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**TRAFIKIMI I QENIEVE NJERËZORE NË LEGJISLACIONIN E REPUBLIKËS
SË KOSOVES: ASPEKTE NACIONALE DHE KRAHASIMORE**

**ТРГОВИЈАТА СО ЛУЃЕ ВО ЗАКОНОДАВСТВОТО НА РЕПУБЛИКА
КОСОВО: НАЦИОНАЛНИ И КОМПАРАТИВНИ АСПЕКТИ**

**HUMAN TRAFFICKING IN THE LEGISLATION OF THE REPUBLIC OF
KOSOVO: NATIONAL AND COMPARATIVE ASPECTS**

Abstract

Today, one of the forms of organised crime that has involved almost all societies is human trafficking.

Human Trafficking is a multidimensional threat, it deprives people of their freedom and their rights, it is a global threat and stimulates the growth of organized crime. It has devastating effects on individual victims who often suffer from physical and emotional abuse, rape, threats directed at them or their families.

Different perspectives treat the crime of human trafficking, depending on the perpetrators or institutions involved. Recently, states and international organisations have expressed their commitment to approach trafficking from a human rights perspective. This approach has as its ultimate goal the recognition and protection of the human rights of trafficked persons.

The European Law Enforcement Cooperation Agency (Europol) warns that trafficking in human beings is likely to increase in the period following the economic downturn due to the Covid-19 pandemic, as unemployment increases as a result, and an increase in the demand for trafficking for labor and sexual exploitation can be expected.

Keywords: *trafficking, criminal offence, legislation*

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Introduction

Trafficking in women affects the right to be free from slavery. The right to be free from slavery is considered one of the fundamental human rights, a right that is affected in the trafficking phase.

National and international acts guarantee fundamental human rights and freedoms. The Constitution of the Republic of Kosovo does the same. Similarly, in Article 9 of the Constitution of the Republic of North Macedonia, citizens are equal in freedoms and rights regardless of gender, race, skin color, national and social origin, political and religious beliefs, property, and social status. Citizens are equal before the Constitution and the laws.

The Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly prohibits trafficking and exploitation of prostitution of women.

Slavery is the status or condition of a person over whom any or all of the powers that exist from the right of ownership are exercised. In other words, slavery can be understood as the status of persons who are in the property of another person. The right to be free bears the mark of exploitation and ownership of another; however, another issue has been shown to be important in determining the status of slavery, and that is the irrelevance of consent to the existence of prohibited conditions.

The fact that slavery in the form of human trafficking still exists in the 21st century is a shame to us all, wrote Antonio Maria Costa, Director of the UN Office on Drugs and Crime (UNODC), in April 2006. Governments, international organizations, and civil society are making considerable efforts to confront it, but there is still a lack of information about the extent of this tragedy, and only by understanding its depth and scope can we design policies to combat it.

1. What is human trafficking?

Trafficking in human beings, especially women and children, as well as other illegal activities that are closely related to it, is considered a dangerous form of organized crime with numerous and very serious consequences for its victims and society as a whole.² Human trafficking is a serious and systematic violation of many human rights and freedoms, especially of women and young girls, guaranteed by international conventions and the laws of contemporary states, therefore, it is rightly considered one of the modern forms of human slavery.

According to some published data, it turns out that human trafficking ranks third in terms of profits, immediately after drug trafficking and arms smuggling, generating an annual income of about 150 billion dollars. Of this

² Rexhep Gashi, *Krimi i organizuar*, Prishtinë, 2023, pg. 186

amount, sexual exploitation is the most profitable part, with 99 billion dollars per year.³

The European Agency for Law Enforcement Cooperation (Europol) warns that trafficking in human beings is likely to increase in the period following the economic downturn caused by the Covid-19 pandemic, as unemployment increases as a result, and an increase in demand for trafficking for labour and sexual exploitation can be expected.⁴

Naming itself, trafficking in human beings clearly shows that this criminal offense becomes a trade with people, and the main purpose is the realization of material benefits. The types of action by which this criminal offense is committed are alternatively defined and such sites are numerous and complex. Consequently, it is considered as a form of action for committing this criminal offense: such as recruiting, transferring, accommodating, or accepting trafficked persons for the purpose of exploiting them in a variety of ways, sexual exploitation or other forms of sexual exploitation, services or forced labor, slavery or acts similar to slavery, slavery or unlawful removal of organs⁵

The Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly prohibits trafficking and exploitation of prostitution of women.

