



The Fight Against Human Trafficking for the Purpose of Exploitation for Forced Labor

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Abstract

Human trafficking is a serious crime that abuses people's fundamental rights and dignity. It involves the criminal exploitation of vulnerable people for the sole purpose of economic gain. Trafficking in human beings for the purpose of exploitation for forced labor is one of the most challenging aspects of "modern slavery". First of all, it is challenging to put into practice the interpretation if we are dealing with a concept of a standard work or a forced work, because often the victims prefer not to complain or they refuse to testify as witnesses since they are dependent from their traffickers for work and housing. Secondly, the fight against trafficking for this purpose, that is, the exploitation of labor, requires coordinated action between the state, civil society, unions and the private sector. The concept of "forced labor" in the context of human trafficking is not defined in international legal instruments, but is used to define slavery or practices similar to slavery. Different countries have different concepts regarding the concept of what is called forced labor and what is related to the object of human trafficking. This paper aims to briefly address the concept of trafficking for the purpose of forced labor and the current challenges of legislation and protection in practice of victims of trafficking.

Keywords: trafficking, victims, forced labor

1. Introduction

Trafficking in human beings appears in the most diverse forms, involving a number of different areas and affecting several layers of society. This aspect constitutes a violation of freedom and human rights and is a complex criminal offense based on labor exploitation and it is present in all modern societies, as one of the manifestations of human trafficking.

Trafficking in human beings for the purpose of exploitation for labor causes serious damage this phenomenon is increasing in number in all EU member states and abroad, affecting a growing number of women, men and children. Trafficking in human beings is a serious violation of a person's dignity, which treats human beings as objects and is related to the violation of labor law and other illegal activities, such as tax evasion, fraud with social security and money laundering;

The EU Committee of Ministers approved Recommendation KM/Recommendation (2022)21¹ "For the prevention and fight against human trafficking for the purpose of exploitation for work". The recommendation calls on the member states of the Council of Europe to adopt laws, policies and national strategies that deal with trafficking for the purpose of labor exploitation, following an approach which focuses on rights as well as on victims. It complements existing legally binding instruments, in particular the Council of Europe Convention "Against Cruelty to Human Beings" and builds on the work of GRETA², the judicial practice of the European Court of Human Rights and the conclusions and decisions of the European Committee of Social Rights. The justification of the recommendation contains a wide package of measures in the field of prevention, protection, criminal prosecution and partnership. It also contains measures for businesses and public organizations to operate with appropriate and vigilance measures and address the risks of human trafficking in their supply origin.³

2. Trafficking in Human Beings for the Purpose of Forced Labor

The first internationally recognized definition related to the concept of "Trafficking of persons" can be found in the Protocol "On the Prevention, Suppression and Punishment of Trafficking of Persons, Especially Women and Children", known as the Palermo Protocol in Article 3⁴his. This article is in addition to the United Nations Convention "Against International Organized Crime".

Trafficking in human beings is a widespread phenomenon that has some special characteristics from one country to another, but it is basically a criminal activity with serious consequences for the whole society. Perfection in the way of organization, scope, use of binding means or the vulnerable position of the target subjects, in adaptation with the process of globalization as a whole and technology in particular, makes this crime quite widespread due to of the high benefits they bring to their consumers.

Regarding "Trafficking in persons" article 110/a⁵of the Criminal Code of Republic of Albania states "Recruitment, transportation, transfer, concealment or reception of persons through the threat or use of force or other forms of binding, kidnapping, fraud, abuse of duty, or benefiting from the social, physical or psychological condition for the purpose of exploiting the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or similar forms of enslavement, using or transplanting organs, as well as other forms of exploitation, are punished with imprisonment from five to fifteen years and a fine from two million to five million Lek (Albanian currency)". This article is also drafted in full compliance with the Palermo Protocol.

The definition of the concept of human trafficking, by the Albanian legislator, referred in the Criminal Code in force, is in accordance with the meaning given to this concept by the United Nations Convention "Against Organized Crime" and its two Additional Protocols, which have become an internal part of the Albanian legislation, through Law no. 8920, dated 11.7.2002.

Human trafficking is a form of modern-day slavery, a new type of global slave trade. In our country, the legislation that deals with human trafficking has undergone continuous changes aiming at improvement and adaptation to international standards.

¹September 27, 2022

²Group of Experts on Action against Trafficking in Human Beings

³"Preventing and combating human trafficking for labor exploitation", KM Recommendation/Recommendation (2022)21 of the Committee of Ministers for member states

⁴For the purposes of this Protocol: (a) "Trafficking in persons" means the recruitment, transportation, transfer, concealment or reception of persons through the threat, use of force or other forms of coercion, fraud, extortion, subterfuge or abuse of power or of vulnerable position or giving or receiving payments or benefits to obtain the consent of a person who controls another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, removal of organs or servitudes. (b) consent of the trafficked victim to the exploitation intentional referred to in subparagraph (a) of this article will be inappropriate if the means provided for in subparagraph (a) have been used.

