

The European policies on fighting against trafficking in human beings Challenges for Romania

Assoc. prof. Ph.D. FLORENTINA OLIMPIA MUȚIU*

West University of Timisoara, Law Faculty

Abstract:

The study takes into consideration the current issues related to trafficking in human beings: dimensions (growing the phenomenon and its consequences), contexts of preventing and combating, involvement of EU and national (Romanian) institutional actors to transpose into practice the requirements of EU policies, EU Strategy and National Strategy (Romanian Strategy) in this matter.

The study aims to analyse relevant aspects regarding: the legal framework for implementation, monitoring and evaluation the measures on preventing of and fighting against human trafficking; the most effective solutions in the fight against trafficking of human beings at the EU level and national level (especially for the case of Romania), highlighting the punishment of offenders and protection/support of victims of human trafficking.

The approach to human trafficking imposes an interdisciplinary research, aimed to reveal the synchronized elements and the deficiencies of measures applied in this matter, in accordance with national criminal legislation, strategies and policies and the effective proposals for improvement the objectives and actions focused on responses to the challenges of human trafficking nowadays.

Keywords: *trafficking in human beings, EU Policies, EU Strategy, National Strategy, offenders, victims, criminal legislation.*

The multidisciplinary approach to human trafficking issue highlights: the legislative measures regarding the means of the offender's coercion or repression and the identification and diminishing of the potential sources of human trafficking; the economic, social and administrative measures for prevention of human trafficking and for protection of the victims of human trafficking. Multi-causal and multi-factorial analysis of the phenomenon of human trafficking is able to provide relevant data regarding the preventive and the repressive actions and the potential sources of crime (the necessity to diminish these sources).

In accordance with the requirements of the European Strategy on matter of trafficking in human beings¹ is necessary to analyze the impact of anti-trafficking prevention initiatives in particular awareness-raising activities as well as educational programmes, measures to reduce demand, measures specifically targeting root causes as these are directly linked to trafficking in human beings².

* E-mail: florentina.mutiu@e-uvt.ro.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, COM (2012) 286 final;

² *Study on prevention initiatives on trafficking in human beings - Final Report*, Luxembourg Publication Office of the European Union, 2015.

Taking into account the framework of crime prevention is important to evaluate:

- the causes and conditions that encourage crime, the dynamics of crime;
- the involvement of state authorities on development of appropriate measures to reduce criminality rate;
- the effectiveness of the activity of Inter-ministerial working groups, the actions of specialized bodies required in accordance with the provisions of the strategies for prevention and combating particularly serious forms of crime (e.g. human trafficking);
- the cooperation between the competent bodies to achieve the objectives of the strategy on matter of human trafficking: National Strategy against Trafficking in Human Beings for 2012-2016³;
- improving institutional coordination in the fight against human trafficking as serious form of crime; cost-effectiveness analysis of preventive programs – campaigns to inform the population, especially the vulnerable groups, regarding the benefits of prevention and the risks of perpetration of crime, the “cost of crime”;
- the relevance of special techniques of prevention and the community model or “model of community mobilization for effective design and implementation of social measures for prevention”;
- strengthening the public security and the crime control.

To reduce the crime rate is important that the prevention programs and actions to prove effectiveness by:

- establishing the methodology, the horizontal and vertical organization of preventive structures, elaborating and validating minimum standards of service quality, specialized prevention training/specialization interveners (own personnel in specialized institutions, experts) in preventing and combating crime;
- planned activities, from educational and social training to professional insertion of young people or organization of leisure time for populations with social risk;
- the collaboration between the police authorities and the public, especially young people and the coordination of preventive activities in human trafficking issues; elaborating and dissemination of educational materials (through newsletters, seminars, meetings, debates, reports, periodicals) for the population or certain segments of the population (public opinion, officials, offenders, victims) on preventing and combating human trafficking;
- the requirement of protection of the unattended children whose one or both parents work abroad: is noted the social reality in Romania and the amended legislation which offers the institutional framework for the protection, integration and surveillance of those minors (Law no. 257/2013⁴).

