Aspects of Criminal Procedural Law Related to Trafficking in Persons

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Abstract: Trafficking in persons is one of the most productive activities of criminal organizations and, implicitly, the offense which, by frequency, causes one of the most spectacular increases in the international crime rate recorded over the last decade. The coordination of individual actions and the harmonization of national legislation on the punishment of traffickers, the human trafficking prevention and the protection of its victims are the main objectives whose fulfillment is conditioned by stopping the magnitude of the phenomenon.

Keywords: trafficking in persons; international crime; trafficker; victim; protection

Law no. 678/2001 on the prevention and combating of trafficking in persons, in Chapter IV, establishes special provisions on the judicial procedure, referring to the instrumentation of the cases of trafficking in persons in the criminal prosecution phase and in the court trial stage. At the same time, Section III of Chapter III lays down special provisions for the application of safety measures.

The rules and principles underlying the instrumentation of cases of trafficking in persons are the general rules established by the Criminal Procedure Code, with the application of the special provisions laid down in art. 21-25 of Law no. 678/2001.

As shown in the regulation of art. 200 of the Criminal Procedure Code, the purpose of the criminal prosecution is to collect the evidence necessary to prove the existence of the offense, to identify the perpetrators and to determine their liability, so that they can be sued when it is required.

According to art. 201 of the Criminal Procedure Code, the prosecution is carried out by the prosecutors and by the criminal investigation bodies, with the mention that, according to Law no. 304/2004, establishing the attributions of the Public Ministry, the prosecutor performs the criminal prosecution in the cases and conditions established by law.

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Law no. 39/2003 on the prevention and combating of organized crime introduced special provisions related to the prosecutor's competence to conduct criminal prosecution in cases of crimes committed by an organized criminal group.

According to art. 12 of the Law no. 508/2004 on the establishment within the Public Ministry of the Directorate for the Investigation of Organized Crime and Terrorism Offenses, the offenses regulated by Law no. 678/2001 on the prevention and combating of trafficking in persons are the competence of prosecutors of such Directorate.

An important aspect in proving the offense of trafficking in persons is the use of undercover investigators.

The institution of undercover investigators, as introduced in the Criminal Procedure Code by Law no. 281/2003, has brought essential amendments to the acts preceding the criminal prosecution.

Thus, under art. 21 of Law no. 143/2000, "the prosecutor may authorize the use of undercover investigators for the discovery of facts, identification of authors and for obtaining evidence, in cases where there are solid indications that an offense among those provided for in this law has been committed or is being prepared for commission."

Subsequently, provisions on the use of undercover investigators were introduced in other special laws, also: Law no. 78/2000[1] on the prevention, detection and sanctioning of acts of corruption, Law no. 678/2001[2] on the prevention and combating of trafficking in persons and Law no. 39/2003 on the prevention and combating of organized crime.

The amendment of the Criminal Procedure Code made by Law no. 281/2003 has introduced the articles 224¹-224 that govern the institution of undercover investigators. Thus, art. 224¹, of the Criminal Procedure Code provides that undercover investigators "may be used" in order to gather data on the existence of the offense and identify subjects against whom there is a presumption that they have committed an offense. This article specifically provides the offenses for which undercover investigators may be authorized, such as: offenses against national security provided by the Criminal Code and special laws, drug trafficking offenses, arms trafficking offenses, trafficking in persons and migrants, acts of terrorism, money laundering, forgery of money or other values, or an offense stipulated by Law no. 78/2000 on the prevention, detection and sanctioning of acts of corruption, and very broadly, by the statement "other serious crimes that cannot be discovered or whose perpetrators cannot be identified by other means."

[1] Published in the Official Gazette no. 219 dated 18th of May 2000.
[2] Published in the Official Gazette no. 783 dated 11th of December 2001.

If for the first part of the provisions of art. 224[1] of the Criminal Procedure Code, the offenses for which undercover investigators may be authorized are clear, the second part requires some clarification. Thus, in Law no. 39/2003 on the prevention and combating of organized crime, art. 2 letter b), the legislator provided a number of 19 points containing various crimes included in the category of serious crimes.

In addition to these crimes, they have also been classified as serious crimes any other offenses for which the law provides the prison sentence, the special minimum of which is at least 5 years.

Law no. 508/2004[1], amended by the G.E.O. no. 7/2005, on the organization and functioning within the Public Ministry of the Directorate for the Investigation of Organized Crime and Terrorism Offenses (D.I.I.C.O.T.) provides in art. 17 that undercover investigators may be used in order to collect data and identify subjects, in case of offenses under the jurisdiction of D.I.I.C.O.T.

Art. 12 of the abovementioned law, lists all offenses under the jurisdiction of D.I.I.C.O.T., including those covered by Law no. 39/2003, offenses provided for in the Criminal Code and certain special laws, except for the offenses provided by the Criminal Code and special laws, under the jurisdiction of the National Anticorruption Directorate.

