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LEGISLATIVE CHANGES REGARDING TRAFFICKING AND EXPLOITATION OF VULNERABLE PERSONS – EVOLUTION AND CURRENT JUSTIFICATIONS

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Abstract

The intensification of the phenomenon of exploitation of vulnerable people, the serious ways in which this phenomenon manifests itself, and its cross-border character have led the legislator to intervene on the normative content of some crimes regarding the trafficking and exploitation of vulnerable people in the current Criminal Code, by changing the amount of punishments and by introducing new assimilated variants and aggravating elements – the latest amendments were introduced by Law No. 217 of 10 July 2023, Law No. 202 of 26 June 2024, and Law No. 269 of 30 October 2024.

The justification for these legislative amendments referred to the high rate of human trafficking, the large number of children abused and sexually exploited by being forced into prostitution or into acts specific to child pornography, in the online environment, but also to the cross-border nature of human trafficking. Other reasons were also presented, such as: the significant proportion of other forms of exploitation (forced labor, begging); very lenient sentences compared to the seriousness of the crimes of trafficking and exploitation of vulnerable persons; the need to restrict the scope of application of the provisions on the suspension of the execution of the sentence under supervision in the case of slavery, human trafficking and minors trafficking; the lack of differences between the social danger of pimping in its aggravated form and human trafficking; non-uniform judicial practice.

Key words: *human trafficking, child trafficking, human exploitation, sexual exploitation.*

INTRODUCTION

The phenomenon of trafficking and the exploitation of vulnerable people is on the rise, with increasingly serious manifestations, both nationally and internationally. The acts of trafficking and the exploitation of vulnerable persons have a transnational character, being committed by Romanian citizens on the territory of other countries or by foreign citizens on the territory of Romania, or part of the criminal activity is committed on the territory of our country, and another part on the territory of other countries. Most of the time, Romanian citizens collect the victims in Romania and exploit them in other countries, having important financial gains.

The economic and social changes of recent years, manifested by the decrease in the standard of living (*C.Anghelache, M.G.Anghel & A.M.Popescu, 2021, p. 262*) and affecting the living conditions of the population, especially of the poor population segment, have also led to the intensification of this criminal phenomenon, determining the intervention of the legislator by changing the normative content of some crimes regarding the trafficking and exploitation of vulnerable persons included in the Criminal Code, in particular, under the aspect of the sanctioning regime.

Prior to the entry into force of the current Criminal Code, crimes regarding the trafficking and exploitation of vulnerable persons were regulated separately in a special law, respectively Law no. 678/2001. When taking over these crimes in the current Criminal Code, the following international normative acts were taken into account: the Council's framework decision of 19 July 2002 on combating human trafficking (it was replaced by Directive 2011/36/EU), the United Nations Convention against organized transnational crime since 2000, the Council of Europe Convention on Combating Trafficking in Persons since 2005 (*T.Manea & G.Şologon, 2022, p. 45*).

Unlike the current Criminal Code, none of the previous codes were systematized in such a way as to group in a single chapter all the crimes that targeted the trafficking and exploitation of vulnerable persons, these being regulated separately or as aggravating circumstantial elements of other crimes, in different chapters or sections.

Since the entry into force of the Criminal Code, the normative texts of traffic offenses and exploitation of vulnerable persons have undergone several changes, the last ones being adopted by Law no. 217 of 10 July 2023, Law no. 202 of 26 June 2024 and by Law no. 269 of 30 October 2024. Thus, from 1 January 2024, the normative content of the act of using child prostitution was changed (art. 216 ind. 1), and from 1 July 2024, respectively 3 November 2024, the texts criminalizing acts of slavery, trafficking of persons and trafficking of minors were changed (art. 209-211).

I. BRIEF HISTORY OF THE REGULATION OF TRAFFICKING AND

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EXPLOITATION OF VULNERABLE PERSONS

In the Criminal Code 1865, the kidnapping of minors, by cunning or violence, or their hiding or displacement (transfer) were criminalized by art. 280 and punishable by imprisonment from one year to 2 years; if the minor was a girl younger than 16, the law provided for the maximum imprisonment (art. 281), being an aggravating circumstantial element. Exploitation of kidnapped minors under the age of 16, by forcing them to beg or prostitute or to other activities from which material benefits were obtained, was sanctioned with imprisonment (art. 283).

The crime of pimping was provided for by art. 267 of the Code, which criminalizes determining, favoring or facilitating prostitution or corrupting young people under the age of 21.

