

# DEFINING TRAFFICKING IN HUMAN BEINGS AND ITS SOCIAL EFFECTS

LAURA ECEDI-STOISAVLEVICI\*

## ABSTRACT

Trafficking in persons, as a social phenomenon, has a long history, being present throughout the development of mankind. It was first regulated directly and separately from other related phenomena such as sexual exploitation, slavery, etc., only in the year 2000.

Most definitions used today by the nations of the world that define this social phenomenon from a legal point of view are inspired from the definition given to it by the United Nations Organization in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

The social effects of trafficking in persons stretch from the victim to the communities of which they are part, affecting not only the individuals caught up in the phenomenon of trafficking, but also the communities from which they come and even society, as a whole.

**Keywords:** Trafficking in persons, concept, social effects.

1. In the Preamble of the Universal Declaration of Human Rights it is emphasized that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people” (Universal Declaration of Human Rights, 1).

“Everyone has the right to life, liberty and security” (art. 3 of the Universal Declaration of Human Rights; art. 2 and art. 5 of the European Convention on Human Rights); “no one shall be held in slavery or servitude” (art. 4 of the Universal Declaration of Human Rights; art. 8 paragraphs 1 and 2 of the

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\* Postdoctoral researcher within the project entitled “*Horizon 2020 – Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Scientific Research*”, contract number POSDRU/159/1.5/S/140106. Legal Research Institute of Romanian Academy, Calea 13 Septembrie, no.13, 5<sup>th</sup> sector, Bucharest. E-mail: icj\_orizont2010@yahoo.com.



International Covenant on Civil and Political Rights; art. 4 of the European Convention on Human Rights); “slavery and the slave trade shall be prohibited in all their forms” (art. 8 paragraphs 3 of the International Covenant on Civil and Political Rights; art. 4 of the European Convention on Human Rights).

These fundamental rights, sanctioned by the Universal Declaration of Human Rights, are also found in the International Covenant on Civil and Political Rights<sup>1</sup>, as well as the European Convention on Human Rights<sup>2</sup>.

Despite the existence of those international instruments for the protection of human rights trafficking in persons has recorded in the last decade a significant increase, and it has become a major problem at both national and international level. If we think about the old forms of slave trade, but also other related ancient practices, we could say that trafficking in persons has a long history, being present throughout the development of our society.

Today, when we talk about trafficking in persons, we automatically think about women being trafficked for the purpose of prostitution. However, trafficking in persons is a more comprehensive phenomenon, which can no longer be reduced only to prostitution or slavery, although this was considered to be the case for a long period of time. Gradually, other phenomena, such as forced labour or illegal organ removal were considered to be similar practices, being included within the scope of the concept of trafficking in persons.

At international level, trafficking in persons was treated directly and distinctly for the first time only in the year 2000<sup>3</sup>. Until then, trafficking in persons was approached as an infringement of fundamental human rights, and regulated as phenomena related thereto, such as: slavery<sup>4</sup>, discrimination against women<sup>5</sup> and children<sup>6</sup>, sexual exploitation<sup>7</sup>, etc.

Despite the lack of a universally accepted definition of this concept, there are, nevertheless, a series of characteristics of the phenomenon, on which specialists have agreed, these being: violence, deception, use of force, deprivation of the right of movement, abuse of authority, the imposition of certain debts, forced labour, and other forms of exploitation.

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<sup>1</sup> Romania ratified the International Covenant on the 31st October 1974 by *Decree no. 212*, published in the “Official Gazette of Romania”, Part I, no. 146 of the 20th of November 1974.

<sup>2</sup> *European Convention on Human Rights* was ratified by Romania on the 20th of June 1994.

<sup>3</sup> By the *protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, adopted by the General Assembly of the United Nations on the 15th of November 2000.

<sup>4</sup> *The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, adopted by the General Assembly of the United Nations on the 7th of September 1956.

<sup>5</sup> *The Convention on the Elimination of All Forms of Discrimination against Women* adopted by the General Assembly of the United Nations on the 18th of December 1979.

<sup>6</sup> *The Convention on the Rights of Children* adopted by the General Assembly of the United Nations on the 20th of November 1989.

<sup>7</sup> *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* adopted by the United Nations General Assembly on the 2nd of December 1949.

