THE OFFENCE OF HUMAN TRAFFIC IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION

Mihai ŞTEFĂNOAIA[*]

Abstract

The European framework in which the judicial system of Romania works, obliges the Romanian society and the authorities to adapt to the new standards, especially in this very important domain. Of a great importance are the aspects concerning the approach of the victim of the human traffic, so that the judicial procedures in which the victim takes part are not traumatizing and not to contribute to a new status in which the person is reconsidered a victim. The minor, as a victim of the human traffic, has a special status, taking into consideration the delicacy with which the case must be dealt with and also all the aspects regarding his exploitation. The phenomenon of the human traffic often raises controversies and confusions, being associated to the traffic of migrants, to procurement, and the victim of the human traffic to the prostitute.

Keywords:

fundamental rights, human traffic, penal policy

[*] Faculty of Law, "Petre Andrei" University from Iasi

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

The defending of the fundamental rights and liberties of a person represents a constant concern, common to all law systems, especially to those under the jurisdiction of the European Union.

In any social ranking, the human life has been protected by the law, not only as a biological phenomenon, but, above all, as a social phenomenon, as a primary and absolute value of any society, as an indispensable condition of the existence of the society itself. The modernization of the society we live in has attracted with itself, as it was expected, the developing not only of the positive sides, but also the flourishing of the organized crime and of the human traffic, obliging the authorities to adopt the adequate actions in order to stop these phenomena.

The European framework in which the judicial system of Romania works, obliges the Romanian society and the authorities to adapt to the new standards, especially in this very important domain. Of a great importance are the aspects concerning the approach of the victim of the human traffic, so that the judicial procedures in which the victim takes part are not traumatizing and not to contribute to a new status in which the person is reconsidered a victim. The minor, as a victim of the human traffic, has a special status, taking into consideration the delicacy with which the case must be dealt with and also all the aspects regarding his exploitation. The phenomenon of the human traffic often raises controversies and confusions, being associated to the traffic of migrants, to procurement, and the victim of the human traffic to the prostitute.

The human traffic represents a "violation of the human rights, of his dignity and liberty, a phenomenon which exists and manifests itself in almost all the countries in the world, no matter their degree of development" (Hotca, Dobrinoiu, (2008), :41). Year by year, women, men and children become victims of sexual exploitation, of exploitation by forced labour or for drawing organs. Being caused by a multitude of psycho-social factors such as poverty, the lack of education, disorganized family relations, the human traffic develops itself into a real phenomenon especially in the underdeveloped countries or in the course of development.

Also, its effects can bring damage to a multitude of areas in the life of a community, such as demographic movements, health, public security, the level of education, the degree of occupation of labour force.

For a better understanding of the phenomenon of *the human traffic* and to give it a clear definition, we will proceed with a short history concerning the concept *of human traffic*. The notions *woman slave, sold woman, woman taken into slavery*, are not at all new; once with history, these phenomena have occurred in our country during the Turkish reign, but also in the diplomatic relations of the moldavian lords with the sovereigns of neighboring states.

In our contemporary era, this phenomenon has become more evident, when the term traffic was for the first time used to refer to the so-called

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

"commerce with white slaves, at the beginning of the 1900s, manifesting as a side of commerce" (Luca et allii, (2008), :52).

The traffic and the volunteer migration of the white women from Europe to the Arabian countries and Eastern Europe, as concubines or prostitutes, has alerted the governments of many European states. As a result, in 1904, in Paris, the majority of the states in Europe have signed an International Convention which dealt with the traffic of white slaves. At that point, the traffic meant the movement or the transportation of the woman for immoral purposes, that means prostitution. Initially, the definition implied the crossing of the borders, but, later, in 1910, a new agreement came with a new definition, which admitted that the traffic of women can also take place within the borders of one country.

