficking for forced labor, prostitution, exploitation of prostitution, etc are also part of this analysis.

Our goal has been to distribute this analytical report to justice professionals including judges, prosecutors, police officers, representatives of non-profit organisations and policy makers. In this way we aim to contribute to improving the legal framework and its implementation promoting a victim centered approach. We believe that it will boost the capacity of judges and prosecutors in the investigation, prosecution and adjudication of trafficking cases in line with EU standards and with special attention for the position and treatment of victims/witnesses in court proceedings. Also, we are glad to announce that several issues of this analysis will be integrated in the curriculum of the School of Magistrates for judges and prosecutors.

Wishing that this report will be useful for all its readers, on behalf of the Centre for Legal and Civic Initiatives I would like to thank all the collaborators who helped in the realization of this study, and the project as a whole, particularly the Netherlands Helsinki Committee, the Albanian School of Magistrates and the Dutch Training and Study Centre for the Judiciary.

**Thank You,**  
**Prof. Dr. Aurela Anastasi**  
**Executive Director**

# INTRODUCTION

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This report assesses the development and the implementation of the Albanian legislation in combating trafficking in human beings with a focus on the protection of the rights of the victims of trafficking.

The analysis focuses on the treatment of trafficked persons as victims in criminal and other relevant legal proceedings, their access to legal aid and representation, their right to information, to protection of their safety and privacy, the right to compensation, etc.

The analysis is based on the minimum standards as laid down in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (also called the Palermo Protocol), the *Council of Europe Convention on Action against Trafficking*, *EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* and other relevant European and international legal instruments. Albania ratified both the UN Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings.

The relevant provisions on trafficking and the rights of trafficked persons on national level are described in the following acts:

- The Criminal Code (CC) of the Republic of Albania:
  - Art. 110a : Trafficking of adult persons
  - Art. 128b : Trafficking of minors
  - Art. 113 : Prostitution
  - Art. 114 : Exploitation of prostitution
  - Art. 115 : Use of premises for prostitution
  - Art. 52a : Exemption from serving the sentence or reduction of the sentence for collaborators of justice and victims

- The Criminal Procedural Code (CPC) of the Republic of Albania;
- The Civil Code of the Republic of Albania;
- Law No. 10039 of 22 December 2008 “On legal aid”;
- Law No. 108/2013 “On foreigners”;
- Law No. 9887 of 10 March 2008 “On Protection of Personal Data”;
- Law No. 10192 of 3 December 2009 “On the prevention and Fight of organised Crime and trafficking through preventive measures on assets”;
- Law No. 10173 of 22 October 2009 “On the protection of witnesses and justice collaborators”;
- Law No. 9355 of 10 March 2005 “On social assistance and services”;
- Law No. 23/2012 “On Some Amendments to Law No. 7895 of 27 January 1995, Criminal Code of the Republic of Albania, Amended”;
- Law No. 144/2013 “On some additions and changes in Law No.7895 of 27 January 1995, “The Criminal Code of Republic of Albania”;
- European Parliament Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality ([2013/2103\(INI\)](#));
- Decision No. 582 of 27 July 2011, Approval of Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking;
- Decision of the Council of Ministers No. 195 of 11 April 2007 on “The standards of the Social Care Services for persons who are victims of trafficking or are potential victims of trafficking in the Residential Centers”.

In addition the following resources were used:

- Case file of D.S, supported with free legal aid by the lawyers of CLCI;
- Case file of B.Q, supported with free legal aid by the lawyers of CLCI;
- Court decisions of the Tirana Judicial District Court on exploitation of prostitution;
- Court decisions of the Serious Crimes Court on trafficking;
- Interview with the Deputy Director of the Center “Different but Equal”.

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Key elements of the project are trainings on trafficking in human beings for judges and prosecutors, organized by the Center for Legal Civic Initiatives and the School of Magistrates in cooperation with their Dutch partners. The thoughts and opinions of the judges and prosecutors shared during these trainings are also reflected in this legal analysis.

Other sources are the studies and reports on the effectiveness of legislation related to addressing trafficking of human beings, the official data from the Annual Statistics prepared and published by the Ministry of Justice and the websites of different state and non-state actors.

Finally, it is used the practice of CLCI in providing free legal aid to victims of trafficking in human beings or persons in risk of being trafficked.

The support offered by the international expert, Ms. Marjan Wijers, was very important during the whole process of the preparation of the legal analysis.

# 1. PART 1

## FACTS & FIGURES

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There are not many trafficking cases registered by the courts, maximum 8-10 cases per year. These mainly concern internal trafficking. Internal trafficking remains a concern, which demands stepping up proactive investigations.<sup>1</sup>

There are, however, no comprehensive national statistics on trafficking. The following figures are based the Annual National Statistics of the Ministry of Justice<sup>2</sup> for the year 2011-2013.

At that time (2011) trafficking was criminalised in three separate articles in the Criminal Code (hereafter: CC):<sup>3</sup>

- Article 110a CC: Trafficking of persons
- Article 114b CC: Trafficking of women
- Article 128b CC: Trafficking of minors.

In addition article 114 CC criminalised the exploitation of prostitution, while Article 114a CC criminalised the exploitation of prostitution under aggravating circumstances.<sup>4</sup>

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1 Progress Report 2013 Albania. Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf).

2 Annual statistics of the Ministry of Justice. Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Annual Data 2011, p.36.

3 Trafficking has been criminalised as a separate offence since 2001.

4 Added by Law No. 8279, dated 15 January 1998, article 2, point 6 and last paragraph amended by Law No. 8733, dated 24 January 2001, article 29.

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Article 110a CC on **trafficking in persons** read:

1. *The recruitment, transport, transfer, hiding or reception of persons through threat or the use of force or other forms of compulsion, kidnapping, fraud, abuse of office or taking advantage of the social, physical or psychological condition or the giving or receipt of payments or benefits in order to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, within and beyond the territory of the Republic of Albania, shall be punishable by imprisonment from eight to fifteen years.*
2. *If such offence is committed against an adult female, it shall be punishable by ten to fifteen years of imprisonment.*
3. *The organization, management and financing of the trafficking of persons is punished with imprisonment of seven to fifteen years and with a fine of four million to six million Lek.*
4. *When such offence is committed in collaboration, more than once, accompanied by maltreatment and making the victim to commit various actions through the use of physical or psychological violence, causing serious consequences to health or threatening his life, is punishable by imprisonment of no less than fifteen years.*
5. *When the crime has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than twenty years or with life imprisonment, as well as with a fine of seven million to ten million Lek.*
6. *When the criminal crime is committed through the utilization of a state function or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.*

Article 114b CC 2011 on **trafficking of women** read:

1. *The recruitment, transport, transfer, hiding or reception of women through threat or use of force or other forms of compulsion, kidnapping, fraud,*

*abuse of office or taking advantage of social, physical or psychological condition or the giving or receipt of payments or benefits, in order to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of seven to 15 years and with a fine of from three million to six million lek.*

2. *The organization, management and financing of the trafficking of woman is punished with imprisonment of from ten to 15 years and with a fine of five million to seven million lek.*
3. *When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through the use of physical or psychological force, or brings serious consequences to health, it is punished with imprisonment of no less than 15 years and with a fine of six million to eight million lek.*
4. *When the offence has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of seven million to 10 million lek.*
5. *When the criminal offence is committed through the utilization of a state function or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.*

Article 128/b CC (changed with law no.9188, dated 12.02.2004, article 3, added with law no.9859, dated 21.1.2008, article 3) on Trafficking of Minors read.

*The recruitment, selling, transport, transfer, hiding or reception of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, are punished with imprisonment of from seven to 15 years and with a fine of from four million to six million lek.*

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*The organization, management and financing of the trafficking of minors is punished with imprisonment of from 10 to 20 years and with a fine of from six million to eight million lek.*

*When this offence is committed in collaboration or more than once, or is accompanied by mistreatment and making the victim commit various actions through physical or psychological force, or brings serious consequences to health, it is punished with imprisonment of no less than 15 years and with a fine of from six million to eight million lek.*

*When the offence has brought about the death of the victim as a consequence it is punished with imprisonment of no less than 20 years or with life imprisonment, as well as with a fine of from eight million to 10 million lek.*

*When the criminal offence is committed through the utilization of a state function or public service, the punishment of imprisonment and the fines are increased by one fourth of the punishment given.*

Article 114 CC 2011 on **exploitation of prostitution** read:

*Soliciting prostitution, mediating or gaining from it is punishable by a fine or up to five years of imprisonment.*

Article 114a CC 2011 (**exploitation of prostitution under aggravating circumstances**) read:

When exploitation of prostitution is committed:

1. *against minors;*
2. *against some persons;*
3. *against persons with close consanguinity, in-laws or custodial relations or by taking advantage of an official rapport;*
4. *with the use of deception, coercion, violence or by taking advantage of the physical or mental incapability of the person;*
5. *against a person that has been forced or coerced to exercise prostitution out of the territory of the Republic of Albania;*

6. *by criminal organizations;*  
*it is punished from 7 up to 15 years imprisonment and with the confiscation of all means and profits.*

In 2013 the Criminal Code was changed (Law No. 144/2013 of 2 May 2013). Since then trafficking is criminalised in two articles:

- Article 110a CC: Trafficking of adult persons
- Article 128b CC: Trafficking of minors.

Article 114b CC 2011 (trafficking of women) was abolished and its content included in Article 110a, para 2, CC (trafficking of adult persons). By the same law Article 114a CC 2011 (exploitation of prostitution under aggravating circumstances) was abolished and its content included in Article 114 CC (exploitation of prostitution). The current provisions in the Criminal Code will be discussed in part 2.

Below the available data on the offences concerned are given.

Data on trafficking in human beings for the year 2011

<b>Criminal act</b>	<b>Article CC 2011</b>	<b>Cases</b>	<b>Convicts</b>
Trafficking of women for prostitution	114b (1)	1	1
Trafficking of women for prostitution	114b (2)	2	3
Trafficking of women for prostitution	114b (3)	6	9
Trafficking of minors	128b (1)	1	1
Trafficking of minors	128b (2)	2	4
Trafficking of minors	128b (3)	1	1
<b>Total</b>		<b>13</b>	<b>19</b>

*Source:* Ministry of Justice, Annual Data 2011<sup>5</sup>

5 Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Ministry of Justice, Annual Data 2011, p. 37.

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**Data on exploitation of prostitution for the year 2011**

<b>Criminal act</b>	<b>Article CC 2011</b>	<b>Cases</b>	<b>Convicts</b>
Exploitation of prostitution	114	9	17
Exploitation of prostitution with aggravating circumstances	114a	6	5
Exploitation of prostitution with aggravating circumstances (against minors)	114a (1)	3	5
Exploitation of prostitution with aggravated circumstances (against some persons)	114a (2)	2	2
Exploitation of prostitution with aggravating circumstances (with the use of deception, coercion, violence or by taking advantage of the physical or mental incapability of the person)	114a (4)	2	2
Exploitation of prostitution with aggravating circumstances (against a person who has been forced or coerced to exercise prostitution out of the territory of Albania)	114a (5)	2	2
Exploitation of prostitution with aggravating circumstances (by a criminal organisation)	114a (6)	1	1
<b>Total</b>		<b>25</b>	<b>34</b>

**Source:** Ministry of Justice, Annual Data 2011<sup>6</sup>

According to the annual data of the Ministry of Justice there are 27 convictions for exploitation of prostitution (article 114 CC 2011) in the year 2011.

**Data on trafficking in human beings for the year 2012**

<b>Criminal act</b>	<b>Article CC 2011</b>	<b>Cases</b>	<b>Convicts</b>
Trafficking of women for prostitution	114b (3)	2	2

**Source:** Ministry of Justice, Annual Data 2012<sup>7</sup>

6 Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Ministry of Justice, Annual Data 2011, p. 36, 37.

7 Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Ministry of Justice, Annual Data 2012, p.40.

According to the data of the Ministry of Justice, 2 persons were tried for trafficking in women for prostitution in 2012. One of them is sentenced to 5-10 years, the other to 10-25 years imprisonment.

#### Data on exploitation of prostitution for the year 2012

Criminal act	Article CC 2011	Cases	Convicts
Exploitation of prostitution	114	5	10
Exploitation of prostitution with aggravating circumstances	114a	9	9
Exploitation of prostitution with aggravated circumstances	114a (1)	2	2
Exploitation of prostitution with aggravated circumstances	114a (2)	2	6
Exploitation of prostitution with aggravated circumstances	114 a (3)	1	1
Exploitation of prostitution with aggravated circumstances	114a (4)	2	3
Exploitation of prostitution with aggravated circumstances	114a (5)	1	1
<b>Total</b>		<b>22</b>	<b>32</b>

Source: Ministry of Justice, Annual Data 2012<sup>8</sup>

#### Data on trafficking in human beings for the year 2013.

Criminal act	Article CC 2011	Cases	Convicts
Trafficking of women for prostitution	114b (3)	1	3
Trafficking of minors	128b (1)	1	1
<b>Total</b>		<b>2</b>	<b>4</b>

Source: Ministry of Justice, Annual Data 2013<sup>9</sup>

In 2013, 3 persons were sentenced for trafficking of women for prostitution. Two of them were sentenced to 10-25 years, the third one to life imprisonment. One person was sentenced for trafficking of minors.

So far, there have been only cases of trafficking for prostitution with Albanian victims and offenders. Most of the women and girls come from rural areas.

8 Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Ministry of Justice, Annual Data 2012, p.39.

9 Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Ministry of Justice, Annual Data 2012, p.38-39.

