

Legal Analysis of the Rights of Trafficked Persons

ROMANIA



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Foreword

This report has been written as part of the 3-year project “*Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support – A Human Rights-Based Approach*”. It provides a legal analysis of the position of trafficked persons in criminal and other relevant proceedings and their treatment by the judicial system. Particular attention is paid to their access to legal aid and the protection of their rights as victims and witnesses, including access to compensation. The report looks at the legal provisions pertaining to the position of victim/witnesses of trafficking, as well as at their implementation in practice based on the experiences of the partner NGOs and information from interviews with victims. Attention is also paid to the national definition of trafficking and the way it is applied in practice. In particular whether it offers equal protection without discrimination to all possible victims, including sex workers and victims of trafficking and exploitation for other purposes than prostitution.

One of the problems many countries have in common, including Bulgaria, Romania and Slovakia, is the lack of access of victims to legal counseling and aid. An adequate referral system which ensures that victims are informed about the relevant judicial proceedings and their rights from their very first contact with the authorities is missing. There are very few lawyers trained in working with trafficked persons. State-funded legal aid is scarce and often limited to no more than the formal presence of a lawyer during the trial. Even if formally victims have a right to claim compensation for the damages they suffered, in practice such claims are rarely awarded and, if they are, hardly ever executed. Provisions, such as the use of closed hearings or audiovisual means that might protect the safety and privacy of victims are not effectively used. Many actors in the judicial system, including police, prosecutors, judges and lawyers, lack knowledge about trafficking and its psychological, social and health impacts on its victims. And in some cases victims are disrespectfully treated by representatives of the judicial system itself. As a result trafficked persons face major barriers in accessing justice and criminal proceedings often lead to their secondary victimization. At the same time, NGOs are not trained in providing legal counseling and only have limited funds to pay for legal aid and representation. Despite increasing awareness that trafficking and the exploitation of human beings under forced labor or slavery-like conditions constitute severe human rights violations, States tend to focus on the prosecution and punishment of the perpetrators, while the protection of the rights of trafficked persons lags behind.

Often victims are purely seen as instrumental for the prosecution with little regard for the far reaching impact testifying against their exploiters may have on their current and future wellbeing, safety and life.

This project was developed to respond to some of the challenges listed above. It aims at:

- Increasing knowledge of lawyers and social workers about trafficking, its impact and the legal rights of trafficked persons
- Enhancing victims' access to legal counseling, aid and representation during criminal and other legal proceedings
- Increasing the capacity of NGOs and social workers to provide legal information and counseling to trafficked persons
- Enhancing the capacity of NGOs to effectively advocate for the protection and promotion of the rights of trafficked persons as victims and witnesses of a serious crime and human rights violation.

The first step was to map the current situation in regard to the position of victims in criminal and other relevant legal proceedings. To this aim a questionnaire was designed to guide the research, based on the minimum standards as laid down in EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the Council of Europe Convention on Action against Trafficking and other relevant international standards. This resulted in three national reports on the current situation in Bulgaria, Romania and Slovakia. The reports will feed into national trainings of social workers and lawyers and act as a basis for lobby and advocacy by the partner NGOs. The outcomes of the national researches will also be discussed in Round Table sessions with the relevant stakeholders, including law enforcement, judges and prosecutors.

Based on the outcomes of the researches, a group of 15-20 social workers per country will be trained to provide legal counseling and information to trafficked persons. Per country also 20 lawyers will be trained to provide legal aid to trafficked persons and defend their interests and rights during criminal and other legal proceedings. The trainings will be followed by a number of expert meetings on different topics, depending on the national situation. Aim is to create a sustainable network of social workers and lawyers, able to provide legal counseling and aid to trafficked persons, which will continue to operate after the closure of the project.

During the project a leaflet will be developed for trafficked persons to inform them about their rights, including a list of trained lawyers who can provide specialized legal aid. The leaflet will be distributed among all actors that are or might come in contact with (potential) victims of trafficking, including NGOs, social welfare centers, police and embassies.

Next to the training of social workers and lawyers, a model will be developed to systematically monitor court cases with respect to the treatment of the victim/witnesses concerned and the protection of their rights and interests. The monitoring will be carried out by law students who will be specifically trained to this aim. The outcomes will provide the relevant stakeholders with concrete recommendations on how to improve the treatment of trafficking victims in light of the relevant European and international standards. A joint summary of the national reports and the outcomes of the monitoring process, identifying shared problems, will be made for regional advocacy.

In the third year a lobby & advocacy training will be organized for the partner NGOs to use the outcomes of the project for national, regional and international lobby & advocacy to enhance the position of trafficked persons in criminal and other relevant legal proceedings. The training will be followed by media events, Round Table meetings with national stakeholders, international experts

and a selection of the trained lawyers and various other advocacy activities, depending on the country.

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Superior Council of Magistracy

Directorate for Investigating Organized Crime and Terrorism

General Inspectorate for Immigration

General Inspectorate for Police

Ministry of Justice- Probation Direction (central structure)

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Probation Service – Suceava Tribunal

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INTRODUCTION

Trafficking in human beings is a complex phenomenon that has a great impact on our modern society and has severe negative consequences for its victims. Trafficking is recognised as a serious violation of fundamental human rights. This implies that the State has the obligation to prevent and combat trafficking and to provide victims with adequate remedies, including protection, assistance and compensation.

According to statistics and various international reports Romania is an origin, transit and destination country. During the last years certain progress has been made by Romania in regard to the protection of trafficked persons and their rights, but there are still shortcomings that need to be addressed.

This national report developed by PRO REFUGIU Association presents an overview of the current legal framework and its implementation, as well as of the obstacles faced by trafficked persons in accessing their rights as laid down in law. Throughout the report examples and case studies are given, based on the daily practice of assisting victims of trafficking.

In addition to the legal analysis, five interviews with Romanian victims of trafficking were held. The interviews record their experiences with the various actors (law enforcement, prosecutors, lawyers and judges) involved in the different stages of the criminal proceedings. All five respondents were clients of ADPARE at the time of the interview. We want to express our gratitude to them that they were willing to support the research by sharing their perceptions, feelings and thoughts.

The report closes with a number of recommendations aimed at improving access of trafficked persons to legal aid and representation, as well as the improvement of their treatment as victim/witnesses in criminal and other relevant legal proceedings. The recommendations are based on the minimum standards as laid down in EU Directive 2011/36/EU, the Council of Europe Convention on Action against Trafficking and other relevant international standards, including the UN Trafficking Protocol.

CHAPTER 1

FACTS AND FIGURES

This chapter provides a detailed presentation of the statistics on trafficking in Romania during 2011-2012. The statistics do not provide information on the specific type of labor (other than prostitution) for which people are trafficked. However, the most common sectors for men are construction work, agriculture and the forest industry. For women it are agriculture and domestic work.

