



Considerations on Preventing and Combating the Illegal Trafficking of Minors under the Current Economic and Financial Crisis

Tache BOCĂNIALĂ¹

Abstract: This work highlights the economic crisis problem that affects most states of the world, the crime problem that the society is facing, namely the human trafficking and in particular the child trafficking. This theme is particularly important in the context of amplifying the organized crime, it increasingly concerns the modern society and implicitly the specialists engaged in research of the phenomenon and for preventing and combating it. This paper is an analysis of the current financial crisis impact on human trafficking and the level of response that the society is ready to give through the regulatory framework, specialized institutions and their staff. The analysis concluded that Romania, as a result of its alignment with the *acquis communautaire*, is now a modern legislative and institutional system in preventing and combating trafficking in human beings. However, there is a need for legislative amendments in order to have a greater effectiveness in prevention and control measures, which represents a milestone in addressing other related issues. This study is also a warning for specialists to deepen their research for improving the prevention and combating trafficking in human beings which tends to grow.

Keywords: human trafficking; organized crime; economic crisis

1. General Considerations

In the recent years, human trafficking, as corruption, underground economy, or financial fraud, have become one of the largest forms of manifestation of crime, recording alarming scales for modern society and becoming a major issue at national and international level.

Given the evolving forms pertaining to organized crime (along with drug trafficking, arms trafficking, terrorism, etc.), human trafficking may create vulnerability to economic and social stability of the states, even for their peace and security, by disturbing the demographic, ethnic, cultural balance, through the inability of social protection mechanisms or public health, by going beyond the capacity to absorb legal labour market, hence the disruption of the balance of

¹Senior Lecturer, PhD, Faculty of Law, "Danubius" University of Galati, 3 Galati Boulevard, 800654 Galati, Romania. Tel.: +40.372.361.102, fax: +40.372.361.290. Corresponding author tachebocaniala@univ-danubius.ro.

forces between control structures of legality and public order and the side of the population is channelled towards criminal activities (Kartusch, 2001, p. 3).

The specialists in combating organized crime believe that the current economic and financial crisis will have a major impact on all forms of manifestation of this phenomenon and implicitly on human trafficking, which they will enhance, thus contributing at the same time to the increase of its visibility. Actually, the transition period in where Romania was, over the last twenty years, along with other states in the immediate vicinity, has materialized already in a steady increase of organized crime, estimated by UNODC study on South-Eastern European countries¹ as a real problem of this geographical area, along with corruption.

It can be noticed the fact that in Romania, due to its geographical position, there are intersected important routes of cross-border crime, completed with the growing interest of local groups for criminal activity due to higher revenue that such activities bring, contribute significantly to enhancing the human trafficking networks along with other categories of criminal activities.

Amid economic crisis, which brought large staff layoffs and decreasing purchasing power of the population, these groups will want to ensure higher returns by recruiting new members more easily, in exchange for money and especially through the much easier recruitment for victims, particularly minors.

The phenomenon of human trafficking is not a new problem within crime area, it is present in human history for millennia. Thus, slavery in new or old forms, as practices similar to slavery, continue to exist in other states of the world, all developing under the umbrella of organized crime. In their turn, the development of means of communications and global economic imbalances have internationalized and amplified the human trafficking.

Human trafficking should be viewed from several points of view. Thus, morally, trafficking of women and children has been seen along the time as a phenomenon that accompanies the *sin of prostitution*, as it was formulated in the preamble of the *Convention of 1949*.²

¹ United Nations Office on Drugs and Crime, its crime and impact affected countries in the Balkans, in March 2008.

² Convention for the Suppression of human trafficking and Exploitation of the Prostitution of Others"- approved by the United Nations General Assembly on 2 December 1949 that on 21 March 1950

In socio-human terms, trafficking is a serious allegation brought to society.

From the public health perspective, the victims of trafficking are subjected to physical deprivation (sleep, food, light, basic needs) sexual abuse, having denied medical care when it is necessary or imposing the use of drugs, all having serious consequences both on personal and public health.

