

POSITION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS AND EXPLOITATION OF PROSTITUTION IN COURT PROCEEDINGS IN ALBANIA

Analysis of judicial practice through monitoring of court cases on trafficking in human beings and related criminal offenses

2014-2016

1. Introduction

Throughout 2014, 2015 and 2016 the Centre for Legal and Civil Initiatives (CLCI) monitored court cases on trafficking in persons. All cases served before the Tirana Serious Crimes Court, which has the exclusive authority to deal with trafficking cases. During 2014 and 2015 CLCI also monitored court cases on (the exploitation of) prostitution and related offences at the Tirana Judicial District Court. Aim was to investigate whether victims of trafficking were prosecuted themselves for prostitution as a result of overlapping criminal provisions and/or because trafficking cases were qualified as (exploitation of) prostitution instead of trafficking.

The court sessions were monitored by law students who were trained and supervised by a lawyer of CLCI. The staff of CLCI, the supervising lawyer and the students of the Law Faculty were supported by the Dutch expert Marjan Wijers.

The court monitoring focused on the treatment of victims of trafficking in human beings and related criminal acts. It made part of the project *"Promoting a Victim Centred Approach in Trafficking Cases in Albania and Bosnia and Herzegovina"* led by the Netherlands Helsinki Committee and financed by the Dutch Ministry of Foreign Affairs (MATRA/COPROL program). The monitoring aimed to assess the compatibility of domestic practice with international standards, as laid down in the UN Trafficking Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings. Special points of concern were the protection of the privacy and safety of victims, the treatment of victims by the court and other trial actors, compensation and access to legal aid and other assistance. To guide the process an observation list was developed, which covered the following aspects: protection of personal data, legal representation and support of the victim, provision of information, presence of the public/media, safety, interrogation of the victim, communication with the victim, compensation, and duration and outcomes of the trial.

In total 24 human trafficking cases were monitored and 11 cases on (exploitation of) prostitution. During 2014 CLCI monitored 8 cases on trafficking in persons (involving 54 hearings). In 2015, 11 cases on trafficking in persons were monitored: 6 new cases and 5 continued cases from 2014 (involving in total 113 hearings). In 2016, 13 trafficking cases were monitored: 10 new cases and 3 continued cases from 2014 and 2015 (involving 115 hearings). All trafficking cases were prosecuted before the Tirana Serious Crimes Court.

In addition, 11 cases of (exploitation of) prostitution and related offences were monitored in 2014 and 2015 in the Tirana Judicial District Court: 8 cases in 2014 (involving 27 hearings) and 3 cases in 2015 (involving 11 hearings). Most of the cases involved both defendants charged with the exploitation of the prostitution and defendants charged with exercising prostitution.

No. of cases	2014	2015	2016
trafficking	8	11 (6 new)	13 (10 new)
(exploitation of) prostitution	8	3	not monitored

Although CLCI aimed to monitor as many of the hearings as possible, this was not always possible, due to the availability of the monitors or the lack of information on the dates of court hearings. Therefore, the number of actual court hearings and the number of monitored sessions may differ.

The report concludes with a set of recommendations for improving the current situation.

Summary of findings

The findings show that existing provisions aimed at protecting the victim's privacy and safety are hardly or not applied. In almost all cases the personal data and life history of both adult and minor victims were publicly exposed. If not, this was because the case was settled with a short judgement on the request of the defendant(s).

Although generally the court itself behaved neutral and professional (with a few exceptions), they rarely intervened to protect victims from degrading or offensive behaviour from the part of the defence or the audience. Direct confrontations with the suspect(s) inside and outside the court hall and the treatment of victims during hearings, including threats and intimidation by the suspect(s) and their associates, further contribute to their secondary victimisation.

A persistent problem is the lack of compensation and access to legal aid. In the only case that the (minor) victim requested compensation for damages, the claim was referred to the civil court. None but one of the (at least) 29 victims involved had a lawyer.

In three trafficking cases it was stated that the victim had been previously convicted for prostitution, in one case while the victim stayed in a shelter for trafficking victims. In one of the (exploitation of) prostitution cases, the victim had reported to the police that she was forced to prostitution by the defendant, which raises the question why the case was not prosecuted as trafficking. This might indicate problems in the adequate identification of trafficking victims at district level.

The same goes for four cases of exploitation of prostitution of a minor, 2 in 2014 and 2 in 2015. It is not clear why these cases were prosecuted as exploitation of prostitution rather than as trafficking of minors, as in the case of children no deceit or coercion is required. This seems to illustrate the problem of the overlap between the article on trafficking in minors and the exploitation of prostitution of minors.

In 2015 two minors were prosecuted for prostitution. This is in violation of the ILO Convention on the Worst Forms of Child Labour, which stipulates that in such cases minors should be removed from such work and receive assistance instead of being punished.

A general problem is the disproportional number of court hearings that is adjourned because of the prosecutor, the (full) panel of judges, the defendant or the defence counsel is not present.

The monitors noted that in the cases of judges who took part in the project, victims were treated with more sensitivity. More attention was paid to the way they were questioned and to their treatment by the defence.

1. Trafficking in human beings

In **2014**, 8 cases were monitored involving 16 suspects and (at least) 10 victims. All but one case concerned trafficking for prostitution. In one case the victims were also forced to sell drugs. The male victim in this case, who had been forced to sell drugs in Greece, was murdered. One case concerned an attempt to organ trafficking. The victim in this case was a 7-year old boy.

The majority of the defendants was male (15); the majority of the victims was female (7), including two minors. Of the male victims, one was minor. In one case the gender of the minor victim is not known. In four cases the defendants were also prosecuted for other offences, such as falsification of identity papers, theft, illegally keeping hunting weapons and murder. One of the defendants had the Bulgarian nationality, the others were Albanian nationals. In one of the cases one of the suspects (MO) was in jail in Greece for drugs trafficking. His case was later separated from the other suspects because he could not be given notice.

Of the 16 suspects, 4 were convicted in 2014, 4 in 2015, 5 in 2016 and 1 in 2017. They were all convicted to imprisonment, varying from 10 to 20 yrs. One suspect was acquitted in 2015. Of another suspect it is unknown whether or not he was convicted.

