

# **SOCIAL PROTECTION OF THE HUMAN TRAFFICKING VICTIMS FROM ROMANIA**

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**Abstract:** Human trafficking is one of the most widely spread crimes in today's Europe. Not only does it affect the direct victims but also the indirect victims and the communities in which it develops. The social protection of the victims of this crime is not merely an obligation which the states that have signed the Protocol of Palermo have assumed but it is also a very important instrument to suppress its development by strengthening the vulnerable category of victims of human trafficking and thus avoiding the risk of re-victimisation and re-trafficking. Thus, exposing the victims as less as possible to the exploiters throughout the rehabilitation phase which often coincides with the criminal investigation and criminal trial phase is an important ally. The present paper analyses the current social assistance context in Romania and provides a case study of a unique case of human trafficking as a model of best practice.

**Keywords:** Human trafficking, Victim support, Legislation, Practice, Case Study

## **Social Protection of the victims of human trafficking in Romania. Between theory and practice**

Being mainly ranked as a source country of victims of human trafficking and only subsidiary as a transit and destination country, Romania, according to the

national, European and International statistics is the main fuel for human trafficking within the European Union.

Based on the annual reports of the Romanian National Agency Against Human Trafficking yearly more than 800 victims of human trafficking are identified.

Most of these victims are victims who have been repatriated or who have returned to Romania after the trafficking phase in one of the western countries by means of own possibilities without the support of a state institution or a non-governmental organization.

The needs of these victims depend much on the form of exploitation they have been subjected to, the scars such experiences have left over the victims, both from a psychological and from a physical perspective, the possibility of reintegration into the family and community of origin, own financial resources, level of education and professional development etc.

According to the report issued by the Romanian National Agency Against Human Trafficking in 2016 for the reference year 2015, 880 victims of human trafficking have been identified. Out of these, 492 have been trafficked externally and 388 were trafficked within Romania. Most of them were female victims, 583 and 297 were male victims. According to the age, mostly the victims were aged between 18 – 25, 294 victims but there have been also registered 5 victims of above 60 years. With regards to the methods of recruitment, the statistic shows that 733 victims have been recruited face – to face by a recruiter who, in 479 cases, was a friend. The main form of exploitation continues to be sexual exploitation with 498 registered cases, followed by labour exploitation with 180 cases and forced begging 69 cases. The main countries of destination were Italy 388, Spain 78, Germany, 55, Denmark 51, UK 39 and France 27 but there have been also cases of exploitation of Romanian victims conducted in rather unusual destination countries as Bahamas, Libya or Qatar. The 880 victims have been identified in 833 cases by judicial authorities, in 28 cases by diplomatic missions, in 5 cases by NGOs and in 4 cases by international organizations by means of investigations, in 543 cases, complains 246 cases, raids 44 cases, information of Romanian authorities 22 cases, information of foreign authorities 3 cases and 1 flagrant. (Romanian National Agency Against Human Trafficking, 2016)

A qualitative research conducted at national level with the aim of analysing the “in the field” services offered in Romania to the identified victims of human trafficking has highlighted a series of issues which need to be considered in the future strategies designed to assist the victims of human trafficking. Among these, the main problem identified was the lack of access to specialized residential services, including lack of temporal stability of traffic centres and lack of residential assistance for some category of victims. This highlights the fact that “Most of the centres for the victims of trafficking that were included in this evaluation report were non-functional. These centres cannot shelter victims and, due to this reason, the authorities must use alternative solutions or "emergency

solutions" such as adult victims' accommodation in different structures providing assistance for the homeless, centres for mothers with children at risk, centres for victims of domestic violence. Taking into consideration the victims' gender, the qualitative research highlights the fact that the male victim assistance in residential regime is an issue, even in the functional centres. This happens, either because these structures merge with others that assist women in difficulty, either because of their transformation into structures that grant assistance to child victims." (Romanian National Agency Against Human Trafficking, 2015, p. 43)

Other significant problems identified by the same research were that "the status of the victims may be conditioned by the willingness to cooperate with law enforcement agencies; identity protection for the victim that is part in the criminal trial is not always provided, given the fact that on the court websites victims' personal data are made public: name, home address. For example, in the case of a minor victim of human trafficking, her full name, county of residence, village, street and house number was published on <http://portal.just.ro/>; Assistance for the victim in the criminal trial is made, mostly, by ex officio lawyers. Therefore, one of the main problems arising is the lack of continuity of the process of assisting the victims in the penal trial." (Romanian National Agency Against Human Trafficking, 2015, p. 45)

