

The Evolution of the Regulation of the Crime of Trafficking in Underage Persons in Romanian Criminal Law

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Abstract: The evolution of the regulation of the crime of trafficking in underage persons/minors in Romanian criminal legislation reflects the social, political and legal transformations of the Romanian state, as well as the obligations assumed through international treaties. The purpose of this study is to analyze the evolution of the regulation of the crime of trafficking in underage persons in the Romanian criminal legislation, from the first forms of indirect incrimination to the current enshrinement in the 2009 Romanian Criminal Code, in force since 2014. The topic remains highly relevant, as trafficking in underage persons represents one of the most serious forms of organized crime, with a direct impact on the fundamental rights of the child and on social security. The conclusions of the study highlight the constant tendency of the Romanian legislator to tighten and specialize the legal regime of trafficking in underage persons, in accordance with the international commitments assumed and the imperatives of child protection. Although the current regulations provide a firm legislative framework, their effectiveness depends on the consistent application by the authorities and on the existence of complementary policies of prevention and support for victims.

Keywords: regulation, crime, trafficking, underage person/minor, harmonization

Introduction

Trafficking in underage persons is one of the most serious forms of crime, with profound implications for the fundamental rights of the child and human dignity. The regulation of this crime in Romanian criminal law has undergone significant evolution, reflecting both the changes in Romanian society and the international commitments assumed by Romania in the field of combating human trafficking. Romania, as a member state of the European Union and signatory to essential international instruments, has been forced to adopt a coherent and efficient regulatory framework for the prevention and combating of this crime. The importance of the study stems both from the seriousness of the consequences on the psychosocial development of minors and from the obligation of the state to ensure the protection of children, enshrined in the Constitution and in the international conventions to which Romania is a party.

Underage persons trafficking can be broadly defined as the recruitment, transportation, transfer, harboring or receipt of a person under 18 years of age for the purpose of exploitation, regardless of the victim's consent. Compared to adult human trafficking, there are certain particularities, namely, the consent of the minor is legally irrelevant, it is not necessary to prove means of coercion or abuse and the degree of social danger is higher, reflected in more severe sanctions (Franguloiu, Moroșanu, & Klein 2012).

Evolution of regulation in Romanian legislation

In the Criminal Code of Carol II from 1936 and later in the Romanian Criminal Code from 1969, there was no distinct criminalization of trafficking in underage persons. The protection of children was achieved through crimes against sexual freedom and integrity (rape, sexual intercourse with a minor, corruption of minors) and through crimes related to pimping. Thus, what we today call

“trafficking in underage persons/minors” was framed by analogy with crimes such as pimping or sexual corruption of minors.

After 1989, Romania experienced an exponential increase in the phenomenon of human trafficking, being both a country of origin and a transit country. However, the legislation was insufficient. Amendments to the Criminal Code brought higher penalties for pimping and sexual acts with minors, but there was no unified regulation of the trafficking of minors.

Regarding the Regulation prior to Romania’s accession to the European Union, before 2004, Romanian legislation did not make a clear distinction between human trafficking and trafficking in minors. Associated crimes were mainly provided for in the 1969 Criminal Code and other special laws, often being treated as crimes against personal liberty or those against public order and peace. During this period, Romania was identified as a country of origin for victims of human trafficking, especially minors exploited sexually or through forced labor, which generated international pressure for legislative reform.

On November 21, 2001, Law no. 678 on the prevention and combating of trafficking in persons was adopted and published in the Official Gazette of Romania no. 783 of December 11, 2001, with subsequent amendments and completions. This law represents a turning point in Romanian criminal law, being adopted following the ratification of the Palermo Protocol (2000). Through this law, Romania created for the first time a specific and autonomous legal framework for trafficking in underage persons. Law No. 678 represented a turning point in Romanian criminal law, since, for the first time, the phenomenon of trafficking in persons was regulated in a unitary and distinct manner, through clear provisions that targeted both the repressive and the preventive aspects. The adoption of this law took place in the context of Romania’s ratification of the Palermo Protocol, through Law No. 565/2002 (adopted on October 16, 2002), concerning the ratification of the United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Air, and Sea—each supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on November 15, 2000, and published in Official Gazette No. 813 of November 8, 2002. The Protocol imposed on the signatory states the obligation to criminalize trafficking in persons, including minors, through special rules and to establish firm measures to protect victims. Romania complied with these international requirements, thus being one of the first states in the region to create a modern legislative framework in the matter (See also Franguloiu & Alexandru, 2003).