In the case of 3 of the 16 suspects the court gave a so-called 'short judgement' on the request of the defendants. According to art. 406 of the Criminal Procedural Code, this means that the punishment is reduced with one third and that the case is adjudicated in the state as it is, without further investigation and without

further calling of witnesses, including the victim(s). Consequently, there is usually little information about these cases.

Trafficking in human beings – new cases 2014					
	Indictment	No. suspects	No. victims	No. hearings monitored	Outcome
NG	Trafficking in persons for prostitution in collaboration (art. 110a (4) CC)	1 male	1 female	5 (2014)	Short judgement 10 years imprisonment (2014)
TT AC	Trafficking in persons for prostitution in collaboration (art. 110a (4) CC)	2 male	1 female	6 (2014) 13 (2015)	1: acquittal (2015) 1: 11 yrs. imprisonment (2015)
IT	Trafficking in persons for prostitution and selling drugs (art. 110a (3) CC); intentional murder (art. 76 CC)	1 male	1 male No info on other victims	2 (2014) 18 (2016)	20 yrs imprisonment (2017)
GB	Trafficking in persons for prostitution (art. 110a (2) CC); illegally keeping combat weapons (art. 278(4) CC)	1 male	1 female	10 (2014)	Sentence unknown (2014)
SHS BS ET	Trafficking in persons for prostitution (art. 110a (4) CC); trafficking in minors for prostitution (art. 128b (3) CC), both in collaboration	3 male	2 female 1 minor	8 (2014)	2: short judgement/ sentence unknown (2014) 1: unknown whether convicted
TL VM AV MF MO	Trafficking in minors for prostitution (art. 128b (3) CC); falsification of identity documents (art. 189(2) CC)	4 male 1 female	1 minor girl (female/16 yr at the time of the offence ¹)	All suspects: 2 (2014) 4 suspects: 10 (2015) ² 1 suspect: 5 (2016) 1 suspect: ³ 11 (2015) 10 (2016)	4: 10 yrs. imprisonment (2016) 1: 15 yrs. imprisonment (2016)
MB EZh	Trafficking in minors for prostitution in collaboration (art. 128b (3) CC)	2 male	1 minor (female)	12 (2014) 25 (2015)	Both suspects: 17 yrs. imprisonment (2015)
BI	Attempt to trafficking in minors for organ transplant (art. 128b CC); illegally keeping hunting weapons (art. 280 CC)	1 male	1 minor (male/7 yr)	9 (2014) 11 (2015) (5 in first instance, 3 in appeal)	7 yrs. Imprisonment (2015); Verdict upheld in appeal (2015)
	Total	15 male 1 female	7 female (incl. 2 minors) 2 male (incl. 1 minor) 1 minor (gender unknown)	2014: 54 2015: 70 2016: 33	

In **2015**, 6 new cases were monitored, involving 7 suspects and at least 9 victims. In one case the number and gender of the victims is not known. All cases concerned trafficking for prostitution. The majority of defendants was male (5). All known victims were female, of whom 5 were minors.

¹ At the time of the trial she is 23.

² In total 24 court hearings were held, of which 10 were monitored.

³ In 2015 the case of defendant MO was separated from the other four defendants, because during he was in jail in Greece for drugs trafficking and could not be given notice.

All 7 suspects were sentenced to imprisonment: 5 in 2015 and 2 in 2016. Prison terms varied from 6 to 16 years. Of the 7 suspects, 4 requested and were granted a short judgement. There were no acquittals.

Trafficking in human beings - new cases 2015					
	Indictment	No. suspects	No. victims	No. hearings monitored	Outcome
XHO	Trafficking in minors for prostitution (art. 128b CC)	1 male	3 minors (female)	10 (2015)	16 yrs. imprisonment (2015)
AL	Trafficking in minors & adults for prostitution (art. 128b & 110a CC)	1 female	1 female 2 minors (female)	9 (2015)	Short judgement: 7 yrs. & 1 month imprisonment (2015)
GJK	Trafficking in persons for prostitution (art. 110a CC)	1 male	unknown	2 (2015)	Short judgement: 6 yrs. imprisonment (2015)
MK	Trafficking in persons for prostitution (art. 110a CC)	1 male	1 female	2 (2015)	Short judgement: 6 yrs. & 8 months imprisonment
QGJ GjH	Trafficking in persons for prostitution in collaboration (art. 110a (4) CC)	1 male 1 female	1 female	16 (2015) 11 (2016)	Both suspects: 15 yrs. imprisonment (2016)
MV	Trafficking in persons for prostitution (art. 110a CC)	1 male	1 female	4 (2015)	Short judgement: 14 yrs. imprisonment
	Total	5 male 2 female	9 female (incl. 5 minors)	2015: 43 2016: 11	

In **2016**, 10 new trafficking cases were monitored, involving 19 suspects and 10 victims, of whom 4 were minors. Eight cases concerned trafficking for prostitution. One case concerned a girl who was forced to beg by her brothers. They were not convicted under the trafficking article but under the article on maltreatment of minors, *in casu* art. 124b CC.⁴ In one case the trafficking purpose is not known. In 3 cases (some of) the defendants were also charged with other crimes, such as exploitation of prostitution and failure to report a crime.

All suspects were male (19). Similar to the previous years, the majority of the victims was female (8); In 2 cases the gender of the minor victims is not known.

Of the 19 suspects, 13 were convicted to imprisonment in 2016, varying from 4 to 15 years. Two suspects were convicted in 2017 (AC/SS). In the latter case the victim had been previously convicted herself for prostitution to 2 months imprisonment and 18 months probation in 2015 (see ED, HK & RC under (exploitation) of prostitution). Of the 13 convictions, 10 concerned a short judgement. In one case the request for a shortened trial by the two defendants was rejected by the court (AC/SS). The case of 4 suspects is still pending.

