

Human trafficking and related criminal offences in the criminal legislation of the Republic of Serbia and Romania. From incrimination to present-day

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Abstract:

As a global contemporary phenomenon, the criminal offense of human trafficking, due to its complexity and variety of the phenomena, as well as the numerous modalities of recruitment, control and exploitation of victims, is becoming drastic in scales.

The ever more severe consequences that impact the victims and the social community as a whole, demand an unequivocal, strong and synchronized response. Considering the fact that human trafficking, as a rule, is a regional or even a global problem that cannot be efficiently solved only on a national level, one of the most important roles in its efficient suppression is the international multilateral or bilateral cooperation between countries. In order for such cooperation to be possible, with the aim to successfully fight this extremely negative phenomenon, modern countries must primarily create an adequate and mutually coordinated legal framework.

Keeping this idea in mind, this paper will present the genesis of incrimination of socially negative behaviors such as human trafficking, and other related and similar behaviors, and the current provisions in the criminal legislature of the two neighboring countries – the Republic of Serbia and Romania, with the aim to possibly encourage the legislator of one country to analyze the legal solutions of another country and consider the possibility of implementing good and efficient solutions into its national legislature.

Keywords: *Human trafficking, Trafficking of minors for adoption, Trafficking in underage persons, Use of an exploited person's services, Criminal legislation, Republic of Serbia, Romania.*

1. Introduction

Amongst the forms of the organized crime¹ phenomenon, as one of the most dangerous social evils, the criminal offense of human trafficking stands out in the

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¹ "Organized crime represents those activities carried out by a group, organised for a long period of time out of three or more persons, that have corruptive liaisons or of any other nature with

amount of the illegal gain acquired from it², the high growth number, and unfortunately, in the disastrously harmful consequences. The existing modes of recruitment, control and exploitation of victims change daily and adapt to the new opportunities and situations, new forms are being permanently invented and used, which are, as a rule, far more perfidious, inhumane, brutal and cruel, and with even more severe consequences to the victims of the crime and the community as a whole³.

Human trafficking is a global phenomenon that, in different ways and in different measures, affects almost all the countries of the modern world. This is why it is necessary to invent an unequivocal, strong and synchronized response of the international community. If the contrary is true, the nature of the phenomenon, the complex causes of its occurrence and existence, and the insufficient awareness regarding the problem, with insufficiently coordinated criminal and other suitable regulations of the jeopardized countries, will condition a significantly decreased level of efficiency of the measures aimed at preventing and suppressing this social malice.

Considering the fact that this is a regional, or a global problem that cannot be acted upon exclusively on the national level, the international multilateral and bilateral cooperation has one of the most important roles regarding efficient combat against human trafficking, particularly between the countries where different phases of human trafficking take place. Particularly because, in practice, strengthening the (repressive) response in one country can lead to a shift in the location where these criminal offenses are perpetrated into other, often neighboring countries.

In the attempt to change the cruel reality and deal with the various forms of human exploitation, the broader social community, via various international institutions, starts and conducts measures and activities focused on preventing and surprising human trafficking more frequently and with better organization. The

state's authorities and are predisposed to use violence and other ways of intimidation, having as final purpose to obtain profits and/or power by committing crimes for which the legislation provides punishment with prison of minimum four years, by the group members that have précised and clearly determined assignments". – Darian Rakitovan, Raluca Colojoară, Ligia Mirișan, "Organized Crime and Similar Terminological Concepts. A Problem in Defining the Notion of Organized Crime", in *Journal of Eastern-European Criminal Law*, no. 1/2015, Law Faculties of the West University of Timișoara and the University of Pécs, Universul Juridic Publishing House, 2015, p. 179.

² As it is impossible, due to the secretive nature of organized crime, to obtain reliable and complete date, evaluations regarding the gain acquired in this manner vary. However, all of them evaluate the monetary amounts that acquisition of which is connected to human trafficking to be very high. So, for example, according to one such estimate, human trafficking in the world results in between 8.5 and 12 billion euros of profit (Report on the condition of organized crime in European Union from 2014); while according to other, exploitation of labor of men, women and children alone, victims of human trafficking, results in 32 billion US dollars per year. – International Labor Organization (ILO), A Global Alliance against forced labor, p. 42, according to: *Law Enforcement Manual for Combating Trafficking in Human Beings*, International Centre for Migration Policy Development (ICMPD), United Nations Development Program (UNDP), 2006, p. 15.

³ Human (women) trafficking was first mentioned in XIX century during a public debate in Western European countries regarding taking of women from those countries into their colonies for the purpose of their prostitution. An international campaign was started against what was then known as "white slavery trafficking", which resulted in the first international treaty signed in Paris in 1904. The United Nation Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others was passed in 1949. The problem recaptured the attention of the public at the end of the XX century, due to the spreading of AIDS, the appearance of sex tourism and child prostitution, as well as new migrations. – Ivana Radović, et. al, *Trgovina ljudima – priručnik za novinare*, ASTRA, OSCE, Belgrade, 2003, p. 12.

efforts placed in this direction can be seen in providing a unique definition of the normative-legal framework that should enable a more effective accomplishment of these goals, as the interest of all the subjects of international community to efficiently combat illegal human trafficking and similar procedures is unequivocal and contained in numerous international documents.

Regardless, the response of the national legislators varies from country to country. Some of them put into effect special regulations that sanction human trafficking and passed a wide spectrum of additional regulations regarding this problem. On the other hand, other countries are in the process of defining or implementing these measures, while some countries still do not have regulations concerning the crime of human trafficking, or the plans for their implementation.

However, such situation cannot pertain for much longer. The lack of suitable legal regulation on a national level will cause not only decreased efficiency in preventing and suppressing human trafficking, but will surely attribute to an even larger scale of human rights violations. The consequences of such state will also manifest in a lack of trust of the victims in government authority and a lack of their cooperation in the criminal-operative and penal procedure, but also in the administrative persecution of victims (regarding foreign citizens and denial of residence). Of course, in this manner, the chances of a successful criminal prosecution and appropriate punishment of human traffickers are decreased. On the other hand, on the international level, these but also other serious consequences are caused by a lack of coordination or insufficient coordination between the laws and bylaws of origin countries, countries of transit or destination of the victims of human trafficking, which are aimed at proscribing the responsibility of the perpetrators and the procedure in such criminal affairs.

