

HUMAN TRAFFICKING, A CHALLENGE FOR CONTEMPORARY SOCIETY

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RESUMEN:

La trata de seres humanos: es un tema que concierne al tema de las instituciones internacionales en los últimos años, con mayor frecuencia. La trata de personas se considera una forma particular de manifestación de la delincuencia organizada porque implica, en esencia, el tráfico ilícito de personas. Normalmente, las manifestaciones más significativas de la trata de personas son la prostitución organizada, el proxenetismo, las adopciones ilegales y, en general, la migración ilegal de personas, siendo víctimas de ello mayoritariamente mujeres y niños. Se lleva a cabo un estudio de este problema, por desgracia, plenamente actual.

ABSTRACT:

Trafficking in human beings - is an issue that increasingly concerns the international institutions in recent years. Human trafficking, the illicit trade in people, is considered a particular manifestation of organized crime, which include organized prostitution, pimping, illegal adoptions, and generally, the illegal migration of people. The victims are primarily women and children. Here we provide details and timelines related to these issues.

PALABRAS CLAVE: *Trata de Seres Humanos, mujeres, niños*

KEYWORDS: *Human trafficking, women, children*

In dealing with this, would be to combine internal and international regulations. We refer initially to the Universal Declaration of Human Rights and Article 1 begins with an analysis of: «All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood . » But if we refer to the ancient times to the present, human trafficking has circumvented this provision, no matter what form of dress: the prostitution, the pimping, illegal adoptions or the illegal migration of persons etc.

Human trafficking is considered a particular form of manifestation of organized crime is, in essence, the illicit trade in people.¹

The Palermo Convention of 13 December 2000, gives the definition of human trafficking:

a. «*Trafficking in persons means the recruitment, transportation, transfer, harboring or receipt of persons by threat or use of force or other forms of coercion, of abduction, of fraud, of deception or abuse of power by using a vulnerable situation, the giving or receiving payments or benefits to achieve the consent of a person having control over another person for purposes of exploitation. The operation means*

¹ OLTEI, Iuliana Gabriela: *Human Traffick. Legal Issues.*, Published in: «Review of Panal Law», No. 2/2009.

prostitution or other forms of sexual exploitation, forced labor or services, slavery or similar practices, servitude or the removal of organs. »

b. *«The consent of a victim of intentional exploitation of trafficking for the purposes referred to in paragraph a. is irrelevant if you have used any of the above-mentioned processes»;*

c. *«The recruitment, transportation, transfer, harboring or receipt of child exploitation will be considered trafficking even if they do not involve any of the procedures provided for in paragraph a. »*

On 4th of December 2002, Romania has ratified the Palermo Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Also, the Romanian law, art. 12 al. 1 of Law no. 678/2001 on preventing and combating trafficking in persons, trafficking in persons as defined in the following way: *«The recruitment, transportation, transfer, harboring or receipt of persons by threat, force or other forms of coercion, of abduction, fraud or deception, abuse of authority or taking advantage of that person inability to defend themselves or to express their will, or by offering, giving or receiving of payments or benefits to achieve the consent of the person who has authority over another person for purposes of exploitation this person».*²

The provisions of art. 13. par. 1 of that law defines child trafficking as *«recruitment, transportation, transfer, harboring or receiving a minor in order to exploit it».*

Unfortunately, there is a very close network of committing such crimes, the citizens who are generally poorer. A predominant orientation is noted on Eastern Europe.

First, as geografică settlement, as well as economic, allows networks that smuggle people to access very easy to manipulate masses of people in Romania, and amazingly it appears many times, that even parents of children trafficked are parties directly

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First, as geographical location, economic level as well, allowing trafficking networks are very easy to gain access to manipulate masses of people in Romania, and amazingly it appears many times, that even parents of children trafficked are parties directly involved in these illicit commercial acts, we might say.

The modalities of recruitment are vast. As I stated in the previous paragraph, one of them is even sale of minors by parents, for illegal adoptions, and more and more serious to commit child sex offenses, and not least for the illicit exploitation of minors: begging (to be reach their disfigurement forced to attract the sympathy of others), work hard, etc.

Compared to the major people, when talking about the means of recruitment, we refer to one of the most common, namely, the false promises of work from some knowledge, relatives or friends.

