

## THE MAIN PROOFS IN A CRIMINAL TRIAL FOR TRAFFICKING IN HUMAN BEINGS IN ALBANIA

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### ABSTRACT

Criminal proceeding begins with knowledge of the offense,<sup>2</sup> which serves as the basis for the start of the preliminary investigation. Preliminary investigations constitute one of the most important stages of the criminal proceedings. During this phase the necessary evidences that serve to identify the criminal fact, the identification of the authors of the offense, and security measures for authors. During preliminary investigation conducted investigative activities that they deem necessary of a prosecutor shall in charge authentication function.<sup>3</sup> The discovery and evidentiary procedural fixing two moments that have connection directly between them. During the investigation it is necessary not only the discovery of appropriate evidence but their procedural fixation. Reached this conclusion by considering: Evidence obtained under the procedural rules laid down.

**Keywords:** Crime, trafficking, cases, trial, evidence Criminal Code.

## THE MAIN PROOFS IN A CRIMINAL TRIAL FOR TRAFFICKING IN HUMAN BEINGS

Are procedural provisions which regulate the manner of exercising the prosecution, investigation and trial of offenses as well as the execution of judgments? These rules are binding on the subjects of criminal proceedings, state bodies, legal entities and citizens.<sup>4</sup> Detection and fixation of evidence is very important since the time, under the impact of different factors may be damaged evidence, disappear or change.

For every decision the Court concludes by stating that the defendant guilty needed enough evidence to which shows that the offense was committed and that the offense was committed by the defendant. The evidence on which charges should be legal and obtained from one of the sources specified in the law. Such designation constitutes a condition for the validity of them. As above facts taken from unexpected sources in law and suspect have no value probation. The body prosecution for all matters affecting in the investigation and consequently for any person to recipient prosecution concludes with notice of charges, unless there are sufficient data to show who the offender is.

With enough data should be understood evidence collected by the prosecution. Evidence cannot be used if it is taken in violation of the prohibitions provided for in the law, because no one can be declared guilty on the basis of data collected illegally.<sup>5</sup> In this way it is very

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<sup>2</sup> Article 280 of the Criminal Procedure Code of RA's.

<sup>3</sup> Prosecutor exercises criminal prosecution and represents the accusation in court on behalf of the state. Prosecution performs other duties assigned by law. Article 148 of the Constitution of the Republic of Albania.

<sup>4</sup> Respect for procedural norms, Section 2 of the Criminal Procedure Code of the Republic of Albania.

<sup>5</sup> Article 2 of the Constitution of the Republic of Albania.

important when it comes to testing and its meaning, its types, ways of making etc, making procedural provisions devote special importance.

Subject to evidentiary are facts<sup>6</sup> relating to the offense, the charge that prosecution raises, the guilt of the defendant, the assignment of security measures, punishment and civil liability. In order for a fact to have value, it must be related to the issue, have come from each legal resource, and to be taken pursuant to the rules of procedure. According to the code of criminal procedure bodies tasked with taking of evidence the prosecution, judicial police and the courts. The latter takes the evidence at the hearing at the request of the parties, excluding that evidence prohibited by law or which are not necessary to resolve the issue. In this way, the court manages to make even be one of the most important principles is the availability of probation.

Gathering evidence is not a stage which made only during the initial investigation after prolonged case. On the other side and the court it has the right to dispose of the mainly on getting proofs. When speak for evidence at the request of the parties in the process is not excluded from receiving them and by the court, which has the right to take evidence it deems useful for judicial review of the case and the main types of evidence mainly. Among defined in the procedural provisions are evidence, question the defendant and private parties, confrontations, recognitions, experiment, expertise, material evidence and documents.<sup>7</sup> On the other hand accepted that the data obtained by means of research evidence, accepted as above proof. For many mention the data provided by the insight, control, seizures, or interceptions.

