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Criminal Liability of Legal Persons for Human Trafficking Offences

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Abstract: *Human trafficking represents one of the most serious forms of contemporary organized crime, having major consequences for fundamental human rights, particularly human dignity, freedom, and the physical and psychological integrity of victims. The phenomenon manifests itself in various forms, such as exploitation through forced labour, sexual exploitation, forced begging, or other illicit activities, and is facilitated by economic, social, and legal factors specific to modern society. In the context of economic globalization, labour mobility, and the development of complex corporate structures, legal persons may become, directly or indirectly, actors involved in the commission, facilitation, or tolerance of human trafficking offences, either through their management bodies or through the absence of effective control and supervision mechanisms.*
This article aims to analyse the legal framework governing the criminal liability of legal persons for human trafficking offences, highlighting legislative and doctrinal developments in this field. The study is based on the international and European normative framework, with particular emphasis on the obligations assumed by Member States to criminalize and sanction the involvement of collective entities in such acts. At the same time, the paper examines the regulation under Romanian criminal law, focusing on provisions concerning the criminal liability of legal persons and the offence of human trafficking, from the perspective of the conditions of attribution and forms of participation (Marinescu, 2011).
In addition, the article addresses the main theoretical and practical difficulties encountered in the application of this liability regime, such as the delimitation of the legal person's interest, the relationship between the criminal liability of the legal person and that of the natural person, and the effectiveness of applicable criminal sanctions. In conclusion, the importance of strengthening legal mechanisms for preventing and sanctioning the involvement of legal persons in human trafficking is emphasized, as an essential tool for victim protection and for the effective fight against organized crime.

Keywords: *human trafficking, legal person, criminal liability, organized crime, criminal law.*

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Introduction

Human trafficking is classified at international, European, and national levels as one of the most serious forms of organized crime, characterized by a complex, dynamic, and profoundly transnational nature. This offence directly infringes fundamental values of the legal order, such as human dignity, individual freedom, and the physical and psychological integrity of the person, being consistently regarded as a modern form of slavery and a serious violation of human rights (Obokata, 2006). The gravity of the phenomenon is intensified not only by its scale, but also by the difficulty of identifying victims, their heightened vulnerability, and the sophisticated mechanisms employed by perpetrators.

In the traditional approach of criminal law, human trafficking has been almost exclusively associated with the actions of natural persons or organized criminal networks, typically characterized by informal structures and clandestine activities. (Gallagher, 2010). However, contemporary economic and social realities—marked by market globalization, labour mobility, and the expansion of cross-border commercial activities—have increasingly revealed the involvement of legal persons in mechanisms of human exploitation. In many cases, corporate entities not only facilitate criminal activities but also derive direct or indirect economic benefits from the exploitation of victims, using apparently lawful legal structures to conceal illicit activities (Zazzaro, 2025).

This evolution of the criminal phenomenon has led to a reconsideration of classical conceptions regarding the active subject of the offence and has contributed to the development of the institution of criminal liability of legal persons. Within modern criminal policy, a clear trend can be observed toward extending criminal liability to collective entities, in order to ensure an effective and proportionate response to economic and organized crime, including human trafficking. The criminal liability of legal persons is thus conceived as an indispensable instrument for preventing and sanctioning offences committed in their interest or for their benefit, as well as for discouraging the tolerance of exploitative practices within the business environment (Udroiu, 2025).

At the normative level, this orientation is reflected both in international and European legal instruments, which impose on states the obligation to ensure effective forms of liability for legal persons, and in national legislation, including Romanian criminal law. Nevertheless, the practical application of this liability regime raises numerous theoretical and jurisprudential difficulties, related to the attribution of the offence, the

delimitation of the legal person's interest, the relationship between the criminal liability of the legal person and that of the natural person, as well as the effectiveness of applicable sanctions.

In this context, the analysis of the criminal liability of legal persons for human trafficking offences emerges as a topical issue of significant theoretical and practical importance. The study of this matter contributes to clarifying the legal mechanisms for holding collective entities accountable and to strengthening the role of criminal law as an effective instrument for protecting victims of human trafficking and combating organized crime.

