



Pilot Monitoring Report on Anti-Trafficking Policies in Albania (2018)



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Part I: Monitoring process: goal, objectives and employed methodology

Purpose of the report and beneficiaries:

The present Pilot Monitoring Report on Anti-trafficking Policies in Albania was prepared by the Center for Legal Civic Initiatives (CLCI) in the frame of “Balkans Act Now” (BAN III) project, which is supported by the European Union and implemented by ASTRA Organization in cooperation with the following partner organizations in the region: International Solidarity Forum–EMMAUS, Bosnia and Herzegovina; Women’s Rights Center, Montenegro; the Center for Legal Civic Initiatives (CLCI), Albania; Open Gate La Strada, Macedonia; and the Netherlands Helsinki Committee. This report was compiled not only to monitor the anti-trafficking policies in Albania in 2018 but also to compare the data and standards adhered to by our country in this regard vis-à-vis the other countries of the region involved in this project.

In order for the data contained in this report and the results obtained thereby to be as valuable and accurate as possible, the report has been subjected to a long consultative process with the relevant institutions operating in this area: the Office of the National Anti-Trafficking Coordinator, Ministry of Justice, Ministry of Health and Social Protection, Police, Prosecutor’s Office, nonprofit organizations that operate in this area, and centers for the receipt and reintegration of victims of trafficking operating in Albania. An important contribution to this report was made by Vatra Center and Different & Equal Organization which monitored concrete cases of victims of trafficking/potential¹ victims of trafficking in order to identify potential issues and provide valuable recommendations for this report. In this regard, it is worth mentioning that the approach taken in drafting this report was both *consultative and participatory*.

Findings from the monitoring report will help paint an overall picture of the anti-trafficking regulatory framework in Albania, particularly in terms of application of such framework by all state actors, which are involved in the identification and treatment of victims of trafficking, and guarantee the protection of victims’ rights in line with international standards. Furthermore, the results of this report and—in particular—the weaknesses and areas of Albania’s anti-trafficking policies that need improvement will serve as a starting point to

¹ When the Albanian authorities have reasonable grounds for suspecting that an individual has been trafficked, but are not sure of the individual’s victim status, Albanian legislation refers to them as a ‘potential victim’. This term is not used in this report, as the same term (‘potential victim’) is sometimes used to refer to someone who might be trafficked in the future (or has characteristics which make it disproportionately more likely that they will be trafficked than most other people), but who has not yet been trafficked or exploited. The Handbook published by the OSCE’s ODIHR in 2004 (Office for Democratic Institutions and Human Rights, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook*, Warsaw, 2004) designates possible or suspected trafficking victims as ‘presumed victims’. This term is consequently used throughout the present monitoring report to refer to individuals whom the Albanian authorities categorize as a ‘potential victim’.”

enhance not only the legal and regulatory framework, but also the intervention and cooperation among all law-enforcement institutions in Albania working in the area of trafficking in human beings.

Another goal of this report was to establish a system of data comparison on anti-trafficking policies between Albania and other countries of the region that are involved in this project. By obtaining a concrete monitoring picture of state policies, based on national anti-trafficking indicators, and introducing the data from monitoring, we will enable ourselves to compare such results against results obtained in other countries of the region. By doing so, we would not only see the place our country takes in the region as regards the implementation of anti-trafficking policies, but also—and most importantly—establish a coordination system with countries of the region, whereby we would highlight the most positive examples in the region and integrate them into our system and provide our expertise to other countries of the region in cases in which we may serve as a positive example.

Based on the foregoing, it is safe to say that the findings of this report will serve, first and foremost, state actors involved in identification of and dealing with victims of trafficking, nonprofit organizations operating in the area of anti-trafficking in Albania, active regional/international organizations that work towards the same goal, and any person interested in the Albanian legal framework combatting trafficking in human beings and the implementation of such framework.

Monitoring objectives: The present Pilot Report will shed light on the results of monitoring assignment performed by CLCI, in cooperation with other reporting actors, for 2018 with regard to the implementation of policies against trafficking in human beings in Albania. The main objective of this report is to assess the situation of the Albanian State with regard to national legal framework concerning trafficking in human beings; to measure the compatibility of such legal framework with international standards and policies; to explore the applicability of anti-trafficking laws and policies by institutions referred to by the law; to identify the achievement levels; and to raise with the domestic state structures the most problematic issues in that area.

The following may be succinctly mentioned to be the objectives of this monitoring report:

- *To assess the effectiveness of the Albanian legal framework in the area of trafficking in human beings;*
- *To explore the level of progress and/or amendments made by the Albanian State in relation to trafficking in human beings;*
- *To explore the level of institutional cooperation and coordination towards identification and protection of the victims of human trafficking;*
- *To identify policy/legal problems and deficiencies in the area of trafficking in human beings and other technical issues that are to be addressed in the future;*
- *To assess the quality of data collected based on monitoring indicators, identify indicators for which data is missing, and come up with recommendations to improve the system of data collection regarding trafficking and/or broaden the scope of data in order to enable a more inclusive monitoring process in the years to come;*
- *To offer concrete recommendations on improving the legal framework, institutional cooperation, and policies on trafficking.*

Methodology used in drafting this report

The methodology employed in drafting this report was selected taking into account the objectives and purpose of the report. Monitoring was carried out by a working group composed of experts from various fields, identified by CLCI, who monitored the groups of indicators as per their relevant fields of expertise. The monitoring period lasted at least six months from the moment the monitoring process commenced. From a methodological perspective, the present report relied on a combination of qualitative and quantitative methods. As regards qualitative methods, a main source worth mentioning was the analysis of the Albanian legislation on trafficking in human beings in respect of indicators of Groups Aa, B, C, and D. Furthermore, using a comparative method, we managed to identify the compatibility of the legal framework and procedural acts followed by Albanian state with the international framework and standards concerning the area in question. A quantitative method was used in gathering data concerning the scope of indicators B, C, and D; such data is of a quantitative character as it involves numerical data/percentages. Moreover, for the purpose of this report, we conducted interviews with relevant actors and victims of trafficking, upon obtaining their consent, all while adhering to all the personal data protection rights.

It is also worth mentioning that we used data from both primary and secondary sources; such data were necessary in terms of the methodology used for this report. When compiling this report, we reviewed and analyzed the following secondary sources: the Ministry of Internal Affairs official report on “Application of national action plan for the fight against trafficking in persons 2018-2020 (January-December 2018)”;

the US Department of State Report on Albania (2019); EU Progress Report (2019), and official data referred in internal reports and institutional websites of responsible state institutions operating in the area of trafficking in human beings. The reason behind using such data was to accurately reflect not only the official number of cases identified and dealt with by Albanian institutions, but also the close coordination with institutional partners in preparing this report. Meanwhile, in order to provide a more insightful analysis and to deal even with cases in relation to which institutions and state structures may not have been completely successful, we included in this report an analysis of actual case studies addressed by nonprofit organizations operating in this area from identification of the cases until their final treatment. Primary sources of data included observation, interviews and the hands-on experience of organizations dealing with cases: Different & Equal, the Vatra Center and the Center for Legal Civic Initiatives. Primary sources of data will be particularly valuable in the analysis of case studies integrated throughout the contents of this report.

Reporting limitations:

The Pilot Monitoring Report on Anti-Trafficking Policies in Albania is limited in two aspects: the monitoring period and the scope of what was monitored. As far as the monitoring period is concerned, the findings of this report are limited only to a single year, 2018. As far as the monitoring scope is concerned, it is worth emphasizing that the findings of this report are limited only to the analysis of data collected on just four groups of indicators: Aa, B, C, and D; other groups of indicators that are part of the Albanian instrument for monitoring were not included for this pilot.

Part II: Analysis of the Albanian legal framework on trafficking in human beings: Compatibility with international standards (indicators Aa1-27).