May arise during the process necessary to obtain a proof which is not regulated by law, and in the case where taking a test that is not regulated by law, the court may take it if it helps to prove the evidence and not violates freedom of the will of the person<sup>8</sup>. As such proof may be mentioned films, photographs, etc. To give a sense of evidence detailing the legal provisions referring specifically:

The evidence are reported on the facts and circumstances relating to the offense, taken from one of the sources defined in criminal procedural law in accordance with the rules set by him and serve to validate whether or not the offense, the effects resulting from it, the guilt or innocence of the defendant and his degree of accountability.<sup>9</sup>

Since a test is valuable in criminal trials, it must necessarily be simultaneously following three elements is; - To provide the data releases reflect the facts and circumstances of the commission of a designated offense and serving to validate whether or not the offense, the effects resulting from it, the guilt or innocence of the defendant and the degree of his responsibility. - The handles of known resources provided by the criminal procedural law. - Such evidence must necessarily to be administered according to the rules provided by law procedural provisions specific to each test.

The determination of these elements is connected directly with the intention that the criminal process itself as well as the respect of democratic standards guaranteed by the constitution, by international treaties and legislation in applicable. As of said first element necessary that the

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<sup>6</sup> Article 150 of the Criminal Procedure Code of the Republic of Albania.

<sup>7</sup> Types of evidence, Chapter II, Code of Criminal Procedure of the Republic of Albania.

<sup>8</sup> Article 151/3 of the Code of Criminal Procedure of the Republic of Albania.

<sup>9</sup> Article 149 of the Criminal Procedure Code.

notice be tested in criminal trials is the content of this announcement. It is precisely the content of which constitutes the object of proof. If the evidence does not give information about the object of proof in criminal trials, it cannot be evidence in criminal proceedings, although it may be obtained from legal sources and according to the rules of procedural law. In cases where a test does not give information related to the subject of proof, judicial practice held attitude by not taking it to the administration, and if it has been taken as evidence considered being unusable for criminal trials, having missed connection object of proof.

### **More specifically mention**

"Including letters, documents, and objects of nature as material to be presented as a reason for the review decision must satisfy two conditions; have emerged after the decision has become final and be proof in the sense that the legislator gives evidence under section 149 of the Criminal Procedure Code.<sup>10</sup>

Certificates submitted by the accused<sup>11</sup>, constituted board Peshkëpi stated that the accused has come to live in this village in June 2005, found by this Panel as inappropriate legal format to prove residency of judgment, less that these acts cannot prove that the accused has used or second items related to the obligation of receiving this notification from sources recognized by criminal procedural law. Criminal procedural law recognized as a source of evidence; witness, the defendant, private parties, experiment, expertise and materials of documentary evidence.

Any notice which is not obtained from the above sources of evidence criminal offense, regardless of its value and quality cannot have the value of evidence in criminal trials. Here we can mention the data and reports that deal because of operational activity by the police authorities, about the offense and its authorship. These data and serve notices investigation body in the form of legal durum require notification proof. When although related to the subject of proof is not received proper legal way and the sources of evidence under the law does not constitute evidence in criminal processing. In this way does not constitute evidence in criminal proceedings information obtained by the police in operational route? This information can serve only as an act upon which starts a criminal proceeding but not proof in terms of the law, as it is not taken from legal sources recognized by penal processes. The procedural practice law court held attitude by not considering these notifications value proof in a criminal trial.

The third element relates to compliance with the requirements of procedural law on the manner of receiving the notification, the proof by procedural subjects. "Constitutional especially. Court stated that, in Article 32/2 of the Constitution of Republic of Albania is provided that no one can be declared guilty on the basis of data collected illegally. In the provisions of Title IV of the Code of Penal Procedure defines general rules obtaining criminal evidence by type, and for taking them during the trial of the case are made provisions of Section III of Title VII of the Code. "The way of obtaining evidence is essential for the development of fair criminal process. Court judicial practice in many cases is faced with the request of the parties administration as evidence notarized statements, statements made by entities or persons different procedural before a notary, these statements about the object of

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<sup>10</sup> Unifying decision of the Supreme Court, No. 6/2002.

