

# NEW ASPECTS OF HUMAN TRAFFICKING IN THE LIGHT OF THE NEW LEGAL STIPULATIONS. STUDY CASE – 2014 INDICTMENT OF D.I.I.C.O.T. – S.T. ORADEA

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**Abstract:** With the entry into force of the new Romanian Penal Code at 1<sup>st</sup> February, 2014 through Law no. 187/2012 for implementing Law no. 286/2009 about Penal Code, numerous and significant changes occurred. The area of deviant behaviours registered prostitution, procuring and human trafficking was registered and incriminated in legal acts too from 1991 and 2014 in different manners. Eloquently is prostitute decriminalization and considering it as misbehaviour sanctioned as contravention from 1<sup>st</sup> of February, 2014. New legislative changes can cause new ways of offenders' actions. Already began to appear for example modalities of human trafficking there is agreement between victim and exploiter and benefit both parties – this happens pregnant with the decriminalization of prostitution and considering it as a contravention.

**Keywords:** Romanian Penal Code 2014, procuring, human trafficking, punishments/sanctions, Law no. 61/1991 actualized, infractions/contraventions.

## Introduction

“Prostitution seems to appear in virtually all societies, but at the same time, most groups disapprove of the practice. The extent of prostitution and people’s reactions to it has fluctuated over many years, but the essential facts surrounding exchanges of sex for money have remained the same.” (Clinard & Meier, 2004, p.

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368). Scientific literature stated in a basic definition that “prostitution identifies it as promiscuous and mercenary sexual behavior with emotional indifference between the partners. A more precise definition becomes difficult because conceptions of this activity vary” (Aday, 1990, p. 104 apud. Clinard & Meier, 2004, p. 368).

In Europe, more precisely in E.U. – there are countries where prostitution is legalized, for example Germany and Netherlands, or countries that tolerate this activity such as Hungary.

In Romania prostitution is not legalized but it is punishable as contravention. Sometimes the persons practicing prostitution as oneself, without another one as a procurer, but activity related to prostitution is often the activity of procuring because there are material interests, the women need protection etc. (this reasoning is controversial) but in case of Netherlands the procurer is officially considered an entrepreneur (according to sociological theory – “was first proposed by Kingsley Davis in 1937. Today it is still very popular among sociologists, who refer to it as a *functionalist theory* of prostitution. Davis attempts to explain why prostitution exists in society: the moral system of society causes prostitution”) (Thio, 1983, p. 214).

Trafficking of persons is distinct issues from prostitution and procuring. First difference is regarding the penalties provided by law, more precisely they are more severe. I do not consider concurrent or cumulated infractions but simple basic.

By human trafficking the special law according to Penal Code provides the means of recruitment, transportation, transfer, sheltering or receipt of persons for the purpose of exploitation, committed by constraint, abduction, misleading or breach of trust or taking advantage of the inability to defend or impossibility to express his will

### **Theoretical framework**

“Elaboration and adopting a new penal Code represents a crucial moment in the legislative evolution of any state. The decision to development a new penal code isn’t a simple manifestation of political will, but equally represents a social-economic corollary evolution but the doctrine and jurisprudence” (Cioclei, 2014, p. 1).

The Penal Code from 1968 was replaced with a new Penal Code. The vision of social phenomena and social reality developed over more than four decades demanded new regulations in different areas of social life. Change of regime in a democratic led to great changes reflected in social norms and legal and became necessary to provide legal norm to reality. Attempts to change the Penal Code have existed in Romania during mentioned, for example in 2004 (The New Penal Code-Law no. 301/2004, published in M. Of., P. I, no. 575/29.06.2004) the action remained only at the stage a draft law but it was completed finished at February 1, 2014.

The new range of approached and analysis of deviant behavior, facts like prostitution or sexual work are reevaluated and convicted by authorities as well as contraventions the correspondent of misbehavior; also sanctions are consisting of a contravention fine money and when the infringer cannot pay or assets aren't foreclosed the sanction can be transformed/converted to so-called community work or work for the community.

The legal basis on sanctioning prostitution is actualized Law no. 61/1991 (published in M. Of., P I, no. 77/31.01.2012, republished in M. Of., P. I, no. 96/07.02.2014) which states at art. 3 pt. 6 and 7 that "attracting people, under any way, committed in pubs, parks, on the street or in other public places for practicing sexual relations with them to obtain material benefits and also instigation or determination, for the same purpose, of a person to commit such facts; the acceptance or tolerance the above mentioned practice [...] in hotels, motels, encampments, bars, restaurants, pubs, pensions, discotheques or their appendages by owners or administrators or premises chiefs" and such of acts are sanctioned to a fine from 500 to 1500 lei according to art. 4, pt. 1, letter c) of the Law no. 61/1991 actualized.

