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PROMOTION OF THE RIGHTS OF TRAFFICKED PERSONS IN BULGARIA, ROMANIA AND SLOVAKIA WITH EMPHASIS ON LEGAL SUPPORT – A HUMAN RIGHTS BASED APPROACH

LAWYERS MANUAL

Asociatia
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CHAPTER I

INTERNATIONAL AND NATIONAL DEFINITIONS OF TRAFFICKING

International definition of trafficking

Introduction

This section discusses how trafficking in persons, forced labour, slavery and slavery-like practices are defined in international law. It also addresses the question of the difference between trafficking and prostitution and between trafficking and smuggling.

What is trafficking in persons?

The definition of trafficking in Article 3 of the UN Trafficking Protocol provides the common ground for the international community to prevent, combat and punish trafficking, as well as to provide assistance and protection to its victims. The definition has three constituent elements:

DEFINITION OF TRAFFICKING		
ACTS	MEANS	PURPOSE
<ul style="list-style-type: none">• Recruitment• Transportation• Transfer• Harboring• Receipt of persons	<ul style="list-style-type: none">• Threat or use of force or other forms of coercion• Abduction• Fraud• Deception• Abuse of power or a position of vulnerability• Giving or receiving payments or benefits to achieve the consent of a person having control over another person	<p>Exploitation, including:</p> <ul style="list-style-type: none">• Exploitation of the prostitution of others or other forms of sexual exploitation• Forced labour• Slavery or practices similar to slavery• Servitude• Removal of organs• Other forms of exploitation

Movement from one place to another

The recruitment process can take place in formal and informal ways. Many trafficking cases involve registered or illegal recruitment agencies, but also family members, friends or acquaintances can act as recruiter.

Trafficking often occurs between countries, but can also happen without crossing borders. According to the parent convention on organised crime, domestic law must establish trafficking as an offence “independently of the transnational nature or the involvement of an organized criminal group”. The Council of Europe Convention explicitly covers both internal and cross-border trafficking.

Trafficking can happen through legal as well as illegal migration channels. Some migrants enter the country illegally while others enter with legitimate visas or work permits and only become illegal when they remove themselves from the power of an abusive employer.

Fraud, deception or abuse of power or a position of vulnerability

The inclusion of fraud, deception and the abuse of power or a position of vulnerability makes clear that trafficking can occur without any use of (physical) force. Deception can refer to the nature of the work or services, for example when a trafficked person is promised a job as domestic worker but is forced to work as a prostitute, but in many cases traffickers deceive people about the conditions under which they will be forced to work/live. If a woman is trafficked into prostitution, for example, she may know she is going to work in the sex industry, but not that she will be deprived of her liberty and her earnings and will be coerced to work under abusive conditions.

While in some cases traffickers use violence, in many cases they abuse the vulnerable situation of the trafficked person. According to the Interpretative Notes to the Protocol, 'abuse of a position of vulnerability' refers to

'any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved' (para 63)¹.

Into conditions of exploitation

The definition covers all forms of exploitation into which people can be trafficked, including forced begging, illegal adoption, forced or servile marriage and the exploitation of criminal activities.² While the sex industry is one of the industries into which in particular women are trafficked and exploited under slavery-like conditions, people can be trafficked into a diversity of industries, such as domestic work, sweatshop labour, construction or agricultural work. For the crime, it is not important whether the work is legal or illegal under national laws (e.g. begging, prostitution).³

Children

In regard to children, the *Convention on the Rights of the Child* and the *Convention on the Worst Forms of Child Labour* (ILO C. No. 182) identify specific types of exploitation of children. The engagement of children under 14 (15 in developed countries) in any form of full-time work, or children under 18 in hazardous work such as mining, seafaring or sex work, is always exploitation.

What are exploitation of the prostitution of others and sexual exploitation?

Exploitation of the prostitution of others and sexual exploitation are not defined in the Protocol or in international law. The terms were intentionally left undefined in order to allow all States, independent of their domestic policies on prostitution, to ratify the Protocol.⁴

According to the definition 'exploitation of prostitution' only amounts to trafficking, when the other two elements are present, i.e. one of the acts and the use of deceptive or coercive means.⁵ Whether or not a person was formerly engaged in prostitution (or domestic work or any other type of work) or knew s/he would be so, is not relevant if all the elements of the definition are fulfilled: the presence of one of the acts, the use of one of the coercive or deceptive means and the purpose of exploitation.

¹ Crime Prevention and Criminal Justice, report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh session, Addendum, *Interpretative notes for the official records (Travaux Préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN General Assembly, 3 November 2000 (A/55/383/Add.1), to be found at <http://www.odccp.org/crime-cicp-convention-documents.html>.

² See also *EU Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims*, Art. 2(3).

³ See also: UNHCHR, UNHCR, UNICEF, UNODC, UN Women, ILO, Joint UN agencies, *Prevent Combat Protect Human Trafficking, Joint Commentary on the EU Directive-A human Rights-Based Approach*, 2011, p. 102-104.

⁴ Interpretative notes (*Travaux Préparatoires*) (A/55/383/Add.1), available at <http://www.odccp.org/crime-cicp-convention-documents.html>.

⁵ The same goes for the purpose of 'removal of organs', which also only amounts to trafficking if the other two elements are present.

While the Protocol draws a distinction between trafficking for forced labour and for sexual exploitation, this does not mean that forced prostitution and coercive sexual exploitation do not amount to forced labour. Since the coming into force of the Forced Labour Convention, the ILO Committee of Experts has treated trafficking for the purpose of forced prostitution as a form of forced labour, no matter whether prostitution is illegal under national law.⁶

What are forced labour, slavery, slavery-like practices and servitude?

An integral component of trafficking is usually forced labour or slavery/slavery-like practices. Forced labour or services, slavery or practices similar to slavery and servitude are also not defined in the Trafficking Protocol, but are elaborated in other international conventions, to which regard must be taken in its implementation and interpretation.

The ILO Forced Labour Convention no. 29, to which Serbia is a party, defines forced labour as

All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

‘All work or service’ encompasses all types of work, employment or occupation, irrespective of the nature of the activity performed, its legality or illegality under national law or its recognition as an economic activity. Forced labour, thus, can apply as much to factory work as to prostitution or begging when performed under coerced conditions.⁷

While a person may have entered an employment contract without any form of deception or coercion, he or she must always be free to revoke a consensually made agreement, that is, any restriction on leaving a job owing to legal, physical or psychological coercion can be considered forced labour. If the employer or recruiter has used deception or coercion, consent becomes irrelevant.⁸ Experience of the loss of control over one’s life is a general indicator of coercion and forced labour. Child prostitution and pornography always constitute forced labour and fall under the worst forms of child labour under ILO Convention No. 182, as does trafficking in children.

Indicators of forced labour⁹

- Threats or actual physical or sexual harm
- Restriction of movement and confinement to the work place or to a limited area
- Debt bondage/ bonded labour. This is the case when the person works to pay off a debt or loan and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the person cannot escape the debt
- Withholding of wages or excessive wage reductions that violate previously made agreements
- Retention of passport and identity documents, so that the person cannot leave or prove his/her identity and/or status
- Threat of denunciation to the authorities where the worker has an irregular status.

⁶ ILO, *Eradication of Forced Labour*, International Labour Conference, 2007, p. 42.

⁷ ILO, *The Cost of Coercion*, 2009, p. 6.

⁸ ILO, *Human Trafficking and Forced Labour Exploitation, Guidance for Legislation and Law Enforcement*, 2005; ILO, *Handbook for Labour Inspectors*, 2008, p. 4.

⁹ ILO, *Human Trafficking and Forced Labour Exploitation*, 2005, p. 20-21.

In the case of a girl from Togo, the ECtHR found that she had been subjected to forced labour as she had worked for years for a family that exploited her “*without respite, against her will, and without being paid*”, while residing illegally in the country, afraid of being arrested by the police.¹⁰

Forced labour imposes a degree of restriction on an individual’s freedom, which is often achieved through violent means. However, the definition of forced labour does not incorporate the concept of ownership as is the case for the Slavery Conventions.

The League of Nations Slavery Convention (1926) defines slavery as:

The status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised.

The definition in the Slavery Convention may cause difficulties today, as legally there can be no rights of ownership for one person over another. A contemporary definition would be “the status or condition of a person over whom control is exercised to the extent that the person is treated like property”, or “reducing a person to a status or condition in which any or all of the powers attached to the right of property are exercised”.¹¹

The 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar Practices prohibits slavery-like practices. These include debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. Debt bondage and servile forms of marriage (including forced marriages) are particularly relevant in the context of trafficking.

Debt bondage refers to the system by which people are kept in bondage by making it impossible for them to pay off their (real, imposed or imagined) debts. The Supplementary Slavery Convention defines it as:

The status or condition arising from a pledge by a debtor of his personal services or those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Servile forms of marriage include all forms of marriage whereby women have no right to refuse, defined as:

Any institution or practice by which (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; (ii) the husband of a woman, his family, or his clan, has THE RIGHT TO TRANSFER HER TO ANOTHER PERSON FOR VALUE RECEIVED OR OTHERWISE; (III) A WOMAN ON THE DEATH OF HER HUSBAND IS LIABLE TO BE INHERITED BY ANOTHER PERSON.

Servitude is prohibited by the ICCPR and the ECHR. Although it is not defined in either instrument, it is identified as a slavery-like practice, covering exploitative conditions of work or service, which one cannot change or from which one cannot escape.¹²

In the above mentioned case of a girl from Togo the ECtHR found that she (also) had been subjected to a modern form of slavery.¹³ According to the Court, relevant factors in assessing whether

¹⁰ ECtHR, *Siliadin v France*, 26 July 2005, Application no. 73316/01.

¹¹ UNODC, Model law on trafficking, p. 21.

¹² Manfred Novak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, 2005. See also: Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, Gulnara Shahanian (A/HRC/15/20), 28 June 2010.

¹³ ECtHR, *Siliadin v France*, 26 July 2005, Application no. 73316/01.

a situation amounts to a contemporary form of slavery include whether: there is control of a person's movement or physical environment; there is an element of psychological control; measures are taken to prevent or deter escape; there is control of sexuality and forced labour.

The issue of consent

The Trafficking Protocol stipulates that the consent of the victim shall be irrelevant where any of the means listed in the definition is used. This is in line with existing international legal norms and does not take away the right of the accused to a full defence and to the presumption of innocence, as explicitly stated in the Interpretative notes to the Protocol. It should also not be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the State or public prosecutor, in accordance with domestic law. However, once the elements of the crime of trafficking are proven, any allegation that the trafficked person 'consented' is irrelevant.

Relationship between trafficking and prostitution

Although trafficking happens in the sex industry, as it does in other industries, sex work and trafficking are not the same. While sex work refers to the consensual provision of sexual services by adult persons in exchange for money or goods, the key element of trafficking is coercion, deceit and abuse of power in order to exploit another person.¹⁴ Contrary to sex work by adults, child prostitution is a human rights violation. The Convention on the Rights of the Child declares in its Optional Protocol regarding the sale of children, child prostitution and child pornography that states must prohibit "child prostitution" or "the use of a child in sexual activities for remuneration or any form of consideration" and cover it under criminal law. Children found in sexually exploitative situations should be removed and provided access to services to protect their rights.

Relationship between trafficking and smuggling

The Trafficking Protocol makes a clear distinction between human trafficking and human smuggling, which is addressed in another Protocol. Smuggling is a violation of domestic laws that protect the state by regulating who can cross its border and how, whereas trafficking primarily concerns the protection of human beings against human rights abuses and can happen with or without crossing borders.

When people are smuggled, at the end of the journey they are free and not tied to the person who smuggled them. When people are trafficked, at the end of the journey they are not free, but tied to their traffickers for the exploitation of their labour or services. For trafficked persons, it is often only once they arrive at their destination that their real problems begin. They have often been promised a job that does not exist and/or are forced to work in conditions to which they did not agree. In practice, it often only becomes clear at the end of the journey whether a person is trafficked or smuggled.

What makes trafficking identifiable and distinct is not the movement of a person from one place to another or the site of work per se, but the brokering, the violation of the free will of the person, and the exploitative conditions of work.

National Definition of Trafficking & Related Crimes

Regarding trafficking in human beings, until the entry into force of the new Criminal Code (CC), there is a unified regulatory framework in this area, namely Law no. 678/2001 on preventing and

¹⁴ See also NSWSP, *Sex work is not trafficking*, issue paper no. 3. Available at: <http://www.nswp.org/sites/nswp.org/files/SW%20is%20Not%20Trafficking.pdf>.

combating trafficking in human beings. Currently, the offenses laid down in this special law had been taken over in the New Criminal Code (NCC); the mentioned law kept a number of definitions, specific procedural issues, detailing the rights of victims of trafficking and powers of the institutions involved in preventing and combating antisocial phenomenon.

Art. 2 of Law no. 678/2001 provides the meaning of terms and expressions in the wording of the law, showing, among other things, that “HUMAN TRAFFICKING means acts referred to in art. 210 and 211 of the NCC”, i.e. both trafficking in adults - art. 210 CC and trafficking in minors - art. 211 CC.

The other crimes provided by the same law had also been taken over in the NCC, with some modifications, namely referred to child pornography (present art. 374 CC) and facilitating illegal stay in Romania (present art. 264 CC), but in other chapters than the one on trafficking and exploitation of vulnerable persons¹⁵, since their main legal object is different from trafficking in human beings.

According to art. 210 of the NCC, **the crime of trafficking in human beings is criminalized as follows:**

“(1) The recruitment, transportation, transfer, *harboring* or receipt of a person for the purpose of exploitation, committed:

- a) through coercion, abduction, deception or abuse of authority;
- b) by taking advantage of the impossibility to defend or express his/her will or particularly the obvious condition of vulnerability of the person in case;
- c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of a person with authority over the person in case,

shall be punished with imprisonment from 3 to 10 years and deprivation of certain rights.

(2) Trafficking in human beings committed by a **public official** in the performance of his/her duties is punished by imprisonment from 5 to 12 years.

(3) The consent of the person victim of trafficking is not a justifying cause”.

The alternative ways of achieving the activities constituting the *verbum regens* of the offense are identical to those provided by art. 12 of Law no. 678/2001, with some minor changes to the wording, as the text is restructured.

THE MATERIAL ELEMENT of the crime of human trafficking can be achieved through several **ALTERNATIVE ACTIONS** (the crime may be detained in any of these types of actions):

RECRUITMENT: involves any manner of attracting the victim – it starts by identifying the possible victim, his/her identification, making contact with him/her, and his/her determination to become part of the trafficker’s plan. Sometimes this work involves gathering information from neighbors, colleagues, friends or relatives of future victims, about their family or material problems, in determining their vulnerabilities and choosing the most effective way to approach the victim or the person who has influence over him/her. These methods can consist, for example, in submitting job offers in other cities or abroad, providing assistance in the procurement of travel documents, promises to bear the costs of travel, accommodation or help in finding accommodation, etc. Other times, traffickers study the behavior of some young girls in clubs or bars, identifying their availability to enter easily into relations with strangers and then act in various ways that impose their power on the

¹⁵ Chapter VII of Title I – “Crimes against the person”

victim's confidence by gaining their trust as "friends" or "lovers" from proposals to become dancers or waitresses in clubs ... to physical violence, kidnapping or rape.

Recruitment does not always involve a direct contact between the trafficker and the victim, as it can be done through intermediaries - individuals and even legal persons who practice various methods: placing selection ads for different types of jobs, usually abroad, castings for modeling, lending in burdensome conditions and not specified from the beginning, guarantee for the provision of services from the person offering "help", etc. In judicial practice it is mentioned the trafficking offense in the manner of recruitment, even when victims "have come alone" to the defendant¹⁶, but the defendant defrauded them (even if the victims had accepted the undeclared work) by concealing the real conditions in which they would be held abroad: accommodation in containers, restricting the freedom of movement, lack of food, etc.

TRANSPORTATION - involves moving the victim from one place to another using a means of transport, either within the country of origin or from the country of origin to the state of destination, which may require transit of more border lines. The mode of transportation has no importance in engaging the offense: by land (car, maxi taxi, bus, train, and rudimentary means: cart, litter, etc.), by sea or by air. When they don't use their own vehicle or don't personally accompany the victim, this way of transportation may represent a crime even when the trafficker arranges the necessary formalities, transportation, buys or pays for the travel tickets or other documents required at the border, ensures the amount charged as guarantee for owning the livelihoods a period of time (for travelling to certain countries), deals to obtain a power of attorney empowering the adult person accompanying the minor one when crossing the border etc.

TRANSFER - can mean either passing the victim from one trafficker to another when s/he is actually sold as a good or object of another transaction between the traffickers (i.e. exchange) or moving the victim from one place of accommodation or place where s/he is concealed to another place¹⁷. It is common among traffickers the act of "selling" the victim of another trafficker or exchanging him/her with other victim with the purpose of his/her exploitation or on the account of a debt - in all cases the victim is considered a good. However, in other cases the victim is transferred, even temporarily, to another trafficker considered tougher with the purpose of his/her punishing and intimidation of other exploited persons.

HARBORING - is a broader concept than "accommodation" mentioned in art. 12 of Law no. 678/2001; it includes both the accommodation - in a dwelling or other building for this purpose, in the trafficker's or other persons' place - and the arrangements for accommodation in hotels, motels, also in improper places for living and housing (cellars, stables, barracks, deserted buildings, containers, forests, isolated places, etc.). This way of committing a crime ranges from the provision of the own houses by the traffickers to covering the costs of hotel accommodation in specific locations, but also involves seeking concealed places to hide the victim (especially when victims entered the territory of a state unlawfully).

¹⁶ HCCJ, criminal section, Criminal Decision no. 4001/04.12.2008

¹⁷ We consider that the transfer from one place to another, even when the victim remains under the control of the same trafficker falls under this offense. On the same point of view: V. Dobrinoiu, în V Dobrinoiu, MA Hotca, M Gorunescu, M. Dobrinoiu, I. Pascu, I. Chis, C Păun, N. Neagu, MC Sinescu, "Noul Cod penal comentat", vol. II, Universul juridic, București, 2012, p.126, and on contrary point of view: GC Zaharia, "Traficul de persoane", CH Beck, București, 2012, p. 54.

RECEIVING - means taking over the victim by a trafficker from another trafficker and also the initial takeover, if the victim is entrusted by his/her relatives or other persons with authority over him/her. Receipt of the victim may or may not be accompanied by a fee remission.

Similar to art. 12 of Law no. 678/2001, art. 210 CC maintains, with some rewording or additions, the conditions attached to the material element (the essential requirements related to the offending activities) characterizing the crime of trafficking elderly human beings.

The terms provided by art. 210 para. 1 letter a):

CONSTRAINING - includes any action on a persons' body or psyche that restricts his/her freedom to choose or act. The constraint comprises a series of other crimes, of which some were expressly provided in art. 12 of Law no. 678/2001: threats and hitting or other forms of violence and for this purpose the NCC had not explicitly rendered them in the text on incrimination. Other crimes are added to these as means of coercion: blackmail; theft of documents; destruction of documents or of goods being in the property of the victims or their relatives; rape of victim or rape of other persons in presence of the victim, etc.

In our opinion, the offenses of the constraint are absorbed only to the extent they were sufficient to meet the requirement to criminalize the offense of trafficking in human beings; but serious violence that exceed the limits of common constraint "condition" may compete with the offence of human trafficking crime.

The old CC incorporated in the crime of hitting or other forms of violence those types of aggression that resulted to up to 20 days of medical care (the personal injury including injuries requiring between 20 and 60 days of medical care; over 60 days the crime was a criminalized act as grievous bodily harm). The NCC in art. 193 sanctions in para. 2 the production of injuries requiring up to 90 days of medical treatment. I appreciate that the crime of trafficking in human beings may compete with the offense provided by art. 193 para. 2 of the NCC. The production of fractures (the strengthening duration being of about 30 days, without complications), the application of thrusts that led to injuries curable in a large number of days of medical care, even if less than 90 days for which the victim required hospitalization, may lead to finding two multiple offenses. This is an important detail because prior to the offense provided by art. 193 there must be made a complaint, as this offence is not instrumented *ex officio*, except the case of minor victims. Also, the crime of rape requires a previous complaint if the victim is an adult; however, from the perspective of the victim, it is important that multiple offenses were found to aggravate the criminal responsibility of the perpetrator, calling for stronger punishment due to the application of specific rules for multiple offenses.

There are a number of acts intimidating for the victim, even if they are not incriminated as crimes: violence on things; reporting aggressions (real or imaginary) committed on other victims, stories about what happened negatively to other victims after they escaped the traffickers' "protection", etc.; Compulsion can take other forms: the traffickers' so-called "searches" of the victim's room, his/her humiliation, undressing, starvation, deprivation of medications if s/he gets sick or of clothes and hygiene products, imposing a minimum daily gain for traffickers and punishing in various ways if it is not achieved, withholding of passport or identity document, indebtedness of the victim or of his/her family, etc. Within the constraint can also be included other facts that prevent the victim from taking decisions freely: the administration of drugs or other hallucinogens, alcohol, etc.

ABDUCTION - means taking the victim by force from his/her home or from other person's or another trafficker's home, from the street, premises or other places where s/he is; deprivation of freedom by moving the victim from one place to another. It is irrelevant whether the victim knows or doesn't know the place where s/he is taken by abduction; it is relevant only the lack of his/her consent to move there freely and taking the victim by force to that place. It is not important the fact that the victim managed to escape during transportation or from the location where s/he was brought after the abduction.

MISLEADING - is a broader concept than "fraud or deceit" of the former art. 12 of Law no. 678/2001 which could be speculated in defense by reference to the elements of the offense of deceit or of any definitions of fraud. In fact, it means any lie, false information, hidden information, lack to communicate the real intent, lack of detailed informing about the work the victim would have to provide and the type and conditions of work, the living place, the freedom of movement and communication that s/he will have, the amounts s/he will receive, the treatment the victim will be subjected to, the debt to the trafficker etc., issues which, had they been known to the victim, the trafficker would not have accepted the offer.

ABUSE OF AUTHORITY - means abusive exercise of de facto influence or of the authority of law which the trafficker has on the victim, including situations where former victims are determined to recruit or to keep other victims under surveillance. In this manner is usually done the trafficking of relatives, wives, concubines, of persons for whom they received attorney for accompanying abroad, of employees by employers, of students by teachers or supervisors, of members of spiritual groups by their religious leaders etc.

