Case study report based on the obtained court verdict for the criminal offense of human trafficking in Albania

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Jurisdiction: Republic of Albania, Court of First Instance of General Jurisdiction of Durrës

Decision No: 11-2022-972 | **Case No:** 52802-00855-11-2021 | **Decision Date:** 28/02/2022

***Keywords**: exploitation of prostitution, Article 114/2 Criminal Code, child trafficking, incorrect classification of offense, victim-centered approach*

Relevant provisions of the law:

Provisions of the Criminal Code

Article 114 – Exploitation to prostitution

Prostitution, mediation, or receiving remuneration for the practice of prostitution is punishable by imprisonment from two to five years.

The same offense, when committed with minors, against several persons, with persons with whom there are close sexual relations, in-laws, guardians, or by taking advantage of official relationships, or is committed in collaboration or more than once, or by persons entrusted with state and public functions, is punishable by imprisonment from seven to fifteen years.

Article 110/a – Trafficking in human beings
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 services or work, slavery or forms similar to slavery, putting to use or transplanting organs, as well as other forms of exploitation, within and beyond the territory of the Republic of Albania, shall be punishable by imprisonment from eight to fifteen years.
If such offence is committed against an adult female, it shall be punishable by ten to fifteen years of imprisonment.
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 making the victim commit various actions through the use of physical or psychological violence, causing serious consequences to health or threatening their life, it is punishable by imprisonment of no less than fifteen years.

When the crime has brought about the death of the victim as a consequence, it is punished with imprisonment of no less than twenty years or with life imprisonment.
When the criminal offense is committed through the utilization of a state function or public service, the sentence is increased by one fourth.
Article 128/b – Child Trafficking

The recruitment, sale, transportation, transfer, hiding, or reception of minors for exploitation in prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, organ harvesting or transplantation, as well as other forms of exploitation, shall be punishable by imprisonment from ten to twenty years.

The organization, management, and financing of the trafficking of minors shall be punishable by imprisonment from ten to twenty years.

When this offense is committed in collaboration with others or more than once, or is accompanied by mistreatment and coercion through physical or psychological violence against the victim to perform various acts, or results in serious health consequences, it shall be punishable by imprisonment of no less than fifteen years.

If the offense results in the death of the victim, it shall be punishable by imprisonment of no less than twenty years or life imprisonment.

When the criminal offense is committed through the misuse of a state function or public service, the imposed prison sentence shall be increased by 1/4 of the given sentence.

Article 50/e provides aggravating circumstances:

e) when the offense is committed against children, pregnant women, or other persons, who, for various reasons, cannot be protected. According to the Code, the special vulnerability of the victim (the offense is committed against children, pregnant women, or other persons who, for various reasons, cannot be protected) is considered an aggravating factor for the punishment of the perpetrator.

Provisions of the Criminal Procedure Code
Article 405 – Summary trial hearing

1. When the defendant or their defense attorney, with special authorization, has submitted a request for a summary trial during the preliminary hearing, by the provisions of Article 332/c of this Code, the court session is conducted with the participation of the prosecutor, the defendant, their defense attorney, the victim or their heirs, when their identity and residence are established from the procedural acts, as well as the private parties.
2. The court verifies the legitimacy of the parties.