This part of the report focuses on the analysis of whether Albanian legislation on trafficking in human beings is compatible with other instruments of international and European character

adopted for this purpose. More specifically, the Albanian legal framework was analyzed in terms of its compatibility with:

- The United Nations Convention against Transnational Organized Crime and two of its supplementary Protocols namely:
 - Protocol against the Smuggling of Migrants by Land, Sea and Air, and
 - Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also known as the Palermo Protocol).²
- The Council of Europe Convention on Action against Trafficking in Human Beings, also known as the Warsaw Convention.³

The qualification of “*trafficking in persons*” as a criminal offence and the forms and means of punishment imposed for its commission are regulated respectively by the Criminal Code of the Republic of Albania (CC)⁴ and the Criminal Procedure Code of the Republic of Albania⁵. These codes were amended recently in 2017 in the framework of the Justice Reform in Albania. Furthermore, in view of the said reform, in addition to the two fundamental instruments mentioned above, the Criminal Justice for Children Code was adopted and several laws were amended, thus producing important effects on the protection of victims of trafficking. Such laws include: Law no. 111/2017 “On state-guaranteed legal aid”; amendments to Law no. 9669, of 18.12.2006, “On measures against domestic violence”; Law no. 18/2017 “On the rights and protection of the child”, and other laws in the area of social protection applicable in our country.⁶ Likewise, from a strategic viewpoint, it is worth mentioning the adoption of the National Action Plan against Trafficking in Persons 2018-2020⁷. However, what one can see from a general legislative perspective is that despite the amendments made to each of the aforementioned laws, **there is no legal initiative** by the Council of Ministers or deputies of the Albanian parliament **to draft a specific framework law for the protection of the victims of trafficking**⁸, which would join and better coordinate all the said laws related to trafficking in human beings. Some attempts in this field have been made by civil society organizations. It is, however, worth mentioning that meanwhile the Albanian Government, in cooperation with UNDP, has undertaken a study that will provide input in drafting a framework law against gender-based violence. Therefore, it is necessary to integrate all initiatives and hold consultations in order to draft legislation that is both appropriate and effective.

Although there is no special law, it can be stated that the national legal framework concerning the trafficking in human beings **generally reflects international standards**. In order to provide legal proposals, we will later highlight the issues which the Albanian law-maker has not properly addressed in compliance with international standards.

2.1 Concept of trafficking in human beings: means and forms of trafficking in persons⁹

²Ratified by the Republic of Albania through Law no. 8920, of 11.07.2002, “On the ratification of the United Nations Convention against Transnational Organized Crime and its two supplementing protocols”.

³Ratified by the Republic of Albania through Law no. 9642, of 20.11.2006, “On the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings”.

⁴Adopted by Law no. 7895, of 27.01.1995 (as amended in 2017)

⁵Adopted by Law no. 7905, of 21.03.1995 (as amended in 2017)

⁶Law no. 121/2016 “On social care services in the Republic of Albania” & Law no. 10383, of 24.02.2011, “On compulsory health care insurance in the Republic of Albania”, as amended.

⁷Adopted by Council of Ministers Decision no. 770 of 26.12.2018.

⁸ See also: Different & Equal Organization. (2019). “Study report on the need for drafting a special law for the protection of victims of trafficking in Albania”.

⁹See indicator A2/3

The Council of Europe Convention on Action against Trafficking in Human Beings defines ‘trafficking in persons’ as *“the recruitment, transportation, transfer, harbouring or receipt of persons [...] for the purpose of exploitation”*.¹⁰ According to this Convention, *“[...] exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”* With regard to the incorporation of this concept into the Albanian criminal legislation, **Article 110/a** of the Criminal Code of the Republic of Albania (“CC”), defines **“trafficking in adult persons”** as a criminal offence characterized by, *“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 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 exploiting others for prostitution or other forms of sexual exploitation, forced labour or services, slavery or forms similar to slavery, putting in use or transplanting organs, as well as other forms of exploitation, both within and beyond the territory of the Republic of Albania [...]”*. The criminal offence provided for by Article 110/a of CC is part of CC Section VII titled “Criminal acts against person’s freedom”. As such, this is different from criminal offences against state secrets and state borders, stipulated by Articles 297 and 298 of CC which explicitly sanction *“Illegal crossing of the state borders”* and *“Assistance for illegal crossing of borders”*. In addition, the criminal offence of trafficking in persons is different from other crimes against state authority or public order and security. We reach the same conclusion even when considering the criminal offences against morality and dignity, including the criminal offence of prostitution (Article 113 of CC) or exploitation of prostitution (Article 114 of CC). In any case, in order to classify the exploitation of prostitution as part of trafficking in persons the forms of trafficking should be established based on its definition.¹¹

Article 128/b of the Criminal Code, which provides that **“trafficking of children”** is a criminal offence, prohibits, *“recruitment, sale, transport, transfer, hiding or reception of children with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced labor or service, slavery or forms similar to slavery, putting in use or transplantation of organs, as well as other forms of exploitation”*.

As we see from the provisions quoted above, the concept we have introduced in the criminal law and the forms of trafficking in persons are **almost identical** to those stipulated in the European Convention. The same thing can be said also for **the means of trafficking**, which are entirely identical to Article 4/a of the CoE Convention, which lists the following means of trafficking: a) threat; b) use of force; c) other forms of coercion; d) abduction; e) fraud; f) deception; g) abuse of power; h) position of vulnerability; or i) giving or receiving of payments or benefits to achieve the consent of a person.¹²

In addition, Article 128/b of the CC characterizes trafficking of children as a criminal offence in all cases, without mentioning any of the means of trafficking contained in the provision of trafficking in adult persons, thereby reflecting the spirit of EU anti- trafficking directive 2011/36 which provides that, *“when trafficking involves a child, then it must always be punishable even if none of the means of trafficking was used.”*¹³ Meanwhile, insofar as trafficking in adult persons, the **provision does not fully reflect the international standards**. More specifically, the definition of trafficking in adult persons provided by the

¹⁰Article 4a of the Council of Europe Convention on Action against Trafficking in Human Beings.

¹¹Indicator A.13

¹²Article 4a of the Council of Europe Convention on Action against Trafficking in Human Beings.

¹³Indicator A.16

criminal law does not, in any case, explicitly foresee that obtaining consent is irrelevant to whether such act should be considered a criminal offence or not; this is a provision stipulated by the UN Convention.¹⁴ In view of the foregoing, in order to provide a more complete protection, *we recommend that Article 110/a be reworded to explicitly foresee that the consent of the victim to the intended criminal offence of trafficking shall be irrelevant to the commission of such offence.*

Furthermore, as regards the definitions of both provisions on trafficking in human beings (Articles 110/a and 128/b), it is worth emphasizing that while the definition of trafficking in adult persons explicitly includes both internal and external trafficking, **trafficking of children lacks provisions covering penalties for internal (domestic) trafficking**, which would make it impossible to criminally prosecute and punish cases of children trafficked in the territory of the Republic of Albania. *Having regard to the foregoing, it is important that Article 128/b be reworded to legally foresee penalty for ‘internal (domestic) trafficking’.*

In fact, the provisions of the conventions serve as a minimum standard vis-à-vis the national legal framework. This means that the Albanian law-maker must, as a minimum, incorporate them into the national law, without excluding the option of adding forms or means of trafficking as necessary, taking into account the context and reality of the country. Therefore, instead of the term “position of vulnerability”, the Albanian law-maker used the term “social, physical or psychological condition”. In our judgment, *the lack of a definition of what is meant by ‘social, physical or psychological condition’ in CC, may result in issues when it comes to carrying out the full identification of potential victims of trafficking.* In addition, the notion of the term “position of vulnerability” is broader than the notion of ‘social and psychological situation’ of an individual. Within the meaning of Directive 2011/36/EU of the European Parliament and of the Council, a ‘position of vulnerability’ means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.¹⁵ In the frame of this Directive, the concept of vulnerable persons in particular should include children; however, other factors related to the status of a victim—such as gender, pregnancy, state of health and disability—may also be taken into account.¹⁶ *Based on the foregoing, we suggest that, in keeping with international standards, in addition to positions of vulnerability provided for by the Albanian law-maker, other criteria related to age, gender, state of health, physical and/or mental disability should also be included. Inclusion of these elements in the definition provided under Article 110/a of the Criminal Code would reflect the Albanian law-maker’s purpose to foresee more severe punishment if the criminal offence of trafficking is committed against women (Article 110/a, paragraph 2) or children (Article 128/b).*

2.2 Criminal offences linked to trafficking in persons:

Besides trafficking in person, the Albanian legal framework foresees other criminal acts that are related to it.¹⁷ This approach reflects, in particular, the compatibility of the national legislation with the EU Directive 2011/36/EU on Combating Trafficking, which, having regard to the recent developments in the phenomenon of trafficking in human beings, adopts a broader concept of what should be considered trafficking in human beings. Within the

¹⁴Indicator A15

¹⁵Directive 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, Article 2/2

¹⁶ 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, paragraph 12/ preamble

¹⁷See indicators A5 – A10

context of this Directive, the notion of trafficking in persons should include other forms of exploitation such as: slavery, forced labour, forcing of persons to beg, sexual exploitation, trafficking of persons for the purpose of removal of organs, and even forced abortion or forced marriages, when such forms meet the criteria to be classified as the criminal offence of trafficking in persons.¹⁸ If we analyze the Criminal Code of Albania, we will notice that each of these associated criminal offences is provided for.¹⁹ In addition, CC explicitly defines “*Benefit from or use of services provided by trafficked persons*” (Article 110/b) and “*Actions facilitating trafficking*” (Article 110/c) as criminal offences.²⁰

However, criminal offences of serious labour exploitation of adult persons and labour exploitation of children below 18 years of age are regarded by the Convention as offences linked to trafficking in persons.²¹ If we analyze the legal provisions of the Criminal Code pertaining to these two criminal offences, we will notice that while CC foresees a special provision for children (in addition to the provision concerning trafficking of children)—*Article 124/b “Maltreatment of children”*²²—*labour exploitation of adult beings is included within the meaning of trafficking in adult persons; therefore, there is no separate provision concerning the obligation of debt.* Furthermore, the provision concerning trafficking in persons (Article 110/a) of the Criminal Code does not foresee the form of ‘serious’ labour exploitation.