It can be thus concluded that undercover investigators may be authorized in order to collect data and identify subjects in case of commission of the offenses provided in art. 12 of Law no. 508/2004, of the offenses such as bribery (both giving and receiving), traffic of influence, and receipt of undue benefits, provided in art. 254 – 257 of the Criminal Code, of the offenses provided by Law no. 78/2000 as well as in case of commission of any other offense for which the law provides the prison sentence, the special minimum of which is at least 5 years.

From the content of art. 224[1] of the Criminal Procedure Code, with reference to art. 224 paragraph 1, the provisions of art. 254 – 257 of the Criminal Procedure Code, and the provisions of Laws no. 508/2004 and 78/2000, as subsequently amended and supplemented, it can be concluded that when there are strong and concrete indications that one of such offenses has been committed or is being prepared, undercover investigators may be used if the offenses cannot be revealed or the perpetrators cannot be identified by other means, the role of undercover investigators being limited to collecting the necessary data on the existence of such offenses and the identification of subjects against whom there is a presumption that they have committed the offenses; however such activities may be carried out only after notification of the criminal prosecution body, according to art. 221 of the Criminal Procedure Code.

[1] Published in the Official Gazette no. 1089 dated 23rd of November 2004, amended by G.E.O. no. 7/2005, published in the Official Gazette no. 177 dated 1st of March 2005.

Although the title of art. 224[1] of the Criminal Procedure Code suggests that undercover investigators may carry out their activity only during the preliminary acts, we believe that they may continue their activity even after the commencement of the criminal prosecution "in rem", precisely because their activity can be used to identify the perpetrators of the offense.

With respect to the one who can be named undercover investigator in a case, art. 224[1] paragraph 2 of the Criminal Procedure Code clearly provides that only active workers within judicial police may be used as undercover investigators[1].

Thus, workers within other state bodies with responsibilities in the field of national security cannot be used as undercover investigators. According to art. 224[2], authorization for the use of undercover investigators is approved by a reasoned authorization of the prosecutor conducting or supervising the prosecution.

The authorization shall be given by a reasoned order for a period of up to 60 days and may be extended for duly justified reasons, each extension not exceeding 30 days and the total duration of the authorization in the same case and for the same person not exceeding one year. The request for authorization is made by the criminal investigation body and addressed to the prosecutor supervising the criminal investigation. The request for authorization will contain the data and indications of the facts and subjects against whom there is a presumption that they have committed an offense, as well as the period for which authorization is requested.

In case the criminal prosecution is conducted by the prosecutor, the documentary procedural act (reasoned ordinance for the authorization to use undercover investigators) must be preceded by a procedural act (the resolution by which the prosecutor finds the need to use the investigators and the decision taken in this respect) (Volonciu & Ţuculeanu, 2007, p. 57).

According to art. 224[2] point 5, in duly justified cases, the authorization for activities other than those for which there is already an authorization may also be requested, for which the prosecutor will decide as soon as possible.

In accordance with the provisions of art. 17 of Law no. 508/2004, undercover investigators may be used subject to the existence of reasoned authorizations of the prosecutor appointed by the Chief Prosecutor of the Directorate with attributions in the case (Mateuț and collaborators, p. 124 and the following).

In order to obtain authorization for the use of an undercover investigator it is necessary to meet the following prerequisites:

[1] Law no. 304/2004 regulates the legal framework for the organization and functioning of the judicial police. Also, the Criminal Procedure Code, the Constitution, Law no. 304/2004 on judicial organization, Law no. 218/2002 on the organization and functioning of the Romanian Police, Law no. 360/2002 on police officer status, refer to the organization and activity of the judicial police. The legal regulation is in line with Recommendation no. 1604/2003 of the Parliamentary Assembly of the Council of Europe.

- the existence of strong and concrete indications about the commission or the preparation of an offense related to trafficking in persons;

- such offense cannot be revealed or the perpetrators cannot be identified by other means;

- the objective pursued focuses on discovering facts, identifying authors, and gaining evidence.

Because art. 224² of the Criminal Procedure Code uses the phrase "prosecutor conducting or supervising criminal prosecution" when referring to the one that may authorize undercover investigators, in view of the principle of hierarchical subordination governing the activity of the Public Ministry, as well as the categories of offenses for which undercover investigators may be authorized and the quality of the person committing the offense, we consider that prosecutors who may authorize the use of undercover investigators are those within D.I.I.C.O.T., the Prosecutor's Office attached to the Court of Appeal, the Prosecutor's Office attached to the Court of Law and the National Anticorruption Directorate prosecutors.

