

The Trafficking in Human Beings Crime in Romania

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ABSTRACT: The study below is meant to focus on the trafficking in human beings crime in Romania, in specially analysis of the trafficking infraction provided in the Romanian Criminal Code. Romania is one of the transit states, but mostly one of the main source countries for trafficking in human beings in Europe. Currently, the trafficking in human beings phenomenon, as for the drug trafficking, the arms trafficking, corruption, tax evasion, represent one of the most extended ways of displaying the criminality, that, in a very short time span, recorded unimaginable and unacceptable proportions for the society we live in. The trafficking in human beings phenomenon is defined through the illegal migration. The Romanian legal response to the trafficking in human beings phenomenon was a gradual one, by ratification certain international provisions, but also through enacting a special law and legal measures that can be applied regarding the field in the talk.
KEYWORDS: crime, human trafficking, organized crime, Romanian Criminal Code.

1. Introduction

The trafficking in human beings crime problem is not a new problem in the humankind history, the criminality's panacea from the trafficking in human beings sphere encumbers the history of various millennia. The slavery, under old or new ways, as the practices similar to the slavery, continues to exist in other world states, everything running under the organized crime's fan. The communication ways' development and the world economy imbalances have internationalized the trafficking (Filip 2010, 189-190).

The trafficking in human beings (especially of women, young females even if men are equally counted as victims) is developing worldwide. When the desire for emigration to the West cannot be legally satisfied, the migration candidates have resorted to the intermediaries that often turned out to be part of the organized crime networks and that they were empowered to recruit the prostitution intended persons. Especially the situation of some regions of Central and Oriental Europe (since the borders opening, the unemployment rate rising, the rising of the poverty, the disturbing of the state's structures and the minimizing of the control) tend to favor the development of all the trafficking forms and especially of the human beings trafficking with the purpose of sexual exploitation (Mantale, Ungureanu & Popescu 2009, 8). Therefore, the trafficking in human beings phenomenon is defined through the illegal migration.

In the limits of this methods, the trafficking in human beings requires the prevention of the exit and the entering, also the stationing of the people on the border limits of the same state. Various states (departure states and also destination states) have a restrictive policy conditional upon issuing the visa and the strict control of the borders; the limitation of the residence and the work permits; the expulsion of all the people without a residence permit; the rigorously control of the foreigners on the state's territory; the stricter surveillance in the marriages of the citizens of different states; the incrimination of the illegal immigrants etc. Such a policy makes trafficking in human beings a very profitable business, negatively acting on the people who, at a time when the origin country does not offer them employment opportunities and, essentially, the possibility of a normal life, make a call to the illegal ways of migration, becoming, this way, vulnerable to the various ways of abuse and violence. Therefore, the trafficking in human beings becomes a labors problem, given that the destination states' policy is oriented to protecting its own laborers, therefore, the migrants having "reserved" the low paid employment sectors, or those from the shadow economy, therefore becoming even more vulnerable, given their status of illegality (Evaluation Report 2010, 37-38).

As it was stated, the Annual Report on the trafficking in human beings evolution for the year of 2015 (Annual Report on the Development of Human Trafficking in 2015, 3) the trafficking in human beings causes was multiple: there is a huge demand as sexual services and cheap or unpaid labor force;

- ✦ There are many extremely vulnerable people, because of the multiple economic, psychological and social needs;
- ✦ There are parents who abandon their children for going to work outside the country or parents that sell their children for obtaining income;

- The responsible social actors never adopt an efficient protection for the victims and a radical response towards the criminals;
- The huge profits that the trafficking in human beings is generating are motivating the criminal activity of the criminals etc.

The vulnerabilities are exposing the people to higher risks of becoming victims of the trafficking in human beings, but they do not make themselves causes of the trafficking. There is trafficking since there is a high demand for services and goods provided through the exploitation and because there is an extremely profitable form of an organized crime (Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings, 8).

