



Methodology of the Investigation of the Crime of Pimping

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Abstract: In the context of poverty and economic instability, of unemployment affecting more and more people, there are certain apparently legal situations/temptations, which, if given in to, may lead to quick gains without hard work. The immediate result is an endangerment of public morals and of social life relationships. My intention is to present the investigation of the crime of pimping which is most often related to the crime of prostitution and human trafficking, through an interdisciplinary approach to criminal law and forensic science. I considered it useful to briefly present in the first part of the article the constitutive elements of the offence, as this is an article addressing international readership, and thus provide the opportunity of becoming acquainted with the Romanian legislation. The aim of the research is on the one hand to show the differences in the regulation of the pimping crime, in light of the Romanian Criminal Code now in force (February 2013) and according to the new Romanian Criminal Code, and on the other hand to highlight the features of the forensic investigation of this offence, which is often complex and difficult, because of the expanding of the investigation from an offence of pimping at first to prostitution and transnational human trafficking networks. The presentation of the topic by analyzing the existing legislation, by relevant observations regarding the new regulations, by exemplifying the investigative work through cases from judicial practice, gives an original perspective on the subject, brings new elements and a critical approach in the context of the dynamics of the legislation.

Keywords: forensic science; hearing; forensic activity

1. Introduction

Normally, good social cohabitation is conditioned, among other things, by the lawful procurement of one's means of existence. In a world where poverty, economic instability, unemployment affect more and more people, there are certain apparently legal situations/temptations, which, if given in to, may lead to quick gains without hard work.

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Studies carried out worldwide show that wealth is now concentrated in sectors dominated by highly-qualified workforce. As a result, there is an increased risk that the vulnerable persons who are secondary passive subjects of the crime of pimping, might come especially from among people who are inactive in the labour market, low-skilled, young, uneducated, naive and with unrealistic social and professional expectations in relation to their education and possibilities.

Generally speaking, migration is an important factor in the development of criminality. If we associate it with globalization and industrialization, we can say that the dynamics of migration in a particular area determines the emergence of subjects who either initiate a quick, profitable business (e.g. massage parlours) or are recruited into already existing networks (e.g. nightclubs), apparently legal businesses, but with illegal components.

If at first it may seem to be legal migration, with the future victims legally leaving the country of origin, transiting and reaching the country of destination, towards the end of the journey illegal actions are committed which may complete the constituent elements of the criminal offences in this field¹, including that of pimping.

In the situation where a potential migrant weighs the possibilities to migrate or not, social capital works to reduce risks and increase the motivation to migrate (Iancu, 2013, p.66). Thus, there are situations where migrants, before leaving the country of transit or after they have reached their destination, change their priorities and, depending on whether they find easily or don't find at all what they expected, become involved or not in various legal or illegal activities.

Labour migration is the one that determines a significant migration flow between states but also within the same state. Both the Romanian legislation and that of the EU contain provisions governing the rights and obligations of the Community worker (Nechita, 2010), thus encouraging the observance of the legal limitations of partnerships that may enter the labour market. Among the fundamental freedoms in the labour market are the rights of the European Union's citizens to establish themselves and provide services anywhere in the European Union (Florian & Florian & Banciu, 2010).

It is significant in this respect that the first modern normative act in the matter of settlement of collective labour disputes in the Romanian legal system, the Trancu-

¹ The crime of prostitution.

Iași Law of year 1920, recognized, in Article 1, everyone's right "to work at will", an idea reiterated in subsequent normative acts, starting with the Constitution of 1923 (Onica-Chipea, 2012, pp. 33-36).

While in Europe there are states where prostitution is legalized, and states where it is criminalized, people involved are often part of organized networks providing criminal activities, actions forming the material element of the actus reus of the offence of pimping, actions criminalized by the legislation of all modern states.

Typically, offenders focus their criminal approach on people looking for an opportunity to go abroad, with a precarious financial and family situation. It is very important for people coming from Central and Eastern Europe to be offered an accommodation of their own, which is a level of independence unthinkable as compared to the situation in their countries of origin. Trafficked persons are led to believe that they will reach a rich country in Western Europe, where soon they will earn large sums of money, which they can use for themselves and their families to end the poverty and despair (Olteanu, 2005, pp. 186 - 187).

Thus, the phenomenon generally called crime is a great social danger because it has become international, has expanded its coverage and scope of activities at an alarming rate, being a concern for most countries, but especially for those whose economy is in transition (Buzatu, 2012, p. 109).

