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REPORT

**The development and implementation
of the Albanian legislation
to combat human trafficking in human beings,
with a focus on the protection of the rights of victims of trafficking**

An analysis of the Albanian law and practice on human trafficking, including through direct assistance and court monitoring.

This report was prepared under the “Legal Education and Protection of Rights” Project.

Tirana, 2009

This report was drafted under the Project "Legal Education and Protection of Rights. Access to justice for victims of trafficking and persons at risk", supported by the Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, OSCE/ODIHR.

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Special thanks to Allison Jernow, Freelance Trafficking and Criminal Justice Consultant for her assistance, and Ms. Astrid Ganterer, ODIHR Anti-Trafficking Program.

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INTRODUCTION, SCOPE AND METHODOLOGY

1.1 Introduction

Albanian legislation foresees trafficking in human beings as a seriously dangerous offence. The establishment of the Court for Serious Crimes¹, responsible for offences related to trafficking in human beings, has increased the effectiveness of fight against this highly dangerous crime. There has also been an increasing commitment of the state structures, civil society organizations and other civic stakeholders involved in the fight against trafficking in human beings, demonstrated both through preventive and protection measures of a legal, administrative, social and economic nature.

The Albanian legislation has evolved in trying to approximate itself with the international conventions ratified by the Republic of Albania. Structures responsible for fighting against this phenomenon have focused on implementing the National Strategy on Fight against Trafficking in Human Beings, and have also established some mechanisms for this purpose. The Anti-Trafficking Unit has intensified its work in co-operation with the General Police Directorate, and the Border Police in particular, as well as with non-profit organizations and other stakeholders. The Ministry of Interior, Ministry of Foreign Affairs and Ministry of Labor, Social Affairs and Equal Opportunities, established, through a joint order², the so-called Responsible Authority for ensuring protection of, and assistance for, victims and potential victims of trafficking. Such assistance and protection is enabled by coordinating and monitoring their referral, assistance, protection and reintegration. In addition, the National Coordinator on Fight against Trafficking in Human Beings, under the Ministry of Interior, is another important structure for addressing the phenomenon of human trafficking.

These agencies coordinate their work with international organizations, trying to ensure the implementation of the Transnational Referral Mechanism for trafficked persons in South-Eastern Europe, as well as the implementation of these mechanisms at the national level.

1.2 Scope of study

Applying the law effectively and improving the performance of justice authorities is crucial in the overall framework of measures for preventing and fighting against trafficking in human beings. Identifying the assistance needed in this direction was the scope of the monitoring process and of the analysis conducted during a one-year-period by the Centre for Legal and Civic Initiatives.

¹ Established by law No. 9119, 'On the organization and functioning of the Court for Serious Crimes'

² This order was approved by the Ministry of Interior by order No. 3394/4, dated 17.05.2006, by the Ministry of Labour, Social Affairs and Equal Opportunities by order No. 1152, dated 19.05.2006 and the Ministry of Foreign Affairs by order No. 7590, dated 24.05.2006.

Being aware of the high complexity of the phenomenon of trafficking, we chose to analyze the legal and administrative measures, judicial practice, and state policies from a new perspective. More specifically, we analyzed and monitored how rights of the victims of trafficking are being guaranteed under the framework of fundamental human rights and freedom.

The study aims to analyze the results achieved by the development and improvement of the legislation on trafficking in human beings, as well as its implementation by monitoring the investigation and court practices regarding this criminal offence.

Firstly, the study monitors court decisions and judicial practices regarding trafficking offences during 2004-2007. It is a follow up of the 2000-2003 study conducted by the same centre, but introduces some novelties in its analysis, conclusions and recommendations.

Secondly, the study provides information about a larger number of courts, including the Court for Serious Crimes and the district courts of Tirana, Shkodra, Vlora and Korça.

Thirdly, the study includes important findings about the status of victims and that of injured parties.

Fourthly, this study monitors judicial practices for a wider range of criminal offences set forth in the Albanian Criminal Code, which are under the jurisdiction of the Court for Serious Crimes³, as described below:

“Trafficking in human beings” (Article 110, paragraph a);

“Trafficking in women” (Article 114, paragraph b);

“Trafficking in minors” (Article 128, paragraph b).

In addition to trafficking offences, the study monitors also some other offences related to trafficking, which are useful for analyzing the practical implementation of the legislation:

“Transplant trade” (Article 89, paragraph a);

“Sexual or homosexual intercourse, by force, with minors between the age of 14 and 18” (Article 101);

“Non-consensual sexual intercourse with mature women” (Article 102);

“Kidnapping or keeping a person hostage” (Article 109);

“Abandonment of minor children” (Article 124);

“Intentional hiding or switching of children” (Article 128, paragraph a);

“Forcing or impeding to cohabit or divorce” (Article 130);

“Exploitation of prostitution” (Article 114);

“Exploitation of prostitution under aggravated circumstances” (Article 114, paragraph a);

“Use of premises for prostitution” (Article 115);

“Illegal crossing of state border” (Article 297);

“Assistance in illegal border crossing” (Article 298).

³ Article 75, paragraph a, of the Criminal Procedure Code.

1.3 Purpose of study

This study aims to contribute to increasing access of victims of trafficking to justice by making them aware of their rights and by guaranteeing their protection. The recommendations and suggestions provided through this study aim to improve the performance of justice authorities and strengthen the rule of law in the country.

1.4 Methodology

The methodology used for this report is manifold. It includes analyses of international standards and national laws, the monitoring of court cases at selected courts, the provision of direct assistance to victims and consultations with a variety of anti-trafficking stakeholders.

From a technical viewpoint, the methodology consisted of monitoring the decisions of the Court for Serious Crimes and those of district courts of Tirana, Vlora, Shkodra and Korça. Information was received both through direct co-operation with the courts or through their respective websites. The monitoring process involved also direct observation of some court proceedings with the Court for Serious Crimes, and with Tirana District Court.

Findings are based on data collected through a monitoring record form, which includes the following:

- ✚ Data on the victim's testimony before the court
- ✚ Data on social issues faced by the victim, which made her vulnerable to trafficking or other related offences
- ✚ Data on the victim's form of exploitation
- ✚ Data on the victims' exercise of her right to file a civil lawsuit in a criminal proceeding
- ✚ Data on the status of the person tried
- ✚ Judge's reference to international acts on the rights of trafficking victims

Information provided through such forms was integrated into a database, processed from a quantitative and statistical viewpoint, and analyzed by legal experts. The study analysis, conclusions and recommendations were consulted with justice professionals, and non-profit organization lawyers, who work on anti-trafficking issues.

A specific method used in this study was that of self-involvement, i.e. we followed trafficking cases involving victims or persons at risk of being trafficked, to whom the Centre for Legal and Civic Initiatives had provided some legal support. Issues of concern identified in the process of monitoring court cases in the Court for Serious Crimes and in Tirana District Court served to complete the study and draw the respective conclusions.

An important part of the study constitutes of an analysis of international acts ratified by Albania on prevention and fight against trafficking, obligations for Albania emerging from such international acts, the development of domestic legislation in compliance with international standards, the current situation and the need for improvement. Comparing the Albanian legislation with the international standards was useful in identifying problematic issues and making recommendations.

The experience of the Centre for Legal and Civic Initiatives lawyers in monitoring and analyzing the performance of justice authorities by monitoring decisions and court hearings on cases of trafficking, domestic violence, corruption, etc, have contributed to the quality of the study.

Reference materials which contributed to the quality of the study⁴ include reports issued by other national and international organizations and various state institutions.

⁴ Anti-Trafficking Unit, Ministry of Interior, “Report on the implementation of the National Strategy on Fights Against Trafficking in Human Beings, January-December 2006”; OSCE-ODIHR Report (Barcelona 2007) on Albania, etc.

CHAPTER I

THE RIGHTS OF VICTIMS OF HUMAN TRAFFICKING IN INTERNATIONAL LAW

1.1 General overview⁵

The constitutional mechanism imposes the necessity of the approximation of the Albanian legislation with the international standards, aiming them to be part of the legislation, which can not be on the opposition with the ratified international acts in the level of United Nations, Council of Europe and European Union.

To be known with European Union's standards and legislation in this field make an important aspect, because it is ratified and it is in power Stabilization and Association Agreement with European Union, which is binding for Albania. This Agreement envisages the obligation of Albania to ensure that the Albania's existing legislation to be approximated with that of the Community. Albania shall endeavor to ensure that its existing laws and future legislation shall be gradually made compatible with the Community acquis.(article 70)⁶

Also, the Agreement put the obligation to cooperate in criminal field, aiming to prevent and combat trafficking of human beings (article 85).

The crime victims rights' movements in Europe and North America reflected on one hand a need for recognizing the harm done to victims of trafficking by perpetrators, and the need for a larger participation of victims in criminal court proceedings on the other.

In order for the victims to participate more in criminal proceedings, their rights need to be recognized by law and guaranteed in practice. The international law pays a special importance to these rights and requires the State Parties to guarantee them through comprehensive measures and policies.

But which are some of the main rights of the victims of trafficking under the international law? ***The right to information, legal assistance, protection and compensation, are some of them.***

Key fundamental documents date back to 1980. In 1985, the Committee of Ministers of the Council of Europe approved Recommendation No. R (85) 11 "On the position of the

⁵ In drafting this chapter, we consulted the presentations of Allison Jernow, Freelance Trafficking and Criminal Justice Consultant, used in OSCE/ODIHR-funded training courses for judges, prosecutors, judicial police officers organized by the CLCI and the Magistrate School during 2008-2009.

⁶ www.mie.gov.al, Stabilisation and Association Agreement between the European Communities and their member States, of the one part, and the Republic of Albania, of the other part.

victim in the framework of criminal law and procedure”. Criminal justice has a “fundamental function”, it should meet the needs of victims and safeguard their interests. This function is directly related with increasing victims’ confidence in criminal justice, as well as with encouraging them to participate in the criminal justice system as witnesses.

This recommendation focuses on issues of special importance such as the right of victims to be informed by police about possibilities of obtaining help, practical and legal assistance, compensation by the perpetrators or by the state; the right to be informed about the final decision of criminal proceedings, the right to be informed about the date and place of court proceedings; the right to be informed about possibilities of compensation and their right to be informed about the result of criminal proceedings; the right to be informed about orders of compensation imposed on perpetrators as part of criminal sanctions; and assistance provided to victims in receiving compensation.

Another important recommendation related to the rights of victims of trafficking is Recommendation No. R (2006) 8 “On assistance to crime victims”.

Article 9 of the Framework Decision of the EU Council on Standing of Victims in Criminal Proceedings requires member States:

- to ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender, as well as to take appropriate measures to encourage the offender to provide adequate compensation to victims.

In 1985, the United Nations approved the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Although non-binding, most of the recommendations have now been adopted in binding instruments. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims as persons, who have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States. On the conditions of the lack of a definition of “the victim” in the Albanian legislation we may refer to this provision. A damaged person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted.

Some of the basic principles of this Declaration include access to justice and fair treatment; restitution (from the offender); compensation (from the state) when full compensation from the offender is not possible, and encouragement for creating national funds to provide assistance to victims.

The Albanian state is committed to prevent trafficking in human beings, and has expressed its will by ratifying several conventions⁷, which take a special place⁸ in the hierarchy of domestic legal acts.

⁷ 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.

Understanding and implementing such conventions is a challenge for all professionals involved in anti-trafficking work, in particular with a view to ensuring victims' access to their rights. In cases of ratified conventions, that include provisions of a general nature, the Albanian state is obliged to draft domestic laws in compliance with them.

Drafting and approving normative acts, that meet the standards of various international acts, including those issued by the United Nations, Council of Europe, and the European Union, has been a priority for the Albanian legislative and executive system, and this constitutes a good basis for respecting human rights and fundamental freedoms.

Obligations and recommendations deriving from international acts represent an encouraging resource for developing the domestic legislation in compliance with the standards of preventing and fighting against trafficking in human beings⁹. The latest amendments to our criminal legislation¹⁰ were in compliance with precisely these binding and non-binding international acts.

An important obligation deriving from international acts ratified by the Albanian state consists of improving the status of victims of trafficking, and providing assistance to them, as trafficking can be effectively prevented only if the victim is in the centre of all measures taken against it. Obligations require states not only to take legislative and/or administrative measures which provide victims with information about judicial and

- Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, plus Final Protocol of New York 1950.

- The United Nation Convention against transnational organized crime, ratified by Law No. 8920, dated 11.07.2002

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- 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 7767, dated 09.11.1993.

- European Convention "On compensation of victims of violent crimes", ratified by law 9265, dated 29.07.2004.