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**Data on exploitation of prostitution for the year 2013**

<b>Criminal act</b>	<b>Article CC 2011</b>	<b>Cases</b>	<b>Convicts</b>
Exploitation of prostitution	114	8	6
Exploitation of prostitution with aggravating circumstances	114a	5	8
Exploitation of prostitution with aggravated circumstances (against minors)	114a (1)	2	1
Exploitation of prostitution with aggravated circumstances (against some persons)	114a (2)	2	3
Exploitation of prostitution with aggravated circumstances (by a criminal organisation)	114a (6)	2	2
<b>Total</b>		<b>19</b>	<b>20</b>

*Source:* Ministry of Justice, Annual Data 2013<sup>10</sup>

Although the data are not disaggregated by gender, according to the Trafficking in Persons Report of the American Department of State 2013<sup>11</sup>, Albania is a source and destination country for men, women, and children subjected to sex trafficking and forced labour. The Report calls on the Serious Crimes Court to disaggregate data to demonstrate that it makes efforts against both sex trafficking and forced labor.

**Data on prostitution**

Also prostitutes themselves are criminalised according to the Criminal Code (Article 113 CC).

According to the Annual Data of the Ministry of Justice 27 persons were sentenced for prostitution in 2012 in 17 criminal cases.

In 2012 22 persons were convicted in 16 criminal cases. Out of the 22 persons convicted for prostitution, 18 were women. In 2013 in 9 criminal cases 20 persons were convicted for prostitution, of whom 18 were women.

<sup>10</sup> Available at [www.drejtesia.gov.al](http://www.drejtesia.gov.al), Ministry of Justice, Annual Data 2012, p.38.

<sup>11</sup> Available at [http://www.punetebrendshme.gov.al/files/priorities\\_files/06202014\\_English\\_TIP.pdf](http://www.punetebrendshme.gov.al/files/priorities_files/06202014_English_TIP.pdf).

On the basis of Article 113 CC also minor girls are punished with imprisonment. According to the annual data of 2012<sup>12</sup>, two minors were convicted for committing the criminal act of prostitution. According to the Annual data of 2013, one minor was convicted for prostitution.<sup>13</sup>

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12 Available at [http://www.drejtesia.gov.al/files/userfiles/statistika/VJETARI\\_STATISTIKOR\\_2012.pdf](http://www.drejtesia.gov.al/files/userfiles/statistika/VJETARI_STATISTIKOR_2012.pdf).

13 Available at [http://www.drejtesia.gov.al/files/userfiles/statistika/VJETARI\\_STATISTIKOR\\_2013.pdf](http://www.drejtesia.gov.al/files/userfiles/statistika/VJETARI_STATISTIKOR_2013.pdf)

# II. PART 2

# CRIMINAL LAW IN REPUBLIC OF ALBANIA AND ITS EVOLUTION

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## **2.1. Trafficking in human beings**

Trafficking in human beings is a crime against human rights and fundamental freedoms and the dignity of the individual. Repressive and preventive measures therefore aim for the protection of the rights and fundamental freedoms of the victims, devoting them special importance.

The Constitution of the Republic of Albania is the highest legal act sanctioning the principle of equality and non-discrimination, which principle permeates the entire legislation of our state. Article 3 of the Constitution states: *"the dignity of the individual, human rights and freedoms [...] are the basis of this state, which has the duty of respecting and protecting them."*

The Albanian legislation has evolved in trying to approximate itself with the international conventions ratified by the Republic of Albania. The Constitution requires the harmonization of the Albanian legislation with international standards, aiming them to be part of the national legislation, which cannot be in contradiction with the ratified international acts on the level of the United Nations, Council of Europe and European Union.

International norms have a major impact on the domestic legislation and policies of our state. Article 5 of the Constitution envisions that *"The Republic of Albania shall implement international law, which is binding for it"*.

The international standards ratified by the state prevail over domestic legislation (Article 116 Constitution). Under Article 122 of the Constitution, international agreements ratified by our state, after publication in the Official Gazette, are incorporated in the domestic legislation.

The Albanian state is committed to prevent trafficking in human beings and has expressed its will to do so by ratifying several conventions<sup>14</sup>, which take a special place in the hierarchy of domestic legal acts.

Albania is party to the Council of Europe Convention on Action Against Trafficking in Human Beings and the Council of Europe Convention for Protection of Children from Sexual Abuse and Exploitation.

As per Law No. 144 of 2 May 2013 the Criminal Code criminalizes trafficking in human beings in two articles: Article 110a CC "Trafficking of Adult Persons" and Article 128b CC "Trafficking of Minors". Trafficking of adult females is defined as an aggravating circumstance in Article 110a para 2.

These articles criminalize trafficking in human beings for the purpose of exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery, using or transplanting of organs and other forms of exploitation.

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14 The international Convention for the Suppression of the Traffic in Women and Children - Geneva 1921, and its amending protocol; Convention for the Suppression of the Traffic in Women of Full Age - Geneva 1933, and its amending protocol; Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, plus Final Protocol of New York 1950; United Nation Convention against Transnational Organized Crime, ratified by Law No. 8920, dated 11.07.2002; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Law No. 8920, dated 11.07.2002; Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organized Crime, ratified by Law No. 8920, dated 11.07.2002; Convention on the Elimination of All forms of Discrimination against Women, 1979, ratified by Law No. 7767, dated 09.11.1993; European Convention "On compensation of victims of violent crimes", ratified by Law No. 9265, dated 29.07.2004.

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The text of the article does not contain specifically the term servitude (as in the UN Protocol's definition of trafficking) but its meaning is included in the term "other practices similar to slavery".

The list of forms of exploitation is not exhaustive. It is thus up to the court to decide whether a certain practice falls under 'exploitation' (e.g. forced begging).

**Article 110a CC on Trafficking in Adult Persons reads:**

1. *The recruitment, transportation, transfer, hiding or receipt of persons through the threat or the use of force or other forms of coercion, kidnapping, fraud, abuse of office or taking advantage of the social, physical or psychological condition or the giving or receiving of payments or benefits in order to get the consent of a person having control over another person, with the purpose of exploitation of the prostitution of others or other forms of sexual exploitation, forced services or work, slavery or other practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, both within and outside the territory of the Republic of Albania, is punished with imprisonment from 8 to 15 years.*
2. *When the offense is committed against an adult female it is punished with imprisonment from 10 to 15 years.*
3. *The organization, management and financing of trafficking of females is punished with imprisonment from 7 to 15 years.*
4. *When the offence is committed in collaboration, more than once, accompanied by mistreatment and by making the victim commit various actions through the use of physical or psychological force, causes serious consequences to the health of the victim, or endangers her or his life, it is punished with imprisonment of no less than 15 years.*
5. *When the criminal offence is committed through the use of a state function or public service, the punishment of imprisonment is increased by one fourth of the punishment given.*

**Article 128b CC on Trafficking of Minors (persons below the age of 18) reads:**

1. *The recruitment, transportation, transfer, hiding or receipt of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced services or work, slavery or other practices similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, is punished with imprisonment from ten to 20 years.*
2. *The organization, management and financing of trafficking of minors is punished with imprisonment from 10 to 20 years.*
3. *When the offence is committed in collaboration, more than once, accompanied by mistreatment and by making the victim commit various actions through physical or psychological force, causes serious consequences to the health of the victim it is punished with imprisonment of no less than 15 years.*
4. *When the offence has brought the death of the victim as a consequence, it is punished with imprisonment of no less than 20 years or with life imprisonment.*
5. *When the criminal offence is committed through the use of a state function or public service, the punishment of imprisonment is increased by one fourth of the punishment given.*

With the last changes of the Criminal Law (Law no.144/2013) "Trafficking in Adult Persons" is punishable both within and outside the territory of the Republic of Albania.

As to Article 128b CC "Trafficking of Minors", Law no.144/2013 increased the punishment but the article does not explicitly cover trafficking of minors both within and outside the territory of the Republic of Albania. According to the judges and prosecutors<sup>15</sup> the article should cover the commission of this criminal act both within and across borders.

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15 This opinion is expressed by judges and prosecutors who participated in the trainings in 2013 and 2014, organized by the Center for Legal Civic Initiatives in cooperation with the School of Magistrates, with the Netherlands Helsinki Committee and with the Dutch Training and Study Centre for the Judiciary

In line with the UN Protocol<sup>16</sup> and the Council of Europe Convention on Trafficking, Article 128) CC does not require the use of deceptive or coercive means as listed in article 110a. This provides specific protection to minors who are an especially vulnerable group due to their inability to protect themselves and to oversee the risk of these illegal actions. It is important for all professionals who work on the protection of minors against trafficking to understand that consent is irrelevant in the case of minors and that no deceit or coercion is required.

### **The use of services of a trafficked person & facilitating trafficking**

Law no.144/2013 also added new articles to the Criminal Code, *in casu* Article 110b which criminalises the use of services offered by trafficked persons (following Article 19 CoE Convention on Trafficking), and article 110c which criminalises actions that facilitate trafficking, including the falsification or retention of travel and identity papers (following Article 20 CoE Convention).

Article 110b CC criminalises the use of or benefitting from services offered by trafficked persons:

1. Benefitting from or making use of services offered by trafficked persons, or services that are subject to exploitation by trafficking, knowing that the person is trafficked, is punished with imprisonment from two to five years.
2. When this offense is committed against a minor it is punishable with imprisonment by three to seven years.

Article 110c CC criminalises the falsification or retention of travel and identity papers when this facilitated trafficking, even without the knowledge of the person:

1. The falsification, possession or provision of identity documents, passports, visas or other travel documents or the retention, removing, concealing, damaging or destruction of them, which has allowed trafficking in adult persons, but without knowledge of this fact, constitutes a criminal offense and is punishable with imprisonment from two to five years.

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16 "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" supplementing the UN Convention Against Transnational Organized Crime.

2. When this offense, is committed *in collaboration, more than once, or is committed by the person who has the duty to issue identity cards, passports, visa or travel documents, or when it has allowed child trafficking, it is punished* with imprisonment from four to eight years.
3. *When this offence has brought serious consequences it is punished with imprisonment no less than five years.*

There is no practice yet with the implementation of these new articles.

Next to Article 110c, Article 189 para 3 CC criminalises the “Falsification of Identity Documents, Passports or Visas”:

*When the falsification is done by a person who has the duty of issuing the identity document, passport or visa, it is punished with imprisonment from three to seven years.”*

As Article 110c, para 2, and Article 189(3) CC overlap, in practice the implementation of these articles may cause confusion.

### **Trafficking in minors and minors maltreatment**

Another overlap takes place between Article 128b “Trafficking of Minors” and Article 124b CC “Maltreatment of Minors”. The latter criminalises the abuse of minors when this offense is committed by special subjects, such as parents, custodians, grandmothers, etc. With the aim of providing better protection to minors, Article 124b was also changed with Law no. 144/2013.

#### **Article 124b, para 1, now reads:**

*Physical or psychological maltreatment of minors by their parents, sister, brother, grandfather, grandmother, legal guardian or by any other person who is obliged to look after him, is sentenced by imprisonment from three months up to two years.*

#### **Moreover, Article 124b, para 2, reads:**

*Coercion, exploitation, encouragement or the use of a minor to work to obtain income, to beg, or to perform actions that damage his/her*

*mental and/or physical development or education, shall be punishable by two to five years of imprisonment.*

*When committing of this act has caused serious harm to the health of the minor or the death of the minor, it shall be punishable by 10-20 years.*

Although the legislator had the aim to improve the protection of minors, the second paragraph of Article 124b partly overlaps with Article 128b on trafficking of minors. The enforcement of this article in practice and the ensuing questions as to the legal situation of minors will bring confusion and do not fit the logic of the high interest attached to the protection of minors.

## 2.2. Forced labour, slavery, slavery-like practices and servitude

The Constitution prohibits all forms of forced labour (Article 26). The Criminal Code, however, does not contain specific articles which criminalise forced labour and/or slavery. Forced labour and slavery, however, are elements of the criminal act of trafficking. There is very limited judicial practice on forced labour and slavery<sup>17</sup>, so it is not clear how these concepts are interpreted in judicial practice. They are, however, defined in international law, in particular the ILO conventions on forced labour. Also the case law of the European Court on Human Rights provides guidance, in particular the case of *Siliadin v. France* (application no. 73316/01) and *C.N. and V. v. France* (application no. 67724/09).<sup>18</sup>

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17 There are no cases of forced labour and slavery which were supported by Center for Legal Civic Initiatives (CLCI).

18 See ECtHR, Key case-law issues, Prohibition of slavery and forced labour, Article 4 of the Convention. Guide on Article 4, December 2012, available at [http://www.echr.coe.int/Documents/Guide\\_Art\\_4\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf); ECtHR, Factsheet – Trafficking in human beings, March 2014, available at [http://www.echr.coe.int/Documents/FS\\_Trafficking\\_ENG.PDF](http://www.echr.coe.int/Documents/FS_Trafficking_ENG.PDF); ECtHR, Factsheet – Slavery, servitude and forced labour, March 2014, available at [http://www.echr.coe.int/Documents/FS\\_Forced\\_labour\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Forced_labour_ENG.pdf).

## 2.3. Prostitution

The Albanian Criminal Code penalises the exploitation of prostitution and the use of premises for prostitution, as well as exercising of prostitution itself.

Exploitation of prostitution is criminalised in Article 114 CC:

1. *Inducing, mediating or obtaining financial benefits from the prostitution of others is punished with imprisonment from 2 to 5 years.*
2. *When committed against minors, against some persons, relatives, in-laws, within a custodial relation, or by taking advantage of an official relation, or when it is committed in collaboration, more than once, or by persons who have state or public functions/duties, it is punished from 7 up to 15 years imprisonment."*

**Article 115 CC criminalises the use of premises for prostitution:**

*Managing, utilizing, financing, renting out the premises for purposes of prostitution, is punishable by a fine or up to ten years of imprisonment.*

### **Difference between trafficking in human beings and exploitation of prostitution**

Formally, the difference between the offence of exploitation of prostitution (Article 114 CC) and trafficking for the aim of prostitution (Article 110a and 128b CC) lies in the way how these criminal acts are committed and more concretely in the elements of the criminal act. According to the Criminal Code, exploitation of prostitution is committed through pushing, mediation, or receiving rewards, whereas trafficking, beside these elements, also requires other elements, such as recruitment, transportation, hiding or receipt of a person and the use of coercion or deceit. In practice, however, there often is confusion about the difference between trafficking and exploitation of prostitution, especially at the level of the District Courts. This is important as they decide whether or not the case should be referred to the Serious Crimes Court.