The terms of art. 210 para. 1 letter b):

The offense committed by recruitment, transportation, transfer, harboring or receipt of a person for purposes of exploitation can be punished as a crime of trafficking in human beings, if it is reflected in one of the conditions set out at letter a) or any of the actions referred to had been achieved by taking advantage of the victim (unable to defend him-/herself or to express his/her will) or particularly of the vulnerable condition of the person in care. The victim's condition must pre-exist and the perpetrator should have taken advantage of him/her. If these situations are caused by the perpetrator, then there are considered the provisions of para. (1) letter a).

The state of helplessness can be a mental or a physical one and can result from natural circumstances (old age, illness) or can be caused by certain events in the life of the victim or are associated with the development of certain stages. In these latter cases, the state of helplessness is temporary but, sometimes very intense (trauma after an accident, psychic disorders due to death or serious illness of close persons, strong immaturity for his/her age, the condition of abused persons, extreme exhaustion, etc.). Long term helplessness (disability, physical impairments, mental illness, low intellect) can also be exploited by traffickers, usually through forced begging. Other times, the victim's state of vulnerability is precisely due to the action of the victim that the trafficker takes advantage of (voluntary consumption of alcohol, drugs).

For art. 210 para. (1) letter b) final sentence, **it cannot be found** the **general** aggravating circumstance of art. 77 letter e) NCC ("the commitment of a crime taking advantage of the particularly vulnerable condition of the victim ...").

The terms of art. 210 para. 1 letter c):

Human trafficking committed while providing, commissioning, acceptance or receipt of money or other benefits in exchange for the consent of a person having authority over the victim is just as dangerous, even if the victim does not receive directly, at that time, the transaction whose object it is.

PROVIDING money or material benefits supposedly means that the person having authority over the victim who is shown or presented money or material goods, no matter if the offer is accepted.

GIVING requires effective delivery of money or material goods; this can be done directly or through intermediaries, as expressed or implied;

ACCEPTANCE requires the express or implied approval (doubtless) of the person who has authority over the victim; the agreement may be passed directly or indirectly to the trafficker;

RECEIVING involves the actual taking the money or material goods; if the offender previously accepted the offer of money or benefits, the crime would take place at the time of acceptance.

In establishing a crime it is not necessary that the money or the material goods offered by the trafficker actually reached at the person with authority over the victim; they can be handed to persons from his/her entourage, but in taking control over the victim it is important the trafficker obtained the consent using such materials “arguments”.

All those who were found as authors of any of these alternative actions (constituting *verbum regens* of the offense) must pursue exploitation of victims (**direct intention qualified by purpose**). For accomplices it is suffice that they knew the perpetrator’s purpose, even if they do not aim directly for this purpose (**indirect intent**). It is irrelevant whether the goal was reached or not. The trafficker has representation of the unlawful nature of his/her acts in which s/he is involved consciously and provides its consequences, while pursuing their production.

EXPLOITATION OF A PERSON involves the activities laid down in art. 182 NCC, respectively:

- a) submission to the execution of a work or performance of services, forcibly;
- b) keeping a person in slavery or other similar deprivations of liberty or servitude;
- c) forcing into prostitution, pornographic manifestations in the production and dissemination of pornographic materials or other forms of sexual exploitation;
- d) forcing into begging;
- e) removal of organs, tissues or cells of human origin, unlawfully;

AGGRAVATED FORMS: the only aggravated form kept by the new CC in para. (2) of art. 210 is trafficking in human beings committed by a **public official** in the performance of his/her duties (punished with imprisonment from 5 to 12 years, compared to the form of punishment with imprisonment from 3 to 10 years and removal of rights) - the main penalty remained between the same limits provided by Law no. 678/2001 while complementary and accesory penalties are detailed in the general part of the NCC (art. 66).

From the criminalization of aggravated forms “disappeared” the human trafficking committed *by two or more persons together* (the NCC states in art. 77 the offense committed by three or more persons together as general aggravating circumstance) or the human trafficking *that caused severe bodily or health injury to the victim* (the NCC allows finding multiple offenses of bodily injury offenses - art. 194 and even with the offense provided by art. 193 para. 2, as detailed above).

Unfortunately, the aggravating form that was referred to in para. (3) of art. 12 of Law no. 678/2001 disappeared; that form *penalized human trafficking that resulted in the death or suicide of the victim, with imprisonment from 15 to 25 years and removal of certain rights*. It is true that the NCC allows in this respect more tougher sanctions by applying the rules of multiple offenses where appropriate with the offense of manslaughter - art. 192 NCC or battery leading to death - art. 195 NCC, or even with the crime of murder.

Art. 211 of the New Criminal Code criminalizes the child trafficking as follows:

(1) The recruitment, transportation, transfer, *harboring* or receipt of a child for purposes of exploitation, shall be punished with imprisonment from 3 to 10 years and deprivation of certain rights.

(2) If the act was committed under the provisions of **art. 210 para. (1)** or by a public official in the exercise of his/her duties, the penalty is imprisonment from 5 to 12 years and deprivation of certain rights.

(3) The consent of the victim of human trafficking is not considered a justifying cause.

The alternative ways of achieving the activities which constitute the *verbum regens* of the crime of trafficking in minors are the same as for trafficking in adults, but it is necessary to find any of the specific terms of art. 210 CC; the minor is presumed to be in a state of vulnerability due to his/her lack of maturity in understanding the facts and their consequences on him/her. The offense under those conditions constitute an aggravated form of the crime of trafficking in minors.

Another aggravated form similar to the trafficking in adults is the offense committed by a public official in the performance of his/her duties. Unfortunately, it does not appear as aggravating the case in which the perpetrator is a qualified subject through that s/he is a relative of the victim. It also disappeared the aggravated form provided by para. (4) of art. 13 of Law no. 678/2001 (the acts that resulted in the death or suicide of the victim, the discussions referred to in art. 210 CC are valid in this case).

Para. 3 of art. 210 and 211 expressly provide that the victim's consent is not a supporting cause. This explicit clarification was necessary concerning the concept of the New Criminal Code related to supporting causes and their effects. Among others, art. 22 provides the consent of the injured person, with the consequent impunity of the perpetrator of an offense laid down by the criminal law. This text provides that "under the criminal law, the offence committed with the consent of the injured person is not justified, if s/he could lawfully have the social value that was harmed or endangered". The consent of the injured person does not take effect for crimes against life and when the law excludes its supporting effect. Compared to the last sentence, for each of the two offenses it was required para. 3, previously mentioned.

Art. 16 of Law no. 678/2001 (in present repealed) provided: "The consent of the victim of trafficking does not remove the criminal liability of the perpetrator". If under the old law the consent of the injured person was only making the difference between the crime of human trafficking and the prostitution, according to art. 22 NCC, the consent of the injured person is supporting as rule, so exception must be expressly provided.

CHAPTER II

INTERNATIONAL AND EUROPEAN INSTRUMENTS

International and European legal framework on trafficking in human beings

Introduction

This chapter gives an overview of the existing international and European instruments on trafficking in persons. Its main aim is to place the issue of trafficking in the context of international law and human rights and to provide lawyers with useful resources.

1. International instruments

The core international instrument is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.¹⁸ The Protocol, for the first time, contains an internationally agreed legally binding definition of trafficking in persons. It is one of three protocols attached to the UN Convention against Transnational Organized Crime.¹⁹ The Convention, the Trafficking Protocol and a Protocol on Smuggling were adopted by the UN General Assembly in November 2000 in Palermo. For that reason the Protocol is sometimes also called the “Palermo Protocol”. The Convention and its Protocols are primarily law enforcement instruments to promote cross-border cooperation by governments and to ensure that all countries have adequate laws to address these crimes.

The Trafficking Protocol consists of three parts: the Protocol, relevant sections of the Convention and the Interpretative Notes (Travaux Préparatoires), which provide an explanation of the provisions of the Protocol.

Moreover, the different human rights violations which occur during the process of trafficking are addressed in various international treaties. The most important are the *International Covenant on Civil and Political Rights* (1966), the *International Covenant on Economic, Social and Cultural Rights* (1966), the *Slavery Convention* (1926), the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* (1956), the *ILO Forced Labour Conventions* no. 29 (1930) and no. 105 (1957), the *Convention on the Protection of All Migrant Workers and their Families* (1990), the *Convention on the Elimination of All Forms of Discrimination Against Women* (1979) and the *Convention on the Rights of the Child* (1989).

Non-binding international instruments

A crucial human rights-based instrument is the 2002 OHCHR *Recommended Principles and Guidelines on Human Rights and Human Trafficking*²⁰, which intend to provide a foundation for the development, implementation and evaluation of a rights-based response to trafficking. The Guidelines cover prevention, protection and assistance as well as criminalization, punishment and redress. A

¹⁸ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. Doc. A/RES/55/25 (2000), available at <http://www.unhcr.org/refworld/docid/4720706c0.html>

¹⁹ *Convention against Transnational Organized Crime*, U.N. Doc. A/RES/55/25 (2000) and its *Travaux Préparatoires*, available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

²⁰ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

Commentary was published by the OHCHR in 2010, which further elaborates them and provides direction on the legal status of the various aspects of the Principles and Guidelines.²¹

Key international instruments on the right to an adequate remedy are the 2005 *Basic Principles and Guidelines on Remedy and Reparation*²², and the 1985 *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.²³ Both are resolutions and not legally binding instruments, yet they are politically binding.

2. European instruments

On the European level, the 2005 *Council of Europe Convention on Action against Trafficking in Human Beings* (hereinafter CoE Trafficking Convention) is the most important instrument.²⁴ Contrary to the UN Protocol, the CoE Convention explicitly identifies trafficking as a violation of human rights and provides a list of rights of trafficked persons. It covers both cross-border and internal trafficking.

Another core European instrument is the 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR). According to the European Court of Human Rights (ECtHR) trafficking in human beings constitutes a violation of Article 4 of the Convention, which prohibits slavery, servitude and forced labour, without the need to determine whether it should be qualified as slavery, servitude or forced labour (ECtHR, *Rantsev v Cyprus and Russia*, Application no. 25965/04, 7 January 2010).

Furthermore the 1983 Council of Europe Convention on the Compensation of Victims of Violent Crimes lays down a number of basic principles on compensation of crime victims.

EU instruments

At the EU level *Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims* (hereinafter EU Trafficking Directive) is the main instrument. The Directive recognizes trafficking as a gross violation of human rights and aims to take an integrated, holistic and human rights approach. It pays specific attention to the identification, legal and other assistance, protection, non-prosecution and compensation of victims, including child victims. The 2011 Joint Commentary of the UN Agencies *Prevent Combat Protect Human Trafficking* provides an extensive human rights-based commentary on the Directive.²⁵

²¹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, 2010, available at http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf

²² UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law*, adopted by the General Assembly 21 March 2006, A/RES/60147.

²³ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly, 29 November 1985, available at: www2.ohchr.org/english/law/victims.htm.

²⁴ *Council of Europe Convention on Action against Trafficking in Human Beings*, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>. See for the Explanatory Report <http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm>.

²⁵ *Prevent Combat Protect Human Trafficking, Joint Commentary on the EU Directive - A Human Rights-Based Approach*, available at: www.unhcr.org/refworld/docid/4edcbf932.html.

Next to the Trafficking Directive, four other EU Directives are especially important:

- ❖ The 2004 *Directive on a temporary residence permit for victims of trafficking who cooperate with the authorities*²⁶ provides for a reflection period and a temporary residence permit during criminal proceedings for victims who cooperate with the authorities, including material, medical, legal and other assistance, and access to education and the labour market.
- ❖ The 2004 *Directive relating to compensation to crime victims*²⁷ aims to ensure that each Member State has a national scheme in place which guarantees fair and appropriate compensation to victims of crime and which is accessible to victims regardless of where in the EU a person becomes the victim of a crime.
- ❖ The 2009 *Directive on sanctions against employers of illegally staying third-country nationals*²⁸ provides for criminal penalties in case of particularly exploitative working conditions, where the employer knows the worker is a victim of trafficking or a minor. It also requires Member States to ensure that employers are liable to make back payments to workers, such as outstanding remuneration.
- ❖ The 2011 *Directive on combating the sexual abuse, sexual exploitation of children and child pornography*²⁹ obliges Member States to criminalize the demand for child prostitution and pornography and the involvement of children in sexual exploitation, including sex tourism and activities like 'grooming' (befriending children with the intention of sexually abusing them). Special attention is paid to prevention, the protection of victims against additional trauma resulting from the criminal proceedings (including access to a free lawyer), and the treatment of offenders, so that they don't abuse again.
- ❖ The 2012 *Directive establishing minimum standards on the rights, support and protection of victims of crime*³⁰ addresses a wide scope of victims' rights, including the right to respectful treatment and recognition as victims, to protection against intimidation, retaliation and further harm by the accused and during criminal proceedings, to accessible and understandable information from their first contact with the authorities, including on the progress of the criminal case, to specialized support services, to compensation and restoration, and to individual assessment to identify vulnerability and special protection measures. It also addresses the rights of family members.

A summary of the rights of trafficking victims in the EU can be found in the 2013 paper of the European Commission "*The EU Rights of Victims of Trafficking in Human Beings*".³¹

²⁶ Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (2004/81/EC, 29 April 2004).

²⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

²⁸ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

²⁹ Directive [2011/93/EU](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

³⁰ Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

³¹ European Commission, Home Affairs (2013), *The EU Rights of Victims of Trafficking in Human Beings*. The paper is available in various languages. See: http://ec.europa.eu/anti-trafficking/EU+Policy/EU_rights_victims.

CHAPTER III

RIGHTS OF VICTIMS BEFORE, DURING & AFTER CRIMINAL PROCEEDINGS

Identification of possible victims of trafficking (reasonable grounds indication) & barriers to testify

Reasonable-grounds indication

Victims of trafficking often have good reasons for not wanting to disclose their situation or act as witness. An ever present factor is fear for their safety and that of their family, often coupled with lack of trust in the authorities. Moreover, for people trafficked into the sex industry, the stigma on prostitution acts as a major barrier. As a consequence only few victims of trafficking self-identify as victims. Identification may therefore be a complex and time consuming process. This is one of the reasons why the EU Directive points out that victims are entitled to assistance and support as soon as there is a reasonable-grounds indication that a person may be a victim of trafficking (Art. 11(2) Dir. 2011/36/EU). In *Rantsev v. Cyprus* the ECtHR held that States have positive obligation to take protective measures when “*the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited*” (§ 286). Moreover they have a duty to investigate cases when there is a credible suspicion of trafficking or another violation of Art. 4 ECHR, independent of a complaint (§ 288).

Barriers to report or testify

Fear of reprisals

Most victims have been threatened with reprisals against themselves or their families to deter them from contacting the authorities or asking others for help. Research shows that in many cases threats and intimidation continue also when the victim is no longer in the direct trafficking situation. In most cases trafficking takes place in a more or less organised network. This means that even if the victim her or himself is in a safe situation and/or one or more of the offenders are arrested, their family can still be at risk.

Stigma and social exclusion

Women trafficked into the sex industry, within or across borders, will be very aware of the stigma on prostitution and the common prejudice that once a prostitute, a woman loses her rights and is no longer entitled to protection against violence and abuse, as this is “her own fault”. This certainly applies if they have worked in prostitution before or knew they would work in the sex industry. They may not trust that they will be believed or be afraid that they will be punished themselves, in particular in countries where prostitutes are criminalised. Many justifiably fear stigmatisation and rejection by their family or community if it gets known they have worked as a prostitute.

Lack of trust in the police and the legal system

Many victims have little confidence in the police and the legal system, especially if they are undocumented migrants, come from minority communities or have worked as prostitutes. Often they have previous negative experiences with the police.

Gender

The lack of control is a general characteristic of trafficking situations. For women this may be intensified by the weak social status they held in their home community or the fact that the crime committed against them may be considered as their own fault or as a crime against the family honour.

Immigration status

One of the major barriers for migrant victims to turn to the authorities is the fear for detention and/or deportation. Deportation may not only expose them to the risk of reprisals or re-trafficking upon return, but also to harassment or prosecution by the authorities in their home country, e.g. for having crossed the border illegally or for having worked as a prostitute. In some cases they made debts in order to pay their recruiters. Deportation means returning home empty-handed with no perspective of being able to repay their debts.

Relation with the trafficker

The relationship between the trafficker(s) and the victim may be very complex. Many victims have been forced to survive in a situation of extreme dependency of their captors, which was unpredictable and life-threatening. The effects thereof are comparable to responses of victims of hostages or kidnappings. Victims may, for example, identify with their captor or protect him or her (Stockholm syndrome). Some victims will protect the trafficker as they believe he (or she) is the only person that has the power to help them.

Generally traffickers weave a web of disinformation, insecurity and fear around trafficked persons through a combination of threats, violence, psychological manipulation & isolation. A common strategy of traffickers is 'divide and rule': one victim, for example, may be used to control other victims in exchange for privileges or a bit more freedom. Or one member of the criminal network has the role of executing punishments (e.g. for disobedience), while another helps them to take care of their bruises and wounds. Other strategies are degrading, ridiculing, humiliating or dehumanising the victim by depriving them of their names, identifying details and possessions. Victims may also be given false information about each other in order to be able to play them off against each other. If the victim is a woman, traffickers may become "romantically involved" with them as a strategy.

Sometimes victims will try to contact their traffickers again, for example in an attempt to ensure the safety of their family or themselves. Victims can also have the feeling that one of the members of the criminal network was actually on their side, for example the person who comforted them if they were beaten up.

Trauma

Some victims may suffer from severe post-traumatic stress disorder (PTSD), which may affect their ability to remember details or to provide a consistent and complete statement. This can lead to the victim being seen as unreliable, not credible or not convincing. A trauma basically means that something happens to a person which he or she is unable to process, because the most basic and unquestionable concepts in regard to one's "self" and "others" and to the environment are inconsistent with the event.

Survival and coping strategies

People have diverse ways of surviving and coping with the trafficking situation. Some of the most common are:

- Obedience in the hope that the trafficker will keep his or her promises or refrain from violence if they are obedient enough

- Utter compliance in the hope to mislead their guards and find an opportunity to escape
- Trying to appease their captor by forging a positive relationship and anticipating his wishes. They may literally “understand” their captor, sympathize, feel compassion or even fall in love with him.
- Trying to find and influence sympathetic individuals within the network
- Switch off emotionally.

Rights of victims of trafficking in EU and international law

Introduction

Below the main victim rights are discussed as laid down in international and European law. These standards are drawn from the UN Trafficking Protocol and its parent convention on organized crime the Council of Europe Trafficking Convention, the EU Directives and the major human rights treaties. The aim is to provide background information to lawyers when representing trafficked persons and defending their interests.

Right to assistance

Although trafficking is recognized as a serious crime and a violation of human rights, in many cases trafficked persons are primarily seen as witnesses and as tools for law enforcement. In almost all countries, for example, access to assistance and protection is dependent on the willingness of the victim to cooperate with the authorities and his/her usefulness for the criminal proceedings. Often measures do not respect basic human rights and the dignity of the trafficked person. Examples are restriction of the victim’s freedom of movement or contacting the victim’s family and informing officials in his/her country of origin about them without prior consent.

Over the last years there has been increasing attention for the needs and rights of victims of trafficking. While most of the victim-related provisions in the UN Protocol are not mandatory, the CoE Trafficking Convention and the 2011 EU Directive on Trafficking establish a set of minimum standards of assistance and protection which State Parties are obliged to provide to victims, regardless of the willingness of the victim to act as witness. According to the EU Directive on Trafficking assistance should be provided as soon as there is reasonable ground for believing the person might be a victim of trafficking (Art. 11(2)).

Both the COE Convention and the EU Directive stipulate that any assistance should be provided on a consensual and informed basis and should include at least appropriate and secure accommodation, psychological and material assistance, access to emergency medical treatment, translation and interpretation services, counselling and information with regard to their legal rights and the services available to them, assistance to defend their rights and interests during criminal proceedings and, in the case of children, access to education.

Moreover, states are obliged to take measures to facilitate the identification of victims of trafficking.

Right to legal representation

Victims have the right to a lawyer to protect their rights, to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for the damage suffered.

Most trafficked persons are not legally trained and have no experience with legal proceedings. In order for them to be able to actually exercise their rights access to legal aid is a crucial factor. A lawyer should be appointed from the very first contact with the authorities on (and preferably even before that point). It is recommended that the victim has one and the same lawyer during the entire proceedings.

Both the UN Trafficking Protocol and the CoE Convention on Trafficking contain provisions on legal assistance and representation. The Explanatory Memorandum of the latter refers to the ECtHR, which held that in certain circumstances there is a right to free legal assistance under art. 6(1) ECHR (*Airey v. Ireland*, 9 October 1979). Effective access to a court may necessitate free legal assistance if someone is not in a position to present her or his case properly and satisfactorily without the assistance of a lawyer (*Golder v. UK*, 21 February 1975).

The 2011 EU Directive on Trafficking requires Member States to provide victims, without delay, with legal counselling and legal representation, which should be free from charge if the victim does not have sufficient financial resources (Art. 12(2)).

Right to information

Victims have the right to information about their status, their rights and the relevant judicial and administrative procedures, including information on available remedies.

Transparency of procedures and honesty of information is paramount. Trafficked persons will have been frequently deceived and used. It is important that the victim is given full and accurate information to enable her/him to take informed decisions. Information provision should take into account the possible effects of psychological trauma and/or the person's cognitive abilities. For example, victims who are traumatised may find it difficult to adequately process information.

If the victim has expressed his or her wish to keep informed about the proceedings following her or his pressing charges, the police should, to the best of their abilities, inform the victim about the progress and disposition of the case up till the moment the file is sent in to the prosecutor. From that moment on the prosecutor should be responsible for informing the victim about the progress of the proceedings. The lawyer can have an important role as "watchdog" in this respect.

Right not to cooperate with law enforcement

Victims have the right to refuse cooperation with the prosecution authorities.

Pressing charges and/or acting as witness can have far-reaching consequences for victims. It may expose them, their children and other loved ones to intimidation and reprisals from the offenders and increases the risk that their situation becomes publicly known, with all consequences entailed. Moreover, the court case itself is extremely burdening and risks re-traumatizing the victim. These concerns need to be fully understood and respected. Victims may also need time before they can fully consider their position and options. If the victim needs more time to make an informed decision about pressing charges and/or act as a witness, this time should be given. This lessens the likelihood of re-victimization of the victim and is likely to lead to better evidence and a stronger witness in the long run. If the victim, for whatever reason, decides not to press charges or act as witness this decision should be respected and no undue influence should be exerted on her or him.

