

## REFLECTIONS REGARDING THE PREJUDICE AND THE WAY OF MATERIALIZATION IN THE CASE OF HUMAN TRAFFICKING CRIMES

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**ABSTRACT:** *Crimes of trafficking in human beings is the object of many internal and international regulations, also representing one of the new manifestation modes of the transnational organized crime.*

*What is prejudiced by such a crime is the human person, considered both in its material and spiritual nature.*

*Being a complex offense, trafficking in human beings has raised many controversies about establishing a proper legal classification of such facts, also being a source of contradictions in the judicial practice, reason for which they were raised a few examples.*

**KEYWORDS:** *trafficking in human beings, constraint, consent person, material object, harm, minors, human liberty.*

**JEL CLASSIFICATION:** *K 13, K 14*

1. Human trafficking has become a global business generating huge profits for traffickers. New routes for trafficking are regularly settled and the market of false travel documents, clandestine transportation and border crossing fraudulently becomes more and more organized.

Some victims are lured by attractive advertisements for tempting jobs. Other victims are sold by relatives, acquaintances or family friends. Traffickers choose poor communities and show themselves during a drought season or before the close of harvest time, when food is missing, in order to persuade the poor families to sell their daughters for small sums of money.

The problem is widespread. Although the most trafficking cases occur in Asia, they are pretty much present in Africa and Latin America. Recently, the European Commission expressed its concern about the increasing number of women trafficking cases in Eastern Europe – it is estimated a number of approximately 500,000 women that were forced into prostitution. According to a CIA report, approximately 50.000 women and children are

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taken in the U.S. each year under various pretenses and are forced into prostitution, to work improperly or to become servants. Few cases reach the courts of justice.

Poverty and inequality are the root causes of trafficking. Gender discrimination within the family and community, and tolerance of violence directed especially against women and children, also have an important role. The lack of an appropriate legislation and of a political will to address this problem, the restrictive immigration policies, the globalization of the sex industry and the involvement of transnational organized crime networks are other causes of this problem<sup>1</sup>.

2. From these introductory considerations, in the approach to the harm caused by such crimes, we start from some theoretical considerations regarding the human being, seen in terms of certain values, which implies besides their objective existence also a personal appreciation and a recognition attitude towards these values<sup>2</sup>.

Criminal law deals with these values as legal assets or objects, from the moment it proposed precisely their protection. Legal assets that can be both material and spiritual in nature, such as life, physical integrity, honor, sexual independence, etc., are considered useful conditions or options for the individual and for its free development in the context of a social system based on these goals and which are also required for the functioning of the system in itself<sup>3</sup>.

For the legal assets to be discerned, they need to be incorporated in material objects that appear as their materialization and are guarded by a criminal rule. Between the material object and the legal material it is a checked phenomenon of reflection and repercussion as violating the first has repercussions on the juridical harm produced upon the other.

Prejudice, considered by some authors as the central concept of the criminal theory<sup>4</sup>, becomes more obvious if it relates to the material objects affected by the illegal behavior expressed in the crime, thus being possible a quantification of this prejudice<sup>5</sup>.

3. To understand how this reasoning can be found in the crimes of human trafficking, we start from the Italian criminal law doctrine, very generous in approaching this problem.

The act of trafficking in persons is incriminated in the Article 601 of the Criminal Code, article that constituted the subject of the criminal reform, embodied by the Law no. 228/2003 regarding some measures taken against human trafficking, law that has brought many significant changes to the Italian Criminal Code<sup>6</sup>. In its new configuration, unlike the prior one in force, one can identify two different behaviors:

<sup>1</sup> <http://www.unfpa.org/gender/violence1.htm>.

<sup>2</sup> J. Hall, *General Principles of Criminal Law*, Second Edition, The Bobbs-Merrill Company Inc, Indianapolis- New York, p. 217.