It is a relatively new concept and that has not been tackled from the perspective of its current meaning - as comprehensive phenomenon with multiple ways of manifestation - therefore the definitions used by countries today are inspired from the one given by the United Nations with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children<sup>8</sup>.

The differences that arise between the definitions in various states are due to the special circumstances of manifestation of this phenomenon in each state, for example, the Netherlands, where prostitution is legalized, there are difficulties in proving trafficking in persons in the form of sexual exploitation through prostitution (US Department of State, *Trafficking in Person Report*, 2015, 258–259), the way in which it is perceived, as normal or not, for example, in North Korea there is no anti-trafficking law and many Koreans are sent to work abroad, especially, in Russia and China, in conditions of forced labour and exploitation. Officially trafficking in persons is not acknowledged as an issue, the government taking advantage of the forced labour of the victims. North Korea is not a party to the 2000 UN TIP Protocol (US Department of State, *Trafficking in Person Report*, 2015, 207–210) and the judicial system of each state, for example, in Spain, people mugging in the form of sexual exploitation through prostitution is considered as an offence (According to Article 187 and Article 188 from *Spanish Criminal Code*). However, all states use the defining elements stipulated in the UN definition.

In accordance with Article 3 paragraph a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children stipulates that “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

The main element of trafficking in persons is therefore **the exploitation of a human being**, which exploitation can be of a sexual nature, or not. It is a characteristic common to a wide range of phenomena, such as forced prostitution, forced beggary or forced labour, organising criminal groups consisting of minors, and so on, the aim being material gain.

At European level, by *the Resolution on trafficking in human beings from 1996*, the European Parliament accepts the lack of a clear definition of trafficking in persons, and three years later, the European Council at its meeting in Tampere,

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<sup>8</sup> The protocol is additional to the *Convention against Transnational Organized Crime* adopted in New York on the 15th of November 2000.

held on the 15th and 16th of October 1999, noted that it was necessary to have some common definitions, incriminations and sanctions with regard to trafficking in human beings and draws attention to the need to adopt European legal instruments to sanction this serious infringement, inviting the Council of the European Union to adopt legislation in this respect.

As a result of such findings, on the 4th of December 2000 *Decision 2001/87/EC of the Council* was adopted, with respect to signing, on behalf of the European Community, the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and illegal trafficking of immigrants by land, air or sea.

Subsequently, the Council of the European Union issued Framework Decision 2002/629/JHA of the 19th of July 2002 on combating trafficking in human beings, which represented an important tool in this respect. The text of the framework decision was based to a large extent on the UN Convention Protocol, using the definition given to trafficking in persons in this document, but it does not regulate the obligations of the states regarding the protection and assistance of the victims<sup>9</sup>.

Currently, the framework regulation at European Union level in this respect is Directive 2011/36/EU, which replaced Framework Decision 2002/629/JHA. The definition of trafficking in person, as well as all other aspects governing this phenomenon from a legal point of view, were taken over by the new Directive.

The novelty of this Directive is that the trafficking in persons is approached in a broader way by the European Union, the member states being asked to take into consideration the definition of the United Nations and, at the same time, are regarded as human trafficking certain activities which the Union exemplifies, namely:

“– labour exploitation in construction work, the agricultural sector or domestic servitude (recital 3 of the Directive)

– forced begging, which should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour (recital 11 of the Directive)

– exploitation of begging, including the use of a trafficked person begging (recital 11 of the Directive)

– illegal adoption or forced marriage” (recital 11 of the Directive).

At the same time, the Directive provides that the expression “exploitation of criminal activities” should be understood as “the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar

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<sup>9</sup> A possible argument would be that there is a distinct piece of regulation on the status of victims in criminal proceedings, but the framework is too general for the special needs and vulnerabilities of victims of trafficking in persons.

activities which are subject to penalties and imply financial gain” (recital 11 of the Directive).

In the Romanian legislation, trafficking in persons was criminalised for the first time as a distinct offence by Law No.678/2001 on the prevention and combating of trafficking in persons<sup>10</sup>, which Law took over the definition of the United Nations Organization for the most part, introducing only small differences.