(c) Recruiting, transporting, transferring, hiding or receiving a child for the purposes of exploitation, will be considered "trafficking in persons" even if it does not include the means provided for in subsection (a) of this article.

d) "Child" means any person under 18 years of age.

⁵Added by Law 8733, dated 24.1.2001; amended by law no. 9188, dated 12.2.2004; changed the title, the words in the first paragraph and the third paragraph and added the second paragraph with the law no. 144, dated 2.5.2013; repealed the part that also provides for a fine, as the main penalty, in addition to a prison sentence, with law no. 144, dated 2.5.2013

Defining human trafficking requires three necessary elements:⁶

- Action: recruiting, transporting, transferring, hiding, harboring or hosting persons;
- Means: threat, use of force or other forms of binding, fraud, extortion, abuse of power or vulnerable position or giving or receiving payments or benefits;
- Purpose: exploitation of prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, removal of organs or servitude.

As for the objective aspect, it can be done through:

Recruiting: it is carried out by the actions that the subject performs to identify and find the persons on whom he uses one of the ways such as force, fraud, benefit from the social situation, abuse of duty, etc. with the aim of exploiting them.

Transportation of the person: means moving him from one place to another, inside or outside the territory of the Republic of Albania. It doesn't matter the means by which it was transported, but the violation of the victim's will to carry out the relocation.

Accommodation of the victim in the place of exploitation, such as in hotels or apartments for the purpose of exploitation; housing someone in a private residence where they are used as a domestic worker; accommodation of men, women, children in warehouses or facilities adapted as dormitories near factories or fields where they are employed in forced labor; sheltering persons in any way during their journey to the place where the illegal activity will take place.

The subject will be considered to have fully committed this criminal offense, in cases where he only recruited the person, etc. and for the purpose of his trafficking, despite the fact that he did not traffic this person, and despite the fact that he did not exploit this person.

The threat made to the person, for the purpose of his trafficking, means psychological violence or the threat made to the person. The use of force refers to the use of physical violence that the subject of the criminal offense exerts on the victim. Physical violence is manifested through physical injuries and damages, which are done to the person. Other forms of coercion include all those actions, which substantially affect the will of the victim, completely depriving him of the freedom to dispose of himself, which are different from physical or psychological violence such as: leaving the victim without food, or not providing the victim with minimal living, sleeping conditions, threats, blackmail, etc.

Fraud refers to the presentation of untruthful facts to the victim, for example, a person is promised to perform a certain job but in fact is forced to practice prostitution or if their travel and identity documents are taken and they are left with no choice but to accept the job.

Taking advantage of the victim's social status is one of the most widespread tools in the trafficking process. The means of profiting from the victim's situation or as it is otherwise known "taking advantage of the vulnerable position" of the victim is becoming more and more widespread.

Receiving payments or benefits to obtain the consent of the person who controls another person: When the subject of the criminal offense receives a benefit from a third person, in order for the latter to obtain the approval of the person he controls, for his trafficking.

3. Prohibition of Forced Labor

The prohibition of forced labor is protected from Article 26 of the Constitution of the Republic of Slovenia⁷. This Article in full compliance with Article 4 of the European Convention for the Protection of Fundamental Human Rights and Freedoms: "

Labor trafficking is a serious crime. It is prohibited, prosecuted and sanctioned through criminal law at international and European level. The EU Anti-Trafficking Directive harmonizes the criminal law of EU Member States in this aspect. Freedom from forced labor and labor trafficking is a "fundamental right at work", sanctioned in the fundamental Convention of the International Labor Organization no.29 (1930) and the Additional Protocol (2014) together with the accompanying Recommendation no. 203 (2014).⁸According to this Convention, forced labor means: "all work or services performed by any person under the threat of punishment and for which the person has not volunteered." Victims can be coerced into forced labor through the use of violence or intimidation or through more sophisticated means, such as

⁶Elezi.I "Criminal law, Special Part", Publications Erik, Tirana 2007, page 140

⁷No one shall be required to perform forced labor, except in cases of execution of a judicial decision, performance of military service, or for service resulting from a state of war, from a state of emergency, or from a natural disaster that threatens human life or health"

⁸"Trafficking for labor exploitation - Tackling Group Cases"
https://www.ituc-csi.org/IMG/pdf/forced_labour.pdf

manipulated debts, retaining of identity documents or threats of reporting to immigration authorities, and others.

