

THE TRAFFICKING IN HUMAN BEINGS - “AN EXTREMELY PROFITABLE INDUSTRY”

Niculae GAMENT-ANTONIU*

ABSTRACT: *In the present day international context, Romania – a South-East European country, situated at the confluence of the roads that link the East to the West of the continent, and the South of Asia to the Northern and Western Europe – is included on the “Balkan Route” of illegal migration, a fact which influences all important activity domains of society including the security of the state and of its citizens.*

One of the major problems of the last decade, at a national and international level, is the trafficking in human beings, which is often linked to the illegal immigration and constantly growing. Trafficking in human beings is a serious crime which harms the human rights, having deep economic and social consequences, due to the obscurity, mobility and aims of this phenomenon.

KEYWORDS: *illegal migration, the trafficking in human beings, prostitution, search, modern slavery*

JEL CLASSIFICATION: *K 14*

Human migration is a phenomenon which has exist since ancient times. It is to be noticed nowadays too, and it will certainly be noticed in the future, the evolution of human societies also having mobility at its basis.

From a judicial point of view, migration can be a practical manifestation of the human being's natural aspiration towards knowledge, communication and comfort, whose evolution has led to the acknowledgement of the modern times legitimate right entitled “the right to free circulation” of people.

Romania has had, even since Antiquity and the Middle Ages, long lasting traditions as the host of those belonging to other nations, who, out of certain reasons, were forced into fleeing from their home lands, thus rounding off, if necessary, the so tormented Romanian people's history along with their so rich cultural heritage.

The situation at the Romanian borders has been and is still influenced by the social and political situations as well as by other sort of situations in Central Asia, Middle East and North Africa especially, by the exodus of the migrating groups who use our country as a transit country in order to reach the West.

* Ph.D. candidate, assistant, Law Faculty, „Romanian-American“ University, București, ROMANIA.

After a brief analysis of the migration phenomenon, we can notice that it is not something at random or specific to a certain time period or geographical space. Human beings have felt since ancient times the need for mobility and migration in order to exist and develop.

In the modern epoch, after the construction and consolidation of the national states, after the enforcing of some state norms and their afterwards harmonizing by the agreeing upon some regulations of an international kind, by means of conventions and agreements between states regarding the establishing (determining) of citizenship, transborder circulation regime, the migration phenomenon has acquired clearer characteristics and pertinent interpretations.

One of the fundamental instruments in controlling migration on our national ground is represented by the legislative setting in the field. This instrument offers authorities enough possibilities for them to take action against some factors that generate migration or which can stop migration on certain parts. To this purpose, The National Strategy regarding Migration has been drawn up, being permanently adapted to present realities.

The National Strategy regarding Migration has been conceived as a means of grouping all the instruments existing within the reach of the Romanian authorities, which can be used with a view to sketching an efficient national policy as well as to controlling the migration phenomenon in Romania.

The controlling of the acceptance of foreigners on a national ground represents a lever used by a state's authorities for the protection of the citizens of that particular country and of its national interests, observing the requirements of the international law. For purpose, a state's policy must maintain an equilibrium between the facility of acceptance for certain purposes and the citizens, on the one hand, and the limiting of the entrance out of reasons which regard public order and health, or the desire to protect the internal labor market.

The causes, forms, field and intensity of the manifestation of the migration phenomenon have been very different both in terms of time and period (antiquity – modern times) and in terms of the unfolding area (regional or global).

Under a causal aspect, the migration phenomenon first has at its basis economic factors, the differences and sometimes the discrepancies between state developments, the different demographic factors (developed countries display a tendency of birthrate stagnation, whereas in the poorly developed countries the birthrate is very high), the armed interethnic conflicts, natural catastrophes, earthquakes, floods, extended droughts, as well as a series of conditions of an objective or subjective kind: flagrant infringement of the human rights, etc. It is relevant in this sense the case of some countries considered as being "poor" such as the countries in Africa, some countries in South America or Asia, where massive immigration occurs, the people from these countries being in search of better paid working places in the economically developed countries.

The causes of migration are sometimes hunger, poverty, unemployment, and migrants also resort to the services of some migrant trafficker networks, out of the desperate need to survive, this time migration becoming illegal. Criminal groupings have taken control over this phenomenon, taking advantage of the despair undergone by the persons who want to migrate in search of a better living.

Out of the 92 states officially declared as “source countries” in people migration, Romania has dealt with illegal migrants coming from Afghanistan, Albania, Algeria, Angola, Armenia, Bangladesh, Burundi, China, Congo, Egypt, Ethiopia, Jordan, Iraq, Iran, India, Lebanon, Nigeria, Pakistan, Rwanda, Sierra-Leone, Syria, Somalia, Sri-Lanka, Sudan and Turkey, together with others coming from the Republic of Moldavia, from states of the former Soviet Union, but also from other countries. For most migrants Romania represents only a transit country on the way to the West, but some of them express their intention of remaining in this country forever.

