

INTERNATIONAL COOPERATION AGAINST HUMAN TRAFFICKING

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ABSTRACT: *Trafficking in human beings, a phenomenon with global dimensions constitutes a serious violation of human rights, dignity and freedom, a social phenomenon with negative consequences for the entire society.*

Countries have been concerned over the time to find the most effective policy measures to combat and prevent human trafficking, and in this regard the United Nations, the European Union and the Council of Europe have developed a series of international documents which established an international legal framework for the criminalization of trafficking in human beings.

In Romania, Law no. 300/2006 for the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, signed by Romania in Warsaw on May 16, 2005, and Law no. 678/2001 are the main instruments for preventing and combating trafficking in human beings. Thus, these instruments establish the measures that regulate the activity of prevention, criminalization of trafficking in human beings and trafficking related offences, seizure, non-punishment provisions and judicial procedures, the protection and reintegration of trafficking victims, as well as international judicial cooperation. Likewise, therein are provided a number of authorities and public institutions, NGOs and other civil society representatives that shall co-operate in order to pursue a sustained activity of prevention of trafficking in human beings, especially in women and children.

Protection of human rights and fundamental freedoms is a constant concern of all systems of law. Preventing and combating the phenomena of trafficking in human beings is all the more important as trafficking is a threat to constitutional order and the legal framework establishes a series of social protection measures that are meant to prevent serious violation of human rights which may occur as a result of trafficking crimes.

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Human trafficking is an underground phenomenon with worldwide dimensions, a severe infringement of human rights, of dignity and liberty, a social phenomenon with negative results on the entire society and it is present in most states regardless their level of development.

World states have been concerned with identifying the most effective measures of criminal policy for fighting against and preventing human trafficking. In this respect a series of international documents have been issued by the United Nations Organization, the European Union and the European Council and by means of them an international legal framework for incriminating the human trafficking crime has been established.

The first documents with international character that were adopted in the matter of human trafficking and by means of which criminal policy and prevention measures were implemented and latter included in the national legislation of the states that ratified them: the International Agreement for the suppression of trafficking in women and children¹, the Convention for the suppression of trafficking in women and children², the International Convention for the suppression of trafficking in women of full age³ and the Convention for the suppression of trafficking in persons and the exploitation of the prostitution⁴.

The main international instrument for fighting against human trafficking, which considers human trafficking as pertaining to organized crime and as a severe infringement of human rights, is the United Nations Convention Against Transnational Organized Crime⁵ and the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, as well as the International Protocol against illegal trafficking in migrants on land, air and sea. Actually in the Protocol Foreword it is mentioned that the association of the United Nations Convention against Transnational Organized Crime with an international instrument that aims to prevent, suppress and punish trafficking in persons, especially in women and children will help to prevent and fight against this type of criminality.

¹ The International Agreement for the suppression of trafficking in women and children was signed on 18 May 1904

² The Convention for the suppression of trafficking in women and children was signed by 27 states among which România in 1921

³ The International Convention for the suppression of trafficking in women of full age was concluded in 1933

⁴ The Convention for the suppression of trafficking in persons and the exploitation of the prostitution was adopted on 2 December 1949, by the ONU Resolution 317 (IV)

⁵ The United Nations Convention against Transnational Organized Crime was adopted in New York. Romania signed the Convention in Palermo on 14 December 2000 and the two additional Protocols. By Law no. 565 of 16 October 2002 there were ratified the UN Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, as well as the International Protocol against illegal trafficking in migrants on land, air and sea, protocols additional to the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 Nov. 2000, published in the Official Gazette no. 813 from 8.11.2002.

In Europe, there have been adopted such documents, which are extremely important in the matter of trafficking in persons⁶ such as follows: the European Convention for the protection of human rights and fundamental freedoms⁷, the European Convention for the removal of all forms of discrimination against women⁸, The European Council Convention on the exercise of Children's Rights⁹ and the European Council Convention on Action against Trafficking in Human Beings¹⁰.