In the original version of the Criminal Code 1937, putting or keeping a person in slavery or in a similar situation or trading or transporting slaves (slave traffic) was punishable by correctional imprisonment from one to 5 years and a criminal fine (art. 491).

In the concept of art. 348 of the Code, the exploitation of begging consisted in encouraging a minor to beg or procuring a minor to be used in begging, in order to obtain a benefit - this act was punishable by imprisonment from 6 months to 2 years and a criminal fine, and if the perpetrator was the parent or guardian, the complementary penalty of losing parental rights was also applied.

The determination of a person of any sex to practice prostitution, for the purpose of its exploitation, was criminalized as a crime of sexual corruption and punished with correctional prison from 2 to 5 years and correctional prohibition from one year to 3 years (art. 433 par. 1). The one who helps, assists or favors the prostitution of a person was punished more mildly for favoring prostitution, with correctional prison from 6 months to one year and correctional prohibition from one year to 2 years (art. 433 par. 2). The punishment was greater if the acts were committed by an ascendant, in direct line or through alliance, by the adoptive father or mother, by one of the spouses, by the guardian or any other person, to whom the victim is entrusted for care, education, instruction, supervision or security (433 par. 3). If the facts provided by art. 433 of the Code were committed against a minor or by violence, threat, abuse of power or authority, fraud, use of alcoholic beverages or narcotics, the penalties were increased by a fourth.

Exploitation of prostitution required that the perpetrator was supported by a woman, from the earnings from her prostitution, or gave his protection or help to a woman for the practice of prostitution, habitually and for the purpose of obtaining personal benefit - the act was sanctioned with correctional imprisonment from 3 months to 2 years, criminal fine and correctional ban from one year to 2 years. The penalty is increased by a fourth, if the one who gave the help or protection carried weapons.

Pimping consisted in procuring someone, usually and with the aim of achieving a material benefit, of a person to maintain sexual acts or acts of sexual inversion - the act was punishable by correctional imprisonment from 6 months to 2 years, a criminal fine and correctional ban from one to 2 years (art. 436). Also, in the scope of the notion of pimping was included the gathering of a woman under the age of 21 for the practice of prostitution, including through violence, the act being more severely sanctioned (art. 437). Art. 438 of the Code provides for other aggravating circumstantial elements, namely the commission of pimping through violence, threat, fraud or the use of narcotics or by an ascendant, in direct line or through alliance, by the adoptive father or mother, by one of the spouses, by a guardian or any another person, to whom the victim is entrusted for care, education, instruction, supervision or guarding.

Sending or taking a woman abroad to practice prostitution was considered trafficking in women and was punishable by 2 to 8 years of correctional imprisonment, a criminal fine, and 2 to 5 years of correctional prohibition. The punishment was greater if the act was committed in the following circumstances: on a woman under the age of 21 and who was unconscious or unable to express her will or defend herself; by violence, threat, fraud or drug use; on a married woman.

In the amended version of 1 December 1960, the text criminalizing the exploitation of begging was repealed, and the content of the crime of pimping was reformulated. According to the new regulations, pimping meant the exploitation of prostitution in any way and the trafficking of women for the purpose of prostitution - the limits of the correctional prison increased, but the criminal fine was waived, as in the case of other crimes.

Criminal Code 1969, in its original form, it regulated slavery and slave trafficking (art. 191), submission to forced or compulsory labor (art. 191) and pimping (art. 329) – these acts were sanctioned with imprisonment and the prohibition of certain rights.

In the case of pimping, the incriminating text also referred to the recruitment of a person for prostitution, but also to human trafficking for this purpose, as normative methods of the crime.

In the last amended version of the Code, pimping was more severely punished, and the recruitment and trafficking of people for prostitution, coercion into prostitution, but also the commission of the crime against a minor, were circumstantial elements of aggravation.

The criminal protection of the person's freedom and rights, dignity, bodily integrity and health, against acts of exploitation, was fulfilled by the adoption of Law no. 678/2001, which contained a modern regulation in the matter of preventing and combating human trafficking; this law was based on the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons,

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Especially Women and Children, additional to the United Nations Convention against Transnational Organized Crime of 15 November 2000.

According to art. 3 of the Additional Protocol, human trafficking consists in recruiting, transporting, transferring, harboring or receiving persons, through the threat of resorting to or resorting to force or other forms of coercion, through kidnapping, fraud, deception, abuse of authority or a situation of vulnerability or by offering or accepting payments or advantages to obtain the consent of a person having authority over another for the purpose of exploitation. Exploitation means exploitation through prostitution of another person or other forms of sexual exploitation, exploitation through forced labor, slavery, use or removal of organs.

