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Confiscating the proceeds of crime in human trafficking cases in Romania

Senior Lecturer FLAVIU CIOPEC, LL.D*

Faculty of Law

West University of Timișoara

Abstract:

The cross-border dimension of human trafficking challenges the limits of the classic paradigm of criminal law. Fighting against such transnational crime involves cooperation between legal systems and harmonization of their legal instruments. The preset study aims at revealing one legal dimension of the strategy of combating trafficking in human beings in Romania. It will be shown the advantages of the confiscation as an alternative instrument for tackling such offence and the mechanism of how the confiscation really works.

Key-words: *confiscation, proceeds of crime, trafficking in human beings, Romania.*

Why confiscating the proceeds of human trafficking crime?

The exploitation of human beings is a highly lucrative business for organized criminal groups¹. According to International Labor Organization (hereinafter the ILO) estimates² there are at least 2.4 million trafficked persons at any given point in time, out of 12.3 million forced labor victims worldwide. Yet there are only a few thousand convictions of traffickers every year. Despite growing awareness and more effective law enforcement responses, trafficking remains a low-risk criminal enterprise with high returns. In 2008 the ILO estimates that annual profits generated from trafficking in human beings are as high as 32 billion USD. This estimation situates human trafficking on the 16th place of the Global Black Market³, but if we notice that prostitution is on the 2nd place (186 billion USD), we understand that the above estimation refers exclusively to the amounts obtained from trafficking, without taking into account the income generated by the trafficked persons. This is also supported by the fact that the estimation for human smuggling (14th place in the range with 35 billion USD income) has the same appearance. The two issues point to a superficial distinction between women who are trafficked and men who are smuggled, differences unconfirmed in practice⁴. ILO estimates⁵ indicate, however, that 32% of all victims were trafficked into labor exploitation, while 43% were trafficked for sexual exploitation and 25% for a mixture of both. Women and girls make up the overwhelming majority of those

* E-mail: flaviu.ciopec@e-uvtr.ro.

¹ <https://www.unodc.org/unodc/en/frontpage/2012/July/human-trafficking-organized-crime-and-the-multibillion-dollar-sale-of-people.html>

² International Labor Organization (2008). *Action against trafficking in human beings*. Geneva: ILO Publications, p.1.

³ Data available at www.havocscope.com.

⁴ International Labor Organization (2008), *op. cit.*, p. 29.

⁵ International Labor Organization (2008), *op. cit.*, p.3.

trafficked for the purpose of sexual exploitation (98%) and as many as 1.2 million victims of trafficking are minors (under 18).

According to the estimation report drawn up in 2012 and published in 2014, statistics worsened. The ILO estimated⁶ that 20.9 million people are in forced labor globally, trafficked for labor and sexual exploitation or held in slavery-like conditions. Of these, 4.5 million (22 %) are victims of forced sexual exploitation and 14.2 million (68 %) are victims of forced labor exploitation, primarily in agriculture, construction, domestic work, manufacturing, mining and utilities. Women and girls represent the greater share of the total – 11.4 million (55 %) – compared to 9.5 million (45 %) men and boys. Adults are more affected than children – 15.4 million (74 %) are aged 18 or older, with the number of children under the age of 18 estimated at 5.5 million (26 %).

It is estimated⁷ that the total illegal profits obtained from the use of forced labor worldwide amount to 150.2 billion USD per year. More than one third of the profits – 51.2 billion USD – are made in forced labor exploitation. Two thirds of the profits from forced labor were generated by forced sexual exploitation, amounting to an estimated 99 billion USD per year. Profits per victim are highest in forced sexual exploitation, which can be explained by the demand for such services and the prices that clients are willing to pay, and by the low capital investments and low operating costs associated with this activity. Unlike drug trafficking, where the commodity is contraband and must be hidden, sexually exploited women and girls are not easily identified and can be sold over and over again, exposing traffickers to lower risks and yielding high profits for their exploiters⁸. A fundamental premise of a human trafficking case is that the trafficker takes all the profits from the

forced labor of the victims, so the unfortunate truth is that the money earned through illegal activity are proceeds of the crime and none of it is “the victims’ money,” even though they likely are the ones who earned it⁹. With a global average profit of 21,800 USD per year per victim, this sector is six times more profitable than all other forms of forced labor, and five times more profitable than forced labor exploitation outside domestic work.

