



**STUDY**

**COMPLIANCE OF THE  
ALBANIAN LEGAL  
FRAMEWORK WITH THE  
*ACQUIS COMMUNAUTAIRE*  
OF THE EUROPEAN UNION  
IN THE AREA OF THE FIGHT  
AGAINST TRAFFICKING  
IN HUMAN BEINGS**

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Albanian legal framework with the  
*Acquis Communautaire*  
of the European Union  
in the area of the fight against  
Trafficking in Human Beings

Study

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**of the fight against Trafficking in Human Beings**

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# Acronyms

EU	European Union
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECHR	European Convention on Human Rights,
CC	Criminal Code of the Republic of Albania, adopted by Law no. 7895/27/01/1995, as amended
CPC	Criminal Procedure Code of the Republic of Albania, adopted by Law no. 7905/21/03/1995, as amended
CCJC	Code of Criminal Justice for Children, adopted by Law no. 37/2017.
NCATS	National Coalition of Anti-Trafficking Shelters
ILO	International Labour Organization
UN Protocol	United Nations Protocol of 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
SOP	Standard Operating Procedures for the protection of victims and potential victims of trafficking, adopted by DCM no. 499, dated 29/08/2018
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in human beings
VT/PVT	Victim of trafficking/Potential victim of trafficking
DCM	Decision of the Council of Ministers



# Introduction

Trafficking in human beings (THB) severely violates fundamental human rights, freedom and dignity. THB is one of the forms of organized crime, a serious cross-border/transnational and domestic crime. The European Union (hereinafter EU) considers THB as a form of slavery. The fight against THB has long been a priority for the European Union and progress has not been lacking. Awareness-raising campaigns, reintegration programs and numerous trainings have been conducted in order to reduce human trafficking and strengthen the protection system of victims of human trafficking. Studies and reports have enhanced knowledge about the phenomenon, thus contributing to the development of appropriate response strategies. Despite the progress made, trafficking in human beings remains a serious threat in the European Union, endangering thousands of individuals each year, especially women and children.

Legislation is one of the most powerful tools available to the EU to combat human trafficking. This legislation clearly determines the meaning of the THB criminal offence, the sanctions and common objectives to prosecute criminals and to protect victims. The EU Directive known as the Anti-Trafficking Directive, namely Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims<sup>1</sup> has been the backbone of EU efforts in the fight against trafficking in human beings. A number of other directives are interrelated to it.

The European Commission has monitored and supported the transposition and implementation of Directives in respective Member States. But apparently, even at this level, there is still room for more effort, there is still room for improvement in terms of prevention, protection, assistance and support measures for victims, including child victims. Effective implementation of the directives remains an ongoing challenge within the EU.

Albania aspires to become a member of the European Union. The task of a country like Albania is to harmonize its legislation with the EU legislation. This process has its advantages and so far our country has made considerable progress. Many laws are in line with EU standards and this study highlights them. This is an ongoing activity both at EU level and in Albania. Therefore, the

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<sup>1</sup> Published in the Official Journal of the EU (Official Journal no. L 101, 15/04/2011, p. 0001 – 0011).



main focus of the study is to determine the compliance of the Albanian anti-trafficking legislation with the *Acquis Communautaire* of the European Union (EU) in the area of combating THB in order to identify gaps in legislation and needs for improvement.

**The purpose of the study** is to contribute, through its results, to the strengthening of the protection system of victims of trafficking in Albania, specifically with regards to improving the Albanian legislation on the protection of victims' rights.

***The objectives of the study are:***

- To explore the compliance of the Albanian anti-trafficking legislation with the *Acquis Communautaire* of the European Union (EU) in the area of combating THB.
- To recommend improvements to the legislation in those directions that would contribute to a complete and effective protection of the rights of THB victims.

The study is organized in five chapters: in the first two chapters the study provides the legal acts of the EU *acquis*, related to the area of the fight against human trafficking, followed by the regulatory mechanisms of the Albanian legal framework in the fight against this phenomenon.

The basic part of the study addressed in the third and fourth chapters provides an analysis of the compliance between the existing legal standards with those of the EU, both in the area of THB and the rights of victims. The fifth chapter provides recommendations to harmonize the legislation in cases of lack of compliance.

## METHODOLOGY

In order to carry out this analysis on the compliance of the Albanian legislation with the EU legislation in the area of THB, at first, the relevant acts in the EU framework were identified and their content was studied. At this stage, the EU legal framework on combating and preventing trafficking in human beings was identified (hereinafter THB); common goals of the Directives, such as:

- Improving the protection of victims of criminal offences;
- Treating victims with dignity, sympathy and professionalism;
- Avoiding secondary victimization;
- Providing timely assistance and support for victims before, during and after criminal prosecution.
- Main aspects of the EU legal framework aimed at the protection, rights, and support of victims of trafficking.

- New emerging challenges in the fight against THB related to COVID-19 and the protection and prevention of victimization/re-victimization of vulnerable persons.
- The case law of the European Court of Justice (hereinafter ECJ) on the protection of the rights of victims during a criminal proceeding

The second step consisted of an almost comprehensive identification of the applicable legal framework in the Republic of Albania as of April 2021, by conducting an analysis whose clear goals were to measure the level of compliance of the applicable norms at the time this study was finalized.

Furthermore, in order to obtain real measurements, reports and analyses of international stakeholders and actors reflecting the status and level of approximation of the domestic legislation with that of the EU were taken into consideration. For this purpose attention was paid to the EU progress reports, strategies and action plans, analysis of chosen literature, as well as interviews to clarify the collected information, to explore concrete situations if deemed relevant etc.

## CHAPTER |

# EUROPEAN UNION STANDARDS FOR THE PREVENTION AND FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS AND PROTECTION OF VICTIMS

## 1.1 Acquis and the use of this term

EU «*Acquis*» is the body of common rights and obligations that are binding on all EU countries, as EU Members. It is constantly evolving and comprises:

- The content, principles and political objectives of the Treaties;
- The legislation adopted in application of the treaties and the case law of the Court of Justice of the EU;
- Declarations and resolutions adopted by the EU;
- Measures relating to the common foreign and security policy;
- Measures relating to justice and home affairs;
- International agreements concluded by the EU and those concluded by the EU countries between themselves in the field of the EU's activities

Applicant countries are required to accept the *acquis* before they can join the EU. Derogations from the *acquis* are granted only in exceptional circumstances and are limited in scope. *The Acquis* must be incorporated by applicant countries into their national legal order by the date of their accession to the EU and they are obliged to apply it from that date.<sup>2</sup>

## 1.2 The EU legal framework in the fight against THB

The acts listed below will be addressed during this study, particularly with in framework of the compliance or harmonization of the Albanian legislation with the European legislation.

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<sup>2</sup> <https://eur-lex.europa.eu/summary/glossary/acquis.html>

### □ *Charter of Fundamental Rights*

Article 5 of the Charter of Fundamental Rights of the EU

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

The Charter clarifies the position of the EU in relation to the rights, freedoms and principles upon which the EU is based and operates. The preamble of this Charter underlines that the individual is at the heart of EU activities and that the EU is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity, based on the principles of democracy and the rule of law.<sup>3</sup> Article 5 of the Charter of Fundamental Rights sanctions the prohibition of slavery and forced labour, addressing THB as an important part of it.

### □ *Treaty on the Functioning of the European Union (TFEU):*

Articles 79 and 83, highlight the EU's efforts to strengthen the fight against THB, in particular against the trafficking of women and children, by taking the necessary legislative measures. Article 83 of this treaty underlines that, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions for crimes, in the areas of particularly serious crime with a cross-border dimension. Article 83 refers to THB as one of the criminal offences qualified as particularly serious along with the sexual exploitation of women and children<sup>4</sup> which comprises the scope of this study. The prevention of and the fight against THB comprise measures for the development of common immigration policies as provided for in Article 79 of the TFEU. The EU has the authority to adopt measures for the prevention of and fight against THB, especially with regard to women and children. Moreover, the EU has the authority to adopt measures which are directly or indirectly related to the fight against trafficking in these areas:

The conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

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<sup>3</sup> The Preamble of the Charter of Fundamental Rights of the European Union (consolidated version of the Treaties of the European Union and the Charter of Fundamental Rights, published by the Ministry of European Integration). Accessible at: [https://www.mei-ks.net/repository/docs/Traktati\\_i\\_Lisbones\\_-\\_Verzioni\\_i\\_Konsoliduar.pdf](https://www.mei-ks.net/repository/docs/Traktati_i_Lisbones_-_Verzioni_i_Konsoliduar.pdf)

<sup>4</sup> See paragraph 2 of Article 83 of the TFEU.

The definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

illegal immigration and unauthorized residence, including removal and repatriation of persons residing without authorization.

- *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims*<sup>5</sup>

It was adopted in 2011 and has replaced the Council Framework Decision 2002/620/JHA on combating trafficking in human beings. The purpose of the adoption of this directive is to approximate the domestic legislations of EU Member States by unifying the definitions of criminal offences related to THB, in order to facilitate regional cooperation in the criminal field. Directive 2011/36 EU prioritizes the prevention, identification and assistance of THB victims, with a special focus on minors. The introduction part of this directive emphasizes that there is an integrated, holistic, and human rights approach to the fight against THB. The following must be considered in the implementation of Directive 2011/36/EU:

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.
- Council Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. More rigorous prevention, prosecution and protection of victims' rights are the major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled by means of the most efficient measures.<sup>6</sup>
- Other instruments adopted in the framework of strengthening the fight against THB, such as: The United Nations Protocol of 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Council of Europe Convention of 2005 on Action against Trafficking in Human Beings. Both of these recent acts have been

<sup>5</sup> Published in the Official Journal of the EU (Official Journal no. L 101, 15/04/2011, p. 0001 – 0011).

<sup>6</sup> Paragraph (7) in the introduction of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

ratified by the Republic of Albania and thus, are part of our domestic legislation.

Directive 2011/36/EU is an added value in the fight against THB. This Directive has adopted a broader concept of the THB phenomenon, including other forms of exploitation such as: forced begging or the exploitation of a child for begging<sup>7</sup>; exploitation in other criminal activities; as well as other behaviours such as illegal adoption or forced marriage.<sup>8</sup> Each of these phenomenon has been treated as components of THB. Directive 2011/36/EU focuses on the rights of victims, recognizing the gender-specific phenomenon of THB, therefore assistance and support measures towards victims have been provided while taking into account these gender specifics.

- *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*

The European Union has paid increasing attention not only to strengthening the fight against THB, but also to victims of crime. Among the most important acts adopted by the European Parliament and the European Council in this regard is precisely Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. This Directive respects fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union. In particular, Directive 2012/29/EU seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities and the right to a fair trial, outlined in the Introduction (paragraph 66).

This Directive imposes obligations on EU Member States, such as to transpose it by means of legal instruments, where each European country should establish a specific legal framework to enable victims of crime to clearly recognize their rights and obligations under this Directive. Directive 2012/29/EU focusses on

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7 Europol (2014) Intelligence Notification, Child trafficking for exploitation in forced criminal activities and forced begging. [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/child\\_trafficking\\_for\\_exploitation\\_in\\_forced\\_criminal\\_activities.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/child_trafficking_for_exploitation_in_forced_criminal_activities.pdf). “Child trafficking for exploitation in forced criminal activities and begging” underlines that children are one of the most vulnerable groups, targeted for the trafficking in human beings (THB). Organized crime groups (OCGs) choose to traffic children as they can be easily recruited and quickly replaced. OCGs can also maintain child victims relatively cheaply and discreetly. The exploitation of children violates the human rights of children; to have a safe childhood in their family setting, to receive education, to have time to play and to be protected from exploitation

8 Paragraph (11) of Directive 2011/36/EU.

victims of crime and their needs, on providing comprehensive information, on supporting and guaranteeing them appropriate protection, on treating them in a sensitive and professional manner, without discrimination. In this regard, Article 1 “Objectives” of the Directive sets the obligation for Member States to ensure that *“victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. (...) where the victim is a child, the best interest of the child shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child’s age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child”*.

This Directive gives special attention to victims of certain types of crime, including victims of THB, as well as victims of terrorism, organized crime, gender-based violence, sexual violence and exploitation. This increasing attention is based on the fact that these victims more likely to experience a high degree of secondary and repeated victimisation, intimidation and retaliation. In such cases, Member States shall have an obligation to take special protection measures, and to harmonize their legislation with this Directive. It should be underlined that upon the entry into force of this Directive in 2013, its provisions may be directly applicable in Member States, regardless of their transposition into their domestic legislation.<sup>9</sup>

In this regard, the following documents are important to this study, respectively the EU strategy for 2020 – 2025 on the eradication of THB,<sup>10</sup> and the report from the Commission to the European Parliament and the Council, on the implementation of Directive 2012/29/EU by Member States. This strategy focuses on five key/priority points: (i) effective communication with victims by guaranteeing a safe environment for victims who report a crime; (ii) improving support and protection to the most vulnerable victims/groups; (iii) facilitating victims’ access to compensation; (iv) strengthening cooperation and coordination among all relevant actors; (v) strengthening the international dimension of victims’ rights. This strategy outlines the concrete steps/ actions to be taken by the European Commission, Member States, as well as civil society in the next five years, in order to guarantee the rights of victims, based on Directive 2012/29/EU.

On the other hand, the report<sup>11</sup> from the Commission to the European Parliament and the Council on the implementation of this Directive in Member

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<sup>9</sup> For more information, refer to Part Six, Chapter 2 of the Treaty on the Functioning of the EU, “Legal acts of the Union, adoption procedures and other provisions”.

<sup>10</sup> EU Strategy on victims’ rights (2020-2025), Brussels, 24/06/2020/COM(2020) 258 final.

<sup>11</sup> Report from the Commission to the European Parliament and the Council, Brussels, 11/05/2020/COM(2020) 188 final

States emphasizes the obligation of these countries not only to transpose the provisions of this Directive into their domestic legislation, but also to take non-legislative measures. These non-legislative measures aim at guaranteeing a general and specialized support for victims, ensuring that those who implement these measures in practice and other persons who are in contact with crime victims are trained and aware of the victims' rights and needs.

In both of the above acts, the European Commission has emphasized that the COVID-19 pandemic and the movement restrictions have also had an impact on THB. The Commission draws attention to the particular difficulties experienced by victims of trafficking, including the risk of being homeless, the decreasing number of support services provided by civil society/NGOs working in the area of anti-trafficking, and the risk of invisible victims to be trafficked again. In this regard, the Commission has highlighted through the strategy the need to observe the rights guaranteed by Directive 2012/29/EU for victims of crime, and to protect the most vulnerable groups during the crisis, including also victims of human trafficking, by ensuring that they receive the necessary help and support even during the pandemic.

The European Court of Justice (ECJ) has had the opportunity to interpret Directive 2012/29/EU when addressing the case of Gambino and Hyka.<sup>12</sup> In this case, the ECJ expressed its opinion on the existence of the risk of violating the victims' rights to protection and to receive compensation within a reasonable time (Articles 18 and 16 of the Directive, respectively), as a result of additional hearings that may take place under the Italian legislation on request of the defendant, if the composition of the court has changed. The Court clarified that the national legislation allowing the defendant to request witnesses be heard again in such circumstances was in line with the respective provisions of the Directive.

#### **□ Other relevant EU legislative acts in guaranteeing the rights of THB victims.**

Among these Directives, the following may be identified:

- Directive 2004/80/EU of 29 April 2004 relating to compensation to crime victims;
- Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography;
- Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

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<sup>12</sup> The ECJ Decision of 29/07/2019 (Case C-38/18) – other cases addressed by the ECtHR, took place before the Directive entered into force, but played a role in improving the rights recognized to victims of crime.



- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2008 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

CHAPTER 

## THE LEGAL FRAMEWORK IN THE REPUBLIC OF ALBANIA FOR THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

*Current situation:* In its 2020 progress report for Albania, with regards to the fight against THB, the European Commission<sup>13</sup> has pointed out that Albania is a source, transit and destination country for THB. Albanian women and children are subject to trafficking for sexual and labour exploitation within the country and in some EU Member States. Police and prosecutors cooperate more effectively on investigations and administrative procedures have been simplified. Centres providing assistance to victims of trafficking continue to lack adequate financial support. The report underlines that Albania should increase efforts on the early identification of victims of trafficking and/or potential victims of trafficking; to intensify cross-border and international cooperation; as well as to contribute to the successful reintegration of victims. The European Commission suggests that increased care and attention should be paid to unaccompanied children and child victims of trafficking by providing them with adequate protection. The legal framework for addressing victims of trafficking has been improved, including changes made to the Criminal Procedure Code, but it has not been implemented yet.

Constant improvements have been made to Albania's legal framework in relation to THB, however its implementation still remains an issue that requires attention<sup>14</sup>. Over the years work has been done in order for this legislation to address the requirements of international standards by taking into account the country's context and specifics, as well as its institutional framework. The following analysis will focus on the most important legal acts starting with the Constitution of the Republic of Albania; the Criminal Code; the Criminal Procedure Code and laws and by-laws on the prevention and fight against trafficking.

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13 European Commission, Albania 2020 report, Brussels, 06/10/2020/SWD (2020) 354 final

14 European Commission progress report on Albania, 2019, p. 35. Brussels, 29/05/2019 SWD (2019) 215 final

## 2.1 Constitutional framework

Article 3 of the Constitution explicitly provides that “...*dignity of the person, human rights and freedoms, ...are the bases of this state which has the duty of respecting and protecting them*”. Article 26 of the Constitution sanctions that: “*No one may be required to perform forced labour, except in cases of the execution of a judicial decision, the performance of military service, or for a service that results from a state of war, a state of emergency or a natural disaster that threatens human life or health*”. Another important constitutional provision for cases related to child trafficking is Article 54(3), which sanctions the right of children to be protected from exploitation and from performing any work, especially under the minimum age for child labour, which could damage their health, morals or endanger their life or normal development.

Based on the content of the constitutional provisions it is ascertained that the Constitution of the Republic of Albania does not explicitly prohibit THB and any of its forms. Although THB violates the universal human rights: the right to life, freedom of movement, violates human dignity and the right to be protected from any form of servitude, it is noted that the Constitution, as the fundamental law of the state, does not specifically stipulate THB as a complex violation of these rights.

## 2.2 International conventions ratified by the Republic of Albania

**Albania is a party to the European Convention on Human Rights.** In this regard, Albania is obliged to observe the provisions of the ECHR as well as the case law of the European Court of Human Rights (ECtHR)<sup>15</sup>. The ECtHR has underlined in its case law that the European Convention on Human Rights (hereinafter the ECHR), in interpretation of Article 4, sets out positive obligations for States Parties to take measures to prevent modern slavery, to protect human beings from slavery, servitude and forced labour,<sup>16</sup> to prevent THB, to take measures to protect victims or potential victims. The ECtHR emphasized that Article 4 sets out the obligation for States Parties to effectively prosecute and investigate all offences that aim to keep a person in slavery, servitude or forced labour, and to investigate and adjudicate the persons responsible for trafficking.<sup>17</sup>

Albania **has ratified the UN Convention against Transnational Organized Crime**<sup>18</sup> with its two supplementary protocols: The Protocol against the Smuggling of Migrants by Land, Sea and Air. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (*Palermo Protocol*); the

<sup>15</sup> See Annex 2 providing a list of ECtHR decisions.

<sup>16</sup> Case *Siliadin v. France*, application no. 73316/01, dated 26/07/2005.

<sup>17</sup> Case *C.N. v. United Kingdom*, application no. 4239/08, dated 13/11/2012.

<sup>18</sup> This Convention and its two protocols have been ratified by the Assembly of the Republic of Albania by Law no. 8920 dated 11/07/2002 “On the ratification of the UN Convention against Transnational Organized Crime” and its two supplementary protocols.

Council of Europe Convention on Actions against Trafficking in Human Beings (known as *the Warsaw Convention*)<sup>19</sup>.

It is important to emphasize that an essential instrument connected to this study is the **Council of Europe Convention on Actions against Trafficking in Human Beings (hereinafter the EC Convention), ratified by Albania by Law no. 9642, dated 20/11/2006**. This convention has had a very significant impact on the domestic legislation and judicial practice. The most essential value of this convention is the fact that it focuses on the victims and their fundamental rights. The Council of Europe/Warsaw Convention has established a monitoring mechanism to follow-up cases of trafficking, consisting of a group of independent experts (GRETA). GRETA draws up reports/recommendations regarding the implementation of the Convention by the visited state which, after receiving a final form, are sent to the respective party and the Committee of the Parties. GRETA's latest report on Albania published on December 2020<sup>20</sup>, is an important act that plays a role in strengthening the fight against THB and in guaranteeing the rights of victims of trafficking. This evaluation report prepared by GRETA (third evaluation round for Albania) was focussed on access to justice and effective remedies for victims of trafficking.

Another important convention is **the European Convention on the Compensation of Victims of Violent Crimes** adopted by Law no. 9265, dated 29/07/2004.

### 2.3 The legal framework in the Republic of Albania

*The Criminal Code of the Republic of Albania*, as one of the most important laws in defining criminal offences and punishments was adopted by Law no. 7895, dated 27/01/1995. The criminal offence of THB was provided for the first time in the amendments to the Criminal Code in 2001. By means of Law no. 8733, dated 24/01/2001, the following articles were added to the Criminal Code, respectively Article 110/a "Trafficking in persons"; Article 114/b "Trafficking in women for prostitution"; and Article 128/b "Child trafficking". In 2004, due to the needs to harmonize the Criminal Code with the international criminal law, and with the international legal instruments ratified by Albania,<sup>21</sup> amendments were made to the Criminal Code by means of Law no. 9188, dated 12/02/2004. The provisions related to the criminalization of THB were improved, specifying

19 The Council of Europe Convention "On Actions against Trafficking in Human Beings", ratified by the Assembly of the Republic of Albania by Law no. 9642 dated 20/11/2006.

20 GRETA (2020)09/Group of Experts on Action against Trafficking in Human Beings – "Report concerning the Access to justice and effective remedies for victims of trafficking in human beings in Albania" (third evaluation round)/(Council of Europe) [www.coe.int/trafficking](http://www.coe.int/trafficking) or [trafficking@coe.int](mailto:trafficking@coe.int)

21 These changes came as a result of the ratification of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

the forms, means and purpose of THB. Continuous improvements have been made to the legal framework, especially with regard to the special protection of children. In 2008, significant amendments were made to the Criminal Code by means of Law no. 9859, dated 21/01/2008, “On some additions and amendments to Law no. 7895, dated 27/01/1995, Criminal Code of the Republic of Albania” (as amended). The aim of these legal amendments is to protect children from physical or psychological abuse by persons, who are obliged to care of them (Article 124/b), to protect children from being exploited for the production of pornographic materials (Article 117). An important fact in this regard is that the term “sale” is added in the content of Article 128/b of the Criminal Code “Child trafficking”, as one of the forms of trafficking. To ensure special protection for women and children, the legislator has provided for specific criminal offences and more severe sanctions.

By means of Law no. 144, dated 02/05/2013, the provisions of the criminal substantive law on THB (the law entered into force on 04.06.2013) were amended again, thus implementing the recommendations of GRETA. By means of this law, Article 114/a “Exploitation of prostitution with aggravated circumstances” and Article 114/b “Trafficking in women” of the Criminal Code were repealed, while the title and content of Article 110/a: “Trafficking in adult persons” was amended. By means of the new wording of Article 110/a of the Criminal Code, trafficking in women is provided as a qualifying circumstance; *domestic trafficking* is explicitly provided for, except for trafficking outside the borders of Albania; more severe punishments have been provided for some qualifying circumstances. It should be noted that these amendments to Article 110/a of the Criminal Code are not reflected in Article 128/b of the Code, which provides “Child trafficking”, thus not referring to domestic trafficking or more severe punishments in this provision. On the other hand, the second paragraph of Article 114 (provision amended by Law no. 144/2013) provides that the exploitation of a child for prostitution is punishable under this provision, and is not qualified as child trafficking. International standards and Directive 2011/36/EU explicitly sanction that the consent of a minor to prostitution shall not be taken into account.

Currently, the CC of the Republic of Albania is undergoing a process a full review. The main responsible authority is the MoJ. It is expected that some of the recommendations of this analysis shall be taken into account in the context of this reform. This is also related to the fact that some of these recommendations have been ascertained by stakeholders, including the civil society and international partners, in their reports.

*The Criminal Procedure Code* is one of the normative corpora that has undergone essential amendments. It is important to emphasize the amendments made in the context of the Justice Reform, by means of Law no. 35/2017, which entered into force on 01/08/2017. These changes improved the procedural position of the victim in the criminal proceedings, as a result of the approximation of

the domestic legislation with the international legislation, in particular with the European legislation. *Currently, in the Criminal Procedure Code, the term “injured person by the criminal offence” has been replaced with the term “victim”, and the term “accusing injured person” with the term “accusing victim”.* Even after the substantial amendments resulting from the Justice Reform, the Albanian legislation does not provide for the definition of the term “crime victim”.

In accordance with Directive 2012/29/EU, the criminal procedural code has provided for some rights of the victim in criminal proceedings, which are defined as one of the procedural subjects. The importance of the role of the victim in criminal proceedings is emphasized in Article 9/a of the CPC, not only by indicating that the crime victim has rights, but also by defining the obligation of public bodies to ensure the treatment of victims in a manner that is respectful to their human dignity and to protect them from re-victimization while exercising the rights provided for in this Code. However, it should be noted that, although the victim is a procedural subject, it is not a party to the criminal proceedings, unless it has the status of an accusing victim or is legitimized as a civil plaintiff (i.e. when the victim files a civil lawsuit in criminal proceedings). Article 58 of the CPC has been reworded completely, while Articles 58/a and 58/b have been added and specifically provide for the rights of child victims and the rights of sexually abused victims or victims subject to trafficking. The provision of these rights for child victims and/or sexually abused victims or victims of trafficking is related to their specifics.

Another important element in the CPC (Law no. 35/2017) is the change of subject-matter competence in the investigation and adjudication of criminal offences related to THB. Following these changes in the CPC, the investigation and adjudication of offences related to THB is under the competence of the Prosecution’s Office and the court of general jurisdiction (Article 75/a of the CPC). The investigation and adjudication of these cases shall fall under the competences of the Prosecution’s Office and the Court against Corruption and Organized Crime only when special collaboration is identified (organized crime/structured criminal group).

**The Code of Criminal Justice for Children** (CCJC) adopted by Law no. 37/2017 was one of the outcomes of the Justice Reform. The CCJC provides for special rights for the child victims of the criminal offence, guaranteeing their protection and best interest, in accordance with the Constitution and international standards. Unlike CPC, Article 3 of this code provides the respective definitions, including the term “child victim”, which includes any person under 18 years of age, who has suffered moral, physical or material harm because of a criminal offence (Article 3(5) of CCJC).

**Article 68 of Law no. 97/2016 “On the organization and functioning of the Prosecution’s Office in the Republic of Albania”** explicitly stipulates the

assistance provided to subjects of special status. This provision stipulates the obligation of each prosecution office to guarantee all necessary services for addressing subjects who enjoy a special status under the CPC. However, this provision does not explicitly stipulate that: child victims, sexually abused victims and victims of trafficking are subjects who, under the CPC, are provided with special treatment in comparison to other victims of the criminal offence. **This law emphasizes that each prosecution office should comprise at least one coordinator to coordinate actions and ensure the provision of services and treatment with dignity of victims who enjoy special status.** In this regard, a valuable document is the General Instruction of the General Prosecutor's Office of the Republic of Albania, which determines the course of action that should be followed by prosecutors, judicial police officers and other employees of the Prosecution's Office during their interaction with victims and witnesses of criminal offences. This instruction is based on the rights provided in the applicable legislation for victims and witnesses of criminal offences, by indicating their treatment in accordance with the domestic legislation, with international mechanisms ratified by our country, including the approximation of domestic legislation with the *acquis communautaire*, as well as in accordance with other international mechanisms. This normative act specifically states Directive 2012/29/EU, dated 25/10/2012, of the Parliament and of the Council of the European Union, which establishes minimum standards for the rights, support and protection of victims of crime; and European Union Council Directive 2004/80/EC, dated 29/04/2004 relating to compensation to crime victims.