The opening, after 1989, of the borders of the countries from the former communist bloc, the guaranteeing of the freedom of moving, the liberalization of the exchange of merchandise and services, the rapid circulating of information have allowed terrorism and organized crime the performing of a major leap from the point of view of the action spheres, the terrorist and criminal organizations have rapidly adapted their structure, methods and the means they were using to the new realities, they have diversified the forms of preparation of the personnel and have ensured a more powerful secretly to their networks, members and activities.

Within the arsenal of criminal groupings one can find, in different proportions, the use of violence, the blackmail, the corrupting of public authorities and even actions which may seem legal, but which pursue aims of a punishable kind. Criminal groups gather substantial incomes which they frequently use in order to penetrate and control the legal structures. Corruption creates a favorable complicity atmosphere, encourages the camouflage, provides criminals with conditions in order for them to reach their targets running fewer risks and undermines the institutions from their very inside. Corruption is some sort of production cost for the illegal services and facilities performed. By means of corruption, the most terrible and perfidious weapon, organized crime climbs towards the peaks of society, penetrating vital state institutions, choking its freedom and independence, endangering its safety.

The criminal corporation is made up of all the goods and services involved with a view to the carrying out of an illegal business. The goods can be both illegal (weapons) and legal (computers). Criminal organizations are made up of people who have access to large sums of money and connections in many spheres of society.

The services may as well be legal or illegal such as the trafficking in human beings (immigration, prostitution), strong and light drugs, weapon trafficking, speculation, road transport, the fraudulent use of E.U. funds, cigarettes and tobacco smuggling, the international trafficking of stolen cars, gambling, the stealing of art and archaeology objects, banking and financial activities, credit card frauds, trading of rare animals, public auctions, public services, the building construction, investments in real estate goods, agricultural activities, collecting funds by means of speculating and usury, catering, bars, restaurants, hotels, touristic places, etc.

The criminal organizations set up in a country usually form connections with businessmen or even groupings from other countries, lying in a certain geographical areas and they internationalize their criminal actions following clearly outlined strategies.

The labor defrauding, the trafficking in human beings (migrants, children, women), the drug trafficking, the gambling, the usury, the manslaughter, the kidnapping of persons, the

blackmail, the prostitution, the smuggling, the counterfeiting and the placing of false payment means and corruption represent fundamental chapters of the criminal activities, the profits being channeled towards other legitimate businesses, by means of complicated money laundering systems.

In many states the organized crime represents the perfect “cancer” which weakens the power of society, threatens the integrity of the governments, brings about the increasing of the taxes which add to the price of the merchandise, jeopardizes the safety of citizens, economic agents who are in competition, controlling the unions, which have a powerful political and economic influence, by getting inside different legal businesses.

The illegal migration with a view to the person’s exploitation is the most dynamic component part of the organized crime. The volume of international migration and especially of that brought about by economic causes on the south-north route has increased dramatically. The illegal migration has become a great business worldwide, the criminal groupings in the field gaining very large sums of money and representing in fact the real problem regarding the managing of migration.

The criminal groupings have taken control over this phenomenon, have introduced new organizing elements, have at their disposal means of forging documents and control the sea, railway and road transport, turning everything into an extremely profitable industry. On different segments, the criminal groupings also cooperate with other illegal organizations, thus enhancing the profit obtained in this way. The illegal migration has become a billion business, the criminal groupings in the field gaining very large sums of money.

The dynamics of the illegal migration and of the trafficking in human beings has brought about and favoured some persons’ specializing in clandestine migration by guiding through channels and trafficker networks coordinated by powerful international organizations having a well adjusted structure.

The large sums of money that can be obtained from these activities, sums that can compete with the money obtained from drug trafficking represent a risk factor, as the networks, in order not to be penetrated, offer “complete services” which consist of: forged documents, guiding, transport, and the payment is performed at the destination, so that, in the case of a group being tracked down while trespassing the border, information about the traffickers is not divulged.

In such cases, the sums usually exceed 2.500 Euros/person on average, the funds being used for the paying of the members of the networks, the acquiring of updated logistics, including the providing of judicial assistance for the network members that have been discovered with a view to obtaining their freedom or the enforcing of some more lenient penalties. Another risk factor is represented by the perception of the public prosecutor and his deputies and of the people enforcing justice upon the social danger brought about by the criminal offence of trespassing the border, viewed as a minimum danger as it does not generate financial prejudices to the detriment of the state or of the person, which leads to lenient penalties enforced only upon the person tracked down while trespassing the border, who no longer testifies for the trafficker, out of fear or because of the fact that he is not part of the protecting of the witness programme, the criminal file being handled *ut singuli*, without further investigations, regarding only the migrant’s deed.