According to the Additional Protocol, recruiting, transporting, transferring, harboring or receiving a child for the purpose of exploitation constitutes trafficking in persons, even if no means of coercion are used; child is any person under the age of 18.

At the European level, the newest normative instrument applicable in the matter is Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, which adopted the terminology and principles established by the Protocol additionally from the year 2000. This directive was recently amended by Directive (EU) 2024/1712, which includes in the notion of exploitation the exploitation of surrogacy, forced marriage or illegal adoption - in this sense, we believe that it is necessary to amend the legal definition of exploitation of a person in the current Criminal Code (art. 182) as soon as possible, this having already been supplemented on 3 November 2024 with a new form of exploitation, namely the compulsion to commit acts provided for by criminal law.

Offenses regarding trafficking in persons and minors, provided for in Law no. 678/2001, were taken over in the Criminal Code 2014 (art. 210-211), in a separate chapter, suggestively named "Trafficking and exploitation of vulnerable persons" (Chapter VII, Title I), which also included crimes of the same kind from previous criminal codes, such as slavery (art. 209), submission to forced or compulsory labor (art. 212), pimping (art. 213), the exploitation of begging (art. 214), the use of a minor for the purpose of begging (art. 215), but also a new crime, namely the use of the services of exploited persons (art. 216).

II. THE CHANGES MADE TO THE CURRENT CRIMINAL CODE IN THE MATTER OF TRAFFICKING AND EXPLOITATION OF VULNERABLE PERSONS

In the initial version of the Criminal Code 2014, human trafficking consisted in recruiting, transporting, transferring, harboring or receiving a person, for the purpose of exploiting him, in the following circumstances: by coercion, kidnapping, misleading or abuse of authority; taking advantage of the impossibility of defending oneself or expressing one's will or of the state of

obvious vulnerability of that person; by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person who has authority over that person. In the case of minors' trafficking, the simple recruitment, transportation, transfer, harboring or reception of minors for the purpose of their exploitation is also sanctioned; the act was more serious if it was committed in the circumstances listed previously.

In the matter of trafficking and exploitation of vulnerable persons, the current Criminal Code has been amended several times over time. Thus, by Law no. 187 of 24 October 2012, a new aggravating circumstantial element was introduced into the text of the crimes of trafficking in persons and minors trafficking, namely the commission of the act by a public official in the exercise of his official duties – the amendment took effect as of 1 February 2014.

Emergency Ordinance No. 18 of 18 May 2016, again amended the normative content of the crime of minors trafficking, introducing other aggravating circumstantial elements, as follows: the act endangered the life of the minor; the act was committed by a family member of the minor; the act was committed by a person in whose care, protection, education, guard or treatment the minor was or by a person who abused his recognized position of trust or authority over the minor - the ordinance began to produce its effects starting with May 23, 2016. The same ordinance criminalized a new act, namely the use of child prostitution, this being included in the chapter dedicated to crimes regarding trafficking and exploitation of vulnerable persons.

Law no. 217 of 29 October 2020 supplemented the content of the circumstantial elements provided for in art. 211 para. 2 let. d) and e), with minors trafficking being more serious if it is committed by a person who lives with the minor, as well as in the event that the perpetrator took advantage of the minor's obviously vulnerable situation, due to a mental or physical handicap, a situation of dependency, a state of physical or mental incapacity or another cause; also, the minimum limit of the prison sentence applicable to the aggravated variant provided for in art. 211 para. 2 of the Code increased from 5 to 7 years – this law entered into force on 2 November 2020. The same law also amended the normative text of the crime of pimping, introducing a new aggravated variant (art. 211 para. 3 ind. 1), so that the punishment for the first aggravated variant provided for in art. 211 para. 3 will be increased by a quarter, if the act is committed against a minor in the following circumstances: the perpetrator is a family member or a person living with the victim; the minor is in the care, protection, education, guard or treatment of the perpetrator or the perpetrator has abused his recognized position of trust or authority over the minor; the perpetrator has previously committed a crime against sexual freedom and integrity against a minor, a crime of child pornography or pimping against a minor. The minimum prison sentence for the standard version of the crime of pimping was increased from 3 to 5 years.

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The latest amendments were introduced by Law no. 217 of 10 July 2023, Law no. 202 of 26 June 2024 and Law no. 269 of 30 October 2024 and mainly concern the amount of the penalty applicable to the crimes of slavery, human trafficking, minors trafficking and the crime of using child prostitution, as well as the regulation of an assimilated variant of the crimes of human trafficking and minors trafficking.

