

## MODERN SLAVERY

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### Abstract

*This study aims to examine the extent to which slavery is a dangerous criminal offense and unfortunately abundant in a society considered to be civilized and advanced in all respects.*

*Slavery is a crime which is part of the category of offenses against the freedom of persons, that is regulated in Chapter VII, Title I of the Special part of the Romanian New Criminal Code, Article 209.*

*This phenomenon has existed since ancient times. Placing and keeping the persons in a state of slavery, as well as trafficking in slaves, are well known.*

**Keywords:** *slavery, criminal offense, human exploitation, victim, traffic, the breach of the human's rights.*

### Introduction

*Modern slavery represents the most serious violation of human rights in which persons are been revoked freedom and dignity, that is exactly what make us humans.*

*Slavery is a crime which is part of the category of Slavery is a crime which is part of the category of offenses against the freedom of persons, that is regulated in Chapter VII, Title I of the Special part of the Romanian New Criminal Code, Article 209 and consists of placing and keeping a person in a state of slavery, as well as trafficking in slaves, are punished by imprisonment from 3 to 10 years and the prohibition of certain rights.*

*This offense was incriminated by the Romanian legislator as a result of commitments at the international level.*

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This offense was incriminated by the Romanian legislator as a result of commitments at the international level.

The international act which marked a crucial moment in this field was the Slavery Convention signed at Geneva on 25 September 1926. Entered into force on 9 March 1927, in accordance with the provisions of Article 12, the Convention was amended by the Protocol done at the Headquarters of the United Nations, New York, on 7 December 1953<sup>1</sup>.

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<sup>1</sup> The amended convention entered into force on 7 July 1955, date to which all the amendments set in the addendum in the Protocol from 7 December 1953 entered into force according to Article III of the Protocol. Romania ratified the Convention through the Decree no. 988 in the "Romania's Official Monitor", Part I, no. 76 from 1 April 1931.

According to Article a of the Convention, Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

Article 2 provides that "The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps:

(a) To prevent and suppress the slave trade;

(b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms."

Another very important act is the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>2</sup> which in the Preamble provides that "The States Parties to the present Convention,

*Considering* that freedom is the birthright of every human being,

*Mindful* that the peoples of the United Nations reaffirmed in the Charter their faith in the dignity and worth of the human person,

*Considering* that the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, states that no one shall be held in slavery or servitude and that slavery and the slave trade shall be prohibited in all their forms,

*Recognizing* that, since the conclusion of the Slavery Convention signed at Geneva on 25 September 1926, which was designed to secure the abolition of slavery and of the slave trade, further progress has been made towards this end,

*Having regard* to the Forced Labour Convention of 1930 and to subsequent action by the International Labour Organisation in regard to forced or compulsory labour,

*Being aware*, however, that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world,

*Having decided*, therefore, that the Convention of 1926, which remains operative, should now be augmented by the conclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery."

Despite the entry into force of the Slavery Convention and the official interdiction in almost all the countries, slavery continues to exist on large scale, both in its traditional form, as well as in modern form.

According to the studies published in the past few years there may be, still, 27 million slaves in the world.

One of the fundamental principles of the law and of the modern society, in general, provides men are equal, being prohibited the exploitation of fellow humans between them. However, this principle has not been and it is not always respected, slavery and trafficking in slaves representing the most serious forms of crime.

The importance of human resources on organization level is analyzed also in terms of equal opportunities, fundamental rights of human resources in any organization that provides for the abolition of slavery in the modern economy<sup>3</sup>.

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<sup>2</sup> Adopted on 7 September 1956 by the the United Nations Conference of Plenipotentiaries was convened pursuant to resolution 608 (XXI) of the Economic and Social Council of the United Nations on 30 April 1956. Entered into force on 30 April 1957, according to the provisions of Article 13, Romania ratified the Convention on 13 November 1957 through Decree No. 375, published in Romania's Official Journal, Part I, No.33 on 9 December 1957.

This phenomenon has existed since ancient times. Placing and keeping the persons in a state of slavery, as well as trafficking in slaves, are well known.

Placing and keeping people in a state of slavery, as well as slave trading, represents the best-known form of exploitation, in the course of the history.

This method of exploitation of the human being has existed since ancient times, slaves providing the manpower necessary to build the big constructions or to work the fields. In ancient times, wars represented a main source of getting slaves. For example, in Roman Empire, gradually in so far as conquering other peoples, the number of slaves increased substantially, reaching toward the end of the Republic to represent more than one-third of the total population of the state<sup>4</sup>.