The undercover investigator has the task of collecting data and information for the purpose of issuing the prosecutor's motivated ordinance. His activity materializes in investigation reports he submits to the prosecutor. Investigation reports are confidential and should contain details of all activities carried out by the investigator, data and information gathered on the activity of offenders, as well as any other data and information necessary to prevent future offenses.

Concerning the use of data obtained by undercover investigators, art. 224³ of the Criminal Procedure Code does not make a clear delimitation. Thus, point 1 refers to the fact that such data and information may only be used in the case for which it has been authorized by the prosecutor, whereas point 2 makes reference to the fact that such data may also be used in other cases or in relation to other persons, provided they are conclusive and useful.

If the first situation is the rule of application, for the second situation, the derogation from the rule is a matter of strict interpretation and it is left to the discretion of the prosecutor or the judge. In order t-o ensure the undercover investigator protection, the law provides in Article 224 that the real identity of undercover investigators may not be disclosed during or after their action.

The only person knowing the real identity of the undercover investigator, besides the head of the judicial police structure designating him/her, is the prosecutor issuing the authorization[1].

[1] Art. 706-84 of the French law 2004-204 dated 9th of March 2004 provides that the real identity of the judicial police agent or officer who has performed the infiltration must not appear at any stage of the procedure. Art. 706-86 provides that the judicial police officer under whose responsibility the

Regarding the testimony of undercover investigators, Law no. 678/2001 does not provide for procedural rules regarding their hearing, neither for the criminal prosecution phase or for the judicial investigation phase, nor for the ways of keeping the data on the operation or the way of use of evidence, which the investigator has the ability to provide.

Even if the regulation is incomplete, in the interest of the criminal proceedings, we consider that the hearing of the investigator must be a special procedure, taking into account the need to protect the real identity of the judicial police officer or agent. There is only one provision of general applicability[1] according to which "the sources of information, methods and means of collecting information are confidential and may not be disclosed under any circumstances. Exceptions are cases in which the duties of the function, the justice needs or the law require their disclosure. In such cases, disclosure is made with the provision of necessary protection."

In order to avoid the risk of revealing undercover investigators, the provision in art. 86¹ of the Criminal Procedure Code is applicable, relative to the hearing of the witness in the criminal trial under a different identity than the real one, a minutes being drawn up in which the statement of the undercover investigator is made, minutes that will be signed only by the prosecutor and by the criminal prosecution body. Data relating to the real identity and address of the investigator will be kept in a file separate from the case file, to which it will also be enclosed the authorization of the prosecutor for the introduction of the investigator concerned.

As regards the surveillance of telecommunications and information systems, the provisions of art. 23 paragraph (1) of Law no. 678/2001, on the access to telecommunications and information systems and their supervision, shall be applied in accordance with the provisions of art. 911-915 of the Criminal Procedure Code, as amended by Law no. 281/2003, a law enhancing the criminal procedural safeguards, in particular those concerning the rights and freedoms privative or restrictive measures.

Thus, according to the provisions of art. 911 of the Criminal Procedure Code, interceptions and recordings on magnetic tape or any other type of support of conversations or communications shall be made with the motivated authorization of the court, at the request of the prosecutor and only under certain conditions.

In principle, any interception and recording of conversations or the recording of images without the consent of the person concerned is an interference in intimate, private and family life, a restriction of the person's right to respect and protect such rights. In this context, it was appreciated that in order to avoid any violation of the provisions of art. 8 of the Convention for the Protection of Human Rights and

infiltration operation has been conducted may be the only one to be heard as a witness with regard to the operation.

[1] Art. 33, paragraph 2 of Law no. 218/2002 on the organization and functioning of the Romanian Police.

Fundamental Freedoms as to the limits within which the interference of public authorities is allowed in a person's private and family life, it is necessary that authorization of interceptions to be issued by a judge, as he/she will not be influenced by the investigation conduct, but only by the existence or non-existence of legal, necessary and mandatory requirements for the issuance of the authorization.

The provisions of art. 911-916 of the Criminal Procedure Code, as amended by Law no. 281/2003, rigorously regulate the ways of interception and audio-video recording in order to meet the requirements set out in art. 8 paragraph 2 of the Convention, so that any action taken in this respect be proportionate to the legitimate purpose resulting from such provisions, namely the defense of the rule of law and the prevention of criminal offenses.

The reason for which it is imperative that these provisions be strictly observed lies in the fact that the defense will try by all means to prove the procedural deficiencies or the abuse of the criminal prosecution bodies in order to remove relevant evidence and to exempt the defendants from criminal liability.

Special provisions on the use of such means of investigation are provided in art. 15 of Law no. 39/2003 on the prevention and combating of organized crime, authorizing the prosecutor, when there are serious indications related to the commission of the offenses referred to in art. 7, the trafficking in persons offenses being included in this category, for the purpose of collecting evidence or identifying the perpetrators, to order, for a period not exceeding 30 days, the surveillance or access to information systems, mentioning that the provisions of art. 911-915 of the Criminal Procedure Code, as amended by Law no. 281/2003, shall apply accordingly.

