

The Problem of Child Trafficking Enriched with Its Newest Purpose - Establishing Illegal Adoption

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Abstract

The emergence of new ways of committing the crime of human trafficking have increased the prevalence and variety of this crime so that it has become necessary to establish a separate incrimination of the crime, to enable its detailed and comprehensive regulation. Trading with people not only means simple exploitation or the simple (ab)use of their services. It means much more than that. It has developed into a game with human destinies and it involves the whole life of a human. Situations become alarming when a child's life is put into the center of the crime. More and more often, internationally speaking, children are declared as missing who either are found dead or are not found at all. Their innocence and naivety is used to more easily approach to them and take them away. Children are used around the world for begging, labor exploitation, sexual exploitation, and even as camel – riders in the United Arab Emirates. In addition their organs and tissues are sometimes harvested and they are used for medical experiments, so their life ends tragically.

Trading children so that they are taken from their place of belonging for illegal and unlawful adoption, is a crime which is becoming more and more interesting for the perpetrators because of the enormous profits. It is a painful reality for the biological parents as well, and a new direction for the crime of human trafficking on a global scale. It is regulated often as child trafficking or trafficking in humans in general, but its impact requires separate regulation and treatment. Objectifying a child's life by making it a commercial entity greatly harms the child..

Key words: human trafficking, juvenile, adoption, "baby - mafia", surrogacy.

Introduction

Rapid society development, expansion of the meaning of human trafficking and the definition of the the term mean its simple enrollment under the selling of the female body for sexual exploitation, and terminological correlated only with prostitution will no longer cover all of the situations of human tracking. The newest activities undertaken within child trafficking that have a separate, centralized goal, establishing adoption of minors (mostly newborns), produced the appearance of a new trend of trafficking in children for illegal adoption, which in the last decade achieves its own qualitative and quantitative gradation, especially in the territories of Western Balkans. The inevitable fact is that victimization affects mostly women, mainly manifested through selling of their body. However newer definitions of this term, suggest that human trafficking is committed for a whole range of purposes, and as a result new meaning can be given to the crime. The most common purpose of trafficking is for sexual exploitation, followed by labor exploitation, human trafficking which is linked with organ trafficking and illegal transplantation of organs, and trafficking in minors for all the illegal purposes. In most cases, it is about abusing the vulnerability of people in certain categories, turning one's weakness and loss to the benefit of others' permanent, gains. Human trafficking has always been a form of bringing people into a submissive slave relationship, which, in the eyes of the perpetrators, is a "profitable business" since the "merchandise" which is traded is expendable and suitable for "multiple use" by the service users. That exact combination of availability of others who are susceptible to abuse, and reduction of the costs to a minimum in order to enormously increase of profits, makes this "business" appealing for offenders to maintain their share in it, with a constant tendency to spread.

Hence, the increase of interest of the perpetrators to engage in the trading of minors or, as it is internationally known, child trafficking. The specificity of this vulnerable group makes crime easier to commit, with lower risks and higher profits. This crime has developed into an industry. In recent decades, one special form of organized crime within child trafficking, called "baby – mafia" has developed. "Baby mafia", in the narrow sense, means the array of criminal activities aimed at the illegal adoption of children. Broadly, the term "baby mafia" refers to various abuses of children for criminal purposes, in order to acquire unlawful gain¹. So babies may be traded for experimental purposes, especially fetuses that are aborted or born dead. Body parts, organs, tissues, blood of a babies are being trafficked, and in some cases complete fetuses, though sometimes babies are killed after few weeks

¹Mijalkovik, Sasha, Milosevska, Tanya, *Trends of trafficking in children, babies and human bodies - a new challenge for national security system*, 2009, p. 6;

of living in order to use the bodies. This trafficking is basically made for scientific purposes, for researchers at university faculties, pharmacy companies and governmental agencies all over the world².

1. Brief Elaboration of the Topic

The methods of approach, motives and goals set by that perpetrators of the crime of trading with people are the same regardless if victims are adults or minors. Exploitation with sexual inclinations, labor exploitation, often realized through forced begging, performing labors in very unsafe conditions, particularly relating to construction, exploitation of victims for organs removal and illegal transplants are forms of human trafficking that can be perpetrated regardless the victims age. Minors are trafficked for all of these purposes also³.

But, in the cases of trafficking for illegal adoptions the victim is strictly a minor. This form of trading in children is relatively newer than other forms of human trafficking and occurs mostly as a result of manipulation of the legal structure of a particular state by the perpetrators. The consequences of this crime are so destructive that efficient and effective methods of combatting it are necessary.

The ways and forms of committing this type of crime can be varied. They include abduction of children, buying them, mostly from the parents or guardians of children, or, if the child is older, forcing them or their parents to agree to the crime..