The data was collected with the support of the following authorities:

- National Agency Against Traffic in Persons
- Directorate for Investigating Organized Crime and Terrorism
- Superior Council for Magistracy
- Ministry of Justice – Probation Direction
- General Inspectorate for Police
- Romanian General Inspectorate for Immigration

Table 1: Number of victims of trafficking in persons identified by the National Agency

Year	Total no. victims identified	Forms of exploitations	Female		Male		Nationals	Foreigners
			Adults	Minors	Adults	Minors		
2011	1048							
		Sexual exploitation	251	244	0	11	505	1
		Forced labour ¹	92	6	304	6	402	6
		Forced thefts	2	1	7	1	11	0
		Forced begging	20	11	40	10	81	0
		Pornography	0	9	1	1	11	0
		Criminal attempt trafficking	10	19	2	1	32	0
2012	1041							

		Sexual exploitation	238	271	9	8	522	4
		Forced labour ¹	94	14	275	27	410	0
		Forced thefts	0	1	3	2	6	0
		Forced begging	8	9	27	4	48	0
		Pornography	1	28	0	2	31	0
		Criminal attempt trafficking	7	4	9	0	20	0

Source: National Agency against Trafficking in Persons

Table 2: Number of identified victims subjected to internal and cross-border trafficking

DOMESTIC TRAFFICKING IN PERSONS					
Year	Forms of exploitation	Women		Men	
2011		Adults	Minors	Adults	Minors
	Sexual exploitation	61	188	-	11
	Forced labour	-	3	7	1
	Forced begging	-	3	-	3
	Pornography	-	4	1	1
	Other forms of trafficking	-	1	-	-
CROSS-BORDER TRAFFICKING IN PERSONS					
	Sexual exploitation	190	56	-	-
	Forced labour	92	3	297	5
	Forced begging	20	8	40	7
	Pornography	-	5	-	-
	Other forms of trafficking	2	-	7	1

DOMESTIC TRAFFICKING IN PERSONS					
Year	Forms of exploitation	Women		Men	
2012		Adults	Minors	Adults	Minors

	Sexual exploitation	74	220	8	8
	Forced labour	22	13	87	25
	Forced begging	1	4	-	2
	Pornography	1	28	-	2
	Other forms of trafficking	-	1	-	-
CROSS-BORDER TRAFFICKING IN PERSONS					
	Sexual exploitation	164	51	1	-
	Forced labour	72	1	188	2
	Forced begging	7	5	27	2
	Pornography	-	-	-	-
	Other forms of trafficking	-	-	3	2

Source: National Agency against Trafficking in Persons

Table 3: Number of victims pleading as injured parties or witnesses in criminal proceedings

Year	Total no. victims as injured parties/witnesses	Women		Men	
		Adults	Minors	Adults	Minors
2011	1005	345	285	346	29
2011	1024	341	318	322	43

Source: National Agency against Trafficking in Persons

Table 4: Number of interviewed/questioned victims and/or injured parties/witnesses of trafficking in persons during the prosecution phase (up till the indictment)

Year	Forms of exploitation	No. victims
2011	Sexual exploitation	447
	Labour exploitation	383
	Forced begging	98
	Other forms of human trafficking	16
2012	Sexual exploitation	455
	Labour exploitation	431

	Forced begging	81
	Other forms of human trafficking	9

Source: Directorate for Investigating Organized Crime and Terrorism

Table 5: Number of cases and suspects/ defendants prosecuted

Year	Total no. cases/ prosecution phase	Total no. suspects/prosecution phase	Total no. suspects sent to court
2011	810	2403	480
2012	676	2236	536

Source: Directorate for Investigating Organized Crime and Terrorism

Table 6: Number of files for human trafficking and engaging in prostitution

Type of criminal offence	Year	First court	Appeal	Supreme Court
Human trafficking	2011	465	No statistics provided	No statistics provided
	2012	422	No statistics provided	No statistics provided
Engaging in prostitution (art. 328 CC)	2011	51	No statistics provided	8
	2012	52	No statistics provided	15

Source: Superior Council for the Magistracy

Table 7: Number of convicted persons in 2011

Year	Type of criminal offence	Total no. convicted persons	Adults		Minors	
			Female	Male	Female	Male
2011	Engaging in prostitution Art. 328 Criminal Code	96	86	1	9	0
	Smuggling of migrants Art. 71 OG no.105/2001	24	9	13	0	2
	Trafficking in persons	90	19	69	2	0

	Art. 12 Law. No. 678/2001					
	Trafficking of minors Art. 13 Law No. 678/2001	143	27	106	3	7
	Child pornography Art. 18 Law no.678/2001	12	0	12	0	0

Source: Superior Council for the Magistracy

Table 8: Number of convicted persons in 2012

Year	Type of criminal offence	Total no. convicted persons	Adults		Minors	
			Female	Male	Female	Male
2012	Engaging in prostitution Art.328 Criminal Code	42	41	0	1	0
	Smuggling of migrants Art. 71 OG no.105/2001	93	49	44	0	0
	Trafficking in persons Art. 12 Law. No. 678/2001	161	40	119	0	2
	Trafficking of minors Art. 13 Law no. 678/2001	255	52	191	3	9
	Child pornography Art. 18 Law no. 678/2001	11	0	10	1	0

Source: Superior Council for Magistracy

CHAPTER 2

CRIMINAL LAW

This chapter discusses the provisions in the Criminal Code on trafficking in human beings and related practices, as well as their implementation in practice. It also pinpoints a number of the attached legal and practical problems.

2.1 Criminalisation of trafficking in persons

The Romanian legislation transposes the full definition set out in Article 3(a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime which reads as follows:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

Trafficking in persons is criminalised both in the Criminal Code (hereafter: CC) and Law no. 678/2001 on preventing and combating human trafficking (hereafter: Anti Trafficking Act¹). The indictment rules therefore are not included in the Criminal Code, but in the special anti-trafficking law. This situation will change with the entry into force of the new Criminal Code, which is foreseen for 1 February 2014. From that moment all provisions in regard to the criminalisation of trafficking will be included in the new Criminal Code.

Article 12(1) Anti Trafficking Act criminalises **trafficking of adults**:

"The recruitment, transportation, transfer, harboring or receipt of persons, by threat, violence or other forms of coercion, abduction, fraud or deception, abuse of power or by taking advantage of that person's inability to defend themselves or to express their will or by offering, giving or receiving payments or other benefits to achieve the consent of a person who has control over another person, for the purpose of exploitation is punishable by imprisonment from 3 to 10 years and the prohibition of certain rights."

