

THE RELATIONSHIP BETWEEN TRAFFICKING CRIME AND FORMS OF EXPLOITATION. EVOLUTION AND CHALLENGES

Georgian RĂDĂȘANU*

Abstract

On July 1, 2024, Law no. 202/2024¹ entered into force, a normative act that provides that if the acts of trafficking in persons or minors are followed by the effective exploitation of a person, within the meaning of art. 182, the rules of concurrent offenses will apply. However, through Law no. 269/2024², which entered into force on November 3, 2024, a normative variant was introduced, among other things, into the scope of the offense of trafficking in persons and trafficking in minors, by translating pimping by coercion, respectively that committed against a minor, into the scope of the two offenses.

In this context and in order to ascertain the impact produced by the two legislative interventions in the field of preventing and combating the phenomenon of human trafficking, this article aims to treat, from an evolutionary perspective, the relationship between the crime of human trafficking and forms of exploitation, starting from the normative solutions existing in the old Criminal Code, Law no. 678/2001 on the prevention and combating of human trafficking (hereinafter, Law no. 678/2001) and the current Criminal Code, then continuing with those introduced following the amendments recently made by the Romanian Parliament through the two laws mentioned above.

In the conditions of maintaining the solution of concurrent offenses de lege lata, an aspect corroborated with the amendment made by Law no. 269/2024, this article aims to clarify whether the (recent) intention of the legislator was to (partially) invalidate the solution of the concurrence of crimes in the case of trafficking followed by sexual exploitation, by operating an absorption of the latter or, as the case may be, the intended purpose was to continue to allow the application of the norm of Law no. 202/2024 also with regard to the form of sexual exploitation, consisting in the coercion to start or continue practicing prostitution or in the case of determining or facilitating the practice of prostitution or obtaining patrimonial benefits from the practice of prostitution by one or more minors, thus being only in the presence of a legal reclassification of the form of exploitation.

Keywords: *traffic, people, report, minors, exploitation, absorption.*

1. Preliminary aspects

In the matter of human/minor trafficking, the problem at the doctrinal and jurisprudential level that was raised both in the old and the new regulation was related to the possible retention of the concurrence between the crime of human/minor trafficking and the forms of exploitation highlighted in the form of distinct crimes, such as: submission to forced or compulsory labor, forcing to practice prostitution³, exploitation of begging etc. Against the background of an increasingly high incidence of the practice of prostitution in relation to other forms of exploitation, the problem of establishing this ratio was raised especially in the case of pimping, an aspect that also led to the supreme court issuing a decision on appeal in the interest of the law.

In this context, the trafficker of persons/minors is the intermediary who makes the connection between the organized crime networks that exploit the victims and the recruited victims, being the one who uses his knowledge to identify and transport the victims to these networks, regardless of whether we are talking about domestic or international human trafficking⁴. Obviously, in such situations, the solution to the retention of the crime of trafficking in persons/minors is as obvious as possible and does not raise problems of interpretation and application, which is why we will not insist on this aspect in the present analysis.

* PhD Candidate, Legal staff assimilated to judges and prosecutors, Ministry of Justice (e-mail: radasanu.georgian@yahoo.com).

¹ Law for the amendment and completion of Law no. 286/2009 on the Criminal Code, published in the Official Gazette, Part I no. 607/28.06.2024.

² Law for the amendment and completion of Law no. 286/2009 on the Criminal Code, published in the Official Gazette, Part I no. 1089/31.10.2024.

³ We are considering the previous form of the absorption of procuring by coercion within the scope of human trafficking, currently, para. (2) of art. 213 CP being repealed.

⁴ R. Mocanu, *Infrațiuni din sfera criminalității organizate*, Hamangiu Publishing House, Bucharest, 2024, p. 180.

Instead, the central problem that has plagued this relationship between the crimes of trafficking in persons/minors and the forms of exploitation over time was that related to the commission by the same person of both recruitment, transportation, transfer, reception or hosting through coercion, deception, etc., and of the subsequent obligation to commit various activities (prostitution, begging, agricultural work, housekeeping, etc.). In this case, the question arose whether it is necessary to retain a plurality of crimes or, as the case may be, only the crime of trafficking in persons/minors, by absorbing the crime - which constitutes the form of exploitation - within the scope of the trafficking crime.

Analyzing the doctrine and judicial practice on both the old and the current regulation, prior to the amendment made in 2024 by Law no. 202/2024 (which requires the solution of concurrent offenses), we will be able to find that, although at the doctrinal level, the majority trend was in the sense of correctly retaining the plurality, the majority opinion in practice was in the sense of retaining the absorption thesis. Such an approach on the part of the practice came in the conditions in which the original intention of the legislator clearly aimed at the solution of retaining the concurrent offenses, an aspect confirmed, once again, by the legislative intervention operated with the entry into force of Law no. 202/2024.

Without entering into the subject of further discussion at this point, we only mention that such an approach on the part of the legislator was the correct one since the crime of human trafficking, respectively the crime of trafficking in minors, each represents an intermediary crime (a preparatory activity that the legislator, considering the danger that could follow these activities, decided to criminalize), followed most of the time by the actual exploitation of the victims⁵. Therefore, by constructing this intermediary crime, human/minor trafficking is interposed between the victim's state of freedom and the subsequent action of actual exploitation of the victim, by subjecting the victim to forced labor, subjecting the victim to prostitution, forcing the person to beg, etc.⁶.

Exploitation, required only as a special purpose pursued by the perpetrator, makes the crime of trafficking in persons/minors autonomous in relation to the acts of actual exploitation, which may be criminally sanctioned in addition to the sanction applicable for trafficking in persons/minors⁷. Therefore, if exploitation takes the form of a crime, in addition to actual trafficking, the natural solution is to withhold the concurrence with the crime-purpose, to the extent that the trafficker subsequently exploited the person in question⁸.

However, as we will see below, although such an approach was shared by the majority at the doctrinal level, the constant solution in practice was to retain only the crime of trafficking in persons/minors, considering that the forms of exploitation that take the form of distinct crimes are absorbed into the content of trafficking. However, as we will see later, this orientation of practice, towards retaining a single crime, came to be consolidated with the pronouncement of appeal Decision in the interest of the law no. XVI of March 19, 2007, artificially stopping any discussion regarding the possibility of retaining plurality.

Unfortunately, given that the texts in issue at the time of the decision had a distinct content and required an intervention related to that time, maintaining the solution retained by the supreme court and applying it superficially/artificially, with the entry into force of the Criminal Code, to normative solutions different from those envisaged by this court, led to an unjustified limitation of the sanctioning treatment in the case of the same person committing two distinct criminal conducts. Practically, although the new legal provisions imposed a cessation of the applicability of those retained by the supreme court, judicial practice unjustifiably perpetuated an approach that could no longer be supported by the new legislative reality.

⁵ In the same sense, S. Bogdan, D.A. Șerban, *Drept penal. Partea specială. Infrațiuni contra persoanei și contra înfăptuirii justiției*, 2nd ed., Universul Juridic Publishing House, Bucharest, 2020, p. 288; N. Neagu, in V. Dobrinioiu et al., *Noul Cod comentat. Partea specială*, 3rd ed, Universul Juridic Publishing House, Bucharest, 2016, p. 141; T. Toader, *Drept penal român. Partea specială*, vol. I, Universul Juridic Publishing House, Bucharest, 2019, p. 163.

⁶ R. Mocanu, *op. cit.*, pp. 171-172.

⁷ S. Bogdan, D.A. Șerban, *op. cit.*, p. 288; In the same sense, R. Mocanu, *op. cit.*, p. 199.

⁸ For such a correct solution, see HCCJ, crim. s., dec. pen. no. 3566/8.06.2005, in *Pandectele Române* no. 1/2006, available at: www.lege5.ro; This opinion is also shared by: S. Bogdan (coord.), D.A. Șerban, G. Zlati, *Noul Cod penal. Partea specială. Analize, explicații, comentarii. Perspectiva clujeană*, Universul Juridic Publishing House, Bucharest, 2014, p. 130; S. Bogdan, D. A. Șerban, *Drept penal. Partea specială. Infrațiuni contra persoanei și contra înfăptuirii justiției*, 4th ed., Universul Juridic Publishing House, Bucharest, 2024, p. 355.

2. Brief mentions regarding the forms of exploitation

Human trafficking can lead to multiple forms of exploitation: sexual, through labor [the case of child soldiers⁹, unpaid domestic servitude and forced labor in various industries - agriculture, commercial fishing, construction, hospitality, cleaning services, nail salons, begging, etc.], illegal organ harvesting or the commission of forced criminal activities¹⁰. Equally, forms of exploitation can also involve the conclusion of forced marriages, the carrying of pregnancy by other people (surrogate mothers) or the conclusion of illegal adoptions of children resulting from commercial acts.

Most of the previous examples of exploitation also meet, in our domestic law, the constitutive elements of autonomous crimes: slavery (art. 209 CP), submission to forced or compulsory labor (art. 212 CP), pimping by coercion [art. 213 para. (2) CP]¹¹, exploitation of begging (art. 214 CP) or the removal or transplantation of organs, tissues or cells of human origin from living donors without consent or obtained by coercion [art. 154 para. (1), respectively art. 156 para. (2) of Law no. 95/2006] or, as the case may be, improper participation in the commission of various crimes.

Next, we will briefly highlight, from the perspective of judicial practice, the relationship between the crime of trafficking in persons/minors and the forms of exploitation, in the situation of the commission by the same person of both the elements specific to trafficking and the forms of exploitation:

2.1. Forced labour or services

With regard to this form of exploitation, it is important to remember that statistics show that one third of victims of human trafficking are subsequently placed for labour exploitation¹². At European level, according to the Report on the progress made in the EU in combating human trafficking (fifth report) of 20.01.2025 (hereinafter, Report)¹³, this form of exploitation was the second most widespread in the EU in 2021-2022, with a percentage of 37% of all victims of human trafficking¹⁴. Among the sectors involved in this phenomenon we mention: construction, agriculture, forestry, food processing, assembly lines, hospitality, retail, car washes, beauty and cleaning services, transportation and housekeeping, and recently sectors such as: home care or medical care services or parcel delivery have appeared¹⁵.

Regarding the relationship between trafficking and this form of exploitation, in addition to the doctrinal opinions indicating the solution of the concurrent crimes between human trafficking (art. 210 CP) and submission to forced or compulsory labor (art. 212 CP)¹⁶, we can also recall a decision confirming this solution in the case of persons transported to Italy and misled regarding the situation they would have in this country, but who were forced by the same subjects to work 10-12 hours a day, being accommodated in unsanitary places and having their money and identity documents taken in order to prevent them from evading the performance of such activities¹⁷.

In the reasoning of the solution, the court held that „(...) the acts committed by the defendants T.E. and T.F. meet the constitutive elements of the crimes of human trafficking and forced or compulsory labor. As regards the material element of the objective side of the crime of human trafficking, the court finds that it was carried out through several alternative normative methods, namely through recruitment, by facilitating the transport of the injured persons and by ensuring accommodation (activities that were not denied by the defendants), which were committed by misleading, in order to exploit these injured persons (...) It is obvious that the defendants

⁹ These are children who are forcibly or voluntarily involved in armed conflicts.

¹⁰ M. Drăguș, *Activități de instruire privind identificarea și detectarea proactivă a victimelor traficului de persoane derulate la Brașov și Timișoara*, 2024, article available at: <https://anip.mai.gov.ro/activitati-de-instruire-privind-identificarea-si-detectarea-proactiva-a-victimelor-traficului-de-persoane-derulate-la-brasov-si-timisoara/>

¹¹ We are considering the form prior to the absorption of pimping by coercion into the scope of human trafficking, currently, para. (2) of art. 213 CP having been repealed.

¹² R. Mocanu, *op. cit.*, p. 217-218.

¹³ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions.

¹⁴ Report available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=COM%3A2025%3A8%3AFIN&qid=1737377409773>.

¹⁵ *Ibidem*.

¹⁶ In the sense of retaining a concurrence between the crime of human trafficking and submission to forced or compulsory labor, see S. Bogdan (coord.), D.A. Șerban, G. Zlati, *op. cit.*, p. 136; In the sense of retaining only the special norm (art. 210/art. 211 CP) and leaving the general norm unapplied (art. 212 CP), see C. Duvac, *Drept penal. Partea specială*, vol. I., Universul Juridic Publishing House, Bucharest, 2015, p. 176.

¹⁷ CA Iași, crim. s., crim. dec. no. 981/21.12.2018, available at: www.lege5.ro.

recruited and facilitated the transport, misleading the injured persons, in order to exploit them by subjecting them to forced labor, but also to obtain sums of money in an easy, but also unfair way (...). With regard to the factual situation proven in the case, the Court finds that, in „In this case, it was proven, beyond a doubt, that the exploitation of the injured persons was carried out by subjecting them to forced labor or services”¹⁸.