In some countries, adoption is stigmatized. "Adopting an orphaned child is prohibited under Islamic Sharia law, which much of Egypt's civil and criminal laws are based on."⁴ "Judicial authorities permit adoption in certain instances, providing the adopting couple is Egyptian and children do not take their surnames. Adopted minors are also not allowed to leave the country."⁵ Therefore people trade babies and use the services of "traders", in order to obtain offspring. In Egypt this means not only local adoptions, but also because of the problems of international adoptions, trafficking of children outside the borders of Egypt. Normally as everywhere the problem exists, traffickers do not care about the legal system; they care only about

² <http://babypartstrafficking.org/html/Overview.html>; (last accessed on January 2011);

³ See a research of: Rebecca Surtess, Other forms of trafficking in minors: Articulating victim profiles and conceptualizing interventions, NEXUS Institute to combat human trafficking and International organization for migration (IOM), 2005;

⁴ <http://tvblogs.nationalgeographic.com/2012/07/23/attempted-adoption-becomes-human-trafficking-nightmare-on-locked-up-abroad/> (last accessed: 25.10.2013);

⁵ <http://latimesblogs.latimes.com/babylonbeyond/2009/09/egypt-two-american-couples-jailed-for-illegal-adoption.html> (last accessed: 25.10.2013);

profits. . In 2009 two American couples were sentenced for two years in prison and fined 100.000 Egyptian pounds per person after they were convicted for illegal adoption in Cairo⁶.

Sometimes people who want to adopt a child and who come to the desired offspring in this way are not even aware that the adoptee was acquired through trading of the newborn in a first place, because they are deceived by the agency that officially performs mediation of the adoption procedure. It is difficult for this to occur in countries that do not allow private adoption⁷, where the government allows no opportunity for the private sector to be involved in the adoption, which is carried out only by licensed agencies. Adoption is done exclusively through state institutions and bodies, established by the state authorities for adoption purposes. However even in these countries children can be consciously ordered for illegal adoption by those who wish to have a child, thus knowingly, organized crime enters this network. But with a country with a legal system as in American, where the adoption process can also be achieved through the private sector⁸, couples that adopt sometimes do not have a clue that the adoptee was traded in the first place. Here, state agencies mostly work with older children, and private adoption agency mostly work with newborns.

The element that makes this crime especially difficult to detect is the “crossing borders”, the international element that is brought into the methods by perpetrators. For this reason, international adoption is regulated by many international documents and bilateral agreements between states. Most important among them are the European Convention for Child Adoption, from the 24th of April 1967, adopted by the Council of Europe, and the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption from the 29th of May 1993, that was adopted on the Hague Conference on International Private Law⁹. The Hague Convention, clearly states that the Contracting States through this convention aim to ensure that safety measures will be taken in order to accomplished international adoption and that abduction, sale or trafficking of children will be avoided¹⁰. It also provides prohibition of improper financial or

⁶<http://www.smh.com.au/world/american-couples-on-trial-in-egypt-for-adoption-20090517-b70d.html> (last access 25.10.2013);

⁷but also not impossible;

⁸<https://www.childwelfare.gov> – website in which every state’s licensed adoptive agency are listed;

⁹Both adopted by Republic of Macedonia;

¹⁰Article 1 from the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

other income from activities related to international adoption.¹¹ It is similarly regulated in the European Convention for child adoption.¹²

2. Legal Adoption Procedure in Republic of Macedonia and its Possibilities for Abuses

Sometimes the main, reproductive function of a family cannot be fulfilled and pregnancy cannot easily be achieved, and an array of biomedical difficulties that hinder the formation and maintenance of pregnancy until birth can occur. This can produce various psychological problems in the person who is incapable of having offspring and it can easily change their ability to reason properly.

At first, couples who cannot have a child reach for all legal means and methods that are available and justified: in vitro fertilization, legal procedure of adoption and where is allowed, surrogacy is quite tempting.

Adoption is the oldest solution to the problem of the inability to reproduce. Adoption is an old institute which primarily occurs as a good substitute for couples, who cannot have offspring they truly desire, in the biological way. Today, because of the modernization of social values and attitudes, adoption is used for many reasons and in different ways. However, the primary reason for adoption is the care of minors, with whom fate was not fair and left them without parental care. In order for these children to grow up into psychologically stable individuals who will contribute to a better tomorrow, adoption becomes more than necessary. Adoptive parents allow adopted children to have the home, love and attention they need, raise them, educate them and take care of them, in a word the adoptive parents make up for the parental care that the children were deprived of from immediately after their birth. An individual will be much better developed in an environment surrounded with love and understanding, despite the fact that does not come from blood relatives, than if the child is with biological parents who are not willing or able to create the conditions necessary for the child to feel desired and loved. Therefore, the validity of adoption runs through the years.