In Romania, trafficking in human beings is regulated for the first time as distinct from crime in Law. 678/2001, as amended, represents a legislative framework in Romania in the transposition of European legislation and international provisions related to trafficking. Another piece of legislation in this area is the Regulation for applying Law no. Adopted by Government Decision No. 678/2001. 299/20035, legislation intended to clarify roles and responsibilities that institutions have received by previous laws. By GEO. 79/2005 and by Law no. 287/2005, last amendment was made to the Law. 678/2001 relating to crime, the causes of impunity and assistance in Romania, foreign persons, victims of trafficking.³

Before appearing special laws, regulations were lacking in the Criminal Code. Thus, the

² *Ibid.*

³ OLTEI, Iuliana Gabriela: *Human Traffick. Legal Issues.*, Published in: «Review of Panal Law», No. 2/2009.

Criminal Code of 1936 provided, along with the crime of pimping in the usual form (art. 436) and severe form (art. 437), the crime of trafficking in women having an international character, such as aggravated and (art. 439). A series of preparatory acts performed for the crime of trafficking in women were punished as attempts (art. 440). Criminal Code of 1968 focused on the provisions of art. 329, all forms of procurement, to facilitate prostitution and trafficking of women, referred to above. The same code in May sanctioned deprivation of liberty, art. 189, slavery, art. 190, subjected to forced or compulsory labor, art. 191. Analyzing these provisions of the Criminal Code in comparison with those of the special law, it appears that before the advent of the latter remained sanctioned a series of illegal activities carried out in order to facilitate trafficking in persons, and on the other hand, ensure effective legal protection against all forms of actions that are likely to achieve trade and exploitation of human beings.⁴

In our approach, we want to relate to an extremely contemporary niche, namely trafficking in children, their rights and freedoms.

Protecting and promoting children's rights has become an international concern, adopting the best documents in this regard. Convention on the Rights of the Child is the human rights treaty with the widest ratification history.⁵

Sexual exploitation and abuse of children and young adults, often for profit only recently been recognized as a social problem and the facts that require urgent action at national and international. First there was the stage of denial or minimizing the phenomenon. During this stage, it was considered, and in some countries still consider yet, exploitation and sexual abuse of

young people as a rare phenomenon and without significant consequences. It took very long until it was recognized that the problem has reached considerable size and that require attention at national and international phenomenon. Minimizing the problem resulted, among other things, poverty reliable statistical data in this area.

«The next stage tended to attribute to sexual exploitation and abuse of children and young adults a fortuity, as degenerate acts committed by few individuals. When these facts came to public attention the first time they were considered pathological cases, offenders are counted as «mentally unbalanced degenerates and monsters». Now, after the media revealed that many cases of young people on sexual abuse were made, it is not easy to believe that those who indulge in such acts or profit from them are people with mental disorders. The third stage was characterized by accusing the victims. Victims of sexual abuse and exploitation were seen as alluring and perversely inclined to such an extent that they have whipped themselves from sexual abuse. Regardless of age, victims have been identified as highly aggressive and provocative and, if it were their whims on them would not have committed any abuse. Finally, in some countries has reached the final stage: the emergence of pressure groups and social movements have organized campaigns against the sexual exploitation of children and young adults. They have contributed greatly to raising awareness and public authorities.»⁶

By way of example, to present a case that was before the High Court of Cassation and Justice of Romania, namely Decision. 593 of 30 January 2004.

The recruitment of a minor in order to exploit it by begging and recruiting an adult,

⁴ *Ibid.*

⁵ RUSU, Marcel Ioan: *Considerations on the protection and promotion of children's rights in EU legislation*, Annales Universitatis Apulensis, Nr. 11/2008.

⁶ POPA, Nelu Dorinel: *Sexual exploitation of children*, Published in: «Review of Panal Law» No. 4/2007.

by offering and giving money or benefits to achieve the consent of the person who has authority over it, for the same purpose, the constituent elements of minor traffic offenses and trafficking in persons referred to in art. 13 and art. 12 of Law no. 678/2001.

With criminal sentence no. 585 of October 8, 2003, the Court finds defendants sentenced for crimes GJ and RB and trafficking of minors and trafficking in persons referred to in art. 13 para. (A), (3) and (4) and art. 12 para. (A) and para. (2). from Law no. 678/2001.