Finally, in terms of crime - which could endanger the *public order* and also the *national security* - human trafficking is incriminated as a crime and punishable as such.

The conducted specialized studies over the recent years have led to the identification of some factors that contribute to the increased vulnerability of victims, adults or minors, in front of traffickers. The first is the economic situation, followed by family relationships, ethnicity, religion, education and employment status. It is true that none of the above factors alone cannot explain or generate the phenomenon of trafficking, operating only in groups. This was highlighted in a recent report from the UNICEF - Innocenti Research Centre report,¹ which, after interviewing child victims, revealed the highly interdependent nature of the factors that contribute to the growth of vulnerability to the traffickers and child abuse: personal experiences of domestic violence or protection institutions, poverty, alcoholic parents, etc. In cases where several of the factors listed above are linked to the absence of alternative measures of protection and support, the children's response is fleeing home and often they penetrate in the sphere of juvenile delinquency ending, often enough become victims of trafficking for exploitation.

From the data published by the General Inspectorate of Police, it results that the main way to exploit the victims identified by the Romanian authorities in 2009, it was the sexual exploitation of women which mainly started on the street, in clubs or private homes, in 41% of cases, while trafficking in forced labour (exploitation in agriculture, construction or other activity sectors) there have been identified 40% of the identified cases. Thus, in 2009 there was registered an increase in the percentage of victims trafficked for sexual purposes, and an increased percentage

opened by signing and acceding. Romania has ratified by Decree no. 482 of December 10, 1954, published in the Official Bulletin no. 46/1954.

¹ UNICEF Innocenti Research Centre, Child Trafficking in Europe: A broad vision to put children first, in March 2008, and UNICEF IRC / Mike Dottridge Young People's Voices on Child Trafficking: Experiences from South Eastern Europe, December 2008.

of those exploited through forced labour from 2008. Exploitation of begging has increased from 7% percent for 2008 to 14% (109 victims) in 2009.

In the period to which we refer, the situation of identified minors as victims of children trafficking has respected the manifested tendency at the level of total victims, their share rising from 17% in 2007 (292 children identified) and 2008 (186 copies) of the total identified in these period, 29% of the 780 victims identified in 2009. Three quarters of children were sexually exploited, the most vulnerable age group being 14-17 years (94%). The main destination countries for trafficking victims identified in 2009 were Spain, Italy, Czech Republic and Greece.

2. The Legal Coordinates of Preventing and Fighting against Child Trafficking

2.1. International Legal Framework

Trafficking of persons is a violation of human rights and undermining human dignity and integrity, as stated in all international documents.

UN Declaration on *Human Rights* proclaims the need for aid and welfare of children, so they can fulfill their role in society. The UN Convention on the *Rights of the Child* adopted in 1989 and ratified by Romania in 1990 is one of the first international instrument which proclaims the necessity of ensuring children's fundamental rights, such as freedom of speech and freedom of conscience, in order to protect the child against any forms of violence, whether physical or mental, against abandonment or negligence, maltreatment or exploitation, including sexual ones, all to ensure social, spiritual and moral welfare of the child and his physical and mental health.

Under ILO Convention no 182 on Worst Forms of Child Labor and the immediate action to eliminate them there are presented and explained the definitions and characteristics of child labor as follows:

- a) all forms of slavery or similar practices, such as sale and / or trafficking of children, debt bondage and the slave labor, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflicts;

- b) the use, procuring or offering a child for prostitution, production of pornography or for pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, especially drug production and trafficking, as defined in relevant international conventions;
- d) work which, by their nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.

UN Convention on combating cross-border organized crime adopted in New York on November 15, 2000, and its additional protocol on *the prevention, combating and punishing trafficking of persons, especially women and children*, stresses the role of cooperation in order to prevent and combat crime more effectively the cross-border organized crime. This convention has been ratified by Romania by Law No. 565/2002.