According to Art. 12(2) the act is considered more serious

- when committed by two or more persons together

¹ Published in the Official Gazette of Romania, Part I, no. 783 of 11 December 2001.

- when the victim suffered serious bodily or health injury, or
- when it is committed by a public official in the performance of his/her duties.

The penalty in these cases is imprisonment from 5 to 15 years and the prohibition of certain rights.

When the offense resulted in the death or the suicide of the victim, the penalty is imprisonment from 15 to 25 years and the prohibition of certain rights (art. 12(3)).

Article 13 (1) prohibits **trafficking of minors**:

“The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of his/her exploitation is considered trafficking in minors and is punishable by imprisonment from 5 years to 15 years and the prohibition of certain rights”.

The use of one of the coercive or deceptive means is in the case of minors not required. However, in the case of

“threat, violence or other forms of coercion, abduction, fraud, deception, abuse of power or taking advantage of the minor's inability to defend themselves or to express their will or by offering, giving or receiving of payments or benefits to achieve the consent of a person having authority over the minor”

the penalty is raised to imprisonment for 18 years and the prohibition of certain rights (Art. 13 par.(2)).

When the acts indicated in art. 13 par. (1) and (2) are committed according with the conditions mentioned in art. 12 par. 2 or by a family member the penalty is imprisonment from 7 years to 18 years and prohibition of certain rights.

According to Article 2 of the Anti-Trafficking Act **“exploitation of a person”** means:

- a) “the execution of work or performance of services forcefully by violating the legal rules on working conditions, wages, health and safety;*
- b) keeping in slavery or other deprivation procedures similar to the lack of liberty or servitude;*
- c) compelling to prostitution, begging, the production or dissemination of pornographic materials, or other forms of sexual exploitation;*
- d) removal of organs, tissues or cells of human origin in violation of the laws;*
- e) carrying out any other similar activities which violate fundamental human rights and freedoms”.*

The term *forcefully* covers both situations when the victim is physically or morally constrained.

“Deprivation procedures similar to the lack of liberty or servitude” means to put the victim in a situation of total dependence from the offender.

Attempt is punishable both in regard to adults and minors.

Facilitating the entry or stay of a trafficked person

Article 17 Anti Trafficking Act stipulates that the act of determining or allowing, either directly or through an intermediary, the entry or stay in the country of a person subject to human trafficking who is not Romanian citizen by

- a) using fraudulent means, violence, threats or other forms of coercion, or

b) exploiting the special situation of that person, due to his/her illegal entry or stay in the country, or because of pregnancy, disease, a physical or mental infirmity,

constitutes an offense and shall be sanctioned with the penalty mentioned for the human trafficking offence.

Use of the services of a trafficked person

Article 14(1) criminalises the use of services provided by a person known to be a victim of trafficking, and is punished by imprisonment from 6 months to 3 years or a fine (if the act does not constitute a more serious crime).

Trafficking of more than one person at the same time

Since the entry into force of the Anti Trafficking Act there have been various situations in which more than one person was trafficked at the same place and time. Some courts have held that this should be qualified as multiple crimes, the act of trafficking constituting a separate crime in relation to each trafficked person. Other courts held that trafficking more people at the same place and time constitutes a single offense, repeatedly committed.

The High Court of Cassation and Justice ruled that trafficking in the sense of Articles 12 and 13 of the Anti Trafficking Act, committed against more than one person in the same place and time, should be qualified as a single crime repeatedly committed, and not as multiple crimes (Decision no. XLIX/2007 of The High Court of Cassation and Justice, United Sections, published in the Official Gazette of Romania, Part I, no. 775 of 15 November 2007).

Consent and abuse of a position of vulnerability

The definition of trafficking in persons takes into account two aspects which impose a broad interpretation of trafficking in persons:

- **“Consent”** is acknowledged as irrelevant in the case of minors and considered on a case-by-case basis when the victim is an adult, thus pointing out the necessity to consider the aspect of coercion in a broader, more operational context. Article 16 of the Anti Trafficking Act states that
“The consent of a person, victim of human trafficking, does not remove the criminal liability of the perpetrator”.
- There is **“abuse of a position of vulnerability”** when the person’s (partial) consent to the sexual exploitation is resulting from an interaction of vulnerability factors - none of which is a determinant in itself - which act systemically as:
 - a) contextual, environmental or individual factors that render a person vulnerable to trafficking in persons (poverty, inequality, discrimination, gender-based violence, belonging to a deprived community, intra-family dysfunctions, personal history of trauma)
 - b) means to keep the person in a situation of exploitation, as they act to limit the victim’s choices (e.g. forcing the person to abuse substances to the point of addiction; using the victim’s children as means of threat)

These factors are less visible coercive and often involve manipulation, positive reinforcement, and validation/empowerment so that the victim will allow the exploitation to occur (somewhat similar to the “grooming” performed by sex offenders). The exploiter typically befriends or builds a relationship with the victim in order to establish an apparently secure and trustful relation with

them.

This is in line with the UNODC issue paper on “Abuse of a position of vulnerability and other means”, which centres on the understanding and application of this concept and points out that it acts as an “inherent feature of most, if not all, trafficking cases”, occurring in all the stages of trafficking:

“In some cases, vulnerability and/ or its abuse are used as a subsidiary means, that it appears to bolster or substantiate other means.

For instance, it may be established that a person has been deceived through the abuse of their position of vulnerability, where a less vulnerable person would not have been deceived. In other cases, establishing APOV is an important means by which an explicit element of the offence can be established”.

2.2 Criminalisation of related practices

Forced labour

Forced labour is criminalised by art. 191 CC:

"The act of subjecting a person - in other cases than those provided by law - to perform work against his/her will or forced labour is punishable by imprisonment from 6 months to 3 years".

The article does not provide a definition of forced labor.

In addition to the CC, Article 42(1) of the Romanian Constitution prohibits forced labour. According to Article 42(2) this does not cover a) activities of the military service and those carried out by law, in lieu thereof, from religious or conscience reasons; b) the work of a convicted person under normal conditions during detention or conditional release; c) services required to deal with a calamity or other dangers, as well as those activities which are part of normal civil obligations established by law".

Article 191 CC has not been applied in judicial practice in recent years. Even in cases where trafficking victims are subjected to forced labour, only the trafficking articles are applied.

Slavery

According to Article 190 CC

"subjecting or keeping a person in slavery and the slave trade shall be punished with imprisonment from 3 to 10 years and the prohibition of certain rights".

Also attempt of this crime is punishable. The provision has not been applied in judicial practice in recent years because trafficking is considered to have a special character and the application of the trafficking provisions should have priority over those on slavery.

