

INTERNATIONAL CRIMINAL LAW

SOME ASPECTS OF CRIMINAL LAW AND FORENSIC SCIENCE REGARDING HUMAN TRAFFICKING

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Abstract

Trafficking in human beings constitutes a complex criminal offence which comprises the following stages: recruitment, transportation, transfer, harbouring or receipt of human beings for the purpose to exploit them. The essential element of the human beings trafficking process is the exploitation of persons in conditions which seriously affect the fundamental human rights and freedoms. To comply with the requirements referring to the offence of trafficking in persons, it is not important if the purpose pursued by the traffickers of persons, the exploitation of the victim, was carried out or not.

The crimes of trafficking in human beings present a cross-border character, which imposes that the evidence be obtained from the territorial jurisdiction of several states, by using the special techniques of criminal investigation, international cooperation and requests for mutual assistance. The investigation process of the trafficking in human beings must be centred on the respect of the rights and needs of victims. Investigators in the field of trafficking in human beings must continuously adapt to the new challenges related to the combat against trafficking in persons by elaborating new methods, techniques and proceedings of investigation.

Keywords: *human beings; trafficking in persons; trafficking in minors; crime scene investigation; investigation process; exploitation of persons.*

§1. Preliminary considerations

Trafficking in human beings means 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

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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”².

In essence, trafficking in human beings constitutes a complex criminal offence which comprises three distinct stages which refer mostly in recruitment, transportation and exploitation of persons. Moreover, trafficking in persons is a process which involves a series of correlated actions, to which participate more persons. The victims of the trafficking in persons must be recruited and transported to the place where will be exploited by one of the indicated means by the above mentioned definition. After recruitment, the victims of the trafficking in persons may be transported both in the country and outside its borders in order to be exploited.

The essential element of the human beings trafficking process is the exploitation of persons in conditions which seriously affect the fundamental human rights and freedoms.

The main objective for most of human traffickers is to achieve profit following the exploitation of victims once they reached their final destination. Thus, human traffickers make profits most of the time through the following forms of exploitation: forcing to execute a labour or to provide services in a forced manner; keeping in slavery or other similar proceedings of lack of freedom or servitude; obligation to practice prostitution, pornographic manifestations in order to produce and disseminate pornographic materials or other forms of sexual exploitation; obligation to practice begging; illegal removal of human organs, tissues and cells.

We noticed that, sometimes, along with the notion of trafficking in human beings in the literature is also used the notion of smuggling of migrants, these two notions being used most of the time alternatively, and taking into consideration this aspect, we should point out that in reality these two notions are different.

According to the provisions of article 3 (a) of the Protocol³ against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention Against Transnational Organized Crime, the smuggling of migrants means „the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

² The definition of *trafficking in human beings* is found in the following legal instruments at international and European level: article 3 (a) from the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime; article 4 (a) from the Council of Europe Convention on Action against Trafficking in Human Beings; article 2 (1) from the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

³ The Romanian Official Gazette no. 813 from the 8th of November 2002.

Smuggling of migrants is an offence with cross-border nature which involves an organized transport of persons outside the borders in the exchange of an amount of money received by the person who organized the transportation. The relation between the smuggler and the migrant ends after the border has been crossed and migrant has paid the smuggler the requested amount of money before arriving in the foreign country or when arriving at destination⁴. The migrant must be a person who has not the citizenship of the state on the territory of which requests the illegal entry or to be a person who does not have the domicile on the territory of that state. In contrast, in case of human trafficking, the relation between the trafficker and the victim does not end upon arrival at destination, but it continues for a certain period, as the victim can be subjected to a form of coercion, such as to provide a forced labour in order to pay off a debt. Human beings trafficking occurs both across international borders and within the national boundaries⁵.

The main difference between smuggling of migrants and trafficking in human beings arises from the freedom to choose of the trafficked person. Thus, the migrant gives his/her consent all the time in respect of the transportation outside the borders of his/her country of origin, while the victim of human trafficking, even if, initially, he/she gives the consent, then he/she is aware of the danger only when they arrive at the destination. The danger to which is exposed the victim of human trafficking consists in losing the freedom to choose, as he/she is forced to be in a situation to be exploited.