This definition is based on three elements:

- All types of work or services that occur in an activity, industry or sector, including the informal economy.
- The threat of punishment includes a wide range of punishments used to force a person to work.
- Non-volunteering: the term "volunteering" refers to the person's free and informed consent to take up a job and his freedom to leave it at any time.⁹

Paragraph 2 of Article 4 of the Convention prohibits forced labour. However, this provision does not specify what should be understood by "forced or compulsory work", nor do the various documents of the Council of Europe related to the preparatory work for the European Convention provide definitions on this point. In the case "Van der Mussele k. Belgium",¹⁰ The court relied on Convention no. 29 of the International Labor Organization (ILO) regarding forced or compulsory labor. For the purposes of this Convention, the term "forced or compulsory labor" means "any work or service that is required of an individual under the threat of any punishment and for which the individual in question has not shown himself to be willing of his own free will." . The Court took this definition as a starting point to interpret paragraph 2 of Article 4 of the Convention. In order to clarify the notion of "work" in the sense of Article 4/2 of the Convention, the Court clarifies that not every work required of an individual under the threat of a "punishment" necessarily constitutes a prohibited "forced or compulsory work" from this provision. In fact, in particular, the nature and volume of the activity in question must be taken into account. These circumstances make it possible to distinguish a "forced labor" from what pertains to jobs that can reasonably be required in the name of mutual family assistance or cohabitation. The first adjective, "forced", implies the idea of a coercion, physical or moral. As for the second adjective, "obligatory", this cannot mean any legal obligation. For example, a work to be performed under a contract of free will cannot fall within the scope of Article 4 merely because one of the two contractors has committed to the other to perform it and there may be sanctions if he does not keep his promise.¹¹

Article 4/3 of the Convention, as well as Article 26 of the Constitution of the Republic of Albania points out that "any work that is normally required of a person who has been deprived of his freedom" is not called "forced or compulsory work".¹² or during his parole. In order to determine what should be called a "work normally required of a person deprived of his liberty", the Court takes into account the norms prevailing in the Member States

Defining forced labor requires two elements:

- Lack of consent to work (involuntary nature of work);
- Threat (coercion).

When the person's will is violated or taken by force or fraud, a person cannot be considered to have voluntarily consented to be trafficked and exploited.¹³

Forced labor differs from unfair working conditions. Different indicators can be used to determine whether or not a given situation constitutes forced labour, such as restrictions on workers' freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debts , from which workers cannot avoid. The ILO has identified 11 indicators of forced labor; when there is one or several of these indicators, we may have a situation of trafficking for the purpose of exploitation for work:

- Abuse of vulnerability
- fraud
- Movement restriction
- isolation
- Physical and sexual violence
- Intimidation and threats
- Keeping of identity documents
- Withholding of wages
- Blackmailing through debt

⁹OSCE, "Trafficking in Human Beings: A Handbook for Judges, Prosecutors and Other Legal Professionals", November 2021, pg 35

¹⁰Court (Plénière), *Affaire Van Der Mussele c. Belgium*, (Request no 8919/80)

<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%7B%22001-62147%22%7D%7D>

¹¹Guide to Article 4 of the European Convention on Human Rights "Prohibition of Slavery and Forced Labour", 2nd Edition

¹²(*Stummer v. Austria* [DhM], § 119) GRANDE CHAMBRE AFFAIRE STUMMER c. AUSTRIA

(Request no 37452/02)<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%7B%22001-105579%22%7D%7D>

¹³Article 3 of the Palermo Protocol and Article 2 of the EU Anti-Trafficking Directive 2011/36.

- Abusive living and working conditions
- Excessive overtime¹⁴

In some cases, it may even be a single indicator that may imply the existence of forced labor; in other cases, although there may be some indications, a more in-depth assessment is needed to decide whether the worker is a victim of forced labor or simply subjected to unfair working conditions.¹⁵

4. Conclusions and Recommendations

With the aim of reducing the trafficking of human beings for the purpose of forced labor, based also on the guidelines of international instruments related to forced labor and trafficking, the criminal policies of every country must include the obligation to prevent the phenomenon through the correct addressing of the phenomenon, addressing the request and addressing cooperation and due diligence.

Effective strategies to prevent forced labor and trafficking must attack the root causes of the phenomenon, not the symptoms. Without effective prevention, investment in other critical areas such as victim identification, protection and law enforcement cannot fully solve the problem, as new victims will simply replace those who are released.

The work must be done in the perspective of the effective implementation of the law and the criminalization of all forms of trafficking for the purpose of preventing the forced labor, the criminalization of consumers of services provided by victims of labor trafficking, and the criminalization of legal entities.

The work should also be done on the seizure and confiscation of the proceeds and assets of forced labor trafficking, using the confiscated assets to support and compensate victims of trafficking.

Although labor institutions can play a crucial role in preventing employment-related trafficking. In many cases external barriers are combined with internal barriers, such as the lack of sufficient awareness of the labor inspection about its role in preventing trafficking for employment purposes.

Labor inspectorates should be employed to enforce unpaid wages, to control the employment or working conditions of contract workers – which would exclude entire groups of employed or self-employed workers (service providers);

They should also facilitate and encourage international and cross-border cooperation in identifying and monitoring cases of trafficking in human beings for the purposes of exploitation for work.

Victims of trafficking or potential traffickers should be supported through access to public education, protection from poverty, decent employment, health care, decent housing and quality social protection services that are comprehensive, and proactively influence them too. that are left behind.

Also, victims should be provided with support related to immediate identification and protection, material and psychological care and support, as well as free legal assistance.

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¹⁴indicators of forced labor, according to the ilo. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

¹⁵OSCE, "trafficking in human beings: a handbook for judges, prosecutors and other legal professionals", November 2021, p 36

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