3. If the defendant's defense attorney is not present and legal representation is mandatory according to the criteria outlined in this Code, the court appoints another defense attorney as a substitute.
4. If the defendant does not appear in the hearing for justified reasons, the court sets a new hearing date and orders the notification of the defendant.
5. After hearing the parties on preliminary requests, the court reads the request for a summary trial and asks the defendant whether they maintain their request. If the defendant confirms their request, the court declares the commencement of the judicial review and grants the floor to the prosecutor to briefly present the results of the preliminary investigations.
6. After hearing the prosecutor's presentation, in the same session, the court decides on the acceptance of the request for a summary trial if it deems that the case can be resolved based on the existing procedural acts. Otherwise, it rejects the request and proceeds with a regular trial. An appeal against the decision is allowed together with the final judgment.
7. The request for a summary trial is not accepted if the defendant or their defense attorney raises objections regarding the validity of the procedural acts or the admissibility of evidence collected during the preliminary investigation, or if they request the admission of new evidence in the trial. The request for a summary trial is also not accepted in cases where the court, on its initiative, finds absolute nullity or inadmissibility of evidence, as a result of which it deems that the case cannot be resolved based on the existing procedural acts. In such a case, in its decision to reject the request, the court specifies the null acts or the inadmissible evidence for the trial. This rule does not apply when evidence is requested concerning the personality of the defendant or their personal, family, or economic situation.
8. The court accepts the request for a summary trial, and it invites the parties to present their final arguments.
9. When the court accepts the request for a summary trial, the civil lawsuit is not examined. Article 406/1 – Judgement 1) When issuing a conviction decision, the court reduces the sentence of imprisonment or fine by 1/3.

Overview of the case:

A.B (female) and A.P. (male) were accused of the criminal offense of "Exploitation of Prostitution" under Article 114/2 of the Albanian Criminal Code. The victim, M.H., was a minor (female) who relocated from Shkodër to Durrës and became involved in a network of individuals engaging in exploitative activities.

Key facts of the case and evidence:

The victim, M.H, left her hometown and relocated to Durrës where she met with E.Z with whom she started a relationship. For the first time she met with E.Z in a bar, and he was accompanied by two others, namely A.Gj (male) and S.Gj (female).

Through E.Z., the victim met with A.P., who was his friend. *E.Z. requested the victim to have intercourse with A.P., but she rejected and interrupted communication with E.Z. The victim, however, maintained communication with A.P.*

For about two months, the victim was living and working in Durrës until she had a conflict with an employee at her work, and went to the police. The police sent her back to her parents in Shkodër. She stayed there two weeks, and departed again to Durrës, this time stealing money, a laptop, and jewelry from her mother.

Upon returning to Durrës, she communicated with A.P via Instagram, and that evening met him together with A.B (female) and E.Z (former boyfriend). She shared a rented apartment with A.B. However that did not last long as conflicts emerged between the two, and the victim evicted A.B from the apartment.

On 18 September 2018 the victim together with her then partner F.M and S.Gj and A.Gj went out. They encountered E.Z and A.B and the latter initiated a conflict, and eventually stole the wallet of the victim. After this the victim M.H went to the police.

The victim testified to the police that A.B and A.P. and another person, whom she knew his nickname found clients for her to have intercourse for payment and drove her to different clients.

The victim was interrogated again, and her testimony was recorded and then transferred onto a DVD. In her second testimony, the victim stated that A.B did not operate alone and had a large network of collaborators. A.B had friends in Tirana and Durrës who would find clients, including foreigners, and other friends who would secure houses for rent. The victim, M.H., testified that *A.B, when she lacked money to buy drugs, would go to M. and offer him girls in return for money.* The victim witnessed that A.B had also connections with certain hotels.

The victim would abide by A.B, who would take her to different clients. M.H. testified that she had shared pieces from her personal life with A.B, and he later would abuse the emotional ties they had created and threaten her with killing her family. M.H. witnessed that she would have 5-6 clients a day. She also witnessed another minor who was part of this network and working closely with A.B.

The wiretap transcripts (phone records) *revealed a network of people involved in facilitating prostitution,* including discussions about arranging meetings and finding locations, as well as potential drug-related activities. The transcripts also revealed that G.P. is the person who has interacted with the victim via Instagram and with whom the victim claims to have had intercourse in return for money. From the text of the decision, it is indicated that the following persons were involved:
A.B – Organizer and mediator of prostitution.
A.P. – Accomplice in the exploitation of prostitution
G.P. (Gazi668) – Client who paid for sexual relations with the minor.