Right to protection of privacy

Victims have the right to protection of their private life and identity. They have the right to request that their life and identity are protected during criminal proceedings and that the press and public are excluded from the court room.

A major fear of many victims, in particular when they have been trafficked in the sex industry, is that what happened to them becomes publicly known. Public exposure may lead to stigmatization and social rejection and may effectively prevent the victim from restoring her life. Protection from intrusion on her/his privacy is important in any stage of the proceedings. If the victim, for example, chooses not to inform her/his direct surroundings (family, partner, friends, neighbourhood, village) about her/his predicament, this wish should be respected at all times. Contacts with the victim should be made in a way that respects this wish, for example through the services of a victim support organization.

The OHCHR Recommended Principles and Guidelines call on States to ensure

...that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard (Guideline 6).

Right to protection of physical integrity and safety

Victims have the right to protection of their safety. The police should examine whether the safety and security of the victim is ensured.

The right to integrity refers to the protection of the safety of the victim, but also to, for example, medical examinations. The victim must give her/his informed consent to any medical or other examination. To be able to do so, s/he must in any case be informed about the very limited possibilities to keep the medical data confidential if the case goes to court. In particular in the light of these limited possibilities, refusal to consent should not be seen as a failure to cooperate with the authorities.

Right to witness protection

If victims testify in criminal proceedings, they have the right to witness protection and to be treated with respect and dignity. They have the right to be protected from threats, insults, intimidation and any other assault before, during and after the investigation and prosecution.

Many victims have a well-founded fear for reprisals against themselves, their children or other persons close to them. In many cases they have been threatened by the suspects with reprisals against them and their loved ones if they would dare to report to the police. Often they have personal experience with the violence the suspects are able to exercise. In many cases traffickers or their associates (which can include family members) will try to intimidate the victim in order to keep them quiet. They may put the victim under pressure and harass or abuse them to prevent them from testifying or to withdraw their statement. This is often worse if there is a close relationship between the victim and the trafficker, for instance because they come from the same community or family. The safety of the victim and her/his family and friends should therefore always be a paramount consideration.

For trafficked persons the fear of being directly confronted with the accused (suspect) may be significant. Wherever possible, direct confrontation between the victim/witness and the accused during the criminal investigation and trial should be avoided in order to avoid putting victims under unnecessary pressure and protect them from intimidation by the accused. Though it is good to have specific witness protection programmes, these generally do not offer a real option, as they require the victim to change her/his identity, sever all ties with their family and friends and basically wipe out their former existence.

Avoidance of secondary victimisation

Key factors for preventing secondary victimisation are proper information so the victim knows what to expect and can make informed decisions, avoidance of unnecessary repetition of interviews during investigation, prosecution and trial, protection against unnecessary confrontation with the suspect or family members of the suspect, avoidance of visual contact between the victim and the suspect during the giving of evidence such as interviews and cross-examination, e.g. by the use of communication technologies, and protection against inappropriate and unnecessary questions about their private life or sexual history, in particular for victims of trafficking into the sex industry.

Right to compensation

Trafficked persons have a right to adequate and effective remedies. This includes the right to compensation for damages suffered.

The right to compensation is an important element of access to justice for trafficked persons. Victims of trafficking generally have suffered serious damages, both material damages (financial and pecuniary losses: unpaid wages, medical, funeral or hospital and other costs, costs of relocation, loss of future earnings, costs of damage to property etc.) and immaterial or moral damages (psychological and emotional suffering and injury, loss of reputation, pain and suffering, loss of society and companionship).

Redress of wrongs is a fundamental legal principle that constitutes both a general principle of law and a customary rule of law.³² As stated in the OHCHR Recommended Principles:

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies".³³

The UN Trafficking Protocol and its parent convention oblige State Parties to establish appropriate procedures to provide access to compensation and restitution. In addition, the CoE Trafficking Convention contains a provision on State compensation, for example through the establishment of a Victim Fund. Key international instruments are the 2005 Basic Principles and Guidelines on Remedy and Reparation,³⁴ the 1985 Declaration of Basic Principles of Justice for Victims

³² OHCHR, *Commentary on the Recommended Principles*, p. 223.

³³ OHCHR, *Recommended Principles*, guideline 9.

³⁴ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law* (hereinafter: Basic Principles and Guidelines on Remedy and Reparation), UN General Assembly, 16 December 2005.

of Crime and Abuse of Power,³⁵ and, for children, the 2005 Guidelines on Justice for Child Victims and Witnesses of Crime.³⁶ Further, the ILO Conventions on migrant workers No. 97 and 143 as well as the International Convention on the Protection of Migrant Workers and Members of Their Families (ICRMW) set standards to ensure that migrants are not deprived of their right to be paid for work they have performed. A similar provision is contained in the 2009 EU Directive on minimum standards on sanctions and measures against employers of illegally staying third-country nationals.³⁷

In case of violations by non-State actors, that actor will in principle be individually liable for reparation to the victim. However, under certain conditions, State responsibility can arise, e.g. when State actors are complicit to trafficking or where a State has failed to duly prevent, investigate and punish trafficking and/or its forced labour outcomes, as confirmed by the ECtHR in *Rantsev v. Russia and Cyprus* and *Siliadin v. France*.³⁸

According to the UNODC *Model Law against Trafficking in Persons*, compensation may include payment for or towards:

- Costs of medical, physical, psychological or psychiatric treatment required by the victim;
- Costs of physical and occupational therapy or rehabilitation required by the victim;
- Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- Lost income and due wages according to national law and regulations regarding wages;
- Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;
- Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her;
- Any other costs or losses incurred by the victim as a direct result.

Non-prosecution and non-punishment of trafficked persons

Victims of trafficking should not be charged or prosecuted for prostitution or other illegal acts they were compelled to commit

Victims may have committed offences as a result of their being trafficked, such as illegal border crossing, begging or prostitution. Especially in the case of trafficking into the sex industry, the victim can get caught in the firing line: if she does not report the crime or facilitates the arrest of the offenders she can be prosecuted by the authorities for prostitution, but if she does so, she risks intimidation and reprisals from the side of the perpetrators.

It is a widely accepted principle that one should not be held responsible for a crime he or she was compelled to commit. Whereas the UN Trafficking in Persons Protocol does not specifically address the issue, the Working Group on Trafficking in Persons, the body established to make

³⁵ *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly, 29 November 1985.

³⁶ *Guidelines on Justice for Child Victims and Witnesses of Crime* (ECOSOC Res. 2005/20).

³⁷ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

³⁸ ECtHR, *Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010; ECtHR, *Siliadin v. France*, no. 73316/01, 26 July 2005. For a more extensive discussion on state responsibility: OHCHR, *Commentary on the Recommended Principles*, p. 224-225; Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 13 April 2011 (A/HRC/17/35), p. 4-5.

recommendations on the effective implementation of the Protocol, noted that States Parties should consider

“not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts.”³⁹

The CoE Convention on Trafficking explicitly provides for the possibility of not imposing penalties on victims for their involvement in unlawful activities if they were compelled to do so by their situation (Art. 26). This is further explained in the Explanatory Report.⁴⁰ The EU Directive on Trafficking contains a similar article (Art. 8).

Non-detention of trafficked persons

Trafficked persons should not be detained or held in closed shelters or other welfare centres.

The detention of (presumed) trafficked persons (including children) in public detention facilities, or public or private shelters violates a number of fundamental principles of international law, such as the right to freedom of movement, the prohibition on unlawful deprivation of liberty, arbitrary arrest and detention, and the prohibition of discrimination on ground of sex; it should therefore be considered as unlawful.⁴¹

Detention of trafficked persons, defined as “the condition of any person deprived of personal liberty except as a result of conviction for an offence”,⁴² can cover a wide range of situations. Victims may be detained as irregular/undocumented migrants, as a result of their engagement in illegal activities, such as prostitution or unauthorized work (even if correctly identified as victims), because they are unwilling or unable to cooperate in criminal investigations or because their cooperation is not considered useful.

Another form of detention is the placement of trafficked persons in closed shelters or other welfare facilities in conditions akin to detention. Common justifications for this form of detention are the need to provide shelter and support, the need to protect victims from further harm and the need to secure victim cooperation in the investigation and prosecution of traffickers. The practice of victim detention in shelters and other welfare institutions is often highly gendered. The majority of trafficked persons detained in closed shelters are women and girls.

In the case of child victims, Article 37(b) CRC states that

“[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily.⁴³ The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

³⁹ UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, (CTOC/COP/WG.4/2009/2, para. 12).

⁴⁰ CoE, *Explanatory Report – Action against Trafficking in Human Beings*, 16.V.2005, para. 272-274.

⁴¹ Anne Gallagher & Elaine Pearson, *Detention of Trafficked Persons in shelters. A legal and policy analysis*, 2008. See also Joint UN Commentary, *Prevent Combat Protect*, p. 38.

⁴² Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution 43/173, annex.

⁴³ See also CRC General Comment No. 6 on unaccompanied and separated children.

The detention of children in need of protection has been explicitly rejected by the Committee on the Rights of the Child:

“Such deprivation of liberty for children who have been abandoned or abused equates to punishment for children who are victims of crimes, not the offenders.”⁴⁴

Temporary, permanent and humanitarian residence permit

Victims have the right to a reflection period of 3 months. Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities. If return would compromise their life and safety trafficked persons have the right to apply for asylum or a residence permit on humanitarian grounds.

Reflection period and temporary residence permit

The reflection and recovery period allows trafficked persons to start recovering and make informed and thoughtful decisions about the options available. The reflection period is not tied to cooperation with the authorities and should not be used to compel trafficked persons to cooperate. The reflection period is equally important for national as non-national victims, whether they are trafficked within or across borders. According to the Council of Europe Convention on trafficking the reflection period should be at least 30 days when there are reasonable grounds to believe that the person is a victim of trafficking. Empirical evidence suggests that a minimum period of 90 days is necessary for the cognitive functioning and emotional strength of a trafficked person to increase to a level at which they are able to make well-considered decisions about their safety and cooperation with the authorities against the traffickers, as well as to offer detailed evidence about past events.⁴⁵

International protection⁴⁶

While not all victims are refugees, some trafficked persons may be in need of international protection. Trafficked persons may be unable to return to their home country for fear of re-victimisation or re-trafficking at the hands of the traffickers. They may also fear ostracism, stigmatisation and punishment at the hands of their family, community and sometimes the authorities. This fear may be well-founded and may amount to persecution triggering international protection under refugee law.

The obligation to provide protection, including protection against *refoulement* and the granting of refugee status or subsidiary protection is enshrined in several international and regional treaties. The Council of Europe Trafficking Convention explicitly states that trafficked person should not be returned to another State when there is a serious risk that they will be subjected to persecution, torture or other forms of ill-treatment. It also reinforces the right of trafficked persons to seek and enjoy asylum.

The UNHCR Guidelines on victims of trafficking and persons at risk of being trafficked provide guidance on the adjudication of asylum applications presented by (potential) victims of trafficking as well as procedural guidance.⁴⁷ In addition, the UNHCR *Guidance Note on Refugee Claims Relating to*

⁴⁴ Committee on the Rights of the Child, General Comment no. 10 on children’s rights in juvenile justice.

⁴⁵ Cathy Zimmermann et al., *Stolen Smiles. The physical and psychological health consequences of women and adolescents trafficked into Europe*, London School of Hygiene and Tropical Medicine, 2006, p. 3.

⁴⁶ See for a more extensive discussion: Joint UN Commentary, *Prevent Combat Protect*, p. 56-63.

⁴⁷ UNHCR, Guidelines on International Protection No.7: *The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, 7 April 2006.

*Victims of Organized Gangs*⁴⁸ clarifies that, in the absence of effective State protection, victims of gang violence – who may include victims of trafficking - may also qualify for international protection.

The Principle of non-refoulement

The principle of *non-refoulement* prohibits States from returning a person to a territory where there is a risk that his or her life or freedom would be threatened and the person would be subjected to persecution. It is enshrined in the 1951 Refugee Convention and incorporated in a range of international and regional treaties, among which the ICCPR and the 1984 Convention against Torture.⁴⁹

Although the principle of *non-refoulement* does not as such, entail a right of the individual to be granted asylum in a particular State, it does mean however, that for the removal of the individual to be lawful, States need to examine whether such removal would result in a breach of the States' *non-refoulement* obligations.⁵⁰

Repatriation & guarantees of non-repetition

Victims have the right, if they wish so, to return to their home country without unnecessary or unjustified delay and with taking care of their safety. The safety of the trafficked person and their family should be taken into account in any decision on repatriation.

Both the UN Trafficking Protocol and the Council of Europe Trafficking Convention contain the obligation to provide safe and, as far as possible, voluntary return. A critical aspect of safe repatriation is supported reintegration. Victims who are provided with assistance and support on their return are less likely to be re-trafficked and are less vulnerable to intimidation, retaliation, social isolation and stigmatization.⁵¹ Return and reintegration programmes should respect the right to privacy of the victim and take due consideration of the safety, dignity and health of the trafficked person. They should also seek to secure the safety and well-being of returned victims, enable them to find viable means of existence prevent re-victimization and reduce the risk of re-trafficking.

The right to return also implies the obligation to permit victims who wish to return to do so without undue or unreasonable delay. Detention of trafficked persons in shelters, prisons or immigration detention centres or compelling victims to remain for the duration of criminal proceedings is clearly in contradiction with this right.⁵²

Guarantees of non-repetition

An important component of the right to an adequate remedy is the guarantee of non-repetition. According to the UN Special Rapporteur on trafficking in particular guarantees of non-repetition, which include measures to prevent trafficking, constitute an important form of remedy in

⁴⁸ UNHCR, *Guidance on Refugee Claims Relating to Victims of Organized Gangs*, 2010.

⁴⁹ See UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, paras. 14-16; UNHCR, *Note on Diplomatic Assurances and International Refugee Protection*, 10 August 2006, paragraph 15; UNHCR, *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol adopted at the Ministerial Meeting of States Parties of 12–13 December 2001*, HCR/MMSP/2001/09, 16 January 2002, at preamble para. 4; and E. Lauterpacht and D. Bethlehem, "The scope and content of the principle of *non-refoulement*: Opinion", in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press, Cambridge (2003), pages 149-164.

⁵⁰ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 8.

⁵¹ OHCHR, *Commentary on the Recommended Principles*, p. 181-182.

⁵² OHCHR, *Commentary on the Recommended Principles* p. 178.

view of the risks of re-trafficking that trafficked persons may be exposed to”.⁵³ The guarantee of non-repetition encompasses the right to be protected from re-victimization by not being sent back to a place of trafficking or where traffickers operate. The UN Trafficking Protocol requires all States parties “to protect victims of trafficking [...] especially women and children, from re-victimization”.⁵⁴

The CoE Trafficking Convention requires that States do not remove a person from their territory until the identification process as victim has been concluded,⁵⁵ as the rights afforded by the Convention would be theoretical and illusory if such persons were removed before their identification as victims was completed. According to the UN Protocol and the Council of Europe Trafficking Convention, the safety of the trafficked person and their family should be taken into account in any decision on repatriation.

Risk assessment

Before returning a trafficked person a risk assessment of whether a victim of trafficking could be at risk of re-trafficking, re-victimization and/or further harm should be carried out. The purpose of a risk assessment is to assess the safety of the trafficked person upon his or her return, the perspectives of his or her social and professional inclusion and the risks of re-trafficking. When the trafficked person has children, the best interest of each child should be taken into account, and whether they will have the opportunity to go to school and to receive medical, social and other necessary care and protection.

Children

Article 16(7) of the CoE Trafficking Convention states that “child victims shall not be returned to a State, if there is an indication, following a risk and security assessment that such return would not be in the best interests of the child”. Also the Legislative Guide to the Trafficking Protocol stresses the need for special care in the repatriation of child victims:

*“In cases where child victims are involved, legislators may also wish to consider not returning those child victims unless doing so is in their best interest and, prior to the return, a suitable caregiver such as a parent, another relative, another adult caregiver, a government agency or a child-care agency in the country of origin has agreed and is able to take responsibility for the child and to provide him or her with appropriate care and protection. Relevant ... authorities ... should be responsible for establishing whether or not the repatriation of a child victim is safe and should ensure that the process takes place in a dignified manner and is in the best interest of the child... In those cases where the return is voluntary or in the best interest of the child, each State party is encouraged to ensure that the child returns to his or her home country in a speedy and safe manner”*⁵⁶

Any decision to return a child should be based on a formal Best Interests Determination.⁵⁷ Factors that should be taken into account are:

⁵³ Report of the Special Rapporteur on trafficking in persons, especially women and children, 13 April 2011 (A/HRC/17/35). Para. 41.

⁵⁴ UN Trafficking Protocol, Art. 9(1)(b).

⁵⁵ CoE Trafficking Convention, Art. 10(2).

⁵⁶ UNODC, *Legislative guide to the Trafficking Protocol*, para. 66 and 67.

⁵⁷ A Best Interest Determination (BID) describes the formal process with strict procedural safeguards designed to determine the child’s best interests for particularly important decisions affecting the child. It should facilitate adequate child participation without discrimination, involve decisions-makers with relevant areas of expertise, and balance all relevant factors in order to assess the best option. UNHCR, *Guidelines on Determining the Best Interests of the Child*, 2008, and UNHCR *Best Interests Determination Children – Protection and Care Information Sheet*, 2008.

- The safety, security and other conditions, including socio-economic conditions, awaiting the child upon return;
- The availability of care arrangements for that particular child;
- The views of the child expressed in exercise of his or her right to do so under Article 12 CRC and those of the caretakers;
- The child's level of integration in the host country and the duration of absence from the home country;
- The child's right "to preserve his or her identity, including nationality, name and family relations" (Article 8 CRC); and
- The "desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Article 20 CRC).⁵⁸

Rights of victims of trafficking in domestic law

Right to Information

Victims have the right to information about their status, their rights and the relevant judicial and administrative procedures, including information on available remedies.

In article 43 of the Anti-Trafficking Act it is mentioned that *victims of trafficking should be informed about the applicable judicial and administrative procedures*. Also the entire chapter II of Law no. 211/2004 is dedicated to the right to information for crime victims in general.

In practice, victims are informed about their rights by the institution carrying out the identification (law enforcement or prosecutor) or, as is most common, they receive this information from the National Agency against Trafficking in Persons (social assistants and psychologists) on the basis of a form they sign after the encounter, or the NGO/state assistance provider.

If the victim is identified by law enforcement authorities (specialized police structures working on trafficking related issues such as the Directorate, Brigades and Services for Combating Organized Crime, criminal investigations departments, border police, offices and services within the Directorate for the Investigation of Organized Crime and Terrorist Offences - DIOCTO), they are responsible for informing the victim about their right to legal assistance, their rights in criminal proceedings and other rights (Article 4 of Law 211/2004).

Pursuant to article 4 of Law 211/2004, judges, prosecutors and police officers must inform victims regarding:

- a) The services and the organizations that provide counselling or other forms of assistance to victims, depending on their needs;
- b) The law enforcement authority with which they can file a complaint;
- c) The right to counsel and the institution where they can go to exercise this right;
- d) The conditions and the procedure for granting free legal assistance;
- e) The procedural rights of the injured party/ civil party;

⁵⁸ Committee on the Rights of the Child, General comment No. 6, para. 84.

f) The conditions and procedure in order to benefit from the provisions concerning protection of the identification data of the witness, special modalities to listen a witness, hearing of a witness under 16 years old, protection measures for witness's domicile or residence, protection from police for the witness from his/her house to the prosecutor office or to court, as they are presented in the articles 114-130 Criminal Procedural Code and the provisions of Law no. 682/2002 on the protection of witnesses;

g) Conditions and procedure for granting financial compensation by the state.

The information must be provided to the victim in writing or verbally in a language which he/she understands. Fulfilling this mandatory obligation must be recorded in minutes which are registered within the institution where the judge, prosecutor, police officer or agent is working.

In addition, the Ministry of Justice and the Ministry of Interior, in cooperation with the Ministry of Communications and Technology of Information must secure a permanent hotline to inform victims of crime. Access to the hotline is free of charge by calling a single phone number at national level. The staff is required to notify the police if the phone call indicates that the victim is in danger (art. 5 of Law no. 211/2004). The information must also be published on the websites of the Ministry of Justice and the Ministry of Internal Affairs, courts, prosecutors' offices and police units.

In practice the national 0800 800 678 hotline, managed by the NAATIP, mainly receives calls from persons who are interested to receive general information on trafficking in Romania or who intend to migrate abroad and want to inform themselves on the associated risks.

Right to a reflection period

Victims have the right to a reflection period of 3 months.

According to the Anti-Trafficking Act (Art. 39, index 2) Romanian nationals – when there are reasons to assume they are victims of trafficking – are entitled to a recovery and reflection period of up to 90 days. The reflection period serves for their recovery, to escape from the influence of the traffickers, and to make a conscious decision about cooperation with the authorities. During the recovery and reflection period Romanian citizens are entitled to counselling, medical and social assistance, medicines, food and (upon their request) accommodation in the centers or protected homes, and should be informed about the applicable legal and administrative proceedings (Art. 39(2)).

According to the National Mechanism for the Identification and Referral of Trafficking Victims (NRM), the institution or organization carrying out the victim identification and the organization that provides assistance are responsible to inform the victim on his or her rights, including the right to a recovery and reflection period. Generally the recovery and reflection period is granted to persons about whom there are reasonable grounds to believe that they are victims of trafficking.

The reflection period may be terminated when:

- It appears that the victim restored on his/her own initiative the contact with the traffickers
- There is a danger to public order and/or national security
- The status of victim has been claimed unjustified (Art. 39(3)).

Foreigners about whom there is a reasonable cause to believe that they are victims of trafficking are equally entitled to a recovery and reflection period of up to 90 days to recover, to get out of the influence of the trafficker and to make an informed decision on cooperation with the competent authorities (Art. 39(1), index 1, Anti Trafficking Act). They should be informed in a language they understand about the right to a recovery and reflection period and to access to specialized services, including accommodation in specially arranged centers, psychological, medical and social assistance. During this period the General Inspectorate for Immigration (GII), at the request of the prosecutor or the court, grants them a 'tolerated status' in Romania. Further aspects linked to foreigners can be found in chapter 6.