What is worrying is the procedure of adoption itself. It is a fact that it is a sensitive issue that should be given all necessary attention and precaution, but only in such an amount as not to create an open space for manipulative games. Everything that is complicated more than necessary opens up possibilities for

¹¹Article 32 from the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

¹²Article 15 from the European Convention of Child Adoption;

abuses. The entire legal procedure, from the very beginning, has not had any major changes. "The ball" is being thrown constantly between the Commission for adoption and Center for Social Work¹³. The Commission profile has an appropriate composition: a lawyer, a pedagogue, a psychologist and a social worker, all of whom must have experience in the field so they can appear as members of the Commission and from whom is required an objective evaluation of the conditions that are needed for proper growth of a juvenile¹⁴. The procedure begins with the filing a request by the potential future adoptive parents to the Commission, followed by all the required documentation¹⁵. The Commission shall consider the filed documentation, and if anything is not right it will reject the request, but if the documents are in order, the Commission will submit the request with the application subject to the Center for Social Work. The Center is authorized within a period of 4 months (before the amendments to Family Law from 2012¹⁶, this period had its own legal minimum of 4 months and legally specified maximum of 6 months) to monitor potential adoptive parents and to evaluate their suitability for adoption. An expert team from the Center prepares their findings and opinions and if they are positive, the team makes a proposal for the parents' registration into the Register of Potential Adopters. Such a proposal, together with findings and opinions from the experts, are forwarded to the Commission within 15 days, a period that was added with the recent amendments to the Family Law from 2012. If the documents are not in order. Commission passes the whole subject to the Center of Social Work the with obligation to remove the deficiencies and return the subject to the Commission within five days, but if the documents are in order, the Commission brings a decision for enrollment in the Registry of Potential Adopters. A copy of this decision with an excerpt from the Register and a copy of the documentation are forwarded back to the Center for Social Work for archiving data in the Program for selecting the most appropriate adoptive parents electronically. The Center also monitors minors without parental care as well and proposes to the Commission to enter them in the Registry of possible children for adoption (together with the

¹³According the Family Code of Republic of Macedonia, Official Gazette of the Republic of Macedonia" No. 80/92, 9/96, 38/04, 33/06, 84/08,67/10, 156/10, 39/12 and 44/12, part -Establishing adoption (from article 104);

¹⁴Article 97-a, Family Code of Republic of Macedonia, Official Gazette of the Republic of Macedonia" No. 80/92, 9/96, 38/04, 33/06, 84/08,67/10, 156/10, 39/12 and 44/12

¹⁵Ministry of labor and social affairs determines the required documentation with Rulebook for keeping records of adoptees and for determining the adoption papers.

¹⁶"Official Gazette of the Republic of Macedonia" No. 44 from 30th March 2012.

findings and opinions from the expert team and individual findings and opinions from the experts). After receiving the proposal, the Commission submits a report of the health condition of the child to the Commission for evaluation, which within 15 days submits their findings and opinions for the health condition of the child. With the amendments from 2012, the Institute for Social Activities is obligated to prepare a Program for evaluation of adopters (current article 104-b, paragraph 4) and Program for evaluation of minors without parents and parental care who are possible children for adoption. Before these amendments of 2012, the Center for Social Work was making the selection of the most appropriate adopter electronically and was notifying the Commission for the top five possible adopters from the list of the Program, according to Family law, the Commission was making the election and it was obligated to give an explanation for that choice. Now, after entering the data for potential adopted child into the Program, the Commission, at its next session, has to make a choice of most suitable adopter electronically from the top three possible adopters from the list of the Program. The Commission notifies Center for Social Work, which is guardian of the child, of the selection and, depending on the place the selected adoptive parents are living, will place the custody of a specific child in the hands of a Center of Social Work employee from the area where adoptive parents live. With that, all rights and obligations of Center for Social Work will stop.

After all of this, the Commission brings a decision for accommodation of a child to the adoptive family and submits it to the Center for Social Work. The period of the accommodation cannot be less than two nor more than three months, and during this period, the Center for Social Work will continuously monitor the accommodations and make monthly reports to the Commission. At the end of the period of accommodation, the Center will prepare a report within five days and give an opinion concerning the adoption of the child to the adoptive parents and submit it to the Commission for finalizing the adoption. The Commission makes an evaluation on the documents and either rejects the case, sending it back for amendments of the procedure within 30 days and for making a new selection of potential adoptive parents, or, in the best case, brings a decision for finalizing the adoption.

During the adoption procedure, those who are required by the law meet together and, minutes will be taken including the data about the type of adoption, all the other necessary information (name, surname of the adoptee, place of birth, inheritance rights), and the decision. This decision will be forwarded to the registry

office for registration for issuance of a new birth certificate¹⁷. This procedure varies depending on whether it is a complete or incomplete adoption that is being established, depending the age of the minor who is to be adopted and if it is about the child of a spouse or the adoptive parent is a foreigner. However, this is the essence of the adoptive procedure.