In most cases¹⁰ of documented forced sexual exploitation, a whole chain of traffickers and exploiters benefits: the recruiter who imposes high recruitment fees; the people in charge of travel and transport, who make sure the victim safely reaches the place of exploitation; corrupted law enforcement paid to close their eyes to obvious cases of illegal migration or exploitation; owners of flats or houses; companies in charge of advertising; and, of course, the brothel owner or manager of the prostitution networks.

The main incentive for traffickers is the high profit obtained¹¹. More research on the financial aspects of human trafficking might reveal much about the profits of

⁶ International Labor Organization (2014). *Profits and poverty: the economics of forced labor*. Geneva: ILO Publications, p. 7.

⁷ International Labor Organization (2014), *op. cit.*, p. 13, 15.

⁸ Ch. Whitman (2013). *Hitting Them Where It Hurts: Strategies for Seizing Assets in Human Trafficking Cases*. Strategies in Brief, 20, p. 1, available at www.aequitasresource.org.

⁹ L. Longhitano, Ch. Whitman (2014). *Assisting Human Trafficking Victims with Return of Property and Restitution*. Strategies in Brief, 21, p. 2, available at www.aequitasresource.org.

¹⁰ International Labor Organization (2014), *op. cit.*, p. 26.

¹¹ F. Vlad (2006). *Merchants of Living Souls: Traffickers of Human Beings in Romania*. MA Thesis, Stanford University, p. 37, available at <http://law.stanford.edu/wp-content/uploads/2015/03/VladFlorin-tft2006.pdf>

different actors and the social organization of these illegal activities¹². A survey made in Serbia strongly indicates that human trafficking is a very important source of labor and income for a large number of people, especially for those living in areas near the borders¹³. Not surprisingly, the percentage of unemployed traffickers was very high (46.7%)¹⁴. In Great Britain, human trafficking is included as a lifestyle offence under the Proceeds of Crime Act 2002. This legal label allows the authorities to recover all of the value of the assets the "lifestyle criminal" obtained in the six years prior to the crime (unless s/he can prove otherwise) as opposed to merely the benefit of a particular crime that can be gained from non-lifestyle offenders¹⁵. In Italy, a crucial country given its geographical position and high demand for sexual services, exploiters are able to identify criminal opportunities in the various regions and also the areas in which the greatest demand is concentrated¹⁶.

Why Romania?

According to US Department of State 2015 Report on Trafficking in Persons¹⁷ "Romania is a source, transit, and destination country for men, women, and children subjected to labor trafficking and women and children subjected to sex trafficking. Romanians represent a significant source of sex and labor trafficking victims in Western Europe (particularly the United Kingdom, Italy, Spain, and France) and Central and Southern Europe (particularly the Czech Republic, Hungary, and Greece). Romanian men, women, and children are subjected to labor trafficking in agriculture, construction, domestic service, hotels, and manufacturing, as well as forced begging and theft in Romania and other European countries. Romanian women and children are victims of sex trafficking in Romania and other European countries. Romanian victims of forced begging and forced criminal activities are often Romani children. Romania is a destination country for a limited number of foreign trafficking victims, including sex trafficking victims from Moldova and Poland and labor trafficking victims from Bangladesh and Serbia".

The above report also includes some recommendations for Romania (which is placed in the second category namely of the states which do not fully comply with the minimum standards for the elimination of trafficking, but, however, make significant efforts to do so). None of the recommendations regards the confiscation of proceeds of crime as an alternative to conviction.

