

ASPECTS OF INTERNATIONAL JUDICIAL COOPERATION REGARDING HUMAN TRAFFICKING

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Abstract

Judicial issues in human trafficking suppose with priority a unified approached of the phenomenon both point of view theoretical and practical. So must be cumulatively-fulfilled conditions related to the identity or similarity of criminalitations and the correspondent of procedures. National/Romanian – intern normative acts are governed by Law no. 302/2004 on international judicial cooperation in criminal matters republished in 2011 and the management of issues at the international level requires agreement documents, covenants, treaties and international conventions – at the international universal level mention the United Nations Organisation Convention on transnational organized crime, opened for signature in Palermo - Italy on December 12, 2000 and the two additional Protocols (Protocol to prevent, suppress and punish trafficking in persons, women and children and Protocol against migrants trafficking by land, sea and air) and also at the international regional level the Council of Europe Convention on action against trafficking in human beings – Warsaw, May 16, 2005.

Keywords: *human trafficking, cooperation judicial, European Arest Warrant*

Introduction

Trafficking in human beings is a criminal activity that can be developed as organized form, held on the territory on more than one state. The present paper aims to address European Council perspective in human rights as the impunity concept governing "Guidelines on eradicating impunity for serious human rights violations"². Those guidelines conceived to combat impunity in cases of serious human rights violations - domain included the human trafficking.

Whereas the human rights domain is very large expressed in human trafficking and among the means of persons' exploitation included it, the "Guidelines on eradicating impunity for serious human rights violations"³ counteracts any serious human rights violation which exploits a human being for trafficking. Thus were established rules on assuring the efficiency of investigations, par example: to be adequate, to be impartial, to proceed promptly, to be transparent to ensure investigators' accountability and to encourage the public belief in state institutions.

¹ Republished in Official Gazette of Romania, no. 377/31.05.2011.

² Aadopted by the Committee of Ministers of the Council of Europe, on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, available at http://www.mpublic.ro/cooperare/2012/linii_directoare_CE.pdf

³ *Idem*, p. 1.

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Romanian legislation and norms.

Criminalization, by the Romanian legislation, of the human rights violations provides at art. 2 lett. e) in the special Romanian Law no. 678/2001 on preventing and combating trafficking in persons⁴ that by exploiting a person means also activities that violate fundamental human rights and freedoms. Impunity involves the exemption from punishment of a person who committed an offense, determined by special circumstances exemption provided by law or other normative acts.

On the other side in Romania is in force Law no. 302/2004 about international judicial cooperation in penal matters, republished in 2011⁵ refers to the following application areas: extradition, surrender under European arrest warrant, the proceedings transfer in penal matters, recognition and enforcement of judgments, the transfer of sentenced persons, legal assistance in penal matters and other forms of international judicial cooperation in penal matters.

Through art. 3 of Law no. 302/2004 about international judicial cooperation in penal matters, actualized, are determined the limits imposed by sovereignty, security, public order and other interests of Romania, defined by Constitution. Also, regarding the preeminence of international law, the provisions of Romanian special Law no. 302/2004 are intended to complement that not covered situations in international legal instruments as conventions, treaties, agreements - to which Romania is a party.

As a safety clause, as too a principle obligation and expression of the principle of ensuring minimum level on human rights, par. 2 of art. 20 of the Constitution of Romania⁶ provides that if there are discrepancies between the covenants and treaties on fundamental human rights, to which Romania is part, and internal laws has priority international regulations, excepting situations that the Constitution and national laws contain stipulations more favorable.

European criminalization of the human trafficking.

Also, should be pointed out that European unitary criminalization of the infraction of trafficking in persons was agreed with the adoption of U.N.O. Convention on Transnational Organized Crime⁷, opened for signature in Palermo - Italy on December 12, 2000 and the two Additional Protocols (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Women and Children and Protocol Against Trafficking of Migrants by Land, Sea and Air).

International judicial cooperation.

International judicial cooperation it's a very complex activity relating many aspects of international and internal penal procedure which can be approached both in terms of the issues raised by victims and the situation criminals. As it was affirmed in specialty literature "Criminal investigative organs can take cognizance about committing an infraction from locked sources (for example classified notifications transmitted by information services) or

⁴ Published in Official Gazette of Romania, no. 783/11.12.2001, modified by Law no. 230/2010 published in Official Gazette of Romania, no. 812/06.05.2010 modified by G.E.O. (O.U.G.) no. 41/2011 published in Official Gazette of Romania, no. 304/03.05.2011.