The delicacy of the matter needs a detailed procedure indeed, with a reasonable brake when the selection of adoptive parents is made, including objectivity in finding a suitable home. Through all of this the Commission and Center of Social Work act as key players in the whole procedure who often seem to affect each other as controllers. Legally predicted prudence must be present in the procedure because it is the life of a minor that is being decided. Hopefully the child will not have to go through the procedure again, especially if the minor has reached the age when he or she starts to understand and feel the pain that comes from the situation. But this prudence is a source of potential problems. The legal procedure sometimes resembles a “Ping-Pong” relation, which in practice creates serious complications. A primary problem is slowness in the procedure. Meanwhile the waiting list of the potential adopters extends and the children grow without the parental care that they need. Psychologically it has a very destructive affect on minors, as well as on those who want to adopt a child, especially married couples who, before starting this procedure, have been through a lot of trying to have their own child. So, those who want to adopt are ready to “compensate” substantial sums for accelerating the procedure. In this way competent authorities become corrupt and direct the procedure where benefits come from. Some are deleted from the list, others mysteriously appear on it. The procedure is prolonged for some, and expedited for others. None of this differs greatly from normal administrative routine; indeed, it would have not even been worth mentioning, if it were not for an essential element that renders the overall story alarming, i.e. the life of a minor child. This simple administrative procedure affects their faith and is crucial to their well-being; therefore, it must not in any way pose a threat to them; on the contrary, it is to be in their favor. The Rulebook on the Closer Criteria and Method of Selecting Adoptive Parents Electronically is only a part of an already complicated procedure. The value system of the Rulebook does not make any considerable distinction between the love given to the child and the ownership of an additional apartment or a house; the location of the residence and its vicinity to children’s

¹⁷According Family Law, “Official Gazette of the Republic of Macedonia” No. 80/92, 9/96, 38/04, 33/06, 84/08, 67/10, 156/10, 39/12 and 44/12.

playgrounds are considered equal to moral values and attitudes, sensibility, empathy and altruism. In general, raising a healthy and loved child does not require ownership of luxurious automobiles, houses and holiday houses, etc. What the Rulebook in fact promotes is marginalization of people with average incomes, and their legal right to adopt a child, in favor of people with higher incomes.

The illegal trade of infants is one of the by-products of the complexity of this procedure. Human trafficking of minors is a serious criminal act, which in recent decades, has been growing at an increasingly fast pace and has transcended international borders. Internationally, trafficking offenders (trafficking of infants) are known as “baby-mafia”. The severity of this criminal act is reflected in the legal distinction between human trafficking of minors and human trafficking in the Criminal Code of the Republic of Macedonia¹⁸, as well as in increased penalties; moreover, in Serbia there is a separate article on illegal trade of children for the purposes of adoption¹⁹. Serbia faces kidnapping of newborns from hospitals for the purposes of illegal trade and adoption by other families within Serbia, or more often, beyond its borders. This criminal industry in Serbia is highly organized and the chain of human traffickers includes people employed in key positions, such as hospital staff, social services staff, judges²⁰. The international nature of human trafficking and the vicinity of neighboring Serbia inevitably entail consequences for Macedonia, such as having a model for criminals to follow, as well as being an export destination. The possibility of having the complex legal procedure of adoption bypassed and having human trafficking of infants in our country is very real. There have been several instances in which families have raised suspicion of abduction and illegal trade, after the failure of hospitals to provide valid evidence of the death of their newborns.

There are two essential issues that need to be addressed in order for the procedure of adoption to be accomplished: how to objectify one procedure that

¹⁸Criminal Code of the Republic of Macedonia „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 and 185/11

¹⁹Article 389 of the Criminal Code of the Republic of Serbia, Official Gazette of Republic of Serbia 26/77-1341, 28/77-1566, 43/77-2213, 20/79-1059, 24/84-1233, 39/86-2739, 51/87-2421, 6/89-406, 42/89-1401, 21/90-888 and 16/90-468, 49/92-1664, 23/93-817, 67/93-3110, 47/94-1465 i 17/95-529, 44/98 from 08.12, 10/02 from 01.03

²⁰Detailed information can be find in: Ristovic, Misha, Born to disappear – about baby trafficking in Serbia, 2006;

incorporates such a personal matter as the life of the minor and how to protect this process from corrupt influences so that it will be finalized in favor of the child and his or her welfare? Primary and secondary legislation is not properly contributing towards answering these questions, excessive caution is a painful reality for ordinary people who want to adopt a child, to give him or her home and love for his or her proper development. It is more than clear that this problem exists in Republic of Macedonia. The rules are not followed, or in some cases the procedure is fulfilled completely which leads to a delay. The number of homeless children is huge, despite the justifications that the procedure is complex and heavy because of the small number of potential adoptees.. Procedures should be respected, but they also need to work in favor of those for whom they are created on the first place. Anomalies in the application must not create a buffer zone within the procedure that would be devastating for adopted children and adoptive parents. The goal of this institution must not be reduced to simple execution of an administrative procedure that is easily susceptible for manipulation. Therefore minimizing the letter of the law underneath the needs of the target group is the initial condition for framing procedure into law and its abuse prevention in general.

3. The Situation in the Balkans

Because of the of their specific location, the Balkan countries, particularly Albania, Serbia, Kosovo and the Republic of Macedonia, are known internationally as transit - countries. But a good number of the victims, a nearly constant number over the years, often end up on one of the territories of the Balkan states, and therefore one must conclude that these countries are also final destinations for victims of human trafficking. Montenegro, Serbia, Albania are often mentioned as countries of origin of the victims, and particularly Serbia when it comes to trafficking of minors for adoption. In summary, although the Balkan countries are often mentioned in the context of "transit areas" for the transport of victims, the territory covers all of the fields that the problem of trafficking in humans consists of.