According to the last data available, Romanian authorities investigated 875 trafficking cases in 2014, an increase from 714 in 2013. The government prosecuted

¹² E.S. Kleemans, M. Smit (2014). *Human Smuggling, Human Trafficking, and Exploitation in Sex Industry*. In L. Paoli (ed.): *The Oxford Handbook of Organized Crime*. Oxford: Oxford University Press, p. 396.

¹³ V. Nikolić-Ristanović (2012). *Human Trafficking between Profit and Survival*. In A. Šelih, A. Završnik eds.): *Crime and Transition in Central and Eastern Europe*. New York: Springer, p. 219.

¹⁴ V. Nikolić-Ristanović (2012), *op. cit.*, p. 221.

¹⁵ P. Sproat (2012). *A critique of the official discourse on drug and sex trafficking by organized crime using data on asset recovery*. *Journal of Financial Crime*, vol. 19, issue 2, p. 150.

¹⁶ M. Mancuso (2015). *Estimating the revenues of sexual exploitation: applying a new methodology to the Italian context*. In E.U. Savona, F. Calderoni (eds.): *Criminal Markets and Mafia Proceeds*. London and New York: Routledge, p. 20.

¹⁷ Available at <http://romania.usembassy.gov/2015-tip-en.html>.

534 defendants in 2014, similar to the 552 in 2013. Romanian courts convicted 269 traffickers in 2014, slightly more than 252 in 2013. The government did not disaggregate law enforcement statistics to demonstrate action against both sex and labor trafficking. Sixty-seven percent of convicted traffickers were sentenced to time in prison, ranging from one to 15 years' imprisonment; this marked an increase from 2013, when 59 percent of convicted traffickers were sentenced to time in prison. However, in 2014, courts suspended 73 prison sentences and instead levied fines against 15 traffickers. Looks like the government made strong law enforcement efforts but obtained weak or suspended sentences that neither deterred traffickers nor kept victims safe when traffickers were released.

Public officials and NGOs identified 880 victims in 2015 and 757 victims in 2014, a decrease from 896 in 2013. Sixty-six percent of victims were female (seventy-four percent in 2014) and 31 percent of victims were children (37 % in 2014)¹⁸. In 2014, sixty-three percent of victims (475) were subjected to trafficking for sexual exploitation and 25 percent (188) for labor exploitation in agriculture and construction¹⁹. Considering that the number of victims is around 900 per year it is possible to estimate the profits (3,000-6,000 USD for one girl sold²⁰) to a maximum of 5.5 million USD in one year.

Legal instruments

Tracing and seizing money and assets often look like a task more able to perform instead of chasing criminal individuals. Romania has powerful instruments from this point of view.

One of the objectives of the National Strategy against Human Trafficking during 2012-2016 implemented by Government's Act no. 1142/2012²¹ is represented by the improvement of the institutional ability to investigate human trafficking offences, especially trafficking in minors, as well as the tracking of the illicit gain by the law enforcement authorities.

Act no. 678/2001²² on the prevention and suppression of human trafficking was almost completely repealed, especially as concerns the related offences, once the new penal code (hereinafter the NPC) came into force. The new law transposes the 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 victims²³. Presently, the penal code sanctions trafficking in adult persons at art. 210 NPC, by penalties between 3 to 10 years of imprisonment and trafficking in minors at art. 211

¹⁸ National Agency against Human Trafficking (2016). The Graphic Analysis of Victims Identified in 2015. Available at <http://anitp.mai.gov.ro/ro/docs/Cercetare/Analize/analiza%20general%202015.pdf>, p. 2.

¹⁹ National Agency against Human Trafficking (2015). The Statistics of Victims of Human Trafficking Identified in 2014. Available at <http://www.anitp.mai.gov.ro/wp-content/uploads/analiza%20a%20victimelor%20in%202014%20-%2025.08.2015.pdf>, p. 14.