International and european legal framework

The fight against human trafficking has, in recent decades, become a constant concern of the international community, materialized through the adoption of legal instruments aimed at establishing common standards for the criminalization, prevention, and sanctioning of this criminal phenomenon. At the international level, the key reference instrument in this field is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime*, adopted in Palermo in 2000. The Protocol defines human trafficking in a comprehensive manner, encompassing the constituent elements of the offence—namely the act, the means, and the purpose of exploitation—and imposes on States the obligation to criminalize such conduct under domestic law (United Nations, 2000).

Although the Palermo Protocol does not expressly enshrine the criminal liability of legal persons, it establishes a general framework that allows for—and indeed encourages—the adoption of appropriate legislative measures to sanction all entities involved in human trafficking. Legal doctrine has emphasized that the effectiveness of combating this phenomenon requires moving beyond an approach exclusively centered on natural persons and including collective entities that may benefit, directly or indirectly, from the exploitation of victims (Obokata, 2006).

At the European level, the normative framework is considerably more explicit with regard to the liability of legal persons. A central role is played by Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims. The Directive obliges Member States to ensure that legal persons may be held liable for human trafficking offences committed for their benefit by persons holding a leading position within the entity or as a result of a lack of supervision or control (European Parliament & Council, 2011).

Furthermore, the Directive provides for effective, proportionate, and dissuasive sanctions applicable to legal persons, including both criminal penalties and complementary measures, such as exclusion from public benefits or the dissolution of the entity. This approach reflects the orientation of European criminal policies toward holding the corporate environment accountable and strengthening the preventive function of criminal law (Zazzaro, 2025).

Overall, the international and European legal framework highlights a clear trend toward recognizing the role of legal persons in human trafficking mechanisms and toward strengthening legal instruments designed to sanction their involvement. These standards constitute an essential benchmark for national legal systems, including Romanian criminal law, in the process of harmonizing legislation and enhancing the effectiveness of the fight against human trafficking.

Criminal liability of legal persons under Romanian Criminal Law

In Romanian criminal law, the institution of criminal liability of legal persons was expressly enshrined with the entry into force of the new Criminal Code, marking a clear departure from the classical conception according to which only natural persons could be active subjects of criminal offences. The current regulation aligns with European and international trends that promote the extension of criminal liability to collective entities, particularly in the fields of economic crime and organized crime (Costin, 2010).

According to Article 135(1) of the Romanian Criminal Code, legal persons—except for the State and public authorities—are criminally liable for offences committed in the course of carrying out their object of activity, in their interest, or in their name. This legal provision establishes an autonomous system of criminal liability, distinct from that of natural persons, without excluding the possibility of the concurrent engagement of both forms of liability (Udroiu, 2025).

With regard to human trafficking, criminalized under Article 210 of the Criminal Code, as well as trafficking in minors, provided for under Article 211, Romanian legislation does not expressly limit the active subject of the offence to natural persons. Consequently, these offences may also be attributed to legal persons, provided that the general conditions for criminal liability set out in Article 135 of the Criminal Code are fulfilled. Legal doctrine has emphasized that, in the case of legal persons, the criminal act is carried out through the actions of management bodies, legal representatives, or other persons acting under their authority, while the connection between

individual conduct and the collective entity is established through the criterion of interest or benefit obtained (Streteanu & Nițu, 2014).

The application of criminal liability to legal persons in cases of human trafficking presents significant particularities. Thus, a legal person may be held criminally liable when its economic activity involves the systematic exploitation of vulnerable persons through forced labour or working conditions contrary to human dignity, or when the legal structure is used for the recruitment, transportation, or sheltering of victims. In such situations, the criminal liability of the legal person is not conditional upon the identification or conviction of a specific natural person; it is sufficient to demonstrate the existence of the offence and its connection to the activity or interest of the collective entity (Udroiu, 2025).

From both a jurisprudential and doctrinal perspective, one of the most debated issues concerns the delimitation of the legal person's interest and the determination of the degree of imputability. In this regard, it has been argued that the mere obtaining of an economic advantage is not always sufficient; rather, an analysis is required of the extent to which the criminal activity is integrated into the policies or operational practices of the legal person (Zazzaro, 2025).