The purposes of this protocol are:

Preventing and combating human trafficking, paying particular attention to women and children;

Assisting victims of trafficking in human beings, while fully respecting human rights; and

Encouraging cooperation between States Parties in order to achieve these objectives.⁶

Human Trafficking is a multidimensional threat, it deprives people of their freedom and their rights, it is a global threat and stimulates the growth of organized crime. It has devastating effects on individual victims who often suffer from physical and emotional abuse, rape, threats directed at them or their families.⁷

The victim of a criminal offense enjoys certain rights in criminal proceedings. Some of the rights generally belong to victims of crime, some are specific rights for vulnerable categories of victims, and some others relate to victims of crime against gender freedom and gender morality, humanity and international law.⁸

³ Ibidem, pg. 190

⁴ UNODC, Raportul Global Mbi Trafikimin e Personave, 2020.

https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020

⁵ Komentar i Kodit Penal te R.Kosoves- .Saliu, Zhitia & Hasani, 2014, p, 458

⁶ Revista Vizione,nr.36/2021, f. 123

⁷ Po aty

⁸ Po aty, f. 125

2. Legislation of the Republic of Kosovo on Trafficking in Human Beings

Human trafficking has been a worrying phenomenon for more than two decades in Kosovo, a phenomenon that has evolved and changed in its forms and trends.⁹ Given that the phenomenon of trafficking has also affected other countries, where the movement of victims can take place from one country to another, it is seen that international cooperation is of particular importance, especially the exchange of experiences and information between countries.

Kosovo has developed a sound legal and strategic framework for combating trafficking, including institutional mechanisms mandated to coordinate and implement anti-trafficking policies. Furthermore, the approximation of legislation with EU legislation continues in accordance with the National Program for the Implementation of the Stabilization and Association Agreement with the European Union.¹⁰

“Human trafficking means placing a person under the unlawful and de facto control of other persons by means of violence, threat, abuse of authority or intrigue, for the purpose of engaging in prostitution, forms of sexual exploitation and rape of minors or the trafficking of abandoned children. These forms also include the production, sale, and distribution of child pornography”¹¹.

According to Article 3 of the Law on Preventing and Combating Trafficking in Persons and Protecting Victims of Trafficking in Persons of the Republic of Kosovo, trafficking in persons means the recruitment, transportation, transfer, harbouring or receipt of persons, including the exchange or transfer of control over such persons, through the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation.

Whereas, based on Article 165, paragraphs 1 and 2 of the Criminal Code of the Republic of Kosovo Whoever engages in trafficking in persons shall be punished by a fine and imprisonment of five (5) to twelve (12) years, When the offense provided for in paragraph 1 of this Article is committed within a three hundred and fifty (350) meter radius of a school or other locality which is used by children or when the offense is committed against a person under the age of eighteen (18) years, the perpetrator shall be punished by a fine and imprisonment of five (5) to fifteen (15) years. When the offense provided for in this Article is committed by an official person abusing his or her position or authorizations, the perpetrator shall be punished by:

4.1. A fine and imprisonment of five (5) to fifteen (15) years in the case of the offense provided for in paragraph 1 or 2 of this Article;

⁹ Strategjia kombëtare kundër trafikimit me njerëz, 2022-2026

¹⁰ Ibidem

¹¹ Vesel Latifi, *Kriminalistika*, Prishtinë, 2014, Universiteti i Prishtinës, pg. 213.

4.2. A fine and imprisonment of not less than ten (10) years in the case of the offense provided for in paragraph 3 of this Article.

Based on paragraph 6 of this article, the expression "trafficking in persons" means: the recruitment, transportation, transfer, harboring or receipt of persons, by threat or the use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or the abuse of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation.