These differences do not modify the meaning of the concept of trafficking in persons, as defined by the United Nations, but use more comprehensive concepts (harbouring – lodging/ accommodating; resorting to the use of force – violence; offering or accepting payments or benefits - offering, giving, accepting or receiving money or other goods; a state of vulnerability – taking advantage of someone's impossibility to defend themselves or to express their will).

In accordance with Article 12 and Article 13 of the law, trafficking in persons was defined as “recruiting, transporting, transferring, harbouring, hosting or receiving a person, resorting to threat, violence, or other forms of constraint, abduction, fraud or deceit, abuse of authority or by taking advantage their impossibility to defend themselves or to express their will, or by offering, giving, accepting or receiving money or other goods in order to obtain their consent by a person with authority over this person, for the purpose of exploiting such person” (Law no. 678/2001).

Subsequently, following the entry into force of the new Criminal Code, trafficking in persons received a new regulation.

Accordingly, Chapter VII of Title I of the special part of the new Criminal Code, entitled “*Trafficking and exploitation of vulnerable persons*”, regulates the criminalised offences contained in the provisions of the previous criminal provisions, namely Law no. 678/2001 on the prevention and combating of trafficking in persons, as well as those provided for by the Emergency Ordinance no. 194/2002 on the legal status of aliens in Romania.

The texts that criminalise *trafficking in persons* (article 210 of Criminal Code), *of minors* (article 211 of Criminal Code) and *migrants* (article 263 of Criminal Code) have been planned systematically for easier comprehension and a better correlation with other criminalising text, nevertheless, without substantial modifications.

The novelty about the new Criminal Code is the aggravated form of the offence of trafficking in persons, namely *trafficking in persons committed by a civil servant* during the course of their duties.

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<sup>10</sup>Until trafficking in persons was criminalised by Law no. 678/2001, the illicit activities carried out in connection with trafficking in persons were stipulated in *the Criminal Code*, i.e. unlawful deprivation of liberty (Article 189), slavery (Article 190), subjecting to forced or compulsory labour (Article 191), prostitution (Article 328) and procuring/ pandering (Article 329).

This regulation represents an alignment of the national legislation to the Council of Europe Convention on action against trafficking in human beings, ratified by Romania by Law no. 300/2006. Implementing Article 24 of the Convention in the Romanian law represents an obligation assumed by the Romanian state.

Chapter VII of Title I of the special part of the new Criminal Code also includes the offences of trafficking in minors, as a distinct criminal offence, with more severe sanctions, forced or compulsory labour, procuring, exploitation of beggary, the use of a minor for the purpose of beggary, the use of the services of an exploited person.

Trafficking in women is not regulated as a distinct offence, unlike trafficking in minors. Similarly to the previous regulation, it is regulated as part of the broader phenomenon of trafficking in persons.

As regards the practice of prostitution, the new Criminal Code no longer includes the criminalisation of this conduct, but it criminalises deeds that exploit the phenomenon of prostitution, such as procuring, trafficking in persons, or use of the services of an exploited person, or that cause an expansion of this phenomenon.

These are often manifestations of organised crime, as a broader phenomenon, within which trafficking in persons is only an aspect.

Given this context, the intention was to acknowledge that the person providing sexual services within these organised crime groups is a victim, shifting the opprobrium from the person recruited to the recruiter, to help punish the real perpetrators responsible for the spread of prostitution and of other phenomena, with a more significant social danger, such as trafficking in persons.

The fact that prostitution is removed from the Criminal Code does not mean that it was “legalised”, or that it became regulated or permitted under the law, as it continues to be sanctioned as a contravention.

The new Criminal Code no longer criminalises beggary as stipulated in the previous Criminal Code, but contains two distinct criminalised offences, meant to respond to situations that have been frequently arising in the past few years.

These offences are the exploitation of beggary practiced by a minor or by a person with disabilities (coercing them into practicing beggary or deriving benefits as a result of this activity) and the use of a minor by an adult able and fit for work, for the purpose of deriving material benefits from the public.

The latter situation – for example a woman begging holding a few months old baby to stir pity – represents a clear danger, not just because it is a serious threat to human dignity, the child being used as an accessory, but also because it endangers the health or even the life of this minor, given the conditions which the child is exposed (very low or very high temperatures, rain, etc.).

