

EUROPEAN UNION'S COMMITMENT TO FIGHT AGAINST THE HUMAN BEINGS TRAFFICKING, THE MODERN FORM OF SLAVERY

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Abstract

One of the most serious threats to the European Union is the organised crime. The EU is continuously adapting its response in order to best respond to the situation. Among different types of organised crime, human beings trafficking is one of the most seriously crimes worldwide, representing also a gross violation of human rights. Very often behind the human beings trafficking is the organised crime because is one of the most profitable criminal activities in the world. The numbers are very scary because it is estimated that the trafficked people to or within the EU are reaching several hundred thousands a year.

The present study is intending to discover how the European Union intends to fight against the human beings trafficking, since there is a need to have a coherent action at the European level because of the criminals can easily operate across border.

Keywords: *commitment, human beings, European Union, slavery, trafficking.*

1. Introduction

1.1. About human beings trafficking

One of the most serious threats to the European citizens, businesses, state institutions and economy is organised crime.

A coherent action at the European level is mandatory because the criminals easily operate across border. Thus, the European Union is continuously adapting its response in relation to the amplification of this phenomenon. This adaptation can be noticed even in the continuous development of the specialised EU agencies (e.g. Europol, Eurojust, CEPOL).

The expression *human beings trafficking* can be misleading, because it places emphasis on the transaction aspects of a crime that is more accurately described as *enslavement*. It envisages the exploitation of people, day after day, for years on end.

But what are the root causes of trafficking in human beings? We can argue that one of the causes is *vulnerability* due to different criteria (poverty, marginalisation, economic exclusion, armed conflicts, social and gender inequality, discrimination¹ against ethnic minorities and infringements of children's rights). Another cause is related to *inadequate laws and policies* in many countries and that the risk of getting caught is quite small. Another cause is the *demand in richer countries/urban areas especially for prostitution and cheap labour*. But why are people trafficked? Several purposes can be distinguished, among which

the most important are: sexual or labour exploitation, organs' removal.

Who are mainly the targeted persons? Women and children are particularly affected, mostly because of their lack of defending power (women and girls represent 56% of victims of forced economic exploitation and 98% of victims of forced commercial sexual exploitation, while children are also trafficked to be exploited for begging or illegal activities, such as petty theft).

This is why the EU has made a top EU priority preventing and fighting them. In this respect, the European Commission has proposed better new rules for more concrete action against criminals responsible for child sexual abuse and trafficking. The Commission has also thought measures for victims' better assistance.

When analysing this problem, it is obvious that the EU's political commitment to stop the phenomenon of human beings trafficking is reflected in a large number of measures, funding programs and initiatives.

We underline that the EU's actions regards both trafficking into Europe and intra-regional trafficking in third countries, especially for labour and sexual exploitation.

1.2. Differences between trafficking in human beings and people smuggling (migrants)

But what is the difference between trafficking and irregular migration (or even the smuggling of irregular migrants)?

Very often, human beings trafficking and people smuggling are confounded. We could argue four main differences between them.

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¹ For information on non-discrimination in Romania, one of the EU's member states, please see *Elena-Emilia Stefan*, *Opinions on the Right to Non-Discrimination* (in Proceedings of the Challenges of the Knowledge Society Conference, ISSN 2359-9227, 2015) accessed March 28th, 2016 http://cks.univnt.ro/cks_2015_archive.html

First of all, we have to analyse the *consent to enter a country illegally*. Even though some trafficked persons might start their journey by agreeing to be smuggled into a country illegally, many do not and never have any intention of doing so. In cases of trafficking from third countries, the victims may enter a country legally (e.g. on a tourist or student visa), then be exploited by traffickers and held in the country beyond the expiration date, possibly against their will. Although undertaken in dangerous and humiliating conditions, the smuggling migrants give their consent for the journey.

Secondly, the *exploitation* is different. In a trafficking case, after crossing the border, the victim is further exploited in coercive or inhuman conditions, while smuggling of migrants ends with the migrants' arrival at their destination.

Thirdly, we have to discuss about *transnationality*. While trafficking in human beings can take place (i) within the borders of their own countries (internal trafficking) or (ii) across international borders (international trafficking), the smuggling of migrants is always transnational.