In the daily language, the migrant is considered and treated as an intruder, not favorably received most of the times. The illegal migrants' almost unimaginable sufferings have aroused weird interpretations and labels in the western publications: "nobody's people, western city dustmen, desperados, modern slaves" (not only do they perform inferior and poorly paid jobs, but they are also very dangerous). Even the migrants' children are suggestively called mutants. The clandestine migrants' situation of being illegally present in a country, places them under the category of potential delinquents (the tendency of suspecting the migrants of all the bad happenings going on in society is growing).

The situations experienced by the illegal migrant (difficulties, adaptation, not functioning properly in that particular way of life) cause a reduction of his spiritual life, a fact which is to be noticed in terms of his religious and cultural life, too. These people perceive life as being brutal, namely because of the profound gap between desires, necessities and the real possibilities of fulfilling them. In this situation, most of them are wasted away with frustration.

The virtues of the human rights represent the migrants' mental support, but most times what is left for them out of this ideal is just empty dreams, the migrants' moving away from their origin country and their heading for the target state by going through other transit countries turning into an unpleasant experience which causes them physical and mental traumas, some of them even losing their life.

The trafficking in human beings criminal offence, that is the accosting, the leading or the guiding of one or more persons with a view to fraudulent trespassing of the state border, as well as the organizing of these activities, is stipulated and punished by the Emergency Ordinance no.105 / 27th June 2001 regarding the Romanian state border, by art.71 indented line 1.

The accosting can be performed in different ways, by persons who accost individually, working by means of informal networks that can include family members and friends, publicity or legal or semi-legal intermediaries, including recruiting agencies which offer working and studying places, marriages or travels abroad.

Sometimes, these accosting activities, leading or guiding over the state border illegally, may endanger the migrants' life or security or may make them experience an inhuman or degrading treatment, there existing the possibility, included by the lawmaker in the Emergency Ordinance no. 105/ 27th June 2001 regarding the Romanian state border, by art.71 indented line 3, of their leading towards the victim's death or suicide.

The potential victim could be recruited in any phase of the migration process.

The persons are recruited by the traffickers in their origin country and then they are trafficked towards one or several countries where they are subject to one of the exploiting forms identified by U.N.O. Protocol regarding the trafficking. Another way is that by means of which the persons are recruited in their countries and moved to another destination from the same country where they subsequently become victims of forced labor or of other types of exploiting.

Migrants leave their own country without being forced and arrive in another country, either legally or not, most often illegally, and then the traffickers take control over them. They are most of the times trafficked either in the country they have just reached, or in another country.

The migrants who reach another country and find a working place are subject to forced labor only after arriving in this working place, there existing the opinion according to which this situation should be subordinated to trafficking¹.

All these scenarios imply infringements of the human rights and of the right to work in different degrees. The concept of forced labor necessitates investigators to concentrate on the constraining that the traffickers use in order to defeat a person's desire. The constraining degrees vary a lot from case to case, some victims being subject to physical harming, whereas others are practically unaware of the fact that they are subject to forced labor until they realize that in order not to be paid their migrant status is taken advantage of.

In one of the cases, a young 19 year old mother, who lived in a locality next to a large industrial town in Serbia, was unable to find herself a job because of the poor general economic situation. She lived with her father, who was an alcoholic. As a result of a dispute with her father, she decided to start searching for a working place not only in her native town, but also in its surroundings. She applied for a waitress job in a café, received the job and moved to the town.

The café's owner never paid her the settled salary, treated her in a very brutal manner and sexually harassed her. Under these circumstances she trusted a man (later on she found out that he was her boss' friend) who offered her a job in the sex industry in a well-known Italian resort, where she was supposed to work for famous clients. She agreed to work for a 1000 EURO salary. With the help of a Croatian friend, the man who had recruited her provided a false passport for her and transported her to North Italy. Immediately after her arriving there, all her documents were taken away from her and the leader of the criminal grouping forced her to work as a street prostitute from Trevizo to Mestre (11km). In this area the Serbian, Albanian and Russian Mafia operated, organizing the sex market.

When the young woman refused to do this, she was beaten and raped for 3 days and 3 nights, which also happened to other women who put up resistance. As a result of this traumatic experience she gave up and went out in the street, but having in mind the plan to evade as soon as the occasion occurred. She gained 800 EUROS a night and she had to hand over the money to the trafficking grouping. After 10 days she managed to escape with the help of an Italian client, succeeding in reaching the Serbian border where she exposed the entire case to the frontier police. Most members of the grouping were arrested and the case was instrumented by the Belgrade organized crime special court. Although the victim received professional assistance and care both in the shelter and in hospital, she tried to commit suicide twice. As a result of subsequent stabilizing efforts, she successfully testified and she was transferred in a third country in order to be granted safety.