The two crimes are also included in different sections in the Criminal Code. Trafficking in adult persons (Art. 110a CC) is included in the Chapter on criminal

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acts against the freedom of persons, whereas article 114 on exploitation of prostitution is included in the Chapter on criminal acts against morals and dignity.

According to the opinion of two judges of the Serious Crimes Court of Tirana, the criminal acts of exploitation of prostitution and trafficking in adult persons differ from each other both in the way they are committed and in the interest they protect in relation to the damaged person.<sup>19</sup> The articles on trafficking relate to the protection of the freedom and dignity of the person as a fundamental right, while Article 114 CC on the exploitation of prostitution protects the morals and dignity of the person.

According to another judge the difference between trafficking and exploitation of prostitution consists in the fact that in the case of trafficking the victim is totally controlled by the perpetrator and commits every action asked by him. It is the total dependence of the victim from the authors of the criminal act, due to threats, violence, fraud, destroying of personality, etc. and the absence of the victim's will in committing the act of prostitution.

The latter raises the question whether the law also protects prostitutes from being trafficked and subjected to forced labour or whether consent to prostitution is considered to imply consent to violence and abuse. The latter would mean that prostitutes can be trafficked with impunity. A similar reasoning in regard to trafficking for, e.g., domestic labour would imply that if a person consented to work as a domestic worker, did so before or wishes to continue to do so, it would exclude that person from being recognised as a victim of trafficking for domestic labour. This question has not only theoretical importance, but may also have severe practical consequences for the victim. Depending on whether the crime is qualified as trafficking or exploitation of prostitution, the victim will either be entitled to protection and assistance or be prosecuted and punished herself.

The importance is not only related to the qualification of the crime, but also to the fact that the two criminal articles fall under the competence of different courts. Article 110a and 128b CC fall under the competence of the Serious Crimes Court, while Article 114 CC falls under the competence of the District courts.

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19 Interview May 26, 2014.

## Minors

Especially the overlap between 114(2), exploitation of minors for prostitution, and trafficking of minors for prostitution causes problems in practice, as Article 128b (trafficking in minors) criminalises any exploitation of children, regardless the will of the minor or the use of coercive and deceptive means. This is in accordance with the UN Protocol and the CoE Convention on trafficking, as well as with the Convention on the Worst Forms of Child Labour, which defines any use, procuring or offering of a child for prostitution as exploitation (Article 3).

According to the opinion of the prosecutor in the Serious Crimes Prosecutor's Office in Tirana, the overlap between the two causes problems in the proper qualification of the criminal act:

*"The difference [between exploitation of prostitution and trafficking] consists in the way and forms of committing each of them. It is, however, not clear what the difference is between the second paragraph of Article 114 CC concerning the exploitation for prostitution of minors, and the criminal act of trafficking of minors, as according to the definition of trafficking in the Convention of the Council of Europe on Action Against Trafficking in Human Beings each case of exploitation of minors, regardless their will, should be considered as trafficking of minors. In practice this situation has caused difficulties in regard to the proper qualification of the criminal act"* (interview 26 May 2014).

## Criminalisation of prostitutes and clients

Prostitutes themselves are criminalised by Article 113(1) CC, which penalises the committing of prostitution. The maximum sanction is 3 year imprisonment, in practice this is most times 1 year conditionally. Persons who have not yet reached the age of 14 cannot be criminally prosecuted (Article 12 CC).

In the past, the Criminal Code criminalised only prostitutes. With Law No. 23/2012<sup>20</sup>, Article 113(2) CC also criminalises clients. Article 113 now reads:

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20 Law No. 23/2012 "On Some Amendments to Law No. 7895 of 27 January 1995, Criminal Code of the Republic of Albania, Amended".

1. *Prostitution is punishable by a fine or up to three years of imprisonment.*
2. *Giving remuneration for personal benefit of prostitution is sentenced by fines or up to three years imprisonment.*

Before the change of law the testimony of clients was the most important evidence, this has changed now.

### **Background of the changes in the Criminal Code regarding the Article 113 CC**

CLCI initiated legal steps aiming to abolish Article 113 CC as unconstitutional through the submission of an Informative Note to the Commissioner for Protection from Discrimination and by providing free legal aid in the case of B.Q. In its "Information to the Commissioner for Protection from Discrimination for the case B.Q., accused and convicted by the Albanian courts for the criminal act of prostitution, based on the Article 113 CC", dated 11 January 2012, it asked the Commissioner for Protection from Discrimination to exercise his legal competences as laid down in Law No. 10221 of 4 February 2010 "On protection from discrimination", and to recommend the responsible authorities to abolish Article 113 CC, arguing that the article violated the principle of gender equality as it indirectly discriminated against women and girls.

The Commissioner in Recommendation no. 49, dated 13 February 2012, addressed the case to the Head of the Commission on Legal Issues, Public Administration and Human Rights of the Parliament and Speaker of the Parliament, recommending the abolishment of Article 113 CC, aiming for prostitutes to be no longer subject of criminal prosecution and punishment.

The Parliament, however, did not abolish Article 113 CC but changed it by adding the second paragraph. Following Law no. 23/2012,<sup>21</sup> since March 01, 2012 Article 113 CC also punishes clients of prostitutes.

This legal measure did not improve the legal situation of prostitutes. The article continues to have negative effects on women.

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21 Law No. 23/2012 "On Some Amendments to Law No. 7895 of 27 January 1995, Criminal Code of the Republic of Albania, Amended", Official Bulletin no. 26, p.1299.

During the period 1 January 2011 to 1 June 2012 CLCI monitored the judicial practice in Tirana, Durrresi, Shkodra and Vlora District Courts. Its main findings were laid down in its "Report on knowledge and implementation of gender equality standards in court decisions".<sup>22</sup> From the report, it appears that predominantly women are punished under Article 113. Also minors are prosecuted and punished for prostitution.

In 2011, the Tirana Judicial District Court issued 15 court decisions on Article 113 and punished 17 females. In 2012 it issued 12 court decisions, punishing 13 females for prostitution: 10% of the 30 women and girls sentenced for prostitution were minors; 20 % were between 18-20 years old; 43.3% were between the age of 21-30 year. More than 63% of them were without education or had education up to the 8<sup>th</sup> class; approximately 13 % of them finished high school. For 23 % there are no data. The Durrresi Judicial District Court issued only one court decision in 2011, punishing one female. In 2012 it issued 5 court decisions, punishing 4 females and 1 male.

To understand the effects of the change of Article 113 CC CLCI also monitored the court decisions of the Tirana Judicial District Courts in 2013.

In 2013, the Tirana Judicial District Court sentenced 5 women and 2 men under Article 113 CC. The arguments of the judges in the court decisions made clear that all punished women suffered from family and social economic problems. It can be inferred that the individuals who exercise prostitution are particularly vulnerable socially, economically, physically, psychologically, emotionally and in family terms, and are more at risk of violence and harm.

Thus, regardless the fact that Article 113 CC (changed) seems to be gender neutral, it brings negative and discriminatory effects on women, because of the fact that they are women and because of their vulnerability. This situation reflects the fact that the criminal legislation regarding prostitution continues not to be in compliance with the Constitution of Republic of Albania, Article 18, and international acts.

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22 CLCI, Report on knowledge and implementation of the gender equality standards in court decisions", available at the website of CLCI [www.gag-al.org](http://www.gag-al.org).

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In regard to children it is, in particular, in violation of the ILO Convention on the Worst Forms of Child Labour,<sup>23</sup> which defines “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances” as one of the worst forms of child labour. The Convention obliges member states to provide the necessary and appropriate direct assistance for the removal of children from these forms of child labour and for their rehabilitation and social integration, as well as to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour and to take account of the special situation of girls (Article 7).

Moreover, Article 113 CC (changed) is in contradiction with the UN Convention on Elimination of All Forms of Discrimination Against Women, ratified by Albania in 1993. It is also not in line with the resolution of the European Parliament of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI), which holds that the buying of sexual services from prostitutes under the age of 21 years old should be a criminal act, whereas the offering of such services should not to be punished (point 19). In point 26, the Resolution calls on State Parties to repeal repressive legislation against prostituted persons.

Different academics have expressed the necessity to repeal this article according to Albanian doctrine.<sup>24</sup>

### The case of B.Q

One of the cases supported by CLCI is the case of a girl named B.Q, who was accused and penalised for exercising prostitution. . In May 2011 she was declared guilty and punished by the Tirana Judicial District Court under Article 113 CC for committing the criminal act of prostitution (court decision no. 744, dated 06.05.2011). The sentence was confirmed in appeal by the Tirana Appeal court (court decision no. 1430, dated 21.12.2011).

The lawyers requested both courts, the Tirana Judicial District Court and the Tirana Appeal Court, to declare B.Q innocent, arguing that Article 113 CC is in violation

23 Ratified by Albania on 2 August 2001.

24 See: Ismet Elezi, “The Criminal Law. Special Part”, Tirana 2009.

of Article 18 of the Constitution of the Republic of Albania<sup>25</sup> and the Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW.<sup>26</sup> Based upon Article 145(2) of the Constitution of the Republic of Albania they requested both courts to suspend the judgement and send the case for judgement to the Constitutional Court. Both courts refused to consider this request.

B.Q, supported by the lawyers of CLCI, consequently submitted a request to the High Court of Albania asking to suspend the judgement and send the case for judgement to the Constitutional Court, aiming for the Constitutional Court to abolish Article 113 CC as being in violation with the Constitution of Republic of Albania and the Convention on the Elimination of All Forms of Discrimination Against Women.

In the judicial process before the High Court, in addition to other arguments, it was argued that the CEDAW Committee – considering the initial and second periodic report submitted by the Albanian State - in its 2003 Concluding Observations in a clear way expressed its concern that “prostitutes, but not those who exploit prostitutes, are prosecuted and punished” (A/58/38 (Supp), para.70). In its Concluding Observations of 16 September 2010 the Committee reiterated its concern that prostitutes and victims of trafficking remain subject to criminal punishment under the Penal Code, noting that “the Albanian Criminal Code is one of the fewest, if not the only one in Europe, that holds prostitutes criminally accountable” (CEDAW/C/ALB/Q/3, para. 13<sup>27</sup>). It urges the state of Albania

*“to amend its Penal Code so that prostitutes are not criminally prosecuted and punished, and to provide adequate support programmes for women who wish to leave prostitution”* (CEDAW/C/ALB/CO/3, para. 29).<sup>28</sup>

25 Article 18 of the Constitution of Republic of Albania states that: 1. All are equal before the law. 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status or ancestry. 3. No one may be discriminated against for reasons mentioned in paragraph 2 if no reasonable and objective legal grounds exist.

26 Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

27 Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/CEDAW-C-ALB-Q3.pdf>. See also Responses to the List of issues and questions, para 57 and 58, available at <http://www.refworld.org/pdfid/4eeb28c12.pdf>.

28 <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ALB-CO-3.pdf>.

The CLCI lawyers used CEDAW as a tool in the High Court, based upon the fact that the Convention, under referral to article 116 and 122 of the Constitution of the Republic of Albania, has supremacy over internal laws of the country. Also, it was argued for the High Court that the CEDAW Committee is the competent organ in regard to the final interpretation of the CEDAW Convention.

CLCI requested the High Court, in issuing its final court decision regarding the case of B.Q., to also consider the policies of the EU, which go towards abolishing restrictive measures for the persons who prostitute and recommend that the buying of sexual acts to be prevented. In this respect, attention was called to the European Parliament Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), which stresses that forced prostitution, prostitution and exploitation in the sex industry can have devastating and long-lasting psychological and physical consequences for the individual involved (even after they have left prostitution), especially children and adolescents. It was argued that the Resolution calls on States to consider that one way of combating the trafficking of women and girls for sexual exploitation and improving gender equality is the model implemented in Sweden, Iceland and Norway (the so-called Nordic model), and currently under consideration in several European countries, where the purchase of sexual services constitutes the criminal act, not the services of the prostituted persons.

In conclusion, the High Court adjudicated the case on 2 April 2014 and decided to send the case to the Constitutional Court to examine the constitutionality of Article 113 CC, *in casu* whether the article is in compliance with the Constitution of Republic of Albania.

### **Competence of the Serious Crimes Court**

Law no. 9110 of 24 July 2003 "On organisation and functioning of the court of serious crime" established the competence of the Serious Crimes Court to deal with all human trafficking cases. This has increased the effectiveness of combating organized crime and serious crimes. The fact that cases of trafficking in human beings are only judged by the Serious Crimes court has led to the unification of the judicial practice regarding cases of trafficking in human beings.

According to Article 75a of the Criminal Procedural Code (hereafter: CPC) on “The competences of the Court of Serious Crimes”, the Court of Serious Crimes has the material and territorial competence to judge all cases under Article 110a (Trafficking in Adult persons) and Article 128b (Trafficking of Minors). Cases on (exploitation of) prostitution and illegally crossing of borders are dealt with by the regular (district) courts.

## 2.4. Collection and publication of case law

There is no central data base of case law. Only the Tirana District Court has a good website on which it publishes case law in regard to the cases that fall under its competence. The other District Courts don't publicise their judgements.

There are, however, various institutions that collect data on trafficking. The Minister of Interior (MOI) is the responsible administrative authority for human trafficking.

The main institutions dealing with victims of trafficking are the Ministry of Interior; Ministry of Justice; Ministry of Social Welfare and Youth (former Ministry of Labour, Social Affairs and Equal Opportunities); Ministry of Education and Science; Ministry of Foreign Affairs; National Centre for the Reception of Victims of Trafficking; the General Prosecutor's office and the First Instance Court of Serious Crimes. The School of Magistrate has an important role in organising trainings for professionals of the justice system.