The same provisions were taken over by Law no. 508/2004, in the sense that, at the request of the prosecutors of the Directorate, the court may order the surveillance, interception or recording of communications and access to information systems, for a period not exceeding 30 days. Such measure may be extended for grounded reasons, each extension not exceeding 30 days. The maximum duration of the ordered measure is 4 months, according to the provisions of art. 911-916 of the Criminal Procedure Code.

In case of trafficking in persons, requests for authorization of interceptions and recording of communications are relatively frequent, as audio or video recordings provide evidence difficult to combat and provide important information for the identification of all subjects involved in the criminal activity.

However, such methods should not be regarded as the only way to obtain evidence, the prosecutor being required to motivate the request for authorization to intercept conversations by identifying those solid data and indications on the preparation or commission of trafficking in persons offenses and the presentation of impediments to obtaining evidence and identification of perpetrators by other means.

As regards witnesses in human trafficking cases, Law no. 678/2001 is limited to a simple provision of principle that, starting from accepting the thesis of vulnerability of this category of victims[1], places them under the procedural and extra-procedural provisions on the protection of witnesses contained in Law no. 682/2002 on the establishment of the extra-procedural witness protection program in Romania, as well as in the Law Enforcement Regulation, complemented by the provisions of the Criminal Procedure Code (art. 861-865) introduced by Law no. 281/2003. Such regulation is natural if we take into account the fact that victims of human trafficking usually fulfill the role of witnesses indispensable to establishing the truth.

In this case, only one problem could arise, namely that of knowing if the victim's vulnerability or dependency situation is sufficient by itself for it to be eligible for the benefit of the special protection provided for witnesses. In other words, the general conditions provided by art. 861 of the Criminal Procedure Code should still be met in order to benefit from protection, or are we in a situation of a presumption of danger justifying the taking of witness protection measures?

From the terms used by the legislator[2] it seems like we are dealing with a presumption of vulnerability, being a case similar to the one described in art. 864 of the Criminal Procedure Code, on the hearing of witnesses under the age of 16 in certain cases, being admissible the presentation of a hearing previously made through audio-video recordings. As such, we believe that in this case, too, it is only conditioned by the court order, being optional, not mandatory, since the court may order that the victim-witness not to be heard during the trial hearing. However, it implies an appreciation of the court, that could be equivalent to a specific research, including by requiring the accusation and, if appropriate, the victim – injured party or civil party – to produce evidence in order to decide whether or not the measure is in the interest of justice.

Within the same concept, we believe that, according to the English model, if we come to the conclusion that a witness will not be available for counter-interrogation for various specific reasons[3], the judge could be invested with the power to rule out the counter-interrogation. This could be a legal support for the new regulation covered by art. 862 of the Criminal Procedure Code corroborated with art. 861 of the Criminal Procedure Code, allowing for the physical separation of the accused from the witness. However, in order not to prejudice article 6 paragraph (3) letter d) of the Convention, we believe, in consensus with the Strasbourg jurisprudence[4], that only

[1] See, Sandy Ligari, Des conditions de travail et d'hebergement incompatibles avec la dignite humaine resultant d'un abus de la situation de vulnerabilite ou de dependence de la victime, in "*Revue de science criminelle et de droit penal compare*", 2002, p. 555 and the following.
[2] Law no. 678/2001, as subsequently amended.
[3] Reasons such as illness, death, fear, etc. may be considered.
[4] E.C.H.R., Decision Unterpertinger vs. Austria, series A, no. 110.

completely exceptional circumstances may justify the dispensation of the counter-interrogation, despite the objections of the defense.

Even in such circumstances, which guarantee the admission of "hearsay testimony", however, article 6 paragraph 1 continues to be violated if the conviction is based, entirely or to a decisive degree, only on the testimony of the witness that the defense did not have the appropriate and proper opportunity to respond to, either during the investigation or the prosecution, or during the trial[1].

This approach has claimed to the European Court of Justice to examine closely the considerations suggesting to the national courts to admit the "hearsay testimony", the so-called "hearsay evidence". At the same time, it has led these courts, as is probably the case in Romania, to give weight to the probative value of other evidence supporting the verdict, and whose role is usually avoided.

As regards the probative value of the statement of the victim-witness – obtained under cover of anonymity, the special law does not contain any provision. It is, however, explicitly regulated in the matter of vulnerable witnesses in the new Criminal Procedure Code as amended by Law no. 281/2003 (art. 861, paragraph 6, and art. 862, last paragraph), derogating from common law in the matter. Thus, it is expressly provided that "statements of witnesses to whom another identity has been assigned may serve as evidence only to the extent that they are corroborated with facts and circumstances arising from the whole evidence in the case."

