

Human Trade

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Abstract:

Regarded as a global phenomenon of our time, human trade has transformed into a complex mechanism, adapting it in terms of the objective pursued, contemporary society, diversity, complexity and size. Dangerousness of this phenomenon far surpasses the national and international statistics and forecasts.

Keywords: *freedom, human, trade, society*

INTRODUCTION

Freedom is usually conceived as absence of any external constraints: the usual sense of the word liberty, it defines otherwise, and the meaning or origin. The origins of our civilization, freedom is provided free of man who is not a slave (servus) or prisoner. As opposed to slave, treated as a devoid tool of rights, or master citizen freely dispose of his person and actively participate in city life. Thus, freedom is first status, for a social and political condition, guaranteed by a set of rights and duties, before being conceived by philosophers, theologians as an individual characteristic purely psychological and moral.

Freedom also means that the individual must bear the consequences of his actions, he will be praised or blamed for them. Freedom and responsibility are inseparable. A society that does not recognize that every individual has their own values on which it is entitled to follow has no respect for the dignity of the individual and can not know freedom. Equally true it is that in a free society, the individual will be respected depending on how they use their freedom.

HUMAN TRAFFICKING

Regarded as a global phenomenon of our time, human trade has transformed into a complex mechanism, adapting it in terms of the objective

pursued, contemporary society, diversity, complexity and size. Dangerousness of this phenomenon far surpasses the national and international statistics and forecasts. As a body tentacular well organized trafficking continuously adapt to the social environment, speculation and possible weaknesses and crossing the barriers of law, annihilating a network traffic in a region of the globe, and may result in immediate reaction of self-defense, traffic proliferation elsewhere in the world.

Because trafficking is a danger raised serious prejudicing the rights and fundamental freedoms, the rule prosecution is an essential tool, even central, the activity of preventing and combating the phenomenon of anti-social.

Nationally, amid international regulations of the UN and regional European countries, Romania has criminalized in 2001, for the first time trafficking as a criminal offense. Responsive to extraneous legal transformations and in turn confronted with the phenomenon of human trafficking, while Romanian legislator chose to follow the model of the UN Protocol and the Council of Europe Convention, while adapting criminal law and the new membership of the European Union. The result is not negligible in terms of standardized legal issues, requiring constant but changes and additions, sometimes delayed by the many issues covered and in addition, the urgency which determines the priority of their regulation.

From analysis carried we appreciate that legislative progress in the area of trafficking are real, being so recognized expert reports of the UN, OSCE, USA etc. No special law. 678/2001 envisages key issues requiring regulation: prevention of trafficking, catching and punishing traffickers, protecting victims of trafficking. In this regard, special law and its implementing Regulation details in separate chapters rules of prevention, the substantive criminal criminalizing distinct and punishing offenses of trafficking or trafficking of minors, and acts in connection therewith, the procedural rules relating to criminal proceedings, legal provisions ensuring the protection and assistance of victims of trafficking and those which seeks to ensure international cooperation in the field.

From the point of view of form, but also, to some extent, content, Romanian special law seeks legal thread of the UN protocol. Definition of the crime of trafficking and the trafficking of minors are taken from international text, respecting the rigors detail on the ways and means of achieving the act, the purpose of it. However, the law makes no express indication related to criminalizing trafficking in national or cross-border, criminalizing both events based on the text of the law.

In fact, Romanian law by inserting improves UN definition of trafficking in organs as a specific form of exploitation of trafficked persons. Criminal penalties for the offense of trafficking or the trafficking of minors comply with the UN Protocol on the Community and the Council of Europe Convention, being proportional to the seriousness of the offense, distinct depending on the forms aggravated offenses and having an amount comprised between 3 and 12 years respectively 5 and 15 years for simple forms thereof.

Another positive aspect is that of establishing distinct and trenchant mood of the passive subject of punishment of the crime of trafficking for acts committed during the operation.

The law also expressly states that the criminal liability of the perpetrator does not depend on whether or not the victim's consent manifested in its recruitment.

However, shortcomings that we show special law Romanian are not few, are generated as in other cases, the lack of timeliness in completing and changing the rules, action so necessary for updating the text to maintain its compliance with transformations of reality. We envisage, for example, the introduction of rules of law in reference to the Criminal Code which refers to the possibility of criminal liability of legal persons, this being regulated after the entry into force of the law, through the general criminal provisions. It would also be necessary to clarify in law the status of an active subject of organized criminal groups and refer in this respect to the criminal provisions of Law no. 39/2003 on preventing and combating organized crime. Another shortcoming of anti-