S.Gj – Involved in the prostitution network.
A. Sh ("Njeshi") – Realtor who provided clients and rooms for rent.
K.S. & M.B. – Involved in a fictitious marriage to avoid expulsion from the EU. The Court administered documents which prove the fictitious marriage, and payment of 400 Euros.
E.Z, E.A, M., F.M – Involved in criminal activity, finding clients, or providing shelter.

The prosecutor requested a guilty plea from defendants A.P. and A.B for the criminal offense of "Exploitation of prostitution" provided for by Article 114/2 of the Criminal Code and to sentence them to 7 years of imprisonment. The application of Article 406/1 of the Criminal Code would reduce their sentences by 1/3, thus to 4 years and 8 months of imprisonment.

Legal analysis

1. Legal classification: child trafficking vs exploitation of prostitution

A thorough analysis of the case facts reveals that the elements present align more closely with "Child Trafficking" (Article 128/b of the Albanian Criminal Code) rather than "Exploitation of Prostitution" (Article 114/2).

In this aspect, reference to the Unifying Decision 217 of the Supreme Penal Court is of relevance. Decision 217 clarifies that even instigating, mediating, or receiving remuneration for the exploitation of a minor for prostitution should be considered trafficking in a minor, according to Article 128/b of the Criminal Code.[1]

In the present case, the actions of the defendants regarding the transportation of the injured party from one place to another should be considered in the function of enabling the injured party to engage in prostitution.

In addition, the facts of the case reveal a clear organization and management of the trafficking of the minor victim, and the offense was committed in collaboration. The evidence provided through wiretap transcripts, together with the testimony of the victim, reveals a network of collaborators, from persons who were engaged in finding clients to hotels. However, these elements are not discussed in the text of the decision.

2. Coercion, control, and psychological manipulation

The victim was subjected to psychological violence, threats, and intimidation, including emotional control by A.B, exploiting personal vulnerabilities; threats against the victim's family, and control over her movement and interactions (the defendant would drive the victim to clients and control her communications). These elements should also be considered as reinforcing the fact that the case meets the threshold of child trafficking rather than exploitation for prostitution.

[1] Supreme Court Decision of the Penal College. No. 00-2022-1679 Decision (217). Available here.

3. Procedural and victim rights concerns

There is no data on the representation of the minor victim in proceedings.
In line with international standards and domestic legislation in place, namely Law No. 111/2017 on Granting State-Guaranteed Legal Aid, the victim is entitled to assistance, including free legal aid, psychological counselling, and protection during criminal proceedings. The court decision does not address compensation of the victim in substantive terms, which raises concerns about the adherence to international standards in place deriving from the UN Palermo Protocol, Council of Europe Convention against trafficking in human beings and EU Directive 2012/2029, as well as under Albanian Criminal Procedure Code provisions, namely Article 58 – 59 and Law No. 10192 "On the prevention and fight against organized crime and trafficking through preventive measures against property" (Article 37).

4. Sentencing

The sentences imposed for both perpetrators (4 years and 8 months) appear lenient. In line with the Criminal Code provision, the organization, management, and financing of the trafficking of minors shall be punishable by imprisonment from ten to twenty years.
When this offense is committed in collaboration with others or more than once, or is accompanied by mistreatment and coercion through physical or psychological violence against the victim to perform various acts, or results in serious health consequences, it shall be punishable by imprisonment of no less than fifteen years.

Conclusions:
In line with international monitoring bodies' recommendations, there is a pressing need to enforce stricter sentencing guidelines, which address the gravity of offenses, and properly classify trafficking in human beings/child trafficking cases.
Legal representation of the victim needs to ensured and recognized in court decisions. Legal representation of the victim should ensure victims' best interest, and inform the victim of their rights.
Tailored training addressing knowledge of the judiciary regarding international standards, and aimed at improving the capacities for drafting, writing, and legal analysis skills, is of paramount importance.
This case exemplifies broader systemic issues in Albania's handling of trafficking-related offenses, which were also discussed in more detail also discussed throughout. Proper application of domestic law in line with international standards is necessary to ensure justice for victims and accountability for perpetrators.