

CRIMINAL POLICIES OF THE EUROPEAN UNION IN THE FIELD OF HUMAN TRAFFICKING

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***Abstract:** Trafficking in persons, like any other crime, generates a negative behavior that affects some people, who in most cases give their consent without realizing the extent of the consequences. Trafficking in human beings implies, in most cases, the carrying out of specific activities on the territory of the victims' state of origin, continued actions on the territory of the destination state, where the criminal activity can be completed or continue on the territory of other states. Thus, the traffic acquires a transnational and cross-border character in the realization of which several people with precisely determined roles are involved and who, through simultaneous or successive actions, collaborate directly in the commission of the act. Human trafficking is a very serious problem both domestically and internationally, which is why the law enforcement authorities of all EU member states should work together to strengthen the fight against human trafficking and to come in support of victims subjected to exploitation.*

***Keywords:** trafficking, gang, exploitation, consent*

1. Concepts and definitions

Trafficking in persons is the offense provided for in art. 210 Criminal Code and which consists of "recruiting, transporting, transferring, sheltering or receiving a person, with a view to exploiting him, committed:

a) by coercion, kidnapping, misleading or abuse of authority;
b) taking advantage of the impossibility to defend oneself or to express one's will or the obvious state of vulnerability of that person;
c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person who has authority over that person,
is punishable by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.

(2) Trafficking in persons committed by a public official, in the exercise of his official duties, is punishable by imprisonment from 5 to 12 years.

(3) The consent of the person who is a victim of trafficking does not constitute justifiable cause."

2. Classification

Trafficking networks are more often well-organized groups, made up of recruiters, intermediaries, transporters, hosts and the traffickers themselves, whose occupation is to buy victims to use for exploitation. These networks are interest groups that operate according to

predetermined rules, which each member of the organization strictly adheres to, and according to the principle of profit maximization.

By means of the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, which is additional to the United Nations Convention against Transnational Organized Crime, human trafficking and the forms in which this crime takes place were defined, considering several aspects, such as: the goal pursued, the characteristics of the trafficked persons, but also of the traffickers, the causes that generated the phenomenon and the social implications. Thus, achieving a classification of human trafficking as follows:

- "1. viewed from the point of view of human rights, human trafficking includes slavery, forced labor, violence, abuse of trust, physical and psychological aggression of the person, being fully justified the assessment that human trafficking is a form of slavery at the beginning of the millennium;
2. from an economic point of view, trafficking involves financial interests (huge profits), regional and international networks, the illicit circulation of money (laundering money that comes from trafficking and on the basis of which the trafficking activity is carried out);
3. from the point of view of the origin of the phenomenon, the factors that generate and support trafficking are the extreme poverty of the victims, low educational level, lack of self-confidence, failures in life;
4. from the perspective of damaged social values, trafficked persons are reduced to the condition of "commodity", they are gradually dehumanized, their deepest feelings being damaged, the trauma suffered marking their entire future evolution;
5. from the point of view of social implications, due to the alarming increase in recent years, human trafficking is becoming a national and transnational phenomenon, being favored by the general process of globalization and the use of modern technologies;
6. from the perspective of the intended purpose, trafficking implies huge profits for traffickers, including in the case of trafficking for the purpose of forced labor". (Udroiu, 2017, p. 140)

3. The constitutive content of the crime of human trafficking illustrated by means of a case study

At the beginning of March 2020, while he was on 1 Decembrie 1918 Boulevard in the municipality of Târgu Mureș, near the bus station, in the presence of witnesses M1 and M2, the injured person P.V. she was approached by the defendant I.I., who promised her a job, in Germany, telling her that she would receive a monthly salary of 1000 euros, that her food would be provided, that she would be accommodated in a hotel where she would not have to pay nothing, and transportation to the location will be provided.