She was also regarded as a victim of trafficking when the moment of her illegal trespassing the Serbian border to Italy by means of a false passport provided by the person who had trafficked her was brought into discussion.

The traffickers transport their victims far away from their origin place (either internally or beyond borders) in order to take them away from their communities, their

¹ See I.O.M.: The trafficking in human beings and the exploiting of forced labor. A guide for the legislators and the law enforcing institutions, Geneva 2005.

friends and families, to isolate and keep them under a better control. During the transiting, the victims can be sold from one trafficker to another, without their knowing about it and transported during long travels without a precise direction. During the travel, the victims are either unaware of what is in store for them at the destination place or they have already been exploited by the trafficker and have just been moved to another place. This rises difficulties for the officers charged with the enforcing of the law when they have either to identify the potential victims in order to prevent a possible criminal offence or to discover a criminal offence which is unfolding.

Regarding the origin of the victims of the trafficking, according to I.O.M., “in the transition economies in Eastern and South-Eastern Europe, the forced economic exploitation was noticed among the migrant workers from Transcaucus and Central Asia”. Other trafficking routes have been recorded as well. For example, there is a great number of Chinese workers who are trafficked by sophisticated criminal networks, their passports are taken away from them and they are forced to work without payment in restaurants and in other businesses through the “slavery caused by running into debt” system and other forms of constraint. Statistics show that many children from different South-Eastern European countries were “sold” or illegally taken beyond borders to other countries and forced to become beggars or thieves. Men are trafficked in order to work under slavery conditions in different countries by means of labour placing firms which offer them working places which are apparently decent. The trafficking routes are never fixed, on the contrary they change and follow the demand from the respective countries and regions.

For example, the most recent reports indicate the fact that internal trafficking is growing. According to U.N.D.P. “the number of foreign women” is more and more exceeded by that of “women trafficked internally” in the shelters for the victims of the trafficking in the countries from West Balkans (Albania, Bosnia-Herzegovina, Macedonia, Serbia and Montenegro, including Kosovo). Especially in Kosovo the number of the internally trafficked victims is very high.

The forms of exploitation which the U.N.O Protocol regarding the trafficking associates with the trafficking are defined in a series of other international treaties. “The exploitation of others’ prostitution” refers to the cases in which a procurer or an exploiter totally or partially gets the money which a client pays to a prostitute forced to perform a sexual act². Sexual exploitation refers to both the commercial sexual exploitation (prostitution and the production of pornography) and other situations as well, which are not explicitly identified by the Protocol. “Slavery or practices similar to slavery” and “the enslaving” refer to similar situations in which the persons are constrained to work for the others, without necessarily being “under their possession”, especially in the “slavery caused by running into debt” system, the practice of asking someone to work in order to pay off a loan when the value of work exceeds by far the value of the loan³. “The drawing of organs” refers to the cases of organ transplants which involve living donors who are given

²The exploiting of the others’ prostitution is the topic of the U.N.O. Convention for the elimination of the trafficking in human beings and of the exploitation of the others’ prostitution (1949)

³ The system of “slavery brought about by running into debt” and other forms of ‘enslaving status’ are defined and forbidden by the Additional Convention of U.N.O. regarding the abolishing of slavery, the slave trade and the practices similar to slavery (1956)

sums of money (or whose relatives take money on their behalf) in exchange for the donating of an organ, such as the kidney, or of organic fluids to another patient⁴.

Until reaching the state where the traffickers are going to obtain financial gains as a result of profiting by the trafficked persons, these trafficked persons are most of the times made to illegally cross the state borders. I am of the opinion that these persons are victims of the trafficking in human beings from the very beginning of the putting into practice of the criminal decision taken by the traffickers, namely that of exploiting the respective persons, during the unfolding of the phases of the criminal activity and up to its coming to an end in any of the existing ways, the condition being the proving of the fact that advantage was taken of the state of need experienced by that person at the moment of leaving her own country, namely hunger, poverty, unemployment, a situation that must still exist at the moment of the illegal crossing of the state border.

While being exploited, the victims of the trafficking are placed in a situation of total dependence upon the traffickers, whom they must obey. The fear of revenge or the vulnerability in front of the law represents a key element in this plan. In this phase, the traffickers' objective – the victims' exploiting for financial gains – is totally achieved.

In Romania, by means of The Romanian Immigration Office (R.I.O.) from the Ministry of Internal Affairs and Administrative Reforms, immigrant counseling programmes regarding the opportunities for working places are carried out and Romanian language as well as professional qualification courses are organized. Further on a priority which needs to be enforced is the prospective tackling of the possibilities of integration on the labour market as well as the ensuring of the refugees' access to indemnities for social security, which are being restricted at present in the absence of identity documents.