In an attempt to adapt their legislations to the needs of an efficient combat against human trafficking and coordination with international legal documents, which they are signatories of, the Republic of Serbia and Romania are now putting in serious efforts.

The continuation of this paper will firstly deal with the genesis of incrimination of criminal offence of human trafficking and other similar and related crimes, and afterwards a review and analysis will be given of the positive provisions in the criminal legislatures of these two countries.

2. Criminal legislation of the Republic of Serbia

2.1. Human trafficking

The criminal offense labeled as *human trafficking* was introduced into the national criminal legislature of the Republic of Serbia in the Law on amendments and additions of the Criminal Code of the Republic of Serbia, in 2003⁴ (further as KZRS/03). The genesis of this incrimination is linked to the signing of the ratification of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, particularly in women and children (adding to the UN Convention on Transnational Organized Crime – known as “Palermo Protocol”).⁵

⁴ “The Official Gazette of RS”, no. 39/2003.

⁵ The law on confirming the Convention of the United Nations on transnational organized crime and additional protocols, from 22.06.2001. “The Official Gazette of SFRJ” – International treaties, no. 6/2001.

Until the moment this criminal offense of human trafficking was introduced into the legislature of the Republic of Serbia, processing the offenders of this criminal act that included punitive sentences was possible by relying on the provisions of the Criminal Law of the Federal Republic of Yugoslavia (KZSRJ), namely the Basic Criminal Code (OKZ)⁶ and the Criminal Code of the Republic of Serbia (KZRS)⁷, which presupposed responsibility for other criminal offenses, primarily for: Holding in Slavery and Transportation of Enslaved Persons (Art. 155 of the KZSRJ/OKZ), Intermediation in the Exercise of Prostitution (Art. 251 of the KZSRJ/OKZ), Unlawful Deprivation of Liberty (Art. 63 of the KZRS), Kidnapping (Art. 64 of the KZRS), Rape (Art. 103 of the KZRS), Falsifying identification (Art. 233 of the KZRS). In the circumstances where the victims of human trafficking were not recognized as such, they were exposed to the risk of prosecution according to one of the following laws: The Law on Entry and Stay of Aliens⁸ (Art. 106 and 107), The Law on Residency⁹ (Art. 25), The Law on Identification Card¹⁰ (Art. 18), and the Law on Public Peace and Order of the Republic of Serbia¹¹ (Art. 18).

The Article 111b, paragraph 1 of the KZRS/2003, presupposes responsibility for those who by force or threat, by deception or maintain deception, by abusing authority, trust, dependency relationship or difficult circumstances of another: recruit, transport, transfer, sell, buy, act as intermediary in sale or handing over, hide or hold other person, with the aim of acquiring personal gain by exploiting such person's labor, commission of criminal offenses, prostitution or mendacity, use for pornographic purposes, in order to remove parts of the body for transplant or use in armed confrontations. The legislator proscribed the punishment of imprisonment from one to 10 years for the aforementioned criminal behaviors¹².

The same punishment was proscribed in Article 4, for the offense from paragraph 1 that was committed against a person that is younger than 14 years old. This is under the condition that the offender did not use force, threat or any of the other listed manners of perpetration.

⁶ "The Official Gazette of SFRJ", no. 44/76, ... 61/2001. "The Official Gazette of RS", no. 39/2003.

⁷ "The Official Gazette of SRS", no. 26/77, ... 21/90, "The Official Gazette of RS", no. 16/90, ... 67/2003.

⁸ "The Official Gazette of SFRJ", no. 56/80, ... 53/91, "The Official Gazette of SRJ", no. 16/93, .. 68/2002, "The Official Gazette of SCG", no. 12/2005. Foreign nationals who did not have valid identity documents or permission to stay in Serbia and Montenegro, who were in fact victims of human trafficking (predominantly women) were treated as illegal migrants in Serbia and Montenegro (SCG). In such defined status, the victims were additionally traumatized, prosecuted, and after being sentenced with security measure of expulsion of a foreigner from the country, they were deported (or to be more accurate, returned to the same situation they escaped from, and finally became unavailable for a possible testimony in the procedure against the persons that exploited them).

⁹ "The Official Gazette of SRS", no. 42/77 (purified text), 25/89, "The Official Gazette of RS", no. 53/93, 67/99, 48/94, (17/99, 33/99), 101/2005.

¹⁰ "The Official Gazette of RS", no. 15/74, ... 40/88, "The Official Gazette of RS", no. 53/93, ... 101/2005.

¹¹ "The Official Gazette of RS", no. 51/92, .. 101/2005. Foreign as well as national female citizens who were the victims of human trafficking for exploitation via forced prostitution were prosecuted for offence of prostitution.

¹² Saša Mijalković, *Trgovina ljudima kao oblik organizovanog kriminala – osnovna fenomenološka obeležja*, Nauka bezbednost policija, Kriminalističko policijska akademija, Belgrade, 2006, No. 1, p. 111.

Paragraph 2 of Article 111b predicted a larger number of alternatively defined qualifications of circumstances and a more strict punishment (imprisonment of at least 3 years)¹³, if the act from para. 1 was committed against multiple persons, or by abduction while conducting official duty, as a part of a criminal organization, in a particularly cruel or humiliating manner, or in case of a serious bodily injury.

The heaviest form that predicted the possibility of sentencing the offender most severely (imprisonment of at least 5 years), was related to the cases where the offense from paragraph 1 was committed against a juvenile, or the cases of the death of the victim.

As an active subject of international relations, in order to make the practice of confronting human trafficking more efficient and to coordinate the procedure of the competent national institutions (government and non-government) with the efforts taken in this matter on the international plan, Serbia has, to a great extent, used and copied the provisions contained in the "Palermo Protocol" in order to define more precisely the elements of the criminal act of human trafficking. Despite this, the criminal act of human trafficking defined by Article 111b of the Criminal Code of the Republic of Serbia also contained such elements that indicated an insufficient understanding of the substance of the criminal act of human trafficking¹⁴, meaning, the insufficiently precise definition of the position and the situation of the victim and their distinction from illegal immigrants. In other words, the existing legal definition enabled prosecution under the accusation for human trafficking of those persons that abused the difficulties of other persons and transported such in order to acquire some material gain, but without the intention of exploitation, meaning also those that smuggled such persons.