²⁰ Estimation available at <http://www.havocscope.com/black-market-prices/human-trafficking-prices/>.

²¹ Published in the Official Journal no. 820 of 6th December of 2012.

²² Published in the Official Journal no. 783 of 11th December of 2001.

²³ For a comment on the EU Directive see F. Ciopec (2012). *New Acquis Communautaire in Protection of Human Trafficking Victims* in T. Grünwald, P. Messina (eds.): *Innovative Network for Security and Prevention through Inter-regional Euro-cooperation*. Padova: Centro di ricerca e servizi „Giorgio Lago”, pp. 63-74.

NPC, by the same penalty. Offences related to human trafficking are provided in art. 216 (use of an exploited person's services) by a penalty from 6 month to 3 years, art. 264 NPC (facilitating the illegal stay in Romania) by penalty from 1 to 5 years and art. 374 NPC (child pornography) by a similar penalty.

Art. 19 of Act no. 678/2001 on confiscation of assets and proceeds of crime following human trafficking was repealed by the new penal code. Presently, the provisions of art. 112 which settles special confiscation shall apply. The legal text provides "The following shall be subject to special confiscation:

- a) assets produced by perpetrating any offense stipulated by criminal law;
- b) assets that were used in any way, or intended to be used to commit an offense set forth by criminal law, if they belong to the offender or to another person who knew the purpose of their use;
- c) assets used immediately after the commission of the offense to ensure the perpetrator's escape or the retention of use or proceeds obtained, if they belong to the offender or to another person who knew the purpose of their use;
- d) assets given to bring about the commission of an offense set forth by criminal law or to reward the perpetrator;
- e) assets acquired by perpetrating any offense stipulated by criminal law, unless returned to the victim and to the extent they are not used to indemnify the victim;
- f) assets the possession of which is prohibited by criminal law".

Additionally, the new penal code has also introduced the possibility to apply extended confiscation in case of human trafficking (expressly mentioned in art. 112¹ para. 1 b NPC). The legal text stipulates that "Assets other than those referred to in art. 112 NPC are also subject to confiscation in case a person is convicted of any of the following offenses, if such offense is likely to procure a material benefit and the penalty provided by law is a term of imprisonment of 4 years or more: [...] b) trafficking in and exploitation of vulnerable people [...]. Extended confiscation is ordered if the following conditions are cumulatively met:

- a) the value of assets acquired by a convicted person within a time period of five years before and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict;
- b) the court is convinced that the relevant assets originate from criminal activities such as those provided in par. (1)".

By Act no. 318/2015²⁴ there was established the National Agency for the Recovery and Management of Seized and Confiscated Assets derived from offences, including the ones of human trafficking. Although still unfunctional, since the rules on organization and functioning of the Agency have been adopted very recently by Government's Act no. 358/2016²⁵, this institution aims at improving the enhancement of the proceeds of crime and synthesizing the data related to this type of claims²⁶.

²⁴ Published in the Official Journal no. 961 of 24th December 2015.

²⁵ Published in the Official Journal no. 383 of 19th May of 2016.

²⁶ For a comment on this institution see F. Ciopec (2015). *Despre noua Agenție Națională de Administrare a Bunurilor Indisponibilizate* [On the New National Agency for the Recovery and Management of Seized and Confiscated Assets]. *Curierul Judiciar*, 10, pp. 523-525.

Hitting Them Where It Hurts Most

The place of confiscation as an alternative instrument for the fight against human trafficking depends on the efficient manner of searching and neutralizing the proceeds of crime as well as the economic advantage pursued by traffickers. Asset forfeiture laws provide for the seizure of property that is a fruit of – or was used to further – the criminal enterprise. Utilizing these laws is one effective way to deter and disrupt traffickers while providing trafficking victims with the monetary means to rebuild their lives²⁷.