2.3 Punishment for trafficking in human beings & compliance with international standards

The principal forms of punishment foreseen by the Criminal Code of Albania for commission of crimes are:²³

- a) life imprisonment
- b) imprisonment
- c) fine²⁴

In view of Article 31 of the Criminal Code, the sentence to life imprisonment shall be imposed by a court decision for the commission of a serious crime, unless the criminal offence was committed by persons younger than 18 at the time of commission of the criminal offence. Sentence to imprisonment is imposed for a duration ranging between 5 (five) and thirty-five (35) years²⁵. If we wish to take a look at the category under which the criminal offence of trafficking in persons falls, we will find it under Section VII of the Criminal Code—“Criminal acts against person’s freedom”. As such, this offence would, in terms of the amount of punishment, be comparable to similar criminal offences foreseen under the same section, such as: “Kidnapping or holding a person hostage” (Article 109 of CC)²⁶, “Forcing

¹⁸ 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, paragraph 11/ preamble

¹⁹ See Articles 110/a, 128/b, 114, 114/2, 117, 130 of the Criminal Code.

²⁰ Indicator A17/18.

²¹ Indicator A 11/12.

²² Physical or psychological abuse of a minor by his or her parents, sister, brother, grandfather, grandmother, legal guardian or any person who is obliged to take care of the minor, shall be punishable by imprisonment of three months to two years. Coercion, exploitation, encouragement, or use of a minor to work, obtain income, beg, or perform actions that damage his/her mental and/or physical development, or education, shall be punishable by two to five years of imprisonment. Where from the offence is caused severe health damage or the death of the minor, it shall be punishable by ten to twenty years of imprisonment.

²³ Analysis of indicator A1.

²⁴ Criminal Code of the Republic of Albania, Article 29 “Principal punishments”

²⁵ Criminal Code of the Republic of Albania, Article 32 “Imprisonment”

²⁶ Punishable by imprisonment of ten to twenty years. When this offense is committed against a minor, a sentence to imprisonment of no less than 15 years shall be imposed, and if the person died as a consequence of abduction or being held hostage, the sentence to life imprisonment shall be imposed.

through blackmail or violence to give out the property” (Article 109/b of CC)²⁷, “Enforced disappearance” (Article 109/c of CC)²⁸, or “Hijacking of planes, ships and other means of transport” (Article 111 of CC)²⁹.

Having compared penalties that the Albanian law-maker has foreseen for each of these crime categories with those it has foreseen for the criminal offence of trafficking in persons (Articles 110/a/b/c and 128/b of the Criminal Code), **it is safe to say that the foreseen severity of punishments is comparable**. According to Article 110/a, “trafficking in adult persons” is punishable by imprisonment of eight to fifteen years. However, if such offence is committed against vulnerable persons, such as women or children, the foreseen punishment is more severe³⁰, in line with the principle of proportionality.

Moreover, it is worth mentioning, in line with this principle, the use of the concept of **“aggravating circumstances”** in relation to the perpetrator of the criminal offence of trafficking in persons, which leads to a more severe punishment. For example, if the offence of trafficking is committed in co-perpetration, for more than once, or when accompanied by maltreatment or coercion by means of physical and psychological violence exerted on the victim, or if the offence leads to severe consequences for the victim's life or health, then the punishment is foreseen to be no less than fifteen years’ imprisonment. In harmony with all the aforementioned offences, the law-maker foresees—in the case of trafficking, too—punishment by life imprisonment if the commission of such offence resulted in the person’s death. Another aggravating circumstance that increases the severity of the punishment provided in the Criminal Code is the commission of such offence through use of a public official or public service office, which, if proven to be true, results in the main, previously imposed punishment being increased by ¼.

We can, therefore, conclude that adhering to such policy for determination of punishment **generally reflects the spirit of the Council of Europe Convention** on Action against Trafficking in Human Beings, which regards the following circumstances in the determination of penalty as aggravating circumstances: the criminal offence of trafficking was committed against a child; the offence endangered the life of the victim; the offence was committed by a public official in the performance of her/his duties; or the offence was committed within the framework of a criminal organization.³¹³² Moreover, in our reasoning, such policy for determination of punishment **reflects the notion of efficiency** in terms of “commission of offence–consequences” approach, as **foreseen by Directive 2011/36/EU**,

²⁷Punishable by imprisonment of two to eight years. When this offense is committed by using or threatening to use a weapon, torture, inhuman and humiliating acts which have caused harm to the health, an imprisonment of seven to fifteen years shall be imposed. When the crime, as a consequence, has caused the death of the person, the sentence to life imprisonment shall be imposed.

²⁸Punishable by imprisonment of seven to fifteen years. When such offence is committed against children, pregnant women, or persons who, because of various reasons, cannot protect themselves, sentenced to imprisonment of ten to twenty years shall be imposed. When such offence results in the death of a person, the sentence to life imprisonment shall be imposed. Illegal taking of children who are subjected to forced disappearance shall be punishable by imprisonment of five to ten years.

²⁹Punishable by imprisonment of ten to twenty years.

³⁰If committed against women, the criminal offence of trafficking is punishable by imprisonment of ten to fifteen years and if committed against children, by imprisonment of ten to twenty years.

³¹Council of Europe Convention on Action against Trafficking in Human Beings, Article 24 “Aggravating circumstances”.

³² See also: The United States Department of State. 2019. Trafficking in Persons Report: Albania, which highlights that the penalties imposed by the Albanian criminal law is severe compared to the penalty imposed for similar criminal offenses, such as rape.

according to which when a criminal act is committed under certain circumstances, for example against vulnerable persons, a more severe punishment must be imposed. The same applies also when the criminal offence is particularly grave, for example when the victim's life was endangered or the criminal offence involved serious forms of violence such as torture, forced use of narcotics, rape or other forms of psychological, physical or sexual violence. The Directive foresees that all these circumstances be regarded as aggravating circumstances, which are then reflected in the foreseen punishment.³³

However, even within the context of these two provisions, there are instances where the law-maker has not properly foreseen the application of increased punishment due to aggravating circumstances. More specifically, although organization, management and financing of the trafficking in persons are regarded as aggravating circumstances, not only that the punishment was not increased, but it was lowered (between seven to fifteen years). Meanwhile, according to Article 128/b, this circumstance is foreseen to be punished by the same penalty as the criminal offence of trafficking in children itself. In view of the foregoing, we recommend that both provisions be reviewed in order to reflect international standards.

Moreover, in order to take preventive legal measures, the Republic of Albania adopted Law no. 10192, of 03.12.2009, "On preventing and combating organized crime, trafficking, corruption and other crimes through preventive measures against assets", as amended in 2017, which foresees the confiscation or seizing of assets that were acquired using proceeds of the criminal offence of trafficking in adult persons/trafficking of children.³⁴

Investigation and prosecution of the criminal offence of trafficking in human beings (adult persons and children), regarded as serious crimes also due to penalties imposed, used to be under the jurisdiction of the Prosecutor's Office for Serious Crimes and the Court for Serious Crimes.³⁵ Meanwhile, after the 2017 amendments to the Criminal Procedure Code, both of these criminal offences will fall under the subject-matter jurisdiction of ordinary courts; in the experts' opinion, such change was regarded as being incompliant with the standards set forth by the UN Convention, which regards the criminal offences of trafficking in human beings as serious crimes.³⁶ Such amendments have caused practical difficulties and delays in the review of cases in 2018 and 2019 because the Prosecutor's Office for Serious Crimes had declared itself as having no jurisdiction over District Prosecutor's Offices.³⁷

2.4 Jurisdiction over criminal offences of trafficking, as defined by the Criminal Code and the Criminal Procedure Code of Albania, and the stipulation of "trafficking in human beings" as an extraditable criminal offence.³⁸

The application of Albanian criminal law concerning criminal offences committed by Albanian and foreign citizens is addressed in the General Part of the Criminal Code (Articles 5-7 and 11). Within the meaning of these Articles, the Albanian criminal legislation is applicable in the entire territory of the Republic of Albania, including over the land space, the width of the territorial and internal maritime waters, the air space as well as any other place

³³ 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, paragraph 12/ preamble

³⁴Indicator A.19.

³⁵Former Article 75/a of the Criminal Procedure Code.