**Law no. 10192, dated 03/12/2009 “On the prevention and fight against organized crime and trafficking through preventive measures against assets”** (as amended by Law no. 70/2017), known as the “preventive law” or the “anti-mafia law”. This law constitutes an important step in the fight against THB. This law provides for the establishment of a special fund on preventing criminality and on legal education (Article 37 of the Law). One of the goals of this fund is also to assist crime victims. With regards to the assistance towards crime victims, we believe that the law does not clearly stipulate the type of assistance provided. Besides, it is noted that there is no mechanism in place on how to provide such compensation, and in addition, there is no accurate and detailed information on how victims can benefit from such assistance. Article 37 of this law provides for the establishment of a special fund on preventing criminality. Paragraph 2 of this Article explicitly states that: - 2. *“This fund serves to: a) improve the functioning of criminal justice, by allocating assets under the administration of the General Prosecution's Office, Special Prosecution's Office and Ministry of Justice; b) improve preliminary criminal investigations related to organized crime and develop programs to protect witnesses and justice collaborators, by allocating assets under the administration of the ministry that covers issues related to public order; c) provide assistance to victims of organized crime, and promote social programs for these categories, by allocating assets under the administration of the ministry that covers social issues; ç) compensate victims of organized*



*crime and trafficking at the amount determined by court decision*". Regardless of the good will expressed in the law, the legislation does not yet provide clarification regarding the implementation of this provision and there is no mechanism to directly provide compensation to victims through this fund.

### Other important laws

In framework of this study, the issues related to THB and the rights of victims of trafficking have also been identified in other important legal acts. These include, but are not limited to, the following:

- Law no. 10173, dated 22/10/2009, "On the protection of witnesses and justice collaborators" (as amended by Law no. 10461/2011 and Law no. 32/2017). This law guarantees special protection for witnesses and justice collaborators, therefore even for victims of trafficking, but only if they are witnesses in criminal proceedings.<sup>22</sup>
- Law no. 10/2021 "On asylum in the Republic of Albania" is another important step in the context of the approximation of the Albanian legislation with the EU *acquis*.<sup>23</sup> This law aims to determine conditions and procedures for: a) granting the refugee status; b) subsidiary and temporary protection in the Republic of Albania; c) loss, cessation or revocation of international protection; ç) rights and obligations of refugees, applicants for international protection, persons under temporary and subsidiary protection; d) the content of refugee status and subsidiary protection; dh) the right to family reunification; e) establishing conditions for the integration of refugees and persons under subsidiary protection in the Republic of Albania.
- Law no. 108/2013 "On foreigners" (as amended by Law no. 74/2016). This law has been approximated with Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Article 54 of this law stipulates the issuing of a residence permit for victims of THB, foreign victims of trafficking in the Republic of Albania, regardless of his/her willingness to cooperate with justice.
- Law no. 108/2014, "On state police", as amended (2020), stipulates that one of the tasks of the State Police is to identify, protect and refer for assistance, at the respective authorities, victims of trafficking and

<sup>22</sup> See the 2019 Trafficking in Persons Report of the United States Department of State: "Victims who testified against traffickers had access to the witness protection program; none participated in the program (one in 2017)". At <https://al.usembassy.gov/sq/our-relationship-sq/official-reports-sq/>

<sup>23</sup> This Law repealed Law no. 121/2014 "On asylum".



domestic violence, especially **children** and women<sup>24</sup>.

- Law no. 7961, dated 12/07/1995 “Labour Code of the Republic of Albania”, as amended.
- Law no. 9634, dated 30/10/2006 “On labour inspection”, as amended
- Law no. 8503, dated 30/06/1999, “On the right to information”;
- Law no. 9970, dated 24/07/2008, “On gender equality in society”;
- Law no. 10 221, dated 04/02/2010 “On protection from discrimination”, as amended
- Law no. 18/2017, “On the rights and protection of the child”;
- Law no. 9669, dated 18/12/2006 “On measures against domestic violence”, (consolidated version, 2020)
- Law no. 111/2017, “On state guaranteed legal aid”
- Law no. 65/2016 “On social enterprises”,
- Law no. 15/2019 “On employment promotion”.
- Law no. 121/2016, “On social services in the Republic of Albania”.
- Law no. 141/2014 “On some additions to Law no. 10383, dated 24/02/2011, “On the compulsory healthcare insurance in the Republic of Albania” (as amended). This law has also defined victims of trafficking as a category that benefits from compulsory health insurance, since they are identified as such by the structures of the Ministry of Interior”, and has provided that the payment of contributions for this category will be funded from the State Budget or other sources determined by law.
- *Law no. 22/2018 “On social housing”*. This law stipulates as a priority, inter alia, the housing conditions for victims/potential victims of trafficking (Article 16 “Criteria for the selection of beneficiaries”), rent subsidy for victims/potential victims of trafficking (Article 34 “General rules on rent subsidy”) and the improvement of housing conditions (Article 43 “Beneficiaries of the housing improvement program”); and in Chapter X “Specialized housing program” there is a special article, namely Article 60 “Specialized housing for victims of trafficking/potential victims of trafficking and victims of domestic violence”, which provides that: *Specialized housing for victims of trafficking/potential victims of trafficking and victims of domestic violence shall be equipped with the service of specialized social workers and shall be protected by State Police officers in cases of danger to life and health; they must be equipped with the necessary infrastructure for notifying the*

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<sup>24</sup> See Article 17(1)(g) of Law no. 108/2014.

*police, in cases of danger or emergency; they shall be leased, subject to compliance with the conditions, rights and obligations arising from the social housing program for rent, provided for in this law.*

- Law no. 9917, dated 19/05/2008 “On prevention of money laundering and financing of terrorism” (amended by Law no. 10 391, dated 03/03/2011)
- Law no. 23/2015 “On foreign service of the Republic of Albania”
- Law no. 34/2019 “On the administration of seized and confiscated assets”

## 2.4 Strategic framework and by-laws

These acts are important for this study because they guarantee effective observation of the rights of victims. These include (but are not limited to) the following:

- DCM no. 499, dated 29/08/2018 “On the approval of standard operating procedures for the protection of victims and potential victims of trafficking” (SOP)
- DCM no. 770, dated 26/12/2018 “On the approval of the National Action Plan against trafficking in human beings, 2018 – 2020”.
- By-laws pursuant to Law no. 18/2017 “On the rights and protection of the child”, adoption of DCMs, such as:
  - DCM no. 54, dated 31/01/2018 “On the rules of functioning of the national council for rights and protection of children”;
  - DCM no. 91, dated 14/02/2018 “On procedures for conducting controls and imposing sanctions by the State Agency for the Rights and Protection of Children”;
  - DCM no. 148, dated 13/03/2018 “On establishing rules of cooperation between institutional consultative and coordination mechanisms, structures for the rights and protection of children and non-profit organizations, for the implementation of national and local policies and for the necessary services for the protection of children”.
  - DCM no. 353, dated 12/06/2018 “On the rules of operation of the inter-sectoral technical group on child protection at municipalities and administrative units”, which aims to establish the rules for the organization and operation of the inter-sectoral technical group on child protection at municipalities or administrative units, for the cooperation and coordination of the work of group members while reviewing, evaluating and making decisions on the management of cases of children in need of protection.

- DCM no. 578, dated 03/10/2018 “On referral and case management procedures, drafting and content of the individual protection plan, financing the costs for its implementation, as well as the implementation of protection measures”. The purpose of this decision is to establish the rules and procedures on the referral and management of cases of children in need of protection, drafting and content of the Individual Protection Plan, financing the costs for its implementation, as well as the implementation of protection measures. The provisions of this decision are binding to all state authorities, institutional advisory and coordination mechanisms, structures for the rights and protection of children at central level and child protection structures at local level, public or private institutions, non-profit organizations and all other persons, who have a functional, professional, contractual or legal duty to refer, manage, coordinate or provide a service, within the framework of Law no. 18/2017, “On the rights and protection of the child”.
- DCM no. 195, dated 11/04/2007 “On the approval of standards of social care services for trafficked persons or persons at risk of being trafficked in residential centres”
- DCM no. 933, dated 02/07/2008 “On the representation of the Ministry of Interior with liaison officers in Great Britain, Belgium, Italy, Greece, Turkey, Kosovo and Europol”, as amended
- Joint Instruction no. 3799, dated 08/07/2014 “On the establishment of the responsible authority for the identification, referral, protection and reintegration of victims/potential victims of trafficking”
- Instruction no. 316, dated 10/02/2010, of the Minister of Labour, Social Affairs and Equal Opportunities, “On the implementation of standards of social care services for trafficked persons or persons at risk of being trafficked in residential centres.”
- Order no. 293, dated 04/06/2015, of the Minister of Internal Affairs “On the procedures for the treatment of foreign nationals with irregular residence in the territory of the Republic of Albania.”
- Service Order of the General Director of the State Police, no. 871, dated 27/12/2007 “On the procedures to be followed at the border for interviewing foreign and Albanian citizens returned from other countries”
- Memorandum of Understanding between the Ministry of Interior, the Ministry of Tourism, Culture, Youth and Sports and the Organization for Security and Cooperation in Europe (OSCE) Presence in Albania “On promoting and implementing the Code of Conduct for the protection of children from sexual exploitation in tourism” (signed in 2007).

## CHAPTER

# ASSESSING THE COMPLIANCE OF THE LEGISLATION OF THE REPUBLIC OF ALBANIA WITH THE EU *ACQUIS*, WITH REGARDS TO TRAFFICKING IN HUMAN BEINGS

### 3.1 Obligation to prohibit human trafficking and forced labour.

Article 5 of the Charter of Fundamental Rights of the European Union, entitled “Prohibition of slavery and forced labour” explicitly stipulates:

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

### **ALBANIAN LEGISLATION**

*Article 26 of the Constitution of the Republic of Albania* explicitly provides only the prohibition of forced labour. The Albanian Constitution does not specifically state the prohibition of slavery, servitude or the prohibition of THB, by considering the latter as equivalent with one of the forms of slavery. In this regard, the Constitution of Albania is not in line with EU standards, specifically with the Charter of Fundamental Rights.

### 3.2 Obligation to investigate and prosecute THB

Article 2 of Directive 2011/36/EU, as in the text provided in the footnote, stipulates the criminal offences related to THB.

**Article 2 of Directive 2011/36 provides that:**

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of 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 the purpose of exploitation.
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.
5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.
6. For the purpose of this Directive, “child” shall mean any person below 18 years of age.

As an instrument adopted under the EC Convention on THB, Directive 211/36/EU focuses on the rights of victims and determines the obligation of Member States to take measures to support and assist victims of trafficking. Directive 211/36/EU has taken into account the new forms of THB, thus including other forms of exploitation of persons and their treatment as one of the forms of THB (in relation to Framework Decision 2002/629/JHA). Directive 2011/36/EU also remains ‘faithful’ to the meaning of the THB provided by the United Nations Protocol of 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter the UN Protocol). The UN Protocol, aiming to unify the interpretations and judicial practices of States Parties, has stipulated the meaning of “trafficking in persons” in Article 3.<sup>25</sup> The same meaning is provided to trafficking in persons in Article 2 of

<sup>25</sup> Article 3 of the Protocol to prevent, suppress and punish trafficking in persons, especially of women and children, supplementing the United Nations Convention against transnational Organized Crime provides that: (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the

Directive 2011/36/EU (the following elements have been defined, such as *forms*: recruitment, transportation, transfer, harbouring and reception; *means*: threat, 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 etc., as well as the *purpose* to exploit a person).

Directive 2011/36/EU is innovative compared to other international instruments. What distinguishes this Directive is precisely the inclusion of additional forms of exploitation such as: forced begging as a form of forced labour or services as defined in the 1930 International Labour Organization (ILO) Convention, no. 29<sup>26</sup> with regards to forced labour<sup>27</sup>. According to Directive 2011/36/EU the exploitation of begging, including the use of a trafficked dependent person for begging, is defined as trafficking in human beings only when all the elements of forced labour or services occur. The Directive underlines that the validity of any possible consent by the exploited person to perform such labour or services should be evaluated on a case-by-case basis, by indicating whether any coercive means have been used to perform such work or service. However, when a child is exploited for begging, no possible consent should ever be considered valid.<sup>28</sup> Directive 2011/36/EU also determines that the expression ‘exploitation of criminal activities’ should be understood in practice as the exploitation of a person to commit a criminal offence such as theft, drug trafficking or other criminal activities, which imply financial gain to the trafficker. According to Directive 2011/36/EU, THB shall also include recruiting a person for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as other criminal behaviour such as illegal adoption or forced marriages in so far as they fulfil the constitutive elements of THB.<sup>29</sup>

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threat or use of force or other forms of coercion, of fraud, of abduction, 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, the removal of organs or servitude. Article 4 of the Council of Europe Convention, also known as the Warsaw Convention, stipulates that: (a) “**Trafficking in human beings**”, shall mean the recruitment, transportation, transfer, harbouring or reception of persons; by means of 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 payments **or** benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

26 This convention has been ratified by Albania by means of the Law dated 25/06/1957.

27 See also Convention no. 105 of the International Labour Organization concerning the abolition of forced labour. Ratified by Albania by means of Law no. 8086, dated 13/03/1996. This instrument has established the obligation of states parties to take effective measures to immediately and completely abolish all forms of forced or compulsory labour. See: R146 – ILO Minimum Age Recommendation, 1973 (No. 146); Recommendation 190 (1999) of ILO Convention no. 182 recognizes that “*work under particularly difficult conditions such as work for long hours or during the night*” should be considered as an **unacceptable/hazardous work for children**.

28 Introductory part of Directive 2011/36/EU, paragraph 11.

29 Ibid., introductory part of Directive 2011/36/EU, paragraph 11.

### ALBANIAN LEGISLATION

*The Criminal Code of the Republic of Albania* provides for several criminal offences related to THB. By means of Law no. 144/2013, based on the GRETA recommendations<sup>30</sup>, essential amendments were made to the Criminal Code by providing in two special provisions: trafficking in adult persons (Article 110/a)<sup>31</sup> and child trafficking (Article 128/b).<sup>32</sup> Upon analysing the content of these two provisions, as will be seen below, it has been concluded that they are not fully harmonized with Directive 2011/36/EU.

The Criminal Code of the Republic of Albania is based on the definition of trafficking in persons as provided by both the UN Protocol and the EC Convention<sup>33</sup>. It is important to emphasize that these elements identified in

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30 The Group of Experts on Action against Trafficking in Human Beings (GRETA).

31 Article 110/a, "Trafficking in adult persons", provides that: - The recruitment, transport, transfer, hiding or reception of persons by means of threat or the use of force or other forms of coercion, of abduction, of fraud, of abuse of office or of taking advantage of social, physical or psychological condition, or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation of prostitution of others or other forms of sexual exploitation, forced labour or 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.

- When such offence is committed against an adult female person, it shall be punishable by imprisonment from ten to fifteen years.

- The organization, management and financing of the trafficking in persons shall be punishable by imprisonment from seven to fifteen years.

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

- When the offence has caused the death of the victim, it shall be punishable by imprisonment of no less than twenty years or by life imprisonment.

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

32 Article 128/b, "Child trafficking" provides that: - Recruitment, sale, transport, transfer, hiding or reception of children with the purpose of exploitation for prostitution or other forms of sexual exploitation, forced labour or services, slavery or forms similar to slavery, putting in use or transplanting organs, as well as other forms of exploitation, shall be punishable by imprisonment of ten to twenty years.

- Organization, management and financing of child trafficking shall be punishable by imprisonment of ten to twenty years.

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

- When the offence has caused the death of the victim, it shall be punishable by imprisonment of no less than twenty years or by life imprisonment.

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

33 The Council of Europe Convention on Action against Trafficking in Human Beings



these articles are applicable both internationally and nationally, indicating that the THB is also carried out within the territory of a state (*domestic trafficking*). The legal amendments of 2013 in the CC were an important turning point that was also reflected in the Albanian judicial practice, leading to an *increased number of cases of conviction of domestic trafficking* in human beings.

THB is a complex problem, as the forms and means of committing it change depending on the development of society, economic, social or political situation of different states. Currently, THB as a modern form of slavery, is not just a violation of human rights, but is also an issue of public order, which requires the attention and cooperation of all actors in the justice system, involved institutions and civil society. Law enforcement institutions need to keep in mind the inclusion of these new forms identified by the Directive in the scope of exploitation of a person, by treating them as forms similar to slavery. GRETA's evaluation report of December 2020<sup>34</sup> emphasizes the concern on the low number of persons convicted for THB. One of the identified causes is the incorrect categorization of the criminal offence of trafficking in adult persons or children, into another criminal offence. This incorrect categorization brings consequences not only with regards to making justice, but most importantly because the victim of the criminal offence in this case is not identified as a victim of trafficking.<sup>35</sup>

Cases of trafficking in women are provided as a qualifying circumstance, in full compliance with Directive 2011/36/EU. Directive 2011/36/EU recognizes the gender specific nature of the trafficking phenomenon, by indicating that women and men are trafficked for different purposes.<sup>36</sup> In this regard, the Albanian legislator has provided a more severe punishment in cases when the victim of trafficking is an adult female. The punishment shall be more severe when the trafficking of a person has been accompanied by maltreatment, physical or psychological violence, as well as when it has brought serious consequences to the health of the victim or has endangered the victim's life.

Unlike the Albanian criminal law, Directive 2011/36/EU stipulates that in the context of this Directive, the term "particularly vulnerable victim" should include, at least, all children. At the same time, the Directive also provides for several factors that are taken into account and assessed to determine the vulnerability of a victim, such as: gender, pregnancy, state of health and disability of a person.<sup>37</sup>

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(European Convention against Trafficking), which entered into force in February 2008.

34 GRETA(2020)09 Publication: 15 December 2020.

35 At this point, it is important to note that before the amendments to the CPC, as well as after them, even though victims of trafficking are identified as such by the relevant institutions (police and social services for adults and police and child protection unit for minors), the criminal cases filed by such institutions against traffickers (in the case of trafficking for purposes of sexual exploitation) is often investigated as a criminal offence of exploitation for prostitution or sexual abuse, or in other cases of child exploitation, is classified as a criminal offence of child maltreatment or abuse.

36 Introductory part of Directive 2011/36/EU, paragraph 3.

37 Introductory part of Directive 2011/36/EU, paragraph 12.



Although these elements are not explicitly stated in the Criminal Code, they have been interpreted as such by the judicial practice and law enforcement agencies, and an important fact is that the trafficking in women is considered a qualifying circumstance of THB.

The Albanian legislator has paid increased attention to children. Thus, the “Code of Criminal Justice for Children” adopted by Law no. 37/2017 (CCJC), specifies that a child is any person under 18 years of age. This provision is in full compliance with the Directive. Child trafficking is stipulated in a special provision, separate from trafficking in adult persons, which provides for more severe sanctions. The Albanian legislation does not explicitly provide that “the consent of a child victim of trafficking to exploitation should not be considered valid”, but this can be derived from Article 128/b of the Albanian Criminal Code. Unlike trafficking in adults, where it is necessary to determine the means of trafficking as an element of this criminal offence, in the case of child trafficking, the legislator has defined only the forms of trafficking and the purpose of exploitation, as sufficient elements to qualify the crime as THB.

With regards to the criminal offence of “Child trafficking”, it is important to highlight two very important aspects.

*Firstly*, in the case of child trafficking, the means used to achieve the criminal purpose are not relevant. Thus, the means do not affect the legal qualification of this criminal offence. In our opinion, this means that due to the legal qualification of the criminal offence, it is sufficient to prove the existence of one of the forms of trafficking such as: recruitment, sale, transportation, transfer, hiding or reception of a child, for purposes of exploitation.

*Secondly*, the will or consent of the child victim of trafficking, with regards to the intended exploitation, is not valid, regardless of the circumstances or the manner in which it occurred.

Several problems have been identified in the case of child trafficking, which have also influenced the definition of a child as a victim of trafficking:

*Firstly*, in contrast to the provision that stipulates trafficking in adult persons, the article sentencing child trafficking (Article 128/b of the CC) does not mention the words “both within and beyond the territory of the Republic of Albania”.

*Secondly*, there is a provision in the CC that specifically provides punishment in cases when a child is exploited for prostitution purposes (Article 114, second paragraph of the CC). Based on the content of this provision, it can be concluded that encouragement to exercise prostitution, mediation or receipt of compensation as a result of exploiting a child for prostitution purposes, is not considered as trafficking, but as “exploitation for prostitution purposes”.

*Thirdly*, “coercion, exploitation, encouragement or use of a child to work, to

obtain income, to beg or to perform actions that damage his/her mental and/or physical development or education”, is not considered as trafficking but as child abuse.<sup>38</sup>

*Fourthly*, there is a provision in the Criminal Code that provides the punishment in cases of “intentional request to an adult or child to leave the territory of the Republic of Albania for purposes of obliging him/her to enter into marriage”,<sup>39</sup> which does not qualify as trafficking, although this coercion is exercised against a child. In this case, this action is considered by the legislator as a criminal offence.

With regards to the term “domestic trafficking”, it should be noted that:

- The definition of trafficking does not prevent prosecution when the trafficking has occurred within the territory of the country;
- The definition of trafficking is not necessarily related to the crossing of state borders;
- THB is not only transnational in nature.

THB is a criminal offence whose main purpose is not to illegally cross the border, but to exploit people for prostitution purposes or in any other form of exploitation. In this context, criminal offences related to THB can also be committed within the Albanian territory, as long as at least one of the following elements is proved: recruitment, transportation, transfer, hiding, reception of persons for purposes of exploitation for prostitution, forced labour, slavery, as well as other forms of exploitation, by means of threat, fraud, use of force, abuse of office etc. Specifically, such cases are known as “domestic trafficking in human beings”.

In each of these cases, it is noted that the Albanian criminal law is not harmonized with Directive 2011/36/EU, and neither with the principle of “the best interest of the child” that should guide the criminal justice for minors. CCJC provides that, “*a child victim*” is any person under 18 years of age, who has suffered moral, physical or material harm because of a criminal offence. Meanwhile, “*the best interest of the child*” is defined in this Code as “the right of the child to a sound physical, mental, moral, spiritual, social development, and to enjoy a family and social life suitable for the child” (Article 3 of CCJC).

In contrast to the provisions of Directive 2011/36/EU, the Criminal Code of the Republic of Albania does not contain a special provision to provide punishment for child trafficking for adoption purposes, in cases that are in violation of the law. But, it is necessary to emphasize that by means of Law no. 9859, dated 21/01/2008, Article 128/b of the Criminal Code was amended, by adding

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<sup>38</sup> Article 124, second paragraph of the Criminal Code, “Maltreatment of minors”

<sup>39</sup> Article 130, second paragraph of the Criminal Code, “Coercion or obstruction to cohabit, enter into or dissolve a marriage”

the word “sale” after the word “recruitment”, as one of the forms of child trafficking. This amendment in the content of this provision, adding sale as one of the forms of child trafficking, came as a result of Albania’s accession to the Optional Protocol to the UN Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography. By acceding to this protocol, Albania, as a party to the UN Convention on the Rights of the Child, has undertaken the obligation to ensure, as a minimum, “... *coverage under the criminal law of the acts and activities of sale of children, child prostitution or child pornography, regardless of whether such criminal offences are committed domestically or transnationally or on an individual or organized basis...*”.<sup>40</sup> The meaning of the term “sale of children” as one of the forms of the criminal offence of “child trafficking” is provided in the Optional Protocol to the UN Convention on the Rights of the Child, stipulated as: “...*any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration*”.<sup>41</sup> Under these circumstances, it is deemed that in this regard, the Albanian criminal law is in line with Directive 2011/36/EU.

It is also important to address THB cases for purposes of labour exploitation. In the Albanian judicial practice there have been no cases of THB for purposes of exploitation for forced labour or other services, slavery or similar forms, or putting in use or transplanting organs. However, this does not mean that some of these cases do not exist<sup>42</sup>.

International instruments stipulate that “forced begging” should be understood as a form of forced labour or services, as defined in ILO Convention no. 29, 1930<sup>43</sup>. In a judicial case related to such issue, it is necessary to carefully assess the victim’s potential compromise or consent to engage in such labour, however in the case of a child no possible consent should ever be considered valid.

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40 Article 3 of the Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography provides that:

“(a) In the context of sale of children as defined in Article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

a. sexual exploitation of the child;  
b. transfer of organs of the child for profit;  
c. engagement of the child in forced labour.

(ii) Improperly inducing consent, as an intermediary, for **the adoption of a child** in violation of applicable international legal instruments on adoption.

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2.

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2”....

41 Article 2 of the Optional Protocol of the Convention on the Rights of the Child.

42 See the Human Rights Report of the United States Department of State, 2020 and 2021. At <https://al.usembassy.gov/sq/our-relationship-sq/official-reports-sq/>

43 The meaning of forced or compulsory labour is provided in Article 2 of ILO Convention no. 29/1930 “all work which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”

Elements of forced labour or services, which should be evaluated to qualify these actions as THB, are listed as follows<sup>44</sup>:

1. The nature and degree of the deception or coercion involved in persuading the worker to engage in a specific work;
2. The nature and degree of subsequent exploitation after arrival at the workplace;
3. Conditions at the workplace, together with the level and methods of control to ensure that individuals remained trapped within the workplace or organization/company where they work;
4. The level and extent of individual rights at work, their vulnerable condition or positions;
5. The degree of harm, including physical, psychological and financial harm, suffered by individuals during their work;
6. The nature and extent of financial benefits or other benefits of the employer, number of persons exploited.

In its case law, the ECtHR has interpreted the term “*forced or compulsory labour*” based on the meaning provided to this term by the International Labour Organization Convention 29<sup>45</sup>. The definitions provided for slavery or forced labour under these international instruments can be used as a starting point to interpret various forms of exploitation of persons by human being traffickers.

### 3.3 Incitement, aiding, abetting and attempt

Article 3 of Directive 2011/36/EU provides for the obligation of Member States to take necessary measures to ensure that any inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

#### *Article 3*

#### **Incitement, aiding and abetting and attempt**

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

<sup>44</sup> These elements are currently addressed by the international case law, where reference is made to a case taken from the English judicial practice: the case of *R. v. Connors/United Kingdom of Great Britain and Northern Ireland/The Royal Courts of Justice, London/date of decision 26 March 2013/UNODC*.

<sup>45</sup> This convention has been ratified by Albania by means of the Law dated 25/06/1957.

### ALBANIAN LEGISLATION

**The Criminal Code of the Republic of Albania** is in full compliance with this obligation, as THB is a punishable criminal act. On the other hand, complicity in trafficking adults and/or children is defined as a qualifying circumstance, in each of the provisions stipulating the punishment of such criminal offence. When the criminal offence of THB is committed in complicity, the traffickers shall suffer a more severe punishment. The Albanian Criminal Code has also provided for the types of complicity, considering the instigator or helper, in addition to the organizer and executor of the criminal offence, as an accomplice. The criminal law stipulates that “instigators” are those persons who instigate the other accomplices to commit the criminal offence, while “helpers” are persons who, through advice, instructions, provision of means, abolition of obstacles, promises to hide accomplices, traces or proceeds stemming from the criminal offence, help to carry out the criminal offence.<sup>46</sup> According to our criminal code, instigators and helpers shall be held criminally liable and shall be punishable, similarly to the executors or organizers of the criminal offence.

The Criminal Code of Albania also provides the meaning of attempt to commit a criminal offence in its Article 22: “A criminal offence is deemed to remain an attempt where, although the person undertakes straightforward actions to commit it, the offence is hindered and not completed due to circumstances independent of his/her will”. The person attempting to commit a crime, as is the case with THB, shall be held liable for it. The Albanian law does not contain any legal provisions regarding the punishment of an attempt to THB.

In fact, the Albanian case law has addressed THB as a formal criminal offence, which means that such offence shall be considered committed even if it does generate any criminal consequences. Albanian Courts have interpreted that it sufficient to prove the existence of *one of the forms of trafficking* (e.g. recruiting or transportation or reception), the existence of at least *one of the means* (e.g. fraud or abduction or taking advantage of the social condition/vulnerability etc.) *as well as the purpose of exploitation, including at least for prostitution*, in order to determine that such criminal offence has been fully committed. The criminal offence of THB shall be considered as committed if the existence of the three above-mentioned elements is proven, so in addition to the form (one is sufficient), it is necessary to prove the existence of the means and the purpose of exploitation. But, on the other hand, the courts have argued that a trafficker shall be criminally liable with regards to such criminal offence even if he/she has not been able to exploit the victim for prostitution, since it shall be considered that he/she has committed all the elements of this criminal offence.<sup>47</sup>

### 3.4 Penalties

Article 4 of Directive 2011/36/EU provides for the obligation of Member States to take the necessary measures to ensure that a criminal offence referred to in

<sup>46</sup> Article 26 of the Criminal Code.

<sup>47</sup> For more information, refer to the judicial practice of the former Serious Crimes Court (first instance and appeal).

Article 2 of this Directive shall be punishable. This provision refers to the level of penalties and the qualifying or aggravating circumstances, which lead to more severe penalties for each circumstance.