Law no. 678/2001 established for the first time in Romanian law the crime of trafficking in underage persons as a distinct incrimination, separate from pimping or sexual corruption of minors, regulations previously used to sanction similar acts. The normative act rigorously defined the ways in which trafficking could be carried out – recruiting, transporting, transferring, housing or receiving a minor and provided for severe sanctions, reflecting the seriousness of the phenomenon and the increased vulnerability of the victims. In addition, the law did not condition the existence of the crime on the use of means of coercion, deception or abuse of authority, since it was considered that the simple fact of exploiting a minor was sufficient to incur criminal liability. Thus, the consent of the minor had no legal relevance, and his protection was a priority.

The New Criminal Code - Law no. 286 of July 17, 2009 on the Criminal Code, published in Official Gazette no. 510 of July 24, 2009, in force since February 1st, 2014, with subsequent amendments and completions, integrated the provisions of Law 678/2001, repealing it in part. Thus, for the first time, trafficking in underage persons was directly regulated in the Code, as a distinct offense, provided for in art. 211 of the Criminal Code, within the title dedicated to offenses against personal freedom (Brutaru, 2011).

The current Criminal Code defines trafficking in underage persons as the recruitment, transportation, transfer, harboring or receipt of a minor for the purpose of exploitation. In this

context, exploitation is enshrined in art. 182 of the Criminal Code and includes a wide range of forms: “a) subjection to the performance of work or the performance of services, in a forced manner; b) keeping in slavery or other similar procedures of deprivation of liberty or enslavement; c) forcing to practice prostitution, to pornographic manifestations in order to produce and disseminate pornographic materials or to other forms of sexual exploitation; d) forcing to practice begging; e) illegally removing organs, tissues or cells of human origin; f) forcing to commit acts provided for by the criminal law.”

The novelty brought by the 2009 Criminal Code also consists in strengthening the protection of minors, in the sense that their consent has no legal relevance, and the lack of use of means of coercion does not prevent the existence of the crime. The criminal law starts from the presumption of the vulnerability of minors, which justifies more severe criminal sanctions than in the case of trafficking in adults.

Art. 211 entitled *Trafficking in underage persons* provides:

(1) The recruitment, transportation, transfer, sheltering or receiving of a minor, for the purpose of exploiting him, is punishable by imprisonment from 7 to 15 years and the prohibition of exercising certain rights.

(1¹) The punishment provided for in paragraph (1) shall also sanction the determination or facilitation of the practice of prostitution or the obtaining of patrimonial benefits from the practice of prostitution by one or more minors.

(2) The acts provided for in paragraphs (1) and (1¹) are punishable by imprisonment from 10 to 20 years and the prohibition of exercising certain rights when:

- a) the act was committed under the conditions of art. 210 paragraph (1);
- b) the act was committed by a public official in the exercise of his official duties;
- c) the act endangered the life of the minor;
- d) the act was committed by a family member or by a person living with the victim;
- e) the act was committed by a person in whose care, protection, education, custody or treatment the minor was or the perpetrator abused his recognized position of trust or authority over the minor or the minor's obviously vulnerable situation, due to a mental or physical handicap, a situation of dependency, a state of physical or mental incapacity or another cause.
- f) the act was committed by a person who previously committed a crime against sexual freedom and integrity, a crime of child pornography, a crime of human trafficking, trafficking in underage persons or pimping.