Later on, this term- commerce with white slaves- has extended to the notion of traffic in general: the import of a woman from a country to another or as a "bride by correspondence"[1], as a servant, waitress, dancer, model, which, most of the times end with a forced "employment", through deceit or threat in the sex industry. Respectively, there are emitted and signed a series of agreements and conventions, which give new interpretations to this phenomenon and establish new ways of working so as to stop the phenomenon. Therefore, the notion gets a larger character, including once with the passage of time, the violation of the human rights, resembling slavery, reaching a point in which to be defined in a stable variant.

The Protocol regarding the prevention, the fighting and the penalty of the human traffic, especially of women and children, additionally to the Convention of the United Nations against trans border organized crime, approved on the 15th December 2000 in Palermo , decides:

"The human traffic means recruiting, transportation, transfer, sheltering or receiving persons by means of threat or by using force or other forms of forcing, by kidnapping, fraud, deceit, power abuse or the situation of vulnerability or by offering or accepting bills or things to obtain the consent of a person who has the control over another person with the purpose to exploit it. The exploitation will include, at a minimum level, the exploitation of prostitutes or other forms of sexual exploitation, labour or other forced services, slavery or actions similar to slavery, servitude or drawing organs;

The consent of a victim of the human traffic regarding the intended exploitation such as defined in point a) of the present article is not relevant in the case in which there have been used any of the means presented in point a);

The recruitment, transportation, transfer, sheltering or receiving a child with the purpose of exploitation will be considered "human traffic" even if this does not imply any of the means in point a) of this article;

"Child" means any person under the age of 18".

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

This definition allows a clear distinction to be made between the phenomenon of human traffic, on the one hand, and labour migration, smuggling with migrants and prostitution, on the other hand, with which, many times, human traffic is associated. The elements characterizing the women traffic and by which we can distinguish the other two mentioned phenomena, there are the situations in which a series of human rights are violated, such as (Mateut et allii, (2005), :20).

- the person's dignity;
- the person's liberty;
- the person's security.

The Global Alliance Against the Traffic of Women(GAAWT), The International Group law regarding the Human Rights and the Foundation Against The traffic of Women(STV), Non Governmental Organizations from all over the world, have released a definition, starting from the long-term experience in the field of the prevention of the traffic of women and offering social assistance to the victims of this traffic- **Standard Principles of the Human rights regarding the Treatment of the persons who were trafficked (PS):**

"*Any action or attempt of recruitment, transportation inside or outside some borders, buying, selling, transferring, receiving or sheltering of a person by using the deceit, a restraint(including the making use of the threats or the authority abuse)or of the restraint produced by being in debt, with the purpose of bringing and keeping this person, with or without pay, in a state of servitude(doing chores, sexual or reproductive servitude), in a forced working state or due to being in debt or in conditions similar to slavery, its exploitation being made in another community than in that in which the person lived the moment in which he was deceit, restraint or forced due to being in debt."*

The definition given by the PS clearly identifies the elements of the crime, so as to distinguish the cases of traffic of other actions, such as the illegal migration. Once taken into account, the elements of the crime mentioned in the definition given above and applying them to the clear cases of traffic, we can decide when we are dealing with a case of traffic and when we are not.

Taken altogether, these two definitions include the most important components of the crime of human traffic:

I. Actions (accomplished or attempts)

a) recruitment
b) transport, transfer
c) receiving, sheltering
d) buying, selling

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

II. Methods

a) menacing by using force or other means of constraint, kidnapping
b) fraud, deceit, bringing someone in error
c) the abuse of power or of the situation of vulnerability

III. Purpose exploitation

The International Labour Bureau, a specialized structure of the United Nations Organization, states in a report given to the press in February 2008, that no less than 2,4 million persons are victims of the human traffic with the purpose of exploiting the labour force all over the world, generating a profit estimated to 32 billion USA dollars annually.[1] In what regards Europe, the same organization estimates that approximately 300.000 women are affected by the human traffic every year.