*Article 4*  
**Penalties**

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 5 years of imprisonment.
2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:
  - (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims; EN L 101/6 Official Journal of the European Union 15.4.2011
  - (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ( 1 );
  - (c) deliberately or by gross negligence endangered the life of the victim; or
  - (d) was committed by use of serious violence or has caused particularly serious harm to the victim.
3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.
4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

### **ALBANIAN LEGISLATION**

Based on the content of the provisions stipulating punishments for the trafficking in adult persons or minors in the Criminal Code of the Republic of Albania, it is ascertained that they are in full compliance with the provisions of this Directive. The Albanian Criminal Code provides for qualifying circumstances and the aggravation of the punishment for each of these circumstances, namely:

- In the case of a particularly vulnerable victim, the Albanian law provides for a more severe punishment when the victim is a female or a child. However, the law does not provide any special provisions for cases when the victim is a disabled/impaired person, or suffers from a health condition.

- When the trafficking was committed in framework of a criminal organization, the Albanian criminal law provides punishments for establishing and participating in a structured criminal group or criminal organization, in addition to the punishment for the criminal offence of THB.
- The Albanian Criminal Code provides as qualifying circumstances, and therefore provides a more severe punishment when the victim is subject to physical or psychological violence, maltreatment, or when it causes serious health consequences, as well as when the criminal offence causes the death of the victim of trafficking.
- The provisions stipulating punishments for the trafficking of both adults and children, also provide the cases when these criminal offences are committed through the utilization of a state function or public service, thus increasing the punishment imposed by  $\frac{1}{4}$ .

Article	Criminal offence	Punishment
Article 110/a	Trafficking in adult persons	8 years up to life imprisonment
Article 110/b	Benefit from or use of services provided by trafficked persons	Two to seven years of imprisonment
Article 110/c	Actions facilitating trafficking	Two to eight years of imprisonment
Article 114	Exploitation of prostitution	Two to 15 years of imprisonment
Article 115	Use of premises for prostitution	Fine or up to 10 years of imprisonment
Article 128/b	Child trafficking	10 years up to life imprisonment

### 3.5 Liability of legal persons

Directive 2011/36/EU provides for the obligation of Member States to take appropriate legislative measures to ensure that legal persons are held liable for committing the criminal offences provided for in Articles 2 and 3 of this Directive. Liability of legal persons and sanctions on legal persons are provided for in Articles 5 and 6 of the Directive, which stipulates that a “legal person” shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.<sup>48</sup> On the other hand, Article 6 of the Directive provides for sanctions on legal persons, which include criminal or non-criminal penalties, and must be proportionate and effective.<sup>49</sup>

<sup>48</sup> Article 5(4) of Directive 2011/36/EU.

<sup>49</sup> Article 6 of Directive 2011/36/EU provides sanctions such as: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; (d) judicial winding-up; (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 5***Liability of legal persons**

1. Member States shall take all the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person;
  - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.
4. For the purpose of this Directive, “legal person” shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

*Article 6***Sanctions on legal persons**

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up; (e) temporary or permanent closure of establishments which have been used for committing the offence.



### ALBANIAN LEGISLATION

According to Article 45 of the CC, *legal persons*<sup>50</sup>, with the exception of state institutions, shall be held criminally liable for criminal offences committed on their behalf or to their benefit by their bodies and representatives. On the other hand, the criminal liability of *local government units* is also provided, but only for actions performed during the exercise of their activity, which can be exercised by delegating public services. The Criminal Code sanctions the implementation of the criminal law, stipulating that criminal offences and sanctions against them are regulated by a special law. In accordance with Directive 2011/36/EU, the Criminal Code provides that the criminal liability of legal entities does not exclude that of natural persons who have committed criminal offences or are accomplices in the commission of the same criminal offences.

The criminal liability of legal persons in the Republic of Albania is regulated by a special law, namely Law no. 9754, dated 14/06/2007 “On the criminal liability of legal persons”, which stipulates the rules on the liability, criminal proceedings and the types of punitive measures imposed against legal persons committing a criminal offence. According to this law, legal persons that are responsible for committing a criminal offence shall be subject to the following punitive measures: a) main penalties and b) additional penalties. Article 10 of Law no. 9754, dated 14/06/2007 “On the criminal liability of legal persons” provides the following main penalties: a) fines (main penalty that does not apply to local government units, public legal persons, political parties and trade unions); and b) termination of the legal person. In addition to the main penalty, the legal person may be subject to one or several of the following additional penalties<sup>51</sup>:

- a) closure of one or more activities or structures of the legal entity;
- b) placing a legal person under controlled administration;
- c) prohibition to participate in public funds procurement procedures;
- ç) revocation of the right to obtain or use licenses, authorizations, concessions or subsidies;
- d) prohibition to seek public funds and financial resources;
- dh) revocation of the right to exercise one or more activities or operations;
- e) obligation to publish the court decision.

<sup>50</sup> See the provisions of the Civil Code on the meaning of legal persons to understand the correlation and inconsistency with the provisions of the Criminal Code on “state” legal persons. According to Article 24: Legal persons are public legal persons and private legal persons. Article 25 of the Civil Code: Public legal persons are state institutions and enterprises, which are self-financed or financed by the state budget, as well as other public entities recognized by the law as a legal person. State institutions and entities that do not follow economic purposes, are not registered. Article 26 of the Civil Code: Private legal persons are companies, associations, foundations and other entities of private character, which acquire legal personality in the manner provided by law.

<sup>51</sup> Article 10 of Law no. 9754, dated 14/06/2007 “On the criminal liability of legal persons”. Paragraph 2 of this provision stipulates that “Additional penalties provided in letters “a”, “b”, “d” and “f” of paragraph 1 of this Article shall not apply to local government units, public legal persons, political parties and trade unions”.

The Albanian legislator has not defined a limited list of criminal offences for which a legal person shall be liable/responsible. Theoretically, a legal person may be held liable for the criminal offences stipulated in the special part of the CPC, provided that the criminal offence fits the nature of the legal person and that the conditions for criminal liability are met. In this case, the basic criteria for criminal liability shall be to prove whether the legal person has benefited from the criminal offence committed on its behalf or to its benefit by its bodies and representatives; or by a person who is under the authority of the person that manages, controls and administers the legal person; or due to lack of control or supervision by the person that manages, represents and administers the legal person.<sup>52</sup> Under such circumstances, the legal person in Albania may be held liable and punished according to the provisions of this law, even for criminal offences related to THB (provided that they fit the nature of the legal person).

***In conclusion, we can state that the Albanian legislation is in line with Directive 2011/36/EU regarding the provision of criminal liability of legal persons and the sanctions that may be imposed against them.***

### 3.6 Seizure and confiscation

Article 7 of Directive 2011/36/EU provides the obligation of Member States to take measures to seize and confiscate assets or proceeds that derive from the criminal offences of THB.

#### *Article 7: Seizure and confiscation*

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

### **ALBANIAN LEGISLATION**

Article 36 of the Criminal Code of the Republic of Albania provides the mandatory obligation of the court to impose confiscation and transfer in favour of the state:

- a) assets that have been used or specified as instruments for committing the criminal offence;
- b) the criminal offence proceeds, including any kind of assets, as well as legal documents or instruments evidencing other securities or interests in the assets stemming from or obtained directly or indirectly from the commission of the criminal offence;

<sup>52</sup> Article 3 of Law no. 9754, dated 14/06/2007 “On the criminal liability of legal persons”

- c) the promised or given remuneration for committing the criminal offence;
- ç) any other assets, whose value corresponds to the proceeds from the criminal offence;
- d) the assets, whose production, use, possession or alienation constitutes a criminal offence, even when no conviction decision has been issued.

Assets shall be subject to confiscation even if the proceeds of the criminal offence have been transformed or have been partially or completely altered into other assets; income or other benefits from the proceeds of the criminal offence, from the assets into which the proceeds of the criminal offence have been transformed or altered, or from the assets with which these proceeds have been mixed shall also be subject to confiscation to the same value as the proceeds of the criminal offence.

In addition to the Criminal Code, another important law is also Law no. 10192, dated 03/12/2009 “On the prevention and fight against organized crime and trafficking through preventive measures against assets”. It should be noted that this preventive law repealed the previous law of 2004, by significantly improving the content of the provisions, in order to increase the effectiveness of implementation in practice.<sup>53</sup> The purpose of this law is “*the prevention and fight against organised crime and trafficking by confiscating the assets of persons who have an unjustified economic level as a result of suspected criminal activity*”. It is important to underline that this purpose, which is clearly stipulated in Article 2 of the current law was also stated in the previous law. Law no. 10192, dated 03/12/2009 intends to implement a series of preventive and suppression measures against (*in rem*) legally unjustified assets owned by a special category of persons that pose a risk to society because they have committed criminal offences listed under this law. Based on the most recent international experience related to the seizure and confiscation of assets by a court proceeding, the new preventive law applies even if the person suspected of criminal activity or organized crime has not been convicted. In other words, the so-called “civil confiscation” is not related to the fate and outcome of the criminal proceedings. This type of confiscation allows states to take under their ownership unlawful assets through a direct court proceeding imposing measures against the assets of the person suspected as involved in criminal activity, even if the latter has not been previously convicted. The seizure and confiscation aims to prevent the unlawful use and the following dangerous impact of such assets on the society, whose lawful origin cannot be established/confirmed.

The preventive law has provided that the procedure for imposing and implementing preventive measures shall not be dependent from the status, degree or completion of the criminal proceedings that take place against the persons, which are subject

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<sup>53</sup> Repealed Law no. 9284, dated 30/09/2004 “On the prevention and fight against organized crime”.

to this law. In contrast to the criminal proceedings where the burden of proof falls exclusively on the Prosecution's Office, in the case of preventive proceedings against assets, the burden of proof on the lawfulness of the assets falls on the subject and related persons, against whom a preventive measure of seizure or confiscation is sought. Unlike criminal proceedings, preventive adjudication relies on reasonable doubt, based on evidence, by placing the burden of proof on the subject and other persons to prove the lawfulness of the origin of the assets they possess. Article 3(1) of this law explicitly stipulates that its provisions apply on the assets of persons against whom there is a reasonable doubt, based on evidence, that they have committed crimes listed in this provision, including "trafficking in adults" (Article 110/a) and "child trafficking" (Article 128/b) of the Criminal Code.

This preventive law also regulates the manner of using confiscated assets, which are transferred into state ownership when the decision becomes final. As emphasized above, Article 37 of this law provides for the establishment of a special fund on preventing criminality. This law sanctions, inter alia, that this fund also serves to: c) provide assistance to victims of organized crime and trafficking, as well as to promote social programs for those categories by allocating assets under the administration of the ministry that covers social issues; and ç) compensate victims of organized crime and trafficking, at the amount determined by court decision. Assistance and rehabilitation centres for THB victims shall also benefit from this fund which, in the last three years from issuing the request, have carried out such activities.<sup>54</sup>

***In conclusion***, the Albanian legislation is fully in line with this provision of the Directive.

### 3.7 Non-prosecution or non-application of penalties to the victim

Article 8 of Directive 2011/36/EU provides for the non-prosecution and/or non-application of penalties to victims of trafficking.

Article 8 of Directive 2011/36/EU explicitly provides that:

"Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2".

<sup>54</sup> Article 37(2)(3) of Law no. 10192 "On the prevention and fight against organized crime, trafficking and corruption through preventive measures against assets"

This provision sets the obligation of Member States, in accordance with the basic principles of their legal systems, to take the necessary measures to provide in their domestic legislations the exemption of the victim of trafficking from criminal prosecution or penalties, even if *it is proved that they have been involved in criminal activity*. This exemption is related to two main elements: *firstly*, the victim of trafficking has been compelled to commit the criminal offence, as a result of being subject to exploitation (defined as slavery), but also (*secondly*) when it is proved that the criminal activity was committed during the time of trafficking.

### ALBANIAN LEGISLATION

In compliance with GRETA recommendations, amendments were made to the Criminal Code of the Republic of Albania. More specifically, by means of Law no. 144/2013, Article 52/a was added, which stipulates “exemption from or reduction of the sentence for collaborators of justice and victims”. The second paragraph of Article **52/a provides for** “*exemption from the punishment for committing criminal offences during the time of trafficking*”.<sup>55</sup> Accordingly, this provision brings the Albanian legislation in line with Directive 2011/36/EU, by stipulating that victims of trafficking shall be exempted from the punishment for their involvement in criminal activities during the time of trafficking. In its evaluation reports, GRETA has constantly emphasized that<sup>56</sup> punishing victims of trafficking not only violates the obligation of the state to provide services and assistance to victims, but it also discourages victims from coming forward and collaborating with law enforcement agencies, while also interfering with the state’s obligation to investigate and to criminally prosecute those responsible for the trafficking or enslaving of persons.

Even though Article 52/a of the Criminal Code sanctions the obligation of the Albanian authorities to avoid the punishment of a person identified as a victim of trafficking, it does not prohibit them to initiate criminal proceedings against such person.

Another issue that has been identified in practice is related to occasions where victims of trafficking have been prosecuted for various criminal offences, such as practising prostitution, and have been convicted for such offence, while later they have been identified as victims of trafficking.<sup>57</sup> This means that Albanian authorities should pay attention to the standard operating procedures and the

<sup>55</sup> By means of Law no. 144/2013, Article 52/a was added to the Criminal Code. **The second paragraph of this article** explicitly provides that: “*The aggrieved party as a result of criminal offences related to trafficking in human beings may be exempted from the sentence for committing criminal offences, during the time of trafficking and to the extent the person had been obliged to commit the illegal actions or omissions.*”

<sup>56</sup> For more information, refer to the reports for Albania on the official website: <https://www.coe.int/en/web/anti-human-trafficking>.

<sup>57</sup> This fact is also stated in the latest evaluation report of GRETA for Albania 2020(09), paragraph 92.

identification of victims of trafficking and/ or potential victims of trafficking, because this has a direct impact on their treatment and consequences.<sup>58</sup>

### 3.8 Investigation and prosecution

Article 9 of Directive 2011/36/EU guarantees the initiation of criminal proceedings and the investigation of criminal offences related to THB, regardless of whether or not the victim has filed charges or a report.

*Article 9:*

**Investigation and prosecution**

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.
2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.
3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.
4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organized crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

The purpose of this provision is to ensure that Member States take measures to continue the investigation and adjudication of these criminal offences, regardless of the victim's statements and even when the victim withdraws his/her statement or charges.

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<sup>58</sup> Standard operating procedures (SOPs) for protecting victims and potential victims of trafficking have been adopted by DCM no. 499, dated 29/08/2018 (this decision repealed DCM no. 582, dated 27/07/2011, "On the approval of standard operating procedures for the identification and referral of victims/potential victims of trafficking"). The main purpose of the SOPs is to protect, including the timely and proper identification of victims/potential victims of trafficking, whether adults or children, Albanians, foreigners or stateless persons, from all forms of exploitation, domestic or international trafficking, whether connected or not to organized crime.

### ALBANIAN LEGISLATION

The criminal code and the criminal procedure code of the Republic of Albania stipulate that the investigation of the criminal offences of trafficking in adults and child trafficking is initiated *ex officio*. In these circumstances, we can state that, in compliance with Directive 2011/36/EU, the prosecution of these criminal offences does not depend on the charges or statements filed by the victim of trafficking. In addition, the proceedings for criminal offences related to the trafficking in human beings (added to the Criminal Code by means of Law no. 144/2013), such as: **“Benefit from or use of services provided by trafficked persons”** (Article 110/b) and **“Actions facilitating trafficking” (Article 110/c)**, shall commence upon initiative of the Prosecution’s Office, and upon referral/notification by another party.<sup>59</sup>

In fact, several issues have been identified in this regard in the Albanian judicial practice. These issues are not related to the law itself but to its implementation in practice. The reason we say this is because in most cases, the investigation and prosecution of THB related offences, is based mainly on the charges filed by the victim of trafficking. This has led to many difficulties, since in cases where the victim has withdrawn the charges/statement or has backed down due to the pressure/threats of traffickers, the only evidence supporting the entire criminal process, i.e. the “victim’s testimony”, has ceased to exist. These problems are exacerbated when the victim is a child. The investigation and adjudication of criminal cases of “Child trafficking” are mainly guided by the principle of the best interest of the child.<sup>60</sup> According to Article 3(1) of the Convention on the Rights of the Child (CRC) “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. Therefore, “the principle of the best interest of the child shall mean that in any court or administrative proceedings involving minors, their best interest shall be a primary concern”.<sup>61</sup> In this regard, the primary task of the proceeding body shall be to defend and protect the child victim from any possible threat or retaliation, in order to avoid his/her secondary victimization.<sup>62</sup>

59 Article 284 of the CPC explicitly provides/lists the criminal offences whose prosecution can commence only upon the complaint by the victim, who may withdraw it at any stage of the proceedings. Offences related to THB are not listed among these criminal offences, and neither are the criminal offences of “exploitation of prostitution”, “pornography” or “maltreatment of minors”. The second paragraph of the latter provides the exploitation of a minor to work, beg etc. The only provision referred to in this article is the criminal offence provided by Article 130 of the Criminal Code “Coercion or obstruction to cohabit, enter into or dissolve a marriage”. Pursuant to the Albanian law, the prosecution of such offence shall commence only upon the victim files a complaint.

60 Article 3 of CCJC provides that: “Best interest of the child” shall mean the right of the child to a sound physical, mental, moral, spiritual, social development and to enjoy a family and social life suitable for the child.

61 Article 3 of the UN Convention on the Rights of the Child. See also the Handbook on Justice in Matters involving Child Victims and Witnesses of Crime/publication of UNODC and UNICEF/United Nations – New York 2009

62 According to CCJC, Article 3(24). “Secondary/repeated victimization” is the situation



The investigation of THB criminal cases poses difficulties, as in order to prove that such criminal offence is committed, it is necessary to assess the existence of several elements: the manner of committing the offence, the tools and the purpose of exploitation. Criminal proceedings for the criminal offence of THB shall commence *ex officio*. This means that the criminal proceedings for such an offence may commence even if the injured party has not filed charges. This is an obligation that also derives from Directive 2011/36/EU, which emphasizes that the prosecution of the trafficker shall not depend on the report filed by the victim, while also ensuring that, the most effective investigative tool are used to investigate criminal offences related to trafficking in human beings. This would ensure the conduct of an effective investigation and the finding of evidence to support the charge, regardless of the report filed by the victim.

Criminal offences related to THB, especially to child trafficking, are offences which are rarely reported at the police structures. In this regard, the use of traditional investigation methods or techniques is not always productive, so the Directive (and other instruments, such as the Warsaw Convention) rightly suggests the use of *special methods*, which can provide important data for the criminal proceedings. Special investigation methods or techniques include covert surveillance or interceptions, the use of simulated purchases or the use of infiltrated persons/undercover agents, the use of informants or collaborators of justice. The ECtHR has recognized that these special investigation methods may be used for crime prevention purposes, but emphasizes that state authorities must exercise caution and accompany such methods with sufficient procedural guarantees, without violating the fundamental rights of the individual, in particular, by avoiding provoking a criminal act<sup>63</sup>. The investigation and adjudication of criminal cases of this nature should be guided by **two main objectives**: protecting the victim and punishing the perpetrator of the criminal offence/trafficker of human beings. A successful investigation in the case of THB criminal offences also depends on the coordination of actions between the Prosecution's Office and the judicial police. Cooperation between them should be established since the first stages, by taking all necessary measures to obtain accurate information and sufficient data on the progress of the investigations. The first stage is important for the identification of persons involved, so caution should be exercised in order for the victim to build trust on the persons who will investigate the criminal case referred by him/her.

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where a child victim of a criminal offence may suffer harm because of involvement in criminal justice proceedings. Secondary victimization refers to victimization, which occurs not as a direct result of the criminal offence, but through the response of institutions and individuals towards the victims. For more information, refer to "Victimology", by Ragip Halili, Pristina 2007.

63 For more information, refer to the ECtHR decisions: *Klass v. Germany*, 1979-1980, EHRR 231; *Teixeira de Castro v. Portugal*, 09/06/1998 etc.



### 3.9 Jurisdiction

Article 10 of Directive 2011/36/EU sanctions the obligation of Member States to take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 of this Directive.

*Article 10*  
**Jurisdiction**

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:
  - a. the offence is committed in whole or in part within their territory; or
  - b. the offender is one of their nationals.
2. Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:
  - a. the offence is committed against one of its nationals or a person who is a habitual resident in its territory;
  - b. the offence is committed for the benefit of a legal person established in its territory; or
  - c. the offender is a habitual resident in its territory.
3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction **is not** subject to either of the following conditions:
  - a. the acts are a criminal offence at the place where they were performed; or
  - b. the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

#### **ALBANIAN LEGISLATION**

The Criminal Code of Albania provides that the criminal law shall be applicable to criminal offences committed by Albanian citizens in the territory of the Republic of Albania; and shall also apply to criminal offences committed by Albanian citizens in the territory of another country, as long as that crime is concurrently punishable and unless a foreign court has rendered a final decision.<sup>64</sup> The

<sup>64</sup> Article 6 of the Criminal Code: “The criminal law of the Republic of Albania shall apply to criminal offences committed by Albanian citizens within the territory of the Republic of Albania. The criminal law of the Republic of Albania shall also be applicable to an Albanian citizen committing a crime within the territory of another country, as long as the crime is concurrently punishable and unless a foreign court has rendered a final decision. The condition of concurrent punishment in the territory of the other state shall not apply in the cases of corruption-related crimes in public or private sectors and illicit trading in influence. Within the meaning of this Article, persons holding another citizenship, in addition to the Albanian citizenship, shall also be considered Albanian citizens”.

Albanian criminal law shall also be applicable to a foreign citizen who commits a criminal offence in the territory of the Republic of Albania. This citizen shall be held criminally liable under the criminal law of the Republic of Albania.

The Criminal Code of the Republic of Albania shall also be applicable to any foreign citizen, who commits against the interests of the Albanian State or Albanian citizens, outside the territory of the Republic of Albania, one of the following crimes, among which the criminal offences provided by letter “d” such as: organization of prostitution, **illegal trafficking in human beings, children and women**, illegal manufacturing and trafficking of weapons, drugs, other narcotic and psychotropic substances, nuclear substances, pornographic materials, and illegal trafficking of artworks and items of historical, cultural and archaeological value.<sup>65</sup>

Considering the above mentioned circumstances, we can state that the Albanian legislation, and most importantly the Criminal Code, is in line with Directive 2011/36/EU. In essence, the Albanian law provides that the Republic of Albania has jurisdiction to prosecute, investigate and punish criminal offences committed abroad, based on the principle of citizenship (an Albanian citizen committing a criminal offence abroad, even if he/she has another citizenship in addition to the Albanian citizenship). The Albanian law also applies to cases of stateless persons committing a criminal offence within the territory of the Republic of Albania or one of the crimes provided in Articles 7 and 7/a of the Criminal Code, even if such crimes have been committed outside the Albanian territory. In principle, in this case the Albanian legislation shall apply only if the criminal offence committed outside the territory of Albania is also punishable pursuant to the foreign law (Article 10 of the Criminal Code)<sup>66</sup>. The Albanian criminal law explicitly provides that its jurisdiction to prosecute both Albanian citizens who commit the criminal offence of THB abroad, as well as foreign nationals who commit this criminal offence against the interests of Albanian citizens/victims, including THB, as mentioned above.

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65 Article 7 of the Criminal Code: Any foreign citizen, committing a criminal offence within the territory of the Republic of Albania, shall be held liable under the criminal law of the Republic of Albania. The Criminal Code of the Republic of Albania shall also be applicable to a foreign citizen, who commits one of the following crimes against the interests of the Albanian State or Albanian citizens, outside the territory of the Republic of Albania: a) crimes against humanity; b) crimes against independence and constitutional order; c) crimes with terrorist purposes; d) organization of prostitution, **illegal trafficking in human beings, children and women**, illegal manufacturing and trafficking of weapons, drugs, other narcotics and psychotropic substances, nuclear substances, pornographic materials, and illegal trafficking of artworks, and items of historical, cultural, and archaeological value; f) counterfeiting the Albanian state seal, Albanian currency, or Albanian securities; g) crimes affecting the life or health of Albanian citizens, whereof the law provides for a punishment of over five years of imprisonment or any other more severe punishment; h) laundering the proceeds of a criminal offence or criminal activity; i) corruption-related crimes in public or private sectors, and illicit trading in influence; j) criminal offences in the area of information technology.

66 In this case, the Albanian law provides for an exemption when the condition of concurrent punishment in the territory of another state is not applied in cases of corruption-related crimes in the public or private sector and illicit trading in influence. In this regard, it is important to emphasize that even in the case of trafficking in human beings, the condition of double jeopardy should be avoided, as provided by Directive 2011/36/EU.

## CHAPTER IV

# ASSESSING THE COMPLIANCE OF THE LEGISLATION OF THE REPUBLIC OF ALBANIA WITH THE EU *ACQUIS*, WITH REGARDS TO ENSURING THE RIGHTS OF VICTIMS OF TRAFFICKING

While addressing the rights of the victims of trafficking, for purposes of this study, two important and interrelated EU legal instruments shall be mainly analysed. Namely, Directive 2011/36/EU, which specifically addresses the rights of THB victims, and Directive 2012/29/EU, which establishes minimum standards regarding the support, assistance, protection and position of victims of crime during criminal proceedings.

*Directive 2012/29/EU* aims to revise and supplement the principles set out in Framework Decision no. 2001/220/JHA, by undertaking significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings<sup>67</sup>. In establishing these minimum standards this directive takes into consideration, inter alia, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, as well as Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, which address the specific/particular needs of these categories of victims.

Directive 2012/29/EU lays down minimum rules indicating that Member States may extend the rights set out in this Directive in order to provide a higher level of protection for victims<sup>68</sup>. This Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the

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67 Directive 2012/29/EU of the Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, paragraph (4) of its introductory part.

68 Directive 2012/29/EU, paragraph (7) and (11) of its introductory part.

principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.<sup>69</sup>

The criminal code and criminal procedure code in Albania have undergone significant changes in framework of the justice reform. In this regard, the new amendments to the Criminal Procedure Code, by means of Law no. 35/2017, are part of the approximation of the Albanian legislation with EU standards and acts. It addresses, inter alia, the rights of victims in accordance with international standards. The applicable Criminal Procedure Code at the time of this study, provides the victim of the criminal offence as one of the procedural subjects. Even though after the amendments the victim of the criminal offence is not a party in the criminal proceedings, he/she has procedural rights and guarantees. Thus, the amendments to the Criminal Procedure Code not only changed the term “injured person by the criminal offence” to “victim of the criminal offence”, but they also provided a set of rights for victims of the criminal offence in general, as well as for child victims, sexually abused victims and victims of trafficking, in particular.<sup>70</sup> The provisions of Article 58 of the CPC, provided in the following sections of this study, regarding the rights of victims, shall be applicable in addressing each right, respectively.

An important part of the justice reform in Albania was also the adoption of the Code of Criminal Justice for Children (Law no. 37/2017). This Code aims to guarantee a legal framework on criminal justice for children which is in line with the Constitution, United Nations Organisation (UN) Convention on the Rights of the Child and other international standards and norms which aim at protecting children and their best interest effectively; to ensure reintegration, re-socialization and rehabilitation of the child in conflict with the criminal law and to ensure that the child plays a constructive role in society; to protect the rights of the child witness and/or victim of the criminal offence by preventing re-victimization and secondary victimization of the child who has been a victim of a criminal offence in the past; to prevent the re-commission of criminal offences by the child and to protect public order principles while administering criminal justice for children cases.<sup>71</sup>

At this point it is worth mentioning the fact that, in the framework of the Council of Europe, regarding the rights of the victim in criminal proceedings, Albania has

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69 Directive 2012/29/EU, paragraph (66) of its introductory part

70 The report presented to the Laws Commission on the amendments to the CPC regarding the victim, emphasizes that: The draft has provided the replacement of the term “injured person by the criminal offence” with the term “victim”, as well as the term “accusing injured person” with the term “accusing victim”, while also providing the definitions and relevant adjustments for these subjects in accordance with the Framework Decision of 15 March, 2001 on the standing of victims in criminal proceedings, and Directive 2012/29/EU which replaced this decision. For this reason, Article 58 was completely reworded and Articles 58/a and 58/b were added, which provide the specific terms of child victims and sexually abused victims or victims of trafficking. In both cases it has been provided that the victim also has special rights related to his/her own special characteristics;

71 See Article 2 on the purpose of the CCJC, adopted by Law no. 37/2017.

ratified several important conventions such as: Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention), ratified by Law no. 104/2012; Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, ratified by Law no. 10071/2009; Council of Europe Convention on Action against Trafficking in Human Beings, ratified by Law no. 9642/2006; European Convention on the Compensation of Victims of Violent Crimes, ratified by Law no. 9265/2004. These Conventions are part of the domestic legislation, pursuant to Article 116 of the Constitution, which also indicates the obligation of Albania as one of the states parties to ensure the obligations set out in these acts.

#### 4.1 Definition of victim

Article 2 of Directive 2012/29/EU provides the definition of victim.

