

THE LEGAL AND COMPARATIVE ASPECTS OF THE REPUBLIC OF MACEDONIA'S EXPERIENCE IN THE CAMPAIGN AGAINST TRAFFICKING IN HUMAN BEINGS

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ABSTRACT

In this paper, the crime of human trafficking is analyzed from the Macedonian point of view, stressing how recent changes in the Macedonian Criminal Code have resulted in greater tools to combat this crime. The article compares the provisions of the code with those of neighboring countries, then discusses the changes as part of a campaign against human trafficking being conducted by the Republic of Macedonia. The article concludes with a discussion of the distinction between human trafficking and emigrant smuggling by focusing on the difference in intent of the perpetrators of the two crimes.

ÖZ

Bu makalede, insan ticareti suçuna Makedonya'nın bakış açısı incelenmiş ve bu suç ile mücadelede etkin bir araç olarak ortaya çıkan Makedonya'nın Ceza Kanununda yapılan son değişikliklerin etkisi üzerinde durulmuştur. Makalede, Makedonya Ceza Kanununun ilgili hükümleri komşu ülkelerin Ceza Kanunlarındaki hükümlerle karşılaştırılmış ve Ceza Kanunundaki değişikliklerin Makedonya Cumhuriyeti'nce yürütülen insan ticareti karşıtı mücadeledeki yeri tartışılmıştır. Makale, insan ticareti ve göçmen kaçakçılığı suçlarının failleri arasındaki amaç farklılığının üzerinde

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durulması suretiyle insan ticareti ve göçmen kaçakçılığı arasındaki farkın tartışılması ile sonlandırılmıştır.

Keywords: *human trafficking, Macedonian Criminal Code*

Anahtar Kelimeler: *İnsan Ticareti, Makedonya Ceza Kanunu.*

"It's more sad than odd that some desperate wretches are ready to steal and violently enslave people and to kill for profit. However, it is astonishing that so many civilized people are encouraging or are involved in this kind of act, and still continue to do so, even though many times it was proven that it's not the Republic of Macedonia and it's against all principles of justice and humanity"

INTRODUCTION

The phenomenon of “human trafficking” (white slave trading) has followed society as a type of crime, or as its pathology, throughout the history of human development, lessening or worsening or reappearing in different phenomenon forms. Still this phenomenon has attained its most serious dimensions with the trend of globalization, which caused great migrations of population from the poorer to the richer countries, as well as the movement of the capital. Thus on today's level of societal development, we speak about a type of sophisticated slavery, which leaves behind irremovable consequences on the physical, psychological, social and human well-being of the victim; for the society and the state, it causes a breach and unfulfillment of citizen rights, which prevents the state from practicing its duty as a guarantee of human freedom and rights. Human trafficking also leads to a destabilization of economic relations, especially by supporting and fostering other types of criminal activities, such as money laundering, sexual trade, illegal labor, and corruption (including political).²

The conditions and the problems caused by illegal emigration and trafficking in human beings in the Republic of Macedonia escalated in the middle of the 1990's with the reform of the political and economical systems of the newly-formed sovereign countries of the former Eastern block. So to speak, the majority of the population had to deal with changes in the meaning of property, the collapse of the standard of living, and unemployment, all of which were followed by the phenomenon where a part of the citizenry saw their future existence in migration to the countries of Western Europe or other countries that

² Ljupco Arnaudovski, CRIMINOLOGY 446 (Skopje, 2007).

would provide better earnings. These conditions opened up the way for creating "ideal" opportunities for organized crime groups to infiltrate people into their desired destinations in different ways, and thus greatly profiting from it.

Parallel with the modification of the phenomenal forms of trafficking in human beings and its determinants, and because of the already accumulated experiences and the aspiration for permanent research into the best ways to suppress this kind of organized crime, legislative solutions in the countries of the world have been changing as well.³ Besides the permanent tendencies for unification of values, standards, norms and mechanisms for the purpose of providing the most effective way of addressing this issue, criminal legislation varies significantly from state to state. Some legislation foresees sanctions only for the trafficking in human beings for the purpose of prostitution, while some of the State Parties to the "Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children", almost entirely accepting the definition of the trafficking therein, have more broadly defined the concept of trafficking in human beings in their legislation.⁴

I. TRAFFICKING IN HUMAN BEINGS – THE INTERNATIONAL LEGAL FRAMEWORK

The history of the international community has seen a great number of initiatives and activities undertaken to suppress trafficking in human beings and illegal emigration as crime activity – an activity that constantly increases around the world as one of the most profitable types of crime.⁵ Many documents have been drafted and adopted by the OSCE, United Nations, and Council of Europe that are trying to respond to the need for precise definition of the concept and to set up an effective legal framework to combat this criminal activity.