Trafficking in human beings - new cases 2016					
	Indictment	No. suspects	No. victims	No. hearings monitored	Outcome
EP	Trafficking in persons for prostitution (art. 110a (2) CC)	1 male	1 female	13	11 yrs. imprisonment (2016)
IX XX	Use of a minor to beg, committed in cooperation (art. 124b (2) CC)	2 male	1 minor (female)	4	4 and 4.5 yrs. imprisonment (2016)
FC	Trafficking in minors for prostitution in collaboration (art. 128b (3) CC); Exploitation of prostitution (art. 114 (1) CC)	1 male	1 minor (gender unknown)	6	Short judgement: 6 yrs & 8 months imprisonment (2016)
VF	Trafficking in persons for prostitution (art. 110a (2) CC)	1 male	1 female	9	Short judgement (2016): 8 yrs. imprisonment

⁴ Coercion, exploitation, encouragement or the use of a minor to work to obtain income, to beg, or to perform actions that damage his/her mental and/or physical development or education.

KC BS LM	Trafficking in minors for prostitution in collaboration (art. 128b (3) CC)	3 male	1 minor (female/ 14 yr)	15	2: short judgement, 10 yrs. imprisonment (2016)
				3 ⁵	Pending
QR AR DS Gjl	Trafficking in persons in collaboration (art. 110a (4) CC) Purpose unknown.	4 male	1 minor (gender unknown)	2	Short judgements (2016): 14 yrs. 4 months; 12 yrs.; 10 yrs.; 10 yrs. & 8 months imprisonment
AK AK RS	Trafficking in persons for prostitution (110a (4) CC); Failure to report a crime (art. 300 CC)	3 male	1 minor (female)	7	Pending
KM	Trafficking in persons for prostitution (art. 110a (2) CC)	1 male	1 female	3	Short judgment (2016): 6 yrs. 8 months imprisonment
AC SS	Trafficking in persons for prostitution (art.110a (4) CC); Failure to report a crime (art. 300 CC)	2 male	1 female	6	Both: 15 yrs. imprisonment (2017) Request for short judgement was rejected
MS	Trafficking in persons for prostitution (art. 110a (2) CC)	1 male	1 female	3	Short judgement (2016): 6 yrs. & 8 months imprisonment
	Total	19 male	10 (incl. 4 minors)	71	

Protection of privacy and safety

In almost all cases across 2014, 2015 and 2016 the personal data and life history of the victims were publicly disclosed during the court hearings. This was also the case when the victims were minors. An exception were the cases that were settled with a short judgment. In such cases often no or very limited information about the victim(s) was disclosed, depending on the stage of the proceedings in which the request for a short judgement was made.

Personal data included: name, address, age, place and date of birth, nationality; education; occupation/economic situation; marital status; previous intimate relationships (marriages, cohabiting, love-affairs, etc.); medical data, including present illnesses, medical history and family diseases; number of children and whether they had been born out of wedlock or from cohabitation; relationship with the defendant(s); whether the victim had a previous convicted for an offense; relationship of the victim with their family; personal data of the family of the victim; and in the case of minor victims personal data about the parents of the child.

In 2 cases in 2014 and one case in 2016 it was mentioned that the victim had been convicted for prostitution before (GB 2014; TT/AC 2014/2015; AC/SS 2016).

With a few exceptions, all hearings were open to the public. This also applied to cases in which the victims were minors.

In 5 cases the victim was heard behind closed doors. In 2014 an adult victim was heard behind closed doors on the request of the prosecutor and in one case the audio-registration of the testimony of an adult victim was heard behind closed doors. In 2015 a minor victim was heard behind closed doors. In 2016 two adult victims were heard behind closed doors and a minor victim was heard through video-conferencing. In all three 2016 cases, the examination of the victim started in open court but continued behind closed doors on the request of the prosecutor.

The audience generally consisted of family or friends of the defendants. Sometimes also family of the victim attended the hearings. In most of the cases the audience behaved well, with a few exceptions. In the case of the minor boy (BI), the audience behaved unruly, loudly commented on the case or laughed in reaction to personal information about the boy without the court interfering (BI 2014). In the same case family members of the defendant openly tried to get in contact with the family of the victim. In another case associates of the defendant made fun of the victim when her personal history was discussed and during the testimony of the

⁵ In the course of 2016 the case of defendant LM was separated from the case of the other two defendants as the latter two requested a short judgment, whereas the first suspect asked for the continuation of the regular trial.

mother of the suspect and the sister of the victim (GB 2014). They were joined by the court and the police officers who were present.

In only one case the media were present. Two of the cases were published in the newspaper (one in 2014 and one in 2015), but without the personal data of the victims (XHO 2015; MV 2015).

Publication of the names of victims on the website of the court

In 2014 the full name of one of the victims was published on the website of the Serious Crimes Court (www.gjkr.gov.al) (TT-AC). This also happened to 3 victims, including 2 minors, in 2015 (AL) and again to three victims in 2016, including one minor (EP; LM/KC/BS; AC/SS). Publication may have far reaching and long term negative social effects for victims, especially in the case of trafficking for prostitution. It impairs their chances to rebuild their lives and may put their safety at risk.

From a legal perspective, publication contravenes the CoE Trafficking Convention and represents a breach of Law no. 9887 "On protection of personal data" and Instruction no. 15 "On the processing and publication of personal data in the judicial system".⁶ The latter states:

1. *Personal or sensitive data, including in court decisions, are made public only if this publication does not violate the legitimate interests of the subjects of these data.*
2. *The subject of personal data is informed on his data, which will be published with initials or codes in the official page according to this instruction, aiming to make the subject unidentifiable.*
4. *The persons in charge are obliged to apply the following rules in regard to the publication of criminal decisions and civil decisions (which are given upon lawsuit) on the official website for the protection of privacy:*
 - a) *The names and surnames of the parties, third parties, witnesses and experts called in the trial are inserted with initials or are encrypted;*
 - b) *In the motivation of the decision, the publication of personal data which prejudice the privacy of the parties at trial (such as: address, plate number, telephone number or any other element which makes the data subject identifiable) is prohibited.*

In regard to minors it states:

"In all cases when the parties at trial are minors, the publication of personal details and of other identifiable (personal) data, or of data related to third parties, from which the identity of the minor is revealed, even though indirectly, is prohibited".