The trade with black slaves determined, probably, the largest forced migration in history. According to the latest estimates, 15 million black people were displaced from Africa to American continent, and other 30 - 40 million perished, from various causes, such as the brutality of the treatment, the difficult conditions of the transport, malaria etc<sup>5</sup>.

It is hard to imagine that in our democratic and free countries from the EU, tens of thousands of human beings are deprived of freedom and are exploited, sold like objects for profit. But this is the sad truth, and trafficking in human beings is all around us, closer than we think.

When we talk about ruthless, cruel, unscrupulous exploitation of humans, we do not have to think only about beings kept under key, whom someone obliges them to work or to prostitute themselves.

Many victims of slavery today comply voluntarily to the requirements of exploiters and they do not think at any moment to run away from these. This is because of fear, of frustration, of helplessness, or because of blackmail to which they are subjected to.

Social environment represents the factor generator of slavery. There are found the favorable conditions to maintain this phenomenon, the moral degradation, the existence of a demand for the services of those exploited, and the material lacks of the victims are playing a decisive role. The exploitation of vulnerable persons is linked to the level of the development of human civilization. For example, inventing photo cameras, video cameras, developing information technique have been used to make pornographic materials, often, children being involved<sup>6</sup>.

Slavery and bondage seem to us, today, to be notions from the history and geography, there were once or there exist somewhere, but there are incompatible with the democracy and modernism, that characterize us. However, let us take a look around us.

Each year millions of people, most often women and children, are being scammed or forced to fall in various forms of servitude from which they cannot escape, or from which they escape with great difficulty<sup>7</sup>.

Modern slavery represents the most serious violation of human rights in which persons are been revoked freedom and dignity, that is exactly what make us humans.

Regardless of the fact that it is about the sexual exploitation, domestic slavery or forced labor, forced beggary or other criminal activities, the persons who are exploited do not choose their fate<sup>8</sup>.

Therefore, slavery is a current phenomenon and it is largely extended at both national and international level.

<sup>3</sup> G. Bologa, *Diagnosticul și evaluarea întreprinderii*, Agora Publishing House, Oradea, 2007, p. 19

<sup>4</sup> J. N. Robert, *Roma*, Bic ALL Publishing House, Bucharest, 2002, p. 95

<sup>5</sup> D. Mannix, M. Cowley, *Corăbiile negre – o istorie a negoțului cu sclavi din Atlantic – 1518 – 1865*, Scientific Publishing House, Bucharest, 1968, p. 5.

<sup>6</sup> G. C. Zaharia, Summary to Doctoral Dissertation, [www.unibuc.ro](http://www.unibuc.ro)

<sup>7</sup> <http://freedomkeepersro.wordpress.com/despre-sclavia-moderna/>

<sup>8</sup> Idem

Romania is also distressed, being especially an origin and transit country for the large networks of exploited persons, originating especially from Asia, but also from the neighboring countries as Ukraine, Moldavia.

We conclude, therefore, that according to how they are designed, how they are committed as well as their consequences, most of these crimes present certain elements of internationalization, for which slavery is assimilated to a larger group of international crimes like those relating to human trafficking, drugs, weapons, terrorism, crimes against humanity, war crimes or genocide<sup>9</sup>.

The incrimination of the Romanian penal law established as pre-existing conditions: a.

a. Object of the crime:

Special juridical object constitutes social relationships regarding the protection of the individual freedom against illegal activities of placing and keeping a person in state of slavery<sup>10</sup>.

The condition of free man is an important conquest of humanity, and it is protected by penal law in all democratic states<sup>11</sup>.

The material object of the crime is the human itself who is in a state of slavery, reduced to the level of a simple material object, which can no longer be subject in the sphere of social relationships.

b. Subjects of the crime

(a) The active subject can be any person, the subject does not need to have a certain quality. The participation is possible in all its forms.

If the acts of slavery are committed by a foreign citizen in our country, he will be sanctioned based on the territorial principle of the criminal law. Foreign citizens and persons without citizenship, who commit abroad such acts, will not be judged and punished, at the time when they are in our country, according to the universality principle of the criminal law. Romanian criminal is applied to foreign citizens or to persons without citizenship who are not resident in the country, if they have committed crimes outside Romania, with the condition that the offender is voluntarily in Romania.

(b) The passive subject is the person – non-circumstantial – placed in state a slavery or is the subject of trafficking in slaves<sup>12</sup>.

The slave is a person lacking any rights, property of a slave master for whom he works<sup>13</sup>.

At the regional level, the financial crisis from the past years has facilitated an increase of the victims of trafficking for exploitation through work.