The National Coordinator of Human Trafficking and the Annual Statistics of the Ministry of Justice are the main instances collecting data and jurisprudence. The publications of USAID, OSCE/ODIHR and the Centre for Legal Civic Initiatives are other sources for gathering strategic cases and jurisprudence.

The Annual Statistics of the Ministry of Justice are publicly available at the website of the Ministry of Justice, but they are seriously lacking behind. There have been some attempts on publication and unification of the jurisprudence mainly from international and national organisations in Albania.

During the last years the decisions of the European Court of Human Rights are published at the website of the Center for Legal Civic Initiatives. Materials

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regarding trafficking in human beings are used in the training organised by the School of Magistrate for judges, prosecutors, police officers, the staff, etc. There are data available at the website of the School regarding the number of professionals of the justice system trained on the topic of trafficking in human beings. According to the website of the School of Magistrates during the academic year 2013-2014 there were 74 participants trained on the topic of trafficking of human beings, 238 participants on the changes in 2012 and 2013 in the Albanian Criminal Code and 92 participants on the European Convention for Human Rights and Freedoms.

The collection of data is important to design policies and interventions regarding trafficking in human beings. It shows the trends in this phenomenon and the ways it is addressed by society.



# PART 3

# GENERAL POSITION OF VICTIMS OF TRAFFICKING IN CRIMINAL PROCEEDINGS

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Trafficking victims are witness in the criminal proceedings against the perpetrator. In case they also exercise the right to seek compensation for damages from the offender by joining a civil claim to the criminal case under Article 62 Criminal Procedural Code (here after CPC), they are also injured party. There are no specific provisions in the CPC on the status of victims of trafficking; their position is equal to witnesses or injured parties in other crimes.

All cases of trafficking are adjudicated by the Serious Crimes Court, which has the material and territorial competence to judge cases of human trafficking. Cases on (exploitation of) prostitution and illegally crossing of borders are dealt with by the regular (district) courts.

There are a number of provisions in the CPC which provide protection to victims, including victims of trafficking:

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- The witness may be interrogated at a distance, in the country or abroad, through audio visual connection.
- When there are reasonable grounds to belief that the person may be subject to violence or threat the testimony of the victim during the preliminary investigation can be admitted as evidence during the trial.
- The law on the “Organization of the Serious Crimes Court” provides that witnesses may be questioned in the presence of the defendant and his or her lawyer, but without visual contact and without communicating the victim’s identity to the defendant.
- The questioning of juvenile witnesses may be performed by the presiding judge, upon the parties’ requests and objections. The presiding judge may be assisted by a member of the juvenile’s family or by an expert on child psychology.

According to the CPC the Public Prosecution Service can instigate a criminal investigation following the report of a citizen or *ex-officio*. In practice, victims of trafficking report the crime to the police or the prosecutor’s office. In many cases, the criminal report is made by their relatives. The criminal reports are taken seriously and after the registration of the case measures are taken to both provide the necessary assistance to the victim and collect evidence in order to bring the perpetrators to justice. For this purpose, special investigative techniques can be applied. Since 2010, a special team for the investigation of human trafficking cases has been created in the Prosecutor’s Office for Serious Crimes. This is composed of three prosecutors and four judicial police officers. The work of this team is coordinated with the work of the sections on trafficking in the regional police departments, as well as with the Coordinator of the Office of the Anti-Trafficking Unit in the Ministry of Interior.

## **Main problems**

It is the obligation of the Albanian state stemming from the international acts it ratified, as well as an indispensable necessity to provide free legal aid to victims of trafficking in human beings from the moment of their first contact with the authorities in criminal, civil and administrative proceedings.

The Criminal Procedural Code (CPC), however, does not guarantee (free) legal aid & representation by a lawyer to victims of trafficking. Victims have the status of witnesses in the criminal process and under these conditions have no right to have their interests protected by a lawyer. When victims exercise their right to seek material redress from the offender by joining a civil claim to the criminal process, they have the right to representation by a lawyer.

In 2013 the Law on legal aid was changed, entitling victims of trafficking to free legal aid. There are, however, serious obstacles in the implementation of this law. Despite this change, up till now legal aid and representation is mainly provided by NGOs like CLCI, The Psycho Social "Vatra" Center, etc.

Secondly, the long duration of the judicial processes de-motivate victims to claim their rights, increase the risk for their life and in the end make the existing legislation non effective.

Thirdly, the Albanian law provides for the possibility of victims to claim compensation from the offender through two procedures. According to Article 61 CPC ("Civil lawsuit in criminal proceedings") the person who has suffered material damage by the criminal offence or his/her heirs may file a civil lawsuit in the criminal proceedings against the defendant in order to claim restitution of property or reimbursement for the injury, or the victim may claim material and moral damage in a separate civil procedure according to Article 608 and 625 of the Civil Code.

The Criminal Procedural Code, however, allows the criminal court to separate the civil lawsuit from the criminal process and refer the claim for compensation to the civil court. This can be done either on the request of the parties or *ex officio*, if judging the civil claim provides difficulties or causes delay in the criminal process.<sup>29</sup> In practice this is always done. Claiming compensation in a civil procedure, however, is costly and time consuming and does not offer a real and effective possibility for victims of trafficking to get compensation.

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29 Appendix Criminal Procedural Code according to Law no.8813, dated 13.06.2002.

Moreover, it is not possible to claim moral damages in the criminal process. According to Article 61 CPC the civil suitor in the criminal process only has the right to ask compensation for material damages.<sup>30</sup> The fact that the victim cannot claim moral damages in the criminal process represents a serious obstacle for redress, considering that in the case of trafficking the material damage is accompanied with severe moral damage.

Finally, even if compensation is granted, either in the criminal or in a civil procedure, the execution of the compensation order presents insurmountable obstacles. CLCI does not know any case in which compensation was granted and *de facto* received by the victim.

There is therefore an urgent need to change the Criminal Procedural Code in order to facilitate victims to claim compensation from the offender in the criminal process, not only for material but also moral damages.

Secondly, specific articles should be included in the Civil Code to facilitate redress for damages suffered from sexual or other forms of exploitation which are part of the crime of trafficking of human beings, in order to guarantee the right to redress of victims of trafficking in practice.

### Position of child victims (i.e. under 18) in criminal proceedings

There is a lack of procedural guarantees for child-friendly questioning of minors during preliminary investigations. In regard to the questioning by the court this is regulated in Article 361(5) CPC, which states:

*The questioning of juvenile (minor) witnesses may be performed by the presiding judge, upon the parties' requests and objections. The presiding judge may be assisted by a member of the juvenile's family or by an expert on child education. When it is considered that the direct questioning of the juvenile does not harm his psychological condition, the presiding judge orders the continuation of the questioning*

30 According to Article 61 CPC ("The civil lawsuit in the criminal process") also the heirs of the victim have the right to join a civil case to the criminal process for the return of property or redress from the offender.

*according to the provisions of paragraphs 1 and 2. The order may be revoked during the questioning.*

The Criminal Procedural Code, however, does not provide procedural guarantees for juvenile victims when they are questioned during the preliminary investigation by the police or prosecutor, as it does not require that minors are questioned in the presence of a psychologist or social worker or relatives. In practice, however, psychologists or social workers are present at interviews with minors.

Despite the lack of specific procedural guarantees, the Criminal Procedural Code provides for mechanisms which can serve to protect victims of trafficking: the witness can be interrogated at a distance in or outside the country using audio visual connections; minor witnesses can be interrogated by a special judge; the head of the judging body can be assisted by a relative of the minor or by a specialist in the field of education of children. When there are reasons to believe that the victim/witness is at risk of violence or threats evidence (testimony) can be secured during the phase of the preliminary investigation. The law "On organisation of the Serious Crimes Court" also provides that witnesses can be asked in the presence of the defendant and his or her lawyer, but without visual contact and without making the identity of the victim known to the defence.

### Definition of the term "victim"

The law does not define the term 'victim'. The Criminal Code uses the term "trafficked person" whereas the Criminal Procedural Code uses the term "damaged person". In practice, the state authorities refer to the Council of Europe Convention for the definition of "victim of trafficking".

There are some basic definitions in the *Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking* (hereafter: SOP). According to the SOP, a victim of trafficking in human beings is "the person who is the target of trafficking in human beings, according to Article 4e of Law No.9642, dated 20.11.2006, on the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings". A potential victim of trafficking in human beings is defined as "the person about whom the agencies/

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institutions responsible for the initial identification deem that he or she may have been trafficked”.

The SOP define who are the competent authorities to decide if a person is a victim or possible victim of trafficking in human beings. According to the Standard Procedures a person can be considered victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the victim and the perpetrator.

Law no.108/2013 “On foreigners” defines as victims of trafficking in human beings “subjects who are benefitted the permission to stay in the Republic of Albania due to their status of victim of trafficking”.

There are a number of laws that provide specific rights for victims of trafficking of human beings:

- The special Fund on prevention of criminality envisages to provide support to victims of organized crime and violence, as well as to encourage social programmes for this category, earmarking assets under the administration of the Ministry which covers social issues.<sup>31</sup>
- The Law on legal aid provides that, under certain conditions, a person who is a victim of trafficking in humans being may benefit free legal aid.<sup>32</sup>
- The Law on Social Welfare and Services provides that victims of trafficking in human beings may benefit from economic aid after they left the social care institutions up to the moment in which they are employed (Article 5, point 4).<sup>33</sup>

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31 Article 37c, Law no.10192, dated 3.12.2009, “On the prevention and fight of organised crime and trafficking through preventive measures on assets”.

32 Law “On free legal aid”, amended, No. 143/2013, on some amendments to Law No. 10 039, dated 22.12.2008 “On legal aid”.

33 Law No.10 252, dated 11.3.2010, “On some additions to Law no. 9355, dated 10.3.2005, “On social welfare and services, changed”. In Article 4, point 23, the term victim of trafficking in human being is defined as “the physical person who is object of trafficking in human beings, according to the definition under letter “e” of Article 4 of Law no. 9642, dated 20.11.2006, “On ratification of the convention of the Council of Europe on Action against Trafficking in Human Beings”.

## Identification

Since 2011, the identification and referral of (possible) victims of trafficking is carried out by the social workers and specialists of the police section against illegal trafficking according to the Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking (SOP) approved by the Council of Ministers.<sup>34</sup> The SOP defines who the competent authorities are to decide whether a person is a victim or potential victim of trafficking in human beings.

The anti-trafficking section of the police in the various counties is one of the two sole structures responsible for the formal identification of victims of trafficking. According to the SOP, the Agency Responsible for Formal Identification at the border and in the territory of the Republic of Albania (G/SRFI) is the body that conducts the formal interview of persons who are notified as potential victims of trafficking. The body consists of an officer of the state police section for the fight against illegal trafficking (SFAIT) and a social worker of the regional state social service office (RSSSO) and carries out its assigned duties in the county where the person to be formally identified is located at that moment.<sup>35</sup>

According to the SOP all shelters which are members of the National Referral Mechanism are obliged to identify any victim or potential victim of trafficking accommodated or treated in their shelter and to formalize the identification process with the taking of notes<sup>36</sup> and a formal interview. These two documents are signed by the authorized persons and are the only documents that can serve as “certification” for a person’s status as (potential) victim of trafficking.

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34 Decision of the Council of Ministers No. 582, dated 27.07.2011, “Approval of Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking”.

35 See: <http://www.albania.iom.int/publications/brochures/Brochure-Anti%20Trafficking%20Police%20in%20support%20of%20VoTs%20-%20ENG.pdf>

36 According to the SOP, during the interview the aim of the Notes are explained in an understandable way to the person who is interviewed (and the guardian or parent in the case of a minor), as well as how these Notes are kept and with whom this information will be shared.

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The 2013 Report of the American Department of State (TIP-report) notes that the government, in cooperation with the police directorates and NGOs, established three joint mobile identification units, each consisting of police officers and two NGO social workers; the units search local communities for potential victims of trafficking.

In practice CLCI encounters cases during their legal counselling and the provision of information, in which (potential) victims do not want to report their circumstances to the authorities because they do not trust them and are scared for their own safety or the safety of their families. Also, there are cases in which, even after recognition as trafficking victim, the women concerned do not address the relevant authority in the region where they live in order to benefit from financial support, because they fear for their safety and that they may face the prejudice of the people who will serve them. This is also the experience of the center "Different and Equal", with which CLCI cooperates and which provides accommodation and psychosocial services to victims of trafficking.

# IV. PART 4

## ACCESS TO LEGAL AID AND REPRESENTATION

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Victims have the right to legal counselling and representation to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for damages suffered. Legal advice and representation must be free of costs if the victim does not have sufficient financial resources.

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The right of victims of trafficking to legal assistance and free legal aid under the conditions provided by domestic law for the duration of any criminal, civil or other actions against the traffickers, including for the purpose of obtaining compensation, is laid down in various international and European documents, including:

- Council of Europe Convention on Action against Trafficking in Human Beings;
- Council of Europe Recommendation (2006)8 on assistance to crime victims<sup>37</sup>;

- Directive 36/11/EU on trafficking in human beings<sup>38</sup>;
- Directive 2012/29/EU (Victim Directive)<sup>39</sup>;
- Recommended Guidelines on Human Rights and Human Trafficking of the Office of the High Commissioner for Human Rights (Principle 9 & Guideline 9(3))<sup>40</sup>;
- UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>41</sup>

Article 15(2) of the CoE Convention on Action against Trafficking in Human Beings requires State Parties to *“provide in their internal law for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law”*.

CoE Recommendation (2006)8 requires State Parties to provide victims with effective access to justice.

Article 12(2) Directive 36/2011/EU requires Member States *“to ensure that victims of trafficking in human beings have access without delay to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources”*.

The OHCHR Recommended Guidelines on Human Rights and Human Trafficking require the provision of legal assistance to victims of trafficking, in a language that they understand, in regard to criminal and civil proceedings, as well as in regard to other actions taken against traffickers.

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38 Directive [2011/36/EU](#) of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011].

