

HUMAN TRAFFICKING. TRAFFICKING IN CHILDREN. PRACTICAL ASPECTS REGARDING CHILDREN EXPLOITATION

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Abstract

900 thousand children are working in their own households and 70 thousand were victims of worst forms of child labor, including sexual exploitation, forced work, trafficking in children, involvement in criminal activities and risk exposure. Also, approximately 3 thousand street children were involved in: products selling in the street, beggary or windshields washing. In Roma communities, the work of young children (even of 5 years old) is still a frequent practice.

Isolated cases of girls involved in prostitution were discovered and sexual exploitation of children remained a major problem. From a total of 100 trafficking cases assisted by International Organization for Migration, 26 involved trafficking in minors (girls). A number of nongovernmental organizations emphasized that many institutionalized girls are exposed to a high risk of being trafficked.

Keywords: persons trafficking, children exploitation, criminal activities

A) The Need to Differentiate between Trafficking of Children and Human Trafficking

Trafficking in children is the recruitment, transportation, transfer, harboring, or receipt of children, as well as giving or receipt of payment or benefits for obtaining the consent of the people who control the children for the purpose of: sexual, commercial, and non-commercial exploitation, prostitution or the pornographic industry; labor exploitation or forced services; exploitation in slavery or practices similar to slavery, including illicit adoption; use in armed conflicts; use in criminal activities; removal of organs or tissues for transplantation; abandonment abroad. Similar actions accompanied by: the use of physical or psychological violence against the children; sexual abuse on the children, their commercial and non-commercial sexual exploitation; use of torture, inhuman or degrading

treatment in order to coerce the children, or accompanied by rape, the use of the children's physical dependence, use of arms, threat of disclosing confidential information to the children's families or other people; exploitation in slavery or practices similar to slavery; children use in armed conflicts; removal of organs or tissues for transplantation.

International legislation (The convention concerning children's rights, adopted on November 20, 1989, in New York, by resolution of the General Meeting of the United Nations no. 44/25 ratified by Romania by Law no. 18/1990 and the Protocol concerning the prevention, repressing and punishment of human trafficking, especially women and children, additional to the ONU Convention against the transnational organized criminality) operates with the term of „child” by which is understood any human being under the age of 18. So, the actions of human trafficking (feminine or masculine gender) under the age of 18 will be enrolled according to Article 13 of Law no. 678/2001.

As a result of the modifications brought to the dispositions of Article 13 paragraph (1) of Law no. 678/2001 by Government Decision no. 79/2005 a legal protection was offered to all persons under 18 years of age, victims of trafficking, independently if it was the case of a minor with the age between 15 and 18 years or by a minor who did not turn 15 years of age, being eliminated the distinction existing in the previous regulation between these two categories of passive subjects of crime, for which there were provided punishments with prison in a different quantum, respectively from 5 to 15 years, if the deed was perpetrated on a person that did not turn 15 years and from 3 to 12 years if the victim was a person with age between 15 and 18 years.

Besides, Law 678/2001, that defines and sanctions the crime of trafficking, mentions at Article 16: „The consent of the person, victim of trafficking, does not discard the penal liability of the perpetrator.”

In the doctrine¹ was underlined that the existence of the consent can be analyzed under a triple aspect: either as a constitutive element of incrimination, or as a cause of reducing the punishment, or as a justificatory cause.

By Law 678/2001, the lawgiver understood to incriminate the deed despite the consent of the harmed person, being estimated that this consent

¹ L. Stănescu, *Consimțământul victimei traficului de persoane. Efecte*, (The consent of the victim of human trafficking) in „Revista de Drept penal”, no. 3 / 2004.

is always vicious and, consequently it does not fulfill the conditions of a valid expressed consent. It was appreciated that, in any situation, the capacity of consent of a person must be compared with the capacity of possessing the rights given by the law, and consequently, in order to be valid, the consent must not be vicious by violence, dole or essential error.

In the situation regulated by the examined law the consent is obtained, explicitly or implicitly, by threat, violence or fraud (meaning by use of false qualities), deceit, abuse of authority or taking advantage by the impossibility of that person to defend herself or himself or to express its will or by offering, giving, accepting, receiving of money or other goods.

The estimation as non-existent of a valid consent must be looked upon in a tight correlation with the special situation in which such a victim is found: its cultural, linguistic and physical isolation, the precarious economic situation, the prevention of the access or even the dominant position of the ones that exploit the person who forms the object of the trafficking.

In general, the human trafficking is perceived as a cross-border phenomenon, but by the way in which it can be observed from the definition, crossing the border is no longer a condition for classifying this crime as „trafficking”. Besides, this issue was necessary because the internal trafficking has become equally developed and has a strong connection with the external one, requiring a unitary approach.

Romania is in the first place an origin country for the victims of human trafficking². *US Department Report*³ characterizes Romania as an origin country and of transit especially for women and girls trafficked in Bosnia, Serbia, Macedonia, Kosovo, Albania, Greece, Italy and Turkey for the purpose of sexual exploitation.

Romania is situated between the old soviet block and the countries of the former Yugoslavia which suffered not only the negative effects of the transition, but also the consequences of the war. Due to its geographic position, Romania has an important route (transit country) for the victims of trafficking in the Moldavia Republic, Ukraine and, sometimes, from certain Asian countries.

Until 2002, the area of the Balkans represented the main area toward

² Trafficking in Human Beings in Southeastern Europe – UNICEF, 2000.

³ Victims of Trafficking and Violence Protection Act 2000 – Trafficking in Persons Report, June 2002.

which the persons from Romania were trafficked, the highest number of victims being repatriated from this country. Persons from Romania and the Moldavia Republic⁴ were trafficked through Romania most often in Serbia and Montenegro, and from here in other Balkan countries or West European ones. Cases of children trafficked from Romania were reported in Bosnia and Herzegovina, Macedonia, Montenegro and Serbia (including Kosovo). Likewise, such cases are met in West European countries such as Belgium, Luxemburg and France. Outside Europe, isolated cases of victims from Romania were reported in Cambodia, Canada or South Africa.

A ECPAT⁵ report from 2001 identified the main destinations of the victims of victim trafficking from Romania as being: - Belgium (girls and boys trafficked for the purpose of sexual exploitation by organized groups from Albania), - Italy (after Albania, Romania is the second origin country of the children trafficked in Italy), - Norway, - Holland (especially boys).

Beginning with the year 2003, the main destinations of the victims of trafficking from Romania are Spain, Italy, France, Holland, Austria and Greece. The largest number of the trafficked children and separated children were returned from these countries. This change in the destinations of the children – victims of trafficking is in a tight connection with the migration towards labor, but also with the demand from these countries.

B) Aspects concerning the children trafficking in comparison with other crimes

2. Traffic and child labor

2.1 Forced or mandatory labor

According to Article 191 of the penal Code the deed of subjecting one person, in other cases than the ones stipulated by the legal dispositions, when performing a labor against his or her wish or a mandatory labor it is considered a crime and it is punished with prison from 6 months to 3 years.

The incrimination of this deed occurred as a result of ratification by Romania of the Convention no. 39/1930 concerning forced or mandatory

⁴ A Human Rights Report on Trafficking of Persons, Especially Women and Children – Protection Project, 2002 (www.protectionproject.org).