Another deviant behavior act is the procurer. With the New Penal Code at art. no. 213 with marginal name: "Procuring" the action was in the same way evaluated and punished as before as (1) determination or facilitating the practice of prostitution or obtaining material benefits as a result of practicing prostitution by one or more persons shall be punished with imprisonment from 2 to 7 years and prohibition of certain rights. (2) If determining the start or continue practicing prostitution was done by constraint, punishment is from 3 to 10 years and prohibition of certain rights. (3) If the facts are committed against a minor, special punishment limits are increased by half. Article 213 from the Penal Code provides at paragraph no.4 that the practice of prostitution involves doing sexual acts with different people in order to obtain patrimonial benefits for oneself or for another.

If the two acts of antisocial behavior are sign into register contraventions and offenses, human trafficking enrolls in the sphere of severe deviance, respectively in delinquency. Even the special law (Law no. 678/2001 on preventing and combating human trafficking and Law no. 39/2003 on preventing and combating organized crime – both actualized) incriminates specific activities, once the new code there are correlated even in a different way, respectively the general norms was accorded to the special norms.

I am convinced that this approach from general to special was necessary for Romanian penal policy which takes into account on the one hand applying register of administrative sanctions and not penal for exercise of prostitution, considering that according to a study "quarter of trafficked persons practiced prostitution" (Gavriș, 2013, p. 346); on the other hand, making a parallel between old punishments for the different infractions of theft and new different types of offence and corresponding new punishments which are reduced for many reasons such as: "concrete instances punishments for this type of infractions" (Cioclei,

2014, p. 36) and also the fact that it counts that prostitutes are counting on cooperation in providing informations to investigators to discover any networks or illegal activities related.

Regarding the old and new stipulations of organized crime about the infractions of pimping/procuring and human trafficking incriminated in Romania by the new Penal Code and Law no. 678/2001 and acts of prostitution legal considered contraventions since 1<sup>st</sup> of February 2014 through reporting to Law no. 61/1991 to sanctioning the violation of rules of social life and public order (republished in M. Of. no. 96, P. I/07.02.2014) affirm that provisions relating to concept of organized group is unitary used that defines a group of at least three persons in order to commit illegal actions belonging to social life, public order and organized crime.

### **Methodological framework**

A new manner of action for enforcement criminal human trafficking resolution after decriminalization of prostitution occurred and is sensed by specialists and documented registered in indictment acts. Such a relevant and representative indictment act elaborated in 2014 by specialized prosecutor of the Direction for Investigating Organized Crime and Terrorism of Oradea Territorial Service demonstrate the criminal adjustment to the new rigors of the law. Relevant is following case study. This one was elected from another – from 1<sup>st</sup> of February, 2014 to present - having the same infractional/criminal counts, but in this case selection criteria was the great number of witnesses (16 persons), also accused (7 persons) and not least (5 young girls) aggrieved by infractions. The Indictment is a public act which can be consulted by any person – in accordance with the legal provisions.

### **New aspects of human trafficking in the light of the new legal regulations. Study case – 2014 Indictment of D.I.I.C.O.T. – S.T. ORADEA**

According to art. 329, 328 and 286 of 2014 Penal Procedure Code, indictment is the document instituting the instance. It contains data on act retained to culprit and the legal classification, the evidences and the evidence means, the disposal for sending to instance [...] and other necessary mentions for solving the case. The indictment shows the person's name and surname quoted indicating their quality in process. The prosecutor draft one indictment even criminal investigations concerning many facts or more suspects and trials and even with different solutions. It mentions too the nature and legal classification of the offence/infraction and if necessary the means of suspect or inculpated.

The indictment elaborated by specialized combating organized crime prosecutor by D.I.I.C.O.T. – S.T. Oradea contains a detailed description argued by facts and acts, material and legal evidences about prostitution, procuring and human trafficking as infractions or contraventions (from 1<sup>st</sup> of February 2014 prostitution was

decriminalized). The whole infractional resolution began in October of 2013 during until 2014 of July when the authorities was notified with the gone home of a minor girl (15 years old).

This was the start of the entire criminal investigation which led to the discovery of a organized criminal group, composed of people first in friendship or family relationship. Totally was send to court a number of seven persons, including one woman. They were accused by committing infractions like: joining an organized criminal group, procuring, minors trafficking, complicity in procuring.

Also the entire infraction activity was related in local media, a part of the conducting legal action is signaled about the infractors (<http://www.bihon.ro/pestii-raman-pe-arest-preventiv/1464506>) and in this case against the procurers the instances was taken the preventive detention according to art. 223 of Penal Procedure Code because have been fulfilled the legal condition, respectively there is reasonable suspicion that the accused has committed an offence.

As to the facts the whole criminal activity was running as a result of the advertisement announcement with offering the sexual services; those were offered by girls, minor and major in places such as rented apartments.