As the smuggling of migrants is carried out for the purpose to illegally cross the borders of the Romanian State, the smuggler of migrants receives amounts of money for the illegal entry or exit from the country of the persons who have not the legal right to entry or exit the country. In contrast, the trafficking in human beings is committed only for the purpose of the exploitation of the person, regardless if the activity of exploitation is carried in the same country where the activity of trafficking took place or not⁶.

§2. The legal regulation of trafficking in human beings at international and national level

The Protocol to prevent, suppress and punish trafficking in persons, especially women and children⁷, supplementing the United Nations Convention against

⁴ International Association of Chiefs of Police (2006). *The crime of human trafficking: A law enforcement Guide to identification and investigation*, Alexandria, Virginia, pp. 3.

⁵ The Organization for Security and Co-operation in Europe (OSCE) (2013). *OSCE Resource Police Training Guide: Trafficking in Human Beings*, Publication Series Volume 12, Vienna, July 2013, pp. 44.

⁶ Dobrinoiu, Vasile; Pascu, Ilie; Hotca, Mihai Adrian; Chiş, Ioan; Gorunescu, Mirela; Neagu, Norel; Dobrinoiu, Maxim; Sinescu, Mircea Constantin (2014). *Noul Cod penal comentat. Partea specială*, Second Edition, Bucharest: Universul Juridic Publishing House, pp.128 and the following.

⁷ The Romanian Official Gazette no. 813 from the 8th of November 2002.

Transnational Organized Crime has as purposes to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist the victims of such trafficking, with full respect for their human rights, as well as to promote cooperation among States Parties in order to meet those objectives. The States Parties assumed the obligation to incriminate the acts mentioned at article 3⁸ of this protocol, when they were committed intentionally (article 5).

The Council of Europe Convention on Action against Trafficking in Human Beings⁹, adopted on the 3rd of May 2005, opened for signing and signed by Romania on the 16th of May 2005, has as purposes: to prevent and combat trafficking in human beings, while guaranteeing gender equality; to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution; to promote international cooperation on action against trafficking in human beings (article 1). At the article 4¹⁰ are defined several notions among which is the notion of trafficking in human beings.

⁸ Article 3 from the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime provides: "a) 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;

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article; d) Child shall mean any person under eighteen years of age".

⁹ The Council of Europe Convention on Action against Trafficking in Human Beings was ratified by Romania through the Law no.300/2006, published in the Romanian Official Gazette no. 622 from the 19th of July 2006.

¹⁰ Article 4 from the Council of Europe Convention on Action against Trafficking in Human Beings defines the following terms: "(a) Trafficking in human beings 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;

(b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harbouring or receipt of a child for

The Directive 2011/36/EU¹¹ of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA represents the most important legal instrument in the field of fight against trafficking in human beings at the level of the European Union.

The Directive 2011/36/EU establishes minimum norms to define the offences and criminal sanctions in matters of human trafficking. The Directive also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof. It comprises provisions of material criminal law in respect of the incrimination and the sanctioning of human trafficking, provisions regarding the liability of legal persons, as well as the seizing and confiscation of the means and products obtained after the criminal offence was committed regarding the human trafficking, stipulated at article 2¹².

The offences referring to human trafficking and the offences related to human trafficking are stipulated by the Romanian Criminal Code, Title I Offences against the person, Chapter VII *Trafficking and exploitation of vulnerable persons*, articles 209-217.

The Article 210 paragraph 1 of the Romanian Criminal Code referring to *trafficking in persons* punishes the offences of recruitment, transportation, transfer, harbouring or receipt of a person in order to exploit it, committed by: coercion, abduction, fraud, deception or abuse of power; taking advantage of the impossibility to defend himself/herself or to express is/her will or the particularly

the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) Child shall mean any person under eighteen years of age;

(e) Victim shall mean any natural person who is subject to trafficking in human beings as defined in this article".