<sup>3</sup> M. Dirk Dubber, *Theories of Crime and Punishment in German Criminal Law*, Buffalo Criminal Law Center, p. 683.

<sup>4</sup> J. Hall, *op. cit.*, p. 213

<sup>5</sup> A. Eser, *The Principle of „Harm” in the concept of crime: a comparative analysis of the criminally protected legal interests*, *Duquesne U.L. Rev.* 137, 97, 225, p. 411.

<sup>6</sup> According to Article 601 Italian Criminal Code, a person commits the crime of human trafficking on the terms stipulated in Article 600 or with the purpose mentioned in the first paragraph of this article, either by deception or by force, threats, abuse of authority or taking advantage from a situation of physical or mental inferiority or stress, either by promising or offering money or other benefits to the person who has authority over the victim, either by entering or remaining in or on the territory of the state once with its transit, is punishable by imprisonment from eight to twenty years. The punishment is increased with one third in the case of the crimes mentioned in this article when they are committed against a minor under the age of eighteen or if they are directed towards the exploitation of prostitution or if the victims are subject to organ trafficking.

a. human trafficking, which is already regulated under the terms found in Article 600 in the Criminal Code. The *traffic* concept is taken from the Genoa Convention regarding slavery concluded between Italy and other states on 25 September 1926 and ratified by RD 1723/26 April 1928 that includes among other things, any act of capture, acquisition or disposal of a person with intent to reduce him to slavery, and in general, every act of trade or transport in slaves. For example, on the issue of slavery provided by Article 600 of the Criminal Code, in the acceptance of some authors, the material subject is considered to be the human person, while the legal situation of a person who is transformed from a state of freedom into a slave condition, is considered the be object of the criminal offense<sup>7</sup>.

b. the act of committing one of the behaviors enumerated by the legal rules for the purpose of committing one of the crimes specified in Article 600 of the Criminal Code (i.e. to exercise on a person the corresponding powers of ownership). These kinds of behaviors consist in determining one to enter, remain or transfer to another state through deception or coercion, violence, threat, abuse of power or taking advantage of a position of inferiority or a physical or mental state of necessity or by promises or by offering money or other benefits to the person who has authority over it<sup>8</sup>.

Due to the peculiarities of the material object, the Italian doctrine held that these crimes are part of the category of those with a *necessary homogeneous multiplicity of personal material objects* through their existence, it is necessary a multiplicity of material objects made of entities of the same species. It is this multiplicity, for which the law explicitly uses the plural in a determinative sense, which is indispensable for the existence of the crime and constitutes a subsequently element of quantifying the material object<sup>9</sup>.

Another author perceives the man as the *material object of the crime*, considered both in its material and spiritual nature. According to the nature of the offense, it may be violated either the spirit either the body, considering for example that in the case of crimes against honor or moral freedom what is affected is *the joy of the body*<sup>10</sup>.

The Italian doctrine addresses the scenario of human trafficking committed with the consent of the victim, in the case of minors or incapable individuals. Thus, it may be encountered the crimes of consensual refuse - Article 573 of the Criminal Code and the eluding of incapable individuals - Article 574 of the Criminal Code where the material object is the person, namely the minor who consents, but also the incapable, while the passive subject is the parent for the crime provided by Article 573 from the Criminal Code and the guardian or the trustee, for the crime found in Article 574 of the Criminal Code<sup>11</sup>.

There are also situations where the crime of trafficking in persons has also a real material object, as in the cases of crimes covered by Article 600 of the Criminal Code regarding child pornography where the material object of the crime is the pornographic material represented by virtual images achieved by using images of people under eighteen years or parts thereof. The second paragraph of this article provides a definition of the virtual images, by which we understand the images achieved by graphic work out techniques

<sup>7</sup> F. Gianniti, L'oggetto materiale del reato, Ed. Dott. A. Giuffrè, Milano, 1966, p. 142

<sup>8</sup> L. Delpino, Diritto Penale, Parte Speciale XVI Edizione, Ed. Giuridiche Simone, Napoli, 2008, p. 520

<sup>9</sup> F. Gianniti, op. cit., p. 124.