Influenced by international acts and trends to effectively prevent and combat this crime, the Balkan countries give their full support, to the encouragement of activities aimed at a successful fight against trafficking in persons. Different countries manifest this fight in different ways, however due to the location and international character of the crime, it is often necessary to pool tools to fight against it.

Mainly, the Balkan countries synchronize domestic legislation with legislation of more developed countries and acts from the international law in general and have made significant improvements in the legal framework regarding

human trafficking stiffening the penalties, separating the specific crimes, and enriching the definitions of the crime with new subspecies.

Albania has separated the legal criminalization of human trafficking, trafficking in women and trafficking in minors. Serbia, Montenegro, Bosnia and Herzegovina, Croatia, trafficking in minors has been incorporated into the criminalization of trafficking in humans as a qualified form, something that Macedonia has developed through legal separation of crime against adult victims and juvenile victims. Trafficking in minors for illegal adoption, in the legislation in Republic of Macedonia, is incorporate in the same article of Criminal Code that regulates trading in minors in general²¹.

Serbia has gone a step further than the other Balkan countries, though Montenegro copied this legislation after its independence, and that is the specific separate criminalization of trafficking in minors for adoption purposes. In Serbia this step was required because of the practice that exists of stealing children from hospitals (mostly newborns) and trading them and because of the complicated legal procedure they have for adoption, similar to that in Republic of Macedonia²². The present state of affairs of taking infants from hospitals in Serbia to be given to other families for adoption in Serbia and abroad is a practice that has been talked about for decades. In past few years, the media has reported a multitude of cases in which parents find their children whom they were told had died in childbirth ten or twenty years ago. Ristovich released his research of this situation in a book titled *Born to disappear - baby trafficking in Serbia*. The book summarizes the testimonies of parents who suspect that their children were stolen from maternity hospitals with those suspicions being confirmed years later through mysterious invitations for military service or invitations for vaccination of infants that supposedly died after their birth.

The problem becomes even greater because of the inability to prove the allegations in court. However, since the first year after the introduction of specific criminalization of trafficking in minors for illegal adoption in Serbia in 2006, three criminal charges were filed for the offense. There are situations where the vendors appear to be single mothers or both parents, while the buyers are couples without children, but more often it is an organized form of trading that involves crossing borders, especially for adoption in Greece. Centers for Social Work, NGOs, mostly

²¹article 418-a Criminal Code of Republic of Macedonia, Official Gazette 37/96, 04/02, 19/04, 7/08, 114/09, 51/11, 135/11, 185/11, 142/12, 166/12

²²procedure for establishing adoption in Serbia can be find online on this site <http://www.yumama.com/zelim-bebu/problemi/3668-kako-usvojiti-dete-u-srbiji.html> (last aces: 27.10.2013)

in Athens²³, the Coordination Office for the Protection of victims of trafficking and, police are key stakeholders in the fight to combat this crime and also have a key role in its recognition and prevention. In Serbia Day Care Centers that are working with street children exposed to forced begging. The Centers follow the growth and development of children on the street. The Day Care Centers each cover an area of the city and know each child personally. If they notice that some of the girls become pregnant and there is a danger that the child might be trafficked, Day Care Centers immediately respond by taking independent action and notifying the Center for Social Work. Employees from the Centers for Social Work²⁴ are worried because of the lack of appropriately established family law.. Over the years they have seen young pregnant women from Serbia entering into fictitious marriages with foreigners shortly before delivery. The husband acknowledges the child as his own and after the birth the couple divorce, He then takes the child with him abroad. This seems to be an ideal way of evading the legal framework in the service of seemingly legal trade with infants. However, since most cases are not reported the exact number of these cases is unknown.

Newborns are called “golden loaf”²⁵ and, according to newspapers in Serbia, it costs around 15.000 euro to obtain one. Above mentioned researcher of the matter Misa Ristic from Nish in his book “Born to disappear” finds that “baby-mafia” consisted of a doctor, a midwife, a pathologist, royal service and baby - trader. Serbian babies were sold in Sweden, Denmark, the Netherlands, France and America. For them it was paid above 20.000 marks (10.000 euros). In Serbia, a community of a parents of missing babies²⁶, ones that were not even shown to the parents in hospitals and were declared dead right after their birth has been

²³Official site of NGO Athens in Serbia, <http://www.atina.org.rs/> (last aces on 20.10.2013)

²⁴During authors research in Belgrade trough the program of “Summer School – Social Dimension of Human Trafficking in the Western Balkan“in Belgrade, Serbia, organized by GIZ and DAAD, in September 2012. Some of the aspects of work during summer school are covered into Documentation of Summer School “Social Dimension of Human Trafficking in the Western Balkan”, Regional Programme on Social Protection and Prevention of Human Trafficking, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 2012 Skopje (available: http://eprints.ugd.edu.mk/5658/1/GIZ%20SPPHHT_Summer%20School%202012%20Publication.pdf)