39 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

40 Available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

41 General Assembly Resolution 40/34 (A/RES/40/34, 29 November 1985). Available at <http://www.un.org/documents/ga/res/40/a40r034.htm>.

The provision of adequate assistance throughout the legal process to victims is one of the UN Basic Principles of Justice for Victims of Crime and Abuse of Power.

Access to legal aid before during and after the trial is not only important to defend the interests of the victim during criminal and other proceedings, but also for the right to compensation. If victims are provided with legal aid, they are able to effectively claim compensation and understand the complexity of the court procedures. Access to legal aid is also identified as a concern by the CEDAW Committee, which in its 2010 Concluding Observations on Albania recommended that free legal aid should be guaranteed to victims of trafficking in human beings (CEDAW/C/ALB/CO/3).<sup>42</sup>

### Current situation

Although the provision of legal aid to victims of trafficking is an obligation stemming from the international acts ratified by the Albanian State, the law does not yet guarantee the right of victims of trafficking to be represented by a lawyer in criminal and other relevant proceedings, including for compensation. Whereas since recently specific laws like the law no. 10039, date 22.12. 2008 "On Legal Aid", changed, envisage the right to a lawyer and free legal aid for victims of trafficking of human beings, this is not guaranteed in the Criminal Procedural Code. Moreover, there are still serious obstacles to overcome in order to actually implement this right.

Since 2013 victims of trafficking are entitled to free legal aid according to Article 13 sub 1(c), "Persons who are entitled to receive legal assistance", of the Law on Legal Aid:<sup>43</sup>

1. *Entitled to receive legal assistance are persons who:*
  - a) *request a lawyer's assistance in any phase of the criminal process and it was not possible to choose one because of financial reasons;*
  - b) *need legal assistance in civil or administrative cases, but do not have sufficient means for paying legal assistance or the cases are particularly complex*

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42 Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-ALB-CO-3.pdf>.

43 Law No. 143/2013, on some amendments to Law No. 10 039, dated 22.12.2008, "On juridical aid".

*regarding content and procedure. In this case, in order to receive legal assistance, the person has to prove that he/she is part of social protection programs or at least meets the requirements of these programs.*

- c) *need to protect their rights, through presenting the lawsuit, but did not have enough means to pay the tax on acts, as well as the necessary expenses for notices or other court services. In this case, the individual will benefit legal aid, when she/he proves that he or she: i) is included in social protection programs or meets the conditions to be included in them, or ii) is a victim of domestic violence or a human trafficking victim, for court cases related to them.*
2. *Minors are also entitled to receive legal assistance and it is obligatory that they receive assistance in trial and criminal proceedings.*
  3. *Legal assistance can be requested before, during and after the trial.*
  4. *The person who receives legal assistance has the obligation to collaborate with the State Commission for Juridical Aid and lawyer who provides it, to give valid information regarding the issue and to provide updated information, which could change the purpose of the provided assistance.*
  5. *Failure to comply with the 4<sup>th</sup> paragraph of this article by the person, who receives legal assistance for civil and administrative cases, constitutes a valid reason for the immediate termination of this legal assistance.*

The underlined text in Article 13 sub (1) c is only recently introduced with the law no. 143/2013 "On some amendments in the law no. 10039, date 22.12.2008 "On legal aid". There is a lack of data regarding the number of victims of trafficking of human beings actually receiving free legal aid.

#### Non-profitting sector support for victims of trafficking

In practice, in most cases victims of trafficking receive free legal aid from NGO lawyers like from CLCI and some other NGOs<sup>44</sup>, financed through donor-funded projects. CLCI cooperates with the shelter "Different and Equal" to provide victims of trafficking legal aid. In 2011 and 2012 CLCI provided free legal aid to 32 victims

<sup>44</sup> Psycho Social Center "Vatra" in Vlora, Different and Equal in Tirana, World Vision Elbasan, etc. are some NGOs working on this issues.

of trafficking: 15 in 2011 and 17 in 2012. In 2012, 4 of these cases were referred to CLCI by the Prosecutor's Office.

According to its 2013 report, "Different and Equal", in cooperation with CLCI, made a legal assessment of 32 new cases entering their program. The victims concerned are informed about their rights and are offered legal aid. In 15 new cases referred to "Different and Equal", the victims concerned denounced their traffickers.<sup>45</sup> Their cases are dealt with by the Serious Crimes Prosecutor's Office.

Another obstacle is the obligation to pay judicial fees.<sup>46</sup> Along with the changes in the Law on Legal Aid in 2013, a new paragraph has been added to Article 11, stating:

*Judicial aid includes even the exclusion, in civil and administrative procedures of the individual from the payment of the taxes, and all necessary expenses for notifications or other judicial expenses.*

Because this change is recent, it is not yet possible to assess its implementation.

In this context it is important to mention that the Constitutional Court in its Decision no. 7, dated 27 February 2013, has judged that the court is not hindered to exempt the suitor from the payment of judicial fees<sup>47</sup> in cases when he/she has no financial possibilities to make this payment. This means that there is space for the judge to assess the fulfilment of this procedural requirement and to exempt the person concerned from payment on a case-by-case basis, so as not to hamper her or his right of access to the court. The court can do this by examining the documents submitted by the citizen herself/himself to prove his/her inability to pay. This situation makes it necessary to consider the financial status of victims of trafficking to assess whether it is poor enough to exempt her/him from judicial taxes and expenses.

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45 See <http://www.differentandequal.org/Raporti%20Vjetor%202013%20-%20D&E.pdf>.

46 A major obstacle for victims of trafficking to have access to the court, was that they were not exempted from paying judicial taxes and judicial and Bailiff expenses. A victim of trafficking who wanted to claim compensation, had to pay to the court 1% of the amount she was asking as compensation, and 3 % of the amount granted by the court to the Bailiff Service as compensation for the enforcement of the court decision.

47 These fees also apply to the victim/injured party in other criminal proceedings.

## **The role of social workers in the provision of legal information**

The social workers of the residential centres for victims of trafficking in human beings play an important role in the provision of legal information to victims of trafficking when they interview victims. This responsibility of social workers is stemming from the Decision of the Council of Ministers No. 195, dated 11.04.2007, "The Standards of the Social Care Services for persons who are victims of trafficking or are potential victims of trafficking in the Residential Centers".<sup>48</sup> Regardless of the role of social workers, it is indispensable that victims are provided specialised legal aid from their first contact with the authorities.

## **Access of victims of trafficking to free state-funded legal aid**

The State Commission on Legal Aid is the body who decides on the allocation of a lawyer. Victims are not allowed to choose their own lawyer. According to the Standard Procedures, the body who concludes the formal interview and decides on the status of a victim or potential victim does not include a lawyer. The victim thus does not have access to a lawyer from their very first contact with the authorities.

## **Children**

There are no specific provisions in regard to legal aid and representation for child-victims. Child victims benefit from free legal aid as any victim of trafficking.<sup>49</sup>

When the victim is a child, the parents, guardian or representative represent the interests of the child, when he/she is party in the legal proceedings to ask redress. When the parents/legal representatives of the child are precluded from ensuring the child's best interest and/or representing the child, a guardian or representative is appointed to a child victim. This is regulated in the Family Code.

Up till now CLCI has not had a case in which it represented a child victim in court for compensation.

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48 See: <http://mpcs.gov.al/strategji-standarte>.

49 Law "On free legal aid", amended, No. 143/2013, on some amendments to Law no. 10 039, dated 22.12.2008 "On legal aid".

**Main problems**

The fact that since the change of law in 2013 victims of trafficking of human beings are entitled to free legal aid is an important step forwards in their access to the justice system. However, despite this positive step with respect to the legal framework, there is still a lot to do to guarantee this right in the practice. This includes streamlining procedures and allocating a budget, as well as raising awareness on the new law among the relevant institutions, providing information to victims and improving the quality of legal aid.

To actually implement this right, it is recommended that the Commission for Legal Aid issues guidelines, in which the specific responsibilities regarding legal aid for victims of trafficking and their representation in the judicial proceedings are laid down.

Secondly, it is recommended that part of the annual budget of the State Commission for Legal Aid be designated for the provision of legal aid to victims of trafficking.

Thirdly, the level of awareness of the fact that victims of trafficking are exempt from paying judicial taxes needs to be increased. Exemption of victims of trafficking from judicial taxes and expenses is strongly related with their access in the justice system.

The practice of NGOs working in support of victims shows that victims are not informed on their right to legal aid and how to apply for it at the State Commission on Juridical Aid, nor about their right to be exempted from the payment of judicial fees.

The right to legal aid by victims of trafficking also put to the table the issue of the quality of the legal aid provided to them. Lawyers financed through the State budget are not specialized in this field. Recently, the National Chamber of Advocates in cooperation with different human rights organizations have organised trainings focused on the rights of victims of trafficking. CLCI has organised some trainings for lawyers on this topic.

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It is clear that the quality of state funded lawyers needs to be improved. The law “On juridical aid” envisages that the State Commission for Legal Aid monitors the quality of legal aid offered, but there is a strong need for a system of monitoring to ensure that these lawyers are better trained and more aware on trafficking of human beings, the rights of the victims, etc.

The EU Progress Report 2013 on Albania notes:

*“As regards access to justice, the Law on legal aid was amended in May, introducing possible exemptions from judicial fees for victims of trafficking and domestic violence, and establishing local legal aid offices. The State Commission for Legal Aid called on lawyers to apply to be listed as free legal aid lawyers. Implementation of the law has been very slow and the budget allocation insufficient for local offices to be set up in the short term. Despite the amendments of May, access to justice was hampered by high judicial fees. Applicants requesting free legal aid still need to submit many documents, from various state institutions. Most free legal aid was provided by civil society.”<sup>50</sup>*

There is no on-line information available from the State Commission for Legal Aid in regard to the number of beneficiaries for the year 2013. According to the website of the Ministry of Justice, however, the State Commission for Legal Aid has reviewed 27 cases for the year 2011 and 4 cases for the period January-May 2012, for which legal aid is provided.<sup>51</sup>

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50 Available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf)

51 Mandro, A., “The status of the implementation of the Concluding Observations of CEDAW Committee”. The period of reporting July 2010-November 2012.

# V. PART 5

## RIGHTS OF VICTIMS

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### 5.1. Right to information

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Victims have the right to information in a language they understand about the available assistance services and how to access these, their rights and the relevant judicial and administrative procedures, including information on available remedies and access to legal aid.

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The right of victims of trafficking to information is laid down in, among other documents, the UN Trafficking Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings, Council of Europe Recommendation (2006)8, the EU Directive on Trafficking, the EU Victim Directive; and the Declaration on Basic Principles of Justice.

Article 6(2) of the UN Trafficking Protocol, requires State Parties to ensure that their domestic legal systems contain measures to provide victims of trafficking with information on relevant court or administrative procedures, and to provide victims with assistance to enable their views and concerns to be presented and considered during criminal proceedings.

Article 12(d) of the European Convention on Action against Trafficking in Human Beings requires State Parties to take measures to provide victims with assistance, including *“counseling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand”*. Article 15 (1) obliges states to *“ensure that victims have access, as from their first contact with*

*the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand”.*

CoE Recommendation (2006)<sup>8</sup> requires that victims are given access to information about the services, legal procedures, and the role of the victims in these procedures, as well as information about their rights to protection and compensation from the perpetrator or from the state, counseling and legal advice.

Article 4 of the EU Victim Directive (Directive 2012/29/EU) obliges Member States to ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority:

- a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
- b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- c) how and under what conditions they can obtain protection, including protection measures;
- d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
- e) how and under what conditions they can access compensation;
- f) how and under what conditions they are entitled to interpretation and translation
- g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
- h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
- i) the contact details for communications about their case;
- j) the available restorative justice services;

- k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Provision of information to victims about the progress of the proceedings and the possibility of allowing victims to express their concerns at the appropriate stage of proceedings constitutes one of the basic principles of the UN Declaration on Basic Principles of Justice.

The right of victims to information is closely related with their right to compensation and other rights. A victim may exercise his/her rights only if he or she is aware of them. Victims of trafficking usually have limited information about how the criminal justice functions, and this prevents them from fully exercising their rights.

Also the CEDAW Committee in its 2010 Concluding Observations on Albania raised the issue of guaranteeing the right to information for the victims of trafficking in human beings.

### **Current situation**

According to the Standard Operating Procedures (SOP) approved by the Council of Ministers,<sup>52</sup> the border and immigration police officers must inform victims on their rights and possibilities for assistance. The information is given after the person is being identified as a (potential) victim of trafficking. In the case of domestic victims police officers and NGOs give this information.

Victims of trafficking are not informed by a lawyer because they do not have one in the first contact they have with the authorities. According to the Criminal Procedural Code, the victim is not a party in the criminal process and therefore has no right to a lawyer.

The Criminal Procedural Code does not foresee any legal obligation for prosecutors to provide legal information to victims of trafficking. However, in practice, the prosecutor and the police officer in charge investigating the case inform the victim about their rights and duties related to the criminal process. They maintain constant contact with the victim (also through the centres where the victim is

52 Decision no. 582, dated 27.07.2011 "On the standard operating procedures for the identification and referral of victims/potential victims of trafficking".

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accommodated) about the progress of the investigation, the investigative stages, the completion of investigations, charges filed, personal security measures against suspected persons, court dates and the progress of the criminal case until the final decision. If the case is dismissed, the prosecutor under Article 329 of Criminal Procedural Code has the obligation to notify the victim (injured party) of this decision, who has the right to appeal.

According to the experience of CLCI, victims of trafficking also receive legal information from the prosecutor on the right of compensation.

An important source of information for victims are NGOs through the first contact of the victim with the social worker. Consequently, victims are consistently informed through cooperation with specialized organizations like CLCI and other organizations.

Informing trafficked persons on their rights, including the right to denounce traffickers and the right to compensation, should be an obligation for all responsible parties, at every step of the process.