Fourthly, the *source of profits* is different. While in trafficking cases, the profits are derived from the exploitation itself, in smuggling cases, the profits are derived from the transportation or facilitation of the illegal entry or stay of a person into another country.

2. Content

2.1. Eurostat Statistics

Eurostat, the statistical office of the EU, provides with statistics at European level that enable comparisons between countries and regions. Its mission is to be the leading provider of high quality statistics on Europe.

International statistics are an important, objective and down-to-earth way of measuring how we all live.

Statistics aim to answer many questions in human trafficking, as in general. Is society heading in the direction promised by the EU? Is human trafficking up or down? Are there more human beings trafficking cases compared to five years ago? How is your country's results compared to other EU Member States?

In 2013 Eurostat published its first working paper on Trafficking in Human Beings in Europe, which constituted the second working paper at the EU level on statistics on human beings trafficking. The paper contains data for the years 2010, 2011 and 2012.

The second working paper refers to the same period of time (2010-2012) and includes statistical

data from all 28 EU Member States and the following EU Candidates and EFTA/EEA (Iceland, Norway) countries (Montenegro, Norway, Serbia, Switzerland and Turkey). The figures used in the paper were given by the EU Member States.

It is worth mentioning that a revised edition of the working paper published in 2014 was issued in February 2015², taking into account additional data and information received from Italy.

Unfortunately, these statistics are the sole official statistics at the EU level, but we consider that the figures and percentages are relevant to construe an image on this subject. In this regard, please have in mind that the information of this sub-section is part of the 2015 version of the Eurostat working paper.

Information on victims comes from a range of sources (Member States' police, NGOs, immigration authorities, border guards and other sources).

In 2012 Member States reported a total number of 10,998 registered identified and presumed victims, while over the three years 2010-2012, 30,146 victims were registered in the 28 Member States.

From the data over the three years disaggregated by (i) *gender*, it results that 80% of registered victims were female, while by (ii) *gender and age*, women account for 67%, men for 17%, girls for 13% and boys for 3% of the total number of registered victims of human beings trafficking.

Moreover, it appears that 45% of registered victims were aged 25 or older, 36% were registered as aged 18-24, 17% were registered aged 12-17, and 2% were aged 0-11.

Data showed that the majority of registered victims (i.e. 69 %) were trafficked for the purpose of sexual exploitation, 19% for labour exploitation and 12% for other forms of exploitation (e.g. removal of organs, criminal activities, or selling of children).

We underline that 85% of all the female victims registered were trafficked for the purpose of sexual exploitation, while 64% of all registered male victims, were trafficked for labour exploitation. Therefore, registered victims of sexual exploitation are predominantly female (95%) whereas the majority of registered victims of labour exploitation are male (71%). For other forms of exploitation (e.g. forced begging, selling of children), females represent 52% and males 38% of registered victims, with 10% of unknown gender.

As for the citizenship of victims, it appears that 65% of registered victims come from EU Member States.

Over the three year period covered by the data, Romania appears in the top five countries of citizenship within the EU, in terms of absolute

² EUROSTAT, Trafficking in human beings (2015 edition, February 2015) accessed March 28th, 2016 https://ec.europa.eu/anti-trafficking/publications/trafficking-human-beings-eurostat-2015-edition_en

numbers of registered victims, together with Bulgaria, the Netherlands, Hungary and Poland.

As for non-EU citizens, the top five countries were Nigeria, Brazil, China, Viet Nam and Russia.

Eurostat underlines that no conclusions could be drawn about the breakdown of citizenship by age.

As for the assistance and protection of victims, it results that in 2012, the number of victims who received assistance in the 24 Member States which could provide the data was 5,452. The number of registered victims given a reflection period under Directive 2004/81/EC on residence permits for victims of trafficking in human beings was 1,110 (19 Member States), while the number of registered victims granted a residence permit based on Directive 2004/81 was 1,100 (20 Member States).