⁵ Published in Official Gazette of Romania, no. 377/31.05.2011.

⁶ Published in Official Gazette of Romania, no. 767/31.10.2003. Romanian Constitution is republished form of 1991 Romanian Constitution, updated names and renumbering articles, reviewed through Law no. 429/2003, approved by national referendum of 28-19.10.2003, confirmed through by Romanian Constitutional Court Decision no. 3/22.10.2003.

⁷ Adopted to New York on 15.11.2000, ratified by Romania with two additional Protocols, by Law no.nr. 565/2002 published in Official Gazette of Romania, no. 813/8.11.2002.

other open sources (for example mass-media); if there is such a notification, criminal investigative organs draw up report referral *ex officio*.”⁸

On the other side, all the administrative and judicial system participate efficiently to ensure the non-infringement of laws and human rights. “Penal legislation and practice focus on constitutional and procedural guarantees for delinquent as well as those necessary to do justice to the victim.”⁹

A central institution in judicial cooperation is the extradition, which according to principle of reciprocity, specialty double incrimination and in the last 15 years the Council of Europe has taught to the EU leading role the development of the law on extradition and also from the perspective of Schengen Space and also the Convention implementing the Schengen Agreement are addressed specific issues of extradition law, in art. 59–66, a practical importance reporting of in the Schengen Information System¹⁰.

As a general rule provided by art. 18 of Romanian Law no. 302/2004 about international judicial cooperation in penal matters, actualized, may be extradited from Romania at the request of a foreign state, persons who are under criminal investigation or sent to a court for a crime or are wanted for execution a punishment or a protection or safety measure. Exempted from extradition as a general protection rule with respecting some conditions; at first Romanian citizens can be extradited only if Romania is signatory to a convention on extradition based on reciprocity and if one of these conditions are accomplished: extraditable person residing in the requesting state at the time of the request for extradition also, extraditable person has citizenship of the requesting state and if the state is EU member, the extraditable person committed the act on the territory or against a citizen of EU member state. Definitory is that in case of a Romanian citizen will be punished with imprisonment, the requesting State must give sufficient assurance that convicted person (also Romanian citizen) will be transferred to execute the sentence in Romania.

Withal, cannot be extradited persons to whom has been granted the right of asylum in Romania, foreigners that enjoys for immunity from jurisdiction in Romania, given the limits established by conventions or other international agreements, quotes foreign persons abroad to be heard as parties, witnesses, experts by a Romanian judicial authority respecting the immunities conferred by international conventions.

Measures against human trafficking through judicial cooperation is provided at art. 45 of Romanian Law no. 678/2001 on preventing and combating trafficking in persons¹¹ actualized, by establishing of liaison officers in the Romanian Ministry of Internal Affairs, as well as liaison magistrates at level of prosecution offices to provide reciprocal consultations with liaison officers or, if necessary with liaison magistrates functioning in other states to coordinate their actions during criminal prosecution.

According to Romanian Law no. 302/2004 about international judicial cooperation in penal matters, actualized, in the extradition procedure Romania can performe passive extradition or active extradition compliance with European Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 or any other relevant international instrument in domain ratified by Romania. It’s important to mention that the principle of double incrimination determine that extradition could be admitted only if the infraction is provided as offense both in the requesting State and the Romanian legislation.

⁸ Udroui M., *Procedură penală. Partea specială*, Second Ed, “C.H. Beck” Publishing House, Bucharest, 2015, p 30.

⁹ Iancu Elena-Ana, (2012), *Metodologia investigării infracțiunilor*, “Pro Universitaria” Publishing House, Bucharest, p. 49.

¹⁰ Cf. http://old.just.ro/Portals/0/CooperareJudiciara/Doc%202 Manual_Criminal.pdf, p. 10, consulted on 28.02.2016.

¹¹ Published in Official Gazette of Romania, no. 783/11.12.2001, modified by Law no. 230/2010 published in Official Gazette of Romania, no. 812/2010 modified by G.E.O. (O.U.G.) no. 41/2011 published in Official Gazette of Romania, no. 304/2011.