On the other hand, we also find jurisprudence in the sense of exclusively retaining the crime of human trafficking (unfortunately, the majority¹⁹) when: „The court thus found that, in law, the act of the defendant B.C. who, during the period October 2010 - June 6, 2012, repeatedly and based on the same criminal resolution, recruited, housed and received the injured parties C.Ș.I., M.D. and Z.F. by threat, violence and kidnapping and other forms of coercion (in the case of the injured party C.Ș.I.), taking advantage of his inability to defend himself and express his will and by giving money to obtain the consent of the person who has authority over him (in the case of the injured party M.D.) and taking advantage of his inability to defend himself and express his will (in the case of the injured party Z.F.) for the purpose of exploiting these persons by performing forced labor and in violation of the legal norms regarding working conditions, wages, health and security, violating fundamental human rights, meets the constitutive elements of the crime of trafficking in persons provided for by art. 12 para. (1) of Law no. 678/2001 with the application of art. 41 para. (2) CP”²⁰.

In another case, in which the absorption thesis was retained, it was shown that: „In law, the act of the defendant H.T.V., consisting in the fact that, during the period September 2008 - June 2009, he together with B.Ș.D. the latter's wife, respectively B.E., B.C., H.C.C. and P.Ș.O., exploited through labor, in violation of the legal norms regarding working conditions, wages, health and security, several persons recruited by the promise of well-paid jobs in Suceava and Botoșani counties, respectively: (...), using as methods of coercion the victims: keeping them in a continuous state of psychological pressure by uttering insults and threats, using in some cases physical violence, limiting the freedom of movement of the victims by withholding their identity documents, meets the constitutive elements of the crime of „trafficking in persons”, provided for and punished by art. 12 para. (1) and (2) letter a) in conjunction with art. 2 point. 2 letter a) of Law no. 678/2001 on preventing and combating trafficking in persons, with the application of art. 41 para. (2) CP”²¹.

Finally, in another case, the crime of trafficking in minors was also found in the case of the defendant who: „(...) taking advantage of the vulnerability of the minors: (...) and (...), of the ascendancy over the victims: the adult (...) and (...) since they lived in the building owned by the accused and her family, abusing the recognized position of trust and authority, sheltered the four injured persons, forcing them, using physical and psychological coercion, to perform various household chores every day, in a forced manner”²².

2.2. Forcing prostitution, pornographic performances for the production and dissemination of pornographic materials or other forms of sexual exploitation

It is important to remember that, according to statistical data provided by the National Agency against Trafficking in Persons (ANITP), sexual exploitation, viewed from the perspective of all its associated forms (including child pornography), accounts for 75% of all forms of exploitation, so that 3 out of 4 trafficked victims are sexually exploited²³. At the European level, according to the European Commission Report, human trafficking for the purpose of sexual exploitation continued to be the most widespread form of exploitation in the EU in the period 2021-2022 (49% of victims), the most common method of recruiting young women and girls for sexual exploitation continuing to be the „lover boy” method²⁴.

Regarding the relationship between the crime of trafficking and that of pimping, prior to the changes made in 2024, if at the doctrinal level the majority opinion was in the sense of retaining the concurrence of crimes, at

¹⁸ *Ibidem*.

¹⁹ This is also noted in the doctrine, see V. Cioclei, in G. Bodoroncea *et al.*, *Codul penal. Comentariu pe articole*, 4th ed, C.H. Beck Publishing House, Bucharest, 2025, p. 801.

²⁰ Trib. Călărași, crim. s., crim. dec. no. 16/7.02.2013 remained final in terms of legal classification by crim. dec. no. 270/1.11. 2013 of CA Bucharest, 1st crim s., *apud* HCCJ, crim. s., crim. dec. no. 1814/28.05.2014, available at: www.scj.ro.

²¹ Trib. Suceava, crim. c., crim. dec. no. 148/24.09.2012, remained definitive in terms of this legal classification through crim. dec. no. 101/9.07.2013 of CA Suceava, *apud* HCCJ, crim. s., crim. dec. no. 1311/14.04.2014, available at: www.scj.ro.

²² CA Craiova, crim. s., crim. dec. no. 1287/20.11.2025, available at: www.rejust.ro.

²³ M. Drăguș, *Analiza datelor privind fenomenul traficului de persoane aferente anului 2024 pentru Raportul privind traficul de persoane (RAPORTUL TIP)*, 2025, available at: <https://anitp.mai.gov.ro/analiza-datelor-privind-fenomenul-traficului-de-persoane-aferente-anului-2024-pentru-raportul-privind-traficul-de-persoane-raportul-tip/>.

²⁴ Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=COM%3A2025%3A8%3AFIN&qid=1737377409773>.

the level of judicial practice, the courts have predominantly retained the thesis of the absorption of pimping by coercion within the scope of trafficking in persons/minors, in the hypothesis of the same subject committing, after the elements of trafficking, those of coercion to start prostitution. However, being an issue that involves several discussions, we have opted for a separate treatment of this issue within a distinct section.

2.3. Forcing to beg

This form of exploitation is found at European level in a percentage of 2% of the total forms of exploitation²⁵, we found an almost unanimous judicial practice regarding the exclusive retention of the crime of trafficking in persons/minors, of which we can mention: „3. The act of the defendant I.C., who in May 2006 recruited F.I., by misleading him that he would find him a job in Italy, for the purpose of exploiting him, for which purpose, on 5.06.2006, together with ŞABAN I., transported him by car (...) from Romania to the city of Milan, where through physical and moral coercion they forced him to beg for their benefit until August 2006, meets the constitutive elements of the crime of trafficking in persons, provided for in art. 12 para. (1) and (2) letter a) of Law no. 678/2001, with application of art. 13 of the Criminal Code”²⁶.

In delimiting the crime of human trafficking from that of forcing to practice begging, it was held in another case that „the fact that it was invoked, for the defendant I.Ş., (...) that the crime would meet the constitutive elements of the crime of exploitation of begging provided for in art. 214 of the Criminal Code, an aspect that cannot be retained by the court considering the elements that differentiate the two types of crimes, namely the particularity of human trafficking committed specifically by misleading the victims. In contradiction, the exploitation of begging requires that the victim be explicitly informed that he will repeatedly appeal to the public's mercy, and not be misled”²⁷.

We find this delimitation clearly highlighted in another decision: «The evidence administered in the case outlines the circumstances in which the recruitment and exploitation of minors was carried out, by using coercion and taking advantage of their vulnerability due to their age. Specifically, the activity carried out achieves the material element of the objective side of the content of the crime of trafficking in minors, not only a „determination” taking place in the sense provided for by art. 214 of the Criminal Code, which implies the victim's compliance with proposals and incitements. Without repeating the facts set out above, it emerged in the case that the minors were subjected to conditions imposed by the defendants in their begging activity regarding the location and manner in which they were to carry out the activity, the amount of money they were to obtain daily, otherwise being subjected to acts of physical violence or threats, the conclusion being that they were forced to practice begging under the imposed conditions and for the benefit of the defendants and not just determined ones»²⁸.

2.4. Illegal removal of organs, tissues or cells of human origin

In the absence of relevant decisions, we can imagine the situation of members of a clinic that recruits needy people by offering them sums of money, thus taking advantage of their precarious financial situation and by misleading them, in order to sell organs, tissues or cells of human origin to interested persons. Recruitment can also be committed by misleading them in a situation where victims are promised certain surgical interventions for modest sums or even without paying any sums of money, the real purpose being the unlawful removal of organs. Obviously, to the extent that the same persons commit both the acts of recruitment and then those of illegal removal, the natural solution is to retain the concurrence between trafficking in persons/minors and the crime provided for in art. 154 para. (1), art. 156 para. (2) or even art. 157 para. (1) of the Law no. 95/2006 on healthcare reform²⁹.

²⁵ According to the aforementioned Commission Report.

²⁶ Trib. Constanța, crim. s., crim. dec. no. 264/09.04.2014, remained definitive through crim. dec. no. 48/22.01.2015 of CA Constanța, crim. s., available at www.lege5.ro.

²⁷ *Ibidem*.

²⁸ Trib. Maramureș, crim. s., crim. dec. no. 56/20.03.2017, remained definitive through crim. dec. no. 939/14.06.2017 of CA Cluj, crim. s., available at: www.lege5.ro.

²⁹ Republished in the Official Gazette, Part I, no. 652/28.08.2015.

2.5. Compulsion to commit acts provided for by criminal law

This form of exploitation is found at European level in a percentage of 3% of all forms of exploitation and aims to commit criminal activities, such as: thefts, petty crimes, pickpocketing or shoplifting, transporting or selling drugs, etc.³⁰. As previously mentioned, this form of exploitation was introduced into our domestic law by Law no. 269/2024, finding its source in the provisions of art. 2 para. (3) of Directive 2011/36/EU³¹, provisions which provide that: „Exploitation includes at least the exploitation of the prostitution of other persons or other forms of sexual exploitation, forced labor or service, including begging, slavery or practices similar to slavery, servitude, exploitation of criminal activities or the removal of organs”³².

Given the difficulties generated by the interpretation of the phrase „forced performance of services”, in which the exploitation of individuals through pickpocketing has been included by some courts within the scope of exploitation through the performance of services [art. 182 letter a) sentence 2 CP], we consider that the introduction of this form of exploitation is a welcome one. In this context, we can recall, as an example, the following situation in which such assimilation was considered: „The action of the defendant (...) committed in the general interval May 2023 - December 27, 2023, consisting of imposing the injured person (...) to steal food and drinks from stores, (...) all executed by the minor injured person considering the state of moral subordination after his recruitment through violence by the defendant and the recurrent physical violence on the part of the defendant, constitutes the material element of the crime of submission to forced or compulsory labor”³³.

Regarding the relationship between the crime of human/minor trafficking and the form of exploitation, to the extent that the same person recruits, transports, hosts, etc. through coercion, deception, etc. another person whom he subsequently forces to commit a crime (e.g., pickpocketing, fraud, destruction, drug trafficking, etc.), he will be liable for a real concurrence of crimes between human/minor trafficking and improper participation (in the form of instigation) in that crime.

2.6. Exploitation of surrogacy, forced marriage or illegal adoption

Last but not least, we must remember that, on July 14, 2024, Directive (EU) 2024/1712 of the European Parliament and of the Council of June 13, 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims³⁴ entered into force, with a transposition deadline of July 15, 2026. This directive provides for the extension of the concept of „exploitation” to the exploitation of surrogacy, forced marriage or illegal adoption.

In this context and given the new forms of exploitation, according to the Commission Report several Member States (Slovenia, Slovakia, Spain, Croatia, Latvia, Greece and Lithuania) have reported cases of trafficking in human beings for the purpose of forced and sham marriages, among ethnic minorities, such as the Roma and children (mainly girls) from migrant families. And with regard to surrogacy, a trend has been identified at European level for criminals (in particular, reproductive clinics) to exploit vulnerable women through egg retrieval and assisted human reproduction services, through surrogacy³⁵.

Further, as a result of the obligation to transpose the directive into domestic law, the Ministry of Justice put into public debate a draft law aimed at, among other things, amending the Criminal Code, providing for the extension of the notion of „exploitation”, from the content of art. 182 CP, with new hypotheses, such as:

- forcing to conclude a marriage or to cohabit in a relationship similar to that between spouses;
- forcing a person to obtain or carry a pregnancy for another person;

³⁰ According to the aforementioned Commission Report.

³¹ 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.

³² In developing this article, the directive states in recital 11 of the Preamble that: „The expression „exploitation of criminal activities” should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.”

³³ Trib. Galați, crim. s., crim. dec. no. 264/19.11.2025, available at: www.rejust.ro. We note that such a solution was refuted by the CA Galați (crim. dec. no. 326/06.04.2026, available at: www.rejust.ro), which ordered the removal from the appealed sentence of the penalties applied regarding the crimes of forced or compulsory labor and exploitation of begging in an aggravated form, thus retaining only the crime of trafficking in minors.

³⁴ Published in the Official Journal of the European Union, L series of 24.06.2024.

³⁵ See the report of Comission, available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=COM%3A2025%3A8%3AFIN&qid=1737377409773#footnoteref42>.

- taking over or handing over a child for adoption by another person by evading the legal procedure regarding adoption, as well as forcing or misleading consent to an adoption or obtaining money or other material benefits in exchange for adoption³⁶.

In this context and without going into an in-depth analysis of these new forms of exploitation, we believe that the legislator could also consider the method of exploitation by obtaining money or other material benefits in exchange for entering into a marriage or living together in a relationship similar to that between spouses or, as the case may be, obtaining money or other material benefits in exchange for obtaining or carrying a pregnancy for another person. In this case, those situations in which interested persons enter into arranged marriages or agree to obtain or carry a pregnancy for another person in exchange for sums of money could also be involved in the purpose of trafficking.

And in these situations, we believe that the question of the purpose of exploitation pursued by the trafficker at the time of committing the trafficking methods could be raised. It is true that such an approach opens up a problem related to the configuration of, for example, sexual exploitation, when the legislator has chosen to transpose this form of exploitation by forcing a person to practice prostitution, and therefore not the hypothesis when the trafficker only seeks to obtain patrimonial benefits. However, as we will see later, as a rule, the person is coerced into practicing prostitution so that the trafficker implicitly also seeks to obtain patrimonial benefits from practicing prostitution or we could even say that his direct intention is aimed at obtaining patrimonial benefits, while the compulsion to practice prostitution is committed with an indirect intention.