In conclusion, the Romanian regulation on the criminal liability of legal persons provides an appropriate legal framework for sanctioning their involvement in human trafficking offences. Nevertheless, the effectiveness of this mechanism largely depends on a rigorous interpretation of legal norms and the development of coherent judicial practice capable of responding to the complexity of this criminal phenomenon.

Conditions for engaging the criminal liability of legal persons

The engagement of the criminal liability of legal persons for human trafficking offences requires the cumulative fulfillment of specific conditions established by criminal legislation and further developed in legal doctrine and case law. These conditions reflect the particular nature of criminal liability for collective entities and are intended to ensure a fair and proportionate attribution of criminal conduct.

First, it is necessary that an offence provided for by criminal law has been committed, namely human trafficking or trafficking in minors, as criminalized under Articles 210 and 211 of the Romanian Criminal Code. The existence of the criminal offence constitutes the essential premise for engaging any form of criminal liability, including that of a legal person. In this context, the constituent elements of the offence must be proven in accordance with

statutory definitions and with the standards established by relevant international and European legal instruments (United Nations, 2000).

Second, criminal law requires that the offence be committed in the course of carrying out the object of activity, in the interest of, or in the name of the legal person. This criterion expresses the functional link between the criminal activity and the collective entity and is essential for distinguishing the situations in which a legal person may be held criminally liable. Legal doctrine has emphasized that it is not necessary for the offence to fall within the lawful object of activity of the legal person; it is sufficient that the entity has obtained or sought to obtain an advantage— including an economic one—through the commission of the offence (Streteanu & Chiriță, 2007). In the case of human trafficking, such an advantage may materialize, for example, in reduced labour costs or increased profits achieved through the exploitation of victims.

Third, the offence must be imputable to the legal person, which is determined by reference to the action or omission of management bodies, legal representatives, or persons acting under their authority (Herinean, 2024). According to the prevailing approach in Romanian criminal law, a legal person is criminally liable for offences committed by natural persons exercising decision-making or control functions, where these persons act within the scope of their duties or where the offence results from a lack of adequate supervision or control (Udroiu, 2025). This form of attribution reflects the organizational model of criminal liability, according to which structural or cultural deficiencies within a legal person may facilitate the commission of criminal offences.

A matter intensely debated in legal doctrine concerns the relationship between the criminal liability of the legal person and that of the natural person. Under Romanian criminal law, the two forms of liability are autonomous and may be engaged concurrently, without excluding one another. Thus, holding a legal person criminally liable is not conditional upon the conviction of a specific natural person; it is sufficient to establish the existence of the offence and its connection to the activity or interest of the collective entity (Zazzaro, 2025). This legislative solution is consistent with European standards and aims to avoid situations of impunity generated by difficulties in identifying individual perpetrators.

In conclusion, the conditions for engaging the criminal liability of legal persons in cases of human trafficking reflect a complex approach designed to ensure both the effectiveness of sanctions and the preventive function of criminal law. The rigorous application of these conditions contributes to holding the corporate environment accountable and to strengthening the fight against one of the most serious forms of contemporary organized crime.

Sanctions applicable to legal persons

The sanctioning regime applicable to legal persons for the commission of human trafficking offences reflects the specific nature of criminal liability of collective entities and seeks to achieve the repressive, preventive, and educational functions of punishment. Under Romanian criminal law, the sanctions applicable to legal persons are regulated separately from those applicable to natural persons, with the primary objective of discouraging their involvement in criminal activities and eliminating the advantages obtained through the commission of criminal offences. (Barak, 2015).

According to the Romanian Criminal Code, the criminal fine constitutes the principal penalty applicable to legal persons. Its amount is determined based on the day-fine system, taking into account the gravity of the offence, the specific circumstances under which it was committed, as well as the financial situation of the legal person. In the case of human trafficking offences, which are characterized by a high degree of social danger, criminal fines may reach significant levels, serving to neutralize the economic benefits obtained and to deter the repetition of such unlawful conduct (Udroiu, 2025).

