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# ***Legal Aspects of Combating Human Trafficking in Georgia***

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## Introduction

Trafficking in persons was criminalized in Georgia in 2003 when the relevant provisions were included in the Criminal Code of Georgia.<sup>1</sup> 28 April 2006, the Parliament of Georgia adopted the Law on *Combating Trafficking* in Persons. This law, as the name suggests, stipulates the legal and organizational grounds for preventing and combating human trafficking. It also sets the legal status of victims. In the same year the Georgian Parliament ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the Council of Europe Convention on Action against Trafficking in Human Beings. In 2007, a provision was added to the Criminal Code of Georgia. This criminalized the use of services of a victim of human trafficking.<sup>2</sup>

## Legislative framework for the combating and prevention of trafficking in persons

There are three different articles related to the trafficking in persons in the Criminal Code of Georgia<sup>3</sup>: Art. 143<sup>1</sup> refers to the trafficking in adults, in general. Trafficking in minors is criminalized in a separate provision, namely in Art. 143<sup>2</sup>. Furthermore, Art. 143<sup>3</sup> prohibits the use of services of a (statutory) victim of trafficking in persons. Art. 143<sup>1</sup> prescribes punishment with prison sentences ranging from seven to twenty years. Art. 143<sup>2</sup> contains the stricter approach stipulating prison sentences ranging from eight to life-term imprisonment. As to Art. 143<sup>3</sup>, use of services of a (statutory) victim of trafficking in persons is punished by imprisonment ranging from three to fifteen years.

The provisions of the Civil Procedure Code,<sup>4</sup> which are of relevance for human trafficking concern: lodging complaints on the seizure of property owned by human trafficker and its transfer to the state; declaring property owned by human trafficker illegal or unfounded; seizure of property; legal consequences related to declaring property illegal or unfounded.<sup>5</sup>

## Assistance and protection of victims of trafficking in persons

The Law on *Combating Trafficking* in Persons<sup>6</sup> defines the competences and obligations of state agencies, officials and legal bodies and rules for the coordination of their activities.<sup>7</sup> It defines specificities of the criminal procedure with regard to the prosecution of a trafficking case.<sup>8</sup> It establishes exemptions of trafficking victims from criminal responsibility for wrongful acts committed by them due to being the victim of trafficking in persons.<sup>9</sup> It determines the legal status of victims of trafficking in persons<sup>10</sup> and associated social and legal protection guarantees. According to the law, the status of human trafficking victims may be granted to persons by the law enforcement body provided

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<sup>1</sup> Articles 143<sup>1</sup> and 143<sup>2</sup> of the Criminal Code of Georgia.

<sup>2</sup> Article 143<sup>3</sup> of the Criminal Code of Georgia.

<sup>3</sup> Adopted 22 July 1999 (Last amended on 19 June 2012). „Sakartvelos Sakanonmdeblo Matsne“, 41 (48), 13/08/1999.

<sup>4</sup> Adopted 14 November 1997 (Last amended on 25 May 2012). Parliamentis Utskebani“, 47-48, 14/11/1997.

<sup>5</sup> Articles 356<sup>1</sup> – 356<sup>7</sup> of the Civil Procedure Code.

<sup>6</sup> Adopted 28 April 2006 (Last amended 10 April 2012). „Sakartvelos Sakanonmdeblo Matsne“, 15, 16/05/2006.

<sup>7</sup> Articles 5-10, 17 of the Law on *Combating Trafficking* in Persons.

<sup>8</sup> Article 13 of the Law on *Combating Trafficking* in Persons.

<sup>9</sup> Article 15 of the Law on *Combating Trafficking* in Persons.