Article 2 of Directive 2012/29/EU, titled “Definitions” provides that:

1. For the purposes of this Directive the following definitions shall apply:

(a) “**victim**” means:

- a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death; “*family members*” means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

(b) “**child**” means any person below 18 years of age;

(c) “**restorative justice**” means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party;

2. Member States may establish procedures: to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case and; in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

This definition identifies as a victim not only the natural person who has suffered harm, whether physical, mental or spiritual, or an economic loss from the commission of the criminal offence, but also *the family members* of a person who has lost his/her life as a result of a criminal offence. In the case of a person who has lost his/her life, this directive shall consider family members as victims, as it deems that they have suffered harm as a result of the death of that person.

Furthermore, the Directive has also provided the definition of family members. According to Directive 2012/29/EU, “child” means any person below 18 years of age.

While reviewing preliminary ruling for interpretation, the European Court of Justice (hereinafter ECJ), has consistently confirmed that the concept of victim, for purposes of Directive 2012/29/EU, *does not include legal persons* that have suffered direct damage from the violations of the criminal law of a Member State.<sup>72</sup> However, as emphasized above, the Directive establishes minimum standards for guaranteeing the rights of victims of crime, which means that for the implementation of this Directive, EU Member States may choose to apply the standards set out in the Directive even to legal persons.

### **ALBANIAN LEGISLATION**

The CPC of the Republic of Albania does not provide any definition of the term victim. The only definition is the one provided in the Code of Criminal Justice for Children. Article 3 of CCJC provides that “child victim” is any person under 18 years of age who has suffered moral, physical or material harm because of a criminal offence. But regardless of the lack of a definition for the term “victim” in the legislation, the Albanian courts, in the judicial practice, have referred to international acts ratified by Albania, describing the victim as a person harmed by the criminal offence.<sup>73</sup>

## **4.2 Victim’s right to information**

With regards to the victim’s right to information in the EU legal framework, this study, in addition to the provisions of the two Directives mentioned at the beginning of this chapter, shall also refer to the guidance document prepared by the European Commission Directorate-General for Justice on the implementation

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<sup>72</sup> ECJ, cases C-467/05, Dell’Orto, C-205/09, Eredics.

<sup>73</sup> An important document this study is also the Unifying Decision no. 2/2013 of the Joint Chambers of the High Court. Even though this decision was taken before the amendments made to the CPC by means of Law no. 35/2017, it provides a definition for the victim of the criminal offence (which at that time was known as “injured person by the criminal offence”). More specifically, paragraph 26 of this unifying decision argues that: “26. With regards to the circle of legitimate subjects, Article 58 of the Criminal Code provides for the rights of the “injured” subject in criminal proceedings. The substantive criminal law protects society by guaranteeing fundamental legal rights, values and interests through criminal protection. Each criminal offence violates and harms a legal good protected by the criminal system, which means that the commission of a criminal offence causes an injury or puts at risk an interest protected by the criminal norm. (...) The injured person is the holder of the legal interest protected by the criminal norm, depending on the type of the criminal offence, the relationship and the legal good protected by the criminal law. *Therefore, an injured person shall mean a natural person, who has sustained physical injuries, whose health has been damaged, who has suffered harm as a result of the violation of fundamental rights and freedoms, which are protected by the criminal norm in cases of violation or restriction, whose moral and family moral has been injured etc. An injured person shall also mean a legal person, whose direct economic interests in relation to the activity it carries out, have been harmed by the criminal offence*”.

of Directive 2012/29/EU (hereinafter the Guidance Document).<sup>74</sup> The core objective of this Directive is to deal with victims' needs in an individual manner, based on an individual assessment and a targeted and participatory approach towards the provision of information, support, protection and procedural rights. Special attention is given to special support and protection for victims of certain crimes, including victims of gender-based violence, predominantly women, due in particular to the high risk of secondary and repeat victimisation, of intimidation and of retaliation. The Directive also insists on a child-sensitive approach, whereby the best interests of the child victim must be the primary consideration throughout their involvement in criminal proceedings.

Article 3 of Directive 2012/29/EU

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.
2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.
3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Thus, this article provides for the right of the victim to understand and to be understood. Similarly to what is emphasized in the Guidance Document for the implementation of this Directive, this provision highlights the aim of treating the victim by taking into account the personal characteristics and the individual ability of the victim, in order to understand the steps to be taken during criminal proceedings. It is therefore important to note that the Directive seeks to ensure that victims, based on their personal characteristics (for example gender, disability, age, maturity, relationship to or dependence on the offender), understand and can make themselves understood during criminal proceedings (linguistically or otherwise) and that authorities pro-actively assist victims to do so throughout criminal proceedings.<sup>75</sup>

<sup>74</sup> For more information: DG JUSTICE GUIDANCE DOCUMENT related to the transposition and implementation of Directive 2012/29/EU/ Ref. Ares(2013)3763804 - 19/12/2013 (EUROPEAN COMMISSION, DG JUSTICE, December 2013) – The purpose of this guidance document is to facilitate the effective and timely transposition of Directive 2012/29/EU by EU Member States. This document is not legally binding and is intended for guidance only. The authoritative interpretation of EU law remains within the sole remit of the European Court of Justice in accordance with the TFEU and TEU Treaties. This document is meant to lead Member States through the Directive and suggest possible ways to tackle both the transposition and implementation process. [www.ec.europa.eu/justice](http://www.ec.europa.eu/justice)

<sup>75</sup> DG Justice Guidance Document for the purpose of implementation of Directive 2012/29/EU.



Article 3, along with Articles 4, 5, 6, 7 of Directive 2012/29/EU ensure the right of the crime victim to be informed without delay on the rights provided for in this Directive. The information should be provided without delay from the first contact with a competent authority, in a simple and accessible language, while also providing the assistance of a trusted person who can help the victim to better understand his/her procedural position. Article 4 of this Directive<sup>76</sup> explicitly provides for the obligation of officials/competent authority that has the first contact with the victim to inform the latter on the rights set out in this provision. It is important to emphasize that the information may vary depending on the specific needs of the victim, and the type or nature of the crime.

### ALBANIAN LEGISLATION

In the Albanian legislation, the rights of the victim of the criminal offence are provided in Article 58 of the CPC which, based on its content, constitutes an essential article on the rights of victims in the CPC. Specifically, the victim's right to information is provided in letters "d", "e" and "ë" of this provision. On the other hand, this provision also provides the obligation of the proceeding body to inform the victim immediately on his/her rights. The provision of this information is not just a formal action, but it is also an important procedural step and, as such, is documented in a *report/minutes*. What matters at this point is the fact that the proceeding body must ensure that the victim has understood the rights recognized by law, as this shall have an impact on the effectiveness of exercising such rights before, during and after the completion of criminal proceedings. This provision stipulates that the victim is entitled to request, at any time, information on the state of the proceedings; to be informed on the documents and evidence; to be informed on the arrest of the accused person and his/her release, under the conditions stipulated in this Code; to be informed on the non-initiation of the criminal proceedings, the dismissal of the case, the initiation and conclusion

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<sup>76</sup> Article 4 of Directive 2012/29 provides that: 1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive: the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation; the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures; how and under what conditions they can obtain protection, including protection measures;

how and under what conditions they can access legal advice, legal aid and any other sort of advice; how and under what conditions they can access compensation; how and under what conditions they are entitled to interpretation and translation; if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made; the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings; the contact details for communications about their case; the available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed. 2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.



of the trial on merits. This provision also stipulates the rights of the heirs of the victim, which have been explicitly defined in Article 58(1)(a)(e)(ë)(f)(g) and (j) of the CPC. Among other things, the heirs have the right to be informed on the arrest of the person suspected to have committed the criminal offence or on the release of such person, as well as on the decisions non to commence criminal proceedings, to dismiss the case, to initiate and conclude the adjudication. The Albanian legislator has also regulated the case when the victim does not have the capacity to act, providing that his/her rights are exercised through the legal representative or guardian. The court shall guarantee the effective exercise of the rights provided, in accordance with the interests of the victim, by appointing a special guardian,<sup>77</sup> when there is a conflict of interests between the victim or the legal representative or guardian.

The victim's right to information is specifically provided in Article 279/a of the CPC, giving the victim an active role during preliminary investigations. At this stage of the criminal proceedings, the victim is entitled to request information on the progress of the proceedings, and to have access and receive copies of the evidence and documents found in the prosecutor's file. The legislator has limited this right only for "legitimate reasons". This legal provision (Article 279 of the CPC) is related to the fact that the documents of the preliminary investigation shall be kept secret, until the defendant is informed on them. The prosecutor shall render a decision for each request of the victim, and shall reject such request only in the cases explicitly provided in the law (Article 279/a of CPC).<sup>78</sup> This legal provision implies that the victim's right to information is not absolute, but may be limited in the cases explicitly stipulated in this provision, as well as when the acts are covered by the secrecy of the investigation, a principle that has been explicitly provided for in Article 58(1)(d) of the CPC.

The Albanian criminal procedure code does not define the "legitimate reasons" that support the victim's request for information, but we consider that these reasons should be assessed in relation to the victim's rights listed in Article 58 of the CPC. When providing the cases in which the prosecutor rejects the victim's request for information, the above mentioned Article 279/a requires the existence of a balance between the victim's interest and the principle of secrecy of investigations, or the interest of the defendant. In these circumstances, the legitimate reasons on which the victim is entitled to request information from the prosecutor, are based

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<sup>77</sup> When appointing a special guardian, the court shall apply Articles 274-281 and 308 of the Family Code

<sup>78</sup> Article 279/a of the CPC provides that: 1. For legitimate reasons, the victim, his/her legal representative or defence lawyer, are entitled to request information on the state of the proceedings, and to have access to and receive copies of documents and evidence found in the prosecutor's file. 2. The prosecutor may refuse the request if: a) the interest of maintaining the secrecy of the investigation exceeds the victim's interest; b) the interest of the defendant exceeds the victim's interest; c) the victim has not yet been interrogated as a witness. 3. The victim, her legal representative or defence lawyer are entitled to request information concerning the application, continuation, replacement or revocation of preventive measures against the defendant, unless the provision of these facts could endanger the life or health of the defendant

on his/her own interest, which is closely related to the effective exercise of his/her procedural rights. According to Article 279/a of the CPC, the victim is entitled to request information concerning the application, continuation, replacement or revocation of preventive measures against the defendant, unless the provision of these facts could endanger the life or health of the defendant. This legal provision is also in line with the provisions of Directive 2012/29/EU.<sup>79</sup>

In accordance with Directive 2012/29/EU and Directive 2011/36/EU, the Albanian law has provided for specific rights for child victims, sexually abused victims and victims of THB. In compliance with what is stated in the introductory part of Directive 2012/29/EU, the Albanian legislator has stipulated that when providing support to victims of crime, it is necessary to take into account their personal situation and immediate needs, such as age, gender, disability and potential maturity, while also taking into account and fully respecting their physical, mental and moral integrity.<sup>80</sup> This means that the competent authorities must ensure that the victim has effective access to information in order to exercise his/her rights. In addition to the rights provided in Article 58 of the CPC, the Albanian legislation also guarantees specific rights to child victims and sexually abused victims or victims of trafficking, by specifically ensuring the treatment of victims according to their special status, as well as by taking into account their personal situation.

The first person in contact with the victim shall ensure that the victim receives complete information on the support services he/she may benefit and on how to access such services. An important part of the victim's right to information is also the provision of comprehensive information on the criminal proceedings, the victim's role in these proceedings, using a simple, accessible language, as well as by ensuring the translation of any document or information in a language understandable by the victim. At any stage of the proceedings, the victim has the right to be informed on the progress of the process, on any decision taken by the prosecutor not to commence criminal proceedings or to dismiss the case, as well as on any decision taken by the court in the context of these criminal proceedings. This provision of the Albanian criminal procedure code is in line with Article 6 of Directive 2012/29/EU, which emphasizes the right of the victim and, at the same time, the obligation of the competent authorities to inform the victim on the state of the criminal proceedings (Article 6(2)(b)). Such information shall include all the updated and important data on the criminal case. Only by providing such information, it may be possible to ensure the effective exercise of the victim's rights and his/her access to justice.<sup>81</sup>

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79 Article 6(5) and (6) of Directive 2012/29 provides that: "...5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender. 6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

80 Directive 2012/29/EU, paragraph 9 of its introductory part, and Article 3(2).

81 According to paragraphs 26 and 27 of the introductory part of Directive 2012/29/EU, information

### 4.3 The victim's right to support and protection

Directive 2011/36/EU underlines that it is necessary for victims of THB to be able to exercise their rights effectively. In this regard, this Directive provides for the obligation of Member States to provide victims of trafficking with systematic assistance and support since the moment of their first contact with a representative of the responsible authority, during the prosecution of the perpetrator, and for an appropriate time after prosecution. Member States should also provide for resources to support victims and provide them assistance, support and protection. The assistance and protection provided should include at least a minimum set of measures that are necessary to enable victims to recover and escape from their traffickers.<sup>82</sup>

Article 11 of Directive 2011/36/EU sanctions the obligation of EU Member States to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial of THB related criminal offences.

Article 11 of Directive 2011/36/EU provides, inter alia:

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2), or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

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can be communicated in a tailored manner and through various means (verbally or in writing, including electronic means). "When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any court proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute".

<sup>82</sup> Paragraph 18 of the introductory part of Directive 2011/36/EU

The Directive states that in order to guarantee the rights of victims of trafficking, it is necessary to set up appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organizations. Victims assistance and support is related to their right to be informed on everything, not only on support services, but also on the protection ensured by international instruments, including information on the period of reflection and recovery, and to identifying the special needs the victim may have.

### **ALBANIAN LEGISLATION**

The third GRETA evaluation report for Albania (published on 15 December 2020) highlights the fact that the Republic of Albania has significantly improved its legislation to support victims of trafficking, by strengthening their rights and procedural position in criminal proceedings. The focus of this third evaluation round has been precisely on victims, their access to justice and the effectiveness of exercising guaranteed rights, as an obligation of Albania arising from the ratification of the Council of Europe Convention.

In the framework of the ratification of the Council of Europe Convention on Actions against Trafficking in Human Beings, ratified by Law no. 9642, dated 20/11/2006 and in accordance with GRETA recommendations, the Republic of Albania has adopted the document of “Standard Operating Procedures (hereinafter SOPs) for identification and referral of victims/potential victims of trafficking”, a document that was first adopted by Decision of the Council of Ministers no. 582, dated 27/07/2011, and repealed by DCM no. 499, dated 29/08/2018 “On the adoption of standard operating procedures for the protection of victims and potential victims of trafficking”. With regards to DCM no. 582, dated 27/07/2011, it is important to emphasize that this document came as a need to adequately address this concerning phenomenon, focusing on its identification and the referral of victims of trafficking and potential victims of trafficking. The importance and need of identifying victims or potential victims of trafficking is essential to effectively guarantee the rights of persons, as well as to provide these victims with immediate access to the necessary protection and assistance.<sup>83</sup>

Based on the experience gained pursuant to Decision no. 582 dated 27/07/2011 of the Council of Ministers “On the approval of Standard Operating Procedures for the identification and referral of victims/potential victims of trafficking”, and in compliance with the obligations arising from the “Cooperation Agreement on the Functioning of the National Referral Mechanism for Victims and Potential Victims of Trafficking in Persons” (signed in 2012), and in compliance with

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<sup>83</sup> UN, ECOSOC, “Recommended Principles and Guidelines on Human Rights and Human Trafficking. The Report of the United Nations High Commissioner for Human Rights presented at the Economic and Social Council”, E/2002/68/ Add.1, 2002, p. 6, reads: *A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.*

the agreements, protocols and memoranda of cooperation between Albanian institutions with foreign institutions, by Decision no. 499, dated 29/08/2018 of the Council of Ministers, the document “On Standard Operating Procedures for the protection of victims and potential victims of trafficking” was adopted (repealing Decision no. 582, dated 27/07/2011). The main purpose of the SOPs is to protect, including the timely and proper identification of victims/potential victims of trafficking, whether adults or children, Albanians, foreigners or stateless persons, from all forms of exploitation, domestic or international trafficking in human beings, whether connected or not to organized crime. The procedures provide for specialized sectoral and cross-sectoral/multi-disciplinary interventions, greater involvement, by state institutions and beyond, in the initial identification and understanding of trafficking in persons, and most importantly, the reintegration of victims and potential victims of trafficking. All responsible structures have the obligation to implement these Procedures to identify, refer, assist, protect and reintegrate victims and potential victims of trafficking.<sup>84</sup>

The SOPs are based on human rights and constitute a sensitive approach for the protection of victims/potential victims of trafficking, while aiming at their best interest. The protection of the rights of trafficked persons will be on the focus of all efforts to prevent trafficking, and to protect and reintegrate victims, regardless of their willingness or ability to testify in court. The provision of the opportunity to rehabilitate, to restart a normal life is not merely a human obligation of the state, but also a prevention measure against re-trafficking. These procedures are guided by the principle that no anti-trafficking measure shall violate human rights and dignity, in particular the rights of trafficked persons, migrants, internally displaced persons, stateless persons, refugees and asylum seekers. Standard Operating Procedures specifically take into account the special obligation of the state towards children, more specifically the protection of children’s rights, in accordance with the United Nations Convention on the Rights of the Child (1989), and Law no. 18/2017 “On the rights and protection of the child” based on the best interest of the child.<sup>85</sup>

This document has provided several important definitions. So, paragraph 4 of the SOPs provides the definition of the term “**victim of trafficking**” (VT) which refers to and has the same meaning as the term provided in Article 4(e) of Law no. 9642, dated 20/11/2006 “On the ratification of the Council of Europe Convention on Actions against Trafficking in Human Beings”. On the other hand, according to the SOPs the term “**potential victim of trafficking**” (PVT) shall mean any person for whom, the responsible agencies/institutions for the initial identification, based on the hints/indicators/specific circumstances of the

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84 For more information please consult the Standard Operating Procedures for the protection of victims and potential victims of trafficking, adopted by DCM no. 499, dated 29/08/2018

85 This paragraph provides only a few of the general principles on which standard operating procedures are built upon. The principle of the best interest of the child is also defined in the Code of Criminal Justice for Children, taking into account the international instruments on children’s rights, ratified by Albania (mentioned above).

case, find at least three or more elements that constitute a reasonable doubt that the person may have been trafficked.

Standard operating procedures focus precisely on the “protection of trafficked persons”, emphasizing that this term, includes all actions performed by the staff of central and local government institutions, as well as the staff of non-government institutions, whether members or not of the National Referral Mechanism, for the reception, identification, immediate assistance, and assistance for the safe rehabilitation and reintegration of trafficked persons in accordance with these procedures. All responsible institutions provided in this document shall contribute to the protection, at all stages, starting from the identification to the full reintegration of the trafficked persons, however, for ease of understanding and reference in this document, protection shall include:

- Initial identification and response;
- Formal identification;
- Planning and support for reintegration;
- Planning and support for assisted voluntary return;
- Reception of trafficked persons of Albanian citizenship;
- Assisted voluntary return for foreign nationals;
- Support for the investigation and punishment of traffickers.

Pursuant to this document, the institutions responsible for the protection of victims shall immediately/during the first contact identify the “*basic needs/rights of the victim and their fulfilment*”,<sup>86</sup> taking into account that this shall include at least the basic needs/rights for food, accommodation, housing, medical assistance, psycho-social assistance, communication in an accessible language, contact with the family etc. Furthermore, attention should be paid to the process of identifying VT/PVT and the “*basic needs/rights of the protection of trafficked persons*”, which shall include at least the provision of a free package of services, such as: appropriate and safe shelter, psychological and material assistance, access to immediate medical treatment and continuous health care, translation where necessary, counselling and information particularly on legal rights, assistance for appearance and consideration during the prosecution of traffickers, access to education, vocational training and employment. The main purpose of this entire process of identification, assistance, support and protection is “the reintegration of trafficked persons”, which according to the SOPs is the process of recovery and socio-economic inclusion following a trafficking experience. It includes placement in a secure and sustainable environment, access to a reasonable living standard, physical and mental well-being and opportunities for personal, social, economic development and access to social and emotional support. A central aspect of

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<sup>86</sup> According to the SOPs the following terms are provided in the definitions: “Basic needs/rights during the initial identification and response, and their fulfilment”; “Basic needs/rights for the protection of trafficked persons”; “Emergency protection measures” etc.



successful reintegration is that of empowerment, supporting victims to develop skills towards independence and self-sufficiency, and to be actively involved in their recovery and reintegration. Responsible institutions in this process shall have an ethical communication with trafficked persons, in secure premises, while observing the principles of: non-harm, physical safety, confidentiality, non-discrimination, clear and understandable communication, tolerance, etc.<sup>87</sup>

In response to the needs of victims of trafficking, in 2001, “Vatra” Psycho-Social Centre established the first shelter in Albania for the housing, rehabilitation and reintegration of victims of trafficking. Following that shelter, others were established, such as: The National Reception Centre for Victims of Trafficking, the Centre “Different and Equal”, “Other Vision”. In order to better coordinate their advocacy work for the protection of the rights of victims of trafficking, in July 2007, all four of these centres established the National Coalition of Anti-Trafficking Shelters (NCATS), through a memorandum of understanding. The members of the coalition have been among the main actors, through their contribution, of the initiative taken by the Ministry of Labour, Social Affairs and Equal Opportunities on drafting Standards for social care services for trafficked persons or persons at risk of trafficking in residential centres, approved by DCM, no. 195, dated 11/04/2007. These organizations were intensively involved in the working group, offering their expertise and their long experience in providing direct assistance to victims of trafficking. Providing a package of rehabilitation and reintegration services for victims of trafficking is definitely one of the most important measures that non-governmental organizations provide for this target group in Albania. This package includes specialized and standardized long-term services such as protection and housing, psycho-social, healthcare and legal support, assistance in education and vocational training, support for economic and social empowerment, mediation and family support and reintegration into the community.

The Assembly of Albania adopted Law no. 57/2019 “On social assistance in the Republic of Albania”, which provides a special treatment for victims of trafficking.<sup>88</sup> This law aims to provide economic assistance, to lower poverty and social exclusion for individuals and families, by creating opportunities for their integration; to guarantee social assistance, proper organization and well-functioning of the responsible state institutions. Article 7 of this law defines victims of trafficking as beneficiaries of economic assistance, starting from the moment they leave social care institutions and up to their employment. According to this law, victims of trafficking, as one of the beneficiaries of economic assistance, are included in the category of economically inactive persons in the compulsory healthcare insurance scheme.<sup>89</sup>

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87 For more information refer to the Standard Operating Procedures for the protection of victims/potential victims of trafficking

88 Law no. 57/2019, which has repealed Law no. 9355, dated 10/03/2005, “On social care services”, as amended (including Law 121/2016), as well as any other act that is inconsistent with it.

89 Articles 7 and 18 of Law no. 57/2019

In accordance with Directive 2011/36/EU, and Directive 2012/29/EU, Albania has also adopted Law no. 108/2013 “On foreigners”, as amended.<sup>90</sup> Articles 53 and 54 of this law provide that the local authority responsible for the border and migration, based on humanitarian grounds, shall issue a type “A” temporary residence permit to the foreigner even when the conditions set out in Article 34 of this law or other general criteria provided in this law are not met, if the foreigner: “(...) b) is a victim or potential victim of trafficking; c) has been subjected to conditions of labour exploitation in the Republic of Albania (...); dh) is an abandoned child, or is under no parental care, legal guardianship, or is unaccompanied due to other reasons”. The law determines the timeframes and reasons for the renewal of the residence permit for the foreigner, who in this case enjoys the rights to stay and move within the territory of the Republic of Albania, which are rights guaranteed to foreigners who have a temporary residence permit, in compliance with normal procedures. The foreigner shall cooperate with the responsible bodies to determine his/her identity, but the lack of evidence proving the identity shall not be sufficient

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<sup>90</sup> This law was amended by Law no. 74/2016, dated 14/07/2016 and Law no. 13/2020. This law is fully aligned with EU legislation. More specifically, this law is fully aligned with: The Regulation of the European Parliament and of the Council no. 810/2009 of 13 June 2009 establishing a Community Code on Visas, CELEX Number 32009R0810, Official Journal of the European Union, L Series, No. 243, dated 15/09/2009, pages 1–58. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2008 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. CELEX Number 32009L0052, Official Journal of the European Union, L Series, No. 168, dated 30/06/2009, pages 24–32. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. CELEX Number 32009L0050, Official Journal of the European Union, L Series, No. 155, dated 18/06/2009, pages: 17–29. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. CELEX Number 32008L0115, Official Journal of the European Union, L Series, No. 348, dated 24/12/2008, pages 98–107. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research. CELEX Number 32005L0071, Official Journal of the European Union, L Series, No. 289, dated 03/11/2005, pages 15–22. Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. CELEX Number 32004L0082, Official Journal of the European Union, L Series, No. 261, dated 06/08/2004, pages 24–27. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. CELEX Number 32004L0114, Official Journal of the European Union, L Series, No. 375, dated 23/12/2004, pages 12–18. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. CELEX Number 32003L0109, Official Journal of the European Union, L Series, No. 16, dated 23/01/2004, pages 44–53. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. CELEX Number 32003L0086, Official Journal of the European Union, L Series, No. 251, dated 03/10/2003, pages 12–18. Council Framework Decision, 2002/946/JHA, of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence. CELEX Number 32002F0946, Official Journal of the European Union, L Series No. 328, dated 05/12/2002. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. CELEX Number 32000L0078, Official Journal of the European Union, L Series, No. 303, dated 02/12/2000, pages 16–22. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. CELEX Number 31996L0071, Official Journal of the European Union, L Series, No. 18, dated 21/01/1997, pages 1–6.



ground to refuse the issuance of a temporary residence permit. It is important to note that the foreigner shall benefit health care, financial assistance and support, pursuant to the applicable legal provisions.

Article 54 of the law “On foreigners”, explicitly regulates the issuing of residence permit for victims of trafficking in human beings. This provision stipulates that in this case, the *type “A” temporary residence permit shall be issued to the foreigner for a 3-month validity period, regardless of his/her will to collaborate with justice, if there are reasonable grounds to believe that the foreigner is a victim or potential victim of trafficking, identified as such by the structures responsible for the identification and referral of victims of trafficking.* Such residence permit is issued to the victim or potential victim of trafficking in order to recover, and to be treated pursuant to his/her physical and mental conditions, in order to take a well-informed decision on whether or not to collaborate with justice authorities. This provision, which is in full compliance with the standards of the EU Directives, stipulates that during the recovery and reflection period, the foreigner who is identified as a victim or potential victim of trafficking shall enjoy all the rights and services that victims of trafficking are entitled to, in compliance with the applicable Albanian legislation. This article also provides the cases or conditions of revocation of the residence permit.<sup>91</sup> A foreigner who is identified as a victim of trafficking in the Republic of Albania shall be equipped with a type “B” residence permit, when either or both of the following situations are identified: a) it is deemed that the person’s stay is necessary because of his/her social and personal situation; b) it is deemed that his/her residence is necessary for the purpose of collaborating with justice authorities during the criminal investigation or proceedings.<sup>92</sup> The issuance of the residence permit shall not be conditioned on the existence of sufficient financial means of the victim to cover expenses during the period of stay or by the lack of identification documents of the victim or potential victim of trafficking.

Another important step in the context of the approximation of the Albanian legislation with *the EU acquis* is the adoption of Law no. 10/2021 “On asylum

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91 Paragraph 3 of this Article sanctions that: The residence permit issued for the recovery and reflection period may be revoked if it is proved that the victim or potential victim of trafficking has acquired or claimed this status unfairly, has actively restored relationship, whether voluntarily and/or on own initiative, with persons suspected of trafficking in human beings, or if it considered that his/her stay in the territory constitutes a threat to national security. Revocation of the residence permit for the period of recovery and reflection shall be communicated in writing to the victim or potential victim of trafficking, in a language he/she understands, by informing him/her of the reasons for the revocation, except when the residence permit is terminated due to national security reasons.

92 Article 54(4) of Law no. 108/2013 (as amended).

in the Republic of Albania.”<sup>93</sup> The purpose<sup>94</sup> of this Law is to lay down the conditions and procedures for: a) granting the refugee status; b) subsidiary and temporary protection in the Republic of Albania; c) loss, cessation or revocation of international protection; ç) rights and obligations of refugees, applicants for international protection, persons under temporary and subsidiary protection; d) the content of refugee status and subsidiary protection; dh) the right to family reunification; e) establishing conditions for the integration of refugees and persons under subsidiary protection in the Republic of Albania.

This law applies to all foreign nationals and stateless persons who have stated their intention to apply for international protection in the territory of the Republic of Albania, as applicants for international protection, as well as for their family members. For the purpose of this law, the term “asylum” means the form of international protection that the Republic of Albania grants to refugees and persons under subsidiary protection. One of the categories benefiting from the application of this law, by applying for international protection, are also persons belonging to a special category, who shall receive special attention, treatment and care by the responsible authorities.<sup>95</sup> For the purpose of this law “persons belonging to a special category” means children, unaccompanied children, persons with disabilities, elderly persons, pregnant women, single parents with minor children, **victims of trafficking in human beings**, victims of genital mutilation, LGBTI persons, persons with serious health conditions, persons with mental health problems/disorders, or persons who have been subjected to torture, rape or some other form of psychological, physical or sexual violence.