After they arrived at the hotel, according to what was stated by the injured person, the defendant took her identity document, claiming to conclude an employment contract, and after a few more days, the defendant transported her to the territory of France, where he asked her to steal from commercial companies. The injured person stole food from a store that day, and two more days later, also at the defendant's request, he stole a phone from another store. The next day, the defendant asked her to steal a television from a store, but she refused, the defendant cursing and threatening her, which scared her very much.

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P.V. she managed to call her cohabitant, who she asked to call the police, so she could return home, because the defendant was taking her to steal.

On May 15, 2020, I.I. abandoned P.V. in a metro station and handed him the sum of 50 euros, because he didn't want to steal anymore, according to what the injured person stated. After being abandoned, she started shouting for the police and was later picked up by a crew.

In order to retain the factual situation described above, the court had in mind the corroborated analysis of the evidence obtained during the criminal investigation through the means of evidence indicated in the content of the referral document, mentioned previously, as well as through the means of evidence administered during the trial, respectively the statement of the injured person and the statements of witnesses M1 and M2.

During the hearing during the criminal investigation, the injured person reported the manner in which he was picked up by the defendant, as it was presented in the actual situation. She specified that, at the defendant's request, she stole twice, namely food from a grocery store, and a mobile phone and claimed that she was verbally assaulted by I.I. when he refused to steal others, a fact that created a state of fear for her.

He also stated that during the time he lived in Germany, he received very little food, which consisted mainly of macaroni, he was not allowed to contact his relatives. In the end, however, she managed to inform her concubine about her situation, who in turn informed the Romanian authorities. Until the date of abandonment, when he refused to commit any more thefts, he did not report to the German authorities because he did not know the language and was afraid of being accused.

The essential aspects regarding the circumstances and the method of committing the deed charged to the defendant, consisting in the collection and exploitation of the injured person, in the sense that he determined the injured person, through mental coercion, to commit thefts for his benefit, were confirmed by the witnesses heard in the case during the criminal investigation and heard again during the trial. Thus, witnesses M1 and M2 were present at the time of the roundup, in the area of the bus station in Târgu Mureș, receiving the same offer, but they refused it. Both witnesses recognized the defendant I.I. from the photograph. as the person who presented them with the job offer in Germany.

From the content of the indictment, it emerged that the defendant I.I. other people have also been scammed by the same operating mode. (Criminal sentence published by the Mureș Court, Criminal Section, on the website of the Supreme Council of Magistracy <https://www.rejust.ro/juris/39deed453>)

The object of the crime

The main legal object of the crime of human trafficking is represented by the social relations regarding both the right to freedom of will and the right to action specific to each person.

The material object consists of the body of the person on whom the action is performed if this action was carried out by physical coercion or kidnapping. (Diaconescu, 2004, p. 177)

Subjects of the crime

The active subject of the crime of human trafficking can be any person, both a natural person and a legal person, the subject being an uncircumstantial one, in the case presented above being a male person, unmarried and without a stable job.

The active subject of the crime of human trafficking can be any person who meets the general conditions of criminal liability, this being circumstantial only in the case provided for in art. 210 para. 2, namely when the act was committed by a public official. Traffickers are both men and women. In general, the recruiters are young, neatly dressed, and make a good impression, both by outward signs of their well-being and by the success stories they circulate of their own success. These people flaunt a very good material condition, being convincing by presenting attractive employment contracts: positions in Western European countries, very well paid and which do not require special qualifications.

In criminal activity, women represent, in most cases, the first link in the trafficking phenomenon. They very easily capture the trust and interest of young women, taking advantage of their naivety, their lack of life experience, their lack of education and above all their precarious material condition. The traffickers present the young women with fictitious cases of people who went to work abroad and returned with large sums of money after a short period of time. The women who commit such acts were, in most cases, themselves victims of human trafficking. Due to the traumatic experiences they have gone through, they know well the mechanism of trafficking and become very skilled in attracting victims and placing them for the purpose of exploitation. In some cases, women engage in trafficking willingly most of the time, for even higher earnings, but at other times they do this activity under the authority of traffickers who have power over them. As regards human trafficking for the purpose of sexual exploitation, different criminals are involved, on several levels, starting from beginners, who carry out spontaneous, unorganized actions, to international human trafficking chains with a complex degree of organization.