An important support for receiving and integrating is offered by the Romanian National Council for the Refugees, a non-governmental organization involved with notable results in the administration of the receiving of the refugees and the asylum solicitors (together with the Romanian Office for Immigrations), in the judicial counseling services, in the programmes for instruction and integration, qualification, the learning of the Romanian language, medical assistance etc.

The reason for setting up the Romanian Office for Immigrations on 20th June 2007, by the reorganizing of the Authority for foreigners and of The National Office for the Refugees was that of the Romanian authorities' ensuring as soon as possible the institutional capacity of carrying out the obligations as a European Union state, as well as the efficient handling of the more and more complex problems in the field of migration and asylum, at a national level, taking into consideration the fact that any delay in the process of setting up the new institution could bring about syncopes in the handling of the problems at an internal level, as well as delays in approaching the issue of the admittance of foreigners in Romania, according to the economic interest of the Romanian state.

An important problem is that of *vulnerable groups*, especially that of unaccompanied infants, for whom there must be enforced the reconsidering of the practices of interviewing on their receiving and the adequate instructing of the civil servants, the wrong practices

⁴ The Health World Assembly adopted instructions in 1991 which forbid the trafficking of human organs with a view to commercial gains. See The World Health Assembly (WHA): The Transplant of Human Organs, A report concerning the discussions held under the auspices of WHA (1987-1991).

being able to produce powerful mental traumas. It is also recommended that, beside the R.O.I., the only governmental institution involved in handling the problems of the unaccompanied Romanian infants, with an activity which mainly concerns judicial and administrative problems, other institutions (The Ministry of Education, Research and Youth, the Ministry of Labour, Family and Chance Equality) are to take part in actions for the benefit of this category, in order to provide answers to other sides of the assistance such as education and integration.

Regarding the reintegration, a special situation is created by the persons who were subject to the trafficking in human beings, a major percentage being represented by young women.

Yet, the phenomenon is not known by the Romanian society in its essence, in its real light, its perceiving being affected by serious stereotypes. Most often the involved young women are morally blamed by society, that equals the trafficking with the prostitution, which makes the repatriation and reintegration extremely difficult.

From a legislative point of view, the Romanian authorities have taken significant steps regarding the prevention of the trafficking in human beings, the traffickers' punishing and the victims' protection, but in practice one can still notice drawbacks related to the financial support, the ensuring of a shelter, the repatriation and reintegration.

The most sensitive aspect, until the beginning of the proper reintegration, is represented by the application of a psychological counseling scheme for the treatment of the so-called P.T.S.D. (Post Traumatic Stress Disorder). It has been noticed that it is only after the victims of the trafficking reach a hospitable environment where they are treated respectfully and offered different assisting services, that their openness and their desire to receive information and participate in the reintegration activities significantly grow. As very few of them ever had access to a social and psychological support, it is essential for a gradual, careful approaching to be enforced in the initiating of the counseling sessions, in order to ensure the victim's openness and her accepting the supportive plans in the medium and long run.

At an international level, migration is relatively insignificant, approximately 4% out of the world population. Important migratory waves are to be encountered in a relatively moderate number of world states. No country in the world remains outside the international migratory waves. These countries are either origin countries, transit countries or destination countries for the migrants, or they display all the three characteristics at once. Just like in the case of financial and commercial waves, or the waves of information or ideas, the increase in the proportion of the persons who cross the national borders is part of the most significant indicators of measuring the intensity of the globalization process.

The globalization and the internationalization of markets bring about new migratory behaviours or an increased fluidity of territorial changes of place, the temporary migratory phenomena having a special significance.

From the point of view of the way of accomplishing, the migration can be legally or illegally performed, and quite often just on the line between legal and illegal, which practically totalizes different methods and means to which migrants resort, in order both to leave the origin countries and to transit other states or to penetrate or settle in the destination countries.

Thus, being a sensitive variant of the freedom of circulation, the regulating of migration is to be found at the confluence between the norms of the internal law of the states involved in the carrying out of the emigration (immigration) phenomenon and the provisions stipulated in the international law in this field.

The fundamental reasoning, which brings about the harmonizing or the joining of the two categories of norms – the internal and the international ones – is represented by the necessity of permanent protecting of the people's legitimate rights and interests, irrespective of the place where they are or of their quality: citizens, stateless persons, refugees.

In this context, by interpreting, we can underline the foremost role that must be recognized for the clarifying of the migrants' status, especially when it comes to those migrants who, because of a necessity state, such as the state of hunger, poverty, unemployment etc. from their own country resorted to the services of some criminal groupings specialized in illegal migration, groupings that take advantage of the despair of the people concerned with a view to material gain.