Eventually, the research also highlights "problems regarding the regional bias in the quality of the assistance process. There are serious differences in the quality and the type of assistance services that a trafficking victim can access depending on the local situation at county level. There are regions in the country with a strong network of institutions (usually nongovernmental) where a victim of trafficking can access a variety of services, starting with long term residential assistance, proper medical assistance, proper legal assistance, school or professional (re)integration, but also regions where access to services is problematic. The main cause of this bias is the presence or absence in the area of NGO's that can provide this type of services." (Romanian National Agency Against Human Trafficking, 2015, p. 46)

### **Romanian victim protection legislative framework**

In Romania Law No. 211/2004 regarding some measures to assure the protection of the victims of crimes foresees the main rights of the victims of crimes, including the victims of human trafficking. This has been very elaborately designed in 2004 so that the transposition of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA was a smooth procedure.

The above mentioned law foresees in the benefit of the victims the right to receive psychological counselling, legal advice and compensation for the harm occurred by the crime of which subject the victim has been. The forms of assistance

to which the victims are entitled can either be given by the state authorities according to their competences or by NGOs, in collaboration or independently.

Further on, Law No. 292/2011 on social assistance, modified and completed, through Art. 62 and 63 enumerates the social services which particularly the victims of human trafficking are entitled to, among which housing services in protected residential centres are mentioned, information about their rights and freedoms, counselling, emotional support, rehabilitation and social reinsertion services, legal advice, career counselling and professional guidance are mentioned.

Additionally, Law No. 135/2010 of the Romanian Criminal Procedure Code (R.C.P.C.) has several articles which provide useful victim protection instruments during the criminal investigation phase and during the trial phase.

According to Art. 81 of the R.C.P.C., “ (1) in criminal proceedings, a victim has the following rights: a) to be informed of its rights; b) to propose production of evidence by the judicial bodies, to raise objections and to make submissions; c) to file any other applications related to the settlement of the criminal part of the case; d) to be informed, within a reasonable term, on the status of the criminal investigation, upon explicit request, provided that they indicate an address on the territory of Romania, an e-mail address or a electronic messaging address, to which such information can be communicated; e) to consult the case file, under the law; f) to be heard; g) to ask questions of the defendant, witnesses and experts; g<sup>1</sup>) to receive an interpreter, free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language; h) to be assisted or represented by a counsel; i) to use a mediator, in cases permitted by law; j) other rights set by law. (2) A person who suffered physical harm or a material or moral prejudice as a result of a criminal act in relation to which the criminal action is initiated ex officio, and who does not want to participate in criminal proceedings has to inform the judicial body of this, and the latter can hear such person as a witness if it deems it necessary.”

With respect to the hearing procedure of the victims, Art. 111 of the R.C.P.C. lists a series of rights and obligations: “(2) A victim shall be informed of the following rights and obligations: a) the right to be assisted by a counsel, and in case of mandatory legal assistance, the right to have a counsel appointed ex officio; b) the right to use a mediator in the situations permitted by law; c) the right to propose production of evidence, to raise objections and to argue in court, under the terms set by the law; d) the right to be informed of the conducting of proceedings, the right to file a prior complaint, as well the right to become a civil party in the trial; e) the obligation to come to court when summoned by the judicial bodies; f) the obligation to notify of any change of address. (5) On the occasion of the first hearing, a victim shall be informed of the fact that, in the event that the defendant is deprived of freedom or convicted to a custodial sentence, the former can be informed of their release in any manner.”

The same code states the fact that the criminal investigation bodies, “for the protection of private life or dignity, may order protection measures specified under Arts. 125 – 130 in respect of a victim or a civil party.”

Such protection measures, as listed in Art. 127 are: “a) surveillance and guard of the witness’ residence or providing of a temporary dwelling space; b) accompanying and ensuring protection to the witness or to their family members during trips; c) closed court sessions during the hearing of witnesses; d) hearing of witnesses without them being physically present in the court room, through audio-video transmission devices, with their voice and image distorted, when the other measures are not sufficient; e) protection of identity data, by issuing a pseudonym under which the witness shall testify.”