Right to legal aid and representation

Victims have the right to a lawyer to protect their rights, to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for damages suffered.

According to Article 44 Anti Trafficking Act (as modified by Art. 34 f Law no. 230/2010) *"Persons mentioned in article 43 (victims of human trafficking) benefit from obligatory legal assistance in order to exercise their rights during criminal procedures according to the law, during criminal trial, and to sustain all their petitions and civil requests against those who committed the criminal offences mentioned in the law"*.

"The legal provisions from Chapter IV Law no.211/2004 on some measures to ensure the protection of crime victims, concerning free legal assistance for crime victims are applied accordingly also to victims of trafficking"

In no. 211/2004 Chapter IV article 16 it is mentioned that free legal aid will be granted if the victim informed the judicial bodies in 60 days from the moment in which the crime was committed. If the victim was in a physical or psychological inability to inform the judicial bodies, the term of 60 days will be calculated from the moment in which the inability state stopped. The petition demanding free legal aid will have to contain information such as: personal identify data; monthly income per family member of the victim; the request for a state lawyer. The petition will have to be accompanied by supporting documents. It will be addressed to the tribunal in which territorial area the victim has his / her domicile. In case in which the petition was rejected the victim has the right to demand its reexamination by the tribunal in 15 days from the moment in which the negative answer was received.

When the victim cannot afford to pay for legal assistance a state lawyer is appointed by the judge during the criminal trial upon the victims' request and proof that they cannot afford a hired lawyer. The judge will send an official notification to the legal aid services, which

are special departments inside each regional bar. If a person who does not have a lawyer in court (defendant or injured party) asks to be provided with one, the court is obliged to carry out the necessary procedures and send a request to the judicial assistance service from the bar to provide a state lawyer.

The procedure for appointing a state lawyer is laid down in Decision no. 419/2008 of the National Union of Romanian Bars. According to this decision there are two different types of assistance:

- Mandatory judicial assistance (i.e. prosecution phase and court)
- Optional extrajudicial assistance, which consists of providing consultation, writing application forms, petitions, complaints, initiate other legal proceedings and representation in front of the authorities or public institutions - other than the judicial authorities or authorities with jurisdictional responsibilities - in order to achieve legitimate rights or interests

Decision no. 419/2008 stipulates that the specialized free legal assistance services from each regional bar must be visibly displayed in a public place and published in the Bar Register of free legal assistance in order to ensure the beneficiary's right to choose his/her lawyer. Lawyers must be appointed taking into account their specialization, the complexity of the case and the income from free legal assistance that they obtained until that moment in order to ensure a proportional distribution of cases among as much lawyers as possible. The lawyers which provided extrajudicial assistance will not be the same ones to provide further legal aid in the judicial proceedings (prosecution and court phases). This is very problematic, both from the perspective of quality and continuity of legal aid, given the complexity of trafficking cases, and from the perspective of the victim. In practice victims perceive it negatively that the lawyer during the prosecution stage is replaced after that stage by another state lawyer. Taking into consideration the emotional charge of trafficking cases, victims need stability and continuity also in regard to legal assistance.

If the victim wants to change the state lawyer because is not satisfied with the quality of legal assistance provided or because the lawyer does not have a professional attitude, they can ask this according to the law, but they are rarely informed about this possibility. Even if they would ask so, they will have to justify their request.

In practice many times unfortunately the lawyer is not present during the victims' first contact with the authorities. In some cases social assistants/psychologists from social welfare institutions or NGOs can provide basic legal counselling and psychological support to trafficked persons, before their encounter with law enforcement. Legal counselling and assistance can be provided also by NGOs through their associate lawyers.

Right not to cooperate with law enforcement

Victims have the right to refuse cooperation with the prosecution authorities.

Victims can refuse to cooperate with judicial authorities and continue to receive protection and assistance services from NGOs. According with the legal provisions from the Anti-Trafficking Act by victim of trafficking it is understood the physical person, the passive subject of the offence, irrespective he / she participates or not in the penal trial as injured party.

Possible victims will be registered in the national victims' database anonymously (on criteria such as age/ gender/ area of origin/ exploitation types). If they do not cooperate they will not benefit from state protection and state assistance services for trafficked persons. However, they can benefit from assistance and protection services delivered by NGOs.

The national victims' database is a securitized tool used for prevention and research purposes only. Only two representatives of the NAATP have access and can edit the full data. The victim is asked permission for registering their personal data in the database and they also have the right to refuse to provide their names. In this case, the remaining demographic data will be processed.

Right to protection of privacy and safety

Victims have the right to protection of their private life and identity. They have the right to request that their life and identity are protected during criminal proceedings and that the press and public are excluded from the court room. Victims have the right to protection of their safety. The police should examine whether the safety and security of the victim is ensured.

There are various special provisions to protect the privacy and safety of victims before, during and after the criminal proceedings, including:

- Hearing of the victim behind closed doors
- Hearing of the victim without the presence of the suspect(s)
- Hearing of the victim through video or audio link
- Exclusion of the public from the trial
- Exclusion of the media from the trial
- Keeping the address of the victim secret
- Keeping the identity of the victim secret

Other available measures are: police escort to hearings, the trial; separate waiting rooms for the victim(s) and the suspect(s); a special telephone number of the police that victims can call in case of threats; protection measures for organizations and professionals providing assistance to trafficked victims; in the case of female victims their declaration can be taken by women officers.

According with *Criminal Procedural Code article 352 Publicity of court session*:

(1) Court session is public, with the exception of cases stipulated by the law. The session that take place in the council chamber is not public.

(2) During a court session are not allowed to assist minors under 18 years with the exception of those being parties or witnesses and also armed persons with the exception of the personnel ensuring protection and order in court.

(3) If a trial in public session would harm the state interests, dignity, private life of a person, the interests of minors or justice, the court at the request of prosecutor, of parties or ex officio, will declare the session or part of it a non-public one.

(4) Court can also declare by officio non-public session at the request of a witness if the audience in a public session would harm the safety, dignity, private life of the witness or his /her family and also at the request of the prosecutor, injured party or

other parties if a public hearing would endanger the confidentiality of certain information.

During a non-public session the court will accept only the presence of defendants, injured parties, their representatives, lawyers, prosecutor. During a trial the court can prohibit the publication and dissemination by written or audiovisual means, texts, drawings, pictures or images of nature to reveal identity the identity of the injured party, civil party, civil responsible party or witnesses.

In practice the court will declare non-public session in cases in which as injured parties or witnesses are minors; for example crimes related to trafficking in minors (article 211 Criminal Code) or child pornography (article 374 Criminal Code).

Right to witness protection and to be treated with respect and dignity

If victims testify in criminal proceedings, they have the right to witness protection and to be treated with respect and dignity. They have the right to be protected from threats, insults, intimidation and any other assault before, during and after the investigation and prosecution.

According to the Romanian Criminal Procedural Code, the injured party will be subjected to a hearing and the witness (including witnesses with a secret or protected identity) will have to testify in court. A person cannot have two legal qualities in the same time (injured party and witness). However, during the trial, according to existing evidence, the judge may change the legal quality of a person.

A trafficking victim that has the legal quality of injured party is entitled to protection measures, to compensation and to civil damages. Witnesses can neither apply for financial compensation from the state (through the provisions of Law 211/2004), nor can they request remedies in the civil action.

Victims who do not cooperate with law enforcement, prosecutor and who do not appear in court are not formally recognized as injured parties and are not entitled to any kind of compensation or redress.

Witness Protection Program & Protection of Identity

According to the Anti-Trafficking Act

“Victims of human trafficking when providing to the law enforcement or to court relevant information for the identification and prosecution of the offenders can be included in the Witness Protection Program.

According to Criminal Procedural Code Article 125 (1), if there is a reasonable suspicion that the life, physical integrity, freedom, assets or professional activity of the witness or of his / her family members will be in danger as results of the information provided to the judicial body or of his / her declarations, the competent judicial body will grant to this person the witness threatened status and will apply one of the measures mentioned in articles 126 and 127 CPC.

Article 126 Protection measures ordered during the criminal investigation

They are disposed by the prosecutor during criminal investigation and by judge during trial phase and may consist in:

1. Surveillance and security of witness home or ensuring a temporary housing.
2. Escorting and ensuring the protection of the witness or of family members during trips.

3. Identity data protection, by giving a pseudonym with which the witness will sign his / her declaration.
4. Hearing the witness through audio-video means with distorted image and voice.
5. Closed session during the hearing.

In the case of measures mentioned at point 3 and 4 the witness declaration will not contain his real address and identity data, they will be kept in a special register to which will have access only the judicial bodies, prosecutor, judge.

The prosecutor, judge will dispose these protection measures by officio or at the request of the witness or one of the parties.

During the trial the witness declaration will have to be corroborated with other facts and circumstances arising from all the evidence in question.

In article 130 Criminal Procedural Code there are several legal provisions concerning the *Vulnerable Witness*. The prosecutor or court may decide to grant this status to the following categories of persons:

- the witness which suffered a trauma as result of the crime or as result of the subsequent conduct of the suspect or defendant.
- minor witness.

The measures mentioned in article 126 and 127 can be applied accordingly.

In Law no.682/2002 is laid down the **Witness Protection Program** and its regime. The program applies to persons in one of the following situations:

1. He or she is a witness according to the Code of Criminal Procedure, and his/her statements provide information and data crucial for finding the truth about a serious crime or contributing to the prevention or recovery of a major damage that could be caused by committing such crimes;
2. He or she has no procedural quality in the case, and is providing information and crucial data used for uncovering the truth in cases of serious crimes or to prevent major damage that could be caused by the commission of such crimes or their recovery (this category may also include a person who is a defendant in another case);
3. He or she is executing a custodial sentence and the information and the data provided contribute to the uncovering of the truth in cases of serious crimes or to prevent recovery or major damage that could be caused by committing such crimes.

To include a person in the program the following conditions must be met:

- a) The person is a witness in the sense explained above, a family member of the protected witness, husband or wife, his/her parents or children, or a person close to the protected witness who is bound by strong emotional ties;
- b) The person is in a state of danger, meaning his/her life, physical integrity or liberty are threatened as a result of the information and data provided or agreed to provide to the judicial authorities or of his/her statements;
- c) There is a reasoned proposal from the competent bodies.

The request is made by the criminal investigation body during the criminal prosecution phase, or by the prosecutor during trial through a reasoned proposal. A person becomes a protected witness when signing the Protection Protocol.

The procedure for admission to the witness protection program requires one of the following actions:

- a) during the criminal proceedings phase: the case officer or the prosecutor prepares a motivated request to the National Office for Witness Protection, which clearly explains the high risk in which the person is found;
- b) at any point in the trial: the judge or court files a motivated request to the National Office for Witness Protection.

The Victim/Witness Coordination in the Penal Trial Programme

A multidisciplinary and inter-institutional approach between state institutions, authorities and assistance providers contributes to ensure/enforce adequate victim protection and guarantees increased access to their legal rights. Within the “National Program on Victim-Witness Coordination in the Penal Trial” the following actors have coordinated their efforts (with the support of the US Embassy in Bucharest): the National Agency against Trafficking in Persons, the General Inspectorate of Romanian Police, the General Inspectorate of Border Police, the General Inspectorate of Romanian Gendarmerie and the Directorate for Investigating Organized Crime and Terrorism. The program started in 2006 and is still being implemented.

The objectives of the program are:

- To increase the number of trafficking victims who plead as injured parties or witnesses in the penal trial.
- To increase victims’ participation in the criminal proceedings and penal trial.
- To respect and grant victims’ rights during criminal proceedings and trial.
- To increase the knowledge of the victim of the applicable judicial and administrative procedures.
- To facilitate victims’ access to and relation with criminal investigation authorities and assistance providers.

Elements of the program include maintaining permanent contact with trafficking victims; providing them with information on their rights and the services they can access for specialized assistance; updating victims on issues related to the progress of the criminal proceedings; informing and preparing victims in regard to issues they may face during trial.

The assistance provided to victims within this program can be detailed as follows:

During criminal investigation and prosecution:

- The judicial investigators request the presence of inspectors of the NAATIP Regional Centers during the hearing of the victim. The NAATIP inspectors are social assistants and psychologists experienced in providing victim accompaniment and support in the different stages of criminal proceedings. Wherever possible, social assistants and psychologists from NGOs can also prepare the victim and accompany him or her during criminal proceedings. In this stage victims receive information on the roles of each professional in the team (prosecutor; police officer; psychologist), on the rights they are entitled to and the services they can benefit from. The NAATIP inspector (programme coordinators are psychologists or social assistants) conducts the initial needs’ assessment and provides basic information. Victims are further on referred to specialized assistance providers.
- The programme coordinator (NAATIP) facilitates the updating of the victim on the progress of the criminal proceedings and the need for the victim to provide additional information to law enforcement by maintaining contact with the police officer investigating the case.
- They further inform the case officer on security issues and collaborate to take the necessary protection measures.

- Whenever the case, the NAATIP inspector/program coordinator is in charge with the logistic assistance, i.e. organizing the victims' transportation or travel to the law enforcement authorities.

During trial:

- Victims are informed on the start of the trial phase as well as on the need to be heard in front of the court. The responsible institutions coordinate the handing over of the summons to the victim.
- Victims are accompanied to the court premises before the actual court session to get acquainted with the environment and the court room. Victims are explained how the trial develops, as well as about the role of the diverse parties present at the trial.
- Victims are ensured protection measures during the trial through collaboration with the Gendarmerie.
- Victims are accompanied by the NAATIP inspector/case coordinator throughout the entire duration of the trial
- Victims are ensured legal assistance from lawyers.
- Victims are informed on the rights they are entitled to during the trial phase, i.e. legal assistance, psychological assistance, the right to plead as civil party.

After the trial:

- The victim will be kept informed and monitored also after completion of the trial as long as long as there are security risks for them and their families.

Right to protection of physical integrity

Victims have the right to protection of their physical integrity

Medical assistance provided to victims of trafficking must be in accordance with the general provisions on healthcare (Art. 27(1) Anti Trafficking Act). Any medical procedure can only be carried out after the informed consent of the person concerned (Law no. 95/2006). The legal age of informed consent is 18. If there is a potential risk to the patient the patient's written consent is required (Art. 649).

Except in the cases of force majeure, emergency or when the patient or his/her legal representatives are unable to express their will and consent, the physician should act in compliance with the patient's will and his/her right to refuse or to stop the medical intervention (Art. 376).

These provisions also apply to medical examination of victims of trafficking. They are reflected in the relevant medical protocols and are applied in practice.

Article 189 CPC *Forensic examination of the person* in view of finding traces and consequences of a crime will be made accordingly with the law. The expert report or the medical certificate issues by the doctor will contain description of the traumatic injuries, the way in which they were caused and the date, the consequences produced by the injuries.

The judicial body is responsible to inform the victim on forehand that the defendant will have access to the (medical) information that will be included in the file. The defendant has access to the file, including forensic reports, after completion of the prosecution phase and also in court. The defendant can study the file personally or through his/her lawyer.

Usually it is the prosecutor who requests medical legal expertise. Victims of trafficking are informed of the procedure, asked for their consent and accompanied to the examination by the competent case officers, police officers of the specialized organized crime units. When the victim is included in an assistance program, the case officer should inform the case manager of the assistance provider, either an NGO or state institution. In court procedures the judge has the right to approve forensic expertise.

Non-prosecution and non-punishment of trafficked persons

Victims of trafficking should not be charged or prosecuted for prostitution or other illegal acts they were compelled to commit.

According to article 20 of the Anti-Trafficking Act, victims of trafficking cannot be punished for crimes committed as a result of their being trafficked:

"a person subject to trafficking, who committed - as a result of his/her exploitation - the crime of prostitution, begging, illegal immigration or unlawful cross border of a state or donation of organs or tissues or cells of human origin (...) shall not be punished for these crimes".

According to the data from the National Agency against Trafficking in Persons there were no cases of victims accused in the last years. According to NGO data, in the past 3 years there have been no victims investigated for crimes which they had committed while in exploitation. However, if a prostitute would be trafficked she will not be considered a victim of human trafficking and will be prosecuted and punished for prostitution.

Non-detention of trafficked persons

Trafficked persons should not be detained or held in closed shelters or other welfare centers.

According to the law victims of trafficking are not kept in closed shelters. An adult can be kept in a closed center only if he/she has mental problems, a physical handicap or is considered a danger for society.

In practice, however, closed or semi-closed shelters do exist. In fact the State social services promote this institutionalized approach for certain categories of clients (e.g. neglected/abused/exploited children, persons with disabilities, persons with mental health problems). People live here in large shelters, often in quite remote areas with few options for activities, and cannot go out unless accompanied.

Minors are provided assistance in special centers where security measures are taken to protect them, for example: they can only go outside/ to school accompanied; visits of their parents happen in special locations; they have group activities to keep them busy; and they have security and protection staff and 24 hours personnel.

Child victims of trafficking, when not assisted by their families, receive assistance and protection in NGO and state shelters. There are very few shelters specialized in the assistance of child victims of trafficking and they have few places. The remaining child victims receive assistance in center for unaccompanied, abused, or neglected children run by the General Directorate of Social Assistance and Child Protection

The National Specific Standards on specialized assistance for victims of trafficking do not clearly state special provisions for child victims. However, they reinforce the need to ensure security measures in residential centers/shelters for victims of trafficking, adults or

minors, such as: having video surveillance over the building/apartment and settling a protocol between the center and the police or a security company to ensure fast intervention in emergency cases.

Repatriation and guarantees of non-repetition

According to the law, the repatriation of trafficking victims should not be delayed unless there are objective reasons. It has happened several times that repatriation of Romanian (presumed) victims was delayed due to law enforcement requiring the victims' presence for further procedures. In one case of a Romanian minor victim, repatriation was denied without prior family assessment and risk assessment, as it was considered a priori that the family was inappropriate to raise the girl.

The Ministry of Foreign Affairs is responsible for the repatriation of Romanian citizens who have become victims of trafficking. The diplomatic missions and consular offices in the country of destination must issue identity documents in a reasonable time. Within each diplomatic mission or consular office a designated diplomat is responsible for the repatriation of the Romanian victims of trafficking. The Ministry of Interior is responsible to refer victims on their arrival to the specialized institutions concerned (Art. 28-31 Anti Trafficking Act).

The National Identification and Referral Mechanism contains provisions on the repatriation of Romanian trafficking victims, the referral process and the collaboration between the National Agency, special police agencies, the General Inspectorate for Immigration and other relevant authorities.

Repatriation of Romanian victims

Repatriation of victims can be carried out with the help of the International Organization for Migration and its missions, as well as within the voluntary return program with the assistance of NGOs, diplomatic missions or consular offices or representatives of both recipient states and states of origin and the child protection authorities when the victim is a minor.

If the victim returns with the help of IOM, the Romanian IOM mission receives the victim at the national border and, providing that the victim consents to be accommodated in a shelter for a shorter or longer period of time and is willing to participate in assistance programs, will refer her or him to specialized support services. In the framework of the IOM return and reintegration program, victims are entitled to pocket money and an individual reintegration budget. In order for the reintegration budget to be granted, a needs assessment is conducted at the beginning of the assistance program.

When the victim is identified by an NGO from the destination country, the NGO representative from Romania will meet the victim at the border or at the place agreed upon with the referring partner. If the victim agrees, he or she can be included in the assistance program of the NGO or another organization. Before the return the two organizations will communicate in order to provide support and information to the victim by telephone; obtain data on the victims' whereabouts and family in Romania; mediate between the victim and

her/his family and update them on the steps undertaken in the destination country; mediate between the victim and the shelter; assess her or his medium term assistance needs; identify and assess reintegration options (either in the country of origin or in destination); evaluate the risks attached to voluntary assisted return; and to prepare the victim's cooperation with the relevant institutions for social assistance in Romania (ANITP-anti-trafficking coordinator, DGASPC-state social services, local authorities).

If the victim is identified by a diplomatic mission or consular office abroad, the mission will issue, upon request, the necessary travel documents and notify, within at least five days in advance, the NAATIP and the border police about the return of the victim/victims in view of their taking over the victim at the national border. When the victim needs and applies for pre-return assistance, the Romanian diplomatic or consular mission shall contact and refer them to service providers in the host country. The Romanian liaison officer will transfer the information relating to the victim to the national competent authorities.

Repatriation of foreign victims

Romania facilitates the repatriation of foreign victims up to the border of the Romanian state, unless otherwise provided in bilateral agreements. If foreign victims of trafficking do not possess identity documents or if these were lost, stolen or destroyed, the Ministry of Interior may request the embassy of the country concerned to issue a new passport or travel document. The legal provisions on the repatriation of foreign citizens are stipulated in the Anti -Trafficking Act (Art. 37 and 39) in addition to the general legislation on foreigners as laid down in GEO no. 194/2002.

Children

Specific provisions on the repatriation of unaccompanied Romanian children are laid down in Decision no. 1443/2004 on the repatriation of Romanian children. The diplomatic missions or consular offices abroad are responsible for transmitting the information received from the foreign authorities in order to identify the child and his/her family. As soon as they receive information on child victims they should request the competent local authorities to identify the child in question and provide the information necessary for its repatriation. When the child does not have a passport or other identity document, the General Directorate of Passports should ensure his/her identification and communicate the approval for issuing travel documents to the diplomatic mission or to the consular office within 3 working days from receipt of the request.

If the family or legal representative does not consent with the return of the child or is not found the General Directorate for Passports must inform the National Authority for Child Protection (which informs the General Directorate for Social Assistance and Child Protection) about the last known address of the parents or, if applicable, the legal representative of the child. The latter is obliged, within 7 days, to give his/her consent on the return of the child, ensuring, as appropriate, measures to protect it. The National Authority for Child Protection shall ask the General Directorate for Social Assistance and Child Protection for a social investigation and the preparation of an individual plan for the social reintegration of the child.

The deadline for the preparation of the social investigation should not exceed 20 days from the time of its application.

After issuing the travel documents and obtaining the transport document, the Romanian diplomatic missions and the consular offices communicate - through the Ministry of Foreign Affairs, the Authority and the General Inspectorate of the Border Police - the child's full name, number and series of his/her travel documents, the means of transportation, the border point through which he/she is to enter in the country, the date and time of arrival at the Romanian border crossing point, and, if applicable, the identification data of the person who accompanies the child.