The trafficking in human beings, as a form of manifestation of the organized crime, has a number of specific traits, is organized in clandestine criminal groups; the human beings trafficking and the organized crime sometimes use the same ways and networks, either by the parallel trafficking, where the persons are trafficked using the same routes and networks for the illegal goods; the combined trafficking, where trafficking in human beings is done at the same time as the contraband (for example, using the same vehicles); the replacement trafficking, where the same routes are used for various goods trafficking, others every time; for example the organized crime networks can use the ex-routes of the arms dealers to clandestinely bring persons to a conflict zone after the end of hostilities; the reverted trafficking, where the same routes are used for the trafficking in both directions; the trafficking in human beings is going one way, but the contraband is going the opposite; the combined retail trade, where different goods trafficking is done, including human, drugs, and weapons (Evaluation Report 2010, 39).

According to the Directorate for Investigating Organized Crime and Terrorism – DIICOT Report for the year of 2016 (Activity Report 2016, 14), out of 1.727 cases to be resolved, having as object the trafficking in human beings crime, out of the 853 cases new registered in the referenced period, 552 cases were resolved, compared to 794 cases in 2015, that means a 30,47% dropping. Out of these, there have been solved through indictment and plea bargain a number of 136 cases (132+4) compared to 162 cases in 2015 (16,05% dropping), 352 defendants sent to trial compared to 464 defendants sent to trial in 2015 (24,13% dropping), whereas 208 defendants sent to trial compared to 260 placed in 2015 under preventive arrest (20% dropping).

In order to avoid trafficking in human beings, the people who are departing abroad should register their presence to the closest Romanian diplomatic mission or consular office. They should leave to their relatives and acquaintances remaining in the country, copies of the identity document, the travel program and ways to be

contacted (telephone e-mail Facebook, WhatsApp etc.). In order to avoid trafficking in human beings, the people who are departing abroad should register their presence to the closest Romanian diplomatic mission or consular office. They should leave to their relatives and acquaintances remaining in the country, copies of the identity document, the travel program and ways to be contacted (telephone e-mail Facebook, WhatsApp etc.).

People who find or receive job offers abroad should check thoroughly what is that about and they must not accept the job offer before possessing a valid employment contract. Additionally the foreign employing firm shall be checked too, to the Commercial Register of the same country, but in most cases, this check is not performed.

Even though that the undertaken studies and reports show trafficking in human beings as a concerning reality through the comprising rate and emphasizing the risk factors, the estimations of these cannot give us enough clues on the phenomenon's extent. For example, regarding the registered victim's number, the figures differ from one institution to another, depending on the interpretation of the definition of traffic or the trafficking victim. The explanation is given by the role of the involved institutions preventing and combating this phenomenon, but also the way the legal instruments are used.

The New Criminal Code (286/2009 Law regarding the Criminal Code, published in the Official Gazette 510 on 24th of July 2009 with subsequent additions and modifications) enshrines for the first time a distinctive chapter, in the special part, dedicated to the crimes in the field of trafficking in human beings, meaning Chapter VII The Trafficking and exploitation of the vulnerable persons from the 1st Title, Crimes against the person. In the content of this chapter the following crimes are criminalized (See more in Cristiean 2017, 92-110):

- ✦ Slavery - art. 209;
- ✦ Trafficking in human beings - art. 210;
- ✦ Underaged trafficking - art. 211;
- ✦ Submitting to mandatory or forced labor - art. 212;
- ✦ Pandering - art. 213;
- ✦ Begging exploitation - art. 214;
- ✦ Using an underaged for begging - art. 215;
- ✦ Using the service of an exploited person - art. 216;
- ✦ Using the infantile prostitution - art. 216¹.