The three elements of the criminal offense of trafficking, Article 139 of the PCK, define trafficking in human beings as containing three elements:

1. The recruitment, transportation, transfer, harbouring, or receipt of persons,

2. Using the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for exploitation.

3. The term "exploitation" as used in subparagraph 1 of the present paragraph shall include, but not be limited to, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."¹²

The strategic approach that has been built to combat human trafficking is based on the experience to date, namely the policies undertaken by the institutions of the Republic of Kosovo, as well as the evaluation of the Strategy and Action Plan against Human Trafficking 2011-2014. To build a long-term vision for combating this phenomenon, the drafting of this strategy is also based on advanced policies of the European Union, as well as other international agencies that address this field.¹³

2.1 The Strategy and Action Plan against Human Trafficking

The Strategy and Action Plan against Trafficking in Human Beings reflects strategic objectives in full compliance with the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 of June 2012 and addresses the issue in a local and regional context. Consequently, the objectives and measures foreseen in these strategic documents are linked to the 5 (five) EU priorities for addressing the issue of trafficking in human beings. These priorities are as follows:¹⁴

- Identifying, protecting, and assisting victims of trafficking;

¹² Neni 139 (8) 4), KPPK. Ndonëse shumica e lëndëve të supozuara të trafikimit të monitoruara nga OSBEja përmbajnë raportime të shfrytëzimit të femrave, trafikimi mund të përfshijë shfrytëzimin e punës (puna e detyruar), shfrytëzimin seksual të meshkujve, heqjen e organeve dhe format e skllavërisë.

¹³ Strategjia Kombëtare kundër Trafikimit me Njerëz 2015-2019

¹⁴ Ibidem

- Stepping up the prevention of trafficking in human beings;
- Increased prosecution of traffickers;
- Enhanced coordination and cooperation among key actors and policy coherence;
- Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.

National legal instruments-

- Constitution of the Republic of Kosovo
- Criminal Code
- Criminal Procedure Code
- Law on Family.

Kosovo has prepared a National Strategy against Trafficking in Persons, which is a strategic document that defines the policies and measures to be taken against the crime of trafficking in persons in Kosovo. This strategy and action plan reflects the priorities of the Government of the Republic of Kosovo for combating all forms of trafficking through institutional mechanisms.¹⁵ This Strategy also reflects the Government's commitments to international cooperation in the field of combating trafficking and the obligations arising from the process of integration of the Republic of Kosovo into the European Union, respectively, for the implementation of the obligations arising from the Stabilization and Association Agreement between Kosovo and the European Union.

The Strategy is based on the Law on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking, which addresses all forms of trafficking in human beings, whether national or transnational, including acts committed for the purpose of exploiting victims as long as they contain elements of trafficking in human beings.¹⁶

3. Albanian Legislation on Human Trafficking

The Criminal Code of the Republic of Albania provides for the trafficking of immigrants, women for prostitution, and, as a separate form, the trafficking of minors as forms of human trafficking.

Article 110/a "Trafficking in Persons" provides:

The recruitment, transport, transfer, hiding or reception of persons through threat or the use of force or other forms of compulsion, kidnapping, fraud, abuse of office or taking advantage of social, physical or psychological condition or the giving or receipt of payments or benefits to get the consent of a person who controls another person, with the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced labour or

¹⁵ Strategjia Kombëtare Kundër Trafikimit të Njerëz, 2022-2026

¹⁶ Ibidem

services, slavery or forms similar to slavery, putting in use or transplanting organs, as well as other forms of exploitation, both within and beyond the territory of the Republic of Albania, shall be punishable by imprisonment from eight to fifteen years.

The organization, management, and financing of the trafficking of persons is punished with imprisonment of from seven to fifteen years.

When such an offence is committed in collaboration, more than once, accompanied by maltreatment and forcing the victim to commit various actions through the use of physical or psychological violence, causing serious consequences to the health or threatening their life, it is punishable by imprisonment of no less than fifteen years.

When the offence as a consequence has caused the death of the victim, it is punished by imprisonment of no less than twenty years or with life imprisonment.

When the criminal offence is committed through the utilization of a state function or public service, the punishment of imprisonment is increased by $\frac{1}{4}$ one-fourth of the punishment given.