- Thus, the Peoples Union from 1924 reacted for the first time to this crime, presenting the "Convention for Obstruction of "Trafficking in Human Beings."

³ Statement of Mohamed Y. Mattar, A Comparative Analysis of Anti – Trafficking Legislation in Foreign Countries: Towards a Comprehensive and Effective Legal Response to Combating Trafficking, 25 June 2003.

⁴ The Republic of Moldova, with the changes from 2003, in Article 165 entitled "Trafficking of People," is similar to the Criminal Code of Ukraine, Article 149; furthermore, the Criminal Code of Columbia which in Article 219 incriminates the crime of sex tourism (managing, organizing or promoting tourist activities which involve the sexual abuse of a minor).

⁵ According to FBI data, trafficking in people on a global level generates 9.5 billion dollars per year, while according to the United Nations, the same generates 7 to 10 billion dollars. Federal Bureau of Investigation webpage, available at <http://www.fbi.gov/hq/cid/civilrights/slavery.htm>.

- In that period, many Conventions were adopted in 1904, 1910, 1923 and 1930, where efforts were made to define this phenomenon and to suggest measures to prevent it.
- After the Second World War, on 27 October 1947, the UN presented the Protocol, which obligates the signing-countries to take measures to prevent this crime.
- The Economy and Social Council of the UN, with Resolution 608 (XXI) of 30 April 1956, presented a Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.
- However, the document having the greatest significance for the fight against trafficking people was The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁵ (adopted with Resolution A/PEC/55/25 of 15 November 2000, at the 55th session of the UN General Assembly), which is a part of The United Nation Convention against Transnational Organized Crime (adopted with Resolution A/PEC/55/25 of 15 November 2000, at the 55th session of the UN General Assembly, effective from 29 September 2003, signed by 147 countries).

In this context, we could not forget the following instruments, which made significant contributions in regulating this subject:

- The Universal Declaration of Human Rights (1948),
- The International Convention on Civil and Political Rights (1966),
- The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949),
- The Convention on the Elimination of All Forms of Discrimination against Women (effective from 3 September 1981),
- The Convention on the Rights of the Child (1989),

⁵ The Trafficking Protocol lays down standards on the following issues: mandatory criminalization of trafficking in human beings, Art. 5; protection of and assistance to victims, Art. 6 – 8; prevention of trafficking in human beings, Art. 9; cooperative measures, Articles 9 – 11.

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- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000);
 - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Parallel to the UN activities on this subject, the European Council, placing the fight against human trafficking as a key item on its agenda for the protection of human rights, has set up several international legal documents to address this phenomenon, such as:

- Recommendation No. R (2000) 11, Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation.
- Recommendation No. R (2001) 16 of the Committee of Ministers to Member States on Protection of Children against Sexual Exploitation.
- Recommendation 1545 (2002) of the Parliamentary Assembly of the Council of Europe on a Campaign against Trafficking in Women

However, it is not enough to rely only on the recommendations and related activities, but also that it is time to set an international binding instrument, as a result of the European public noticing the phenomenon of illegal trafficking. At the same time the measures, which had to be adjusted to be effective in this fight, have evolved; the conclusion was that it was necessary to form a legal binding instrument to be directed at the protection of the victim's rights and respect of human rights, as well as being a suitable balance between the human rights and the Court's persecution. The highest achievement has been reached with the Convention on Action against Trafficking in Human Beings (CETS N° 197), adopted by the Committee of Ministers on 3 May 2005 and opened for signature in Warsaw on 16 May 2005, on the occasion of the Third Summit of Heads of State and Government of the Council of Europe. Among the more significant documents of the European Council, which is heavily involved in this area, are the European Convention on Human Rights and Fundamental Freedoms,⁶ the European Convention on the Legal Status of Migrant Workers, the 1951 Convention on the Status of Refugees (the Geneva Convention), effective as from 22 April 1954 and its Protocol, effective from 4 October 1967.