Slavery-like practices and servitude

The Criminal Code does not contain separate provisions on slavery-like practices and servitude. However, some of the practices which are understood to fall under these concepts, might fall under Art. 2 Anti Trafficking Act. In the judicial practice this is, however, never applied.

Prostitution

Prostitutes are criminalised in Article 328 CC:

"Any person who procures his or her livelihood or main livelihood by practicing for this purpose sex with different people, shall be punished with imprisonment from 3 months to 3 years".

A person who willingly works as a prostitute is considered to be the perpetrator of the crime of prostitution and can be convicted. However, in the doctrine, prostitution is only qualified as a crime when committed three times. What is considered antisocial is not the single act, but the repeated act transformed into a habit and a current job.

From the statistics provided by Superior Council for the Magistracy it shows that also minors can be - and are - convicted for prostitution. This is in contradiction with the Convention on the Worst Forms of Child Labor.

A person who willingly prostitutes himself/herself when assisted by another person - even in the form of recruitment or trafficking – cannot become a victim of trafficking. The person who assists is called panderer and not trafficker. This means that prostitutes are not protected against trafficking and can be trafficked and exploited with impunity.

When, however, a prostitute is misled and recruited for a different type of activity and is forced to provide sexual services, he/she may be qualified as victim of trafficking.

There is no study if and how many prostitutes are victims of trafficking. As Romania is considered one of the main sources for trafficking in persons among European states, and given its structural shortcomings, one can infer the overall reduced protection of this vulnerable group against trafficking.

In the new Criminal Code (which will enter into force on February 1, 2014) the act of prostitution will not be criminalised anymore. It will, however, remain an administrative offence. For an administrative offence you do not go to prison, but you can receive a fine.

In contrast, a (non-prostitute) trafficked person is not criminally responsible neither for the act of prostitution, nor for the other facts. Article 20 of Anti Trafficking Act provides that

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

Pandering

Pandering is punished in Article 329 CC:

- 1) *Encouraging or facilitating prostitution or profiting from the prostitution of another person shall be punished with imprisonment from 2 to 7 years and prohibition of certain rights.*
- 2) *Recruiting a person for prostitution or coercing another person into prostitution shall be punished with imprisonment from 3 to 10 years and interdiction of certain rights.*
- 3) *If the act in par. 1 or 2 is committed towards a minor the penalty is imprisonment from 5 to 18 years and prohibition of certain rights.*
- 4) *Money, valuables or other goods that served or were destined to serve, directly or indirectly , to commit an offense under par. 1-3 and those that have been acquired by committing it shall be confiscated, and if they are not found, the convict is obliged to pay their equivalent in money.*

Attempt to pandering is also punished.

A decision illustrating the distinction between trafficking and pandering is the one of the Neamt Tribunal in the case of three girls recruited for a striptease club:

Court Decision nr. 32/P/2011, Neamt Tribunal

M.S. was the administrator of a striptease club. To find dancers he published various announcements in local newspapers. After the girls were selected he forced them to have sexual relations with the clients for 100 Euro. The girls were continuously monitored by the defendants and his employees. If the girls refused they were beaten, threatened, sequestered. M.S. boasted in front of the girls that he had connections among the police and other judiciary authorities which were his clients. Most of the girls were minors, without working contracts, subject to sexual and labour exploitation.

The injured parties were three young girls of whom one was a minor at the moment of exploitation. During the trial the defendants asked for modification of the legal classification of the facts from human trafficking and trafficking of minors to the offence of pimping. The court rejected their request taking into consideration the evidence. It stressed the difference between pimping and human trafficking, stating that pimping does not require the use of violence or coercion or any other form of abuse, whereas trafficking violates the will of the victim.

Child pornography

Child pornography is prohibited by Article 18 Law 678/2001:

“The act of exposing, selling, spreading, rent, distribute, manufacture, produce, transmit, provide, make available, to hold in order to spread objects, films or photographs which present sexual acts with pornographic characteristics of minors or implicate minors represents child pornography and is punishable by imprisonment from 3 to 10 years”.

Smuggling of migrants

Article 71 paragraph 1 Government Ordinance 105/2001 criminalises:

“Recruitment, assistance or guidance of one or more persons for illegal cross border and organizing these activities constitute the crime of smuggling of migrants and shall be punished with imprisonment from 2 to 7 years”.

2.3 Problems attached to the definition of human trafficking in the Romanian legislation and practice

There are a number of problems attached to the definition of trafficking and its interpretation, as well as in regard to the relation of the Anti Trafficking Act and the Criminal Code. These concern:

- the coverage of all forms of exploitation
- the relation between trafficking and pandering

- the relation between trafficking and unlawful deprivation of freedom of liberty to obligate a person to practice prostitution
- the relation between trafficking and smuggling
- the relation between trafficking in minors and child pornography

Coverage of all forms of exploitation

The definition of human trafficking covers, in theory, the main forms of exploitation. However, in practice, it raises problems in regard to victims of forced labour (other than in prostitution), forced begging, constraint to commit petty crime and of illegal harvesting of human organs, tissues and cells.

High Court of Cassation and Justice - Criminal Section, Decision no. 1940/2011, www.scj.ro

One of the members of an organized criminal group recruited a number of young people with a criminal record by giving them various amounts of money in the period in which they were jailed. Later he requested the money back at a rate much higher than that of the original, proposing them to settle the debt by moving to Italy and carry out theft of property for his benefit. The trafficking article does not refer to forcing a victim to the crime of theft, but only to prostitution, begging, pornographic productions or other forms of sexual exploitation.

However, the High Court of Cassation and Justice condemned the members of the criminal group for the offence of trafficking, using art. 12(e) "to carry out any other activities that violate fundamental human rights and freedoms".

Problems attached to the relation between the Criminal Code and the Anti Trafficking Act

When the special Anti Trafficking Act was adopted it was not entirely clear how the new Act would interact with the pre-existing legal framework. For this reason, there have been difficulties in the interpretation and application thereof, which lead to inconsistent case law. Since its entry into force there have been three types of problems:

1. the relation between trafficking and pandering
2. the relation between trafficking and unlawful deprivation of freedom of liberty to obligate a person to practice prostitution
3. the relation between trafficking in minors and child pornography.

1. Relation between trafficking and pandering.

Some courts have held that the distinction between pandering and trafficking is that the purpose of the first is to obtain (financial) benefits, whereas this is not a constituent element of trafficking. Other courts considered that the distinction between the two crimes is the use of coercion or deceit. In the latter case it was argued that pandering is done with the consent of the prostitute, while the core of trafficking is the violation of the free will of the victim.

According to the High Court of Cassation and Justice, in regard to pandering the use of constraint

is only an aggravating circumstance. In this case recruitment and trafficking are not carried out in order to compel a person to prostitution as the prostitution is voluntarily performed by the person concerned.