Articles 110/b and 110/c penalize the benefit of services provided by trafficked persons as well as actions that facilitate trafficking.

The benefit from or use of services provided by trafficked persons, or services which are subject to exploitation by trafficking, being aware that the person is trafficked, shall be punishable by imprisonment of from two to five years. When this offence is committed against a minor, it shall be punishable by imprisonment of from three to seven years.

3.1 Trafficking of Minors Article 128/b¹⁷

By child trafficking, we mean the removal of children from their safe environment for the purpose of exploitation.¹⁸ Child trafficking within and outside the country is linked to the demand for work, where working conditions and treatment at work cause serious violations of children's rights, which are dangerous to the health and development of the child.

Child trafficking is carried out for these purposes:¹⁹

- Sexual exploitation,
- Illegal profit through fraud
- Domestic slavery, such as cleaning, cooking, and childcare,
- Forced labor in factories or agriculture,
- Committing crimes, begging, stealing, working on cannabis farms, and transporting drugs.

¹⁷ Kodi Penal i Republikës së Shqipërisë,

¹⁸ Bistra Netkova& Ismail Zejneli- International standards Regarding Protection of Children of maltreatment-Prizren Social Prizren Journal , Volume.5, ISSUE-2, 2021, pg. 78

¹⁹ Ibidem

According to Article 128/b of ACC, “Trafficking of Minors”, means recruitment, sale, transport, transfer, hiding or reception of minors with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced labor of service, slavery or forms similar to slavery, putting in use or transplanting organs, as well as other forms of exploitation, shall be punishable by ten to twenty years of imprisonment.

Organization, management, and financing of the trafficking of minors is punished with imprisonment of from ten to twenty years.

When this crime is committed in collaboration or more than once, or is accompanied by the maltreatment and forcing of the victim through physical or psychological violence to commit various actions, or bring serious consequences to health, it is punished with imprisonment of no less than fifteen years.

When the offence as a consequence has brought about the death of the victim, it is punished with imprisonment of no less than twenty years or with life imprisonment.

3.2 Elements of the Criminal Offense of Human Trafficking

The criminal offence of trafficking is considered to be committed through the combination of the three constituent elements and the separate components, although in some cases these separate elements will constitute criminal offences independently of the others, e.g. taking by force, kidnapping, rape, fraud, etc. according to the definitions of national legislation.

The three elements of trafficking can appear at different stages: for example, recruitment of the victim, movement within or outside the country, and finally exploitation.

Each of the three elements of trafficking must be proven to have been considered to have committed the criminal offence of trafficking in adult persons.

In the case of child trafficking, it is not necessary to prove the means used by the subject of the criminal offence to achieve the purpose of exploitation.

Trafficking is a combination of these elements, and not each of them is taken separately. For example, the reception of a person (action) through the use of a form (means) for sexual exploitation (purpose) constitutes the criminal offense of trafficking in adult persons.

4. The Legislation of the Republic of North Macedonia on Human Trafficking in Human Beings

Trafficking in persons, especially trafficking in women, is a global problem that is also reflected in the Republic of North Macedonia. It manifests itself in various forms and seems to exploit victims for large material benefits through different forms of exploitation.

The crime of trafficking in human beings has been addressed from different perspectives, depending on the perpetrators or institutions involved. Recently, states and international organizations have expressed their commitment to approach trafficking from a human rights perspective.²⁰ This approach has as its ultimate goal the recognition and protection of the human rights of trafficked persons.

Fundamental human rights and freedoms are guaranteed by national and international acts. Thus, in Article 9 of the Constitution of the Republic of North Macedonia, citizens are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property, and social status. All citizens are equal before the Constitution and the law.

The Criminal Code (CP) with the amendments and supplements of 2002 incriminates a specific and serious criminal offense (Article 418-a) "Trafficking in human beings" with the full legal entity incorporated in its entirety according to Article 3 of the Palermo Protocol.

Whereas, based on Article 418, "Trafficking in Persons" of the Criminal Code of the Republic of North Macedonia means the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat, use of force or other forms of coercion, of fraud, of coercion, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The Criminal Code of North Macedonia is fully in line with the UN Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings.