⁶Article 4 of the ECHR prohibits slavery and servitude, forced or compulsory labor, stating that: "1) No one shall be held in slavery or servitude; 2) No one shall be required to perform forced or compulsory labor."

Within the boundaries of the European Union, whose main goal is to synchronize the legislatures by standardizing the incrimination of trafficking and other more severe forms of assault against person's freedom, as well as exceptionally significant instruments, which regulate this problem, are the following:

- The Charter of Fundamental Rights of the European Union;⁷
- Directive 2004/81/EC of the Council of the European Union on the Residence Permit for Victims of Trafficking;
- Framework Decision 2001/220/JNA of the Council of the European Union on the Standing of Victims in Criminal Proceedings.

The International Labor Organization is a specialized agency of the UN that promotes social justice and internationally-acknowledged human and labor rights. In the scope of its work that also addresses the standards, the ILO raises the question of trafficking in human beings in the context of forced labor (mainly influencing the abuse of emigrant laborers, such as women or indigenous peoples), as one of the worst forms of forced labor. The ILO fights the trafficking of people through its Conventions Against Forced Labor No. 29 and 105 and the Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination on the Worst Forms of Child Labor (1999), stressing that in a European context, the trafficking of human beings, especially women and children, exists not only in the sexual industry, but in the other areas as well, such as non-qualified labor and street-beggars.

II. COMPARATIVE REVIEW OF THE CRIMINAL POLICIES IN THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS IN NEIGHBORING STATES

II.A. Serbia

In the Criminal Code of the Republic of Serbia, the criminal act of "trafficking" is sanctioned in the thirty-fourth chapter, entitled "Criminal Acts Against Humanity and Other Goods Protected by International Rights" with Article 388 of the law. This article has been arranged in six sections, where the basic form of the crime is sanctioned with a prison sentence of from two to ten

⁷ According to Article 5 of the Charter of Fundamental Rights of the European Union: "no one shall be held in slavery or servitude; no one shall be required to perform forced or compulsory labor; trafficking in human beings is prohibited."

years, and in the same statute the minimum and maximum punishment is set when the act is committed against a minor with no use of force, threat or another way of committing the crime.

For the more severe forms of the act, the prison sentence is set as from three to fifteen years, if as a result of the crime, severe body injury to a person occurred, with a prison sentence of at least 10 years if the result is grave bodily injury or death. For organizing the commission committing of this crime, the statutory minimum is a prison sentence of 5 years. A separate criminal act is defined in Article 389 for the trafficking of children for adoption.

II.B. Montenegro

Article 444 of the Montenegro Criminal Code deals with this problem in almost identical way as the Criminal Code of Serbia: the nature of the act, the method of committing, and the form of the offense, with differences existing only in the statutory minimum and maximum prison sentence. According to the Criminal Code, the punishment that can be meted out for an act from Section 1 (the basic form) is one to ten years prison sentence (as well for the person who commits the crime against a minor with no use of force, threat or another way of committing the crime).

According to the more severe forms of the act, a milder attitude has been accepted – the prison sentence is from one to twelve years if, while committing the crime, a severe injury of the person occurs; while conducting or committing the crime from an organized group, the punishment is the same as in Serbia.

II.C. Albania

Especially interesting is the solution offered by the Albanian criminal legislation – trafficking in human beings, women and children is separated into distinct regulations. Hence Article 110-a of the Albanian Criminal Code sanctions trafficking in human beings by the commission of the basic form of the crime - recruiting, transporting, transferring, hiding or misleading the people, with a prison sentence of five to fifteen years, and at the same time imposes a fine of 2 to 5 million lekas

The act of organizing, leading and financing the trafficking in human beings is punishable with a prison sentence of seven to fifteen years and fine of 4 to 6 million lekas.¹³ If the criminal act is being committed

- in collaboration with others,

- occurs more than once,
- is connected with molestation or force,
- occurs with the use of physical strength or psychological suffering,
- committed with other acts, or
- brings severe consequences to the victim's health

the punishment is increased to a prison sentence of at least fifteen years and a fine of 6 to 8 million lekas.

This strict regulation is also applied in the more severe forms of this crime, especially in the regulation which authorizes a prison sentence of at least twenty years in prison, or a life sentence, and a fine of 7 to 10 million lekas, if the crime results in the death of the victim. Along the way, if the criminal act is committed while the perpetrator exercises a state function or public service, the prison sentence and the fine will increase an additional one-fourth from the established punishment.