⁸Article 122, point 1 of the Constitution of the Republic of Albania: "Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement. 2. An international agreement ratified by law has priority over the laws of the country that are incompatible with it ..."

⁹For example the January 2003 recommendation of the CEDAW Committee, recommending the introduction of measures that aim at improving the economic situation of women in order to eliminate their vulnerability towards traffickers, education initiatives for vulnerable groups, including adolescent girls, as well as social support, rehabilitation and integration measures for women and girls who used to be victims of trafficking.

¹⁰The amendments of the Criminal legislation with the law no.8733, date 24.02.01; the law no.9188, date 12.02.04.

administrative procedures, but also measures which ensure assistance to, facilitation, admission and return of the trafficked persons without unreasonable delays, as well as measures which give the victims the possibility to be compensated for the damage they have been suffered.

1.2 The right to information

The sources of the right of victims of trafficking to information in the international law include the UN Anti-Trafficking Protocol, the European Convention on Action against Trafficking in Human Beings, the Framework Decision of the EU Council on Standing of Victims in Criminal Proceedings; the UN Basic Principles of Justice, Council of Europe Recommendation (2006) 8.

Article 6(2) of the **UN Anti-Trafficking Protocol**, requires the State Parties to ensure that their domestic legal systems contain measures that provide victims of trafficking with information on relevant court or administrative procedures, and 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 the State Parties 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. Art. 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.

Article 11 of the European Convention on the Compensation of Victims of Violent Crimes requires the State Parties to take appropriate steps to ensure that information about the scheme is available to potential applicants.

Article 4 of the **Framework Decision of the EU Convention on Standing of Victims in Criminal Proceedings** requires that each Member State ensures that victims have access to the type of services or organizations to which they can turn for support, where and how they can report an offence, procedures they have to follow for obtaining legal advice and/or aid, information about their right to compensation, as well as information about the court decisions.

Provision of information to the victims about the progress of the proceedings, and the possibility of allowing victims to express their concerns at the appropriate stage of proceedings constitute the basic principles of the UN Basic Principles of justice.

CoE Recommendation (2006) 8 requires that the 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.

CoE Recommendation (85) 11 recommends authorities provide the victims with the relevant information. It specifies, for example, that the police and courts should inform victims about possibilities of obtaining assistance, practical and legal advice and compensation.

The victims' right to information is closely related with their right to compensation and others. A victim may exercise his/her right 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.

1.3. The right to legal assistance

The sources of the right of the victims of trafficking to legal assistance include: Council of Europe Convention on Action Against Trafficking in Human Beings; Council of Europe Recommendation (2006) 8, Framework Decision of the EU Council on Standing of Victims in Criminal Proceedings; Basic Principles of Justice for Victims of Crime; the UN Recommended Guidelines On Human Rights And Human Trafficking;

Article 15(2) of the **Europe Convention on Action against Trafficking in Human Beings**, requires the State Parties to provide, in their internal law, for the right to legal assistance, an important component of which is legal aid.

Framework Decision of the EU Council on Standing of Victims in Criminal Proceedings requires that victims have free access to legal aid, where appropriate.

The provision of this right is also required by a number of politically binding instruments. CoE Recommendation (2006) 8 requires the State Parties to provide victims with effective access to justice. The UN Recommended Guidelines on Human Rights and Human Trafficking require the provision of legal assistance to victims of trafficking (in a language that they understand) regarding the criminal and civil proceedings, as well as other actions taken against traffickers. The provision of adequate assistance throughout the legal process to victims is one of the UN Basic Principles of Justice for Victims of Crime.

The right to legal aid and its realization is very important for the victim's compensation. If victims are provided with legal aid, they are able to effectively claim compensation and understand the complexity of the court procedures.

In this context, it is very important to raise the awareness of judges, defense lawyers, and NGO staff about the victim's right to legal aid. An increased awareness on their side would help the victims obtain legal aid and file effective claims of compensation.

1.4. The right to safety, protection, and rehabilitation

Article 6(5) of the, and Articles 28 and 30 of the European Convention on Action against Trafficking require the State Parties to ensure that victims are provided with safety and protection. Failure to do so discourages victims from claiming their rights, including compensation and as a consequence results in victims not being able to enjoy their rights.

Article 6(3)(a)-(d) of the UN Anti-trafficking Protocol and Article 12 of the European Convention on Action against Trafficking require the State Parties to guarantee the right.

1.5. Right to compensation

International instruments provide for compensation for the damage suffered from the perpetrator or from the state. International standards have also developed the principle that the profits made by traffickers through their exploitative activities should be used to compensate the trafficked persons either individually or collectively. These standards also highlight the interests of children and women.

The adoption of international conventions and acts by the domestic legislation has reinforced the right of trafficked persons to claim compensation. Thereby, state parties to the **United Nations Treaty against Organized Crime (UNTOC) and the Anti-Trafficking Protocol (2003)** must ensure that at least one legal procedure is available to trafficked persons to access compensation. They must also ensure the information mechanism on this right for the victim. According to this Convention, access to compensation, should also be recognized across borders.

The Protocol “*On the prevention, prohibition and punishment of trafficking in human beings, especially of women and children*” (Palermo Protocol), which complements the United Nations Convention against the international organized crime, demands the State Parties to handle the phenomenon of trafficking in human beings in a more complex manner by not only addressing the prevention and fight against this phenomenon, but also by protecting and supporting victims of trafficking.¹¹

In the framework of guaranteeing protection and support to victims of trafficking, Article 6(6) of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational requires State Parties to ensure that their domestic legal systems contain measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Compensation to victims may be paid by the perpetrator or by the state. Although in principle, it is the perpetrator who should compensate the victim, this is often not the case because either perpetrators are not brought to justice, or they disappear or are financially not solvent to do so.

¹¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Article 1.

The Council of Europe Convention on Action against Trafficking in Human Beings¹² provides some important obligations, which consist in providing victims of trafficking with access to information on similar judiciary and administrative procedures, free legal assistance, and compensation from the offender or the state. All these measures aim at re-integrating victims in the society. This Convention was ratified in 2008.

Article 15(3) of the European Convention on Action against Trafficking in Human Beings requires each party to provide, in its internal law, for the right of victims to compensation from the perpetrators. This Convention foresees the right to claim compensation from the perpetrator both for material and moral damage suffered. It also foresees the right of the victim to compensation from a state fund, a model, which is sanctioned on the European Convention on the Compensation of Victims of Violent Crimes. Guaranteeing this right requires measures and programs to be taken for victim's social integration.

The European Convention on the Compensation of Victims of Violent Crime has been open for signing since 1983, and it entered into force in 1988. The Convention foresees that the victims are to be compensated from the entire community for damage suffered. Article 2 of this Convention requires its State Parties to contribute to compensating victims, who have sustained serious bodily injury or impairment of health directly attributable to an intentional violent crime, as well as the dependants of persons who have died as a result of such crime.

This obligation is to be met by the states when compensation for victims of violent crimes is not possible from other sources. The Convention requires the State Parties to take appropriate measures to ensure that potential claimants are provided with information about the compensation scheme. The Convention specifies compensation for missed profit, medical treatment, hospitalization, funeral expenses, as well food allowance for dependants of persons, who have died as a result of a violent crime.

The European Convention on the Compensation of Victims of Violent Crimes limits compensation by the State to material damages only in cases where the offence was an intentional crime of violence resulting in physical or mental injury. There are also limits on selection, which includes the need to be a victim of specific types of crimes, types of violence, and types of injury.

The EU Council Directive on Compensation of Crime Victims, approved on 29 April 2004, requires Member States to approximate their legislation with the Directive in order to establish a co-operation system for ensuring victims' access to compensation even in cross-border situations. The Directive specifies that the compensation is to be paid by the responsible authority of the Member State, where the crime is committed.

The right to compensation is also based on politically binding instruments, such as the UN Declaration of Basic Principles of Justice for Victims of Crime and the CoE **Recommendation (2006) 8**. It is recommended that the compensation is provided by the

¹² Ratified by Law 9642, date 20.11.2006.

state for victims of serious, intentional, and violent crimes, including sexual violence, to families or dependants of victims who have died as a result of such crimes. This right is to be ensured to all victims of crimes committed in their respective territories, regardless of the victim's nationality.

In addition to claiming compensation from the trafficker, victims may, in some countries (France, United Kingdom, Romania, USA, etc), also claim compensation through a state fund. It is usually the victims of violent crimes, or those whose damage is proven, who are compensated through this fund. Such systems compensate for special types of material (financial) damages, but there are also some states (France, UK), where compensation may also be claimed for other types of damages, such as 'pain and suffering'. These mechanisms are relatively direct and they ensure compensation is paid. In France and UK, there are experienced NGO's in this field, which assist the victims to make compensation claims to such funds.¹³

CHAPTER II

AN ANALYSIS OF THE ALBANIAN LAW

2.1. The Constitution of the Republic of Albania is the supreme law in the hierarchy of legal acts in the Republic of Albania. It stipulates the rights, whose implementation in practice contributes to the prevention of, and protection from trafficking in human beings. Article 3 of the Constitution states "*...dignity of the individual, human rights and freedoms ... are the bases of this state, which has the duty of respecting and protecting them*".

The second part of the Constitution contains some provisions on the fundamental rights and freedoms, as well as some on protection from violence, which state "*The fundamental human rights and freedoms are indivisible, inalienable and inviolable and stand at the basis of the entire juridical order*"¹⁴; "*A person's life is protected by law*"¹⁵; "*No one may be subjected to cruel, inhuman or degrading torture, punishment or treatment.*"¹⁶

The Constitution states that *no one's liberty may be taken away except in the cases and according to the procedures provided by law* (Article 27). It is important to safeguard the right to freedom in circumstances when kidnapping is considered a high-risk element of a criminal offence, similar to trafficking. Moreover, Article 26 of the Constitution states that *no one may be required to perform forced labor*¹⁷

¹³ *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE/ODHIR, 2008, p. 10-11.

¹⁴ Article 15, point 1, of the Constitution of the Republic of Albania.

¹⁵ Article 21 of the Constitution of the Republic of Albania.

¹⁶ Article 25 of the Constitution of the Republic of Albania.

¹⁷ Article 26 of the Constitution of the Republic of Albania (Law 8417, date 21.10.1998): "No one may be required to perform force labour, except in cases of the execution of a judicial decision, the performance of military servile, or for a servile that results from a state of war, a state of emergency, or a natural disaster that threatens human life or health.

The Constitution clearly specifies that every child has the right to be protected from violence, ill treatment, and exploitation for work, especially under the minimum working age. This explicit constitutional provision is important, given that exploitation and forced services constitute an element of trafficking both in women and minors. Another significant provision of the Constitution is the one which specifies that children, the young, pregnant women and new mothers have the right to special protection by the state.¹⁸ This is particularly important as trafficking in persons, both women and minors, may be accompanied by ill treatment, and physical and psychological violence.

2. 2. LAWS

2.2.1 Criminal Code of the Republic of Albania

Albania has enhanced its criminal legislation by *improving the structure of its legal provisions, as well as by introducing severe punishment measures against traffickers*. There have been amendments to the provisions of the Criminal Code of 1995 by Law No. 8733, dated 24.01.2001, which aim at improving the provisions on trafficking in human beings. Significant changes have been made particularly by Law No. 9188, dated 12.02.2004, in the framework of approximating the domestic legislation with the Palermo Protocol.

Amendments made by Law No. 8733, dated 24.01.2001, introduced an addition to Article 110/a: “Trafficking in human beings”. The social reality and the ratification of the Protocol of Palermo to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime makes the amendment of the Criminal Code essential. Based on Law No. 9188, dated 12.02.2004, the legislator clearly defined the criminal acts of trafficking in human beings and considered *trafficking in persons*¹⁹, *women*²⁰ and *minors*²¹ as special elements of the criminal offence.

Through these changes, the legislator has developed and further extended the legal concept of trafficking by associating it with the exploitation of prostitution and other forms of sexual exploitation, forced services, slavery in its various forms, transplantation of organs, and other forms of exploitation. Furthermore, trafficking and other related criminal offences are now better defined.

The increased number of trafficked women, girls and children has made lawmakers more aware of the need for ensuring a special protection for women, girls and minors by

¹⁸ Article 54, point 1of the Constitution of the Republic of Albania.

¹⁹ Article 110(a) of the Criminal Code of the Republic of Albania, amended by Law 9188, dated 12.02.2004, Article 1.

²⁰ Article 114 (b) of the Criminal Code of the Republic of Albania, amended by Law 9188, dated 12.02.2004, Article 2.