The court noted that on 19 May 2002, defendant GJ went to town Năvodari, and inquiring about the existence of children with disabilities, has been referred to juvenile family BM.

Minor, who had a leg disability, the defendant accepted the offer to go abroad to beg, provided it was accompanied by his sister BA.

Defendant convinced the mother of his two sisters, BC, to agree to leave them, giving them money and goods.

In achieving its purpose, the defendant GJ took the minor and her sister and their mother, to the authorities for obtaining passport formalities. RB defendant has paid the fees for passports, which then, the two defendants took from the girls.

On 15 July 2002, defendant RB was detained at the border, trying to pull out of the country the BM and BA.

Constanta Court of Appeals, by Decision No criminal. 354 / P of 7 November 2003, has rejected calls defendants.

Defendants are baseless appeals.

Article 13 of Law no. 678/2001 provides that 'recruitment, transportation, transfer, harboring or receipt of persons aged between 15 and 18, in the purpose of exploitation, is the offense of trafficking in minors».

Article 12. (A) of the Law, referring to victims of major crime makes the existence of trafficking activity prior to recruitment, transportation, transfer, harboring or receipt of persons by threat, violence or other forms

of coercion, abduction, fraud, deception, abuse of authority or taking advantage of that person's inability to defend themselves or to express the will or by offering, giving, accepting or receiving money or other benefits to obtain the consent of the person who has authority over another person for the purpose of exploitation.

Article 2, paragraph (2). b) Law no. 678/2001 provides that service means «keeping in a state of slavery or other similar procedures of deprivation of freedom or servitude» and the letter. e) provides that «the performance of other such activities that violate human rights and fundamental freedoms» is also a form of exploitation by «servitude» within the meaning of the text quoted understood «the action of subjecting».

However, once get abroad, two sisters, lack of identity in a country whose language they did not know, and could maintain only expedients, begging for defendant RB.

Deed of the two defendants has the elements of the crime of human trafficking, while the BA major recruitment person for purposes of exploitation, is done with the consent of persons who have authority over it - parents of the girl - defendants who gave them money and goods promising them both that they send half the money earned from begging for their daughters.

Therefore, those are the constituent elements of the crime of trafficking in minors and human trafficking, which is why the appeals were rejected defendants.⁷

Here is therefore a serious problem with the Romanian society, but also the international experience, and because of high rates that have reached a rooted, secure issue that can be achieved with great difficulty, given the organizational form of criminal networks and the extent that they have.

To highlight the gravity of these facts, we will refer to another example (here), tried to Alba Iulia Court of Appeal⁸:

⁷ <http://www.scj.ro>

⁸ <http://www.jurisprudenta.com>

Trafficking in persons and trafficking in minors. Retraction of the statements given by victims and refinement. Judge's obligation to give reasons for removing data declarations victims during judicial investigations. Acts accused of being recruited three of the injured party a minor error in diverting them to travel abroad on purpose made of the constituent content of trafficking crimes and trafficking in minors under 12, 13 of the Law nr.678 / 2001 on preventing and combating trafficking.

Department for cases involving minors and family - Criminal Decision No. 41 / A / September 6, 2006 By decision of 14 June 2006, no.233 Criminal Court Hunedoara - VVC defendants convicted criminal section of the IRD and the resulting punishment of three years, or 3 years and six months imprisonment for the crime prev. by art. 12 alin.1si 2, 13 paragraph 2, 3 of Law 678/2001 modified and republished with apps. prev.art.74 letter. of 76 points. a, b of the Criminal Code, 33 points. 34 Criminal Code.

To hear this sentence, the Court held that defendants from Hunedoara, taking advantage of the wealth of many poor women from the Jiu Valley, the town of Lupeni, they have recruited in the period 2004 - 2005 under the promise of providing jobs in Italy. The recruitment of young offender dealt with VVC, which supported all costs required to obtain passports for three couples (two major and one minor) and travel expenses. Once in Italy, the three victims were hosted by IRD defendant who then forced them into prostitution, the promise of decent jobs is in fact a lie used to provide confidence to the young.

The Money that the young obtained from this activity have been appropriated by defendants. Judge fund, analyzing documents and materials and the light disappeared. art. 1 para 1 Code of Criminal Procedure, art. 626 Code of criminal procedure and criminal procedure code 63 has concluded that oscillating behavior of the injured party due to pressure on their carers defendants.