Although a practise of informing victims is established, this does not justify the lack of provisions in the internal legislation which envisage the obligation of the responsible organs to inform victims of trafficking in human beings. It is necessary for the state to take legal measures to ensure that victims of trafficking are provided with information from their first contact with the authorities throughout the legal proceedings.

## **Children**

There are no specific provisions in regard to informing child and adolescent victims (i.e. under 18). In practice the same applies to children as to adult victims.

## **Main problems**

The three main problems in practice in regard to informing the victim are:

1. The Albanian legislation does not foresee any obligation for police, prosecutors or judges to inform victims of human trafficking on their

- legal rights in order to give them safety and make them realize that there are legal and social tools they can use in their advantage.
2. Victims do not receive complete information in regard to their right to claim compensation from the perpetrator and the State scheme under Law No. 10192 of 3 December 2009 "On Prevention and Fighting of Organized Crime and Trafficking through preventive measures against assets".
  3. Victims are not represented by a lawyer at all stages and informed about their legal rights, starting from the moment of identification.

This situation is explained by the weak focus on the rights of the victims of trafficking in human beings.

It means that there is a need for improvement of the legislation and the work of the relevant agencies in regard to the provision of information to victims. One way to ensure that information is given is through leaflets in which the rights of victims of trafficking are described in clear and easily understandable language.

## 5.2. Right not to cooperate with law enforcement

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Victims have the right to refuse cooperation  
with the prosecution authorities.

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Victims are not obliged to press charges or cooperate with the authorities. The formal identification is only conducted through the interview of the potential victim with his or her expressed will and only when conditions exist for a formal interview.<sup>53</sup> According to the standard procedures, the formal identification is done by the authorities.

The interview is only done with the informed consent of the person concerned. Before the interview the interviewers:

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53 See: [www.albania.iom.int/publications/brochures/BrochureAnti%20Trafficking%20Police%20in%20support%20of%20VoTs%20-%20ENG.pdf](http://www.albania.iom.int/publications/brochures/BrochureAnti%20Trafficking%20Police%20in%20support%20of%20VoTs%20-%20ENG.pdf).

## 56

- clarify the purpose of interview
- ensure that the (possible) victim recognises the position of the interviewers and the persons present during the interview
- ensure that the person is ready to start the interview
- ensure that the person is comfortable with the persons present during the interview and feels safe in the interviewing premises
- ensure that the person understands and accepts that upon conclusion of the interview , she/he may be contacted or interviewed again by the interviewers
- ask whether he/she feels comfortable with the interpreter outside the presence of the interpreter.

## Children

According to the SOP, in the case of minors the procedure is as follows:<sup>54</sup>

1. The SFAIT<sup>55</sup> police officer presents him/herself immediately to the Border Crossing Point upon notification by the Border and Migration Police officer for the identification of a minor (potential) victim of trafficking and takes him or her to the SFAIT police interviewing premises;
2. The SFAIT police officer summons the other members of the body for formal identification (G/SRFI)<sup>56</sup> and the regional social service social worker of the location where the interview will take place. If the minor is foreign, the SFAIT police officer requests an interpreter (the same as the one used at the border) who has to sign a Confidentiality Agreement;
3. The SFAIT police officer notifies the minor's parent or custodian to appear before police if the parent or custodian was not present until that time;
4. The SFAIT police officer and RSSO<sup>57</sup> social worker (G/SRFI) explain to the minor and his/her parent/custodian the purpose of the formal interview,

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54 See: [www.albania.iom.int/publications/brochures/BrochureAnti%20Trafficking%20Police%20in%20support%20of%20VoTs%20-%20ENG.pdf](http://www.albania.iom.int/publications/brochures/BrochureAnti%20Trafficking%20Police%20in%20support%20of%20VoTs%20-%20ENG.pdf).

55 Sector of the Fight against Illegal Trafficking (Police).

56 Group/Body Responsible for Formal Identification.

57 Regional State Social Service Office.

the difference between the interview and the criminal report and the way in which information obtained during the interview will be used, and request permission for the formal interview. If the minor and his/her parent/legal custodian do not agree to conduct a formal interview, or if the SFAIT police officer and social worker (G/SRFI) consider that the interview should be postponed for various reasons, they continue to consider the minor as potential victim according to the BMP<sup>58</sup> police officer's determination, and proceed with steps 8 and beyond, upon consultation with the RA<sup>59</sup> and the minor and his/her parent/legal custodian's decision;

5. If preliminary information indicates no involvement of the parent/custodian in trafficking or abuse, G/SRFI conducts the formal interview of the minor and the parent or custodian;
6. G/SRFI conducts an analysis of the interview and concludes on the status of the minor vis-à-vis trafficking and his/her needs for safety and care;
7. The RSSSO social worker (G/SRFI member) informs the RA member from MOLSAEO<sup>60</sup> on the minor's situation and consults with him/her about the minor's placement in an environment that is appropriate for his/her needs;
8. G/SRFI informs the minor and his/her parent or custodian about the assistance that may be provided and helps them make an informed decision about the assistance;
9. G/SRFI helps the minor and his/her parent or custodian to declare in writing their informed decision on assistance.

These procedures are functioning in practice.

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58 Border and Migration Police.

59 Responsible Authority.

60 Ministry of Labor, Social Affairs and Equal Opportunities.

### **5.3. Right to protection of privacy and safety before, during and after criminal proceedings and to be treated with respect and dignity**

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Victims have the right to protection of their private and family life, their personal data<sup>61</sup> and their safety before during and after criminal proceedings and to be treated with respect and dignity. They have the right to (free of charge) translation and interpretation services during interviews or questioning. If they testify, they have the right to witness protection and to be protected from threats, insults, intimidation and any other assault before, during and after the investigations, prosecution and trial.

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Article 11 of the CoE Convention on Action against Trafficking requires state parties to protect the private life and identity of victims. This includes the storage of personal data in conformity with CoE Convention No. 108<sup>62</sup> and encouraging the media to protect the private life and identity of victims. Also Article 6(1) of the UN Trafficking Protocol requires states to protect the privacy and identity of victims of trafficking, including, inter alia, by making legal proceedings relating to such trafficking confidential.

The OHCHR Guidelines on Human Rights and Human Trafficking stress that the identity of trafficked persons is not publicly disclosed and their privacy respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and not given false or

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61 'Personal data' means any information relating to an identified or identifiable individual. Data is considered personal when it enables anyone to link information to a specific person, even if the person or body holding that data cannot make that link. That means any information that identifies or can lead to the identification of one person (data subject) from the rest of persons falls under personal data.

62 CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108).

unrealistic expectations regarding the capacities of law enforcement agencies in this regard (OHCHR Guidelines no. 6.6).

Moreover, measures should be taken to protect trafficked persons from further harm and to protect their physical safety, while taking into account the age, gender and special needs of victims of trafficking, in particular the special needs of children (UN Trafficking Protocol Art. 6(4) & 6(5); CoE Convention on Action against Trafficking, Art. 12 & 28).

Trafficked persons who act as witnesses (and where appropriate their family and others close to them) should be provided with effective protection from harm, threats, potential retaliation or intimidation by traffickers and associated persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. This may include giving testimony in a way that ensures their safety (e.g. through video links), identification of a safe place in the country of destination; protection of identity during legal proceedings; and identification of options for continued stay, resettlement or repatriation (UN Convention on Organised Crime, Art. 25; CoE Convention on Action against Trafficking, Art. 28 & 30; OHCHR Guidelines no. 6, 4.10 & 5.8; EU Directive 36/2011/EU on trafficking, Art. 12).

Article 12 of Directive 2011/36/EU on trafficking requires Member States to ensure that victims of trafficking receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures. Moreover trafficked persons should receive specific treatment aimed at preventing secondary victimization by avoiding, as far as possible and in accordance with national law, the following:

- unnecessary repetition of interviews during investigation, prosecution or trial;
- visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- the giving of evidence in open court; and
- unnecessary questioning concerning the victim's private life.

Failure to protect the privacy and safety of victims and to treat them respectfully discourages victims from cooperation with the authorities in criminal proceedings and from claiming their rights, thus reducing these an empty shell.

### **Protection of personal data**

In general personal data of trafficked persons must be collected, saved and used in accordance with the Law "On Protection of Personal Data"<sup>63</sup> and the European Council Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108), as well as other legal acts of the Albanian legislation in force.

This means that victims are informed who/which body is collecting their personal data; their personal data are not disclosed or shared with other parties without their freely given and informed consent; personal data are collected only for specified, explicit and legitimate purposes in the framework of the tasks of the competent authority; personal data are processed only for the same purposes for which they were collected; processing<sup>64</sup> of these data must have a legal basis and be adequate, relevant and not excessive in relation to the aim for which it was collected; and personal data is deleted or made anonymous when it is no longer required for the purpose for which it was collected.

Before the formal identification interview, the victim is informed (and should agree) that impersonalized data (which do not reveal personal data), collected during the interview, will be preserved and used in accordance with the law for purposes of research which contributes to the fight against the exploitation and trafficking in persons.

In practice, however, there are problems in respecting these standards by the court and other actors.

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63 Law No. 9887 of 10 March 2008 "On Protection of Personal Data".

64 "Processing of personal data" means any operation which is performed upon personal data, including collection, recording, storage, retrieval, consultation, use, transmission, dissemination or otherwise making available, blocking, erasure or destruction.

## Individual risk assessment

A risk assessment is part of the format of the formal interview for adults. According to this format the risks are categorised as follows:

- High risk: the person and his/her family appear to be in high risk of revenge or threats by the traffickers or others. Measures are necessary to transfer the beneficiary to a high security shelter (with the consent of the person) and to coordinate with law enforcement agencies on the protection of the beneficiary and his/her family.
- Moderate risk: there is some information that the person may be at risk from the traffickers or their family, but these risks may be controlled. It is requested that a plan to protect the person against these threats is made.
- Low risk: the person does not appear to have any threat against him/her or his/her family. No action is needed at this moment, but continued safety assessments should be undertaken in case there are changes in the condition of the beneficiary.
- Undefined risk: there is some data that the person may be at risk from the traffickers or their family, but data need to be verified at the earliest time possible.

Further actions that may be undertaken for risk management and assistance to the person are:

- Denunciation of the criminal act and assessment if the victim can benefit from the law on protection of witnesses;
- Interruption of relations with persons involved in the crime;
- Measures undertaken for the protection of other persons under threat/at risk;
- Assistance for safe return and rehabilitation;
- Change of the person's location;
- Agreement between the victim and the interviewers on the way of communication and keeping contact in the future.<sup>65</sup>

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65 Ministry of Interior, Office of the National Coordinator on Combating Trafficking in Persons,

## **Right to (free of charge) translation and interpretation services during interviews and questioning**

In accordance with Article 98 CPC, victims who do not speak Albanian are questioned in their native language and the records/ minutes are also kept in this language. Victims who speak a foreign language are helped with a mother tongue translator. The translator is assigned by the prosecutor (in the preliminary investigation stage) or by the court (in the trial phase). The translator is paid by the state. The translator is appointed from the list of certified translators from the Ministry of Justice.

## **Presence of a confidante during interrogation**

Victims are allowed to be accompanied by someone of their own choice whom they trust during interrogations (e.g. a social worker or psychologist) by the police, the prosecutor and at the trial.

## **Repetition of interviews**

Victims are questioned in a restricted way during the investigation process and only when it is necessary. In the case of new facts, on which they have not been previously interrogated, they can be questioned again. According to the procedural rules on the interrogation of victims (Art. 153-154 CPC) and respecting the principle of non re-victimization, the victim cannot be re-questioned for facts on which she or he has previously declared. During the criminal investigation the victim is questioned by the judicial police officer and/or the prosecutor of the case. During the trial, the victim is questioned in her/his quality of witness by the prosecutor, the lawyer, the defendant and the court.

## **Protection of the privacy and safety of victim-witnesses during and after criminal proceedings**

The law provides for several provisions to protect the victim-witness during criminal proceedings:

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"Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking", Tirana 2011.

- During the trial victims can be heard behind closed doors, without the presence of the suspect and/or through video or audio link, and with the exclusion of the public in order to avoid contact between the victim and the accused and to protect the victim from revenge by persons participating in the judicial process. The testimony of the victim during the criminal investigation can be used for the trial so the victim does not have to testify again;
- The court may decide to hold the examination behind closed doors when it is deemed necessary to protect the safety of witnesses, as well as in the case of the questioning of juveniles (Art. 340(1) c & ç CPC). The public can be excluded from the hearing by the court. Exclusion of the media is not specifically foreseen but falls under the same articles (Art. 340 CPC; Art. 7 of the Law on the Organization of the Serious Crimes Court);
- The trial can be conducted behind closed doors when it is in the interest of the protection of the participants in the trial. Victim/witnesses may be questioned in the presence of the suspect and his/her lawyer without visual contact and without making the victim's identity known to the suspect and his/her defenders (Art. 7 & 8 Law on the Organization of the Serious Crimes Court);
- The witness may be interrogated at a distance, in the country or abroad, through audio visual connection, in compliance with the rules stipulated in international agreements and the provisions of the CPC (Art. 361(7) CPC);
- When there are reasonable grounds to belief that the person may be subject to violence or threats, the court can allow the admission of the testimony of the victim during the preliminary investigation as evidence. This makes it possible to limit the participation of the trafficking victim in the judicial process, considering the complexity of the investigation for these criminal offences (Art. 316(b) CPC).
- During the investigation the victim and the organisations that support the victim are not obliged to reveal the victim's residence address or the shelter where the victim stays. In practice the prosecutor communicates

with the shelter. Communication through CLCI can also be a possibility in cases in which the victim is not accommodated in the shelter.

In the practice of the Serious Crimes Court the articles which are most often applied are those that allow for closed hearings when the victim is being questioned and the avoidance of visual contact with the suspect and his/her attorney. The possibility of admission of the testimony of the victim during the preliminary investigation as evidence at the trial is applied in all cases where there is a risk that the victim may be subjected to threats or is promised money in order to withdraw their criminal report or not to testify.