The visible deviations from the principles proclaimed by international conventions were the cause for a different normative definition of the criminal act of human trafficking in the Criminal Code of the Republic of Serbia¹⁵ that became effective on January 1st, 2006 (in continuation KZRS/2006). Here, the criminal act of human trafficking was classified amongst the criminal acts against humanity and other property protected by international law. Article 388, para. 1, predicts responsibility for those that using force or threat, by deception or maintain deception, abusing authority, trust, dependency relations, difficult situation of others, by retaining identity papers or giving or accepting money or other benefit, recruit, transport, transfer, sell, hand over, act as intermediary in sales, hide or hold another person, for the purpose of sexual exploitation, mendacity, pornography, establishing slavery or a servitude, in order to remove organs or parts of the body or to use in armed conflicts. For this (basic) form of the criminal act of human trafficking the punishment can be imprisonment of two to ten years.

The legislative solution, which in the terms of increased legal protection of juveniles younger than 14 years old (children) was contained in the Article 111b para. 4 of KZRS/03, was extended to juveniles (persons younger than 18 years old) in

¹³ In accordance with then valid provisions, the general maximum imprisonment was defined to 15 years.

¹⁴ In the Strategy of combatting human trafficking in the Republic of Serbia, passed then by the Government of the Republic of Serbia on December 7th, 2006, it is emphasized that Article 111b of KZRS consummated not only the cases of human trafficking, but also the cases of smuggling of humans.

¹⁵ "The Official Gazette of RS", no. 85/2005, 88/2005, 107/2005.

accordance with the provisions of “Palermo Protocol”. Therefore, Art. 388 para. 2 proscribed that for the punishment for the offense from para.1 of this article committed against a juvenile, the offender will be punished even if no force, threat, or any of the other listed manners of perpetration was used.

The indictable form and the heavier sanction (imprisonment of at least 3 years) were provided in Article 3 in case that the offense from para. 1 was committed against a juvenile¹⁶. The qualified form of human trafficking as a criminal offense was proscribed in paragraph 4 of that Article, and relates to the situation of the offenses from para.1 and 3 that resulted in a severe bodily injury of a person (the offender is to be punished by imprisonment from three to fifteen years). If death occurred to one or more persons as a result of this offense from para.1 and 3, the offender is to be punished by imprisonment of at least ten years (para. 5). The punishment of imprisonment of at least 5 years was proscribed in the case that the offender is engaged into committing the criminal offense from para. 1 to 3, meaning that the offense was committed by an organized group.

Apart from those already present, Article 388 also sanctions new manners of executing the offending action (confiscating personal identification or giving or receiving money or other goods) as well as new forms of victim exploitation (forced labor, other kinds of sexual exploitation, establishing slavery or a servitude). Compared with the solution from Article 111b, qualified forms were left out in case that the offense of human trafficking is committed against several persons, by kidnapping or in a particularly cruel or humiliating manner, while conducting official duty, or as a part of a criminal organization.

Following the logic of a necessary special protection of younger persons, while making the conditions for the responsibility of the perpetrator more precise, the legislator proscribed a stricter sanction for those who committed offense against a juvenile by using force, threat or in other manner, as indicated by law. Such solution was also present in Article 111b, however, the minimum limit was then set on the scale of up to five years imprisonment, while with the modifications from the year 2005, the minimum imprisonment was decreased to three years of imprisonment. Both regulations had the same solution in terms of the maximum sanction for this form of human trafficking offense and they employed the general maximum of imprisonment. Observing this issue through the prism of valid regulations, this would be 15 years according to KZSRJ valid on the territory of the Republic of Serbia in 2003, or 20 years according to KZRS/2006. To make the matter worse, for the more severe form of this offense qualified by a serious injury, the punishment was proscribed in the span of three to fifteen years. This is also in the case that the victim is a juvenile.

The Law on amendments and additions to the Criminal Code of the Republic of Serbia¹⁷ in 2009 (KZRS/2009) significantly changed KZRS/2006. Article 173 of this law alters and adds to the provisions of Article 388 of the applicable CC that regulate the criminal offense of human trafficking. These alterations refer to making the proscribed punishments stricter, to implement a new heavier form (amendments in para. 6 and new para. 7 Art. 388 of CC) as well as two special forms (Art. 388, para. 8

¹⁶ With the changes in the part regarding proscribing punishments for the committed acts, the indictable circumstances of human trafficking were set significantly differently by the legislator (those referring to criminal offenses against more persons, by abduction, in official duty, within a criminal organization, on a particularly cruel or humiliating manner were left out).

¹⁷ “The Official Gazette of RS”, no. 72/2009.

and 9 of CC) referring to exploitation of the victim's position or enabling the exploitation of the victim's position. A more precise definition was also introduced that the consent of the passive subject to exploitation or to establishing slavery or servitude mentioned in the basic form of the provision does not influence the existence of this criminal offense (Art. 388, para. 10 of the CC).

To be more precise, the severity of the possible sentence for the basic form of the offense that carried two to ten years was increased to imprisonment of three to twelve years, and for the heavier forms of the offense provided in para. 3 (criminal offense against a juvenile), or in para. 4 (in case of serious bodily harm), imprisonment of at least three years was increased to imprisonment of at least five years.

According to the solution from the year 2006, Art. 388, para. 6 of the CC stated: "Whoever habitually engages into offenses specified in para. 1 to 3 of this Article, or if the offense is committed by an organized group, shall be punished by imprisonment of at least five years." Amendments of the Art. 173, para. 4 of the Law on Amendments and Additions of the Criminal Code from the year 2009, state that the word "organized" is to be removed from this paragraph, so that the heavier form of this criminal offense, after these amendments, exists when the offense is committed by a persons that engages into criminal offense from para. 1 to 3 or when it is committed by a group.¹⁸ However, even after the amendments, conducting this criminal offense by an organized criminal group could not remain nondiscriminatory, so the legislator provided this form in para. 7 of Article 388, and proscribed for it imprisonment of at least 10 years.