With regard to the use of the services of an exploited person, it has been introduced following the ratification by Romania of Council of Europe Convention on action against trafficking in human beings, by Law no. 300/2006.

For example, the text is applicable in the case of a person who agrees to receive an organ transplant, knowing that the organ was illegally removed from a victim of trafficking in persons or to a person who accepts to use forced labour imposed to such victims or a person who receives the services of a person forced to practice prostitution, knowing that the latter is a victim of trafficking in persons.

As regards *the concept of exploitation of a person* the new Criminal Code defines it as:

- a) subjecting a person to conduct work or services, in a forced manner;
- b) keeping a person in a state of slavery or in other similar states of deprivation of liberty or obedience;
- c) forcing a person to practice prostitution, to engage in pornographic manifestation for the purpose of producing and disseminating pornographic materials or other forms of sexual exploitation;
- d) forcing a person to practice beggary;
- e) illegal removal of organs, tissues or cells of human origin. (Art. 182 of the Criminal Code)".

2. Trafficking in persons should be seen not only as a form of victimisation of the human being, but also as an issue of human and social development. It is a form of victimisation of the human being, because it essentially represents a relationship of exploitation thereof.

At the same time, trafficking is a phenomenon that profoundly affects the physical, intellectual and psychological development of the victims and jeopardises their functioning in society. The negative consequences of trafficking extend from the direct victims, to the communities and the society where they originate, the latter two having to cope with the loss of human capital and with increased costs for the recovery and social reintegration of the trafficked persons.

For the victims, the consequences that they have to face are much more serious than in the case of victims of any other type of crime.

First of all, trafficking has the effect of deteriorating the physical health of the trafficked persons as a result of constant violence and abuse to which they are exposed.

These acts of violence and abuse are used by traffickers from recruitment, when, in some cases, the traffickers resort to abducting and coercing the victim. The abuse continues in different situations and during transport, in addition to the acts of violence against the victims, forcing them to travel in improper conditions, with insufficient food and rest.

During their exploitation, the effects on the health of the victims are particularly serious, as the constant violence and abuse result in permanent deterioration of their health. From a medical point of view, "the brutal treatment to which the victims are subject (physical corrections, sleep deprivation, improper food) leads to them losing weight, developing bruises, fractures, dental problems, gastro-intestinal or dermatological conditions, as well as to an increased risk of

infection or various disabilities following beatings or as a result of their attempts to escape” (Zimmerman C., 2003, p.45). In extreme cases, victims who refuse to comply with the requirements or who try to escape are killed. There is no accurate data on this matter, but the figure is believed to amount to thousands of people (US Department of States, *Trafficking in Persons Report*, 2003, p. 10). In the case of victims subjected to sexual exploitation, added to all this, are sexually transmitted diseases, including AIDS.

Secondly, social isolation and the permanent control exercised by traffickers on the victims, as well as the actual conditions in which they work, affect the psychological health of the victims. The psychological trauma is even more profound in the case of sexual exploitation. The chronic stress that the victim experiences generates a series of “psychological disorders: psychosomatic symptoms (insomnia, nervousness, nightmares, etc.), behavioural changes (reclusiveness, suspicion, irritability, aggressiveness, impulsivity, suicide attempts, depression, phobias) and cognitive problems (confusion, disorientation, memory loss, lack of concentration)” (Zimmerman C., 2003, p.53).

These effects are felt more strongly in case the trafficked persons are children; essentially, the lowest the age of the victim, the stronger the psychological and medical trauma.

Children are abused physically, psychologically, verbally and, in some cases, sexually, being denied the rights to education and to protection, working and living in extremely difficult conditions.

Thirdly, trafficking reduces the chance for trafficked persons to lead normal lives. Beyond the physical and psychological trauma that the victims are faced with, trafficking prevents them from acquiring the skills required for them to function as part of society. Given the young ages of some victims, trafficking also means dropping out of school, and thus having a poor education, which will prevent the victim from integrating on the labour market.

Other effects of trafficking are social marginalisation and poverty. The main motivation for individuals who become victims one way or another is of an economic nature, in an attempt to obtain earnings that would provide them with material comfort. The process of trafficking, however, leads to the exact opposite: deepening of poverty and social exclusion. After going through the process, the economic situation of the victims remains just as poor and their educational capital is low (the same as prior to the trafficking), and added to that, there are medical and psychological problems incurred as a result of the trafficking.

