QENDRA PSIKO-SOCIALE "VATRA"

CASE STUDY REPORT BASED ON THE OBTAINED COURT VERDICT FOR THE CRIMINAL OFFENSE OF HUMAN TRAFFICKING IN ALBANIA

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Norway

SMART Balkans
Civil Society for Shared Society in the Western Balkans

CPCD
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Jurisdiction: Republic of Albania, Court of First Instance of General Jurisdiction of Fier

Decision No: 62-2024-5474(766) | **Case No:** 52805-01628-62-2024 | **Decision Date:** 28/10/2024

***Keywords**: exploitation of prostitution, Article 114/2 Criminal Code, child trafficking, victim-centered approach, illegal deprivation of liberty, keeping premises for prostitution.*

Executive summary

On 31 December 2022, following a domestic dispute, the victim, S.M., left her family residence and traveled to Fier to meet A.M., with whom she had previously established contact via Facebook. Upon their encounter, the defendant immediately seized the victim's mobile phone, destroyed the SIM card, and confiscated her national identity card. He then physically assaulted her and transported her to an apartment.

From that point onward, the victim was subjected to repeated sexual exploitation through the use of physical violence and threats. Between January and February 2023, the victim was transferred and held in multiple locations. During this period, she remained under the continuous supervision and control of the defendant and several accomplices, namely A.T., P.I., A.D., and later R.S.

The victim was coerced into prostitution on average five to six times per day, with all proceeds collected by the defendant. She reports enduring ongoing physical and psychological abuse, as well as periods of confinement, during which she was locked inside.

On 25 February 2023, the victim confided her ordeal to an acquaintance's mother, who recorded A.M.'s threats and alerted police, leading to the victim filing a formal complaint at the Fier Police Department.

Between March and June 2023, investigators questioned the victim and witnesses, including R.H. and E.H., conducted site inspections at hotels, and carried out verifications. A forensic psychiatric evaluation confirmed the victim's competence to testify.

Between April and May 2024, trial hearings were held, with the prosecution seeking maximum penalties and the defense arguing for acquittals or reclassification of charges.

The Court's reasoning is comprehensive. In its reasoning, the Court referred to the doctrines of *ne bis in idem*, the principle of speciality, subsidiarity, and absorption.

The court's sentencing decision regarding the defendants are summarized as follows:

Defendant	Offense (Article of Criminal Code)	Sentence after merging (in years)	After 1/3 reduction (summary trial; in years)
A.M	110/a(3), 115 in conjunction with 25	15 years (maximum sentence under Article 110/a of the Criminal Code)	10 years
P.I	114/2	7 years	4 years 8 months
A.T	114/2, 115-25	8 years	5 years 4 months
R.S	114/2, 115-25	8 years	5 years 4 months
A.D	114/2	7 years	4 years 8 months

Relevant provisions of the law:

Provisions of the Criminal Code

Article 110/2 – Unlawful deprivation of liberty

1/ The unlawful deprivation of a person's liberty constitutes a criminal misdemeanor and is punishable by a fine or imprisonment of up to one year.

2/ When this offense is accompanied by severe physical suffering, is committed in collaboration, against several persons, or more than once, it is punishable by imprisonment from three to seven years.

Article 110/a/(3) – Trafficking in adults

1/ 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 in order 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.

2/ If such an offence is committed against an adult female, it shall be punishable by ten to fifteen years of imprisonment.

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

4/ 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, is punishable by imprisonment of no less than fifteen years.

6/ 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.

7/ When the criminal offense is committed through the utilization of a state function or public service, the sentence is increased by one fourth.

Article 114 – Exploitation to prostitution

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

2/ 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 115 in conjunction with Article 25 – Keeping premises for prostitution, in cooperation

The keeping, exploitation, financing, or leasing of premises for the exercise of prostitution shall be punishable by a fine or by imprisonment of up to ten years (Article 115).

Cooperation shall mean the commission of a criminal offense by two or more persons pursuant to an agreement between them (Article 25).

Article 323 **– Escape of a Prisoner from the Place of Detention**

1/ The escape of a detainee, arrestee, or person sentenced to imprisonment from the place of mandatory detention, or during their transportation from one location to another, is punishable by imprisonment of up to five years.

2/ When the criminal offense is committed with violence or through the use of weapons, incendiary substances, explosives, or poisonous substances, it is punishable by imprisonment from five to fifteen years.

Provisions of the Criminal Procedure Code

Article 406/1 – Sentence reduction under abbreviated trial

1/ When issuing a conviction decision, the court reduces the sentence of imprisonment or fine by 1/3.