Starting with 1990, within the European Union there have been adopted a series of directives with the purpose of preventing human trafficking by taking some measures as regards the review of criminal legislation on the European level, the police and judiciary cooperation in order to identify and to prosecute the traffickers and to offer assistance and protection to the victims of human trafficking.¹¹

The adoption of the Amsterdam Treaty on the European level was meant to create an area of freedom, security and justice within the Union and the crime of human trafficking was to be considered a felony that should be primarily fought against by the Member States. The EU Member States should actively apply criminal policies that are to increase the incrimination of human trafficking and introduce in the legislation the proper mechanisms for the protection of potential victims on the national, regional, European and international level. These policies must consider prevention strategies for persons vulnerable to trafficking, the implementation of certain mechanisms adequate to guiding victims to specialized services according to the necessities, the police cooperation between special units for fighting against human trafficking from member states and countries of origin, the initiation of joint programs for increasing the capacity of the special units for fighting against human trafficking from countries of origin, the use of certain investigation

⁶ Apart from the presented legal acts, the following recommendations of the Committee of Ministers for the member states of the Council of Europe were adopted: Recommendation no. R (91) on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation no. R (97) 13 concerning intimidation of the witnesses and the rights of the defense; Recommendation no. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation; Recommendation Rec (2001) 16 on the protection of the children against sexual exploitation; Recommendation Rec (2002) 5 on women protection against violence and the following recommendations of the Council of Europe: Recommendation 1.325 (1997) on women trafficking and forced prostitution in the member states of the Council of Europe; Recommendation 1.450 (2000) on violence against women in Europe; Recommendation 1.545 (2002) on the campaign against trafficking in women; Recommendation 1.610 (2003) on migration related to trafficking in women and prostitution; Recommendation 1.611 (2003) on trafficking in organs in Europe; Recommendation 1.663 (2004) on domestic slavery: servitude, au pairs and mail-order brides.

⁷ European Convention on Human Rights was adopted in 1950 and was ratified by Romania by Law no. 30 from 18 May 1994, together with the additional protocols.

⁸ European Convention on the removal of all forms of discrimination against women was signed in 1997.

⁹ European Council on the exercise of children's rights was adopted in 1996.

¹⁰ The Convention of the Council of Europe on the fight against trafficking in human beings was adopted in Warsaw in 2005 and came into force on 1 February 2008 and was ratified by 20 states. By Law no. 300 of 11 July 2006, published in the Official Gazette no. 622 from 19 July 2006, this Convention was ratified also by Romania.

¹¹ In the matter of trafficking in persons the followings were adopted: The Decision of Council of the European Legal Framework Against Trafficking on 19 July 2002 on the fight against trafficking in human beings; The Decision of Council of the European Legal Framework from 15 March 2001 on the standing of victims in criminal proceedings and the Directive of the Council of the European Union from 29 April 2004 on the residence title issued to the third countries' citizens that are victims of the trafficking in human beings or who were involved in an action to facilitate illegal migration and who cooperate with the competent authorities.

techniques and of some specialized strategies in fighting against human trafficking and the implementation of efficient anti-corruption and anti-poverty strategies within the legislation. All these measures must lead to the transformation of human trafficking from “an activity of low risk and high benefits for the organized crime” into one of “high risk and low benefits.” For achieving these objectives the institutions for law enforcement must use all their resources and capacities to forbid human trafficking, to remove all the economic advantages and to seize all goods where financial benefits have been gained.¹²

The ratification of these international documents was meant to create the international legal instruments on the global level with special focus on the fundamental rights of trafficking victims and on the establishment of a specific monitoring system, as well as on the adoption of common preventive and combative measures by means of viable criminal policies against this continuously increasing plague.

In the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, additional to the United Nations Convention against Transnational Organized Crime, “trafficking in persons” is defined in art.3 as follows:

- the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

- the consent of a victim of trafficking in persons to the intended exploitation set forth in the above paragraph shall be irrelevant where any of the means set forth above have been used;

- The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth above. “Child” shall mean any person under eighteen years of age.

By the adoption of United Nations Convention against Transnational Organized Crime and its additional protocols from 2000, a comprehensive definition of trafficking in persons has been adopted and the application area has been extended by including forced labor as one of the trafficking purposes along with sexual exploitation.¹³ Sexual exploitation does not represent forced labor and the Protocol mentions a few actual differences between trafficking for sexual exploitation and for forced labor or services, for slavery or practices similar to slavery.¹⁴

The Convention of the European Council regarding the fight against trafficking in persons preserves in art. 4 letter “e” the same definitions of the United Nations Convention

¹² See EU Plan on the best practices, standards and procedures for preventing and fighting against trafficking in persons, published in the Official Journal of the EU on 9 December 2005 (2005/C311/01).