Also, the same draft submitted to public debate also provided for the criminalization of „forced marriage”, by virtue of the obligation incumbent on Member States under Directive 2024/1385 on combating violence against women and domestic violence³⁷. As stated in the Explanatory statement, forced marriage is a form of violence that involves serious violations of fundamental rights and, in particular, the rights of women and girls to physical integrity, freedom, autonomy, physical and mental health, sexual and reproductive health, education and private life. In these circumstances, it was deemed necessary at the European Union level to criminalize these acts, with the provision of appropriate levels of sanctions³⁸.

According to art. 211¹ CP, forced marriage will have a basic form consisting of coercing a person to consent to the conclusion of a marriage or to cohabit in a relationship similar to that between spouses, as well as an assimilated form consisting of determining a minor under the age of 16 to cohabit with another person in a relationship similar to that between spouses. The norm also provides for an aggravated form in the event that the act in the basic form is committed against a minor. Last but not least, the legislator also sanctions the attempt to this crime.

In light of these observations, to the extent that the same person recruits, transfers, etc. by coercion, deception, etc. a person in order to force him/her to enter into a marriage or to live together in a relationship similar to that between spouses, and then actually carries out such coercion for the aforementioned purpose, the thesis of the competition between the crime of trafficking in persons/minors and that of forced marriage will be retained.

3. Particular hypothesis of the relationship between the crime of trafficking in persons/minors and that of pimping

Furthermore, we will make some clarifications, first with regard to the relationship between the crime of trafficking in persons/minors and that of pimping, with the same reasoning to be applied *mutatis mutandis* to the other forms of exploitation, there being no rational justification for applying a distinct legal regime to the other forms of exploitation, other than the compulsion to practice prostitution³⁹. Such a conclusion is also reinforced by the correct solution promoted by Law no. 202/2024.

³⁶ <https://www.just.ro/proiect-de-lege-pentru-modificarea-si-completarea-legii-nr-286-2009-privind-codul-penal-legii-nr-135-2010-privind-codul-de-procedura-penala-precum-si-pentru-modificarea-si-completarea-altor-acte-n/>.

³⁷ Published in the Official Journal of the European Union, L series of 24.05.2024.

³⁸ <https://www.just.ro/proiect-de-lege-pentru-modificarea-si-completarea-legii-nr-286-2009-privind-codul-penal-legii-nr-135-2010-privind-codul-de-procedura-penala-precum-si-pentru-modificarea-si-completarea-altor-acte-n/>.

³⁹ In the sense that only in the case where the exploitation of a person within the framework of the crime of human trafficking is carried out by forcing them to practice prostitution, does the issue of delimitation between the two crimes arise, see G. Alexandroiu, *Scurte considerații referitoare la delimitarea infracțiunii de trafic de persoane de infracțiunea de proxenetism*, in *Revista Română de Jurisprudență* no. 3/2019, available at: www.sintact.ro.

However, to begin with, I consider it important to observe how such a paradigm shift in judicial practice (unfortunately, the majority) was reached, in the sense of exclusively retaining the crime of trafficking in persons/minors, even in the hypothesis in which, after the commission of the trafficking acts, the exploitation activities are effectively carried out by the same person, by analyzing the relevant aspects of international law, the provisions of the old/current Criminal Code, Law no. 678/2001, as well as the relevant jurisprudence in this regard.

3.1. Progress of the report prior to the entry into force of the 2009 Criminal Code

To begin with, we recall that, at the international level, the United Nations General Assembly adopted, on 15 November 2000, the United Nations Convention against Transnational Organized Crime (UNTOC), also known as the Palermo Convention, which still represents the main international legal instrument for combating organized crime. This act, which entered into force in 2003, promotes cooperation between states in order to prevent and punish crimes such as human trafficking, migrant smuggling and money laundering.

In the Additional Protocol to the Convention to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, trafficking in persons is defined as „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 another person or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, the use or removal of organs;”

At the European level, a particular interest in the issue of human trafficking has also been shown over time, so that, in 1991, the Council of Europe adopted Recommendation of the Committee of Ministers of the Council of Europe no. R 91 on sexual exploitation, pornography, prostitution and trafficking of children and young adults⁴⁰. Subsequently, also at the level of the same body, the Convention on Action against Trafficking in Human Beings was adopted, adopted on 16 May 2005 in Warsaw and which entered into force on 1 February 2008, which aims to prevent human trafficking, protect victims of trafficking, criminalize traffickers and promote coordination of national actions and international collaboration⁴¹.

At EU level, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings⁴² and the EU Plan on best practices, rules and procedures for combating and preventing trafficking in human beings⁴³ were adopted, both with a view to preventing and combating trafficking in human beings and protecting the rights of victims of trafficking. Subsequently, also with a view to achieving the same objective, Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims was adopted, as well as replacing Council Framework Decision 2002/629/JHA⁴⁴, which defines the crime of trafficking in human beings.

In light of these international regulations, domestically, Law no. 678/2001 represents the first legislative instrument that treats trafficking in human beings as a distinct form of crime and that criminalizes its elements within the scope of art. 12 para. (1): „The recruitment, transportation, transfer, harbouring or receipt of a person by means of threat, violence or other forms of coercion, by means of abduction, fraud or deception, abuse of authority or taking advantage of the inability of that person to defend himself or herself or to express his or her will or by offering, giving, accepting or receiving money or other benefits to achieve the consent of a person having authority over another person, for the purpose of exploiting that person, constitutes the crime of trafficking in human beings, and is punishable by imprisonment from 3 to 10 years and the prohibition of certain rights.”

As can be seen, the content of the incrimination has the same form as that found in the Palermo Convention, as it is presented in a similar form to that existing in the content of art. 2 para. (1) of Directive 2011/36.

⁴⁰ Adopted by the Committee of Ministers on 9 September 1991 at the 461st meeting of the Ministers' Deputies.

⁴¹ <https://rm.coe.int/16805d41fc>.

⁴² Published in the Official Journal of the European Communities L 203/1 of 1.08.2002.

⁴³ Published in the Official Journal of the European Union C 311 of 9.12.2005.

⁴⁴ Published in the Official Journal of the European Union L 101/1 of 15.04.2011.

Looking also from the legislative perspective of trafficking, specific elements of it were also found in the content of art. 329 para. (2) CP 1969, in the structure of aggravated pimping and which concerned the commission of an action of recruiting persons for prostitution or trafficking in persons for this purpose, as well as the coercion of a person to practice prostitution. In the context of the existence of similar ways of committing the crime, in the previous judicial practice existing on the old Criminal Code there were numerous controversies regarding the relationship between the crime of trafficking in persons and that of pimping.

According to some solutions in practice, the criterion for differentiating between the two crimes was the existence or absence of the element of tainting the subjective position (of the free manifestation of conscience and will) of the person who prostitutes himself, tainting which was achieved through psychological or physical violence, misleading or any other form of coercion. From this perspective, when there was a defect in the subjective position of the victim, the legal classification of the act was that of human trafficking, provided for in art. 12 of Law no. 678/2001⁴⁵, and in the absence of this defect, the act was classified as the crime of pimping, provided for in art. 329 para. (1) or (2) CP 1969, with the exception of the last sentence of this para. (*i.e.*, the coercion of a person to practice prostitution)⁴⁶.

It has also been shown in the doctrine that, given an overlap of the material element of coercion from art. 329 para. (2) sentence III of the Criminal Code over that found in art. 12 para. (1) of Law no. 678/2001, between which there is no quantitative or qualitative difference, the solution to resolve this competition of criminal laws must be the application of the principle of specialty - *specialia generalibus derogant*, meaning that Law no. 678/2001, regulating a specific area of crime, that of human trafficking, will be considered as a special law, derogatory to the general provisions contained in the Criminal Code⁴⁷. Even so, it cannot be overlooked that in judicial practice there have been situations when the two crimes were held to be in real or ideal competition, a practice that exists even at the level of the supreme court⁴⁸.

In this context, in order to resolve the controversies that have arisen, the Supreme Court, by decision of the HCCJ no. XVI of March 19, 2007, established the differentiation between the two crimes by referring, mainly, to the two variants of the aggravated form of the crime of pimping: the action of recruiting people for prostitution, respectively human trafficking for this purpose and the material element of the crime contained in Law no. 678/2001, stating the following: „...2. Consequently, if a person, without using coercion, encourages or facilitates the practice of prostitution or benefits from the practice of prostitution by adults, he commits the crime of pimping provided for in art. 329 para. 1 of the Criminal Code (currently, art. 213 para. (1) CP, *n.n.*).

- If a person, without using coercion, recruits adults for prostitution or traffics adults for this purpose, the act meets the constitutive elements of the crime of pimping, provided for in art. 329 para. 2 sentences I and II of the Criminal Code.
- In the case of acts of recruitment, transportation, transfer, accommodation or reception of a person, by threat, violence, kidnapping, fraud or deception, abuse of authority or by other forms of coercion or by taking advantage of the impossibility of that person to express his/her will or by offering, giving, accepting or receiving money or other benefits to obtain the consent of the person who has authority over another person, for the purpose of exploiting this person, the act meets the constitutive elements of the crime of trafficking in persons, provided for by art. 12 of Law no. 678/2001 (currently, art. 210 para. (1) CP, *n.n.*).
- If a person acts on another person in the manner indicated in points 2 and 3, inciting, facilitating or benefiting from or recruiting or trafficking adults in order to voluntarily practice prostitution, and subsequently acts on the same person in the manner indicated in the text of art. 12 of Law no. 678/2001, the commission of both the offense provided for in art. 329 para. (1) of the Criminal Code

⁴⁵ HCCJ, crim. s., crim. dec. no. 4158/2004; HCCJ, crim. s., crim. dec. no. 3995/2005, *apud* N. Cristuș, *Traficul de persoane, proxenetismul, crima organizată. Practică judiciară*, Hamangiu Publishing House, Bucharest, 2006, p. 111-114.

⁴⁶ HCCJ, crim. s., crim. dec. no. 1987/2005; HCCJ, crim. s., crim. dec. no. 6670/2004, *apud* N. Cristuș, *op. cit.*, p. 107; CA Timișoara, crim. s., crim. dec. no. 733/A /15.07/2015, *apud* V. Pușcașu, C. Ghigheci, *Codul penal adnotat. Partea specială*, vol. II, Universul Juridic Publishing House, Bucharest, 2021, p. 168.

⁴⁷ G.C. Zaharia, *Traficul de persoane*, C.H. Beck Publishing House, Bucharest, 2012, p. 155; Also, in the sense that the special law (the crime of human/minor trafficking) will prevail over the general law (forcing prostitution), see HCCJ, crim. s., crim. dec. no. 2550/2004, in *Buletinul Jurisprudenței* 2004, p. 827-828; Similarly, regarding the relationship between child trafficking and pimping, see M. A. Hotca, R. Slăvoiu, *Noul Cod penal și Codul penal anterior. Adnotări, situații tranzitorii, noutăți*, Universul Juridic Publishing House, Bucharest, 2014, p. 323.

⁴⁸ HCCJ, crim. s., crim. dec. no. 3566/2005, nr. 1701/2004 and no. 4825/2004, *apud* N. Cristuș, *op. cit.*, p. 156.

or art. 329 para. (2) sentences I and II of the Criminal Code, as the case may be, and the offense provided for in art. 12 of Law no. 678/2001, in real contest”.

In support of these differentiations, the supreme court retained the following arguments: «Now, while for the existence of the crime of pimping provided for in art. 329 para. (1) of the Criminal Code, as well as its qualified form, regulated under para. (2) of the same article, with the exception of the modality consisting of „coercion to prostitution”, it is not necessary to exercise acts of coercion on the victim or subject her to pressure from a person whose authority over her was purchased, it is necessary to consider that precisely these specific features constitute the criterion for differentiating between the crime of trafficking in persons, for the purpose of exploitation by forcing her to practice prostitution, provided for in art. 12 para. (1), with reference to art. 2 point 2 letter c) of Law no. 678/2001, where the presence of such elements is necessary, and the crime of pimping, provided for in art. 329 of the Criminal Code, whose existence is conditioned only in the particular modality of vitiating the subjective position of the victim of the commission through „coercion to prostitution”. Thus, if in the case of pimping, coercion is provided only as a particular, aggravated modality of alternative commission of the crime, in such a case the recruitment and trafficking of persons are not made for the purpose of forcing to practice prostitution, which is performed voluntarily by the person concerned, in all cases of committing the crime of trafficking in persons, coercion constitutes the main specific means of achieving the material element of the objective side of this crime.»

As can be seen, the comparative analysis of the HCCJ exclusively targeted the two variants of the aggravated form of the crime of pimping: the action of recruiting people for prostitution, respectively trafficking in persons for this purpose (the latter in particular, given the overlap with the material element of the crime contained in Law no. 678/2001), as well as the material element of the crimes contained in Law no. 678/2001 and in no way the form of coercing a person to practice prostitution by relating to the act of trafficking found in the special law. In this context, what the Court holds in point 4 is correct from a criminal point of view, the simple recruitment, transportation, transfer, accommodation or reception of a person through one of the methods listed in the norm, for the purpose of exploitation, leads to the retention of the crime of trafficking in persons/minors, but it does not follow from this, contrary to some motivations illustrated in practice, that if the same person is the one who commits the elements of trafficking, but also the coercion to practice prostitution, the thesis of the concurrence of crimes would be excluded from the plano.