³⁶For more information see: Different & Equal Center (2019) "Study report on the need for drafting a special law for the protection of victims of trafficking in Albania", pp. 46-7.

³⁷ In two cases analyzed by Vatra and Different & Equal, such legal amendments led to issues with the review of cases involving victims of trafficking.

³⁸Indicator A 20/21.

under the sovereignty of the Republic of Albania, such as the seats of the Albanian diplomatic and consular missions, the ships flying the flag of the Republic of Albania, the ships belonging to the military navy and civil and military aviation wherever they are. The criminal law of the Republic of Albania shall apply to criminal offences committed by Albanian citizens within the territory of the Republic of Albania. However, if an Albanian citizen commits a crime within the territory of another country, the criminal law of the Republic of Albania shall apply in case such crime is concurrently punishable and a foreign court has not yet rendered a final judgment. The foregoing principle is of a general character and does not explicitly refer to the criminal offence of trafficking in persons. *Meanwhile, as regards crimes committed outside the territory of Albania against an Albanian citizen, the Criminal Code explicitly foresees the application of Albanian criminal law when foreign citizens have committed, outside the territory of Albania, the offence of trafficking in persons, women or children* (Article 7 of the Criminal Code).

As far as extradition is concerned, it is worth emphasizing that, based on Article 11 of the Criminal Code, trafficking in persons does not fall into the category of non-extraditable criminal offences—only criminal offences of a political or military nature do.

2.5 Lack of a provision in Albanian legislation concerning the punishment of victims of trafficking and their release from detention on remand. (Indicator A22-23)

Paragraph II of Article 52/a of CC titled “Exclusion or reduction of the sentence for collaborators of justice and victims” provides that, “[t]he aggrieved party due to criminal offences related to trafficking in human beings may benefit from exemption from punishment for having committed criminal offences during the trafficking period and to the extent the person had been obliged to commit the illegal actions or omissions”. **However, this provision was not explicitly worded to be a measure for protection of victims of trafficking in every case, thus making it applicable only for cases where the victim cooperates or reports.** Based on the foregoing analysis, it can be seen that they may participate in proceedings and that the obligation to release them from detention on remand is not explicitly stipulated.

Recommendations on Group Aa indicator:

- *Take an initiative to propose a framework law against trafficking in human beings (see: Different & Equal Study, 2019)*
- *Beside the positions of vulnerability, foreseen by the Albanian law-maker, add other criteria to the Albanian criminal legislation in relation to age, gender, state of health, physical and/or mental disability. (Article 110/a)*
- *Apply the concept of “aggravating circumstance” in relation to provisions concerning penalties for the criminal offence of organization, management and financing of the trafficking in persons*
- *Distinguish, in the criminal law, between the criminal offences of “trafficking in adult persons” and “serious labour exploitation of adult persons”*
- *Explicitly foresee in the Albanian criminal legislation the irrelevance of consent to committing the criminal offence of trafficking in adult persons*
- *Add more legal measures for victims of trafficking by introducing the concept of ‘prohibition of punishment for victims of trafficking’ into the criminal law.*
- *Foresee in the Albanian criminal legislation the offence of ‘trafficking of children within*

Part III: Identification of victims of trafficking: findings in the case of Albania

3.1 Legal framework enabling the identification of victims of trafficking

Victims of trafficking in Albania are identified based on Council of Ministers Decision no. 499, of 29.08.2018, “On adoption of standard operating procedures for the protection of victims of trafficking and potential victims of trafficking” (SOPs). This decision explicitly foresees the means of identification of victims of trafficking (initial and formal identification) and the relevant authorities responsible for carrying out the identification. **The procedures were drafted in the same spirit** as the international instruments for prevention and fight against trafficking in persons, and reflect the recommendations provided in relation to the same scope of work by international organizations such as: UNO, the US Department of State, CoE, IOM, OSCE, UNICEF, ICMPD, UNODC.³⁹

As regards initial identification, SOPs assign the Border Police (green and blue) at the borders of the Republic of Albania as the institution responsible for carrying out the identification. Meanwhile, the agencies responsible for the initial identification in the territory of the Republic of Albania are state and non-state agencies, including: NCATS, social care centres for persons in need, organizations running assistance programs for persons in need, regional offices of state social services, state police structures, the labour inspectorate, schools and educational institutions, social care structures at municipality level. The responsible agencies/institutions for the identification of potential victims of trafficking (PVoT) of Albanian citizenship outside the territory of the Republic of Albania are the officers of diplomatic representations of the Republic of Albania, as well as other state and non-state agencies working in the area of protection of victims of trafficking (VoT).⁴⁰

The authority responsible for carrying out the formal identification is the Group/Structure Responsible for Formal Identification (G/SRFI) which operates at the borders and within the territory of the Republic of Albania. G/SRFI, which was set up *ad hoc* to conduct formal interviews with persons identified as potential victims of trafficking, consists of a police officer from the Section of Fight Against Illegal Trafficking (SFAIT) and the child protection worker/CPW at the municipality/administrative unit (for cases involving children) and a social worker from the Regional Office of State Social Service (ROSSS) (for cases involving adult persons).⁴¹

For each of the aforementioned institutions, SOPs clearly determine the indicators necessary for the identification of an adult or child VoT/PVoT and the steps to be taken in each case. Means of formal identification is the formal interview and consultations carried out by the responsible authority.

3.2 Issues faced during the monitoring of Group B indicators concerning the identification of VoTs/PVoTs

³⁹ Decision no. 499, of 29.08.2018, “On adoption of standard operating procedures for the protection of victims of trafficking and potential victims of trafficking”, p. 4

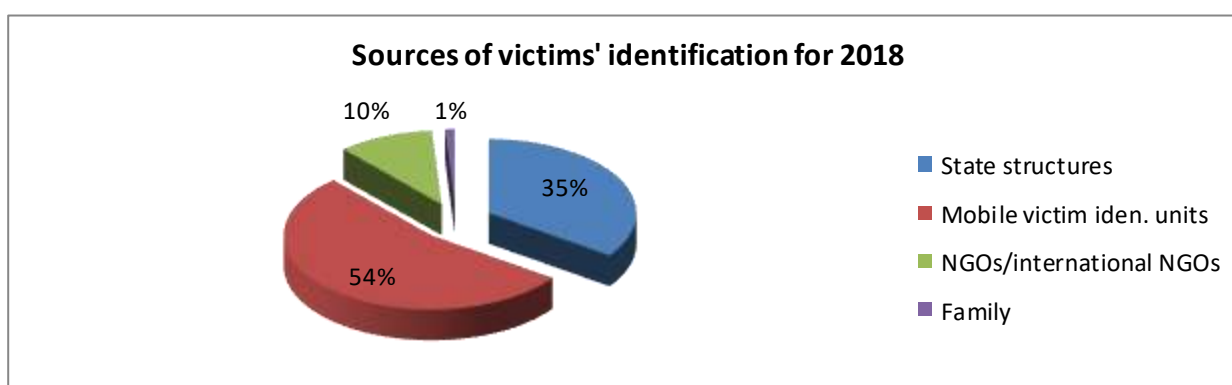
⁴⁰ Decision no. 499, of 29.08.2018, “On adoption of standard operating procedures for the protection of victims of trafficking and potential victims of trafficking”, p. 18.

⁴¹ Decision no. 499, of 29.08.2018, “On adoption of standard operating procedures for the protection of victims of trafficking and potential victims of trafficking”, p. 60.

Before we move on to the analysis of the monitoring of cases of VoT/PVoT identified during 2018, it is worth emphasizing right from the outset that the collection of data on identification of victims of trafficking was difficult and/or impossible for a certain category of Group B indicators. Reasons behind missing data include: firstly, non-existence of an indicator that is similar to the monitoring instrument indicators for the case at hand; and, secondly, failure of responsible authorities to collect data and publish statistics/register categorized data on indicators they cover. For example, in the case of Albania it is impossible to officially categorize VoTs/PVoTs by the form of exploitation. This is because the responsible authorities do not collect categorized data on the forms of exploitation; they limit themselves only to gathering data on the victim's status, citizenship, sex and age. Furthermore, as far as the latter element (age) is concerned, it is worth emphasizing that PVoTs are classified only as 'adult persons' or 'children' without specifying the children's age. In our opinion, doing so would be necessary to provide PVoTs/VoTs with the most adequate protection available. In addition, there are no indicator-related data on the number of victims that were self-identified at the Police, number of identified female/male adult persons, and number of identified children categorized by sex. Lack of data is noticeable even with regard to the number of police workers and/or diplomats who have received at least one training session on this matter.