<sup>11</sup> Decision of the Supreme Court. 2008

proof in a criminal proceeding. Legislator in the provisions of Article 149 of the Penal Procedure Code has not considered the notarized statement as evidence in criminal trials. We say this because the statements of witnesses, defendants, injured parties or other persons involved and administered by the prosecuting authorities and not by other entities that procedural law has not recognized as such. In this case the missing element notarized statement (third) necessary, he making and administration in the form and manner required by procedural law. In the case statement, charges, claims the defendant, private parties, etc. have not been taken by the judicial police or prosecutor (the probe) or by the court in the proceedings, in the form required by law and its requirements respect.

Especially in cases of human trafficking before the court deposition of notary agreement in which the damaged has completely changed her statements in relation to those given during the preliminary investigation constitutes an impairment of the criminal process. But without entering into the analysis of the content of notary agreement, the court should not accept getting her as evidence in criminal proceedings since the it is a test that has no proper legal form.

The same position held and the United Colleges of the Supreme Court in a case with the revision of the final judicial cut in the value of notarised statements reasoned that "... Notarized statements from the point of view of making their procedural form are not proof in the sense that gives the criminal probation legislator. The fact that three statements are edited by the notary does not bring any changes, since the statements made before notary does not give them the quality of evidence in the sense of Article 149 of the Penal Procedure Code.

It must be said that despite the content of notary agreement relating to directly with the object of proving this statement is taken from legitimate sources recognized by law as such (witness, declares the injured party) they may not have the quality of evidence in criminal trials as received and administered not in the form and manner required by law. This stance has consistently held court practice and specifically; "Rightly courts have not accepted as evidence notarized statement of the victim, not only for the fact that it comes in conflict with many of the injured admitted to the charges and the statements, but the notary statement is not evidence, since under Article 151 of the Penal Procedure Code, evidence obtained during the preliminary investigation of the proceeding and the judgment made by the court upon request of the parties or mainly.

According to the procedural rules of evidence verification and evaluation done during the trial, which is based on the principle of contradiction. But it can happen that data for the offense, because of their nature may be damaged, lose<sup>12</sup>.

In a process of investigation or trial relating to the trafficking of human beings, each test has its value, but most notably mentioning are: - Testimony as evidence in the process, where we highlight the testimony of the victim of the offense.

The testimony of the victim is direct evidence since the damaged during questioning that constitute evidence has notified directly to them what happened. - Evidence obtained from persons who have knowledge of the offense since they have been present or have been aware of other persons to the facts. Their evidence may be direct or indirect. Determined that the evidence is indirect in circumstances where they show that they have learned from other

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<sup>12</sup>Commentary of the Criminal Procedure Code, Islam H, Hoxha A, Panda, Tirana 2003, p 212.

people. - The question of the defendant being the person directly involved in the activities and provides details about the circumstances stated by the victims of trafficking. Even the defendant or a co-defendant in a related proceeding may indicate circumstances useful to highlight elements relating to the incident occurred and the manner of its occurrence.

Witness<sup>13</sup> asked for facts constitute evidence. He can not testify to the moral attitude of the defendant, unless the issue is related to the facts that apply to the determination of his personality in relation to the offense and the social danger.

In the case of trafficking in human beings is necessary, especially during the examination of the victim be highlighted and emotional attitude held by the defendant. In such a case the witness cannot be avoided without mentioning the moral attitude of the defendant.

The question of witness<sup>14</sup> can be extended kinship relationships and interests that exist between the witness and the parties or witnesses, and the circumstances, proof of which is necessary for the assessment of his credibility. Proof of evidence that serve to define the personality of the victim of the offense is accepted only when the prosecution of the defendant should be appreciated in relation to the conduct of the injured. Witness asked about certain facts. He can not testify to what is spoken in public or express personal assessments, except when they cannot be separated from the testimony of the facts.