From the monitoring of court sessions, however, it appears that in many court sessions the personal data of the victim are made public.

In the case of B.Q. CLCI requested the High Court - because of the fact that the criminal act of prostitution for which B.Q. was sentenced by the Tirana Judicial District Court is directly related with the dignity and morals of B.Q. - to consider the obligations stemming from the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108) and Article 3(2) and Article 6 and the practice of the European Court of Human Rights, and to include in the court decision only initials or coding the data of the victim's name (as for CLCI she is a victim of inequality in society and Article 113 CC is unconstitutional). The High Court used during the whole process only the initials of B.Q.

### **Special witness protection programmes**

The Law on the protection of witnesses and justice collaborators (changed)<sup>66</sup> provides for a special witness protection program, but this is only rarely used because the conditions are very strict. The witness should be in danger and this danger must be current, concrete and serious. In most of the cases victims, after filing the criminal report, are protected by being accommodated in shelters. There is only one case known of the Serious Crimes Court (decision has not yet become final) in 2013, in which the victim is involved in the witness protection program.

<sup>66</sup> Law No.10173 of 22 October 2009 "On the protection of witnesses and justice collaborators", changed.

The witness protection program includes the following measures:

- a. change of identity;
- b. change of residence;
- c. temporary protection of the identity, information and documents of the protected person;
- d. declarations of the witness under another identity and their administration with special means for voice deformation, non-appearance and other forms defined by law;
- e. special physical and technical measures of protection in the place where the protected person resides, as well during transportation, including also situations where such protection is needed for the fulfilment of the obligations towards the justice authorities;
- f. protection and special treatment in cases when the justice collaborator has been placed in prison as a pre-trial security measure or sentenced by imprisonment;
- g. social rehabilitation;
- h. maintenance, change of the work place and temporary employment;
- i. financial aid for the period of time between two employments;
- j. professional re-qualification;
- k. giving of the advice and specialized legal assistance;
- l. other ways as defined by law.

In addition to the legal provisions described above, the Law on the protection of witnesses and justice collaborators describes in detail the special measures, the way and the procedures for the protection of witnesses and justice collaborators, the organisation, functioning, competences and the relations among the agencies in charge of the proposal, evaluation, approval and application of special protection measures.

The special protection measures may not be implemented to such an extent and in such way, that it would lead to the improvement of the economic condition of the protected person as a result of their implementation. The special protection measures, as a rule, are set for an indefinite time limit and can be applied to all phases

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of the criminal proceeding, as well as after its termination. The duration of the special protection measures depends on the level of danger, suitability of the protected person in relation to the special protection measure, as well as from his/her correctness in the fulfilment of the legal obligations and conditions provided in the agreement of protection. The rules and detailed criteria for the content, meaning, suitability, manner and procedures of the issuance and upgrading of the implementation of the special protection measures are to be defined by joint guidelines of the General Prosecutor, Minister of Public Order and Minister of Justice.<sup>67</sup>

## Children

The Witness Protection Law is applicable to both adults and minors. If the protected person is a minor or an adult with restricted or removed ability to act, his or her opinion is taken into account in regard to his/her accession to the program and the content of the agreement, in accordance with the principles of his/her higher interest and those of his/her ability to act (Art. 19(5)) In these cases, the final approval and signing of the agreement is made by his/her parents or custodian.

The following specific provisions are foreseen in regard to the protection and treatment of child –witnesses:

- Interviews take place without unjustified delay and in premises designed for that purpose;
- The number of interviews is limited as much as possible and only when strictly necessary;
- Interviews are conducted as much as possible by the same people throughout criminal proceedings;
- The child can be accompanied by someone of her/his choice;
- Hearings take place without the presence of the public and the media;
- Hearings take place through video links or other communication facilities;
- Prevention of dissemination of any information that can lead to the identification of the child.

These provisions are also implemented in practice.

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67 For more details see: <http://www.refworld.org/docid/4c20dd572.html> [accessed 5 May 2014].

## 5.4. Right to compensation

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Trafficked persons have the right to adequate and effective remedies. This includes the right to compensation for material and immaterial damages suffered. Compensation for damages may include costs of medical, physical or psychological treatment; costs of physical and occupational therapy or rehabilitation required by the victim; costs of necessary transportation, temporary childcare or temporary housing; lost income and/or due wages / the money the victim earned for the trafficker and was forced to hand over; legal fees and other costs or expenses incurred; payment for non-material damages, resulting from emotional distress, pain and suffering suffered by the victim as a result of the crime; any other costs or losses incurred by the victim as a direct result of the crime.

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The UN Convention on Transnational Organised Crime (Art. 14(2) & 25(2)), the UN Trafficking Protocol (Art. 6(6)) and the CoE Convention on Action against Trafficking (Art. 15(3)) all require States to ensure that there is a legislative and practical possibility for trafficked persons to obtain compensation for damages suffered. This includes both material and non-material damages.

States should also ensure that there is a provision for payment of compensation from the State where such compensation cannot be obtained from the trafficker, f.e. through a Victim Fund. Such fund may be financed through the use of confiscated assets (CoE Convention on Action against Trafficking, Art. 15(4); OHCHR Guidelines on Human Rights and Human Trafficking, 4.4).

Article 25(2) of the UN Convention on Transnational Organised Crime requires states to ensure that there are provisions for the confiscation of the proceeds of trafficking. A priority option should be to use confiscated assets is to compensate victims.

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An important judgement in this respect is that of the European Court on Human Rights in the case of *Rantsev v. Cyprus and Russia*<sup>68</sup>, in which the Court held that trafficking in human beings itself falls within the scope of Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, without the need to identify whether it constitutes slavery, servitude or forced and compulsory labor. This implies that states have the positive obligation to not only prevent, prosecute and protect, but also to provide victims with an effective remedy.

### Compensation through criminal proceedings

Victims can seek compensation for material damages from the offender by joining a civil claim to the criminal proceedings. This is stipulated in Article 61 CPC “Civil lawsuit in criminal proceedings”:

*The person who has suffered material damages by the criminal offence, or his heirs, may file a civil lawsuit in the criminal proceedings against the defendant or the person liable to pay damages (defendant), claiming restitution of the property or reimbursement of the damages.*

According to Article 61 CPC, only material damage incurred by victims of trafficking may be claimed in the criminal case. According to Article 608 of the Civil Code compensation for material damages may include payment for:

- Costs of medical, physical, psychological or psychiatric treatment required by the victim;
- Costs of physical and occupational therapy or rehabilitation required by the victim;
- Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- Lost income and due wages according to national law and regulations regarding wages/ the money the victim earned for the trafficker;

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68 ECtHR, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, 7 January 2010, available at [www.interights.org/rantsev](http://www.interights.org/rantsev).

- Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
- Any other costs or losses incurred by the victim as a direct result of the crime.

The fact that the victim cannot claim moral damages in the criminal process represents a serious obstacle for redress, considering that in the case of trafficking the material damage is accompanied with severe moral damage.

If the claim is awarded the victim her/himself is responsible to ask for the execution of the order. In practice, even if the claim would be awarded by the criminal court, it is impossible for the victim to execute the order.

The criminal court can decide to separate the civil lawsuit and submit it to the civil court according to Article 62 CPC, which reads:

*The court on the application of the parties or ex officio may order the severance of the civil lawsuit and its submission to the civil division (court), if its adjudication complicates or impedes the criminal process.*

This can be done either on the request of the parties or *ex officio*, if judging the civil claim provides difficulties or causes delay in the criminal process.<sup>69</sup>

CLCI does not know of any case in which the claim for compensation was awarded within the criminal procedure. In all cases victims were referred to the civil court.

### **Compensation through civil proceedings**

Victims can also claim compensation through civil proceedings before a civil court. In this case both material damages (in the sense of Article 608 of the Civil

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69 Appendix Criminal Procedural Code according to Law no.8813, dated 13.06.2002.

Code<sup>70</sup>) and moral damages can be claimed. According to Article 625<sup>71</sup> of the Civil Code moral damages consist of payments for non-material damages resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her.

CLCI has applied these provisions in the case of D.S., a minor victim of trafficking. On behalf of D.S., CLCI, under Article 128b CC, filed a civil lawsuit in the criminal process against the perpetrator to seek compensation for material damages. The Criminal Court decided to separate the civil lawsuit and submit it to the civil court. The process before the civil court took place after the criminal decision became final, after about 18 months. The Civil Court (Decision no. 1202 of 19 February 2010) sentenced the offender to pay D.S. compensation for moral damages of EUR 40.000. CLCI also tried to get compensation for the money the victim earned for the trafficker and was forced to hand over, but the civil court only awarded the moral damage. The decision, however, was not enforced because, first of all, the Bailiff Office has high taxes, *in case* 3% of the value to be put in execution, which have to be paid in advance. This amount of money is impossible for victims to pay. Secondly, there were difficulties in the enforcement because the offender's property was confiscated by the state.

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- 70 Art. 608 CC on Liability for causing the damage: "The person who, illegally and to his fault, causes a damage to another person or to his property, is obliged to compensate the damage caused. The person who has caused the damage is not liable if he proves that he is innocent. The damage is deemed illegal when it is a consequence of the violation or harm of the interests and rights of the other, which are protected by legal order or good custom.
- 71 Art. 625 CC on Liability for non-property damage: "The person who suffers damage, different from property damage, has the right to claim compensation if: a) he has suffered injury to his health or is harmed in his honour and personality, b) the memory of a dead person is desecrated and the spouse he lived with until the day of his death or his relatives up to the second scale, seek compensation, except when the offence is committed when the dead person was alive and he was recognized the right of compensation for the desecration done. The right foreseen in the above mentioned paragraph is not hereditary."

## Execution

In total, CLCI has run five cases on compensation, of which two were won, but not executed.

Execution is utterly problematic. In the first place the suitor/victim has to pay 3% of the compensation awarded in advance as taxes to the Bailiff Office, which is impossible for victims of trafficking. Secondly, if the criminal assets are confiscated by the state there is no property that can be used to execute the order. In theory, confiscated assets could be used to compensate victims on the basis of the Anti-mafia Act. In practice, however, this has never been successful.

There is no case known, in which the victim was awarded damages *and de facto* received the awarded compensation.

## State Fund

Although officially there exists a state compensation scheme, in practice this does not function. The Law "On prevention and fighting organized crime and trafficking through preventive measures against property" (Art. 37c Law No. 10192 of 3 December 2009) provides for a special fund, but stipulates that this fund will be used to provide assistance to victims of organized crime and violence and to promote social programs for these categories.

In practice there is no case in which victims of trafficking have benefited from this fund. In most of the cases victims require compensation through a civil lawsuit in the criminal process.

## The right to claim compensation based on the labour legislation

The labour legislation might offer a possibility to claim compensation for labour exploitation. The national mechanisms regulating the standards for employment should also allow for labour inspectors to file claims against employers for paying compensation (e.g. in cases of salaries not been paid, or damages caused at work).

In practice, however, this has never happened. In this aspect, our legislation needs improvement, in order to provide support for trafficked persons.

## **Main obstacles for victims to obtain compensation for damages**

There is not any procedural facilitation for claiming compensation of material damages through the criminal process. Also, although officially there is a state compensation scheme in practice not one victim of trafficking has benefitted from this fund.

Another barrier to claim compensation are the judicial fees. Although since the change in the Law on Legal Aid, victims of trafficking are exempted from paying judicial taxes, in practice not all relevant parties are aware of this.

The Constitutional Court (Decision No. 7, dated 27 February 2013) has instructed that it is up to the court to decide on the exemption from court expenses for citizens who address the court to settle a civil matter. This is decided by the court after an investigation of all the required documentation presented by the victim .

If the victim applies to the State Commission for Legal Aid, s/he can benefit as a victim of trafficking. If s/he has not applied to the Commission, the decision of the Constitutional Court is applied. CLCI is of the opinion that when the victim submits the document that s/he is victim of trafficking, this document should be sufficient for not discussing the ability of the victim to pay.

The most urgent changes needed are:

- Changes in the Criminal Procedure Code to facilitate the procedures for joining a civil claim for compensation to the criminal case;
- Changes in the internal legislation to enable victims to get compensation from the state scheme;<sup>72</sup>
- Implementation of the provision that exempts victims of trafficking from paying judicial taxes and court expenses.

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72 Law No. 10192 of 3 December 2009 "On Prevention and Fighting of Organized Crime and Trafficking through preventive measures against property".

## 5.5. Non-prosecution and non-punishment of trafficked persons

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Victims of trafficking should not be prosecuted or punished for prostitution or other illegal acts they were compelled to commit as a direct result of their being trafficked.

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Article 26 of the CoE Convention requires states to provide for the possibility of not imposing penalties on victims of trafficking. A similar provision is found in Article 8 of Directive 36/2011/EU which obliges states to take the necessary measures to ensure that the competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of their being trafficked.

### Current situation

In 2013 a non-punishment provision was inserted in the Criminal Code (Law 144/2013<sup>73</sup>). Article 52a on the exclusion or reduction of sentences for collaborators of justice and victims reads:

*The person damaged by the offenses related to trafficking in persons, may obtain exclusion from punishment for committing criminal offenses during the period of trafficking and to the extent that he was forced to perform those illegal actions or inactions.....*

The implementation of this new provision is not yet clear. A complicating factor is that (possible) trafficking cases first go to the district courts, who qualify it as a case of trafficking or exploitation of prostitution. In the first case the case is referred to the Serious Crimes Court, in the second case it is dealt with by the District Court. The Serious Crimes Court knows the definition of trafficking, but this does not apply to (all) district courts. Especially cases of domestic trafficking tend

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73 Law No. 144/2013 "On Some Supplements and Changes to Law No.7895 of 27 January 1995, Criminal Code of the Republic of Albania".

to be considered and prosecuted as prostitution or prostitution related offences by the district courts. Moreover, it happens that the police identify a possible victim of trafficking, but that the prosecutor qualifies it as a case of exploitation of prostitution.

