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Brief Considerations on the Human Trafficking and Trafficking Minors Delimitation - Forms of Organized Crime

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Abstract:

The forms of organized crime are numerous, and the attempts of states to provide the means necessary to eradicate this phenomenon requires international cooperation of States in developing uniform regulations. The main objective of transnational and local groups involved in such activities is to obtain financial benefits. Trafficking in persons can be a form of organized crime, and its regulation in the Romanian legislation by Law no. 278/2001 and subsequent special part of the 2009 Criminal Code took account of international recommendations and regulations.

This article seeks to analyze and capture the changes made by the new Criminal Code in relation to criminal offenses of trafficking in persons, trafficking in minors and their relation to the crime of proxenetism.

Keywords: *Trafficking in persons, Minors Trafficking, Organized Crime, pandering, financial benefits, exploitation.*

1. Introductory notions regarding the regulation in Trafficking in persons and offenses Minors trafficking

Organized crime is a complex phenomenon which in order to eradicate requires equally complex means of control. Obtaining financial funds by groups of people from committing such offenses presents a gravity that requires the intervention of criminal law. When these crimes affect other people's attributes and present elements of foreign origin, the common efforts of States are required to end these dangerous phenomena.

In this respect, the Romanian Parliament passed the Law no. 565/2002 ratifying the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, additional to the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of immigrants on land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000¹, and Law no. 300/2006 ratifying the Council of Europe Convention on Action against Trafficking in Human Beings². Aligning the Romanian legislation to the European legislation is an important step in the fight against human trafficking.

Coordinating the efforts of states to prevent and combat trafficking in persons imposed a uniform rule in this matter, especially given the circumstances in which these

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¹ Published in the Official Monitor no. 813 of 8 November 2002.

² Published in the Official Monitor no. 622 of 19 July 2006.

offenses are transnational in nature and involve a transnational group therefore justifies increased protection for victims of these crimes.

The Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime defined specific terms which will be considered in the national recriminations of the signatory states. In this regard, the following meanings of the terms³ have been established:

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

b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph a) of this article shall be irrelevant where any of the means set forth in subparagraph a) have been used;

c) the recruitment, transportation, transfer, harboring or receipt of a child for exploitation shall be considered trafficking in persons even if they do not attend to any of the means set forth in subparagraph a) of this article;

d) the term child means any person under the age of 18.

Aligning the Romanian legislation to the European legislation is a necessity and an important step in the fight against human trafficking. Noticing the danger of the offenses of trafficked in persons, indifferent of what was the purpose of trafficking - ordering to forced labor or ordering to the provision of sexual services - led the Romanian legislator to criminalize these acts by Law no. 678/2001 on preventing and combating trafficking in persons⁴. Law no. 678/2001 was the main criminal regulation in trafficking matter and contained, in addition to rules in criminalizing acts that constitute offenses and procedural issues related to judicial proceedings, the protection and assistance of victims of trafficking, international cooperation.

Undoubtedly, the magnitude and frequency the phenomenon of trafficking in persons had taken, as well as transnational character this criminal phenomenon often takes have justified the adoption of this normative act that took into account international regulations in the scope of a better coordination and international cooperation.

Therefore, the Law no. 678/2001, the crime of trafficking in persons⁵ has acquired a distinctive regulation, taking into account the situations that may lead to aggravating the offense and require harsher sanctions.

³ Under the provisions of art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁴ Published in the Official Monitor no. 783 of 11 December 2001.

⁵ Under the provisions of art. 12 of Law no. 678/2001: "(1) The crime of trafficking the recruitment, transportation, transfer, harboring or receipt of persons by means of threat, violence or other forms of coercion, abduction, fraud or deception, abuse of authority or taking advantage of the person's inability to defend themselves or express their will or by offering, giving, accepting or receiving of payments or benefits to achieve the consent of a person having control over another

On the other hand, the specific situation of victims, the resulting situation of vulnerability or moral dependency or their material dependency required a distinction in the matter of incrimination of such acts. Therefore, taking into account international provisions requiring that in the case of children, the recruitment, transportation, transfer, harboring or receipt of a child for exploitation shall be considered trafficking in persons even if the perpetrator does not use any of the means provided to trafficking in adult persons, the Romanian legislator separately incriminated and more severely sanctioned child trafficking⁶.