The amendments adopted by Law no. 217 of 10 July 2023 entered into force on 1 January 2024 and consist of increasing the limits of the prison sentence for using child prostitution – the minimum limit from 3 to 6 months, and the maximum limit from 2 to 3 years.

The amendments provided for by Law no. 202 of 26 June 2024 began to take effect on 1 July 2024 and refers to the increase in the penalty limits for slavery, human trafficking and minors trafficking, but also to the prohibition of ordering the suspension of the execution of the penalty under supervision in the case of these crimes. Following these amendments, the minimum limit of imprisonment for slavery increased from 3 to 5 years, and the maximum limit from 10 to 12 years, the penalty provided by law being imprisonment from 5 to 12 years and the prohibition of the exercise of certain rights.

Likewise, for the standard variant of human trafficking, the minimum prison sentence was increased from 3 to 5 years, and the maximum from 10 to 12, the penalty provided by law being imprisonment from 5 to 12 years and the prohibition of exercising certain rights – the same penalty as in the case of slavery. As for the aggravated variant, the minimum limit was increased from 5 to 7 years, and the maximum from 12 to 15 years, the penalty provided by law being imprisonment from 7 to 15 years and the prohibition of exercising certain rights.

The minimum prison sentence for the standard variant of minors trafficking was increased from 5 to 7 years, and the maximum from 10 to 15 years, the penalty provided by law being imprisonment from 7 to 15 years and the prohibition of exercising certain rights; for the aggravated variant, the minimum prison limit increased from 7 to 10 years, and the maximum limit from 12 to 20 years, the penalty provided by law being imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights – in the same amount as the penalty for simple murder.

Another amendment imposed by Law no. 202 of 26 June 2024 aims to introduce express provisions regarding the concurrence of crimes, in the event that the acts of persons or minors trafficking are followed by the effective exploitation of the victim – the conditions of the concurrence of crimes may be met, with pimping, exploitation of begging, slavery, submission to forced labor or with the illegal trafficking of organs, tissues or cells of human origin (art. 157-158 of Law no. 95/2006), depending on the content of the illicit exploitation activity.

The amendments adopted by Law no. 269 of 30 October 2024 entered into force on 3 November 2024 and consist of including circumstantial elements of pimping in the incriminating text of the crimes of human trafficking and minors trafficking, as assimilated variants, supplementing the aggravated variants of the two crimes with new circumstantial elements, as well as increasing the punishment in the case of the aggravated variant of the crime of minors trafficking.

The determination to start or continue the practice of prostitution by coercion, misleading or abuse of authority, but also by other means provided for in art. 210 paragraph 1 of the Criminal Code, as well as the determination or facilitation of the practice of prostitution or the obtaining of patrimonial benefits from the practice of prostitution by one or more minors are currently assimilated to human trafficking or minors trafficking, being excluded from the content of the crime of pimping.

Also, crimes of human trafficking or minors trafficking committed by a person who has previously committed a crime against sexual freedom and integrity, a crime of child pornography, a crime of human trafficking, minors trafficking or pimping will be punished more severely.

In the case of the aggravated variant of minors trafficking, the minimum limit of the sentence increased from 5 to 10 years in prison, and the maximum limit from 12 to 20 years in prison, the penalty provided for by the new criminal law being imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights.

As follows from the Explanatory Memorandum of Law no. 217 of 10 July 2023, the increase in the penalty for the use of child prostitution was justified by the high rate of human trafficking, Romania being in first place at European level in terms of this type of crime. The United States Department of State places Romania at the Tier 2 Watchlist level in terms of concrete actions to prevent and combat human trafficking.

Another reason was the large number of sexually abused and exploited children, who practice prostitution by coercion, under the threat of the aggressor. They come from poor families, do not have a stable home or residence, or live in various centers or shelters, finding themselves in an unfavorable, vulnerable situation.

The explanatory memorandum of Law no. 202 of 26 June 2024, which amended the text of the crimes of slavery, human trafficking and minors trafficking, shows the extent of the phenomenon of human exploitation. In Romania, during the period 2019-2023, the most common form of exploitation was sexual exploitation (114 victims), followed by labor exploitation (17 victims) and begging (12 victims). Also, over half of the total number of identified victims were minors (57%), mainly targeting the sexual exploitation of young women between 14 and 17 years old. It was found that sexual exploitation is usually

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carried out by forcing them to practice prostitution, as well as through acts of child pornography, in the online environment, with an upward trend in this type of exploitation being recorded at national level.