²¹ Article 128(b) of the Criminal Code of the Republic of Albania, amended by Law 9188, dated 12.02.2004, Article 3.

introducing specific provisions on trafficking, as well as severe punishment measures for traffickers.²²

New provisions were introduced by Law 9188, dated 12.02.2004, on trafficking in persons, women and minors committed in aggravating circumstances, i.e. committed by individuals who take advantage of their state or public posts, or committed in collusion or repetition, trafficking involving ill treatment or physical violence causing serious damage to health. Such amendment has had significant preventive and punishing effects over the state officials.

It is of particular importance the fact that the legal framework has been continuously improved, especially relating to the particular protection of children. Thus, in 2008, the Criminal Code underwent important amendments made by Law 9859, dated 21.01.2008, which consisted of new measures for ensuring protection of children from physical and psychological ill treatment, committed by persons who are supposed by law to take care of them (Article 124/b) and protection of children from being used for pornographic purposes (Article 117). Article 128/b of the Criminal Code on trafficking in minors is amended with the 'selling of children' being introduced as another element this offence.

2.2.2 CRIMINAL PROCEDURE CODE

[Criminal Procedure Code (Law 7905, dated 21.03.1995), amended by Law 8813, dated 13.06.2002 and by Law 9276, dated 16.09.2004].

Albanian Criminal Procedures Code specifies two categories of victims of criminal offences:

A. Persons damaged by a criminal offence

B. Persons damaged by a criminal offence as the injured accuser

Victims, who have suffered a damage inflicted by a minor criminal offence, may directly address the Court raising charges against the perpetrator.

The Albanian Criminal Procedures Code envisages the rights of the injured accuser. It specifies the types of criminal offences²³, for which the injured accuser is allowed to file his or her claim directly to the court. (Article 58, Article 59) The Criminal Procedure Code foresees thirteen of such criminal offences (Article 59).

²² Commitment of these offences is sentenced by imprisonment from seven to fifteen years and fine from three to six million Leke for the trafficking of women and fine from four to six million for the trafficking of minors. As far as the trafficking in persons is concerned, a punishment measure from five to fifteen years of imprisonment and fine from two to five million Leke is stipulated.

²³ The criminal offences foreseen by this provision are: *beating* (Article 90 of the Criminal Code), *serious injury due to negligence* (Article 91 of the Criminal Code), *non-serious injury due to negligence* (Article 92 of the Criminal Code), *housebreaking* (Article 112 of the Criminal Code), *insulting* (Article 119 of the Criminal Code), *libel* (Article 120 of the Criminal Code), *violation of privacy* (Article 121 of the Criminal Code), *disclosure of personal information* (Article 122 of the Criminal Code), *denial of support* (Article 125 of the Criminal Code), *the taking of the child in violation of custodial decisions* (Article 127 of the Criminal Code), *publication of a work in violation of copyright* (Article 148 of the Criminal Code), *reproduction of a work in violation of copyright* (Article 149 of the Criminal Code), and *the destruction of property by other means* (Article 254 of the Criminal Code).

The injured accuser, affected by a criminal act, is generally entitled to a special legal protection thanks to amendments made to the Criminal Procedure Code of 2002 (Law 8813, dated 13.06.2002). These provisions have significantly improved the rights of the injured accuser of criminal offences. The injured accusers are, thus, given an active position, as they may report a crime to the prosecutor and demand that evidence is gathered. They are even entitled to complain should the prosecutor reject their request²⁴.

The injured accuser has the right to file a lawsuit with the court, participate in the trial as a party to prove charges, and ask for compensation. During court hearings, the person affected by the criminal act, may either be present or choose to be represented by a lawyer, provided that the evidence he or she possesses is already administered by the court.

The victims of the criminal acts of trafficking of human beings have the status of the victims but they do not entitle the status of being a party in the criminal process. In the criminal processes related the trafficking of human beings offences, the litigant parties are the prosecutor and the author of these criminal acts. (Trafficker).

The list of criminal offences under Article 59 of the Criminal Procedure Code²⁵, shows that trafficking in human beings, and all other criminal offences related with it, may not be pursued in court. They may be pursued by the prosecution body (prosecutors) only. As a result, the victims of trafficking may claim compensation for their damage only by filing a civil claim in a criminal process or an independent civil claim in a civil process. In this case, they are granted the status of a party in trial, and they may be represented by an advocate in criminal proceedings. They may, however, have no advocate appointed by the state *ex officio*.

Article 361/7 of the Criminal Procedure Code (as amended by Law 9276, dated 16.09.2004), foresees interrogation of witnesses and justice collaborators under special protection measures. In addition to distance interrogation through audiovisual connection, the court may also order that special measures are taken for the person's face and voice not to be identified, if the person's identity has already been changed. Approval of this provision is an achievement also in respect of victims of trafficking as the accusing party.

The Criminal Procedure Code has provided for the interrogation of minor witnesses by the Chief Judge in trial, with regard to claims and objections of parties in trial, in order to protect minors from being re-victimized. This is a useful measure, as confrontation of a minor with a defendant, charged of such criminal offences, would endanger the minor's physical and mental well-being.

The administration of evidence during the preliminary investigation in particular cases (as stipulated under Article 316 of the Criminal Procedure Code) increases the safety of the victim and shortens the length of judicial proceedings. In addition to the Prosecutor,

²⁴ Article 58, point 3, of the Criminal Procedure Code, amended by law 8813, dated 13.06.2002.

²⁵ For more details, see: H. Islami, A. Hoxha, Ilir Panda, *Criminal Procedure, Commentary*, Tirana, 2003, p. 141-143

the damaged party/victim of trafficking may attend the court hearings upon filing of a request.

2.2.3 Civil Code

Victims of trafficking may resort to the possibilities and legal tools provided by the Civil Code, to claim compensation from perpetrators. The Code specifies the responsibilities for causing material damage to a person or to his/her property, as well as the responsibilities for non-material damages. In order for a victim of such damage to claim compensation according to the Civil Code, it is required that an illegal behavior, a cause-effect relationship, or blame be identified (for more details on this issue, refer to Chapter III).

2.2.4 Family Code

The regulation of family relations by the Family Code is a guarantee for the protection of family members, especially of children, from the phenomenon of trafficking in human beings. The victims of trafficking, however, usually face a series of legal difficulties in family relationships.

One of the fundamental criteria specified by the Albanian Family Code is the minimum marriage age, which is 18. Full and free consent to marry is also another criterion to be met for a marriage to be considered legally valid. Any marriage, concluded between two persons without the full and free consent of each, who are under the minimum legal marriage age, have no intention of living together as husband and wife, or who have been forced to marry because of threat.²⁶

The Family Code provides the same rights and obligations for the spouses in a marriage as in its annulment, guaranteeing thus a healthy family, protected from dangerous social phenomena. Among the rights and obligations provided by the Family Code for the spouses, we can mention the right for **“compensatory contribution”** (Article 147) and **“the right of using the residence”** (Article 153). These are important rights for the protection of the family members, especially of women and children.

Article 62 of the Family Code specifies **“Measures against violence”** for the protection of family members from violence.

The Family Code includes some important provisions with regard to the meaning and exercising of **parental responsibilities**. A parent sentenced for abandoning his/her child, loses his/her parental custody²⁷.

²⁶ Family Code Articles 33, 34, 36, 37, 39

²⁷ Family Code, Article 223: “Parents of a child may lose their parental rights through a conviction for committing or collaborating in a criminal act towards their child, as collaborators in a criminal act

Loss of parental custody is imposed in cases of a parent abusing his/her parental responsibilities or showing serious negligence in meeting his/her responsibilities, as well as in cases of a parent carrying out action, which have harmful effects on the education of the child. In such cases, the other parent, relatives of the child or of the prosecutor may file a complaint²⁸.

2.2.5 Labor Code

The Labor Code provides special protection for minors and women (pregnant and young mothers) by setting the minimal working age, defining light and heavy work, night work, medical check-up, prevention of discrimination, etc.

Thus, chapter X of the labor Code is dedicated specifically to the special protection of minors. According to Article 98 of the Labor Code, employment of minors under the age of 16 is forbidden, except for 14-16 year old minors who may be involved in light work during their summer vacations, which do not affect their health or education.

The Labor Code, however, contains no provisions on the protection from labor exploitation. There are a set of provisions on the protection for women employment, protection for pregnant women and young mothers, maternity leave, prohibition on employing pregnant women for night work, or employees under the age of 18. Violations of this provisions is punished by clearly-defined sanctions foreseen in the Code, contributing thus to preventing them from happening.

The protection of women and children's rights at work is also regulated by several decisions issued by the Council of Ministers.²⁹

Ensuring proper application of the rights provided by the Code of Labor and other relevant acts is a significant aspect in preventing trafficking in human beings, element of which could also be the labor exploitation of persons, especially trafficking in women and children. The Labor Code may envisage in a better way legal remedies for competent organs to protect the person from the labor exploitation.

2.2.6 Other Laws

- Law No. 9110, date 24.07.2003, "*On the organization and functioning of serious crimes courts*"

performed by their child, or if they have been convicted of family abandonment, as long as they have failed to fulfill their family obligations".

²⁸ Family Code, Article 228

²⁹ Council of Ministers Decision No. 207, dated 29.05.2002, "On the definition of hard and hazardous labour"; Council of Ministers Decision No. 205, dated 09.05.2002 "On some amendments to Decision No. 384, dated 20.05.1996 "On the protection of minors at work".

The approval of Law 9110, dated 24.07.2003, “On the organization and functioning of the courts for serious crimes” is a significant achievement in improving the judicial and administrative framework. This makes it easier to have faster and more specialized court proceedings against criminal acts of high risk, including trafficking in women and minors. Article 75(a) of the Criminal Procedure Code, amended by Law 9276, dated 16.09.2004 defines the responsibilities of the Serious Crimes Court.

- Law 9284, dated 30.09.2004 “***On the prevention and fight against organized crime***”

This law foresees the establishment of special administrative structures to administer the seized and confiscated assets of persons suspected of having committed criminal offences foreseen by Articles 110(a), 114(b), and 128(b) of the Criminal Code. The Agency for the Administration of Confiscated and Seized Assets, under the Ministry of Finance, established on the basis of this law, represents a very significant step that Albania has undertaken for the implementation of this law.

The law is regarded as an achievement with regard to the assistance and rehabilitation provided to the victims, and to the creation of a special fund for the compensation of the victims, in compliance with the international acts³⁰.

The direct implementation of this law in practice has identified some ambiguities, especially in terms of the responsibilities of the relevant bodies in executing seizure or confiscation decisions. The law fails also to specify a ratio between the amount or quantity of seized or confiscated assets that is to go to local government units and judicial bodies, and the one which is to be used for the rehabilitation and compensation of the victims of trafficking.

Difficulties in the direct implementation of Law 9284, dated 30.09.2004 “On the prevention and fight against the organized crime”, indicate the need for drafting the following by-laws, which would better regulate the compensation scheme and would guarantee the right of compensation for the victims of trafficking.

- **Law 9205, dated 15.03.2004 “On the protection of witnesses and justice collaborators”.**

In addition to the Criminal Procedure Code provisions on the protection of witness, the law at hand represents an important act. This law specifies the special measures, ways and procedures on the protection of witnesses and justice collaborators, as well as the organization, functioning, competences and relations among the authorities responsible for proposing, assessing, approving, and applying special protection measures.

³⁰The Convention of European Council “On the measures against human trafficking”, Article 15, points 3 and 4.

The law completes further the legal framework on improving the work on prevention and fight against trafficking. The witness protection program, i.e. the protection of witnesses, who have been subject to trafficking (victims of trafficking) constitutes a guarantee not only for the prosecution of the perpetrators, but also for ensuring that the victim is safe, and that he/she may exercise his/her legal rights, including the right for compensation.

Indications are that the responsible authorities are not paying appropriate attention to treating victims of trafficking, as this law requires. The number of victims who have been granted the status of injured witness is still low.

Implementation in practice: During 2006, proper protection measures have been taken in accordance with this law, only for one witness of justice, based on the proposal of the General Prosecutor. The justice collaborator collaborated with the justice authorities in a trafficking case. During this process, the person who has been granted the status has been the main witness and victim of trafficking at the same time. Based on her testimony, four citizens have been accused. The accusation was proved during the trial and perpetrators were sentenced with nine years of imprisonment by the court³¹.