To ensure the receipt, representation and accompaniments of the repatriated child, if his/her family is not present at the point of border crossing, the General Directorate for Social Assistance and Child Protection from the child's domicile shall designate a person to see him/her to his/her home or to any specialized center for receiving children in the county of residence of the child or, if this is not known, to the county of the border crossing point.

The General Directorate for Social Assistance and Child Protection is responsible for monitoring the situation of repatriated children for a period of at least 6 months after their repatriation; it shall ensure reports every two months that shall be transmitted to the Authority. The transportation expenses up to the border crossing point shall be incurred in accordance with the readmission agreements or with other agreements concluded by Romania with the other state. If there are no agreements or understandings concluded between Romania and the other country, these costs are incurred by the budget of the Ministry of Foreign Affairs.

Right to Compensation

Trafficked persons have a right to adequate and effective remedies. This includes the right to compensation for damages suffered.

The right to compensation is an important element of access to justice for trafficked persons. Victims of trafficking generally have suffered serious damages, both material damages (earnings they were forced to give to the trafficker, unpaid wages, medical costs, costs of relocation, loss of future earnings, costs of damage to property etc.) and immaterial or moral damages (psychological and emotional suffering and injury, loss of reputation, pain and suffering, loss of society and companionship).

The UN Trafficking Protocol and its parent convention oblige State Parties to establish appropriate procedures to provide access to compensation and restitution. In addition, the CoE Trafficking Convention contains a provision on State compensation, for example through the establishment of a Victim Fund.

Law 211/2004 on Financial compensation from the State for the victims of certain offences

Art.21 – (1) Financial compensation shall be granted, upon request, to the following categories of victims:

- a) persons against whom was committed an attempt to the offence of murder, first degree murder or particularly serious murder
- b) an offence of serious bodily harm
- c) an intentional offence that resulted in serious bodily harm to the victim,
- d) an offence of rape,
- e) sexual intercourse with a minor and sexual perversion ;
- f) the spouse, children and dependants of persons deceased following the commission of offences of murder, first degree murder and particularly serious or of intentional offences that resulted in the person's death.

(2) Financial compensation shall be granted to the victims in para.(1), if the offence was committed on Romanian territory and the victim is a Romanian or foreign citizen who legally inhabits Romania.

(3) Financial compensation shall be granted to the victims in para.(1) based on international conventions to which Romania is a party, if the offence was committed in Romanian territory and the victim is a foreigner who does not inhabit Romania.

Art.27 – (1) Financial compensation shall be granted to victims for the following categories of prejudice suffered following the commission of the offence:

a) for the victims in Art.21 para.(1) a):

1. hospitalisation costs and other categories of medical expenses incurred by the victim;
2. material prejudice resulting from the dispossession, destruction, damaging or rendering unfit for use of the victim's assets by commission of the offence;
3. earnings that the victim is deprived of by the commission of the offence;

b) for the victims in Art.21 para.(1) b):

1. expenses for the funeral;
2. the support of which the victim is deprived by the commission of the offence.

(2) Financial compensation for the material prejudice shall be granted while not exceeding the equivalent of **10 national minimum basic gross** salaries established for the year in which the victim lodged the application for financial compensation.

(3) The amount of money paid by the perpetrator as civil damages and the indemnity received by the victim from an insurance company for the prejudice caused by commission of the offence shall be deducted from the amount of financial compensation granted to the victim by the State.

The Criminal Procedure Code

The civil action

Purpose and use of a civil action

Art.19 - (1) A civil action initiated in criminal proceedings seeks to establish the civil liability in tort of the persons liable under the civil law for damages caused by having committed an act that is the subject matter of criminal action.

(2) A civil action is used by a victim or by their successors, who become a civil party against the defendant and, as applicable, against the party with civil liability.

(3) When a victim lacks mental competence or has a limited mental competence, a civil action shall be initiated on their behalf by their legal representative or, as applicable, by the prosecutor, under the terms of Art. 20 par. (1) and (2), and pursues, depending on the interests of the person whose behalf this is initiated, to hold the responsible persons person with civil liability in tort.

(4) A civil action is settled within the criminal proceedings, if this does not lead to exceeding the reasonable duration of the trial.

(5) Material and moral damages shall be remedied according to the stipulations of civil law.

Material reparation is ensured:

a) in nature, by restitution of the object/situation previous to the offence, by total/partial annulment of a writing or any other means of reparation;

b) by payment of a financial damage, if the situation in which the in nature reparation is not possible

Damage is also ensured for the use of which the civil party had been deprived of (e.g. lost wage/opportunity).

The reparation of moral damage is conducted as follows:

a) by payment of a financial reparation;

b) by disposing of measures necessary to remove the damage brought to the right.

Bringing civil action in criminal proceedings

Art.20 - (1) Civil action can be introduced in criminal proceedings by the moment of commencement of judicial examination. Judicial bodies are under an obligation to inform victims on the existence of such right.

(2) Civil action may be introduced in criminal proceedings in writing or verbally, by indicating the nature and scope of claims, and the reasons and evidence on which this is based.

(3) In the event that civil action is introduced in criminal proceedings verbally, judicial bodies are under an obligation to record this in a report or, as applicable, in the hearing report.

(4) In the event that any of the requirements set by par. (1) and (2) are not met, a victim or its successors may no longer become a civil party in criminal proceedings; however, they may file such action with a civil court.

(5) Until completion of judicial examination, a civil party may:

a) correct clerical errors contained in the application to become a civil party in criminal proceedings;

b) increase or decrease the scope of claims;

c) request remedy of material damages through the payment of a monetary compensation, if an in-kind remedy is no longer possible.

(6) In the event that a large number of persons, who do not have contrary interests, become civil parties in criminal proceedings, these may appoint a person to represent their interests within the criminal proceedings. If civil parties did not appoint a joint representative, for the proper conducting of criminal proceedings, the prosecutor or the court may appoint, through an order or through a reasoned court resolution, a court-appointed counsel to represent their interests. Such court resolution or order shall be communicated to the civil parties, who have to inform the prosecutor or the court if they refuse to be represented by such counsel appointed by the court. All process acts communicated to the representative or of which such representative took knowledge are presumed to be known by the represented persons.

(7) If a right related to the remedy of damages was transmitted conventionally to other persons, such persons may no longer initiate a civil action in criminal proceedings. If such right is transmitted after the person in question became a civil party in criminal proceedings, a civil action may be disjoined.

(8) A civil action seeking to hold person with civil liability both the defendant and the party with civil liability, filed with a criminal or civil court, is exempted from judicial stamp fees.

Settlement of a civil action in criminal proceedings

Art.25 - (1) The court shall decide both on the criminal action and on the civil action through the same judgment.

(2) When a civil action seeks remedy of material damages through the restitution of a specific object, and such restitution is possible, the court shall order that the relevant object be returned to the civil party.

(3) The court, even if a party did not become a civil party in criminal proceedings, shall decide on the entire or partial nullification of a deed or on restoring the status prior to the committed offense.

(5) In case of acquittal of a defendant or of termination of criminal proceedings, under Art. 16 par. (1) lett. b), first indent, lett. e), f), g), i) and j), as well as in the situation set by Art.486 par. (2), the court shall leave the civil action unsettled.

(6) The court shall leave the civil action unsettled also in a situation where the heirs or, as applicable, successors in title or liquidators of a civil party do not explicit their option to continue the civil action or, as applicable, the civil party fails to indicate the heirs, successors in title or liquidators of the party with civil liability within the term set by Art. 24 par. (1) and (2).

Disjoinder of a civil action

Art.26 - (1) The court may order disjoinder of a civil action when its settlement leads to exceeding the reasonable term for the settlement of the criminal action. The settlement of the civil action shall remain under the competence of jurisdiction of the criminal court.

Circumstances in which civil action are settled by civil courts

Art.27 - (1) If it does not become a civil party in criminal proceeding, a victim or its successors may file an action for the remedy of damages caused by an offense with a civil court.

(2) A victim or its successors who became civil parties in criminal proceedings may file an action with a civil court if, through a final sentence, the criminal court left the civil action unsettled. Evidence produced during the course of criminal proceedings may be used before that civil court.

(3) A victim or its successors who became civil parties in criminal proceedings may file action with a civil court if the criminal trial was suspended. If criminal proceedings are resumed, the action filed with the civil court shall be suspended under the terms specified by par. (7).

(4) A victim or its successors who initiated an action before a civil court may leave this court and address the criminal investigation body, the judge or the court, if the criminal action was initiated subsequently or if criminal proceedings were resumed following suspension. A civil court may not be abandoned if it rendered a court decision, even a non-final one.

(5) In the event that civil action was initiated by the prosecutor, if from the evidence it results that damages were not fully covered through the final sentence of the criminal court, the difference may be claimed through action filed with a civil court.

(6) A victim or its successors may file an action with a civil court for the remedy of damages resulted or discovered after they became a civil party in criminal proceedings.

(7) In the situation specified by par. (1), the trial before the civil court shall be suspended after the initiation of criminal action and until settlement of the criminal case by the court of first instance, but no longer than a year.

The Romanian law foresees two types of redress available to victims of trafficking in persons:

- a) the Compensation for victims of violent crimes (stated in Law 211/2004), granted at the end of the criminal trial, by the Compensation Board, under the Ministry of Justice;
- b) the material and immaterial redress resulting from the civil action in the criminal trial or following the criminal trial, according to the estimated value of the damage.

Claiming financial remedies for material and immaterial damages in the civil action

Financial remedies (for material and moral damage) can also be claimed by victims (injured parties) in the civil action, either started within the criminal trial or following it, as a separate trial, according to the Civil Law. The civil action refers to holding the perpetrator and civil responsible party liable from a civil point of view, for the prejudice produced to the injured party on the commission of the crime.

The civil action may be requested either by the injured party herself or its successors against the perpetrator or civil responsible party. The Prosecutor will start the civil action if the victim has restrained capacity of exercise. The injured party participating in a civil action (trial) becomes a civil party. It should be noted that only persons having the legal quality of injured parties and their successors (family members) are entitled to participate as civil parties.

Civil actions started during the criminal trial are solved upon the end of the criminal trial, on the condition it does not exceed its duration.

Pleading as civil party

According to the updated Civil Law, a person who got victimized on the commission of the offence has to decide in the phase of case investigation whether she will plead as civil party or not. In practice in the investigation phase, the law enforcement officers or Prosecutor assess together with the victim the value of the prejudice produced and settle a quota that will be mentioned in a record. According to the procedure, the decision for pleading as civil party may be done both orally and in writing, by indicating: The nature of the claims; the estimated value of the prejudice; the reasons for requesting the reparation; evidence/ proofs to support the claim.

Until the resolution of the trial, civil parties are entitled to: Correct any material error occurred in the request to plead as civil party. Lower or increase the value of the claims. Demand that reparation be done by financial payment instead of restitution in nature, whenever the latter is no longer possible

The civil action within the criminal trial

In case the criminal court decides sentencing the perpetrator, it will also decide in the resolution of the civil action. If the court decides the acquittal of the suspect, it will leave open the civil action. If the material prejudice can be repaired by the restitution of the victim's property and that is possible, the court proceeds in ordering restitution. Even if no injured person pleaded as civil party, the court may impose for the annulment of any of the measures depriving the victim of her rights, to ensure reparation. In cases in which interests of third parties may be harmed, the disjunction of the civil action may be requested by the court. The disjunction of the civil action can be requested by the judge – ex officio, the prosecutor and parties – by request submitted to the court. The same proofs/information will be used at the new court judging the case, unless disposed differently by the court.

The civil action within the civil court

If the injured party/successors have not pleaded as civil parties in the criminal trial, they may lodge a request to start a civil action at the civil court. Other situations in which they may also start a civil action are:

- if the criminal court has left unsolved the civil action, by definitive decision, within the criminal trial;
- if the criminal trial was suspended; in case it will restart, the civil action filed at the civil court will be annulled;
- a new civil action may be requested if the prejudice was discovered or generated after pleading as civil party
- if the civil action was requested by the prosecutor, and upon the reparation decided by the criminal court, it is noted that the reparation was not covered in full. In this case, the injured party/successors may start a new civil action for the reparation of remaining prejudices.

The injured party/its successors may leave the civil court and address to the judge, prosecutor or law enforcement authority if the start of the criminal case followed the start of the civil action or if the criminal trial has restarted after a suspension.

The resolution of the civil action

The resolution of the civil action is ensured by definitive court decision. Reparation for the civil party is done by imposing "precautionary measures" such as freezing, seizing and valuing the goods, properties, assets belonging to perpetrators, which were either used at the commission of the crime or have been purchased as a result of committing the crime. If during the investigation and prosecution phase precautionary measures have not been requested, the court may impose such measures during the trial. Precautionary measures are maintained even if the criminal court leaves the civil action unsolved, but will be annulled if the injured person does not lodge a civil action request to the civil court within 30 days from the communication of the definitive court decision.

Precautionary measures

- The following categories of professionals may request precautionary measures, either by order or by motivated conclusion: prosecutor (during the prosecution phase), the preliminary court judge, the court judge.
- Precautionary measures are implemented to avoid the hiding, alienation, destruction of the goods/properties/assets making the object of (special or extended) confiscation. The confiscation of such goods serves the purpose guaranteeing the sentence, covering the judiciary expenses of redressing the victim.
- Precautionary measures consist in rendering goods/properties/assets unavailable (blocking access) by seizing them.
- **Special/extended confiscation measures** refer to blocking access not only to goods/properties and assets detained by the perpetrator but also by his family.
- Following the confiscation of goods/properties/assets, these are given a financial value. This is meant to cover the abovementioned expenses and the remaining savings go to the state budget, **unless the civil party/successors or their lawyer demand reparation.**
- The imposing of precautionary measures is obligatory if the injured person has no exercise capacity or has restrained exercise capacity.
- According to the law, goods belonging to an authority or public institution cannot be confiscated.

Distribution of payment of judiciary expenses

- If the court decides to cancel criminal pursuit or the sentence or the postponement of the sentence, the perpetrator has to pay the judiciary expenses for the injured party and civil party if the civil action was approved;
- If the civil action is only partially approved, the perpetrator may either pay entirely or partially the judiciary expenses, upon court decision;
- In case of acquittal the injured party/civil party will pay the judicial expenses for the suspect if the expenses have been generated by the injured person or civil party.

The expert evaluating the goods

The judicial authority (law enforcement or prosecutor) who applies the precautionary measure has the obligation to both identify and evaluate the financial value of the goods/properties/assets to be seized. In order to achieve this, the authority may also use an expert. The frozen and seized goods may be left to the owner with a seal banning their use (e.g. cars, properties), may be entrusted to a keeper (custodian). The following goods are by obligation taken away from the perpetrator or suspect: jewels and precious metals; foreign currency; art objects, collections, similar values; money resulting from selling of valuable objects; objects other than those destined for home and personal use. The seizing of goods is concluded through a record listing and describing the objects and their financial value.

As mentioned above, the authority implementing the precautionary measure may appeal to an expert to financially evaluate the goods. Additional to the experts, there are the judicial executors, who are organized in offices with county jurisdiction under the Ministry of Justice. They work to recuperate/redirect seized goods to persons entitled to receive remedies in the civil action, irrespective of their gender, ethnicity, language or social origin. This process is called coerced

execution and can only be initiated upon final court decision. According to the specific law regulating the judicial executors' profession (Law 188/2000), their work attributions are:

- To execute the dispositions of the civil actions, as provided in the court decision;
- To notify judiciary and extra-judiciary actions
- To communicate procedures;
- To amicably recuperate goods/properties/assets/money
- To apply the ensuring measures the disposed by the court
- To follow the Civil Procedure Code
- To conclude the documents assigned to the judicial execution procedures

Claiming compensation in trans-national cases

Order no. 1319/2008 contains provisions to enforce the procedure of obtaining financial compensation for victims of violent crimes occurred in trans-national contexts, as stated in Law 211/2004 on ensuring certain protection measures for victims of crimes. Relevant legal provisions can be found also in the Government Emergency Ordinance 113/2007 to complete and modify Law 211/2004 (*Completions related to obtaining financial compensation in the situation in which the offence was committed on the territory of another EU member state, on which the victim has no legal residence*).

CHAPTER IV

HEALTH AND PSYCHOLOGICAL EFFECTS OF TRAFFICKING

Physical and psychological health consequences

Reduced to the scale of the individual/group surviving it, trafficking in persons, becomes an issue of damage at the levels of physical, emotional and economic wellbeing. While in exploitation, victims are repeatedly subjected to degrading treatments, acts of violence, utter deprivations of basic needs (sleep, food, and rest), this of course impacting on long term on their state of physical and emotional health and also altering their perceptions over the self, body and needs. In brief the exploitation activates two experiences: 1) that of being objectified and no longer allowed to voluntarily use the body and the self; 2) that of an inequitable rapport of power in which the victim has no real opportunity of reversing positions to improve their condition.

Before considering empowering trafficked persons to denounce exploitation and actively involve in judicial procedures, professionals may consider the impact trafficking has on its victims and may act to ensure that the timing chosen to decide involving in these procedures belongs to victims and act to safeguard them at all times. It should be mentioned that no protection or assistance measure must be conditioned upon victims' positive decision to collaborate with judicial authorities. Victims' (initial) negative response to law enforcement should by no means be regarded as a sign that they are not "authentic" victims.

Physical Impact

There are two considerations with regard to the impact of exploitation on victims' physical wellbeing: a) suffering from medical conditions as a direct result of the bad treatments during the trafficking period; b) medical conditions which can be partially explained by the exploitation but have a strong psychosomatic component. According to "Stolen Smiles" research, immediately following a trafficking experience most women are burdened with numerous and concurrent physical and mental health problems. Symptoms victims mention are often intense and resist treatment. When investigated, they cannot be completely explained as do not always have a clear physiological basis. The tendency to somatise should be regarded as a characteristic of victim reality but should be considered with seriousness as psychosomatic symptoms tend to become permanent and organically affect the concerned body part.

Generally speaking somatisation can be understood as the expression of an utter psychological distress through physical pain, usually sensed at the level of the body parts considered to have been harmed. "Violence and physical harm are hallmarks of trafficking in women, and it is vital that symptoms that appear to be stress-related are not misread and assumed to have solely a psychological cause. Women's physical health complaints should be thoroughly and repeatedly investigated to determine the actual cause. Moreover, it is important to recognise that the absence of a diagnosable cause, such as infection or injury, does not reduce the severity or significance of any given symptom or impact they have on a woman's quality of life".

Furthermore, the research lists the main types of physical symptoms, as they were mentioned by interviewed victims (the results are similar to those above):

Cardiovascular symptoms - chest and/or heart pain, persistent over time. Heart palpitations and shortness of breath are often in connection with acute anxiety and/or panic attacks.

Musculoskeletal symptoms - Back pain is common among women who have been sexually abused or physically assaulted by an intimate partner, and has been associated with stress and depression. Dental problems also lead to serious pain and may be a result of no access to medical services or may be caused by blows to the face or head. A distinct health problem related to choosing an extreme solution to escape the exploitation is acquired following victims' attempt to jump out of the window. There is a clear distinction between victims with suicide attempts by this method and victims who perceived themselves in great danger and jumped to escape (examples from the ADPARE practice: victims who were sequestered by the trafficker; victims subjected to torture-like practices by clients). Additionally in severe circumstances, victims have also been caught in the middle of clan disputes and got shot or escaped clients who tried to murder them. All of them come back with the most severe physical and emotional trauma and often require months, sometimes years of complex medical interventions to recover.

Eyes - Eye pain was reported to have been associated with migraine-type headaches.

Ears, colds, flu and sinus infections - Experiencing stressful events has been shown to reduce functioning of the immune system, and it has been demonstrated that abused women show higher rates of infection than non-abused women.

Skin problems - allergies or skin infections may be consequences of unhygienic conditions and stress. Skin is the organ with the largest surface and is connected to care, touch and affection. Thus it is quite common that both problems triggered by psychosomatic factors (such as distress) as well as problems with organic basis (injury; infections) be manifesting on the skin. A different type of problem, though not directly related to physical health refers to branding the victim by traffickers by the use of tattoos or other forms of skin imprinting, even carving/cigarette burning, so that they are perceived as a group belonging to a certain perpetrator. This brings about difficulties in the victim being able to adequately perceive and accept her body once it had been injured and marked as someone else's property. The memory of the "marking" event is in itself traumatic and will be carried forever by the victim, re-activated every time they look at the mark.

Sexual and reproductive health symptoms - The sexual and reproductive health complications experienced by trafficked women are typically a result of sexual violence and coercion experienced during the trafficking situation (pelvic pain and gynaecological infection, but also concerns regarding loss of fertility, unwanted pregnancy and HIV infection). Research on sexual violence has increasingly recognised the association between sexual violence and STIs.

Psychological health consequences

Specialty literature describes trauma as a paradoxical situation that is unexpected, has harmful potential and for which the victim's defence mechanisms are ineffective. Following the experience of a traumatic event, victims often experience physical and emotional suffering that is very similar to loss and bereavement. In the wider context, the trauma following exploitation may or may not be the person's first encounter with abuse, usually exploitation is only another episode in the over-saturated with trauma personal and family history. In a sense, a person may already have developed a certain habitude to abuse, followed by certain beliefs on suffering, risk and protection/help. As professional working in this field, it is important to learn the victims' perspective, her benchmarks and work with them to find solutions appropriate for the person instead of imposing one's own solutions.

According to "Stolen Smiles" study on physical and psychological health consequences TiP has on women and girls in Europe (Cathy Zimmerman,2006), 60% of the respondents reported to have suffered physical and/or sexual violence prior to being trafficked, with 32% having been sexually abused and 50% physically assaulted. Nearly one-quarter (22%) were both physically and sexually abused (the onset of sexual abuse occurring before the age of 15). One in seven respondents (15%)

reported having a coerced sexual experience before the age of 15, prior to being trafficked. Of these women, almost one-quarter (24%) cited more than one perpetrator, with over half (52%) reporting being sexually abused or coerced by a family member, and 28% stating that the abuse was perpetrated by a father (14%) or step-father (14%). Mothers were also implicated in cases of sexual coercion (7%), and women reported abuse by carers in institutional settings, such as orphanages. Just over one-quarter of the women (26%) reported a forced or coerced sexual experience after the age of 15, prior to being trafficked.