A new amendment of the provisions of Article 388 occurred in the year 2012. Namely, the Law on amendments and additions to the Criminal Code¹⁹ from that year proscribed that para. 4 of this article is changes so that it is: "If the offense referred to in para. 1 and 2 of this article resulted in severe bodily harm, the perpetrator shall be punished with imprisonment from five to fifteen years, and in case of severe bodily harm to a juvenile person due to the offense referred to in para. 3, the perpetrator shall be punished with minimum five years' imprisonment."

After all these amendments and additions, the criminal offense of human trafficking from Art. 388 in now valid CC of the Republic of Serbia is regulated as follows:

(1) Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, hands over, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of three to twelve years.

(2) When the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration.

¹⁸ According to the provisions of Art. 112, para. 22 of KZRS/2009, the phrase "group" includes at least three persons connected for the purpose of permanent or occasional conducting of criminal offenses that that does not need to have defined roles of its members, a continuity of membership or a developed structure.

¹⁹ "The Official Gazette of RS", no. 121/2012.

(3) *If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by imprisonment of minimum five years.*

(4) *If the offence referred to in paras 1 and 2 of this article resulted in severe bodily harm, the perpetrator shall be punished with imprisonment from five to fifteen years, and in case of severe bodily harm to a juvenile person due to the offence referred to in para 3, the perpetrator shall be punished with minimum five years' imprisonment.*

(5) *If the offence specified in paragraphs 1 and 3 of this Article resulted in death of one or more persons, the offender shall be punished by imprisonment of minimum ten years.*

(6) *Whoever habitually engages in offences specified in paragraphs 1 and 3 of this Article or if the offence is committed by a group, shall be punished by imprisonment of minimum five years.*

(7) *If the offence referred to in paragraphs 1 through 3 hereof has been perpetrated by an organized crime group, the offender shall be punished with imprisonment of minimum ten years.*

(8) *Whoever knows or should have known that a person is a victim of human trafficking and abuses their position or allows another to abuse their position for the purpose of exploitation referred to in paragraph 1 hereof shall be punished with imprisonment of six months to five years.*

(9) *If the offence referred to in paragraph 8 hereof has been committed against a person whom the offender knows or should have known is a minor, the offender shall be punished with imprisonment of one year to eight years.*

(10) *Person's consent to be exploited or held in slavery or servitude referred to in paragraph 1 hereof shall not prejudice the existence of the criminal offence stipulated under paragraphs 1, 2, and 6 hereof.*

Therefore, according to the valid legal solution in the Republic of Serbia, criminal offense of human trafficking has a basic form, four severe forms, two forms indictable by a severe consequence and two special forms.

The guilty act of the basic form of the criminal offense is defined alternatively and consists of recruiting, transporting, transferring, handing over, selling, buying, acting as intermediary in sales, hiding or holding a person captive. In order for the offense to exist, it is necessary that the action is realized by one of the also alternatively determined *manners*, and those are: by use of force or threat, deception or maintain deception, abusing authority, trust, dependency relations, difficult circumstances of another, retaining identity papers or giving or receiving money or other benefit. Apart from that, it is necessary that the offending act has a *functional character*, meaning, that these actions are committed for the *purpose* of exploiting a person's labor, forced labor, conducting criminal offenses, prostitution or other kinds of sexual exploitation, mendacity, use for pornographic purposes, establishing slavery or servitude, in order to harvest organs or parts of the body or to use persons in armed conflicts.

Both *active* and *passive subject* can be any person. However, when the offending act is committed by abusing authority, trust or dependency relations, in such cases the act can only be committed by a person with appropriate authority, meaning, someone with whom the passive subject has a certain relationship of trust, or is in dependency relation.

The offense can be committed in any *place* or at any *time*.

Human trafficking can only be *directly premeditated*. "It can be contested whether intent of the perpetrator aimed at achieving one of the listed goals is demanded as a

special subjective element, or is the knowledge of the perpetrator that the passive subject will be exploited for one of the listed purposes sufficient.”²⁰

It was previously mentioned that the basic form of this criminal offense carries the sentence of three to twelve years of imprisonment.

Due to the severity of the possible sentence, *the attempt* of committing human trafficking is punishable, considering that the provisions of Art. 30 from the general section of the CC presuppose that the person that begins committing the criminal offense with intent, but does not complete the offense, shall be punished for the attempt of the criminal offense that can carry a five year imprisonment or a more severe punishment.

Prosecution for this criminal offense can be conducted exclusively on servant duty, and its processing is in the *authority* of higher court.

As previously listed, apart from the basic, there are four *severe forms*.

The *first severe form* is described in para. 2, Art. 388 of the CC. According to this provision, the perpetrator shall be punished by the penalty prescribed for the basic form even if there was no use of force, threat or other mentioned method of perpetration, and the offense was committed against a juvenile. Even though some authors argue the issue why is it that due to the particular nature of the passive subject “incriminates that which would normally not be a criminal offense”²¹, what needs to be pointed out is that the existing legal solution is completely in accordance with the basic principles of international legal documents that also pay close attention to persons younger than eighteen years old, and that the criminal offense of human trafficking the victims of which are children are connected to a specific action of perpetration aimed at their exploitation. This is independently of the manner a specific act is perpetrated.

The *second severe form*, described in para. 3 exists when the basic offense, as it is fully defined in para.1 (meaning, with the use of force, threat or other methods of perpetration), is committed against a juvenile. This form of the offense carries imprisonment of at least five years.

Paragraph 4 distinguishes the *first indictable form*, and it exists when the offense from para. 1 and 2 resulted in severe bodily harm of a person (the perpetrator can be punished by imprisonment from five to fifteen years). If the offense from para. 3 resulted in a severe bodily harm of a juvenile, the perpetrator can be punished by imprisonment of at least five years.

The *second form indictable by a severe consequence* was proscribed by paragraph 5, and it exists when the basic form from para.1 and the severe form from para. 3 of this article (referring to a juvenile) results in the death of one or more persons. In the case of perpetration of this qualified form of human trafficking, the perpetrator will be punished by imprisonment of at least 10 years.