⁵ Trafficking in children for sexual purposes from Eastern Europe to Western Europe – ECPAT, 2001.

labor, by Decree no. 213 of May 18, 1957, it corresponding to the constitutional provisions that, in Article 42 paragraph (1), stipulate that forced labor is prohibited.

Any person has the possibility of choosing freely the labor he or she wishes to develop, in comparison with the acquired skills and preparation. Any contrary act of obligating a person to forced labor represents a serious violation of the human freedom.

According to Article 2 point 2 letter a of Law no. 678/2001, the performance of a labor or the fulfillment of services in a forced manner or with the breach of the legal norms concerning labor conditions, remuneration, health and security means exploitation of that person.

In the case in which a person is forced to fulfill a task, a labor that normally he or she would not performed or he or she is put in the situation of performing a labor to which he or she was not obligated to perform, as if he or she had the duty of making it, and the performance of the respective labor is done forcedly, by the modalities and means incriminated by Article 12 and 13 of Law no. 678/2001, the perpetrator will be held responsible for the crime of human trafficking.

2.2 Slavery

According to Article 190 of the penal Code „The putting or keeping of a person in a state of slavery, as well as the slave trafficking are punished with prison from 3 to 10 years and with the prohibition of some rights.”

This crime is constituted by the deed of a person that puts another person in a state of slavery, respectively the perpetrator brings the victim in the situation of total dependence towards him, this one becoming the owner of the damaged person, person that before was free, being assimilated now with a single living object.

By the maintaining under a state of slavery it is understood the exertion on one person or all the powers that derive from the property right 147.

According to Article 2 point 2 of Law no. 678/2001, by exploiting one person (which refers to the purpose of the crime) it is understood, at letter b), also „the maintaining under a state of slavery or other procedures similar to the deprivation of freedom or enslavement”.

So, the slavery represents a form of exploitation that constitutes the purpose of trafficking.

Related to the essence of slavery lies the uprootal of a person and moving he or she in a non-familiar environment, in which the lack of social resources makes it vulnerable and exposes it to exploitation.

By slavery it can also be understood the obligation of a person to perform sexual services and of labor by force or constraint, by the condition of slavery being the deprivation of a person from the essential aspects of his or her independence.

When we refer to slavery, as a form of exploiting the trafficked human beings we refer also to the domestic enslavement which is characterized by a personal relationship between the exploiter and the victim, of cohabitation, in whose context the trafficker abusively exploits the services of the victim, basing himself on his or her isolation and vulnerability.

The exertion of these powers by the exploiter gains relevance in the case of the human trafficking, especially women trafficking connecting the traffic with the practices similar to slavery.

Human trafficking can imply also a series of practices similar to slavery, for instance, the obligation of one person to perform sexual services and labor by force or constraint.

The practices similar to slavery characteristic to the trafficking do not necessarily involve the fact that the victim should be deprived totally of any kind of independence.

It was established, starting from the Additional Convention that stipulates the full abolition of slavery, slave commerce and practices similar to slavery (Geneva, September 7, 1956), as being modern forms of practices similar to slavery:

- constraint by duty;
- enslavement;
- forced marriage of a woman in exchange for paying an obligation;
- transferring the woman by the husband, his family or community, to another person;
- the inheritance of a woman by another person, after the death of the husband;
- the selling of a child or a young man by his parents for the purpose of exploiting the child or his mother.

In Article 3&3 from the European Union Chart it is stipulated that a modern form of slavery is also the human trafficking.

The International Organization of Labor (OIM) estimates that, on a world level there are over 350 millions of children workers. They are surnamed "the little slaves" and they are put to labor under horrific conditions, for the profit of some employers that are unscrupulous. The triggering signals of OIM are multiplying.

Of the 350 millions of children forced to labor, both in the countries where the sheer poverty is prevalent, as well as the ones in the richness pole, 17 millions are subjected to some forms of exploitation that are difficult to conceive: underfed, they work hard at least ten hours a day, without any spare day, they do not have access to medical care or social services.

"Slaves" with age between five and 15 years can be met in the most unexpected places: in mines of diamonds or charcoal, sorting garbage from tons of residues, on the plantations of cotton or opium, in front of ovens of melting metals or in the networks of organized crime, obligated to steal, beg or to prostitute. They are often preferred to the adults because they are more disciplined, they accept any kind of work, they do not know how to claim their rights and "they cost" barely nothing.

The geography of the phenomenon comprises extremely vast areas. Practically, there is no continent in which the labor of the children is not exploited. The Asia-Pacific area owns a record-percentage of "small slaves", approximately 60% of the world total. On the Indian continent, the data of the World Bank and of UNICEF speak about approximately 56 millions of labor-children. In Pakistan or Nepal, the cases of families that sell their children to the manual manufacturers of carpets are very frequent. They begin to acquire this trade since four years old, fact that causes them problems of development and respiratory disease.

In its turn, the organization "Save the Children" denounces the situation of at least 450.000 little girls, with ages between six and 14 years from the Indian state Andhra Pradesh who work on the cotton plantations.

Numerous trading companies, among which Unilever, Bayer, Monsanto, Emergent Genetics, take advantage after the work contributed by the "little slaves". Likewise, in sub-Saharan Africa there is an increased percentage of „labor-children", especially in countries such as Nigeria or Sierra Leone. In Burkina Faso can be seen children of seven-eight years old who work daily, at a 60 feet depth, in gold mines.

In Latin America, the cases of "slave-children" are extremely spread, one child from six being involved. In poor areas from countries such as Brazil, Bolivia or Peru, many of them are forced to labor only for survival. When they are around six years old they know how to handle a special knife for cutting the sugar-cane, during which time others are "employed" in charcoal mines, at pushing cars and selecting ores. The exposure to toxic gases can induce death to them or, in the best case scenario, serious respiratory illnesses.

As far as the European continent is concerned, things are a little more with shades of differences. In the countries with economies in transition from the Eastern Europe, affected by an increased rate of poverty, the children labor in order to help their family. 4% of the ones with ages between 10 and 14 years old are active.

In the "rich" countries, many children coming from the row of immigrants work at "the employer". For instance, in the great urban crowds of Italy (country where, according to the data of the IRES institute, there are approximately 500.000 children that labor), the children "with family" can be used in the carwashes or at unloading goods in supermarkets, and the ones "without family" get on the hands of drug dealers or are forced to steal, beg or prostitute.

Data provided by the organization for the defense of children's rights „Telefono Azzuro" show that in the Peninsula the annual business figure for the networks of beggar-children can arrive to one billion of euro. As far as the rural areas are concerned, "the little slaves" work "illegally" side by side with the adults in various illicit plants or plantations.

The international regulations concerning the labor of the children debuted in 1919 when the International Organization of the Labor (OIM), by Convention no. 5, fixates the age of 14 years as a minimum threshold for an industrial activity. Later, by Convention no. 138 of 1973, OIM established that, independently on the type of activity, the hiring of children with ages under 15 years old is prohibited. In 1989, the General meeting of ONU approved the International Convention of Children's Rights that, for the first time, introduced the concept of the child as subject of some rights. In 1999, the Convention no. 182 of the International Organization of Labor defines and regulates the "Most serious forms of children exploitation".

