Logos Universality Mentality Education Novelty: Social Sciences
ISSN: 2284-5976 | e-ISSN: 2501-0409
Covered in: ERIH PLUS, CEEOL, Index Copernicus, CrossRef, CrossCheck, J-Gate, Google Scholar, Ideas RePeC, Econpapers, Socionet, KVK, WorldCat.

2019, Volume 8, Issue 2, pages: 88-97 | doi: 10.18662/lumenss/28

Victims of Human Trafficking and their Mixed Status as Social Cases, Patients and "Means of Evidence"

Roxana NECULA[1]

[1] Head of the Center for Social Services of Care and Assistance of Victims - General Directorate of Social Work and Child Protection, Iasi, Romania

Associated Professor - Faculty of Philosophy and Social and Political Sciences, Faculty of Roman-Catholic Theology, "Alexandru Ioan Cuza" University, Iaşi, Romania

President of the Iaşi Territorial Branch - National College of Social Workers of Romania

Abstract: The trafficked persons are both the victims of human trafficking, a statute that implies protection and restoring their autonomy, not only on an individual level, but also socially, as well as key witnesses in the criminal procedures that aim to impose criminal liability on the offenders. In addition, the victims who have been physically constrained may present traces of this constraint on their body, which makes them subject to forensic examination. Corelatively, the same victims, as abused persons, a a vulnerable category of patients, with possible mental and physical traumas, which implies a special attention in balancing the victim's interest in receiving the best care, and the need to appeal to the victim, although traumatized, in a manner which does not endanger their physical, but especially their psychological state of health, in order to carry out the probation in the penal trial, because criminal procedure involves repeated hearings of the victims during the criminal investigation and the trial phase. Sometimes, the state's interest in carrying out and completing the procedure for bringing the offender to account for his crimes may come into conflict with the victim's interest of isolating themselves from the criminogenic environment, a condition for their psycho-social-affective rehabilitation. This article discusses with the way in which these two sometimes conflicting interests may affect the autonomy of the trafficked person, their consent to participate in medical procedures and their rehabilitation through social work services, beyond the status of patient or injured party, there is that of a vulnerable person who is in need and should be a beneficiary of social services.

Keywords: *human trafficking; victim; patient; forensic examination; criminal trial; social work.*

How to cite: Necula, R. (2019). Victims of Human Trafficking and their Mixed Status as Social Cases, Patients and "Means of Evidence". *Logos Universality Mentality Education Novelty: Social Sciences, 8*(2), 88-97. doi:10.18662/lumenss/28

Introduction

Depending on perspective, the victim of human trafficking may be characterized differently. Thus, from the perspective of criminal law, the focus is on the manner of committing the crime and reflects the distinct ways in which the crime can be committed, since the purpose of the act of justice is first and foremost to identify whether or not a fact represents a crime, and correlatively to determine, as accurately as possible, the course of events, the factual situation in all its details.

According to the Standards of Fundamental Rights for the Treatment of Trafficked Persons (GATTW, 2000), the victim of the crime of trafficking in persons is the one who has been subjected to one of the modalities indicated in the national legislation as a form of trafficking. Article 12 paragraph 1 of Law no. 678/2001 regarding the prevention and combating of human trafficking exhaustively lists these modalities as: "recruiting, transporting, transferring, accommodating or receiving a person, by threat, violence or other forms of coercion, kidnapping, fraud or swindling, abuse of authority or taking advantage of the impossibility of that person to defend themselves or express their will, either by offering, giving, accepting or receiving money or other means to obtain consent of the person who has authority over another person, for the purpose of exploiting that person "(Law no. 678/2001).

As we will show below, the status of victim of human trafficking is not limited to that of a person subjected to one of the above mentioned aggressions. Depending on the specialist / practitioner with whom the victim comes in contact, the way in which the person will be approached and treated will change according to the professional obligations of the respective practitioner, determining for the manner in which a certain side of that perso's victimology will be emphasized (or not).