Obviously, the element of differentiation between the two crimes and the one that must prevail from the perspective of the exclusive retention of the crime of trafficking in persons/minors, according to Law no. 678/2021, is the one related to the vitiation of the subjective position of the victim, the methods found in art. 329 CP 1969 (except for the obligation to practice prostitution) being devoid of the necessity of the existence of a constraint. On the other hand, to the extent that the intention of the court would have been to retain exclusively the crime of trafficking in persons/minors and in the situation where, following the recruitment, transportation, transfer, accommodation or reception of a victim, her exploitation is carried out in practice by the same person who committed the elements of trafficking, this would have resulted, obviously, from the content of the judgment.

However, such an issue could not even be the subject of the Supreme Court's analysis given that the non-uniform practice resulted from the existence of two similar texts that concerned one of the elements of trafficking (recruitment) compared to the situation of trafficking in persons for the purpose of practicing prostitution, with regard to which, as the Supreme Court also pertinently noted, the differentiation element strictly aims at vitiating the subjective position of the victim. Moreover, the issue of such a comparative analysis was not raised in HHCI Decision no. XVI/2007 between the crime of trafficking in persons/minors under Law no. 678/2001 and pimping by coercion since, as we anticipated, the crime of trafficking in persons and that of trafficking in minors, respectively, each represent an intermediary crime (which constitutes a preparatory activity), followed most of the time by the actual exploitation of the victims⁴⁹.

⁴⁹ In the same sense, S. Bogdan, D. A. Șerban, *op. cit.*, p. 288; N. Neagu, in V. Dobrinou et al., *op. cit.*, p. 141.

4. Evolution of the report with the entry into force of the 2009 Criminal Code and prior to the amendments made by the legislator in 2024

a. With the entry into force of the Criminal Code in 2014, the crime of trafficking in persons retained a form similar to that existing in the content of art. 12 para. (1) of Law no. 678/2001. On the other hand, the content of the crime of pimping was simplified, abandoning the aggravated version of recruitment for prostitution and trafficking in persons for this purpose, which thus created numerous difficulties in the previous legislation, these amendments representing the transposition into domestic criminal law of the obligations resulting from international legal acts to which Romania is a party^{50 51}. Considering the content of the new crime of pimping, part of the doctrine considered that the following hypotheses of demarcation between the crimes of trafficking and pimping can be retained⁵²:

1. The commission of the crime of pimping in the basic form will be considered if the act is committed under the conditions of art. 213 para. (1) of the Criminal Code, when prostitution is practiced for any reason (and not as a result of coercion), even if the case also includes elements specific to trafficking (for example, the pimp is the one who recruits the person or provides their transport or shelters them). In this situation, trafficking in persons or minors cannot be considered since there is no exploitation, which involves forcing them to practice prostitution.
 - The commission of the crime of pimping in the aggravated version provided for in art. 213 para. (2) of the Criminal Code will be considered, if it is not considered that, along with the coercion, there was also an activity of recruitment, transportation, transfer, respectively sheltering of the prostitute specific to human trafficking.
 - The commission of the crime of human trafficking will be considered if, along with the determination by coercion of a person to start or continue practicing prostitution is also considered an activity of recruitment, transportation, transfer, respectively sheltering of the prostitute. In this case, the crime of pimping provided for in art. 213 para. (2) Criminal Code will be absorbed into the crime of trafficking in persons or trafficking in minors.”

b. Such an opinion regarding the resolution of the conflict between trafficking and the form of exploitation consisting of forcing to practice prostitution, which unfortunately has influenced judicial practice over time and which we have found in countless court decisions, could not be shared for the following arguments, applicable *mutatis mutandis* also with regard to other forms of exploitation:

b.1. First, the author starts from the same confusion that he has promoted over time in the editions of his course and to which judicial practice has unfortunately agreed, imposing in point 1 of his analysis the retention of human/minor trafficking from the existence of exploitation, which also involves the obligation to practice prostitution. The same confusion was promoted by the author regarding the form of exploitation of the obligation to practice begging, who supported the retention of human/minor trafficking in all cases in which the person is forced to practice begging, such a solution being imposed under the conditions in which „the coercion is equivalent to the obligation to practice begging and, thus, the condition of exploitation provided for in art. 182 letter d) is achieved”⁵³.

Returning to the previous point, as we have already mentioned, the exploitation of a person represents the purpose of the criminal activity, and not a requirement of the objective side of the crime⁵⁴, so that it is not necessary to achieve the purpose in order to meet the constitutive elements of the crime of trafficking, but only

⁵⁰ See N. Neagu, in V. Dobrinioiu *et al.*, *op. cit.*, p. 141; Al. Boro, *Drept penal. Partea specială*, 4th ed., Ch. Beck Publishing House, Bucharest, 2019, p. 141.

⁵¹ Among these acts can be listed: the UN Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others, signed on March 21, 1950, the UN Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, ratified by Law no. 565/2002 or the Council of Europe Convention on Action against Trafficking in Human Beings, signed by Romania in Warsaw on May 16, 2005.

⁵² See V. Cioclei, *Drept penal. Partea specială I, Infrațiuni contra persoanei și patrimoniului*, 6th ed., Ch. Beck Publishing House, Bucharest, 2021, p. 180. This opinion was also shared by M. Udriou, *Sinteze de drept penal. Partea specială*, 2nd ed., vol. I, Ch. Beck Publishing House, Bucharest, 2021, p. 283; Similarly, see also: G. Alexandroiu, *op. cit.*

⁵³ V. Cioclei, *op. cit.*, 6th ed., p. 184.

⁵⁴ We also find an isolated opinion according to which the purpose completes the objective side, and not the subjective one, see R. Mocanu, *op. cit.*, p. 202.

to pursue it⁵⁵. Therefore, being in the presence of a direct intention qualified by purpose⁵⁶, the simple pursuit of the purpose is sufficient to contain the crime, it being not necessary for its consummation that the purpose has actually been achieved⁵⁷. Therefore, we cannot speak of an absorption of the crime of pimping within the crime of trafficking in persons, since the achievement of the purpose exceeds the variants of committing the material element of this crime, in which case if the purpose crime is also consummated, liability for a plurality of crimes will naturally arise⁵⁸.

In the doctrine we also find the opinion that the intention present in the case of the crime of trafficking in persons/minors can also be indirect, giving as an example the situation of recruiting the victim in order to hand her over to the one who will exploit her and transfer power over her in exchange for a sum of money (the actual purpose pursued), the trafficker implicitly accepting that the latter will exploit her, being indifferent to the method or intensity of the exploitation⁵⁹. Looking from this perspective, one could even conclude that most traffickers do not aim to exploit the victim, at most accepting such a possibility, but to obtain income by committing elements specific to human trafficking: recruitment, transfer, transportation, etc.

However, as is also stated in the doctrine, „the perpetrator acts with direct intent not only when the production of the result constitutes the very purpose of his action or inaction, but also when its production is viewed by him as a necessary means (...) of the intended result”⁶⁰. Under these conditions, a direct intent will be retained in the case of crimes of abstract danger, given that the legislator’s approach to direct intent is that it links the volitional factor to the consequence⁶¹. This has led to the consideration that, in the case of sexual crimes, the perpetrator does not aim to harm the victim’s sexual freedom, but to obtain sexual satisfaction, but since the desired result can only be achieved by producing the consequence provided for by the criminal law, these crimes can only be committed with direct intent⁶².

Under these conditions, we also consider that in the case of trafficking offenses (abstract danger offenses), the perpetrator does not seek to harm the freedom/safety of the trafficking victim, but exclusively to obtain patrimonial benefits as a result of undertaking certain commercial acts. However, given that obtaining them can only be achieved by carrying out the immediate pursuit of trafficking, we must admit that the intention can only be found in the form of the direct one.

Returning now to the issue of the relationship between trafficking and forms of exploitation, it is certain that the retention of the real contest is likely to emphasize both the dangerous nature of the crimes of human trafficking/trafficking in minors, as well as the attribute of these crimes to be instrumental crimes, and, on the other hand, only in such a manner can the specific function of initiating and holding criminally liable in a complete manner for all associated criminal behaviors be achieved⁶³. Thus, the goal of the human trafficker is to exploit the victim, and the legislator has chosen to punish - relatively drastically - all actions preceding the achievement of this goal, in order to prevent exploitation, thus offering the authorities the possibility to intervene before the

⁵⁵ H. Diaconescu, *Drept penal. Partea specială*, vol. I, 2nd ed, All Beck Publishing House, Bucharest, 2005, p. 185; G. Alexandriou, *Probleme jurisprudențiale în legătură cu infracțiunea de trafic de minori*, Revista de Drept Public no. 1/2019, available at: www.sintact.ro.

We also find such an opinion in Spanish doctrine, which considers human trafficking to be a crime of anticipated consumption, see: F. Muñoz Conde, *Derecho penal. Parte especial*, 23rd ed., Tirant Lo Blanch Publishing House, Valencia, 2021, p. 197.

⁵⁶ In the same sense, see also: T. Toader, *op. cit.*, p. 163; T. Manea, C.-N. Constantinescu-Mărunțel, H.-Ș. Tiugan, *Drept penal. Partea specială. Infracțiuni contra persoanei. Infracțiuni contra patrimoniului*, Hamangiu Publishing House, 2022, p. 240; H. Diaconescu, *op. cit.*, p. 185; A. Ionaș, A. F. Măgureanu, C. Dinu, *Drept penal. Partea specială conform noului Cod penal*, Universul Juridic Publishing House, Bucharest, 2015, p. 132; C. Duvac, *op. cit.*, p. 169.

⁵⁷ G. Fiandaca, E. Musco, *op. cit.*, p. 332. *apud* F. Streteanu, D. Nițu, *op. cit.*, p. 347; C. Ap. Craiova, crim. s., crim. dec. no. 1287/20.11.2025, available at: www.rejust.ro.

⁵⁸ In the sense of retaining the thesis of the competition of crimes, see: F. Muñoz Conde, *op. cit.*, p. 197; V. Dobrinioiu, N. Neagu, *Drept penal. Partea specială*, Universul Juridic Publishing House, Bucharest, 2014, p. 132; T. Toader, *op. cit.*, p. 163; Al. Boroi, *op. cit.*, p. 144; N. Neagu, in V. Dobrinioiu et al., *op. cit.*, p. 141;

In terms of retaining the concurrence of crimes in the hypothesis of the relationship between the crime of human trafficking and pimping by coercion, see: T. Manea, C.-N. Constantinescu-Mărunțel, H.-Ș. Tiugan, *op. cit.*, p. 243. On the other hand, in the case of trafficking in minors, to the extent that the determination or facilitation of the practice of prostitution is carried out through solicitation, transfer, etc., a crime of trafficking in minors will be considered, and not of procuring, given that the material element of trafficking is no longer linked to coercion (in particular), and the consent offered has no legal value, see *Ibidem*, p. 243.

⁵⁹ R. Mocanu, *op. cit.*, pp. 202-203; S. Bogdan, D.A. Șerban, *op. cit.*, p. 28; HCCJ, crim. s., dec. pen. no. 1498/2004, available at: www.scj.ro.

⁶⁰ C. Bulai, B. Bulai, *Manual de drept penal. Partea generală*, Universul Juridic Publishing House, Bucharest, 2007, p. 159-160.

⁶¹ F. Streteanu, D. Nițu, *op. cit.*, p. 321.

⁶² *Ibidem*.

⁶³ A se vedea, A. Florea, *Trafic de persoane și proxenetism. Exploatarea persoanei. Aspecte controversate. Problema concursului de infracțiuni*, in Dreptul no. 5/2019, available at: www.sintact.ro.

victim is subjected to any of the forms of exploitation. Following the line of reasoning presented by one part of the doctrine, it would be completely and utterly absurd for the judicial body to give up on punishing the purpose crime, representing the more serious crime (e.g., pimping by coercion, slavery, exploitation of begging etc.)⁶⁴.

In this context, we cannot help but draw a natural parallel with the crime of aggravated murder committed to facilitate the commission of a crime [art. 189 para. (1) letter d) CP], when the doctrine and judicial practice are unanimous in holding the real concurrence with etiological connection between the qualified murder and the crime for which the killing of the victim is necessary (e.g., robbery, rape, sexual assault, home invasion etc.), just as it is not necessary to commit the purpose crime for holding the crime of qualified murder (the means crime). However, human/minor trafficking is committed in order to facilitate the commission of the purpose crime, which is the exploitation of the person, a relationship that implies *mutatis mutandis* the holding of a real concurrence with the same form of connection as that present in the case of qualified murder followed by the commission of the purpose crime.

b.2. Secondly, there cannot be an overlap between the material element of coercion in the case of the two crimes, since if in the case of the crime of trafficking, the coercion is an accessory element to one's own actions (transportation, transfer, sheltering, etc.), in the case of the aggravated variant of the crime of pimping, the coercion is manifested exclusively with regard to the commencement or continuation of the practice of prostitution. Looking also from a temporal perspective, these material elements are realized successively, in a certain chronological order, an aspect that also leads to a distinct moment of consumption⁶⁵.