From the aspect of committing criminal acts, almost identical solutions have been advanced for the trafficking women and children (Art. 114-6 and Art. 128-c, respectively). There is a difference only in the minimum and maximum punishment; for trafficking in minors, since the crime against a minor is considered to be a greater offense, the prison sentence is seven to fifteen years and the fine is between 4 to 6 million lekas, whereas for trafficking in women the fine is 3 to 6 million lekas. This formulation is kept even in more severe forms of crimes.⁸

II.D. Bosnia and Herzegovina

The Bosnian Penal Legislation also reflects quite an interesting approach as a response to the phenomenon of trafficking in human beings, as regulated by Article 186 of the law. For the basic criminal act (para. 1), one is punished if he engages in the recruitment, transport, sheltering or accepting of persons only to take advantage of them; the punishment for that is 1 to 10 years in prison. If the act is committed against a minor, the prison sentence is at least 5 years (para. 2), while commission of the crime in an organized group is sanctioned by a prison sentence of at least 10 years.

⁸ Penalty and legal regulation and analysis of cases of trafficking in human beings and migrants from Macedonia, Serbia, Albania, Montenegro and Bosnia and Herzegovina is from the International Organization for Migration (IOM) Mission in Skopje.

Also interesting is the assessment of the Bosnian lawmakers to incriminate the negligence, or more precisely to rule it out as a complete defense – in the cases where a defendant wants to avoid punishment for the crime out of negligence, a prison sentence from 6 months to 5 years is given.

III. THE REPUBLIC OF MACEDONIA IN THE CAMPAIGN AGAINST TRAFFICKING IN PEOPLE

A significant step forward was the Protocol to the Palermo Convention⁹ supplementing the United Nation Convention against Transnational Organized Crime, which the Republic of Macedonia signed on 12 December 2000, along with the “Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children,” and the “Protocol against Smuggling of Emigrants on Land and in the Air, (hereinafter the “Protocols”) which confirmed the determination and the preparedness of the Government to prevent and eliminate the growing forms of transnational organized crime through the strengthening of international cooperation and empowering the rule of law.

The definition of the crime of trafficking in human beings set forth within the Convention provides a sufficient framework to encompass all types of trafficking in human beings, such as sexual exploitation and forced labor, slavery, and servitude. Simultaneously, this Protocol determines that any person may be a victim of this crime, not only women or children. It is also not necessary to cross a State border to be in violation of the Protocol, which also means that internal trafficking in human beings is criminalized as well.

After signing the Convention and the Protocols, intending to complete the process of ratification, a thorough analysis of the compatibility of the Convention with the legislation of the Republic of Macedonia was conducted. Inspired by the need for more successful punishment of traffickers, in 2002 a new provision, Article 418(a) "Trafficking in Human Beings" was inserted into the Criminal Code of Macedonia.¹⁰ This crime is contained in Chapter XXXIV of the Code, which criminalizes offenses against humanity and international law, which undoubtedly indicates that the legislature was right in assessing the nature of the criminal act to be one of the most serious forms of organized crimes. The provision to sanction the withholding or destruction of another person's identification document for the purpose of committing the crime of

⁹ See Article 3 of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted under Resolution A/PEC/55/25 of 15 November 2000 and passed at the 55th session of the UN General Assembly.

¹⁰ Official Bulletin of the Republic of Macedonia, No. 04/02 from 25 January 2002.

trafficking in human beings was also introduced for the first time. Still, it was shown that the previously set legal framework for suppression of this crime did not completely correspond with international standards (particularly regarding the second protocol against smuggling emigrants). That is why changes and amendments of the Criminal Code in 2004 modified the already existing provision from Article 418-a, and added two more criminal acts as well. Those are the acts contained in Article 418-b "Smuggling Emigrants" and Article 418-c "Organizing a Group and Encouraging Them to Traffick in Human Beings and Smuggle Emigrants."

