HUMAN TRAFFICKING IN THE LIGHT OF THE NEW HAVEN SCHOOL OF JURISPRUDENCE

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Abstract
Human trafficking is a global phenomenon with profound social and economic implications that affects all the eight human values introduced by Harold Dwight Lasswell and promoted through the New Haven School of Jurisprudence. Each human trafficking victim’s aspiration to power, enlightenment, well-being, wealth, skills, affection, rectitude and respect is infringed, even if all these values are protected by international human rights law and national legal norms.

The present chapter seeks to examine the European phenomenon of trafficking in human beings, based on the intellectual framework used by the New Haven School of Jurisprudence. This theory about law helps us to efficiently delimit and analyze a societal problem. Further, using the same methodology, we intend to identify the conflicting claims, claimants, and their bases of power, before explaining the past trends in decision, projecting future decisions in accordance with the changed and changing conditioning factors, appraising these decisions, and developing recommendations in the common interest. We intend to address the following questions: How does this global phenomenon manifest itself? Does the European Union make sufficient efforts to respond to the human trafficking issue? How weak is Romania in the fight against trafficking in persons with regard to its citizens?

Keywords: human trafficking, modern slavery, human values, New Haven School of Jurisprudence

1. Delimitation of the Problem
From the standpoint of the New Haven School of Jurisprudence, the primary intellectual task is to find solutions that maintain community order, maximizing individual access to the process of shaping and sharing the eight human values introduced by Harold Dwight Lasswell, i.e. power, enlightenment, well-being, wealth, skills, affection, rectitude, and respect.1 Regarding trafficking in human beings, the above mentioned human values may conflict with each other when we analyze them from the perspective of different claimants, such as the victims of human trafficking or the traffickers. They share the same values, but they play different roles in the chain of human trafficking exploitation as perpetrators or as victims.2

Human trafficking is a modern-day form of slavery, a complex and evolving international problem, which is present everywhere, from the most developed countries

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to the poorest states of the globe. During the last years, relevant international bodies started to rigorously monitor this transnational criminal phenomenon that is in constant and rapid growth. They focus on the efforts undertaken by national governments to prevent and combat trafficking in human beings or to assist the victims. The recent reports of the International Labour Organization (ILO), United Nations Office of Drugs and Crime (UNODC), the Council of Europe – Group of Experts on Action against Trafficking in Human Beings (GRETA), as well as of the European Union’s specialized bodies reflect clearly increasing trends on trafficking in human beings, mainly in European countries.

The 2012 International Labour Organization’s Report that covers the period of 2002 to 2011 shows that, globally, 20.9 million people are presumed to be held in a modern-day form of slavery. Three out of every 1,000 people worldwide are in forced labor, including forced sexual exploitation; most of them come from South-Eastern Europe (4.2/1,000) and Africa (4.0/1,000) (International Labour Organization. Global Estimate of Forced Labour. Geneva, Switzerland: Programme for the Promotion of the Declaration on Fundamental Principles and Rights at Work; 2012 – hereinafter ILO; 2012). The same report states that 26% of identified and presumed victims are children, which means that 5.5 million minors are globally enslaved today. More than 18.7 million people (90%) are exploited in the private economy. 22% (4.5 million) are victims of forced sexual exploitation and 68% (14.2 million) are compelled to work in agriculture, construction, manufacturing, domestic work, etc. The other 10% of victims (2.2 million) are state – or rebel – imposed forms of forced labour like prisons or military work, rebel armed forces etc. (ILO; 2012).