I mention that the trading post is a favorite and common way of the infractors for labor recruitment and labor exploitation especially in local newspapers (Gavriș, 2013).

The girls practicing prostitution were “recruited” from the young with financial problems, who abandoned studies, who had problems at home with parents for various reasons: quarrels, alcoholism, violence, poor material condition, poverty. One of the girls was mother of two children and she had no materials means for their growth. Another one has a suicide history and alcohol addiction. Majority of them became from rural.

Noticeable is the aspect that the girls accepted to prostitute themselves - except two – who have been abused and determinate to prostitute. Some of them were convinced for practicing prostitute by lover-boy method, as motivation “to make money for (their) wedding”.

In the same time, the girls were monitored and controlled both procuring, traffickers and guard.

With the money obtained from sexual services the girls pay all their costs: the rent, the whole livelihood, announcements in local newspaper, telephone costs and over all, their-own protection to the guards.

Sometimes the girls were violent verbal threatened by the procurers because the suspicion/mistrust to retain some of the money earned.

The newest and latest manner I notice there were also cases when the girls changed their mind and were let go, but under the threat not to talk about. So the girls if

initially agreed to prostitute after several attempts, in two or three days they gave up and renounced. Noteworthy is that the girls were not threatened or forced to prostitute precisely because not just to create the prerequisites discovery by authorities. This new manner was exposed in the Indictment of D.I.I.C.O.T. –S.T. Oradea, drafted in 2014, once with the entry the force of the new criminal legislation.

The indictment is relevant because were investigated a relevant number of witnesses as different men ages as sex consumers, some being Italian.

In two cases, the girls were transported with their accord for international human traffic, respectively in Spain, but the infractors give up because weak earnings. The activity cannot be prostitution even the criminals have the girls accord, because the Romanian law not exempt from punishment in those cases, so it was human trafficking.

As far as that goes the procurers, they were unemployed people, relatively young, including a woman, an adult one, dealing with prostitution and procurement for about 15 years; another accused person was his son – who has the role of the recruiter, organizer or lover-boy.

## Conclusions

This presented case elaborated in 2014 - Indictment act from D.I.I.C.O.T. – S.T. Oradea, reveals many action manners of the traffickers for recruiting the girls for forced prostitution or for human trafficking consisting in sex work. Even the infractors obtained the victims' accord, the special Law 678/2001 actualized and The New Penal Code is punishing the facts. It was an intern and international traffic case and intern case of procurer and association organized criminal group, complicity in procuring.

The entire infractional activities were “elaborated” by unemployed persons, without occupation and with a low level of education. The infractors, in some of the situations used force (verbal an even physical) and the victims (the young-minor girls) aquire a lot of fear, anxiety; sometimes they do not have to use force because the girls accepted to prostitute because they need money.

The profile of the girl is, unfortunately, often minor girls, preponderant from rural, whether or not school abandonment, from families with various problems; some of the girls present a certain mental lability.

Otherwise stated, from 1<sup>st</sup> February 2014 the prostitute was decriminalized and many of the girls weren't punishable; although, the human traffickers were punished as before the new regulations.

A new infraction was introduced by the new Penal Code, respectively the art. no. 216 with the marginal titled: *Using the services of a exploited person*; this penal article provides that the persons' act of using services involving forced labor, keeping in slavery, forced into prostitution, ordered to pornographic behavior, ordered to

begging or illegal organs or tissues extraction is punishable with prison from 6 month to 3 years or criminal fine.

In a personal opinion I think that the punishment is an easy one because in case the delinquent knows that services are of a slavery person or obligated person for prostitute, he is more punishable. In fact I believe that the legislation is moving to legalize the prostitution but, like in Sweden – the consumer of commercial sex will be punished, in no event the prostitute. But it takes time for things evolving so.

Also, I remark the new manner conturated in infractional activities: the girls accept to practice prostitute (I am repeating: in this moment is a contravention) and the infractors/procurers became a “good boy” who offer protection and facilitate the clients and also give money from her own girl-sex-work. Of course – because is not legalized - the girl is paying all the costs, even the guard: that is the current practical model. I’m wondering how about the advertisements announcements – probably it has to exist for facilitating the fight against the illegal phenomenon. The real threat and danger is human trafficking and is easier to catch “using mass media”, more precisely local newspapers.

Another remark is that often and in most cases the simply prostitution became organized procurers’ work which leading to forced prostitution as persons trafficking.

I cannot notice the new way in “sexual market” caught in the Indictment of DIICOT - ST Oradea: the girls didn’t agree the sex-work and were allowed to leave because the procurers could find other.

In the same time is going to a new relation between a girl and a procurer, exactly existing cases when a girl is not working for a pimp but is working for madam: “While the madam gets a large portion – usually about 50 percent – of her employees’ earnings, the pimp typically gets all of them.”(Thio, 1983, p. 204).

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