<sup>10</sup> Ibidem, p. 47.

<sup>11</sup> Carlo Fiore, Diritto Penale, Parte Generale, UTET, Torino, 1993, p. 163.

associated totally or in part to real life situations, whose quality of representation makes them appear as truly non real situations<sup>12</sup>.

4. The Anglo-American criminal doctrine also makes use of a few typical forms of harm as a consequence of the human trafficking crimes.

For example, according to certain authors it should be taken into consideration the fact that the prejudices of criminal nature are far from being limited to physical injuries, being extended from tangible to intangible, from objects purely tangible to intangible interests and values. For example, in some crimes of trafficking, kidnapping or sexual crimes etc. there is no physical injury, and in others such as rape, physical injury can be insignificant. Since it was established that these crimes do not represent actual damage, the term of “*criminal injury*” must be defined in terms of incorporeality, such as harm brought to woman’s freedom, prestige, etc. Prejudice is regarded as a negation, devaluation and lack of natural conditions. Therefore, it is estimated that the prejudice signifies the loss of certain values, the central focus of a value or a devaluation being not only the object itself, but also the assessment and the attitude of others, as it is mentioned above<sup>13</sup>.

With reference to sexual offenses, the same author considered that if the offender abuses a woman and has sexual intercourse against her will not only her body’s sexual organs are protected, but rather her interest of being in control of her sexual freedom<sup>14</sup>. While the woman’s interest is considered a specific interest, there is also a general interest materialized in the preserving and protection of the public morality.

It was also appreciated that a real harm along with a subjective position of the perpetrator who voluntarily commits a criminal act determines *mens rea*, as part of the crime; so passing a woman over the borders of a state does not cause harm unless it was done for the purpose of prostitution<sup>15</sup>.

5. In the French criminal law, human trafficking is criminalized in the Article 225-4-1, Criminal Code, modified by Law no. 239/2003, which states that “trafficking in human beings exists in the case of a person’s recruitment in exchange for remuneration or any other advantage or promise of reward or benefit; a person’s transportation, transfer, sheltering, to make it available to a third party even unidentified, either to use the person for assault or sexual actions, for exploitation of begging, with no working conditions or conditions which are contrary to the person’s dignity of accommodation, either to compel that person to commit any felony or misdemeanor”.

The following situations constitute aggravating circumstances of trafficking:

I. Article 254-4-2 Criminal Code, if the crime is committed:

1. against a minor,
2. against a person whose special vulnerability is obvious or known by the author because of age, illness, infirmity, physical or mental impairments
3. against several persons,
4. against a person found on the territory of the State or at arrival on the territory of the State

<sup>12</sup> M. Bianchi, S. Delsignore, I delitti di pedo-pornografia fra tutela della moralità pubblica e dello sviluppo psico-fisico dei minori, CEDAM, Padova, 2008, p. 118-121

<sup>13</sup> J. Hall, op. cit., p. 217; A. Eser, op. cit., p. 370

<sup>14</sup> Ibidem, p. 379.

<sup>15</sup> Ibidem, p. 394.

5. if the person was put in touch with the author of the acts through the use of a telecommunication network, for broadcasting messages destined for an undefined public,

6. in circumstances which expose the person directly to an immediate risk of death or injury that may cause mutilation or permanent disability,

7. by the use of threats, coercion, violence or criminal practices aimed to the person or its family or to the persons related to it;

8. by a legitimate ancestor, natural or adoptive of the person-victim referred to in Article 225-4-1 or by a person who has authority over the victim or abuses the authority that his position gives him,

9. by a person appointed to participate in its functions to the fight against trafficking or maintain public order.