So, the exposure of teenagers with ages under 18 to activities that can cause "physical, mental and sexual traumas" is prohibited, as well as the use of children in subterraneous, submarine, great heights activities in a polluted environment.

The industrial revolution of Great Britain, arrived afterwards in France, brings an increased number of children hired in plants, such as those of processing the cotton in northern England, French filatures or textile workshops from the USA. The labor is very hard: the époque confessions speak about unthinkable punishments applied to children. One of them, used especially in the plants of Great Britain, is the whipping when the production rate decreased.

However, by regulating "Factory Act" of 1853, the hiring in the textile industry of the children smaller than nine years was prohibited and the labor time was limited depending on the age (10 hours a day for the children with ages between 9 and 14 years old, 12 hours for the category 14-18 years old). In Europe, at the end of the 19th century, the minimum age for hiring was of 9 years old in Italy, 10 in Denmark, 12 years in Germany and Holland and 4 years in Switzerland.

The number of children that work in China is not known precisely, but the organizations of defense of the human rights speak about a figure comprised between five and six millions. At the end of the '90, several National Governmentment Organizations reported that in areas surrounding Hong Kong there is an increased rate of school abandon, the main cause being the hiring of children in companies specialized in export. A clerk of the Ministry of Labor acknowledged then that the issue of "labor-children" is a serious one.

So, it was discovered that the most "productive" areas from this point of view are Sichuan, Hubei, Fujian and Guangdong, in which the children with age between eight and 16 work between 10 to 14 hours a day, underpriced paid. The reports spoke about 45 foreign companies from the area Shenzhen, where there were teenagers under 16 years of age hired.

Throughout the last years, the International Organization of the Labor received numerous confessions about children hired in the textile industry and in the one that manufactures toys. 80% of the toys in the entire world are "made in China", Thailand or Indonesia, for their manufacturing were working children under 14 years of age 12 hours a day and under hard to imagine conditions.

Recent figures show that the USA imports annually toys in amount of over six billions of dollars. In 1998, two plants, one from China, one from Indonesia, burnt, hundreds of little girls lost their lives in the fires. In the USA there were afterwards organized campaigns of boycotting the toys "made in China", under the name of "Toycott". As it was subsequently observed, these had not by a long shot the targeted consequences.

At the end of the month of April 2008, 1.000 Chinese children with ages between nine and 16 years old were working in plants from Dongguan, Shenzhen and Huizhou (province Canton), were "released". The newspaper "Nanfang Dushibao", quoted by "Le Monde", stated that a great part of the economy of the province was based on export and that at its development contributed firstly the children. The smallest "Salary" is of nine centimes per hour, of which a nine year old "laborer" enjoys. This type of scandals outburst regularly in China, comments "Le Monde", but most of the "employers" remain unpunished.

The magnitude of this phenomenon of children exploitation, that represents the most convenient "man-power", is the result of a tight collaboration between the local authorities of the communist party, the "employers" and the police. In July 2007, another happening of this type scandalized the international public opinion, when 570 "little slaves" were discovered working under abominable conditions in brick yards in Shanxi province, from the south-west of Beijing.

Closed in bedrooms- barracks, guarded by wolf-dogs, "fed" only with a few pieces of polenta a day, it was discovered that the little ones were also beaten if they did not fulfill their norm.

According to the media reports, the local regime manifested indifference towards this crime and sometimes blocked the investigations of the parents. The communist regime began the investigations only in the context of the international pressure.

According to the media reports from the continental China, most of the children were lured or kidnapped by the traffickers from train stations from Zhenzhou, bus stations, from under the bridges or on the streets. The children were usually sold for the amount of 500 yuani (approximately 65US\$) at the brick plants from the Shanxi province.

The organized protected crime. Beijing Youth reported on June 15, 2007 that the son of a party leader from the village Caosheng owns one of

the illegal brick plants from the district Hongdong and that he enjoys special protection. These brick plants pay large taxes and “have a special connection with the government officials.”

According to a report of Guangzhou New Express Daily of June 13, the slavery of children exists many years now. The local government does not help the rescuing of children but protects and supports the brick plants. Chai Wei, the father of such a child, declared that he tried once to save a few children from the brick plant in the district Linyi. However, the police refused to help because the owner of the plant was a powerful man. Eventually, Mr. Chai saved only seven children. Upon another occasion, the police from the district Yongji refused directly to help Mr. Chai.

According to the television network from Henan, a parent found his child in a brick plant with the help of the police. In the same place, he discovered another child that he knew, from the same city as he was and he wished to bring the child to his home. The local police told him that the plant spent hundreds of yuani to buy children and they declared: “Find only your child and leave alone other people’s business.”

Shanghai Morning Post reported on June 14 about a group of children that worked in a brick plant. They carried clay bricks during 10 hours a day. The regular beatings were used to ensure themselves that they move the bricks faster. Those children were dirty and their clothes were torn and dusty. Some of them were 15 years old and other only 8. This happens in hundreds of brick plants in the southern part of the Shanxi province.

These barefoot children work all day and their hair is so dirty and elf-lock looking that they looked like barbarians. Some of them had been isolated from the external world for over 7 years; other are beaten and become disabled after they try to escape; some of them have burns and bloody wounds on their back because the workers mark their back with hot red bricks.

The children must work over 14 hours a day and they are never fed accordingly. If they become too tired and they slow down the work, the supervisors lift bricks and throw them towards their head. If the bleeding aggravates, a dirty cloth is used in order to stop it, but the children must continue the work. Brutal beatings occur all the time.

The children are never brought to the hospital if they have injuries as a result of the beatings. If their wounds aggravate and there is no chance of recovery, the children are buried alive. These children suffer from such skin illnesses due to the lack of a proper hygiene.

2.3 Beggary

According to Article 326 penal Code the deed of the person that, having the ability to work, recurs repeatedly to the charity of the public, asking material help, is punished with prison from one month to 3 years.

The same as in the prostitution crime, the distinction between the crimes of human trafficking and that of beggary bears on the quality of the person that recurs, repeatedly, to the charity of the public, asking for material help. So, if in the case of beggary crime, the person that practices it has always the quality of active subject, in the case of crimes of human trafficking the person that practices beggary has the quality of passive subject, and cannot be condemned for the perpetration of this crime, being a victim of the perpetrated trafficking.

The recruiting of a minor for the purpose of exploiting him by forcing him/her to beg and the recruitment of a grown-up person, by offering and giving money or other goods for obtaining the consent of the person that has authority on him, for the same purpose, meet the constituent elements of the children trafficking crimes and human trafficking stipulated in article 13 and article 12 from Law no.678/2001.

Legal practice: The High Court of Cassation and Justice, Criminal Department, Decision no. 593 of January 30, 2004.

Through the penal sentence no. 585 of October 8, 2003, the Court of Constanța condemned the defendants R.B. and G.J. for the perpetration of children trafficking crimes and human trafficking stipulated in Article 13 paragraph (1), (3) and (4) and in Article 12 paragraph (1) and paragraph (2) letter a) of Law no. 678/2001.