¹¹ Published in the Official Journal of the European Union from the 15th of April 2011, L 101/1.

¹² Article 2 from the Directive 2011/36/EU provides the following:

"1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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. 2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved. 3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. 4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used. 5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used. 6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age".

vulnerability of that person; by offering, giving, accepting or receiving money or other advantages in return for the consent of the person who has authority over that person. Also, the article 210 paragraph 2 of the Romanian Criminal Code punishes the trafficking in persons committed by a civil servant in the exercise of the duties. The consent victim of the trafficking does not constitute a supporting cause (article 210 paragraph 3 of the Romanian Criminal Code).

The article 211 paragraph 1 of the Romanian Criminal Code referring to *trafficking in minors* punishes the offences of recruitment, transportation, transfer, harbouring or receipt of a minor for the purpose to exploit him/her. According to the provisions of article 211 paragraph 2 of the Romanian Criminal Code, the minimum and maximum limits of the punishment increase when: the crime was committed under the conditions of article 210 paragraph 1; the crime was committed by a civil servant in the exercise of his/her duties; it endangered the life of the minor; the crime was committed by a member of the family of the minor; the crime was committed by a person in whose care, protection, education, guard or treatment is the minor or by a person who abused by his position recognised by trust or authority over the minor. The consent of the trafficking victim does not constitute a supporting cause (article 211 paragraph 3 of the Romanian Criminal Code).

The article 182 of the Romanian Criminal Code defines the notion of *exploitation of a person*, which refers to: submission to the execution of a labour or provision of services in a forced manner; keeping in slavery or other similar processes of deprivation of liberty or servitude; obligation to practice prostitution, pornographic manifestations in order to produce and disseminate pornographic materials or other forms of sexual exploitation; obligation to practice begging; illegal removal of human organs, tissues or cells.

Within Chapter VII *Trafficking and exploitation of vulnerable persons* of Criminal Code are also found the offences related to trafficking in persons or minors: slavery (article 209); forced or compulsory labour (article 212); pimping (article 213); exploitation of begging (article 214); use of a minor for the purpose of begging (article 215); use of the services of an exploited person (article 216); use of infantile prostitution (art.216¹). Other offences related to trafficking in persons or minors are the offences of illegal deprivation of liberty, which is stipulated by article 205 of the Romanian Criminal Code and the offence of infantile pornography stipulated by article 374 paragraph 1¹ of the Romanian Criminal Code.

§3. The legal analysis of the offences of trafficking in persons and trafficking in minors stipulated by the Romanian Criminal Code

3.1. The analysis of the offence of trafficking in persons stipulated by article 210 of the Romanian Criminal Code

➤ **The special legal object** is represented by the social relations related to the respect of freedom, dignity, body integrity or health of the person or other rights,

against the offences of exploitation and transformation of the person in a source of an unlawful gain.

➤ **The material object** is constituted by the body of the trafficked person for the purpose of exploitation.

➤ **The active subject** of the offence of trafficking in persons can be any person who complies with the general conditions stipulated by law in order to be held criminally liable. In relation to the aggravated variant of this crime, the active subject is qualified, having the quality of civil servant.

The criminal participation is possible under all its forms: co-author, instigation and complicity.

➤ **The passive subject** of the offence of trafficking in persons is constituted by the person trafficked for the purpose to be exploited, who can be any adult person, woman or man. In the case the passive subject is under 18 years old, the crime that will be investigated will be the trafficking in minors.

➤ **Objective side**

The material element of the objective side is formed of a series of actions which represent an alternative character being as follows: recruitment, transportation, transfer, harbouring or receipt of persons for the purpose to exploit them. To comply with the requirements referring to the offence of trafficking in persons, it is not important if the purpose pursued by the traffickers of persons, the exploitation of the victim, was carried out or not.

