

MODERN-DAY SLAVERY – HUMAN TRAFFICKING IN THE 21ST CENTURY**Mihai ȘTEFĂNOAIA****“Petre Andrei” University, Iași, Romania
stefanoaiamihai@yahoo.com**

Abstract: *Human trafficking represents an extremely serious social phenomenon, which brings serious prejudices to the fundamental rights of men. Human trafficking (infringement that is regulated and incriminated by the current Penal Code in the Special Part, Title I – Infringements against the person, Chapter VII – The trafficking and the exploitation of the vulnerable persons, article 210) represents one of the modern forms of slavery, together with work exploitation and the traffic of organs. Due to the abolishing of slavery and the incrimination of its practices, this form of human denigration has continued to exist against all forms of rebutment. This situation may be explained through the theories mentioned. Still, one of the reasons for which slavery has resisted until nowadays is because it has changed its form, adapting to the new social and political requirements. As a result, the three forms of modern slavery have appeared, among which human trafficking.*

Keywords: human trafficking, law, slavery, protection, legislation

Introduction

The contemporary Romanian society must face, simultaneously, both the destructive effects of the powerful economic and social seisms, which have affected the whole central and eastern European region in the past decades, and the challenges connected to the re-launching of the development process, in accordance to the common objective of the European Construction – a modern, competitive society, with a high degree of social cohesion, which guarantees and protects the rights of all its citizens.

Human trafficking is an extremely serious social phenomenon, which brings serious prejudices to the fundamental rights of men. The phenomenon has a long record in countries from Africa, Asia and the two Americas, spreading in the European countries after 1990, after the fall of the communist regimes and the Balkan crisis. The countries from the south – eastern and central part of Europe represent not only source countries but also transit ones for the

human trafficking. In a relatively short period of time, after the 1990s, this region has come to compete with the traditional ones, such as Latin America, South – East Asia or Africa, representing one of the most important sources of women and children who are used for sexual traffic or as labour force in Western Europe. (*Trafficking in Persons Report – June 2003*, U.S. Department of State, Bureau of Public Affairs, 2003).

The evolution of the social and economic context in Romania of the 90s has favored the appearance of some social cleavages and implicitly, of some social levels which are vulnerable to trafficking. By the end of the 90s and the beginning of the 2000, the geographical proximity to the conflict zones from the former Yugoslavian countries has also led to an increased incidence of the phenomenon in Romania.

Once it became part of the European Union, it came natural that Romania would become a destination country for human trafficking.

Here from, the need of a capable and efficient system to manage the situation of a larger number of persons from other states, who are trafficked on the Romanian territory and who will need assistance and repatriation to the native country. (The National Anti-Trafficking Strategy, 2006-2010, 13th of February 2006, page 4).

The notion of human trafficking is defined in many legal norms which regulate its prevention and control, both at national and international level. Against all these, there are still many people who mistake this infringement for prostitution or even proxenetism. That is why we find it compulsory to define all these terms, so as to lower the degree of confusion.

Human trafficking is defined, at international level, by the Organization of the United Nations (The Convention from Palermo, 13th of December 2000): "the human trafficking represents the recruitment, transportation, sheltering and receiving persons, by means of menacing and other forms of restraint, by kidnapping, racketeering, fraud or power abuse, by using a vulnerable situation, by giving or getting money or other goods with the purpose of having the consent of a person upon another for exploitation. By exploitation we understand prostitution or other forms of sexual exploitation, labour or forced services, slavery or similar practices, servitude or organ prelevation". (The protocol regarding the prevention, repression and the punishing of the human trafficking, especially of women and children, additional to the Convention of United Nations against the organized transnational criminality).

At national level, before the new Penal Code was adopted, in February 2014, the former law no. 678/2001 for preventing and controlling human trafficking defined, in article 12, the infringement of the human traffic as being "the recruitment, transportation, transfer, sheltering of a person, by threat, violence or other means of constraint, by kidnapping, fraud or deceit, authority abuse or taking advantage

of the fact that the person cannot defend himself or express his will, or by offering, giving or accepting money or other goods in order to obtain the consent of the person who has authority over another, with the purpose of exploiting that person."(Law nr.678 from 2001 regarding the prevention and control of the human trafficking (art.12).