On its turn, UNICEF[2] estimates that "globally speaking, approximately 1.2 million children are trafficked every year, not only in their countries, but also outside their borders." The International Organization regarding Migration and the European Committee estimates that 12.000 to 36.000 persons under the age of 18 are trafficked every year in Europe with different purposes, including being forced to work, doing chores, working the land, begging or stealing.

According to the report of the European Union regarding the situation of the organized crime from the year 2004, globally speaking, the traffic of human beings is an affair of 8.5 billion euro to 12 billion euro annually.

The long and varied history of the international documents regarding the human traffic reflects the difficulties of the international community to reach and to obtain efficiently an agreement on a large scale. Globally speaking, the history starts with the International Agreement regarding the stopping of the commerce with women, dating back to 1904,[3] continuing with the *Convention to stop the traffic of women and children*[4] or with the *Convention regarding the stopping of the human traffic and the exploitation through prostitution.*[5]

These first instruments of large international use are of a great importance which is underlined by making known the problems with which the states were confronting at the national level, at that time, by implementing some first measures of penal policy and prevention, and by assuming some obligations at the international level, drawing the lines of the policy that the states must

[1] http://www.ilo.org\global\themes\forced labour\lang--en\index.htm.
[2] United Nations Children's Fund.
[3] The international agreement regarding the fighting against the traffic of women, signed on the 18th May 1904.
[4] Signed by 27 states, including Romania.
[5] Adopted on the 2nd December 1949,through the Resolution317(VI) of ONU.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

undergo so as to give applicability and efficiency to the conventions adopted and assumed through signing.

The Convention of the United Nations against organized trans national criminality and the additional Protocol regarding the prevention, the stopping and the punishing of the human traffic, especially that of women and children, have been analysed together, because, the human traffic is , by excellence, an offence of the organized crime, which severely breaks the human's rights. In the introduction part of the Protocol, it is stated that "the association of the United Nation Convention against organized trans national criminality with an international instrument regarding the prevention, the stopping and the punishing of the human traffic, especially to that of women and children, will help to the prevention and stopping of this type of crime".

The Convention represents the main international mechanism of fight against organized crime adopted by the United Nation Organization. The Convention is an instrument with judicial mandatory force which involves the states in the direction of adopting a series of measures against the organized trans border crime.

In what regards the measures taken in the European Union, we can observe that starting with the years 90s, the European Union has actively involved in the fight against the human traffic, especially for the prevention of the human traffic, the revising of the legislation at the European level, the improvement of the cooperation of the police and the judicial practice, in what regards the penal punishing of the dealers, and also to give protection and assistance to the victims of the human traffic.

The Amsterdam Treaty which has as objectives the creation of a liberty space, security and justice, occupies an important role in the analysis of the activity of the European Union in this domain. The VIth title refers to the judicial and police cooperation regarding crime field. In the content of this chapter, we can find a clear reference to the human traffic, the treaty considering the offence of human traffic as one of the crimes that must be necessarily stopped.

As opposed to this rich activity, the human traffic has not decreased in intensity. In a recommendation made by the European Parliament regarding the fight against the human traffic from the year 2006, it was mentioned that " the measures taken so far so as to decrease the human traffic, have not determined a decrease in the number of victims, but, on the contrary, it has been proved that the human traffic is one of the crimes that has developed throughout the years."[1] This thing means that an intensification of the activities both to the level of the prevention of the human traffic, but also to stop the phenomenon by punishing the guilty ones. The creation of an anti-traffic legislation represents a first step in the stopping of this phenomenon.

[1] http://europa.eu\pol\fraud3\index.ro.htm accessed on the 15th November 2010.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

In this context, we have to observe the most recent endeavors of the European Council, meaning the Convention regarding the fight against the human traffic. The purpose of it being the establishment of the International area of punishing the offence of human traffic, that of establishing recommendations for the member and non member states regarding the existence of some efficient measures for the prevention and punishing of the offence of human traffic, but also for helping the victims of this criminal offence. The action of the **European Council** is so relevant that among its 46 member state, there are origin countries, transit ones and destination ones for the victims of the human traffic.

