

# Trafficking in Georgian Criminal Law

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## Abstract

Trafficking is global and one of the most important problems in the modern world. Every year, due to various reasons, both on their own and in other countries, many people become victims of exploitation. Trafficking prevents the development of a democratic and humanitarian society. Individual states and international organizations are trying to combat this crime. Human trafficking is one of the fastest growing and most important profitable criminal act. Today, it is placed beside drug dealing. If we take a look at the modern world practice, fighting against trafficking is carried in three directions: A) criminal liability of the perpetrators; b) crime prevention; C) Protection of trafficking victims; The basic content of our topic will focus on criminal responsibility and its regulation issues in Georgian legislation.

**Keywords:** crime, criminal responsibility, trafficking.

## 1. Introduction

The modern globalization process poses a lot of challenges to the civilized world, including the fight against international crime. Trafficking takes a significant place in this regard. Trafficking is an important challenge to the modern civilized world. This transnational crime is characterized by two important problems:

First, this is the scale of this crime: in particular, if we look at different data chronologically, we will see that every year more than two million people are victims of this crime. (There are different data on the trafficking, but the fact that it is a crime you can see at reference 17; Badzagua, M., 2010, p. 5; Shagulashvili, T., 2008, p. 140)

1. In addition, such a crime is not usually carried out within one country but often it starts in any country and continues to be in other countries, so the area of action of criminals and the number of victims is quite large.

2. Second, these are the gravest causes of these offenses. It hinders the process of development of the civilized world, grossly violates human rights and basic values. It violates and destroys such good things as human life, health, safety, freedom, dignity, and honor. The necessary sign of trafficking is an exploitation that often leads to a

slavish condition of the human being. Slavery is a continuous process in its contents. The hard social-psychological condition caused by such a situation makes the victim a non-existent; in a moral sense, the person loses his/her ability to perceive himself/herself as a person who is disintegrated, stigmatized, disgusted, and intimidated by the society. People in such a situation "do not get hurt or worry about anything." The victim of human trafficking "experiences physical and psychological forms of violence and destructive influence of these forms. The use of these forms puts a risk to life, freedom, security and free development" (Meskhi, M., 2014, p. 276). People with such severe psychological stress often need a long psychological course to rehabilitation."

In view of all these factors, in conditions of modern globalization, international organizations and separate states should actively fight against and avoid any trafficking offense.

## 2. Analysis

Fighting against trafficking has been the focus of the whole world, however, according to recent data, trafficking still continues to be an important part of the "profitable business"(For statistics of trafficking in Georgia see ref. 16). It is noteworthy that if in the past trafficking was limited to slavery, nowadays, "together with the development of medicine, people are using organs for transplantation and surrogate motherhood and, in parallel to technological improvement the victims become the source of the more profitable activity" (Badzagua, M., 2010, p.3). It holds an honorable place between narco-business and weapon trade. High level of economic interest is characterized by the nature of this crime as well (M. Lekveishvili, N. Todua, G. Mamulashvili, 2014, p. 244).

In most cases, trafficking is caused by the low socio-economic backgrounds associated with poverty, unemployment, low level of education, corruption, discrimination or lack of prospect. Trafficking is not a new offense. At different stages of human development, it was manifested in various forms, and sometimes it got very steep and wide scales (For example, we can name the trafficking in Georgia in the 16<sup>th</sup> and 18<sup>th</sup> centuries. The Georgian Orthodox Church has alarmed the bells on the sale of the victims. In the middle of the sixteenth century the Church Council was invited by the Catholicos of Kartli Malachia and the spiritual leader of Western Georgia Evdemon I, where the Church Council discussed and punished the people involved in these dirty affairs, (Dolidze, I., Vol. III; Kantaria, B., 2011, p. 72). In December 1759, the church meeting was invited by the King of Imereti Solomon I, which was attended by the secular feudal, in fact, it was a meeting of State Governors. A rigid verdict on people who directly or indirectly contributed to or participated in the sale of prisoners was made. This law punished all the people who were considered to be the victims of the sale of prisoners ... regardless of the social and theological hierarchy. Those who were directly involved in the murder were also strictly executed (see essays of Georgian