The changes that occurred in the Macedonian criminal legislation at the beginning of 2008 led to reform of this article of the Code. Thus, with the Law for Changes and Amendments to the Criminal Code,¹¹ the article for the criminal act of "Trafficking in human beings" from Article 418-a now states:

(1) A person who, forcibly or by means of a serious threat misleads other persons or uses other forms of coercion, abduction, deceit, abuse of power or condition of pregnancy, vulnerability or physical or mental inability of others, gives or receives money and other benefits to obtain the consent of a person with control over other persons, or in other words, recruits, transports, transfers, buys, sells, harbors or receives persons for the purpose of exploitation by prostitution or other forms of sexual exploitation, pornography, forced labor and servitude, slavery, forced marriage, forced fertilization, illegal adoption or relations similar thereto, illegal transplantation of parts of the human body, shall be punished by prison sentence of at least four years.

(2) A person who will dispossess or destroy an ID, passport or other foreign identification document, will be imprisoned at least for four years because of committing the crime from Section 1 of this article.

(3) A person who uses or enables for others to use sexual favors or other type of exploitation from a person of which he knew or was obliged to know that it is a victim of trafficking, will be imprisoned from six months to five years.

¹¹ Official Bulletin of the Republic of Macedonia, No. 7 from 15 January 2008

(4) The agreement of the trafficking victim for the intention of exploitation stated in Section 1, is not crucial for the existence of the criminal act as stated in Section 1.

(5) If a legal subject committed the crime from Section 1, he will be punished financially.

(6) The attempt is liable for punishment.

(7) The real estate and the personal objects, as well as the vehicles used to commit the crime, are going to be taken away.

The provisions of Article 418-a, will be elaborated with detail below.

a) In Section 1 where the ways of committing the crime of trafficking in human beings have been stated, as well as the acts that constitute the crime¹² (for which the public expertise on several occasions has presented its criticism and marks as too wide, even though it represents a total adoption of the text from Article 3 of the Protocol, unnecessarily overloaded which at the same time caused serious difficulties in its application) was additionally enriched with adding the phrase "or in other words."

b) Section 2 presented the severest form of the basic crime and refers to a person that appears to be a perpetrator of a crime where the victim is younger than 18 years, but has been redefined as a separate criminal act¹³ in Article 418-d, "Trafficking in minors." This regulation criminalizes the recruiting, transporting, transferring, buying, selling, sheltering or accepting a minor for exploitation, prostitution or any other form of sexual exploitation, pornography, forced labor or slavery, bondage, forced marriages, forced fertilization, illegal

¹² Indeed, from one side the complexity of the act, actually the wide spectrum of act which consist in it provide decreasing of the chance some negative behavior from the various praxis to remain uncovered, while from another side, the complexity of the act shows the need for clear defining of the relation between the different actions from which it is consist. Coalition All for Fair Trials, COMBATING TRAFFICKING IN HUMAN BEINGS THROUGH THE PRACTICE OF THE DOMESTIC COURTS 17 (2005), available at http://www.all4fairtrials.org.mk/en/Default_files/SuzbivanjeEN.pdf. (last visited 10 June 2008).

¹³ Article 173 from the Criminal Code of Estonia levies prison sentences from 1 to 5 years for the sale and buying children (separate article). The Criminal Code of Ukraine, according to Article 149 from Chapter 3 (criminal acts against the freedom, honor and dignity of the person), in Section 2 foresees harder punishment if the act from the basic form is committed over a minor (5 – 12 years in prison instead of 3 – 8 years).

adoption or similar act, or illegal transplanting body parts. The basic form of the crime has been sanctioned with a prison sentence of at least 8 years, and more severe forms of the crime are punished with longer prison sentences

The first more severe form (Section 2) consists of forced action, serious threat, delusion or other form of compulsion, abduction, deception, abuse of a position of trust, pregnancy, receiving a bribe or other benefit for getting official approval for a person who has control over another person.

The second more severe form of the act from Article 418-d (Section 3) consists of using or enabling another person to use sexual favors or any other kind of exploitation of a minor, who the perpetrator knew or should have known was a victim of trafficking. Also, the provision from Article 418(c), that penalizes the committing of the act by an organized group, gang or other organization, expands its practice over the crime of trafficking in minors.