The passive subject is represented by "the person recruited, transported, transferred, sheltered or received, for the purpose of exploitation.", according to art. 210 Criminal Code.

The main characteristic of the vulnerability of the potential victim is the desire to improve poor living conditions and obtain high incomes in a relatively short time abroad.

Regarding "criminal participation, it is possible in all forms, namely: co-authorship, instigation or complicity" (Udroiu, 2017, p. 141).

If the act of trafficking has affected several people, there is a multiple passive subject, and in judicial practice the issue has been raised, from the point of view of legal framework, if the recruitment of several people at the same time and place, based on a single criminal resolution, for practicing prostitution and transporting them abroad in order to achieve material benefits, constitute a crime of human trafficking and pimping, or as many crimes as passive subjects were recruited for this purpose (Bodoroncea, 2016, p. 68).

The material element

According to art. 210 Criminal Code, the material element of the crime consists in any of the following alternative actions: "recruiting, transporting, transferring, harboring or receiving a person".

The phenomenon of human trafficking must be analyzed from the perspective of several aspects, such as:

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"Recruitment can be materialized in the proposal made to the victim in the initial phase of the trafficking process. This proposal usually turns out to be a false promise in the end, either related to the object or nature of the work, the destination of the victim's journey, the conditions in which he will be, will be held or work or the place of the activity. Recruitment can be carried out by one or more natural or legal persons, directly or through an advertisement, through the media or the Internet, using one or more of the means listed below.

Transportation involves the placement of the victim by traffickers (intermediaries or transporters) from the place of origin or where the recruitment took place to the place of destination, where the exploitation will take place. It is not mandatory that the transport is carried out across the state border.

The transfer or sale can take place in the situation where the victim is given by the recruiter to an intermediary for transportation and/or further to the natural or legal person for exploitation. The transfer can be accompanied by the payment of a sum of money, material goods or other kind. At the same time, there are also cases when the transfer and/or sale is carried out by the natural or legal person who first exploited the victim, who is transferred and/or sold to another person/group who will continue to exploit her.

Shelter or accommodation can be provided by the recruiter, intermediaries or the natural or legal person who exploits the victim, who can be kept in a home, hotel, improvised premises.

The reception of the person or persons intended for the object of exploitation takes place in the context of the transfer or sale" (Order no. 2353/2008 of the Minister of Justice).

For the existence of the offense provided for in art. 210 Criminal Code, the material element must be carried out by "coercion, kidnapping, misrepresentation or abuse of authority."

Coercion, regardless of whether it is physical or moral, is a way of restricting a person's will, which can be done through threats, violence, or any other means of coercion. The person in question is deprived of the opportunity to freely express and manifest their wishes or interests.

Kidnapping represents that act of deprivation of liberty, by which a person is moved by means of physical or mental violence to another place, against their will.

Misleading is achieved through a deceptive action or inaction whereby a person is ensnared in the trafficking activity against their will for the purpose of exploitation.

Abuse of authority involves the abusive exercise of the de facto influence or legal authority that the trafficker had over the victim (Udroiu, 2017, p. 144).

Another essential requirement of the material element is achieved by "taking advantage of the impossibility to defend oneself or to express one's will or the state of manifest vulnerability."

The impossibility of expressing one's will is that situation in which a person is not able to manifest his desire due to causes of a psychological nature. Thus, that person, although he could defend himself, cannot do so because his will is affected by psychological factors.

Vulnerability can be understood as that visible, express state in which a person is physically and mentally easily attackable, frail, who cannot resist in order to reject the action of the perpetrator to traffic him, abusing the special state in where the person finds himself because of his illegal or precarious situation, or because of pregnancy, an illness or infirmity or physical or mental deficiencies, the victim can be more easily trafficked (Dungan, 2017, p. 216).