Under these circumstances, the chances of integration into the labour market are much lower than initially. The situation is extremely serious, especially in the case of children. In their case trafficking leads to poor education, which, in the long run, in the absence of measures to remedy the situation, will lead to serious marginalisation and social exclusion.

The stigmatisation of trafficked persons, in particular in the case of victims of sexual exploitation, is another effect of traffic, which hinders the process of social reintegration of the victims. A woman who practiced prostitution (even if forced) is disregarded in many societies and is blamed for her situation.

Equally serious is the situation in which the victims themselves are prosecuted (for prostitution or illegal residence in a Member State, thus becoming criminals) and even imprisoned as a result. Even in cases where this does not happen and trafficked persons are acknowledged as victims, society is often incapable of providing them with the assistance and services they need. The chances of reintegration are so low that trafficked persons returning to their communities of origin face an increased risk of conducting illegal activities (US Department of States, *Trafficking in Persons Report*, 2006, p. 10).

Trafficking also has an impact on the victim's relationship with his or her family, social integration being compromised not only due to the poor skills of victims, but also due to stigmatisation and isolation, their families being the first ones to label and to isolate them.

The effects of trafficking also extend to the community of origin. Consequently, the social and economic costs for the community are significant. Direct costs are involved (the costs required to eliminate or reduce the negative effects of trafficking), but also indirect costs (impact on the labour force, imbalances of the labour market, issues that adversely affect the economic development).

Sexual exploitation is primarily associated with the transmission of sexually transmitted diseases, including AIDS, but also with a profound deterioration of the health of victims, due to the severe work conditions and alcohol and drug addiction. The poor health condition of the victims requires medical assistance for recovery or, in more complex cases, permanent medical assistance, which involves considerable costs.

Trafficking for sexual exploitation represents a risk to public health due to the spread of some diseases, in particular sexually transmitted diseases, including HIV. Under these circumstances, medical care is not limited to the victims, but also to customers and any potential partners of the customers.

Trafficking also involves meeting a need at community level - the need for cheap labour or sexual services. While it is true that prostitution brings substantial revenue, it is not a source for community development. Trafficking helps the traffickers earn substantial proceeds and is, implicitly, a source of power, adversely affecting the democratic functioning of the society. Aside from these effects, there are also costs to be incurred by society to prevent and fight against this phenomenon, as well as to provide support for its victims.

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### REFERENCES

- Convention on the Elimination of All Forms of Discrimination against Women* adopted by the General Assembly of the United Nations on the 18th of December 1979.
- Convention on the Rights of Children* adopted by the General Assembly of the United Nations on the 20th of November 1989.
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* adopted by the United Nations General Assembly on the 2nd of December 1949.
- Convention against Transnational Organized Crime* adopted in New York on the 15th of November 2000.
- Decree no. 212*, published in the “Official Gazette of Romania”, Part I, no. 146 of the 20th of November 1974.
- European Convention on Human Rights*.
- International Covenant on Civil and Political Rights*.
- MATEUȚ GHE., PETRESCU V.E., ȘTEFĂROIU N., ONU E., BUBLEA A., LUCA S., IOVU D., TĂRNICERIU R.D., GAFTA G.L., LUCA C., PRUNĂ R.A. 2005. *Traficul de ființe umane. Infractor. Victimă. Infracțiune*. Asociația Magistratilor Iași și Asociația Alternative Sociale Iași.
- Romanian New Criminal Code*.
- Law no. 678/2001*, published in the “Official Gazette of Romania”, Part I, no. 783 of the 11th of December 2001.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* adopted by the General Assembly of the United Nations on the 15th of November 2000.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, adopted by the General Assembly of the United Nations on the 7th of September 1956.
- Spanish Criminale Code*.
- Universal Declaration of Human Rights*.
- US Department of States, *Trafficking in Persons Report*, (2003).
- US Department of States, *Trafficking in Persons Report* (2006).
- US Department of State, *Trafficking in Person Report*, (2015).
- ZIMMERMAN C. 2015. *The Health Risks and Consequences of Trafficking in Women and Adolescents. Findings from a European Study*, London School of Hygiene and Tropical Medicine.