Romania also signed the *Council of Europe Convention on Action against Trafficking in Human Beings* May 16, 2005 in Warsaw, which was transposed into the national law by Law no. 300/2006.

An important international instrument on trafficking of children is the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse signed by Romania in 2007. The Convention is the first Council of Europe legal instrument which provides for the incrimination of various forms of sexual abuse of children, *including within the family, committed by a parent using force, threats or coercion*. In addition to traditional crimes such as: sexual abuse, child prostitution, child pornography and making children take part in pornographic performances, the Convention for the first time defined the so-called "grooming", by misleading the child's trust for sexual purposes. In addition, there are defined and a set of rules to prevent sexual tourism.

2.2. National Legal Framework

All the third millennium nations consider the person as the most important social value to modern society. Thus, for the European Union respecting human rights is a fundamental condition of belonging to it. Not incidentally, among the criteria for accession of Romania to the European Union, established in Copenhagen since 1993, the first is one that takes into account the existence in the candidate state a stable institution that guarantees the democracy, rule of law, human rights. *Even in the first article, the Romanian Constitution, establishes among the supreme values*

human dignity, rights and freedoms of the citizen, free development of human personality and justice.

Romania's Constitution guarantees the protection of child rights, on Chapter - Fundamental Rights and Freedoms, article 49 states: "*Children and young people enjoy a special protection and assistance in achieving their rights. Exploitation of minors, using them in activities that would harm the health, morals or endanger their life or the normal development is prohibited.*"

In the first legislative act on trafficking human beings adopted in Romania was Law no. 678/2001 for preventing and combating trafficking in persons, it is explicitly defined the crime of child trafficking and related penalties. For the purposes of this law: "*the recruitment, transportation, transfer, accommodating or receipt of children, in order to exploit them, is the crime of child trafficking which is punishable by imprisonment for 5-15 years, having forbidden certain rights.*"

In the case of the offense of trafficking of minors we find a distinction from trafficking an adult, that is they are sufficient only two of the elements of the crime of trafficking in persons, the action of recruitment, transportation, transfer, harbouring or receipt of a minor, for the purpose or for exploiting, without being necessary the condition of the used means, that is threats, violence or other forms of coercion, abduction, fraud, deception, abuse of authority or taking advantage of that person's inability to defend himself or to express its will by offering, giving or receiving payments or benefits to achieve the consent of the person who has authority over another person.

By article 18 of Law no. 678/2001 it is defined and sanctioned the child pornography as: "*The act of exposing, selling or spreading, renting, distributing, manufacturing or possessing in order to the spread objects, films, photographs, slides, emblems or other visual media, representing pornographic positions or sexual acts, presenting or involving minors under the age of 18, or importing such objects or handing over to a transport or distribution agent for selling or distributing them represent child pornography offense and it is punishable by imprisonment for 2-7 years.*"

In order to protect victims of crime it has been adopted Law no. 211/2004 *on some measures to protect victims of crime*, providing the rights for victims of certain crimes such as free legal and psychological counselling and compensation. We see now that the law has two drawbacks posed by the difficulties of the victims to be a

party within the criminal proceedings and regulations of cases where there are granted compensations to the victims of certain crimes. In the current law, there are provided specific rules to minors, in the sense that they are not obliged to be an injured party or to make a criminal complaint and the period of legal and psychological assistance is of 3 months bigger than in case of the adults.

If we do not know the exact age of the victim when there are reasons to suspect that the victim is a child, during the verification of age, according to Law no. 300 / 2006 it will be considered that the person is a child and it will receive the specific protection measures. As soon as an unaccompanied child is identified as a victim, the law requires to:

- a) be represented by a legal guardian, organization or authority which will act in the interest of the child;
- b) take measures for establishing the identity and nationality of the victim;
- c) make efforts to identify the victim's family, if it serves to the best interest of the child.¹

Decision no. 1238 of 10 October 2007 *on approving the National Standards specific to the specialized assistance services and protection of trafficking victims* is a legal instrument that regulates the national networks of services and of protection of the victims of trafficking, the provided services and their quality, measures on ensuring an optimal environment to the victims of trafficking, providing the necessary qualified staff and their continuous improvement.