The Convention of the European Council regarding the fight against the human traffic, was adopted on the 3rd of May 2005 and opened to be signed on the 16 th of may 2005 in Warsaw. The convention was applied on the 1st of February 2008, 90 days after ten states signed, of which 8 are members of the European Council. For the time being the convention is applied in 20 states[1], of which Romania[2] also.

The attentive analysis of the document, that this takes into consideration all the other international existing instruments, especially the Convention of the United Nations against the trans national criminality and the additional protocols. The Convention enlarges the existing applicability field by applying the ONU convention. In the second article it is mentioned that" the present convention will apply to every form of human traffic, internal or international, linked or not with the organized crime".

It is remarkable the desire of international organisms, either we speak about the ONU, the European Union or the European Council, to search for solutions to make better the fighting methods against every form of discrimination or exploitation, of eliminating every form which makes them different.

The beginning of the 21st century is marked by the more and more powerful tendency of the cooperation states at an international level and that of thinking to the common solutions regarding the entire accomplishment of the human's fundamental rights and liberties, and also to the desire to analyze together the new dangers that threaten the fulfilling of the stated principles in so many documents they have joined.

The human traffic was incriminated for the first time in the Romanian penal legislation, in the Penal Code from 1936 which stated next to the offence

[1] Albania, Austria, Bosnia, Hertegovina, Bulgaria, Croatia, Cyprus, Denmark, France, Georgia, Lituania, Moldova, Malta, Muntenegru, Norwegia,Poland, Portugal, Romania, Slovekia and The United Kingdom of Grat Britain and The Northern Ireland, have so far adopted the Convention.

[2] By means of the Law 300\2006 published in the Official Gazette 622 from 19th July 2006, the Romanian Parliament has adopted the Convention of the Eoropean Council regarding the fight against human traffic.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

of whoremongering in its common form (art.436) and in an aggravated form (art. 437), the offence of traffic of women having an international status in its common and aggravated form (art. 439).

A series of documents issued with the purpose of committing the offence of traffic of women were punished just like the attempt.

The Penal Code from 1968 has concentrated in the dispositions from art. 329 all the forms of whoremongering, discouraging the prostitution and the traffic of women stated in the former Code.

The problem that arises is whether, after a serious incrimination of the human traffic by means of the Law no.678\2001, the dispositions from the art. 329 referring to the human traffic remain or not valid.

In our opinion, the art. 329 incriminates the human traffic regarding the prostitution, while the Law no.678\2001 incriminates the human trafficwith the purpose of exploitation, a much larger notion, explained by the art. 2, alin. 1, point 2.

The first normative act from the internal law which approaches the human traffic as a distinctive form of criminality and which incriminates the activities which are susceptible to contribute to its accomplishment, is constituted by the Law no. 678\2001 with the modifications and subsequent completions, regarding the prevention and the fighting of human traffic.

The Law no. 678\2001 is the main instrument of penal policy regarding the human traffic, so that it contains, along with incrimination standards and dispositions which define the terms and expressions used, dispositions that regard the prevention of human traffic, by indicating the responsible institutions in this field, incriminating standards of some offences which are connected to the human traffic, special dispositions regarding seizure, the reduction of punishments, special dispositions concerning the judicial procedure, dispositions regarding the protection and assistance of the victims of the human traffic and also referring to the international cooperation.

A premises of adopting this law was represented by the existence of multiple and important international judicial instruments[1]- signed and\or adopted by Romania- which establish standards, principles, procedures and ways of cooperation in the field of human traffic, taken into account obviously when incriminating the deeds that represent offences regarding the human traffic.