The state of necessity experienced by the migrant, doubled by his support offered in the proving of the illicit activities of the criminal groupings specialized in illegal migration meant to lead to the falling apart of the migrant trafficker network, respectively the calling to criminal account of its members could become, in a future law, a cause that could remove the criminal liability.

The solutions given by the trial courts in the cases regarding the illegal trespassing of the state border, a deed stipulated and punished by art. 70 indented line 1 from the Emergency Ordinance no.105 / 27th June 2001 regarding the Romanian state border, were, most of the times, pointing to the ceasing of the penal action with the enforcing of art. 18¹ from the Penal Code.

The real social danger is represented by the criminal offence of the trafficking in human beings, namely the accosting, the guiding or the leading of one or more persons with a view to the fraudulent trespassing of the state border, as well as the organizing of these activities which may sometimes endanger the life or security of the migrants or cause them to be subject to an inhuman or degrading treatment, there existing the possibility, inserted by the lawmaker inside the Emergency Ordinance no.105 / 27th June 2001 regarding the Romanian state border, through art. 71 indented line 3, to have as consequence the victim's death or suicide.

One must notice that when the lawmaker also stipulates the variant of the death or suicide he no longer uses the term of migrant but that of victim.

Art.70 indented line 4 from the same mentioned law stipulates that a certain category of persons, namely the victims of the trafficking in human beings, is exonerated from the criminal liability for the accomplishing of the illegal trespassing of the state border.

The United Nations Protocol for the preventing, fighting and punishing of the trafficking in human beings, especially women and children, as an annex to the Convention of the United Nations against the transborder organized crime, best known under its shorter name of "*Palermo Protocol*", established a standard referring to the trafficking crimes. In many states, the legislation specific to the anti-trafficking fight was elaborated or is being elaborated, being fully based on the provisions of this Protocol.

The most important article of the whole document is Article Three, which defines the criminal offence of trafficking in human beings as being the recruiting, transporting, transferring, accommodating or receiving of a person by threat, violence or other forms of constraint, by kidnapping, fraud or cheat, authority abuse or by taking advantage of the impossibility of that person to defend herself or to express her will, or by the offering, giving, accepting or receiving of money or other benefits for the obtaining of the consent of the person who has authority over another person, with a view to the exploitation of this person. The exploitation includes, at its minimum, the exploitation of the prostituting of other persons or other forms of sexual exploitation, the performing of a job or the carrying out of services without one's consent, the keeping under slavery or other similar proceedings such as the depriving of freedom or the enslaving or the drawing of organs.

Other international organizations have as well elaborated definitions of the phenomenon of the trafficking in human beings:

The definition of the Europol Convention regarding the trafficking in human beings⁵ explicitly emphasizes the predominantly sexual nature of the victims' exploitation. Regarding the criminal offences listed in article 2(2), the Convention contains the following definition:

"The trafficking in human beings refers to the methods of subjecting a human being to the real and illegal disposal of other persons, by using the force, the threatening with the force, the authority abuse, or the misleading with a view to the exploiting of prostitution, the sexual exploiting of any kind, the abusing of the infants or the trade with abandoned infants."

In the national legislation, Law no.678/2001 regarding the preventing and the fighting of the trafficking in human beings⁶, it is the main instrument of criminal policy in the field of the trafficking in human beings so it contains, apart from incrimination norms and provisions which define the terms and expressions used, provisions which regard the preventing of the trafficking in human beings, with the indicating of the institutions responsible in this area, norms of the incrimination of some criminal offences which are related to the trafficking in human beings, special provisions in the field of the confiscation, impunity, reduction of the punishments, special provisions regarding the judicial procedure, provisions regarding the protection and assistance of the victims of the trafficking in human beings and provisions regarding the international cooperation.

Article 12 from the above mentioned law incriminates the criminal offence of the trafficking in human beings and defines it as it is stipulated in Article Three from the "*Palermo Protocol*".

This modern and progressive definition has several positive aspects, as it reflects the reality of the nowadays trafficking in human beings.

First of all, it recognizes all forms of trafficking. The notion of trafficking is no longer restricted to sexual exploitation. The definition concentrates on the conditions of *forced labour*, *enslaving*, the practices *similar to slavery* and *slavery*, each of them being defined in a distinct way.

⁵ Annex regarding article 2 of the Europol Convention <The Act of the Council sketching the Convention based on article k3 from the European Union Treat, concerning the creation of an European Police Bureau ; July 1995.
⁶Of. M. no.629/19th July 2005

Second of all, it does not exclusively concentrate on women and girls, it admits that the victims can be women and men alike, girls and boys.