<sup>10</sup> Articles 11-12 of the Law on *Combating Trafficking* in Persons.

this person cooperates with law enforcement in investigating an alleged case of trafficking.<sup>11</sup> Alternatively, it may be granted by the Permanent Task Group at the Interagency Coordination Council for Carrying out Measures against Trafficking in Persons.<sup>12</sup> A victim of trafficking in persons is entitled to a thirty-day reflection period over the question of whether to cooperate with law enforcement bodies in investigating alleged cases of trafficking.<sup>13</sup>

Rules for first contact with victims of trafficking in persons, identification of victims of trafficking in persons and procedure for granting the status of victim are regulated by the Decree of the President of Georgia, 1 February 2007, No 78.<sup>14</sup>

Several provisions aiming at protecting victims of trafficking in persons can also be found in other Georgian laws.

The Criminal Code stipulates that sanctions for refusing to make statements do not apply during the reflection period to persons who are victims of trafficking in persons.<sup>15</sup> According to the Code of Administrative Offences,<sup>16</sup> persons are released from responsibility for infringing the rules of registration and staying in Georgia, if the offence was committed while a victim of human trafficking but before being given the status of “victim”.<sup>17</sup> Furthermore, persons are also released from administrative responsibility for prostitution, if prostitution took place while a victim of trafficking in persons but before being granted the status of a victim of trafficking in persons.<sup>18</sup>

The Law on the Legal Status of Aliens and Stateless Persons<sup>19</sup> also contains provisions related to the protection of victims of trafficking in persons. In particular, the law stipulates that a temporary residence permit shall be issued to foreigners if there is a reasonable assumption that they may be a victim of trafficking in persons.<sup>20</sup> Besides, a foreign citizen where there is a reasonable assumption that he or she may be a victim of human trafficking shall not be expelled from Georgia.<sup>21</sup>

Along with general measures to protect witnesses in Georgian criminal procedure, there are also special provisions with regard to the protection of the victims of trafficking in persons. The Criminal Procedure Code<sup>22</sup> provides that during the reflection period persons who are victims of trafficking in persons are free of obligations to testify as a witness and to submit objects, documents, substances or other items containing information significant to the case.<sup>23</sup> Criminal prosecution shall not start or if already initiated shall terminate if the following crimes have been committed by the person because they were a human trafficking victim: violation of rules for entry the occupied territories; illegal crossing of Georgian borders; and fabrication, using or selling of false passport and other official documents and seals.<sup>24</sup> During the reflection period, criminal prosecution and/or court trial shall not

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<sup>11</sup> Article 7 of the Law on Combating Trafficking in Persons.

<sup>12</sup> Article 11 of the Law on Combating Trafficking in Persons.

<sup>13</sup> Article 12 of the Law on Combating Trafficking in Persons.

<sup>14</sup> Decree No 78, 1 February 2007 of the President of Georgia Approving the Common Standards and Rules for Identification of Victims of Trafficking in Persons. „Sakartvelos Sakanonmdeblo Matsne“, 14, 01/02/2007.

<sup>15</sup> Article 371 of the Criminal Code.

<sup>16</sup> Adopted 15 December 1984 (Last amended 29 June 2012).

<sup>17</sup> Article 185 of the Code of Administrative Offences.

<sup>18</sup> Article 172<sup>3</sup> of the Code of Administrative Offences.

<sup>19</sup> Adopted 27 December 2005 (Last amended 25 May, 2012). „Sakartvelos Sakanonmdeblo Matsne“, 3, 16/01/2006.

<sup>20</sup> Article 19.1 g) of the Law on Legal Status of Aliens and Stateless Persons.

<sup>21</sup> Article 58.3 d<sup>1</sup> of the Law on Legal Status of Aliens and Stateless Persons.

<sup>22</sup> Adopted 9 October 2009 (Last amended 9 June 2012). „Sakartvelos Sakanonmdeblo Matsne“, 31, 03/11/2009.

<sup>23</sup> Article 50.1 of the Criminal Procedure Code.