At the same time, prostitution was incriminated by the old Penal Code of Romania, which defined this infringement as being "the deed of a person who earns his living or the main means of living by practicing in this respect sexual intercourse with different persons"(art. 328). In tight connection to this, still in the Penal Code, the term proxenetism meant the "urging or encouraging to the practice of prostitution or taking advantage from somebody practicing prostitution" (art. 329, Old Penal Code).

In the current Penal Code there can be found the infringement of human trafficking regulated and sanctioned in its Special Part, Title I – Infringements against the person, Chapter VII – The traffic and the exploitation of the vulnerable persons, art. 210, and the infringement of proxenetism in art.213 Penal Code, the same title, the same chapter. In return, we no longer find the infringement of prostitution, this deed being considered only a contravention after the new Code was adopted.

As a consequence, although all these three deeds may seem similar in some respects, there are still major differences between them. Firstly, human trafficking involves the existence of a so-called "network", meaning at least three elements: recruiter, seller and exploiter. In the case of prostitution and proxenetism, the recruiter and the exploiter may be one and the same person. In other words, human trafficking becomes part of the organized crime.

When the current Penal Code was conceived, the legislator had in mind the fact that, in most of the cases, the person practicing prostitution has the quality of the

victim in the process of the development of the anti-social acts which are done in order to obtain material goods from human trafficking, and, secondly, by prostitution, we understand only abuse and sexual exploitation, whereas human trafficking also implies more types of exploitation and abuse, such as economic, physical, sexual etc.

Last but not least, trafficking is different from prostitution by the fact that, at least in the initial phase of the exploitation, there is no victim's consent. Initially, the existence of the victim's consent represented an essential criterion in order to frame the deed, but, because of the judicial impediments, the current legislation has suffered modifications by which the consent of the victim is no longer relevant. The practical problems that have occurred especially in the domain of the penal prosecution are mainly generated by the psychology of the victim (the attachment of the victim to the felon).

Starting from this perception on human trafficking, we can conclude that the expression "victim of human trafficking" refers to any person subjected to trafficking, regardless of age, gender or other things. Consequently, in the category of the victim we may find women, children, men, old people, etc. The recruiter represents the person involved in the first stage of human trafficking, in which the victim is closely studied, in order to find all those vulnerable points to be taken advantage of, the initiation of the contact with the victim and gaining her confidence. The trafficker represents the person who commits the infringement of human trafficking. He represents in fact the "linking person", the one who makes the connection between the recruiters and the exploiters. For a better understanding, the trafficker represents the seller from the economic point of view, being found in a continuous change between demand and offer, but on a very dangerous market. The exploiter represents the last link in this chain, exploiting the victim. We cannot speak about stability

among these roles that the felons may have in the criminal network. In other words, the recruiter can become trafficker or exploiter, the trafficker recruiter or exploiter and the exploiter, recruiter or, more rarely, recruiter.

The object of human trafficking

The "flesh" trafficking has more variations, according to the following criteria:

a) According to the subjects that are victims of the trafficking, we can distinguish:

- trafficking of men;
- trafficking of women;
- trafficking of children;

b) According to the way the will of the victims is expressed:

- trafficking in which the victims have been attracted by expressing their own will;
- trafficking in which the victims have been attracted by means of restraint of any kind;
- trafficking in which the victims have been attracted by deceit.

c) According to the territory within whose boundaries trafficking is practised:

- trafficking between the regions of the same state (from one region to another);
- human trafficking beyond the borders (from one state to another);

d) According to the purpose for which it is practised:

- trafficking for the purpose of slavery;
- trafficking for sexual exploitation;
- trafficking for the pornographic industry;
- trafficking for organ prelevation;
- trafficking for being used in army conflicts. (V. Guțuleac *Drepturile omului și traficul de persoane în Criminalitatea în R. Moldova: Materialele conferinței științifico-practice internaționale aprilie 2003*, Ed. Academiei de Poliție "Ștefan cel Mare", Chișinău, 2003, pag. 46).