Article 190 – Disposition of Material Evidence

1/ In the final decision or in the decision to dismiss the case, the court or the prosecutor shall determine what is to be done with the material evidence, ordering:
a) objects which have served or were intended as instruments for committing the criminal offense, as well as objects constituting the proceeds derived from it, or the reward given or promised for its commission, shall be seized and transferred to the State, except in cases where such objects belong to persons who did not participate in the commission of the criminal offense;
b) objects whose possession or circulation is prohibited shall be handed over to the relevant authorities or destroyed;\
c) objects which have no value shall be destroyed;
ç) other objects shall be returned to the persons to whom they belong and, where there is a dispute over their ownership, shall be kept until the matter is resolved by the court.

2/ Material evidence may be returned to the persons entitled to them even before the conclusion of the proceedings, provided that this does not prejudice the resolution of the case.

Article 393 – Obligation to pay costs

1/ The convicted person shall bear the procedural costs related to the criminal offenses for which the conviction was rendered.

2/ Persons convicted for the same criminal offense or for related criminal offenses shall be jointly liable for the payment of such costs. Persons convicted in the same trial for unrelated criminal offenses shall be jointly liable only for the common costs connected to the offenses for which the conviction was issued.

Case analysis

Chronological overview of events

Mapping of parties involved and their roles

A.M recruitment, control, exercise of violence, logistical organization, client provision, and maintaining premises.
P.I accompanying the victim to clients (without using violence), facilitating prostitution.
A.T receiving the victim at the residence, accompanying her to clients, and applying psychological pressure.
R.S is cohabiting with A.T, accompanying the victim to clients, jointly using the residence for prostitution.
A.D accompanying and guarding the victim, collaboration in exploitation.
S.M. victim

Facts of the case

On 31 December 2022, the victim, *S.M*, following a domestic dispute in Patos, left her family residence and traveled to Fier to meet *A.M*, with whom she had previously made contact via Facebook.

Immediately upon their meeting, the defendant seized the victim's mobile phone, removed and destroyed the SIM card, and confiscated her national identity card. He physically assaulted her and transported her to an apartment in the "16 Prilli" neighborhood, in the vicinity of the premises known as "Casablanca."

From this point onwards, the victim was subjected to repeated sexual exploitation through the use of physical violence and threats. All payments received from clients were taken directly by the defendant.

Between January and February 2023, the victim was moved and held in multiple locations, including:

- An apartment adjacent to "Casablanca" (approximately two weeks);
- A room within the premises of "Casablanca" (approximately one month);
- An uninhabitable apartment in the "11 Janari" neighborhood;
- Various hotels (*Fiore, Leone, Vila Baçi, Dafinat, Pasioni,* etc.), as well as rural areas, wooded locations, and vehicles.

Throughout this period, the victim remained under the continuous supervision and control of the defendant and several accomplices, namely *A.T., P.I., A.D.*, and subsequently *R.S*. The victim was forced to engage in prostitution on average five to six times per day, with all proceeds collected by the defendant or his associates. She reports enduring ongoing physical and psychological abuse, in addition to periods of confinement, during which she was locked inside with a key.

Reporting

On **25 February 2023** the victim was with her acquaintance, *A.H.* She recounted her story to *R.H* (mother of A.H). A.M arrived to retrieve the victim, threatening her both in front of them and over the phone. The phone call was recorded the conversation by R.H., who subsequently contacted the police. The victim was escorted to the Fier Police Department, where she filed a formal complaint.

Criminal proceedings were registered under **Case No. 200/2023** for multiple offenses, including: trafficking in persons, exploitation of prostitution, keeping premises for prostitution, unlawful deprivation of liberty.

Initial investigative actions and procedural developments

On 26 February 2023, searches were conducted at the residence of A.T., where the victim's ID, mobile phones, and a quantity of non-narcotic powder were seized. A.T and A.D were

escorted for questioning. On 1 March 2023, A.M was arrested in flagrante in Fier, and a knife was seized.

Between March and June 2023, the victim and witnesses, including R.H and E.H, were questioned, site inspections and verifications at hotels were carried out, and a forensic psychiatric evaluation of the victim confirmed her competence to testify. On 28 December 2023, the Preliminary Hearing Court returned the case files for additional investigation, primarily regarding the role of R.S. On 7 February 2024, the prosecution expanded the investigation to include R.S. as a defendant.

On 9 May 2024, the defendants' request for a shortened trial under Article 406 of the Criminal Procedure Code was accepted, and the case was forwarded for trial on the merits with the existing investigative files, without administering new evidence.

Between April and May 2024, trial hearings on the merits were held, with the prosecution requesting maximum penalties for all defendants, while the defense sought acquittals or reclassification of the offenses.