2. The analysis of the trafficking in human beings provided by the Romanian Criminal Code

The 210th article in the Romanian Criminal Code is a new criminalization, not having a correspondent in the previous Criminal Code. With some modifications, it did have a correspondent in the (1) paragraph of the 12th article, the 678/2001 Law regarding the prevention and combating the human traffic, published in the Official Gazette no 783 on 11th of December 2001, the incrimination being revoked through the 94th article, The 187/24 October 2012 Law for applying the 286/2009 Law regarding the Criminal Code, published in the Official Gazette 757 on 12th of November 2012.

The 1st paragraph of the 12th article of the 3678/2001 Law had the following content: *It is a trafficking in human beings crime, the recruitment, transportation, transferring, housing or lodging of a person, though threatening, violence or other forms of constraint, through kidnapping, fraud, authority abuse or taking advantage of the impossibility of that person for self defence or to express the will or by offering, giving, accepting or receiving money or other benefits in order to obtain the cinsent of the person that has authority on other person, with the purpose of exploting this person, will be punished with the punishment shall be by the term of imprisonment of between 3 and 10 years and the disqualification from the exercise of certain rights.*

The new criminalization is for avoiding the different interpretations and the uneven practice created by the application of the special criminal law. Furthermore, this represents the transposition of the obligations resulted from the international legal acts to which our country takes part, in the Romanian Criminal law, namely:

- ✦ European Convention on Human Rights;
- ✦ EU Charter of Fundamental Rights;
- ✦ Law no 565/2002 for the ratification of the United Nations Convention against the organised transnational criminality, and of the Protocol against the illegal migrant smuggling on ground, air and aquatic way, additional to the United Nations Convention against the organised transnational criminality, adopted in New York on 15th of November 2000, published in the Official Gazette no 813 on 08 November 2002.
- ✦ Law no 300/2006 for the ratification of the European Council Convention for fighting against the trafficking in human beings, adopted on 3rd of May 2005, opened for signing and signed by Romania in Warsaw on 16th of May 2005, published in the Official Gazette no 622 on 19th of July 2006.

- The Directive 2011/36/EU of the European Parliament and the Council of 5th of April 2011 for preventing and combating the traffic in human beings and protecting the victims of it, also for replacing the frame-Decision no 2002/629/JAI of the Council, published in JO 101L on 15th of April 2011.

2.1. Legal regulation – art. 210

(1) Recruitment, transportation, transfer, harboring or receipt of persons for exploitation purposes:

- a) By means of coercion, abduction, deception, or abuse of authority;*
- b) By taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability;*
- c) By offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.*

(2) Trafficking in human beings committed by a public servant in the exercise of their professional duties and prerogatives shall be punishable by no less than 5 and no more than 12 years of imprisonment.

(3) The consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense

2.2. Pre-existent elements

A. The legal object

a) The special legal object consists in social relations whose conducting is conditioned by respecting the freedom of human rights, dignity, health and body integrity, against acts of exploitation and transforming of the person in a source of income. Trafficking in human beings is an interesting crime for achieving of a certain purpose, as a result of the victim's exploitation.

b) The material object is the body of the person towards whom any of the incriminated crimes are done.

B. The criminal offense subjects

a) The active subject can be any person. They can be any known person, like a neighbor, a friend, the partner, the spouse, a colleague or a family member. Moreover, the traffic can be an unknown person, a firm, for example, an online friend, a chat

room person, a fictive recruitment company, a false firm for labor placing, a fictive provider of educational offer etc.

The Traficant's have the allure of trustworthy persons and directly display signs of wealth. They are very convincing and they always have a story about someone who left and made it abroad in every way possible (Human trafficking: The EU is struggling with a scourge that brings huge revenue, 2016).

For the aggravated version, the active subject is qualified to be a public servant.

According to the 175th Article of the Criminal Code, *public* servant, legally, means the person who, on a permanent or temporary basis, with or without remuneration: a) shall exercise the duties and responsibilities, set under the law, to implement the prerogatives of the legislative, executive or judiciary branches; b) shall exercise a function of public dignity or a public office irrespective of its nature; c) shall exercise, alone or jointly with other persons, within a public utility company, or another economic operator or a legal entity owned by the state alone or whose majority shareholder the state is, responsibilities needed to carry out the activity of the entity. (2) At the same time, for the purposes of criminal law, the following shall be deemed a public servant: the person who supplies a public-interest service, which they have been vested with by the public authorities or who shall be subject to the latter's control or supervision with respect to carrying out such public service.