As a result, the object of activity of human trafficking is represented by:

- women and girls for the sex industry;
- children to be given for adoption;

- old persons, children with disabilities used for begging;
- children used for committing felonies (pick pocketing, car breaking, etc.);
- trafficking of children for sexual exploitation;
- men, women and children used for forced labour and slavery;
- organs or human tissues or persons for organ prelevation, etc. (Octavian Bejan, O., Butnaru, Ghe., *Traficul de ființe umane*, Ed. Pontos, Chișinău, 2002, pag. 26).

Around all these objects of criminal activity, we may distinguish different forms of human trafficking. We are going to present a brief characterization of each of them.

Trafficking of women and girls for the sex industry

One of the most widely spread forms of trafficking is represented by the trafficking of women and girls who are used for sexual exploitation. This has known an unprecedented growth in the past decade, getting to the point where it affects the mental and physical health of women and severely diminishes their moral status; not only does it terribly affects their social position, but it also shatters the basis of society – the family. Trafficking has grown once with the massive exodus of the labour force towards the developing countries, in a desperate search for a better living. In the present case, the victims are used especially for prostitution, pornography (movies, photos, images with live sexual intercourse that are broadcast on the Internet, etc.) or sex – shows (striptease, different erotic forms of dancing, etc.)

The victims are mainly prostitutes: some of them hope that, by getting to another owner, they will earn more money and, consequently, they accept to be sold; others may not even be asked; in both cases they will get to know a treatment which does not correspond to their will. Much worse is the situation of women and girls who under no means accept to be trafficked or to practice prostitution. These women and girls are

recruited under the pretext of being offered a well-paid job across the borders, as, afterwards, to be submitted to cruel sexual exploitation in the brothels from Kosovo, Macedonia, Bosnia, Albania, Greece, Italy, Germany, Sweden, Turkey, etc. There has been lately noticed an increase in human trafficking towards the Arab states: the United Arab Emirates, Kuwait, Syria, etc.

The traffickers use the following routes: Romania – Serbia – Kosovo – Albania – Italy; Romania – Serbia – Macedonia – Greece; Romania – Hungary – Austria – Germany; Romania – Bulgaria – Turkey. (*Trafficking in Human Beings in Southeastern Europe*, UNICEF, 2002, pag. 9).

In order to reach their hateful goals, the traffickers make use, in this case, of any means: the victims are kidnapped or deceived, by being promised all that they want (usually to get to prosperous countries where they can earn a good living) and then are forced to practice prostitution, being intimidated, maltreated, raped, submitted to sexual perversions or even murdered.

From the victims' confessions (*Ce spun 24 de femei traficate*, Centrul de Analiză și Investigații Sociologice, Politologice și Psihologice CIVIS, 2001, pag. 7), it results that the treatment to which they are submitted can be described as a constant ordeal, which leaves them with untreated marks, terribly shattering their mental and physical health. These women lose, in most of the cases, their mental strength to escape from the captivity of their traffickers orpimps, and even worse, they come to bear a mental instability that makes them become real prostitutes, even trying to recruit other women. The psychological recovery and the social reintegration of the victims of human trafficking with the purpose of social exploitation is very difficult, needing a specific psychological, criminal and medical approach to be developed in stable and adequate conditions.

Trafficking of children for sexual exploitation (Bejan, Butnaru, *op. cit.*, pag.

34)has mainly developed in the past ten years, although it has existed, probably, even in the previous years. Anyway, it represents a very serious threat to our society and it requires a very serious approach. Victims of the wrong-doers are not only adult women but also minors, even male minors (persons of masculine gender). Moreover, more and more often there are children of both sexes among the victims.