- **The law no.10039, date 22.12.2008, “On legal assistance”**

Article 13 of the law³² defines the categories of persons entitled to legal assistance, as stated below:

- a) ask to be represented by an advocate in all the stages of a criminal proceeding, and due to lack of financial resources, are not able to choose an advocate or no longer have one;
- b) need legal assistance in the civil or administrative cases, but do not have sufficient financial means to pay for the legal assistance, or the cases very complex either in the content or procedure. In this case, to benefit from legal assistance, the person must show evidence of being enrolled in the social assistance programs or that he/she fulfills the criteria to be part of these programs.

Minors are also entitled to legal assistance. For them, legal defense during the criminal proceeding and the trial is obligatory by law. A positive aspect of this law is the entitlement to legal assistance before, during and after the trial process.

By granting legal assistance *ex officio* for persons who are not able to pay, even in the civil or administrative cases or when the cases are very complex, for the first time victims of trafficking may potentially benefit from this law.

In accordance with the international standards, the law provides for the cooperation with NGOs. The State Commission for Legal Assistance, an institution established by this law,

³¹ Anti-Trafficking Unit, Ministry of Interior, Report on the Implementation of the Albanian National Strategy against Trafficking in Human Beings for January-December 2006, issued in March 2007.

³² Law No 10039, dated 22.12.2008 “On legal assistance”

may sign cooperation agreements with NGOs which have expertise in providing legal assistance.

- Law No. 9669, dated 18.12.2006, “*On measures against domestic violence*”

Taking into consideration the fact that domestic violence makes people more vulnerable, especially towards human trafficking and other related offences, the approval of this law constitutes a contribution in the prevention of human trafficking. For this reason, this law is regarded as an important step in the prevention of human trafficking, especially of women and children. It has some characteristics that distinguish it from other criminal and civil laws.

Firstly, the law foresees special administrative-civil measures to be taken; therefore, it is not a criminal law. Such measures or services, including shelters, are offered based on protection orders issued by the court. Defining domestic violence *as an act or attitude of a person towards another, which threatens the physical, moral, psychological, sexual, social, and economic integrity of the latter*; this law ensures the protection of family members from all forms of domestic violence.

Secondly, the law aims at preventing and minimizing domestic violence, as well as at guaranteeing legal protection to all family members who are victims of violence, paying special attention to children. The law clearly specifies the family members that are protected by this law, and it extends its effect covering marital relationships, gender, adoption, custody, and even cohabitation, relationship with former spouse, and even intimate relationships, including relations that no longer exist.

Thirdly, the law clearly specifies the obligations of the state authorities responsible for drafting concrete policies and strategies for preventing and reducing domestic violence. Thus, a network of interacting institutions is established, both at the central and the local level.

Fourthly, the law provides for protection measures to be taken not only for the protection and rehabilitation of the victims of domestic violence, but also for the rehabilitation of their abusers. This is one of the best contributions that the implementation of this law is expected to have.

Fifthly, the law is an important contribution for the strengthening of the judicial power. It becomes a strong point of the whole system through sanctions of protection measures against domestic violence. **Immediate protection warrants** and **protection warrants** are foreseen as protection measures taken by the court. These warrants serve for the prevention of a potential crime, which may happen in the future.

Sixthly, the law has established various new standards, as means to guarantee the efficient implementation of its own provisions, which helps to better support the victim. The particularity stands in the enlargement of the circle of institutions, vested with legitimacy to require the undertaking of measures in front of the competent bodies, in due

procedure timeframes, especially regarding trial and issuance of protective orders by the court, or upon the immediate delegation of the executive power towards the court decision on the issuance of a protective order.

- Law 9509, dated 03.04.2006 on “*Moratorium on motor-vessels of the Republic of Albania*”.

The moratorium on the use of motor-vessels has been a positive development in preventing and combating organized crime in general, and trafficking in human beings in particular. While this law affected also some lawful and useful activities involving vessels, it proved to be the most important Government tool in preventing the phenomenon, in absence of Government capacities to control illegal border crossing and trafficking.

By-Laws

- The Council of Ministers has approved some decisions of a special importance regarding the legal rights of the victims of trafficking,

Decision No. 195, dated 110.04.2007, “On the approval of the standards of social care services, in the residential centers, for trafficked persons or those at risk of being trafficked” requires residential centers to offer, among others, legal services to the trafficked persons or those at the risk of being trafficked. The decision makes the Ministry of Labor, Social Affairs and Equal Opportunities (MLS AEO) responsible for monitoring the implementation of the standards by the relevant institutions.

- To prevent trafficking in human beings and reinforce integration of the victims of trafficking, the Council of Ministers approved **Decision No. 632, dated 18.09.2003** “*On the promotion of the employment of unemployed female jobseekers*”, which foresees supportive measures for those employers, who hire trafficked girls and women. **Order No. 645, dated 20.03.2006** of MLS AEO “*On the priorities of the program for the encouragement of employment for 2006*” requires that 50% of the funds of these programs are planned for implementing this employment program.
- **Joint Order** of the Minister of Interior (No. 3394/4, dated 17.05.2006), Minister of Labor, Social Affairs and Equal Opportunities (No. 1192, dated 19.05.2006), and of the Minister of Foreign Affairs (No. 7590, dated 24.05.2006), foresees the establishment of **Authority Responsible** for coordinating and monitoring the referral process with the aim of supporting the protection and re-integration of the victims. The Order foresees both the responsibilities of this authority, and those of each line ministry.

- **Cooperation Agreement** among the Ministry of Labor, Social Affairs and Equal Opportunities, General State Directorate of Social Service, National Reception Center for Victims of Trafficking, Ministry of Interior, General Police Directorate, Ministry of Foreign Affairs, Directorate of Consular Services, “*Vatra*”, and “*Tjeter Vizion*” (two Albanian local NGOs), and the IOM, on the establishment of a **National Referral Mechanism** for the identification and improved assistance to the victims of human trafficking.
- **The National Strategy** of the Fight against Trafficking in Human Beings, the Action Plan of this strategy, approved by the Prime Minister Order No. 25, dated 22.02.2005. The National Strategy and the action plan on the fight against trafficking of children and protection of children victims of trafficking 2004-2006.

The strategy was followed by a **national plan of action**, which includes effective measures for the prosecution of the convicted traffickers through amendments in the legislation and its best possible application; reintegration programs; services; improvement of the economic and social situations of girls and women; education and studies. This plan of action defines not only the main work directions but also the responsible institutions and the necessary budget for their implementation.

The Albanian Government has prepared the Albanian National Strategy on the fight against trafficking in human beings: “**The strategic framework and national plan of action 2005-2007**”. The content of this document complies with the principles of international standards. Some of the main fields of this document are: investigation and prosecution of the trafficking offences, support and protection of the victims and the witnesses, prevention of trafficking and re-trafficking, the coordination framework and the need for studies.

CHAPTER III

THE RIGHTS OF VICTIMS OF TRAFFICKING IN PRACTICE

3.1 The right to information

The Albanian legislation specifies no formal obligations for police, prosecutors, or judges to inform the victims of violent crimes, and the victims of trafficking in particular, about their rights. Provision of information to victims about their rights is a very important element, which gives them confidence, and helps them understand that there are legal and social tools that they can use in their favor.

There is a need for legislative measures to ensure that the victims of trafficking are informed about their rights at the earliest stage of interrogation and court proceedings.

Law professionals have often informed the victims of trafficking about their rights, or have referred them to the National Reception Center for Victims of Trafficking, or other centers licensed by the Ministry of Labor, Social Affairs and Equal Opportunities, which provide accommodation and rehabilitation services.

The Centre for Legal Initiatives found during its monitoring process (2004-2007) that despite the lack of a formal obligation in the Albanian law for prosecutors and judicial police officers to inform the victims of trafficking about their rights, there are some cases they refer to the international acts and tried to do so. This, however, may not be an excuse for lack of provisions in the internal law and guidelines that would foresee this obligation to inform the victims.

There is a need for measures to ensure that the victims of crime, including victims of trafficking, are informed about their rights and assistance available at their first contact with the police and prosecutor's office and throughout court proceedings. The legal and practical framework of the judicial system should be reviewed with a view to establishing clear obligations on its actors and enabling victims' access to information and their rights (such as through provisions in the criminal procedure code, instructions and guidance to police, prosecutors etc.).

3.2 The right to legal assistance

According to the Albanian Constitution, free legal assistance is provided to everyone who is tried in a criminal proceeding and who does not have sufficient means to afford an advocate. Article 31/c states, "In a criminal proceedings, everyone has the right to be defended by himself or with the assistance of a legal defender chosen by him; to communicate freely and privately with him, as well as to be provided free defense when he does not have sufficient means".

Article 49, point 7 of the Criminal Procedure Code, in the same line with the Albanian Constitution, provides for the state obligation to cover the expenses of an advocate only when the defendant does not have sufficient means. Whereas the victim of trafficking in a criminal proceeding has the status of a witness, thereby the proceeding body or the court do not have any legal obligation to provide the victim of trafficking with an advocate.

According to articles 61 and 62 of the Criminal Procedure Code, the victim of trafficking is entitled to be represented by an advocate only when she is a party in a criminal proceeding as a civil plaintiff, claiming compensation from the wrongdoer. Even in this case, the state does not guarantee free legal assistance to victims of trafficking.

In this situation, licensed NGO's in Tirana and in other cities, provide legal and other free of charge services³³ for victims of trafficking, via projects supported by international

³³ The following is a comment by OSCE/ODIHR (Barcelona 2007) on the assistance provided by NGO's: At least one NGO, CLCI, gives legal advice to trafficked persons but this does not seem to be part of a state-sanctioned referral system. IOM provides free legal assistance to the state reception centre and the NGO "Different and Equal" runs a shelter. In general, shelters cooperate with NGOs such as CLCI and the

donors. Their contribution in providing free legal service has become the only way for low income-persons or groups in need to benefit from legal representation.

In order to fulfill the international legal standards and the obligations as State Parties, the Albanian State has made serious efforts to grant the right of free legal service to the citizens.

The approval of the Law No. 10039, dated 22.12.2008, “On legal assistance”, is an important development in the legal framework, in granting free legal assistance.

It is a challenge for Non Profitable Organizations addressing trafficking of human beings to establish the responsible organs according to this law and to lobby to relevant organs for the implementation of this law, aiming that the victims of trafficking of human beings to be subject to benefit free legal assistance.

3.2.1 Necessary developments to increase the role of NGO’s in providing legal assistance

It is difficult for an organization to intervene in a legal proceeding without an authorization. This may happen only when the organization represents one of the parties in the process. There is an increasing need of having legal provisions that would allow organizations to become third parties in a proceeding, or to initiate a trial. Such a provision, at least in special cases, would enhance the effective protection of the rights and freedom of victims of trafficking.

The European Court of Human Rights as well as the various international human rights committees, sanctioned by the international conventions and other acts, may serve as important instruments for the NGO’s to assist victims of trafficking. A number of international acts have established committees which review claims from citizens, citizens groups or state parties. Although it remains unclear which is the procedural status of the organizations or associations to intervene in the process, as they are not considered as a third party, they can make use of the parties’ willingness to be represented by the organizations in front of the international bodies. So far, there are no cases of Albanian NGOs representing victims of trafficking in front of international bodies.

However, NGO’s may play an important role in the process of proving the act.³⁴

Free legal assistance for trafficked persons is an important element not just as a right existing by itself, but also in the framework of the legal rights for victims of trafficking.

Granting free legal assistance to victims of trafficking will increase the victims’ opportunities to pursue other rights which are fundamental for their rehabilitation, such as the right to compensation.

Legal Clinic for Minors. The quality of services provided by these two organizations is reputedly of good quality as both have expertise in legal counseling...”

³⁴The First Instance Court for Serious Crimes decision no. 03, dated 16.01.2007, the registers of the NPO “Terre des Hommes”, which provides assistance to trafficked children, were used as evidence.

Law No 9669, dated 18.12.2006 “On the measures against domestic violence”, stipulates that victims of domestic violence are entitled to free legal assistance for drafting a claim, the acts and their submission to the court. Domestic violence makes individuals more vulnerable to trafficking in human beings and other similar acts.

3.3 The right to protection/physical integrity

In accordance with the international acts ratified by the Albania, the improvement of the status of the victim as well as the assistance provided to victims of trafficking is a fundamental obligation. It should be noted that trafficking in human beings may be prevented and prosecuted effectively only by applying victim oriented measures.

These obligations include not only legislative and/or administrative measures that inform the victim about the court and administrative procedures, but also the assistance, facilitation, admission and the return of the trafficked persons without unreasonable delays, the physical integrity of the victims of trafficking, as well as the introduction of legislative measures that allow the opportunity of claiming compensation for the damage incurred.

Thereby, the physical protection of victims of trafficking is a very important component, which becomes a precondition for granting other important rights, such as the right to compensation, to information, legal assistance, etc.