In Romania, in order to be in the presence of ordinary confiscation, called special confiscation, a criminal trial needs to be started against the author of the offence of human trafficking or the related offences (art. 264 or art. 374 NPC). However, special confiscation can be ordered regardless of a conviction (art. 107 para. 3 NPC). Applying a penalty is not necessary, but since confiscation is a penal sanction, i.e. a detention order, it must be ruled only by a criminal court. Romanian law is not familiar with non-conviction based confiscation for the proceeds of crime derived from human trafficking, an institution which is highly used in USA²⁸.

For the imposition of special confiscation, the penal judge must ascertain the fulfilment of three conditions:

i) Commission of an act provided by criminal law and unjustified. Romanian law does not condition the imposition of such measure on the existence of an offence, but only on act provided by criminal law, a reason why as shown above, it is not necessary to apply a penalty. As such, any way of committing the *actus reus* described in art. 210 NCP must be proved, namely 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.

ii) A state of danger which can be removed only by imposing a detention order. In case of confiscation, we refer to an objective danger (*in rem*), which is not an inner part of assets subject to confiscation, but results mainly from the way they were acquired which is prohibited by criminal law, but becomes relevant when committing an act provided by the same law (the above mentioned condition). By enforcing the penal code, the mostly preventive nature of confiscation has been addressed, which aims at removing a state of danger. According to art. 112 NPC, in case of human trafficking offences there shall be subject to confiscation the following category of assets:

b) assets that were used in any way, or intended to be used to commit an offense set forth by criminal law, if they belong to the offender or to another person who knew the purpose of their use; [...]

d) assets given to bring about the commission of an offense set forth by criminal law or to reward the perpetrator;

²⁷ Ch. Whitman (2013). *Op. cit.*, p. 1.

²⁸ Aequitas – The Prosecutor's Resource on Violence against Women (2014). *Restitution and Asset Forfeiture: A Focus on Human Trafficking*. Available on www.aequitasresource.org.

e) assets acquired by perpetrating any offense stipulated by criminal law, unless returned to the victim and to the extent they are not used to indemnify the victim.

iii) Identifying the goods that can be subject to confiscation. This is the hardest activity since in the absence of assets, confiscation is deprived of its object. Identifying the assets is a difficult task for judicial authorities since it implies specific powers (*assets intelligence*) which are not familiar to the former. This is the reason why such powers were provided for the new National Agency for the Recovery and Management of Seized and Confiscated Assets. The Agency has the right to access, directly or indirectly, the database on all categories of assets which can be subject to confiscation in a criminal trial, on the basis of protocols concluded with a series of public authorities and institutions, namely the Tax Management Agency, the Registry of Companies, the Financial Supervision Authority, the National Office of Prevention and Suppression of Money Laundering, the Department of Fight against Fraud, the National Agency of Real Estate Registration and Recordation, the National Union of Judicial Executors, the National Union of Notaries Public, the National Bar Association. Judicial authorities or the courts shall be able to require the Agency on the basis of standard application form data and information in order to identify and track the assets. The transmission of these data and information shall be done on its own motion when the Agency considered that they will lead to the facilitation of identifying and tracking those assets by said authorities. The provisions are similarly in case of cooperation with the counterpart agencies of other countries.

Romanian law also provides for the special confiscation by cash equivalent. In cases referred to in art. 112 par. (1) lett. b), if the assets cannot be subject to confiscation, as they do not belong to the offender, and the person owning them was not aware of the purpose of their use, the cash equivalent thereof will be confiscated. If the assets subject to confiscation pursuant are not to be found, money and other assets shall be confiscated instead, up to the value thereof. The assets and money obtained from exploiting the assets subject to confiscation as well as the assets produced by such, except for the assets provided for in art. 112 par. (1) lett. b), shall be also confiscated.

In the case referred to in art. 112 par. (1) lett. b), if the value of assets subject to confiscation is manifestly disproportionate to the nature and severity of the offense, confiscation will be ordered only in part, by monetary equivalent, by taking into account the result produced or that could have been produced and asset's contribution to it. If the assets were produced, modified or adapted in order to commit the offense set forth by criminal law, they shall be entirely confiscated.