This means that the same acts are considered as "trafficking" when they concern a person who (can prove that she) did not work before in prostitution, and as "qualified pandering" when they concern a prostitute. It is therefore the status of the victim, rather than the acts of the perpetrator, that qualifies the crime. This reasoning is used only in relation to prostitution, not in regard to other forms of trafficking, e.g. when the victim already worked as domestic worker or construction worker. In practice this means that prostitutes cannot be trafficked according to the (interpretation of the) law.

The underlying criterion for distinguishing between trafficking (Anti Trafficking Act) and pandering (Art. 329 CC) is, as argued by the High Court, the social interest protected by the provision concerned. In the case of trafficking the social interest to be protected is the right to freedom of will and action of all persons, while in the case of pandering the social interest to be protected is the morality of society and the insurance of licit means of livelihood. This is reflected in the 2007 decision of the High Court cited below.

High Court of Cassation and Justice, United Sections, Decision no. XVI, 19 March 2007, www.scj.ro

Through this decision the Court established the distinction between the criminal offence of human trafficking, incriminated in article 12 and 13 of the Anti Trafficking Act, and the offence of pandering, incriminated in article 329(1) of the Criminal Code. According to the Court the distinction is made by the different generic juridical object of the two criminal offences, respectively the different social value protected by the legislature. In the case of the offence incriminated under the Anti Trafficking Act the value to be protected is the right to freedom of will and action, while in the case of the offence of pandering the value to be protected is the moral values of social life. That is why the offence of pandering exists in the situation in which the acts of accommodation, transport and transfer are made without the constraint of the injured party.

2. Relation between trafficking and unlawful deprivation of freedom of liberty to obligate a person to practice prostitution (Art. 189(3) CC)

Some courts have ruled that kidnapping a person and then force him or her into prostitution constitutes both trafficking and unlawful deprivation of liberty as provided in Article 189(3) CC. Other courts have held that these acts meet the constituent elements of trafficking (Art.12 Anti Trafficking Act), as well as those of pandering (Art.329 CC) and/or trafficking in minors (Art.13 Anti Trafficking Act). In this case the High Court ruled that when both provisions apply, the Anti Trafficking Act as a specific law takes precedence over the general provisions of the Criminal Code, based on the principle *lex specialis derogate legi generali*.

The act of any person who recruits, transports, transfers, accommodates or receives another person deprived of his or her freedom, in order to exploit him or her, is considered human trafficking in

accordance with Article 12 Anti Trafficking Law. The same act in relation to a minor constitutes trafficking in minors under Article 13 of the Anti Trafficking Act. In this situation the legal provisions from Art. 189(3) CC are not applied (High Court of Cassation and Justice, United Sections, I/2008, Decision published in the Official Gazette of Romania, Part I, no. 817 of 5 December 2008).

3. Relation between trafficking in minors and child pornography

Over the last years there have been cases in which the court changed the qualification of the crime from trafficking in minors to child pornography, the latter falling, according to Law 678/2001, under the section of trafficking related offences.

Article 18 of Law 678/2001 states:

“The act of exposing, selling, spreading, rent, distribute, manufacture, produce, transmit, provide, make available or to hold in order to spread objects, films, photographs which present sexual acts with pornographic characteristics of minors or implicates minors represents child pornography and is punishable by imprisonment from 3 to 10 years”.

The distinction is relevant because for child pornography the punishment is 3 to 10 years prison, whereas for trafficking in minors (Art. 13(1) Anti Trafficking Act) the punishment is 5 to 15 years prison and the prohibition of certain rights.

2.4 Publication of case law

At the moment there is no centralized system to specifically collect and publicise case law on trafficking in persons or prostitution/pandering. At national level there are two online portals that provide official information on national jurisprudence in general. Case law on trafficking or prostitution can be found by using these two search terms in the two portals. The portals are <http://portal.just.ro> and <http://www.jurisprudenta.org/>. The first portal is the result of "The Development in Using Electronic Tools for Managing the Communication Procedures of Processes and the Insertion into the Portal of the Courts of a General Search Engine" project co-financed by the European Union under the "Criminal Justice" program. The second portal is managed by the Superior Council of the Magistracy.

The two portals do not relate. The first portal “portal.just.ro” is more developed and contains more information than the second one “jurisprudenta.org”.

CHAPTER 3

GENERAL POSITION OF VICTIMS IN CRIMINAL PROCEEDINGS

This chapter looks into the problems concerning the access of trafficked persons to legal assistance and representation. It also discusses the definition of the concept of “victim” and the rights attached to the status of victim.

3.1 Problems in practice in regard to the position of victims of trafficking in criminal proceedings

There are several problems in relation to the position of trafficking victims in criminal proceedings. The main problems are:

1. The lack of application of the reflection and recovery period
2. The lack of adequate legal aid and representation in court
3. The lack of specialized judges
4. The trial of trafficking cases in open court
5. The hearing of the victims in front of traffickers
6. The publication of the full name of victims.

1. No application of the reflection and recovery period

Although the law provides for a recovery and reflection period of 90 days, this is often not respected. Victims are often heard by the police very soon after escaping from the exploitation, while they are still in a very vulnerable emotional and mental state, and without a prior meeting with a lawyer or social assistant/psychologist.

A. was brought to the police for hearings only a few days after she escaped from exploitation. During the hearing she felt sick. When the ambulance arrived she wrapped the cord of a medical device around her neck saying that she could not take it any longer. She was brought to the emergency unit of a mental care hospital. The criminal proceedings are ongoing and the prosecutor disposed that the case will be tried as trafficking in persons.

M., a victim of cross-border trafficking for sexual exploitation who pressed charges in the country of destination voluntarily returned to Romania with a night flight. All relevant institutions had been notified, the repatriation team was ready to pick her up and accompany her to a shelter where she could spend the night before returning to her hometown, a city in the northern part of Romania.

However, the border police required that the young woman provided a declaration as soon as she arrived. Their position remained unchanged, even after interventions from the repatriation team and a delayed plane. The young woman was held for 4 more hours to deliver the declaration as well as for other procedures. According to the law, this was unnecessary as:

- *she had already been identified as a presumed victim of trafficking in the destination country, which is also legally valid in Romania;*
- *the case was under investigation in a EU member state and the law enforcement could have cooperated with that country for data exchange;*
- *she was entitled to a 90 days recovery and reflection period in which she could have made an informed decision on cooperation with the Romanian authorities.*

2. Lack of adequate legal aid and representation in court.

Most victims are dependent on a lawyer appointed by the state. These often communicate poorly with the victim and have no interest in defending the victim's rights. Moreover, there is an insufficient number of specialized lawyers.