For ordering a witness protection measure during the trial Art. 128 R.C.P.C. states that: “(1) The court orders the application of protection measures ex officio, upon request by the prosecutor, the witnesses, the parties or the victim. (2) A proposal filed by the prosecutor includes: a) name of the witnesses to be heard at the trial stage and in whose respect the ordering of a protection measure is sought; b) an actual reasoning of the danger seriousness and of such measure need. (3) When such application is filed by other persons listed under par. (1), the court may order that the prosecutor conduct verifications, on an emergency basis, in respect of the soundness of such protection request. (4) Such application shall be ruled on in chambers, without the participation of the person who filed it. (5) The prosecutor’s attendance is mandatory. (6) The court shall decide through a reasoned court resolution, which is not subject to avenues of appeal. (7) The court resolution ordering a protection measure shall be stored under confidentiality terms. If witness protection is necessary also after the court sentence remains final, provisions of the special law are applicable.”

In such cases, the hearing of the protected witnesses takes places under within the limitations set by Art. 129: “ (1) In the situations listed under Art. 126 par. (1) item d) and Art. 127 item d), the hearing of witnesses may be conducted through audio-video devices, without the physical presence of the witness at the venue where judicial bodies are. (3) Main trial subjects, parties and their counsels may cross examine witnesses who testify under the terms set by par. (1). Judicial bodies shall deny questions that may lead to a witness' identification. (4) Statements of protected witnesses shall be recorded using audio and video technical devices and shall be fully transcribed in a written format. (5) During the criminal investigation, statements are signed by criminal investigation bodies or, as applicable, by the Judge for Rights and Liberties and by the prosecutor who attended the hearing of witnesses, and shall be included in the case file. Transcribed witness statements shall also be signed by these and shall be stored with the case file submitted to the prosecutors’ office, in a special place, under confidentiality terms. (6) During the trial, witness statements are signed by the judicial panel’s presiding judge. (7) The medium on which witness statements were recorded, in

original, sealed with the seal of the prosecutors' office or, as applicable, of the court before which the statement was given, shall be stored under confidentiality terms. The medium containing the recordings made during the criminal investigation shall be submitted at the end of the criminal investigation to the court of competent jurisdiction, together with the case file, and shall be stored under the same confidentiality terms."

The Romanian legislative framework on protecting the victims of human trafficking has additionally been strengthened after the transposition into the national legislative system of the Directive 2011/36/Eu of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, being among the 9 states of the European Union transposing the legislation within the established deadline – 6<sup>th</sup> of April 2013.

### **Protection of the Romanian victims of human trafficking. Case study of a “victimless” case.**

Blackburn is an old mill town in the Northwest of England. Recently the authorities have seen a growth in the appearance of ‘pop up’ brothels which are being run by Romanian Organised Crime Groups who seem to be drawn to the area because of the multitude of cheap rental properties and steady customer base.

As part of a Police response, a dedicated Human Trafficking team ( Proteus) has been set up to combat this threat, however, a common theme that has emerged is that in many cases the girls refuse to make a complaint. The reasons for this are well understood around fear and mistrust but it proves to be problematic when seeking to prosecute the offenders and safeguard the victims.

“Operation Nyx” started when in May 2016 the police has received some intelligence that a female was working as a prostitute at 299 Accrington Road, Blackburn. This address is a classic profile for a pop up brothel being a mid-terraced house in a cheap rental area.

Base on this, the police has decided do a safeguarding visit to establish who was at the property and if they would support any Police action should evidence of exploitation be found.

As part of the planning, the police waited until the evening to maximise the chance of there being evidence of sex work being identified and also in the hope that the traffickers would also be present. A key part of the strategy was the attending officers to be wearing body worn cameras so that any immediate evidence could be captured and recorded.

On Wednesday 11<sup>th</sup> May 2016 officers from East Division Human Trafficking team with neighbourhood officers attended 299 Accrington Road to conduct a safeguarding visit on the females believed to be living and working from the address. On knocking on the door there was no response but officers at the rear of the premises noticed a large built male leave the rear door of 299 using his

mobile phone and walk toward the back street, he was followed by a dark haired female in a dressing gown. Officer spoke to the male and female and returned into the house opening the front door to allow the other officer entry.

Once in the address it was instantly clear that the premises were being used as a brothel. Each room had a double bed in it, including the living room there were condoms and lubricants next to the beds, and dozens of mobiles phones that were constantly ringing in the living room. The female was taken into a separate room to be spoken to by a female officer and whilst trying to communicate with the large built male who said his name was C.S. a further couple walked in the back door. This male stated his name was I.S. and he was with another female who stated they both lived at this address. They all stated that they were from Romania. At this point given the evidence of the address being used as a brothel, the females being advertised on adult service website, the males were arrested on suspicion of human trafficking.