According to Act no. 678/2001 the instruments of crime also included the means of transport used for the trafficking of persons as well as the harboring establishments for these persons, if they belong to the authors of the offence (art. 19 para. 2). After this text was repealed by the new penal code, such a provision no longer exists, therefore art. 112 para. b) NPC becomes applicable.

The prerogatives in the matter of confiscation have been extended by Act no. 63/2012²⁹ which amended the penal code. The extension refers to three aspects³⁰: (i) the confiscation of certain assets which are no longer directly linked with the offence for the conviction was ruled; (ii) confiscation shall also aim third parties which are

²⁹ Published in the Official Journal no. 258 of 19th April of 2012.

³⁰ F. Ciopec (2015). *Confiscarea extinsă: între de ce și cât de mult?* [Extended Confiscation: Between Why and How Much?] București: C.H. Beck, p. 5.

connected to a certain extent with the convicted person and (iii) confiscation shall be also ordered for a period of 5 years going backwards to the moment when the offence was committed, which is subject to an analysis of the acquired assets.

Extended confiscation is itself a detention order which in general terms is governed by the same rules as special confiscation but at the same time has some specific features. The criminal judge shall be able to extend confiscation to other goods than those subject to special confiscation, namely:

a) A conviction was ruled in a criminal trial against an offender for an offence of certain degree of seriousness. Although the minimum requirement in order to impose a detention order is the commission of an act provided by criminal law unlawful and unjustified, extended confiscation imply a higher standard, since it is necessary that the act constitute an offence and that a conviction for the former be ruled. The convicted can be only an adult natural or legal person. Since according to the new penal code (art. 114), courts cannot convict minor offenders to penalties but only rule educational sanctions against them, extended confiscation cannot be ordered in case of the former. In fact, human trafficking has little compatibility with the active involvement of minor offenders. The seriousness of the offence is a criterion which matters in case of human trafficking since the penalty provide by the law is more than 4 years, the minimum level which allows access to extended confiscation.

b) The act committed is liable to provide some valuable consideration. It has been considered³¹ that his condition implies the analysis of two elements: (i) an objective one, namely that the value of the assets acquired by the convicted person in a certain period of time obviously exceeds the income lawfully obtained; and (ii) a subjective one, namely the court's persuasion that the respective assets are derived from activities similar to those which led to the conviction. Criminal law includes in the category of assets the mobile, immobile, as well as the amounts of money. Moreover, the value of the assets transferred by a convicted person or by one-third party to a family member or to a legal entity over which that convicted person has control shall also be considered. In determining the difference between the legitimate income and the value of the assets acquired, the value of the assets upon their acquisition and the expenses incurred by the convicted person and their family members shall be considered. The legal text does not state if the services from which the convicted person benefited during the reference period are also taken into account. The answer is only affirmative, since services have an economic value less likely to neglect, being able to disguise the proceeds of crime such As the real estates or financial banking investments (tourists offers, beauty services or healthcare services on demand – aesthetic or dental surgery). The reference period taken into account in order to assess the value of the acquired assets is of 5 years going backwards and, if the case may be, after the moment when the offense was committed, until the court is referred to. The five-year term is similar to the one in tax matters related to the statute of limitations that the state benefits from in order to determine and track the income of taxpayers.

c) It was not possible to prove the lawfulness of the acquired asset. Extended confiscation is understood when used to fight against organized crime, but it must be associated with safeguards meant to limit the abuse of confiscation. One of these safeguards is the possibility of the accused to be able to rebut the factual presumptions by proving that the goods were lawfully acquired, which serves for the inapplicability of

³¹ F. Ciopec (2015). *Op. cit.*, p. 127.

extended confiscation. The right of a person to require the supplying of counter-evidence against judicial presumptions which established that the assets whose value exceeds the person's lawful income are derived from crime activities similar with the ones which entailed the conviction, has its direct source in the presumption of innocence. Common defenses³² to a petition for asset forfeiture include that the respondent did not commit the crime that makes the property forfeitable or that he/she did not have knowledge of the criminal activity. When a third party owner's property is subject to forfeiture, he/she may argue that he/she took steps to curtail the criminal behavior of the possessors/lessees, but was unsuccessful. Another common argument is that the assets in question were not part of the criminal enterprise.