The penal participation is possible under all its forms, namely, instigation and complicity.

b) The passive subject is the major person being put into trafficking with the purpose of exploitation, regardless of age, sex, its health state. If the passive subject is a minor, the legal representation will be the trafficking in under aged human beings – 211th article, Romanian Criminal Code.

They are trafficking in human beings victims (Evaluation Report 2010, 29-30):

- The persons that were subjected to violence, authority abuse or threats that were the source for them entering such a process of their sexual exploitation or have occurred meanwhile;
- Those persons who were tricked by organizers/the traffickers and who believed they had an attractive employment contract without any link to the sex business, or simply an ordinary job;
- Those persons who are aware of the real intentions of the organizers/traffickers and who previously gave consent on this sexual exploitation, the cause being the vulnerable

states they have been in. The abuse of the vulnerable state of the victims is included expressly, as a constitutive element of the trafficking.

The victims of the trafficking in human beings can be well educated, or reduces formal education they can come from important cities or form the rural areas of Romania. They can be women, men, youngsters or elders. A common factor for victims is, as mentioned above, their vulnerability.

2.3. The structure and the legal content of the crime

A. The premise situation

The trafficking in human beings crime requires the existence of a person liable to represent the object of the trafficking in human beings.

B. The constitutive content

a) The objective aspect

The material element is realized through one or more alternative actions, listed in a restrictive way, for a number of 5, namely, the recruitment, the transporting, the transferring, the sheltering or the reception of a person. We mention the fact that the incriminated acts have the meaning of the current speaking.

The recruitment consists in the identification of a person liable to be exploited and determining him to become a victim of exploitation.

Transporting consists in moving the victim from the place he was situated to the place to be exploited, by a person named transporter, with the help of a means of transport.

Transferring means the action of a person to dispose of and accomplishing the victim's movement from the place he had been accommodated, hidden or exploited, to another place, even in the same town, with the same purpose.

Sheltering is the person's act of providing an accommodation or hosting space to the victim with the purpose of exploitation or facilitating its exploitation.

The retrieval is the action of a person to take over, take into possession, and take into ownership the person to be exploited or to facilitate its exploitation.

Essential requirements. In any of the five alternative cases, provided in the 210th article 1st paragraph, the act represents a crime only when committed:

- a) By means of coercion, abduction, deception, or abuse of authority;
- b) By taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability;

c) By offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person.

The committing modality of trafficking in human beings in the typical form constitutes the same amount of stand-alone crimes. Therefore, the act can be committed by constraint in any form, including threatening, hitting or kidnapping or unlawful imprisonment is absorbed in the constitutive content of the trafficking in human beings crime. If the outcome of the traffic actions is exceeding the outcomes foreseen for the crimes above, causing personal injury or the death of the trafficked person, it will be a crime competition between trafficking in human beings, hitting or personal injuries causing death or murder, according to the case.

For the existence of the aggravate version, it is necessary that the act to be committed by a public servant during the time of exercising his functions, but only the fact that the public servant was in the course of exercising his professional duties in the moment of the crime committing.

The existence of the crime is conditioned of the purpose of the act committing as well, consisting in the victim's exploitation.

The immediate outcome consists in infringing the person's rights, freedom, dignity, and integrity, both physical and psychological.

The causality link. Between the act and the immediate outcome must be a causality link. In this case, this can be realized by committing the crime itself, described by the incrimination norm.

b) The subjective aspect means the subjective element and the essential requirements.

The subjective element. The crime should be committed with direct intention because in our opinion the essential requirement of the purpose has the meaning of destination and is characterized by the material element and not by the subjective side (Cristiean 2017, 97).