A component of criminality is pimping, which, from the investigation perspective, is linked to prostitution. There are many cases where, during the investigation of a crime of prostitution, a pimp or a human trafficking network is uncovered.

We refer on the one hand to paid sexual services because in the course of time there have been claims to legalize them and, on the other hand, we have in view the main mode of human exploitation by forcing persons to perform sexual services or pornographic representations or other types of activities that violate human dignity (Gavriș, 2009, p. 107).

However, by committing this crime, not only human dignity is prejudiced, but also the person's right to dispose of his/her body, one of the most natural, inalienable and indefeasible rights of a human being. A person's right to dispose of himself/herself, expressly regulated by the New Romanian Civil Code in Article 60, involves two main aspects: on the one hand, only the person may dispose of his/her being, his/her physical integrity and freedom, and on the other hand, by exercising this right, the person should not prejudice the rights of others, public

order or morality (Duminică & Draghici, 2010, p. 416).

As a result, exploiting others – men or women, children or adults, can only produce negative consequences in society, being an immoral and illegal activity that violates fundamental and natural human rights.

Also, in the criminal matter, through the proposition in the new Romanian Criminal Code¹, Article 182, the legislator defines the concept of “exploitation of persons” as possible in five variants, namely:

- a) forcible submission to executing a work or performing services;
- b) keeping in a state of slavery or other similar processes of deprivation of freedom or servitude;
- c) forcing into prostitution, pornographic manifestations in the production and dissemination of pornographic materials or other forms of sexual exploitation;
- d) forcing into the practice of begging;
- e) illegal removal of organs.

In the context of the theme of this article, we will refer to point c. The crime of prostitution is provided for in the Romanian Criminal Code, Article 328, as the act of a person “who procures his/her means of existence or main means of existence by practicing for this purpose sex with different people”. In this regard, we note that in the new Romanian Criminal Code, the legislator leaves, in the legal content of another crime (the crime of pimping), in Article 213, paragraph 4, the concept of prostitution practice, defining it as “*engagement in sexual acts with different people in order to obtain economic benefits for oneself or for another*”.

2. Concept. Aspects of Criminal Law. Present and Future Approach

The offence of pimping is provided for in the Romanian Criminal Code, in Title IX, “Offences against social relations of coexistence”, Chapter IV, in force at the time of writing the article (February 2013), in Article 329, paragraph 1, in its simple form, as the act by which a person “*induces or facilitates prostitution practice or benefits from prostitution practice by a person*”.

In the new Romanian Criminal Code, in Title I, “Offences against the person”, Chapter VII entitled “Trafficking and exploitation of vulnerable persons”, in Article 213, the legislator introduced the crime of pimping under paragraph 1,

¹ Law no. 286/2009 published in The Official Journal of Romania, Part I, No. 510/2009.

defined as *“Determining or facilitating prostitution practice or obtaining patrimonial benefits from prostitution practice by one or more persons shall be punished by imprisonment for 2-7 years and deprivation of certain rights”*.

If we analyze this paragraph in the two texts, we notice some similarities and differences. Namely:

- As regards the objective side, the new text brings new terms, i.e. it replaces the term “to induce” with the term “to determine”. Accordingly, we consider “to determine” as a better term, because it is explicit, precise, and can be easily demonstrated in research;
- In both texts, the material element is the action of “facilitating prostitution practice”;
- In the new text the legislator makes exact reference to the benefits that can be derived from prostitution, which are only “patrimonial benefits” as compared with the text now in force in which the term “to benefit” is used. I consider the new text as more precise in that it does not leave room for so many interpretations. In the current regulation to benefit can mean so many things, even the possibility that the perpetrator can get benefits simply as someone maintained by such a person (Toader, 2008, p. 458).

Aggravated forms in the current regulation are referred to in paragraph 2 of Article 329 as “recruiting a person for prostitution or trafficking persons for this purpose, as well as coercion into prostitution” and in paragraph 3, as the acts provided for in paragraph 1 or paragraph 2, when committed against a minor or being of a serious nature in some other way.