The protection measures provided by the Criminal Procedure Code provisions on witnesses should be viewed with regard to victims of trafficking, who often have the witness status.

The Criminal Procedure Code (as amended by Law No 9276, dated 16.09.2004, article 361/point 7), states that the witness may questioned in a distance, within or outside the country, via audio-visual technique. This change occurred due to a need to increase the efficiency of the prosecution and of the judiciary in the prosecution of organized crime; the safety and protection of witnesses, victims of trafficking from the threats of the defendants’ or other persons, which become a serious burden in proving them guilty and punishing them.

According to Article 316/a of the Criminal Procedure Code (added by Law No 9276 dated 16.09.2004), it is possible to question justice collaborators and protected witnesses under special protection measures. In addition to distance questioning, when the identity change has been decided, the court may order that measures are taken so that the face and voice become unidentifiable. This provision is a positive development in cases when victims of trafficking appear as witnesses.

The custody of evidence during the preliminary investigation (as per Article 316 of the Criminal Procedure Code) increases the victims’ safety and reduces the court procedures time. The prosecutor and the defendant, victim of trafficking, may ask from the court to proceed with the custody of evidence.

Special attention is given to minor witnesses. According to the Criminal Procedure Code, the chairing judge may question minor witnesses with regard to the acceptance or rejection of the parties, so that minors are protected from re-victimization. Such an appropriate measure safeguards minors from facing the accused party, which would cause their physical and mental integrity.

Article 7 of the law No 9110, dated 24.07.2003 “On the Organization and Functioning of the Courts for Serious Crimes”, provides for special procedural rules, stating that *trials of cases by courts for serious crimes and by courts of appeal for serious crimes may take place behind closed doors when this is seen as necessary for the case at trial or for other proceedings, in the interest of national security, public order, justice and the protection of participants in the trial. Regarding the questioning of witnesses, article 8 of the law states that the courts for serious crimes may permit that questioning of witnesses, as well as confrontations and permissible readings be performed under the following rules, either together or separately:*

- a) in the presence of the defendant and the defense attorney, but without visual contact;
- b) without communicating to the defendant and the defense attorney the identity of the witness
- c) in certain other cases and ways, determined according to the legislation on the protection of witnesses and justice collaborators.

These provisions are particularly important when the victim is a civil plaintiff in the criminal proceeding claiming compensation from the wrongdoer.

In addition to the legal provisions ascribed above, the Law No 9205, dated 15.03.2004 “On the protection of witnesses and justice collaborators” is an important act regarding witness protection. The law 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 law serves to complete the legal framework in the prevention and fight against trafficking related crimes. The protection of witnesses, including witnesses injured by the trafficking crime (victims of trafficking) is a safeguard not only for the prosecution of perpetrators, but also in providing adequate protection to the victims so that they may exercise their legal rights.

It should be noted that there’s little application of this law for victims for trafficking by relevant institutions. The number of victims of trafficking enrolled in the witness protection scheme is still low.

Practical application. During the year 2006, only one witness received special protection measures, following the proposal of the General Prosecutor. The justice collaborator collaborated with the justice system bodies in a trafficking case. The beneficiary of the status was the main witness and trafficking victim. Based on her

testimony, 4 persons were accused and proved guilty at court. They were sentenced to 9 years of imprisonment.³⁵

3.4. The right to rehabilitation

The professional and sensitive attitude of judges, prosecutors, and police officers towards the victims of trafficking is an important element, which not only eases the investigation and prosecution process, but contributes also to the rehabilitation of the victims.

Sometimes, judges, prosecutors, police officers, and defense lawyers are not so sensitive to the needs of the victims of trafficking. They do pay the appropriate attention to gathering evidence and prosecuting the offenders, but they do not know the restorative justice and its importance on the victims.

There are cases in which the language of the professionals of the justice system is discriminatory towards the victims. From the court decisions and proceedings that we have monitored, it results that the terminology used to describe trafficking and victims of trafficking includes sometimes words like 'entertainment industry' and 'prostitutes', which are not in compliance with the standards, and revictimize the victim.³⁶

The psychological assistance of the victim plays a significant role in the victim's restoration process. We think that this treatment needs to be considered with special attention, as part of the judicial practice.

During our monitoring process, we have identified a few cases of psychological treatment provided to the victims through social workers during the process of investigation and criminal proceedings. Thus, there has been one case³⁷ with Tirana Court, where, during the period 2004-2006, the court requested a psychologist to assist the victim of trafficking. There was another case³⁸, where the victim was interviewed by a psychologist because of her minor age (as it results from the court decision).

This type of assistance is offered at the centers for former victims of trafficking, but this assistance should be given not only throughout the criminal proceedings, but also after them, in order for victims to rehabilitate themselves both from the psychological and the moral point of view.

Provision of safety, psycho-social assistance, information about their rights, legal assistance in claiming compensation from the offender or from the state, assistance with presentation at courts of different levels, are all considered very important for the rehabilitation and integration of this target group in Albania.

³⁵ Anti-Trafficking Unit, Ministry of Interior, "The Report on the implementation on the National Anti-Trafficking Strategy, January-December", March 2007.

³⁶ Decision no. 29, dated 06.10.2004, of the First Instance Serious Crimes Court.

³⁷ Decision dated 12.11.2004 (based on Article 101 of the Criminal Code)

³⁸ Decision dated 09.05.2006 (based on Article 101 of the Criminal Code)

3.5. Victim related information obtained from the monitoring of criminal court cases (on human trafficking) in Albania between 2004 -2007.

Table no.1: Victims' testimony in court proceedings

| Year | In the court room | Letter rogatory | Affidavit | No information |
|--------------|-------------------|-----------------|-----------|----------------|
| 2004 | 3 | - | 5 | 3 |
| 2005 | 2 | - | 4 | - |
| 2006 | 1 | 1 | 5 | 3 |
| 2007 | 8 | | 2 | |
| Total | 14 | 1 | 16 | 6 |

From the monitored court decisions for the period 2004-2007, and the monitored proceedings at the Court for Serious Crimes during 2007, the CLCI found that almost in every court case, victims have given their testimony by affidavit, as provided for in Article 316 and following of the Criminal Procedure Code, and by distance questioning as provided for in Article 361(7).

Figures show that there has been an increasing tendency on the part of the victims of trafficking to give their testimonies in the court room during the year of 2007.

The table also shows that the number of victims who chose to give their testimonies in the court proceedings is low. In this context, and in the framework of the obligations emerging from the unification of the domestic legislation and practices with the international standards, justice authorities have given a priority consideration to the victims' safety and well-being.

Co-operation of the victims of trafficking with the justice authorities is considered very important for the criminal prosecution of the perpetrators, because of the elements of these offences, and the ways in which trafficking in human beings is carried out.

In order to undermine the co-operation of the victims with the justice authorities, traffickers exert pressure on them by threatening them with their lives, and that of their families. As a result, the victims hesitate to co-operate with the justice authorities during the court proceedings. Their protection, anonymity, and safety are indispensable for a successful prosecution of their perpetrators.³⁹ There have been cases when the justice authorities have failed to provide victims with the appropriate safety and environment for them to co-operate with these authorities. This has led to cases of some victims of

³⁹ This is an obligation specified by Article 25/1 of the UN Convention against Transnational Organized Crime, which requires the Albanian state to take the appropriate measures to ensure protection of, and assistance to the victims of trafficking, in particular in cases of threat of retaliation or intimidation. This obligation is further supplemented by the Recommendations of the CEDAW Committee, January 2003, which requires the State Parties to ensure that the trafficked women and girls have the protection and support they need to be able to testify against the traffickers.

trafficking being adjudicated and convicted of providing 'false testimony', Article 306(1) of the Criminal Code.⁴⁰

Careless, and even illegal sometimes, attitude of prosecutors, have led to victims of trafficking being re-trafficked. Thus, decision no.3, dated 17.01.2006, of the Serious Crimes Court states: **“The injured person, being deceived and under the pressure of her parents, withdrew her complaint. And although the criminal offence reported in her complaint is not one of the offences specified by Article 284 of the Criminal Procedure Code, the Prosecutor's Office of Bulqiza (a small district in Northern Albania) decides not to initiate the criminal proceedings against defendant A!!!”** Following this decision, the injured A, was re-trafficked.

Forms used by traffickers to recruit their victims

Table no. 2: Forms used by the traffickers

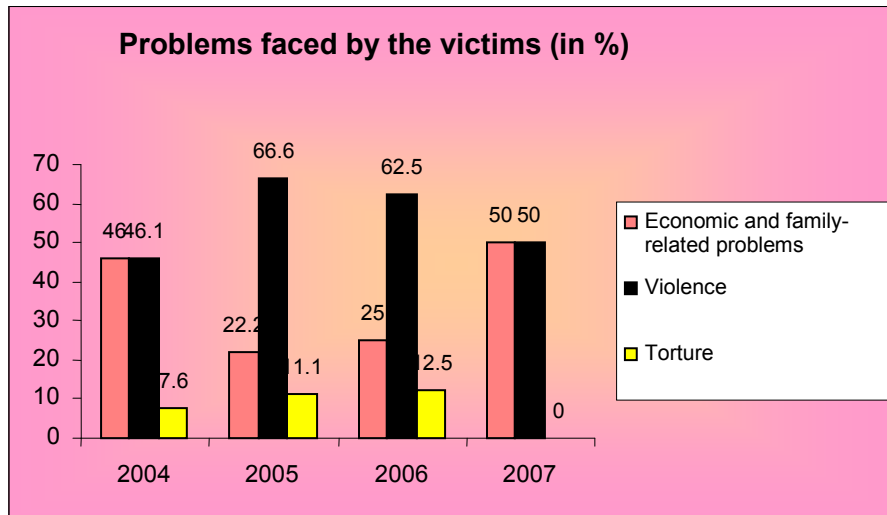
| Year | False promise of employment | False promise of marriage |
|-------|-----------------------------|---------------------------|
| 2004 | 4 | 5 |
| 2005 | 0 | 6 |
| 2006 | 2 | 5 |
| 2007 | 1 | 5 |
| Total | 7 | 21 |

Social and economic issues

- Victims involved in 15.3% of the cases tried in the year of 2004, resulted to have faced serious economic issues, 30.7% of them family problems, 46.1 % had been subject to various types of violence, and 7.6% had been subject to torture.
- In the year of 2005, the victims involved in 66.6% of the cases tries had been subject to all types of violence, 22.2% of them had economic and family problems, and 11.1% of them had been subject to torture.
- In the year of 2006, 25% of the cases involve economic and family problems, 62.5% violence, and 12.5% torture.
- In the year of 2007, five cases involved economic and family problems, and five others violence of various forms.

⁴⁰ Decision no.29, dated 06.10.2004, of the First Instance Serious Crimes Court.

Chart: Issues faced by victims of trafficking.



Some of the severe forms of violence that victims of trafficking have had to face include forced abortion, strangling, kicks and fists⁴¹, threats of wrist-cutting, beating, murder threats, and death threats for not withdrawing their claims, grave beating⁴². Victims have, in some cases, been threatened with death for not withdrawing their claims, and in others they have been promised money in exchange of withdrawing. Monitoring some cases of children trafficking, we found that children were forced to beg in the streets of Athens, sell flowers and tissue paper for their traffickers, be threatened, etc.⁴³

Most of the trafficking victims are often abandoned by their families⁴⁴.

In some cases, victims of trafficking do not enjoy their rights also because of a lack of social gender awareness in the prosecution of their traffickers. Thus, decision no.14, dated 19.03.2007, of the First Instance Serious Crimes Court argues that there are no proof of the defendant K.M, accused of 'forced sexual intercourse with minors of 14-18 years of age', having exerted physical or psychological violence. The Court did not take into consideration the explanation of the victim about the way she had been raped, and her mouth shut. This argumentation of the court is not in the spirit of the decisions of the European Court of Strasbourg, which take into consideration the specific and psychological characteristics of the reaction of a minor during forced sexual intercourse (*M.C vs. Bulgaria*).⁴⁵

⁴¹ Decision no.68, dated 15.12.2005, decision no.3, dated 28.04.2004, of the First Instance Serious Crimes Court.

⁴² Decision no.29, dated 11.06.2007, of the First Instance Serious Crimes Court.

⁴³ Decision no.03, dated 16.01.2007, of the First Instance Serious Crimes Court.

⁴⁴ Decision no. 09, dated 12.02.2007 of the First Instance Serious Crimes Court.

⁴⁵ See *M.C vs. Bulgaria*.