3.3 Results of monitoring on identification of PVoTs/VoTs for 2018

Based on the Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020, the first identification sources continue to be, even in 2018, the General Directorate of State Police, the Social State Service, centers, NPOs, families or foreign organizations. Out of 95 VoTs/PVoTs, 33 were identified by state structures, 51 by mobile victim identification units, 10 by NPOs and international organizations; only 1 victim was identified by the family.⁴²



Out of the total of 95 VoTs/PVoTs, 28 were adult persons and 67 children; 60 were female and 35 male. Only 1 victim was a foreign citizen. Meanwhile, state authorities identified 93 persons as potential victims of trafficking and 2 as officially confirmed victims. As regards child victims, there are no data concerning the existence of cases of children who were

⁴²Ministry of Internal Affairs. (2019). Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020, p. 17.

considered as adult persons during the identification process and who had complained to be considered as child PVoTs.

Data on identification of victims of trafficking January-December 2018	95 PVoTs/VoTs	
	Sex	
	Male no./%	Female no./%
	35 / 37%	60 / 63%
	Age	
	Adult no./ %	Minor no./ %
	28 / 29%	67 / 71%
	Nationality	
	Albanian no./ %	Foreigner no. /%
	94/	1/
	Status	
	VoT no. / %	PVoT no./%
	2 /2%	93 / 98%

Source: Ministry of Internal Affairs (2019)

Although the government could not provide details about the form of exploitation, according to the US Department of State (USDoS) at least 36 were subjected to sex trafficking, 25 to forced labor, and 27 to forced begging.⁴³ As far as the officially identified victims are concerned, both victims were subjected to sex exploitation. The authorities responsible for identification of the form of exploitation were the Police bodies and the Labour Inspectorate. *However, according to the USDoS, these bodies lack the training to identify victims of forced labor by age and sex.*⁴⁴ Furthermore, as regards the authority responsible for the identification of victims of forced labour exploitation we may say that there is no separate authority for carrying out the identification of only male or only female victims (see indicator B.18/19). In our case, the Labour Inspectorate acts as a single body that should collect data on these indicators.

⁴³The United States Department of State, (2019) Trafficking in Persons Report: Albania, p. 48.

⁴⁴Ibid, p. 48.

The Border and Migration Department has identified 4 PVoTs among Albanian citizenship, 3 of whom were victims of sexual exploitation and 1 a victim of domestic violence. According to the Annual Report of the Ministry of Internal Affairs, the 4 PVoTs were found to have been exploited/violated outside the territory of the Republic of Albania by Albanian citizens (2 PVoTs) and foreign citizens (2 PVoTs).⁴⁵

As regards the investigation of the criminal offences of trafficking, we can say that during 2018 the Section of Fight Against Illegal Trafficking recorded a total of 1251 criminal offences related to trafficking in persons, of which 1106 or 92%, committed by 1461 perpetrators, were traced down. These cases are categorized in the table below by the type of criminal offence:⁴⁶

Type of Criminal Offence	Number of cases	of
Trafficking in persons	30	criminal offences
Trafficking of children	8	criminal offences
Assistance for illegal crossing of the borders	127	criminal offences
Illegal crossing of the state borders	990	criminal offences
Use of services provided by trafficked persons	3	criminal offences
Exploitation of prostitution	77	criminal offences
Use of premises for prostitution	16	criminal offences

Source: Ministry of Internal Affairs (2019)

Furthermore, during 2018, the structures for fight against illegal trafficking proactively referred 105 cases to the Prosecutor's Office for Serious Crimes and Prosecutor's Offices of Judicial District Courts, which were addressed by use of special investigative methods and fall into the following categories of criminal offences: "Trafficking in persons", "Exploitation by prostitution", and "Assistance for illegal crossing of borders". In the first 9 months of 2018, the General Prosecutor's Office registered a total of 16 proceedings under Article 110/a of the Criminal Code for three defendants/persons under investigation, and referred to the

⁴⁵Ministry of Internal Affairs (2019) Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020, p. 19. Foreign citizens appear to be of Macedonian and Arab citizenship.)

⁴⁶Ministry of Internal Affairs (2019) Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020, p. 17.

court only 1 case with 3 defendants; the court established that they were not guilty. During the same period, with regard to the criminal offence provided for by Article 128/b, the Prosecutor's Office prosecuted 1 case with 3 defendants which it referred to the court. In this case, the court found the three defendants guilty of having committed the criminal offence stipulated by Article 128/b of the Criminal Code.

As regards the cases adjudicated by the first-instance Court for Serious Crimes, it is worth mentioning that in 2018 the court sentenced 4 defendants to 15, 8, 7 years and 4 months, and 11 years of imprisonment respectively after finding them guilty of committing the criminal offence of trafficking of children provided by Article 128/b of the Criminal Code. During this period, the Court of Appeals for Serious Crimes sentenced 3 persons on the basis of Article 110/a and 2 persons on the basis of Article 128/b. During the monitoring period, 2 cases of trafficking in adult persons and 2 of trafficking of children were lodged with the Supreme Court, which has not yet rendered any decision on any of these cases.⁴⁷

Referring to 2017 and 2018, we notice a drastic decrease of the number of adjudicated cases and persons convicted of criminal offences of trafficking in human beings: 16 cases in 2016, 6 in 2017, and, again, 6 in 2018. The number of convicted persons decreased from 15 in 2016 and 7 in 2017 to only 4 in 2018. In the opinion of According to *Different & Equal*, the underlying reasons for the decrease of the number of cases are linked to the lack of abilities and capacities of the District Prosecutor's Offices to investigate and properly qualify the criminal offences; this finding resulted from the monitoring of cases that the Prosecutor's Office had dismissed. The same conclusion was reached by Vatra which noted, with regard to monitored cases, that the local police bodies or the prosecutor would, in some cases, mistake the criminal offence of 'trafficking in persons' for 'exploitation by prostitution'. In addition, regardless of the attempts made by the Office of the National Coordinator to train the referring bodies during 2018, monitoring sheds light on their need for these bodies to become more familiar with SOPs and protective measures for the victims. It is necessary to obtain complete statistics on training provided to professionals, number of training sessions held, and the total number people who benefited from the training in every case.

⁴⁷Ibid, p. 76.

Recommendations on Group B indicators:

- *Reword the indicators concerning the identification of VoTs/PVoTs to add the identification of the form of exploitation;*
- *Carry out the identification process by adhering to all procedural steps laid down by SOPs, regardless of reports to the Prosecutor's Office;*
- *Establish special indicators concerning VoTs/PVoTs, necessary to collect statistical data;*
- *Obtain statistical data on the total number of the Responsible Authority staff who have been trained throughout the year by the Office of the National Anti-Trafficking Coordinator;*
- *Build the capacities of Labour Inspectorate employees to identify the victims that are subjected to forced labour;*
- *Widen the scope of training provided to the relevant structures in all territorial units in the Republic of Albania and train specialists of border crossing points, asylum specialists, and diplomats, on the identification of victims of trafficking;*
- *Set up a system for collecting data on the identification of PVoTs/VoTs accessible by all the structures of the Responsible Authority and take measures to eliminate overlapping of data among police structures, prosecutor's offices and courts.*

Part IV: Protection of victims of trafficking: findings in the Albanian case

4.1 Legal protection for victims of trafficking

The Albanian legislation foresees, through some acts, the protection of victims of trafficking. SOPs determine clearly the difference between a VoT and PVoT, with the latter being characterized by the presence of at least three or more elements, which, based on indicators or circumstances of the case, raise the Responsible Authority's suspicion that the person in question might have been trafficked. In addition, SOPs determine the interview format for both adult persons and children. It is very important that a VoT/PVoT be identified quickly because they might need specialized assistance and support services which aim at assisting them in their reintegration and full physical, psychological and social recovery. As regards the guaranteeing of protective measures for VoTs/PVoTs, the Albanian legal framework was drafted based on the minimum standards of protection provided by Article 12 of the CoE Convention.⁴⁸ Special rights that are part of the protective measures of a legal character include:

a) Right to free legal aid⁴⁹

b) Right to benefit from a protection program for witness or collaborators of justice⁵⁰

⁴⁸ The Council of Europe Convention on Action against Trafficking in Human Beings regards the following standards as minimum standards for the protection of VoTs/PVoTs: appropriate and secure accommodation; psychological assistance; material assistance; access to emergency medical treatment; translation and interpretation services, when appropriate; counseling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand; legal assistance and free legal aid under specific conditions; access to labour market; education and vocational training; and access to education for children, taking due account of the victim's safety and protection needs.

⁴⁹ Law no. 111/2017 "On state-guaranteed legal aid"

⁵⁰ Law no. 10173, of 22.10.2009, "On protection of witnesses and collaborators of justice", see Article 12.

c) *Right to benefit from social security scheme after leaving a social care institution until they find employment*⁵¹

d) *VoTs/PVoTs' right to be accommodated in special residential centers;*

e) *In special cases, foreign victims of trafficking are entitled to work permit of type C for purposes of business, employment, self-employment, or vocational training*⁵²

f) *Protection of identity and private life of a VoT/PVoT*⁵³⁵⁴.