Recruitment of a person for the purpose to be exploited refers to the identification of a person susceptible to be exploited and the determination thereof to become victim of the exploitation in order to obtain a gain¹³. The simple identification of the victim is not enough to be in the presence of the offence of trafficking in persons, being necessary that the traffickers have a continuous bond with the victim in order to gain control¹⁴.

The Internet network has an important role in this stage of recruitment of the victims of trafficking in persons. A person can become victim of the trafficking in persons by voluntarily and unaware involvement in the activities on the Internet. Human traffickers use the Internet network as an instrument in order to carry out the criminal activity.

Human beings traffickers, in order to recruit the victims with the help of Internet network, use fraudulent methods, such as the promise made to the victim to have a better life in a foreign country, or the perspective to become well known to the general public. Moreover, human traffickers, through the use of the Internet network, easily success in recruiting the victims and manipulating them

¹³ Dobrinoiu, Vasile; Pascu, Ilie; Hotca, Mihai Adrian; Chiş, Ioan; Gorunescu, Mirela; Neagu, Norel; Dobrinoiu, Maxim; Sinescu, Mircea Constantin (2014). *Noul Cod penal comentat. Partea specială*, Second Edition, Bucharest: Universul Juridic Publishing House, pp. 126.

¹⁴ Zaharia, George-Cristinel (2012). *Traficul de persoane*, Bucharest: C.H. Beck Publishing House, pp. 52.

subsequently in order to be exploited. Persons become victims of trafficking in persons in cyberspace more easily than in the offline space, especially those who frequently pursue different opportunities on the Internet. Thus, the possible victims of trafficking in persons in order to gain big amounts of money, in order to become famous and to get a feeling of personal achievement, visit a multitude of web sites which allow them to interact with other persons through social networking (such as Facebook, Twitter), groups of discussions and forums¹⁵.

Without realizing it, most of the Internet users easily disclose their personal information, which can be used afterward by human traffickers in order to subsequently manipulate the possible victims by intimidation, allurements or other practices of social engineering.

Transportation refers to the action of a person, called carrier, to move from a place to another the person who is going to be trafficked, with a help of any means of transportation, within the borders of a state or outside the borders of that state. The border crossing towards the state of destination is performed legally, such as the situation where the trafficked persons present the necessary documents to cross the border of the state, as tourists, artists, future spouses, political asylum seekers, or the border crossing towards the state of destination can be performed illegally, in the case where the victims of trafficking in persons do not meet the requests provided by law to cross the border, such as the case referring to the persons who do not have residence permit valid in the country of destination.

Transfer consists in the action of passing the victims of trafficking in persons from a trafficker to another trafficker by sale-purchase, exchange, donations, assignments in exchange of other debts so that the victims of the trafficking in persons be exploited. In all the situations, the action of transfer consists also in the change of the place where the victim is hidden or exploited, in some cases the victim remaining under the control of the same trafficker¹⁶.

Harbouring refers to the action of placing a person in a certain place in order not to be found by the judicial bodies, for the purpose to exploit that person.

Receipt consists in the action to take possession of the victim of the trafficking in persons from a trafficker to another trafficker, as result of a transaction made between them, in order to exploit the victim. We notice that the action of *receipt* refers to taking into custody the victim by a trafficker from another, while the action of *transfer* represents the exit of a victim from the authority of a human trafficker in order to pass under the authority of another human trafficker¹⁷.

¹⁵ Yu, Szde (2015). *Human Trafficking and the Internet*, in Michael J. Palmiotto (ed.), *Combating Human Trafficking. A multidisciplinary approach*, Boca Raton, Florida: CRC Press, Taylor & Francis Group LLC, pp. 64-65.

¹⁶ Zaharia, George-Cristinel (2012). *Traficul de persoane*, Bucharest: C.H. Beck Publishing House, pp. 53-54.

¹⁷ Idem, p.55; Vidaicu, Mihaela; Dolea, Igor (2009). National Institute of Justice, *Combaterea traficului de ființe umane-drept material și drept procesual-*, Chișinău: Nova Imprim SRL, pp. 30.