Understanding trauma – the Syndrome of Victimization and complex PTSD

In a certain respect, victimisation results in a transformation of the persons suffering it, transformation interpreted often by the person and her family as a loss (of a part of the person; of a known way of being and behaving). Every person is in contact with the others and surrounding world, this helping him to define his identity and also function properly in the society. Each individual has a certain perception/ image on the world, the roles he carries out and place he occupies the world (This image is processed as basic assumptions, “models of the world”). By these assumptions, existing in the world makes sense, he engages in exchanges with the world and the latter offers him order, security and protection. However, trauma breaks the continuity of the persons’ identity and challenges/shatters the person’s basic assumptions. Thus, the recovery process will have to focus on re-creating/re-testing the connections between the victim and the world.

Secondly, each individual has internalised a certain image on death and their own passing away. Usually this is held at distance by denial or by placing it in an undetermined future. Wherever the case of life threatening trauma, the natural time order is perturbed, the image of death being brought into present in a manner in which victims actually feel the imminence of their disappearance. As a consequence, survivors will experience difficulties in perceiving themselves in the future or in making/accomplishing projects for the future.

Thirdly, the experience of objectification of trafficked persons (irrespective of the type of exploitation), usually inflicted on long periods of time and accompanied by violence is often associated with losing “ownership” on one’s mind, emotions and body. Most victims report ambivalent experiences: loss of sensitivity in the body<-> intense persistent pains, with psychosomatic basis; persistent trying to re-gain subjectivity: exercising saying NO – to protection; assistance; to law enforcement; breaching regulations in assistance context or otherwise; social isolation<-> maintaining multiple, superficial social relations; avoidance of sexual relations<-> engaging in promiscuous, risky sexual practices. All these though often harmful have the role of allowing victims to exercise having control over their lives, of re-asserting themselves as subjects.

The syndrome of victimisation (VS) - Ochberg

The experience of several episodes of violence, psychological abuse, coercion to sexual activities as a victim or witness

The following symptoms can be present :

The inability of coping with daily challenges

The belief of being durably harmed/wounded

Tendency to isolation, the incapacity of trusting others, inability to maintain relations of intimacy

Repression of feelings or over-expression of negative affects

Minimisation of the impact of the traumatic event

Total or partial amnesia over the event/certain parts of it

The belief that the victim is more guilty than the perpetrator

Re-exposure/re-experiencing of similar traumatic events

Adopting the same system of beliefs and explanations the perpetrator has on the traumatic event; appreciating his bad behaviour as adequate

Idealization of the perpetrator

The persistence of several of the above symptoms for at least one month.

In addition, outside the context of specialized help and of resilient coping, states of posttraumatic stress may turn into CPTSD – complex posttraumatic stress disorder, best described as a profound and stable modification of one's personality, on 4 levels:

Altering of personality traits : feelings of hopelessness and lack of initiatives ; feeling without value and anticipating stigma ; feeling completely separated/different from the others ; uncritical acceptance of whatever happens with one; tendency to develop chronic psychosomatic symptoms ; dissociative episodes: separating emotions from the event ; attention deficit; altered states of consciousness ; aggressive acts oriented towards oneself and/or the others ; alterations in regulating emotions.

Altering the perception of the perpetrator: obsessive preoccupation for maintaining a connection/relation with the perpetrator; ruminations focused on obtaining retaliation ; perpetrator perceived as omnipotent ; adopting the same system of beliefs and explanations the perpetrator has on the traumatic event ; idealization/emotional attachment to the perpetrator

Altering the sphere of interpersonal relations : social isolation versus entertaining multiple, superficial relations ; constant preoccupation for finding a saviour or a « scapegoat » ; dismissing/avoiding relationships with a high degree of intimacy (from fear of re-experiencing rejection and deceit) ; acute suspicion and lack of trust in others ; increased tolerance to violence and abusive relationships ; « clinging » emotional dependency upon another ; emotional over-investment of relationships

Altering the meaning of existence: feelings of anger towards the moral and divine justice; rejecting beliefs and values once adopted ; persistent feelings of void, meaninglessness and loss of hope.

Self treatment-conducts

In order to continue functioning and « get rid » of the destabilizing effects of the traumatic event, victims develop the so called self-treatment conducts (STC) aimed at 1) disconnecting/anesthetizing from the event and reducing the level of anxiety; 2) re-connecting to a similar event to increase the level of stress and a) release the tension; b) re-create the context to trigger neurotransmitters to act as sedatives. On the short term, self-treatment conducts achieve their aims, however, in time they expose victims to trauma repetition and threaten her physical, emotional

and moral integrity and can generate permanent dissociative disorders and personality impairments. Yet these seem to be an extreme solution to the others' inability to understand and help the victim.

Preventing secondary victimization

Secondary victimisation can be defined as '*the aggravation of the suffering or harm to the victim caused by the initial crime as a result of the criminal process*'.

Research⁵⁹ identifies four different types of secondary victimisation:

1. Negative psychological effects on the victim's self-esteem, faith in the future, trust in the legal system, and faith in a just world;
2. Increase in the frequency of posttraumatic stress reactions (PTSS) to the original trauma caused by the crime (re-traumatisation);
3. Hindering of the process of recovery; and
4. The experience of a second, new trauma, resulting from the trial.

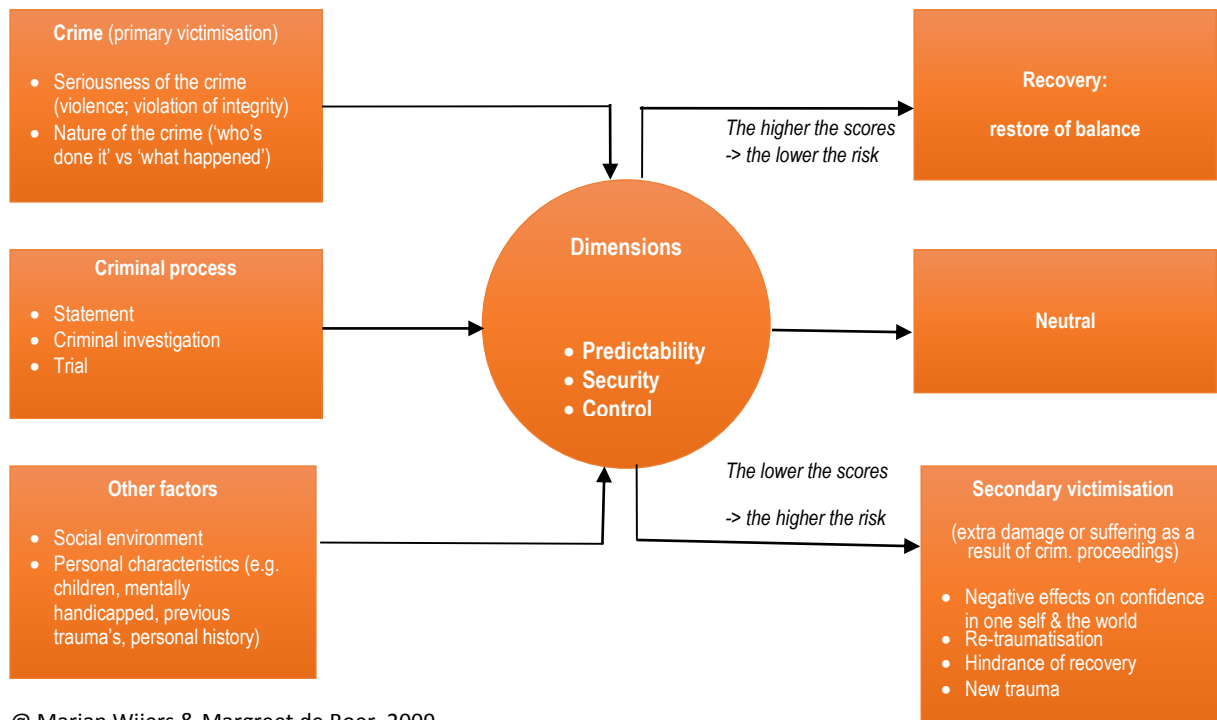
The two forms that research identifies to occur most often are negative effects on the victim's self-esteem and their faith in the future, the legal system and a just world (1), and, for those victims who were already traumatised by the crime, the increase of post-traumatic stress reactions to the initial trauma (2). The latter we understand under the term re-traumatisation. These two forms of secondary victimisation should be distinguished from each other. The first relates to all victims of crime, while the second impacts only on those victims already traumatised by the crime.

Secondary victimisation may not only be experienced by the victim/witness during questioning by the police, hearings by the investigating judge or by hearings during the trial. Other factors may also play a role, such as the general imbalance between the position of the accused and that of the victim, a lack of information provided to the victim, the interaction between criminal justice officials and the victim, the long duration of the trial and discontent about the outcomes of the trial.

Key concepts in the prevention of secondary victimisation are predictability, security, control and justice. The model below pictures the various factors and their relationship to secondary victimisation.

⁵⁹ Marjan Wijers & Margreet de Boer, *Een keer is genoeg. Verkennend onderzoek naar secundaire victimisatie van slachtoffers als getuigen in het strafproces (One time is enough. Exploratory research into secondary victimisation of victims as witnesses in the criminal process)*, The Hague: WODC 2010.

Model secondary victimisation



The risk of secondary victimisation not only depends on factors related to the criminal process, but also on factors related to

- the severity and nature of the crime (e.g., 'what happened' type of crimes may directly put the credibility of the victim at stake, contrary to 'who's done it' crimes)
- personal characteristics of the victim such as gender, age and personal resilience, and
- the social context (in particular the presence of a supportive environment).

The table below presents an overview of the factors before, during and after the criminal proceedings that are of influence on the basic dimensions of predictability, security, control and justice.

Critical factors in the criminal process to prevent secondary victimisation	
<p>Predictability</p> <p>The extent to which the victim/witness knows what to expect.</p> <ul style="list-style-type: none"> ❖ the provision of information to the victim before, during and after the criminal process so he or she knows what to expect. This includes information on the position of the victim/witness, the various stages of the criminal process, the progress of the case (incl. a decision to dismiss the case), detention and release of the 	<p>Physical, emotional and social security</p> <p>Physical safety relates to fear for reprisals or direct confrontation with the suspect.</p> <p>Emotional and social security relates to the personal integrity of the victim (protection of privacy, fair treatment, being taken seriously).</p> <ul style="list-style-type: none"> ❖ the choice of location where the victim's statement is recorded ❖ confidentiality of address and personal data of the

<p>accused, and the fact that all information is recorded and available to the accused. Information should be repeated and by preference given both oral and in writing</p> <ul style="list-style-type: none"> ❖ information about the interrogation by the police and/or the court (including an explanation of the reasons why detailed and critical questions are asked) ❖ (lack of) clarity about the procedures around the interrogation by the investigating judge or in court ❖ the length of time of the criminal process, insecurity about the length of the criminal process and lack of clarity why proceedings take so long 	<p>victim (e.g. using the address of the lawyer instead of the victim in the criminal file).</p> <ul style="list-style-type: none"> ❖ diligence in obtaining information from third parties, f.e. medical practitioners, family, friends and service providers. Victims should be asked permission on forehand and should be aware of the fact that all information is recorded in the criminal file and thus available to the accused ❖ the manner of interrogation by the investigating and/or trial judge, the treatment of the victim by the defence lawyer and the protection of the victim against intimidation by the suspect and/or intimidating or unjust questions ❖ proper preparation for the interrogation ❖ seating arrangements, in particular avoiding that victims and suspects are seated together in the waiting room or next to each other in the courtroom ❖ the presence of a person of his or her own choice who the victim/witness trusts during interrogations (this can be the lawyer, but also a friend or NGO counsellor) ❖ safety arrangements before, during and after the trial
<p>Sense of (lack of) control</p> <p>The feeling of the victim/witness that he/she can influence the criminal process: that it is 'his or her case', that he/she is taken seriously and matters.</p> <ul style="list-style-type: none"> ❖ decisions relating to the prosecution, pre-trial detention of the suspect(s), and the manner of settlement of the case ❖ the (in)ability of victims to obtain or access a copy of their own testimony and the case file, whether through their lawyer or otherwise. Lack of access to the criminal file places the victim 'outside' the criminal process: it is about them but they are not allowed to read the case file, contrary to the accused ❖ having their own lawyer: somebody who speaks their language and protects and defends their interests <p>From the perspective of avoiding secondary victimisation, the first factor is problematic, as generally the wishes and interests of the victim play only a very limited role in decisions relating to the prosecution, the detention of suspects and the way the case is settled.</p>	<p>Sense of justice</p> <p>The feeling of the victim/witness that he or she is treated fair and that justice is done.</p> <ul style="list-style-type: none"> ❖ 'management' of expectations: the victim/witness has a realistic picture about the criminal process, the feasibility of the case and the to be expected outcome ❖ the imbalance between the position of the defendant and the victim. Many victims feel as if the accused has all the rights while they have none. This includes the fact that the accused has access to the entire case file, including information about the victim, while often victims do not even get a copy of their own statement ❖ recognition of the consequences of the crime for the victim ❖ the provision of a copy of the verdict to the victim ❖ adequate motivation of the verdict ❖ final outcome of the proceedings (severity of the punishment, but also does the verdict help to prevent new victims)

CHAPTER V

COMMUNICATION LAWYER-VICTIM

Basic values in the communication with victims; victim friendly approach

The decision whether to denounce exploitation and cooperate with law enforcement to accomplish justice highlights a very important stage in the victim recovery process. It shows that the victim is empowered to appeal to institutions and request her legal rights and may also indicate that her trust in authorities /institutions is improved. When victims are ready and choose to collaborate with authorities, they do it as an act of justice, perceived as reparatory for them and as a preventive act for others (to do whatever they can to prevent other persons get exploited).

Pressing charges and/or acting as witness can have far-reaching consequences for victims. It may expose them and their families to intimidation and reprisals from the offenders and increases the risk that their situation becomes publicly known, with all consequences entailed. Moreover, the court case itself is extremely burdening and risks re-traumatising the victim. These concerns need to be fully understood and respected. Victims may also need time before they can fully consider their position and options. If the victim needs more time to make an informed decision about pressing charges and/or act as a witness, this time should be given. This lessens the likelihood of re-victimisation of the victim and is likely to lead to better evidence and a stronger witness in the long run. If the victim, for whatever reason, decides not to press charges or act as witness this decision should be respected and no undue influence should be exerted on her or him.

Although trafficking is recognised as a serious crime and a violation of human rights, in many cases trafficked persons, if recognised, are primarily seen as witnesses and as tools for law enforcement. In almost all countries, access to assistance and protection is dependent on the willingness of the victim to cooperate with the authorities and his/her usefulness for the criminal proceedings and often the reflection and recovery period is only formally granted.

The willingness of victims, however, to report to the police and cooperate in criminal proceedings is strongly related to their general treatment by the police and judicial authorities, the protection of their safety and privacy, the availability of information and assistance and the risk they incur of being arrested, detained, prosecuted or deported for offences arising out of their status of being trafficked, such as illegal entry or stay, involvement in the sex industry and/or the use of false documents. Research shows that victims who are treated well are more willing to cooperate and that law enforcement officials tend to be most successful in securing convictions when the trafficked person's rights are respected.

Tips on ensuring that the engaging process with the victim goes on well

- Make sure that the victim is secured and out of imminent danger from trafficker or other pressure factors
- Make sure that the initial information on the rights process takes place in an adequate and friendly setting (e.g. in a counselling centre; in a daytime facility)
- Ensure that the victim's basic needs are respected and catered for if needed (water, food, taking breaks, using the restroom)

- If you feel it's needed, use an ice-breaking technique to relax the atmosphere (e.g. ask her how she feels that day/ if she reached safely the location you are in/ talk about the weather/ ask something more personal but neutral, etc).
- Tell her you may start when she's ready and ask her what she knows it will happen during the meeting
- Allocate enough time for the meeting (at least an hour) and dedicate that time entirely to the discussion with the client
- Do not aim to cover everything in a single discussion; do not expect that your client fully understands everything, it is an ongoing process, unfolding with the completion of each stage of the judicial proceedings
- Describe your role towards the victim as clearly and realistically as possible and tell them the purpose of the meeting
- Allow the victim to ask questions, express doubts, fears, even refuse to answer a certain question or disclose a certain aspect
- Avoid as much as possible to express ideas which may be considered as promises or which may put your role in an unrealistic light
- Be curious to learn victim's perceptions/past experience in relation to institutions or law enforcement; discuss her expectations from the various actors in the system, including you.
- Double check information passed and make sure the victim understood what they have been told. Invite questions from the victim to ensure dialogue and mutual understanding. If there is no response, do not force it.

Tips on ensuring that the legal assistance goes on well

- Please find information on the Victim / Witness Coordination in the Criminal Trial Programme, from the Regional Centre of ANITP which has jurisdiction in your county and discuss with the Victim/ Witness Coordinator the possibility to collaborate during the criminal proceedings and trial in which the victim you provide legal assistance is involved. The Coordinators accompany injured parties during trial sessions, mediate the relation between victim and lawyer and request updates on the trial progresses.
- Inform trafficked persons of their rights deriving from being identified as victims of a severe crime and on how they will be helped to access them. Do tell them they have the right to protection for physical safety , safe housing, free legal aid, medical assistance, psycho-social services and care if needed;
- Inform victims on the criminal proceedings stages and the activities that will be implemented, as well as on the various actors – policemen, investigation prosecutor, medical-legal expert, lawyer, court prosecutor, defendant, judge and their tasks
- Ensure that rights to protection on private life, identity, physical security and specific judicial protection measures are respected during the criminal proceedings as well as in trial. It is important to avoid secondary victimization and have a collaborative and emotionally safe injured party.
- Accompany the victim throughout the criminal proceedings, if possible. It is better that they maintain contact with only one lawyer who knows the case and can help them better.
- Try to balance the shortcomings and available solutions when explaining legal procedures to victims and focus on solutions

- Maintain a good, clearly set cooperation with the law enforcement officers investigating the TiP case and if possible with the assistance providers.
- Decide together with assistance providers and the victim the usefulness of a physical medical legal evaluation and of a clinical psychology assessment. Ask for your client's consent after explaining the purpose of them undergoing the examination and after describing the procedures
- Check for any available and accessible information leaflets that may be useful to the victim.
- Discuss with your client and the police officer coordinating the investigation of the case and choose the most appropriate communication manner or receiving updates: a) the victim receives directly updates on the prosecution phase from the police officer; b) you receive information on the evolution of the case from the police officer (case officer) and transmit it to the victim
- Discuss with your client whether she had received any fines before. If so, discuss together how to proceed. It is quite often that victims may refuse to cooperate with law enforcement fearing that they will be prosecuted for these activities.
- Inform your client on the right to receive financial compensation (through Law 211/2004) and on the possibility to plead as civil party. Be honest in telling them about the procedure to request such funds, and the conditions imposed, as well as the success rate as far as you know it.
- Remind your client that if civil damages are granted, the lawyer is entitled to request a certain percentage of the received amount and the expert evaluating the seized goods also requests 10% of the amount. Always explain victims that a certain percentage of the entire amount received will be feed by fiscal authorities, therefore she may receive an amount that is smaller than the one officially agreed.

Child-friendly approach on judicial procedures, according to the UNICEF Guidelines on the Protection of Child Victims of Trafficking

An appropriate venue for a discussion should be chosen, with which the child victim should feel at ease, ideally an already known space from the day/counselling centre. Otherwise the venue should at least have comfortable seating, running water and toilet facilities. The room should be as private as possible. Others who are not involved in the interview process, should not be able to stare in through windows, or overhear the conversation in the interview. There should not be interruptions during the discussion, and others should not be coming and going in and out while the interview is taking place. Paper, writing and drawing materials as well as refreshments should be made available.

Conducting interviews with child victims of trafficking and exploitation

The child's parent or legal guardian should be present during the discussion. If the child has strong feelings about not wishing any specific person to be present, explore the reasons why, and respect the child's wishes and feelings. The guardian shall ensure that the child victim is fully informed about security issues, risks and criminal procedures before the child takes a decision on cooperating with law enforcement authorities. He must also ensure that the right to a recovery and reflection period within legal provisions is granted to trafficked children before involving them in the criminal proceedings against the perpetrators

a) Getting the pace right

The child has been exposed to trauma and psychological reactions may influence responses to questioning. Recalling traumatic events may also trigger unwanted memories and influence him in re-experiencing the facts. The interviewer should be aware of this and act empathic and responsive to the needs of the child. He must also be prepared to take breaks, de-focalize the child from traumatic experience and ask him remember positive/neutral facts, help him relax in order to be able to continue the interview. If the interview becomes too painful for the child, it should stop. Following any interview, appropriate psychological and social support and/or therapy should be offered by a suitably trained person.

The discussion dynamics (pace, rhythm) should be suitable to the child. In order to achieve this:

- slow down the rate of speaking;
- allow time for the child to understand what has been said;
- leave enough time for the child to consider their response;
- be patient if the child replies slowly or remains silent for periods;
- avoid following up with another question too soon;
- refrain from interrupting if the child hesitates – he or she may be taking time to think.

b) Providing age-appropriate information at the beginning of a discussion

The age and level of understanding of the child should be known in advance by the interviewer as it is important to use a language children can understand. Before starting the interview, the following information should be provided:

- purpose of the meeting;
- anticipated outcome of the discussion, i.e., what is likely to happen next;
- explanation of issues of confidentiality;

The child should never be misled, be made undeliverable promises or be falsely encouraged

c) Checking the child understands terms being used

Children have their own way of describing things and they may use a word that means something specifically to them, or an expression that may sound neutral but in fact act to “hide” or reduce the gravity of the facts, so that it can be spoken without triggering any additional burden. Children typically want to please and they may give the appearance of understanding when they, in fact, do not. A few general test questions can be asked to see if the child fully understands what is being asked. The talk may start with a pleasant/neutral discussion aimed to break the ice and create a more relaxed atmosphere. This could also help settle the child’s level of understanding.

Code of Ethics for Lawyers

In a society based on respect towards justice the lawyer has a relevant role. His mission is not limited to the faithful execution of a warrant under the law. The lawyer has to enforce the rule of law and the interests, rights, freedoms of his clients.

A lawyer’s function therefore lays on him or her a variety of legal and moral obligations towards:

- The client;
- The courts and other authorities before whom the lawyer pleads the client’s cause or acts on the client’s behalf;
- The legal profession in general and each fellow member of it in particular;
- The public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, is an essential means

of safeguarding human rights in face of the power of the state and other interests in society.

