

Protecting Children Victims of Crimes of Human Trafficking in the EU

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Abstract: Within the paper there were examined the main provisions of the European legislative act framework in the domain of protecting children victims of human trafficking offenses, with some critical remarks. The paper can be useful to the European and Romanian legislator, practitioners and academics in the field. The novelty consists of analyzing the provisions of the European legislative act, focusing on the practical ways provided for the protection of children victims of this kind of crime, and the formulated critical remarks.

Keywords: crime; assistance; support; prevention

1. Introduction

In the recent years, on the national territories of all countries of the world there were defined criminal organizations that continuously improve and modernize the forms and methods of action, particularly penetrating in the state institutions through which they often reach their goals.

With the enlargement of the European Union, taking advantage of an incoherent legal framework and judicial cooperation in criminal matters with many gaps, the criminal organizations have developed their actions at a very fast rate. (Rusu, 2012, p. 218)

The establishment of the European Union (EU), conceived as a political and economic entity, designed to ensure a strong economic development to all Member States has implicitly determined the emergence of the new manifestations of crime, in particular the organized cross-border one. (Rusu, 2012, p. 166)

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Providing an area of freedom, security and justice in the EU represents an objective assumed by the Member States, which can only be attained in terms of intensifying the judicial cooperation in criminal activity based on a coherent legislative framework within the organization, but it should also be based on an effective legal system in each Member State. (Rusu, 2012, p. 166)

In this context, on the U.E. territory there were developed several forms of criminal organization, most of them being targeted in drug trafficking, weapons and ammunition, radioactive materials, hazardous waste, human trafficking, etc.

Trafficking in minors is considered by the Member States as one of the most serious one and it is mentioned in all enactments concerning the judicial cooperation in criminal matters in the EU. (Rusu, 2012, p. 167)

A first step to ensuring a proper legal framework in the domain of preventing and combating trafficking in persons was made with the adoption of the Framework Decision 2002/629/JHA of 19 July 2002 on combating the trafficking in persons.¹

The legislative act in question establishes the offenses in this field, which aim is related only to the sexual or labor exploitation, the criminal sanctions to be applied, the liability of legal persons and their applicable penalties and some rules of jurisdiction in the activity of criminal prosecution.

The crime developments in the field, in particular trafficking in minors, which was not sufficiently regulated in the mentioned legislative act, have highlighted some shortcomings, being practically inapplicable in some specific situations.

Against this background, the European legislative act in question was repealed, being adopted the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in persons and protecting its victims, and also replacing the Framework Decision 2002/629/JHA of the Council.²

In this paper we will proceed in examining the way of ensuring the protection of child victims of trafficking in persons' offense in terms of the provisions of the European legislative act with some critical remarks.

2. Assistance and Support for Child Victims

We mention that even from the beginning under the provisions of the European legislative act by the word *child* it means any person under the age of 18, in the Romanian legislation the term being synonymous with *minor*.

¹ Published in OJ L 303 of 01.08.2002.

² Published in the Official Journal of the European Union L101 / 2 of 15.04.2011.

According to article 13 of the Directive, in applying its deposition, it must take into account primarily the best interests of the child, meaning that the children victim will receive assistance, support and protection.

In this sense, all Member States shall take the measures necessary to ensure the specific actions in order to assist and support the children victims of trafficking, in the short and long term in the recovery process of their physical and psycho-social status it will be conducted an assessment of each case, taking into account the views, needs and concerns of the child. In this regard it will be ensured the access to education in accordance with the national law of the Member State concerned.

It will appoint a guardian or a representative for the child victim of trafficking in persons from the moment of its identification by the authorities in the case of, under the national law, a conflict of interests, between the holders of parental responsibility and the child victim, prevents them from defending the supreme interests of the child and /or to represent the child.

Also, the Member States will adopt, to the extent that this is appropriate and possible, measures to provide assistance and family support of the child victim of trafficking in persons, if the family is in the territory of a Member State (Directive 2011/36/UE, article 14). From the examination of those provisions it results that in all cases, the children victims of the offense of trafficking in persons receive special treatment oriented towards meeting the major interest of the child in terms of physical and psychosocial recovery, needs, concerns, training and education.

All the support and assistance activities must, however, be achieved under the internal legislation adopted by each Member State, able to satisfy all the requirements imposed by the European legislative act, starting from its general provisions.

3. Protecting Child Victims of Trafficking in Persons within the Criminal Investigations and Proceedings

According to the provisions of article 15, the Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, the competent authorities appoint a representative for a child victim of trafficking in persons, in the case where, according to the national law, a conflict of interest between the holders of parental responsibility and the child victim prevents them from representing the child.

Child victims will have immediate access to legal advice and free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

In order to protect the child victims of trafficking in persons, within the criminal investigations and proceedings, without bringing prejudice to the rights of the defense, there will be ordered the following measures:

- Interviews with the child victim will take place without unjustified delays, after the competent authorities were informed on the facts in question;
- Interviews with the child victim will take place, where necessary, in premises designed or adapted for this purpose;
- Interviews with the child victim are carried out, when necessary, by and with the help of professionals who have received training for this purpose;
- As far as possible and if it is the case all interviews with the child victim are carried out by the same people;
- The number of interviews is as limited as possible and the interviews are carried out only where strictly necessary for the investigations and proceedings;
- The child victim may be accompanied by a representative or, where appropriate, by an adult named by the child, unless it decides otherwise on that person.