For both of these indictable forms of the offense, in accordance with the general regulations of the Criminal Code (Art. 27 of the CC)²², in relation to a grave

²⁰ Zoran Stojanović, *Komentar Krivičnog zakona*, fourth edited and revised edition, Službeni glasnik, Belgrade, 2012, p. 1014.

²¹ *ibidem*.

²² When a graver consequence has resulted from a criminal offence due to which a more severe punishment is provided by law, such punishment may be imposed if the consequence is attributable to the offender's negligence, as well as if he acted with premeditation if this does not establish elements of another criminal offence.

consequence *negligence* must exist, considering that in the case the perpetrator inflicted the severe bodily harm with intent, or deprived the passive subject of their life, there will be joinder of the criminal offense of bodily harm and the criminal offense of human trafficking, or of murder and human trafficking.

The *third severe form* of human trafficking was presented alternatively in para. 6, and it states: 1) when the perpetrator engages in the offenses from para. 1 to 3, Art. 388 of the CC; and 2) when this offense is committed by a group²³. This form of the offense carries minimum imprisonment of five years.

The *fourth and the most severe form* of the criminal offense of human trafficking exists when the offense from para. 1 to 3 of this article was committed by an organized criminal group²⁴. In this case, the perpetrator shall be punished by minimum imprisonment of ten years.

The two special forms of the criminal offense of human trafficking were introduced into Serbian legislature in the Law on amendments and additions to the Criminal Code from September of 2009. The cause for the implementation of these forms are the provisions of Art. 16 of the Council of Europe Convention on Action against Trafficking in Human Beings²⁵. *First such form* is perpetrated by a person that had the knowledge or could have had the knowledge that the offended party is a victim of human trafficking, and therefore uses their position or enables other to use the victim's position for exploitation predicted by the basic form of this criminal offense. In this case, the perpetrator shall be punished by imprisonment of six months to five years.

The *second special form* is in fact a severe form of the first special form, and it exists when this form of the offense is committed against a person that the offender knew or could have known is a juvenile. For committing this form of the offense, the perpetrator shall be punished by imprisonment of one to eight years.

These two norms are "very haphazardly formulated"²⁶, and are not completely in accordance with the provisions of the general section of the CC relating to intent and negligence²⁷, and therefore require revision.

Provisions of Art. 4, para. b of the Council of Europe Convention on Action against Trafficking of Human Beings are implemented (although not in the most adequate manner) in para. 10 of Art. 388 of the CC. "It has as its aim to not permit a possibility of excluding the existence of a criminal offense on the account of the damaged party's consent, i.e. of the victim of human trafficking. That provision refers to the exploitation or establishing slavery or servitude even when the means listed in the description of the basic form were not employed, and that indisputably exclude consent (force, threat, etc.)."²⁸

²³ According to provisions of Art. 112, para. 22 of CC, *Group* must be at least three persons connected for the purpose of permanent or occasional conducting of criminal offenses that does not need to have defined roles of its members, a continuity of membership or a developed structure.

²⁴ Art. 112, para. 35 of the CC: An organized crime group shall mean a group comprising three or more persons, existing a certain amount of time, and acting in concert with the aim of committing one or more criminal offenses punishable with a term of imprisonment of four years or more the purpose of which is acquiring direct or indirect financial or other type of gain.

²⁵ "The Official Gazette of RS" – International treaties, no. 19/09.

²⁶ Milan Škulić, *Organizovani kriminalitet – Pojam, pojavni oblici, krivična dela i krivični postupak*, Službeni glasnik, Belgrade, 2015, pg. 302.

²⁷ See: Zoran Stojanović, *op.cit.*, p. 129-140 and p. 1016.

²⁸ *ibidem*, p.1016.

2.2. Trafficking of minors for adoption

Apart from human trafficking, KZRS/2006 particularly distinguishes the criminal offense of *trafficking of children for adoption*. Within its framework, Art. 389 predicts criminal responsibility: for whoever abducts a child under the 14 years of age for the purpose of adoption contrary to laws in force, for whoever adopts such a person or mediates in such adoption or whoever for this purpose, buys, sells or hands over to another a person under 14 years of age, or transports, provides accommodation or conceals such person. This criminal offense carries the punishment of imprisonment from one to five years. The indictable form of the criminal offense from Art. 389 (for persons that habitually engage in these actions or if the offense was committed in an organized manner by multiple persons) predicts the punishment of minimum three years imprisonment.

The Law on amendments and additions to the Criminal Code from the year 2009 introduced novelty to the existing provisions of Art. 389 of the CC that incriminate trafficking of children for adoption. So, among other things, the very title of the criminal offense was changed to "*Trafficking of minors for adoption*", which in fact enabled to lift the age limit of the persons traded for adoption from 14 years up²⁹.

The criminal offense of Trafficking of minors for adoption from Art. 389 of the KZRS/2009 is now determined as follows:

(1) *Whoever abducts a child under sixteen years of age for the purpose of adoption contrary to laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under fourteen years of age or transports such a person, provides accommodation or conceals such a person, shall be punished by imprisonment of one to five years.*

(2) *Whoever habitually engages in activities specified in paragraph 1 of this Article or if the offence is committed by a group, shall be punished by imprisonment of minimum three years.*

(3) *If the offence referred to in paragraph 1 hereof has been perpetrated by an organized crime group, the offender shall be punished with imprisonment of minimum five years.*

The guilty act – this criminal offense can be perpetrated in several manners: 1) by abducting a person under the age of sixteen for the purpose of their adoption contrary to the laws in force (by person that has the legal right and the obligation to look after the minor); 2) by adopting or mediating such adoption, which means that this criminal offense will also result in the punishment of the person that adopted the taken child under the age of sixteen, as well as the person that mediated this illegal adoption; 3) by buying, selling, handing over, providing accommodation or concealing a person under the age of sixteen for the purpose of their adoption.

The *active subject* can be any person, while the *passive subject* can only be a person under the age of sixteen.

This criminal offense can only be *premeditated*, and it has to include the *awareness* that the guilty act is committed for the purpose of adoption of a person under the age of sixteen contrary to the laws in force.

²⁹ Although in the legal system of the Republic of Serbia minors are considered to be persons under the age of 18, the legislator decided to make the special protected object of this criminal offense only persons under the age of 16.