The 2012 Global Report on Trafficking in Persons of UNODC, which covers the period of 2007 to 2011, states that women detected globally as victims of trafficking in human beings represent about 60% of the entire number. The data collected in this report states that there is a significant increase in the trafficking of children (7%) and the trafficking for forced labor (18%), compared with the previous period of reporting, i.e. 2003 to 2006 (United Nations Office on Drugs and Crime. Global Report on Trafficking in Persons. Geneva, Switzerland: Global Initiative to Fight Human Trafficking; 2012 – hereinafter UNODC; 2012). The data collected by EUROSTAT from the EU’s member states during 2008-2010, show that the total number of identified and presumed victims increased by 18% in that time period (European Commission Report. Trafficking in human beings. Luxembourg: Eurostat. Publications Office of the European Union; 2013 – hereinafter, EC; 2013). In the EU, more than 23,600 victims of human trafficking have recently been identified. The majority come from EU member states (61%), especially from Romania and Bulgaria (80%). The victims coming from outside the EU are mostly from Nigeria and China (EC; 2013). They are trafficked for sexual exploitation (62%), forced labor (25%) and trafficking in other forms (13%), such as removal of organs or criminal activities, including the selling of children, begging and petty crimes (EC; 2013). However, the gradual increase in the total number of victims reported over the three reference years does not necessarily denote an actual growth of the number of victims in the EU, but rather is the result of a better reporting system and a good regional policy based on the EU’s Strategy towards the Eradication of Trafficking in Human Beings and its action plans.
The number of suspected traffickers decreased by 17% from 2008 to 2010 and, at the same time, the number of convictions for this crime fell by 13% (EC; 2013). Most of them have been involved in trafficking for sexual exploitation (84%) and a much smaller percentage suspected to be involved in forced labor (12%) and other forms of exploitation (3%) (UNODC; 2012). Within the EU, the majority of human traffickers are males (75%) and, also, citizens of an EU member state (76%).

The 2012 ILO Report shows that, globally, the largest number of victims are exploited for forced labor (68%), while the 2012 UNODC Report, which contains data from a combination of regions, estimates that in the Europe and Central Asia region the largest number of human trafficking cases detected were related to sexual exploitation (62%). However, according to the 2013 EU Report on Trafficking in Human Beings, there are large numbers of victims present in Europe. Nowadays, more than 880,000 people in the EU are victims of forced labor and forced sexual exploitation (EC; 2013).

Based on the data reported by international organizations, Romania is the main country of origin for human trafficking victims in the EU. When it comes to country rankings, Romania ranks first regarding the total number of minors and of forced labor victims. Furthermore, the exploitation of persons, especially of children, for begging in the EU’s largest cities became a special issue related to Romania.

The 2012 “GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania” states that Romania is primarily a country of origin for victims of human trafficking. However, in the last years, Romania has become a country of destination for sexual exploitation victims coming from Moldavia, Colombia and France and for forced labor exploitation victims from the Democratic Republic of Congo, Bangladesh, Serbia and Honduras.

In the last decade, Romania gradually became a transit country for all forms of human trafficking, especially for forced prostitution. The data collected by Romanian National Agency against Trafficking in Persons shows that the number of identified victims decreased from 1,580 in 2007 to 1,154 in 2010 and to 1,043 in 2011.

However, analyzing the data collected by the National Agency, as they have been presented in the Figure 3, we can see, in the last years, an increase in the total number of Romanian victims trafficked for sexual exploitation and petty crimes. The victims of trafficking for the purpose of begging are, mainly, children; their number increased from 7% in 2010 to 14% in 2011 (NATP; 2012). Based on the age and gender of the victims, data collected from 2007 to 2010 shows that the largest number of victims annually identified are men, followed by women, girls and boys (UNODC; 2012). In 2011 and 2012 there has been a smaller increase in the number of women trafficked for sexual exploitation.

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Until 2010, Romanian legislation to combat trafficking in human beings was based on the criminal law approach. This helped the authorities to follow the criminal networks and to achieve a large number of convictions. The number of prosecuted Romanian traffickers in the EU increased from 400 in 2008 to 530 in 2010 and 480 in 2011 (EC; 2013), in line with the overall number of convicted traffickers.