In conclusion, Law no. 678/2001 does not bring anything new regarding the procedural and extra-procedural protection of witnesses, with the procedures for the protection of witnesses being fully applicable.[2] In this respect, we encounter the same problem of delimitation of the application fields of the new laws in the matter.

First of all, we must point out that the Law on witness protection no. 682 dated 19th of December 2002,[3] as subsequently amended, is undoubtedly a complex, modern law, which is part of the more general process of harmonizing the national legislation with European legislations similar to the Romanian one and adapting it to the requirements of the rule of law, capitalizing on the tendencies of other states with tradition, in the organization and implementation of special witness protection programs.[4]

Thus, following the American model, given the magnitude of the witness intimidation phenomenon in our society and the enormous impact it has on the settlement of important criminal cases, the law aims to "ensure the witness protection

[1] E.C.H.R., Decision Windisch vs. Austria, dated 27th of September 1990, series A, no.186, par. 28. In the same sense, Law Commission, *Evidence in Criminal Procedings: Hearsay and Related Topics*, Report no. 245, 19th of June 1997, par. 653.
[2] For details on these rules, see (Mateuţ, 2003).
[3] Published in the Official Gazette no. 964 dated 28th of December 2002.
[4] It is about the relevant legislation in Italy, USA, Canada and Germany.

and assistance, including victims-witnesses whose lives, physical integrity or freedom is threatened as a result of their possession of information or data on the commission of serious crimes which they have provided or agreed to provide to the judicial bodies and that have a decisive role in the discovery of offenders and in the settlement of cases".[1]

Therefore, the priority of the law is to prevent pressures, threats and risks of reprisals to which the victim-witness is exposed and, thereby, to ensure that his/her contribution to the work of justice is guaranteed, that the testimony be obtained in conditions under which its reliability cannot be suspected as a requirement of the quality of the proceeding itself.

These are, in fact, the two aspects to be included in the notion of "witness protection" in the sense of the law: prevention of the risks of aggression, on the one hand, and the proceeding quality assurance, on the other hand.

The prescriptions provided by the new legal framework apply at all stages of the criminal proceeding, even at the stage of preliminary acts, when it comes to simple information that could be obtained by covering anonymity without problems, given the absence of rules or, after the completion of the trial, when measures also have an extra-procedural nature. At the same time, the law does not establish any difference in the legal regime between the minor witness and the adult witness, so nothing prevents a minor, regardless of his/her age, from being heard under cover of anonymity, if appropriate, and benefit from the witness protection program, under the same conditions as an adult witness.

There are particular provisions only with regard to the procedure of signing the Protection Protocol, as we will see later. However, it does not invalidate the conclusion that the hearing of the minor witness will now be possible in three different ways: following a normal procedure; following the procedure described in art. 81 of the Criminal Procedure Code[2]; following the procedure provided by the new provisions on anonymity and witness protection during hearings in criminal proceedings.

Compared to Law no. 682/2002, it appears that the provisions of the Criminal Procedure Code have a broader scope with regard to the witness protection measures in trials.

Such a differentiation is normal, since the special law establishes a witness protection program, while the Criminal Procedure Code is limited to simple procedural provisions. It also reveals the exceptional nature of the regulation contained in the

[1] Art. 1 din of the Witness Protection Law no. 682 of 19th of December 2002, as subsequently amended and supplemented.

[2] The minor can be heard as a witness. Until the age of 14, his/her hearing is performed in the presence of one of the parents, the guardian or the person to whom the minor is entrusted for rearing and education.

special law, which is applicable only in certain cases, more serious, but also the need to ensure access to protection measures, especially of a procedural nature, for any person who has the quality of witness in trial and is in danger, that is, not only those who are part of a protection program, for which certain conditions must be met.

Thus, firstly, procedural provisions on the protection of witnesses are applicable to all offenses, regardless of their nature and gravity, unlike other systems[1].

As a compensation, the Criminal Procedure Code apparently only refers to the notion of "witness" as defined in art. 78 of the Criminal Procedure Code, to which two other categories are added: undercover investigators and experts, as well as the victims of trafficking in persons, as victims-witnesses, in the meaning given by the provisions of Law no. 678/2001, that make explicit reference to the provisions of the Criminal Procedure Code in the matter.

At the same time, these rules are also applicable to interprets. Also, the protection measures provided by the Criminal Procedure Code concern only the ongoing criminal proceedings, directly affecting the procedure of hearing the witness who benefit from protection and are subject to its conduct. This means that, unlike Law no. 682/2002, the Criminal Procedure Code actually establishes a distinct case of termination of protection, that does not always coincide with the disappearance of the danger leading to the taking of the protection measures, namely the completion of procedures. But the provisions of Law no. 682/2002 extend beyond any procedures, until the actual disappearance of the danger to the life, physical integrity or freedom of the protected witness, that it links either to the information and data provided or he/she agreed to provide to the judicial bodies, or to his/her statements.