In the new Romanian Criminal Code, in paragraph 2, the aggravated form of the offence is provided for as the act by which either starting or continuing prostitution was determined by coercion. The two paragraphs in the texts that are being compared are different by the following elements:

- in the current regulation we have, the action of “recruitment” for prostitution or human trafficking, and in the new regulation we have the action of “determining” someone either to start or continue prostitution, without considering human trafficking anymore, thus the new text has been simplified, becoming even clearer;
- both texts provide the possibility of actions committed by coercion;
- both texts provide the possibility of actions committed in the presence of a minor (in the current regulation, paragraph 3), or of which the “passive subject can be a

minor” (in the new text proposed by the legislator).

Relevant to the issue under review, when the passive subject is a minor, is the Optional Protocol to the International Convention on the Rights of the Child regarding the sale of children, child prostitution and child pornography, which defines child prostitution as “the use of children for sexual activities, in exchange for remuneration or another form of retribution”.

In the matter of criminal procedure other measures necessary to protect the rights and interests of children who are victims of these crimes are established, namely:

- the protection of children, taking into account their special needs, especially when they are witnesses;
- informing them about their rights and the proceedings;
- consideration and review of the views and opinions of the child;
- protection of the identity of the child who is a victim and of his/her private life to prevent the dissemination of any information that could lead to their identification (Drăghici, 2010, p. 56).

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse should also be considered, also with a view to protecting children and bringing offenders to justice (Aleca & Drăghici, 2012, pp. 23-36).

Some authors in the specialized literature consider procurement actions as acts of instigation or complicity in prostitution. A comparison of sanctions leads to the following findings:

- the penalty is the same for the simple form, imprisonment from 2 to 7 years and interdiction of certain rights;
- for the aggravated form, the penalty is the same, imprisonment from 3 to 10 years and interdiction of certain rights, unless the passive subject is a minor, in which case the special limits of the punishment should be increased by half;
- the legislator does not expressly provide in the new text, imprisonment of 5-18 years and interdiction of certain rights as punishment if the offence is committed against a minor or is of another serious nature.

3. Particularities of the Investigation of the Offence of Pimping

In terms of investigation, the crime of pimping is linked to the crime of prostitution and/or of human trafficking. As a result, the investigation of this crime is complex, requiring a lot of expertise as the investigative activities will be customized according to the mode and means used by offenders, the number of participants, their age, the extent of the network.

The pimp usually starts with building the “business”. In this respect, the first step is to recruit people who will be involved in various forms at different stages of the criminal activity. This stage is customized depending on the level of organization of the criminal networks, the qualities and logistical possibilities that those who are directly involved in this activity have.

Current methods used for recruitment are:

- Recruitment in bars, cafes, clubs, discos and other places where people passing through “difficult times” express their dissatisfaction or an interest to work abroad;
- Recruitment through family acquaintances and circle of friends;
- Recruitment through advertisements, announcements, job offers or offers to study abroad;
- Recruitment through agencies offering jobs abroad, studies or marriage abroad (Olteanu, 2005, pp. 186-187).

To conduct investigation and prepare the hearing of persons the case will be documented by gathering data and information from the places and micro-social groups to which we referred above, the gathering information activity being the most effective for identifying and supervising persons with predisposition to commit such acts, and for observing the dynamics of the crime. For example, family, the circle of friends, the neighbours of the victim or the perpetrator, the inhabitants of a certain area will provide various pieces of information on the habits, the interests, the entourage, the behaviour of those involved in committing the crime.

Not infrequently, the recruitment is done by applying force, abuse of various kinds, leading to acts of violence causing physical and mental suffering. In these cases, upon investigation of the site where acts of prostitution were carried out (houses, cars, roads, bars, gardens, public institutions, etc.), or where the perpetrator lives or carries out his/her apparently legal activity (corporate offices, nightclubs, discos, massage parlours, leisure and/or beauty centres, hotels), biological evidence can be

found (e.g., blood, hair, semen, urine, saliva).

Traces can be exploited which are in the form of objects, scrap items, such as clothes, condoms, objects used during sexual acts. As a result, investigators will be able to establish the link between the participants, the relationship they have with each other, the reactions they had to different proposals, the tariffs set, the sums of money obtained from charging fees for the sexual acts performed, the remaining percentages for the parties.

For forensic activities to reach their goal, those suspected of undertaking illicit activities will be put under surveillance, as these activities may constitute the objective side of the crime of pimping.

At the same time, stakeouts will be organized and filming of targets with the potential risk of accommodating people already known to have practiced prostitution on their own or who were subjects of crimes in this area. Special attention will be given to specific locations where such activities have already been carried out and to persons already investigated or convicted of crimes in this area. For example, the defendant was filmed while walking with several customers to their cars.