The *prosecution* for this offense is done according to official duty, and in accordance with the provisions of Art. 23, para. 1 p. 3 of the Law on Court Organization³⁰ higher courts have the authority to proceed with these cases.

The *severe form* of this criminal offense is alternatively provided in para. 2 of Art. 389 of the CC, and it exists when the basic form of the offense was committed by a person that habitually engages in trading of minors, or when the offense was committed by a group. The punishment for this form is minimum three year imprisonment.

The *most severe form*, which carries imprisonment of minimum five years, exists when the offense is committed by an organized criminal group.

The importance attributed in the legislature of the Republic of Serbia to finding solutions for a more adequate punishment of criminal offenses in general, as well as those that perpetrated the criminal offense of human trafficking, is visible in the amendments of the provisions regarding the limits that moderate imprisonment sentences introduced on September 3rd, 2009 (KZRS/2009). Primarily, the legislator introduced a new limitation if for the criminal offense, as the smallest measure of punishment, imprisonment of ten or more years is proscribed. In this case, the punishment can only be decreased to seven years of imprisonment (Art. 57, para. 1 p. 1). Even in such more severe conditions for moderating the sentence, the legislator excluded the possibility of decreasing the sentence in the case of numerous criminal offenses, as well as for the criminal offense of human trafficking (Art. 57, para. 2).

3. Criminal legislation of Romania

3.1. Human trafficking

Even in the accession period, the process of European integrations of Romania included harmonizing their legislature with the provisions of international conventions that Romania has signed, and after becoming a member of the European Union on January 1st, 2007, the obligation to include and carry out *acquis communautaire* in its national legislature, i.e. the legal instruments developed on the level of the EU.

Singing of the so called “Palermo Convention”³¹ by Romania on December 14th, 2000, had an effect on the legislature of this country in the sense that the phenomenon of human trafficking is incriminated as a special criminal offense, which is why on November 21st, 2001, a Law no. 678/2001 has been passed regarding the prevention and suppression of human trafficking³² that regulated this issue in its whole. This law has been “tweaked” several times, primarily in order to coordinate it with the criteria on the international level and the level of the EU.

The Law no. 678/2001 was divided into seven chapters: The first chapter contains general provisions and defines the term of human exploitation; The second

³⁰ “The Official Gazette of RS”, no. 116/2008, 104/2009, 101/2010, 31/2011 – st. law, 78/2011 – st. law, 101/2011, 101/2013, 106/2015, 40/2015 – st. law and 13/2016.

³¹ Ratified by Romania on December 4th, 2002, by Law no. 565/2002, published in “The Official Gazette of Romania”, Section I, no. 813, from 08.11.2002.

³² “The Official Gazette of Romania”, no. 783/2001.

chapter refers to preventing human trafficking and proscribes the jurisdiction of government; The third chapter contain(ed) the definitions of criminal offenses regarding human trafficking, trafficking of minors and connected criminal offenses; The fourth chapter consists of special procedural provisions; The fifth chapter is dedicated to the protection and assistance to the victims of human trafficking; Chapter six- international cooperation; and final provisions from the seventh chapter refer to, among others, giving special authority to Ministry of Internal Affairs to identify the victims of human trafficking.

Due to limited space, only the provisions of Art. 12 of this Law that proscribes the criminal offense of human trafficking will be presented in the paper (in the text and the form that was applied until the New Criminal Code of Romania came into force):

“(1) Whoever recruits, transports, transfers, harbors or receives a person, through the use of threats or violence or the use of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person’s inability to defend him-/herself or to express his/her will by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter, commits a criminal violation of this Law and shall be punished with 3 to 12 years imprisonment and denial of a number of rights.

(2) Whoever engages in trafficking in human beings under the following circumstances:

a) traffics two or more persons at the same time;

b) causes the victim to sustain serious bodily harm or serious health problems, shall be punished with 5 to 15 years imprisonment and denial of a number of rights.

(3) If the violation of this Article has resulted in the victim’s death or suicide, the offender shall be punished by 15 to 25 years imprisonment and a denial of a number of rights.”

Starting from February 1st, 2014, the New Criminal Code³³ is being applied in Romania (in continuation NCC). Passing NCC had as its aim to create a unified legal framework, simplify criminal regulations, without necessary duplication, in order to ease their application and enable quick transposition of criminal justice regulations adopted on the level of the EU into national legislature and a complete harmonization of Romanian criminal law with the criminal jsystems of other EU member states. At the same time, there was a need to include criminal offenses into the New Code that were previously proscribed in special laws. In this manner, criminal offense of human trafficking, trafficking of minors and other related criminal offenses were included into the New Criminal Code, and provisions of Law no. 678/2001 that defined these criminal offenses ceased to be in force. What needs to be mentioned is that most of the other provisions of this Law are still in force.

Besides the fact that by being implemented into the NCC these regulations gained a position in a basic material criminal regulation of this country, the basic forms of the substance of these criminal offenses could not essentially change compared to how they were proscribed in the Law no. 678/2001.

Criminal offense of human trafficking, in Art. 210, Chapter VII “Trafficking in, and exploitation of vulnerable persons”, Title I “Criminal offenses against the person”³⁴, from the Special section of the valid NCC, is proscribed in the following manner:

³³ “The Official Gazette of Romania”, no. 510 from 24th of July 2009.

³⁴ Apart from the criminal offense of human trafficking (Art. 210), this Title of NCC includes also the criminal offense of Slavery (Art. 209), Trafficking in underage persons (Art. 211), Pressing into

(1) Recruitment, transportation, transfer, harboring or receipt of persons for exploitation purposes:

- a) by means of coercion, abduction, deception, or abuse of authority;*
 - b) by taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability;*
 - c) by offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person,*
- shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.*

(2) Trafficking in human beings committed by a public servant in the exercise of their professional duties and prerogatives shall be punishable by no less than 5 and no more than 12 years of imprisonment.

(3) The consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense.