²⁵<http://www.novosti.rs/vesti/naslovna/aktuelno.293.html:414555-Trgovina-ljudima-Za-bebu-u-Srbiji-15-hiljada-evra>(last aces on 24.10.2013)

²⁶they also have a facebook site for their easier associating - <https://www.facebook.com/nestale.bebe>

organized. The parents claim that their child was not even buried²⁷. In September 2013, the European Court of Human Rights in Strasbourg confirmed the verdict from March 2013 for the case of Jovanovic verses Serbia, urging the Serbian institutions to create an effective mechanism for revealing the truth concerning the cases of "missing babies" whose parents are convinced that they were stolen and sold, the representatives of state institutions claimed that they had died at birth. Serbia's request to the Grand Chamber of the European Court of Human Rights has been rejected and the earlier decision rendered in favor of the citizen of Serbia, Zorica Jovanovic, has been confirmed. She has been trying to determine what happened to her son, born in 1983 in Chuprija. She was told that he had died, and though she suspected that is not true since the representatives of state institutions were not able to prove that the baby actually died. The Strasbourg Court ordered the state of Serbia to pay compensation to the injured of 10,000 euro²⁸.

So, according to practice, the sentence stated in the criminal codes needs to be increased. In Serbia, according to the Criminal Code, "one that will take away a person that has not reached fourteen years of life for its adoption contrary to applicable law or who will adopt such a person or mediates in such adoption procedure or for the purpose will buy, sell or delivered person who has not reached 14 years of life or transports, provides housing or covers it, shall be punished with imprisonment of one to five years, and one that deals professionally with the performance of activities or if the offense is committed by a group, the penalty is at least three years in prison"²⁹. Because of these problems, Serbia in this area is considered as a source country.

Montenegro also has problems with adoption procedure. Here many newspapers blame the Center of Social Work for getting in the way of the realization of procedure, instead of helping³⁰. There is not much about trafficking with babies in the territory of Montenegro, but since they were one country with Serbia until recently and because of the location of the country, this problem affects it also.

²⁷<http://www.6yka.com/cyr/novost/43829/udruzenje-roditelja-nestalih-beba-srbije-tvrdi-za-14-godina-nestalo-10.000-beba>(last aces on 24.10.2013)

²⁸<http://www.politika.rs/rubrike/tema-dana/Strazbur-od-Srbije-trazi-istinu-o-nestalim-bebama.lt.html>(last aces on 24.10.2013)

²⁹article 389 form Criminal Code of Republic of Serbia;

³⁰Jovan Stamatović, Dragan Cvijović, (Non)Adoption of the children in Montenegro: gray side of Safe house, Pobjeda, 27.03.2012,<http://www.pobjeda.me/2012/05/27/nasa-tema-neusvajanje-djece-u-crnoj-gori-siva-strana-drugog-doma/#.UmwGsvlkMrU>, (last aces: 27.10.2013);

In Macedonia the voice of a few families was also raised. Some people were told that their baby died soon after birth but they suspected possible resale of their children and were looking for solid evidence of their death, but their questions have remained without any concrete answers.

At the beginning of 2011, a chain of baby traders was apprehended. This was an international organized crime, between Greece and Bulgaria. Pregnant women from Bulgaria, mainly Roma, were transported to Greece and accommodated to their birth, and then documents for adoption were forged and the babies were sold, mostly to couples without children³¹. The price for these babies depended on the color of the child and gender. It is unknown how long the group had been in existence and how many children were trafficked.

4. Surrogacy as a Way of Accomplishing Child Trafficking

The eminent progress of medicine combined with the technological development allows one other alternative to adoption, as a substitution of the basic ways of establishing parental relationship, surrogacy.

Surrogacy is a method of reproduction in which a woman agrees to become pregnant with an embryo inserted from another or simply put, she lends her uterus. Embryos created through invitro fertilization of eggs from another woman who is unable to carry a child to term are planted into the uterus of a surrogate mother. The uterus of a surrogate mother is used as an incubator for nine months. Surrogacy can be used for artificial insemination, natural fertilization (where the sperm of the father is used and the egg cells of surrogate mother who after the birth gives the child to the father and his partner even though she appears as a biological mother) and biomedical assisted insemination, the introduction of an embryo in the womb of the surrogate mother.

Information about the first case of surrogacy motherhood was published was in, Louisville, Kentucky, USA in November 1980, though some authors also speak also of the roots of this procedure being found in the Bible itself. Namely, Shara,

³¹<http://www.dw.de/%D0%B2%D0%BE-%D0%B3%D1%80%D1%86%D0%B8%D1%98%D0%B0-%D1%86%D0%B2%D0%B5%D1%82%D0%B0-%D1%82%D1%80%D0%B3%D0%BE%D0%B2%D0%B8%D1%98%D0%B0-%D1%81%D0%BE-%D0%B1%D0%B5%D0%B1%D0%B8%D1%9A%D0%B0/a-14836641>(last access on 25.10.2013)

wife of Avram could not have children, so she convinced Avram to take concubine for birth of a child, Izmael (Bible, Post 16).³²

Many authors speak about the fact that surrogacy leads to "fragmentation of motherhood"³³ and can easily be manipulated so as to appear to be "buying" an infant and putting a price on offspring. Therefore only a small number of countries around the world allow such a procedure. It is allowed in Russia, Israel, Canada, and some states in the USA³⁴. The worst part it is that some states (Oregon and California) also allows surrogacy with commercial element, so surrogate mothers can earn \$20,000 to \$30,000³⁵. Texas also allows such transactions. In 2002 in Dallas a company called "Simple Surrogacy" was founded. This is a full-service Surrogacy Agency that deals with surrogacy and egg donors. On their official web site, they have not only the fees³⁶, but also the strict conditions under which a woman can apply to be a surrogate mother³⁷.