The females were placed in separate rooms with female officers firstly to explain that the police was checking on their wellbeing as it was believed they were being exploited for prostitution and may have been trafficked into the UK for that reason and secondly to obtain a first account from them.

Prior to conducting a search of the premises, a third male walk in through the back door. He was spoken to and identified himself as C.V. He claimed to be a friend just visiting the address. On talking to him further he could not tell us where he was living and his account of being there and what his involvement with the house and occupants were did not ring true. He removed his wallet and phone and placed them on the kitchen work surface and produced a Romanian driving licence to confirm his identity. He was at this point also arrested on suspicion of human trafficking.

Both females admitted being prostitutes and working from that address as a brothel.

They deny being coerced or forced but state that the males do not work and are living off the money the females make.

On searching the address there were numerous recent receipts from money transfer companies showing several thousands of pounds of money recently being transferred out of the country and paid into banks.

In the kitchen was an A4 piece of paper with Vivastreet 05-05-16 written on. This is used by females setting up profiles to confirm with the website provider that they are the girl advertising.

During the subsequent investigation, phone enquiries and cell siting showed the offenders in the area of certain houses / hotels.

Phone downloads also showed the females connecting to hotel Wi-Fi , they also took photos of themselves in hotels and enquiries helped officers identify the hotels they were using. This showed that the females were being moved from different hotels for the purpose of sexual exploitation.

Further receipts from money transfer companies were found showing approximately £70,000 had been transferred out of the country and paid into banks in the home country of Romania.

The important points were that the police had captured the girls' account on the bodycam when they first entered the house and established from them that the males were living off the money earned through prostitution. Further on they could also show that the males had moved the girls around between several addresses (including hotels).

The Modern Slavery Act 2015 states that an offence of Human Trafficking is committed if a person arranges or facilitates the travel of another person with a view to this person being exploited. It is irrelevant whether the person consents to the travel (whether the person is an adult or a child).

The Act then goes on to provide a definition of sexual exploitation as something that is done to a person that would amount to an offence under – Section 1(1) (a) of the Protection of Children Act 1978 (indecent photographs of children) or Part 1 of the Sexual Offences Act 2003 – eg. Rape, Sexual Assault and includes Sections 52 & 53 of the Sexual Offences Act 2003 covering the control of prostitution.

Therefore, by proving that the girls had been moved by the males and that they (the males) were gaining financially from the prostitution, then a formal complaint from a victim was not required.

All 3 males were charged with 1. Arranging or Facilitating the travel of another person with a view to exploitation (section 2 of Modern Slavery Act) and 2. Keeping / Managing a brothel with a view to exploitation (October 2015 – May 2016) even though the girls continued to refuse to cooperate. All 3 males pleaded guilty to Human Trafficking and jailed for a total of 10 years.

The court was told the case is thought to be one of the first in the country where police have managed to secure a conviction against human traffickers without the support and testimony of the victims.

## **Conclusions**

Being the main source country of the victims of human trafficking from the European Union, Romania must focus not only on preventing and combatting human trafficking but also on assisting the victims of this crime because of several considerations: a) the majority of the victims return or are repatriated back to Romania after the trafficking phase; b) a considerable number of the victims are re-victimised and/or re-trafficked, therefore they keep showing up in different annual statistics, either to the same destination or to a different destination country so the average number of trafficking cases can not be reduced without proper rehabilitation; c) human trafficking is a crime which is not only having disastrous effect on the direct victims but also on the indirect victims such as children or

relatives and also on the community in which it develops causing negative effects in the sphere of public health, migration or labour market.

As shown in the present paper from a legislative perspective Romania has developed in a positive direction introducing efficient legislative instrument in order to proceed to the de-structuring of organized crime groups. However, empirical researches show that there are also several syncope when it comes down to applying the instruments created.

One of the most efficient methods to avoid re-victimization and to protect the victims of human trafficking from public exposure is the lack of their involvement in the criminal investigations and criminal trials. The unique case study shown in the present paper reflects the positive outcomes of such an endeavour.

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Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, being among the 9 states of the European Union transposing the legislation within the established deadline – 6<sup>th</sup> of April 2013.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA was a smooth procedure.

Law No. 135/2010 of the Romanian Criminal Procedure Code

Law No. 211/2004 regarding some measures to assure the protection of the victims of crimes

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