In addition, it is clear that in the scope, sometimes wider and sometimes narrower, the introduction in the Criminal Procedure Code of witness protection measures required by the very purpose of the criminal proceeding, is likely to increase the effectiveness of the protection, even if some of these measures are also found in the special law. At the same time, in general, the protection measures provided by Law no. 682/2002 are too vague, being maintained at a certain level, relating them directly to the criminal provisions and raising them to a higher quality level.

This way, the Criminal Procedure Code is not limited, as we have seen, to simply stating the protection of the identity data of the witness or the possibility of hearing the witness by the judicial bodies under another identity different from the real one or by special means of distortion of image and voice as Law no. 682/2002 does, but establishes special criminal proceedures of presentation of a hearing previously performed, by audio-video recordings, or of remote hearing of the witness, including

[1] However, to us, too, they apply mainly to serious crimes, as defined in Law no. 39 of 21st of January 2003 on the prevention and combating of organized crime (published in the Romanian Official Gazette, Part I, no. 50 of 29th of January 2003), including in the category of serious crimes also the offenses of trafficking in persons and the offenses related to trafficking in persons.

the victim-witness, live, through a television network with distorted image and voice, so that he/she cannot be recognized, or of assignment of another identity under which he/she is to appear before the judicial body. It also defines measures to protect the witness to and from the judicial bodies, also covering the physical protection of the victims of trafficking in persons during the trial.

As we can see, the Romanian system for fighting against trafficking in persons brings back to our attention a difficult compromise between the will to protect the victims and to offer them future prospects, on the one hand, and the need for an effective fight against trafficking networks, on the other hand. In this context, the victims of trafficking in persons who accept to cooperate with the judicial authorities and to be accommodated in the assistance and protection centers newly established by Law no. 678/2001, could benefit from a specific status in criminal procedures. This way, the effectiveness of actions within the fight against human trafficking is closely related to the development of a collaboration dynamics between police services, prosecution offices and courts, on the one hand, and specialized reception centers, on the other hand.

However, the complementarity of interventions of all parties involved can only be achieved if victims or alleged victims of trafficking in persons are actually put in contact with legal procedures. This can only be achieved by means of appropriate procedural provisions facilitating their contribution to establishing the truth and highlighting their essential role as witnesses during the criminal proceedings.

Of particular importance in the action taken to prevent and combat the criminal phenomenon of trafficking in persons is bringing the perpetrators to justice and, respecting procedural safeguards, holding them accountable, in order to sound an alarm signal to also be heard by those who concentrate their efforts on thinking about the best methods and means to easily and quickly earn important amounts of money.

Thus, during the criminal proceeding, the trial stage is of particular importance under the aspect of contouring the factual framework of the criminal activity conduct and especially in applying the sanctions provided by the normative acts circumscribed to the case brought to justice.

According to the criminal procedural doctrine (Theodoru & Plăieşu, 1987, p. 101) the trial stage consists of the proceeding and procedural activity carried out by the court of law, with the active participation of the prosecutor and the parties, assisted by the defenders, in order to find out the truth regarding the offense and the defendant with whom the case was brought and, consequently, the legal and thorough settlement of the case, in relation to those found, by convicting the guilty defendant and applying the sanction provided by the criminal law, or by prescription or termination of the criminal proceeding, if it is a case that excludes or removes criminal liability.

Starting from this all-comprehensive acception of the trial stage, we can find that, within the criminal proceeding, the trial is necessary, indispensable for the realization of criminal justice, being considered the main stage lying between the criminal prosecution, preparing for the trial, and the execution of criminal judgments, accomplishing what the court has decided.

The specific nature of the trial, in the first instance, is determined by its purpose: finding out the truth regarding the offense and the person with whom the case was brought to court, by performing a judicial investigation administering and evaluating the evidence and by conducting judicial debates.

For human trafficking offenses, Law no. 678/2001 established procedural rules derogating from the ordinary procedure, but without producing essential changes, the vast majority of the common procedural rules governing the instrumentation of such cases also in the second phase of the criminal proceeding.

As regards the jurisdiction of the trial of human trafficking offenses, art. 21 of Law no. 678/2001 provides that they are judged, in the first instance, by the court of law. This provision is an illustration of the general rule set out by art. 27 point 1 letter f) of the Criminal Procedure Code, according to which the court of law also judges in the first instance other offenses provided by law within its jurisdiction.

The reason for the establishment of this rule of material competence lies in the seriousness and the high degree of complexity of such offenses, implying better training, specialization and experience of magistrates, in order to ensure a correct implementation of the criminal justice.