¹³ I. Gârbuleț, *Traficul de persoane*, Editura Universul Juridic, București, 2010, p. 17.

¹⁴ Trafficking refers the movement of persons across borders or on the territory of the same state and which is most of the times illegal and is considered as a commercial activity that concludes with the sexual or labour exploitation (M. Vidaicu, I. Doldea, *Combaterea traficului de ființe umane*. (drept material și drept procesual), Chișinău, 2009, p. 8, pe www.unodc.org/.../human/).

and adds to the notion of victim some details namely that victim is any natural person that is subject to trafficking in persons.

Trafficking in persons represents a violation of human rights and an affront against human dignity and integrity that can lead to a slavery situation for the victims.

The international cooperation in this domain has imposed taking some measures for the prevention and fighting against trafficking in persons, for the protection and the support of victims' rights with the guarantee of equality between men and women and for the promotion of international cooperation in the domain of the fight against trafficking in persons, as well as some legislative measures for incriminating trafficking in persons and for carrying out effective criminal inquiries and investigations, measures regarding border, security and documents control.

In the area of trafficking in persons the states must adopt measures as regards: the establishment and the strengthening of coordination on the national level of different bodies with attributes for the prevention and the fight against trafficking in persons; initiating and supporting some efficient programs and policies for preventing trafficking in persons by researches, campaigns for information and education, social and economic initiatives and training programs specially designed for the persons vulnerable to trafficking and for the professionals involved in fighting against trafficking in persons; the promotion and observance of human rights, of equality between men and women as well as the respect of children's rights by the creation of a protective environment with the purpose of reducing their vulnerability to trafficking and assuring the migrations' legality by sending to the competent authorities the exact information regarding the conditions that allow legal entrance and residence on one state territory.

For achieving these objectives the states have the possibility to get non-governmental organizations and other competent bodies and representatives of civil society engaged in the prevention of trafficking in persons in the victims' assistance and protection.

In order to discourage the requests that favor all forms of persons' exploitation, especially that of women and children which lead to trafficking, and by means of international conventions, the states have assumed the obligation: to regulate and develop the legal, administrative, educational, social and cultural framework, including by researches that regard good practices, methods and strategies; to adopt measures to make the public opinion aware of the important role and responsibility of mass-media and of civil society in the identification of the request as one of the basic causes of trafficking in persons; to organize information campaigns for target-groups meant to involve public authorities and decision-making political factors and to establish preventive measures that include educational programs for girls and boys during their schooling, programs that are designed to underline the unacceptable character of discrimination based on sex and its negative consequences, the importance of equality between women and men, as well as the dignity and the integrity of each human being.

The protection of fundamental rights and liberties has been and still is a constant concern of all legal systems. The prevention and the fight against trafficking in persons represent a serious danger for constitutional order, and by means of the legislative framework social protection measures are established with the purpose of preventing serious violations of human rights by committing trafficking of persons.

The trafficking of persons is a crime with negative consequences both for its victims and for the society as a whole, a fact that requires a constant preoccupation of the authorities and public institutions, of non-governmental organizations and of civil society's representatives with decreasing trafficking in persons, thus imposing an intensification of international cooperation in this area.

In Romania – in the context established by the Constitution of 1991 revised¹⁵ -, the main criminal policy instrument in the matter of trafficking in persons is Law no. 678/2001 on the prevention and fighting against trafficking in persons, which, by its regulations sets the measures for the preventing trafficking in persons and the institutions involved in the prevention and incrimination of trafficking in persons and of the related crimes, the seizure, the causes of punishment failure, the measures for the protection and reintegration of the victims of trafficking in persons, and last but not least important, provisions regarding international judicial cooperation.¹⁶

A series of legal norms have been adopted to supplement the legislation on trafficking in persons, the most important being: Law no. 682/2002 on the witnesses' protection¹⁷, Law no. 211/2004 on securing some measures for the protecting the crimes' victims¹⁸, Law no. 39/2003 on the prevention and fighting against organized crime¹⁹, Law no. 272/2004 on the protection of children's rights²⁰ and Law no. 302/2004 on the judicial cooperation in criminal matters.²¹

For an efficient fight against trafficking in persons the authorities and public institutions referred to in Chapter II of Law no. 678/2001, the non-governmental organizations and other representatives of civil society will develop separately or in cooperation thorough actions to prevent trafficking in persons, especially trafficking in women and children.