Therefore, it cannot be said that, automatically, in the hypothesis in which we find ourselves in a situation of coercion to practice prostitution, the crime of trafficking will be exclusively retained, but it must be verified whether the same person who coerces the victim is the same who previously recruited her, transported her, sheltered her, etc. by violence, misleading, etc., in which case the two successive activities will entail criminal liability for a concurrent offense. Otherwise, that person will be liable only for the aggravated form of the offense of pimping, provided for in art. 213 para. (2) CP in conjunction with an offense against sexual freedom and integrity (e.g., rape, sexual assault, sexual act with a minor etc.).

As well, the thesis of concurrent offenses cannot be automatically retained to the extent that a person commits the activities prior to exploitation and specific to trafficking, but does not participate in carrying out the exploitation, in which case only trafficking can be retained to the extent that he knew the purpose of the exploitation (however, the simple commission of the material element, without proof of intent, will not even be able to lead to the retention of trafficking). In this context, as some authors note, the issue of the relationship between trafficking crimes and those concerning exploitation does not only concern the form of authorship, but any form of participation, so that, given that the purpose of trafficking in persons is to exploit the person (this being one of the constitutive elements of the crime of trafficking in persons), the perpetrator of trafficking will also be liable as an accomplice to the subsequent crime concerning the form of exploitation⁶⁶.

b.3. Thirdly, although human/minor trafficking constitutes a means crime in relation to the purpose crimes for which it is committed, it does not borrow the same social values and does not produce the same immediate consequences as exploitation crimes, given that, for example, the victim of human trafficking does not always end up being deprived of liberty during the recruitment, transportation, etc. operations (e.g., the victim voluntarily accompanies the perpetrator to the place where the exploitation will take place in the hope of being employed in certain fields, but the reality on the spot is completely different)⁶⁷.

Under these conditions, in the modality of committing the crime through recruitment or transportation by misleading, therefore in situations in which the victim is deceived about the true purpose at the end of the itinerary proposed by the perpetrator, it cannot be argued, for example, that during the journey to the destination the victim was deprived of liberty⁶⁸. This means that the legal object of the crime of trafficking in

⁶⁴ *Ibidem*.

⁶⁵ Other authors also note that in the presence of „two different coercive actions, which aim at two different results, the displacement of the victim, respectively her subsequent sexual exploitation, (...) it is necessary to hold that there is a real concurrence of crimes between the act provided for in art. 210 para. (1) letter a) of the Criminal Code and the act provided for in art. 213 para. (2) CP” see D. Lucaciu, *Câteva aspecte referitoare la infracțiunile de trafic de persoane (art. 210 CP), proxenetism (art. 213 CP) și folosirea serviciilor unei persoane exploatate (art. 216 CP)*, in *Revista Penalmente* nr. 2/2018, p. 15, available at: <https://www.revista.penalmente.ro/wp-content/uploads/2019/02/Lucaciu.pdf>.

⁶⁶ *Idem*, p. 14.

⁶⁷ R. Mocanu, *op. cit.*, p. 200.

⁶⁸ *Idem*, p. 173, 175.

persons/minors can only concern the safety of the person, a concept that brings together physical integrity, physical freedom, but also other social values⁶⁹. However, we cannot fail to recall that at a doctrinal level, the almost unanimous opinion is that the social value protected in the case of trafficking crimes is the freedom of the person, a value incompatible with exploitation⁷⁰.

In a decision in which the court opted for the thesis of the concurrence of offenses, it was shown that «although the joining of the two offenses in the same section of the Criminal Code (...), would suggest that they protect the same social value, namely the „human dignity” of the person (...), a careful reading of the marginal name of Chapter VII reveals that in the regulatory paradigm, human dignity involves valences and thus criminal protection discourages distinct acts: human trafficking (with a view to exploitation) and the effective exploitation of the person”⁷¹. Practically, the criminalizations under discussion have the role of preventing/combating, on the one hand, the transformation of a person into a „tool”, by „preventing the person's regression to the level of a commodity, of a tradable (circulable, „tradable”) economic value, similar to the animal which, in human society, has the legal nature of movable property», and, on the other hand, preventing the use of this atypical „tool”⁷².

Therefore, the subsequent exploitation of a person or, more precisely, maintaining him in the state of enslavement necessary for his exploitation through labor, occurs exclusively in relation to the specific acts of exploitation of the victim, when we are already under the incidence of the effect of a different criminalization, an aspect that makes it necessary to prevent the creation of a contamination of the legal object of trafficking (means offense) with that of the criminalizations concerning the forms of exploitation (purpose offenses)⁷³.

Therefore, with the entry into force of the Criminal Code, although the majority opinion at the doctrinal level continued to support the solution of retaining the concurrence of crimes, at the level of judicial practice, as we could observe in a previous section, the almost unanimous opinion was in favor of retaining exclusively the crime of trafficking in persons/minors. Regarding the almost unanimous nature of judicial practice⁷⁴, it is worth recalling what was retained in a decision that once again reinforces this conclusion: „According to the relatively uniform judicial practice prior to the entry into force of Law no. 202/2024 by which this normative provision was introduced, if the purpose provided by the law for the prevention of human trafficking was also achieved, the subsequent act consisting of the exploitation of the injured person, even if it meets the constitutive elements of a distinct offense, is absorbed into the constitutive content of the offense of human trafficking”⁷⁵.

5. Legislative solutions operated by Laws no. 202 and no. 269 of 2024

a. As previously mentioned, Law no. 202/2024 provides, among other things, that if acts of human trafficking or minors are followed by the effective exploitation of a person, within the meaning of art. 182, the rules of concurrent offenses will apply. Such a legislative amendment confirms once again the original and correct intention of our legislator regarding the relationship between the crime of trafficking and forms of exploitation, if the two are committed by the same active subject.

In this context, we recall that a similar rule in this regard also exists in the Spanish Criminal Code. Thus, in art. 117 bis para. (9) of this code: „In any case, the penalties provided for in this article shall be applied without

⁶⁹ R. Mocanu, *op. cit.*, p. 173, 175.

⁷⁰ T. Toader, *op. cit.*, p. 160; I. Lascu, *Incriminări privind traficul de persoane*, in *Revista de drept penal* nr. 3/2002, p. 65; G.C. Zaharia, *op. cit.*, p. 47. Other authors also note that the norm protects the person's freedom of movement, see D. Lucaci, *op. cit.*, p. 13. We also find a middle opinion according to which the legal object would protect both the freedom and rights of the person, as well as the dignity, bodily integrity or health of a person against acts of exploitation, see N. Neagu, in V. Dobrinioiu *et al.*, *op. cit.*, p. 128.

Spanish doctrine also holds that human trafficking protects the freedom and dignity of the victim and, therefore, their moral integrity, see F. Muñoz Conde, *op. cit.*, p. 195.

⁷¹ Trib. Iași, crim. s., crim. sent. no. 206/15.04.2025, available at: www.rejust.ro. Even though at the time of the trial of the case, the provisions of Law no. 202/2024 and Law no. 269/2024 were in force, the court retained in the decision as the more favorable criminal law the form of incriminations prior to the amendments made by the two normative acts.

⁷² *Ibidem*.

⁷³ R. Mocanu, *op. cit.*, p. 173-174. As the author also notes on the same occasion, „once the exploitation process begins, by subjecting the victim to forced labor, or by forcing her to prostitute herself (in other examples), her freedom is limited to the framework allowed by the one who exploits her.”

⁷⁴ In this regard, see also a series of court decisions mentioned in the doctrine that reinforce this conclusion, A. V. Iugan, *Codul penal adnotat. Partea specială. Jurisprudență națională 2014-2020*, Universul Juridic Publishing House, Bucharest, 2020, p. 115-119.

⁷⁵ Trib. Călărași, crim. s., crim. sent. no. 28/27.03.2025, remained final by dec. pen. no. 42/15.01.2026 of CA Bucharest, 1st crim. s., both available at: www.rejust.ro. The same decision also states that: „This solution was deduced by the courts from the per a contrario interpretation of the solution from point 5 of the operative part of Decision no. 16 pronounced on 19.03.2007 by the High Court of Cassation and Justice in resolving the appeal in the interest of the law.”

prejudice to those that correspond, as the case may be, to the offense provided for in article 318 bis of this Code or to other offenses actually committed, including those that constitute the corresponding exploitation”⁷⁶. Therefore, this correct approach, taken into account by the Romanian legislator, is also found in other European legislation.

Naturally, after the entry into force of Law no. 202/2024, judicial practice has focused on retaining the concurrence of offenses, thus abandoning the (deeply unjust) solution of absorption. Thus, for example, in a decision it was noted that: „(...) there can be no confusion between the criminalization norm provided for in art. 210 with the criminalization norm in art. 213 of the Criminal Code, given that the actions specific to human trafficking are carried out with a purpose in mind, and the purpose can never include the materialized purpose under the conditions in which the materialized result enjoys a distinct criminalization in another criminal norm”⁷⁷.

Approximately half a year later, Law no. 269/2024 enters into force, a normative act that provides, with the translation of par. (2) of art. 213 of the Criminal Code into art. 210, respectively of par. (3) and (3¹) into art. 211 of the Criminal Code⁷⁸, a new variant of criminalization in the case of the crime of human trafficking, respectively trafficking in minors. Specifically, according to art. 210 par. (1¹) Penal Code: „(1¹) The same punishment shall be imposed for the determination to start or continue the practice of prostitution, if this was carried out through any of the methods provided for in para. (1).”⁷⁹, and in accordance with art. 211 para. (1¹) of the Criminal Code: „The punishment provided for in para. (1) shall also be imposed for 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”⁸⁰.

According to the Explanatory statement, the initiators consider that the proposed amendments to art. 210 and art. 211 of the Criminal Code are necessary in order to eliminate the alleged problems of interpretation and application that have arisen in judicial practice regarding the delimitation of the crimes of trafficking in persons/minors from those of aggravated pimping. In essence, the starting point is the (wrong) premise that numerous people are convicted in Romania for acts of pimping, although these should constitute crimes of trafficking in persons or minors. In practice, in the authors' view, the same criminal behavior ends up being framed differently, a situation that is likely to generate confusion in practice, with consequences regarding the legality of criminal prosecution, given that the competence to handle cases involving pimping crimes (other than those committed in the context of an organized criminal group - and trafficking in persons) ends up belonging to regular prosecutorial structures.

Regarding the legislative solution of absorption, even before the entry into force of Law no. 269/2024, the Superior Council of Magistracy noted in the content of the point of view expressed regarding the legislative proposal (L no. 420/2024, PI-x no. 450/2024) that: „Unlike the old criminal legislation, the current Criminal Code has made a more precise distinction between the crimes of human trafficking (including minors) and pimping, at the level of the science of criminal law, the element of differentiation not necessarily being given by the free or constrained nature of the action of the vulnerable person, but by the action of the agent in relation to the exploited person, therefore by *verbum regens*. In other words, the idea of trafficking in living beings is based on a behavior similar to trade, with the mention that the good is replaced by the person (trafficking in people or "living flesh"), the agent relating to trafficked persons similarly to goods, obtaining them (through recruitment), transporting them, transferring them or receiving them from another participant in the commission of the act. Therefore, the distinction between these crimes is obvious, the act of determining to start or continue practicing prostitution, even through coercion, cannot be scientifically qualified as human trafficking, or, as the case may

⁷⁶ <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>.

⁷⁷ CA Galați, crim. s., conclusion of the hearing of 31.10.2024, available at: www.rejust.ro.

⁷⁸ Correlatively also in the case of the crime of trafficking in minors.

⁷⁹ According to art. 210 CP: „(1) The recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation, committed:

a) by coercion, abduction, deception or abuse of authority;

b) taking advantage of the impossibility of defending oneself or expressing one's will or of the obvious vulnerability of that person;

c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person who has authority over that person, is punishable by imprisonment from 5 to 12 years and the prohibition of exercising certain rights.”

⁸⁰ According to art. 211 CP: „(1) The recruitment, transportation, transfer, sheltering or receiving of a minor, for the purpose of exploiting him, is punishable by imprisonment from 7 to 15 years and the prohibition of the exercise of certain rights.”

be, trafficking in minors, since the pimp proceeds directly to the „exploitation” of the person, while the trafficker is limited to activities prior to it”⁸¹.

This point of view, expressed also at the institutional level, reiterates what was previously shown by the doctrine, namely the fact that the specific elements of trafficking constitute activities prior/precursor to the activity of exploiting victims, so that in no case could the issue of absorbing pimping by coercion into the scope of the crime of human/minor trafficking be raised.

After the entry into force of Law no. 269/2024, surprisingly the same author who for years in his courses supported the thesis of the absorption of pimping by coercion within the scope of human/minor trafficking committed by the same person and who, unfortunately, shaped judicial practice in this direction, through a surprising „doctrinal reversal” ends up criticizing the solution provided by this law. Thus, it specifies the following: „Before the discussed amendment, if the perpetrator transported a person, for the purpose of exploitation by forcing them to practice prostitution, after which he also forced her to practice prostitution, he could be held liable for two concurrent offenses: human trafficking and aggravated pimping⁸². After the amendment, for the same acts, criminal liability will be incurred for a single offense: human trafficking in the assimilated version. Specifically, this results in a substantial reduction of criminal liability for the serious acts mentioned. Was this the intention of the legislator? I don't think so. It is rather a new legislative error”⁸³.