The immediate consequence consists in the creation of a condition of danger, of threat against the social relations regarding the respect of freedom, dignity, physical or psychic integrity of the person or other rights.

Between the activity of the offender and the immediate consequence there must be a **causal link**, resulting from the materiality of the crime.

➤ **Subjective side**

The crime of trafficking in persons is committed only under the form of guilt of the direct intention. For all the actions forming the material element of the objective side in the case of the crime of trafficking in persons, the law requires, as an essential condition, the existence of a certain purpose of the crime, this being the exploitation of the victim, in the meaning of article 182 of the Romanian Criminal Code.

➤ **Forms of the crime**

Preparation is possible, but it is not incriminated and therefore is not punished.

Attempt of the crime of trafficking in people is possible and is punished according to article 217 of the Romanian Criminal Code.

Consumption of the crime of trafficking in persons takes place at the moment when the material element of the objective aspect was achieved, which is composed of a series of actions and the immediate consequence happened.

Exhaustion of the crime of trafficking in persons takes place at the moment when the last act incriminated by law was committed. The crime of trafficking in persons can be committed under continuous or continued form. Thus, some of the actions incriminated by article 210 paragraph 1 of the Romanian Criminal Code, such as transportation, transfer, harbouring, involve the carrying out of some activities having a certain duration, a prolongation in time, which shows that the crime of trafficking in persons, committed in these variants, is continuous crime¹⁸.

➤ **Modalities**

The crime of trafficking in persons presents five normative modalities: recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of their exploitation. These normative modalities can have as correspondence various fact modalities.

➤ **Sanctions**

The offences covered by article 210 paragraph 1 of the Romanian Criminal Code are punishable by 3 to 10 years of imprisonment and the interdiction to exercise some rights. The article 210 paragraph 2 of the Romanian Criminal Code punishes also the trafficking in persons committed by a civil servant in the exercise of his/her duties, by imprisonment from 5 to 12 years.

¹⁸ Dobrinoiu, Vasile; Pascu, Ilie; Hotca, Mihai Adrian; Chiş, Ioan; Gorunescu, Mirela; Neagu, Norel; Dobrinoiu, Maxim; Sinescu, Mircea Constantin (2014). *Noul Cod penal comentat. Partea specială*, Second Edition, Bucharest: Universul Juridic Publishing House, pp. 129.

3.2. The analysis of the offence of trafficking in minors stipulated by article 211 of the Romanian Criminal Code

➤ **The special legal object** is represented by the social relations regarding the respect of freedom, dignity, body integrity or health of a minor or other rights, against the crimes of exploitation and transformation of the minor in a source of an unlawful gain.

➤ **The material object** is constituted by the body of the trafficked minor for the purpose of exploitation.

➤ **The active subject** of the offence of trafficking in minors can be any person who complies with the general conditions stipulated by law in order to be held criminally liable. In relation to the aggravated variant of this crime, the active subject must have the quality of civil servant in the exercise of his/her duties or of member of the minor's family or can be a person in whose care, protection, education, guard or treatment is the minor or be a person who abused by his position recognised by trust or authority over the minor.

The criminal participation is possible under all its forms: co-author, instigation and complicity.

➤ **The passive subject** is qualified, this one being only the exploited minor.

➤ **Objective side**

The material element of the objective side is formed of a series of alternative actions: recruitment, transportation, transfer, harbouring or receipt of a minor for the purpose to exploit him. The analysis of these alternative actions was already carried out at the crime of trafficking in persons, analysis to which we refer. We notice that, unlike the crime of trafficking in persons, the crime of trafficking in minors is not conditioned by the fulfilment of any essential condition for the carrying out of the material element in the type variant. Thus, the crime of trafficking in minors is committed through any methods of recruitment, transportation, transfer, harbouring or receipt.