The court admitted that, on May 19, 2002, the defendant G.J. went to Năvodari and, inquiring about the existence of a child with disabilities, was guided to the family of the child B.M.

The child, who had an infirmity at her leg, accepted the offer of the defendant of taking her abroad for beggary, under the condition that she would be accompanied by her sister B.A. The defendant convinced the mother of the two sisters, B.C., to agree to their departure, giving her money and goods. For the achievement of the proposed goal, the defendant G.J. took the child and her sister, as well as their mother, to the authorities for the fulfillment of the formalities for obtaining the passports. The defendant R.B.

paid the taxes for the issuance of the passports that, afterwards the two defendants kept. On July 15, 2002, the defendant R.B. was detained at the border when he tried to get B.M. and B.A out of the country.

The Appeal Court Constanța, by penal decision no. 354/P of November 7, 2003, rejected the appeals of the defendants.

The appeals declared by the defendants were considered as lacking ground.

Article 13 of Law no. 678/2001 stipulates that the recruitment, transportation, transfer, accommodation or acceptance of a person with age between 15 and 18 years old, for the purpose of exploiting them, constitutes crime of children trafficking. Article 12 paragraph (1) of the same law, referring to adult victims, conditions the existence of the crime of human trafficking as a previous activity of recruitment, transportation, transfer, accommodation or acceptance of a person, by threat, violence or other forms of constraint, by kidnapping, fraud or deceit, by abuse of authority or taking advantage of the impossibility of that person of defending herself or himself or expressing her will or by offering, giving, accepting or receiving money or other goods in order to obtain the consent of the person that has authority on other person, for the purpose of exploiting this person.

Article 2 point (2) letter b) of Law no. 678/2001 stipulates that by exploitation is understood „the keeping under a state of slavery or other similar procedures of depriving of liberty or enslavement”, and letter e) of the same article stipulates that “the performance of such other activities by which fundamental human rights and liberties are violated” constitutes, likewise, a form of exploitation by “enslavement” in the sense of the quoted text being understood “the action of subject.”

Or, once arrived abroad, the two sisters, deprived of identity documents, in a country whose language they do not know, would support themselves only from expedients, by begging for the defendant R.B.

The deed of the two defendants fulfils the constitutive elements of the crime of human trafficking, under the conditions in which the recruitment of the adult person B.A., for the purpose of exploitation, was made with the consent of the persons that have authority on her– the parents of the girl – to whom the defendants gave money and goods, promising to them altogether, that they will send to them half of the money earned by their daughters from beggary.

Consequently, in cause are fulfilled the constitutive elements of the crimes of children trafficking and human trafficking, for which reason the appeals of the defendants were rejected.

3.1 Traffic and adoption

The Hague Convention on Children Protection and Cooperation in the Matter of International Adoption forms the main international instrument of preventing international children trafficking for the purpose of adoption. It prohibits the improper financial gain obtained by international adoptions, specifying that only the cost and expenses, including reasonable fees... can be perceived or paid (Article 32). Besides, the Facultative Protocol at the Convention concerning Children's Rights, in connection to the child selling, child prostitution and child pornography includes in its domain of application: obtaining the consent inappropriately, as intermediate, for the purpose of adopting a child, with the breach of the applicable international legal provisions as far as adoption is concerned (Article 3(ii)).

But there are further cases of selling for international adoption, especially in South America, in Central America and Eastern Europe, the Western buyers wishing, especially, white children; this is though a global phenomenon because, under normal conditions, the number of couples that are willing to adopt tends to exceed the number of healthy children that can be adopted. And, although international adoptions represent an important source of profit, the clandestine child selling for adoption manifests itself also on internal plan in several jurisdictions.

Some countries took measures in order to prohibit the international adoptions or to limit them only to the cases of abandoned or institutionalized children. However, these measures, although elaborated in order to prevent trafficking and support the child's rights, stipulated at Articles 7, 8 and 10 (the right of the child to know his parents and to be taking care by them, the right to preserving the identity and the right to not be separated by the parents), seem to form a less flexible mean of guaranteeing the superior interest of the individual children than the measures stipulated by the Hague Convention.

In order to avoid the possibility of trafficking by adoption of the children separated from their parents or the children remained orphans as a result of the war in the former Yugoslavia, a decision was taken that until

the end of the war, the international adoptions would not be allowed. However, within the cooperation with the International Social Service, there were signaled cases of mothers that were crossing the border in order to bear their children in hospitals from abroad and who accepted to give for adoption newborn children, thing that alimeted the suspicions connected to children trafficking. This practice requires a better bilateral cooperation within the Convention concerning the Powers of Authorities and the Law Applicable Concerning the Protection of the Newborn, even if the Federal Republic Yugoslavia did not sign yet this Convention“⁶

The chief of the Romanian Service for Adoptions, Mrs. Theodora Bertzi, announced that over 1300 Romanian children adopted from families from abroad between 1997 and 2005 vanished untraceable, the Romanian state not having any information in connection to them. The networks of children trafficking, illegal adoptions perfected with the help of the state representatives. This is how Romania looks like before the „great step“towards Europe. In only a few months, three native counties (Buzău, Oradea and Craiova) found themselves in the attention of the authorities and the press. The reason is as serious as possible: three newborn found in the maternities of the mentioned counties vanished without a trace. „There are specialized persons that deal with such things that are familiar with the market. They dealt also in the past with adoptions and remained still interested by this subject. It might be said that they are those persons that made international adoptions in the past. In Romania, there was an external children market that now has closed, but there are attempts of producing more, as possible, on the internal market“, declared the chief of ORA.

Most of the times adoption is only the cover for organ drawing at children.

3.2 Trafficking and organ transplant

The evidence concerning children organ trafficking for medical purposes are to a great extent not confirmed. There was not performed yet a systematic investigation worldwide of the suspected cases. But, taking into consideration the stringent demand, from the rich states, of children's organs for transplant, as well as the vulnerability of many children from the

⁶ The Federal Republic of Yugoslavia, IR, paragraph 420.

countries in course of development, the probability of such commerce seems pretty large. The Special Rapporteur for the issue of children selling, children prostitution and child pornography informed the Commission for Human Rights that the issue of sold children for organ transplant remains the most sensitive subject of the mandate of the Special Rapporteur. Although the evidence concerning adult organ trafficking of various parts of the world is abundant, the search for evidence concerning children's organ trafficking presents greater difficulties. We must We must state the fact that, in the course of the mission of the Special Rapporteur in Nepal, in the year 1993, the Nepal police informed him in relation to a recent case concerning children trafficked in India in this illegal purpose. So there are increasingly numerous evidence concerning the existence of a market for children's organs⁷

The Directing Principles of the World Health Organization concerning Human Organ Transplant recommends that „no organ should be excised from the organism of an alive minor for the purpose of transplant. The exceptions are accepted only according to the national legislation, in the case of regenerative tissues “(Principle 4). These exceptions allow the transplant of bone marrow, but exclude, for instance, that a child would donate a kidney or a lung to a brother of his (although, according to Principle 3, the adults can donate organs to the beneficiaries with which they are genetically kindred). Principle 5 prohibits the commercial transactions for the purpose of organ transplant.