<sup>24</sup> Article 105.2 d) of the Criminal Procedure Code.

start and the ongoing prosecution/court trial shall be suspended towards persons who are victims of trafficking in persons.<sup>25</sup> Furthermore, on the motion of a party, the judge may decide to partially or fully close the hearing in order to protect the interests of a victim of human trafficking.<sup>26</sup> Besides, the court renders a judgment of conviction that imposes a sentence, but releases the defendant from serving it if the following crimes were committed by the person as a victim of trafficking in persons: violation of rules for entry of the occupied territories; the illegal crossing of Georgian borders; the fabrication, using or selling of false passport and other official documents and seals.<sup>27</sup>

## **Institutional support**

Until 2006, an inter-agency commission called the Temporary Interagency Commission for Combating Trafficking in Persons was part of the National Security Council. After the adoption of the Law on Combating Trafficking in Persons in 2006, it was replaced by the Interagency Coordination Council for Carrying out Measures against Trafficking in Persons. The Coordination Council was established according to the article 10 of Law of Georgia on Combating Trafficking in Persons with the Decree of the President of Georgia, 1 September 2006, No 534.<sup>28</sup> It is chaired by the Minister of Justice. Furthermore, the Coordination Council consists of representatives of the following institutions: the Prosecutor's Office, the Ministry of Labor, Health and Social Affairs, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Education and Science. Besides, there are invited members on the Coordination Council. These represent: the Parliament of Georgia, the Public Defender's Office, the Council of Europe, the EU Commission, the US Embassy, the United States Agency for International Development, the Young Georgian Lawyers' Association and the NGO "Tanadgoma". The Coordination Council coordinates anti-trafficking activities and is also responsible for preparing recommendations for the President of Georgia on the issue and for monitoring these matters. Of the documents elaborated by the Coordination Council the following should be noted: unified standards and rules for the identification of THB victims; standards, requirements and a sample of statute of the shelters for victims of trafficking in persons; Strategy for Rehabilitation and Reintegration in Society of Victims of Trafficking in Persons.

The State Fund for the Protection and Assistance to Victims of Trafficking in Persons plays the most important role in implementing the measures directly related to victims of trafficking in persons. The State Fund was established according to article 9 of the Law of Georgia on Combating Trafficking in Persons. Its statute was approved by the Decree of the President of Georgia, 18 July 2006, No. 437.<sup>29</sup> The purpose of the State Fund is the effective implementation of protection, assistance and rehabilitation measures for the victims of trafficking in persons. State supervision over the activities of the State Fund is exercised by the Ministry of Labor, Health and Social Protection of Georgia. The State Fund provides the following services to victims of trafficking in persons: shelter; legal, psychological and medical assistance; rehabilitation and reintegration; and compensation to victims of trafficking in persons.

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<sup>25</sup> Article 107.2 c) of the Criminal Procedure Code.

<sup>26</sup> Article 182.3 d) of the Criminal Procedure Code.

<sup>27</sup> Article 269.5 f) of the Criminal Procedure Code.

<sup>28</sup> Decree No 534 of 1 September 2006 of the President of Georgia on Approval of Composition and Statute of the Interagency Coordination Council for Carrying out Measures against Trafficking in Persons. „Sakartvelos Sakanonmdblob Matsne“, 119, 04/09/2006.

<sup>29</sup> Decree No. 437 of 18 July 2006 of the President of Georgia Approving the Statute of a legal person of public law - the State Fund for Protection and Assistance to Victims of Trafficking in Persons. „Sakartvelos Sakanonmdblob Matsne“, 96, 21/07/2006.

## **Conclusion**

To sum up, the legal and institutional framework for the fight against human trafficking and the assistance and protection of victims, which has been established in recent years, creates all conditions for the successful implementation of state policies in this field.

It should be noted here, that since 2007, according to Trafficking in Persons Reports published annually by the State Department of the United States, Georgia is in “tier one”. This means that Georgia has the highest possible ranking and indicates that Georgia fully meets the Trafficking Victims Protection Act’s minimum standards.<sup>30</sup>

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<sup>30</sup> The reports can be found on the web site of the US State Department: <http://www.state.gov/j/tip/rls/tiprpt/index.htm>