The immediate consequence consists in the creation of a condition of danger, of threat against the social relations regarding the respect of freedom, dignity, physical or psychic integrity of the minor or other rights, the action of the active subject being carried out by committing the incriminated activity.

Between the activity of the offender and the immediate consequence there must be a **causal link**, which is carried out by committing the action described by the incriminating norm.

➤ **Subjective side**

The crime of trafficking in minors is committed only under the form of guilt of the direct intention, qualified through the purpose. For all the modalities of existence of the material element of the objective side in case of the crime of trafficking in minors, the law requires as an essential condition the existence of a certain purpose of the crime, this being the exploitation of the victim, according to article 182 of the Romanian Criminal Code.

We consider that the exploitation of minor constitutes the purpose of the activity of the crime of trafficking in minors and not a condition of the objective side, therefore it is not necessary the achievement of the purpose for meeting the constitutive elements of the crime of trafficking in minors, but only their follow-up.

In respect of the **forms of the crime of trafficking in minors**, we refer to the explanations given in the crime of trafficking in persons, which are valid for the crime of trafficking in minors, too.

➤ **Modalities**

The crime of trafficking in minors presents five normative modalities: recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of their exploitation. These normative modalities can have as correspondence various fact modalities.

➤ **Sanctions**

The offences covered by article 211 paragraph 1 of the Romanian Criminal Code are punishable by 3 to 10 years of imprisonment and the interdiction to exercise some rights. The offences covered by article 211 paragraph 2 of the Romanian Criminal Code are punishable by 5 to 12 years of imprisonment and the interdiction to exercise some rights.

§4. Forensic aspects on human beings trafficking

4.1. Particular elements to the investigation process of human beings trafficking

One of the most important challenges for the enforcement bodies within the process of investigation is represented by the hidden nature of the trafficking in human beings, which contributes to the poor identification of the victims of human trafficking. Often, the victims of trafficking in persons cannot or do not want to cooperate with the investigators, hesitating in most of the case to seize the competent legal bodies the commission of potential crimes.

The crimes of trafficking in human beings present a cross-border character, which imposes that the evidence be obtained from the territorial jurisdiction of several states, by using the special techniques of criminal investigation, international cooperation and requests for mutual assistance¹⁹.

Investigators in the field of trafficking in human beings must continuously adapt to the new challenges related to the combat against trafficking in persons by elaborating new methods, techniques and proceedings of investigation.

The investigation process of the trafficking in human beings must be centred on the respect of the rights and needs of victims. The enforcement bodies have the obligation to ensure that the measures adopted for the purpose to prevent and

¹⁹ Herz, Annette (2012). *Human Trafficking and Police Investigations*, in Winterdyk, John; Perrin, Benjamin; Reichel, Philip (eds.), *Human Trafficking. Exploring the International Nature, Concerns, and Complexities*, Boca Raton, Florida: CRC Press, Taylor & Francis Group, pp. 134.

combat trafficking in persons will not have a negative impact over the respect both of the dignity of victims and other rights they have during the criminal proceedings.

4.2. Planning the investigation of trafficking in human beings

Planning represents an essential condition of the process of investigation of trafficking in persons, and it must establish the aspects related to the criminal jurisdiction, meaning the region or the state where the proceedings will begin. At the same time, planning will pursue to establish all the legal procedures which have to be followed during the investigation proceedings. Still from the beginning of the investigation process, legal bodies, before making a decision, must analyse all the options they have and clearly identify the risk factors to which are exposed the victims of the trafficking in persons.

The planning of the investigation process of trafficking in persons has to clear other aspects referring to:²⁰ establishing the team for the investigation of the trafficking in persons and the financial resources necessary for the carrying out of the investigation process; protection of the vulnerable and threatened witnesses and protection of the investigation team; management of witness hearings, injured persons and offenders; presence of interpreters in the state where takes place the process for the investigation of trafficking in persons; establishing by the investigators of the special investigation techniques depending on the forms of exploitation of the victims of trafficking in persons subject to analysis; evaluation of the potential risks to which are exposed the victims of the trafficking in persons during the investigation proceedings, in case the investigators identify a risk which threatens the security of the victims of the trafficking in persons, then they have the legal obligation to take all the measures necessary to reduce this risk by identification and initiation of adequate proceedings.