As for the suspected traffickers, over the three years, unsurprisingly, more than 70% of suspected traffickers were male and 69% of all suspected traffickers were EU citizens. Romania is again in the top 5 EU countries of citizenship besides Bulgaria, Belgium, Germany, and Spain. As for the non-EU citizenship, the five countries most frequently reported in the three reference years were Nigeria, Turkey, Albania, Brazil and Morocco.

Member States reported that 8,805 people were prosecuted for trafficking in human beings between 2010-2012, while 3,855 convictions were reported (over 70% of prosecutions were of males, and more than 70% of convicted traffickers were male).

Across the three years, there is no EU-wide trend in the number of convictions. However, Romania has reported a more than doubling in the number of convictions from 2010 to 2012.

2.2. EU Strategy to Eradicate the Human Beings Trafficking 2012-2016³

EU's present strategy to eradicate the trafficking was established for the period 2012-2016 and is currently applicable. It will be interesting to analyse the new strategy to be adopted at the end/at the beginning of the year.

This strategy sets-up five top priorities to focus on and establishes certain actions to be implemented by the European Commission together with other key actors (i.e. Member States, EU institutions, international organisations, third countries).

The above mentioned priorities could be resumed as following:

a) identifying, protecting and assisting the trafficking victims;

b) stepping up the prevention of the human beings trafficking;

c) increased prosecution of traffickers;

d) policy coherence and enhanced coordination and cooperation among key actors;

e) effective response to emerging concerns related to human beings trafficking.

These priorities cannot be followed outside of a legal EU framework even though this is a dynamic legal framework.

On April 5th, 2011 a directive⁴ on this matter has been published in the Official Journal of the European Union (Directive 2011/36/EU⁵ 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). The adoption followed a Commission⁶ Directive proposal, with binding legislation to prevent trafficking, to effectively prosecute criminals, and to better protect the victims, in line with the highest European standards. Moreover, this is the first EU measure of criminal law nature adopted under the Lisbon Treaty.

As stated in Article 1, the Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings.

Article 2 of the Directive provides the following definition:

"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."

Moreover, in the same article it is explained that:

"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."

But what does exploitation means under the Directive? In the same Article 2, it is defined that:

"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"

³ Available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf.

⁴ For information on the specificities of EU directives, please see Augustin Fuerea, Manualul Uniunii Europene, 5th edition revised and enlarged, after the Lisbon Treaty (Bucharest: Universul Juridic Publishing House, 2011), 157 and Roxana-Mariana Popescu, Introducere în dreptul Uniunii Europene, (Bucharest: Universul Juridic Publishing House, 2011), 68 and following.

⁵ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

⁶ For details on the division of powers, please see Augustina Dumitrașcu and Roxana-Mariana Popescu, Dreptul Uniunii Europene. Sinteze și aplicații, second edition, revised and enlarged (Bucharest: Universul Juridic Publishing House, 2015), 183-190.

similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.”

We have to underline that those definitions are almost identical to the definition of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.⁷

The Directive contains provisions for the protection, assistance and support to victims, as well as provisions to prevent the crime and provisions to better monitor and evaluate efforts. It ensures that people who are victims of trafficking are given an opportunity to recover and to re-integrate into society.

The key points of the directive could be resumed as follows:

a) criminal law and prosecution:

a definition of the crime applicable in all EU Member States;

non-prosecution or non-application of penalties to the victims of the human beings trafficking that are directly linked to them being trafficked (i.e. using false documents);

extraterritorial jurisdiction, meaning that there is stated the possibility to prosecute EU nationals for crimes committed in third countries.

b) prevention measures in order to:

discourage the demand for human beings trafficking (e.g. clients buying sexual services from the victims);

promote training for victims, but also for the officials to come in contact with them (e.g. border police, social workers).

c) victim protection and support measures in order to:

establish national mechanisms for identifying and assisting victims from early stages;

provide victims with support (e.g. shelter, medical assistance, interpreting services);

ensure proper treatment for victims;

give assistance before, during and after criminal proceedings.

The Directive also contains reflections on the mandate of the EU anti-trafficking coordinator (established by the Stockholm Programme – December 2009). Among his tasks, we underline that it provides overall strategic policy orientation in the human beings trafficking, it improves co-ordination and coherence of the EU's external policy, and it contributes to the elaboration of existing or new EU policies for fighting against the human beings trafficking.