Moreover, in addition to these rights, the international conventions foresee the right of the victims of trafficking to return (to their country of habitual residence) and to benefit from compensation in order to repair the damage suffered by them. The Criminal Procedure Code of the Republic of Albania recognizes the right of a victim of a criminal offence to seek compensation for the damage and be accepted as a civil plaintiff in the criminal proceedings.⁵⁵ The problem is that the General Part of the Criminal Code of Albania does not recognize the term “victim”, because it focuses mainly on general concepts of crime, criminal liabilities and criminal sanctions, whereas the Special Part of the Code focuses on concrete criminal offences. This means that the victim is not recognized as an individual and independent subject of the criminal law; as such, unlike the prosecutor, defendant and the court, they cannot be a legitimate party in criminal proceedings. Meanwhile, until the amendments to the Criminal Procedure Code became effective in 2017, the Code contained the term “*person i dëmtuar*” (injured party/aggrieved person), thus excluding the right of victims of trafficking to play a full and active role as an autonomous actor in proceedings. Currently, the term ‘victim’ has been unified across all Albanian legislation. In the past, because the victims of trafficking could not take part directly in the criminal proceedings as a party, “*they could not materialize their basic rights to participation, protection and restitution.*”⁵⁶ Besides, the legislation did not explicitly foresee protection from retaliation or intimidation during and after investigation/prosecution for either the victims or their families. The 2017 amendments to the Criminal Procedure Code stipulated a new position of the victim of crime in criminal proceedings.⁵⁷ They have brought about a fundamental change in the status of victims of criminal offences. Unlike their position in the past, now the victim of crime is a party in the criminal proceeding and has procedural rights that allow them to play an active role in the process. This is a fundamental change that differentiates the victim’s current position from their previously passive position where the victim could only act in the

⁵¹ Law no. 10252, of 11.03.2010, “On some amendments to Law no. 9355, of 10.03.2005, “On social assistance and services””, Article 1

⁵² Law no. 9959, of 17.7.2008, “On Aliens”, Article 60.

⁵³ Law “On protection of personal data”

⁵⁴ Law no. 108/2014 “On the State Police”; Criminal Justice for Children Code, Article 21/4

⁵⁵ Criminal Procedure Code, Article 58/1/(g).

⁵⁶ Different & Equal (2019) “Study on issues of victims’ cooperation with law enforcement authorities”, p. 15.

⁵⁷ See: Aurela Anastasi. TË DREJTAT E VIKTIMAVE TË TRAFIKIMIT TË QENIEVE NJERËZORE NË PROCESIN PENAL (neni 58, 58/b të Kodit të Procedurës Penale), botuar në “Komentari i veprave penale të trafikimit të qenieve njerëzore, Të drejtat e viktimave të trafikimit gjatë procesit penal”, Prezenca e OSBE në Shqipëri 2017, [English: THE RIGHTS OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN CRIMINAL PROCEEDINGS, (Articles 58 and 58/b of the Criminal Procedure Code), published in “A commentary on criminal offences of trafficking in human beings, The rights of victims of trafficking during criminal proceedings”, OSCE Presence in Albania 2017], pp. 51- 61, available at: <https://www.osce.org/sq/presence-in-albania/373351?download=true>

capacity of a witness, reporter (to the police) or civil plaintiff that sought compensation for the damage caused to them as a result of the commission of the criminal offence. Currently, a series of procedural rights is in place. In addition to the rights that are foreseen recently for victims of crime in general (Article 58), the victims of trafficking in human beings have rights that are foreseen specifically for them (58/b)⁵⁸.

Furthermore, health care legislation guarantees mandatory health care coverage for victims of trafficking. *What is noticeable, however, is that such right has not been foreseen for potential victims of trafficking.*⁵⁹

4.2 Results from monitoring of VoT/PVoT protection (2018)

It transpires from the Annual Report of the Ministry of Internal Affairs and the data of shelters that 9 individuals from the National Reception Centre for Victims of Trafficking (NRCVT), 2 from Vatra and 17 from Different & Equal have collaborated with the law enforcement authorities during 2018; they were assisted by these centers which provide services to victims/potential victims of trafficking. Based on the information contributed by Vatra, the number of cases this center followed is 7, which points to the need for a better coordination between state structures and organizations operating in this area. The shelters do not report any case being included in the Program for Protection of Witnesses and Collaborators of Justice during 2018.⁶⁰ Meanwhile, none of the official reports contains any data on the protection of victims following the trials of criminals accused of committing offences against them. In addition, based on the information provided by shelters which support victims of trafficking, it was found that no such measure was taken in 2018. Moreover, based on monitoring results, *except for sheltering in centers and provision of legal assistance, no other special measure was taken during the monitoring period to protect victims, witnesses, NGOs that protect victims during criminal proceedings from potential retaliation or intimidation.* Based on the findings, during this period the law enforcement institutions did not provide full and secure protection to victims and their families, which suffered threats during court proceedings. There was only one case where the testimony of a victim was obtained by means of a video-conference. In other cases, the victims have been part of the proceedings in a court-room.⁶¹ According to SOPs, VoT/PVoT are supposed to be provided with support, protection and safety even if they do not collaborate with the Police or other law enforcement officials. The only measure linked to the collaboration with justice bodies and reporting is to benefit from the opportunity of being exempted from penalties or having such penalties reduced as foreseen by the Criminal Code (Article 52/a). Furthermore, no cases were reported where the members of NGOs that support VoTs/PVoTs received threats or were intimidated during the period they protected the victims. There are no data/cases concerning this period that would point to the withdrawal/insecurity of victims of trafficking after a 6- or 12-month period following their contact with an organization and their subsequent refusal to cooperate. In addition, no data was available on cases that were

⁵⁸ Idem

⁵⁹ See Law no. 141/2014, of 23.10.2014, amending Law no. 10383, of 24.02.2011, on Compulsory Health Care Insurance in the Republic of Albania.

⁶⁰ See also: The US Department of State Report: Trafficking in persons Albania 2018, p. 5.

⁶¹ Ibid, p. 5.

officially provided with protection measures during investigations. In 2018, no victim was provided with protection in the form of physical safety, reallocation or changing of identity. In some cases monitored by Vatra, the personal details and photos of VoTs were made public, thus further endangering them. In addition, based on the monitoring performed by the same organization, it is worth mentioning that in some cases, because a victim of trafficking gave no statement or modified her statement that would imply the trafficker's criminal liability, the Prosecutor's Office would not further investigate the case and dismissed it due to lack of evidence.

With regard to VoTs/PVoTs who returned to Albania during 2018, it was found that the number of cases is 7. They returned from, France, Germany, North Macedonia, Portugal and the UK. All of them were returned with assistance by the Responsible Authorities of both countries and civil society organizations operating in both the destination countries and Albania. According to SOPs, consular personnel should be involved in cases of assisted return; however, based on the MIA report, it was found that although there were 7 cases of assisted return, *such cases were returned through NGOs in cooperation with the Responsible Authority at Albania's Ministry of Internal Affairs, without the involvement of Albanian consular personnel*. Assisted returns were carried out in compliance with the Standard Operating Procedures in general, despite the lack of involvement of consular personnel. Before such individuals were returned to Albania, a risk assessment was reported to have always been carried out and, in case of children, their family situation was also assessed. In one case, however, due to the failure of local authorities to act in a timely manner or follow the steps foreseen in the procedures, the assisted return was delayed. Immediately upon their return to Albania, all these returnees were provided with a full package of integration services based on their individual needs. The lack of an indicator on "compulsory repatriation" in the Action Plan of the Ministry of Internal Affairs makes it impossible to monitor this indicator for the purpose of the present report (indicator C.46).

4.3 Protection of child victims of trafficking/potential victims of trafficking

The Albanian legal framework provides broadened protection to child victims of trafficking/potential victims of trafficking in order to protect the child's best interests, enable their reintegration in society, and take measures to provide them with educational and social services, medical aid, etc.⁶² Based on Law no. 18/2017 "On the rights and protection of the child", the Albanian Council of Ministers (CoM), in cooperation with several organizations, adopted the necessary decisions of the CoM to guarantee protection of children.⁶³

⁶² See in particular Law no.18/2017 "On the rights and protection of the child"; Criminal Justice for Minors Code; CMD no. 499, of 29.08.2018, "On adoption of standard operating procedures for the protection of victims of trafficking and potential victims of trafficking".