Consequently, the Protocol regarding the prevention, fighting and punishing the human traffic, especially that of women and children, additionally to the ONU Convention against trans national organized criminality, defines the human traffic as being "the recruitment, the transport, the transfer, the sheltering or receiving persons, by threat or by force, or by other means of

[1] The Protocol for the modification of the Convention from Geneva regarding the fighting against the traffic of women and children, and of fighting against the traffic of women over 18, signed on the 12th November 1947.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

constraint, by kidnapping, fraud, deceit, abuse of authority or by the offer or acceptance of bills or other advantages to obtain the consent of a person having influence over another one with the purpose of exploitation."

After the adoption of the law, in order to realize her harmonization with the European legislation, its dispositions have been successively modified-including the standards which incriminate tha human traffic by the OUG no. 143\2002[1], for the modification and completion of some dispositions from the Penal Code, and some special laws, regarding the protection of minors against sexual abuses, by the Law no. 39\2003 regarding the prevention and the fighting against organized criminality[2], and by the OUG nr. 79\2005 for the modification and completion of the Law nr. 678\2001, concerning the prevention and the fighting against the human traffic.[3]

The law incriminates the deeds regarding the human traffic in art. 12-16 and the deeds connected to the human traffic in art. 17-18.

The material element of the offences of human traffic consists, according to art.12 alin. 1, in the recruitment, transfer, sheltering or receiving of a person with the purpose of exploiting him.

The deed is incriminated if it is committed by constraint, kidnapping, fraud, deceit, authority abuse, taking advantage from the fact that that person cannot defend himself, or express his will and by offering the consent of the person who has the authority on another person with the purpose of exploiting that person.

The exploitation of a person is defined in art. 2, alin 1, pct. 2, as being:

- the performance of a labour or the fulfilling of services by using force, by breaking the legal standards regarding the working conditions, payment, health, security;
- keeping in a state of slavery or other related ways of lacking liberty or enslaving;
- forcing the practicing of prostitution, pornographic representations in order to produce and broadcast pornography or other forms of sexual exploitation;
- organ drawing;
- the effectuation of other activities by which the fundamental human rights and liberties are broken.

The art. 12 states two aggravating cases:whether the human traffic was committed by two or more persons and whether the victim has suffered a serious injury of the body or health, , whereas the art. 12, alin. 3 states another aggravating case, whether the deed had as a consequence the death or suicide of the victim.

[1] Official Gazette no. 804 from 5th November 2002.
[2] Official Gazette no.50 from 21st January 2003.
[3] Official Gazette no.629 from 19th July 2005.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

The art. 13 alin 1 incriminates the traffic of a person aged between 15 and 18 and the art. 13 alin. 2 incriminates the same deed committed against a person who is not yet 15.

If the facts stated by the art. 12 and 13 are committed by a person who is part of an organized group or who has produced or obtained, for himself or for others, important material benefits, the special maximum of the punishment is increased by 3 years, as it is obvious from art. 14.

The notion of organized group supposes the existence of an hierarchical structure and of an activity plan (Oancea, (1992),:689). In what regards the notion of important benefits, these should be appreciated by comparison to the sums received by the person who has made the object of the traffic.

The art.15 sustains the punishing of the attempt and organizing the offences of human traffic or related to the human traffic.

The notion of organization, which is rather new in the Romanian penal law, supposes a higher degree in participation than the incitement, without being superposed to the notion of complicity.

Organizer ca be called, for example, the one who establishes the participants to the offence, their positions and enables the financial resources to commit the offence.

In order to eliminate any interpretation which could impede a correct application of the texts, art. 16 establishes that the penal responsibility of the doer is not removed by the consent of the person, victim of the traffic.

The art. 17 incriminates the first deed connected to the human traffic.

The objective side of this offence consists of determining or allowing, consciously, directly or by intermediaries, the remaining within the borders of the state of a person who is not a Romanian citizen, submitted to the human traffic, using against it some fraudulent, violent means or threats, taking advantage of the state in which that person finds himself.