CHAPTER IV

COMPENSATION OF VICTIMS OF TRAFFICKING

4.1 The right to compensation in Albanian law

Constitution of the Republic of Albania

The growing body of international standards on the right to compensation of victims of crime has also influenced the Albanian legislation. Albanian law allows for compensation of victims from the offender and in some cases for compensation through a state funded compensation scheme (see 4.4.).

The right to compensation is one of the fundamental rights foreseen by the Constitution of the Republic of Albania for persons who have suffered a damage inflicted by an act or omission of state bodies (Article 44). Procedures for implementing this right are specified by the law. Law No. 9381, dated 28.04.2005 "*On the Compensation of Wrongful Imprisonment*" is one of the main laws approved for the implementation of Article 44 of the Constitution. Since its approval, there has been an increasing number of compensation claims for police wrongful behavior and wrongful imprisonment.

The mechanism established by the Constitution for recognizing international acts as part of the internal juridical system allows judges to take their decision on compensation claims by referring directly to international acts and conventions ratified by the Republic of Albania.

4.2 Compensation mechanisms established by the Albanian law

The Albanian procedural law allows for compensation of victims of trafficking to be paid either through a civil claim appended to the criminal procedure or an independent civil claim under civil procedure. The main difference between these two is that moral damages are not available in a suit taken with a criminal case. The Criminal Procedure Code does not allow for compensation of 'moral damage'. The Code allows for the possibility of claiming compensation only in cases of the civil plaintiff filing a lawsuit with the court.⁴⁶ However, victims of trafficking do have possibilities to claim compensation for moral damage through a civil claim under civil procedure. The legal tools for compensation may be found under the Criminal Procedure Code, Civil Code, as well as under Law 9284, dated 30.09.2004 "*On prevention and fight against organized crime*". It is also worth noting the Unifying Decision no.12, dated 14.09.2007, of the High Court Joint College, which unifies the judicial practice regarding material and moral damage.

Status of victims in criminal proceedings. Criminal Procedure Code (Articles 58-68)

⁴⁶ See Article 59 of the Criminal Procedure Code.

From the view of international standards, the Albanian mechanisms clearly allow:

- The right to claim compensation from the trafficker both through the criminal and the civil procedure;
- The right to compensation from state funds created by the confiscation of illegal assets of persons involved in organized crime.

The legal means to claim compensation are to be found in the Criminal Procedure Code, Civil Code, and Law 9284, dated 30.09.2004 “*On prevention and fight against organized crime*”. It is also worth mentioning the Unifying Decision no. 12, dated 14.09.2007, of the High Court United College, which unifies the judicial practice with regard to the meaning of material and moral damage.

The Albanian legal procedures provide for the possibility of compensating victims of trafficking through a civil claim appended to the criminal procedure or an independent civil claim under civil procedure.

The Criminal Procedure Code allows compensation for damage, without specifying the damage as necessarily material⁴⁷. So far the Albanian juridical-penal doctrine has interpreted this to mean that compensation in criminal proceedings is limited to material damage: “The rights of a civil defendant in a criminal process are to be determined by the intention of this institution to ensure the restitution of the material damage inflicted by the criminal offence”⁴⁸.

The main difference between these two is that moral damages are not available in a suit taken with a criminal case.

Victims of criminal offences, who file a civil lawsuit in the criminal proceedings against the defendant or the person liable to pay damages (defendant), have the status of a civil plaintiff. On the other hand, the injured accuser who have suffered a damage inflicted by a minor criminal offence become the civil plaintiff and may directly address the Court raising charges against the perpetrator. The Criminal Procedure Code foresees thirteen of such criminal offences (Article 59)⁴⁹.

Comparing the juridical position of the two categories, we would be able to identify:

⁴⁷ See Article 59 of the Criminal Procedure Code.

⁴⁸ Fehmi Abdiu, “*Civil claims in Albanian Criminal Procedures*”, Publication of Pex, Tirana, 2003, p.82

⁴⁹ The status of the injured accuser is granted to victims of the following criminal offences:

1. Other intentional harm (beating)
2. Serious injury due to negligence
3. Non-serious injury due to negligence
4. Housebreaking
5. Insulting
6. Libel;
7. Violation of privacy;
8. Disclosure of personal information;
9. Failure of support;
10. taking a child in violation of custodial decisions;
11. Publication of a work in violation of copyright;
12. Reproduction of a work in violation of copyright;
13. Inviolability of the home;

1. An injured party is entitled to file a lawsuit with the court and participate in the proceedings, while a victim who is not an injured party, according to article 59 of Criminal Procedural Code abovementioned, is entitled to report the criminal offence to the Prosecutor's Office and be granted the status of the witness in a criminal process initiated by the Prosecutor.
2. An injured accuser participates in the court proceedings, and is entitled to be represented by an advocate, while a victim of a criminal offence has simply the status of a witness, and the support of the state prosecution body.
3. Regarding the right to compensation, the injured accuser, who files a lawsuit with the court and participates in the court proceedings, may claim the prosecution of the defendant and compensation for the (material and moral damage) he/she has suffered. The victim of the criminal offence, on the other hand, may claim compensation for his/her damage only by filing a civil lawsuit in a criminal process, and may do so for material damage only.

4.3 Compensation claims for material damage in criminal proceedings

Article 61 of the Criminal Procedure Code allows a victim, or his/her dependants, to claim compensation only for material damages, by filing a civil claim appended to a criminal proceeding against the defendant. The right to claim compensation for material damage is related with the definition of material damage in the Civil Code.⁵⁰ A unifying decision (no. 12, dated 14.09.2007) of the High Court helps us understand this better. Basically, this decision states that “(Biological) damage to health constitutes, basically, a violation of a person's health, and the physical and/or psychological integrity”. Although our Civil Code considers the damage to health a non-material damage, it should be noted that the biological damage may be distinguished as a material one. Regardless of the type of damage, the Joint Colleges emphasize that this damage is subject to compensation despite other material and non-material damages suffered by the victim. That is, according to Article 625(a) of the Civil Code, compensation for damages to health is claimed regardless of claims for material damages of loss or decreased ability to work foreseen by Article 641 of the Civil Code. In addition, a victim may also claim compensation for expenses incurred for medial treatment or care (*see unifying decision no. 12, dated 14.09.2007*)⁵¹.

In this context, one raises the question of the meaning of 'material damage' claimed through a civil lawsuit in criminal proceedings. Article 61 of the Criminal Procedure Code allows a person or her or his heirs to file a civil lawsuit in the criminal proceeding against the defendant (civil defendant) for material damage. The Albanian judicial practice and doctrine contain various opinions about the meaning of damage in general, and the material damage in particular. This is also affected by the previous meaning of material and civil responsibility in the Albanian legislation. Some think that compensation may be claimed only for effective damages, and for no other types of damage, or for missed profit. Thus, in the case of *armed robbery, a civil plaintiff may*

⁵⁰Articles 640-644

⁵¹ For further details, see Marjana Tutulani, “*Moral damage regulated by the Civil Code*”, published in *Jeta Juridike*, no. 1, August 2003.

*claim compensation for the stolen money, but not for the money he or she has spent for medical treatment*⁵². I think that such a definition limits extensively the scope of Article 61 of the Criminal Procedure Code. This would make it very difficult for a civil lawsuit to be effective in the criminal proceedings, especially when damage was caused by trafficking in human beings.

Article 61 of the Criminal Procedure Code addresses the material damage in two aspects: restitution of property and compensation of damage. The term, though, do not necessarily have the same meaning in different contexts. Restitution of property in the United States, for example, is understood as a payment to the victim from the defendant according to the court decision, while in the United Kingdom or France, 'restitution' means the actual return of goods and assets to their legitimate owner. The restitution of property in the Albanian legislation is the same with that in the UK and France. In the illustrating example above, restitution refers to the return of the money to the civil plaintiff, who is their owner and the victim of the robbery. The return of money or any item, though, is much more limited than 'compensation for damage' or 'compensation of material damage' in our case. It would be useful to have a definition of the material damage in the national context specified by the law. Only in common law countries this is done based on precedents. The lack of such definition in the law, however, can not be an excuse for not compensating damage inflicted by criminal offences, as we can always refer to the international standards, or to the judicial practice.

According to the international standards, the term “material damage” refers to financial or asset loss, such as medical expenses, funeral expenses, hospitalization, loss of income and proceeds from employment, unpaid salaries,⁵³ and costs of damage to property⁵⁴. The material damage includes anything that is related with financial or asset loss. This also includes damage to health, or what is nowadays is referred to as 'biological damage'. This also complies with the explanations given by some authors⁵⁵, and the unifying decision of the High Court.

Concerning the above, we may conclude that the purpose of a civil lawsuit in a criminal proceeding must not be reduced merely to a restitution of property to its legal owner. There has to be a compensation for the material damage, which may be understood as property damage as a result of the criminal offence, including all types of financial or property losses. These losses may not be covered in full by the social security scheme either. Certainly, these losses are totally claimable through a civil proceeding as well, which is exclusively used to claim a moral, non-property restitution.

⁵² See Fehmi Abdiu, quotation, p. 50-51

⁵³ It is worth noting that unpaid salaries constitute a subcategory of the material damage. Compensation in some claims based on the right to work, may also be referred to as 'unpaid salaries'.

⁵⁴ *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE/ODHIR, 2008, p.16

⁵⁵ See: Marjana Tutulani, “*Moral damage regulated by the Civil Code*”, published in *Jeta Juridike*, no. 1, August 2003.

Establishing the lawfulness of a civil plaintiff in criminal proceeding. The Criminal Procedure Code (Article 62) specifies the phase and time-limits for establishing the lawfulness of a civil plaintiff in a criminal proceeding. It is the prosecutor who establishes the lawfulness of the civil plaintiff prior to the commencement of the judicial examination. In no case may this time-limit be extended. Clearly, the lawfulness of the claim is established by the court prior to the commencement of the judicial examination. However, I am of the opinion that we need to highlight two separate moments, the establishment of the lawfulness of the claim, and its submission.

The formulation of Article 62 of the Criminal Procedure Code has some gaps pertaining to the moment of submission of the civil lawsuit in a criminal proceeding. It does not exclude the possibility for the claim to be submitted to the Prosecutor as the prosecution authority, which may take action in relation to it, regardless of the fact that the lawfulness of the claim is further established by the court, prior to the beginning of the judicial examination. This is a necessary practice to be followed, because it contributes to the progress of the examination of the civil lawsuit in the criminal proceedings. First and foremost, at a very early stage of the investigation, the victim must be informed about her right to claim compensation for the damage suffered and have her civil lawsuit filed in the case folder. The Albanian law does not envisage detailed legal rights which would compel any of the state bodies to inform the victim, or request evidence concerning the civil lawsuit in a criminal proceeding. However, we think that collection of evidence for the proceeding of the perpetrator is related also to the process of substantiating the civil lawsuit in a criminal proceeding; therefore it is more than necessary for the lawsuit to be submitted at the beginning of a proceeding. This would also help the criminal court to examine the civil lawsuit; otherwise its separation would be pre-announced, which would then transform the civil lawsuit in a criminal proceeding into an unnecessary institution.

The criminal court is fully allowed to separate a civil lawsuit from a criminal proceeding and send it for a civil proceeding. This may happen not only upon request by parties, but also on courts own motion, should the judgement of the civil lawsuit complicate or protract the criminal proceeding⁵⁶. In general, the separation of the civil lawsuit in a criminal proceeding is a cause for prolongation of judicial proceedings. The Albanian practice has proven in such cases that it has been almost impossible to proceed and make a decision in a civil proceeding, unless the criminal proceeding has been completed first.

In the case of D.S. vs. A.A., although the court received a civil lawsuit in a criminal proceeding submitted by the victim and decided on its separation, it did not reflect at all on the lawsuit in its final decision.

Separation of a civil lawsuit in a criminal proceeding can be done by an interim decision. The court is obliged to reflect this interim decision in its final decision, perhaps in the reasoning part. This stems from the obligation of the Court to reply to all procedural requests of the parties, as well as from the right of a party to appeal a decision. In such a case, the civil plaintiff in a criminal proceeding is entitled to appeal the interim decision of the court in relation to his/her lawsuit along with the final decision. This right is

⁵⁶ The above has been established by an appendix to the Code of Criminal Procedures in 2002 (Law 8813, dated 13.6.2002).

provided in the Criminal Procedure Code: “*court orders, unless provided otherwise by law, may be appealed only by appealing the (relevant) court decision*”.

Right to be represented by a lawyer

Counselling services for trafficked persons are an essential element of the right to compensation. In order to claim compensation for the damage, trafficked persons must be aware of their rights and of the ways to obtain them. In addition, international standards specify measures that guarantee the safety and welfare of the person for the duration of a claim procedure. In other words, it means that adequate accommodation, social, legal and medical assistance, as well as residence permits are crucial rights, in the absence of which, the possibility to obtain compensation is limited.