This law provides the obligation of the responsible authorities to assess the special needs of these persons, based on the individual assessment of each applicant, refugee, person under subsidiary protection or person under temporary protection

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93 This Law repealed Law no. 121/2014 “On asylum” and has been partly approximated with:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. CELEX Number 32001L0055, Official Journal of the European Union, L Series, No. 212, dated 07/08/2001, p. 12-23.

- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. CELEX Number 32003L0086, Official Journal of the European Union, L Series, No. 251, dated 03/10/2003, p. 12-18.

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. CELEX Number 32011L0095, Official Journal of the European Union, L Series, No. 337, dated 20/12/2011, p. 9-26.

- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. CELEX Number 32013L0032, Official Journal of the European Union, L Series, No. 80, dated 29/06/2013, p. 60-95.

- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. CELEX Number 32013L0033, Official Journal of the European Union, L Series, No. 180, dated 29/06/2013, p. 96-116.

94 Article 1 of the Law “On asylum”.

95 Special categories of applicants for international protection are addressed in Chapter VI of the law “On asylum” no. 10/2021, Articles 50-53

pursuant to this law. Applicants, refugees, persons under subsidiary protection or persons under temporary protection, belonging to a special category, shall benefit different treatment in accordance with their specific accommodation needs, and shall be provided with special reception conditions, necessary medical treatment and psycho-social counselling; they shall receive full and proper treatment for the damage caused to them by such acts, and in particular, they shall have the possibility to receive proper medical and psychological treatment and care. The law also focuses on persons working with victims of torture, rape, or other serious acts of violence, who must have received or shall receive the appropriate training in relation to their needs and comply with the rules of confidentiality regarding the information received while carrying out their activity.<sup>96</sup> The rights and obligations provided for in this law for the applicants for international protection, shall also apply to special categories, including victims of trafficking in human beings.

#### 4.4 Protection of victims of trafficking in criminal investigation and proceedings

Article 12 of Directive 2011/36/EU

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA (our note, this framework decision referred to in this directive has been replaced by Directive 2012/29/EU).
2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources. EN L 101/8 Official Journal of the European Union 15.4.2011.
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.
4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:
  - (a) unnecessary repetition of interviews during investigation, prosecution or trial;
  - (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
  - (c) the giving of evidence in open court; and
  - (d) unnecessary questioning concerning the victim's private life.

<sup>96</sup> Article 50 of Law no. 10/2021.

As it can be noticed, Article 12 of Directive 2011/36/EU provides the minimum standards of protection to be guaranteed to victims of trafficking, both during the criminal investigation and during the adjudication of the criminal case. These minimum standards include the rights stipulated in this provision of this Directive, as well as the rights guaranteed by Directive 2012/29/EU. More specifically, these two acts stipulate that Member States shall take the necessary measures to guarantee the participation of victims of trafficking in criminal proceedings (investigation and adjudication), providing them with full access without delay to free legal counselling and free legal representation; on the basis of an individual risk assessment to guarantee access to witness protection programs or other similar programs based; to guarantee a specific treatment aimed at preventing secondary victimization, by avoiding as far as possible unnecessary repetition of the interview of the victim of trafficking, by ensuring that there is no visual contact with the defendant, by avoiding giving evidence in open court, and by avoiding unnecessary questions concerning the victim's private life. The victim has the right to be heard during criminal proceedings, even if he/she is a child, taking into account in such case his/her age and maturity.

The above mentioned Directives emphasize *first of all*, that victims of trafficking should be guaranteed assistance regardless of their willingness to cooperate in investigations, or to become witnesses. More specifically, in a nutshell, the THB victim is entitled to:

- adequate and safe accommodation;
- psychological assistance;
- material assistance;
- access to emergency medical treatment;
- written and oral translation services;
- counselling and information;
- assistance during criminal proceedings;
- access to the labour market, training and vocational education, if the victim is a legal resident in a country.

The protection of privacy and identity implies that the victim's personal data cannot be made public and can be retained only for specific lawful purposes. They may not be used in any other way that allows the victims identification. Protection during investigations and trials, means that victims and their family members, when necessary, receive protection from potential threats from traffickers. This may include physical protection, relocation, change of identity, and job search assistance.

### ALBANIAN LEGISLATION

Through the amendments made to the CPC by means of Law 35/2017, as well as through the approval of the Code of Criminal Justice for Children (Law 37/2017), the Republic of Albania has significantly strengthened and improved the status and position of the victim in the criminal proceedings (adult victim or child victim). Specifically, Articles 58, 58/a and 58/b of the CPC guarantee the victims' participation in the criminal proceedings, recognizing their right to require the prosecution of the perpetrator. Chapter V of the CCJC provides for specific guarantees and rights related to the position of the child victim and witness of the criminal offence, guaranteeing the right to participate in the process and protective measures. In accordance with the EU Directives 2011/36 and 2012/29, during the criminal proceedings in Albania, in addition to the right to information, which was addressed above, the victim shall also be entitled:

c) to benefit medical care, psychological assistance, counselling and other services provided by the authorities, organizations or institutions responsible for providing assistance to victims of the criminal offence;

ç) to communicate in his/her own language and be assisted by an interpreter, sign language interpreter or communication facilitator for persons with speech and hearing disabilities;

d) to choose a defence lawyer and, where appropriate, to receive free legal aid, in accordance with the legislation into force;

dh) to require to receive the evidence and submit other requests to the proceeding body;

f) to appeal to the court against the decision of the prosecutor non to commence the proceedings and the decision of the prosecutor or of the judge of the preliminary hearing to dismiss the charge or the case; g) to ask a compensation for the damage and be accepted as a civil plaintiff in the criminal proceedings;

gj) to be excluded, under certain conditions stipulated by law, from paying any expenses for obtaining court documents and from the court fee for submitting the lawsuit related to the status of the victim of the criminal offence;

h) to be summoned in the preliminary hearing and the first court hearing;

i) to be heard in court even when none of the parties has requested him/her to be summoned as a witness (Article 58 of CPC).

These rights are not exhaustive, as the criminal procedure law provides that the victim in criminal proceedings has other rights, which are provided in this code, such as the rights provided specifically for the victim of trafficking.<sup>97</sup>

<sup>97</sup> Article 58/b of the CPC provides that: Apart from the rights provided in Article 58 and 58/a of this Code, sexually abused victims and victims of trafficking in human beings shall also be entitled to:  
a) be questioned without delay by a judicial police officer or a prosecutor of the same gender;

The provision of these rights for the victim aims to guarantee the victim's access to criminal proceedings and the effective exercise of guaranteed rights, but the assistance and protection of the victim shall not be conditioned on his/her cooperation in the conviction of traffickers. In support of the GRETA recommendations, as well as pursuant to Albania's obligations stemming from the ratification of the Council of Europe/Warsaw Convention, it is important to emphasize that the amendments made to the Albanian legislation oblige the competent authorities to be guided by the following principles during the investigation and adjudication of criminal offences related to trafficking in human beings:

- The right of the victim to be treated with dignity and care throughout the criminal proceedings;
- The right of the victim to defend, by ensuring that the presence of a lawyer and a psychologist throughout the criminal proceedings;
- The right to safety and, in the case of a child victim, the right to take special protection measures;
- The right to be heard and to express opinions on any decision relating to the victim or the respective criminal proceedings;
- The right of the victim of trafficking to receive compensation.

The prosecutor, during the preliminary investigations, and the court, during the trial, must show due diligence to respect all the guaranteed rights of the victim of trafficking. International instruments to which Albania is a party, sanction the duty of the Albanian state to provide special protection for the victim in any case, especially when he/she is a child, regardless of his/her cooperation with the justice or his/her testimony in criminal proceedings.<sup>98</sup> The implementation of protection and security measures should be ensured to all victims of trafficking, without any prejudice or discrimination on the basis of gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic, educational, social status or parental affiliation.<sup>99</sup>

Assistance and support for victims is provided unconditionally even during the period of recovery and reflection, which constitutes a right of the victim to process the information received and decide freely whether to cooperate or not with the competent authorities. Even before victims are formally identified as such, they have the right to recover for 30 days, to escape the influence of

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b) refuse to answer questions regarding their private life, which are clearly not related to the criminal offence;

c) request to be heard through audio-visual tools pursuant to the provisions of this Code.

98 This obligation derives from the Warsaw Convention, Article 12(6)

99 Article 18 of the Constitution of the Republic of Albania and Article 3 of the Warsaw/EC Convention, an obligation that has also been reflected in the standard operating procedures, as well as in the general principles of the CPC, more specifically in Article 9/a which sanctions the obligation of public bodies to ensure that victims of criminal offences are treated by respecting their human dignity and are protected from harm, while exercising the rights provided by the CPC. See also Law No. 10 221, dated 04/02/2010 "On protection from discrimination", as amended; Article 11 of CCJC; etc.

traffickers and to consider the possibility of cooperating with responsible bodies for investigating criminal offences related to corruption.<sup>100</sup> During this period, they cannot be expelled from the state and have the right to receive assistance, even if their stay is irregular, since this right is explicitly provided in the Albanian legislation, both in the law on foreigners and the law on asylum, as mentioned above.

The entire procedure, from the moment of identification of the victim/potential victim of trafficking until the completion of the judicial proceedings related to the trafficking of a person, should be conducted while respecting the principle of confidentiality. Standard Operating Procedures<sup>101</sup> stipulate that all persons involved in this process (translators, interviewers, social workers, state police officers etc.) shall sign a confidentiality agreement. This is related to the obligation of respecting and protecting the privacy and identity of victims.<sup>102</sup> All personal data collected and processed during the process of identification and referral of victims must be stored and used in accordance with the legal criteria provided by the Law “On the protection of personal data in Albania”.

In compliance with the standards provided in Directive 2012/29/EU,<sup>103</sup> the CPC of Albania ensures, in the first place, the right of the victim to benefit all the necessary support and health care, psychological care, counselling and assistance, since the moment he/she is identified as a victim or potential victim of trafficking. Such a conclusion can also be drawn based on the conclusions and recommendations of GRETA for Albania,<sup>104</sup> which emphasize the significant

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100 This obligation for the Albanian competent authorities also derives from Article 13 of the Warsaw/EC Convention, ratified by the Republic of Albania, which has been taken into consideration by the Albanian authorities at the time of the adoption of standard operating procedures (mentioned above).

101 Standard Operating Procedures for the protection of victims/potential victims of trafficking stipulate the obligation of each person involved at a certain stage in the treatment of victims or potential victims of trafficking, to ensure a safe and ethical communication by applying the principles of: non-harm, physical security, confidentiality, non-discrimination, clear and understandable communication, tolerance etc.

102 This is in compliance with Article 11 of the Warsaw/EC Convention, as well as Articles 8 and 9 of Directive 2012/29/EU.

103 Article 8 of Directive 2012/29/EU provides: 1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim. 2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services. 3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim. 4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis. 5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

104 GRETA(2020)09, published on 15/12/2020, Albania Third evaluation round, “Access to justice



improvement of the legal framework focusing on victims of trafficking in human beings. GRETA experts recognize and recommend the strengthening of law enforcement by ensuring the practical and effective exercise of the rights guaranteed by the law to victims of trafficking.

At this point it is worth noting that the Albanian legislation does not clearly address the rights of family members of victims of trafficking. The definition of the term “victim” in Directive 2012/29/EU, as emphasized above, also includes the family members of a person whose death has been directly caused by a criminal offence and who have suffered harm as a result of that person’s death. The Criminal Procedure Code provides only the rights of the victim’s heirs, which are explicitly provided in Article 58(4) thereof. This provision stipulates that the heirs of the victim have the rights provided in letters “a” (the right to require the prosecution of the perpetrator), “e” (the right to be informed about the arrest of the accused person and his/her release), “ë” (the right to be informed on the non-initiation of proceedings, the dismissal of the case, the initiation and completion of the adjudication), “f” (the right to make an appeal in court against the prosecutor’s decision not to initiate criminal proceedings or the decision of the prosecutor and the judge of the preliminary hearing to dismiss the charge or the case), “g” (the right to seek compensation for the damage and to be accepted as a civil plaintiff in criminal proceedings) and “j” (to exercise other rights provided in this code) of paragraph 1 of this Article.

The restriction of the rights for the heirs of the victim indicates that, according to the Albanian legislation, they are not included in the definition of the victim as provided in Directive 2012/29/EU, since this code does not provide their right to receive support and assistance in accordance with their needs and the degree of harm suffered as a result of the criminal offence against the victim, or the other rights specifically stipulated in Article 58 of the CPC only for the victim. The Guidance Document for the implementation of this Directive in the Member States suggests that there should be no restrictions on family members when it comes to their access to support services or assistance.<sup>105</sup> The definition of the term “family member” provided in Directive 2012/29/EU includes the spouse; the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis; the relatives in direct line, the siblings and the dependants of the victim. In this regard, by restricting the right of family members to receive support and access to relevant services, the Albanian law is not in line with Directive 2012/29/EU.

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and effective remedies for victims of trafficking in human beings”/www.coe.int/en/web/anti-human-trafficking

<sup>105</sup> DG Justice Guidance Document, related to the transposition and implementation of Directive 2012/29/EU - Ref. Ares(2013)3763804 - 19/12/2013



## 4.5 The right to legal advice and assistance

Directive 2011/36/EU, Article 12(2)

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources. EN L 101/8 Official Journal of the European Union 15.4.2011.

Directive 2012/29/EU, Article 13: Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

**The Albanian legislation** guarantees legal aid and access to free legal counselling, starting from the first contact with a person authorized to treat victims/potential victims of trafficking. Victims of trafficking are entitled to receive information about their rights and all relevant procedures, in a language they understand. Victims of trafficking are also entitled to legal aid and free legal aid under specific conditions.

The right of the individual to free legal aid is explicitly provided in the Constitution of the Republic of Albania. Article 31 of the Constitution stipulates that: *“In a criminal proceeding, everyone has the right: ... c) to have the assistance of a translator, without charge, when he/she does not speak or understand the Albanian language; d) to be defended by himself or with the assistance of a legal defender chosen by him/her; to communicate freely and privately with him/her, as well as to be provided free defence when he does not have sufficient means;...”*. Meanwhile, the CPC of the Republic of Albania, as amended (Article 58(1)(ç)), guarantees the right of the victim of the criminal offence to choose a defence lawyer and, where appropriate, to receive free legal aid, pursuant to the legislation in force.<sup>106</sup>

The law on free legal aid was firstly adopted in Albania in 2008. This law was a novelty at that time and established a necessary standard with direct effects on access to justice. The amendments made to this law established THB victims as a specific group to benefit from this legal aid.<sup>107</sup> Several issues were identified

<sup>106</sup> Also, pursuant to article 58(1)(b) of the CPC, the victim of the criminal offence has the right to benefit medical care, psychological assistance, *counselling* and other services provided by the authorities, organizations or institutions responsible for providing assistance to victims of the criminal offences.

<sup>107</sup> Law no. 10039, dated 22/12/2008, “On legal aid”, Article 13 of the Law “On legal aid”, has been amended by Law no. 143/2013 and later by Law no. 77/2014, by including victims of THB in the group of persons benefiting legal aid, as well as by excluding them from the obligation to pay fees related to court documents and other necessary expenses.

from the implementation of this law in practice, which led to the minimization of expectations. As a result of these shortcomings, in framework of the justice reform, a new Law “On state guaranteed legal aid” was adopted.<sup>108</sup> So, the new Law no. 111/2017 “On state guaranteed legal aid”,<sup>109</sup> is in accordance with Article 13 of Directive 2012/29/EU and Article 12 of Directive 2011/36/EU.

The purpose of the Law “On state guaranteed legal aid” (Article 2) is to: a) create a system for the functioning and delivery of free legal aid in order to ensure equal access for all individuals in the justice system; b) to ensure the proper organization, administration and well-functioning of the state institutions responsible for the administration of legal aid; c) to ensure the provision of professional, qualitative, efficient and effective legal aid services. Law 111/2017 “On legal aid” stipulates that this type of aid is provided in the form of primary aid, secondary aid, and as an exemption from paying court fees and court expenses, pursuant to the law, and an exemption from the obligation to pay in advance the fee for the execution of the enforcement order. The law also stipulates the beneficiaries of legal aid guaranteed by the state, identifying the specific categories which may benefit legal aid regardless of their income and wealth. This category of beneficiaries also includes sexually abused victims, victims of domestic violence and victims of trafficking in human beings, at any stage of the criminal proceedings, as well as child victims and children in conflict with the law, at any stage of the criminal proceedings.<sup>110</sup> With regards to these special categories of beneficiaries of legal aid, the law does not provide any obligation to prove the lack of financial means, which implies that victims of trafficking can benefit such aid by simply being identified as such.

In framework of the legal aid guaranteed by the state, Law 111/2017 provides that persons who have the right to receive secondary legal aid, according to articles 11 or 12 of this law, are entitled to be exempted from: a) paying general and special fees, according to the provisions of the Law “On court fees in the Republic of Albania”; b) paying court expenses (expenses for witnesses, experts, translators and for the inspection of items or on-site inspection), according to the provisions of the procedural legislation; c) the obligation to pay in advance, at the state judicial bailiff service, the fee for the execution of the enforcement

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108 Analysis of the Justice System, drafted by the Special Commission “On the Justice System reform”, established by Decision no. 96/2014, dated 27/11/2014, identified some problems in providing legal aid in Albania, reaching the following conclusions: “1. Confusion exists on the application of “legal aid in the criminal field”, more specifically with regards to the responsibilities of the State Commission for Legal Aid, the Prosecution’s Office and courts in financing this scheme; 2. Individuals in need do not benefit free “expertise” and translations through the coordination and inter-institutional cooperation with structures that have the appropriate capacities or laboratories; 3. Lack of transparency of the State Commission for Legal Aid regarding the financing of legal aid cases; 4. There are gaps in the legislation when it comes to avoiding obstacles that prevent the access to courts (to justice) of persons in economic difficulties, who cannot afford court expenses, especially expenses related to “experts” or “psychologist” (in family matters); 5. Lack of effective action of courts to self-manage funds under the capacity of an “independent institution”.

109 Law no. 111/2017 entered into force on June 1, 2018.

110 See Article 11(b) and (c) of law 111/2017.

order. Specifically, Article 11 of this law provides the victim of trafficking as a special category.

Law no. 98/2017 “On court fees in the Republic of Albania” is also part of the package of laws adopted in framework of the justice reform.<sup>111</sup> Article 9 of this law provides that litigants may be exempted from the obligation to pay court fees or other court expenses when they have filed a request, in accordance with the criteria and procedures defined in the applicable Law “On legal aid”. The Albanian legislator has provided that victims of trafficking shall be part of the special category that benefits free legal aid, including exemption from the obligation to pay court fees. This legal provision guarantees not only the victims access to justice, but also an effective exercise of their rights. Moreover, the new Law “On free legal aid” has provided that one of the tasks of the Free Legal Aid Directorate is the establishment of a system for assessing the quality of providing legal aid; as well as the annual supervision of the standards of providing primary and secondary legal aid services by non-profit organizations and lawyers. These are important elements to ensure the effective implementation in practice of the rights guaranteed to victims.

#### 4.6 The right of access to witness protection programs

**The right of access to witness protection programs** is provided in Article 12(3) of Directive 2011/36 and Articles 19, 20, 22 and 23 of Directive 2012/29, including the right to protection of privacy.

Directive 2011/36/EU provides the obligation of Member States, on the basis of an individual risk assessment, to guarantee access of victims of trafficking to witness protection programs.<sup>112</sup>

#### **ALBANIAN LEGISLATION**

The Albanian legislation regulates, by means of the special Law no. 10173, dated 22/10/2009, “On the protection of witnesses and justice collaborators”, (consolidated version 2017)<sup>113</sup> the special, temporary and extraordinary measures, the manner of and procedures for the protection of witnesses and justice collaborators, as well as the organization, functioning, competences and relationships among the bodies charged with proposing, assessing, approving and implementing the protection program. The protection program includes

111 Even Law no. 98/2017 was foreseen to enter into on June 1, 2018, which corresponds with the entry into force of the Law “On state guaranteed legal aid”.

112 Article 12(3) of the above mentioned Directive.

113 No. 10173, dated 22/10/2009, “On the protection of witnesses and justice collaborators”, amended by Law no. 10461, dated 13/09/2011, Law no. 32/2017, dated 30/03/2017. The amendments of 2017 are part of the package of legal amendments in framework of the justice reform.

special, supporting and extraordinary measures, aimed at protecting the life and health of protected persons, under the conditions provided by this law. The implementation of the protection program for victims of trafficking in human beings is related to the fulfilment of several criteria:

*firstly*, the scope of this law is related to crimes punishable by a minimum sentence of 4 years, a criterion that is met in the case of criminal offences provided by Article 110/a (trafficking in adults) and 128/b (child trafficking);

*secondly*, the victim can benefit from protection programs if he/she has the capacity of a justice witness. This law defines that “justice witness” means a person, who, in the capacity of a witness or harmed person, declares or testifies about facts and circumstances that constitute evidence in criminal proceedings, and who is in a situation of danger, because of these declarations or testimony.<sup>114</sup>

*Thirdly*, the conditions provided in Article 10 of the Law “On the protection of witnesses and justice collaborators” must be met, and one of these conditions is the existence of a situation of danger. This law provides that a “situation of danger” means a current, concrete and serious situation, in which the life and health of a witness or justice collaborator is in danger, as a consequence of his/her testimony in criminal proceedings for criminal offences provided in this law.<sup>115</sup>

This law also guarantees the right of the victim of trafficking to benefit from witness protection programs, but since this assistance is conditioned on the victim’s obligation to testify against the perpetrator/trafficker, it is necessary to carry out an assessment and fully inform the victim on the measures that shall be implemented, as well as on the rights and obligations arising from being placed in a protection program. The Law “On the protection of witnesses and justice collaborators” provides several protection measures,<sup>116</sup> which can only be applied if the justice witness agrees, under his/her free will, to cooperate with the Prosecution’s Office and the Court. A protection program shall be applied only if the witnesses and justice collaborators provide statements or testimony, without any conditions and reservations, i.e. to if they provide grounded data, which constitute crucial evidence for the detection, investigation and adjudication of crimes and their perpetrators. This law also stipulates that a preliminary assessment shall be carried out to determine whether the witness is suitable to

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114 Article 3 of Law 10173, dated 22/10/2009.

115 Ibid., Article 3 of Law 10173, dated 22/10/2009.

116 Article 10 of Law 10173, dated 22/10/2009 “On the protection of witnesses and justice collaborators”, stipulates the following protection measures for justice witnesses: a) change of identity; b) change of residence; c) providing false documents; ç) temporary protection of identity, data and documents; d) giving testimony under another identity and using special means to modify the voice and image, and other lawful means, in compliance with Article 361/b of the Criminal Procedure Code; dh) physical and technical protection, in the place where the person is accommodated, as well as during his/her movements; e) social rehabilitation; ë) financial assistance; f) vocational retraining; g) counselling and specialised legal assistance; gj) any other measure that is deemed and approved as necessary in compliance with this law.

be placed in protection programs. Suitability is related to the psychological, social and physical conditions of the witnesses or collaborators, which must be such as to create certainty that they shall obey the rules of the protection program and will not endanger their own life and health or the life and health of other persons.<sup>117</sup>

Articles 58/a and 58/b of the CPC guarantee the rights of child victims and sexually abused victims or victims of trafficking. These provisions, in line with the standards set by the above-mentioned EU Directives, ensure the treatment of victims with special protection needs, guaranteeing their right to safety, privacy and confidentiality, both before and during criminal proceedings. Article 58/b of the CPC explicitly stipulates that victims of trafficking in human beings, in addition to the rights provided in Article 58 and Article 58/a, shall also have the right to: a) be questioned without delay by a judicial police or a prosecutor of the same gender; b) refuse to answer questions related to their private life, which are clearly not related to the criminal offence; c) request to be heard through audio-visual tools in order to avoid direct contact with the defendant. The questioning of victims of trafficking through audio-visual tools may be carried out in accordance with Article 361(8) of the CPC, which explicitly provides for the right of victims of criminal offences related to trafficking, to request to be questioned as witnesses through audio and audio-visual means.

In order to guarantee the right of victims of trafficking for protection and safety, Article 340 of the CPC has also been amended. This article explicitly stipulated that the victim defined in Article 58/b of the CPC may request holding a trial behind closed doors. Therefore, the victim of trafficking may also request holding the trial *behind closed doors*. This is a measure that also guarantees the privacy and data confidentiality of the victim, preventing the dissemination of information that may violate the personal integrity of victims of trafficking. Through the amendments made by Law no. 35/2017, the definition of “witness with hidden identity” was included in the Criminal Procedure Code. It is important to emphasize that this special witness questioning technique is applied only to a limited number of criminal offences, and excludes criminal offences related to trafficking in human beings (Article 110/a or Article 128/b of the Criminal Code).<sup>118</sup>

In its latest evaluation report, published on 15/12/2020, GRETA has recommended the Albanian authorities to take additional steps to ensure that victims and witnesses of human trafficking, as well as their family members, are provided with effective and appropriate protection against potential retaliation

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<sup>117</sup> Article 10 of Law 10173, dated 22/10/2009.

<sup>118</sup> Paragraph 1 of Article 165/a of CPC stipulates that: 1. When the testimony may pose a significant risk to the life or health of the witness or his/her family members, and the defendant is accused of any of the criminal offences provided for in Articles 230, 230/a, 230/b, 230/c, 230/ç, 231, 232, 232/a, 232/b, 234, 234/a, 234/b, 265/a, 265/b, 265/c, and the witness protection program is not applicable, the court may, upon the request of the prosecutor, decide to use special questioning techniques pursuant to Article 361/b of this Code.

or intimidation, including regular risk assessment and ensuring that specialized NGOs receive adequate funding for this purpose. This provision should be available for the families of Albanian victims who are identified abroad and who may be at risk of retaliation/intimidation by the perpetrators.<sup>119</sup>

#### 4.7 The right to adequate and safe housing

Article 11 of Directive 2011/36/EU sanctions the measures that Member States shall take to ensure assistance and support to victims of trafficking. Specifically, article 11(5) provide:

*Directive 2011/36/EU, Article 11(5)*

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

#### ALBANIAN LEGISLATION

In accordance with European standards, the Albanian legislation has adopted the Law “On social housing”, which defines the conditions for the selection of beneficiaries, based on social conditions, by also including in this category victims of trafficking/potential victims of trafficking. The National Action Plan on the Fight against Trafficking in Human Beings,<sup>120</sup> emphasizes that unconditional protection and assistance shall be provided to all victims of trafficking, not only to those who cooperate with justice, but to any person who has been identified as a victim/potential victim of trafficking. In this sense, the process of identifying and referring victims of trafficking/potential victims of trafficking is of particular importance. This process, as explained above, is accomplished by applying the Standard Operating Procedures (SOPs). This action plan recognizes the need to protect trafficked persons, which implies all actions performed by the staff of central and local government institutions, as well as the staff of non-government institutions, whether members or not of the National Referral Mechanism, for the reception, identification, immediate assistance and assistance for the safe

<sup>119</sup> GRETA(2020)09, published on 15/12/2020, Albania Third evaluation round, “Access to justice and effective remedies for victims of trafficking in human beings”/www.coe.int/en/web/anti-human-trafficking

<sup>120</sup> This National Action Plan has been adopted by DCM no. 770, dated 26/12/2018, for the period 2018 – 2020, while the action plan for the following period has not been adopted yet, also conditioned by the fact that 2021 is an election year in the Republic of Albania. However, it is important to emphasize that the fight against human trafficking has always been addressed with priority by the Albanian governments. Since 2001, which marks the adoption of the first anti-trafficking strategy, and until recently, the focus has been on victims and their rights.

rehabilitation and reintegration of trafficked persons in accordance with the SOPs.

The “reintegration of trafficked persons” is of crucial importance in this process, which in the National Action Plan, is defined as the process of recovery and socio-economic inclusion following a trafficking experience. It includes placement in a secure and sustainable environment, access to a reasonable living standard, physical and mental well-being and opportunities for personal, social and economic development, and access to social and emotional support. A central aspect of successful reintegration is that of empowerment, supporting victims to develop skills towards independence and self-sufficiency, and to be actively involved in their recovery and reintegration.