The defendants submitted a request for summary trial proceedings, which was granted by the court in accordance with the provisions of Article 332/dh of the Criminal Procedure Code. The defendants became automatically entitled to one-third reduction of the sentence.

Role of Psycho-social Center VATRA

The PsychoSocial Center VATRA played an important role in the proceedings by providing the victim with consistent legal assistance representing the victim during the proceeding, psychological support, and practical help throughout the process. Its involvement ensured that the case was handled in line with a victim-centered approach, safeguarding the victim's rights, wellbeing, and participation in the proceedings. VATRA's support contributed to reducing the risk of secondary victimisation and helped align the handling of the case with international standards on the protection of victims of human trafficking. During the criminal proceedings, Vatra made three requests to the proceeding body: 1. For the examination of the case as a criminal offense of organized crime of human trafficking to be handled by the Special Prosecution Office against Corruption and Organized Crime; 2. For the inclusion of the victim in the State Program for the Witness Protection and 3. Compensation for the victim. The requests were examined during the court proceedings and the judge did not express his opinion on them. Currently, the case has been appealed to the Court of Appeal by the defendant and after its conclusion, Vatra will support the victim during the civil proceedings for compensation for damage.

Legal Analysis:

1. Procedural and victim rights concerns – legal representation

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).

The victim was represented by legal counsel, and her statements were assessed for credibility against corroborating evidence.

2. Evidence gathering and consideration

In the case, the court's consideration and position on the evidence were thorough and critical. The court, emphasized the importance of procedural integrity, and carefully analyzed the evidence presented during preliminary investigations and the judicial process, including witness testimonies, expert reports, and seized materials.

Evidence showed that the victim was subject to psychological violence, threats, intimidation and physical violence, including control over her movement – all elements that reinforce the case meets the threshold of human trafficking.

In its analysis, the court takes consideration of key evidence including:

- Statements from the victim, R.H, and her husband E.H.
- Telephone wiretaps and WhatsApp messages.
- The fact that the victim's ID from A.T's residence.
- Lease agreement for the residence where prostitution took place was in R.S's name.
- Other evidence collected during surveillance and site inspections (residences, premises, hotels).

3. Sentencing

The Court refers to the doctrine of "ne bis in idem" in criminal law, which functions as a safeguard against the duplication of prosecutorial or punitive proceedings for the same criminal act. This principle, embedded in constitutional guarantees and reinforced by international legal instruments, such as the European Convention on Human Rights, is construed to protect

the individual's liberty, uphold legal certainty, and ensure the proportionality of criminal sanctioning.

The Court discusses the principle of speciality, in its paragraph 168 of the judgement, which applies when two legal norms regulate the same subject matter: the more specific norm takes precedence over the general one (lex specialis derogat legi generali). The specific norm is applied only when it contains elements that distinguish it from the general norm, preventing double punishment for the same act. The general norm encompasses even the specific one, but for legal resolution, only the norm with the narrowest criteria is considered.

Furthermore, the Court discusses the principle of subsidiarity, under paragraph 169. This principle is based on the hierarchical relationship between two norms protecting the same legal relationship at different levels. The primary norm prevails when it covers the protected legal relationship at a higher level, while the subsidiary norm is applied only if the facts do not fall under the scope of the primary norm. The subsidiary norm is excluded for the same fact. For instance, if an act escalates in seriousness, the norm covering the higher degree is applied.

Lastly the Court elaborates on the principle of absorption under paragraph 170. According to this principle, when several penal norms refer to the same legal relationship, only the norm that "absorbs" or covers the entire unlawfulness of the offense is applied, typically the more severe one, thus consuming the lighter ones. Applying the more severe norm avoids double punishment and helps maintain proportionality in sentencing. For example, if sexual harassment encompasses all elements of a lighter offense, only the more severe norm is applied.

In essence, these paragraphs explain how conflicts between criminal norms regarding the same facts are resolved:

- The specific norm takes precedence,
- Next, the norm that protects the legal interest at a higher level (subsidiarity),
- And finally, the harsher norm that absorbs the lighter ones (absorption principle). These principles ensure fair, single, and proportional punishment for criminal conduct.

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Unlike other court decisions analyzed between 2021 and 2024, this judgment stands out precisely because it provides a clear and well-reasoned explanation of the factors and legal principles taken into account in determining the length of the defendants' sentences.

In imposing sentence, the Court applied the principles of proportionality and individualization of punishment. The Court assessed each defendant's specific role in the commission of the criminal acts, their prior criminal history, and the existence of mitigating or aggravating factors.

The court further took into account the age of the minor defendant, the personal circumstances of all accused, and their respective stances regarding culpability. This analytical framework ensured that the sanctions imposed were calibrated to the gravity of the offence and the degree of individual culpability, thereby satisfying the requirements of fairness and justice in sentencing.