There are some states that prohibit it only if the procedure of having a baby for another is paid, while they allow the birth of a child for the noble motives of enabling couples to have a child that will have their genetic material. However, in some jurisdictions such as the UK, before the couple can use surrogacy all other alternatives must be exhausted. In countries like this so called altruistic surrogacy is allowed, while surrogacy that is based on commercial grounds is banned. Australia also permits altruistic surrogacy, and here "laws do not permit any payment beyond medical expenses and other out-pocket costs"³⁸. Some states that allow surrogacy recommend also adopting procedure for the parents who are taking child, especially

³²Kovacek – Stanic G., Biomedical assistance fertilization and birth of a child: Surrogacy motherhood compared European and Serbian law, Faculty of Law, Novi Sad, 2012 (can be found <http://www.doiserbia.nb.rs/img/doi/0038-982X/2013/0038-982X1301001K.pdf>)

³³See more: Tupanchevski N., Deanoska – Trendafilova A., Kiprijanovska D., Medical criminal law, Faculty of Law "Justinian I", Skopje, 2012, pg. 225;

³⁴ <http://www.simplesurrogacy.com/?gclid=CKDXlunesboCFQhc3godbEYAoQ> (last access: 25.10.2013);

³⁵Lewis M., Tamparo C., Medical law, ethics & bioethics for the health professions, F.A Davis Company, 2007, pg. 184;

³⁶ <http://www.simplesurrogacy.com/service-fees/>

³⁷For example: non-smoker, not using drugs, have given birth to her own child, having driver license, support of the spouse, have no psychiatric illness etc. <http://www.simplesurrogacy.com/surrogates/>

³⁸ <http://www.surrogacyaustralia.org/about-us/altruistic-surrogacy-with-australia> (last access: 26.10.2013)

when it is not conceived from genetic material from either parent. They say that the child is not related to the parents in any way, so adoption is recommended.³⁹

When it comes to the Balkan countries and its neighbors, Greece allows surrogacy only if the court approves, if certain medical and legal standards are met and if there is an agreement settled in court that there will be no material fees. It is regulated in the law of medically assisted reproduction as part of the Civil law⁴⁰ and strictly forbids foreigners to take the roll of a surrogate mother in Greece.

The Republic of Serbia regulates this issue with Family law⁴¹ and the Law for treatment of infertility through biomedical assisted fertilization⁴². Here, in article 73 from the Law for treatment of infertility through biomedical assisted fertilization, surrogacy is forbidden with a penalty of 3-10 years imprisonment for those who deal with these procedures, including the surrogate mother.

Croatia also forbids surrogacy motherhood. In its Law of medical assisted fertilization, same as in Serbia, all the forms of surrogacy are prohibited⁴³. Bosnia and Herzegovina still does not have a law about biomedically-assisted fertilization, which is a huge problem. Though none of the three religions active in the country allows surrogacy, especially if it is done for money.

So it can be said that the Balkan countries including Republic of Macedonia, use restrictive measures to prevent surrogacy. In the Republic of Macedonia it is regulated in article 27 of Biomedical assisted fertilization Law from 2008⁴⁴. Article 27 of this act establishes a prohibition for the use of public notice, public media or in any other way, to require or offer the service of giving birth to a child for another (surrogate motherhood), as well as the negotiation or realization of the procedure of biomedical assistance fertilization in favor of giving birth to a child for others. Contracts made that regulate this procedure, regardless of whether or not a compensation is included, are considered as a invalid.

According Prof. Jovan Tofoski⁴⁵ of Macedonia, this moment allows space for a lot of manipulation, and opens countless moral, ethical and legal issues. Primarily, there is the payment and the manner of regulation of the service itself, giving rise to

³⁹Ibid

⁴⁰law 3089/2002 (Kounougeri-Manoledaki, 2005),

⁴¹Family law of Republic of Serbia, Official Gazette 18/05;

⁴²Law for treatment of infertility through biomedical assisted fertilization, Republic of Serbia, Official Gazette 72/09;

⁴³Article 31 from Law of medical assisted fertilization of Croatia brought in July 2012;

⁴⁴Biomedical assisted fertilization Law, Official Gazette of Republic of Macedonia 37/08;

⁴⁵Former Director of the Clinic for gynecology in Skopje and the first doctor in Macedonia that made baby from a specimen;

the dilemma that the infant moves from subject and becomes an object because, practically, the baby is being sold, the “owner” usually requires money for the service and that is the point at which many problems are raised. So according to this, the birth of a baby for another where the payment is included would make this act the act of human trafficking or trafficking in minors for obtaining a parental relationship.