history, Vol. VI, 1973, pp. 640-641). The Georgian film “Mamluk” has been made on this topic). The civilized society was trying to make a proper legal assessment of the trafficking offense and to determine its legal concept. In terms of fighting against similar criminal acts in the past, a lot of normative acts of international or internal legal significance have been created (1926 Convention on Slavery, the 1945 Convention on the Exploitation of Human Trafficking and Prostitutes; 1989 Convention on the Rights of Children, etc.). However, the definition of this crime and fighting against it was not given a due attention.

In terms of fighting against trafficking, 2000 year is considered to be an important stage of development when the UN Convention and the Protocol were signed to fight against transnational organized crime in the city of Palermo: “The Protocol on Prevention, Prohibition and Punishment of People, especially Women and Children”. This Protocol is the first international legal document where the concept of trafficking was first interpreted (Meskhi, M., p. 257; Bakakuri, N., 2004, p. 111.; Criminal Court Practice Comments: Crimes against Human, Chapter XXII-XXIV of the Criminal Code of Georgia,., 2008, p. 115). This document is very important in the sense that it defined the legal mechanisms for fighting against trafficking.

An important legal document in the international jurisdiction is also the Convention of the Council of Europe on the Fight against Human Trafficking (March 16, 2005), which was ratified by the Parliament of Georgia on December 22, 2006.

Modern mechanisms for fighting against trafficking, which can be strengthened by various international legal acts, can be divided into three directions: the criminals' responsibility, the prevention of crime and the protection of trafficking victims.

All three mechanisms are very important in terms of fighting against trafficking, but the distinguished place is still held by the criminal responsibility of the criminals. Perhaps, this fact should be explained by the circumstance that the notion of trafficking in the Georgian legal space was first defined in criminal law in 2003, and later in 2006 the Parliament adopted a law on “Resistance to Fighting against Human Trafficking” where the third and fourth chapters of this law focus on the prevention of trafficking and rehabilitation of victims (see ref. 18).

Trafficking crimes in the Criminal Code of Georgia are placed in the chapter of the crimes against constitutional rights and freedoms. Judging by placing crimes in the Criminal Law Code, the Georgian legislator discusses them as the crimes against human freedom. The offense of trafficking is presented in three compositions: Trading with humans (trafficking) (Article 143<sup>1</sup>), trade with children (trafficking) (Article 143<sup>2</sup>), and using the service of victims of human trafficking (Article 143<sup>3</sup>). The first two of these crimes belong to a particularly hard category of crime, and the third is less serious. It should be noted that trafficking was first introduced in 2003 in two articles, and the third article was added in 2007. In addition, in 2006 the amendments were introduced in Article 143<sup>1</sup> and 143<sup>2</sup> of the Criminal Code of Georgia, according

to which the responsibility of legal entities was defined and the composition of the crimes was perfectly specified. New qualifying (aggravating) marks were also formulated in a new way (Lekveishvili, M., Todua, N., Mamulashvili, G., 2014, p. 244).

Until 2003, before the definition of trafficking in Georgia, the Georgian criminal law legislation had been responsible for similar types of anti-social acts under various compositions, such as involvement in prostitution, imprisonment, violence, etc. However, the qualifications of these articles do not necessarily reflect the social-legal content of trafficking, and the penalty applied according to these articles did not comply with the load of the offense. The current Georgian legislation is perfectly complete in this regard. It almost completely prohibits all forms of manifestation of trafficking and establishes a relevant sentence according to the severity of the offense committed.