4.3. Means of trafficking in human beings

Enforcement bodies must know what the means of human trafficking are, what means the traffickers use frequently to commit the trafficking in persons offences, what impact have these means on the human beings trafficking investigation process and which are the possible legal matters which can occur during this investigation process.

The main means of human trafficking are as follows:²¹

- The threat or use of force on the victim and their family;
- Coercion;

²⁰ The Organization for Security and Co-operation in Europe (OSCE) (2013). *OSCE Resource Police Training Guide: Trafficking in Human Beings*, Publication Series Volume 12, Vienna, July 2013, pp. 134-135.

²¹ The Organization for Security and Co-operation in Europe (OSCE) (2013). *OSCE Resource Police Training Guide: Trafficking in Human Beings*, Publication Series Volume 12, Vienna, July 2013, pp. 39-40.

- Psychological, which refers to the relations of the victims with other persons;
- Economic, which refers to the obligation of the victim to pay huge amounts of money or provision of a forced labour by the victim in order to pay off a debt;
- Abduction of victims, especially of female gender, by using violence or seduction;
- Fraud, which involves five distinct elements: a false statement of a material act; knowledge of the part of the perpetrator that the statement is untrue; the intent of the human trafficker to deceive the alleged victim; the justifiable reliance by the alleged victim on the statement; the existence of a prejudice, produced to the alleged victim;
- Deception, which refers to giving false or inaccurate or misleading information to the victim from the trafficker, such as, when recruiting workers for labour exploitation or offering a false job for sexual exploitation;
- Abuse of power or position of vulnerability, which refers to any situation in which the victim has not real acceptable alternative but to submit to the abuse committed by the trafficker;
- Offering or accepting payments or advantages to get the consent of a person having the authority over another person, for the purpose of exploitation.

4.4. The investigation of trafficking in human beings

Offences referred to in article 210 of the Romanian Criminal Code and article 211 of the Romanian Criminal Code are investigated in the procedural stage of the prosecution by the Service for the fight against organized crime within the Directorate for Investigating Organized Crime and Terrorism Offences (DIOCTO), which, based on article 11 paragraph 1 point 2 of the Government Emergency Ordinance no.78/2016²² of the 16th of November 2016 for the organization and the functioning of the Directorate for Investigating Organized Crime and Terrorism Offences, as well as the amendment and the completion of some normative acts and based on article 32 paragraph 1 letter b of the Order no. 4682/C/2016²³ of the 21st of December 2016 for the approval of the Regulation on the organization and functioning of DIOCTO, carried out the entire prosecution in the situation of committing the offences of trafficking in persons or trafficking in minors, regardless they have been committed or not under the conditions of the organised crime group stipulated by article 367 paragraph 6 of the Romanian Criminal Code, for the purpose of identifying the offenders and their arraignment. For the offences stipulated at article 210 of the Romanian Criminal Code and article 211 of the Romanian Criminal Code committed on minors, the prosecution is carried out by the prosecutors within DIOCTO, specifically assigned by the general prosecutor

²² The Romanian Official Gazette no. 938 from the 22nd of November 2016.

²³ The Romanian Official Gazette no. 1060 from the 29th of December 2016.

within the Prosecutor's Office attached to the High Court of Cassation and Justice, according to the provisions of article 11 paragraph 2 of the Government Emergency Ordinance no. 78/2016.

The seizing of the prosecution authorities, regarding the commission of the offences of trafficking in human beings is carried out in compliance with the provisions of article 288 paragraph 1 of the Romanian Criminal Procedure Code, by complaint or denunciation, by the acts concluded by other finding bodies stipulated by law or ex officio.

As for the jurisdiction of the offences of trafficking in persons or trafficking in minors, this pertains to the Court of Law, as first instance.