Statistics show that criminal networks on average, make a profit of 2,500 Euros/victim trafficked. These funds are usually used to pay the members of the network, to set up logistics needed for communication and transport, to bribe some state officials and, often, for judicial assistance of the traffickers that have been caught, with the view to obtain their freedom or to ensure a more lenient penalty. These figures represent only “the tip of the iceberg” of the identified and presumed victims of trafficking in human beings, but there are many others that could not be found and some of them will never be. The hidden nature of human trafficking makes it difficult to estimate the real size of this global phenomenon.

2. Conflicting Claims, Claimants and Bases of Power and Other Values

The problem of trafficking in human beings, as it has been presented above, involves many actors whose claims are in conflict. So, for the members of the organized criminal groups the values of wealth and power are extremely important, while victims that usually look for wealth, end up in need of well-being and affection.

2.1. Organized Criminal Groups

In Romania, the period after communism has been very difficult; the low standards of living, the high level of corruption and the old mentality of exploitation of man by man contributed to the easy development of organized criminal groups in the field of human trafficking.

Recruiters have often been supported in their illegal actions by state officials, mainly by corrupt policemen. Also, the national criminal law with regard to this phenomenon is not implemented as it should be. These aspects, cumulated with the fact that the crime of human trafficking is a low-risk prosecution and a very high profit crime for members of the criminal group, have increased the interest of persons to get involved in such illegal activities.

2.2. Victims of Trafficking in Human Beings

Most of the victims, in their search for a better life, accept false promises that are usually made with respect to a job, education, love etc. The claims of the victims concern mainly values as wealth, skills or affection.

Victims of trafficking in human beings need better protection from the authorities and the state itself in order to prevent trafficking and reduce the number of victims, on the one hand, and, on the other, they need better access to medical care and social services.

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5 (Gament N. The Juridical Current. The Trafficking in Human Beings – An Extremely Profitable Industry. 2011; 45-146).
3. Past Trends in Decisions and Their Conditioning Factors

3.1. International Law

The rapid growth of trafficking in human beings forced the international community to take action against this phenomenon at the end of the 20th century. In this regard, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the United Nations Convention against Transnational Organized Crimes (hereinafter, the “Palermo Protocol”) was adopted. It offers the first internationally agreed-upon definition on trafficking in human beings.

Art. 3 states that “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.” Furthermore, the Palermo Protocol establishes that the consent of a victim of human trafficking to the intended exploitation set forth in the first paragraph is irrelevant where any of the means presented above have been used. Also, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered human trafficking, even if this does not involve any of the means set forth in the first paragraph of the Art. 3. This definition and its legal process have been implemented in the domestic legislation of the majority of the European countries; 27 EU member states are parties to the Palermo Protocol. This international instrument is part of the universal effort to combat transnational organized crime at large.

At the same time, art. 4 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings defines a victim as “any natural person who is subject to trafficking in human beings”. The identification of victims depends on the national legal and administrative systems of each state party to this Convention. So, an identified victim is any person who has been identified by a formal authority of a state as a victim of human trafficking, and a presumed victim is a person who has met the criteria, but has not been formally identified by the relevant authorities as a victim or who has declined to be legally identified as trafficked.

In the last years, the European Union has actively participated in the international movement against human trafficking and increased its efforts to efficiently combat this problem. In December 2009, the European Council adopted the Stockholm Programme regarding an open and secure Europe serving and protecting its citizens. It highlights the necessity to strengthen trafficking prevention measures and calls for the establishment of an Anti-Trafficking Coordinator. The main responsibilities of this official were established in the EU Anti-Trafficking Directive 2011/36/EU. This coordinator is responsible for developing existing and new policies to efficiently address human trafficking and for improving cooperation among EU institutions, agencies, member states and international actors. The Directive also obliges EU member states to establish a national rapporteur responsible for implementation of anti-trafficking policy at the national level. Furthermore, the 2012 EU Strategy towards the eradication of trafficking
in human beings expands the European efforts to combat human trafficking by focusing on prevention, protection, prosecution and public-private partnership related to this phenomenon.