II. Article 254-4-3 – Criminal Code, if the offense is committed in organized gangs

III. Article 254-4-4 – Criminal Code, if the offence is committed by making use of torture or acts of barbarity.

IV. Article 254-4-5 – Criminal Code, if the offense or crime that was committed or had to be committed against the person – victim of human trafficking is punishable by a sentence privative of freedom for a term of imprisonment greater than the time length found in the application of Articles 225-4-1 to 225-4-3, the crime of human trafficking is punishable with penalties attached to crimes or offenses which the author is aware of and if that crime or offense is accompanied by aggravating circumstances, it receives punishments attached to the only aggravating circumstances of which he has knowledge.

It was stated in the legal doctrine that the crime of exploitation, absorbed in the complex content of the trafficking crime is not defined in the Criminal Code and that this crime requires the prior existence of a prostitution offence. Viewed from the etymological point of view, this term comes from the Greek – *proxenetes* – the one who intermediates and receives progressively a pejorative value in the meaning of a person who derives income from prostitution (Diderot).

Regarding prostitution, the latest definition consists of two elements: the performance of certain acts in exchange for remuneration and consent to physical contact of any kind it may be, to satisfy the sexual needs of another, less important being the sex of the partners.

In law, the different cases criminalized as procurement correspond in reality to the cases of complicity in prostitution, but nevertheless, the prostitute is considered a victim and not an accomplice to the exploiters, having the opportunity to serve as a civil party against him<sup>16</sup>.

6. In the German Criminal Code, according to § 180b paragraph 1, human trafficking is present when a person compels to obtain material benefits, when a person begins or continues to practice prostitution because of constraint, the sentence in these cases being up to five years imprisonment or a fine. The same punishment receives the person compelling others in order to obtain material benefits, a person who has sexual intercourse with or facing a third person or to accept a third person to have sexual intercourse with her, because of the situation related to residence in a foreign country.

<sup>16</sup> P. Gattegno, Droit penal special, 5<sup>e</sup> edition, Cours Dalloz, Paris, 2003, p. 114.

Paragraph 2 provides a different legal situation, which penalizes a person who compels or forces another person to start or continue practicing prostitution, because of the situation connected with the living in a foreign country or a person under 21 that begins or continues to practice prostitution.

On § 181, Criminal Code, we find regulated the aggravating trafficking in persons for the person who:

- coerce another person to begin or continue to practice prostitution by using force or a dangerous threat or by deception,
- either recruits by deception, or abducts by force or threat another person to have sexual intercourse with or facing a third person or to accept that a third person have sexual intercourse with her, due to the situation related to the residence in a foreign country, or
- recruits, in a qualified way, another person in order to force it to start or continue to practice prostitution, because of the situation related to residency in a foreign country.

In these crimes, the material object of the action is considered the human body and the legal object is “having” a body unharmed, as a preceding condition for a life without disability.

The German criminal doctrine appreciated moreover that the ranking of legal goods (objects) is assumed to be derived from the constitutional principles so that values of personality like human freedom is worth more than the material goods such as property, and life and corporeal integrity involves not only personal values but also individual legal property<sup>17</sup>.

With reference to the crimes of prostitution and procurement, which are included in the structure of human trafficking crimes, it was considered that the starting point of the regulations regarding prostitution and procurement would be not to punish a legalized activity - *freedom for prostitution*, thus the lack of fear of punishment in what concerns the prostitutes, the men involved in prostitution or the prostitution customers. From this point of view there are three categories of rules governing these activities:

- a) rules that protect this freedom of prostitution, though it prevents exploitation of prostitutes by a procurer and other offenders,
- b) rules that restrict freedom of prostitution; it is prohibited prostitution for young persons (§180, §180a, §180b of the Criminal Code) and also the exercise of certain actions of stimulation or pressure for someone to practice prostitution.
- c) rules in connection with the exercise of prostitution or other prohibitions such as the spread of pornography.

Prostitutes' and procurers' environment is often regarded as a source for feeding criminality. In Germany, this environment is presented as a starting point for the organized crime and not least because of its link with drug trafficking.