(3) The consent of the person who is a victim of trafficking does not constitute a justifiable cause.

(4) If the acts provided for in paragraphs (1) and (2) are followed by the effective exploitation of the minor, within the meaning of art. 182, the rules of concurrence shall apply of crimes.

From the provisions of art. 211 of the Romanian Criminal Code, it can be seen that it defines the crime of trafficking in underage persons distinct from trafficking in persons (art. 210), regulating the constitutive elements of the act, as follows: the passive subject is any person under the age of 18; the acts that are incriminated are the recruitment, transportation, transfer, sheltering or receiving of a minor for the purpose of exploitation and the consent of the minor is irrelevant, which represents an important legal protection for him. At the same time, the Criminal Code provides for aggravated forms of the act (e.g. commission by a public official, against several minors, etc.) and more severe penalties than in the old regulation.

The distinction made between art. 210 – *Trafficking in persons* targeting adult victims and art. 211 – *Trafficking in underage persons* targeting victims under 18 years of age is fully consistent with international regulations (e.g. the Palermo Protocol) and Romania's commitments regarding the protection of children's rights. The passive subject of this crime is the minor, i.e. in Romanian legislation any person under 18 years of age. This clarification is essential, because the regulation of trafficking in underage persons implies a high degree of

criminal protection. By definition, minors are considered vulnerable and incapable of validly consenting to acts that may seriously affect their life, health or dignity. Also, the Romanian Criminal Code does not impose a distinction between minors under 14 years of age, between 14-16 years of age, or 16-18 years of age within art. 211, which means that all minors benefit from the same criminal protection against trafficking (Buzatu, 2010).

The criminal acts are as follows: recruitment, transportation, transfer, harboring, or receipt of a minor for the purpose of exploitation. This constitutes a clear enumeration of the material elements of the objective side, identical to the wording of the law. These criminal acts are inspired by Article 3 of the Palermo Protocol, which defines trafficking in persons using the same operative verbs: recruitment, transportation, transfer, harboring, or receipt. It is important to note that the commission of all these acts is not required cumulatively—any individual act is sufficient, if it is accompanied by the purpose of exploitation. Furthermore, these acts may be committed by different individuals at various stages, which often leads to the applicability of concurrence of crimes and criminal participation. The purpose of the act is the exploitation of the minor, which transforms the acts of recruitment, transportation, etc., into trafficking crimes. Without this purpose, the acts could constitute other crimes (e.g. deprivation of liberty). For example, forms of exploitation are sexual exploitation (including child prostitution), labor exploitation, forced begging, organ harvesting or coercion to commit criminal acts.

The consent of the minor is irrelevant, which represents an important legal protection for him/her. This provision is fundamental and corresponds to a major international development in the field of criminal law of child protection. The legislator has established that: minors cannot fully understand and assess the consequences of such acts. Therefore, even if a minor states that he/she “agrees” to go with a person or to perform an activity, the act is not justified and does not exempt from criminal liability. This approach eliminates a vulnerability frequently exploited by traffickers (Niță & Grădinaru, 2017, p. 344).

The material element of the objective side of the crime is one or more of the following actions: recruitment (promises, persuasion, threats, etc.), transportation, transfer, shelter, reception of the minor.

The purpose is the exploitation of the minor, which is an essential condition of the crime.

The immediate consequence is the impairment of the minor’s freedom and integrity.

The causal link must exist between the perpetrator’s actions and the immediate consequence.

Subjective side: This crime is committed with direct intent, in all forms. The intent must include the purpose of exploitation. Essential requirements exist in the form of the purpose for which the incriminated acts are committed, namely the exploitation of the minor.

Compared to the previous form of art. 211, where the penalties were between 3 and 10 years (simple form) and up to 15 years (aggravated form), the new provisions substantially raise the sanctions, namely the minimum is now 7 years (double the old regulation) and the maximum reaches 20 years in the aggravated form. This change reflects the firm criminal policy of the Romanian state in combating trafficking in underage persons, underlining the perception that the phenomenon has a gravity comparable to the most serious crimes against the person.