Other authors also rightly criticize such a legislative solution: „The legislative amendment is uninspired, in the context of the recent clarifications of reality by Law no. 202/2024, in the sense of retaining the concurrence of offenses between the crime of human trafficking and the purpose offense through which the actual exploitation is carried out. Thus, prior to the legislative amendment by Law no. 269/2024, in the case of recruiting, transporting, transferring, harboring or receiving a person, for the purpose of their sexual exploitation, followed by determining them to prostitution, committed by the same person, the act would have constituted the crimes of human trafficking and procuring, in concurrence. At this time, the acts indicated above constitute only the crime of human trafficking. The exception only concerns the sexual exploitation of the person, not the other forms of exploitation, where the rule of concurrence of offenses applies. (...) The legislative amendment is unnecessary, inconsistent with criminal policy recent and generating confusion and uncertainty”⁸⁴.

b. Further and analyzing the new legislative solutions, we note that, unlike pimping by coercion provided for in art. 213 para. (2) CP and in accordance with the new vision, the determination to start or continue practicing prostitution may be achieved through: coercion, kidnapping, misleading or abuse of authority, taking advantage of the impossibility of defending oneself or expressing one's will or the state of obvious vulnerability of that person or by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person who has authority over that person, etc. Therefore, the new regulation, which operates an assimilation of human trafficking to a form of exploitation, operates an expansion of the ways in which pimping is committed, no longer being limited only to the requirement of coercion.

Also, given that the text of the variant of art. 210 para. (1¹) CP speaks of the commission of the act „by any of the means provided for in para. (1)”, the question arises whether the legislator intended this reference to cover both the means of committing the crime of trafficking (recruitment, transportation, transfer, etc.) and the essential conditions/requirements attached to the material element (e.g., coercion, misleading, etc.) or only the latter. According to the first variant, plausible from the perspective of the fact that the text speaks of „means”, i.e. normative means of the material element, it is concluded that in order to apprehend human trafficking in the variant provided for in art. 210 para. (1¹) CP, recruitment, transportation, sheltering, etc. is necessary, the simple determination to start or continue practicing prostitution by means of coercion, misleading, etc. being

⁸¹ Superior Council of Magistracy, Address no. 11072/26.07.2024, p. 1-2, available at: https://www.senat.ro/legis/lista.aspx?nr_cls=L420&an_cls=2024#ListaDocumente.

⁸² V. Cioclei, *Drept penal. Partea specială I. Infrațiuni contra persoanei și infrațiuni contra patrimoniului*, 9th ed., C.H. Beck Publishing House, Bucharest, 2024, p. 187. Another author who took the opinion of absorption prior to the entry into force of Law no. 202/2024 also surprisingly supports, after its entry into force, the unnecessary nature of regulating the solution of concurrent offenses, see M. Udriou, *Sinteze de drept penal. Partea specială*, vol. I., 6th ed, Ch. Beck Publishing House, Bucharest, 2025, p. 306.

⁸³ V. Cioclei, *Traficul și exploatarea persoanelor vulnerabile, din nou sub „bisturiul” legiuitorului. Modificarea Codului penal prin Legea nr. 269/2024 o altă „operație” eșuată*, 2025, article available at: https://www.juridice.ro/essentials/10200/traficul-si-exploatarea-persoanelor-vulnerabile-din-nou-sub-bisturiul-legiuitorului-modificarea-codului-penal-prin-legea-nr-269-2024-o-alta-operatie-esuata#_ftnref6; V. Cioclei, in G. Bodoroncea et al., *op. cit.*, p. 794-795.

⁸⁴ N. Neagu, in N. Neagu, V. Dobrinou et al., *Codul penal comentat. Partea specială*, Universul Juridic Publishing House, Bucharest, 2025, p. 142.

insufficient. According to the second variant, such a determination committed through one of the essential requirements attached to it (e.g., coercion, misleading etc.) is sufficient.

Given the legislator's intention to create a normative variant by absorption, we also consider that it will not be necessary to commit the modalities of trafficking (recruitment, transportation, transfer, shelter or reception), being in the presence of a trafficking „lacking trafficking” (in practice, devoid of its elements), a contrary interpretation leading to the unacceptable conclusion that the "simple" coercion of a person to start or continue practicing prostitution could no longer be criminalized *de lege lata*⁸⁵. It can be observed that such an interpretation, contrary to the strictly literal interpretation that concerns a form of the text that speaks of modalities of committing the material element, has the role precisely of saving the norm in the face of a decriminalization operated by the legislator, out of ignorance and/or incompetence.

Even so, we believe that such an opinion, which we also share, will be intensely discussed in judicial practice, as defendants will invoke decriminalization in their favor in those situations in which they only coerced the victim to start or continue practicing prostitution, but did not previously commit specific trafficking modalities (e.g., recruitment, reception, hosting, etc.).

c. Regarding trafficking in minors, Law no. 269/2024 introduces in art. 211 CP a form assimilated to trafficking in minors consisting in determining or facilitating the practice of prostitution or obtaining patrimonial benefits from the practice of prostitution by one or more minors. Practically, any instigation or complicity or, as the case may be, obtaining patrimonial benefits from the practice of prostitution by a minor will no longer constitute aggravated pimping, but trafficking in minors.

The new perspective of the legislator is based on the premise that, in no case, a minor can express a valid consent to the practice of prostitution, this being one by hypothesis flawed. Without going into an in-depth analysis of this issue, such an approach raises serious problems from the perspective of the fair nature of such a solution given that not every determination/facilitation of the practice of prostitution starts from the idea of misleading the minor. In practice, there may be mature minor victims, 16, 17 years old, under 18 years old who, for various reasons, choose to practice prostitution voluntarily. However, considering that in any situation there is no valid consent, automatically qualifying, for example, any help from such a person (by promoting him on the Internet or making a home available) as an act of trafficking in minors, leads to a real departure, on the one hand, from the traditional social values that the crime of trafficking in persons protects, and, on the other hand, from the need to anchor criminal law in the realities of a society, even in conditions in which criminal policy is the prerogative of the legislative authority.

But when the legislator manifests a huge appetite for the field of criminal law through reckless legislative interventions and intended to show its citizens that the state intervenes promptly and firmly in their defense, although there are many other instruments that could have solved such problems, such a way of regulation, with unjust consequences that will arise in the future, should not surprise us. Certainly, other legislative (non-criminal) or administrative solutions (e.g., effective mechanisms for identifying and protecting victims of sexual exploitation, mechanisms for their psychological counseling in the conditions in which they suffer multiple traumas, etc.) would have required time, a more in-depth analysis and additional financial, logistical and human resources allocated to the fight against this scourge.

Under these conditions, amending the CP (e.g., by increasing the special punishment limits, eliminating the possibility of suspension under supervision for certain crimes, introducing special aggravating circumstances/aggravated forms that practically annihilate the application of the crime in its basic form, declaring the imprescriptibility of criminal liability etc.) has for some time represented in domestic law an extremely easy and quickly implemented solution, intended to quench the „blood thirst of the population”. In contrast, in the long term we may find that these legislative interventions in the field of criminal law may do more harm than good, while the other solutions, which would have led to lasting results, continue to function in a state of disrepair, with no interest in resolving them. But, once again, since this easy-to-use and effective tool exists from the perspective of its popularity, capable of bringing a state of tranquility to the city, no one is interested in addressing the real problems and causes of the phenomenon of human/minor trafficking and, especially, its forms of exploitation.

⁸⁵ V. Cioclei, *Traficul și exploatarea persoanelor vulnerabile, din nou sub „bisturiul” legiuitorului...*, cit. supra; V. Cioclei, in G. Bodoroncea et al., op. cit., p. 794. Although the author constantly uses the notion of „assimilated variant”, we consider that the incrimination norm in art. 210 para. (11) CP, respectively art. 211 para. (11) CP, does not represent an „assimilated variant” of the basic one, but a distinct offense united by the legislator within the same article with the actual offense of trafficking.

d. Finally, regarding the issues of material competence and which, in the view of the authors of Law no. 269/2024, justified the solution of absorbing pimping by coercion within the scope of human trafficking, we recall that human/minor trafficking falls under the competence of the Directorate for the Investigation of Organized Crime and Terrorism Offences, while pimping in any of its forms (basic and aggravated forms) belonged to local prosecutors' offices, to the extent that it was not committed within an organized criminal group, when it would have fallen under the competence of DIICOT. Starting from the fact that judicial practice almost unanimously held that any coercion to start or continue practicing prostitution, in the presence of a trafficking modality (recruitment, transportation, hosting, etc.), led to the detention of human trafficking, two working options were discussed regarding the competence to carry out criminal prosecution in the case of pimping: taking over the entire crime of pimping (Option 1), respectively taking over the aggravated forms of pimping, namely those by coercion and on a minor [art. 213 para. (2)-(3¹) CP] and leaving pimping with consent [art. 213 para. (1) CP] at the level of local prosecutors' offices (Option 2).

Obviously, any of the solutions would have presented both advantages, such as the lack of declination to regular prosecutors' offices, the carrying out of criminal prosecution by a specialized prosecutor's office unit, with related resources and logistics, better international judicial cooperation, etc., as well as disadvantages, such as the one related, in particular, to the loading of a specialized prosecutor's office with files of reduced complexity and the allocation of disproportionate resources for such files, against the background of an already insufficient human resource⁸⁶. However, in agreement with the opinion expressed by the Superior Council of Magistracy, we consider that the issues invoked by the initiators in the Explanatory statement could have been easily resolved by extending the scope of DIICOT's competence to the crime of pimping by coercion⁸⁷ and not through a legislative intervention that would overturn an original philosophy envisaged by the legislator and recently confirmed by him with the entry into force of Law no. 202/2024, with negative consequences in terms of the sanctioning regime and which will pose problems of interpretation and application in practice.

6. Evolution of the report and the solutions identified with the amendments made by Laws no. 202 and 269 of 2024

In the context of the absorption of pimping by coercion and pimping of a minor in the scope of art. 210 and 211, operated with the entry into force of Law no. 269/2024, the issue of a (partial) invalidation of the provisions introduced by Law no. 202/2024 is being discussed and which confirms once again the original and correct intention of the legislator regarding the relationship between the crime of trafficking and the forms of exploitation regarding the need to retain the concurrence between trafficking in persons/minors and the crime of pimping by coercion. Specifically, the question arises whether, following the entry into force of Law no. 269/2024, a single crime of trafficking in persons/minors will be retained [art. 210 para. (1¹) or art. 211 para. (1¹) CP], a possible concurrence between the crime of trafficking in persons/minors and pimping or, rather, a concurrence of crimes between the form provided for in art. 210 para. (1)/ art. 211 para. (1) CP and that provided for in art. 210 para. (1¹)/art. 211 para. (1¹) CP?

Under these conditions, we can identify 3 solutions to resolve the conflict between the crime of trafficking in persons/minors and pimping:

a. The first of these aims at excluding *de plano* the retention of a plurality of crimes between trafficking and pimping or, as the case may be, between the form provided for in art. 210 para. (1)/art. 211 para. (1) CP and that provided for in art. 210 para. (1¹) /art. 211 para. (1¹) CP, in all cases a single offense of trafficking in persons/minors is retained.

Under these conditions, if a person recruits, transports, hosts, etc. a person by coercion, misleading, etc. who subsequently forces him to start or continue practicing prostitution, the form provided for in art. 210 para. (1¹) /art. 211 para. (1¹) CP. This solution starts from the literal interpretation according to which para. (1¹) of art. 210 CP refers to the modalities provided for in para. (1), therefore implicitly to recruitment, transportation, hosting, etc. and not only to the essential conditions attached to the material element, namely: coercion, misleading, etc. Therefore, prior to the exploitation of the person we also find the elements of trafficking in the person of the same author.

⁸⁶ To the extent that the consensual pimping was not committed within an organized criminal group.

⁸⁷ See also the Superior Council of Magistracy, *Adress nr. 11072/26.07.2024*, p. 2-3.

We note that such a variant leads to a significant decrease in the sanctioning regime by moving from the possibility of retaining a concurrence of offenses between human trafficking (art. 210 CP) and pimping by coercion [art. 213 para. (2) CP], according to the amendment made by Law no. 202/2024, to a single offense of human trafficking [art. 213 para. (1¹) CP]. However, for the reasons expressed above, such a solution cannot be considered, the modalities considered by the legislator actually referring to the essential conditions attached to the material element⁸⁸. Therefore, as we will see below, we consider that in such a situation the concurrence between the offense provided for in art. 210 para. (1)/ art. 211 para. (1) CP and the one provided for in art. 210 para. (1¹)/art. 211 para. (1¹) CP.

On the other hand, if the perpetrator of trafficking acts with a view to exploiting the person, and he does not subsequently carry out the exploitation, the question of retaining the offense provided for in art. 210 para. (1¹) CP, given that this concerns an action of determination to start or continue practicing prostitution, therefore an action of exploitation that has begun, can no longer be raised. Under these conditions, only the offense of trafficking in persons in its basic form [art. 210 para. (1) CP] can be retained. Such a solution could be based on the argument that the exploitation of a person was not eliminated by the legislator from the Criminal Code (this being not even possible, by the way), but only legally reclassified by transferring it from the offense of pimping to that of trafficking in persons. We believe that such an approach is correct, but even so, it does not fully resolve the relationship between the crime of human trafficking and the form of exploitation, when both are committed by the same person.

b. The second option concerns the possibility of confining human trafficking to the crime of pimping in the situation where the trafficker acts to facilitate the practice of prostitution or to obtain financial benefits from the practice of prostitution by a person, an activity that is subsequently carried out⁸⁹. Therefore, the confining of the crimes will be incidental in the event that, following the recruitment, transportation, etc. by coercion, deception, etc. of a person, the victim practices prostitution, and the trafficker is also the one who helps the victim to practice prostitution or to obtain financial benefits from his activity. This solution proposed by part of the doctrine is based on the fact that pimping does not only involve the determination to start or continue practicing prostitution, acts that are not found in the constitutive content of the crime of human trafficking⁹⁰.