Hearing of the victim

In most cases the victims were not present during the court sessions, except when they were interrogated. However, in the majority of cases the victims were not heard, mainly because the case was settled with a short judgement.

	2014	2015	2016
Public hearing of the victim	1 adult female, no psychological or social support (GB)		1 adult female, no psychological or social support (EP)
Hearing behind closed doors on request of the prosecutor	1 adult female, no psychological or social support (TT/AC)	7-year old minor in the presence of a psychologist (BI)	2 adult female, no psychological or social support (QGI/GjH; AK/AK/RS) 14-year old minor via video conference supported by a psychologist (LM)
Audio registration of testimony of the victims heard behind closed doors	1 adult female (GB)		
Victim not heard /short	5 cases	5 cases	7 cases

⁶ Law no. 9887, dated 10.03.2008, changed with the law no.120/2014, "On protection of personal data"; In Instruction no. 15, dated 23.12.2011, 'On elaborating and publication of personal data in the judicial system, civil and criminal court decisions are included.

judgement	(TL/VM/AV/MF/MO; MB/EZ; NG; SHS/BS/ET; IT)	(XHO; GjK; MK; AL; MV)	(IX/XX; FC; VF; QR/AR/DS/ GJI; KM; AC/SS; MS)
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In 5 cases the victim was heard behind closed doors: one adult victim in 2014 (TT/AC) and two adult victims in 2016 (QGI/GjH; AK/AK/RS); one 7-year old minor in 2015 (BI) and one 14-year old minor in 2016 (LM). In one case the audio-tape of the testimony of an adult victim was heard behind closed doors (GB 2014).

In the case of two of the adult victims (TT/AC 2014; QGI/GjH 2016) and one of the minors (LM 2016) the interrogation initially took place in open court, but was later continued behind closed doors on the request of the prosecutor.

The 7-yr old victim was heard behind closed doors in 2015 in the presence of a psychologist. The 14-year old victim in 2016 (LM) was heard through video-conferencing on the request of the prosecutor. The first hearing was public, but on the request of the prosecutor the hearing was continued behind closed doors. During the first, public session, the court interfered to re-formulate questions when the victim did not understand them well. The panel of judges was attentive to the answers of the victim and the prosecutor careful in the way he asked the questions.⁷

In the same way the president of the court interfered and tried to re-formulate the questions in a more clear and simple way, when in 2016 a 22-year old victim was heard who was clearly confused and under pressure. The judge also told the defence not to influence the answers of the victim-witness (QGI/GjH). However, during the hearing one of the judges and the prosecutor laughed.

In another case in the same year, the victim, who was interrogated in a public hearing, also had problems in understanding the questions, was anxious and started to cry (EP). In both cases the victims were not supported by a psychologist, social worker or lawyer.

Representation by a lawyer & information about victim rights

In all three years, none of the victims was represented by a lawyer except for one minor victim in 2014/2015 (MB/EZh).

In most cases, the victims were summarily informed by the judge about their legal rights before they gave testimony.

Support of the victim

In most cases, including those involving child/minor victims, the victims were not supported by a psychologist, social worker or any other institution.

There were a few exceptions: in 2015 a 7-year old victim (BI) was interrogated in the presence of a psychologist in a closed court session. However, he was not interrogated in his native language (Macedonian) but in Albanian, while the interpreter declared that she did not understand Albanian well. However, during the other hearings there was no psychological or social support for the boy or his parents, nor were they informed about their rights during the hearings.

In some cases, the victim was supported by family members, mostly parents but also a brother or sister (BI 2014; TT/AC 2014; MB/EZh 2014; EP 2016). However, there were also cases in which the victim had no support at all, including during their public questioning (GB 2014; QGI/GjH 2015).

In 4 cases the victim stayed or had stayed in a shelter for trafficking victims (TT/AC 2014/2015; AK/AK/RS 2016; EP/2016; AC/SS 2016). In 2 cases it was mentioned that the victim had attempted to commit suicide (TT/AC 2014/2015; AK/AK/RS 2016).

In several cases it was mentioned that the victim came from a poor family, never went to school or had very little schooling, had run away because of conflicts with her family or was not accepted by her family anymore, or was unemployed.

⁷ The judge in this case was one of the participants in the project.

Treatment by the court

Generally, the prosecution and the court behaved professional and neutral. However, they rarely protected the victim against derisive or insulting behaviour of the audience, other witnesses or the defence.

In several cases in 2014 information on the personal history, the work or the private life of the victim led to a condescending attitude of the court towards the victim. In some cases, the judges even started laughing in reaction to data about the private life and history of the victims concerned. When the defence made humiliating, derisive or offending remarks about the victim, the court generally did not interfere. On the contrary, in some cases they joined the defence and/or the audience in humiliating the victim.

In the 'attempt to trafficking for organs' case, for example, the audience behaved noisy and was laughing about the work of the 7- year old boy, who herded cows, but the court did not interfere. The audience consisted of family of the defendant and the parents of the boy. The victim himself was only present when heard. During the hearings in appeal, the president of the court⁸ had to ask two members of the panel of judges several times for their attention as they were talking with each other (BI 2014).

In a second case (TT/AC 2014) the defence stressed that the victim had been previously sentenced for prostitution and making a false statement. One of the defence councils talked in her presence about her in terms like "she is a professional prostitute", "she is a fraud", "she has a mental disability". In another court session the defence described her as "an unemployed prostitute" and "a bad mother who does not care for her child and even does not remember the birth day of her child". The defence also referred to information from her medical file, that she had been hospitalized for a psychiatric illness and had attempted to commit suicide. The court did not interfere at any point. The defence also asked for an expert report on the mental state of the victim, which it later requested to be declared invalid. Remarkable is that the defence referred to the fact that the victim "had tried to escape from the shelter", as if she were not a victim but a prisoner.