The public authorities for taking the necessary measures in order to create and implement in their activity the national action plan for fighting against trafficking in persons are: The Ministry of Foreign Affairs, The Ministry of Labor, Family and Social Security, The Ministry of Administration and Internal Affairs, The Ministry of Education, Research, Youth and Sport, The Ministry of Health, The National Authority for Child's Protection and Adoption, The Ministry of Justice, as well as other governmental bodies with competencies for fighting against trafficking in persons.

In this respect, the Ministry of Foreign Affairs has made a list of the states with high potential for trafficking in persons and together with the Ministry of Administration and Internal Affairs is going to take all the necessary measures to prevent the access to the

¹⁵ Characterised as a rigid Constituin – see Lucian Chiriac, Sur les effets juridiques des lois d'approbation ou de rejet des ordonnances du gouvernement, in „Curentul Juridic” Journal, no. 2/2010, p. 47.

¹⁶ Law no. 678/2001 to prevent and fight against trafficking in human beings, published in M. Of. of Romania no. 783/2001. For the same purpose The Rules for applying the provisions of this law were adopted by H.G. no. 299/2003, published in M. Of. 206/2003.

¹⁷ Law no. 682/2002 on witness protection, published in M. Of. of Romania no. 964 /2002.

¹⁸ Law no. 211/2004 on some measures for assuring the protection of trafficking victims, published in M. Of. of Romania, no. 505/2004.

¹⁹ Law no. 39/2003 on the prevention and fighting against organized crime, published in M. Of. of Romania, no. 50/2003.

²⁰ Law no. 272/2004 on the protection of child's rights, published in M. Of. of Romania, no. 557/2004.

²¹ Law no. 302/2004 on the judicial cooperation in the criminal matter, published in M. Of. of Romania, no. 594/2004.

Romanian territory of the foreign citizens in relation to whom there is grounded evidence of their involvement in trafficking in persons.

The Ministry of Labor, Family and Social Security, by means of its specialized structures on the central and territorial level, drafts and implements special measures for the integration on the labor market of the persons with high risk of being trafficked, especially of women from disfavored areas and of socially marginalized persons. Together with the Ministry of Public Finances, the Ministry of Labor, Family and Social Security is currently investigating the opportunity of taking some measures to stimulate the businesses that hire both persons with high risk of being trafficked, as well as the victims of trafficking that have completed some professional training.

The National Agency of Employment is developing for the persons with high risk of being trafficked informative programs on job market and employees' rights, professional training programs, as well as programs for informing the companies as regards hiring these persons with priority.

The Ministry of Education, Research, Youth and Sport is developing with the support of the other involved ministries and in collaboration with the non-governmental organizations with activity in this domain, educative programs for parents and children, especially for the groups with high risk of being victims, in order to prevent the trafficking in persons.

The Ministry of Administration and Internal Affairs, by means of its specialized structures and with the support of other ministries organizes and updates the databases regarding trafficking in persons, periodically monitors and evaluates this phenomenon, by taking into consideration both the persons that are trafficking, as well as the trafficking victims and the legal persons involved in the activity of trafficking in persons.

In the fight against trafficking in persons the Ministry of Administration and Internal Affairs makes and disseminates materials regarding the risks which the potential victims of trafficking in persons can be faced with and, with the support of the General Inspectorate of Police, and with the approval of the Ministry of Internal Affairs, quarterly publishes statistics on trafficking in persons and evaluation reports.

The Ministry of Justice and the Public Ministry periodically perform surveys using their own databases with the purpose of identifying the causes that determine the criminality phenomenon and the conditions that favour trafficking in persons.

With the purpose of preventing trafficking in persons, the non-governmental organizations cooperate with the interested ministries and organize information campaigns regarding the phenomenon of trafficking in persons and the risks to which the victims are faced with.

On the national level, due to the serious increase of cases involving crimes in the matter of trafficking in persons, the National Agency for Fighting Against Trafficking in Persons has been established and has been assigned competencies in this area.²²

²² H.G. 1584/2005 on the establishment, organization and functioning of the National Agency to Prevent Trafficking in Persons and to Monitor Assistance for the Victims of Trafficking in Persons, published in M. Of. of Romania, no. 5/2006.

