



OTVORENA PORTA
AGAINST VIOLENCE AND TRAFFICKING

CASE STUDY **No3**

based on analysis of the judicial practice of 2024 for the crimes of human trafficking, child trafficking, smuggling of migrants, organizing a group and instigating performance of crimes of human trafficking, trafficking in juveniles and smuggling of migrants.

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Criminal Code, Official Gazette of the Republic of Macedonia no. 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 41/14, 115/14, 132/14, 160/14, 199/14, 196/15, 226/15, 97/17 и 248/18 and Official Gazette of the Republic of North Macedonia no. 36/23 and 188/23

Child Trafficking Article 418-g

(1) The person who shall deceive a child into performing sexual acts or enables the performance of sexual acts with a child or entices, transport, purchases, sells or offers for sale, acquires, provides, shelters or accepts a child due to exploitation by means of their use in sexual exploitation, pornography, forced labor or slavery, begging, for exploitation due to legally prohibited activity, slavery, forced marriages, forced fertilization, illegal adoption or extortion of consent as mediator to adopt a child, disallowed transplantation of human body parts, shall be punished with imprisonment of at least eight years.

(2) The person that shall perpetrate the action from paragraph (1) by force, serious threat, delusion, or another form of forcefulness, abduction, fraud, by abuse of their position or pregnancy, powerlessness or physical or mental inability of another, or by providence or receipt of money or another use due to acquire of consent of a person that has control over another one, or the act has been perpetrated against a child under the age of 14, shall be punished by imprisonment of at least ten years.

(3) The person who uses or enables another person to use for sexual services or other kind of exploitation of a child for who they knew or were obliged to know that is a victim of human trafficking shall be punished with imprisonment of at least eight years.

(4) The user of sexual services from a child under the age of 14 shall be punished with imprisonment of at least 12 years.

(5) The person who shall take away or destroy a personal ID card, passport, or identification paper of another due to perpetration of the act from paragraphs (1) and (2) shall be punished with imprisonment of at least four years.

(6) If the act from paragraphs (1), (2), (3), and (4) from the present Article is committed by an official person in their official operation, shall be punished with imprisonment of at least ten years.

(7) The consent of the child to the actions envisaged in paragraph shall not be relevant to the existence of the criminal act from paragraph (1).

(8) A child- victim of human trafficking shall not be punished in the cases in which the law envisaged punishment of a child when the perpetrator of the criminal act coerced the child to commit the crime if such action is an immediate result of their position of a victim.

(9) If the criminal act from the present Article is perpetrated by a legal entity, it shall be punished with a fine.

(10) The real estate, objects and transportation means used to perpetrate the act shall be confiscated.

Sexual assault and rape

Article 186

(1) A person who, contrary to the clearly expressed will of another, evaluated in the context of the circumstances of the case, performs sexual intercourse or another sexual act equivalent to it, which consists of vaginal, anal, or oral penetration with any part of the body or object, or induces another person without their consent to perform sexual intercourse or other sexual act with a third person, or to perform a sexual act on themselves, shall be punished by imprisonment from one to eight years.

(2) If the crime from paragraph (1) of this Article is committed with a child who has reached the age of 15, the perpetrator shall be punished with imprisonment of at least three years.

(3) If the crime referred to in paragraph (1) of this Article is committed by using force or threatening another to attack their life or body or the life or body of a person close to them, the perpetrator will be punished with imprisonment from three to ten years.

(4) With the penalty from paragraph (3) of this Article, the person who commits the crime from paragraph (1) of this Article against another with a serious threat that they or a person close to them will reveal something that would harm their honor and reputation or that it will cause other grave evil.

(5) If the crime from paragraphs (3) and (4) of this Article is committed against a child who has turned 15 years of age, the offender shall be punished with imprisonment of at least eight years.

(6) If due to the crime from paragraphs (1) to (5) of this Article, serious bodily injury, death, or other serious consequences occurred, or the crime was committed by several persons or in a particularly cruel or humiliating manner or out of hate, the perpetrator shall be punished with imprisonment of at least ten years or with life imprisonment.

(7) Whoever, in the cases from paragraphs (1) to (5) of this Article, performs only another sexual act that does not consist of vaginal, anal or oral penetration shall be punished for the offense from paragraph (1) of this Article by imprisonment from six months to three years, for the crime from paragraph (2) of this Article with a prison sentence of one to three years, for the crime from paragraphs (3) and of this Article with a prison sentence of one to five years, and for the crime from paragraph (5) of this Article with a prison sentence of one to ten years.

(8) If the offense referred to in paragraph (1) of this Article is committed by a current or former spouse or intimate partner, it shall be punished by imprisonment of at least three years.

(9) If the offense referred to in paragraph (3) of this Article is committed by a current or former spouse or intimate partner, it shall be punished by imprisonment of at least three years.