Law no. 2/1998, elaborated taking into consideration the international regulations and the principles and rules incident in this matter, establishes the legal regime of the drawing of tissue transplant and human organs. Since the first article of the law it its foreseen the difference between drawing and transplant, as the notions of donor and receiver.

By drawing we understand the harvesting of tissues and/or morphologically and functionally healthy human organs for performing a transplant. The tissue transplant and/or human organs represents that complex medical activity that, for therapeutic purpose, replaces tissues and/or morphologically and functionally compromised human organs, from the body of a human subject with other similar structures, proved to be

⁷ (E/CN.4/1994/84, par. 100).

healthy. The donor is the alive subject or the subject in brain death, genetically compatible with the potential receiver who, for therapeutic purpose, donates tissues and/or human organs. The receiver is the subject that benefits from the achievement of a transplant.

By law there are stipulated also certain conditions in which activities of drawing and transplant of human tissues and organs can occur. As principle it is established the rule that the drawing and transplant of human tissues and organs cannot make the object of any transaction, because, according to Article 2: the donating during life or the written consent for the drawing of tissues and organs, after death, given by the family members or the relatives stipulated by the law, after his death, represents a profoundly humanitarian act, that can allow the saving of one man's life. In a correlative manner there are provided the crimes stipulated at Article 16(1) and Article 17.

The drawing and transplant of tissues and organs as a result of the exertion of a constraint of physical or moral nature on a natural person are strictly prohibited. As far as the consent is concerned, the law contains also other provisions, among which the possibility of the donor to come back on his given consent before the drawing.

An important provision is that by which it is prohibited the drawing of human tissues and organs from the potential children donors, as well as from the persons that lack of discernment, found alive. The law authorizes though the drawing of the bone marrow also from children, but only in the benefit of his brother or sister. According to the legal provisions, the drawing of bone marrow from children can be done only with the consent of each of the bearers of the parental authority of the legal representative of the child. The consent is expressed in front of the president of the county court or Bucharest city, according to the case, in whose are of activity the child resides, or in front of a magistrate, after the mandatory performance of an investigation by the competent custody authority. The reject from part of the child forbids any drawing.

The organ and tissue trafficking is a form of human trafficking that leads to serious breaching of the human fundamental rights, especially human dignity and physical integrity, and that can affect the trust of the citizens in the legal system of transplant and can aggravate the lack of volunteer donating of organs and tissues.

4 years ago, the Moldavia Republic suspended the international adoptions for fear that the little ones would not be dissected for the organs. According to the Israeli newspaper Haaretz, the Romanian authorities investigate similar accusations in Israel and they suspended the international adoptions in the case of Romanian children. The American authorities monitored a network in the USA that made supplies two years old from the Moldavia Republic.

The Prosecutors of the Department for Investigation of Crimes of Organized Criminality and Terrorism – the territorial Service of Bacău, together with police officers within the Brigade of Fighting Organized Crime of Bacău and supported by the General Department of Information and Internal Protection – the Zonal Service of Bacău, traced in flagrante delicto the parents of the two children, being investigated for the committing of crimes of children trafficking, for the purpose of organ drawing. According to the prosecutors, it was admitted that the two, in the quality of natural parents manifested the intention of selling both children, seven years old of age, in order to suffer drawing of a kidney, receiving for their consent 12.000 EUR, informs Realitatea.net. March 17, 2009.

4. Trafficking and sexual exploitation

4.1 Child pornography

The achievement or production of pornographic material with children represents an act of sexual exploitation of the children which constitutes a crime in all national legislations, either by specific crimes created for this purpose, or by traditional and more generic incriminations, concerning sexual moral⁸.

The main reasons for the pornography peak on the Internet⁹ were the universality of the environment and its ability of putting millions of people in contact, users from all over the world, the rapidity of the access

⁸ Miguel Angel Boldova Pasamar, Pornografia infantila pe Internet: fundamentul și limitele intervenției dreptului penal, *Caiete de Drept Penal nr. 2/2008* (Child Pornography on the Internet: the Fundament and the Limits of the Intervention of the Penal Law, Books of Penal Law no. 2/2008), Ed. CH Beck

⁹ Horatiu Dan Dumitru, *Probleme juridice privind abuzurile savarsite asupra minorilor în Internet, I-IV*, *Pandectele Romane, (Legal Issues concerning the Abuse Perpetrated on Children in the Internet, I-VI, Roman Panadects)*, 2006-2007

and the exchange of information, anonymity for the users, and for those involved, small costs. The Internet generated numerous forms for allowing this exchange, and the increasing popularity of this mean made the phenomenon become huge, but it also determined important efforts of states that tried to break it and fight it.

A definition of the notion of child pornography was established by the Decision – frame no. 2004/68/J.A.I. of the European Union Council. This document qualifies for beginning the term of „child”, being considered as belonging to this category any person under 15 years of age. The legal concept of child pornography includes, according to the dispositions¹⁰ of the quoted normative act, any material that gives or represents visually a real child involved or co-hired in an explicit sexual behavior, such as, for instance, lascivious exposure of the genital or pubic areas. Enter in the content of the notion and materials that contain visual representations of a real person that looks like a child, involved in a sexual behavior of the type previously described, being considered as pornography also those that present realistic images of a non-existing child given in such a posture.

The age from which the legal protection is ensured varies between 14 and 18 years. This age is of 14 years in Germany and Austria, 15 years in Denmark, 16 years in England and the Wales and Switzerland, 18 years in Spain, Italy and the U.S.A. The admitted age corresponds generally to the one under which sexual relations with a child constitutes a crime. Three countries: Belgium, Spain and the U.S.A. admitted as far as pornographic fighting is concerned at a superior age limit to the one admitted for other sexual crimes. In all the countries there are special dispositions concerning the fight against child pornography, the legal interdiction concerning the visual supports, excluding the sound recordings, although, at the same time, the formulations encountered in the legal texts do not exclude virtual representations, and the age from which legal protection is ensured varies between 14 and 15 years.

According to the American jurisprudence¹¹, the written texts are not considered pornography because the court considered that the only ground for restraining the freedom of speech constitutes the production of an

¹⁰ Article 1 letter a and b from the Decision-frame no. 2004/68/J.A.I. adopted on December 22, 2003 by the Council of the European Union.

¹¹ Case *Ashcroft vs. Free Speech Coalition*

effective prejudice tot the child, so that any work that does not include a real determined period, if it is not qualified as obscene for other grounds other than the age of the subject, will never be considered illegal.

By the term „obscene", we understand those objects or scenes that in the common sense offend the shame. As well as in the Romanian penal law, the notion of obscenity waits to be estimated at the level of the medium tolerance of the common man from the respective community, thus being avoided the extremes given by an exaggerated morality, or an excessive tolerance. In the American jurisprudence it is considered that the criteria of the obscenity will be estimated in rapport with the current standards of the community from the respective state that will have priority in comparison with the national standards¹².

Both in the Romanian penal law, as well as in the American one, next to the term obscene, the specialty texts operate also with another term, and namely, pornographic. The explanatory dictionary of the Romanian language puts an equality sign between obscene and pornographic, showing that both imply something indecent, shameless, trivial, vile and immoral. The obscene nature is given by the general evolution of the public sentiment of shame; it varies topographically and depending on the intellectual level.