When the witness<sup>15</sup>, knowing the facts, referred to other persons, the court, upon request of a party or even mainly orders that they be called to testify. Especially in cases of trafficking in human beings due to the problematic situation the victims of trafficking in their living off claims about their accountability and consequently mental and claims to authenticity, the regularity of the claims of victims of trafficking. In a process criminal cannot be questioned as witnesses:

- a) persons who, because of physical or mental shortcomings are not able to make regular evidence;
- b) the defendant in a joint criminal offense or a related proceeding against them even when awarding beginning a case, the acquittal or conviction, except when acquittal decision has become final;
- c) those in the same proceeding perform or have performed the function of a judge or prosecutor;
- d) civil defendant.

The witness is required to appear in court<sup>16</sup>, to adhere to its orders and truthfully answer questions that are made. The witness cannot be compelled to testify to facts, from which can be born criminal responsibility.

In a criminal justice process are not required to testify:

- a) Affinity gender or near the defendant, pursuant to article 16, except when they make charges or complaint or when they or a relative are injured by the offense,
- b) the spouse of the facts learned from the defendant lifetime marital,

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<sup>13</sup>Article 153 of the Criminal Procedure Code.

<sup>14</sup>Article 153/2 of the Code of Criminal Procedure.

<sup>15</sup>Indirect evidence, Article 154 of the Criminal Procedure Code.

<sup>16</sup>Article 157 of the Criminal Procedure Code.

- c) divorced spouse of the defendant,
- d) although he is not the defendant's spouse, cohabiting or has cohabited with,
- d) who is connected with the defendant with the adoption relationship?

The Court makes known the above persons the right not to testify and ask them if they want to benefit from this right. Failure to respect this rule makes it invalid witness. Witness is obliged to appear in court to testify, if there are regular notifications of the hearing date and trial time. When witness called regularly, does not appear in the place, date and at the appointed hour, without legal obstacles, the court may order mandatory accompaniment. A person associated with the obligation cannot be held available after the time necessary for his presence, and no more than twenty-four hours. Responsibility for perjury or refusal to testify during questioning witness When making contradictory statements, not the full or that are contrary to the evidence, the court notes warning for perjury. The same warning does unjustly witness refuses to testify. When the witness insists on refusing to proven or when it appears that the witness makes false testimony, the court requires prosecutors to proceed according to law.

### **The tactic of questioning the witness**

The question is investigative action<sup>17</sup> and trial through which the body procedure takes directly saying that matter to resolve the matter right by the injured, predicate, the defendant etc. These statements are the result of a complex psychological process. The formation of these sayings passes three phases, namely:

- perception,
- Memory,
- Reproduction.

Perception is psychological process by which reflected awareness of the object, object and phenomenon in whole. Memory consists of a set of processes how to memorizing, retention, recognition and reproduction, Reproduction is the process of reflection statements before or heard.

All three of these processes represent important in offenses related to trafficking in human beings.

Another evidence in criminal proceedings are and confrontations which in the case of trafficking in human beings represent important since the damaged put against the defendant confirming its version and takes so aware with what will be faced at the trial of the case. Facing<sup>18</sup>, allowed only between persons who are asking when their mismatch between facts and circumstances. The proceeding, after being recalled previous statements that will confront people, ask if you confirm or vary them, inviting, where necessary, to make reciprocal objections. The record shall questions from the proceeding, the statements made by persons face and everything else that happened during the confrontation.

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<sup>17</sup>Begeja, S. Criminology, Volume II, Tirana, 2011,

<sup>18</sup>Article 169 of the Criminal Procedure Code.



When the need arises to conduct the identification of a person,<sup>19</sup> invites him to the proceeding must identify to describe the person showing all the signs that remembers and asks if it was previously called to make recognition as well as other circumstances that may affect the authenticity of knowledge. Minutes include actions taken and statements made by the person making the acknowledgment.