The defendant carried out several activities from those included in the incrimination norm, namely he recruited the victim, provided her transport and sheltered her, by misleading her, under the pretext of offering a well-paid job in Germany.

As such, contrary to what was claimed by the defendant, through the ex officio appointed defense counsel, the material element of the crime of human trafficking is realized in the case. He claimed that the state of facts is not circumscribed by the thesis provided by the criminal law, because there would not have been a submission to the execution of a job or the performance of a service in a forced manner, but these aspects do not concern the objective side of the crime but the purpose of its commission. In order for the deed to be considered a crime, the criminal law requires that the activities of recruiting, transporting, transferring, sheltering or receiving a person are carried out for the purpose of exploiting him, it is not necessary that specific exploitative activities have actually existed for the consummation of the crime.

The immediate consequence is the state of danger created for social relations regarding the person's freedom, respect for rights and freedoms, dignity and mental integrity.

Being a crime of danger, the causal link results ex re, from the simple performance of the action that constitutes the material element.

From the point of view of the subjective side, the defendant committed the act with the direct intention qualified by purpose, to exploit the trafficked person and thus obtain material advantages, by psychologically coercing her to steal goods for her benefit, coercion that was achieved by threatening the injured person in the sense that he would suffer. This threat created real fear for the injured person, which was also revealed by witnesses M1 and M2. Thus, during the hearings, they stated that the injured person was crying on the phone and told them that she was being taken to steal. The injured person was brought into the situation of not being able to change his condition, being deprived of freedom of movement, unable to return to the country or leave the locality where he was, due to his lack of knowledge of the German language, the surveillance exercised over him by the defendant and poor living conditions, stating that she received very little food, which consisted mainly of macaroni.

Reported to the concrete situation of the present case, contrary to what was claimed by the defendant, through the ex officio appointed defender, the court found that the exploitation was carried out in one of the five variants provided by the law, respectively by submitting to the performance of services, in the manner forced. The accusation also noted the fact that the exploitation would also have been achieved by forcing the injured person to work, and the defendant would have appropriated the money earned from the work performed by the injured person, but the injured person's statement in this regard is not corroborated with any another piece of evidence, so that it will not be retained by the court.

Related to the above, the court held that the conditions provided by art. 396 para. (2) of the Code of Criminal Procedure - the act exists, constitutes a crime and was committed by the defendant, beyond any reasonable doubt, for which reason he will be sentenced, there being no incident preventing the further exercise of the indicated criminal action by the defendant, through the ex officio designated defense counsel. (Criminal sentence published by the Mureș Court, Criminal Section, on the website of the Supreme Council of Magistracy <https://www.rejust.ro/juris/39deed453>)

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The immediate aftermath

The immediate consequence consists in a state of danger created for the freedom of the victim as well as for the relationships related to the dignity of the person.

Trafficking in persons committed against several passive subjects, under the same conditions of place and time, constitutes a single crime, in continuous form, and not several crimes in competition (Dungan, 2017, p. 122).

Causality link

There must be a causal link between the action taken by the perpetrator and the immediate aftermath, which must be proven.

Conclusions

Trafficking in persons represents a growing and developing phenomenon in recent years, being a real problem both at the national and international level.

Although this phenomenon is global in scope, it manifests itself mainly in less developed areas, with inadequate legislation, which has ambiguous provisions in this field and in areas where cooperation between state and international bodies is less effective.

From the examination of the causes that determine the emergence and growth of the phenomenon of human trafficking in our country, we can conclude: the political-social, cultural changes determined by the transition of the countries from the communist regime to the democratic one, determined a low standard of living characterized by cheap labor.

Given the fact that the main victims of human trafficking are women, we can conclude that there are certain factors that favor this group, for example women are the last to be hired and the first to be fired, they are pushed towards non-conventional sectors of the economy, being much more prey light of these facts.

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