Statistics based on cases solved by the authorities, that apply the law, state ascending evolutions of the trafficking in human beings to exploit them through work in a series of legal and illegal sectors, including agriculture, horticulture and food processing, cleaning services, construction, catering services, entertainment industry (in particular among artists: dancers, entertainers, for example, in amusement parks), hotel industry, care centers, restaurants, catering services or small businesses in which physical work is used<sup>14</sup>.

”In particular, forced labor is determined by the nature of relationship between the person concerned and the employer. This implies restrictions on freedom of movement, confiscation of the identity documents, hurling threats such as threats with violence or with

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<sup>9</sup> L. A. Lascu, *Modalități de participare la comiterea crimelor date în competența instanțelor penale internaționale*, Hamangiu Publishing House, Bucharest, 2013, p. 10-15

<sup>10</sup> V. Dobrinou, *Drept penal. Partea specială*, Vol. I, Teorie și practică judiciară, Lumina Lex Publishing House, Bucharest, p. 166

<sup>11</sup> *Idem*

<sup>12</sup> V. Dobrinou, *op. cit.*, p. 167

<sup>13</sup> <http://dexonline.ro/definitie/sclav>

<sup>14</sup> “Transnational study regarding the characteristics of the policies in the domain of trafficking in persons to be exploited through work 2009-2011”, published on <http://anitp.mai.gov.ro/>

denouncing the person to the authorities of immigration to the immigrants who complain of standards of living and working conditions”<sup>15</sup>.

”One of the most outspread types of control on the victims is the system of ”slavery by debt” which, from a legal point of view, represents the state or the condition resulting from a commitment borne by the debtor to pay back a debt through services executed in person or by other person on whom this has an authority as security for that debt, if the value of those services, assessed reasonably, does not have the capacity to cover their debt or that the duration and the nature of these services are limited”<sup>16</sup>.

c. The constitutive content

- Objective side:

The material element consists of an action by which the active subject places or keeps in a state of slavery or by which the trafficking in slaves is realized<sup>17</sup>.

*Placing a person in a state of slavery* means a change from the situation of free person into the situation of total dependence on another person.

The last person becomes the owner of the first person<sup>18</sup>.

*Keeping in slavery* means to maintain the state of slavery, that is the state in which a person is by exerting the prerogatives of property right<sup>19</sup>.

Finally, *trafficking in slaves* means acts of trade, of slaves, that is acts of sale/purchase, transport or barter with slaves<sup>20</sup>.

There are no special conditions concerning the time or the place where the offense was committed.

The immediate outcome is placing a free person in a state of slavery, that is the total dependence on the slave owner or maintaining in this state or placing a person in slavery from one owner to another through acts of purchase or transfer.

It is not necessary for this result to have a legal consecration, being sufficient to be produce in fact.

c) Causality relation. The objective side is performed only when among the action of the offender (placing or keeping a person in slavery, or trafficking in slaves) and the immediate outcome, the existence of a casual link can be set. It is necessary to assess to verify if the activity of the active subject has produced or has contributed to the generation of these outcomes.

B. Subjective side.

The crime of slavery may be committed with direct and oblique (indirect) intent. The movable and the activity’s goal of author are not relevant. Also, the eventual consent of the victim is not inquired.

Among the causes of trafficking in slaves we find the profits that are obtained from this type of criminal activity, the lack of a satisfactory standard of living of the victims, their educational shortcomings, the existence of a demand for the services provided by the trafficked persons, a permissive criminal law or a lack of diligence in applying the legal provisions.

Although the specific arrangements of trafficking in slaves differ from one case to the other, looking as a whole the phenomenon, we can outline broadly how the smugglers act, as well as the steps that are taken up to the actual exploitation of the victims. Also, based on certain characteristics frequently encountered, we can also achieve a profile of the traffickers and of the victims.

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<sup>15</sup> Idem

<sup>16</sup> Idem

<sup>17</sup> C. Duvac, Drept penal. Partea specială, Vol. I, C. H. Beck Publishing House, Bucharest, 2010, p. 139

<sup>18</sup> Ghe. Diaconescu, în Ghe. Diaconescu, C. Duvac, Tratat de drept penal. Partea specială, C. H. Beck Publishing House, Bucharest, 2009, p. 160

<sup>19</sup> V. Dobrinou, op. cit., p. 167

<sup>20</sup> Idem

Usually, the *recruitment* is done by promising some well-paid jobs abroad. After the victims' confidence has been gained, the second stage of trafficking in persons, the *transport* starts. After reaching their destination, the victims are retained the travel documents and the identity cards and they are *accommodated* or *housed* and *exploited* directly by the traffickers which have recruited them in the first place, or are *transferred* to other traffickers, in exchange for money, to be exploited by them<sup>21</sup>.