The procedure does not require that (presumed) victims are provided a lawyer to consult with during criminal investigation and prosecution. It is quite difficult to fully understand their rights as persons who cooperate with law enforcement; the parties they can choose; the procedures, etc. It could be stated that once again victims are brought in a position of vulnerability, being provided insufficient time and very few choices to adequately respond to these requests.

Wherever available, victim/witness coordinators or experienced psychologists/social workers act to cover these gaps and to provide adequate information and support, also to ensure that justice is done and to reduce the number of victims changing their depositions, dropping the charges or renouncing to appear in court.

N.S is a victim of sexual exploitation. She is represented during several court sessions by a state lawyer. After a few sessions the lawyer decides to stop defending the victim and to become the lawyer of the trafficker.

The adult victim of rape and battery with elements of trafficking had to defend herself in the trial as the court communicated that no available state lawyer was on duty. However, the 3 defendants were provided a lawyer. The case is currently in appeal. The judge qualified the case as illegal deprivation of liberty (art.189 CC) and not as human trafficking according to the Anti Trafficking Act.

3. No specialized judges for trafficking cases (especially cases involving minors).

Judges are specialized in criminal law in general and not necessarily familiar with the national and international legislation on human trafficking. The behaviour of judges is sometimes influenced by the social status of the victim.

4. Cases are often not tried behind closed doors

The law only provides for trials behind closed doors in the case of minors. However, when both minors and adults are involved the entire case is tried in public, as exemplified by the judgement of the Brasov Appeal Court.

According to the Brasov Appeal Court Criminal (Decision no. 38/AP/2011), court sessions are, following Article 24(1) Anti Trafficking Act not public only in cases of trafficking of minors (Art.13) and child pornography (Art.18). These provisions, however, should be applied under strict interpretation and limitation. In cases which are not linked to trafficking of minors/child pornography the sessions will be public. The court ruled that the legal question is similar to cases

in which there are more defendants of whom some are adults and others are minors. When a defendant is accused of various offences in the same case and in relation to some of these offences the court has to judge in public session and in relation to other offences behind closed doors, the entire case shall be judged in public session under penalty of nullity and cassation as stipulated in Article 385 index 9 paragraph one point 4 Criminal Procedural Code.

In a case of trafficking in minors for sexual exploitation, involving 3 teenagers as injured parties, the data delivered in the court sessions gave access to the local media to write articles providing detailed insight in the exploitation history of each of them, while publishing their full names and addresses.

5. Hearing of the victims in front of traffickers

The hearing of victims in front of the traffickers puts them at risk and demoralises victims. As a result the victims and their families sometimes decide to withdraw the complaints made. This also has a high potential of re-exposing victims and their families to trauma. According to empirical findings of the ADPARE psychotherapist, in at least 10 cases post-traumatic symptoms (high levels of anxiety; nightmares; re-experiencing of events) increased or reactivated just before the victims' hearing in front of the court.

6. Publication of the full name of victims on the state case law website.

The main national legal portal <http://portal.just.ro> which contains data about each case publicises the full name of victims of trafficking as injured parties, irrespective of whether they are minors or adults. The portal is widely accessible and one can find the development of any case tried by using only one of the following search criteria, among: name/ surname/offence/no. of file. Upon a brief search of "trafficking in minors" the results will show all trafficking in minors cases tried in that tribunal in the past few years. The documents concluded at the Prosecutor's office which send the offender to trial and which also contain the personal data of the victims are also public, irrespective whether the victims are adults or minors.

This is clearly in violation with the Council of Europe Convention on Data Protection (Convention 108) and the EU Data Protection Directive (Directive 95/46/EC). It is also at odds with the obligation to protect the privacy and safety of victims, as laid down in the CoE Convention on Action against Trafficking and the EU Directive on Trafficking (Directive 2011/36/EU of 5 April 2011).

3.2 Main causes of problems in regard to the position of victims of trafficking during criminal proceedings

There can be several reasons pinpointed for the identified problems:

- Lawyers, prosecutors and judges are insufficiently trained in regard to specialized legislation related to human trafficking and victims' rights and do not have the necessary human rights-based approach towards victims. Although the departments of continuous professional trainings from each regional bar each year organize trainings for lawyers, there is a lack of

interest in organizing trainings on human trafficking and victims' rights. Most of the trainings are focused on legal issues related to civil law, commercial or financial law.

- Insufficient resources of non-governmental organizations to provide adequate legal assistance during the entire criminal proceedings.
- Insufficient collaboration between NGOs/assistance providers and law enforcement units.
- Disparities in the organization of protection services and an unclear division of tasks and responsibilities in the multidisciplinary team. By "multidisciplinary teams" are understood: law enforcement, NGO services, state social services and any other institution attributed with task in victim identification and the provision of protection and assistance, or institutions with monitoring tasks.

3.3 Definition of "victim"

Victim of trafficking in persons can be any natural person about whom there is information that he/she has suffered physical or psychological harm, emotional abuse, economic loss or a serious violation of his/her fundamental rights by actions or inactions which infringe the criminal legislation on trafficking in persons.

In the Romanian criminal law doctrine, the term "victim" in general is the same as the "passive subject" of the crime. In the sense of the criminal law, the victim has the position of injured or civil party, while in a criminological sense, the victim is the person suffering directly or indirectly from the commission of a crime or following the occurrence of a natural event.

The definition of victim does not specifically include family members, yet Law no. 211/2004 contains a number of provisions on measures for the protection of victims without giving a definition of the concept. The law specifically mentions both the direct victims of crimes and the indirect victims:

- "Direct victim" concerns the person against whom one of the following crimes was committed: attempt of murder, aggravated murder and manslaughter (Art. 174-176 CC); an offense of grievous bodily harm (Art. 182 CC); an intentional crime that resulted in serious injury of the victim, rape, sexual intercourse with a minor and sexual perversion (Art. 197, 198 and Art. 201 par. 2-5 CC; Art. 14, par. 1, (a) of Law no. 211/2004)
- "Indirect victims" are the "spouse, children and dependents of deceased persons as a result of murder, aggravated murder and manslaughter (art. 174-176 CC) and intentional crimes which have resulted in the death of the person" (art. 14, par. 1 (b)).

In addition there is specific legislation in regard to particular categories of victims. E.g. Law no. 272/2004 on the protection and promotion of children's rights, which establishes measures to protect children against any act of trafficking or exploitation and criminalizes coercion to begging. Also Law no. 682/2002 contains provisions on the protection of specific categories of witnesses.

According to the Anti Trafficking Act a person can be considered victim of human trafficking regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the victim and the perpetrator. If the perpetrator is a family member this is considered an aggravated circumstance increasing the punishment.