In another case (GB 2014) the defense lawyer used offensive language against the victim and tried to justify the actions of the defendant by vilifying the character and personality of the victim and questioning her morals. The court did not interfere. The court also did not interfere when one of the witnesses used offensive language to refer to the victim. When the personal history and data of the victim were discussed, the police officers who were present in the court hall reacted by laughing. A male member of the audience, who had a relation with the defendant, reacted with pulling faces and making ironic remarks. The attitude of the police and the audience was shared by the court. During the testimony of the sister of the victim and the mother of the suspect, the audience started to laugh, making fun of the past of the victim, especially about the fact that the victim had twice been prosecuted for prostitution. They were joined by the judges, police officers and staff of the court. The judges did not make any attempt to stop the witnesses using offending language against the victim.

Also in a fourth case the defence referred to the victim with insulting language without interference of the court (NG 2014).

Only in one case, involving both adult and minor victims, the judge requested the lawyer of the defendant not to elaborate on the character of the victims in his final conclusions (SHS/BS/ET 2014).

In 2 cases in 2016 the court tried to re-formulate questions in a simpler way to help the victim to understand them (LM; QGJ/GjH).

In 2016, 2 members of the panel of judges had to laugh when the brother of the victim was cross-examined and one of them asked him whether his sister worked as a prostitute (EP 2016).

Compensation

In none of the trafficking cases but one the victim submitted a claim for compensation. In the one case the (minor) victim did, the court referred the claim to the civil court. This was also the only trafficking case in which the victim had a lawyer (MB/EZh 2014).

Relation victim and defendants

In several cases there was a close relationship between the victim(s) and the defendant(s).

⁸ The president of the court in this case was one of the judges who participates in the MATRA/COPROL project.

In one case the defendant and the victim were married and had a child together (TT/AC 2014). During the trial it was stated that the victim had been promised a marriage and a better life abroad.

In 6 other cases, the victim or one of the victims was the girlfriend of one of the defendants (SHS/BS/ET 2014; GB 2014; VF 2016; LM/KC/BS 2016; AK/AK/RS 2016; AC/SS 2016). In one of these cases witnesses declared that the victim was not allowed to take her children with her without the permission of the defendant. In another case the victim had a 3-year old daughter whom she had left with her parents when she went to Italy with the defendant (VF 2016). In a third case the defendant had been banned from Greece for 5 years, which did not stop him from trafficking the victim to Greece and joining her there (AK/AK/RS 2016).

In one case the minor female victim was the daughter of an uncle of one of the male defendants (MB/EZh 2014). In another case the defendant was the son of the uncle of the (adult) female victim (MV 2015).

Non-punishment

In two trafficking cases in 2014 and one in 2016, the victim herself had been previously prosecuted and convicted for prostitution (TT/AC; GB 2014; AC/SS 2016).

In the 2016 trafficking case the victim had been sentenced in 2015 to 2 months imprisonment and 18 month probation service for practicing prostitution even while she was staying in a shelter for trafficking victims (AC/SS 2016). She was represented by an *ex officio* lawyer, together with the 2 male defendants (ED/HK), who were sentenced for exploitation of prostitution to resp. 2 and 4 months imprisonment. The suspects in the 2016 trafficking case were not the same as in the 2015 (exploitation of) prostitution case.

Verdicts

In several cases the defendants requested a short judgement according to art. 206 of the Criminal Procedure Code. This implies that punishment is reduced with one third and the case is adjudicated in the state as it is without further investigation. In all but one case (AC/SS 2016) the court granted the request. In the table below the type of judgement per suspect is registered under the year of the beginning of the trial. The actual verdict can be given in a later year.

	2014	2015	2016
Short judgement	3	4	10
Regular judgement	11	3	5
Acquittal	1		
Pending			4
Not known	1		
Total no. of suspects	16	7	19

The number of short judgements seems to increase substantially across the 3 years that were monitored. The increase in short judgements does not mean that the severity of the punishments decreased: in 2016, eight suspects were sentenced to 6-10 year imprisonment and two were sentenced to 11-14 year imprisonment in short judgements.

	4-5 yr	6-7 yr	8-9 yr	10-11 yr	12-13 yr	14-15 yr	16-17 yr	18-20 yr	pending	not known
2014				1						3
2015		4		1			3			
2016	2	3	1	9	1	5			2	
2017						2		1		
Total	2	7	1	11	1	7	3	1	2	3

Sentences varied from 4.5 to 20 yrs. imprisonment. There is only one acquittal (in 2015). The highest sentence (20 year) was given in the trafficking case in which one of the victims was murdered (IT). The highest sentence in a case of trafficking of minors was 17 year imprisonment (regular procedure) and 14 year and 4 months (short judgement). In the case of adult persons, the highest sentence was 15 year (regular procedure) and 14 year imprisonment (short judgement). In the latter case the victim had been lured to Italy by her cousin, the defendant, under the pretext that they had to de-register the deceased brother of the victim. She had been forced to prostitution in Italy and Switzerland and had undergone eight abortions before she managed to escape. The family members of the victim had withdrawn their statements because of threats of the defendant (MV 2015).

In 3 cases the defence tried to have the case re-qualified from trafficking to exploitation of prostitution, arguing that the victim worked in prostitution before or consented to working as a prostitute (XHO 2015; EP 2016; VF 2016). In the first case, involving three minor victims, the defence pleaded not guilty, arguing that all minors had practiced prostitution before they got in contact with the defendant and that they all had declared that they did so with their consent. For this reason, the defence counsel argued, it should be qualified as exploitation of prostitution instead of trafficking. The Court, however, qualified the case as trafficking and sentenced the defendant to 16 year imprisonment (XHO 2015).⁹ In the second case, the defence argued that the victim had been accompanied several times to the police in Italy but had never said anything. Moreover, that she had asked the father of the defendant for help when she had been deported to Albania by the Italian police and couldn't go back to her family (VF 2016). The defendant was sentenced to 8 year imprisonment in a short judgment. Also in the third case the court held on to the qualification of trafficking and sentenced the defendant to 11 year imprisonment (EP 2016).

In a fourth case the defence maintained that the victim had worked for herself and had been able to dispose herself over the money she earned (KM 2016). The suspect was sentenced to 6 yr and 8 months imprisonment in a short judgment.

Countries in which victims were exploited outside Albania included Italy, Greece, Switzerland and Kosovo. In one case the victim was stopped by the police in Italy and deported back to Albania when found undocumented (VF 2016).