The civil lawsuit in a criminal proceeding requires an active participation of the trafficked person in the legal process, providing oral or written statements in relation to the offence and damage and loss suffered. In general, this practice causes fear or needs for consultation; therefore free legal advice and representation are necessary to enhance the possibilities of trafficked persons to follow through the procedures and obtain compensation. Nevertheless, the absence of a lawyer *ex officio* weakens the victim’s position, particularly, the work done to inform the victim of her rights to claim compensation for the damage suffered.

In this regard, the social society has an unquestionable role to play. In a number of countries, civil society groups have played a key role in the development and application of the right to compensation. NGOs and unions have lobbied for changes at a national and international level. They have been the dynamics of reforms at national level and have worked to ensure basic services for trafficked persons⁵⁷.

Case law

There’s limited case law on the compensation of victims of trafficking through a civil claim appended to the criminal procedure. As a result, several questions arise, such as: Which is the role of the Prosecutor or Judicial Police Officer in the case of the civil claim in the criminal proceeding? Should the victim be required to pay the court taxes when presenting a civil claim in a criminal proceeding? Who has the responsibility of informing the victim about her compensation rights? Should there be an opportunity for free of charge advocate in those cases when the victim or her family do not have sufficient means? What should be the court procedure to collect evidence? Are there schemes or models to establish the compensation amount? These questions have arisen from the practical work and they urge the need for further legal improvements as well as the unification of case law.

A case tried at Tirana First Instance Court (criminal decision no. 63, dated 23.02.2004), the court accepted the civil claim in a criminal proceeding, presented by the advocate of a victim of exploitation for prostitution. The panel of three judges accepted that they should evaluate the work that the plaintiff had done for the defendant, although the work

⁵⁷ *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE/ODHIR, 2008, pg. 11

had been illegal. The court also decided that although there is no price for such work in Albania, reference could be made to other prices. However, the decision is not clear as to how was the compensation amount of 2 million Albanian Lek established, as there is no reference to previous schemes or models.

This decision raises two issues: *firstly*, regarding the reasoning according to which the court calculated and compensated a work which is not legal in Albania; and *secondly*, regarding the calculation of the compensation amount, which did not consider any material damage compensation scheme. In fact, there is no case law on the scheme of material damage compensation in Albania. No reference can be made to other courts case law, because there are no globally unified schemes for the calculation of damage, that's why compensation amounts vary from one county to another. However, the court decision described above is a positive step. The decision was appealed by the civil defendant, and upheld by higher level courts. The execution process is on hold due to non representation of the creditor requesting the execution of the decision.

Another issue is the victim's access to compensation irrespective of financial duties existing in the civil process. For instance, in a case tried at the *First Instance Court for Serious Crimes, the only judge decided not to act on the case of a civil claim in a criminal proceeding, allowing time to the plaintiff to pay the court taxes (Decision No.65, dated 14.02.2008, by the Judge of the First Instance Court for Serious Crimes, Tirana).*

The decision was appealed at the Appeals Court, which decided to reject the appeal against the only Judge's decision, reasoning that the appeal should be made altogether with the appeal against the final court decision. Regarding the substance of the case, the Appeals Court reasoned: "Due to the fact that the only judge referred to the civil procedure law, it is necessary to clarify that the "civil plaintiff" institution, envisaged by the Criminal Procedure Code, is applicable in the criminal proceeding. The latter is subject to the procedural rules of the Criminal Procedure Code. The Civil Procedure Code regulates the civil proceeding not the criminal proceeding. (Decision No.19, dated 20.03.2008, Appeals Court for Serious Crimes, Tirana).

The enforcement of final court decisions runs into serious obstacles. It is the victim who has to pursue the procedures for the enforcement of court decisions either in the civil proceeding or when the compensation award was ordered by the criminal court. This leads to intimidation or fear considering that the procedures are against the trafficker's assets. As such, although the above-mentioned decision of the First Instance Court, No. 63, dated 23.02.2004, is final, it remains not enforced by the Bailiff's Office, because the creditor has not shown up since more than 2 years.

Other obstacles are encountered during the enforcement. For instance, when the trafficker is prosecuted in a country other than the victim's country, or when the trafficker's assets are located in a country different from where the compensation decision is awarded. The most typical case is when the trafficker's property cannot be tracked as it is concealed under other names or in joint ownership.

The law "On the Prevention and fight against organised crime" is also applicable for the trafficking related crimes {trafficking of persons (Art.110 (a), trafficking of women

(114(b), trafficking of minors (128(b)). A special procedure for the seizure of the defendant's assets is applicable under this law. Confusion exists about the practical application of this law with a view to the Criminal Procedure Code. For example, in *the First Instance Court for Serious Crimes, by decision no. 27, dated 06.05.2008, the court rejected the prosecutor's request for the confiscation of seized assets although the defendant was declared guilty, reasoning that those should be subject to the law "On the Prevention and Fight against Organised Crime"*. We believe that this court decision was affected by third parties' claims on the seized assets. However, the reference made to the so-called "anti-mafia" law seems unclear, as long as this law does not establish new courts or proceedings, but refers to the proceedings in the existing courts. So far, there are no cases tried separately under the law against organised crime. The Court for Serious Crimes should refer to the special procedures envisaged by this law.

Compensation claims in civil proceedings

The Civil Code allows for compensation through civil proceedings, when the person is damaged in an unlawful manner. Foreigners are also recognized to address the court for claiming compensation.⁵⁸

The right to compensation for moral damage applies in the following cases (Article 625 of the Civil Code):

- a. When a person has suffered damage to his/her health, or when his/her personality and honour have been violated.
- b. The memory of a dead person is desecrated and the spouse he or she lived with until the day of his/her death, or his relatives up to the second scale, seeks compensation.

The meaning of moral damage is also addressed in the doctrine⁵⁹, but the above-mentioned unifying decision is useful in defining both the moral and the existential damage, as one of its special forms.

The Civil Code does not define compensation for moral damage, or how it is calculated. The judicial practice has not established any scheme of reference either, leaving the calculation of the damage, to the judgment of the judge, on a case-by-case basis.⁶⁰

The right to claim compensation based on the labor legislation. The labor legislation can be seen as a good possibility to claim compensation for labor exploitation. The national mechanisms regulating the standards for employment should also allow for labor inspectors to file claims against employers for paying compensation (e.g. in cases of salaries not been paid, or damages caused at work). In this aspect, our legislation needs improvement, in order to provide support for trafficked persons.

Compensation through mediation or voluntary settlement

⁵⁸ Article 3

⁵⁹ See: Marjana Tutulani, Ibid.

⁶⁰ For further details, see Rezarta Mataj, *Suggestions for a fair assessment of the claim: "Compensation for non-material damage. Article 608 and 625 of the Civil Code*, published in "Jeta Juridike", no. 2, December 2007.

Due to the difficulties in obtaining the compensation through civil or criminal proceedings, it is recommended that the compensation is ensured through voluntary or mediated agreements. A third party can also act as mediator. The law mediation could become more applicable. NGO's supporting victims of trafficking or trade unions in cases of labour exploitation, could act as mediators. Even state agents could become mediators. Mediated cases have a higher success chance in obtaining the compensation and also have less trauma effect on the victim.

4.4 State-funded compensation schemes

4.4.1 The possibility to claim compensation from the state fund.

Law 9284, dated 30.09.2004 "*On prevention and fight against organized crime*", or the so-called "*anti-mafia law*" foresees the creation of a state-scheme for the compensation of the victims of organized crime. This law foresees special measures to be taken against proceeds of organized crime. The provisions of the Criminal Procedure Code were considered sufficient for this process before this law was approved. "*One may not deny the fact that the approval of this law was the result of the failure of the hitherto criminal legislation to achieve significant results against the economic power of the organized crime*"⁶¹.

The law foresees that all confiscated assets are to be transferred to the state based on a court decision. The law also established an agency for the administration of seized and confiscated assets. It is the Minister of Finances, though, who decides on the destination of the seized and confiscated assets, based on the reports of the agency, and the advice provided by the local government units where the assets are located. An administrator appointed by the court or another one appointed by the agency to replace him/her, is responsible for transferring to the agency the relevant monetary means.

Finally, we may identify two main pillars of the law related closely with our issue: provisions on the activity of the law enforcement bodies to prevent and fight organized crime, and the provisions on the activity of public agencies for administering the state fund created from the confiscation of organized crime assets.

4.4.2 Can the victims of trafficking benefit from this law?

The law pays a special attention to the compensation of the victims of organized crime, specifying, the three following forms in which victims of crime, including THB, can benefit from confiscated assets.

Individual compensation. The law specifies that the confiscated monetary means and assets may be used for compensating the victims of organized crime (Article 33(a) and 34(a) of the law). Thus, the law authorizes the appointed administrator to carry out the necessary actions to deposit in the account of the Agency for the Administration of

⁶¹ Ardit Mustafaj, "*Products of criminal offences from the view of juridical-criminal aspect and criminal policies*", Tirana, 2007

Seized and Confiscated Assets the funds not to be used for the compensation of the victims. The immovable confiscated assets on the other hand are sold for compensating the victims of organized crime.

The law, however, does not explain clearly how compensation is done. The amount of compensation to be paid to the victim is clearly decided by the court, but the Albanian legislation foresees no automatic mechanisms to carry out this *restitutio* to the victim. The law, therefore, should be interpreted in two aspects: as an opportunity to execute court decisions of compensation, as well as an opportunity for claiming compensation of administrative damage through the state scheme. The Albanian courts are fully capable of deciding on the basis of this law to compensate the victims from the fund of seized and confiscated assets, both when the compensation claim is judged separately in a civil procedure, and when it is appended to a criminal procedure. However, as we emphasized above, civil claims in civil procedures take a long time, while those appended to criminal proceedings tend to be separated and referred to civil procedures. Therefore, I think that this law should establish quicker procedural means for an automatic restitution or compensation by the court. This would make the fight against organized crime more effective. Let us just recall that since its creation, the Serious Crime Court has never taken any final decisions of compensation in cases where compensation is sought through a civil lawsuit in criminal proceedings, despite the seizure and confiscation orders it has issued on movable and immovable assets gained through prostitution or trafficking in minors.

Using of assets for social purposes. The seized or confiscated assets may be **directly transferred to local government units**, where they are located, for them to carry out their functions or achieve their **social purposes**. A central or local government body may administer these assets itself or loan with free of charge for purposes of use to NGOs, or other public entities whose activity consists of the social, cultural, and health rehabilitation of the people in need, in particular those affected or at the risk of being affected by crime, including centres, which provide assistance to victims of trafficking. (Article 34 of the law)

Establishment of a special fund to prevent crime and raise awareness. This fund aims to prevent crime and raise awareness by financially supporting projects, which for purposes of an institutional, social, or public interest nature, manage confiscated immovable property, and projects aimed at providing assistance and rehabilitation to victims of trafficking (Article 39 of the law).

4.4.3 Implementation of the law. The National Anti-Trafficking Strategy foresees a set of obligations for ensuring the implementation of this law. The monitoring process⁶², however, finds that its implementation leaves much to be desired. Media often raise the problem that seized and confiscated assets are stored and neglected for too long, and therefore destroyed. They have also reported cases of abuse by people who are supposed

⁶² See: “Development and implementation of the Albanian legislation as a tool in preventing trafficking in human beings, and in guaranteeing the rights of trafficking victims.” Monitoring report of the Albanian Centre for Legal Initiative, Tirana, 2009.

to take care of such assets.⁶³ They have never been used for compensating any trafficking victims. The Ministry of Finances has failed to act, or manage the special fund in favour of the victims, or the fight against trafficking. The agency responsible for administering seized and confiscated assets under this ministry is not functioning, behind the excuse of lack of provisions on its organization and responsibilities, and lack of by-laws.

There are no cases of compensation obtained based on an administrative claim, even after the court has ordered the confiscation of assets. Besides, there are no indications of this fund being used for victim's rehabilitation or information at all. The state centre for the accommodation and rehabilitation of trafficking victims is run on state budget, and there are no indications of any amount of money coming from the fund established by the 'anti-mafia' law. The monitored decisions of the Serious Crimes Court for the period 2000-2007 show that there have been cases of offenders' assets being confiscated and transferred to the state.