From the contents of the Emergency Ordinance no.105/27th June 2001 regarding the Romanian state border, art.71, indented line 1-3, there results that the migrant is considered to be a victim if as a result of the accosting, leading or guiding with a view to the fraudulent trespassing of the state border, his life or security being endangered or as a result of the migrant's being subject to an inhuman and degrading treatment the migrant's death or suicide has occurred.

The existence of an incomplete legislative setting regarding the migration, which cannot ensure, as in the situation of the trafficking in human beings, the protection of the victims and the witnesses, represents a cause which brings about the development of the trafficking in migrants.

The restricting of the opportunities of legal migration to the destination countries, as well as the very restrictive regulations regarding the legal migration imposed by the countries with a more developed economy, towards which the victims of the trafficking tend, severely limit any form of legal migration, a situation which favours the trafficking. The internationalizing of the criminal groupings brings large profits as a result of the trafficking in migrants and thus it is considered that the trafficking in migrants has become a global business with a turnover beyond 7 billion dollars.

The law information factors regarding the realities of the labour market or the standard of living in the destination countries, the real possibilities of getting employed in the labour field across the border, the consequences of the illegal work lead to the incorrect assessing of the real success chances, favouring the trafficking.

According to a survey ordered by I.O.M. in Romania, there were identified a series of factors which bring about the vulnerability to the trafficking of young people especially, factors which represent as many causes which bring about and precede the appearance of the trafficking, thus:

- the "advantageous" geographical setting; since Romania is an origin, transit and destination country, it favours the development of the trafficking. At the same time, the community becomes a cause when we refer to the geographical setting in a poor region (most victims of the trafficking come from Moldavia and Muntenia) and the living in a crowded city (for example, the young women who live in the big cities are more vulnerable to the trafficking in comparison to those who live in small, rural communities);

- the belonging groups; the young women who live in an institutionalized environment are significantly more vulnerable to the trafficking than those who live by themselves or with their family;

- the family abuse and the dysfunctioning, the lack of communication within the family and the social disintegration; thus, the experiencing of an abuse, either in the family or in an institution substantially increase the vulnerability to the trafficking; the abusive family environment is a factor generating migration and trafficking, keeping alive the feeling of failure in the personal relationships and making the young women look for freedom somewhere else; on the other hand, the poor communication between parents and the young women generates the feeling of not belonging to the family and it increases the

vulnerability to the trafficking; the lack of a group of friends accentuates the feeling of disintegration and facilitates the breaking apart from the family and community;

-personal acquisitions and aspirations; the desire for personal achievement and financial independence are in a relation of direct proportionality with the risk of the trafficking (the projecting of the success abroad is a dominant cause in the appearance of the trafficking);

Along another line, the causes of the trafficking can be related to the three coexistence levels - the trafficking with a view to: the sexual exploitation, the labour exploitation and the donating of organs.

The trafficking with a view to sexual exploitation remains the largest and most important form of the trafficking, out of the simple reason that it will always represent the most important source of money for the traffickers.

The poverty, the unemployment, the discrimination on the labour market, the domestic violence and the abuse bring about for women and young women especially the appearing of a desire to “run away towards a better world”, thus the traffickers’ deceptive offers being easily accepted.

The victims who come from disorganized families, having no income source, are offered well-paid working places outside the country; in the case of the children used for begging, their parents are promised that for their children there is the chance for a better life, a successful career, they are given imaginary examples concerning persons who were successful in this activity, they are offered money in exchange for the children; there are also cases when they are trafficked by their friends, who have influence upon these persons or their parents (in the children’s case). The victims are transported to another country, most of them under the cover of “dissimulated tourism”.

It can be stated that, most times, for the achieving of the wished goal namely the person’s exploitation, (the way is defined in art.2 point 2 from Law no.678/2001, as it was modified by the G.E.O. no.79/2005), the goal must exist at the moment of the accomplishing of the deeds that lead to the achievement of the criminal resolution, but must not necessarily be reached.

I am of the opinion that from the moment of the trafficked person’s recruiting in order to be exploited with a view to obtaining profit and up to the obtaining of this profit for the benefit of the trafficker, the victim’s procedural quality cannot be changed for the deed of illegal trespassing of the state border either, the victim being led or guided to this purpose, the final aim being that of obtaining some financial benefits by a criminal grouping. In order to enjoy the procedural quality of victim during the criminal trial taken against the members of the criminal grouping and implicitly the protection on the part of the state authorities, the trafficked person must carry out the condition of supporting the state of need which she experienced when she was accosted, a need generated by hunger, poverty, unemployment, etc., a state which should also be encountered at the moment of the taking of the decision of illegally trespassing the border, the victim being led or guided with this purpose.