Adjournment of hearings

The majority of the monitored court sessions were adjourned or the case was suspended. In a remarkable number of cases the cause was the absence of the prosecutor, the (full) panel of judges, the defendant, the attorney of the defendant or witnesses.

The table below lists the reasons for adjournment and/or suspension in 2014, 2015 and 2016.

Reasons adjournment/postponement of hearings in trafficking cases	2014	2015	2016
Absence prosecutor	7	16	13
The panel of judges not formed	2	8	9
Absence lawyer of the defendant	7	10	19
Absence defendant	1	3	1
Absence prosecutor and the lawyer(s)			3
Absence prosecutor and non-notification of the defendant(s)			1
Absence lawyer, defendant and witness			1
Defendant not given notice/to (re)notify the defendant	2	12	5
Defendant and his/her lawyer not given notice			2
Incorrect declaration of defendants			1
Defendant was not well			1
International search of the defendant/to order the search of the defendant/to wait for response from Interpol			7
To call an interpreter		1	
Absence interpreter	1	1	
To notify/call/interrogate witnesses	7	5	11
Absence witnesses/witnesses not notified	4	11	1
To organise an escort for a witness who is in prison	3		
To interrogate the victim behind closed doors	1		
To interrogate the defendant	1	1	
To wait for/study (new) evidence	3	4	2
Pending the execution of a rogatory letter			3
On request of the defence (to get the authorisation of the defendant; read the file; study new charges; present new evidence; prepare final conclusions; etc.)	9	13	12
On request of the suspect to know/change/select or give notice to his/her lawyer	3	8	
On request of the prosecutor to get familiar with the file			1
On request of the prosecutor to present new/more evidence			4
On request of the prosecutor to prepare his/her final conclusions	2	6	6
To prepare the final conclusions (short judgment)	2	1	

⁹ The judge in this case was one of the judges who participates in the MATRA/COPROL project.

To announce the court judgement		5	6
Not clear	1		
Total	54	108	109
Total no. of hearings monitored	54	113	115

2. (Exploitation of) prostitution

In 2014, 8 cases on prostitution related offences were monitored. In total nine suspects were prosecuted for the exploitation of prostitution or related offences. All suspects were male. Four persons (in four cases) were prosecuted for exploitation of prostitution. One of them was also prosecuted for using premises for prostitution and paying for the services of a prostitute. Three persons (in two cases) were prosecuted for exploitation of the prostitution of a minor; one of them was also prosecuted for theft.

One person was prosecuted for failure to report a crime and intentionally inflicting light injury; another for failure to report a crime and paying for the services of a prostitute. One person was prosecuted for concealment of income.

Seven women and one man were prosecuted for practising prostitution. In some cases, the victims¹⁰ of exploitation of prostitution were in the same case prosecuted themselves for practicing prostitution, making them victims and defendants at the same time. Three exploitation of prostitution cases involved victims who were not prosecuted: one was an adult female victim who had declared with the police that she had been forced into prostitution by the suspect, the other two were minor girls.

In 2015, three cases on exploitation of prostitution were monitored, involving seven male suspects. Two of these cases involved the exploitation of the prostitution of both adults and minors. In these cases, the (five) suspects were also accused of paying for a prostitute. Six females were prosecuted for practicing prostitution. Two of them were minors. All cases served before the Tirana Judicial District Court.

(Exploitation of) prostitution 2014					
	Indictment	No. suspects	No. victims	No. hearings monitored	Outcome
ESH	Exploitation of prostitution (art. 114(1) CC)	1 male	1 female	5 (in total 7 hearings)	1 yr. imprisonment
FH	Exploitation of prostitution of a minor with aggravating circumstances (art. 114a (2) CC 2011)	1 male	1 minor (female)	2 ¹¹	7 yrs. imprisonment
FM	Exploitation of prostitution of a minor (114(2) CC); theft (art. 134(3) CC)	2 male	1 minor (female)	6 (in total 13 hearings)	unknown
YSh	Exploitation of prostitution (art. 114(1) CC);	1 male		6	Short judgement: 1 yr. 4 months suspended imprisonment & 3 yr. probation service
NR	Failure to report a crime & intentionally inflicting light injury;	1 male			Short judgement: 9 yrs. suspended imprisonment & 2 yrs. probation service
HO	Prostitution (art. 113(1) CC)	1 female			Short judgements: 6 months, 20 days imprisonment (female)
MK		1 male			6 months suspended imprisonment & 2 yr. probation service (male)

¹⁰ Formally they are not victims but co-perpetrators.

¹¹ At the second session, the students were not allowed to be present on the argument that there was no place in the office of the judge.

AK	Exploitation of prostitution (114(1) CC);	1 male		3	Unknown
KC	Concealment of income;	1 male			Unknown
LA	Prostitution (art. 113(1) CC);	2 female			Short judgement: 8 months suspended imprisonment & 4 yrs. probation service; unknown
OM					
BQ	Prostitution (art. 113(1) CC)	1 female		1	Case referred to the Constitutional Court
ML	Paying a prostitute (art. 113(2) CC; failure to report a crime	1 male		1	Unknown
MD	Attempt to prostitution (art. 113(1) CC)	2 female			
RS					
VH	Exploitation of prostitution (art. 114(1) CC); use of premises for prostitution (art. 115 CC); paying a prostitute (art. 113(2) CC);	1 male		1	3 yrs. suspended imprisonment & 3 yrs. probation service
DA		Prostitution (art. 113 (1) CC)	2 female		
DT					Fine of 140.000 ALL
	Total	8		27	19

(Exploitation of) prostitution 2015					
	Indictment	No. suspects	No. victims	No. hearings monitored	Outcome
ED	Exploitation of prostitution (art. 114 (1) CC) Prostitution (art. 113 (1) CC)	2 male		6	Short judgement: 4 and 2 months imprisonment resp.
HK		1 female			2 months suspended imprisonment & 18 months probation service
RC					
CM	Exploitation of prostitution (art. 114(1/2) CC) & paying for a prostitute (113(2) CC) Prostitution (art. 113(1) CC)	3 male		3	Request for a short judgement granted - pending
CO		2 female			
KK		1 minor (female)			
MK					
KG					
XhM					
MP	Exploitation of prostitution (art. 114(1/2) CC) & paying for a prostitute (113(2) CC) Prostitution (art. 113(1) CC)	2 male		3	Short judgement: 8 months, 20 days imprisonment (MP)
NQ		1 female			Short judgement: 1 yr. 4 months suspended imprisonment & 18 months probation service (NQ)
AH		1 minor (female)			The sentence for the other two suspects, incl. the minor, is unknown.
EL					
	Total	14		12	