The Serious Crime Court has not been explicit on the destination of confiscated assets. Because the law itself does not define clearly the role of judges in this aspect. The Court has not 'dared' to issue any automatic orders of compensation, as the law, again, is very vague in this aspect. The Court has, at the same time, not expressed itself very clearly as to what happens to the confiscated assets upon the completion of a trial. As noted above, the Court has not decided to confiscate seized assets, referring to the procedures specified by the law on prevention and fight against organized crime, despite the final decision it has already taken on the merits of the case.⁶⁴

4.5 Conclusions and suggestions

In the future, we need to assess whether the current compensation mechanisms are functioning, and whether justice is made for trafficked persons. The most positive examples of other countries, including their best schemes and practices, could be very useful for improving our existing methods. The US restitution approach and the UK compensation orders seem to be very appropriate for Albania. The Albanian law needs to support the victim more, by improving the victim's status in the process, as well as by not leaving the victim alone throughout the process of claiming and obtaining compensation. Services of legal assistance to trafficked persons are very important for them to realize their right to compensation. The Albanian legislation, however, does not specify any obligations for police officers, prosecutors, and judges to inform the victims of their rights in court proceedings. The victim may be represented by an advocate only when he or she files a civil claim in a criminal procedure, but the law does not foresee the appointment of an advocate *ex officio* by the state. It is worth noting that civil society organizations are allowed to assist a victim on voluntary basis, but there are no specific provisions in the law to assist these organizations in such cases, or to offer them state support.⁶⁵

⁶³ According to "Top Channel" TV, "Fiks Fare" program.

⁶⁴ Decision 27, dated 06.05.2008 of the First Instance Serious Crimes Court.

⁶⁵ This is what the OSCE-ODHIR report (Barcelona 2007) on Albania notes about the assistance provided by NGOs: "At least one NPO, CLCI, offers legal counseling for victims of trafficking, but this does not

Additional measures need to be taken to guarantee physical security and safety of the person during the proceeding for the compensation claim. In other words, it means appropriate accommodation, social, legal and medical assistance, and residence permit which are crucial to provide rights that would enable the claim to compensation. This assistance may allow a person to be adequately supported, to the extent that he/she is capable to present evidence that support his/her claim.

There are always problems for trafficked persons, but those problems are multiplied in cases of child victims. To illustrate this, legal proceedings are more scaring for children and legal counselling and representation are even more necessary for them to understand the legal system and their rights. There are other issues related specifically to children: the need for effective social work and guardianship systems to ensure monitoring over the provision and spending of the compensation. Thus, children may be protected from parents or guardians who do not act to their highest interest.

Of particular importance is the drafting of policies on the compensation of trafficked persons based on consultations with the individuals themselves and NGOs that represent their interests. For instance, legal and institutional reforms may be envisaged in the area of criminal, administrative and especially labour legislation for an increased access to justice and administrative authorities. This includes provision of legal assistance for trafficked persons, information and support services; strengthening of labour inspectorates and similar authorities empowering them to issue orders, including compensation of damage; examination of extra-judiciary systems to negotiate payments, e.g. mediation etc.

An important aspect of this issue is the execution of decisions and payment of the compensation. ODIHR's Practical Handbook *National Referral Mechanism Manual* includes guidelines on the importance of compensation as a method for reversing the violation of rights of trafficked persons and an important restorative and preventive effect.⁶⁶ In this regard, OSCE's Action Plan to Combat Trafficking in Human Beings recommends that States shall: Consider legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences and that the confiscated proceeds will be used for the benefit of victims of trafficking.

seem to be part of state referral mechanism. IOM offers free legal aid for the State Reception Centre and NCI runs a shelter 'Different and Equal'. Generally, shelters cooperate with NGO's such as CLCI and the Legal Clinic for Minors. The quality of their service has a good reputation as experts in legal counseling..."

⁶⁶ *National Referral Mechanisms - Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSBE/ODIHR, 2004), pages 83-87.

CHAPTER V

CONCLUSIONS AND SUGGESTIONS

5.1. LEGISLATION AND ITS IMPROVEMENT

Conclusion 1: The latest development in our criminal legislation are done in compliance with international standards. The meaning and definitions of trafficking of persons, women, minors in Albanian criminal legislation are in compliance with respective definitions in Palermo Protocol.

Recommendations.

The Criminal **Procedure Code** needs to be improved, because it should *provide for a better support for the victims of crime, especially victims of violent crimes, including especially their right to information and legal assistance.*

The approval and entrance in force of a law “**On legal assistance**” is a positive achievement, but by-laws for its implementation are urgently needed for the law to also protect victims of violent crimes. The approval of by-laws for the implementation of this law will make possible coordinating of the activity between the Non Profitable Organisations providing assistance for the victims of trafficking of human beings and responsible structures established by this law.

In this context, decision no.195, dated 11.04.2007. of the Council of Ministers "On approval of standards for social care services offered in residential centers to persons who are trafficked or, who are at the risk of being trafficked" is also of a special importance in increasing the quality of services and addressing the needs of the victims.

The Albanian Criminal Procedure Code does not specify any obligations for *prosecutors, judicial police officers, or other bodies, to inform the victims of crime, especially victims of violent crimes, especially victims of trafficking about their legal rights.* The legislative measures should be such that they make sure that the victims of trafficking receive this information at the earliest stages of crime reporting, investigation, and court proceedings⁶⁷.

⁶⁷Create a checklist for the police officer to structure provision of information:

- I handed over victim brochure.
- I explained its contents.
- I provided specific information.
- I provided information about victim support.
- I discussed possibility of assistance by victim support.
- I contacted victim support on behalf of victim.
- I gave registration number of report.
- I asked if victim wanted to be informed about proceedings and decision whether to prosecute.

There is a need to clearly determine who is responsible for informing the victims of crime, especially victims of trafficking (generally the police), and to clearly define the relevant responsibilities as formal obligation under the job description of the responsible body.

It is recommended that effective concrete measures are drafted and followed by action plans, which specify clearly the financial resources needed for carrying out victims-oriented activities.

Such measures should be followed by training of professionals of the justice sector, judicial police, judges, lawyers, prosecutors on the rights of the victims of crime,

The victims of crime should be able to take their own decisions whether to collaborate with justice being protected and safe. This requires this right to be specified in future amendments to the Albanian criminal law.

Conclusion 2. The Albanian legislation allows legal possibilities and tools for the victims *of trafficking* to claim compensation. Such claims, however, have been very rare in practice. Therefore, the Albanian legislation needs to be amended following these recommendations.

Recommendation: In order to give the **victims of crime, especially victims of violent crimes** more practical possibilities to exercise their right for compensation, the Albanian **Civil Code** should contain specific provisions on compensation for damage caused by sexual exploitation, labor exploitation, forced services, or other forms of exploitation, that constitute elements of trafficking in human beings.

The **labor legislation** needs to be further improved, so that it contains not only one clear provision prohibiting forced labor, but other which ensure protection of women and minors from labor exploitation. In order to be effective, this legislation should also specify clear sanctions. The international labor standards (ILO) should be guidance in reviewing the labor code.

The Criminal Procedure Code should define clearly the responsibility of prosecutors in cases of civil lawsuits pursued under criminal procedure. This law should also facilitate the execution of court decisions on compensation of **the victims of crime, especially victims of violent crimes**, allowing for compensation to be realized by using some of the seized assets

Considering the above, we would also suggest that courts should be given the possibility to take automatic compensation decisions, or at least restitution decisions, which would make justice more effective.

The tax law is also very important. It needs to be amended, so claims of compensation for **the victims of crime, especially victims of violent crimes** trafficking or other violent

crimes are exempt from the so-called 'judicial tax'. This would increase victim's access to claim compensation, and would make justice more effective.

Conclusion 3. In the framework of strengthening the judicial system, it is very important to provide the Serious Crimes Courts with the necessary technical elements as audiovisive equipments, special premises for the victims and to ensure the protection and safety of the victims of trafficking.

Recommendation: Commitment of the relevant structures for a swifter approval of the relevant by-laws, would contribute to a better implementation of Law 9205, dated 15.03.2004, “On protection of witnesses and collaborators of justice”.

5.2. JUDICIAL PROCESS AND CRIMINAL PROSECUTION PRACTICE

Conclusion 1: Judges, prosecutors, and judicial police officers should become more aware of the international standards for the treatment of **the victims of crime, especially victims of violent crimes**. It is necessary that justice professionals increase both their knowledge and level of implementation of the international conventions and standards.

Recommendation

It is recommended that an index of all universal and regional acts be established for justice professionals to be better informed about them and apply them directly in practice.

It is recommended that guidelines and manuals be prepared for lawyers and police officers, which would enable not only a unification of criminal procedures, but it would also improve the treatment of **the victims of crime, especially victims of violent crimes** in compliance with international standards.

Conclusion 2. Judges, prosecutors, and judicial police officers should be better aware of the international standards for compensation of victims of **the victims of crime, especially victims of violent crimes**. Lack of judicial practice dealing with the civil responsibility of trafficker, and the lengthy civil trials, discourage victims and expose them to a greater risk from the perpetrators.

Recommendation: With civil trials taking time and money, victims are encouraged to claim compensation within the criminal proceedings against the perpetrator. This requires a clearer division of responsibilities between the court and prosecutors during the process of collecting evidence and proving the damage. Judicial police officers should also have clear responsibilities regarding the treatment of victims.

Some guidelines and damage-calculation schemes would be useful for this purpose.

We think that **the victims of crime, especially victims of violent crimes** should be interviewed by a judge, prosecutor, psychologist, or by the representative of an NGO

during the court proceedings rather than by the lawyer of the trafficker. During the monitoring process, we found that psychological assistance to victims of trafficking was not a consistent practice.

Recommendation: It is recommended that a unified practice is used for offering victims psychological support, not only when victims are minors, but in every other case.

- There is a need for increasing the capacity of people who provide psycho-social assistance to victims of trafficking in order for them to identify, and support victims at a timely manner by using legal means. They should have a higher qualification, no matter whether they work for governmental or non-governmental organizations.

- There is a need for networking between the police, prosecutor's office, courts and anti-trafficking organizations in offering services to victims of trafficking. It is recommended that their separate statistics are also unified among them.

- It is recommended that lawyers should be trained by the Magistrate School, Ministry of Justice, Chamber of Lawyers, and NGOs, and develops their knowledge of international acts and implement them directly in practice.

5.3. ROLE OF NGOs

Non-governmental organizations have played a very important role if offering the necessary services to victims of trafficking, including legal and psycho-social assistance, accommodation, physical safety, and help in presenting their evidence in court. They have also played a very important role in lobbying for improvements of the domestic legal framework in compliance with the international standards, so that the Albanian judicial system pays a special importance to the rights of the victims of trafficking.

There has been a good co-operation between the Albanian national Coordinator for Fight against Trafficking in Human beings, and the anti-trafficking non-governmental organizations, which has consisted of a joint and institutionalized work for preventing trafficking, protecting victims, and guaranteeing the rights **of the victims of crime, especially victims of violent crimes.**

The role of anti-trafficking NGOs, however, should strengthen not only through increased capacities, but also through continuous support from the state, which should consider them as significant stakeholders.

It is recommended that anti-trafficking NGOs co-operate with the respective state authorities to prevent this phenomenon. In this context, it is needed that special comprehensive policies are drafted and implemented for protecting the main social-economic rights of women and other vulnerable groups, including the right to education, employment, shelter, and other supporting services. With these rights guaranteed, groups at risk of being trafficked would strengthen and would, therefore, be less vulnerable to trafficking.

It is recommended that NGOs be present as a third party in court proceedings in order to support **the victims of crime, especially victims of violent crimes**, who regularly avoid confrontation in court, and do not even have a right to be presented by a lawyer, remaining thus alone in the position of a witness.

5.4. COMPENSATION AND REHABILITATION OF VICTIMS

It is necessary for the Albanian juridical system to aim at meeting the international standards, which require that **the victims of crime, especially victims of violent crimes** enjoy the right of compensation from the offender or from the state, considering the fulfillment of this right of a special importance not only for the physical, psychological, and social rehabilitation of the victim, but even for the power of justice itself.

The approval of Law 9284, dated 30.09.2004 on Prevention and Fight against Organized Crime, which requires that a special agency is created for the administration of confiscated assets, is a positive achievement of the Albanian Government, but it should be applied in practice. This agency would decide to allocate up to 40 per cent of confiscated assets to local government units and law enforcement agencies for social purposes, as well as for compensating victims of organized crime.

Other measures should also be taken to ensure the physical safety and integrity of the victims during the procedure of claiming and obtaining compensation. It is, therefore, essential to provide them with a safe house, social and medical care, legal assistance, and a permission of stay if needed. A victim should be sufficiently assisted in order to be able to present the evidence to support a compensation claim.

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