Furthermore, the Member States shall take legislative measures that would allow the interviews with the child victim or a child witness to a crime of human trafficking to be recorded, and they can be accepted as evidence in criminal proceedings.

During the hearings the Member States will adapt the national legislation, so that the hearing would take place without the presence of the public and the child victim may be heard in the courtroom without being physically present through the use of communication technologies (Directive 2011/36/EU, art. 15).

The above provisions contained in article 15 from the international legal instrument establishes a special procedure for the hearing of child victims and child witnesses, a procedure focusing especially on avoiding the possibility of harming them.

This procedure involves both criminal prosecution and on the court.

4. Assistance, Support and Protection for Unaccompanied Child Victim of Trafficking in Persons

In all cases, the Member States shall take measures to ensure that the specific measures that aim at providing assistance and support to child victims of trafficking in persons consider accordingly the personal and special situation of the unaccompanied child victim. To this end it will conduct an individual assessment of the child's interests.

For the case of the unaccompanied child victim it will be designated a guardian, if it is the case.

In the criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, the competent authorities appoint a representative where the child is unaccompanied or separated from his family.

Also, there will be taken the measures for victims of trafficking in persons, including children, to have access to the existing schemes of compensation of the victims of violent intentional crimes (Directive 2011/36/EU, article 16 and 17).

5. Prevention of Child Victimization

In order to reduce the crime in this area, the Member States shall pay particular attention to the complex activity of prevention, through education and training. There will be conducted appropriate action, including through the Internet, such as information and awareness campaigns, research and educational programs, where appropriate in cooperation with relevant civil society organizations and other interested parties, aiming at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in persons.

There will be promoted the training activities for officials likely to come into contact with victims and potential victims of trafficking in persons, including police officers, training that would enable them to identify and deal with victims and potential victims of trafficking in persons.

In order to discourage the organized crime groups or other people intending to commit such offenses, to prevent and combat this type of crime there will be taken steps to incriminate the use of victim persons' services when the service users know that the person is victim of human trafficking offense.

Furthermore, the Member States shall take the necessary measures to establish the national rapporteurs or equivalent mechanisms. Their tasks include the achievement of some assessments of trends in human trafficking matters, measuring the results of the actions of combating human trafficking, including collecting statistics in close cooperation with relevant organizations of the civil society in this field and presenting reports.

At EU level, in order to contribute to a coordinated and strengthened strategy of combat trafficking in persons, the Member States facilitate the fulfillment tasks of an anti-traffic coordinator (CAT). Member States will convey to CAT the relevant information on which CAT will report every two years to the Commission, which will reveal the progress in the complex activity of combating trafficking in persons (Directive 2011/36/EU, article 18-20).

6. Critical Reviews

The judicial practice in the recent years has shown that often children victims of human trafficking offenses are trafficked for the purposes specified by the legislator on the territory of other states than of the home territory.

Without trying to diminish the importance of this international legal instrument, we note that the protection of child victims of human trafficking is not insured properly, especially if the child victim is found by competent judicial authorities of a Member State in its territory, and the child victim is a citizen of another Member State or a third country, and his family is not in the State where the investigation is carried out.

We believe that it would require the establishment of some legal rules to govern the way in which it will ensure the child victim protection, in the case where it is on the territory of Member State other than their own, by identifying new concrete procedures. It will be taken into account the special situation of child victim, due to the following circumstances: ignorance of the State's language in which it was identified, the lack of parental care, the possibility of its accommodation during the investigation, etc.

It also will be considered the possibility of enhancing the judicial cooperation in this matter, for the purposes of granting enhanced CAT competences. We consider the possibility of carrying out some studies and research, to promote a set of best practices at the level of the judicial authorities competent in the fields, proposals for the amendment and completion of EU and Member States laws, etc.

A final observation concerns the need to complete the content of the offense of trafficking in minors, as in practice there may arise situations where perpetrators of such acts cannot be held criminally liable.

Thus the European legislator made the authentic interpretation of the term exploitation, stating that the exploitation includes at least the exploitation of the prostitution of other people or other forms of sexual exploitation, forced labor or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities or removal of organs.

We note that the European legislator did not include the version in which a child is sold to another person for the purpose of raising and educating him, so not with the purpose of exploitation. In other words we consider the implementation of a covert adoption, by breaking the provisions of the internal laws of a Member and European state.

7. Conclusions

The Member States' statistics show an unprecedented growth of this kind of crime, rightly considered to be extremely serious.

Under these conditions, in order to prevent and combat more effectively this kind of crime it has become a necessity to adopt such legislative act.

In order to ensure the application of European legal instrument, it is important that all Member States would complete relevant national legislation in the field (where applicable), with express provisions to ensure coherent action at EU level in this area.

Perhaps the most important problem remains the efficiency of the specific activities of prevention and strengthening the judicial cooperation between investigative bodies with responsibilities in the discovery, investigation, prosecution and adjudication of such cases.

8. References

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