Aggravating forms (paragraph 2) include situations in which the degree of social danger is increased:

- commission under the conditions of art. 210 paragraph (1) - that is, through coercion, kidnapping, fraud, abuse of authority, taking advantage of vulnerability, etc. The rule for human trafficking applies, but with more severe sanctions;
- public official - abuse of power is doubly sanctioned, since the official has the obligation to protect, not to exploit;
- danger to the life of the minor - reflects the increased protection granted to the physical and mental integrity of the child;

- family member or person in the care of the victim - betrayal of trust and use of the relationship of authority justify severe punishment;
- abuse of position or trust - enshrines the idea that the exploitation of the minor by a person who should protect him has a devastating psychological impact and constitutes a serious violation of social values.

Another major change brought in 2024 is that minor traffickers can no longer benefit from the suspension of the execution of the sentence, and the crime has become imprescriptible. These legislative solutions increase the certainty of the punishment and send a clear message of intolerance towards this type of crime. Toughening the punishments can have a deterrent effect, but it is not sufficient in the absence of integrated public policies (victim protection, education, prevention campaigns, social reintegration). Increasing the punishment limits also implies increased responsibility for the courts, which must carefully differentiate between the forms of gravity and individualize the sanction in relation to the concrete facts. By bringing the punishment limits closer to those applicable to murder crimes, the legislator sends the message that underage persons trafficking is perceived as a crime of extreme gravity, with an impact not only on the victim, but also on the entire society.

These legislative provisions facilitate judicial evidence in the sense that the authorities do not have to prove the force, coercion or deception of the minor. They also provide a clear framework for the application of aggravating penalties in the event that the act is committed in a group, by repeat offenders or by persons holding public office.

Harmonization with European legislation: After joining the European Union, Romania transposed the provisions of Directive 2011/36/EU on preventing and combating trafficking in human beings and placed emphasis on the protection of victims and social reintegration. It also created the National Agency Against Trafficking in Persons (<https://anitp.mai.gov.ro/>). In parallel, special legislation on the protection of children and victims of crime strengthened the legal framework by emphasizing the flawed consent of the minor and the forms of exploitation to which he was subjected (Brutaru, 2011). This regulation came following alignment with European and international standards, in particular the Palermo Protocol (2000), ratified by Romania through Law no. 565/2002.

Conclusions

The regulation of the crime of trafficking in underage persons in Romania has evolved significantly, from a general and insufficient approach in the 1990s, to a coherent regulation in line with European and international standards.

The evolution of the criminalization of trafficking in underage persons in Romania started from the absence of a distinct regulation (treated through pimping or sexual corruption), progressed through the essential stage marked by Law no. 678/2001, and reached a consolidated regulation in the current Criminal Code (art. 211), in line with international and European standards. Law no. 678/2001 constituted a specific and autonomous legal framework for trafficking in underage persons, aligning national legislation with international and European standards and marking the beginning of a new stage in the fight against this serious form of crime.

By including trafficking in underage persons in the Criminal Code, Romania has achieved legislative harmonization with international and European standards, in particular with Directive 2011/36/EU, which imposes on Member States the obligation to combat trafficking in persons and to protect victims, especially minors. At the same time, better coherence and systematization of criminal regulations have been ensured, replacing the fragmented solutions provided for by Law no. 678/2001 with an integrated regulatory framework.

The legislative amendments of 2024 mark a change in Romanian criminal policy regarding trafficking in underage persons, by tightening penalties, eliminating the statute of

limitations and suspension. These changes emphasize the absolute protection of the child and the need to severely sanction those who take advantage of the vulnerability of minors, but their practical effectiveness will depend on the capacity of institutions to apply these rules and effectively support victims.

Harmonization with international documents has had the effect of strengthening the national legal framework, improving victim protection mechanisms and developing more effective international cooperation.

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