The 2013 TIP-report of the US Department of State notes that the Albanese authorities still treat victims of trafficking as suspects of prostitution and that in some cases victims also have been sentenced for prostitution.

## 5.6. Non-detention of trafficked persons

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Trafficked persons should not be detained or held in closed shelters or other welfare centres.

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### Detention in closed shelters

There are three shelters in Albania, which accommodate victims of trafficking.

- Linza shelter: this is a closed state shelter only for trafficking victims at high risk. Victims are locked in as witnesses. They have their own lawyer and professionals.
- “Different and equal” shelter in Tirana;
- Vatra shelter in Vlora, which accommodates both domestic violence and trafficking victims. Before it accommodated only trafficking victims, but by lack of funding it now also takes in victims of domestic violence.

There is little information on the conditions in the Linza shelter. It is also not clear what the legal basis is for depriving victims of trafficking of their freedom of movement. Victims are referred to CLCI only through the last two shelters.

## 5.7. Reflection period, temporary and permanent residence permit and asylum

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Victims have the right to a recovery and reflection period. Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities. If return would compromise their life and safety, trafficked persons have the right to apply for asylum or a residence permit on humanitarian grounds.

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The CoE Convention on Action against Trafficking (Art. 12-14), the 2004 EU Directive on a temporary residence permit for victims of trafficking (Art. 6-9)<sup>74</sup> and Directive 2011/36/EU on trafficking (Art. 11(1)) require Member States to grant trafficked persons a reflection period of at least 30 days to recover and to take an informed decision on their cooperation with the authorities, as well as a temporary residence permit for the duration of criminal and/or other legal procedures when they decide to cooperate. During the reflection period victims should have access to material, medical, psychological and legal assistance. If granted a temporary residence permit they also should have access to the labour market, vocational training and education. The reflection period applies to victims of both internal and cross-border trafficking.

### Current situation

According to the Law on Foreigners (Law No. 108/2013, Article 53(1)b “Issuing of the residency permission for humanitarian cases”) the Local Responsible Authority for the Borders and Immigration may grant foreigners a temporary residency permit if the foreigner is a (potential) victim of trafficking.

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74 Council Directive [2004/81/EC](#) of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

The right of foreign victims of trafficking to be granted a residency permit is laid down in Decision No. 513, dated 13.6.2013, "On the designation of criteria, procedures and the documentation to enter, stay and treatment of the foreigners in the Republic of Albania".

There is no experience with the implementation of this provision as up till now no foreign victim of trafficking have been identified in Albania.

## 5.8. Repatriation & guarantees of non-repetition

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Victims have the right, if they wish so, to return to their home country without unnecessary or unjustified delay and with taking care of their safety. The safety of the trafficked person and their family should be taken into account in any decision on repatriation. Victims may not be returned when there is a serious risk that they will be subjected to persecution, torture or other forms of ill-treatment (principle of non-refoulement).

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The Standard Operating Procedures for the Identification and Referral of Victims of Trafficking and Potential Victims of Trafficking foresee in assistance for voluntary return. This may concern assistance for voluntary return of Albanian citizens identified outside the territory of the Republic of Albania as well as assistance to foreign victims to return to their home country.

In the case of children, the Responsible Authority member from the Ministry of Foreign Affairs establishes contact with the parents/legal custodian of the child and obtains the authorization of the parents/legal custodian for the travel of the child. Before the return of Albanian victims of trafficking, the social economic and safety situation will be assessed.

In case the assessment report by the country of origin shows that return of the child to the family or a child care institution in the country of origin is unsafe and inappropriate, the case is reviewed by the Responsible Authority and a long term solution is found.

# SUMMARY AND RECOMMENDATIONS

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## Summary

The Albanian Legislation is partly developed in compliance with international standards regarding the rights of the victims of trafficking of human beings. However, although the legal framework is improved, the rights of the victims in the penal process are not foreseen in the legislation and as a consequence there is deficiency.. Rights that need to be foreseen in legislation include the right to information, free legal aid, compensation and protection of privacy and safety before, during and after criminal proceedings.

Victims are not represented by a lawyer at all stages and informed about their legal rights, starting from the moment of identification. Up until now there has been no case in which a trafficking victim was granted compensation and received this *de facto*.

Another point of concern is the continued criminalisation of prostitutes under article 113 of the Criminal Code, despite international standards and calls of the CEDAW Committee to have this abolished. CLCI has requested from the Constitutional Court to consider article 113 CC as discriminatory and in violation of the Constitution of Albania..

There is no system in place on publication of case law relating to trafficking in human beings.

Positive developments are the recent changes in the Law on Legal Aid which entitle victims of trafficking to free legal aid and exempts them from the payment of judicial taxes and court expenses. However, in order to actually implement these changes it is acted slowly..

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Strengthening of the capacity of judicial professionals, such as judges and prosecutors, through continuous trainings is realized consistently.

According to the 2013 Trafficking in Persons Report of the American Department of State<sup>75</sup>, Albanian law enforcement agencies improved their understanding of a victim-centred approach to human trafficking.

The Office of the National Anti-Trafficking Coordinator has invited non-governmental organisations to contribute to the implementation of strategies and action plans through concrete activities.

## Recommendations

Victims of trafficking should have effective access to compensation for both material and non-material damages. This requires a change of the Criminal Procedural Code to foresee clear procedures to claim for compensation during the penal process. Compensation for the damage coming out as a result of the commitment of the criminal offence should include both material and moral damages.

There is the need for important changes in the internal legislation aiming to set up real state schemes to enable victims damaged from the criminal offence to get compensation. .

. It is needed to be foreseen provisions in the Criminal Procedural Code that define clearly the procedures and the competent authority responsible to guarantee the victims of trafficking the rights for information on the legal aid that should be provided for them.

Protection of the personal data of the victim of trafficking should be improved to bring such a protection in accordance with the standards of CoE Convention 108.

Also the role of the State Commission on Juridical Aid needs to be strengthened in order to support victims of trafficking to benefit from free legal aid.

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75 [http://www.punetebrendshme.gov.al/files/priorities\\_files/06202014\\_English\\_TIP.pdf](http://www.punetebrendshme.gov.al/files/priorities_files/06202014_English_TIP.pdf).

Lawyers need to be trained to be able to provide specialised legal aid to victims of trafficking. The role of the lawyer, especially in relation to the first contact of the victim with the authorities, needs to be included in the Standard Operating Procedures.

Trainings need to be organised for the professionals of the justice system on a continuous and sustainable basis. Moreover, better cooperation is recommended between the professionals of the justice system and non-governmental organizations focusing on the promotion and protection of the rights of the victims of trafficking of human beings.

Similarly, the cooperation between the Office of the National Anti-trafficking Coordinator and non-governmental organisations needs to be strengthened through concrete actions and results.

It is recommended to establish a system for publication of case law on trafficking in human beings.

# ANNEX 1

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## **The role of NGOs: Practices & Experiences of “Vatra” Psycho Social Center**

“Vatra” Psycho Social Centre provides free legal assistance to victims of trafficking in human beings. This NGO offers information and counseling for victims of trafficking, including information sessions and group meetings organized by the lawyers of the centre. The main subjects treated in these sessions and meetings are related to: human rights and fundamental freedoms, to the law “on witnesses protection and collaborators of justice”, to the right for remedies and compensation, to the law “on gender equality in society”, to the law “on measures against violence in family relations”, to regulations and procedures concerning the registration of children, etc. Free legal assistance provided by this Centre consists also in offering individual counseling for beneficiaries, especially for those victims of trafficking who have denounced the traffickers. Information of beneficiaries on their rights is given by “Vatra” staff since the very first contact with them.

The direct legal assistance consists of an assessment of the needs of beneficiaries for free legal aid; on drafting of a plan of assistance based on state standards; on counseling; on accompaniment of the beneficiary by the lawyer and by the psychologist (or by a social worker) during the interviewing process in the police offices, in the prosecutor’s office, in the court, or to solve different problems related to registrar’s offices or to different other institutions. Direct legal assistance provided free of charge by this NGO for the victims of trafficking is related as well with the support given to beneficiaries in all court sessions by the psychologist and a lawyer. The psychologist and the lawyer inform the beneficiary in relation to different issues such as the criminal proceedings against the trafficker, the

registration procedures, the identification documents; children registration procedures, etc. "Vatra" Psycho Social Centre provides the beneficiaries with free of charge legal aid to prepare the relevant documents and with professional assistance in civil procedures related to dissolution of marriage, to property issues, etc.

### **Problems identified**

Problems identified in addressing these cases or in offering services include:

- Lack of information of beneficiaries regarding their rights guaranteed by the anti-trafficking legislation, by the law "on witnesses protection", by different procedures and acts to get compensation, etc.
- Lack of documents (such as birth certificate, identity card, etc.).
- Lack of registration at the civil registry (mainly the children of beneficiaries, but in some cases the beneficiaries themselves are not registered in the Fundamental Register of the registrar's offices in the municipalities/communes).
- Corruption within the agencies responsible for the implementation of legislation.
- Prejudices against the beneficiaries (victims of trafficking) by law enforcement agencies and other bodies responsible for implementing the law.
- Lack of a social worker/psychologist at the prosecutor's office or at the courts. The social worker/psychologist can be a great support for the victims of trafficking.
- Postponement of the judicial proceedings (even up to 3 years). Case postponement makes the victim of trafficking to lose patience while staying in the shelter.
- Confrontation of the victim of trafficking or of her family members with the trafficker during the process of criminal proceedings in the prosecutor's office and in the court;
- The internal trafficking in human beings, in some cases, is considered by

the police structures as “exploitation in prostitution” and it is not treated as a criminal offence of ‘trafficking in human beings’. So, the denunciations of the victims of trafficking exploited inside the country are classified by police and by the district prosecutors offices, in majority of them, as cases of “exploitation in prostitution”, while the denunciations of the victims of trafficking exploited abroad are classified as “trafficking in human beings” cases. Another problem that is identified recently is related to the fact that the court has condemned not only the pimp, but also the victim of trafficking. The court has condemned the pimp for “exploitation in prostitution”, while the victim of trafficking is condemned for “exercising of prostitution”.

- In the everyday practice it is identified the need to strengthen the capacities of the judicial police, of the prosecutor’s office and of the District Courts in relation to the legislation against trafficking in human beings.

### **Difficulties and challenges identified by the staff**

Lack of implementation of the law on witness protection for victims of trafficking (since 2005 only one victim of trafficking is accepted in this program) creates lack of security for the life of beneficiaries. As a result, in many cases, victims do not denounce the traffickers or even in cases when they do, they withdraw their denunciation in the middle of the process, due to fear for their life and the life of their family members;

Victims of trafficking in human beings have not benefited any compensation because they can not pay the high taxes requested in the Judicial system. According to the Civil Procedural Code, victims of trafficking have to pay the court fees when submitting a request for compensation in the court. Such a court fee is equal to 1 % of the amount requested in the lawsuit and it should be pre-paid. Considering the social and economic situation of victims of trafficking, none of them is able to pay this judicial fee. According to the experience of “Vatra” in 2010 and 2011, three victims of trafficking in human beings have withdrawn their request for compensation at the moment they had to pay the judicial taxes. Since 2010 one

case supported by CLCI has won the right of compensation, but the court decision hasn't been applied into practice so far.

The confrontation of victims with the trafficker(s) during the judicial process in the prosecutor's office or in the court (at the local level), as well as facing prejudices manifested by the representatives of these institutions cause regress in their psychological situation. The consequences are reflected in the form of lack of trust in the justice institutions, in having problems with the behavior and communication with the staff and other beneficiaries, resulting in fear and uncertainty for their life, etc. It also puts them at risk of re-victimization.

Finally, providing services to victims of trafficking generates high financial costs, including staff costs, transportation costs, payment for documents, etc.

The heavy psychological situation of the victim of trafficking accommodated in the shelter during the period she is waiting for the Court of Appeal Decision related to the victim's appeal on the Decision taken by the District Court that has already penalized her on "exercising of prostitution"

## **Positive aspects and successes**

Positive developments are

- Awareness raising of the beneficiaries on their rights, as well as raising the number of the victims of trafficking who denounce their traffickers;
- providing protection and high security for former victims of trafficking in human beings, especially for victims at high risk for their life;
- the establishment of a specialized anti-trafficking unit at the Prosecutor's Office for Serious Crimes. Two female prosecutors are dealing with all cases of denunciations made by victims of trafficking in human beings. Also, a coordinator for trafficking cases is working at this office. The General Prosecutor's Office is included in the National Referral Mechanism.
- As compared to previous years, during the two last years, it is identified progress on the part of police structures in relation to the process of

identification of victims of trafficking exploited inside the territory of the country. Some years ago all the victims of trafficking exploited inside the country were identified as cases of “exploitation in prostitution”, while during the last two years, based upon “Standard Operating Procedures” for the “Identification and Referral of Victims of Trafficking /Potential Victims of Trafficking from the State Police structures to the Social Service, these cases are identified as “victims of trafficking”.

- Important changes in the Penal Code of Albania were realized in May 2013 with the Law no. 144/2013 For some additions and changes in the law no. 7895, date 27.01.1995, “Penal Code of Republic of Albania”.

## Conclusions and recommendations

- The capacity of the judicial police officers to identify cases of internal trafficking and trafficking of children needs to be improved. It is needed improvement as well for the referral of these cases to the Serious Crimes Prosecutor’s Office.
- There is a need for the preparation of an anti-trafficking draft law which not only covers the criminalization of traffickers, but also the protection of the victims.
- In order to have access to justice it is crucial for victims of trafficking to be provided with a defense lawyer who gives for them free legal aid, by accompanying them at interrogation sessions and by representing them in the court.
- It is very important to employ a psychologist to the unit established in the Serious Crimes Prosecutor’s Office in order to support victims of trafficking in human beings emotionally during the criminal process.
- The capacity of prosecutors, judges, police officers, etc. who deal with trafficking cases needs to be strengthened through the organization of continuous trainings.

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Jurisprudence of the courts of different levels

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