I. The victimology of human traffiking - perspectives

From a psychological perspective, the legal definition of trafficking takes too little account of the subjective situation of the victim, it does not focus on an essential element of the victim status, which refers to the consequences of the crime on the mental well-being of the trafficked person. Not all ways of committing the crime involve physical abuse, but all involve emotional abuse. Moreover, Law no. 678/2001 does not define the victim of human trafficking, but only the actual crime. Much more appropriate, from this perspective, is the definition given to victims by the United Nations,

according to which victims are those who suffer "physical or mental injury, emotional trauma, material losses or substantial violations of their fundamental rights "(UNGA, 1985). From a psychological point of view, the victim is the person who has been traumatized, in other words the victim is the person whose resources have proven to be inadequate to protect them from the threat of external factors, because their self-protection mechanisms are exceeded biologically, as well as psychologically (UNODC, 2009).

From a forensic perspective, the victim is the person from whose body evidence can be collected, which will lead not only to identifying the way in which the crime was committed (for example: with violence, through food deprivation, etc.), but also to gathering other data to help determine the identity of the offenders, the places where the victim was held, etc. For the forensic MD, the victim's body is a valuable source of information. This status of the victim correlates with their role in criminal procedures, because, from the perspective of the criminal procedural law, the statement of the party injured by the crime represents one of the essential means of proof. There is an obligation to listen to the victim in both the criminal investigation and the trial phase, and the repeated hearing of the injured person will be done whenever the necessities of the case impose it.

For the physician, the victim is a person with physical traumas, possibly with illnesses due to the conditions in which she was held or trafficked, or the exploits she was subjected to.

For the forensic MD, it is essential that the victim be examined as soon as possible after their identification, for the prosecutor it is imperative to take the victim's deposition, also, as soon as the crime was committed, to ensure that time does not distort the perception of the victim on the past events, that the victim will not forget information, respectively that the victim will make available additional information that will lead to the extension of investigations regarding other persons and / or facts, the identification of new members of the trafficking network or of other victims. These procedural and investigative needs can lead to the depersonalization of the victim, to transforming them into a means of evidence.

For the psychologist, the victim of human trafficking is a patient who needs psychological counseling, for the treating physician the victim is a patient who needs drug treatment, for the social worker the victim is a person who needs to benefit from services of social reintegration, all the more so as these victims come, most often, from social strata with a low degree of education and a poor financial level, thus prone to transgressing to a social group with lax rules of cohabitation, which favors easier acceptance

of a criminal behavior, factors which, in turn, predispose to exposure to new risky situations in which the same victim is again trafficked. Not often do these people, in the absence of real living opportunities or alternatives that they perceive to be viable, return to the only environment they know, the criminal social group, and end up accepting being trafficked as a way of life.

II. Challenges for social work in case of human trafficking victims

For the social worker, the victim of human trafficking is a person who is part of a vulnerable category of population. The vulnerability of the trafficked person is attracted, most of the times, according to statistics (OIM, 2005), by a correlation of causes, and each of them, considered individually, is sufficient to classify these persons in the category of vulnerable populations. It is precisely this correlation of causes that transforms victims of human trafficking into a difficult category of beneficiaries, which raises particular challenges for the social worker.

The precarious financial status, as the main cause that shapes the victimology of trafficked persons (Mandra, 2008), causes the victims to choose, initially, a certain way of life. For example, a victim who is trafficked for sexual exploitation may initially choose to practice prostitution with the help of a procurer (Schwartz & Tomiță, 2017); a victim trafficked for forced labor may initially choose to work illegaly and under precarious or risky conditions. (ILO, nd), the victimwho is trafficked for organ harvesting may initially choose by themselves to sell an organ on the black market (Huidu, 2010). In other words, victims are exposed to a criminogenic social environment or a criminally influences social group in which the potential for trafficking is higher than in other groups. Precisely because the victim is exposed to such environments, sometimes the victim is regarded by society as partially guilty for what happened to them or is treated as a person who themselves violated the law, therefore there is a tendency of society to marginalize the victim, which, from the perspective of social work, makes the social inclusion of the victim difficult.