The EU policies in matter of human trafficking emphasizes the benefits of: the adequate knowledge of the current system of criminal justice at the European level and the national level of EU Member States; the comparative analysis of best practices, procedures and standards on prevention of and fighting against human trafficking (providing comprehensive anti-trafficking responses); the coherent proposals for the improvement of the activity focused on the punishment of offenders and protection/assistance of victims of human trafficking; the recommendations for the implementation, monitoring and evaluation of the measures in the area of prevention

³ National Strategy against Trafficking in Human Beings for 2012-2016.

⁴ Law no. 257/2013 which amends Law no. 272/2004 on the protection and promotion of the rights of child.

and combating the human trafficking (especially for the case of human trafficking for purpose of sexual exploitation or for purpose of forced labour, trafficking in women and children).

The EU legislative framework takes into consideration the main aspects related to trafficking in human beings:

- This serious form of crime is prohibited by article 5 paragraph 3 of the Charter of Fundamental Rights of the European Union⁵ - in the context of the prohibition of slavery and forced labour, the human trafficking represents a violation of human rights (e.g. dignity, individual freedom)⁶.

- The Treaty on the Functioning of the European Union (article 79 on Policies on Border Checks, Asylum and Immigration and article 83 on Judicial Cooperation in Criminal Matters)⁷ requires the implementation of the comprehensive policy to effectively address trafficking in human beings - focused on the prevention of trafficking, prosecution of offenders, protection of victims and partnership with the different stakeholders and actors involved within an integrated and multidisciplinary perspective correlated with a human-rights-centred and gender-specific approach⁸.

- The Directive 2011/36/EU⁹ replaces Council Framework Decision 2002/629/JHA and is transposed into the national criminal legislation of EU member states (e.g. the settlements of the Romanian New Criminal Code on human trafficking); in accordance with the provisions of the Directive 2011/36/EU, early identification of the victims (particularly vulnerable victims, including children, women) is necessary for an effective assistance, support, protection and social inclusion of the victims of trafficking in human beings (based on the appropriate mechanisms) and enables police and prosecution authorities to better investigate and punish traffickers¹⁰.

- The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016¹¹ is focused on measures that support the implementation of the Directive 2011/36/ EU on preventing and combating trafficking in human beings and protecting its victims; victims are often recruited, transported or harboured by force, coercion or fraud in exploitative conditions, including sexual exploitation, forced labour or services, begging, criminal activities, or the removal of organs; this perspective is correlated with the constituent elements of trafficking in human beings (process, means and purpose) highlighted by the internationally recognised definition of this form of serious crime (in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

⁵ Beatrice Andreșan-Grigoriu, Tudorel Ștefan, *Tratatul Uniunii Europene. Versiune consolidată*, Editura Hamangiu, București, 2014, p. 166.

⁶ Charter of Fundamental Rights of the European Union (2000/C 364/01), O J L 364, 18.12.2000, p. 1.

⁷ Treaty on the Functioning of the European Union.

⁸ Reference Document - *Guidelines for the identification of victims of trafficking in human beings*, Luxembourg Publication Office of the European Union, 2013.

⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

¹⁰ Reference Document - *Guidelines for the identification of victims of trafficking in human beings*, European Union, 2013.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions -The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, COM (2012) 286 final.

especially Women and Children, which supplemented the United Nations Convention against Transnational Organized Crime¹².

The EU Strategy on trafficking in human beings 2012-2016 establishes five priorities: identifying, protecting and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; increased prosecution of traffickers; enhanced coordination and cooperation among key actors and policy coherence; increased knowledge of and effective response to emerging concerns related to all forms of trafficking. These priorities regards both the EU institutions/bodies and the EU Member States institutions/authorities, civil society, taking into account the evaluation and monitoring of European and national strategies and activities aimed at addressing human trafficking.