Law no. 203 of 15 November 2000 for ratifying ILO Convention No. 182 *on prohibiting the Worst Forms of Child Labour, 1999 and the immediate action to eliminate them*, adopted at the 87th session of the General Conference of the International Labour Organisation in Geneva on 17 June 1999 is a national useful tool for protecting minors.

In 2003 it was promulgated Law no 196 *on preventing and combating pornography*. In its text, in particular in article 10 it is incriminated any recruitment activity, and obligation or use of minors in any obscene act, or any such acts is punished with imprisonment from 3-12 years having forbidden certain rights.

¹ Law no. 300/2006 ratifying the Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 3 May 2005, signed by Romania in Warsaw on May 16, 2005.

The Law no. 272/2004 *on the protection and promotion of child rights* deals issues on: the citizen's rights and freedoms, family environment characteristics, the alternative means, the health system, services provided to refugees, child protection and non-discriminatory basis to promote and respect the best interests of the child, equal chances and others. Article 99 provides: "*The child has the right to be protected against all forms of exploitation*" and again it emphasizes on the need to prevent and combat the phenomenon of exploitation, trafficking and abuse.

Because the state institutions must implement legislation against human trafficking, both international and national, there were developed strategies and tools for monitoring and coordinating, we must mention: the National Strategy against Trafficking in Persons for the Period 2006 - 2010 and National Plan of Action 2008-2010 to implement the National Strategy against Trafficking in Persons 2006 to 2010, which provide relevant background information, defining the problem and the main action areas and strategic objectives in the field of human trafficking.

An increasingly important actor having the role in coordination at national level, of the activities to prevent human trafficking and implicitly child trafficking, is the National Agency Against Trafficking in Persons (ANITP) which, by its action taken especially in the last two years, has asserted its position as a truly regional and even European leader in the field.

3. Improvement Needs of the Regulatory Framework for a Better Protection of Minors

Romania has already implemented most of the recommendations and community provisions of the internal law, such as National Rapporteur Institution, measures to discourage demand of sexual services, the provision in the internal law of a recovery and reflection period of at least 30 days for the trafficking victims, etc., presenting currently a modern legislative and institutional system in preventing and combating human trafficking and child trafficking in particular domain, in the spirit of the tendencies at European level. Therefore, we can say that Romania has made important progress over the last years in preventing and combating human trafficking, the current economic and financial crisis has found it with specialized institutions and departments and specialized personnel trained at a higher level. Today we may speak of the fact that Romania, through the perfected regulatory framework and state institutions with responsibilities in the field, has solved many

of the negative aspects of this segment of organized crime reported in the past, being in the position of providing expertise and best practices to other European partners as well.

We appreciate, however, that legislative amendments are necessary for the authorization of authorities to intervene more effectively in cases of neglect or exposure of minors by their parents (children without identity documents, do not attend school, forced to beg). The social services must act with greater flexibility and mobility. The legislation should define more clearly the recruitment as criminal activity, and for recruiters to provide effective punishments and procedural rules to reduce the time for solving cases in court. Riding through the streets at night of children and also young people and children having access to clubs or bars should be better controlled, as specified in the laws of other states, by setting limits on hours and age. There are a number of views and attitudes according to which the legalization of prostitution could significantly reduce the number of trafficked victims, including minors. We do not share these views, moreover, we believe that we can present many cons in their control, which will be the subject of another study.

4. Conclusion

According to experts' opinions, the overall socio-economic situation may have a stronger impact than the inappropriate child's support by the family or the existence of a violent and abusive family environment as risk factors, "Push Factors", in a traffic situation. Given that the socio-economic evolution specific to the crisis period creates, for parents and children, a particular risk of entering in a vicious circle of lack of resources, of care and emotional support for their children, a global effort is necessary from the enforcement agencies and civil society (NGOs) in cooperation with EU and international organizations to overcome these obstacles.

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