Qualification of the crime: exploitation of prostitution or trafficking

In one of the cases, the victim had made a report at the police station that she was forced to prostitution by the defendant (E.SH.). This raises the question why the case was not prosecuted as trafficking. The same goes for the two cases of exploitation of prostitution of a minor. One of these cases was committed in 2008 (!). It is not clear why these cases were prosecuted as exploitation of prostitution rather than as trafficking of minors, as in the case of children no deceit or coercion is required. This seems to illustrate the problem of the overlap

between the article on trafficking in minors and the exploitation of prostitution of minors, as pointed out by one of the prosecutors in the national report¹²:

"...It is, however, not clear what the difference is between the second paragraph of article 114 CC concerning the exploitation for prostitution of minors, and the criminal act of trafficking of minors, as according to the definition of trafficking in the Convention of the Council of Europe on Action Against Trafficking in Human Beings each case of exploitation of minors, regardless their will, should be considered as trafficking of minors. In practice this situation has caused difficulties in regard to the proper qualification of the criminal act" (interview prosecutor 26 May 2014, Promotion of the rights of trafficked persons in Albania. Legal analysis of the current situation in regard to the rights of victims of trafficking).

Another problem might be the identification of trafficking cases on district level.

In one of the trafficking cases in 2016 (AC/SS 2016) it was mentioned that the victim (RC) had been sentenced in 2015 for prostitution while she was accommodated in a shelter for trafficking victims. The 2 male defendants (ED/HK) had been sentenced for exploitation of prostitution. The defendants in the (exploitation of) prostitution case in 2015 were not the same as the defendants in the 2016 trafficking case.

Protection of privacy

All court sessions were open to the public and the media. The personal data of the women who were prosecuted for prostitution were publicly disclosed. They were interrogated in the presence of the other defendants and the public. The audience mostly consisted of family of the defendants.

Also in the three cases with a victim, the personal details of the victims were publicly exposed, including name and address. This also applied to the two minor victims. All court sessions were open to the public, although in one of these case the students were not allowed to be present on the argument that there was no place in the office of the judge (FH). In practice there were no media or public present. The victims were not heard during the trial, although in one case the prosecutor insisted on reading the police report of the statement of the victim (ESH).

Legal aid

None of the three victims was represented by a lawyer. All male suspects were represented by a lawyer, sometimes *ex officio*. However, not all the women who were accused of prostitution were represented by a lawyer.

In one case the male defendant had an *ex officio* lawyer, while the two women - who were accused of attempt to prostitution - had no lawyer at all (MD/RS/ML). Also in another case (HO-YSH/HO/MK/NR) the female victim/defendant did not have a lawyer, nor the support of her family, a psychologist or social worker. The only support she had was of the other defendants. The judge, however, informed her on her right to be represented by a lawyer at the first session. In a third case the 2 male defendants, accused of exploitation of prostitution, and the female defendant, accused of prostitution, together had two lawyers. The woman and the lawyer had only met each other that day and the lawyer was not familiar with the case (ED/HK/RC).

Treatment by the court and the prosecution

In general, the court and prosecution behaved professional and neutral.

Background of suspects of prostitution and relation with the male defendants

In a number of cases there was a love relation between the male suspect of exploitation of prostitution and the female suspect of prostitution.

This was also the case with one of the minor victims (FH). The verdict in the case on 'exploitation of the prostitution of a minor with aggravating circumstances', for example, referred to a 'love relation' between the accused and the victim. This sounds like what are sometimes also called 'loverboy mechanisms'.

¹² Promotion of the rights of trafficked persons in Albania. Legal analysis of the current situation in regard to the rights of victims of trafficking, CLCI 2015.

According to the attorney of the male suspect in another case it had been the aim of the defendant to create a family with the female defendant and not to exploit her in prostitution. The other woman in this case was married, had eight classes of education, was unemployed and had a 7-year old child. When she told that she had a 7-year-old child, the prosecutor said: "Did you give birth when you were 15 years old?". This clearly made her feel uncomfortable and she just affirmed by nodding her head.

In a fourth case the female defendant had left home because of conflicts with her family. One of the defendants was owner of a hotel and had offered her accommodation and work as waitress, along with having sex with clients of the bar and the hotel. She declared she had a love relation with one of the defendants, a client with whom she had been ordered to have sex for free by the first defendant. She was accompanied by a social worker during the court sessions and accommodated in a shelter.

In a sixth case the defendants were said to have started prostitution due to their poor economic situation. One of them was a minor.

Prosecution and verdict

In six cases of (exploitation of) prostitution the victims of the exploitation were also prosecuted themselves for prostitution. This made them both victim and defendant at the same time.

In two cases (in 2015) minors were prosecuted for prostitution. This contravenes the UN Convention on the Rights of the Child as well as the ILO Convention on the Worst Forms of Child Labour, which qualifies prostitution as one of the forms of worst child labour. According to article 7, rather than punishment, State parties should "provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration", as well as take account of the special situation of girls. In one of these cases the minor was supported by a psychologist.

In the majority of cases, both on exploitation of prostitution and prostitution, a short judgement was requested and granted. This means that no further evidence is taken or witnesses heard. In all these cases the term of imprisonment was reduced with one third on the basis of article 406 CPC.

Sentences for exploitation of prostitution (in a number of cases in combination with other offences) varied from 1 to 7-year (suspended) imprisonment. Sentences for prostitution varied from 1 year and 4 months (suspended) imprisonment to a fine of 140.000 ALL.