A significant improvement is the current Section 20 in Article 122 of the law, where the terms used in the statute have been explained, and specifically the meaning of the term “child” as a victim of a crime act is explained. This latest amendment presents an elimination of the past discrepancy between our legislation and the Convention against Transnational Organized Crime; with the previously-mentioned Protocol, that referred exactly to the discrepancy of the term "child," which according to the Convention refers to every person younger than 18 years. Thus, today in Article 122, Section 20 of the Criminal Code, the term “child” as a victim of a criminal act presupposes a minor up to 18 years of age.

c) The legislature, probably starting from the fact that the issue – trafficking people for sexual exploitation – will not be reduced unless certain measures are not taken against the persons who also create the demand for this kind of market, so with Section 3 of the regulation, the penalties has been expanded to include persons who use sexual favors from another person, who they knew or should have known was a victim of trafficking.

d) An interesting question in the last few years has revolved around the handling of the compliance of the passive victim of exploitation. The Macedonian penal law previously did not include a provision to address the irrelevance of the compliance of the victim for the existence of a criminal act, in cases when the compliance has been extorted with fraud, force, threat or use of physical strength. The new statute resolutions stress this problem; actually, the

above mentioned regulation has been amended with an additional Section 4, which states: "The compliance of the victim of trafficking for the intention of exploitation, written in Section 1, is not relevant for the existence of the criminal act from Section 1." This step presents an adjustment of the regulation with Subsection (b) of Article 3 of the Trafficking Protocol.¹⁴ From here, the implemented solution would mean the non-applicability of the opinions of certain authors, according to whom the compliance of the victim to be exploited is being treated as mitigating and could lead to erasing or reducing the responsibility of one who commits the act of trafficking.

e) A question has arisen in the professional public regarding the punishment of the attempt to commit the crime of trafficking in human beings. In Article 418-a, there was no provision included for the punishment for any person who attempts to commit the crime. Nevertheless, the general provision of the Criminal Code applies, which orders a prison sentence of five years or more severe punishment (unless there is a specific provision in the law about the particular act). Here we are practically faced with a dilemma: If the punishment for the commission of the basic form of the crime (Section 1) is a minimum of four years imprisonment, under which the punishment for an attempt could be applied, for what crimes would apply the prison sentence of five years minimum?¹⁵

This matter was overcome by the implementation of a new statutory solution, where the punishment for the attempt of committing this crime was specified in a section distinct from Article 418-a (Section 6).

f) The successful battle against this type of "sophisticated slavery of the 21st century" unquestionably requires the application of all legal tools available, with the particular importance of the seizure of property and confiscation of illegally-acquired material benefit. So, if we start from the general principle where no one can profit from a crime, no one has a proper claim to property, or actual power over an object, which was used for the commission a crime, or an object which could be used again in the commission of a crime, it is now completely clear and undeniable that the choice of our legislature put emphasis on this issue (Article 97 of the Criminal Code).

¹⁴ "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set fourth in subparagraph (a) have been used."

¹⁵ See Violeta Velkovska, *Trafficking in Human Beings in Republic of Macedonia* (April 2007) (unpublished Masters Thesis, Faculty of Law "Iustinianus Primus", Skopje, Republic of Macedonia)(on file with the author).

Section 7 of Article 418, whose content was enhanced, applies these special criminal justice measurements connected to the criminal act, stating that the real estate, objects and transportation vehicles used in the crime are going to be seized.

IV. The Tendency to Finalize the Creation of a Legal Framework for more Efficient Prevention and Repression of the Crimes Connected with Trafficking in Human Beings

Willing to achieve a higher level of efficiency and mutual activity in the fight against this phenomenon, the Government of Republic of Macedonia decided to form a National Commission for the Fight against Trafficking and Illegal Emigration in the Republic of Macedonia.¹⁶ This commission is to observe and analyze the situation regarding the trafficking in human beings, as well as illegal emigration, and coordinate the activities of the governmental institutions, international organizations, and non-governmental organizations that are involved in these issues. Also, in the structure of the national commission there is a subgroup for the fight against trafficking in children.

The National Program for the fight against trafficking in human beings and illegal emigration was announced by the Government of the Republic of Macedonia in February 2002, where research activities into the reasons for these crimes have been started, that is influencing the phenomenon of trafficking in human beings and illegal emigration in the country and the region, exposure of the perpetrators of criminal acts, the methods used and their connection with international groups, the measures for prevention of the act and criminal prosecution of the perpetrator of these phenomena on every level, as well as measures for protection of the victims and emigrants.