From these relevant cases, we may find out that, under different pretexts (modeling), the traffickers take children of both sexes, aged 3 to 12, from their parents and eventually sell them to some foreign pedophiles for sexual exploitation, pornographic articles, etc. This is due to the increase of the phenomenon lately, which, actually has come to alarming rates. The researches prove that the demand comes mainly from the Balkan and Scandinavian countries. Taking into consideration all the facts presented here, we may predict a greater increase of the phenomenon due to the ever increasing demand and corruption that dominate the former socialist countries. In addition, the pedophiles prove themselves to be rich persons with a great political influence.

Trafficking of children for the purpose of adoption (*Idem*, pag. 27)has greatly developed after the fall of the communist regimes in the countries of Eastern Europe. The networks and the groups of traffickers were formed at the beginning around orphanages, speculating on the one hand the multiple requests of citizens from the developed countries (especially the USA and Canada) to adopt orphan children from the former communist countries and, on the other hand, the difficult procedure and bureaucracy that could be found in these countries.

The traffickers willingly offered themselves to help, but in reality, by means of corruption and forgery, they illegally obtained the necessary approvals for the adoption of children in exchange of great sums of money. Eventually, they spread their activity, getting children from their

biological parents who found themselves in great material need and were willing to commit such hateful transactions, which ended in the selling of their children. The negative consequences of this phenomenon of human trafficking cannot be well controlled by the legal institutions, the children often becoming victims of some inhuman treatments or even of sexual abuses. Sometimes these children are used both in the sex industry and also for tissue and organ prelevation.

Trafficking of old people, children, disabled persons for the purpose of begging (Bejan, Butnaru, *op. cit.*, pag27)meets the demand of some criminal groups, oriented to obtain profits by organized forms of begging. We speak about the criminal groups which operate abroad, especially in the developed countries where they earn great amounts of money. The victims are deceived by different means, usually by being promised to work abroad and then are forced to practice begging. For the work they do, they get a very small amount of money, are kept in miserable conditions and in a continuous mental tension so that their will can be defeated. The desire of the victims to give up this activity is rejected, being under permanent constraint to continue practicing begging. In order to accomplish begging, children are mainly preferred, but also old people, women and disabled persons.

The trafficking of children for the purpose of committing infringements (*Idem*, pag. 28)

The trafficking we are dealing with in this paper meets a demand coming from the criminal world that want to accomplish their criminal goals. The demand refers to children who are trained for criminal activities. The criminals use these children for committing pick pocketing, car theft, etc. They take benefits from all the financial goods these children earned, whereas the children get, in the best of cases, a very insignificant amount or they may not get anything at all. The way in which these activities take place is very convenient to the felons, because they can avoid legal

liability: the children do not know the criminals very well, and they cannot give too many details about them, so that finding out their identity becomes more and more difficult. Another problem is that, in case of being found and the children being taken to the police, the criminals may very well continue their activities, making use of other children. The facts described above take place in prosperous foreign countries, where the profits are increased, and the police do not have data about the criminals. As a consequence, other relatives of the wrongdoers who train children for these illegal activities take advantage of the demands and sell children to them.

Trafficking of women, men and children for forced labour or slavery(Bejan, Butnaru, *op. cit.*, pag. 28, 33)

Even though the Middle Ages disappeared a long time ago, and men enjoy the rights and liberties of modern societies, some manifestations of slavery still exist nowadays. The modern day slavery does not differ too much from the historical one, the single difference representing the illicit practice. By this we understand that the person (the slave) finds himself in the possession of another person (the owner), who uses him according to his own will (exploiting him) or even administers him, such as giving him away at any time (selling – buying or by giving). The master usually submits the person he owns to various forms of physical and intellectual exploitation. Moreover, the person being under the possession of the master is deprived of freedom until the end of his life, unless the authorities set him free or he succeeds in freeing himself from slavery or being helped by a third party. In the case of slavery, trafficking takes place only if someone sells a person for this very purpose, or when the master himself gives him away.

The forced labour phenomenon and the trafficking taking place for this purpose have considerably increased lately with the occurrence of a huge number of cheap labourforce coming from ex-communist

countries which are in a very poor state. To this there has been added the offer from Asian countries, due to the options of illegal migration resulting from the lack of border security produced in the ex – communist countries.