In terms of criminal statistics, dominant are the child sexual abuse – more than 15.000 cases annually, following the far less injurious acts of exhibitionism – about 10.000 cases a year and the rapes – 1.000 cases per year. In 1996, German police has uncovered a number of 4.373 cases regarding distribution of pornographic materials<sup>18</sup>.

<sup>17</sup> M. D. Dubber, op. cit., p. 693.

<sup>18</sup> G. Arzt, U Weber, Strafrecht Besonderer Teil, Lehrbuch, Verlag Ernst und Werner Gieseking, Bielefeld, 2000, p 821.

7. In the Romanian criminal law, the facts regarding human trafficking and those related to trafficking are criminalized in the Article 12 to 18 of the Law no. 678/2001 on prevention and fighting human trafficking<sup>19</sup>.

Specific for the crime of human trafficking is that, as apparent from the semantic analysis of the type of the crime, these crimes are directed not against a person, but against more than one person so that the material object is multiple; therefore the multiplicity of the material objects is essential for the existence of the crime.

Thus, it is necessary not make a confusion between the complex crime of human trafficking (as its contents might include other crimes as exploitation, beatings, threatening, etc.) and a series of crimes motivated by the fact that there would be so many crimes as the number of material objects or passive subjects. The crime does not depend (in what concerns the achievement of its content) on the goals of the offender regarding the quantitative aspect of the material object. The subjective position of the offender is crucial regarding the existence of the crime only by foreseeing the producing of the result, not by an *a priori* determination of the quantitative aspect of this outcome<sup>20</sup>.

In this respect the Supreme Court delivered pronounced judgment through the Decision of guidance no. 1/1963, which considered that in order to determine whether all actions – inactions were committed with the same criminal intention or if they have their source in different resolutions, it is essential to examine all the circumstances and conditions under which they were committed, taking into consideration the unity of the material object, the place and the victim identity.

<sup>19</sup> The Law no. 678/2001 provides the following crimes: I) crimes regarding trafficking in persons: Art. 12 - (1) The act of recruiting, conveying, transferring, lodging or taking over a person by threat or by other forms of coercion, by abduction, fraud or deceit, abuse of authority or taking advantage of the person's inability to defend him/herself and to express his/her will, or by giving, accepting or receiving money or other benefits in order to obtain consent from the person having authority over another person in order to exploit that person, shall be punished by strict imprisonment from 3 to 12 years and the prohibition of certain rights. (2) Trafficking in persons committed in one of the following circumstances: a) the act has been committed by two or more persons together b) if the victim suffered serious injury of corporal integrity or health, c) the act is committed by a public official in the execution of his duties is incriminated and is punishable by imprisonment from 5 years to 15 years and prohibition of certain rights; Article 13 - (1) The act of recruiting, conveying, transferring, lodging or taking over a minor for exploitation is incriminated with trafficking in minors and shall be punished by imprisonment from 5 years to 15 years and prohibition of certain rights. (2) If the act referred to in paragraph (1) has been committed by threat, violence or other forms of coercion, by abduction, fraud or deceit, by abuse of authority or taking advantage of the minor's inability for defense or to express will, or by giving, accepting or receiving money or other benefits to receive consent from the person having authority over the minor, is punished by imprisonment for 7 years to 18 years and prohibition of certain rights. II) Offences related to human trafficking: Article 17 - (1) the act of determining or allowing, in full knowledge, either directly or indirectly, the entrance or stay on Romanian territory of a person who is not a Romanian citizen or does not domicile in Romania, and who is a victim of trafficking in persons, committed in one of the following circumstances: a) by using fraudulent means, violence, threats or any other form of coercion against the victim, or b) by abusing the special condition of the victim, because of his/her illegal or poor situation of entrance or stay in the country, or because of pregnancy, disease or disability or a physical or mental disability, constitutes a crime and is punishable with the punishment provided for the crime of trafficking in persons In Article 18 - (1) The act of producing in order to disseminate, offer or make available, disseminate or transmit, obtain for oneself or for another, child pornography material through computer systems, or the possession, without right, of child pornography material in a computer system or data storage medium shall be punished by strict imprisonment from 3 to 10 years. (2) The same punishment is given for the import or delivery of the items referred to in paragraph (1) to a transport or distribution agent with the purpose of trading or distributing them.