In almost all cases, both on exploitation of prostitution and prostitution, imprisonment was suspended under a number of conditions. Conditions that were imposed to the women who were sentenced for prostitution included for example:

- 8 months suspended imprisonment on the condition that she kept in contact with the probation service for 4 years, did not to repeat the offence, received professional education, did not frequent bars with alcoholic drinks, and with the obligation to stay at home from 22:00 PM till 06:00 AM. (LA)
- 2 months suspended imprisonment and probation service for 18 months. During these 18 months she is obliged not to commit any other criminal act and not to be accompanied with the other two defendants. She is also obliged to exercise a profession or to attend professional education (RC)
- 1 year and 4 months suspended imprisonment and probation service for 18 months. During these 18 months she is obliged not to commit any other criminal act and not to be accompanied with the other two defendants. She is also obliged to exercise a profession or to attend professional education (NQ)

Especially the condition of exercising a profession or attend professional education is interesting, as many of the women indicate that they ended up in prostitution through unemployment and dire economic circumstances. This makes the chances that they will be able to follow an education or find another job without support and stigmatized as prostitutes as good as illusory.

Only in one case the woman was sentenced to an unconditional imprisonment of 6 months and 20 days for exercising prostitution (HO). This is also one of the cases in which the female defendant had no own lawyer. The male suspect of prostitution in the same case was sentenced to 6 months suspended imprisonment on the condition of keeping in contact with the probation service for 2 years and respecting the obligation not to be accompanied with the other sentenced persons (MK). It is not clear why the woman was sentenced to unconditional imprisonment.

One case was referred to the Constitutional Court. This concerned a principled case, supported by CLCI, challenging the discriminatory character of the criminalisation of (mostly female) prostitutes as being in violation of the Constitution of Republic of Albania and the Women’s Treaty. In relation to 6 suspects the verdict is not known or the case is still pending.

Adjournment or postponement of hearings

Also, here several court sessions were adjourned or postponed, but much less than in the trafficking cases.

Reasons adjournment/postponement of hearings in (exploitation of) prostitution cases	2014	2015
Absence of the prosecutor	2	2
The panel of judges not formed	4	
Absence lawyer of the defendant	2	2
Absence defendant	1	
Defendant not given notice	2	
To call/interrogate witnesses	2	
On request of the lawyer(s) of the defendant (to review the file; prepare final conclusions)	2	1
On request of the prosecutor to prepare final conclusions	2	2
To prepare the final conclusions	1	
Total	18	7
Total no of court sessions monitored	27	12

Developments

Recently a new law to strengthen the position of victims of crime has been adopted, which contains several substantial improvements.¹³ The law was adopted on March 30, 2017 and entered into force on August 1, 2017. Among other changes, a new article 9a is inserted in the Criminal Procedure Code titled “The rights of victims and injured parties of the criminal act”. According to this article, the public organs have to guarantee that victims and injured parties “are treated with respect for their human dignity and are protected from revictimization during the exercising of the rights envisaged in this Code”.

Article 40 defines the rights of the victims of crimes. These include the right to request the prosecution of the defendant; the right to medical care, psychological support, counselling and other services of organizations or the responsible institutions; the right to free legal aid; to submit complaints; to be informed on the progress of the proceedings; to request compensation/redress; to be excluded from the payment of the judicial expenses; to be listened to by the court, etc.

Recommendations

- The court should pay attention to the protection of the privacy and the personal data of victims in accordance with Albanian legislation and international standards on the rights of victims. The identity of minors should always be protected. On March 30, 2017 a Code of Criminal Justice for Minors was adopted (Law no. 37/2017), which will enter into force on January 1, 2018. The Code includes specific regulations for minors, victims and/or witnesses of criminal acts and requires the responsible institutions to undertake the necessary measures for its implementation.
- It should be ensured that the names of the victims are never published on the website of the court in accordance with Law no. 9887, dated 10.03.2008, “On protection of personal data”, changed, and Instruction no. 15, dated 23.12.2011, “On processing and publication of personal data in the justice system”. Judges, prosecutors and court staff should be trained on the legal responsibilities stemming from the above law and instruction.
- Prosecutors, judges and other relevant justice professionals should be trained in (the implementation of) the recent changes in the Criminal Procedure Law.
- Continuous training of all professionals in the justice system is needed to ensure implementation of the international standards and Albanian legislation with respect to the rights of victims of trafficking in human beings. Special attention should be paid to the attitude of judges, prosecutors and court staff towards victims of trafficking and related offences, prejudices and the (legal) obligation to treat victims with

¹³ Law no. 35/2017 “On some additions and changes in law no. 7905, dated 21.03.1995, ‘The Criminal Procedural Code of the Republic of Albania’, changed”.

respect. Special attention should also be paid to the training of police and prosecutors on district level to adequately identify victims of trafficking.

- Judges and prosecutors should play a much more active role in protecting victims against offensive, degrading and intimidating behaviour of the defendant, the defence counsel, witnesses, and the audience.
- Measures should be undertaken to decrease the number of adjournments and postponements of court hearings. The coordination between the court, the prosecutor and the defence lawyer needs to be improved. Measures should be taken by the court, prosecutors and lawyers in order not to delay hearings.
- Cooperation between the prosecutor's office and the civil society centres which provide free legal aid to victims of trafficking need to be strengthened to ensure that victims are informed on their legal rights, such as the right of compensation, and to support victims to prepare a civil claim for compensation in the criminal process.
- The role of the prosecutor's office in informing victims on their rights and especially the right to compensation should be strengthened.
- The role of psychologists needs to be strengthened, especially regarding minor victims. Psychologists have an important role in assisting trafficking victims not only when they give testimony but also when the victim attends the court session.
- Defence lawyers need to be trained on the Ethical Code and disciplinary measures should be available in cases of breaches.
- The discussion on the functioning of the criminal justice system and the rights of victims of violent crimes needs to be strengthened. To this end the media play an important role in informing the public on criminal procedures, to initiate discussions on the rights of the victims of violent crimes, etc.
- Decriminalisation of prostitutes should be seriously considered for victims of trafficking to be able to safely turn to the police without fear of being prosecuted and punished themselves. This would also enable prostitutes to turn to the police in case of violence, coercion or other crimes committed against them.