The 2009 Criminal Code complies with the definition and general structure of offenses of trafficking in persons and trafficking of minors in Law no. 678/2001, changes in the content of these crimes aiming to eliminate interpretations that could lead to an uneven practice in the matter and also to simplify the text of the law by waiving certain aggravating circumstances provided in the old regulations.

Amendments to the 2009 Criminal Code in this matter demonstrates, once again, the attention and concern of the legislator to ensure the legal and efficient frame to suppress trafficking in persons.

2. The criminalization of human trafficking and child trafficking in the 2009 Criminal Code and the innovations in the field.

The offenses of trafficking in persons and trafficking in minors were taken from the special law and included in the special part of the 2009 Criminal Code Title I - Crimes against the person, Chapter VII - Trafficking and exploitation of vulnerable persons

It is no coincidence that the Romanian legislator in 2009 took this option. Trafficking in persons, whether of adults, whether of minors are crimes against the person, concerning their freedom and have in common with other crimes covered in the chapter where the particular situation of victims, that vulnerability, addiction, and purpose of the perpetrator, that of exploiting, from offense to obtain some economic benefit.

person for the purpose of exploitation of that person, and is punishable by imprisonment from 3 to 10 years and removal of rights. (2) Trafficking committed in one of the following circumstances: a) two or more persons together; b) caused the victim serious harm to bodily integrity or health; c) by a public official in the performance of duties is an offense punishable by imprisonment from 5 years to 15 years and removal of certain rights. (3) If the act resulted in the death or suicide of the victim, the penalty is imprisonment from 15 to 25 years and removal of certain rights. "

⁶ Under the provisions of art. 13 of Law no. 678/2001: "(1) The recruitment, transportation, transfer, harboring or receipt of a child, in order to exploit it, constitutes the offense of trafficking in minors and is punishable by imprisonment from five years to 15 years and removal of rights. (2) If the act in para. (1) is committed by means of threat, violence or other forms of coercion, abduction, fraud or deception, abuse of authority or taking advantage of the minor's inability to defend or to express their will or by offering, giving, accepting or receiving of payments or benefits to achieve the consent of a person having authority over the minor, the penalty is imprisonment from 7 to 18 years and prohibition of certain rights. (3) If the deeds provided in par. (1) and (2) are committed under the terms of art. 12 para. (2) or a family member, the punishment is imprisonment from 7 to 18 years and deprivation of rights in cases under par. (1), and imprisonment from 10 years to 20 years and deprivation of certain rights in cases under par. (2). (4) If the acts referred to in this Article resulted in the death or suicide of the victim, the penalty is imprisonment from 15 years to 25 years and removal of certain rights. "

As shown in the specialized literature⁷ on legal object, although the crime of trafficking in persons concerns the liberty of a person, it differs from illegal deprivation of liberty or other crimes against freedom, as it constitutes a crime of means to achieve a certain end result of exploiting the victim.

This explains the option of the legislator of grouping in this new chapter entitled "Trafficking and exploitation of vulnerable people", taking into account the social value aggrieved common criminal group provided here, the crimes of traffic in persons and trafficking in minors with crimes such as slavery, submission to forced or compulsory labor, pandering, exploitation of begging, using a minor for purposes of begging, using the services of an exploited person.

The Romanian legislator applied the principle of uniform regulations in the special crimes, crimes grouping crimes by the criterion of the social value which they affect and the result is easy to see, the marginal name of the facts covered in this chapter are suggestive and giving sufficient information on common elements these facts.

Regarding the crime of trafficking in persons⁸, the 2009 Criminal Code defines it as: (1) The recruitment, transportation, transfer, harboring or receipt of a person for the purpose of exploitation, committed:

- a) through coercion, abduction, deception or abuse of authority;
- b) taking advantage of the impossibility to defend or express their will or particularly vulnerable status of that person;
- c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of a person having authority over that person. "

What emerges from a first comparative analysis of the two measures is that in the constitutive content there are no substantial changes, the only complement in the new regulation, taking into account the situation of the typical action material element is achieved by taking advantage of the impossibility of defending or to express the will or particularly vulnerable status of that person.