The non-observance of the legal provisions regarding the material competence of the judicial bodies is sanctioned with absolute nullity according to art. 197 paragraph (2) of the Criminal Procedure Code. Therefore, the exception of lack of material competence may be raised by either party, by the prosecutor or ex officio by the court throughout the criminal proceeding until the final judgment is pronounced.

According to the provisions of art. 317 of the Criminal Procedure Code the trial in the first instance is limited to the offense and to the person indicated in the document of referral to the court, respectively the offense and the person for whom the trial was ordered by indictment.

Regarding the way of referral to the court and the object of the trial, the provisions of art. 335-337 of the Criminal Procedure Code, stipulate that if during the trial the criminal proceedings have been extended for other offenses or other persons, the trial also takes place against such offenses or persons.

The participation of the prosecutor in the trial of human trafficking offenses is mandatory according to art. 315 paragraph (2) of the Criminal Procedure Code under the sanction of absolute nullity provided by art. 197 paragraph (2) of the Criminal Procedure Code.

When taking part in the trial, the prosecutor has to play an active role, in conducting both judicial investigation and debates, in order to find out the truth and to comply with the legal provisions.

At the trial in the first instance, the defendant is required to appear in person, but if the summons procedure is legally fulfilled, he/she may also be judged in absentia, the court considering that he/she accepts the procedure (Paraschiv & Damaschin, 2004, p. 175).

Related to this rule, a derogation is made, according to which the trial can only take place in the presence of the defendant when he/she is in detention, and the bringing of the defendant to trial is mandatory under the sanction of absolute nullity of the trial procedure.

Given the high degree of social danger of the offenses and perpetrators' dangerousness, and also considering the limits of punishment provided by law, trafficking in persons is usually settled with the defendants under preventive arrest, so that their presence in court is mandatory.

Art. 24 paragraph (1) of Law no. 678/2001 stipulates that the hearings in cases related to the offense of trafficking in persons provided by art. 13 and child pornography provided by art. 18 of the Law are not public.

The lack of publicity is an exception to the principle specific to the trial stage provided by art. 290 paragraph (1) of the Criminal Procedure Code and the reason for this derogation lies in the concern to ensure for the minor victim of the offense of juvenile trafficking and child pornography, favorable psychological conditions, without being disturbed by the presence of other persons, and being able to keep, during the judicial investigation and debates, the usual behavior, without any reluctance in recounting facts (Turianu, 1995, p. 196).

These special provisions complement the general rules laid down in art. 290 paragraph (2) of the Criminal Procedure Code, according to which, if trial in a public hearing could adversely affect a state, moral interests, dignity or the intimate life of a person, the court may declare the hearing secret.

Concerning the procedural sanction of violation of the provisions of art. 24 of Law no. 678/2001, it is stipulated that art. 197 paragraph (2) of the Criminal Procedure Code provides that only the provisions related to the publicity of the court hearing are provided for under the sanction of absolute nullity, not those waiving such rule.

Consequently, only if the minor, his/her legal representative or the prosecutor proves that, by public hearing trial, a violation of the minor's rights has been committed, or if the court considers that cancellation is required for finding out the truth and for the fair settlement of the case, only then the judgment pronounced may be abolished in accordance with the provisions of art. 197 paragraph (4) of the Criminal Procedure Code.

According to the provisions of art. 24 paragraph (2) of Law no. 678/2001, to the trial of offenses of trafficking in persons in a non-public hearing, the parties may attend, their representatives, their defenders, as well as other persons whose presence is considered necessary by the court.

These special provisions comply with the general rules set out in art. 290 paragraph (4) of the Criminal Procedure Code, stipulating that while the hearing is secret, only parties, their representatives, defenders and other persons designated by the court in the interest of the law, are admitted in the courtroom.

The participation of the defender in the first instance trial is mandatory in cases of compulsory legal assistance, under the sanction of absolute nullity provided by art. 197 paragraph (2) of the Criminal Procedure Code.

In case of human trafficking offenses, mandatory legal assistance is provided for both defendants, since the punishments provided by the law for such offenses are more than 5 years in prison, and victims, since the provisions of art. 44 of the Law stipulate that the victims of the offense have the right to receive mandatory legal assistance in order to be able to exercise their rights in the criminal proceedings provided by the law, at all stages of the criminal proceeding, and to present their requests and civil claims against the defendants.

The drafting mode of art. 44 of Law no. 678/2001, by bringing together the two terms "right" and "mandatory", has generated controversy in judicial practice in the sense that some courts have left at the discretion of the victims the possibility to benefit from qualified legal assistance, while others have appointed them ex officio defenders, considering that legal assistance is mandatory.

We believe that the intention of the legislator was to guide and help the injured party through a person with the appropriate legal and professional qualification to defend their rights and legal interests.