Additionally, there are other EU pieces of legislation relevant on this matter:

Charter of Fundamental Rights of the EU (2012) which specifically prohibits the human beings trafficking (Article 5);

Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. According to this directive, a reflection period is given to these victims who are in the EU illegally, in order to recover and to establish an independent existence, free from the traffickers influence. If the victims cooperate with the authorities, a temporary residence permit can be issued.

The Brussels Declaration on human trafficking and May 2003 Council conclusions on the declaration effectively introduced a new policy framework and led to setting up of a Commission expert group on human beings trafficking.

Interesting to keep in mind is the 2005 EU plan on combating and preventing human trafficking, containing procedures, standards and best practices. One of the most important aspects is the scope for collective EU action and action of individual EU governments.

In order to raise awareness on trafficking in human beings and increase the exchange of information, knowledge and best practices amongst the different actors working in this field, the European Commission decided that each October 18th we will celebrate the EU Anti-Trafficking Day, at the national level or at the EU level. Certain outcomes from the EU level events include the 2007 Recommendations on the identification and referral to services of victims of trafficking in human beings and the 2011 Joint Statement of the Heads of EU Justice and Home Affairs Agencies.

Mention should be made regarding the informal EU Network of National Rapporteurs or equivalent mechanisms which was set up by the Council Conclusions adopted on June 4th, 2009 and meets every year, with the help of the European Commission. The National Rapporteurs are monitoring the implementation of anti-trafficking policy at the national level and play a key role in data collection both at national and EU Level.

There are several EU funding programmes which help to the developing and implementing EU policies against trafficking in human beings (in the EU, in the Member States and even in the candidate countries). We mention here: Daphne III (2007-2013), Prevention of and Fight against Crime (ISEC) (2007-2013), Thematic Programme Migration and Asylum.

3. Conclusions

As underlined in the legal doctrine, “there cannot exist a common legislation for all societies”.⁸

⁷ Available at https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/united-nations-protocol-prevent_en

⁸ *Anghel Elena*, Constant Aspects of Law (in Proceedings of the Challenges of the Knowledge Society Conference, ISSN 2359-9227, 2011) accessed March 28th, 2016 http://cks.univnt.ro/cks_2011_archive.html, 595.

In the last decade, the EU has made important steps towards building a truly comprehensive migration policy, based on common political principles and solidarity. Since 2005, the Global Approach to Migration and Mobility is the overarching framework of the EU external migration and asylum policy. The Global Approach to Migration and Mobility defines how the EU conducts its policy dialogues and cooperation with non-EU countries, based on clearly defined priorities and embedded in the EU's overall external action, including, of course, development cooperation.

This line was also followed in the 2009 Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings.

As we can notice very easily, human being trafficking is also addressed in numerous external relations instruments (*e.g.* the annual progress reports on candidate and potential candidate countries, the roadmaps and action plans regarding visa liberalisation dialogues with third countries, the Country Strategy Papers and National and Regional Indicative Programmes and programmes in the

framework of the European Neighbourhood Policy). Additionally, it is also addressed in bilateral Action Plans and ongoing political dialogue with third countries.

We hope that the new ambitious rules adopted by the EU institutions will keep the EU at the forefront of the international fight against human beings trafficking by protecting the victims and punishing the criminals behind this modern type of slavery.

We are looking forward to the launch of the future EU's strategy to eradicate the human trafficking starting from 2017.

Due to the fact that these crimes are affecting the entire world (at the global level, the UN Office on Drugs and Crime frames a figure of 2.45 million⁹, out of which 1.2 million¹⁰ children according to UNICEF), effective legislation and measures have to be taken on an international, regional and national level.

In this respect, we have to bear in mind that “[t]he law always starts from the social actions, but it also means legal consciousness, ideals and social values”.¹¹

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⁹Available at http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf

¹⁰Available at <http://www.unicef.org/protection/>

¹¹Anghel Elena, *Values and Valorization* (in Proceedings of the Challenges of the Knowledge Society Conference, ISSN 2359-9227, 2015) accessed March 28th, 2016 http://cks.univnt.ro/cks_2015_archive.html, 357.