The completion was more than necessary because, on one hand, where crime group where trafficking in persons is found is referred to vulnerable people and, on the other hand, in terms of dangerousness process used by the perpetrator equivalence exists between where this act by coercion, abduction, deception or abuse of authority and takes advantage of the situation when unable to defend themselves or express their will or particularly vulnerable status of that person.

Thus, the material element of the crime of trafficking is realised by one or more of the actions alternately provided in the legal text (recruitment, transportation, transfer, harboring or receipt of persons) to be committed by one of the ways certain specified also, alternatively, in incrimination rule (by coercion, abduction, deception or abuse of authority or taking advantage of the impossibility to defend or express their will or particularly vulnerable status of that person, or by offering, giving, accepting or receiving money or other benefits in exchange for the consent of a person having authority over that person).

In the situation in which several actions are performed in regard to the material element, the crime remains unique. Thus, in judicial practice⁹ it was decided that the

⁷ T. Toader, M.I. Michinici, R. Răducanu, A. Crișu-Ciocântă, S. Rădulețu, M. Dunea, *The New Penal Code. Comments on the articles*, Ed. Hamangiu, Bucharest, 2014, p. 363.

⁸ Provided by art. 210 of the 2009 Criminal Code.

⁹ High Court of Cassation and Justice, Criminal Section, Decision no. N. 2020/2005 in N. Cristus, *Trafficking in persons, proxenetism, organized crime. Court Practice*, Ed. Hamangiu, Bucharest, 2006, p. 39.

defendant act to recruit a person in the purpose of prostitution followed by obtaining a passport and transportation to another country under the pretext of legal work and then seizing the victim in a hotel room, forcing her to prostitute meets the crime of trafficking in persons, the material element being realized in several ways: the recruitment, transportation and accommodation. The multitude of actions made by the defendant and the diversity of the means employed by him (deception, coercion) will take into account the judicial individualisation of the punishment.

Another constituent element necessary for the existence of the offense refers to the purpose pursued by the perpetrator, which must be the exploitation of the victim. As for the term "exploitation" of a person in criminal law¹⁰ it has been stated that the exploitation of persons means:

- a) submission to the execution of a work or performance of tasks forcibly;
- b) keeping in a state of slavery or other similar deprivation of freedom or servitude;
- c) forced into prostitution, pornographic manifestations in the production and dissemination of pornographic materials or other forms of sexual exploitation;
- d) forced into prostitution;
- e) removal of organs, tissues or cells of human origin, unlawfully.

For the existence of the crime of trafficking it is sufficient to prove that the perpetrator has pursued this goal, the exploitation of the victim in any of the ways mentioned above, it is not necessary to achieve that purpose. If the perpetrator managed to reach the goal, the offense of trafficking will be retained in real competition with the offense constitutes exploitation (if the crime of slavery, servitude to forced or compulsory labor, prostitution, exploitation of begging)¹¹.

Even if the trafficking is committed by coercion of the victim it is no question of overlapping criminal offenses committed with the aggravated¹² form of pandering -that the determination of the commencement or continuation of prostitution was made under constraint. If the crime of trafficking, coercion should be used to achieve any material element of the offense of ways - recruitment, transportation, transfer, harboring or receipt of the victim. Unlike in the case of variant aggravated pandering, coercion should be used to determine the commencement or continuation of prostitution.

Regarding the ways of aggravated form of trafficking in persons, the 2009 Criminal Code gave the criminalization of ways in which the offense is committed by two or more persons together, which caused the victim serious harm to bodily integrity or health, or if resulting in the death or suicide of the victim. The only circumstance that attracts aggravation of punishment is the crime of a public officer in the performance of their duties. In this situation, the aggravation of the crime arises from the special quality of the active subject - that of public official - and the offense in the performance of duties which adds protection service of his activity by public officers- as a social value protected in subsidiary by criminalization of the act.