4.4.1. The crime scene investigation in the case of trafficking in human beings

The crime scene investigation in the case of trafficking in human beings presents a series of specific features:²⁴

➤ The main difference between crime scene investigation in the case of trafficking in human beings and the crime scene investigation in case of other offences consists in the existence at the crime scene in case of trafficking in human beings of a higher number of elements which must be taken, seized and examined.

➤ In the case of investigation of trafficking in human beings several participants are involved (human traffickers, victims, witnesses) than in the case of the investigation of other crimes.

➤ The offences of trafficking in human beings are committed during a long period, as the duration of the forms of exploitation of the victims of the trafficking in human beings can vary from weeks, months to years.

➤ As the trafficking in human beings has a commercial feature, the crime scene investigation in the case of trafficking in human beings is carried out closely related to the following defining elements of the trafficking in human beings: publicity, locations or places where are carried out the activities of exploitation of victims, transportation, communications and finance.

➤ In the case of the investigation of trafficking in human beings there is the probability that the offence of trafficking in human beings to be committed in several places. The place of the offence of trafficking in human beings can be found in the recruitment area or the origin area of the victim, in the areas transited by the victim towards the destination location and in the destination area. For example, in case a person, after being recruited by the human traffickers, was transported with the help of a vehicle to three different locations to be exploited, the place of the offence of trafficking in human beings refers both to the three locations and to the vehicle and the transited areas.

²⁴ United Nations. United Nations Office on Drugs and Crime. Global Initiative to Fight Human Trafficking (2009). *Anti-human trafficking manual for criminal justice practitioners. Module 7: Crime scene and physical evidence examinations in trafficking in persons investigations*, Vienna, pp. 11-13.

The scene of the offence of trafficking in human beings refers to any location which contains physical traces of some activities carried out in the past. The place of the offence of trafficking in human beings comprises both a closed or open area, vehicles, being the place where the criminal activity took place, totally or partially, or the place where its consequences occurred. There is a series of objectives which the investigators pursue to achieve by carrying out the crime scene investigation in case of trafficking in human beings: identification of human beings traffickers; identification of victims; establishment of the age of victims; identification of the connexions between traffickers, victims, locations, vehicles, documents, etc.; establishment of the authenticity of the identity or travel documents.

Physical evidence that can be picked up from the crime scene of the trafficking in human beings refer to: biological traces (blood, urine, saliva), traces of hands and traces of other parts of the human body, micro-traces, writings, information systems and other electronic equipments.

An effective management of the crime scene investigation in the case of human beings trafficking refers to the following activities: a good international legal cooperation in the field of the fight against trafficking in human beings between the law enforcement bodies; planning and organization of the activities that will be carried out on the crime of trafficking in human beings scene; preservation of the integrity of the scene of the offence of trafficking in human beings; record of the scene of the offence of trafficking in human beings; examination of the entire crime field; recovery and preservation of physical evidence.

The crime scene investigation in the case of trafficking in human beings ends by drafting a report which represents the main procedural means to determine the results of this initial act of prosecution. The crime scene investigation report in the case of trafficking in human beings can have attached photographs, draughts, drawings, video recordings and other similar evidence. At the same time, this report must be signed on each page, and at the end by the person who draws it and by the persons who participated in the crime scene investigation in the case of trafficking in human beings.

§5. Conclusions

The main objective of the investigation of trafficking in human beings is to save the potential victims of human beings trafficking and to get evidence to lead to the identification, preventive [apprehension](#) and arraignment of the human beings traffickers.

The criminal investigation in the field human beings trafficking is carried out based on the procedural criminal law rules, as they are regulated by the Romanian Criminal Procedure Code. The criminal investigation techniques in the field of human beings trafficking are comprised in the Romanian Criminal Procedure Code, both in Chapter IV, named *Supervision or research special methods*, and within *classic criminal proceedings*, which are carried out for the administration of evidence.

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11. The Romanian Criminal Code.
12. The Romanian Criminal Procedure Code.