National legal instruments-

- Criminal Code
- Criminal Procedure Code
- Law on Foreigners
- Police Law
- Code of Police Ethics
- Protocol to Prevent, Combat and Punish Trafficking in Persons, Especially Women and Children
- Protocol against the Smuggling of Migrants

The crime of trafficking in human beings has been approached from various angles depending on the actors and or institutions involved.²¹ Only recently have states and international organization expressed their commitment to approach trafficking from the human right perspective. This approach has

²⁰ Ismail Zejneli-E drejta Penale e posacme, Tetove-2007, pg. 179

²¹ Bistra Netkova& Ismail Zejneli, Trafficking Human Beings Legal Aspects-South East European University, Tetovo, 2006- pg.19

the recognition and protection of the human right of the trafficked persons as its ultimate goal.

Conclusion

Human rights and freedoms are defined by the Constitution of the national states, as well as by certain legal provisions. The physical and moral integrity of the person is inviolable; all forms of torture, inhuman and degrading treatment or punishment are prohibited, and forced labor is prohibited.

The victims of sexual exploitation are most often women and girls, but it is not excluded that there are also men and boys as victims.

The Palermo Convention, with its protocols, emphasizes the need to create a single and efficient legal framework. Regardless of the legislative choices and standards of the EU countries in the field of trafficking in human beings, the national legislation of countries outside the Union must be supplemented and harmonized.

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Literature:

- Ragip Halili, Kriminologjia, Prishtinë, 2016
- Vesel Latifi, Kriminalistika, Prishtinë, 2014
- Skender Begeja, Kriminalistika, Prishtinë, 2005
- Rexhep Gashi, Kriminaliteti i Organizuar, Prishtinë, 2023
- Mensur Morina & Florent Azemi-Krimi i Organizuar, Mitrovicë, 2022
- Veton Vula & Mesut Ademi, Kriminaliteti i organizuar, Prishtinë, 2020
- Ismail Zejneli & të tjerë, Krimi i organizuar-aspekte juridike, Tetovë, 2008
- Ismail Zejneli, E drejta penale-pjesa e posaçme, Tetovë, 2007
- Ismet Salihu, E drejta penale e posaçme, Prishtinë, 2006
- Ismet Salihu, M. Z., Komentari i Kodit Penal të Republikës së Kosovës, Prishtinë, 2012
- Delo Meçani, E drejta penale-pjesa e posaçme, Tiranë, 2020
- Bistra Netkova & Ismail Zejneli, Trafficking Human Beings Legal Aspects-South East European University, Tetovo, 2006
- Bistra Netkova & Ismail Zejneli, CEDAW Right of non-discrimination and State Obligations in connections to trafficking in Women-

Advances in Social Sciences Research Journal–Vol.3,No.1-Publication-Date: Jan.25.2016.

- Bistra Netkova & Ismail Zejneli, International standards Regarding Protection of Children of maltreatment-Prizren Social Prizren Journal, Volume.5, ISSUE-2, 2021

- Rina Zejneli & Muazam Halili, *"The Characteristics and Dynamics of Classic Crime During 2022–2023: A Case Study of the Tetovo Region"*, International Journal of Social Sciences "VISIONS", No. 44/2025

- Трговија со човечки суштества: Импликации за ОБСЕ, Варшава, Полска, 1999

- Ligji.nr 04/L-218 për parandalimin dhe luftimin e trafikimit me njerëz dhe mbrojtjen e viktimave të trafikimit, Gazeta Zyrtare Republikës së Kosovës-34/2013

- Kodi penal i Republikës së Kosovës, Gazeta Zyrtare e Republikës së Kosovës / Nr. 2 / 14 janar 2019, Prishtinë

- Strategjia kombëtare kundër trafikimit me njerëz në Kosovë 2022-2026, 2022

- Raporti i DASH-it për trafikimin e qenieve njerëzore – Kosova dhe Shqipëria/ 2022

- Kodi Penal i Republikës së Maqedonisë së Veriut, edicioni i vitit 2023

- Прирачник за идентификација и директна помош и поддршка на жртви на трговија со луѓе и ранливи групи, Скопје, 2012