Law 211/2004 specifies that a victim has the right to apply for compensation from the special fund of the Ministry of Justice, even if the perpetrator is unknown.

The status of “**presumed victim of trafficking**” can be granted in two ways: through formal identification (by law enforcement agencies and/or the National Agency against Traffic in Persons) and through informal identification (by Diplomatic Missions, consulates, and NGOs) by the use of a set of specific indicators.

The final status “**victim of trafficking in persons**” will be granted by the judge to injured parties through the court decision. The status of victim can be granted irrespective of the willingness of the victim to cooperate with authorities.

A young man was identified in the destination country as victim of trafficking for the purpose of committing petty crime, while in arrest for shoplifting. However he was denied victim status by the Romanian authorities as he was considered to be the offender of petty crimes.

In the case of three Romanians who were exploited for labour purposes abroad, the prosecutor dismissed the trafficking case considering that the “recruitment did not imply threats, violence, constraint, kidnapping, fraud, abuse of authority” and that “there is a discordance between the understanding of the term exploitation of a person and the manner in which the persons concerned had been treated”¹. This happened even if as soon as the three had arrived in the destination country their identity documents and mobile phones were seized, they were forced to work 7 days per week, 12 hours a day, they were never paid their salaries and there was no contract. They were given plastic foil and some iron bars to build a tent on the farm they were forced to work and were given food out of trash containers.

Four years later, the authorities in the destination country opened another case on labour exploitation, in which the three Romanians were called to testify as witnesses. However the trans-national cooperation of the authorities was feeble and they could not travel to that state, since the notification/ subpoena arrived to the Prosecutor’s Office less than a week before the date settled for the hearing.

¹*The quotations are excerpts from the Court Decision.*

CHAPTER 4

ACCESS TO LEGAL AID AND REPRESENTATION

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

4.1 Description of the situation

According to Article 44 Anti Trafficking Act (as modified by Art. 34 f Law no. 230/2010)

“persons mentioned in article 43 (victims of human trafficking) benefit from obligatory legal assistance in order to exercise their rights during criminal procedures according to the law, during criminal trial, and to sustain all their petitions and civil requests against those who committed the criminal offences mentioned in the law”.

In general these legal provisions are taken in consideration in practice. However, one of the biggest problems is the low motivation and perseverance of state appointed lawyers who provide free legal assistance. Moreover, the lawyer is only appointed to represent the interest of the victim/injured party during the trial and not during criminal investigations and prosecution or for other situations. E.g. civil claims for compensation..

When the victim cannot afford to pay for legal assistance provided by a lawyer a state lawyer is appointed by the judge during the criminal trial upon the victims’ request and proof that they cannot afford a hired lawyer. The judge will send an official notification to the legal aid services, which are special departments inside each regional bar. If a person who does not have a lawyer in court (defendant or injured party) asks to be provided with one, the court is obliged to carry out the necessary procedures and send a request to the judicial assistance service from the bar to provide a state lawyer. There have been, however, situations, as the examples show, where the defendant received a lawyer and the victim not on the motivation that there were no lawyers available.

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

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

Decision no. 419/2008 stipulates that the specialized free legal assistance services from each regional bar must be visibly displayed in a public place and published in the Bar Register of free legal assistance in order to ensure the beneficiary’s right to choose his/her lawyer. Lawyers must be appointed taking into account their specialization, the complexity of the case and the income

from free legal assistance that they obtained until that moment in order to ensure a proportional distribution of cases among as much lawyers as possible.

The same Decision stipulates that a state lawyer who provided extrajudicial assistance cannot provide free legal assistance for the same case in court. This is very problematic, both from the perspective of quality and continuity of legal aid, given the complexity of trafficking cases, and from the perspective of the victim. In practice victims perceive it negatively that the lawyer during the prosecution stage is replaced after that stage by another state lawyer. Taking into consideration the emotional charge of trafficking cases, victims need stability and continuity also in regard to legal assistance.

If victims want to change the state lawyer because they are not satisfied with the quality of legal assistance provided or because the lawyer does not have a professional attitude, they can ask this according to the law, but they are rarely informed about this possibility. Even if they would ask so, they will have to justify their request because in general courts do not easily accept a request to appoint a new state lawyer without a solid justification of the victim concerned.

In most cases the lawyer is not present during the victims' first contact with the authorities. In some cases social assistants/psychologists from social welfare institutions or NGOs can provide basic legal counselling and psychological support to trafficked persons, before their encounter with law enforcement.

According to the National Program on victim/witness coordination in the criminal trial representatives of the National Agency Against Trafficking in Persons are entitled to mediate in the relationship between victims and the judicial authorities. In order to ensure a better representation of victims' rights in relation with the judicial authorities a Protocol was concluded in 2008 between the National Agency, the General Directorate for Combating Organized Crime and Terrorism, the General Inspectorate of the Romanian Police, and the General Inspectorate of Romanian Gendarmerie.

Number of victims provided with legal aid

According to the statistics of the National Agency 1092 victims benefited from legal assistance in 2012, as part of the national program on victim-witness coordination in the penal trial. Of this total number, 421 were identified victims of trafficking from 2012 and 671 were identified victims from previous years. In 2011 47 victims benefited from legal assistance offered by NGOs in cases linked to human trafficking and related legal issues. The statistics only mention the round number, cumulating victims who are parties in trials from several years. The judicial procedure states that injured parties should be provided with an appointed lawyer. The victim/witness coordination program is an example of good practice in regard with bridging gaps between victims and the juridical system.

Most of the free legal assistance services provided by the special departments of the regional Bars do not keep annual statistics of the number of victims who received legal assistance by the state lawyers registered in their system. One of the reasons they give is that the bars receive a lot of requests for legal aid lawyers for this kind of cases and that keeping a registration would burden them too much. However, one of the Bars from the Arad region sent us statistics of the free legal

aid provided by state lawyers from this region: 25 victims of human trafficking received free legal assistance as injured parties in 2011 and 12 in 2012.

Apart from the legal assistance provided through the state system it is also possible for victims to receive legal counselling and assistance from non-governmental organizations. There are, however, just a few NGOs in Romania that are able to provide specialized legal counselling and assistance for victims of human trafficking. In comparison with state lawyers, lawyers contracted by service providers are more motivated in solving the case. The relationship between victim and lawyer is mediated by the case manager and more “client oriented”. However, the services provided by NGOs are available to only a limited number of victims; other victims are assisted by non-specialized services or do not receive any assistance.