Production and Distribution of Child Pornography **Article 193-a**

(1) The person producing child pornography with the purpose of its distribution or transferring it or offering it to another or in another manner makes it available shall be punished with imprisonment of a minimum of five years.

(2) The person acquiring child pornography for themselves or another or possessing child pornography shall be punished with imprisonment from five to eight years.

(3) If the criminal act referred to in paragraphs (1) and (2) from the present Article has been committed through a computer system or another means of mass communication, the perpetrator shall be punished with imprisonment of a minimum of eight years.

(4) If the criminal act referred to in the present Article has been committed by a legal entity, it shall be punished with a fine.

Primary Criminal Court Skopje

The criminal offense of Child trafficking under Article 418-g, paragraph 1 (the general crime of child trafficking with its main features) in relation to Article 45 (crime committed in continuation) of the Criminal Code; the criminal offense of sexual assault and rape under Article 186 paragraph 1 and 2 (committed with a child who has reached the age of 15) and Production and distribution of child pornography under Article 193-a.

Victim

➔ The victim is a female child, 15-16 years old, at the time of committing the crime.

Type of exploitation

➔ Sexual exploitation.

Defendants

➔ The defendants are thirteen young men, five of them charged with Article 418-g, seven charged with Article 186, and one charged with Article 193-a.

Verdict

➔ All defendants were found guilty of the criminal act 418-g Child trafficking Article 186 Sexual assault and Article 193-a, and one was charged with Article 193-a Production and distribution of child pornography, respectively. The sentences are below the legal minimum, and the court applied the rule of mitigating the sanction during the sentencing.

Security measures

➔ Detention was issued for all defendants in January and March 2023, and the measure was dismissed and issued again during the first instance decision. For the five defendants charged with 418-g Child trafficking, the court issued house detention until the final decision comes into force.

Representative

➔ The defendants had attorneys.

Duration

➔ The trial lasted seventeen months. The indictment was submitted to the court on June 30, 2023, and the court hearing when the sentence was issued was held on November 20, 2024.

From the analysis of the verdict, the crime was revealed in January 2023, when the first group of defendants were detained, and another group of defendants were detained in March 2023. The victim had a legal representative during the criminal procedure before the prosecution and the criminal court procedure.

Overview of the key facts

This is a proceeding against thirteen young men prosecuted for the crime of Child trafficking from Article 418-g, paragraph 1, Sexual assault and rape from Article 186, paragraphs 1 and 2, and Production and distribution of child pornography from Article 193-a of the Criminal Code. One of the defendants seduced the child via the social network Instagram and arranged a meeting with her. During the meeting at his house, he video-recorded the victim while having oral sex with him. After this moment, he started blackmailing her into doing things he ordered, or he would show it online or show it to her parents.

Since that day, on different occasions, the defendant exploited her with his friends at the parties he organized in different apartments in the town. The other four defendants charged with trafficking were either helping him or exploiting the victims for money, while the defendants charged with rape were using sex services even though they knew that she was exploited and did not consent to the sexual intercourse with them but were forced to provide sexual services under a threat of revealing the pornographic video. One defendant recorded the acts of sexual exploitation of the child with his phone.

Once the case was revealed, the Primary Prosecution Office for Organized Crime and Corruption submitted a request to the court to issue detention against all perpetrators except for the defendant charged with the Production and distribution of child pornography. The court issued precautionary measures, including a prohibition on leaving the temporary or permanent place of residence, an obligation for the defendant to report periodically to a designated official or the competent state authority, and temporary confiscation of the defendant's passport.

The victim was accommodated in a shelter, managed by the organization Open Gate/La Strada, which provides specialized support to victims of human trafficking. During her stay, she received comprehensive psychosocial and legal assistance.

The psychological support played a crucial role in helping her process her traumatic experiences, regain emotional stability, and build the resilience needed to give a statement before law enforcement, cooperate with the authorities, and continue to actively engage in the ongoing legal proceedings with a greater level of confidence.

The victim was examined by an expert witness whose report was used in the trial to prove the non-pecuniary damage of the victim of the multiple crimes she suffered.

Court procedure

On June 30, 2023, the prosecutor submitted an indictment to the Primary Criminal Court of Skopje (the competent court to review organized crime cases). After accepting the indictment, the first court hearing was scheduled for September 19, 2023.

At the court hearing, all defendants were present with their attorneys.

During the first court hearing, one of the defendants pleaded guilty to rape, and the procedure against him was separated and closed at the very same hearing, while for the others, the first instance criminal procedure was pending until November 20, 2024, when the verdict was announced.

In the opening statement (except the defendant who pleaded guilty), all defendants pleaded not guilty and blamed the victim for her loose character and immoral behavior, but also her parents for being irresponsible to the victim that led to the events. Throughout the whole court proceeding, that was the theory of defense of the defendants, and all their evidence was in support of portraying the victim's character as immoral.