The low degree of education and professional training is another cause that favors the recruitment of people to be trafficked (Mandra, 2008). The desire of the victim to have a high income in a short period of time and through means perceived as easier than a job, with a low earning potential due to the low professional abilities of the victim, causes the victim to accept the attendance of certain environments in which she perceives that she is offered the chance for a consistent profit. After the victim is saved from trafficking, the problem does not disappear, so the low self-esteem of the

victim often makes her return to the risky environment from which she was rescued, which she perceives as the only one she can truly a part of and feel normal. This is an aspect likely to hamper the success of a long-term intervention plan of the social worker, who must take these vulnerability elements into account (Unguru, 2019).

Lack of support from ones family, correlated with traumatic incidents from childhood, especially for the minor or young victims (Alexandrescu et al., 2004), constitute not only factors that favor recruitment for trafficking, but also a social-family profile that makes it difficult to implement an intervention plan, whereas the victim does not have people to trust or to support her emotionally and financially during the transit period between the time she was trafficked and when she could be rehabilitated. Therefore, the feeling of loneliness leads to hopelessness, then to giving up to making the necessary efforts for one's own rehabilitation, so that the victim becomes uncooperative with the social worker and ends up by rejecting their help and returning to the criminogenic social group.

Another feature noted by the literature as a factor favoring becoming a victim of human trafficking is the libertine and superficial attitude towards life, marked by idealism and credulity (Mateuţ et al., 2005). Correlated with the lack of education and professional perspectives, the lack of financial autonomy of the victim and a lack of ability to properly analyze life situations and decide for themselves in the long term, this predisposition makes the victim extremely susceptible to the influences of the one who recruits her, whose discourse misleads the victim and presents her with a distorted reality, but credible to them, and which combats, with his promises, the discourse of the social worker, who is rejected because the reality presented by him does not have the same ease for the victim as the one described by the person who recruits her.

All these specific elements of the victimology of trafficked persons represent as many challenges for the social worker in elaborating the intervention plan ("La Strada" International Center, 2005). In addition, the intervention plan must take into account not only the factors that made the victim a candidate for trafficking (which must be eliminated if the victim is to be reintegrated), but also the type of trafficking the victim was subjected to.

III. Types of trafficking and types of victims

The first thing that must be established by both doctors and social workers, but especially the criminal investigators (for a correct apprehension

of the facts and in order to coordinate the investigation accordingly), is the unequivocal status of being a victim. Some people are only apparently victims of human trafficking, and others camouflage their own voluntary acts behind the status of being a victim, although they are not a real victim, in order to avoid being held responsible for their own intentional acts.

Such a situation is the risk of confusion between the person who practices prostitution and the trafficked person who is forced to provide sexual services. Between prostitution and trafficking there the important difference of lack of consent. Prostitution, usually, implies the absence of coercion, and trafficking involves physical or psychological violence, or even restraining the victim. But human trafficking is not limited to this sole purpose of trafficking, that of forcing the victim to provide sexual services for the benefit of the trafficker. Likewise, there should be no confusion between procureing and human trafficking. As established by the High Court of Cassation and Justice, "procureing represents a non-aggressive criminal activity, that does not imply infringing the subjective authonomy of the secondary injured partyt, while the activities that constitute the factual element of human trafficking consist of means that imply the violation of freedom of will and consciousness of the injured party "(HCCJ, Decision no. XVI / 2007).

There is also human trafficking made with the purpose of forcing the trafficked person to forced labor. In this case, the concept of human trafficking should be separated from the concept of illegal work or emigration in order to do illegal work within the black economy. Again, the difference is made by the volitional element, or more precisely its absence - the person who works on the black labour market accepts the lack of the benefits that comefromworking withought a contract (social insurance, accumulation of seniority in work, recognition of professional experience, etc.), agrees to the amount of money he will receive in exchange for the work performed and has the freedom to leave the job if the employer does not respect the terms of the agreement. The victim of trafficking for forced labor cannot negotiate his or her remuneration alone, the money is not paid to the victim, but to the trafficker, who gives back to the victim a modest amount, they cannot leave the job, cannot decide the type of work they do, the start date and at the end of the activity, they cannot issue any claims regarding working conditions, etc.