According to jurisprudence¹³ and the American specialty literature, a work that illustrates or describes a sexual behavior is considered as having an obscene nature under the following situations:

- a) when the regular individual, by applying the current standards, would conclude that the work, taken in its whole, draws a lascivious interest;
- b) when the work presents or describes, in an obvious offending manner, the sexual behavior intentionally defined by the applicable state law;
- c) when the work, taken in its whole, lacks artistic literary, political or scientific genuine value.

So, in the jurisprudence of the New York state was considered that there was the crime of spreading obscene materials when the owner of a sex-shop commercializes videocassettes with children.

In order for the child pornography in the case of a child to exist, it

¹² T Dianu, *Infrațiunea de răspândire de materiale pornografice în dreptul penal SUA*, in „Revista de drept penal” no.1/1997, (*The Crime of Spreading Pornographic Materials in the Penal Law in the USA*, in „The Review of Penal Law”, no. 1/1997), pp. 135-140.

¹³ Case *Miller vs California*, United State Supreme Court, 413 U.S. 15 (1973)

is not important if the child is dressed or naked, the visual description of him must be lascivious. It is considered a crime even the receiving, the private possession and even the taping or exposure of such materials.

The sexual materials whose manufacturing or distribution is incriminated by the state Legislation concerning sexual exploitation of the children, showing children, engaged or used in explicit sexual behaviors, such as erotic nudity, meaning exposure of the human genital apparatus, of the pubic area or women's breasts for the purpose of opening the sexual drive, or stimulating one or several persons, does not identify with the materials constitutionally protected that show nudes of children for family, educational, medical, artistic or other legitimate purposes.

In order to determine if a certain image constitutes or not child pornography, in the American jurisprudence¹⁴ six criteria are used (Dost factors), respectively it is estimated:

- if the visual material centers on the genital, pubic or anal areas of the child;
- if the framing in the scenery of the subject is suggestive from a sexual point of view, meaning the subject is in a posture or location usually associated with sexual activities;
- if a child is presented in an unnatural posture or an attitude that is inappropriate to his age;
- if the subject is presented partially naked or nude;
- if the visual representation suggests a sexual act or the availability of engaging in sexual activities;
- if the visual representation is made for the purpose of raising a sexual response in the psyche of the watcher.

However, the Dost factors do not represent an absolute standard, in 1994 in the cause *United States vs. Knox*, the court decided that total or partial nudity of the represented child is not necessary, the images that show dressed children constituting „lascivious exposure", in the sense of the law.

In the case of pornographic materials with children it is prohibited the simple private possession of visual means or printing in which the

¹⁴ See the cause *United State vs Dost* of 1986 quoted in „ Internet porn increasing child abuse, *Guardian*, January 12, 2004

children are engaged in a sexual behavior. There exists crime even when possession is achieved within one's personal residence. Likewise, it is also incriminated the possession of photos or reproduction of the child in positions that involve the lascivious display of the genital organs, even if it is not foreseen the requisite that the photos are obscene. Even the preview of pornographic materials with children is incriminated.

4.2. Sexual act with a child or child trafficking?

Article 198 of the penal Code incriminates the sexual act, of any kind, with a person of the opposite sex or the same sex that did not make 15 years of age. An assimilated modality is represented also by the sexual act, of any nature, with a person of the opposite sex or the same sex between 15 and 18 years of age, if it is perpetrated by a tutor or curator or a supervisor, caretaker, general practitioner, professor or educator, that makes use of his capacity or if the perpetrator abused of the victim's trust or abused of his authority or influence.

The element of peculiarity of this crime is given, on one hand, by the existence of a consent to the act of sexual nature, as it is interpreted also in the case of a rape, and on the other hand by the age of the victim, a person under 15 years, or between 15 and 18 years if there exists a particular relationship between the author and the victim.

If the child is so young that we cannot speak about the concrete existence of consent to the sexual act, the deed will be framed as rape.

The repeated oral sexual intercourses with children of the same sex determined to do this by giving money by the perpetrator, constitutes crime of sexual relations with children stipulated in Article 198 paragraph (3) of the penal Code, and not that of children trafficking stipulated in Article 13 of Law no. 678/2001, that involves a previous recruitment, transportation, transfer, accommodation activity or receiving a person for the purpose of exploiting the person.

By penal sentence no. 41 of February 17, 2004, Bihor Court convicted the defendant G.F. for perpetrating the crime of child trafficking stipulated in Article 13 paragraphs (1), (2) and (3) of Law 678/2001. The Court admitted that, in July 2001, the defendant recruited and repeatedly engaged in sexual intercourses in the park with two children, offering them different amounts of money.

The Oradea Court, by penal decision no. 101 of May 11, 2004, rejected the appeal of the defendant.

The appeal declared by the defendant has no grounds.

According to Article 13 of Law 678/2001, the crime of child trafficking consists in recruitment, transportation, transfer, receiving of a person with age between 15-18 years, for the purpose of exploiting her or him, and in the paragraph 3 there are foreseen limits of higher punishment in the case in which the crime is committed on a person that did not turn 15 years.

Article 12 paragraph (1) of the same law conditions the existence of the crime of human trafficking of a previous activity of recruitment, transportation, transfer, accommodation or receiving of a person by threat, violence or other forms of constraint, by kidnapping, fraud, deceit, by authority abuse or taking advantage of the impossibility of the person to defend herself or himself or to express her will, by offering, giving money or other goods in order to obtain the consent of the person, for the purpose of exploiting her or him.

In the sense of the Law no. 678/2001, by exploitation it is understood the keeping in a state of slavery or other similar procedures of deprivation of liberty or enslavement or the performance of some other similar activity by which fundamental human rights and liberties are violated.

In comparison with the contents of the mentioned texts, the defendant did not perpetrate the crime of child trafficking, such as this is characterized in Article 12 and 13 of Law no. 678/2001, he was pursuing to obtain sexual favors in exchange of which he gave money to the damaged persons, his deed was found in the dispositions of Article 198 paragraph (3) of the penal Code according to which the sexual intercourse, of any nature, with a person of the opposite sex or the same sex, who did not turn 18 years of age, determined by the offering or giving of money or other goods by the perpetrator, directly or indirectly, to the victim, the punishment is prison from 3 to 12 years.

Namely, the defendant had, at various time intervals, in the achieving of the same resolution, sexual oral intercourses with persons that did not turn 18 years of age, whom he offered material rewards, the deed comprises the constituent elements of the crime stipulated at Article 198 paragraph 3 of the penal Code.

As a result, the appeal of the defendant was approved, the attacked

decisions were annulled and the legal framing of the deed was changed in the mentioned direction, being disposed the conviction of the defendant according to the new framing.

5. The child trafficking in connection to the drug trafficking

The children that make drug trafficking have 12-13 years of age and a life experience that exceeds by far their biological age. They live rough, to the limit, they learn quickly all sorts of tricks and they become, very soon, drug users. These are the children used by their families to make drug dealings.