The court exhibited the written evidence prepared by the expert witness and the statement of the expert witness confirming the consequences of the committed crimes for the victim's physical and mental health and the duration of the pain and suffering she endures after the crimes.

The defense of all defendants, in their closing arguments, asked the court to pronounce the defendant not guilty due to a lack of evidence that they committed the crimes they were charged with.

Court decision

Based on the undisputed factual situation, the court, in accordance with the evidence exhibited during the trial, determined that the defendants committed the crime at the time, place, and manner specified in the indictment and that the actions they committed fulfilled the characteristics of the crime- Child trafficking from Article 418-g paragraph 1 Sexual assault and rape from Article 186 paragraph 1 and 2 and Production and distribution of child pornography from Article 193-a of the Criminal Code.

The first five defendants, charged with Child trafficking, were sentenced to imprisonment of five years and six months, four years and six months and four years, respectively. The defendants charged with rape were sentenced to one year and six months imprisonment and one to one year and three months imprisonment. The defendant charged with the Production and distribution of child pornography was issued an alternative measure - a suspended sentence with probation supervision.

As an aggravating circumstance, the court takes the type and character of the crime, the degree of criminal responsibility of the defendants, the motives for committing the crime, the harmful consequences caused to the physical and mental health of the victim, and the fact that the crime was committed against a victim who is particularly vulnerable. For the defendant, who had a child of his own, the court considered it an aggravating circumstance since the crime was committed against a minor.

For all defendants, the court considered mitigating circumstances the fact that they are young persons, they did not have established their own families (except one defendant), and they were all respecting the court during the trial. The court considers that the sentences are appropriate to serve the aim of individual and general prevention of committing the crime in the future, and it referred to other judgments to argue the appropriateness of the sanctions.

All defendants are obliged to pay the court fee of 82.121,00 denars jointly.

The court denied the request for compensation and referred the victim to claim her rights in civil procedure against the perpetrators.

Overview of the sentence for defendants

Defendant	Criminal offence	Sentence
Defendant 1	Child trafficking (Article 418-g paragraph 1)	5 years and six months imprisonment
Defendant 2	Child trafficking (Article 418-g paragraph 1)	4 years and 6 months imprisonment
Defendant 3	Child trafficking (Article 418-g paragraph 1)	4 years and 6 months imprisonment
Defendant 4	Child trafficking (Article 418-g paragraph 1)	4 years and 6 months imprisonment
Defendant 5	Child trafficking (Article 418-g paragraph 1)	4 years imprisonment
Defendant 6	Sexual assault and rape from Article 186 paragraphs 1 and 2	1 year and six months imprisonment
Defendant 7	Sexual assault and rape from Article 186 paragraphs 1 and 2	1 year and six months imprisonment
Defendant 8	Sexual assault and rape from Article 186 paragraphs 1 and 2	1 year and six months imprisonment
Defendant 9	Sexual assault and rape from Article 186 paragraphs 1 and 2	1 year and six months imprisonment
Defendant 10	Sexual assault and rape from Article 186, paragraphs 1 and 2	1 year and six months imprisonment
Defendant 11	Sexual assault and rape from Article 186, paragraphs 1 and 2	1 year and three months imprisonment
Defendant 12	Production and distribution of child pornography	An alternative measure - a suspended sentence with probation supervision

Conclusion

Efficient institutional response

- ➔ The Task Force responded promptly to the disclosed evidence by identifying the child victim and ensuring her safety.
- ➔ The center for social work reacted promptly after receiving information about the crime and sheltered the victim.
- ➔ The prosecution took statements from the victim in a short period after the crime was revealed.
- ➔ The court issued detention for all defendants charged with child trafficking.

Lenient sentences

- ➔ The defendants received sentences below the legal limit, and the court applied the rule of mitigating the sanction during the sentencing.
- ➔ The court used the argument that the sentences are appropriate by referring to other judgments for the same or similar crimes (which is not the case in other judgments). Having in mind that the court tends to issue more lenient sanctions for trafficking, 1 comparison with existing case law on trafficking does not provide an appropriate justification for the sanctions in this particular case.

Position of the victim

- ➔ The right to privacy of the victim was formally protected during the court proceeding because the court held closed court hearings from the very beginning. However, the name of the victim was out in the media, and first, her initials and then her full name were discovered to the public.
- ➔ The victim had a representative during the proceeding before the prosecution and the court.
- ➔ The prosecution secured procedural protection for the victim and recorded her statement before the prosecutor, which was used in the criminal procedure as evidence.
- ➔ The court referred to the victim while justifying the decision and pointed out that she is a vulnerable victim with specific protection and that she endures consequences to her physical and mental health.
- ➔ The court refused the request for compensation from the victim and referred her to claim her rights before a civil court.

¹ See the analysis of court judgment for trafficking for 2022, 2023, and 2024.