Such provisions were taken over and developed by Law no. 211/2005, on certain measures to ensure the protection of victims of offenses, regulating victims' information measures with regard to their rights, respectively the fact that they may benefit from psychological counseling, free legal assistance and financial compensation from the state.

Besides the judicial bodies, parties and defenders, other persons without a direct interest in the settlement of the case, such as witnesses, experts, undercover investigators, interpreters, psychologists, reintegration advisors, may also attend the trial in the first instance.

In practice, in case of human trafficking offenses, it is noted that the courts often appeal to the assistance of social workers, psychologists and reintegration advisors within the Victims' Protection and Offenders' Social Reintegration Service for a

psychological and social evaluation of the defendants, but also for the reduction of the psychological impact of the offense on the victim.

The victims of human trafficking offenses receive free psychological counseling provided by the victims' protection and offenders' social reintegration services, on demand, for a period of up to 3 months and for victims who are under the age of 18, for a maximum of 6 months.

This information as well as other on services and organizations providing psychological counseling or any other form of assistance to victims are brought to their attention by the court, prosecutors or police agents.

Protection measures have also been introduced for victims of trafficking in persons who are not minor, in the sense that, according to the provisions of art. 25 of Law no. 678/2001, at the trial of the offenses provided for in art. 12 and 17, at the request of the injured party, the court may declare a hearing secret.

It is another derogation from the principle of publicity that is typical to the trial stage of the criminal proceeding, since in the case of such offenses publicity could harm the interests of the victims, their morals or intimate life, by revealing some aspects for which the legislator gives the possibility to decide whether they wish or not to make them public.

Thus, at the request of the injured party, the court, after hearing the other parties and the prosecutor, declares the session secret for a particular part or for the entire case trial.

According to the provisions of art. 19 of Law no. 678/2001, the amounts of money, values or any other goods acquired as a result of committing human trafficking offenses or those that have been used for the commission of such offenses, as well as the other goods provided by art. 118 of the Criminal Code, are subject to special confiscation.

In paragraph (2) of the same article, the legislator makes a remark, in the sense that it includes in the category of the goods that have been used for the commission of the offenses, also the means of transportation used in the transport of the trafficked persons and the buildings where such persons were accommodated, if they belong to the perpetrators.

Judicial practice in the matter is not unitary in the application of these legal provisions, in the sense that some courts order the confiscation of the vehicles used for the transport of victims, if they belong to the perpetrators, while others consider that the vehicle does not fall under the provisions of art. 118 of the Criminal Code, being neither indispensable, nor intended to be used for the commission of the offense, as victims could able to be transported by other means of transportation, such as train or airplane, or combined transportation.

Regarding this controversy, we appreciate that, since the legislator has understood to regulate this specific method of confiscation, if it is proved that the vehicle with which the victims were transported belongs to the perpetrator, the incidence of the provisions of art. 19 of Law no. 678/2001 and art. 118 of the Criminal Code is unquestionable, the purpose of the regulation being that of rendering unavailable the goods that may be used for the commission of other similar actions.

In the case of human trafficking offenses, the possession of goods expressly stipulated by the law, namely by art. 118 of the Criminal Code – the basic premises of the matter – but also by the special law, pose a danger, given their possible destination (use of means of transportation or buildings for the transportation or accommodation of other victims) or their illicit origin.

Human trafficking offenses, although they have as their object the trafficking in persons, in themselves, come down to money, starting with investments in creating the network, recruitment infrastructure, obtaining counterfeit travel documents, and subsequently, after obtaining profit, distribution and possibly "money laundering".

In both procedural phases, both during the criminal prosecution and during the judicial investigation, one of the objectives pursued is the life style of the perpetrators, their expenses, and, ultimately, the determination of sources of income.

Two main aspects will be monitored:

- if suspects have jobs or legal occupations, the nature of such occupations, if they can be associated with trafficking in persons offenses;

- if suspects spend money, where they do it (casinos, bars, betting agencies, personal investment).

All of these investments require capital movements, receipts and payments that can be disclosed during the financial investigation operations. Thus, the investigation bodies carry out checks on the purchase of travel tickets, which can provide details of the traffickers' plans, supervise the entry-exit points of the country, analyze the expenses incurred and money transfers by electronic payment instruments.

Since they don't wish to take any risk in managing their profits, the traffickers re-invest it by giving it an apparent legality, either in investments for personal comfort or through the performance of business, or the establishment of commercial companies, with a real business object.

Relevant information on revenues and expenditures made can be obtained from the National Office for the Prevention and Combating of Money Laundering, that has the obligation to report suspicious transactions.

If the number and location of the goods acquired by the traffickers as a result of committing the offense or those intended to be used for the commission of the offense, have been identified, they shall be rendered unavailable during the criminal

prosecution, and then confiscated, during the trial stage, according to art. 19 of Law no. 678/2001.