Thus, removing insincere statements reasoned, was retained by the judge guilt for the acts of defendants who ordered the prosecution. In terms of enforcement, the court before sentencing and execution determining how to take account of lack of previous criminal conduct of the defendants previously offenses, tangible danger and how to commit crimes by them.

Against sentence appealed instance, in legal terms provided. art. 363 defendants in criminal procedure code. In the grounds of appeal in writing and orally supported the Court of Appeal, the defendants have shown that it is not considered guilty of crimes for which they were convicted.

They showed that these girls helped financially without claiming and obtaining any material advantage in knowing their insistence that they come from needy families. In relation to these reasons, the defendants asked the caller under Available payment. art. 11pct.2 letter, rap. in Article 10 letter. the criminal procedure code. The defendants claimed that callers have the objective side of human trafficking offenses is not made because of the rules of evidence shall not result in threats, abduction, fraud or other form of compulsion on the victims and no exercise of the victim of abuse of minors.

A final court decision critical of the fund was the failure to state reasons regarding the Iron Curtain by the court of substantive evidence in defense proposed by the defendants. In relation to grounds of appeal raised, the defendants-callers have asked to be given evidence before the court of appeal. Examining the reasons of appeal raised by the defendants, in the light of art. 378 from Criminal Procedure Code, the Court of Appeal Alba - Iulia, the decision upheld the appeals nr.41/A/06.09.2006 criminal defendants, and abolished the criminal sentence appealed only in terms of individualization of sentences for the two defendants in the sense that given the greater efficiency from art. 74, 76 to the Criminal Code and under the supervision of

suspended sentences imposed on defendants and proceeding to a new trial in this range.

Answering the grounds of appeal raised the point, Alba-Iulia Court of Appeal held: instance judge had in mind a fact confirmed by the evidence file correctly. The fact that the two defendants - caller the 3 victims were recruited and they have «facilitated» departure to Italy, promising them jobs as waiters and chambermaids witnessed by: statements aggrieved parties who have come to know the two defendants, one from another and knew that they «helped» more girls to go to Italy.

The two defendants are brother's in law, and the defendant sister is staying for several years in Italy, to Naples. In statements during the prosecution they describe, in detail, that the job offer was made by the two defendants callers, they have accompanied them to the competent authorities to obtain passports, they set the date of departure, had «arranged» Who to expect in Italy, where to be accommodated and reached once informed that there were to be prostitutes.

In the course of legal research, civil party presented another series of facts, but the recruitment and transportation of injured parties in Italy by the defendants, where they checked the results from the statements of witnesses who agree with the issues presented by the injured parties; transcribing minutes of phone call. In the context of said probation, the judge instance, correctly held that they are constitutive elements of the crime of trafficking in persons and minors. The evidence showed that the three injured parties (two major and one minor) were recruited under the promise of jobs in Italy, as waiters and chambermaids. It turns out

that the defendants-callers have accompanied the injured parties to obtain documents, they have paid and transported to Italy, they expected that they sent someone you trust who expect to finish, gave assurances that the minor mother to give consent to leave his daughter.

In the context of the aforementioned probation judge properly fund established conditions for the existence of all criminal liability of both defendants for crimes caller withheld because the three injured parties at the time of recruitment had no job, had no income, so for the defendants - the call was easy to put injured parties in a state of addiction to them. Once in Italy, without papers and without money, the injured parties were only required to follow the conduct of traffickers. This is why their call for the payment for the acts of trafficking in persons and minors has proved to be unfounded. Failure to state reasons for criticism by the judge the evidence suggested the Iron Curtain is unfounded. The judge thoroughly analyzed the entire fund probation, expressly and explicitly stated reasons for which the victim recalls are not justified in concluding their Iron Curtain. Court of Appeal in accordance with the dispute, by the Article 52, 72 from Criminal Code giving efficiency criteria of individualization of punishment and taking account of dispute. 86 / 1 of the Criminal Code as amended by Law no. 278/2006 found that application of a suspended sentence and supervised probation set a maximum range provided by the application. The 86 / 2 of the Criminal Code is able to provide preventive and educational role required by article 52 of the Criminal Code.