Although many believe that surrogacy is as ethically and morally justified as adoption itself apart from rare cases of altruistic surrogacy, paid surrogacy violates the dignity of the person, because only things can be monetarized and children are way too valuable to be the subject of sale. This surrogacy is seen to be as bad as baby trafficking. The child becomes the object of negotiation and purchasing agreements, and the woman comes down only to the level of reproductive machine. And even were the paid element not included, questions are raised: Is humanity still that noble so that one will give birth to a child for others without wanting anything in return? Can the altruistic surrogacy be that well organized so it will not be abused? Will couples use this institute in the very end of their trying for offspring, when nothing else can be done, or will the possibility of someone else going through the whole procedure of giving a birth of a baby that can have their genetic materials, stimulate the couples to pay all the costs and also bereaved of the pain? In the times when anything else is seen through money perspective, can this procedure stay clean without a single thought from either side to gain financially? And if we answer positive to any of these questions, and allow the practice of altruistic surrogacy in the belief of good and noble humans, can we deal with the result and annul contracts if something turns bad and shows us that we should not have allowed it in the first place? Is humanity that noble and that strong at the same time? In 2011 this kind of trafficking was happened in Thailand, where is no Thai law which explicitly covered surrogacy in Thailand by the time. In 2012 new laws were drafted and were awaiting final approval that will get them closer to the law system of United Kingdom.⁴⁶ So the practice was not illegal, especially between relatives. At first it was trafficked with women from Vietnam who are moved to Thailand, their passports and money are being confiscated and they have been told that is necessary to give birth to a child for someone else, for certain amount of money - that is, to be surrogate mothers. Illegal company "Baby 101"⁴⁷ which appears in the

⁴⁶<http://www.thailand-surrogacy-law.com/surrogacy-draft-laws-a-move-towards-safe-regulation/> (last access: 26.10.2013);

⁴⁷<http://digitaljournal.com/article/304480> (last access: 26.10.2013)

role of acting this activity even had a web site which represent itself as a company that offers "eugenical surrogacy"⁴⁸, which provides the best conditions for the creation of offspring, where only the best leave embryos for implantation. However, it is not mentioned what they do with embryos that remain because they do not measure with their eugenical standards. The company offered two types of services - surrogacy and egg donation, and for that purpose they had several of photographs of women in fashion style photos who could appear in the role of surrogate mothers. For women who were unable or are unwilling to give birth there was a package worth \$ 32,000 - the couple should provide their sperm and eggs, to choose the gender of the child and the surrogate mother of the offered, later the surrogate mother is being isolate in a particular mode of life and diet, special conditions, in order to give birth of the child as it is being "ordered". So it seems that girls were objectivized at first place and were trafficked so that they can give "eugenical" birth that is also priced and infants are treated as merchandise. It shows that even this kind of surrogacy stimulates other crimes that enables it to happen.

The institute adoption exists in favor of infertile couples who want to be parents, and cannot achieve that in a natural way, but there is also present the whole "Ping-Pong" legal procedure for achieving adoption, that will only come as an obstacle for the willing couple. And here surrogacy becomes tempting, and because it is forbidden comes to the inclusion of significant material compensation for the service in conjunction with the performance of other serious crimes for its realization. Because of all that is mentioned above, the severity of the threat of organized crime with this specialized purposes is quite alarming.

5. Conclusion

Trafficking in minors for establishing illegal adoption, although it is only part of the crime of child trafficking, is an increasing practice in the territory of the Balkan countries, so it should be a separate, independent crime.

What makes it more dangerous and contributes to its constant development is its international character. In order to effectively combat this trafficking, properly functioning mechanisms of the target institutions and figures are needed. Improving legislation including a detailed enhancement of the legal definition is just the beginning towards the establishment of conditions for the fight against trafficking in humans. The harmonization of the legislation of the Balkan countries with

international acts means bringing them closer to the more developed countries in terms of readiness for combat this crime. Synchronization of governmental and non-governmental sector in this fight and reconciling their policies is also an extremely important factor.

Countries in the region have initiated legislative reform to effectively combat human trafficking and its manifestations by creating favorable conditions for setting responsible, operating and coordinating systems, created according to international conventions and protocols. However, to combat against child trafficking that aims to establish adoption we need much more than that. It is important to specificity address the manner of committing the crime, and also to be sensitive of the matter, because this crime shows itself in many emotions, and therefore we must struggle to suppress the crime as well as to prevent it. The fact that we do not know how many people are involved in this dark activity, just speaks in favor of its character as a serious organized crime and stresses the need for greater and more detailed engagement of all the key stakeholders in society, especially because of the position of the Balkan countries, especially the Republic of Macedonia, and their label as transit zones.

Synchronized international engagement and placement of instruments to combat human trafficking is a basic prerequisite for starting and running a serious fight against this crime.

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