We could find such an approach in a decision in which, even if such a classification was not opted for, it was considered that the more favorable criminal law was the one prior to the amendment made by Law no. 269/2024, the legal classification of the court caught our attention: „Thus, in the case of the defendant (...) who is charged with recruiting the injured person (...) in order to force him to practice prostitution by misleading the injured person, transporting the injured person to the territory of Spain, as well as determining the injured person to start and then continue practicing prostitution between November 2021 and April 2022, by coercion as a result of the use of aggressive tactics, the defendant thus obtaining material benefits from practicing prostitution, the legal classification according to Law no. 269/2024 would be that of human trafficking, provided for by art. 210 para. 1 let. a and para. 1¹ of the Criminal Code (punished by imprisonment from 5 to 12 years) and pimping, provided for by art. 213 para. 1 of the Criminal Code (punished by imprisonment from 2 to 7 years). The concurrent detention of the two offenses is expressly provided for by art. 210 para. (4) of the Criminal Code, which provides that (...) the acts provided for in para. (1) and (2) are followed by the effective exploitation of the minor, within the meaning of art. 182, the rules of concurrent offenses apply”⁹¹.

As can be seen, the court is considering the detention of a crime of human trafficking by reporting both to para. (1) and to para. (1¹), in conjunction with a crime of pimping. First of all, regarding the retention of a single offense, we cannot embrace such an opinion for the arguments that we will develop in detail later, being in the presence of two heterogeneous and not homogeneous modalities from the perspective of criminal significance. Secondly, the retention of pimping, on the grounds of the defendant obtaining material benefits from practicing prostitution, cannot be considered *de lege lata* given that exploitation is defined by the legislator in a clear and limiting manner in the content of art. 182 of the Criminal Code, as being the forcing of a person to practice prostitution.

⁸⁸ See also V. Cioclei, *Traficul și exploatarea persoanelor vulnerabile, din nou sub „bisturiul” legiuitorului...*, cit. supra; V. Cioclei, in G. Bodoroncea et al., op. cit., p. 794.

⁸⁹ N. Neagu, in N. Neagu, V. Dobrinou et al., op. cit., p. 142.

⁹⁰ *Ibidem*.

⁹¹ CA Galați, crim. s., crim. dec. no. 264/31.10.2024, available at: www.rejust.ro.

Therefore, holding a person who did not intend to exploit another person, and therefore coercing them to engage in prostitution, the purpose of which is to facilitate the practice of prostitution or to obtain financial benefits from the practice of prostitution (following the agreement given in this regard by the prostituted person), would lead to an impermissible extension of the criminalization norm and to an interpretation to the detriment of the defendant (in mala partem), which would constitute a violation of the principle of legality of criminalization.

Moreover, the method of effectively obtaining financial benefits from the practice of prostitution in art. 213 para. (1) CP considers the practice of prostitution voluntarily and not through coercion, in which case only the trafficking offense provided for in art. 210 para. (1¹) CP will be held. In this regard, even if this method is no longer provided for in art. 210 para. (1¹) CP, it implicitly results from the manner of forcing the person to start or continue practicing prostitution (which will also constitute the basis for the legal classification), as there has been no situation in practice when such coercion targeted a motivation of the author of the coercion other than the strictly financial one.

Regarding the relationship between trafficking and the crime of pimping following the changes made in 2024, we also find another opinion, in the sense that „In the event that the perpetrator facilitates the practice of prostitution or obtains material benefits from the practice of prostitution, in the manner provided for in art. 210 para. (1) of the Penal Code, art. 210 para. (1¹) of the Penal Code cannot be retained, because it provides as a means of the material element only the determination to start or continue prostitution. Most likely, if all the elements of typicality are met, the acts will be classified as the standard variant of human trafficking - art. 210 para. (1) CP. Specifically, this will be the legal classification if, for example, the perpetrator obtains material benefits from the practice of prostitution by a person whom, previously, by coercion, he trafficked (or recruited her, transported her, etc.). And in such a situation, the concurrence with the crime of pimping is excluded because it does not (anymore) contain the option of coercion”⁹².

We agree with the solution of excluding the concurrence between the two crimes, but it should be noted in this context that, to the extent that a person is recruited by coercion and subsequently the trafficker obtains patrimonial benefits from practicing prostitution, it is obviously difficult to imagine that that person will practice prostitution voluntarily. In this case, we will also be in the presence of a coercion when starting or continuing to practice prostitution, so that, as we will see later, a concurrence will be retained between the crime of trafficking in persons provided for in art. 210 para. (1) of the Criminal Code and that provided for in art. 210 para. (1¹) of the Criminal Code. Obviously, the solution of retaining the conspiracy with pimping is excluded in such a hypothesis, just as the solution of retaining exclusively the crime of human trafficking in its basic form cannot be considered.

In relation to the retention of the crime of pimping following the amendments made by the legislator in 2024, the same author also shows that: „In the hypothesis provided for in para. (1) of art. 213 of the Penal Code, when the person voluntarily practices prostitution, the crime of pimping will be retained, even if the case also includes elements specific to trafficking, for example, the pimp is the one who recruits the person, or provides transportation for them, or shelters them. In this case, the constitutive elements of human trafficking are not fulfilled because exploitation is missing, which implies forcing them to practice prostitution [art. 182 letter c) of CP]”⁹³.

As can be seen, the author perpetuates the same error of reasoning that he has promoted over time in his courses, excluding the retention of trafficking due to the lack of exploitation and which implies forcing them to practice prostitution. Or, as we mentioned above, the apprehension of trafficking cannot be conditioned by the effective exploitation of the trafficked victim, this being an action subsequent to the commission of the trafficking, but by the pursuit or acceptance of the exploitation of the victim, exploitation that can be effectively carried out by the trafficker (in which case a plurality of crimes will be apprehended) or by another person. On the other hand, if specific modalities of trafficking appear (recruitment, transportation, hosting, etc.), but which are not committed by coercion, deception, kidnapping, etc. we will not be able to be in the hypothesis of a human trafficking crime. However, we will be in the presence of a pimping crime, given that modalities, such as transportation or hosting, can lead to the apprehension of facilitating the practice of prostitution, a crime that

⁹² V. Cioclei, *Traficul și exploatarea persoanelor vulnerabile, din nou sub „bisturiul” legiuitorului...*, cit. supra.

⁹³ *Ibidem*.

currently assumes exclusively the existence of a consent to the practice of prostitution. Therefore, the solution retained by the author is, in essence, correct, but not for the arguments expressed by him.

c. The third option involves retaining a competition between the offense provided for in art. 210 para. (1)/art. 211 para. (1) CP and that provided for in art. 210 para. (1¹)/art. 211 para. (1¹) CP. In this regard, we consider that the only solution that can further give efficiency to the provisions of art. 210 para. (4) and art. 211 para. (4) CP and eliminate discrimination against the sanctioning treatment in the case of trafficking followed by other forms of exploitation, is to consider the new offense contained in para. (1¹) as a distinct offense, not as an alternative normative variant of the material element of the offense of trafficking in persons/minors. Practically, such an interpretation envisages treating the crime of trafficking in persons/minors as a crime with alternative constitutive contents, in which the two crimes provided for in para. (1) and para. (1¹) of art. 210 and 211 CP will be considered together.

In this sense, as has also been noted in the doctrine, if in the case of crimes with alternative content the modalities provided for by the incrimination norm are equivalent in terms of criminal significance, which means that the commission of several of them does not affect the unity of the crime, in the case of those with alternative constitutive contents the modalities of incrimination cannot be equivalent⁹⁴. Therefore, in order to analyze whether or not the alternative variants of commission have the same significance in terms of damage to the legal object, the following can be taken into account: the compatibility of the variants provided for alternatively, the reason for incrimination, etc.⁹⁵. As other authors note, the essential feature of crimes with alternative content is fungibility, so that the acts described in the criminal norm can substitute for the others, „presenting a similar abstract gravity expressed in the same limits of punishment”⁹⁶.

However, within the form provided for in para. (1¹) of art. 210/art. 211 CP, the hypothesis introduced by the legislator in 2024 is fundamentally different from that provided for in para. (1), the differences between the methods of committing the crimes being essential, given that para. (1) aims to sanction an activity prior to/precursor to the exploitation of a person: recruitment, transportation, hosting, etc. by coercion, misleading, etc., while para. (1¹) aims at the very exploitation of a person, by forcing him to start or continue practicing prostitution. Therefore, there can be no talk of fungibility or substitution of the variants described in the two paragraphs. The lack of equivalence of the methods of the two crimes is also highlighted by the legislative solution provided for in Law no. 202/2024 which correctly imposed the solution of the concurrence of crimes between the crime of trafficking in persons/minors and any form of exploitation (therefore, including the compulsion to practice prostitution).

Looking also from the perspective of the reason for the incrimination, we mention that the apparent problem that generated the legislative intervention in practice was related to the legal classification of certain conducts that, apparently, would have met elements of both the crime of trafficking and that of pimping. In these conditions, nothing prevents, under the conditions of the existence *de lege lata* of an express norm that further imposes the retention of the concurrence of crimes, as in the hypothesis in which the elements of trafficking are followed by the compulsion, misleading, etc. to practice prostitution, a plurality of crimes to be retained. We say this because regardless of the legal qualification of the form of exploitation – pimping or trafficking in persons/minors, forcing prostitution remains a form of exploitation under the terms of art. 182 CP.

Under these circumstances, we consider that the reclassification of a form of exploitation cannot be such as to invalidate a rule in force, which the legislator imposed in order to eliminate any controversy regarding the possibility of retaining or not the concurrence of crimes. Therefore, retaining exclusively a single crime of trafficking in persons/minors, while in the case of other forms of exploitation (equally or even less serious) the rules of concurrence of crimes would apply, would constitute an approach devoid of any logical/rational justification and which would lead to the application of a distinct sanctioning treatment to legal situations (forms of exploitation) which are, in essence, similar.

The solution proposed by us also finds support in recent judicial practice, holding in the content of a decision that: „Through the amendment brought by Law no. 269/2024, the offense provided for by art. 210 CP becomes an offense with alternative contents because the incrimination in para. (1) has a distinct legal significance from the incrimination newly introduced by para. (1¹), a distinction given by the concrete, different

⁹⁴ F. Streteanu, D. Nițu, *Drept penal. Partea generală*, vol. I, Universul Juridic Publishing House, Bucharest, 2014, p. 263-264.

⁹⁵ *Idem*, p. 265.

⁹⁶ C. Duvac, *Pluralitatea aparentă de infracțiuni*, Universul Juridic Publishing House, Bucharest, 2008, p. 102-103.

content of the material elements: "recruitment, transportation, etc. for the purpose of exploitation" provided for by para. (1), respectively the effective exploitation in the manner of "determination to start or continue practicing prostitution" provided for by para. (1¹), whose incrimination protects the person from two distinct perspectives: a. prevention of trafficking, of the person's relegation to the level of a commodity, tool, animal, and b. prevention of the exploitation of the person's labor"⁹⁷.

The same reasoning, but viewed from a different chronological sequence of the conduct of the crimes, will also apply to the crime of trafficking in minors, when, after determining or facilitating the practice of prostitution or, as the case may be, obtaining patrimonial benefits from the practice of prostitution by one or more minors, hypotheses that do not imply the existence of acts of coercion, misleading, etc. (in the context of the presumed state of vulnerability of the minor victim), the element of trafficking is committed (transportation, transfer, receipt, etc.) in view of sexual exploitation. In this case too, we consider that it is necessary to retain the solution of the actual concurrence of crimes and not just of a single crime, as some authors wrongly retain⁹⁸, given that, after the commission of the material element of the crime provided for in art. 211 para. (1¹) CP, and which concerns the realization of a form of exploitation of the minor victim, the perpetrator treats the victim as an object, concluding commercial acts regarding her (in exchange for sums of money), thus preparing the commission of one or more new forms of exploitation of her. However, the retention of a single offense is likely to abstract, in an unfair way, from the existence of a new criminal conduct and the need to repress any acts preceding the commission of other new forms of exploitation.

This reasoning applies *mutatis mutandis* also in the case where, subsequently to the commission of the compulsion to start or continue practicing prostitution art. 210 par. (1¹) CP., the same active subject commits the element of trafficking in order to exploit the victim (e.g., transfers the victim to another trafficker, in exchange for a sum of money, for sexual exploitation or even for the purpose of another form of exploitation).