What can be noticed is that with the basic form, apart from the reformulation of certain terms and new systematization of the text, there are no significant changes. What is significantly altered refers to abolishing two severe forms of this criminal act that were proscribed in para. 2 and 3 of Art. 12 of the Law no. 678/2001. Now, what remains is the possibility that in the case of infringement of bodily integrity or health, i.e. in case of death of the victim, to apply institute of joinder of offences, and in the case that human trafficking is committed by multiple persons (at least three persons), that, during sentencing, "conducting criminal offense by three or more persons" proscribed by Art. 77, p. a) of NCC³⁵ to be taken as an aggravating circumstance.

The positive novelty is also the implementation of provision para. 4 p. b of the Council of Europe Convention on Action against Trafficking of Human Beings.

A short analysis of the criminal offense of human trafficking from Art. 210 NCC of Romania consists of the following:

The guilty act of this criminal offense is defined alternatively and it consists of recruiting, transporting, transferring, harboring or receiving persons. In order for this offense to exist, it is necessary that the act is conducted using one of the also alternatively defined manners: a) using coercion, abduction, deception or abuse of authority; b) by taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability; c) by offering, giving or receiving payments or other benefits in exchange for the consent of an individual having authority over that person, and also it is necessary that the guilty act is committed *for the purpose* of exploitation of the victim.

According to the provisions of Art. 182 of the NCC, *exploitation of persons* includes:

- a) forcing a person to conduct a certain business or task;

forced or compulsory labor (Art. 212), Pandering (Art. 213), Exploitation of Beggary (Art. 214), Use of Underage Persons for Mendicancy (Art. 215) and Use of an exploited person's services (Art. 216).

³⁵ Art. 78 of NCC predicts that: "(1) In case aggravating circumstances exist, sentencing can go up to the special maximum. If the special maximum is insufficient, in the case of a prison sentence an addition of up to 2 years can be added that cannot exceed one-third of the maximum, and in the case of a fine one-third of the maximum can be added at most. (2) Increasing the threshold of the maximum penalty can only be done once, irrespective of the number of aggravating circumstances found."

b) keeping a person in slavery or servitude that deprives them of liberty and imposes submissiveness;

c) forcing a person to prostitution, using for pornographic purposes with the aim to produce and spread pornographic material or other kinds of sexual exploitation

d) forced beggary;

e) unlawful taking of organs, tissue or cells of human origin.

The *active subject* can be any person. However, if the guilty act is committed by abusing power, i.e. authority, such act can only be committed by a person with corresponding legal power, namely, that person that has a certain authority over the passive subject.

The *passive subject* can be any adult.

The offense can be committed in any *place* at any *time*.

Human trafficking can only be *premeditated*, that needs to include the *awareness* of the fact that the guilty act is committed for exploitation.

For the basic form of this criminal offense the proscribed punishment is three to ten years.

This criminal offense has a *severe form* that exists when human trafficking is committed by a public servant during official duty. For this form the proscribed punishment is imprisonment from five to twelve years.

In accordance with the provisions of Art. 217 of NKZ, *the attempt* is punishable.

3.2. Trafficking in underage persons

Similarly to the criminal offense of human trafficking, the criminal offense of trafficking in underage persons was first introduced into Romanian legislature by the Law no. 678/2001 about the prevention and suppression of human trafficking.

After numerous alterations, the final definition of this criminal act in the aforementioned law stated:

“(1) Whoever recruits, transports, transfers, harbors or receives underage persons, with the intent of exploiting that persons, commits the crime of trafficking in underage persons and shall be punished by 3 to 12 years imprisonment and denial of a number of rights.

(2) If the violation within paragraph (1) was committed with the use of threats or violence or other forms of coercion, abuse of power or by taking advantage of the inability of the underage person to defend him-/herself, or by offering, giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person, the punishment shall be imprisonment from 7 to 18 years and a denial of a number of rights.

(3) If the violations from para. (1) and (2) of this Article have been committed in the conditions of Art. 12 para. (2) of this Law, or by a family member, the punishment is imprisonment from 7 to 18 years and a denial of a number of rights for the violation from para. (1) of this Article, and imprisonment from 10 to 20 years and a denial of a number of rights for the violation from para. (2) of this Article.

(4) If the violations in this Article have resulted in the victim’s death or suicide, the punishment is imprisonment from 15 to 25 years and a denial of a number of rights.”

Today, according to the provisions in force of the New Criminal Code in Art. 211, this criminal offense is regulated as follows:

(1) *Recruitment, transportation, transfer, harboring or receipt of a juvenile for the purpose of their exploitation shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.*

(2) *If such act was committed under the terms of Art. 210 para. (1) or by a public servant while in the exercise of their professional duties and prerogatives, it shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights.*

(3) *The consent expressed by an individual who is a victim of trafficking does not represent a acceptable defense.*

From the above quoted legal definitions, it can be concluded that, similarly to the case of the criminal offense of human trafficking, the basic form of the criminal offense of trafficking in minors was not significantly altered during suspending the corresponding provisions of Law no. 678/2001 and the implementation of this criminal offense into the NCC. Apart from the reformulation of certain terms ("harboring" – "concealing") and a complete different systematization of the text, the change in the basic form was only committed in relation to the severity of the punishment, which was decreased from 3-12 years of imprisonment to 3-10 years. The punishments were significantly decreased compared to other forms of this criminal offense as well. However, a significant alternation consist in no longer proscribing the severe form of the criminal offense related to the violation being committed by a family member, nor the special form indictable by a severe offense – when the violation results in death or suicide of the victim.

The rule from Art. 4 p. b of the Council of Europe Convention on Action against Trafficking of Human Beings is also valid for this criminal offense, regardless of the fact that the minor gave consent for his/her exploitation, it will not exclude the existence of the criminal offense.

The *guilty act* of the basic form of this criminal offense consists of: recruitment, transportation, transfer, harboring or receipt of a juvenile, and it must be committed for *the purpose of* exploiting the juvenile in any of the forms specified in Art. 182 of the NCC.

The *active subject* can be any person, considering that when the guilty act predicted by para. 2 is committed by abusing authority, then such act can only be committed by a person with corresponding professional authority, i.e. a person that has some sort of authority over the passive subject, while when the act is committed by abusing official duty, the active subject can only be a public servant.

The *passive subject* can be any minor³⁶.

This criminal offense can be committed in any *place* at any *time*.