Trafficking in persons can lead to negative consequences for the victims on several levels. So, their personal integrity or health can be affected by or endangered, or their psychic may be altered. The social relationships in which trafficked persons are engaged, may be, in turn, disrupted. Victims often experience a feeling of inferiority, they may feel stigmatized by their fellow humans, and they may present a high risk of social exclusion<sup>22</sup>.

In these cases, it is advisable that the hearing of the victims should take place in four stages, namely: building the relationship or preliminary discussions, the free account of the event, of the history of the traffic or free reports, asking questions and receiving answers, conclusion of the hearing by summarizing the essential points in the victim's testimony and checking their accuracy with the latter<sup>23</sup>.

- Causality relation

The objective side is performed only when among the action of the offender (placing or keeping a person in slavery, or trafficking in slaves) and the immediate outcome, the existence of a casual link can be set<sup>24</sup>.

It is necessary to assess to verify if the activity of the active subject has produced or has contributed to the generation of these outcomes.

d. Subjective side.

The crime of slavery may be committed with direct and oblique (indirect) intent.

Victim's consent does not remove the penal character of the offense, being a social value of which the person may not have (the condition of freedom)<sup>25</sup>.

The movable and the activity's goal of author are not relevant.

The offense is consumed when the immediate outcome was produced, that is placing and keeping the victim in the state of slavery, or performing a material act of trafficking.

In the manner of placing and keeping a person in slavery, the offense has a continuous character.

In the manner of trafficking, the offense is consumed instantly.

The attempt of the offense is punished.

"On 19 July 2012, the EU has approved a strategy for the eradication of this phenomenon, deemed to be unacceptable for the society in which we are. The basis of a common European legislation have been laid, that has to be adopted by the Member States in a common effort to eradicate the phenomenon of trafficking in persons, but until the expiry date, 6 April 2013, only 6 countries have implemented the European directive (Czech Republic, Latvia, Sweden, Hungary, Finland, Poland) and other 3 are in the process of adopting the new directions (Belgium, Lithuania, Slovenia)"<sup>26</sup>.

There are concerns at global level regarding the prevention and combating of this phenomenon, with a highlight in the specialized literature on the importance of a good global governance of migration existing either within institutions or as a result of the cooperation between institutions dealing with migration, but elements of global governance can also be

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<sup>21</sup> G. C. Zaharia, Summary Doctoral Dissertation, [www.unibuc.ro](http://www.unibuc.ro)

<sup>22</sup> I. G. Oltei, *Social assistance accorded to the victims of trafficking in persons*, in Law magazine, no. 7/2008, p. 225

<sup>23</sup> Elena-Ana Nechita, *Metodologia investigării infracțiunilor (Crime Investigation Methodology)*, 2012, PRO Universitaria Publishing House, Bucharest, p. 51-54

<sup>24</sup> V. Dobrinou, op. cit., p. 168

<sup>25</sup> C. Duvac, op. cit., p. 140

<sup>26</sup> [adev.ro/mm438q](http://adev.ro/mm438q)

found in the decisions following international consultation rounds and arrangements<sup>27</sup>.

By finding a common denominator, the coordination of authorities' efforts from the Member States is attempted to fight more efficiently with the trafficking in human beings.

#### 4. Forms. Ways. Sanctions

A. Forms. The offense is consumed when the immediate outcome was produced, that is placing and keeping the victim in the state of slavery, or performing a material act of trafficking. In the manner of placing and keeping a person in slavery, the offense has a continuous character. In the manner of trafficking, the offense is consumed instantly.

The attempt of the offense is punished.

B. Ways. The offense presents in three ways: placing in a state of slavery, keeping in a state of slavery and trafficking in slaves.

Relating to each normative ways, there are various factual ways.

C. Sanctions. Slavery is punished with imprisonment from 3 to 10 years and the prohibition of certain rights.

### Conclusions

From the analysis presented it has been observed that, despite the entry into force of the Slavery Convention and the official interdiction in almost all the countries, slavery continues to exist on large scale, both in its traditional form, as well as in modern form.

Laws cannot change human nature.

Laws only create the premise for punishment.

Beyond what we all want, depending on education, culture, tradition, religion or personal experiences, there are things that have happened, there are happening and they are going to happen for a long time.

We cannot prevent them, or master them.

We can only limit their effects.

But these things will continue.

And not only poverty "justify" them.

Otherwise, we would have to admit that a large part of the world's population could do that. We know that it's not so. There are needy people but with a perfect morality.

It's about our nature. Human weakness... flaccidity!

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<sup>27</sup> N. Iancu, *Migrația internațională a forței de muncă (International Labour Migration)*, 2013, PRO Universitaria Publishing House, Bucharest, p. 115

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