In conclusion, in the situation where the trafficked victim (minor or adult) is rescued by the judicial authorities from the arms of the trafficker, during or after the commission of the activity of recruitment, transportation, transfer, shelter or reception by coercion, deception, etc., but before the start of her exploitation, the perpetrator will commit exclusively the crime of trafficking in persons [art. 210 para. (1) CP] or of minors [art. 210 para. (1) CP]. To the extent that the rescue of the victim will be done during or after her exploitation, the same active subject (trafficker) will be held responsible for a real competition with etiological connection between the trafficking crime provided for in art. 210 para. (1) CP] and that provided for in art. 210 para. (1¹) CP. And in the case of sexual exploitation of a minor, such a concurrence will be retained between the crime of trafficking in minors provided for in art. 211 para. (1) CP and that provided for in art. 211 para. (1¹) CP. Also, to the extent that, after the commission of sexual exploitation, the elements of trafficking are also committed, the same person will be held liable for a real concurrence of crimes between the form provided for in art. 210/art. 211 para. (1) CP and that provided for in art. 210/art. 211 para. (1¹) CP.

On the other hand, we consider that in the future it is necessary to return to the correct approach envisaged by the legislator regarding the configuration of the crime of pimping, once the Criminal Code enters into force. Specifically, we consider that it is necessary to return to the form prior to the amendments made by Law no. 269/2024, so that *de lege ferenda* the concurrent retention of the crime of trafficking in persons/minors in conjunction with the aggravated forms of pimping (by coercion or on a minor) is taken into account.

7. Some aspects of comparative law regarding the crime of pimping

In support of the return to the previous version of Law no. 269/2024, it is necessary to mention the existing legal provisions of the aggravated forms of pimping from other legislation, those in the basic form having, as a rule, a regulation similar to that existing in the case of our legislation.

According to article 225-5 of the French Criminal Code⁹⁹: „Pimping is one of the following acts committed by any person in any way:

- Helping, assisting or defending the prostitution of another person;

⁹⁷ Trib. Iași, crim. s., crim. sent. no. 206/15.04.2025, available at: www.rejust.ro.

⁹⁸ V. Cioclei, *Traficul și exploatarea persoanelor vulnerabile, din nou sub „bisturiul” legiuitorului...*, cit. *supra*; V. Cioclei, in G. Bodoroncea et al., *op. cit.*, p. 798.

⁹⁹ The mentioned texts constitute my own translation, for the French version, see: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/.

- Obtaining profit from prostitution committed by another person, sharing the products or receiving subsidies from a person who habitually practices prostitution;
- Hiring, training or diverting a person with a view to practicing prostitution or exerting pressure on them to prostitute themselves or continue to prostitute themselves.”

According to art. 216 (Procurement) of the Austrian Criminal Code¹⁰⁰: „(1) Whoever exploits another person with the intention of obtaining a continuous income from his prostitution shall be punished with imprisonment for a term of up to two years.

(2) Whoever, with the intention of obtaining a continuous income from the prostitution of another person, exploits this person, intimidates him, dictates the conditions of his prostitution or exploits several such persons at the same time shall be punished with imprisonment for a term of up to three years. (...)

(4) Whoever, by means of intimidation, prevents a person from giving up prostitution shall also be punished with imprisonment for a term of six months to five years.”

According to Section 233 of the Danish Penal Code¹⁰¹: „A person who induces another person by invitation, incitement, by committing a crime or in any other way to have sexual relations with a client in return for a sum of money or on the basis of the promise of a sum of money shall be liable to a fine or to imprisonment for a term not exceeding 2 years.”

According to Section 181a. (Procurement) of the German Penal Code¹⁰²: „(1) Whoever

1. exploits another person who engages in prostitution or
2. for his own financial benefit controls the exercise of prostitution by another person, determines the place, time, extent or other circumstances of the exercise of prostitution or takes measures to prevent the person from giving up prostitution, and, for this purpose, maintains a general relationship with that person beyond a specific occasion, shall be liable to imprisonment for a term of six months to five years.”

According to art. 169 (Procurement) of the Portuguese Penal Code¹⁰³:

1. Whoever, professionally or for profit, promotes, favors or facilitates the practice of prostitution by another person shall be punished with imprisonment from six months to five years.

2. If the perpetrator commits the crime provided for in the preceding paragraph:

- o By violence or serious threat;
- o By deception or fraudulent manoeuvre;
- o By abuse of authority arising from a family relationship, guardianship or trusteeship, or hierarchical, economic or professional dependence; or
- o By taking advantage of the victim’s mental incapacity or situation of special vulnerability; shall be punished with imprisonment from one to eight years.”

According to art. 187 of the Spanish Criminal Code¹⁰⁴: „1. Whoever, by means of violence, intimidation or deception, or by abusing a position of superiority or the need or vulnerability of the victim, induces an adult to engage in prostitution or to remain in prostitution, shall be punished with imprisonment from two to five years and a fine from twelve to twenty-four months.

A sentence of imprisonment from two to four years and a fine from twelve to twenty-four months shall be imposed on anyone who profits from the exploitation of the prostitution of another person, even with their consent. In any case, exploitation shall be considered to exist when any of the following circumstances are present:

1. The victim is in a situation of personal or economic vulnerability.
2. That onerous, disproportionate or abusive conditions are imposed on him for the exercise thereof.”
3. By deception, coercion or threat.”

Based on the provisions of art. 200 para. (4) of the Hungarian Criminal Code¹⁰⁵:

¹⁰⁰ The mentioned texts constitute my own translation, for the German version, see: <https://www.jusline.at/gesetz/stgb>.

¹⁰¹ The mentioned texts constitute my own translation, for the Danish version, see: <https://danske.love.dk/straffeloven>.

¹⁰² The mentioned texts constitute my own translation, for the English version, see: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html.

¹⁰³ The mentioned texts constitute my own translation, for the Portuguese version, see: <https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/1995-34437675>.

¹⁰⁴ The mentioned texts constitute my own translation, for the Spanish version, see: <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>.

¹⁰⁵ The mentioned texts constitute my own translation, for the Hungarian version, see: <https://njt.hu/jogszabaly/2012-100-00-00.78>.

1. (1) Whoever induces a person, for the purpose of obtaining profit, to commit a sexual act on another person shall be punished by imprisonment for a period of up to three years.

2. (2) Whoever offers or solicits a person under the age of eighteen for prostitution shall be punished by imprisonment for a period of up to one year and a maximum of five years. (...)

3. (4) The punishment shall be imprisonment for a period of between two and eight years, if the procuring, as provided for in paragraph (1), is committed: (...)

As can be seen from the analysis of comparative law, the Romanian legislator correctly opted, with the entry into force of the Criminal Code, for a structure of the crime of procuring similar to that found in many Member States of the EU: France, Austria, Denmark, Germany, Portugal, Spain, Hungary. Thus, if the basic form contains the specific elements of consensual pimping, the aggravated forms concern the practice of prostitution by coercion or other similar means that lead to the idea of exploitation of the victims of prostitution. Therefore, we consider that, also from this perspective, it is necessary to return to the form prior to the amendment made by Law no. 369/2024.

8. Conclusions

As we have seen above, in the relationship between the crime of trafficking in persons/minors and forms of exploitation, the exploitation of a person always represents the purpose of the criminal activity, and not a requirement of the objective side of the crime, so that it is not necessary to achieve the purpose in order to meet the constitutive elements of the crime of trafficking, but only to pursue/accept it. The actions of the trafficker (e.g., recruitment, transportation, etc.) are committed with a view to exploiting the victim (even if this exploitation is not subsequently carried out by the same trafficker), and the legislator has chosen to punish, relatively drastically, all actions preceding the achievement of this purpose (essentially, acts of trade), precisely in order to prevent the start of the exploitation activity. Under these conditions, it would be completely and utterly absurd for the judicial body to give up on punishing the purpose crime, representing even the more serious crime, in the situation where the trafficker is also the one who subsequently exploits the victim. Contrary to an almost unanimous practice, based on a superficial/artificial interpretation of what was retained by the Supreme Court in the content of RIL Decision no. XVI of March 19, 2007, which embraced the thesis of absorbing any form of exploitation within the content of the crime of trafficking in persons/minors, with the entry into force of Law no. 202/2024, a consecration of the original intention of the legislator was achieved, but also of what was constantly shown in the majority doctrine, in the sense of the need to retain the concurrence of crimes to the extent that the same person successively commits the two criminal activities. However, if until the entry into force of Law no. 269/2024 this ratio was quite clearly applicable in practice, by retaining the actual concurrence of crimes, after the entry into force of this law the question arose whether the concurrence of crimes solution provided for by Law no. 202/2024 can still be supported or, as the case may be, will a single trafficking crime be retained, in the event of forcing a person to start or continue practicing prostitution?

This was based on the idea that, although the provisions of Law no. 202/2024 were maintained with the entry into force of Law no. 269/2024, with the translation by the latter normative act of pimping by coercion into the crime of trafficking in persons, respectively of pimping of a minor into the crime of trafficking in minors, it was questioned whether the recent intention of the legislator was to partially invalidate the solution of the concurrence of crimes in the case of sexual exploitation and to operate an absorption of the form of exploitation into the crime of trafficking or, as the case may be, to continue to allow the application of the norm of Law no. 202/2024, but with regard to other normative modalities.

For the reasons expressed in detail, we have shown that, in order to continue to produce legal effects of the provisions introduced by Law no. 202/2024 [art. 210 para. (4) and art. 211 para. (4) CP], the natural solution for resolving the relationship between trafficking offenses and sexual exploitation [this being present in the content of art. 210 para. (1¹) and art. 211 para. (1¹) CP], aims at the need to consider the offenses of trafficking in persons and minors as offenses with alternative constitutive contents.

Given that we are in the presence of activities preceding exploitation, respectively of activities of exploitation of a person, this is required, mainly, in light of the heterogeneous and non-fungible nature of the normative modalities provided for in para. (1) and (1¹) compared to those in para. (1) of art. 210/art. 211 CP, an aspect that makes such crimes not be considered as having a unique constitutive content, therefore crimes that present equivalent modalities from the perspective of criminal significance.

Secondly, such a solution is also required by the fact that regardless of the legal qualification of the form of exploitation in our domestic law – pimping or trafficking in persons/minors, forcing to practice prostitution will continue to remain a form of exploitation, under the terms of art. 182 CP. However, the requalification of a form of exploitation cannot, in any case, be of a nature to invalidate a norm still in force, which the legislator imposed, precisely, in order to eliminate any controversy regarding the need to retain the concurrence of crimes between trafficking crimes and forms of exploitation.

Thirdly, as we have seen previously, if at the domestic level 3/4 of the exploited victims are forced to practice prostitution, at the European level approximately 1/2 are subject to such a form of exploitation. Therefore, from this perspective, imposing a less punitive treatment than other forms of exploitation can only lead to providing a signal of encouragement from the Romanian authorities regarding the fight against human trafficking and sexual exploitation, which can have serious consequences, while failing to ensure this protection could endanger the values of democracy and the rule of law, as regulated in art. 1 para. (3) and (5) of the Constitution.

Last but not least, the exclusive retention of a single crime of human/minor trafficking in the case of the trafficker who subsequently committed the sexual exploitation of the victim, while in the case of other forms of exploitation (equally or even less serious) the rules of concurrent crimes would apply, would lead to the application of a distinct sanctioning treatment to legal situations (forms of exploitation) which, in essence, are nothing more than similar, an approach that would again lack any logical/rational justification from the perspective of the need to respect the principle of equal rights.

In light of the above and in order to resolve the relationship between the crime of trafficking and the forms of exploitation, in the situation where the trafficked victim (minor or adult) is rescued by the judicial authorities from the arms of the trafficker, during or after the commission of the activity of recruitment, transportation, transfer, shelter or reception by coercion, deception, etc., but before the start of her exploitation, the perpetrator will commit exclusively the crime of trafficking in persons [art. 210 para. (1) CP] or of minors [art. 210 para. (1) CP]. To the extent that the rescue of the victim will be done during or after her exploitation, the same active subject (trafficker) will be held responsible for a real competition with etiological connection between the crime of trafficking provided for in art. 210 para. (1) CP] and that provided for in art. 210 para. (1¹) CP. This reasoning is also applied accordingly in the case of sexual exploitation of a minor, when a plurality of crimes will be retained, as, equally, in the situation where, after the commission of sexual exploitation, the elements of trafficking are also committed, the same person will be held responsible for a real concurrence of crimes between the form provided for in art. 210/art. 211 para. (1) CP and that provided for in art. 210/art. 211 para. (1¹) CP.

Last but not least, and also from the perspective of comparative law, we were able to observe that the Romanian legislator correctly opted, with the entry into force of the Criminal Code, for a structure of the crime of pimping similar to that found in many other Member States of the European Union, including: France, Austria, Denmark, Germany, Portugal, Spain, Hungary, a fact for which we consider, once again, that a return *de lege ferenda* to the form prior to the amendment made by Law no. 369/2024 is required. Under these conditions, the relationship between the crime of trafficking and the form of exploitation of forcing to practice prostitution will no longer be established, in an atypical way, between two crimes provided for in the same article (art. 210/art. 211 CP) but, correctly, as in the case of the rest of the forms of exploitation, between art. 210 /art. 211 CP and art. 213 par. (2) or (3) CP, a solution that was retained in practice, for a short period of time, between the entry into force of Law no. 202/2024 and Law no. 269/2024.

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