European Union legislation takes a victim-centered approach, including a gender perspective that offers good protection for human trafficking victims. Directive 2011/36/EU aims to prevent this crime, to effectively prosecute criminals, and to better protect the victims in line with the highest European standards, to ensure that victims are given an opportunity to recover and to reintegrate into society. Directive 2004/80/EC ensures that all EU member states have to have a national scheme in place which guarantees appropriate, easily accessible, compensation to victims of crime, including victims of human trafficking. Also, the Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime states three main groups of fundamental rights that ought to be protected. Therefore, art. 3-7 deal with provisions regarding information and support offered to victims; art. 8-16 deal with the rights of victims to participate in criminal proceedings, and art. 17-23 regulate the protection of victims against retaliation, intimidation, repetition or further victimization. This legal instrument addresses also the specific needs of particularly vulnerable victims in a more targeted manner.

With regard to third-country nationals, EU Council Directive 2004/81/EC introduces a residence permit for victims who cooperate with the competent authorities. The permit should be valid for at least six months. Furthermore, every victim of human trafficking, who is not an EU citizen and is staying illegally, should be offered a so-called reflection period within which the victim can make a decision on whether to cooperate with the authorities or not. The reflection period allows victims to recover, having access to medical care and treatment, and escape the influence of the perpetrators. The duration of this period is not established in the Directive, but it is determined in accordance with the national legislation of each EU member state.

The recent efforts of the EU to eradicate trafficking in human beings have been victim-oriented, trying to identify, assist, support, protect and compensate the victims. In order to help its member states to better protect the victims, European Commission has published “The EU rights of victims of trafficking in human beings”, a booklet that contains information on the rights of victims of trafficking in human beings under EU law.

Art. 2 of the United Nations Transnational Organized Crime Convention defines an organized criminal network as a structured group of “three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. Further, it establishes that a serious crime is conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or an even more serious penalty.

However, for those countries that are part of the European Union, organized crime is defined by Council Framework Decision 2008/841/JHA which states in Art. 1 that a criminal organization is a “structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences, which are punishable by deprivation of liberty or a detention order of a maximum of at least four
years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit”.

Even if Romania is a state party to the above mentioned international instruments, Romanian Government does not fully comply with the minimum global and European standards for the elimination of trafficking in persons. Romania has ratified all relevant international legal instruments regarding this phenomenon, but, nevertheless, it remains a significant source of victims trafficked in Europe and a destination country for a small number of foreigners exploited in both forced prostitution and forced labor.

3.2. Domestic Law of Romania

The first special law on human trafficking, Law no. 678/2001 on Preventing and Combating Trafficking in Human Beings prohibits all forms of trafficking in persons, was passed in 2001, and was amended by Law no. 230/2010. In the same year the first National Action Plan for Combating Trafficking in Human Beings was adopted. These measures were taken by the Romanian Government as a result of the ratification of the Palermo Protocol.

Under pressure after integration in the European Union, Romania established in 2005 the National Agency against Trafficking in Persons, which is the coordinating public body for all measures against trafficking in human beings at the national level. One year later, the first comprehensive National Strategy against Trafficking in Persons for 2006-2010 was adopted. The 2009 New Criminal Code, in its Chapter VII (Trafficking and exploitation of vulnerable persons), defines crimes, particularly against minors, in line with the European and international legal norms. From 2010 to 2012, there was no national strategy or action plan dealing with human trafficking. To fulfill the requirements of integration into the Schengen Area, Romania had to be able to fight against transnational criminal activities, especially against human trafficking. In this respect, Romania adopted at the end of 2012 the new National Strategy for Prevention and Combating Trafficking in Human Beings, for the period of 2012 to 2016, focused on improving victim assistance, expanding international judicial cooperation, raising awareness among various law enforcement agencies and divisions with the purpose of early detection of vulnerable population or victims.