If the assets to be seized are not to be found, money and other assets shall be confiscated instead, up to the value thereof. The assets and money obtained from exploiting the assets subject to confiscation as well as the assets produced by such shall be also confiscated. Confiscation shall not exceed the value of assets acquired during the period of 5 years referred above that are up to the convicted person's lawfully obtained income.

What this institution brings about as a novelty is the radical change of the conditions provided by classical criminal law: a direct chain of causation between the criminal act and the obtainment of the asset, and, respectively, a superior standard in case a decision in criminal matters is ruled.

The judge in criminal matters has now the power to order a repressive measure in relation to assets that the court is convinced that they originate from criminal activities similar with the ones which entailed the conviction. Therefore, it is true that the detention order affects certain assets in case of which no conviction has been or shall be ruled, given that the criminal court has not been referred to in order to judge the acts from which said assets are derived. Although the criminal court does not rule on all the acts, it shall form its conviction based on all the circumstances of the criminal case according to which those acts did exist, were committed by the defendant and procured him some valuable consideration. As to the acts which were not part of the conviction, the standard of proof is less high: „the court is convinced that the relevant assets originate from criminal activities...” than the one necessary to entail a conviction. In the majority of states, the standard of proof for the establishment of forfeiture by wrongdoing is a preponderance of the evidence; the standard is clear and convincing evidence in only three states³³. Preponderance of the evidence, requiring a showing that it is more likely than not that the evidence presented is true, is significantly lower than the standard required for proof of a defendant's guilt at trial (beyond any reasonable doubt).

In such cases the court shall use a series of factual presumptions in order to form its conviction that the wealth originates from acts that are similar with those which led to the conviction of offenders, e.g. are they employed? How do they live? Do they have an income? Do they have an explanation for cash? Where real property or cars are involved, a third party must be asked whether the offender paid rent or a monthly payment equal to or in excess of market value. Did they pay in cash? Does the owner have records of the transactions? These presumptions are not incompatible with the

³² Ch. Whitman (2013), *op. cit.*, p. 3.

³³ J. G. Long, T. Garvey (2012). *No Victim? Don't Give Up. Creative Strategies in Prosecuting Human Trafficking Cases Using Forfeiture by Wrongdoing and Other Evidence-Based Techniques*. Strategies Newsletter, 7, p. 4, available at www.aequitasresource.org.

presumption of innocence, as the Court of Strasbourg stated in its case-law³⁴. All these factual presumptions shall allow the imposition of extended confiscation, on condition that they may not exceed a reasonable limit, so that the judge is in a position where he can no longer establish the facts of the case.

Despite of the arsenal provided by criminal law, Romania did not seem to achieve a great deal of success in the fight against human trafficking. Low numbers of convictions combined with limited use of financial investigations hinder efficient confiscation of assets in human trafficking cases³⁵. In order to have efficient and functional schemes based on confiscated assets, it needs to improve its criminal justice responses, particularly by focusing more on financial intelligence.

³⁴ Case-law *Pham Hoang v. France*, Decision of 25th September of 1992, para. 33, available at <http://hudoc.echr.coe.int>; case-law *Salabiaku v. France*, Decision of 7th October of 1998, para. 28, available at <http://hudoc.echr.coe.int>.

³⁵ United Nations Office on Drugs and Crime (2014). *Global Report on Trafficking in Persons*. New York: United Nations Publications, p. 53.