In this context, an important achievement is the adoption of Law no. 22/2018 “On Social Housing in the Republic of Albania”. This law aims to establish the rules and administrative procedures related to social housing programs, in order to create opportunities for adequate and affordable housing, based on the financial capabilities of families in need of housing and on the assistance provided by the responsible state institutions. This law provides for several types of social housing programs, which benefit victims/potential victims of trafficking. The most important programs are rent subsidy<sup>121</sup> and the inclusion in the specialized housing program. The most important thing to highlight is that the law explicitly provides that social housing programs are combined with other social service programs, mainly with employment, education and health care programs, since the latter are very important elements for the re/integration of the victim of trafficking.<sup>122</sup>

In addition to the Law “On social housing”, an important achievement in framework of the compliance of the Albanian legislation with EU standards,<sup>123</sup> is the adoption of the new Law “On social assistance”, which identifies victims/potential victims of trafficking as beneficiaries of this social assistance. It is important to emphasize that victims of trafficking benefit economic assistance (EA), which is a payment provided in the form of a monthly allowance in ALL, after leaving social care institutions and until their employment, which indicates that support is provided even after the conclusion of criminal proceedings. This legal provision is in line with the standard provided for by Directive 2011/36/EU (Article 11(1)). Furthermore, another important fact is that Article 18 of the “Law on social assistance” provides that beneficiaries of economic assistance,

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121 DCM no. 362, dated 29/05/2019 “On the criteria for granting rent subsidy for categories that enjoy priority in rent subsidy in the free market, through the state budget, and the manner of its calculation”.

122 Joint Instruction of the Minister of Finance and Economy, the Minister of Health and Social Protection and the Minister of Education, Sports and Youth no. 22, dated 05/06/2020 “On the manner of interaction of social housing programs with social services of employment, education and health care”.

123 Law 57/2019, which upon entry into force has repealed Law no. 121/2016 “On social care services”.



including victims of trafficking, are included in the category of economically inactive persons, and are therefore part of the compulsory healthcare insurance scheme.

Another important element for the treatment of victims/potential victims of trafficking, stipulated in the provisions of the Law “On social housing”, is their placement in specialized housing, which are equipped with the service of specialized social workers and are protected by State Police officers. This protection is guaranteed when based on the case management, it is identified the existence of a risk to the life and health of these persons. In this regard, the law in this case provides that these houses shall be equipped with all the necessary infrastructure, to notify the police in case of danger or emergency.

In this regard, it is important to emphasize that the responsible authorities should be very careful in the early identification of victims/potential victims of trafficking, as their referral creates opportunities for immediate access to services guaranteed by the Albanian legislation. Standard Operating Procedures are an important step in providing comprehensive protection for victims/potential victims of trafficking. These procedures highlight the need not only to guarantee access to comprehensive assistance, protection, and services for victims/potential victims of trafficking, but also the importance of treating them according to their specific needs and characteristics. All laws and by-laws adopted in the framework of the fight against human trafficking, emphasize the fact that the protection, support, assistance to victims/potential victims of trafficking should be provided immediately, regardless of their willingness to cooperate with justice in convicting traffickers. The proper identification of persons as victims/potential victims of trafficking would lead to the protection of their fundamental rights and contribute to the prosecution of traffickers. Despite of the above, the safe and sustainable housing of victims/potential victims of trafficking remains a priority, but also a challenge for their reintegration.

The identification of trafficked persons is the first stage of standard operating procedures, which is important to ensure the rights of victims/potential victims of trafficking. The quick and accurate identification of victims affects the provision of protection and necessary assistance for them. One of the basic principles on which the standard procedures are based is the protection of the rights of trafficked persons who will be at the centre of all efforts for their prevention, protection and reintegration, regardless of the victims’ willingness or ability to testify in court. The provision of the opportunity to rehabilitate, to restart a normal life is not merely a human obligation of the state, but also a prevention measure.

Against re-trafficking.<sup>124</sup> Effectiveness in the fight against trafficking in human beings is closely linked to improving the process of identifying victims/potential

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124 For more information, refer to the Standard Action Procedures for the protection of victims and potential victims of trafficking, approved by DCM no. 499, dated 29/08/2018/SOP (general principles)



victims of trafficking, a process that requires the coordination and cooperation of all authorities involved, focusing on the victims and their reintegration in the society. It should not be forgotten that the objectives of identifying trafficked persons are: providing the necessary access to support, protection and immediate safety, regardless of the victims' willingness to cooperate with justice.

The purpose of standard operating procedures is to protect victims and potential victims of trafficking, based on the international and national legal framework. Therefore the definition of "protection for trafficked persons"<sup>125</sup> shall include actions taken by the staff of each government or non-government institution, responsible for reception, identification and immediate assistance and assistance for a safe rehabilitation and re/integration of trafficked persons. According to these standard operating procedures, "basic needs/rights during initial identification and response and their fulfilment" shall include at least basic needs/rights for food, sleep, shelter, medical and psycho-social assistance, communicating in an understandable language, contacting the family, etc. Meanwhile, the "basic needs/rights of the protection of trafficked persons" shall include at least the provision of a free package of services such as: appropriate and safe shelter, psychological and material assistance, access to immediate medical treatment and continuous health care, translation where necessary, counselling and information particularly on legal rights, assistance for appearance and consideration during the prosecution of traffickers, access to education, vocational training and employment. In compliance with EU standards, the adoption of these procedures along with the approximation of the national legal framework (in particular the fulfilment of the obligations arising from the ratification of the Warsaw/EC Convention), aims the reintegration of trafficked persons, which is defined as the process of recovery and socio-economic inclusion after a trafficking experience. Standard Operating Procedures emphasize that this process also includes placement in a secure and sustainable environment, access to a reasonable living standard, physical and mental well-being and opportunities for personal, social, economic development and access to social and emotional support. A central aspect of successful reintegration is that of empowerment, supporting victims to develop skills towards independence and self-sufficiency, and to be actively involved in their recovery and reintegration.

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<sup>125</sup> Ibid., Standard Action Procedures for the protection of victims and potential victims of trafficking, adopted by DCM no. 499, dated 29/08/2018/Definitions.

## 4.8 Access to the labour market, vocational education and training

### **Article 14 of the Charter of Fundamental Rights of the EU** **The right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.

### **Article 15 of the Charter of Fundamental Right of the EU**

#### **Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. ...
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

### **Article 31 of the Charter of Fundamental Rights of the EU** **Fair and just working conditions.**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

## **ALBANIAN LEGISLATION**

Several laws have been adopted In this context, and in addition to what we have addressed so far, other important laws are the Law “On social enterprises”<sup>126</sup> and the Law “On employment promotion”.<sup>127</sup> Both of these laws are focused on disadvantaged groups in the labour market, and one of the categories of these groups are also victims/potential victims of trafficking. The Law “On social enterprises” aims to protect and ensure the social inclusion of vulnerable groups by creating appropriate employment conditions for disadvantaged individuals in the labour market, through employment; providing employment opportunities; providing goods and services as well as appropriate and accessible opportunities for individuals with special needs, as well as by marking an essential step towards gender equality, as these services facilitate women’s participation in the labour market; the economic and social integration of groups in need, promoting the spirit of social responsibility, solidarity and cohesion in the community.<sup>128</sup> In fact, the definition of disadvantaged groups in this law does not specifically refer to victims/potential victims of trafficking, it but provides that:

Disadvantaged groups shall include groups with problems of extreme poverty, social exclusion due to discrimination, long-term unemployment, difficulties due to being prosecuted or being addicted to drugs and alcohol, and displaced persons.

<sup>126</sup> Law no. 65/2016 “On social enterprises”.

<sup>127</sup> Law no. 15/2019 “On employment promotion”.

<sup>128</sup> Articles 2 and 3 of Law no. 65/2016 “On social enterprises”.

According to this law, the concrete categories of disadvantaged groups will be determined by a Decision of the Council of Ministers. Precisely, pursuant to this legal obligation, the Council of Ministers, through Decision no. 56, dated 31/01/2018, has determined the specific categories of disadvantaged groups, identifying women and girls that are victims/potential victims of trafficking, exploitation and domestic violence as persons in unfavourable conditions.

On the other hand, the Law “On employment promotion” aims to enhance the employability of the workforce, through the provision of public employment, self-employment and vocational training services and programs.<sup>129</sup> This law defines as “special groups”, disadvantaged jobseekers in the labour market, including victims/potential victims of trafficking.<sup>130</sup> Pursuant to this law, public employment policies include the employment services and the active and passive labour market programs, which aim to promote the employment of unemployed jobseekers, as well as the integration and social inclusion of special groups. Through employment programs and policies, the Albanian state aims to achieve a “suitable and paid employment” for each person, in accordance with his/her age, gender, health conditions, education, vocational training, residence, duration of previous employment, experience, the impact of the job in question on the personal and family life and labour market situation. In order to fulfil the purpose and objectives intended by this law, regional/local employment structures have stipulated the provision of employment services, which are services that aim to inform, advise, guide and mediate, as fast as possible, the employment of jobseekers and registered unemployed jobseekers, through targeted assistance and to increase competitiveness in the labour market.

Pursuant to this law, the Council of Ministers has approved employment promotion programs.<sup>131</sup> According to this by-law, the employment program is a one-year employment program, in which the profile and needs of the jobseeker are adapted to the vacancy announced by the employer; includes the element of salary, which is determined in the employment contract, in accordance with the respective position and level of salaries in the market. Unemployed jobseekers, entitled to benefit from employment programs, are from the categories explicitly defined in this DCM, which also include victims of trafficking. The employment program subsidizes the following costs: (i) compulsory social and healthcare contributions (part of the employer’s contribution), calculated based on the minimum wage at national level, and provided for the entire duration of employment, reimbursed on a monthly basis; (ii) 6 (six) months of salary funded at the amount of 100% (one hundred) of the minimum wage at national level, determined according to the legislation in force, for participants who are victims of trafficking, domestic violence or gender-based violence, Roma and Egyptians, compensated in the fourth, fifth, sixth, seventh, eleventh and twelfth months of the contract. In addition, this by-law details on-the-job training programs as

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129 Article 2 of Law no. 15/2019 “On employment promotion”.

130 Article 3(4) of the Law “On employment promotion”/Definitions.

131 Decision no. 17, dated 15/01/2020 “On the procedures, criteria and rules for the implementation of employment promotion programs through employment, on-the-job training and internships”

well as the internships program, while also detailing the elements they contain. It is important to note that, in addition to subsidizing the costs covered by these programs, pursuant to the definition in this DCM, for certain categories of beneficiaries, including victims/potential victims of trafficking, other expenses are also covered, such as reimbursement of transport costs; allowances for single parents with a child under 6 (six) years old, at the amount of 3,000 (three thousand) ALL per month for dependent children, in order to enable them to attend kindergartens and nurseries; as well as up to the amount of 200,000 (two hundred thousand) ALL for employers, in order to ensure a reasonable adjustment of the workplace for persons with disabilities.<sup>132</sup>

The Albanian legislation guarantees support for victims/potential victims of trafficking, before, during and for a certain period of time after the conclusion of the criminal prosecution or regardless of their cooperation with justice. In this regard, this legislative approach aims to be comprehensive and ensure the protection and reintegration of victims of trafficking, in line with the standards provided by Directives 2011/36/EU and 2012/29/EU.

#### 4.9 Reflection period

Article 11(6) of Directive 2011/36/EU stipulates that:

6. The information referred to in paragraph 5 shall cover, where relevant, **information on a reflection and recovery period**, pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and in compliance with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

Victims have the right to a recovery and reflection period. The reflection period may be defined as a period of time, the length of which may vary, pursuant to the national legislation, which aims to allow a trafficked person to escape the influence of traffickers and make a decision about his/her future in full compliance with human rights provisions.<sup>133</sup> The reflection period is a right of the trafficked person,<sup>134</sup> therefore he/she shall benefit from this period of reflection, regardless of his/her willingness to cooperate as a witness. Victims without proper documentation/immigrants are entitled to a temporary residence permit

<sup>132</sup> For more information, refer to Decision no. 17, dated 15/01/2020 “On the procedures, criteria and rules for the implementation of employment promotion programs through employment, on-the-job training and internships”.

<sup>133</sup> For more information, refer to the Regional Guideline for the identification of VT/PVT.

<sup>134</sup> This right is expressly provided in Article 13 of the Warsaw/EC Convention, which is also ratified by Albania and is part of the domestic legislation pursuant to Article 116 of the Constitution.

for the duration of criminal proceedings and other proceedings. An important step at this point is the granting of a temporary residence permit to the foreign victim. This means that during this period of reflection no return/deportation order can be issued against the trafficked person. If the return would endanger their lives and safety, trafficked persons shall have the right to apply for asylum or residence permit for humanitarian reasons.

**The following shall be essential for the recovery and reflection period:**

- The time period that will allow the trafficked person to escape the influence of the trafficker. International standards suggest that this period shall be at least 30 days.
- Preventing the trafficked person from leaving the country before his/her status has been established.
- Providing adequate assistance and protection, addressing the immediate needs of the victim.
- Providing assistance and protection regardless of his/her cooperation with the authorities.

***ALBANIAN LEGISLATION***

The Albanian legislation **does not explicitly provide for any definition of the term “reflection period”**. However, the Law “On foreigners”,<sup>135</sup> referring precisely to the recovery and reflection period, provides that the local authority responsible for border and migration shall issue a type “A” temporary residence period, for time a period of 3 months up to 1 year, if there are reasonable reasons to believe that the foreigner is a victim or potential victim of trafficking, identified as such by the structures responsible for the identification and referral of victims of trafficking. This residence permit is issued to the foreigner identified as a victim/potential victim of trafficking, regardless of the person’s willingness to cooperate with justice.

Specifically, Article 54 of the Law no. 108/2013 “On foreigners” (as amended) provides:

Issuing of residence permit for victims of trafficking in human beings

1. The local authority responsible for border and migration shall issue a type “A” temporary residence permit for a 3-month validity period to any foreigner, regardless of his/her will to collaborate with justice, if there are reasonable grounds to believe that the foreigner is a victim or potential victim of trafficking, identified as such by the structures responsible for the identification and referral of victims of trafficking. Such residence permit is issued to the victim or potential victim of trafficking in order to recover and to be treated pursuant to his/her physical and mental conditions, in order to take a well-informed decision on whether or not to cooperate with justice authorities.

<sup>135</sup> Article 54 of the Law no. 108/2013, “On foreigners” (as amended), section IV, “Residence permits in special cases”, which also provides as a separate category foreigners identified as victims/potential victims of trafficking.

2. During the recovery and reflection period, the victim or potential victim of trafficking shall enjoy all the rights and services that victims of trafficking are entitled to, in compliance with the applicable Albanian legislation.
3. The residence permit issued for the recovery and reflection period may be revoked if it is proved that the victim or potential victim of trafficking has acquired or claimed this status unfairly, has actively restored relationship, whether voluntarily and/or on own initiative, with persons suspected of trafficking in human beings or if it is considered that his/her stay in the territory constitutes a threat to national security. Revocation of the residence permit for the period of recovery and reflection shall be communicated in writing to the victim or potential victim of trafficking, in a language he/she understands, by informing him/her of the reasons for the revocation, except when the residence permit is terminated due to national security reasons.
4. The local authority responsible for border and migration shall issue a type “B” residence permit to the foreign victim of trafficking in the Republic of Albania, identified as such by the structures responsible for the identification and referral of victims of trafficking, when either or both of the following situations are identified: a) the competent authority deems that the person’s stay is necessary because of the his/her social and personal situation; b) the competent authority deems that his/her stay is necessary for the purpose of collaborating with justice authorities during the criminal investigation or proceedings.
5. The issuance of the residence permit shall not be conditioned on the existence of sufficient financial means of the victim to cover expenses during the period of stay or by the lack of identification documents of the victim or potential victim of trafficking.

This legal provision is in line with the EC Convention on Action against Trafficking (Articles 12-14), the 2004 EU Directive on temporary residence permits for victims of trafficking (Art. 6-9), as well as with Directive 2011/36/EU on trafficking (Article 11 referred above). The minimum standards in these acts stipulate that Member States shall grant trafficked persons a reflection period of at least 30 days, in order to recover and to make an informed decision on whether or not to cooperate with the justice authorities, while also emphasizing the obligation to provide them with a temporary residence permit for the duration of the criminal proceedings or other legal proceedings, when they decide to cooperate. It is important to emphasize the obligation that, during the reflection period, victims shall be provided with access to services and shall be guaranteed all the rights that victims of trafficking are entitled to benefit under the Albanian legislation. The Albanian legislation guarantees that if the return would endanger their lives and safety, trafficked persons shall have the right to apply for asylum<sup>136</sup> or residence permit for humanitarian reasons.<sup>137</sup> The right of foreign victims of trafficking to be granted a residence permit is formulated in Decision no. 513, dated 13/06/2013 “On determining the criteria, procedures and documentation for the entry, stay

<sup>136</sup> Law 10/2021 “On asylum in the Republic of Albania”.

<sup>137</sup> Article 53(1)(b) of Law 108/2013.

and treatment of foreigners in the Republic of Albania”.<sup>138</sup>Based on the studies and analysis of local practices, it is concluded that there are no experiences in the implementation of this provision, since so far no foreign victim of trafficking has been identified in Albania.<sup>139</sup>

#### 4.10 The right to psychological assistance and access to immediate medical treatment

Directive 2011/36/EU and Directive 2012/29/EU, in framework of the victim’s right to access support services, sanction the right to receive psychological assistance and immediate necessary medical treatment.

##### **ALBANIAN LEGISLATION**

In accordance with EU standards, the Albanian legislation has guaranteed in Article 58(1)(b) of the CPC, several rights for the victim, including the right to receive medical care, psychological assistance, counselling and other services provided by authorities, organizations or institutions responsible for assisting victims of criminal offence. These rights must be effective. Public bodies shall have the obligation to guarantee not only the treatment of victims with dignity and their protection, but also *the effective exercise of these rights*.<sup>140</sup>

The Standard Operating Procedures have detailed the institutions involved in supporting and assisting VT/PVT. During the initial and formal identification procedure, these structures shall focus on protecting of the rights of trafficked persons. These procedures also include health workers (specifically, primary health workers, doctors and nurses, forensics professionals, psychiatrists, etc.). The guide for identifying and working with victims of trafficking,<sup>141</sup> emphasizes that “*the primary obligations of initial identification and referral shall be fulfilled by the state agency which has the most capabilities to assess the situation of the victim and to intervene for providing protection: at the border, the primary obligation shall be fulfilled by the Border and Migration Police, while inside the territory it shall be fulfilled by the shelters for victims of trafficking, social care centres for people in need, organizations with programs to assist people in need, social services regional offices, state police structures, labour inspectorate, employment offices, regional education directorates/offices, regional health directorates, child protection units. (...) In the context of initial identification by health professionals, the*

<sup>138</sup> dcm no. 513, Dated 13/06/2013 “on determining the criteria, procedures and documentation for the entry, stay and treatment of foreigners in the republic of albania” (consolidated version with amendments until 2020, dcm no. 656, Dated 27/08/2020.)

<sup>139</sup> Promoting the rights of trafficked persons in Albania. Legal analysis of the current situation regarding the rights of victims of trafficking in human beings. Publication of the Centre for Legal Civic Initiatives. Tirana, 2015. p. 75.

<sup>140</sup> Article 9/a of CPC.

<sup>141</sup> This Guide was prepared by Focus Centre “On helping Children”, in framework of the project “Providing specialized services for children in street situations, children victims of sexual abuse, exploitation and trafficking”, part of the grant scheme of the project “Inclusion of Civil Society for the Protection of the Rights of Children in Albania” funded by the European Union and supported by Save the Children in partnership with Terre des Hommes in Albania.



*doctor-victim relationship often translates into a relationship of mutual trust. Therefore, a careful examination would create opportunities to assist the victim with regards to medical and mental health aspects. Thus, doctors may have a great importance in creating the best and healthiest conditions for the person, but also a greater responsibility to find a balance between maintaining the confidentiality and trust of their victim, while also taking into account legal and ethical concerns. Mental health, psychological and emotional well-being, which has an impact in overcoming the trauma and establishing future relationships, are very important elements for child victims of trafficking”.*

The Standard Operating Procedures sanction the responsibility of state institutions responsible for guaranteeing support services for VT/PVT. State institutions shall be responsible for the implementation of Standard Operating Procedures, even though their successful implementation is a result of the coordinated efforts of the government, organization providing services for VT/PVT, civil society and international partners. According to the general principles of the SOPs, state institutions shall commit to mobilize the necessary human and financial resources for their implementation, mainly based on their own resources. VT/PVT shall be guaranteed the basic needs from the first moment of contact, which marks the resumption of the initial identification procedure, including at least: food, housing, medical and psycho-social assistance, communicating in an understandable language, contacting the family if this is in the interest of the person suspected of being trafficked and on voluntary basis. After the initial identification, in framework of the protection of trafficked persons, SOPs determine the obligation of responsible institutions to guarantee the provision of a free package of services such as: appropriate and safe shelter, psychological and material assistance, access to immediate medical treatment and continuous health care, translation where necessary, counselling and information particularly on legal rights, assistance for appearance and consideration during the prosecution of traffickers, access to education, vocational training and employment.

To conclude, we can state that the content of the Albanian legislation guarantees the access of VT/PVT to medical and psychological treatment, while taking into account their specific characteristics.

#### **4.11 The right to translation**

Article 11(5) of Directive 2011/36/EU stipulates that:

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.



Article 7 of Directive 2012/29/EU stipulates that:

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.
2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.
3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons, or a summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.
4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.
5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.
6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.
7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.
8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

### **ALBANIAN LEGISLATION**

In accordance with the standards of Directive 2011/36/EU and Directive 2012/29/EU, the criminal procedure code (Article 58(1)(c) of the CPC) provides for the right of the victim of a criminal offence to communicate in his/her own language and be assisted by an interpreter, sign language interpreter or communication facilitator

for persons with speech and hearing disabilities. In accordance with the provisions of Article 98 of the CPC, persons who do not speak Albanian are questioned in their mother tongue or in another language they understands, chosen by them. This legal provision also applies to victims who do not speak Albanian, thus compelling the proceeding body to ask the question in the mother tongue or in another language he/she understands. Translators shall be licensed and approved by the Ministry of Justice, while translation costs are borne by the state.

**To conclude, we can state that the content of the Albanian legislation guarantees the access of VT/PVT to translation.**

#### 4.12 The right to specific treatment to prevent secondary victimization

Chapter 4 of Directive 2012/29/EU, stipulates minimum standards for the protection of victims and the recognition of victims with specific protection needs. This part of Directive 2012/29 stipulates some rights that Member States should ensure for victims by assessing the specific protection needs of victims of the criminal offence. The common goal of ensuring the provision of these rights is to *prevent secondary and repeat victimization*.

On the other hand, Article 12(4) of Directive 2011/36/EU stipulates that:

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice, or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim's private life

#### ALBANIAN LEGISLATION

In accordance with the provisions of the above-mentioned Directives, the Criminal Procedure Code, in addition to the rights guaranteed in Article 58 for each victim of the criminal offence, has also stipulated specific rights for certain categories with special protection needs. Specifically, the CPC provides the rights of child victims, sexually abused victims, and victims of THB.

### Article 58/a of the CPC explicitly provides:

Article 58/a - The rights of the child victim (Added by means of Law no. 35/2017, dated 30/03/2017)

1. In addition to the rights provided for in Article 58 and in other provisions of this Code, as well as in the special law on the child, the child victim shall be entitled to:
  - a) be accompanied by a trusted person;
  - b) personal data confidentiality;
  - c) request, through the representative, that the hearing takes place without the presence of the public.
2. The proceeding body shall treat the child victim of the criminal offence taking into account his/her age, personality and other circumstances, in order to avoid the harmful effects on his/her future education and development.
3. If a possibility exists that the victim is a minor and the victim's age is unknown, then he/she shall be presumed to be a minor.
4. The child victim shall be questioned without delay by persons specialized for this purpose. When possible and appropriate, the conversation shall be recorded with audio-visual recording tools, pursuant to the provisions of this Code. This recording may be used as evidence in the criminal proceedings and shall be assessed along with other evidence, pursuant to the criteria provided in Article 361/a, paragraph 4 of this Code. When the child victim is under 14 years of age, the conversation shall take place in adjusted premises for the child.

On the other hand, Article 58/b of the CPC also explicitly provides that:

Article 58/b - The rights of sexually abused victims and victims of trafficking in human beings (Added by means of Law no. 35/2017, dated 30/03/2017)

Apart from the rights provided in Article 58 and 58/a of this Code, sexually abused victims and victims of trafficking in human beings shall also be entitled to:

- a) be questioned without delay by a judicial police officer or a prosecutor of the same gender;
- b) refuse to answer questions regarding their private life, which are clearly not related to the criminal offence;
- c) request to be heard through audio-visual tools pursuant to the provisions of this Code.

Both these provisions are in line with EU standards and they provide specific rights for these special categories based on the characteristics of the criminal offence, the nature and type of the criminal offence, the circumstances of the committed criminal offence, as well as the personal characteristics of the victim.

In the Albanian legislation, the definition of the term “vulnerable person” is provided in the Law “On foreigners”.<sup>142</sup> According to this law, “vulnerable person” shall mean “*foreign children, unaccompanied children*”, *persons with disabilities, the elderly, pregnant women, single parents with minor children, as well as persons who have been subjected to torture, rape or other forms of severe psychological, physical and sexual violence.*

The individual assessment of the victim in order to identify his/her specific protection needs is an essential part of the SOPs, and as we have pointed out above, the focus is precisely

<sup>142</sup> Law 108/2013, updated, Article 3(25)/Definitions.

on the comprehensive protection of VT/PVT. Due to the serious violation of their fundamental rights, VT/PVT are properly and clearly included within the concept of vulnerable persons, and as such, they are subject to a special treatment in terms of procedural rights.

Specifically, the victim of trafficking shall be entitled to be questioned without delay by a judicial police officer or a prosecutor of the same gender. This right must be exercised without prejudice to the right of defence of the defendant. This means that the body in charge of the questioning must demonstrate maximum care so that the whole procedure is conducted in accordance with the criminal procedure code, in order to avoid procedural violations that would result in the procedure being rejected/sent back or that would result in the case being reviewed due to procedural violations. For the purposes of this study, it is also of interest to refer to the case law of the European Court of Justice (ECJ), which, while reviewing the case *Gambino and Hysa* has also taken under review Directive 2012/29/EU.<sup>143</sup> With regards to this case, the ECJ has emphasized that the rights guaranteed by Directive 2012/29/EU shall be applied and interpreted in such a way that respects fundamental rights, including the right to a fair trial, pursuant to Article 6 of the ECtHR. The ECJ in this decision has emphasized the fact that the rights guaranteed to the victim, including vulnerable victims (including child victims as well as victims of THB), shall not prejudice or violate the right of defence of the defendant, as well as the right to a fair trial. ***None of the provisions of the Directive provides the right of the victim to be questioned only once, but on the other hand it guarantees the protection of the victim and his/her family from secondary and repeat victimization, intimidation and revenge.***

This decision highlights the importance of establishing a balance between the rights of the victim and the rights of the defendant, by focussing precisely on the case of particularly vulnerable victims, such as victims of trafficking. In this context, it is important to note that the criminal procedural law has provided some rules for questioning witnesses, whose application is essential when questioning a victim of trafficking in the capacity of a witness. Specifically:

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143 ECJ Decision, dated 29 July 2019, C-38/18 - accessed at: [www.curia.europa.eu](http://www.curia.europa.eu) Referring to the case law of the ECtHR, in this case, the ECJ has noted that the principles of a fair trial require that, in certain cases, the interests of the defendant's defence are balanced against the interests of the victim called upon to testify. In this context, both the ECtHR and the ECJ emphasize that the courts/judges that must decide on the guilt or innocence of a defendant, shall, in principle, be able to hear each witness in person in order to assess the trustworthiness of their testimony in relation to the other evidence obtained during the process. The assessment of the trustworthiness and value of a testimony is a complex task/activity, which usually cannot be achieved by merely reading the records or minutes containing the statements provided by the victim before trial.

*Article 316 of the CPC, letter “b”/obtaining evidence – b)* if there are reasonable grounds to believe that, when providing the testimony, the person may be subjected to the use of force, threats, promises of payments or other benefits, with the purpose of not testifying or providing a false testimony;

*Article 340 of the CPC:* 1. The court shall decide to hold the trial or some of its proceedings behind closed doors: ç) when such thing is deemed necessary to question child witnesses; d) when the victim defined in Article 58/b, requests the trial to be held in closed doors. 2. The trial shall always be held behind closed doors in cases of: a) adjudication of children; b) adjudication of adult defendants who are charged for criminal offences committed against child victims, regardless of the age of the victim during the adjudication. (...)

*Article 361(8) of the CPC – 8.* The victims of sexual criminal offences, trafficking, or other criminal offences related to domestic violence, upon their request, may be questioned as witnesses through audio and audio-visual tools.