<sup>20</sup> V. Papadopol, D. Pavel, *Formele unității infracționale în dreptul penal român*, Casa de Editură și Presă „Șansa” S.R.L. Bucharest, 1992, p. 54.

Thus, in practice, it was established that the recruitment of a number of persons at the same time and place under a single criminal resolution regarding prostitution and transporting them abroad in pursuit of material benefits, constitute a single crime of human trafficking and procurement and not a series of crimes as the number of passive subjects recruited for this purpose<sup>21</sup>. It also constitutes a single crime of minor trafficking in a continued form the crime provided by the Article 13 of the Law no. 678/2001, committed on several passive subjects to achieve the same criminal intention, in the same place and time<sup>22</sup>.

At the same time, the victims of trafficking, besides their quality of material objects of the crime they carry out the quality of passive subjects of such crimes, situation in general characteristic to the crimes where the holder of the goods or interest taken care of by the criminal provision and attacked through crime is the one and the same human person upon which the criminal conduct reflects in a direct way. These qualities can be joined by the quality of injured party constituted within the criminal trial and which suffered economic damage from the crime<sup>23</sup>.

8. The new Criminal Code adopted by Law no. 286/2009, pursued a rearrangement of incriminations regarding human trafficking and trafficking in minors, though comprised in a different form, in Article 210 and 211<sup>24</sup>.

While in most other legislations, trafficking in minors is an aggravating way of trafficking, in the new Romanian Criminal Code, the variant type of both crimes is based upon the same limits regarding prison sentence between 3 and 10 years respectively; but the aggravating variant of trafficking in minors, committed in the same conditions as the variant type of human trafficking has the limits of punishment modified – prison from 5 to 12 years. From this point of view, the current regulation is better correlated in what concerns the sanction of the alleged misconduct, because the base variant of trafficking in minors is punished with imprisonment between 5 to 15 years and the aggravated variant with a range between 7-18 years compared with limits ranging from 3-12 years of the variant type criminalized on human trafficking.

It should not be overlooked the crimes against persons with disabilities, physical and mental deficiencies, etc., referred to in Article 210, paragraph 1, letter c, which unfortunately received similarly and equal sanctioning treatment, as if the crime was directed against adults, normal individuals physically and mentally.

<sup>21</sup> Î.C.C.J., Panel of 9 judges, Decision no. 32 of 14 February 2005, [www.scj.ro](http://www.scj.ro)

<sup>22</sup> Î.C.C.J., Criminal department, Decision no. 5998 of 12 December 2007, [www.scj.ro](http://www.scj.ro).

<sup>23</sup> N. D. Popa, *Obiectul material al infracțiunii*, PhD thesis presented at the Romanian Academy, Institute of Juridical Research „Andrei Rădulescu”, 2010, p. 96.

<sup>24</sup> According to Article 210 from the new Criminal Code, the crime of human trafficking consists in: (1) The recruitment, transportation, transfer, sheltering or receiving persons for the purpose of exploitation, committed: a) by coercion, abduction, deceit or abuse of authority; b) by taking advantage of the inability of the victims to defend themselves or to express their will or by profiting by the state of obvious vulnerability of that person; c) by giving, accepting or receiving money or other benefits to receive consent from the person having authority over the minor shall be punished with imprisonment from 3 to 10 years and interdiction to exercise certain rights. (2) The victim's consent is not a justifying cause. In the Article 211 the trafficking in minors is criminalized as follows: (a) The act of recruiting, conveying, transferring, lodging or taking over a person aged 15 to 18 in order to exploit that person, shall be punished by strict imprisonment from 3 to 12 years and the prohibition of certain rights. (2) If the offense was committed under the terms of the Article 210 paragraph (1), the punishment is imprisonment from 5 to 12 years and prohibition of certain rights. (3) The victim's consent is not a justifying cause.