At the national level, the New Criminal Code-Special Part includes provisions regarding the trafficking in human beings in the Title I (Offences against person)-Chapter VII (Trafficking and exploitation of the vulnerable persons): articles 210, 211, 216¹³. Before this Code is entered into force, on matter of human trafficking the Law no 678/2001 was the reference law focused on prevention of and fighting against trafficking in human beings¹⁴.

The persons who perpetrate the offence of trafficking in human beings may be both men and women. The traffickers profits by the victims (especially children and women), taking into account the precarious aspects regarding their education (the lack of education or the low level of education and professional preparation), their social-economic conditions of life (the poverty, the unemployment), their psychological profile (their naivety, credulity). In many situations, the offenders know very well the criminal mechanism and are experienced in attracting the victims and their placement for the purpose of sexual exploitation/forced labour/begging.

The current Romanian legislation provides for the trafficking in human beings the punishments privative of liberty: the trafficking of adults and trafficking of minors are punished with prison from 3 to 10 years; the human trafficking committed in the conditions provided in article 210 paragraph 2/article 211 paragraph 2 is punished with prison from 5 to 12 years.

In case of the offence of trafficking in human beings, the victim's consent to the recruitment, transport or accommodation by the deceit for exploitation does not exclude the criminal liability of the offender (in accordance with the article 210 paragraph 3/article 211 paragraph 3 of the New Criminal Code). The act of the offender who, by deceiving of the victim to help her for working abroad, made the necessary arrangements to obtain the passport and travel document gave to the victim the necessary amount for crossing the border, has indicated a contact person and an accommodation for her exploiting, represent the constitutive elements of trafficking in human beings stipulated in article 210 paragraph 1 of the New Criminal Code.

¹² United Nations Convention against transnational organized crime, Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000); Lucrecia Rubio Grundell (Social and Political Science Department, European University Institute), *EU Anti-Trafficking Policies: from Migration and Crime Control to Prevention and Protection*, Migration Policy Centre, May 2015.

¹³ New Criminal Code – Law no. 286/2009 published in Official Monitor of Romania no. 510 from 24 July 2009 and Law no. 187/2012 for application of the New Criminal Code.

¹⁴ Law no. 678/2001 on prevention of and fighting against trafficking in human beings, published in Official Monitor of Romania no. 783 from 11 December 2001.

Even if the victim expressed her consent to go abroad and accepted that the offender fulfils the formalities and pay the necessary amount to cross the border, according to the article 210 paragraph 1 of the New Criminal Code, the victim's consent of human trafficking does not represent the justified cause.

Increasing the criminal rate in matter of trafficking in human beings (particularly trafficking in children and women) requires a coherent and coordinated multidisciplinary perspective on this current issue. Also, is important to correlate the legislative instruments in matter of human trafficking adopted at international, European and national level with the practices and standards implemented and evaluated for an effective response to this serious form of crime.

The European policies, developed in connection with the national policies on trafficking in human beings, emphasize the involvement of the EU institutions/bodies and the national institutions/authorities in coordination of process of monitoring of human trafficking and its implications.

The architecture of the EU policies and the challenges for the EU Member States (in the case presented in this study – Romania) underlines the main contribution on strengthening the institutional relations and consolidating the collaboration between EU and national bodies/civil society into a really network aimed to elaborate and apply the best practices in the area of monitoring the migration flows/human trafficking and to find together the best solutions for the issues related to the prevention of and fighting against organized crime (particularly, trafficking in human beings).

The added value of this approach is represented by: the cross-sectorial analysis on issues regarding transnational organized crime (especially trafficking in human beings); the transfer of knowledge, the exchange of information between the law enforcement officers, labour inspectors, judges, prosecutors, social workers, regarding the EU legislation and national legislation in the area of human trafficking; the implementation of good practices, especially on identification, protection, assistance and support of victims of human trafficking; the consolidation of the judicial cooperation in criminal matters between the Member States in the EU area of freedom, security and justice; the accomplishment of the specific requirements related to the prevention of and fighting against trafficking in human beings both at the EU level and the national level.