⁶³ CMD no. 54, of 31.01.2018, "On regulation of the functioning of the National Council for the Rights and Protection of the Child"; CMD no. 91, of 14.02.2018, "On procedures for performing checks and determination of sanctions by the State Agency for the Rights and Protection of the Child"; CMD no. 148, of 13.03.2018, "On the determination of rules of cooperation between institutional advisory and coordination mechanisms, structures for the rights and protection of the child and nonprofit organizations, for the implementation of national and local policies and for the services necessary for the protection of the child"; CMD no. 353, of

Furthermore, in the framework of protection of and assistance to VoTs/PVoTs, CMD no. 707 “On some amendments and supplements to CMD no. 107, of 10.02.2010, “On publishing, printing, distribution and sale of textbooks for pre-university education system””, as amended, was adopted on 26.08.2015. *This CMD foresees the provision to child victims of trafficking with free-of-charge textbooks.*

In 2018, 38 children, considered to be VoTs/PVoTs, were provided with services by 4 shelters that work with victims of trafficking and by Social Care Institutions (SCI) or family. They were identified based on SOPs for identification and referral of victims of trafficking. The largest number of verified cases occurred in the Municipalities of Tirana and Elbasan. The children identified as VoTs/PVoTs had mainly been exploited for begging. There were, however, also cases of sexual exploitation. Of 38 children, 12 had been exploited for prostitution. All children are of Albanian citizenship.⁶⁴

However, regardless of the protection provided to child VoTs/PVoTs, there was still inadequate data about: a) unaccompanied children identified as victims to whom a guardian was assigned; b) child victims of trafficking whose family was not identified within a reasonable period from the moment the victims were identified; c) children who received legal counselling; and d) number of child victims/witnesses during the stage of legal proceedings. Based on the foregoing, in order to obtain a full picture of child victims of trafficking/PVoT, it is necessary to reword the national indicators by adding the assessment and collection of data also in relation to the aforementioned indicators that are part of the Adapted Monitoring Instrument for Albania.

4.4 Protection of foreign victims

As regards foreign victims, Article 54 of Law no. 108/2013 “On aliens” foresees the option of issuing residence permits to victims of trafficking in human beings. Under this Article, the local authority responsible for border and migration shall issue type “A” temporary residence permit for a 3-month validity period to any alien, regardless of his/her will to collaborate with justice, if there are reasonable grounds to believe that the alien is a victim or potential victim of trafficking identified as such by the structures responsible for identification and referral of victims of trafficking. During the recovery and reflection period, the victim or potential victim of trafficking shall enjoy all the rights and services that the applicable Albanian legislation foresees for victims of trafficking. Based on the official report of the National Anti-Trafficking Coordinator, it was found that 7 foreign citizens were issued temporary residence permits; one case was issued a residence permit for the first time, and 6 had their residence permits renewed. The residence permits were issued for a validity period of 3 to 6 months. In no case has a victim of trafficking been denied the residence permit. In addition, during the monitoring it was found that in 2018, a new case was identified as a foreign victim of trafficking by authorities, and NGOs were aware of 1 other case involving a victim of trafficking, but because the official identification process got too complicated and took too

12.06.2018, “On rules of functioning of the technical cross-sectional group on the protection of children, at municipalities and administrative units”.

⁶⁴ Annual Report of the Ministry of Internal Affairs (2018)

much time the person could not be identified as a victim in 2018.⁶⁵ In addition, during that year, 4 cases were returned by means of assisted return, 3 of which were children and 1 adult. Following a needs assessment of the cases and having the best interest of the child in mind, these individuals were not returned to their country of origin but to a third country. More specifically, according to the Report of the Office of National Anti-Trafficking Coordinator and based on the information obtained from shelters, 3 Afghan children were provided with assistance to relocate to Sweden where their mother lived, and a Belorussian citizen (woman) was returned to Italy—the country where the orphanage she was raised at is located.⁶⁶ No information was available to indicate the number of foreign potential victims who applied for or were granted asylum.

Although a person dealt with by Different & Equal as a case was referred in 2017, the institutions demonstrated their willingness to provide protection to foreign victims. In the case of Romanian citizen M.P., the Border and Migration Department collaborated in providing M with a residence permit and renewed it repeatedly; National Employment Service, through the Migration Office, eased the procedures for issuing M an Albanian work permit within a very short time (5 days from the application date); the Romanian Embassy in the Republic of Albania helped M by issuing her a passport of 1-year validity and is facilitating, in cooperation with Romanian authorities, the procedure for issuing her a passport valid for 10 years. During monitoring, we experienced communication difficulties with the General Directorate of Prisons about the release of the man who had exploited her from prison, facing bureaucracy and delays in getting responses, although the right to being informed of an alleged perpetrator's release is guaranteed to victims by the law and must, as such, be guaranteed by state-run institutions too.

⁶⁵See the Report of the Ministry of Internal Affairs (2019).⁶⁵ Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020.

⁶⁶See the Report of the Ministry of Internal Affairs (2019). ⁶⁶Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020, and the information from Tjetër Vizion and Different & Equal organizations.

Recommendations on Group C indicators

- *Article 52/a of the Criminal Procedure Code needs to be reworded in order to enable VoTs/PVoTs to get a lower penalty or be exempted from punishment even when they do not report to the Police or collaborate with law enforcement bodies.*
- *VoTs/PVoTs should be treated equally as regards the protection of the legally provided rights*
- *The Law on Health Care in the Republic of Albania needs to be amended in order to enable mandatory health care coverage for PVoTs as well as officially-recognized trafficking victims.*
- *Take special measures to protect VoTs/PVoTs from retaliation or threats coming from traffickers during the investigation proceedings/trial*
- *Increase cooperation between the Responsible Authority and consular missions with regard to assisted return of VoTs/PVoTs*
- *Revise indicators on the protection of child victims/potential victims of trafficking by adding the following elements: the number of children who provided testimony or other evidence against suspected traffickers, the number of interviewed children, the number of children suspected of being VoT, the sex of the children suspected of being victims/potential victims of trafficking, the forms of exploitation to which child victims/potential victims of trafficking have been subjected.*

Part V: Assistance and support to victims of trafficking: findings in the Albanian case

5.1 Assistance to victims of trafficking in general

In the Albanian legal framework, the rights of VoTs/PVoTs are clearly defined in the criminal procedure legislation and separate laws. The support/assistance to them is covered mainly by the State Budget. In 2018, a fund amounting to ALL 26,796,602 (approximately €220,000) was allocated from the State Budget in order to pay for the salaries of 29 social workers who provide services in residential centers and to provide food for trafficked cases in the districts of Vlora, Tirana, and Elbasan, through non-public entities: Tjetër Vizion Association, Vatra, and Different & Equal. Meanwhile, funds for NRCVT reach the total amount of 22,476,939 (approximately €184,000).⁶⁷

From a procedural perspective, ***the victims/potential victims of trafficking have a special status, guaranteed*** by Article 58 of the Criminal Procedure Code, which foresees, in addition to rights guaranteed by Articles 58 and 58/a for victims of crime in general, rights that are specific to victims of sexual abuse and victims of trafficking in human beings. Under this Article, VoTs/PVoTs have the right to:

- a) be heard without delay by a judicial police officer or prosecutor of the same gender;*
- b) refuse to answer questions regarding his/her private life not obviously related to the criminal offence;*
- c) request to be heard during the trial through audio-visual tools pursuant to the provisions of this Code.*

In addition, VoTs/PVoTs have all the rights stipulated under Article 58, which are as follows:

⁶⁷See: Ministry of Internal Affairs (2019).⁶⁷ Annual Report on Implementation of National Action Plan for Combating Trafficking in Persons 2018-2020.

- a) to request the prosecution of the perpetrator;*
- b) to seek medical care, psychological assistance, counseling and other services provided by the authorities, organizations or institutions responsible for assisting victims of crime;*
- c) to communicate in his or her native language and to be assisted by a translator and an interpreter of the language of signs or communication facilitator for people who have speech and hearing impairment;*
- ç) to choose an attorney-at-law and, if applicable, receive free legal aid pursuant to the applicable legislation;*
- d) to seek at any time information about the status of the proceedings, and to take cognizance of acts and evidence, without breaching the principle of the secrecy of the investigation;*
- dh) to request to receive the evidence and submit other requests to the prosecuting authority;*
- e) to be informed of the arrest and release of the accused person under the conditions stipulated in this Code;*
- ë) to be informed about the non-initiation of the proceedings, dismissal of the case, initiation and completion of the trial;*
- f) to make an appeal before the court against the decision of the prosecutor for the non-initiation of proceedings and the decision of the prosecutor or of the judge of the preliminary hearing to dismiss the charge or the case;*
- g) to demand compensation for the damage and to be accepted as a civil plaintiff in criminal proceedings;*
- gj) to be excluded, in the cases provided for by the law, from the payment of every expense for receiving the acts and judicial fee for the submission of the lawsuit related to the status of the victim of the criminal offence;*
- h) to be summoned in the preliminary hearing and the first hearing;*
- i) to be heard by the court even when none of the parties requires them to be summoned in the capacity of witness;*

In case of a child victim/potential victim of trafficking, in addition to the foregoing rights, he/she shall have the right to:

- a) be accompanied by a person of his/her trust;*
- b) confidentiality of his/her personal data;*
- c) ask through his or her representative that the hearing takes place without the presence of the public.*

It is exactly these rights that should draw the attention of legal professionals. There have been cases where the victims of trafficking and sexual exploitation were children, but there have been even more cases of victims who were minor when the exploitation started and reached adult age by the time the criminal proceedings were initiated.⁶⁸ Moreover, VoTs/PVoTs have the right to access and benefit from programs that promote their employment and participate in vocational training. Foreign victims/potential victims of trafficking are dealt with the same way—they receive the same quality services from the same centers that cater to the needs of Albanian victims/potential victims of trafficking. They are treated by residential centers once they are referred there. All victims/potential victims of trafficking have benefited from free medical aid for their mental and physical health.