Aiming to enforce the right for the protection of the identity and the privacy of the victims of trafficking, in the changes and amendments of the law for criminal procedure accepted in October 2004, a new Chapter XIX-a: Protection of Witnesses, Collaborators of Justice and Victims, was introduced. With these regulations, procedural and non-procedural measures for the protection of witnesses, collaborators and victims have been enacted. Besides the changes and the annexes in the criminal code, the legislative section now includes a provision for witness protection (which applies from 1 January 2008), a step which has the tendency to finish building a legal framework against organized crime, which was agreed to with the completion of the action

¹⁶ Published in the Official Bulletin of RM, No. 18/2001.

plan for measures and activities brought by the Government of Republic of Macedonia.

According to the data from the State Statistical Office, the total number of persons reported as accused and convicted for the criminal offence of trafficking in human beings in the territory of the Republic of Macedonia in 2002 (the time of incrimination) until 2004 recorded a rapid increase. The data shows not one case where a situation of forced marriage was found; this is interesting because according to the old-fashioned views in certain rural parts in Macedonia and according to information in the newspapers, it may be expected that this dark form of trafficking is not ignored. In the Republic of Macedonia, there were no court cases in relation to trafficking in human beings for the purpose of forced labor, forced fertilization, illegal adoption or similar relationship, nor was there a case of illicit transplantation of human body parts.¹⁷ Paragraph 3 of Article 418(a) prescribes penalties for persons who withhold or destroy identity cards, passports or other identity documents for the purpose of committing a criminal offence. In the Republic of Macedonia no criminal charges¹⁸ under this provision have been filed since 2002 onwards.

V. DIFFERENTIATING TRAFFICKING IN HUMAN BEINGS FROM SMUGGLING EMIGRANTS

Close to the organized trafficking of people is the offense of the organized smuggling of emigrants. We are talking about an act of organizing or assisting the illegal crossing of a state border of some country and the illegal entrance into that state. According to the International Organization for Migration, today in the world there are around 130 million emigrants, of which 20 to 40 million are illegal, and every moment around 4 million illegal emigrants are in motion; of those, 300,000 to 450,000 illegal emigrants enter into Western European countries each year.

In the Republic of Macedonia, Article 418-b of the Criminal Code applies to the smuggling of emigrants, whose introduction into law meant an implementation of the Second Protocol for Smuggling Emigrants on Land, Water or Air. Between these two criminal phenomena (trafficking people and smuggling emigrants), which may have the same social economic roots and very often appear parallel in practice, is necessary to make a clear distinction.

¹⁷ Illicit transplantation of parts of human body is a distinct criminal offence criminalized in Article 210 of the Macedonian Criminal Code.

¹⁸ According to the data from the State Statistical Office (including 2004 data).

While with the smuggling of people the possibility of it being a free decision of the victim is evident, that is not the case with trafficking people for sexual exploitation; furthermore, smuggling is not based on compulsion, but on free will and personal choice. Also, in most cases the arrival of the emigrant at the desired destination finishes the relationship with the smuggler; this is not the case with trafficking in human beings. In fact, arrival at the destination marks only the beginning of the exploitation of the victim, which is the main reason for the movement. This transportation of the victim of human trafficking can happen within the borders of one country only, or also to other countries, but the smuggling of emigrants is connected only with the illegal crossing of a state border. Hereby, we conclude that in the first case we talk about the basic freedoms and rights of the individual through exploitation and mostly through organized criminal networks. Therefore, curtailment of human trafficking is not a matter of immigrations politics, but more about the protection of the victims and their fundamental rights and also about punishing the ones who commit and collaborate in these crimes.

The basic difference between these two acts consists in the premeditation of the perpetrator. For the crime of smuggling emigrants, the intention of the perpetrator includes only the illegal crossing over the state border and there ends the plan, whereas the subjective side of the act of trafficking in human beings is enhanced by the special intention to exploitation the victim in some way.

CONCLUSION

In conclusion, it is possible to see the great strides made in the legislative environment in the Republic of Macedonia that has created a legal environment supportive of the battle to eliminate trafficking in human beings.

“The power of shame has stirred many to action and sparked unprecedented reforms; and the growing awareness has prompted important progress in combating this crime and assisting its victims wherever they are found. Defeating human trafficking is a great moral calling of our day. Together with our allies and friends, we will continue our efforts to bring this cruel practice to an end. Thank you for joining the new abolitionist movement. Together we can make a difference, and together we can build a safer, freer, and more prosperous world for all”.

--- Condoleezza Rice

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