Law no. 678/2001 on the prevention and fight against trafficking in persons incriminates in Chapter III two categories of criminal offences, respectively: crimes on trafficking in persons and crimes related to trafficking in persons.

The first category includes the crime of trafficking in persons, the trafficking of minors and the organization of the crimes on trafficking in persons or crimes related to trafficking in persons.

The specialized legal literature includes the opinion according to which the lawmaker has included in the law the actions of trafficking in persons as separate criminal actions and not as only one crime, with several alternative ways of incrimination. Thus, if several crimes stipulated by the law are committed, a real or ideal concurrence of crimes is considered and not only one crime with several ways of incrimination.²³

The provisions of art. 12 paragraph 1 of Law no. 678/2001 regulate the type form of the crime of the crime of trafficking in persons, a crime that includes recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. In paragraphs (2) and (3) some severe forms of the crime of trafficking in persons are presented as follows: trafficking in persons is committed by two or more persons together, trafficking in persons is committed by a public servant while on duty, by the trafficking in persons a serious bodily injury and health harm were inflicted upon the victim and, the trafficking in persons caused the death or the suicide of the victim.

The trafficking in persons stipulated by art. 12 paragraph (1) is a complex crime, unique, including actions that each can constitute distinct crimes. By the will of the lawmaker these crimes lose their autonomy and the crime of trafficking in persons contains other crimes such as unlawful deprivation of freedom, deceit, threat, bodily injury and others.²⁴

The crime of trafficking in minors in its type form is regulated by art. 13 of Law no. 678/2002 and this stipulates that trafficking in minors is recruitment, transport, transfer, harbor or receipt of the minor for his/her exploitation. The committal of the crime of trafficking in minors by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over the minor, or the situation in which as a result of committing the actions stipulated in art. 13 the victim died or committed suicide, all these are considered severe forms of the crime of trafficking in minors.

The crime of organizing the crimes of trafficking in persons or in relation to trafficking in persons is stipulated in art. 5 paragraph (2) of Law no. 678/2001 which establishes that the organization of the crimes stipulated in chapter III of the law is considered a crime and is punishable as organized crime. This crime can be committed both as regards the organization of trafficking in persons stipulated in art. 12 and 13 of the

²³ I. Lascu, *Incrimînări privind traficul de persoane*, in *Dreptul*, no. 7 /2002, p. 11.

²⁴ M. Boier, *Infrațiuni privind traficul de persoane*, in *Dreptul*, no. 9 /2003, p. 143.

law as well as regards the crimes related to the crime of trafficking in persons stipulated in art. 17 and 18 of the law.²⁵

The crimes related to the crime of trafficking in persons stipulated by Law no. 678/2001 are the action to determine or to allow the entrance or the staying on the territory of a country of a person that is not a Romanian citizen and that is subject to trafficking in persons (art. 17) and the crime of child pornography (art. 18).

In the jurisprudence there hasn't been a unitary opinion regarding the legal framing of trafficking several people in the same location and at the same time. Some courts have considered that such a situation presents us with a cumulating of crimes, under the form of a real cumulating, for each trafficked person being necessary to assign an autonomous unique crime which determines the framing of the whole criminal ensemble into a cumulating of crimes that correspond to the number of the trafficked person, while other courts have considered that the trafficking of several persons in the same location and at the same time is a unique crime committed in a continuous form provided the conditions require the same criminal resolution.

²⁵ For the incrimination of this crime, also the criminal liability of the persons that organize these crimes is to be considered because, even though they are the main beneficiaries of the sums of money made by these actions, it is almost impossible to charge them with crimes of trafficking in persons, or crimes related to the trafficking in persons (see I. Gărbuleț, op.cit., p. 25. For a contrary opinion see G. Mateuț, V.E. Petrescu, N. Ștefăroi, E. Onu, A. Dublea, S. Luca, D. Iovu, R.D. Tărniceriu, G.L. Gafta, C. Luca, R.A. Prună, Traficul de ființe umane. Infractor. Victimă. Infrațiune, Asociația Alternative Sociale, Iași, 2005, p. 53; M. A. Hotca, M. Dobrinioiu, Infrațiuni prevăzute în legi speciale. Comentarii și explicații, vol. I, Editura C.H. Beck, București 2008, p. 53.