In cases of THB, the judicial practice of Albania up to date has shown that the testimony of a victim of trafficking is one of the most important evidence (and unfortunately, it is often the only direct evidence). The amendments made to the CPC have provided for certain rules for obtaining a testimony, including the above-mentioned Article 361. The rule provided in paragraph 8 of this provision aims to avoid direct contact between the victim of trafficking and the defendant. In practice, the testimony of a victim of trafficking is usually obtained at the pre-trial stage, by means of the practice of obtaining evidence. However, the victim may be re-questioned even during the trial on merits, in cases when the defendant, based on his/her right of defence, has claimed that the testimony should be retaken, for various procedural reasons. Even though the re-questioning does not violate the EU standards and the case law of the ECJ/ECtHR, it creates space for the re-victimization of the victim of trafficking, who must once again experience events and situations that may cause emotional and psychological harm. In these circumstances, the proceeding body must show due diligence to take protective measures, both for the victim and his/her family, pursuant to the Law “On the protection of witnesses and justice collaborators”.

The procedural guarantees provided in Article 58/b of the CPC are in accordance with Article 12(4) of Directive 2011/36/EU and Articles 18, 19, 20 and 23 of Directive 2012/29/EU. When questioning the victim, the court shall not allow questions that violate his/her integrity, cast doubt on his/her private life or other questions that are not related to the criminal fact/criminal offence. In this context, the development of the investigation, the manner of obtaining evidence, the questioning of the victim by a person of the same gender, while respecting his/her human dignity and guaranteeing the right to be heard, are important elements.

In this regard, it is important to highlight the GRETA recommendations for Albania, after the third evaluation round.<sup>144</sup> With regards to the investigation and

<sup>144</sup> GRETA (2020)09, published on 15/12/2020/Appendix 1, Conclusions and recommendations.

prosecution of criminal offences of trafficking in persons, these recommendations emphasize that the Albanian authorities should increase efforts to ensure that THB cases are investigated proactively, regardless of whether the victim has filed a complaint, using special investigative techniques in collecting evidence. Investigations shall not rely exclusively on the testimony of the victim of trafficking. In its recommendations for Albania, GRETA also emphasizes strengthening the conduct of financial investigations in identified THB cases. In fact, in practice there have been only a few cases when, in parallel with the criminal investigation, the prosecution has also initiated the financial investigation, something that was also noted during the judicial system reform.

GRETA has also emphasized the specialization of judges and prosecutors dealing with cases of THB, since after the amendments made to the CPC by means of Law 35/2017, the investigation and adjudication of THB related offences has passed under the jurisdiction of the prosecution's offices and the court of general jurisdiction (Article 75/a of CPC). In fact, this legal amendment has brought changes to the treatment of cases of trafficking in human beings, qualifying the criminal fact as exploitation of prostitution or maltreatment of minors, i.e. in another criminal offence. GRETA points out that this has consequences not only in the re-qualification of THB in criminal offences with lighter penalties, but also directly affects the treatment of victims of trafficking, depriving them of access to protection and support. In this regard, the Albanian authorities are recommended to guarantee a fair, effective, proportionate punishment for traffickers/persons found guilty of trafficking in human beings, as well as to ensure that the length of the criminal proceedings is in line with the standards of the ECtHR case law.

#### **4.13 The right to non-prosecution/non-application of penalties**

As previously emphasized, Article 8 of Directive 2011/36/EU obliges Member States to take the necessary measures to ensure that the competent national authorities do not prosecute and/or impose penalties on victims of the THB. This provision is related to the verification of two important moments: *firstly*, it results that the victim is involved in a criminal activity; *secondly*, the victim was compelled to commit a certain criminal act, as a direct consequence of the fact that he/she was trafficked. This fact directly affects the will of the victim, as trafficking is now recognized as/equivalent to slavery. A similar provision is stipulated in Article 11 of Directive 2012/29/EU, which provides:

### Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.
2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.
3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.
4. 4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.
5. 5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out of-court settlement, in so far as national law makes such provision.

### ALBANIAN LEGISLATION

In compliance with the GRETA recommendations, Article 52/a of the Criminal Code provides the exemption from or reduction of the sentence for victims. But, as pointed out above, this provision does not exclude the prosecution of a victim of trafficking, regardless of whether it is proven that the victim committed the criminal offence as a result of the fact that he/she was trafficked. The judicial practice has shown that the implementation of this norm has not been effective, due to several reasons, the most important being:

- i) non-identification of VT/PVT;
- ii) incorrect qualification or re-qualification of the criminal fact in a lighter criminal offence;
- iii) inaccurate identification of cases of internal trafficking of persons, a fact that has resulted in the conviction of many victims for exercising prostitution, without continuing the investigation to determine whether the person was a VT/PVT.

**Based on the analysis of the content of Article 52/a of the Criminal Code, it is concluded that this article does not comply with the minimum standards guaranteed by the above-mentioned EU Directives, as long as a victim of trafficking can be prosecuted for criminal offences committed during the time and as a result of the fact that he/she was a trafficked person.** In addition, this provision is not in compliance with the case law of the ECtHR in this regard. The ECtHR has recently expressed an opinion (in case V.C.L.



and *A.N. v. the United Kingdom*)<sup>145</sup> regarding the “victim’s non-punishment” provision, sanctioned in the Council of Europe Convention (CE Convention) on Action against Trafficking in Human Beings. This provision is addressed in framework of the positive obligations of protection deriving from Article 4 of the ECtHR. As known, starting from the case *Rantsev v. Cyprus* (7 January 2010), the ECtHR has clearly included the prohibition of THB in the scope of Article 4 of the ECtHR, which explicitly prohibits slavery, servitude and forced labour. This interpretation led to the improvement and strengthening of the positive obligations already deriving from all international and European instruments to combat THB, by imposing on Member States the obligations to prosecute, prevent and punish such offences, and on the other hand to identify, protect and support victims of trafficking. ECtHR<sup>146</sup> analysed whether, in the case of prosecution of a VT/PVT, it is possible to raise claims regarding the application of Article 4 of the Convention. In principle, the ECtHR has asserted that the general prohibition to prosecute victims of trafficking cannot be interpreted as obligatory in all circumstances, even when the person being prosecuted is a child victim of trafficking. However, in certain circumstances, the prosecution of VT/PVT may violate the States obligation to take concrete actions to protect them, in cases where they are aware or should have been aware of the circumstances that create the suspicion that an individual was trafficked. In this case, the ECtHR has emphasized the importance of early identification of a VT/PVT, in order to comply with the freedoms guaranteed by Article 4 of the ECtHR.

This case of the ECtHR is important for the Albanian judicial practice as it emphasizes the importance of the whole process of initial and formal identification of VT/PVT. This procedure (incorporated in the SOPs) is particularly important for the investigation and prosecution phase, where the prosecutor must show attention and responsibility to proactively investigate any referral by the responsible authorities of the VT/PVT identification cases.

#### **4.14 Assistance, support and protection measures for child victims of trafficking in human beings**

Directive 2011/36/EU emphasizes special care for children, after their identification as VT/PVT. The state shall guarantee support, assistance and take protective measures for child victims of trafficking, by implementing the norms of this Directive in accordance with the best interest of the child. In this case, the identification process is based on the following principle: when there are doubts or it is not possible to determine the age of a person suspected as a minor, this person shall be presumed as a minor.

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145 ECtHR, dated 16 February 2021, case V.C.L. and A.N. v. the United Kingdom, applications 77587/12 and 74603/12 - <https://hudoc.ECtHR.coe.int/>

146 ECtHR, dated 16 February 2021, case V.C.L. and A.N. v. the United Kingdom, applications 77587/12 and 74603/12 - <https://hudoc.ECtHR.coe.int/>



Article 13 – General provisions on assistance, support, and protection measures for child victims of trafficking in human beings.

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the best interest of the child shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

### **ALBANIAN LEGISLATION**

In accordance with this Directive, the Albanian legislation has undergone significant changes in order to guarantee the rights of children, both when they are in conflict with the law as well as when they are victims or witnesses in criminal proceedings. In framework of the justice reform, the Code of Criminal Justice for Children was adopted (CCJC).<sup>147</sup> Criminal justice for children is defined as proceedings related to criminal offences, including investigation, criminal prosecution, court proceedings, execution of sentences, any other measures involving a child in conflict with the law, child victim or child witness of a criminal offence (Article 3 of CCJC). The purposes of the CCJC are listed in Article 2: protect the rights of the child witness and/or victim of a criminal offence; prevent re-victimization and secondary victimization of the child who has been a victim of a criminal offence in the past; protect public order principles while administering criminal justice for children cases; enhance the professionalism and accountability of competent bodies; ensure re-socialization and rehabilitation of the child, etc.

In accordance with the Constitution and international standards, the CCJC states that a child is any person under 18 years of age (child in conflict with the law; child victim of a criminal offence; child witness during criminal proceedings). For the first time in the Albanian legislation, CCJC provides the definition of child in conflict with the law, including in this category young adults from 18 to 21 years of age, provided that he/she committed the criminal offence when he was a child (Article 3). The CCJC has sanctioned the basic principle that should be applied by every proceeding/competent body in cases when children are involved in criminal proceedings, such as assessing the best interest of the child. In compliance with the EU legislation, Article 10 of the CCJC sanctions the principle of the best interest of the child (BIC):

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<sup>147</sup> CCJC was adopted by Law no. 37/2017 and entered into force on 01/01/2018.

In implementing this principle, the following shall be considered:

- a.** needs of the child for physical and psychological development, education and health, security, and sustainability as well as the upbringing/belonging in a family;
- b.** views of the child depending on the age and maturity of the child;
- c.** background of the child considering special situations of abuse, neglect, exploitation, or other forms of violence against the child and the potential risk of occurrence of similar situations in the future;
- ç.** capacity of the parents or persons in charge of child upbringing to respond to the needs of the child;
- d.** continuity of personal relations between the child and persons, with whom the child has kinship, social and/or spiritual relations.

The amendments made to the CPC are in line with the BIC and the standards established by the EU legislation. By means of these amendments, special rights are provided for the child victim, by specifically taking into account the special needs of children. As stated above, these special rights for the child victim are provided in Article 58/a, paragraph 3 of the CPC, which provides that: “If a possibility exists that the victim is a minor and the victim’s age is unknown, then he/she shall be presumed to be a minor.” This rule is also provided in Article 7 of the CCJC, which emphasizes the fact that this presumption applies to both the child in conflict with the law and the child victim or witness.

#### 4.15 Assistance and support to child victims

Article 14 of Directive 2011/36/EU specifically provides for the obligations of Member States to treat the child victim in accordance with the principle of BIC. These rights complement the rights provided for victims of THB in general:

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each child victim, taking due account of the child’s views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.
2. Member States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child’s best interest and/or from representing the child.

3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

4. This Article shall apply without prejudice to Article 11.

### **ALBANIAN LEGISLATION**

In accordance with this provision of Directive 2011/36/EU, the CPC also provides the right of the child victim to be questioned without delay by persons specialized for this purpose. When possible and appropriate, the conversation shall be recorded with audiovisual tools, pursuant to the provisions of the CPC. This recording may be used as evidence in the criminal proceedings and shall be assessed along with other evidence, pursuant to the criteria provided in Article 361/a, paragraph 4 of the CPC. When the child victim is under 14 years of age, the conversation shall take place in adjusted premises for the child (Article 58/a, paragraph 4 of the CPC).

At every stage of the identification, investigation or adjudication process, the competent authorities shall listen and prioritize the victim and his/her will to act, respond or refer his/her case. The general principles of the SOPs emphasize that in the case of a child victim, the protection of the rights of children must be specifically taken into account, in accordance with the UN Convention on the Rights of the Child and Law no. 18/2017 “On the rights and protection of the child”, based on the BIC. The SOP defines BIC as a threefold concept, i.e. a fundamental right, a fundamental principle of law interpretation, and a procedural rule in line with the principles of child-friendly justice. The BIC is the fundamental right of the child. Whenever a decision shall be made regarding a child, an identified or unidentified group of children or children in general, it shall be necessary to assess the interests of the child and these interests must prevail the interests of other parties. As a fundamental interpretative legal principle, it means that, if a legal provision is open to more than one interpretation, the interpretation that best serves the best interests of the child should be chosen. As a procedural rule, it means that whenever a decision is to be made that will affect a child or group of children, the decision-making process should include an evaluation of all the impacts (positive and negative) of the decision on the child and/or group of children.

The protection of victims of trafficking in general, and in particular, the protection and support of child victims are essential in this procedure. The SOPs also define the meaning of the term “child in need of protection”, referring to Law 18/2017<sup>148</sup>: “*is the person under 18 years of age, irrespective of having the capacity to*

<sup>148</sup> Law 18/2017, “On the rights and protection of the child” and SOPs.

*act, according to the legislation in force, who may be a victim of abuse, neglect, exploitation, discrimination, violence or any criminal activity, and also the individual under the age of criminal responsibility, who is alleged to have committed or accused of the commission of a criminal offence, and the children in conflict with the law”.*

In accordance with the minimum standards provided by the above-mentioned Directives, the Albanian legislation has adopted the legal framework and has taken measures for the identification of child VT/PVT. The responsible authorities and all relevant institutions should take appropriate measures and contribute to the protection of child victims, from their initial identification until their full rehabilitation and reintegration. In this regard, it is important to take emergency protection measures which, in the act defining the SOPs, is defined as “a provisional protection measure taken by the director of the structure responsible for social services, for removing the child and placing him/her in alternative care when assessed that the child is in a situation of high and imminent risk because of abuse, exploitation, neglect or any form of violence and the child protection worker and state police or prosecution structures have allegations or possess facts that the family or environment where the child stays is not safe for the child”.

Law 18/2017 and CCJC, as well as the other legal acts adopted based on them and for purposes of their implementation, are of primary importance for the protection of children and form a complete legal framework. It is important to emphasize the continuous need for training and specialization of persons or staff dealing with the treatment of children, especially of child VT/PVT. Law 18/2017 emphasizes the obligation of every public institution or body that treats children, to be guided by the principle of BIC. For purposes of the implementation of BIC, Article 6 of Law 18/2017 provides the meaning of BIC:

The best interest of the child shall imply the right of the child to have a sound physical, mental, moral, spiritual, and social development and to enjoy an appropriate family and social life suitable for the child. In implementing this principle, the following shall be considered:

- a) needs of the child for physical and psychological development, education and health, security, and sustainability as well as the upbringing/belonging in a family;
- b) views of the child depending on age and maturity of the child;
- c) background of the child considering special situations of abuse, neglect, exploitation, or other forms of violence against the child and the potential risk of occurrence of similar situations in the future;
- ç) ability of the parents or persons in charge of child upbringing to respond to the needs of the child;
- d) continuity of personal relations between the child and persons, with whom the child has kinship, social and/or spiritual relations.

The Albanian legislator has also paid special attention to unaccompanied children or children without parental care. SOPs stipulate that the initial and formal identification of VT/PVT aims to determine the status of the individual by assessing the situation and concrete circumstances, by taking measures for the immediate intervention to remove the person from the situation of exploitation. All actions for initial and formal identification should be carried out as soon as possible, aiming the support for reintegration and rehabilitation of VT/PVT. It is important to note that children without parental care/unaccompanied children are entitled to benefit certain forms of assistance and protection, even before reviewing the evidence to determine whether or not they are victims of trafficking. While carrying out these verifications, another priority obligation of the responsible authorities is also to assess whether the child is being trafficked or has been previously trafficked.

The SOPs, referring to Law no. 108/2013 “On foreigners” (updated) have provided the definition of the term “unaccompanied child”, which means a foreign child who enters the territory of the Republic of Albania, unaccompanied by an adult responsible for him/her, pursuant to the law, and as long as he/she is not effectively taken under the care of such person, or the child who is left unaccompanied, after entering the territory of the Republic of Albania. Meanwhile, Law 18/2017 defines (Article 3) as “unaccompanied child” a child who is separated from both parents or other family relatives and who is not under the care of an adult, pursuant to this law. Article 52 of Law no. 10/2021 “On asylum in the Republic of Albania”, provides:

#### **Unaccompanied children**

1. A guardian shall be assigned to an unaccompanied child, in accordance with the legislation in force, at the moment he/she expresses the intent to seek international protection in the Republic of Albania. For this purpose, the local border and migration authority shall promptly notify the social services structure at the municipality. Within 5 (five) days from the decision on the relevant protection measure issued by the head of the social services structure at the municipality, the child protection worker shall submit a request, to the competent court, for the validity of the emergency protection measure or protection measure for the placement of the child in alternative care, along with the request for custody.

2. Under no circumstances shall an unaccompanied child be questioned without the presence of the child protection worker, appointed as his/her representative. The child protection worker shall carry out his/her duties by applying the principle of the best interest of the child. The child protection worker appointed as a representative of the unaccompanied child may only be replaced if necessary.

3. The custodian shall inform the unaccompanied child on the meaning and possible consequences of the personal interview, and where necessary, shall assist him/her on how to prepare for the personal interview. The child protection worker at the municipality or administrative unit shall be allowed to attend the interview and shall be entitled to ask questions or make comments within the framework established by the interviewing officer.

4. Where an unaccompanied child is interviewed regarding his/her application for international protection, the interview shall be conducted by an employee who has the necessary knowledge about the child's specific needs.

5. The authority responsible for asylum and refugees, in cooperation with relevant national authorities and international organisations, shall make all effort and take all the measures to trace/find the parents or other close relatives of the unaccompanied child, as soon as possible.

6. The authority responsible for asylum and refugees shall coordinate the work with relevant structures so that, from the moment of entry into the territory of the Republic of Albania, the unaccompanied child is placed:

- a) with adult relatives;
- b) with a foster family;
- c) in specialized accommodation centres for children; or
- ç) in other accommodation suitable for children.

7. An unaccompanied child applicant, who has turned 16 years of age, may exceptionally be placed in adult accommodation centres, if the child has provided his/her consent and if this is in his/her best interest, and shall be placed under the custody of the adult relative staying with him/her at the Centre.

8. Where the life or integrity of the unaccompanied child or of the close members of his/her family is under threat, particularly if they have remained in the country of origin, the responsible authorities shall ensure that the collection, exchange, and processing of such relevant information with these persons is made in a confidential manner.

9. To the extent possible, siblings shall remain together, taking into account the best interest of the children and, in particular, their age and level of maturity. Changes of residence of unaccompanied children shall be limited to a minimum.

This legal provision is in line with the minimum standards set by Article 16 of Directive 2011/36/EU, which stipulates precisely the obligation of Member States to take the necessary measures to ensure the assistance, support and protection for unaccompanied child victims of trafficking in human beings.<sup>149</sup> Law 10/2021 "On asylum" provides for the verification of the age of the unaccompanied child, in cases when the responsible authorities have doubts, based on the presumption that when there are doubts, he/she shall be considered a child.<sup>150</sup>

<sup>149</sup> This provision expressly provides that (Article 16 of Directive 2011/36/EU): 1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim. 2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child. 3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings. 4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family. 5. This Article shall apply without prejudice to Articles 14 and 15.

<sup>150</sup> Article 53 of Law 10/2021 "On asylum" provides for medical examinations for unaccompanied children.

**Specifically, Article 53 of the Law “On asylum” regarding the conduct of medical examinations for unaccompanied children provides that:**

2. Medical examinations shall be performed in full respect of the individual dignity. They shall have a nature as least intrusive as possible and shall be performed by qualified medical professionals in order to provide, to the extent possible, a reliable result. The medical examination shall be coordinated and monitored by the staff members of the Asylum Centre where the child is accommodated, at the presence of a psychologist, and the results certified by a qualified doctor shall be submitted to the authority responsible for asylum and refugees.

3. In cases where a medical examination is carried out, the authority responsible for asylum and refugees shall ensure that:

a) unaccompanied children shall be informed, in a language that they understand or are supposed to understand, on the possibility of determining their age through the medical examination, prior to reviewing their application for international protection.

This shall also include information on the method of examination and possible consequences resulting from the medical examination, in framework of reviewing the application for international protection, as well as on the consequences of rejecting the medical examination;

b) unaccompanied children and/or their guardians shall provide consent to carry out the medical examination for the purpose of determining the age;

c) the decision to reject the application for international protection by an unaccompanied child, who refused to undergo a medical examination, shall not be based solely on that refusal;

ç) the fact that an unaccompanied child has refused to undergo a medical examination shall not prevent the authority responsible for asylum and refugees from taking a decision on the application for international protection.

4. For the purpose of this Article, the view of the child shall be taken into account in accordance with his/her age and level of maturity.

5. All the persons who work with unaccompanied children must have received or shall receive appropriate training on their specific needs and shall respect the principle of confidentiality in relation to every information received in the course of the performance of their duties.

#### **4.16 Protection of child victims of trafficking in human beings in criminal investigations and proceedings**

**Article 15 of Directive 2011/36/EU provides that:**

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.



2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible, and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

6. This Article shall apply without prejudice to Article 12.

### **ALBANIAN LEGISLATION**

In line with this standard of the Directive, Article 58/a of the CPC, referred to above, provides specific rights for the child victim, such as: a) the right to be accompanied by a trusted person; b) the right to personal data confidentiality; as well as c) to request, through the representative, that the hearing takes place without the presence of the public. One of the fundamental amendments made to the CPC in framework of justice reform, was the stipulation that all criminal



offences committed by children in conflict with the law as well as against children (child victims) shall be adjudicated by the relevant child structures established pursuant to the law. These structures shall also adjudicate adult defendants accused of committing criminal offences against children (Article 13(4) of the CPC). CCJC and Law 18/2017 emphasize the need for specialization of prosecutors, judges and any other person who investigates, adjudicates or treats children, whether they are in conflict with the law or victims of the criminal offence. This provision is very important especially with regards to the moment of initial identification of a VT/PVT.

Going back to Article 58/a, it is important to note that the provision related to the right of the child to be accompanied by a trusted person, is in accordance with the standard provided in Article 3(3) of Directive 2012/29/EU. The meaning of the term “trusted person” is provided at the CCJC (Article 3, paragraph 18), which defines it as the adult person assigned by the child and accepted by the competent body, who accompanies the child at all the stages of the criminal proceedings. On the other hand, in full compliance with EU standards, the CCJC provides in a separate chapter (Chapter IV) the rights and rules that apply during criminal proceedings for a child victim and child witness of a criminal offence. These rights are also linked to the rights provided by the CPC, such as holding a trial behind closed doors<sup>151</sup> or special techniques of questioning a child, who is also a witness in criminal proceedings. The right to hold a trial behind closed doors is also provided in the CCJC (Article 39(3)), which emphasizes that the trial shall always be held behind closed doors in cases involving child victims or child witnesses. With regards to the questioning of the child victim, the CPC provides:

#### Article 361/a - Questioning a child witness

(Added by means of Law no. 9276, dated 16/09/2004 while the Article was amended by Law no. 35/2017, dated 30/03/2017)

1. A child witness under the age of 14 is questioned without the presence of the judge and the parties, at the premises where the child is located, when possible, through audio-visual tools. The questioning is conducted through a psychologist, an educator or another expert and, unless contrary to the interests of the trial or interests of the child, the parents or the legal guardian may be present during the questioning. The parties may request and the court may decide *ex officio* that the child is questioned by the judge in the presence of an expert. The child may be questioned again only in specific cases and at the same manner.

<sup>151</sup> Article 340(2)(a) of the CPC (referred to above) stipulates that the trial shall always be held behind closed doors when children are adjudicated, while letter (b) of this Article provides that the trial shall always be held behind closed doors when the child is a crime victim, regardless of the fact that during the trial he/she may have reached the age of majority. Therefore, it is related to the age of the victim at the time of committing the criminal offence.

2. The questioning of a child witness aged 14 to 18 years is conducted by the panel presiding judge. During the questioning, special care is shown to avoid harmful consequences on the mental health of the child, especially if he/she is victim of the criminal offence. In compliance with the circumstances, the questioning may be conducted as foreseen in paragraph 1 of this article.

3. The panel presiding judge, when questioning a child witness up to 14 years of age, shall not follow the rule to remind the child on the obligation and legal responsibility to tell the truth. This exemption shall apply also to other child witnesses, if the presiding judge deems that he/she is not capable of understanding the consequences of oath-taking. In such cases, the panel presiding judge shall give to the child the possibility to tell the truth and the court shall proceed with hearing the child's testimony.

4. When the child is heard during the investigation and his/her statements are recorded, pursuant to paragraph 4 of article 58/a of this Code, such statements shall be used as evidence in trial, if the defendant and the defence lawyer give their consent. The statements of the child may be used as evidence even if the defence lawyer has been allowed to question the child through experts and the expert deems that repeating the questioning may harm the psychological conditions of the child.

This provision is in full compliance with the above-mentioned Article 15 of Directive 2011/36/EU, as well as with Article 24 of Directive 2012/29/EU. However, regardless of this provision, which is mostly related to the case when a child is questioned as a witness, specifically and in accordance with EU standards, the CCJC provides in detail the specific rules for the questioning of child victims and witnesses (Article 39,<sup>152</sup> 40 and 41<sup>153</sup> of CCJC). The main purpose of this

<sup>152</sup> Article 39 of CCJC: Special rules of questioning the child victim or witness: 1. When the giving of a testimony may put the child victim or witness at serious life or health risk, the judge, in accordance with the age, shall ensure during trial that: a) the child witness/victim is questioned using devices that alter the image and/or voice of the witness/victim, is questioned behind a non-transparent screen, or is questioned at distance; b) the child witness/victim is questioned before the court hearing starts, in the presence of the defence attorney of the child and that he/she is questioned through video recording; c) the process if followed and the child witness or victim is questioned, when possible and appropriate, by the same persons and that the number of questionings is as limited as possible. 2. The competent bodies shall ensure that the child victim is never confronted with the defendant at any of the premises where the proceedings take place. 3. The court hearing shall be held only behind closed doors in cases involving a child victim or witness. 4. With regards to child victims or witnesses, in addition to the provisions of paragraph 1 of this article, the court shall make sure that: a) the child is questioned in child-friendly premises and outside the court premises; b) the evidence is obtained within the shortest possible period after initiation of criminal proceedings in order to avoid negative effects deriving from a prolonged process; c) the questioning is not repeated at other court instances in order to avoid re-victimization of the child, unless otherwise foreseen in the law; ç) other measures deemed appropriate shall be taken. 5. The child victim and witness shall be questioned without delay after reporting the facts at the respective bodies. 6. The same rules shall be applied by other competent bodies even during the questioning of the child victim and witness.

<sup>153</sup> Article 41 of CCJC: Special rules for questioning a child victim and/or witness of sexual exploitation or sexual violence 1. In addition to the rules provided in Article 58/b of the Criminal Procedure Code, the rules provided in Article 40 of this Code shall apply for questioning a child victim and/or witness of sexual exploitation or sexual violence. Audio and video recording of these children during questioning shall be mandatory. 2. The audio and video recorded testimony provided by the child may be used during the court hearing. 3. The testimony of the child victim of sexual exploitation and/

legal provision is to ensure the life and health of the child victim during the questioning in the criminal proceedings.

#### 4.17 Compensation to victims of trafficking

Victims of trafficking shall be entitled to financial compensation for the damages caused by traffickers. International standards suggest that indemnification or compensation of victims can be achieved through a civil lawsuit in criminal proceedings, or through a civil lawsuit, or through a special fund established based on the implementation of a special law imposing measures against the assets of persons convicted of THB. The requests for compensation may/should contain some elements:

**Material damage** – which refers to monetary values such as: expected income; unpaid salaries, medical expenses, as well as expenses incurred to reduce the damage, court expenses;

**Moral damage** – related to the suffering caused to the victim from an emotional and psychological point of view, pain, family and social losses;

The victim may/should prove the physical and psychological damage caused to him/her, as well as the respective consequences, which may have an impact on his/her life and future.

The right of victims of trafficking to compensation is provided in Article 17 of Directive 2011/36/EU, as well as in Article 16 of Directive 2012/29/EU.

##### *Article 17*

#### **Compensation to victims**

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

##### *Article 16*

#### **Right to decision on compensation from the offender in the course of criminal proceedings**

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.
2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

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or sexual abuse may be heard in the courtroom without the child being present, through the use of necessary communication technologies. 4. A child witness or victim of domestic violence shall not be questioned in the presence of abusive parents or relatives, during the procedure for issuing a restraining/protection order, emergency protection order. 5. In cases involving child victims or witnesses of sexual exploitation and/or sexual abuse, the court proceedings shall be held behind closed doors.

## ALBANIAN LEGISLATION

In line with EU standards, Article 58(1)(g) of the CPC has provided the right of the victim of the criminal offence to claim compensation for the damage, and to be accepted as a civil plaintiff in criminal proceedings. Once the victim is accepted as a civil plaintiff, the CPC provides that the victim has the right to be excluded, under certain conditions stipulated by law, from paying any expenses for obtaining court documents and from the court fee for submitting the lawsuit related to the status of the victim (Article 58(1)(gj)).