The reason that should lead to an aggravation of punishment is the very special quality of the personal material object, which is also a passive subject of the crimes (minors, persons with deficiencies, physical and mental disabilities, etc.), a rule that is violated in the Article 210, 211 of new Criminal Code, reason why it shouldn't have been missed the great impact that the crime causes on such persons, on their further development (the minor cases), their degree of vulnerability, plus the fact that in the theory of the mutual consent between the offender and the victim, the victim's consent is vitiated for lack of discernment or lack of ability to defend itself or various other reasons.

From another point of view, the crimes of human trafficking are part of the crimes of result, because they are directed against the human person, seen as an object of the action both from the physical and psychological point of view, as well as a psychosomatic unit, which is harmed by the crime. In the causal history of producing such a result it is also included the contribution of all the participants in the crime<sup>25</sup>, because its achievement is possible only by means of a single person.

On a semantic analysis of the concept of "trafficking" we should have in mind among other meanings, the illicit trade<sup>26</sup>, which we consider the closest to the meaning used in the criminal law. This effect highlights the fact that trafficking is a multilateral operation because it involves people who "procure", "deliver" and "benefit" by those trafficked who are forced to act the simple role of the "commodity". Throughout this equation, those who "procure" and "deliver" fall under the incidence of the criminal law, thus becoming the active subjects of the trafficking crime. Or, the criminal conduct of these active subjects would not be possible without the existence of "beneficiaries", who in their turn knowingly and aware of the unlawfulness of such acts, take advantage of the trafficked persons in various forms, either by sexual exploitation, using them for forced or unauthorized work, using victims as mere "slaves", etc. either accept, allow or even encourage such acts, for example *begging*.

Such acts do nothing but encourage and increase the illegal activities like trafficking and exploitation of people and create favorable ground for the commission of other subsequent crimes, case where we consider that in order to effectively fight such acts it is necessary using certain criminal law means.

This would constitute a hypothesis of the situation called in the criminal doctrine *necessary plurality*, in which either the acts of all participants are sanctioned (for example, for crimes of association to commit crimes, incest, bigamy, bribery) either the acts of only some of the necessary participants are sanctioned by law (for example, wangle, adultery, receiving unfair advantage, etc.). In the first case, the needed plurality was given the characteristic of proper and in the second case the characteristic of improper<sup>27</sup>.

According to some authors (Francesco Antolisei), holding responsible the persons within the improper plurality required is conditioned by the will of the legislator, reason why we suggest *de lege ferenda* the criminal punishment for such participants and for such conduct. We do not see why legal assets of special value such as liberty, integrity, a person's health etc. should not be protected by means of the criminal law, as it happens in

<sup>25</sup> G. Antoniu, Raportul de cauzalitate în dreptul penal, Ed. Științifică, Bucharest, 1968, p. 254-258.

<sup>26</sup> [www.dexonline.ro](http://www.dexonline.ro)

<sup>27</sup> G. Antoniu, Participația penală. Studiu de drept comparat in „Penal Law Review” no. 3/2000, p. 9-12.

cases of other bilateral or multilateral crimes, that protect according to circumstances legal assets of a lower value, as in the case of the protection of civil servants' honesty, legitimacy and legality of the duties they fulfill<sup>28</sup>, in the case of the crimes of bribery committed by the "beneficiary" of such crimes. And such examples could continue as in the case of drug buyers, organizers and practitioners of gambling, where persons that derive profit from the crimes are also incriminated.

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<sup>28</sup> N. D. Popa, op. cit., p. 79.