The active subject of the crime can be any person, not circumstantial, therefore, in restricting the number of suspects, the possibilities in which the offence can be committed will be taken into account, seeking connection with other activities specific to the offences in this area.

If the offence is committed against a minor, for the correct classification of the offence it must be proven that this circumstance was known to the offender. In this respect, the investigation will determine the age of the people involved, the state of physical and mental development of the person, the rumors circulating in the area about the person in question. Of course, the age of the passive subject is important for sentence individualization too, acts of pimping being punished more severely when victims are minor, because the victims' young age makes them more vulnerable, more easily deceived and convinced to join criminal networks. For sentence individualization, the judicial body will be in the position to estimate whether there was a result of a serious nature. The following circumstances are considered as aggravating: the use of illicit substances or of arms, threats and violence applied in the aggravated form of the offence.

The offence of pimping can be proved by proper documentation pursuing several

aspects of the case. Among them are the following:

- What is the identity of the person who induced and what did the induction consist of (e.g., encouraging a person by presenting the acts of prostitution that the passive subject was already practicing, as positive, beneficial for that person)?
- What is the person's identity and how did facilitating prostitution occur (for example, making available one's home, parlour, hotel, for prostitution practice)?
- What is the identity of the person/ persons who obtained benefits from the committing of the offence, how they were paid, how much they were paid, what percentage of the amount accrued to the parties?
- What are the benefits obtained by the pimp? How long did it take to obtain them?
- Whether the person was forced into prostitution or not? By what means was the coercion done/not done? How many people were involved? Their age? Where did they come from (country, region, area)?;

During the hearing of the persons concerned, having different standings: accused, defendants, witnesses, injured parties, new data and information occur, new elements that contribute to establishing the circumstances in which the offence took place and its form. For example, while being heard, the defendant (subject of the crime of pimping) said in her statement that she had met by accident the injured party L.M. and the witness D.P., who were seeking rent, having recently come from Italy. As the defendant had a flat for rent, she agreed to rent them the flat for 1 year. During this period the injured party and the witness practiced prostitution and gave the money they obtained to the defendant who facilitated their meetings with many customers. In the witness's statements it is shown that she pretended at home that she was working in Italy, taking care of an old person, and thereby obtained the money. In the same case several people were heard from among family members and friends of the witness. A family member said that the witness acknowledged that she practiced prostitution and that she gave the money to the defendant and a colleague who ensured her protection.

It is necessary to identify people who may be a witness, for example, people who attended the service-payment agreement, other prostitutes, employees of hotels, motels, clubs, pubs, etc.

There are also cases where in the course of investigation it can be established that a person has passed from the stage of practicing prostitution to that of procuring prostitution, forming their own criminal network.

At present, there is a tendency among pimps to organize networks which include

foreign citizens, thus the benefits are significant and the influence areas are expanding more and more.

In complex cases undercover investigators can be used, interception may be authorized, as well as flagrant situations and searches of all kinds (corporal, domiciliary, of the car). For example, the defendant was caught by the police on a city ring with witness C.M. while having sex with different people for certain amounts of money. The defendant and the witness were legitimized by the police and, after the corporal search conducted, it was found that witness C.M. had on her an amount of 500 lei, obtained from performing sexual acts with different clients.

Also, information can be obtained from people in the entourage of the groups of prostitutes or pimps, who can provide detailed information on areas presenting the criminogenic factor, the mode of action, of recruitment, network organization.

Confrontation, recognition from a group can be performed to prove the involvement of certain people in the criminal activity.

The money, valuables or any other goods that have served or were intended to serve, directly or indirectly, to committing the crime and those acquired by committing it should be confiscated, and if they are not found, the convict is obliged to pay their equivalent in money.

4. Conclusions

The secondary passive subjects of the crime of pimping are mainly from among people inactive in the labour market, low-skilled, young, uneducated, naive and with unrealistic social and professional expectations as compared to their education and possibilities.

The Romanian Criminal Code includes the offence of pimping in Title IX, "Offences against social relations of coexistence", Chapter IV, in Article 329, and in the new Romanian Criminal Code, in Title I, "Offences against the person", Chapter VII entitled "Trafficking and exploitation of vulnerable persons", in Article 213.

Investigative activities are customized depending on the complexity of the actions, which either remain in the sphere of the ordinary offence of pimping or expand to the investigation of other crimes.

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