trafficking standards is the lack of criminalization of demand for trafficked persons in the sense of using services provided by victims, knowing the operational situation in which they are located. The draft Criminal Code criminalizing Romanian is already considering the future of this act, in accordance with the UN and the Council of Europe. Amid legislative harmonization determined by membership of the European Union, Romanian legislature must consider the whole complex of EU rules affecting the legal norms anti-trafficking and targeting aspects of procedural criminal assistance and protection of victims of trafficking especially women and children etc. Thus, modification of Law no. 678/2001 should be done in tandem with that of all acts Romanian regulations that touch issues of human trafficking, the criminal rule on the administrative, civil or of labor law etc. At present, although there are concrete proposals for completing the Romanian special law on anti-trafficking, their implementation has been delayed due to the development of new codes Penal, Criminal Procedure, Civil and Civil Procedure. We appreciate that while systematizing regulatory accomplished by coding is essentially beneficial not believe that it is appropriate in the case of human trafficking.

The complexity of the crime itself rather requires special law that criminalizes keeping and filling them than replace this law with the substantive and procedural criminal rules, disparate contained in other legislation. Special law, in that it covers the main aspects of preventing and combating trafficking, equivalent to a normative guide in the field, creating an overall picture for the one that applies.

Which diminishes the effectiveness of anti-trafficking law is not the form in which the rules are present, but mainly Updates, precision of language legislation, plus a lack of institutional coordination for the structures involved in preventing and combating trafficking people, and a lack of financial resources, otherwise known matter in Romania. However, legislative efforts and institutions

of the Romanian state to prevent and combat human trafficking and cross-border are notable and constant, reflected specifically in the growing number of victims identified, the number of convictions for trafficking offenses in identifying and dismantling networks traffic in the region. Positive results are assured and direct and constant collaboration with the Romanian authorities correspondents of national states and international and regional: UNODC, UNICEF, Interpol, Europol, Eurojust, Frontex, etc. We also appreciate the beneficial creation of the National Agency against Trafficking in Persons, for monitoring the manifestations of the phenomenon of trafficking in persons to counter its activity that facilitates the coordination of activities to prevent and combat human trafficking at national level, according to the data supplied by that body. What we do not appreciate, however, is regular change of the administrative hierarchy of the institutions involved in preventing and combating trafficking in persons, a situation that creates confusion addressing internally and internationally and difficult solve the problems related to traffic.

We must recognize that in every area, including this one, world states actions are guided by their own interests and only secondarily to the common good, planetary. From this perspective, the UN sanctions system often proves ineffective, economic and political circumstances dictating the accountability of Member States for failure to fulfill obligations, including in the case of human trafficking.

Penal perspective, requires continuous adaptation dynamics of legislation and other measures social areas which require a careful study of the various laws that have very successful in combating and preventing trafficking. These regulations will serve as a model for the creation of national standards and international standards and in preventing and combating the phenomenon of which we have dealt with in this paper.

CONCLUSION

Regardless of the rigor with which the crime of trafficking in persons shall

be governed and sanctioned internationally and nationally, if the world's countries will not consider, first, taking the necessary measures to combat social and economic causes that maintain the phenomenon itself the fight will be lost ab initio.

BIBLIOGRAPHY:

1. **V.Dongoroz, S.Kahane, I.Oancea, R.Stănoiu, I.Fodor, N.Iliescu, C.Bulai, V.Roșca**, *Explicații teoretice ale Codului penal român, Partea Generală*, vol.I, Ed. Academiei Române, București, 1969.
2. **Prof univ.dr. Horia Diaconescu**, *Infracțiunile de corupție și cele asimilate acestora*, Ed. All Beck, București, 2004
3. **Elena Macavei** *Prostituția între ignorare și mistificare*, Ed. ANTET, București 2005
4. **Macavei Elena**, *Prostituția – mod de socializare și comercializare a sexului*, Ed. ANTET, București 2002
5. **Gh.Mateuț, Violeta Elena Petrescu, Nicoleta Stetroi, Elena, Onu, Aurel Dublea, Sofica Luca, Daniela Iovu, Radu Dimitrie Tărniceriu, Georgeta Lăcrămioara Gafta, Cătălin Luca, Raluca Alexandra Prună**, *Traficul de ființe umane. Infractor. Victimă. Infracțiune*, Ed. Asociația Alternative Sociale, Iași, 2005.
6. **Al.Boroi, Gh.Nistoreanu**, *Drept penal, Parte specială*, Edition 3, Ed. All Beck, București, 2005
7. **I.Chipăilă, C.Drăghici, C.E.Ștefan, Ligia T.Pintilie, G.Oloeriu, M.C.Țupulan**, *Globalizarea traficului de copii*, Ed. SITECH, Craiova, 2006.
8. **Georgeta Ungureanu, Gianina Cudrișescu, Cristina Lixandru, Camelia Voicu** – *Femeia contemporană – între deziderat și realitate*, Ed. Pro Universitaria, București, 2004;