There are several fundamental Principles which govern the Lawyers Ethics. In 2006 the Council of Bars and Law Societies of Europe (CCBE) issued the *Charter of Core Principles of the European Legal Profession*. A previous act was issued in 1988 The Code of Conduct for European Lawyers. In these documents are mentioned several relevant principals that any lawyer needs to take in consideration in relation with his clients. These principles are encountered also in the Romanian legislation regulating the lawyers' status:

- *Law no. 51 /1995 on lawyer's profession updated (Chapter III Lawyer's Rights and Obligations)*
- *Lawyers Statut updated (Chapter I Fundamental Principles and Rules of Lawyer's Profession; Chapter III Lawyer's Professional Activity; Chapter IV The Integrity of the Legal Profession)*

The lawyer will be held responsible for non-compliance with the law or statute. The investigation of lawyer's misconduct and disciplinary action are under the competence of the Bar Council. According with the provisions from Law no. 51/1995 the disciplinary sanctions are: remonstrance; written warning; fine from 50 Romanian Lei up to 500 Romanian Lei which that will become income in the budget bar; prohibition to practice lawyer's profession for a period from one month up to one year; exclusion from the profession.

Principle (a) – The independence of the lawyer, and the freedom of the lawyer to pursue the client's case:

A lawyer needs to be free - politically, economically and intellectually - in pursuing his or her activities of advising and representing the client. This means that the lawyer must be independent of the state and other powerful interests, and must not allow his or her independence to be compromised by improper pressure from business associates. The lawyer must also remain independent of his or her own client if the lawyer is to enjoy the trust of third parties and the courts.

This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure.

Principle (b) – The right and duty of the lawyer to keep clients' matters confidential and to respect professional secrecy:

It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others - the most intimate personal details or the most valuable commercial secrets - and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there can be no trust.

Principle (c) – Avoidance of conflicts of interest, whether between different clients or between the client and the lawyer:

For the proper exercise of his or her profession, the lawyer must avoid conflicts of interest. So a lawyer may not act for two clients in the same matter if there is a conflict, or a

risk of conflict, between the interests of those clients. Equally a lawyer must refrain from acting for a new client if the lawyer is in possession of confidential information obtained from another current or former client. Nor must a lawyer take on a client if there is a conflict of interest between the client and the lawyer. If a conflict of interest arises in the course of acting for a client, the lawyer must cease to act. It can be seen that this principle is closely linked to principles such as confidentiality, independence and loyalty.

Principle (d) – The dignity and honour of the legal profession, and the integrity and good repute of the individual lawyer:

To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honourable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonour the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.

A lawyer shall advise and represent the client promptly, conscientiously and diligently. The lawyer shall undertake personal responsibility for the discharge of the client's instructions and shall keep the client informed as to the progress of the matter with which the lawyer has been entrusted.

Principle (e) – Loyalty to the client:

Loyalty to the client is of the essence of the lawyer's role. The client must be able to trust the lawyer as adviser and as representative. To be loyal to the client, the lawyer must be independent must avoid conflicts of interest and must keep the client's confidences. Some of the most delicate problems of professional conduct arise from the interaction between the principle of loyalty to the client and principles which set out the lawyer's wider duties – principles as dignity and honour, respect towards professional colleagues and in particular respect for the rule of law and the fair administration of justice. In dealing with such issues the lawyer must make it clear to the client that the lawyer cannot compromise his or her duties to the court and to the administration of justice in order to put forward a dishonest case on behalf of the client.

Principle (f) – Fair treatment of clients in relation to fees:

A fee charged by a lawyer must be fully disclosed to the client, must be fair and reasonable, and must comply with the law and professional rules to which the lawyer is subject. The principle dictates the necessity of professional regulation to see that the client is not overcharged.

A lawyer shall not be entitled to make a *pactum de quota litis*. By "pactum de quota litis" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

Principle (g) – The lawyer’s professional competence:

It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.

Principle (h) – Respect towards professional colleagues:

This principle represents more than an assertion of the need for courtesy – although even that is important in the highly sensitive and highly contentious matters in which lawyers are frequently involved on behalf of their respective clients. The principle relates to the role of the lawyer as intermediary, who can be trusted to speak the truth, to comply with professional rules and to keep his or her promises.

Principle (i) – Respect for the rule of law and the fair administration of justice:

A lawyer must never knowingly give false or misleading information to the court, nor should a lawyer ever lie to third parties in the course of his or her professional activities. These prohibitions frequently run counter to the immediate interests of the lawyer’s client, and the handling of this apparent conflict between the interests of the client and the interests of justice presents delicate problems that the lawyer is professionally trained to solve. The lawyer is entitled to look to his or her bar association for assistance with such problems. But in the last analysis the lawyer can only successfully represent his or her client if the lawyer can be relied on by the courts and by third parties as a trusted intermediary and as a participant in the fair administration of justice.

CHAPTER VI

SPECIFIC REGULATIONS ON FOREIGN VICTIMS

-Anti-trafficking legislation vs. Legal regime of foreigners

-Reflection period, temporary, permanent and humanitarian residence permit

Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities. If return would compromise their life and safety, trafficked persons have the right to apply for asylum or a residence permit on humanitarian grounds.

The Anti-Trafficking Act⁶⁰ contains several legal provisions regarding foreign victims of trafficking. The legal provisions for Romanian victims of trafficking are applied as well in the case of foreigners.

Foreigners about whom there are reasonable causes to believe that are victims of trafficking are equally entitled to a recovery and reflection period of up to 90 days to recover, to get out of the traffickers influence and to make an informed decision on cooperation with the competent authorities; during this time the Romanian General Inspectorate for Immigration has to grant tolerated status based on the prosecutor or court official request (Art. 39(1), index 1, Anti Trafficking Act).

During the reflection period foreigners are entitled to accommodation facilities as arranged by Government Emergency Ordinance no. 194/2002 on the regime of foreigners in Romania, without need for their detention (Art. 38). The accommodation must be approved by the Romanian General Inspectorate for Immigration. Foreigners need to be informed in a language they understand about the judicial and administrative procedures, the counselling and assistance services to which they are entitled under the same conditions as Romanian victims (psychological counselling, medical and social assistance, medicines and food). In practice the centers administrated by the Immigration authority do not meet the proper conditions in order to accommodate foreign victims; the centers have a closed regime as they are mainly used to accommodate undocumented migrants; there are no separate facilities for victims. These centers have limited staff to provide at least basic health care and psychological services. Access for NGOs representatives is limited and must always be preceded by approval from the Immigration authority.

⁶⁰ Law no. 678 /2001 on preventing and combating trafficking in persons, with subsequent modifications and amendments

If a foreign victim request a form of protection in Romania, she / he can be accommodated in one of the six centers for asylum seekers situated in Bucharest, Giurgiu, Galati, Radauti, Somcuta Mare, Timisoara cities.

The General Inspectorate for Immigration (GII), together with National Agency against Trafficking in Persons (NAATIP) are responsible to coordinate the activities of institutions and NGOs dealing with the integration of foreign victims who are entitled to a form of protection in Romania or have the right to stay in the country.

If the foreign victim wishes to return to his or her origin country, the GII shall contact the diplomatic mission or consular office of his or her country to facilitate the issuance of the necessary travel documents.

Even if there are also few legal provisions regarding foreign victims in the Government Emergency Ordinance no. 194/2002 they are not yet fully harmonized with the anti-trafficking legislation. The Anti-Trafficking Act stipulated that foreigners are granted a reflection period of up to 90 days, whereas according to the regulations on the right to stay (GEO 194/2004) all foreigners should collaborate immediately with the competent bodies, including law enforcement, to regulate their stay in Romania, otherwise they will be considered undocumented migrants that can be hold in public custody.

Temporary residence permit during criminal and other legal proceedings

According to the Anti-Trafficking Act, the General Inspectorate for Immigration may grant to the foreign victim- at the request of the prosecutor or of the court – a “tolerated status” (Art. 39, index 1). During or after the reflection period, a foreign victim may be granted a temporary residence permit, as provided by the Government Emergency Ordinance 194/2002.

A ‘tolerated stay’ in Romania represents the consent to remain in the country (Art. 102 GEO 194/2002) and can be granted by the General Inspectorate for Immigration to foreigners who have no right of residence and, for objective reasons, do not leave Romania. “Objective reasons” are defined as circumstances that go beyond the power of the foreigner and are unpredictable, due to which the foreigner cannot leave Romania. A refusal to provide this status can be appealed within 5 days from the communication at the local Appeal Court. The court decides within 30 days and its decision is irrevocable.

The Ordinance (Art. 103) lists the situations in which a “tolerated stay” can be granted, including those situations in which there are serious reasons to believe that a foreigner is a victim of trafficking (para. 1(e) art.103). In these cases the stay is granted at the request of the prosecutor or court. The ‘tolerated stay’ is granted for a period of 6 months which may be extended for a further period of up to 6 months until the cause disappears (art. 104(1) GEO no. 194/2002). A recent positive development is that during this period of tolerated status foreigners have access to the labor market on an equal footing with Romanian citizens. This legal provision is mentioned in paragraph 5 index 1 art.104 GEO no. 194/2002 which was introduced through Law no. 157/2011 for the modification and completion of normative act concerning the legal regime of foreigners in Romania.

The prosecutor or the court may decide to extend the period of toleration if the presence of the victim is necessary for the proper conduct of the criminal proceedings (para. 5 Art. 104 GEO no. 194/2002). In this case, the period is extended until the termination of the trial. The period of stay is strictly limited to the duration of the criminal proceedings. There

are no provisions in GEO 194/2002 in relation to civil or administrative proceedings for compensation. A legislative amendment is required in order to provide foreign victims the right to stay during all legal proceedings and not only during the criminal trial.

Permanent residence permit on humanitarian ground or asylum application

An application for a permanent residence permit on humanitarian ground or for asylum can be taken in consideration when return in the origin country would endanger the life and safety of the victim. Art. 38 Anti Trafficking Act indicates that Law no.122/2006 on asylum procedures in Romania applies to foreigner victims of trafficking. The Romanian asylum law follows the 1951 Geneva Conventions on Refugees and does not stipulate among the justified reasons for fear of persecution the fact that a person was a victim of trafficking and this leads to difficulties in granting a form of protection (refugee status or subsidiary protection) based on human trafficking grounds.

Law no. 122/2006 Article 23 Refugee Status: *The Refugee status is granted, upon request, to the foreign citizen, that based on a well-founded fear of persecution on reasons related to race, religion, nationality, political opinion, affiliation to a certain social group, is outside his or her origin country and based on this fear cannot or do not want the protection of that country, or a stateless person which being outside his or her habitual residence country for same reasons indicated above, cannot or do not want to return.*

Law no. 122/2006 Article 26 Subsidiary Protection may be granted to *"a foreign citizen or stateless person who does not fall within the conditions for refugee status and in relation to whom there are reasonable grounds to believe that, if returned to his/her country of origin, respectively the country of his/her former habitual residence, he or she would be at a serious risk, as provided by para. (2), and who due to that risk do not want to receive the protection of that country"*

A serious risk means:

- Sentence to the death penalty or the execution of such sentence;
- Torture, inhuman or degrading treatment or punishment; or
- A serious, individual threat to life or integrity as a result of indiscriminate violence in situations of international or internal armed conflict, if the applicant is part of the civilian population"

Although according to the statistics of the General Inspectorate for Immigration, no foreigners received a form of protection based on the fact that they were victims of trafficking, the NGOs specialized in providing assistance to asylum seekers identified during time cases that had relevant elements of trafficking. Some of those foreigners obtained a form of protection based on other humanitarian grounds than the one of being a victim of trafficking. The absence of express provisions in the asylum legislation on the possibility of granting refugee status or subsidiary protection based on the fact that the person is a victim of trafficking, makes difficult to apply and obtain such protection, because in general the authorities limit protection to the specific situations as defined in Art. 23 on "refugee status" and 26 on "subsidiary protection", which follow the 1951 Geneva Convention and its Protocols Relating to the Status of Refugees.

CHAPTER VII

SPECIFIC POSITION OF CHILDREN

When discussing child victims' rights, a very sensitive and challenging aspect is that related to their position as injured parties in the different stages of the judicial proceedings: investigation and prosecution of the criminal case, going to trial, receiving remedies/accessing compensation schemes. Approaching and handling children in all stages shall be a mediated task – by parents/legal guardian and representative of service provider, requiring a clear coordination and distribution of tasks between all actors involved. Relevant legal provisions can be found in the *Convention on the rights of the child* and in the *UNICEF Reference Guide on Protection the rights of child victims of trafficking in Europe*.

As is already known in the Romanian Legislation, trafficking in minors is provided with a separate indictment, not being an aggravated form of trafficking in adults, as is the case of other crimes where the commission of a standard offense type against a minor is aggravating.

As concerns trafficking in adults, an offense committed in one of the common alternative ways of the two offenses is characterized by one condition of the objective side of a crime (*committing the offense by coercion, abduction, deception, abuse of authority, taking advantage of the victim's inability to defend his/her expression of will or his/her obvious condition of vulnerability, or by offering, giving, accepting or receiving money or other material benefits in exchange for the consent of a person having control over the victim*).

Instead, in the case of trafficking in minors, it is required no condition for “the recruitment, transportation, transfer, harboring or receipt of a minor” committed with the purpose of his/her exploitation to constitute a crime. This is because the minor victims have a deemed degree of vulnerability due to their physical and mental immaturity; for this reason it was paid more attention to protection matters in judicial proceedings.

Minor victims of trafficking have all the adult victims' rights, but they also have a series of additional rights or specific protective measures deriving from their quality as child, whose interests must be protected within all proceedings concerning him/her.

The domestic regulations targeting the situation of minor victims of trafficking is composed of those rules with general addressability (the Criminal Code, the Criminal Procedure Code⁶¹, Law no. 272/2004), and also of the legal framework especially dedicated to the victims of trafficking in persons - Law no. 678/2001, supplemented with the content of Law no. 211/2004, on measures for the protection of victims of crime.

After a final judgment in a criminal case, if the civil action was admitted to the crime victim, it acquires a series of rights applicable to the enforcement proceedings of the offender. According to the provisions of art. 19 of Law no. 211/2004, **the victim may also**

⁶¹ CPC

benefit from free legal assistance during the enforcement phase, and also from the general legal provisions on legal aid (Emergency Ordinance no. 51/2008 on legal aid in civil matters).

The rights of minor victims of trafficking in persons are - as in the case of adults - different in part, depending on how they are or are not involved in legal proceedings.

PRIOR RIGHTS OF LEGAL PROCEEDINGS

Up to the age of 18 healthcare is ensured by virtue of the quality of child, and later, even in the absence of contributions to the health insurance budget, it will be considered the state of victim of trafficking in persons; during the recovery and reflection period, the minor victims of trafficking in persons receive **psychological counseling and free medical and social assistance services** and are entitled to medicines and food, and also to accommodation and, on request, in the assisted housing centers.

Therefore, minor victims of trafficking also benefit from their **recovery and reflection period** (provided by art. 39 of Law no. 678/2001). These minor victims are not required to personally take the decision to cooperate with the competent authorities, but, in case of submitting a criminal complaint, a notification of prosecution will be achieved through a legal representative or assisted by this.

The criminal action for the offense of trafficking in minors is exercised on its own without the need to submit any complaint. The civil action shall be exercised by the legal representative (if the victim is under the age of 14) or assisted by this (if the victim is between 14 and 18 years - art. 41 of the Civil Code), but also *ex officio* by the prosecutor, on behalf of the victim (in either situation).

Given that the prosecutor is compulsory to exercise the criminal action when there is evidence, meaning that the offense of trafficking in minors was committed, in these judicial approaches it is important to appeal to all legal provisions that allow the investigation of the crime, but in a manner that the consequences of the judicial proceedings with the lowest negative effects on the victim.

Also, the civil action and the request of both material and moral damage are always in the interests of the minor victim; however, both the attorney, the prosecutor, the judge and the legal representative must cautiously access the information known by the minor victim in establishing specific rules of evidence for determining the amount of compensation.

It is very important that the judiciary and the victim's lawyer timely notifies the potential conflicts between the interests of the minor victim and the victim's legal representative; also, there may be situations in which the victim does not benefit from the real support of the legal representative, the latter is either trying to take advantage on his/her own interest of the victim's suffering personal property (irrespective of his/her condition) or trying to minimize this suffering to mitigate the gravity of the trafficker's facts. This is because the minor victims may have gone under the traffickers' influence with the consent of their parents or of the persons responsible to take care of them.

Consequently, concerning the trafficking in minors there should be also considered the relationship between the legal representatives of the trafficked person and the victim, i.e. to what extent the legal representatives protect the victim and really defend his/her interests, especially in those situations where they received money or other material benefits from the

trafficker either when the victim is entrusted to him/her or afterwards during his/her exploitation, or even during the legal proceedings in order to influence the victim's statements. In my opinion, in these cases the judicial body must proceed to the appointment of a special trustee (under the provisions of art. 57 of the Civil Procedure Code in conjunction with art. 2 para. 2 of the same Code, which applies as a general rule in all matters)

In all the proceedings concerning the child - so including these criminal proceedings where the child is the victim - it must take into account the child's best interests, because this principle (established both by Law no. 272/2004 and by the Civil Code) is not limited only to family relations but it applies in all those procedures involving a child.

MINOR VICTIMS' RIGHTS DURING THE JUDICIAL PROCEEDINGS

The victim of any crime, if remains alive, may participate or not in the criminal proceedings, as injured party or as a civil party if s/he requires civil law claims or the prosecutor has exercised a civil action ex officio. If the victim of the offense has no intention to participate in any of these qualities, she/he may be summoned as witness, but his/her procedural rights are in this case restricted only the matters concerning this specific quality.

The minor victim of trafficking in persons who participate in the criminal proceedings cumulates therefore the following **types of rights during the court proceedings**:

- the rights of any aggrieved person - provided by the CPC
- specific rights of minor injured persons - provided by the CPC
- Civil party rights, with the particularity that the civil action, if that is not promoted by the legal representative, will be exercised by the prosecutor.
- procedural rights specific for victims of trafficking in persons - according to Law no. 678/2001, including the rights under the law on minor victims.

The main provisions relating to the rights of victims are established by the CPC as follows:

- in the title on the participants in the criminal proceedings - art. 32, 33, 79-81, 84 and 85, 93-96 of the CPC,
- on evidence (hearing of the injured party and of the civil party - art.111-113 CPC and of the witness art. 114 - 124 of the CPC, including procedures applicable to the protected or vulnerable witness - art. 125-130 CPC),
- nullities matters – art. 280-282 of the CPC,
- before the judge in proceedings of rights and freedoms (establishment of distraint upon property - art. 249-255 of the CPC, the early hearing procedure)
- the possibility to use the complaint procedure against the measures and acts of criminal prosecution against the prosecutor's solution of non-prosecution and non-lieu - art. 336-341; recently, civil parties and therefore victims had acquired procedural rights for the preliminary chamber procedure - art. 342-347 CPC;
- in the title on the proceedings: texts related to the place of the hearing – art. 350 of the CPC, exceptions related to the conduct of a public hearing - art. 352 CPC, the provisions on participation in the trial - art. 366 CPC, hearing of victims and of civil

party - art. 380 CPC; those texts on resolving the civil action - art. 397, in the matter of appeal - art. 409 and seq. CPC.

1) The right of the aggrieved person to be informed of his/her rights

As provided by **art. 81 letter a) of the CPC**, the aggrieved person's right to be informed on his/her rights aims **the procedural rights** and consists of the exposure by the judicial bodies of all the rights provided by art. 81 and art. 111 para. 2, 4 and 5 of the CPC and special laws, including the ability to qualify for protection under the provisions of art. 125-130 CPC or Law. No. 682/2002 on the protection of witnesses.

The aggrieved person's right entails **the obligation established by law for the judicial bodies to acquaint the related rights** (and obligations) of the proceedings - art. 111 para. 2 CPC.

Art. 4 of Law 211/2004 provides the judicial bodies must inform the victims of crime on the services and organizations providing counseling or other forms of assistance to victims; according to their specific needs, the prosecuting authority to which they can make a complaint, the right to legal assistance and the institution to which they may address to in order to exercise the specific right, **the conditions and the procedures for legal aid**, the conditions and the procedures to qualify for protection under the provisions of art. 125-130 of the CPC and also under the provisions of Law no. 682/2002 on the protection of witnesses, **the conditions and the procedure for granting state financial compensation, etc.**

Comprehensive information of the victim on his/her rights is very important in terms of improving some of these within the criminal proceedings, and beyond this, especially in terms of access to the procedure for granting financial compensation by the state, which is subject to certain steps taken in the referral of the prosecution and bringing a claim for compensation within the deadline provided by law.

Therefore, these rights must be presented not only before giving statements to the prosecuting authorities or to the judge, but also in filing a claim or a complaint by the injured party, or even at simple addressing, even if the judicial body in front of which the victim presented is competent or not or the victim is not yet decided to make a referral thereof. In my opinion, this follows clearly from the text of art. 4 para. (2) of Law 211/2004; the Law states that information on his/her rights is communicated to the victim by the first judicial body to which s/he presents and is recorded in the minutes.

Art. 43 of Law no. 678/2001 provides for a wider field of this right by providing that victims of human trafficking are entitled to receive - in a language they understand - information on the relevant **judicial and administrative proceedings**. This legal text considers not only the obligation of the judicial bodies, but also that of all actors with responsibilities in preventing and combating trafficking who come into contact with the victim. This communication must take place before the victim's involvement in the legal proceedings, precisely because s/he can make informed choices about his/her involvement in such proceedings, but also in order to benefit from the other rights that may be achieved through administrative procedures laid down by the special legislation.

2) The right to free and mandatory legal assistance

The aggrieved person's right to be assisted by a lawyer or represented (according to the provisions of art. 81 letter h) of the CPC) is recognized to all injured persons, regardless

the nature of the crime. In addition, art. 93 para. 4 of the same Code provides that the legal assistance is **mandatory** if the injured party or the civil party is a person who lacks legal competence or has reduced legal competence, including minor victims.

However, as concerns the victims of trafficking in persons, the right to legal assistance is reinforced by the provisions of a special law. Art. 44 of Law no. 678/2001 provides that victims of trafficking in persons (both minors and adults) are provided **mandatory** legal assistance to be able to exercise their rights in criminal proceedings prescribed by law, **in all phases of the criminal proceedings**, and to support their demands and civil claims against the persons who have committed offenses under this law, in which they are involved.