The expression "submitted to the human traffic" is not sufficiently clear regarding the time the person is submitted to the traffic: before being determined or to be allowed the remaining within the states borders or after. It is of no importance, for the existence of the offence, whether the person in case was or not submitted to the human traffic.

The art.18, alin.1 incriminates the child pornography: the exposing, selling, spreading, renting, distributing, making or owning with the purpose of spreading objects or images which represent positions or sexual acts of pornographic character, which present or imply minors who are not yet 18, and handing such objects with the purpose of selling or distributing.

The alin. 2 incriminates the committing of a deed in an aggravated form when it was committed by a person who is part of an organized group.

The immediate consequence of the offences regarding the human traffic consists in the creation of a state of danger for the relations of social cohabitation, protected by the incrimination of these deeds.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

The state of danger is created through the creation of the material element of any offence regarding the human traffic or connected to the human traffic.

The causality connection between the material element of the offences above-mentioned and the immediate effect results from the committing of the action, without having to be proved.

The subjective side of the offences regarding or connected to the human traffic is the direct or indirect intention.

The committing of the offences regarding or connected to the human traffic takes place in the moment of the accomplishing of the material element of the offence.

The recruitment action of a person, for example, is committed the moment when the person under discussion agreed to go to a certain place with the purpose of exploiting with the meaning art.2, alin. 1, pct.2 from the law.

It is not necessary that the person should commit one of the deeds stated in the art. 2, alin.1, pct.2, but just to emigrate in this purpose.

The attempt of the offences regarding the human traffic is incriminated by art.15alin.1.

The attempt is possible in the case of recruiting, transport, transfer, sheltering, and, under discussion in what regards the receiving of the persons submitted to the traffic.

The attempt is not punished in the case of the offences connected to the human traffic.

The preliminary acts are not incriminated, although the art. 3 from the convention for the fighting against the human traffic and exploitation of the prostitution, approved by the General Meeting of the United Nations by the Resolution 317(IV) from the 2nd December 1949 recommends their incrimination.

Regarding the aggravating circumstances stated by the law, these can be grouped into three categories:

- the circumstances that refer to the way in which the deed was conceived (by violence, by two or more persons together, so as to obtain important material benefits, by a person that is part of an organized group);
- circumstances which refer to the consequences of the deed on the victim (severe injury, death or suicide);
- circumstances which refer to the age of the victim(minors under 18 or over 15).

The circumstances which determine the aggravating means of the offence can exist in the same offence, without necessarily implying a multitude of aggravations.

The human traffic is a phenomenon that can be approached from a different range of perspectives: it is a severe violation of human rights, an

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

economic and social phenomenon, with consequences for the entire society, a problem of public health, and least but not last o severe deed, in which the dealers, and not the victims , are the criminals.

At the national level, we consider that the Romanian legislation regarding the fighting against the human traffic can be aligned, in general, to the international laws in the field. Although Romania has signed and ratified the international documents in the field, their implementation in the internal law lingers to appear. As a result of analyzing the internal penal law, I consider that a series of legislative precautions could be improved, taking into account the legislations of other countries, but mainly those of the international documents in the field:

- the defining of the notion of victim of the human traffic.

Any special law supposes, above all, the defining of the terms with which it operates. In the Law 678 from 2001, many references are made to the victim of the human traffic, to his rights and obligations, but the meaning of the term "victim" is not explained. The Convention of the European Council defines for the first time the term "victim" of the human traffic, as being "any person who is subject of the human traffic, as it is defined in this article." The necessity of this definition is linked not only to the judicial framing of the deed of human traffic, but also by a series of protective and assisting measures for the victims of the human traffic, which cannot be applied, without a clear definition of the term victim.

- the modification of the incrimination norm stated by the art. 12 and 13, by introducing activities of selling- buying of a person, of a minor,to be more precise, as modalities of committing the deed.