The Brasov prosecutors revealed a network that recruited poor children and sent them to beg. Four children of Brasov and four of Timisoara were exploited in this way for half a year. If they collected enough money, the children were rewarded with drugs. Most of them ran from their homes, and the traffickers found it easy to determine them to beg for them on the streets of Brasov and Timisoara.

Recruited also by a child, the children were kept under inhuman conditions, in damaged buildings, with torn clothes and very little amounts of food. During the day they were sent to beg, and if during the evening they did not bring the requested amount they were savagely beaten.

The authorities say that the parents lost long ago the trace of the children, with ages between 10 and 15 years.

All five members of the network were caught by policemen after they were followed for more than two months, and their victims were restored to the families. They received preventive arrest warrants and are liable for up to 20 years of prison for child trafficking.

Several drug dealers that acted in the Ferentari neighborhood in the Capital were sent to trial by the prosecutors of the Department of Investigating Crimes of Organized Crime and Terrorism, under the accusation of dealing and possession of high risk drugs (heroin). The investigators claim that the group of dealers had activity in Fernetari neighborhood, in the area of the Zabrauti street. Here existed a group of eight blocks with single room apartments, in which lived several heroin dealers, who supported each other in order to supply, prepare and resell the heroin.

After monitoring the area, developed throughout six months, on December 9, 2005, the investigators performed 12 searches at the residence

of the defendants, as a result of which were obtained significant amounts of heroin, hypodermic syringes used for drug use, as well as the amount of 80 million ancient lei, meaning, 3.000 USD and 1.000 de euro, approximately two pounds of golden jewelry, cell phones, goods and values obtained as a result of drug dealing.

Throughout the criminal investigation were identified and examined 30 heroin consumers who declared to the prosecutors that they bought their fixes of heroin from persons that were sent to trial, with prices that varied between 20 and 30 lei per fix and, many times, some of the defendants allowed them to consume heroin in their homes, even providing them with syringes, distilled water and lemon salt in order to prepare the fix to be injected.

Likewise, it was established that the drug dealers were selling heroin only in the area Zabrauti-Ferentari, sector 5, both by direct selling, as well as through other persons, the so-called "arrows", some of them even children (with ages between 14 and 18 years old, but even under 14 years old), the defendants were acting cautiously, selling drugs, usually, only to known customers.

We mention the fact that some of the investigated children were either the children of the drug dealers, either taken in family placement, or used for crime perpetration, fact that draw, the detention, on the account of the defendants, of legal aggravating circumstances.

Another signaled case was in Germany, where the child drug dealer was arrested in a park in the Kreuzberg neighborhood in Berlin, while he hid "the dope" in the park, in a sand hole. The policemen found the hiding place on a playground of 150 heroin fixes, which are sold on the black market with 10-15 euro per piece. The child tried to run away from the policemen but the authorities caught and arrested him, taking the money he had on him, obtained from drug dealing. Children are often exploited by drug dealers but it is highly unusual that a 12 year old child would sell heroin on the streets. Usually they do not sell the drugs themselves, because they are children and they cannot be criminally held responsible for their actions.

6. Armed conflict, gun trafficking, child trafficking?¹⁵

¹⁵ Update of the EU ORIENTATIONS CONCERNING CHILDREN AND ARMED CONFLICTS.

Almost 300.000 children serve, this moment, as soldiers for armed groups or governmental forces from over 20 countries, it is shown by a report of the Human Rights Watch organization.

"Vulnerable and easy to intimidate, children are obedient soldiers. Many of them are kidnapped and recruited by force, obligated to obey orders, under death threat. Others adhere to armed groups by desperation: the war separates them from the family, it leaves them without a home and support, determining them to see in fight the only chance of survival", it is shown in the report of the organization. In order to better understand this phenomenon, child soldiers from over 12 countries were interviewed, from Colombia and Lebanon to Sri Lanka or Sudan.

"I was afraid to watch, so I threw myself facing the ground and began to shoot towards the sky. I was afraid not to get shot in the head or punished by my boss if I did not do well", story tells Khin Maung Than, recruited by the national army of Burma at 11 years of age. An adolescent from Sri Lanka, taken forcibly by the Tamil Tigers at 16 years, recalls the episode of the "recruitment": "My parents refused to turn myself in, so that 15 of them – women and men, in uniforms, with rifles and guns – came to take me away from home. They took my father to the woods and beat him, and they pushed my mother in front of the house when she tried to stop them".

"They beat me, they kept me tied, they raped me. I was 14 years old. After that they took me to the military camp", says Evelyn, taken by the governmental forces of Liberia at 14 years. The war atrocities are not the cruelest. The children pass through macabre episodes also before the beginning of the fight. "After they captured us, I and my brothers, the people from the Resistance Army of the Lord told us that we cannot serve all five of us because we will not be able to cope with the situation. So they tied two of my younger brothers and beat them to death. They told us that this will give us force in battle. The youngest was 9 years old", remembers Martin of Uganda, soldier at 12 years old.

Their number is not known exactly, but they are recruited even from 8 years of age, boys and girls altogether. In some countries, such as Nepal, Sri Lanka or Uganda, more than a third of them are girls, used as wives for the military leaders. Although the National Governmentment Organizations try to reintegrate the ones that get away in society, their rehabilitation is difficult. A great part of them remain with a violent

behavior and traumas that prevent their "healing".

In 2000, the United Nations adopted the Optional Protocol at the Convention for children's rights, concerning the involvement of the children in armed conflicts. The document forbids the recruitment of adolescents under 18 years old and was ratified until now in 110 countries.

There are though a high number of states that continue to use adolescents in war.¹⁶ Columbia, for instance, is one of the countries with the most recruited children. Around 11.000 are involved in the conflicts of this country, both in the groups of guerrilla, as well as in the paramilitary forces, their number increasing especially in the past years. In Nepal, although the Maoists reached an agreement with the government in November last year, the Communist Party continues to increase the rows of armed troupes through children. Presently, between 6.000 and 9.000 of the 31.000 Maoist children are soldiers. The report achieved recently by UNICEF and quoted yesterday by Reuters shows that the number of children soldiers dropped though, once the wars of the west of Africa ended.

Boys, but also girls, orphans because of the war or kidnapped from the bosom of the family, brutalized and humiliated, become eventually drugged children that do not know either fear or pity. This way they are described by the publication "Courrier International", which dedicates an entire file to the literature around the phenomenon. Beyond the popularization of the civil wars from the black continent, which involves invariably adolescents, a series of recent novels provides a new perspective on the issue.

General remarks considering human trafficking

The extension of human trafficking and children trafficking especially, with devastating consequences on the victims, but also on society, required the implementing of some legal instruments in order to prevent and fight this phenomenon. Human trafficking, as a form of organized crime, must be looked upon permanently in connection to the set of norms of incrimination of a state, in order to make a fair framing of an illicit action.

In Romania, up to the year 2001, the legal provisions concerning

¹⁶ Report of the independent expert for the study of the Organization of the United Nations concerning violence on children, Bucharest, November 25, 2006

human trafficking were resumed to a series of crimes provided in the penal Code, but without them covering the entire range of activities that had as purpose the exploitation of human beings (for example, the illegal freedom deprivation – article 189 of the penal Code, procurer activities– article 329 of the penal Code, subjecting to forced or mandatory labor - article 191 of the penal Code and slavery - article 190 of the penal Code) and without ensuring, consequently, the real and efficient protection of the damaged social values.