The provisions of the CPC and of the Law. 678/2001 are supplemented with those of Chapter IV of Law no. 211/2004⁶² on free legal assistance to victims of crime, which also applies to victims of trafficking in persons.

Unfortunately, neither the legislation nor the Protocol on the lawyers' fees⁶³ stipulates the same lawyer is mandatory to provide legal assistance in all phases of the proceedings (prosecution, pre-trial chamber, first instance proceedings, appeal); also, there are not provided the mechanisms to ensure the continuity of the legal assistance to a victim of trafficking in persons. In fact, every judicial body requests the competent bar association the appointment of a duty lawyer; this appointment is based on a planning which determines, in most cases, the appointment of a new lawyer to replace the one who assisted the victim in the earlier stages. This requires a new adaptation of the victim and a new trust-building exercise thereof.

3) The right to propose taking of evidence by the judiciary, to raise exceptions and conclusions, and the right to make any demands related to the settlement of the criminal case - art. 81 lit. b) and c) CPC

The duty of proof generally belongs to the prosecutor; the prosecution authorities have the obligation to collect and manage the evidence both in favor and to the detriment of the suspect or defendant (in accordance with art. 99 and 100 CPC). The prosecutor's investigation plan is not known by the investigated parties, therefore the crime victim may propose that both evidence that are already covered by the prosecuting authority for administration and other evidence, some of them unknown by the investigative bodies.

The victim of the crime is the one that holds the most information possible about the evidence; however, due to lack of legal knowledge and traumatic events, it is possible that s/he does not realize this. Therefore, a good communication with the prosecution authorities is very important, therefore being necessary the contribution of all professionals who come into contact with the victim and in particular his/her lawyer.

As regards the exceptions that the victim may invoke, this instrument is available only if s/he intends to participate in the proceedings as injured party or civil party. If the victim of the crime does not want to participate in these qualities in the proceedings, s/he cannot

⁶² Law no. 211/2004 on the protection of victims of crime, as amended and supplemented.

⁶³ The protocol for the provision of legal assistance in criminal matters for the provision within the public system of legal assistance, legal assistance services and/or extrajudicial representation or assistance and for the provision of legal assistance services on international access to justice in civil matters and international judicial cooperation in criminal matters between the Ministry of Justice and the National Union of Bars in Romania, concluded in 2015.

invoke exceptions and cannot make conclusions. It is very important the timeliness the exceptions can be invoked; also, the procedural provisions are not known by the victims, as it is the role of the victims' defendant to invoke these exemptions. Also, the procedural nullities regime have to be known and valued by the victim's lawyer, where appropriate.

In this context, we recall that even in the absence of explicit text stating that, according to the decisions of the Constitutional Court, the injured party and the civil party have the right to submit a request and to invoke exceptions **in the preliminary chamber procedure, as well**. They may cover invalidity of criminal prosecution acts or of the referral evidence and irregularities of the referral act. It is very important that the lawyer of the injured party invokes these irregularities in this procedure, to the extent the rights and interests of the victims are being harmed, because after going through the preliminary procedure chamber the nullities and irregularities of acts or evidence during the prosecution cannot be invoked any more.

The right to make any demands related to the settlement of the criminal case (other than to propose evidence to the exceptions and conclusions) includes the declaration of the means of appeal on the criminal side, the request on correcting errors of the procedural documents etc.

2. The right to be informed within a reasonable time on the stage of prosecution, at his/her express request - art. 81 letter d) CPC.

This right is subject to an address in Romania, for ordinary mail, or an e-mail address or electronic mail.

This right stems from the non-public character of the prosecution and allows the injured party to bring any complaints regarding the criminal acts or complaints regarding the procedure.

3. The right to see the file, under the law - art. 81 letter e).

This right of the injured party is completed with the provisions of art. 94 CPC, which provides that the right of the related party's attorney to see the same file, because this right belongs both to the victim and to his/her lawyer, being exercised by both, even simultaneously.

The right to see the file has its own limitations: it cannot be unveiled the identity of the collaborators or of the undercover officers; certain procedural documents on technical surveillance methods may be known only after the cessation of technical surveillance measure.

Seeing the file involves the right to study its documents, the right to write-down information or data of the file and to obtain copies of its documents.

It is recommended that the victim's lawyer requests copies of documents of the file that can be presented to him/her to avoid the possible distress by moving the victim of the crime to the court or to the prosecutor in order to see his/her file. Thus, the victim can verify the contents of the file when s/he has a favorable mental state for an analysis of how the facts that s/he had to face had been reflected in the statements and also an analysis on other evidence in the file to be able to appreciate the possible additions to his/her statements or to request new evidence.

4. The right to be heard – art. 81 letter f)

This right includes both the right to be heard at his/her request or at the request of the judicial bodies, but also the right to provide any other information, even outside the context of the interview of the the injured person.

As concerns the manner of hearing of a minor victim in present the CPC does not provide additional guarantees compared to hearing adults, as required by art. 124 CPC for minor **witness**. The text provides that hearing a minor witness aged up to 14 years takes place in the presence of a parent, trustee or representative of the person or institution to which the minor is entrusted for upbringing and education; if these people cannot be present or have the status of suspect, defendant, injured party, civil party, civilly responsible party or witness in the case, or if there is a reasonable suspicion they may influence the statement of the minor then his/her hearing is held with a representative of the tutelary authority or together with a relative with full legally competence established by the judicial body. If necessary, upon request or on its own, the prosecuting authority or the court requires a psychologist to attend the hearing of the minor witness. The hearing of the minor witness must avoid causing any adverse effect on his/her mental condition.

Art. 24 para. (2) of Law no. 678/2001 provides, inter alia, that in cases of human trafficking offenses, the hearing of the minor aged under 14 shall be held in the presence of at least one parent or legal representative, while being compulsory *summoning* a psychologist or a representative of the General Directorate of Social Assistance and Child Protection. Therefore, these provisions are mandatory for minor victims under the age of 14, and not in the case of those over 14 years, but the judiciary can decide the participation of these persons at the hearing of a minor aged between 14 and 18 years, as well.

It is noted that the text of the special law does not require the presence of a psychologist, but only his/her summon. Of course, if considered necessary, the prosecuting authority or the court may order that the hearing of minor victims of trafficking psychologist to be present when the summoning is mandatory.

For a effective protection of vulnerable victims and, in particular of the minor ones and in order to avoid re-victimization, the Ministry of Justice and the Superior Council of Magistracy submitted to the Parliament proposals to complete the CPC; these proposals shall provide that if the injured persons - for which it was established the existence of specific protection needs - the judicial body may order their examination in premises designed or adapted for this purpose, through its hearing in the presence of a psychologist or other specialist in counseling victims, followed by their rehearing by the same person, as a rule.

In order to protect minor victims during the judicial proceedings, a number of NGOs in Romania and France, under a protocol between the French Embassy, Ministry of Justice of Romania, the Prosecutor's Office attached to the High Court of Cassation and Justice and the Superior Council of Magistracy have equipped the hearing rooms in Craiova and Cluj with video and audio recording equipment and with unidirectional glass. During September-October 2015 it is inaugurated a similar room in the headquarters of the Prosecutor's Office attached to Bucharest Tribunal. These specially equipped hearing rooms for minors (also in terms of the necessary environment) can be used by all judicial bodies in hearing of minors, especially of those aggrieved or witnesses, being indicated to be used for minor victims of trafficking in persons.

In order to avoid re-hearing of minor victims, there were sent to the Parliament proposals for amending the CPC with the purposes of establishing mandatory recording of the hearing with audio or audiovisual technical means; it was also proposed the express regulation meaning that **re-hearing of the injured person shall take place unless this is strictly necessary for the development of the criminal proceedings.**

It was also proposed the immediate hearing of the aggrieved person by the judicial body which has registered a complaint about a crime (if this is not possible, it shall take place subsequent to the filing of the complaint without undue delay); under these circumstances, the statement submitted by the injured party represent an evidence even if it has been administered before the criminal prosecution.

The proposals for supplementing the CPC also aim the laying down of texts expressly providing that **there are presumed vulnerable the following: the minor victims**, the victims who are in dependency relationship with the offender, **victims of terrorism, organized crime, trafficking in persons**, violence in close relationships, sexual violence or exploitation, victims of hate crime and victims affected by crimes due to prejudice or discrimination reasons that may relate in particular to their personal characteristics, victims with disabilities and also victims who suffered considerable damage as a result of a serious offense.

5. The right to question the accused, the witnesses and the experts - art. 81 letter g).

This law is specific in the proceedings stage, but also in early hearing of a witness by the judge of rights and freedoms. The questions are asked through the judge if assented to it. These questions can be asked orally during the hearing or through the submission of written requests comprising questions proposed by the injured party.

As the crime of trafficking in persons involves considerable trauma for victims and the need to avoid re-victimization, the judicial bodies avoid the confrontation between the trafficker and the victim.

During prosecution, the victim's lawyer must enforce the victim's right to question the accused, the witnesses and experts; according to the provisions of Art. 93 para. 1 CPC the lawyer can assist at any criminal charges, including the hearing of the defendant and the witnesses.

6. The right to a free of charge interpreter when unable to understand, speak or communicate in Romanian language - art. 81 letter g/1) in conjunction with art. 12 and art. 105 CPC.

This right stems from the right to defense that must to effective. The interpreter is necessary not only when the person is a foreign citizen or, for other reasons s/he does not speak Romanian, but also when s/he is unable to communicate verbally, as is the situation of deaf and dumb persons. People with such communication impairments are frequently exploited by traffickers, in particular through begging; in this case it is necessary a sign language interpreter.

The right to a free interpreter covers not only the situation in which the injured party makes statements, but also when communicating to him/her documents of the file, when making requests, asking questions, raising exceptions, making conclusions or speaking to his/her lawyer.

7. The right to protection of privacy and identity of victims of trafficking offenses

This right shall be protected during the judicial proceedings. Art. 24 of Law no. 678/2001 provides that hearings in cases concerning the crime of trafficking in minors and child pornography are nonpublic. During the meetings can assist the parties, their representatives, lawyers, representatives of the National Agency against Trafficking in Persons and other persons whose presence is deemed necessary by the court.

CHAPTER VIII

NATIONAL IDENTIFICATION AND REFERRAL MECHANISM & AVAILABLE ASSISTANCE SERVICES

Approved by Order no 335 /2009. Issuer Ministry of Internal Affairs in partnership with several Romanian institutions: Ministry of Education, Ministry Of Health, Ministry of Labor, Family and Social Protection, National Authority for Child Protection, Ministry of Foreign Affairs, Public Ministry, Ministry of Justice

It is the elaboration of a unitary mechanism coordinated by all institutions and organizations involved in anti-trafficking fight, fact that leads to the improvement of the identification capacity of victims, ensuring their protection and assistance, regardless of the institution or organization with which the victim comes into contact for the first time.

The identification process of victims needs to take in consideration two major perspectives

The Legal Perspective: human trafficking crime was mentioned in Law no. 678/2001 on preventing and combating human trafficking. Starting with 1 February 2014 the incrimination of this illegal act it is mentioned in the Romanian Criminal Code.

The victimology perspective: which needs to take into account the characteristics and particularities of each case.

The identification of a person as victim is the first step of this mechanism and several indicators need to be taken in consideration such as: sex, age, social characteristics, documents, place where the person was identified/found; the circumstances in which the victim was identified, signs that may indicate the presence of an abuse (physical or mental trauma) the evaluation/opinion of another organization or institution involved in fight against human trafficking or with legal attributions that need to be considered in the process of identification and referral in order to ensure the continuity and transparency of the decisional process.

Concrete modalities of identifying and repatriating victims of trafficking

Through judicial bodies. Through Romanian diplomatic missions and consular offices abroad. Through TelVerde (a phone line through which can be retrieved and referred assistance requests from victims or complaints about potential human trafficking offence). Other identification modalities: there are situations in which victims can be identified or referred to institutions/organizations by other citizens, former clients, labor inspectors, medical units' staff, school, local community, NGOs)

Referral Procedures

1. The victim was identified by judicial bodies (police special units for combating organized crime, border police, The Directorate for Investigating Organized Crime and Terrorism DIICOT).

The judicial body will notify the Regional Center of the NAATP for the evaluation of victims' assistance needs and to maintain a contact with her. The representative of the NAATP will elaborate an initial evaluation and will ensure an immediate referral for assistance. A case responsible will be appointed to monitor victim's assistance process. The service provider will be notified and with the victim's agreement relevant information will be transmitted necessary for assistance.

2. The victim was referred and repatriated by IOM.

The IOM representative will inform the representative of the NAATP Regional Center about victim's repatriation. He will discuss with the victim about potential collaboration with the judicial bodies. In the case in which the victim cannot receive assistance during the transit phase, the NAATP Regional Center will be informed in order to ensure as soon as possible access to assistance services in the origin community.

3. The victim was identified by a foreign NGO and referred to a Romanian NGO

The Romanian NGO representative will inform the NAATP Regional Center for the coordination and monitoring of the assistance provided to the victim; will discuss with the victim about possible cooperation with the judicial bodies.

4. The victim is identified through the Romanian diplomatic mission or consular offices

In the situation in which the victim is in urgent need to assistance in that foreign country the Romanian diplomatic mission representative will contact a local institution or organization that provide assistance for victims. If the victim do not have any more identity or travel documents to attend his / her Romanian citizenship, the diplomatic mission will issue at request the papers necessary for the repatriation process and will inform in useful time the NAATP and Border Police about the repatriation of the victim.

5. The victim identified is a foreign citizen

Foreign citizen shall benefit without discrimination from all assistance and protection measures as the Romanian citizens.

The territorial structures of Border Police, General Inspectorate of Romanian Police will contact NAATP to evaluate the assistance needs of the victim. NAATP will contact as soon as possible the Romanian General Inspectorate for Immigration informing about the existence of a foreign victim. The victim will have to be transported in security conditions to a special accommodation for foreign victims in order to receive proper assistance. The Romanian General Inspectorate for Immigration has among its duties to regulate the legal situation of foreign victims in accordance with the legislation on aliens' regime in Romania.

6. The victim identified is a child

The General Directorate of Social Assistance and Child Protection (GDSACP) will have to be informed in order to take special protection measures. The representative of this institution will refer the case to a specialized center for child assistance, victim's abuse, neglect and trafficking and will maintain contact with the partners of the inter-institutional team. The representative of the NAATP Regional Center will maintain contact with the GDSACP in order to monitor the case. In the situation of unaccompanied minors' victims of trafficking, the General Inspectorate for Immigration will have to cooperate with several institutions and organizations specialized in child protection in accordance with Government Emergency Ordinance no. 194/2002 regarding the legal regime of foreigners in Romania.

Available Assistance Services for Victims

Special programs to protect & support victims of trafficking

In the frame of a client-centred, promoting Human Rights approach, the protection and assistance programmes for trafficked victims shall be organized in a normalizing de-institutionalized approach, which foresees the active involvement of the beneficiaries in choosing and implementing the most appropriate services. Thus, the beneficiary may become a subject in designing the individual protection and assistance plan, in selecting the services to be implemented, and in working together with the team to implement services and improve their status. Becoming a subject is also an important step in re-gaining one's identity and individuality, should the exploitation experience and its objectification be considered.

An individualized assistance and protection intervention also uses the beneficiary's resources – motivation for change; projects for the future; initiatives; coping mechanisms. The aim of any assistance intervention is that of increasing the level of adjustment/functionality of the victims in various areas of the life identified as important to them. Attaining re/integration for trafficked victims also refers to building independent living skills, improving the economic sustainability of the person, improving the social functioning and the wellbeing of the victim (physical, emotional, material). Re/integration is both a result of the assistance implemented and a process; it is often lengthy, lasting in average 3 years and has a sinuous dynamics. Given these facts, professionals may avoid characterizing the individual reintegration experiences of their beneficiaries as “successful” or “failures” but may consider the individual resources as factors influencing the progresses in assistance.

A different situation is that in which family members become indirect beneficiaries in the protection and assistance programmes. The lack of social protection and professional opportunities often makes the victim vulnerable for trafficking and relapse but also impacts on her family. According to the problems the family is facing and their level of dependency on the direct beneficiary, they may receive: guidance and information on social assistance measures they may apply to; benefit from material assistance, medical services or family/couple counselling. The family members who can become indirect beneficiaries: undeclared unemployed persons; persons with disability; children or younger brothers; persons falling out of the state social assistance system.

The Case Manager is the professional who assesses the needs of the client and monitors their progresses throughout the assistance programme, in an honest, transparent and collaborative professional relation. The case manager also takes the decision on the services the client shall benefit from, designates the professionals who will work with the client and will maintain constant collaboration with them. He acts as a mediator between the client and the various institutions involved (authorities, social services, employers, professional training providers, medical staff, other professionals).

Out of the general goal of victim assistance, that of ensuring re/integration, three working objectives can be extracted:

- Ensuring the physical protection and wellbeing of trafficked victims
- Ensuring improved emotional wellbeing, by reducing posttraumatic symptoms
- Ensuring the economic sustainability for victims

In addition, each assistance programme may be divided according to stages, as below:

- ➔ Assistance in crisis (from 0 – 6 months from intake in assistance) – focused mainly on addressing emergency situations: ensuring physical protection and accommodation; providing emergency medical assistance; psychological intervention in crisis

- Intermediary assistance (7-12 months in assistance) – focused on implementing the full range of services, unless assessed differently: residential, material, medical, juridical, psychological, social, vocational/educational assistance
- Final/ re/integration phase (13-24 months in assistance) - focused on implementing the range of services according to ongoing identified needs: residential, material, medical, juridical, psychological, social, vocational/educational assistance, until the objectives of the assistance and protection plan are met. It is followed by a 6 months monitoring period.
- the monitoring stage – is extended on a 6 months period from the completion of the assistance programme; it refers to monitoring the person's adjustment to an independent life and to receiving support to solve any difficulty occurred in the meanwhile.

To ensure equity and transparency, the service provider(s) may conclude an Assistance Contract with the beneficiary and may also use a Beneficiary's Rights Charter.

The services

Concretely, the activities of an assistance programme (crisis, medium duration or long-term) are:

- **Residential assistance:** for short, medium and long term duration, in protective apartment system;
- **Social assistance:** evaluation of the family and of living conditions; assessing the risk for re-victimization; re-issue of identity papers; support for obtaining of social protection means; covering costs for in and outside of town transportation; periodical monitoring of beneficiaries; mediation of the relation with social protection institutions, with the professional training providers, with schools, etc;
- **Material assistance:** catering for the basic needs by providing food, personal hygiene, care, clothing and footwear items; personal budget management activities (identifying priorities; organizing expenses; using weekly allowance to shop or pay bills); house management activities (cooking; cleaning; using household devices; interacting with the building administrator);
- **Psychological assistance:** individual psychotherapy; family/couple psychotherapy; psychological support group; occupational therapy groups; mediation of the relationship with the origin/extended/nuclear family; psychological support and preliminary evaluation, by phone, before repatriation; psychological support before and after conducting medical investigations; accompaniment in relation with authorities;
- **Medical assistance :** covering costs and accompaniment in conducting routine and specialized medical investigations; blood tests; emergency medical interventions; dental treatment and prophylaxis; ophthalmological investigations, in partnership with private medical clinics; medical counselling; enrolment to family physician and covering costs for the health insurance;
- **Educational assistance:** support in studies completion; enrolment of beneficiaries to professional training/reconversion courses; providing school supplies, textbooks and necessary items; monitoring of the situation and school evolution; professional orientation and vocational counselling activities; informal education activities (literacy courses, healthy life education, PC usage, foreign languages, support in preparing homework); labour reintegration specific activities (mediating relations with the labour placement agency - ANOFM/AJOFM, CV editing, assisted job search, preparation for the employment interview);
- **Juridical assistance:** juridical counselling on the rights as injured party/witness and representation in court both in the criminal trial and in civil cases, related to the trafficking situation (civil redress, divorce, legal guardianship over the child, etc, services provided by a collaborating lawyer); support in carrying out the financial compensation request.

Monitoring the assistance and protection interventions

Elaborating working objectives helps professionals assign assistance services to goals and link them to results, so that the outcomes of the assistance programme can be measured.

The monitoring and evaluation of an assistance programme is a constant activity to be carried out in the various stages and has three directions:

- monitoring and evaluation done by the beneficiaries (qualitative) : (re)evaluation of the assistance objectives; feedback on the satisfaction and relevance of provided services;
- monitoring and evaluation done by the team of professionals implementing the assistance(qualitative and quantitative): based on indicators measuring the beneficiaries' progresses in various stages of the assistance programme; through narrative progress reports; through the annual activity report; through the number of beneficiaries assisted per year/type of service provided/type of assistance;
- monitoring and evaluation of the programme and the degree it complies with the national specific standards for the specialized assistance of trafficked victims - conducted by ANITP, the national anti-trafficking coordinator.

Indicators = concrete elements/criteria used as basis to measure the service provided or the beneficiaries' progress in relation to it.

Qualitative indicators -> answer the question „**how to bring change/improvement**”

e.g. the quality of medical assistance is ensured by the interaction of several factors: medical staff-patient relation; the non-judgmental attitude of the doctor; previous experiences of the beneficiary with medical interventions; explanations received on treatment, healthy lifestyle practices the beneficiary's access to adequate treatment.

Quantitative indicators -> answers the question „**how many**” and points out the level of improvement but without explaining the factors which influenced it, as well as the allocated resources and degree of effort of the team.

e.g. the no of beneficiaries who received a certain service indicates that the particular service is necessary and requested but does not detail on the quality of the service or its impact in achieving reintegration for beneficiaries

There are two types of indicators, both useful in measuring the effectiveness and results of the assistance programme:

- **impact indicators** – check if the expected results (re/integration) have been achieved (e.g. physical security); re/integration is a process influenced by the interaction of several factors – personal resources + social inclusion opportunities which act cumulated.

Following the grid below impact indicators are: safe and affordable accommodation; legal status; education and training opportunities; professional/employment situation; security and safety; healthy social environment; social wellbeing and positive interpersonal relations; economic situation; physical wellbeing; mental wellbeing; access to services and opportunities; motivation and commitment to the re/integration process; legal issues and court proceedings; wellbeing of secondary beneficiaries.

- **process indicators** – verifies the manner in which the process was organized and implemented as well as the results.

Have the services been allocated and distributed adequately?

Have the assistance policies/procedures been respected ?

Have the services proved adequate to the beneficiaries 'needs?

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