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The aspect of dual criminality - Romania's position regarding is presently positive through signing the U.N.O. Convention on Transnational Organized Crime Convention at Palermo in 2000. Also Romanian citizens can be extradited under the provisions of bilateral treaties on reciprocal basis and respecting some conditions.

As an exception to the rules of extradition provided to art. 30 of the Romanian Law 302/2004 regarding judicial cooperation in penal matters, actualized¹², it will be accepted even doesn't exist prior complaint and contrary the opposition of the victim because another special Romanian Law no. 678/2001 on preventing and combating trafficking in persons¹³, actualized provides to art. 16 that consent (for trafficking) of the victim of trafficking not eliminate the criminal liability of the perpetrator.

Another principle which operates in the field of international judicial cooperation is the recognition of foreign criminal decision of condemnation.

According to art. 98 alin.3 of Romanian Law no. 302/2004 regarding judicial cooperation in penal matters, actualized¹⁴, recognition of foreign criminal decision of condemnation is made incidentally by judgment court on the European arrest warrant execution procedure is being to judge (it is pending). This principle is closely connected to European arrest warrant institution initiated by the Tampere European Council in 1999, when it was decided for the first time the replacement of formal extradition procedures with an effective and quick surrender system of pursued people, and two years later constituting politically necessity of implementing of European arrest warrant at European level - was initiated framework-decision method.¹⁵

The European arrest warrant institution, according to art. 110 of Romanian Law 302/2004 regarding judicial cooperation in penal matters, actualized, shall be solved and executed in emergency and extradition is not automatic, but as is provided by the Romanian special Law 302/2004 in compliance with U.E. framework-decision¹⁶: "framework-decision in European arrest warrant provides, excepting required reserves (art. 3 framework-decision), also a series of reasons for rejecting mandatory and optional (art. 4 and 5); moreover, it provided the opportunity to make the surrender certain cases, but the Decision allows member states enough freedom of action for its transposition."¹⁷ Also, to art. 2 par. 2 of Framework-Decision about European arrest warrant (previously mentioned) is specified that offences as human trafficking are punished in the issuing member state with a penal or a custodial detention to a maximum period of at least three years (as well in Romania are based on Law no. 678/2001, actualized to art. 12 par. 1 - the basic form of the infraction is punishable with imprisonment from 3 to 12 years) surrender will operate under the European Arrest Warrant without verification of the double incrimination of the act.

As conclusion, European Arrest Warrant is a certitude on the judicial process in cooperation materialized in actions of "[...] E.U. states govern and institutions and E.U. agencies who conceived and undertook numerous plans, actions and initiatives concerning to secure the population, infrastructure and resources. Many border regions were involved in

¹² Published in Official Gazette of Romania, no. 377/31.05.2011.

¹³ Published in Official Gazette of Romania, no. 783/11.12.2001, modified by Law no. 230/2010 published in Official Gazette of Romania, no. 812/2010 modified by G.E.O. (O.U.G.) no. 41/2011 published in Official Gazette of Romania, no. 304/2011.

¹⁴ Published in Official Gazette of Romania, no. 377/31.05.2011.

¹⁵ Cf. http://old.just.ro/Portals/0/CooperareJudiciara/Doc%202_Manual_Criminal.pdf, p. 10, consulted on 29.02.2016

¹⁶ Cf. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:en:HTML> Council Framework-Decision on the European Arrest Warrant and the surrender procedures between Member States of the European Union, from 13 June 2002, 2002/584/JAI

¹⁷ Cf. http://old.just.ro/Portals/0/CooperareJudiciara/Doc%202_Manual_Criminal.pdf, p. 12, consulted on 29.02.2016.

security zones policy, it accumulates a true <arsenal> of integrated strategies, high performance equipment and professional competences.”¹⁸

Conclusions

International judicial cooperation against human trafficking is very complex activity determined by numerous acts both at international, universal or regional but also nationally, already existing concerted actions regarding the efficiency of procedures for extradition, arrest and transfer of persons under the European arrest warrant with respect for human rights and guaranteeing execution of the punishment in their own country. It's important to affirm that Romania benefits while ensuring a remarkable promptness, efficiency by putting into practice the procedures agreed upon at EU level and U.N.O.

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¹⁸ Iancu, N., (2013) *Migrația internațională a forței de muncă. Considerații teoretice și repere economice ale fenomenului migraționist*," Pro Universitaria" Publishing House, Bucharest, pp. 182-183.