4. Future Trends in Decision

Romania is the only EU member state that does not comply with the minimum international standards for the elimination of trafficking in human beings, even if during the last decade significant efforts were made in this area. As all the other EU states, Romania must ensure the incorporation of the rights and obligations established by Directive 2011/36/EU into its national legislation. In this regard, Romania will have to improve the level of protection for victims of human trafficking, both coming from EU or from a third country, in order to provide specialized attention to the needs of the victims and to reduce their chance of re-victimization. Long-term rehabilitation and social reintegration of the victims, especially minors, should be a strong preoccupation of the Romanian authorities responsible for combating and preventing human trafficking.

Under pressure of the international community and mainly of the EU, Romania is expected to properly investigate and prosecute acts of trafficking committed by or with the support of the state officials.
5. Appraisal and Recommendations

5.1. Universal and European Efforts to Combat Human Trafficking

Analyzing the past trends in decision with regard to the control of the global phenomenon of trafficking in human beings, it is quite clear that the international community, mainly important states and NGOs, has decided recently to take many measures to combat transnational crimes. A good number of international and regional structures and law enforcement agencies responsible for the fight against human trafficking, as well as other national or local authorities involved in the care, protection and social integration of victims work closely together with civil society organizations in an important partnership that fights this phenomenon.

As to possible further improvements in this effort, public-private partnerships seem to work very well and we can expect even more positive results in combating human trafficking from such endeavors. In this respect, End Human Trafficking Now and the United Nations Global Initiative to Fight against Human Trafficking (UN.GIFT), in partnership with Microsoft, designed an e-learning tool for businesses, which helps identifying human trafficking cases within the supply chain of that business. Other important instruments established by a public-private partnership are the Luxor Implementation Guidelines that facilitate integration of anti-trafficking values and the Dhaka Principles that outline measures to support migration with dignity. All these international efforts are able to efficiently design solutions especially against forced labor as a specific form of trafficking in human beings.

At the European level, the Council of Europe and NGOs have undertaken considerable efforts in the fight against human trafficking. The adoption, in May 2005, of the Convention on Action against Trafficking in Human Beings made possible the setting up of an independent monitoring mechanism – the Group of Experts on Action against Trafficking in Human Beings (GRETA), which is responsible for country evaluation reports regarding the implementation of the Convention.

However, even though the European Union and the Council of Europe are trying hard to implement efficient policies to eradicate trafficking in human beings within this area, Europe remains one of the most attractive destinations in the world for trafficking offenders. There is still much work to be done in order to prevent, prosecute the criminals and protect the victims.

5.2. Romania’s Efforts to Combat Human Trafficking

Romania has made significant efforts to comply with the international minimum standards for the eradication of trafficking in human beings. In this regard, Romania developed a strong partnership with the governments of destination countries in order to increase the accountability of trafficking offenders. The data collected for 2011 shows that the number of anti-trafficking prosecutions was among the highest in Europe and a very high one for an EU source country.

Nevertheless, the protection and services offered to victims of human trafficking are very weak and their poor state of care put the vulnerable population at high risk for being re-trafficked. Also, the NGOs involved in the protection of victims or in the prevention of human trafficking do not have any governmental support. The 2012 National Strategy for Prevention and Combating Trafficking in Human Beings employs a victim-oriented
approach, improving assistance provided to them and raising awareness of the population at large in order to detect victims of this “disease” affecting human society as a whole. It seems that the minimum standards established by the EU anti-trafficking policy and the National Strategy will help Romania to offer better protection to the victims and to efficiently combat this phenomenon at the national level. Also, a special set of actions should be designed with regard to Roma protection, mainly to children involved in begging, petty crimes and prostitution.

Nowadays, it is hard to imagine that in a free and democratic world and, especially in Europe, there are tens of thousands of persons deprived of their liberty and human dignity, being traded as simple goods for profit. However, this is the sad reality of the modern-day slavery of trafficking in human beings. There is a strong need for a common international effort to try to put an end to this odious phenomenon. In this regard, Romania should fully cooperate with Europe’s efforts to maximize access by all to the process of shaping and sharing of all things that humans value: power, enlightenment, well-being, wealth, skills, affection, rectitude, and respect.

This paper has been financially supported 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. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. Investing in people!

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