If the act results in serious consequences previously covered one of the worse forms (injury, death of the person), the crime of trafficking in persons will enter the contest, as appropriate, with the crime of bodily harm or offense of battery injury causing death.

¹⁰ According to the provisions of art. 182 Penal Code.

¹¹ Dobrinoiu V., N. Neagu, *Criminal Law. Special Part*, Ed. Universul Juridic, Bucharest, 2014, p. 120.

¹² Provided by the provisions of art. 213 para. 2 Penal Code.

As regards the waiver of aggravating circumstances of the offense of two or more people the option legislature is explained by the fact that the same was applied for other offenses showed this fact as a special circumstance of aggravation, some of them offenses against personal liberty (eg., the crime of illegal deprivation of liberty). For a uniform rule, the legislature has waived this provision, considering that worsening penalty is justified only if the offense committed by three or more people together in this situation operating general application circumstance¹³.

If the offense of trafficking if three or more persons act together and in a coordinated manner in order to obtain material benefit from trafficking in persons, we are in the presence of an organized criminal group¹⁴. In this situation represents an offense¹⁵ any initiation or constitution of an organized criminal group, or joining or supporting in any way such a group and commit trafficking following the establishment of this group will enter the contest with the special law offense.

The legislator has criminalized separately when the victim is a minor trafficking. The recruitment, transportation, transfer, harboring or receipt of a child, its exploitation is an offense of trafficking in minors¹⁶.

The first point that emerges is that, in terms of marginal name data traffic offenses, to highlight the difference between the two, the legislator should make explicit reference to the quality of passive subject of the crime provided by art. 210 Criminal Code. Stating that it is an adult and thus delimiting legally correct terminology and the two offenses.

A second observation is obvious that criminalize there whenever, exploitation, held recruitment, transportation, transfer, harboring or receipt of a child, regardless of the means used by the perpetrator. Use one of the means expressly provided by art. 210 para. One prints a more serious offense, attracting applying the aggravating circumstance provided for by art. 211 para. 2 Criminal Code.

If the legislature considered it serious and criminal act of criminality requires that traffic a person - adult or minor - the purpose of exploitation symmetrically same conclusion should apply the same solution and our services that take advantage of an exploited person. Therefore, if a person uses the services of an exploited person, knowing that it is a victim of trafficking or juvenile shall be for a distinct criminal offense the use of services regulated by an exploited person¹⁷. The phenomenon of trafficking require particular attention so that all the consequences that can be prevented and combated generate. As shown in the literature¹⁸ that offer those who traffic people incur criminal liability, as must happen in our seeking and benefiting from the exploitation of another person, because the demand attracts offer.

¹³ According to the provisions of art. 7 para 1 of the Law no. 39/2003 .

¹⁴ Under the provisions of art. 2 letter a) of Law no. 39/2003 on preventing and combating organized crime by organized group means "structured group of three or more persons, existing for a period and act in a coordinated manner in order to commit one or more serious crimes to obtain direct or indirectly, a financial or other material benefit; not organized criminal group group formed occasionally in order to immediately committing one or more crimes and which has no continuity or a structure or roles for its members in the group. "

¹⁵ According to the provisions of art. 7 para. 1 of the Law no. 39/2003.

¹⁶ Provided by the provisions of art. 211 Penal Code.

¹⁷ Provided by the provisions of art. 216 Penal Code.

¹⁸ Sumanaru, *Prevention and combating of Trafficking in persons*, Journal of Eastern-European Criminal Law no. 1/2014, Ed. Universul Juridic, p. 142.

3. Conclusions

After analyzing criminal regulations relating to trafficking in persons can be seen that although only in 2001 were laid and criminal offending facets of this phenomenon, by Law no. 678/2001, however, Romanian law has attempted to align with international regulations and recommendations.

It required a uniform rule, whereas those facts that contained extraneous elements have a much better chance of success if it is based on international cooperation and coordination of efforts of states in the fight against crime.

The new Penal Code has tried to ensure clarity of criminality, to eliminate imperfections of formulating, so as to reduce uneven practice solutions. From a legal standpoint, there are means to prevent and combat this phenomenon, but these means requires a correct and efficient application.