Once removes what must identify body procedure ensures the presence of at least two persons as similar to that should be recognized. It invites the latter to choose his place in relation to others, tending to appear, as far as possible, in the same condition in which it would have been seen by the person called recognition. After the person who will make the recognition court asks if she knows anyone from those presented for recognition and, if yes, to show which knows and to specify whether it is safe. When there is reason to believe that the person called to make recognition may be afraid or be influenced by the presence of the person to be identified, the proceeding shall order that the act is performed without seeing latter first. In official record, with consequently invalidity, ways of cognitive development. The proceeding may order that the development of identification be photographed or filmed. When should conduct the identification of material evidence or other items related to the offense, the proceeding acts respecting the rules for the recognition of persons to the extent that they are applicable. Once found, when possible, at least two similar objects to be identified, the person asks proceeding call for recognition if it recognizes any of them and, if yes, to the state which has recognized and to specify whether it is safe, entered in the records, the result of invalidity, ways of developing recognition. In trafficking cases human knowledge and knowledge of the person or the files are quite prevalent since the injured often not aware of the names of people who have stayed with. But could happen not to have known and the names of persons who have been trafficked since the persons presented with fake names, fake and untrue. During these processes are important proof and expert. There are a number of cases of incompatibility of office expert:

- a) a minor, who has legal prohibition or deprived of legal capacity to operate or suffers from a mental illness;
- b) who is suspended, even temporarily, of duties public or by the exercise of a profession?
- c) he, to whom personal security measures have been taken;
- d) it cannot be questioned witnesses.

Parties may request disqualification of the expert in the cases provided for and to remove a judge. When there is an exception because the expert is required declare. Declaring cause of exclusion by the expert or search of exclusion of the parties may not appear until setting the duties and, when the causes were born there and then or later recognized before the expert has given his opinion.

### **Cases of securing evidence**

Cases of securing evidence provided for in Article 316 of the Code of Procedure Offenses and are:

- a) The taking of testimony from a person when there are good reasons to think that he could not be questioned because of illness or other serious obstacle.

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<sup>19</sup>Article 171 of the Criminal Procedure Code.

- b) taking of testimony when there are grounded reasons to believe that the person may be subject to violence, threat or promise to give money or other benefits in order not to testify or to give false evidence.
- c) The question of the defendant for evidence relating to the responsibility of others, when the grounds mentioned above.
- d) Dealing with the prosecutor persons has made contradictory statements, when the grounds mentioned in the letters "a" and "b".
- e) Surveying or experiment when they relate to people, objects or places, the situation of which may vary inevitable.
- f) Identification of persons or objects when specific reasons cannot be postponed action recognition to the judicial process.

Most of these cases are included in the category of those actions that cannot be deferred until the trial, while others enter the unique actions such as:

- Extract of a seriously ill person,
- Or when there are serious obstacles to appear at court hearings, as well as expertise and experiment in relation to objects or places which may be subject inevitably changes.

Term actions that cannot be deferred until the trial is anticipated in the code. By clarifying the boundaries within which find application security institute probation, law wanted to provide the correct judges on the basis of which to verify and evaluate the case that appears if it is included in the requirement of Section 316 of the code of criminal procedure.

In the case of witness some of the terms are valid for some other acts 2. a) The taking of testimony from a person when there are good reasons to think that he could not be questioned because of serious illness or other obstacle.

In this case it comes to those who are harmed by the offense, life. Their risk for those persons who are elderly, what prevents them from appearing at the hearing or when the same people there are fears that with time they can die by not stating what they know about the offense or even lose memory? In criminal procedure code does not have a precise definition of the term "barrier serious "and the court will assess such a case, what possibly could turn a situation even abusive. Just mentioned that in a disease should not only be seen but also be verified by medical specialists, which facilitates the work of the court somewhat, but the case of "serious barrier" has found a formulation in our legislation, but estimated case by case.