According to the relevance of the abovementioned issue, it can be said that Georgia carried out legal reform in the field of trafficking in a very short time, in particular, determined the trafficking offenses in the Criminal Code, adopted and launched "the law on fighting against the human trafficking" which represents the legal basis of preventing and fighting against the crime. In addition, Georgia has ratified the "UN Convention Protocol on Transnational Organized Crime" and "the Convention of Council of Europe on the Fight against Human Trafficking". Due to the implementation of effective measures against trafficking, Georgia was positively assessed (Badzagua, M., 2008, p. 134) by the 2007 report of US Department of State that it was among the first states to fight against trafficking (Public Defender's Report of Georgia on the State of Human Rights and Freedom Protection in Georgia, 2008, p. 271; Parsadanashvili, N., 2010, p. 168, 170). According to the Georgian Criminal Code, the name of trafficking is "human trading (trafficking)" (The use of two names for this article, especially the second name in the parenthesis to make it clearer to specify the main name, we think is too much. This article can be called an ordinary trafficking that has been firmly established in Georgian legal thinking).

This article consists of four parts. The **first** part defines the concept of trafficking as the main composition of the criminal act, as follows: "Convincing, transferring, concealing, renting, transporting, transferring, harboring, or receiving a human being for the purpose of exploitation via buying or selling of a human being, or carrying out other illegal transactions, as well as threats, violence or other forms of coercion, abduction, blackmail, fraud, deception, helpless condition or abuse of power, by giving or receiving a benefit or acceptance of the consent of the person who can influence the other person".

By the second, third and fourth parts of the same Article 9 paragraphs of aggravating circumstances are envisaged. In the **second** part, the same action is punishable committed a) against the pregnant woman preliminarily recognized by the offender; (b) against the person in the helpless condition or the materially or otherwise

dependent person on the offender preliminarily recognized by the offender; c) using official position. According to the **third** part, the same action is punishable committed a) repeatedly; b) against two or more persons; c) by taking the victim abroad; d) by the threat on life or health, or with the use of such violence. The **fourth** part shall be punishable for the action envisaged by the first, second and third parts of the same article: a) committed by an organized group; b) causing the death of the victim or any other grave consequence.

In general evaluation of the given article, first of all, it should be noted that the definition of trafficking in the Article 143<sup>1</sup> of the Criminal Code of Georgia does not repeat the verbal definition of trafficking internationally recognized by the 2000 protocol of the Palermo, although it is in compliance with this notion. In the Georgian criminal law, there is an attempt to make the notion of trafficking more clarified on the basis of certain signs, for example, such signs as blackmailing, hiring and transmission, as well as objective signs characteristic of this criminal action, such as buying, selling or other illegal deals. Buy-selling is a general economic activity that involves purchasing certain goods or services. But as for trafficking, we mean here a person as an object of selling, which, like “economic activity”, can be expressed in the payment of money, in debt, the exchange of goods, etc. These methods of buying and selling are not different from similar forms of economic activity; the only difference is in the object of the transaction. As for the sign of illegal transaction during trafficking, it can be expressed in getting certain benefits, such as promising treatment during the transaction, repairs, assistance in business, etc. The content of such transaction will be restricted to the fact that a person entered into an illegal deal can influence the future victims of trafficking. Therefore, this method is absolutely possible to be one of the signs of the objective side of trafficking.

In order to make a more clear impression on the harmonious compatibility of national legislation with international definition of trafficking, we should also underline the fact that at both national and international legislation levels, we can distinguish between three phases of implementation of this crime: selection and recruitment of victims, transit, and operation.

For the recruitment of victims of trafficking, which is expressed in selecting future victims, contacting with them and recruiting them, the criminal may apply to different methods described in Article 143<sup>1</sup> of the Criminal Code of Georgia. In addition, these methods can be both, intellectual, for example, deception, fraud, pay or benefit to a person who can influence others or coercive, for example, abduction, threats, violence or others, or even simultaneously be reflected in the offense committed, such as blackmail, abuse of power, and so forth. In a word, the legislator describes the signs in which the first stage of trafficking can be recruited quite extensively and thoroughly.