It is also stated that human trafficking and minors trafficking have a cross-border nature, Romania being generally the country of origin of the victims, while Italy, Spain, Germany and the United Kingdom are countries of destination, of exploitation; in these countries of destination, it is known that there is increased demand for sexual services, cheap and unskilled labor, but also a more permissive legislative system regarding begging. However, it was noted that a significant proportion of victims are exploited domestically, the localities of origin being Bacău, Bucharest, Braşov, Alba and Argeş.

From a judicial perspective, it was found that a significant part of the cases that had as their object this type of crime were resolved with the suspension of the execution of the sentence under supervision, therefore through a non-custodial method, the general opinion being that the sanctions applied were too mild compared to the gravity of the acts and the importance of the social values protected by the criminal law.

By increasing the penalty limits, the aim was to impose a sanctioning regime proportional to the high social danger of these acts and to restrict the possibility of the courts to apply a punishment that is too mild both in terms of the quantum and in terms of the manner of execution of the sentence, even if they were to focus on the special minimum provided for by law.

As is evident from the Explanatory Memorandum to Law no. 269 of 30 October 2024, the assimilation of the act of determination to start or continue practicing prostitution by coercion with human trafficking was justified by the lack of differences between the social danger of pimping in its aggravated version, as regulated in the previous criminal law, and human trafficking, and problems were also found related to the uneven application of the law on the matter by the courts, which framed the acts differently, although coercion, the vitiation of the victim's subjective position, is a specific mode of action for human trafficking. The new regulation removes the non-uniform practice, and pimping committed by means of coercion was included in the content of human trafficking. Similarly, pimping targeting minor victims is regulated, after the latest amendments, in the text of the crime of minors trafficking.

CONCLUSION

Forms of trafficking and exploitation of vulnerable persons have been regulated in all Romanian codes since 1864, but only in the current Criminal Code, which entered into force on 1 February 2014, have they been brought together in a single chapter (Chapter VII, Title I), these being the following: slavery (art. 209), human trafficking (art. 210), minors trafficking (art. 211),

subjection to forced or compulsory labor (art. 212), pimping (art. 213), exploitation of begging (art. 214), use of a minor for the purpose of begging (art. 215), use of the services of exploited persons (art. 216), use of child prostitution (art. 216 ind. 1). At the same time, the legal texts that criminalized these acts have undergone numerous changes over time, both in terms of constitutive content and in terms of the sanctioning regime. The latest amendments were introduced by Law No. 217 of 10 July 2023, Law No. 202 of 26 June 2024 and Law No. 269 of 30 October 2024 and aimed at increasing the penalties provided for by the Criminal Code for the use of child prostitution, slavery, human trafficking and minors trafficking, establishing the application of the provisions of the concurrence of crimes if human trafficking or minors trafficking is followed by concrete acts of exploitation, as well as assimilating pimping committed by coercion with human trafficking, regulating a new variant of criminalizing the crime of human trafficking.

The extent of the phenomenon of exploitation of vulnerable persons, the numerous cases of sexual exploitation of minors, including in the field of child pornography, in the online environment, the particularly serious consequences on the physical and mental state of the victim, but also the too lenient sanctions ordered by the courts, disproportionate to the gravity of the acts, are the main reasons why the legislator increased the punishment limits provided by the law for slavery, human trafficking, minors trafficking and the use of child prostitution.

The assimilation of pimping by coercion with human trafficking, as well as the separate regulation of this act in the criminal text of human trafficking, was motivated by the removal of the non-unitary practice and the sanctioning of the aggravated variant of pimping with the same punishment as the standard variant of human trafficking, there being no difference in social danger.

We believe that most of the current changes to the regulations on trafficking and exploitation of vulnerable persons are justified, but their rapid succession, within a few months or even weeks, and their multitude, denote the lack of predictability of the legislator at the time of drafting the Criminal Code 2014 and later, with legislation usually taking place as a result of particular cases with public resonance, although the history of the regulation could constitute a guideline in legislation. Legislative instability is likely to disrupt the process of law enforcement and affect its educational and preventive purpose.

We also note an excess in sanctioning certain acts with specific penalties for crimes against life, although the social values affected are less important than the life of the person, reaching the situation where minors trafficking in its aggravated form is sanctioned with the penalty provided by law for murder, without taking into account the hierarchy of social values and the difference in abstract social danger.

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