Interestingly, in its reasoning the Court also elaborates on the principle of humanity and purpose of criminal punishment. The principle of humanity, stipulated under Article 1 of the Criminal Code, ensures that criminal measures do not infringe upon human dignity and do not cause inhuman, degrading, or unnecessary suffering. It implies that the primary purpose of punishment is not solely retribution, but also the rehabilitation and reintegration of the convicted person into society.

Last, the Court touches on the purpose of criminal punishment which is to protect society by preventing the commission of criminal offenses, rehabilitating and re-educating the offender, and deterring both the convicted person and others from engaging in (similar) criminal conduct.

4. Reference to international standards and case law

The Court's reasoning includes references to relevant international human rights standards and caselaw. In addressing issues related to trafficking in human beings, it cites the jurisprudence of the European Court of Human Rights (ECtHR) in Strasbourg, particularly under Article 4 of the European Convention on Human Rights (prohibition of slavery, servitude, and forced or compulsory labour).
Judgments such as *Siliadin v. France* and *Rantsev v. Cyprus and Russia* have established that trafficking falls within the scope of Article 4 and that States have positive obligations to:

1. Maintain an appropriate legislative and administrative framework to prevent and punish trafficking;
2. Take operational measures to protect potential victims; and
3. Carry out effective investigations where there are credible suspicions of trafficking.

The analysis also notes the development of the nonpunishment principle, according to which victims of trafficking should not be prosecuted or penalised for unlawful acts that are a direct consequence of their exploitation.

The Court's reasoning is in line with the case law of European Court of Human Rights regarding the duplication of prosecutorial or punitive proceedings for the same criminal act. Reference is made to cases *Sergey Zolotukhin vs Russia* and *Salier vs Austria*. Both cases illustrate the importance of protecting individuals from multiple prosecutions or punishments for the same conduct, reinforcing a broad and substantive approach to the ne bis in idem principle beyond formal legal characterizations.

These references are considered alongside the Palermo Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention), and Directive 2011/36/EU, ensuring consistency with the definitions and objectives set out in those instruments.

This integration of international caselaw and treaty provisions indicates that the Court has taken into account established standards when interpreting domestic provisions and assessing procedural compliance in trafficking cases.

5. Legal reasoning and writing

The judgment's legal reasoning is clear, wellstructured, and supported by relevant references to international standards, national legislation, and case law. Landmark decisions from Albanian jurisprudence and key rulings of the European Court of Human Rights were cited to substantiate principles on victim protection, positive state duties, and procedural safeguards. This combination of thorough legal exposition and referencing supports the judgment's legitimacy and underscores a sound judicial commitment to upholding the highest standards of justice in trafficking cases.

Conclusions:

- Clarity and legal reasoning – The judgment is clearly and coherently written, with wellstructured legal reasoning and explicit references to international standards and case law. It reflects alignment with the State's positive obligations to prevent trafficking, protect victims, conduct effective investigations, and apply the nonpunishment principle.

- The Psycho-social Center VATRA played a crucial role in supporting the victim and ensuring a victim-centered approach throughout the process.

- Victim's right to representation – The text makes clear that the victim's right to legal representation was fully ensured in the proceedings.

- Sentencing principles – The court applied the doctrines of *ne bis in idem*, speciality, subsidiarity, and absorption, thereby avoiding duplication of prosecutions and ensuring

proportionate, individualised penalties tailored to each defendant's role, circumstances, and any mitigating or aggravating factors.

- Humanity and purpose of punishment – The reasoning reflects Article 1 of the Criminal Code, balancing the punitive function of sentencing with the objectives of rehabilitation and reintegration.

Lessons learned:

- Courts should consistently and explicitly address victim compensation in their rulings.
- Early involvement of specialized services victim-support services, such as shelters, psychological counseling, legal aid, and social services, is crucial. Early intervention helps stabilize victims, strengthens their ability to participate effectively in proceedings, and reduces the risk of re-traumatization or re-victimization.

- Use of international practice and jurisprudence (e.g., European Court of Human Rights jurisprudence, Council of Europe guidelines, EU directives) can significantly strengthen judicial reasoning. By grounding decisions in established international norms, courts not only enhance the quality of judgments but also contribute to harmonization with broader human rights and criminal justice frameworks.

- Application of the non-punishment principle is essential for ensuring trust in the justice system, safeguarding victims' rights, and encouraging them to come forward without fear of punishment.

- Effective case handling requires close collaboration between police, prosecutors, courts, and victim-support organizations. Clear referral pathways and regular coordination mechanisms improve both the protection of victims and the effectiveness of investigations.