In terms of ensuring victims of trafficking, the disputed mark of the objective composition may be the use of a vulnerable state. This is the case when the person is not able to resist because of his/her physical or mental state. That person should be able to recruit the other person and put him/her into exploitation. It is correctly mentioned in this method, in the literature that “such a case is very atypical for human trafficking” (Lekveishvili, M. Todua, N., Mamulashvili, G. 2014, p. 249).

A commitment to trafficking is often accompanied by the movement of the victim or transit. The transit can be done both within and outside the country. In addition, crossing the border can be both legitimate and illegal. In the first case when the victims move inside the country with the purpose of exploitation, this means the victims' movement on the territory of their residence. In regard to this type of trafficking, I agree with the researchers who call it “internal trafficking”. The opinion that trafficking should be considered only in the transnational context, and for this it is necessary to assess only cases where trafficking victims are transferred to a foreign country, I think, is not correct (Comment of Criminal Court Practice: Crimes against Human, Chapter XXII-XXIV of the Criminal Code of Georgia, 2008, p. 124; Bakakuri, N. 2004, p. 114; Glonti, C. 2008, p.127). Transferring victims during the trafficking can be accompanied by signs of objective composition, such as hiring, hiding, transferring, packing or receiving the law. During the transit of victims, they are not just moving, but the main essence of moving and carrying out all accompanying activities lies in reaching the main goal towards the displaced person - turning into trafficking exploitation victim. That is why the legislator tries to list such signs exhaustively.

The third stage of trafficking as a complex action is to provide exploitation. Exploitation is one of the important elements for the qualification of trafficking offense. It is correctly mentioned in the literature that the concept of exploitation compared to the Palermo protocol is more widely interpreted in Georgian legislation (Meskhi, M. 2014, p. 265). This explanation is provided in the note of Article 143<sup>1</sup> of the Georgian Criminal Code. It consists of two parts, and the first part is divided into four paragraphs and four sub-paragraphs. According to the first part of the Article 143<sup>1</sup> of the Criminal Code, the exploitation for the purpose of trafficking is considered to be: a) labor or services or b) enforcing sexual services; c) involving a person in criminal activity, prostitution, pornography or other anti-social action; d) transplanting or removing the organ of the body or tissue of the human body, or using otherwise; e) putting a person in a condition similar to human slavery or in modern conditions of slavery. Putting a person in the modern conditions of human slavery implies the creation of such conditions when he/she is paid, with inadequate compensation or without any remuneration at all, performing a job in the favor of another person or providing a service and cannot change this circumstance because of his/her dependence on this person. Depending on the person may be caused by: e.a) seizure, control or intentional infringement of the person's ID document; e.b) restriction of freedom of movement or control of free movement; e.c) by restricting

communication with a family member or other person or controlling correspondence and telephone communication between them; e.d) by creating a forced or terrifying environment.

According to the second part of the same note, the consent of the person for premeditated exploitation of trafficking does not necessarily have any sense, or we will face the trafficking of the victim, regardless of the consent of the future victim of trafficking.

It should be noted that the Georgian legislator interprets the concept of exploitation quite widely and in details. The exploitation during trafficking can be expressed not only by the manifestation of individual types of human slavery or individual forms of prostitution but also it can be related to the transplantation or other use (Human trafficking for the purpose of taking organs - Under International Legal Regulation, 2011, p. 127-155) of human organs, which obviously increases the threat of this criminal act. Such actions are directly related to the deprivation of human life and health.