In this legal context, on one hand, a series of illegal activities remained unsanctioned, activities which were developed for the purpose of human trafficking, and, on the other hand, there was not performed a legal efficient protection against all forms of actions susceptible to achieve commerce and exploitation of human beings.

Together with the occurrence of the Law no. 678 of November 21, 2001 concerning the prevention and fight of human trafficking (Official Journal no. 783 of December 11, 2001), modified and completed by the Government Decision no. 143 of October 24, 2002 (Official Journal no. 804 of November 5), Law no. 39 of January 21, 2003 (Official Journal no. 50 of January 29, 2003) and by Government Decision no. 79 of July 14, 2005 (Official Journal no. 629 of July 19, 2005), quoted as follows Law no. 678/2001, the field of the actions that enter in the constituent content of human trafficking crimes became sufficiently comprising to include a series of illegal activities, that could not be incriminated as distinct crimes, but through which was, undeniably privileged the human trafficking for exploitation.

The essential differentiation consist of the highlighting in the legal context of human trafficking crimes of all illegal activities, susceptible to contribute to the achieving of the trafficking of the person, being taken into consideration all the forms of exploitation (the performance of a labor or the fulfillment of services in a forced manner or with the breach of the legal norms concerning labor conditions, payment, health and security; the keeping under a state of slavery or other similar procedures of freedom deprivation or enslavement; the forcing for the practicing of the prostitution, pornographic representations, in order to produce and issue pornographic materials or other forms of sexual exploitation; organ drawing; performance of other such activities in which fundamental human rights and liberties are violated), whereas in the content of the common

crimes only certain crime activities and certain distinct forms of exploitation of the human being are revealed.

Article 35 of the Convention concerning Children's Rights¹⁷ has the role of protecting efficiently the children subjected to the risk of kidnapping, selling or trafficking. Article 11 protects the children against „the illicit transfer or a non-repatriation from abroad “; Article 21 stipulates that the international adoption must not involve any „improper financial gain“, Article 32 protects the children against the abusive and dangerous labor, Article 33, against the involvement in drug dealing, Article 34 against their use in the sexual commerce, and Article 36 against all forms of exploitation. Article 35 is a safety instrument by which it is guaranteed the protection of the children against kidnapping or buying in these purposes or for any other purpose.

In the initial phases of the elaboration of the Convention concerning the Children's Rights, Articles 34, 45 and 36 were merged in a single one, but the Work Group agreed that it was more useful to treat the different forms of child exploitation separately. Article 35 was introduced because the sell or children trafficking had a greater area of application than the article 34, which referred to prostitution and child pornography.¹⁸

How can „the kidnapping, selling or children trafficking occur? Article 11 treats incidents in which children are crossed over the border, and Article 35 stipulates measures concerning internal kidnapping. The children from the poor countries or families can be sold as slaves, for work under a slavery regime or for retrieving some debt and can be trafficked for beggary purposes. The children can be likewise trafficked for sexual purposes, prostitution, pornographic production or, less evident, by forced marriages or traditional practices.

Children, and especially infants, represent an attractive commodity for adoption: Article 21 stipulates measures by which it is guaranteed that the international adoption „cannot determine as consequence an improper financial gain for the people involved“. There are also great suspicions related to the fact that children's bodies are used for transplant organ

¹⁷ Manual pentru implementarea Convenției cu privire la Drepturile Copilului, UNICEF, Bucuresti, Ed Vanemonde, 2004 (Manual for implementing the Convention concerning Children's Rights, UNICEF, Bucharest Vanemonde Publishing House, 2004)

¹⁸ (E/CN.4/1987/ 25, pp. 15-24; Detrick, p. 429).

drawing, being thus violated the Article 6.

So, by Article 35, the Convention ensures a double protection for children: the main forms of children trafficking are treated in different articles, but this article stipulates also global actions concerning kidnapping, selling or trafficking „for any purpose or under any form“.

In the year 2000, the General Meeting of the United Nations adopted the Facultative Protocol at the Convention concerning Children's Rights, concerning children selling, children prostitution and child pornography. Besides, there exists a series of other international treaties that approach this issue, such as the Supplementary Convention concerning Slavery Abolition, Slave Commerce and Institutions and Practices Similar to Slavery, from 1956, and the Convention concerning the Elimination of Human Trafficking and Exploiting Other People for the purpose of Prostitution, from 1949. In the last years, these were strengthened by conventions and protocols specific to children, mainly the ILO Convention concerning the prohibition of the most serious forms of child labor, from 1999, the Protocol concerning the prevention, repression and punishment of human trafficking, especially women and children, that completes the Convention of the United Nations against the Cross-border Organized Criminality (adopted by the General Meeting in the year 2000).

„Human trafficking“ is defined at article 3 of the last mentioned Protocol, as follows: „Human trafficking will mean the recruitment, transportation, transfer, shelter or receiving of persons, by threat or use of force or other forms of coercion, by kidnapping, fraud, deceit, power abuse or a situation of vulnerability, by offering or receiving some amounts of money or some advantages in order to obtain the consent of a person who has control on another person, for the purpose of exploitation. The exploitation will include at least the exploitation of others for the purpose of prostitution or other forms of sexual exploitation, forced labor or forced performing of services, slavery or practices similar to slavery, enslavement or organ exciding“. But, in the case in which we deal with children, the article stipulates that: „(c) The recruitment, transportation, transfer, sheltering or receiving of a child for the purpose of exploiting him will be considered human trafficking, even if the respective action does not involve any of the methods stipulated at the sub-paragraph (a) of this article“.

„Children selling“ is defined at article 2 of the Facultative Protocol

at the Convention concerning the Children's Rights, concerning children selling, children prostitution, child pornography, as follows: „Children selling means any act or transaction by which a child is transferred by a person or a group of persons to another person or another group of persons, for the exchange of a remuneration or restitution“.

The Hague Convention concerning the Civil Aspects of Children Kidnapping at an International Level, „The moving or keeping of a child will be considered illegal in the case in which it violates the custodial right attributed to a person, institution or other organism, either in common or in an exclusive manner, according to the legislation of the state in which lived the child before the moving or keeping“ (Article 3).

The World Conference Against Racism, Racial Discrimination, Xenophobia and Other Similar Forms of Intolerance (Durban, South Africa, September 2001) states, in the Declaration that it adopted, that the victims of trafficking are especially exposed to racism, racial discrimination, xenophobia and other similar forms of intolerance. The Action Program encourages states „to elaborate, apply and consolidate efficient measures, at a national, regional and international level, of preventing, fighting and elimination of all forms of trafficking of women and children, especially girls, through complex strategies against trafficking, including legal measures, prevention campaigns and exchange of information“. It also encourages the states to allot the resources necessary for the implementing of complex programs conceived in order to ensure the support, protection, healing, reintegration in society and rehabilitation of the victims. The states will ensure or consolidate the preparation of the staff of the authorities to enforce the law, immigration and other relevant clerks that deal with trafficking victims.¹⁹

¹⁹ Declaration, paragraph 30; The Action Program, paragraph 64.