I consider that to the definition given to the traffic of minors, at the national level, the incrimination of the selling of children should be added, as it appears in the Protocol regarding the selling of children, their sexual exploitation and child pornography, additionally to the Convention regarding the child's rights, meaning "any act or transaction by which a child is transferred by a person or group of persons, to another person for money or other material benefits", by selling understanding the obtaining of the consent fraudulent, as an intermediary for the adoption of the children, by violating the dispositions stated in the international judicial instruments regarding the international adoptions. The social danger resulted from the selling of a person determines the necessity of the incrimination as a distinctive activity within the offence of human traffic.

From the analysis of this phenomenon at the level of the year 2008, one can notice that approximately 6% of the cases of human traffic had as the person who recruited them a relative or a spouse. That is why I consider that the traffic of a person by a relative or a family member should represent one of

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

the aggravating forms of the offence, with the possibility that the punishment can be increased up to 20 years and the banning of some rights.

- the introduction of a special stipulation of not punishing the victims of the human traffic who commit the offence of illegally crossing the borders of the state.

From the practice of the Direction of Fighting the Organized Criminality I can underline one aspect which has remained outside the law, which is the situation of the victims of the human traffic who have also committed other offences, such as the offence of illegally crossing the borders of Romania[1] or of an another state[2], situation in which these persons, on the one hand, can be considered victims or witnesses, or, on the other hand, are investigated for having committed the offence of illegal crossing the borders. In this situation, the victim will no longer cooperate with the police, thing which will impede the investigations and will increase the dependence of making a case file depending on the statements of the victim, making possible the rule that-lacking the testimony of the victim of the human traffic, you cannot instrument a case of human traffic-can be applied.

The judicial practice proves that human traffic is a phenomenon in a continuous change, in which the criminal groups permanently improve their operating methods, as a response to the anti-traffic measures. Today, the traditional elements undergo great changes, seeing new trends in what regards the categories of vulnerable persons, but also the purposes for exploitation or ways of manipulation and control.

So as to face the new challenges, an intensification of international cooperation should be done, the synchronizing of actions and interventions as also an improvement of the methods of dealing with the cases of human traffic.

The human traffic continues to be on the front page of the international governmental organizations. The constant occupation of the agencies to apply the Law in Romania in order to diminish the human traffic will have the expected results when all the governmental agencies will be involved in the prevention and fighting of this phenomenon, taking into account the international standards in this field and the experience gathered until now.

[1] Stated in art. 70 OUG 105\2001, approved by Law 243\2002.
[2] Stated in art. 4 OUG 112\2001, approved by Law 252\2001.

STEFANOAIA, M., (2010) THE OFFENCE OF HUMAN TRAFFIC
IN THE COMPARATIVE LAW OF ROMANIA AND THE EUROPEAN UNION in Jurnalul de Studii Juridice, Anul V, Nr. 3-4/2010

References:

Hotca, M., A., Dobrinoiu, M., (2008). *Infractiuni prevăzute în legi speciale*, Editura C.H.Beck, Ediția a-II a, Bucuresti.

Luca, C., et al. (2008). *Traficul de persoane. Practici și resurse pentru combatere și colaborare*, Editura Hamangiu, Bucuresti.

Mateut, G., et al. (2005). *Traficul de fiinte umane. Infractor.Victima.Infractiune, Asociatia Magistratilor Iași*, Asociatia Alternative Sociale Iasi, 2005.

Oancea, I., (1992). *Explicatii teoretice ale „Codului penal roman", Editura Academiei*, Bucuresti, partea speciala, vol. IV.

Legea 300/2006, publicata in Monitorul Oficial 622 din 19 iulie 2006, Parlamentul Romaniei a ratificat Conventia Consiliului Europei privind lupta impotriva traficului de fiinte umane.

http://www.ilo.org/global/Themes/Forced_Labour/lang--en/index.htm.

http://europa.eu/pol/fraud3/index_ro.htm .