The Albanian legislation provides that a victim of trafficking may claim compensation for the damage suffered:

*Firstly*, by filing a civil lawsuit in the criminal proceedings, claiming the return of assets and compensation of damages from the defendant.<sup>154</sup>

It has been noticed that the implementation of this procedural tool in practice has not been very effective. The courts, arguing that filing a civil lawsuit complicates or delays the resolution of the criminal case, have decided to consider it a separate issue and to send it for review to civil courts.<sup>155</sup> Prior to the amendments made to the CPC by means of law 35/2017, this provision stipulated the right of victims to claim material damage. This legal provision has resulted in different attitudes and interpretations by the courts, regarding the claim for non-economic damages. Currently, Article 61 of the CPC has been amended by removing the word “material” from the content, which has had a positive impact on the unification judicial practice attitudes. The victim may now include in his/her request/claim both the material and non-material damage.<sup>156</sup>

*Secondly*, the victim may also file a civil lawsuit in the civil court, calling as a defendant the person who caused the damage, i.e. the trafficker.

Even in this case, the civil lawsuit has not been effective, as a result of the duration of the civil trial and the difficulties in presenting evidence, which were collected and obtained during the criminal investigation/trial. In both cases, when filing a civil lawsuit the victim can rely on and use the evidence obtained from the prosecution. Obtaining in a civil trial the same evidence that was once assessed in a criminal trial, reduces the efficiency of ensuring justice. Therefore, it is recommended that the most effective tool for the victim to receive compensation, is to file a civil lawsuit in criminal proceedings.

Another discussion of the judicial practice has been the fact that the victim of trafficking was obliged/charged with paying taxes and court fees related to filing

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<sup>154</sup> Article 61 of CPC provides: “A person who has suffered damage by the criminal offence, or his/her heirs, may file a civil lawsuit in the criminal proceedings against the defendant or the civil defendant, claiming the restitution of the assets and reimbursement of the damage”.

<sup>155</sup> Article 62(3) of the CPC

<sup>156</sup> In this case, the claim for compensation will be based on Articles 608, 625, 640 and 647/a of the Civil Code, which define the ways and criteria for determining civil liability and the amount of non-economic damage.

a civil lawsuit both in criminal and civil proceedings. Currently, in line with EU standards, the criminal procedure code and the Law “On state guaranteed legal aid” stipulate that one of the rights of the victim is to be excluded from any expenses for receiving court documents, as well as from court fees or expenses. Law 111/2017 “On state guaranteed legal aid” provides that one of the forms of this assistance is the “exemption from court fees and expenses”. According to Law 111/2017, one of the special categories of beneficiaries of free legal aid are also victims of THB, at any stage of criminal proceedings (Article 12). Another important article is Article 25 which, with regards to secondary legal aid, provides exemptions from: a) paying general and special fees, according to the provisions of the Law “On court fees in the Republic of Albania”; b) paying court expenses (expenses for witnesses, experts, translators and for the inspection of items or on-site inspection), according to the provisions of the procedural legislation; c) the obligation to pay in advance, at the state judicial bailiff service, the fee for the execution of the enforcement order.

This legal provision is important for the treatment and compensation of victims of THB, which is a very important element for the process of recovery of these victims, as well as to avoid the diverse attitudes identified in the court practice in Albania. In these circumstances, the Albanian legislation is in line with EU standards.

*Thirdly*, the Albanian legislation has also provided a compensation scheme for victims of trafficking, using the special fund established based on the implementation of Law no. 10192, dated 03/12/2009 “On the prevention and suppression of organized crime, trafficking, corruption and other crimes through preventive measures against assets” (as amended, hereinafter referred to as the preventive law).

Article 37 of this law provides for the establishment of a special fund on preventing criminality:

1. The proceeds gained from the implementation of this law, shall serve to establish a special fund on preventing criminality and on legal education. The special fund and its amount shall be determined in the annual budget law.

**2. This fund serves to:**

- a) improve the functioning of criminal justice, by allocating assets under the administration of the General Prosecution’s Office, Special Prosecution’s Office and Ministry of Justice;
- b) improve preliminary criminal investigations related to organised crime and develop programs to protect witnesses and justice collaborators, by allocating assets under the administration of the ministry that covers issues related to public order;
- c) **provide assistance to victims of organised crime and trafficking**, as well as to promote social programs for those categories, by allocating assets under the administration of the ministry that covers social issues.

**ç) compensate victims of organized crime and trafficking at the amount determined by court decision.**

3. In addition to the central institutions, the following may also benefit from the financing of projects for the prevention of criminality:

- a) the local government units where the confiscated immovable assets are located;
- b) non-profit organisations**, whose scope of activity includes the social, cultural and health rehabilitation of vulnerable categories of people, especially those affected or endangered by crime, including therapeutic centres and organisations, centres for rehabilitation of and curing users of narcotic substances, **as well as centres of assistance and rehabilitation of victims of trafficking in human beings, which have been conducting such activities in the last three years from the submission of the request.**

4. The requests for financing projects, pursuant to this Article, the verification and preparation of documentation sent for opinion at the Inter-institutional Advisory Committee of Experts for Measures against Organised Crime, as well as follow up of their implementation, shall be carried out by the structures of the Agency for the Administration of Seized and Confiscated Assets.

5. The Minister of Finance, pursuant to the recommendation of the Inter-institutional Advisory Committee of Experts for Measures against Organised Crime, shall issue an order to determine the financing of a project and the ways of using the fund made available to the applicant.

6. The part of the fund, which is intended pursuant to point 2 of this Article, cannot be used for the remuneration of officials of beneficiary institutions.

The establishment of this special fund is also intended to provide assistance or compensation to victims of THB, but in practice, problems have been identified with regards to its implementation.<sup>157</sup> Various studies focused on victims of THB, with regards to their compensation, have highlighted that: “...*despite recent amendments made to the criminal procedure legislation, the issue of compensating victims of trafficking continues to be an unfulfilled standard as both the instrument of civil litigation in criminal proceedings and the compensation under the state scheme, provided by the anti-mafia law, are not effective. As preliminary conclusions, it is important to highlight that the standards of treating victims of trafficking and the elements guaranteeing protection are provided in several levels of the international acts, the constitutional level, the Criminal Code and the Criminal Procedure Code, as well as in special laws and by-laws. (...)Regardless of the good will expressed in the law, the legislation does not yet provide clarification regarding the*

<sup>157</sup> The study published by the organization “Different & Equal”, titled “Research on cases of victims of trafficking cooperation with law enforcement authorities”, with regards to the practical implementation of Article 37 of the preventive law emphasizes, among others, that: “... *On the other hand, in practice the implementation of this provision has been found to be inefficient, as the law has not directly provided how a victim of trafficking can benefit from this fund, through the administrative or criminal and civil process. According to professionals working in this area, the most effective way to guarantee this right of the victim would be to simultaneously adjudicate the perpetrator and the trafficker and review the claim for compensation, as this would psychologically alleviate the victim and would reduce the procedure and costs. This is based on the findings of an OSCE study on Compensation for Trafficked and Exploited Persons, which ascertained that “to prove damage by evidence of past and ongoing victimization, and the titles and definitions of some of the damages categories such as “loss of dignity” can have a re-traumatizing effect on the trafficked person. ...”*. (ISBN: 978-92-9235-264-6)

*implementation of this provision and there is no mechanism to directly apply compensation to victims through this fund*".<sup>158</sup>

In accordance with EU standards, as well as aiming to make the compensation scheme effective through the special fund established by the implementation of the anti-mafia law, Law no. 34/2019 "On the administration of seized and confiscated assets" was adopted. The purpose of adopting this law is the good administration and the most efficient, effective and economic use of the assets seized and confiscated by the judiciary and assets seized by order of the Minister responsible for finances, the return to the community of illegally acquired assets and the financial compensation of crime victims (Article 1). This law aims to compensate victims of THB, through the administration, alienation or any other form defined in this law, of confiscated assets. For this purpose, *the Agency for the Administration of Seized and Confiscated Assets* was established as a public, budgetary legal entity, seated in Tirana, under the dependency of the Minister responsible for finances (Article 6). Law 34/2019 stipulates that the proceeds obtained from the alienation of confiscated assets shall be allocated in several items: a) the state budget; b) the special fund on preventing criminality; c) the account of the Agency. On the other hand, the allocation of the proceeds obtained from the alienation of confiscated assets, pursuant to Article 7(4) of this law, shall be determined by order of the Minister responsible for finances.<sup>159</sup> Article 26 of Law 34/2019 provides the use of monetary items from confiscated assets.<sup>160</sup>

This provision reinforces the purpose of adopting this law with regards to the use of the special fund for compensating victims of THB, where the destination and allocation of the fund is ordered by the Minister responsible for finances. However, regardless of the significant improvements of the Albanian legislation in this regard, the last evaluation report of GRETA states that,<sup>161</sup> the Albanian authorities should continue efforts to facilitate and guarantee access to

<sup>158</sup> Study report on the need of drafting a special law for the protection of victims of trafficking in Albania. This study report was developed by the "Different & Equal" organization in the framework of the project "Justice is a true story when victims become the first worry", part of the project grant scheme "Civic Engagement for a Functional Judiciary System and Access to Justice in Albania", financed by the European Union and implemented by Save the Children in partnership with the Centre for Integrated Legal Services and Practices. (Tirana, 2019)

<sup>159</sup> Article 7(4)(5) of Law 34/2019

<sup>160</sup> Article 26 of Law 34/2019: Use of monetary items from confiscated assets: The confiscated asset administrator shall carry out the necessary actions to deposit into the accounts of the Agency:

a) the confiscated monetary funds, which will not be used for the administration of other confiscated assets, or which will not be used for the financial compensation of the victims of the criminal offences of organized crime and trafficking in human beings; b) the proceeds obtained from the sale of movable property, which are not used in the activity of the commercial legal entity and the securities, in net value, obtained from the sale of assets for compensating victims of organized crime and trafficking. If the sale procedures are not economically profitable, the Minister responsible for finances orders the transfer of ownership, free of charge, or the destruction of assets confiscated by the administrator; c) proceeds obtained from the repayment of personal loans. If the procedure of repaying them is not economically profitable or when, after verifications made by the Agency on the solvency of the debtor, it results that he/she is not able to pay, the personal loans are cancelled, according to the procedure provided in Articles 22 and 23 of this law.

<sup>161</sup> GRETA (2020)09, published on 15/12/2020/Appendix 1, Conclusions and recommendations



compensation for victims of THB. In its recommendations in the third evaluation round for Albania, GRETA has identified several areas where intervention is needed to facilitate access for victims of THB:

- the Albanian authorities shall take measures to ensure the collection of evidence, during criminal investigations of THB cases, documenting the harm suffered by the victim, including the financial gain from the exploitation of the victim, with a view to supporting the victims' future compensation claims;
- the Albanian authorities must ensure the full implementation of the legislation regarding preventive measures, seizure and confiscation of assets arising from criminal activity, in order to ensure compensation for victims of THB;
- taking concrete steps to build the professional skills of persons/lawyers/attorneys who support victims in filing compensation claims/lawsuits;
- training prosecutors and judges in order to use all the possibilities provided by the law to uphold victims' compensation claims/lawsuits;
- the Albanian authorities should use the special fund for compensating victims of THB;
- the Albanian authorities should relieve victims from the responsibility of paying taxes for the execution of the compensation decision/order.

## CHAPTER V

# CONCLUSIONS AND RECOMMENDATIONS

Based on the detailed analysis of this study, as a first general conclusion, it is important to emphasize that the current legislation of the Republic of Albania is, to a considerable extent, in line with the EU *acquis* in relation to the prevention of and fight against THB.

However, when it comes to the prevention of THB and the rights of victims, the Albanian legislation has still room for improvement and for some important interventions in order to meet all the standards of the current EU *acquis*. With regards to Albania's efforts to become part of the EU, it should be noted the importance of the adaptation in order to achieve the fullest possible harmonization.

The following sections provide a summary of the recommendations, which aim at further approximation of the legal framework with the EU *acquis*.

### **5.1 Conclusions and recommendations on including the prohibition of human trafficking in the constitution of the Republic of Albania and harmonization with the eu charter**

Pursuant to the Charter of Fundamental Rights of the European Union (Article 5), it is noted that Article 26 of the Constitution of the Republic of Albania explicitly provides only the prohibition of forced labour and does not specifically provide the prohibition of slavery, servitude or the prohibition of trafficking in human beings, by considering the latter as equivalent with one of the forms of slavery. **In this regard, since the Constitution of Albania is not in line with EU standards, specifically with the Charter of Fundamental Rights (Article 5), it is important to underline this need for harmonization, which should be taken into account by the Albanian legislator in order to ensure full compliance with the EU standards at this level.**

## 5.2 Conclusions and recommendations on the harmonization of the criminal legislation and other accompanying measures on the criminal offence of trafficking in human beings

Although the criminal offence of trafficking in human beings is widely provided in Article 110/a (trafficking in adults) and Article 128/b (child trafficking) of the Criminal Code of the Republic of Albania, this comprehensive analysis, pursuant to this document, has identified several shortcomings, which we recommend to be taken into consideration by the legislator and thus be in full compliance with Directive 2011/36:

**Firstly**, in contrast to the provision that stipulates trafficking in adult persons, the article sentencing child trafficking (Article 128/b of the CC) does not mention the words “both within and beyond the territory of the Republic of Albania”. As analysed in this study, the inclusion of internal trafficking in the content of Article 128/b of the Criminal Code is considered a necessity and is recommended to be taken into consideration by the Albanian legislator.

**Secondly, there is a provision in the CC that specifically provides punishment in cases when a child is exploited for prostitution purposes (Article 114, second paragraph of the CC).** Based on the content of this provision, it can be concluded that encouragement to exercise prostitution, mediation or receipt of compensation as a result of exploiting a child for prostitution purposes, is not considered as trafficking, but as “exploitation for prostitution purposes”. This part of the provision is in violation of international standards and the GRETA recommendations. The exploitation of a child, whether for prostitution or other sexual services, regardless of the child’s will, should be treated as a case of THB. It is recommended that this provision should be amended by repealing the part that qualifies child exploitation for prostitution purposes pursuant to this article and not pursuant to Article 128/b of the CC, in order to be in compliance with Directive 2011/36/EU.

**Thirdly, “coercion, exploitation, encouragement or use of a child to work, to obtain income, to beg or to perform actions that damage his/her mental and/or physical development or education”, is not considered as trafficking but as child abuse.** Directive 2011/36/EU is an added value in the fight against THB. This Directive has adopted a broader concept of the THB phenomenon, including other forms of exploitation such as: forced begging or the exploitation of a child for begging; exploitation in other criminal activities; as well as other behaviours such as illegal adoption or forced marriage. In contrast to the provisions of Directive 2011/36/EU, the Criminal Code of the Republic of Albania does not contain a special provision to provide punishment for child trafficking for adoption purposes, in cases that are in violation of the law. Each of these phenomenon has been treated as components of THB and it is recommended that they are taken into account by the Albanian legislator in order to harmonize them with the EU directive.

***Fourthly***, there is a provision in the Criminal Code of the Republic of Albania that provides the punishment in cases of “Intentional request to an adult or child to leave the territory of the Republic of Albania for purposes of obliging him/her to enter into marriage”, which does not qualify as trafficking, although this coercion is exercised against a child. In this case, this action is considered by the legislator as a criminal offence. This article is in line with Article 37(2) of the Istanbul Convention which stipulates that “Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one he/she resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised”. Directive 2011/36/EU provides as a special form of trafficking the obligation of a child to enter into marriage. In this regard, even in this case, we recommend the legislator to carefully address these forms of THB, especially when the victim of trafficking is a child.

**Article 52/a of the Criminal Code sanctions the obligation of the Albanian authorities to avoid the punishment of a person identified as a victim of trafficking, but it does not prohibit them to initiate criminal proceedings against such person.** This shortcoming has also been pointed out in the final recommendations of GRETA, and it can be avoided, firstly by making amendments to the law, and secondly by improving the process of initial and formal identification of VT/PVT.

Effectiveness in the fight against trafficking in human beings is closely linked to improving the process of identifying victims/potential victims of trafficking, a process that requires the coordination and cooperation of all authorities involved, focusing on the victims and their reintegration in the society. It should not be forgotten that the objectives of identifying trafficked persons are: providing the necessary access to support, protection and immediate safety, regardless of the victims’ willingness to cooperate with justice.

Albanian judicial practice has identified some problems regarding the investigation and prosecution of criminal offences of trafficking in human beings, not because of the law, but because of the implementation of the law in practice. This is related to the fact that the investigation and prosecution of THB related criminal offences is mainly based on the charges filed by the victim of trafficking. This has led to many difficulties, since in cases where the victim has withdrawn the charges/statement or has backed down due to the pressure/threats of traffickers, the only evidence supporting the entire criminal process, i.e. the “victim’s testimony”, has ceased to exist.

The incorrect categorization/qualification of the criminal fact of adult or child trafficking into another criminal offence brings consequences not only with regards to making justice, but most importantly because the victim of the criminal offence in this case is not identified as a victim of trafficking.

The fact that in the Albanian case law there are no identified cases of trafficking in human beings for purposes of exploitation for forced labour or other services, slavery or similar forms, or putting in use or transplanting organs, does not mean that such cases do not exist.

The Criminal Code of the Republic of Albania provides trafficking in human beings as a punishable criminal act, the qualifying circumstances as well as the aggravation of the punishment. In this context we can say that the Criminal Code of the Republic of Albania is in full compliance with the provisions of the EU Directive.

The Albanian legislation is in line with Directive 2011/36/EU, by stipulating that victims of trafficking shall be exempted from the punishment for their involvement in criminal activities during the time of trafficking. However, an issue that has been identified in practice is related to the occasions where victims of trafficking have been prosecuted for various criminal offences, such as practising prostitution, and have been convicted for such offence, while later they have been identified as victims of trafficking. In essence, the Albanian law provides that the Republic of Albania also has jurisdiction to prosecute, investigate and punish criminal offences committed abroad, based on the principle of citizenship. In these circumstances, we can state that the Albanian legislation, and most importantly the Criminal Code, is in line with Directive 2011/36/EU.

### 5.3 Conclusions and Recommendations on the Obligations for Additional Rights for Victims of Trafficking in Human Beings

The Albanian legislation guarantees support for victims/potential victims of trafficking, before, during and for a certain period of time after the conclusion of the criminal prosecution or regardless of their cooperation with justice. In this regard, this legislative approach aims to be comprehensive and ensure the protection and reintegration of victims of trafficking, in line with the standards provided by Directives 2011/36/EU and 2012/29/EU.

During this study, we have encountered and recognized some difficulties in identifying the legal basis, which is not consolidated from the formal point of view. It is important to emphasize this aspect because the rights guaranteed by the Albanian legislation for VT/PVT are scattered in several laws and by-laws, and therefore constitute unfriendly formal approaches for victims and authorities in terms of access.

With the purpose of eliminating this issue, **we underline as a valuable finding the recommendations of various organizations on the need to draft a special comprehensive framework law consisting of the rights and protection of victims of trafficking and well-known standards regarding the structure and content of laws of this level.**

The CPC of the Republic of Albania does not provide any definition of the term victim. This has been noted even after the fundamental changes that resulted from the Justice Reform. Although Article 3 of the Code of Criminal Justice for Children provides a definition of the term victim, this is insufficient. In order to avoid this shortcoming, the Albanian courts, in the judicial practice, have referred to international acts ratified by Albania, describing the victim as a person harmed by the criminal offence. The drafting of a framework law, as one of the recommendations of this study, will put an end, among other things, to the ambiguities related to the terms and their meaning.

#### VICTIM'S RIGHT TO INFORMATION

The criminal procedure law provides the right of the victim to information as well as the obligation of the competent authorities to inform the victim on the state of the proceedings. Such information shall include all updated and important data on the criminal case (especially with regards to the arrest or release of the accused person). Only by providing such information, it may be possible to ensure the effective exercise of the victim's rights and his/her access to justice.

**This legal provision is in line with Directive 2012/29/EU, as well as with Directive 2011/36/EU.**

#### PROTECTION OF VICTIMS OF TRAFFICKING DURING CRIMINAL INVESTIGATION AND PROCEEDINGS

In accordance with the standards provided in Directive 2012/29/EU, the CPC of Albania ensures, in the first place, the right of the victim to benefit all the necessary support and health care, psychological care, counselling and assistance, since the moment he/she is identified as a victim or potential victim of trafficking.

However, it is important to emphasize that the Albanian legislation does not clearly address the rights of family members of the victim of trafficking, thus restricting the right of family members to receive support and access to relevant services. **In this regard, the Albanian legislator should keep in mind the need to comply with Directive 2012/29/EU regarding the rights of family members, as analysed in this study.**

#### THE RIGHT TO LEGAL ADVICE AND ASSISTANCE

The Albanian legislation guarantees legal aid and access to free legal counselling, starting from the first contact with a person authorized to treat victims/potential victims of trafficking. Victims of trafficking are entitled to receive information about their rights and all relevant procedures, in a language they understand. Victims of trafficking are also entitled to legal aid and free legal aid under specific conditions.

**In conclusion, it is noted that this legal provision is in line with Directive 2011/36 and Directive 2012/29.**

#### THE RIGHT OF ACCESS TO WITNESS PROTECTION PROGRAMS

In order to guarantee the right of the victim of trafficking for protection and safety, it may be necessary that the trial *is held behind closed doors*. In addition, through the amendments made by Law no. 35/2017, the definition of “witness with hidden identity” was included in the Criminal Procedure Code. It is important to emphasize that this special witness questioning technique is applied only to a limited number of criminal offences, and excludes criminal offences related to trafficking in human beings (Article 110/a or Article 128/b of the Criminal Code).

**The Albanian authorities, in compliance with the GRETA recommendations, should take additional steps to ensure that victims and witnesses of trafficking in human beings, as well as their family members, are provided with effective and appropriate protection against potential retaliation or intimidation.**

#### THE RIGHT TO ADEQUATE AND SAFE HOUSING

The Albanian legislation has adopted the law on social housing, as well as the new law on social assistance that aims the reintegration of trafficked persons, which is defined as the process of recovery and socio-economic inclusion after a trafficking experience.

**This legal provision is in line with the standard provided by Directive 2011/36/EU.**

#### REFLECTION PERIOD

The Albanian legislation does not explicitly provide for any definition of the term “reflection period”.

The minimum standards in these international acts stipulate that Member States shall grant trafficked persons a reflection period, in order to recover and to make an informed decision on whether or not to cooperate with the justice authorities, while also emphasizing the obligation to provide them with a temporary residence permit for the duration of the criminal proceedings or other legal proceedings, when they decide to cooperate.

#### THE RIGHT TO PSYCHOLOGICAL ASSISTANCE AND ACCESS TO IMMEDIATE MEDICAL TREATMENT

In accordance with EU standards, the Criminal Procedure Code has guaranteed several rights for the victim, including the right to receive medical care,



psychological assistance, counselling and other services provided by authorities, organizations or institutions responsible for assisting victims of criminal offence.

**To conclude, we can state that the content of the Albanian legislation guarantees the access of VT/PVT to medical and psychological treatment, while taking into account their special characteristics.**

#### THE RIGHT TO TRANSLATION

Analysing the content of the Albanian legislation, we can state that it ensures the access of VT/PVT to translation.

#### THE RIGHT TO SPECIFIC TREATMENT TO PREVENT SECONDARY VICTIMIZATION

The provisions of the criminal law are in line with EU standards and they provide specific rights for these special categories based on the characteristics of the criminal offence, the nature and type of the criminal offence, the circumstances of the committed criminal offence, as well as the personal characteristics of the victim.

Practice has shown that the questioning of a VT, even during the trial on merits, does not violate the EU standards and the case law of the ECJ/ECtHR, however, it creates space for the re-victimization of the victim of trafficking, who must once again experience events and situations that may cause emotional and psychological harm. In these circumstances, the proceeding body must show due diligence to take protective measures, both for the victim and his/her family, pursuant to the Law “On the protection of witnesses and justice collaborators”.

**We emphasize that the procedural guarantees for VT provided in the CPC, are in accordance with Directive 2011/36/EU and Directive 2012/29/EU.**

**An important element is the strengthening of financial investigations in identified THB cases, because in practice, there have been only a few cases when, in parallel with the criminal investigation, the prosecution has also initiated the financial investigation.**

**It is also recommended the specialization of judges and prosecutors dealing with cases of THB, since after the amendments made to the CPC by means of Law 35/2017, the investigation and adjudication of THB related offences has passed under the jurisdiction of the prosecution’s offices and the court of general jurisdiction.**

**In addition, the Albanian authorities are recommended to guarantee a fair, effective, proportionate punishment for traffickers/persons found guilty of trafficking in human beings, as well as to ensure that the length of the criminal proceedings is in line with the standards of the ECtHR case law.**

## COMPENSATION TO VICTIMS OF TRAFFICKING

In line with EU standards, the CPC has provided the right of the victim of the criminal offence to claim compensation for the damage, and to be accepted as a civil plaintiff in criminal proceedings, as the most effective tool for compensating the victim.

Another issue has been the fact that the victim of trafficking was obliged/charged with paying taxes and court fees related to filing a civil lawsuit both in criminal and civil proceedings. Currently, in line with EU standards, the criminal procedure code and the Law “On state guaranteed legal aid” stipulate that one of the rights of the victim is to be excluded from any expenses for receiving court documents, as well as from court fees or expenses.

In this regard, it is recommended to make appropriate interventions in the criminal procedure legislation, in matters of compensation of victims of trafficking, by analysing aspects related to civil lawsuits in criminal proceedings and compensation under the state scheme provided in the anti-mafia law, in order to ensure their effectiveness. Establishment of a special mechanism for compensating victims, using the special fund from confiscated assets, regardless of the assets of the respective trafficker(s). So, the purpose of this recommendation is that the Albanian authorities, through effective instruments, facilitate the access to compensation of victims of THB.

## 5.4 Conclusions and recommendations on the harmonization related to the protection of child victims of trafficking in human beings

The “**Code of Criminal Justice for Children**” adopted by Law no. 37/2017 (CCJC), specifies that a child is any person under 18 years of age. This provision is in full compliance with the Directive. The Albanian legislation does not explicitly provide that “the consent of a child victim of trafficking to exploitation should not be considered valid”, but this can be derived from Article 128/b of the Albanian Criminal Code.

In the case of child trafficking, several issues have been identified. Firstly, the article sentencing child trafficking does not mention the words “both within and beyond the territory of the Republic of Albania” and secondly, there is a provision in the CC that specifically provides punishment in cases when a child is exploited for prostitution purposes. Based on the content of this provision, it can be concluded that encouragement to exercise prostitution, mediation or receipt of compensation as a result of exploiting a child for prostitution purposes, is not considered as trafficking, but as “exploitation for prostitution purposes”.

**In each of these cases, it is noted that the Albanian criminal law is not harmonized with Directive 2011/36/EU, and neither with the principle of “the best interest of the child” that should guide the criminal justice for minors.**

**Therefore, this fact should be taken into account by the Albanian legislator in order to ensure full compliance with the EU standards at this level.**

#### ASSISTANCE AND SUPPORT FOR CHILD VICTIMS

In accordance with the minimum standards provided by the EU Directives, the Albanian legislation has adopted the legal framework and has taken measures for the identification of child VT/PVT.

Law 18/2017 and CCJC, as well as the other legal acts adopted based on them and for purposes of their implementation, are of primary importance for the protection of children and form a complete legal framework. It is important to emphasize the continuous need for training and specialization of persons or staff dealing with the treatment of children, especially of child VT/PVT. Law 18/2017 emphasizes the obligation of every public institution or body that treats children, to be guided by the principle of BIC.

This legal provision is in line with the minimum standards set by Article 16 of Directive 2011/36/EU, which stipulates precisely the obligation of Member States to take the necessary measures to ensure the assistance, support and protection for unaccompanied child victims of trafficking in human beings.

#### PROTECTION OF CHILD VICTIMS OF TRAFFICKING IN HUMAN BEINGS IN CRIMINAL INVESTIGATIONS AND PROCEEDINGS

Article 58/a of the CPC provides specific rights for the child victim as well the right of the child to be accompanied by a trusted person. The Albanian legislation is in line with the standard stipulated in Directive 2012/29/EU. On the other hand, in full compliance with EU standards, the CCJC provides in a separate chapter (Chapter IV) the rights and rules that apply during criminal proceedings for a child victim and child witness of a criminal offence.

This provision is in full compliance with the above-mentioned Article 15 of Directive 2011/36/EU, as well as with Article 24 of Directive 2012/29/EU. However, regardless of this provision, which is mostly related to the case when a child is questioned as a witness, specifically and in accordance with EU standards, the CCJC provides in detail the specific rules for the questioning of child victims and witnesses. The main purpose of this legal provision is to ensure the life and health of the child victim during the questioning in the criminal proceedings.

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