The intention is the main form of guilt defined by the 16th article, 3rd paragraph of the Criminal Code and represents the psychological attitude of the criminal resulting in his act and foreseeing the outcome of his actions and pursuing that outcome by committing the crime or even accepting the outcome. The intention is known in the doctrine and legislation under two modalities: direct and indirect. These nominations belong to the criminal law doctrine.

As the 16th article 3rd paragraph point states, an action is committed with intent when the perpetrator can foresee the outcome of their actions, in the expectation of causing such outcome by perpetrating the act.

Essential requirements

It does not matter the motive or the purpose of the criminal's activity, but it will count for the judiciary individualization of the punishment.

The motive or the internal cause of the conduct act designates that feeling (desire, tendency, passion) that conducted to creating in the criminal's mind the idea of committing a certain crime. The purpose or the aim pursued by committing the crime is completing the subjective element of the crime and involves the clear representation for the criminal for the outcome of the crime.

According to the 3rd paragraph, the consent of the person being the victim does not constitute as a justifying excuse.

2.4. Forms. Modalities. Sanctions

A. Crime's forms

Preparing acts are possible, but not punished.

The attempt is possible and punished according to the Criminal code's 217th article's regulation.

The crime's consumption for the trafficking in human beings takes place at the moment at least one of the acts of traffic took place that composes the material element and produces the immediate outcome of the crime, namely, creating the danger state for the social relations regarding the essential attributes of the person.

Crime exhaustion. Some of the incriminated acts such as transporting, transferring, sheltering, require certain duration activities, a prolonging, that emphasizes the fact that this crime committed under the above modalities, is a continuing one. Therefore, we will have a moment of exhaustion that takes place at the same time with the termination of the criminal activity.

The traffic in human beings crime can be committed in a continued form if the facts are committed in the wider period of time and in the same criminality base, the case that gets in exhaustion after committing the last act.

B. The crime modalities

The crime can be committed through 5 normative modalities: recruitment, transporting, transferring, sheltering and reception.

Each of the normative modalities can correspond to a variety of fact modalities.

According to the 2nd paragraph's regulations, the act is serious if it is committed by a public servant during exercising his professional duties. The aggravating element is

the quality of the active subject who is a public servant, and the circumstances that the act is committed while exercising his professional duties.

C. The sanctions

The plain form of the crime is punished with the term of imprisonment between 3 and 10 years and forbidding the exercising of certain rights.

The 2nd paragraph of the 210th article inputs an aggravated form of the crime that is punished with imprisonment between 5 and 12 years. In this case of aggravated situation, the law omitted the stipulation regarding the complementary punishment and forbidding the exercise of certain rights, as it was stipulated in the 1st paragraph of the crime and also for the crime of trafficking in under aged human beings.

2.5. Procedural aspects

The prosecution is the legal instrument through the legal conflict is brought for solving to the judiciary bodies, with the purpose of legal sanctioning of natural and legal persons who committed crimes (Neagu coord. 2016, 102). The prosecution for this crime starts ex-officio.

Conclusions

The national system of justice is justifying the social reparatory action when it succeeds in punishing a bigger amount of people who break the law, and also when the penal sanction becomes a part of an integrated approach, social, economic and educational, that promotes the despondency of criminal motivation, in any form, through controlled action, and socially direction, to vulnerability joints, identified through social applied research in all the relevant fields.

The solving competence of the case in the first instance belongs to the court. The competence of prosecution belongs to the prosecutors of the Directorate for Investigating Organized Crime and Terrorism – DIICOT that was founded in 2004, with the purpose of destruction of the organized crime groups, by the border, and across the border.

According to the 112th article¹ of the Criminal code, the court will order the safety measure of extended confiscating if they would take note of the legal requirements. The safety measure was having practically the same end as a special confiscating measure. This measure represents the confiscation of other goods than the ones mentioned in the 112th article, Criminal code – the special confiscation.

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