In addition to the principal penalty, the legislator has provided for a range of complementary penalties applicable to legal persons, which may have a substantial impact on their existence and activity. Among these, the dissolution of the legal person stands out as an exceptional sanction, applicable in situations where the criminal activity constitutes the very object of the entity's activity or where the entity was established for the purpose of committing criminal offences. Furthermore, courts may order the suspension of the legal person's activity for a specified period, the closure of certain business premises, or the prohibition of participation in public procurement procedures—measures aimed at preventing the continuation of unlawful activities (Streteanu & Nițu, 2014).

The application of complementary penalties is of particular importance in cases of human trafficking, as they allow courts to intervene directly in the organizational mechanisms that facilitated the exploitation of victims. Legal doctrine has emphasized that such sanctions are particularly effective in the case of corporate entities, as they affect the reputation, operational capacity, and economic viability of the legal person, thereby exerting significant pressure to comply with legal norms (Zazzaro, 2025).

In addition, the sanctions applicable to legal persons may be supplemented by safety measures or by special and extended confiscation of assets used in or obtained through the commission of the offence. These

measures contribute to eliminating the criminal effects and restoring the rule of law, while also playing an important role in the protection of victims of human trafficking.

In conclusion, the sanctioning system applicable to legal persons for human trafficking offences is designed as a complex instrument combining pecuniary sanctions with structural and organizational measures. The effective and proportionate application of these sanctions contributes not only to the repression of criminal conduct but also to preventing the involvement of the business environment in activities involving the exploitation of human beings, thereby strengthening the role of criminal law in combating organized crime.

Conclusions and discussions

The criminal liability of legal persons for human trafficking offences emerges, in the context of contemporary criminal policies, as an indispensable instrument in the effective fight against one of the most serious forms of organized crime. Normative developments at the international, European, and national levels reveal a clear orientation toward expanding the scope of subjects subject to criminal liability in order to include collective entities that may facilitate or benefit from the exploitation of human beings. This trend reflects the recognition that human trafficking is not exclusively the result of isolated individual actions, but in many cases is sustained by complex organizational structures and apparently lawful economic mechanisms. (Bang, 2013).

The analysis of the normative framework indicates that Romanian legislation is, in general terms, aligned with international and European standards in this field, providing an adequate legal framework for engaging the criminal liability of legal persons involved in human trafficking offences. The regulation of attribution conditions, the autonomy of the criminal liability of legal persons in relation to that of natural persons, and the diversity of applicable sanctions constitute essential elements for ensuring the effectiveness of the repressive mechanism (Udroiu, 2025). However, the mere existence of legal norms consistent with European requirements is not sufficient to guarantee their effective and coherent application.

In practice, one of the main difficulties lies in proving the link between the criminal offence and the interest or activity of the legal person, as well as in establishing imputability by reference to the actions or omissions of management bodies. In this respect, judicial practice is called upon to develop clear and predictable criteria of interpretation, capable of avoiding both the risk of impunity and the excessive application of criminal

liability in situations that exceed the actual will or control of the collective entity (Zazzaro, 2025).

Moreover, the effectiveness of sanctions applicable to legal persons depends essentially on their proportionality and on their capacity to produce a genuine preventive effect. Sanctions with structural impact—such as the suspension of activity, dissolution of the legal person, or exclusion from public procurement procedures—may play a decisive role in discouraging the involvement of the business environment in activities involving the exploitation of human beings, provided that they are applied consistently and with proper justification.

Finally, the effective fight against human trafficking requires an integrated approach that goes beyond the strictly criminal sphere and involves close cooperation among judicial authorities, administrative institutions, supervisory bodies, and the private sector. Only through such a multidimensional approach, addressing both natural persons and legal persons simultaneously, can real and effective protection of human trafficking victims be ensured and the role of criminal law as a guarantor of the fundamental values of society be strengthened.

AI tools use statement | Authors hereby declare that, during the preparation of this work, we used artificial intelligence tools exclusively for the translation of certain sections of text from Romanian into English. The AI tool used was a linguistic model designed to assist in translation, without interfering in the analysis or interpretation of data and without contributing to the formulation of the scientific conclusions of the study - DeepL. Full responsibility for the accuracy, coherence, and originality of the content rests with the authors, and the material fully complies with the standards of academic integrity and the journal's policy regarding the use of AI.

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