Although according to European Commission statistics (2016), 67% of victims are trafficked for sexual exploitation and 21% for forced labor, yet 12% are trafficked for begging, organ removal or exploitation at home.

Although 76% of these victims are women, the 34% who aremen is still a high percentage.

Begging and selling your own organs can be voluntary options, so that in these cases too, what separates human trafficking from begging or voluntary organs sale is the same element as in the case of sexual exploitation and forced labor: using force, regardless of its nature. The importance of this distinction lies in the fact that the social worker is the one responsible for the long-term reintegration of the victim into society, while the physician, the psychologist or the police / investigative body offers help to the victim only when she is in a state o crisis. The social worker also intervenes when the beneficiary is in a crisis situation, through specific intervention methods, but his activity is continued after the crisis has passed.

Thus, the social worker is interested in the characteristics of the social group from which the victim was recruited and the causes for which the victim was recruited,as well as the purpose for which she was trafficked, he is interested in identifying the elements that make the beneficiary of social services vulnerable and which can expose him again to the risk of bein trafficked. It is necessary for the social worker to adapt its intervention in the long term depending on the type of experience that the victim has lived during the time she was trafficked and also on the impact that the judicial and medical system had in her life at the time she came in contact with them.

A successful social work intervention plan will balance all these elements (Sandu, 2013) to ensure that the victim does not suffer psychological or physical traumas that make it impossible for her to conduct normal interpersonal or working relations (otherwise, the social worker will make the necessary recommendations), to ensure that the victim will not return to the social group that exposes her to the risk of being trafficked again, as well as to prevent their exposure by empowering the victim (through therapy, schooling, employment etc.).

Conclusions

Victims of human trafficking come into contact, after being extracted from the environment in which they were trafficked, with various professionals who act in accordance with the legal and ethical provisions that govern their profession: bodies of inquiry, courts, medical practitioners, therapists, socialworkers. All these persons act according to the needs imposed by the particular situation of the victim or the interests of society and, as a basic principle, all these professionals assume the purpose of

helping the victim and removing her permanently from the criminogenic social group that favors trafficking.

However, the interests and methods of some of these profesionals may come in conflict with the interests of other professionals. The criminal procedure requires that the victim testify at various stages of the investigation or trial, which causes the victim to come back in contact with the aggressors and reminds them, in the cold and sometimes perceived as hostile environment of a courtroom, of events with a high traumatic load or that can maintain or increase their fear of the aggressor, therefore exposing the victim.

The physiotherapist has a relatively meteoric presence, taking special care of the possible physical traumas that the victim presents when she is rescued from the aggressor, but his attitude towards the special mental state of the victim is very important for the way the victim perceives their own status. The psychotherapist, on the other hand, is interested mostly in healing the victim mentally and emotionally and getting the victimtocometoterms as best she can with the traumatic experience she went throug, and this interest may come in conflict with the interests of the criminal investigatiors and the procedures of the criminal investigation. Even if, at the theoretical level, the right to silence (Ignătescu, 2013) is recognized for the victim, which in criminal procedural law translates into the right not to testify, sometimes the rigors of criminal investigation exert a real pressure on the victim to repeatedly report the situations when she suffered the abuses. The activity of the forensic MD, dictated, again, of unquestionable interests, can sometimes be regarded by the victim as intrusive.

The social worker, however, is the one who continues to work with the victim even after the crisis has passed and through this he has to balance, from the beginning, the interests of all these parties (Frun & Sandu, 2018) in order to consolidate a relationship with the victim based on trust and openness, without which any subsequent long-term intervention plan may suffer failure. Therefore, we emphasize the need for the continuous implementation of training programs to prepare social workers for working with this special category of beneficiaries, in order to optimize the care process and increase the chances of reintegrating for victims of human trafficking in society.

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