As far as *guilt* is concerned, trafficking in minors can be only be committed with *premeditation* that must include *awareness* that the guilty act is committed for the purpose of exploiting a minor.

For committing the basic form of the criminal offense the proscribed punishment is three to ten years.

The criminal offense of trafficking minors also has a *special form* in the NCC of Romania, which is alternatively defined in para. 2 of Article 211. This form exists when recruiting, transporting, transferring, harboring or receiving a minor for the

³⁶ As in the legal system of the Republic of Serbia, in Romania under the phrase "underage person" means a person that is under the age of 18.

purpose of his/her exploitation was committed: 1) a) using coercion, abduction, deception or abusing authority; b) by taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability; c) by offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person; or 2) if it is committed by a public servant in the exercise of their professional duties. The perpetrator that commits the criminal offense of trafficking in minors in any of these manners shall be punished by imprisonment from 5 to 12 years and a ban on the exercise of certain rights.

The *attempt* of this criminal offense is also punishable according to the provisions of Art. 217 of the NCC.

3.3. Use of an exploited person's services

The criminal offense that is closely connected with the previous two criminal offenses from the Romanian NCC and for which it can be conditionally said that in certain sense completes the other two, is the criminal offense of *Use of an exploited person's services*.

This criminal offense was introduced into the Romanian criminal legislature on December 9th, 2010, by passing the Law no. 230/2010 on the amendments and additions of the Law no. 678/2001 on the prevention and combat against trafficking in human beings³⁷.

The old legal solution regarding the prescription of this criminal offense was also contained in Art. 216 of the valid NCC, and is as follows:

The action of using the services listed under Art. 182 of this Code, provided by a person about whom the beneficiary knows they are a victim of trafficking in human beings or trafficking of underage persons, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine, unless such action is a more serious offense.

The guilty act of this criminal offense consists of using services listed in Art. 182 of this Code, and that are provided by the victims of human trafficking, or the victims of trafficking in minors. It must be repeated that the provisions of Art. 182 of the NCC proscribe that exploitation of minors includes: a) forcing a person to carry out work or a task; b) enslavement or other similar procedures to deprive of freedom or place in bondage; c) forcing persons into prostitution, pornography, in view of obtaining and distributing pornographic material or any other types of sexual exploitation; d) forcing into mendicancy; e) illegal removal of body organs, tissues or other cells.

The *active subject* of this criminal offense can be any person that uses the aforementioned services provided by the victim that they know is a victim of human trafficking or trafficking in minors.

The *passive subject* can be an adult that is a victim of human trafficking, or a minor that is a victim of trafficking in minors.

As far as guilt is concerned, this offense can be committed only with *premeditation*, direct or indirect, that must include the *awareness* of the perpetrator that they are using the services of persons who are victims of human trafficking or trafficking in minors. We believe that it is not necessary that the perpetrator of this

³⁷ "The Official Gazette of Romania", Section I, no. 812, from 06.12.2010.

offense to be familiar with who committed the offense of human trafficking, or trafficking in minors, or even whether someone was held criminally responsible for such acts, but that it is sufficient that in the moment they began using a specific service, they were aware or had to be aware that such service is being provided by a person who is a victim of human trafficking, or trafficking in minors. However, if during the course of criminal proceedings (conducted due to the criminal offense from Art. 216 of NCC, meaning for the criminal offense of trafficking in humans or trafficking in minors) it is proven that the provider of the services is not a victim of such trafficking, due to the lack of an important element of substance of the criminal offense, the beneficiary of such services will not be held responsible for the criminal offense of using the services of an exploited person.

The *attempt* of this criminal offense, although possible, is not punishable.

4. Conclusion

Without a doubt, in the terms of the criminal-justice definition of human trafficking, the attempts of the legislative authority of both countries resulted in quality normative solutions, however, the road to the final definition is very dynamic and still open.

This particularly refers to the criminal-justice legislation of the Republic of Serbia. Amendments and additions to the existing legal solutions went in two directions. The first was focused on accepting those normative solutions that are a part of international legal documents ratified by the Republic of Serbia (provisions regarding the responsibility of the beneficiary of the services of a human trafficking victim), and the second was on making the possible punishments more severe (the evidence of these intentions is the implementation of the provision regarding the exclusion of the possibility of commuting a sentence in cases of human trafficking offences).

Although specific normative solutions are somewhat different, the significance attributed to the activities and suppression measures of human trafficking is also clearly visible in the legislature of Romania. This conclusion can be made not only based on the fact that the legislator attempted to define the normative framework and the framework of combating human trafficking within a special law, but also from the later amendments of the existing solution and the defining of the element of human trafficking crime and similar offenses in the Criminal Code. The legislator defines and very strictly sanctions various forms of human trafficking recognized in practice, and the determination to protect persons younger than 18 years old from victimization through measures of criminal justice prevention and repression is clearly pointed out in the special legal provision that defines the criminal offense of trafficking in minors.

Although, despite the numerous initiatives, the criminal offense of trafficking in minors (persons younger than 18 years old)³⁸, is not singled out, the legislator in the Republic of Serbia has defined a series of significant specifications for constituting the substance of a crime within the frame of the provisions defining the basic and the

³⁸ More detailed in: Milan Žarković, Radmila Dragičević-Dičić, Snežana Nikolić-Garotić, Gordana Jekić-Bradajić, Miodrag Majić, Mioljub Vitorović, *Krivičnopravni sistem i sudska praksa u oblasti borbe protiv trgovine ljudima u Srbiji*, A joint program of UNHCR, UNODC and IOM, for combatting human trafficking in Serbia, Belgrade, 2011, p. 72-74.

indictable forms of human trafficking (using force, threat or other legally defined manner of realization of the guilty act is not listed as a necessary element for the existence of a crime), meaning more severe punishments in case that these persons are the passive subjects of human trafficking.

We believe that despite the obvious comparison of the existing legal solutions, and the particular characteristics of national legal systems, they can be mutually considered, and then those solutions that have proven to be relevant by the established effects and still not recognized by the legislator, implemented into national legislatures. This particularly refers to defining various forms and manners of human trafficking, but also to a more wholesome and more consistently defined indictable forms of this criminal offense.

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