During trafficking, a person most frequently becomes the victim of sexual service and labor exploitation, which stipulates that he/she is in a state of slavery. At the same time, such offenses take place in the territory of transit or recipient state in terms of general practice. The victim's presence in a foreign state creates additional difficulties related to unlawful migration and illegal crossing of the border. Fighting against trafficking as a transnational crime implies not only imposing liability but also the creation of tools such as taking into account the interests of the victims. In this regard, it is necessary to specifically emphasize the right decision of the Georgian legislator, when, in case of the illegal crossing of the border (344 m) and the preparation, application or selling of fake document, stamp, seal or document form, (362 m.), he/she releases the victim from liability if the offense is committed by a person trafficked during the time of being victimized (the Administrative Offenses Code of Georgia, Articles 172<sup>3</sup> and 185 ). The introduction of such norms by the legislator not only serves to protect the interests of the victims but also it is in compliance with the general law policy in terms of fighting against trafficking.

Trafficking is a formal crime. For its completion, it is not necessary to put the trafficked person into the exploitation and any material result to be reached, but it is sufficient to carry out the act determined by the correspondent law.

Such is the general content of the objective side of the trafficking offense (or, part I of the Article 143<sup>1</sup> of the Criminal Code of Georgia), which can be characterized by a detailed consideration of each of its signs, although this cannot be available due to the size of the present paper.

As for the composition of the subjective side of trafficking, it is expressed in direct intention. In terms of motivation, as a rule, the criminal is basically acting on the

motives of the selfishness; however, it does not matter for the qualification of crime. Therefore, trafficking can also be committed with other motives, such as revenge, careerism, misunderstanding of friendly compassion and so forth. As for the purpose of trafficking, the offender should act for the purpose of exploitation. However, it should also be noted that the issue of purpose along with the signs of objective side of trafficking, like buying, selling, or illegal dealing causes different opinions in legal literature. According to some authors we have the case of trafficking whether or not the offender was responsible for exploitation. We think this approach is correct to understand the essence of trafficking if buying a person is not connected to the freedom of the victim himself. But when a person is the sales object or illegal transaction, and therefore, "a person is treated like a thing ... this action is unlawful and here the purpose shall not be important"( Lekveishvili, M., Todua, N., Mamulashvili, G. 2014, p. 255; Meskhi, M., 2014, p. 271-272; Criminal Code of Georgia, 2008, p. 131-132).

The following composition of the trafficking, defined by Article 143<sup>2</sup>, is trading with juveniles (trafficking). In its contents, this article is similar to the article discussed above. In particular, the legislator also speaks here about selling and buying the juvenile, or to carry out other illegal transactions, as well as recruiting, transferring, hiring, hiding, transporting, transmitting, or exploiting the juvenile. Unlike the previous composition, when dealing with a minor, the legislator does not specifically describe those signs by which the recruitment of the juvenile can be available. It is natural that this offense can also be revealed by all the signs of human trafficking.

We believe that there is no basis for the separation of trafficking of a juvenile as a separate article. The Georgian Criminal Code does not recognize similar practice with regard to other crimes. Therefore, the positions of the authors on this issue who think that the trafficking of juvenile should be established as one of the circumstances qualifying human trafficking are correct ( Glonti, C. 2010, p. 8). There is no theoretical or practical basis for forming it as a separate type. One of these circumstances can be explained by the fact that the UN Convention against the Transnational Organized Crime and its Additional Protocol describe fighting against human trafficking, particularly fighting against women and children trafficking. Because of the vulnerability of children in the international legal context, the main attention is paid to them. However, in fighting against juveniles, it is not necessary to separate these compositions in the national legislation. According to this logic, we should separate the case of trafficking against women, because if we take into consideration the vulnerability of women and the scales of trafficking in comparison with men, these cases may also require similar approaches. Moreover, the above-mentioned protocol and other international documents discuss the special attitudes towards women as well.

The current Georgian Criminal Code, as we have already mentioned, was added by another new composition in 2007, which deals with the use of victims (victims) of human trafficking. The introduction of this article was conditioned by the requirement of Article 19 of the Convention of the Council of Europe, which states that the States acceded to the Convention shall commute the use of the service of the trafficking victims as a crime. Introduction of this article is one more step forward in terms of fighting against trafficking, as the increase in trafficking is often caused by the use of victims of trafficking. Consequently, Georgia is trying to get acquainted with the modern civilized world and create its own tools to fight against this crime.