Traffickers have promptly reacted to this process, and more and more people have become victims of forced labor. The classic form of forced labor resides in imposing a person to execute different physical or intellectual activities for the benefit of another for a period of time. This can be achieved under different more or less obvious forms and means. For example, a person who arrives in a foreign country by illegal means and is given work as a result of an illicit transaction between the traffickers and the master and about which that person knows nothing. He works for a period of time without being paid, because the employer promises to give him the money. At a certain point, the master announces the police about the illegal stay of that person, reason for which he is expelled, without getting any more money. Another method that is used is to offer a person in need the amount of money necessary in order to get to a prosperous country, on condition that the person works as long as it is necessary to give back the money. In such cases, the traffickers get the money directly from the boss who hired the person, as a result of their prearranged agreement.

Trafficking of organs and human tissues or persons for the purpose of extraction (Octavian Bejan, Gheorghe Butnaru, *op. cit.*, pag. 29, 35)

The medical sciences have registered some incredible progress in the past century, offering people unexpected hope for the prolongation of their life. Among the great successes one can mention the possibility to replace the sick organs with some healthy ones, which may come from donors, living benefactors, or people found in clinical death, with the approval of their relatives out of profoundly human impulses. However, getting those healthy organs may

become complicated due to the existing shortage. In this search and attempt to save the beloved ones, people are capable of doing many things, including some immoral ones. As a result, there is a great demand for healthy organs and tissues. And the felons take advantage of these terrible situations. They answer to the demand of people in need by sending some inviting, but illegal offers. To this purpose, traffickers make use of a great range of means. For example, they persuade the people in need to sell their own organs or their children's, by means of which they obtain huge amounts of money. Or they may get involved in illegal adoptions of children whom they will eventually adopt and who may also die, when the extraction of organs does not leave any chance of living. Even adults may become victims of this, too. In this case they are deceived under various forms (that they are helped to find a very well-paid job in a developed country), and then they are submitted to forced surgeries, in many cases even lose their lives. There are, however, cases in which human beings are medically exploited, without any justification or strong arguments, for the sake of performing some medical research. Trafficking is thus manifested by the following means:

1) the extraction of organs within the borders of the country and eventually, their trading abroad;

2) the selling of people over the borders for the extraction of their organs.

Local hospital doctors perform these operations without the knowledge of the patient or his relatives. In the latter case, the victims are transported abroad, under different pretexts (usually being promised a well-paid job), where their organs are drawn out or they are exploited in different ways.

In conclusion, taking into consideration all the things presented above, we may resume that human trafficking represents an extremely serious social phenomenon, which brings serious prejudices to the fundamental rights of men. Regarding the extent to which the topic under discussion has come, we can state that there are still many unexplored areas in what consists the investigation of the problem regarding the regulations of the penal liability in penal law.

"This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013".

Bibliography

- Bejan, O., Butnaru, Ghe., *Traficul de ființe umane*, Editura Pontos, Chișinău, 2002.
- Dobrinou Vasile, Nistoreanu Gheorghe, Pascu, Ilie, Molnar, Ioan, Lazăr, Valerică, Boroș, Alexandru, *Drept penal. Partea Generală*, Editura Atlas Lex, București, 1996.
- Dongoroz, Vintilă, Fodor, Iosif, Kahane Siegfried, Oancea, Ion, Iliescu, Nicoleta, Bulai, Constantin, Stănoiu, Rodica, *Explicații Teoretice ale Codului penal român. Partea Generală*, vol. I, Editura Academiei Române, Editura All Beck, București, 2003.
- Theodoru, Grigore, Plăeșu, T., *Drept Procesual Penal, Partea Specială*, vol. II, Universitatea "Al. I. Cuza", Iași, 1987.
- Wyers, M., Lap-Chew, L., *Trafficking in Women Forced Labour and Slavery-Like Practices in Marriage Domestic Labour and Prostitution*, STV, Utrecht, 1997.
- Declarația anti-trafic a Europei de Sud-Est*, 13 decembrie 2000, Palermo.