5.2 Assistance and support to child victims

Children identified as victims/potential victims of trafficking require an even greater engagement of the Albanian State considering their position of vulnerability as

⁶⁸ See Aurela Anastasi. TË DREJTAT E VIKTIMAVE TË TRAFIKIMIT TË QENIEVE NJERËZORE NË PROCESIN PENAL (neni 58, 58/b të Kodit të Procedurës Penale), botuar në “Komentar i veprave penale të trafikimit të qenieve njerëzore, Të drejtat e viktimave të trafikimit gjatë procesit penal”, Prezenca e OSBE në Shqipëri 2017, [English: THE RIGHTS OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN CRIMINAL PROCEEDINGS, (Articles 58 and 58/b of the Criminal Procedure Code), published in “A commentary on criminal offences of trafficking in human beings, The rights of victims of trafficking during criminal proceedings”, OSCE Presence in Albania 2017], pp. 51- 61, available at: <https://www.osce.org/sq/presence-in-albania/373351?download=true>

victims/potential victims of trafficking. Provision of accommodation and other assistance to a child suspected of being a victim of trafficking takes between 1 and 2 days starting from the moment of identification. Children identified as victims are sheltered and receive financial support at special anti-trafficking centers. All children accommodated in shelters benefit from assistance. After leaving this service, they should continue to receive support upon the child protection worker's referral on receiving free state aid. According to the Annual Report of the Ministry of Internal Affairs, in 2018, 85 children were sheltered and provided with services. The service that all these centers provide is suited to the children's age. In this regard, the only specialized center for children is the center of Tjetër Vizion, which in 2018 provided service to 19 child victims/potential victims of trafficking out of 85 in total. Sixty-six children were placed with shelters specialized in dealing with victims of trafficking and 19 were placed with shelters specialized in dealing with child victims of trafficking (85 in total). Of 85 children, 19 received age-appropriate psychological and social counseling and 66 received psychological and social counseling at centers of the National Coalition of Anti-Trafficking Shelters (NCATS). There are no statistics about child victims being placed with foster or guardian families. No information was available to suggest that child victims were placed with non-specialized centers. The remaining child VoTs received assistance from Different & Equal and Vatra.

Children categorized as victims and potential victims of trafficking received appropriate medical assistance because, after being categorized, they are referred to receive services at anti-trafficking shelters. Thirty-one children, who were identified this year as potential victims of trafficking by the mobile victim identification unit of Tjetër Vizion, were of school age, but they attended classes irregularly. The identified children are referred to shelters in order to receive residential services or receive services while living elsewhere, based on their level of risk. After being referred, the 31 children identified as potential victims of trafficking returned to school. Children of more than 16 years of age were enrolled in and attended vocational training (8 in total, who are sheltered by and received services at Tjetër Vizion).

5.3 Free legal aid and legal assistance

The amendments made to the Criminal Procedure Code, Criminal Code, and relevant legislation guarantee the right to free legal aid. This right is guaranteed by Article 58/1 ("The rights of the victim of the criminal offence") of the Criminal Procedure Code. In addition, Articles 105, 105/b, and 106 of the Civil Procedure Code foresee the right to request exemption from payment of fees for receiving legal documents or for expertise. The right to legal aid, particularly for victims of trafficking, was specified by Article 11 of the Law "On state-guaranteed legal aid" and comes in three forms (Article 5). VoTs/PVoTs have the right to free legal aid in the form of primary legal assistance, secondary legal assistance, and exemption from payment of court fees and judicial expenses as provided by law, and from the obligation to pay in advance the fee of enforcement of the writ of execution. Adoption of this law was considered to be an achievement towards guaranteeing protection for VoTs/PVoTs. However, the state-guaranteed legal aid scheme has not yet become fully effective. A directorate for free legal aid within the Ministry of Justice was supposed to be established by the end of October 2018 but this did not materialize.⁶⁹ From a practical point of view, no victim of trafficking in 2018 benefited from legal aid services of the Directorate for Free Legal Aid in any of the three forms foreseen by the law. Meanwhile, several organizations provided free legal assistance. In addition, it is worth emphasizing that the Center for Legal Civic Initiatives, in cooperation with Different & Equal supported a case at the Tirana

⁶⁹ European Commission. (2019). Albania 2019 Report, p. 30.

Judicial Court requesting material and non-material compensation. For the first time, upon completion of adjudication, on May 16, 2018 the Court awarded compensation to the victim of trafficking for both pecuniary and non-pecuniary damages.

However, as regards the practical guarantee of this right we may state that the Republic of Albania has not set up a general compensation fund to pay compensation to the victims of criminal offences—a fund which the victims of criminal offences could access after the conviction of the alleged perpetrator of trafficking, regardless of whether the victim resides in the country or not.

Furthermore, the Republic of Albania has not set up any specific compensation fund to pay compensation to the victims of trafficking, regardless of whether the suspected trafficked was prosecuted or convicted. Legislation foresees that victims may demand compensation by submitting a civil lawsuit while the criminal proceedings against the defendant are being conducted. Based on the past experience, the cases where the victims of trafficking in human beings seek to invoke this right through civil or even criminal proceedings are very few.

The legislation foresees a new procedure for compensation of victims of trafficking through seized assets; given that there are no practical cases, the effectiveness of such a mechanism remains to be tested in the future.

5.4 Issues identified concerning the VoTs/PVoTs access to justice

The right to be represented by an attorney-at-law During the monitoring period there were no attorneys-at-law with appropriate specialization to provide free legal services who can represent the victims at all judiciary and non-judiciary proceedings. Generally speaking, the attorneys-at-law of non-profit organizations are the only professionals who have the relevant experience to work with the victims of trafficking while adhering to the established standards. The application of the new law on state-guaranteed legal aid, which requires that attorneys-at-law receive initial and ongoing training, should address this issue.

Exemption from the payment of fees and expertise. It was found that courts did not render any intermediate decision to exempt the victim from the payment for receiving acts or for psychologists and forensic experts, possibly creating financial difficulties for them. The reasons were unclear

During the trials, it was noted that the **experts—psychologists in particular—summoned to the Court lack the proper education and training** necessary to compile a report about a victim of trafficking, and during the interviews they conducted, they would often re-victimize the victims.

Another issue found in relation to these trials **is the burden of proof**, which falls on the claimant—the trafficked victim. It was found that the state institutions generally failed to cooperate or respond within the course of efforts to find out precisely how much a trafficked person's health had been damaged as a result of being trafficked (and exploited).

Another issue found during the monitoring concerns the execution of courts' final decisions on compensation of victims of trafficking; this problem resulted from the failure of the Agency for the Administration of Seized Assets to carry out its duty (of taking control of the assets of suspects and criminals).

Recommendations on Group D indicators

- Train attorneys-at-law and experts in handling the cases of VoTs/PVoTs without re-victimizing them.
- Set up a general compensation fund to pay compensation to the victims of criminal offenses—a fund which the victims of criminal offences could access after the conviction of the alleged perpetrator of trafficking, regardless of whether the victim resides in the country or not.
- Set up a specific compensation fund to pay compensation to the victims of trafficking, regardless of whether the suspected person for trafficking was criminally prosecuted or convicted, and a state scheme for compensation of victims of trafficking.
- Make the measure of exemption of VoTs/PVoTs from payment of fees and court expenses a reality, rather than requiring them to make payments and only later possibly reimbursing them
- Take measures to enforce final decisions on court orders that a criminal should pay compensation to VoTs/PVoTs
- Monitor the process of compensation for victims of trafficking and set up a system to collect data on the number of compensation claims and their outcome.
- The State Police and Social Service should assess the pre-existing situation of women and girls who are exploited for prostitution; they should be given the opportunity to rehabilitate and reintegrate in order to prevent punishment of both victims and traffickers.

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- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, ratified by the Albanian Parliament by Law no. 10 071, of 09.02.2009
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