The intention, in the case of the illegal trespassing of the state border by the leading or guiding of one or more persons with a view to her/their exploiting to another state by the trafficker cannot be but direct, qualified by means of the aim because the actions

which make up the material element of the objective side have as subjective finality the aim of the person's exploitation, which is pursued by the trafficker.

The trafficking in human beings represents a complex process which implies the going over several stages, characterized by the carrying out of specific activities.

The material element of the criminal offences of the trafficking in human beings, stipulated by art. 12 from Law no. 678/2001 and the trafficking in infants, stipulated by art.13 from Law no.678/2001 is achieved by means of one or several actions stipulated as alternative ways in the incriminating norms, namely the recruiting, the transporting, the transferring, the accommodating, the housing or the receiving of a person, actions that must be carried out with a view to the victim's exploiting.

The recruiting, as an alternative way by means of which the trafficking occurs, consists of the luring of the victim in order for her to be exploited with a view to obtaining profit.

The transportation implies the moving of the victim from one place to another, either within the borders of her origin state, or from the victim's origin state to the destination state, which most often implies the crossing of one or several borders.

The transferring consists of the transmitting of the victim from one trafficker to another, when she is sold just like a merchandise, at first without her knowing about it, or she is the aim of a transaction concluded between traffickers (for example the exchange).

The accommodating implies a person's temporary installing in a house or in another location having this destination.

The housing is a way of achieving the material element of the criminal offence of the trafficking in infants and means the receiving of a person in a house and her temporary sheltering.

The receiving implies the victim's taking over by a trafficker from another one, as a result of a transaction which occurred between the two of them.

Each and every of these actions is enough in order to achieve the material element of the criminal offence of the trafficking in infants, both in the standard and aggravated variants.

The guiding, which can also be achieved by means of *transportation*, is one of the main forms of the illegal industry of the trafficking in migrants, being organized at an international level, for the illegal migration of the third world citizens especially. Most migrants are young people able to work, with a lower educational level, who do not know foreign languages and do not have relative relationships, totally lacking help, a state that guiders take advantage of.

In the case in which the criminal activity carried out by the trafficker joins two or more alternative ways (for example, the performer first recruits his victim, then he transports her to the destination country where he transfers her to another person, with a view to exploiting), his deed will not represent a juncture of criminal offences, but a single criminal offence made up of a group of different deeds performed on the basis of a unique criminal resolution.

The material element of the criminal offence stipulated by art. 15 intended line (2) from Law no. 678/2001 implies the performing of actions of preparation for the activities of recruiting, transporting, transferring, accommodating, housing or the receiving of a person with a view to her exploiting the elaboration of plans with this purpose, the

establishing of the roles and the tasks of the doers and of the concrete means and methods used in taking action.

Art. 71 from the Emergency Ordinance no. 105/27th June 2009 regarding the Romanian state border was modified by means of law no. 39/21st January 2003 regarding the preventing and fighting of the organized criminality which, in art. 2, letter a defines the organized criminal group as the structured group, formed out of three or more persons, which exists for a tie period and acts in a coordinated way with a view to performing one or more serious criminal offences, in order to directly or indirectly obtain a financial benefit or another material benefit.

The material element of the criminal offences of the trafficking in migrants, stipulated by art. 71, indented line 1, from the Emergency Ordinance no.105/27th June 2001 regarding the Romanian state border is achieved by means of one or several actions stipulated as alternative ways in the incriminating norms, namely the accosting, the leading or the guiding of one or more persons with a view to fraudulent trespassing of the state border as well as the organizing of these activities. After crossing the other transit countries there follow the entering and the installing in the destination country.

Illegal migration being, at present, one of the prevailing transborder manifestations of the international organized criminality, which is brought about by the economic, social and political situation from the migrants' origin countries and which can develop, from case to case, in the transit countries, being able to produce serious effects in the destination (target) countries, can be successfully limited by concentrating the effort of administering the proves, proving the guilt of the members belonging to the illegal migrating networks and their disorganizing. The migrants, treated as victims, can testify and help collecting the proves in the criminal trial taken against the criminal grouping.

The commissions for the Civil Rights for Development from the European Parliament have brought to attention repeatedly the fact that one of the aims of the working sessions of the above mentioned commissions is the analysis of the implications at an international level of the phenomenon of illegal migrations, of the way of the administering and controlling of this phenomenon, but also the enforcing of certain measures related to the legalizing the migration – a solution identified as the most efficient for the reducing of the illegal migration phenomenon.

A special stress has been laid upon the necessity of the migrants' social integration, the disappearance of any kind of discriminations, but also upon the necessity of establishing some common policies and programmes in the European Union for migration.

On the basis of these data we consider as necessary the disposing of a lucid, realistic and efficient policy of fighting illegal migration on the grounds of the useful laws which regulate the phenomenon of migration.