### 3. Conclusion

So, based on the above analysis, we can make some conclusions. First of all, it should be noted that trafficking is still a great problem for the modern world; that the scale of this crime is extensive and the results are quite severe. Georgia, as a part of the civil world, has taken immediate steps to fight against this crime. It shared the international experience and created appropriate tools for the purpose of responsibility for the crime of trafficking, prevention of crime and the rehabilitation of victims. In this regard, Georgia is among the first countries in terms of reforms. In terms of criminal responsibility, Georgia has established three new articles that comply with international approaches to this issue, but it formulates a number of issues, using its own scientific or practical potential, by which it seeks to contribute to improving the criminal activities of trafficking. In this respect, the issue of trafficking is more relevant now in terms of separation from similar criminal actions.

### References

- [1] Administrative Offenses Code of Georgia, Articles 172<sup>3</sup> and 185
- [2] Badzagua, M., Human Trafficking, and State Policy in Georgia, Journal "Criminologist", N2 (3) Tb., 2008, p. 134
- [3] Badzagua, M., (2010). Criminological Characteristics of Human Trafficking on the Examples of Georgia, Dissertation Awarded for Academic Degree of Doctor of Law, Tb, [Online] Available: <http://www.nplg.gov.ge/dlibrary/collect/0002/000408/badzagua%20distracia%20trefikingi.pdf> (December 19,2017)
- [4] Badzagua, M., Criminological Characteristics of Human Trafficking in Georgia, Summary of the Doctoral Thesis, Tb., 2010
- [5] Bakakuri, N., Human Trafficking, "Almanakhi" # 19, 2004, p. 111;
- [6] Comment of Criminal Court Practice: Crimes against Human, Chapter XXII-XXIV of the Criminal Code of Georgia, "Meridiani" Tb., 2008, p. 124; N.

- [7] Glonti, C., Some of the Qualifications of Human “Trafficking”, according to the new legislation of Georgia, Journal “Criminologist,” 2 (3), Tb., 2008, p.127.
- [8] Georgian history, (1973). Vol. VI, , pp. 640-641.
- [9] Human trafficking for the purpose of taking organs - Under International Legal Regulation, Journal of International Law, Tb., 2011, p. 127-155;
- [10] Kantaria, B., ,Dolidze, I., “Law by the Council of Catholicos”, 8 volumes Vol. III, Georgian Legal History - Tb., 2011, p. 72
- [11] Lekveishvili, M., Todua, N., Mamulashvili, G. (2014). Private Part of Criminal Law (Book One), Fifth Edition, Tb. p. 244
- [12] Meskhi, M. (2014). Legislative Regulation of Human Trafficking According to international and national Legislation, Jubilee collection- Mzia Lekveishvili - 85, Tb. p. 276
- [13] Public Defender’s Report of Georgia on the State of Human Rights and Freedom Protection in Georgia, the second half of 2008, p. 271; [Online] Available: <http://www.ombudsman.ge/en/news/adamianit-vachrobis-trefikingis-winaagmdeg-brdzolis-msoflio-dge.page>( December 19,2017)
- [14] Parsadanashvili, N., Prevention of Trafficking - State Practice and Georgia, Journal of International Law, N2, 2010, p. 168, 170;
- [15] Shagulashvili, T.(2008). Trafficking ie Slavery in XXI century; journal "Criminologist," N2 (3) Tb., p. 140
- [16] statistics of trafficking in Georgia [Online] Available: <http://www.justice.gov.ge/Ministry/Index/357> (December, 18, 2017)
- [17] Data on the trafficking, [Online] Available: <http://police.ge/en/projects/adamianit-vachroba>; (December, 19.2017)
- [18] [Online] Available: <https://matsne.gov.ge/ka/document/view/26152> , ( December 19,2017)