According to the data of Association Generatie Tanara, they provided legal counselling to 59 persons in the period 2011-2012; 9 persons received legal assistance provided by lawyers contracted by the NGO. During 2011-2012 Association Pro Refugiu through its associate lawyers provided specialized legal counselling and assistance to 8 victims. In the first 6 months of 2013 Pro Refugiu provided legal and psychological assistance to another 5 victims of human trafficking. Between 2008-2012, 40 victims were provided legal representation in court by the associate lawyer of Adpare. However, all victims who were beneficiaries of its assistance programme (400 persons from 2008 to 2013) received legal counselling provided by the professionals of the association (social assistants and psychologists).

According to information of the IOM, 20 victims participating in trials in destination countries were granted lawyers according to the legislation of that country. The Romanian IOM Mission assisted 30 victims in 2011 and 39 victims in 2012; these victims were not provided legal counselling, but other types of assistance. The return and reintegration programme financed by the IOM has the possibility to cover costs for legal assistance services. Approving funds for this depends on the needs assessment conducted by the case manager and the client.

Children

In principle legal assistance is granted only if the victim notified the law enforcement agencies or the court within 60 days from the date of the crime (Art. 16 of Law no. 211/2004). However, minor victims have no obligation to notify the law enforcement agencies or the court. In their place the legal representative of the minor may do this. Also the application for free legal assistance and the application for the money necessary to enforce the court decision when the victim was granted civil compensation, may be made by the legal representative of the minor (Art. 20 of Law no. 211/2004).

4.2 Problems in regard to (access to) legal aid for victims of trafficking

The biggest problems in relation to access to legal aid for victims of trafficking are:

- The long duration of criminal proceedings (3-5 years). In many cases state lawyers change several times throughout the duration of the trial. Often legal terms are postponed due to various reasons (procedural errors, victims/witnesses change residence or migrate abroad and new notifications need to be done). Sometimes a file can be split or certain legal proceedings can take place in different regions of the country, which can make it difficult to follow the development of the case.

- Lack of necessary state funds in order to pay the state appointed lawyers in due time. Due to bureaucratic procedures often there are delays in paying the fees to state lawyers. This can take several months.
- Lack of information for victims who are not familiar with the procedures for obtaining legal aid during criminal proceedings.
- Insufficient access of victims to legal aid by specialized lawyers in additional cases which are connected to the victim's personal situation (e.g. divorce, child guardianship, etc.)

There have been cases of victims losing guardianship over their children after their husbands accused them of having voluntarily left the family to prostitute. In some of these cases the husband was the exploiter, but these women had never been identified as victims of trafficking. Normally a specialized lawyer would use the exploitation as proof in the court case on the child guardianship and demonstrate that the woman was forced and exploited and was not an unfit mother.

- Lack of specialized lawyers. The special departments of the regional Bars do not organize special trainings on human trafficking, victims' rights and the procedures necessary to adequately assist victims of trafficking.
- The majority of victims are assisted in courts by state lawyers, while the offenders sometimes hire multiple lawyers, creating a significant disparity in the quality of legal aid each party receives.
- State lawyers are many times overburdened with work due to the fact that they provide assistance in several cases in different fields of law. Sometimes they do not know well the content of the file, and they do not communicate enough with the victims. There are situation in which victims are represented by lawyers only during the last legal terms. State lawyers are very low motivated due to the fact that the fees they receive are very low.

Social workers sometimes can play an active role in providing at least basic legal information to victims of trafficking. Through the National Program on victim-witness coordination in criminal proceedings, trained social assistants and psychologists from the 15 Regional Centres of the National Agency act as advocates on the victims' behalf, having as task to coordinate the process of victim/witness participation in criminal proceedings (first court, appeal, high court). This includes:

- Ensuring collaboration between the National Agency, General Direction for Combating Organized Crime, General Inspectorate of Romanian Police, and the General Inspectorate of Romanian Gendarmerie
- Informing victims of their legal rights
- Providing escort and enforcing security measures for victims during their encounters with law enforcement and trial
- Preparing victims and providing psychological support during the proceedings and before hearings
- Mediate their encounters with lawyers and law enforcement.
- Preparing psychological assessments for the court by certified clinician psychologists.

Wherever possible, NGOs also use trained and experienced social workers and psychologists to provide basic legal counselling, including:

- Explaining victims their rights and ensuring that their right to a recovery and reflection period is respected
- Offering a realistic image of what happens during the criminal proceedings, what happens in court, and what a hearing/confrontation/testimony does mean
- Providing victims space to ask questions and express doubts
- Ensuring the victim's access to a lawyer and mediate in the relationship client-lawyer.

CHAPTER 5

RIGHTS OF VICTIMS

In this chapter the rights of victims are discussed as can be derived from international and European instruments, in particular the UN Trafficking Protocol, the Council of Europe Convention on Action against Trafficking and EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims.

5.1 Right to information

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

According to Article 43 of the Anti Trafficking Act victims of trafficking should be informed about the applicable judicial and administrative procedures. In addition, an entire chapter (Chapter II) of Law no. 211/2004 is dedicated to the right to information of crime victims in general.

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

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

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

- a) the services and the organizations that provide counselling or other forms of assistance to victims, depending on their needs;

- b) the law enforcement authority with which they can file a complaint;
- c) the right to counsel and the institution where they can go to exercise this right;
- d) the conditions and the procedure for granting free legal assistance;
- e) the procedural rights of the injured party/ civil party;
- f) the conditions and procedure in order to benefit from the provisions concerning protection of the identification data of the witness, special modalities to listen a witness, hearing of a witness under 16 years old, protection measures for witness's domicile or residence, protection from police for the witness from his/her house to the prosecutor office or to court, as they are presented in Art. 86¹, 86², 86⁴ and 86⁵ CPC and the provisions of Law no. 682/2002 on the protection of witnesses;
- g) conditions and procedure for granting financial compensation by the state.

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

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

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

Children

There are no special provisions in regard to informing minors. Therefore the same provisions apply as those for adults.

Main problems in informing victims about their rights

- Even if victims are informed about their rights during their first encounters with law enforcement, they are rarely explained how to obtain them. Moreover, they are often not able to understand the information due to their emotional state. This is not about logically processing information but about understanding how a highly bureaucratic system works and having the resources to try to access these rights.
- In addition, given the dysfunctions in the system, in practice some of these rights can only be obtained with much difficulty or cannot be obtained at all. Victims are not sufficiently supported to actually benefit and claim the rights they legally have. Often, there is also no link between the case manager/social assistant and the judicial authorities or lawyer defending the victim's rights in court.

A number of causes can be pinpointed for the above mentioned problems:

- Victims are often considered as objects, recipients of information, instead of subjects who need time to deliberate what they are told, ask questions and decide. Often, their rights are explained in a moment of total vulnerability (e.g. before/during repatriation or during their first contact with the police) or without understanding the psychological impact of exploitation (victims were recruited through false promises for a better life; afterwards the system promises them help to have a better life). Victims are not given time to process the information and are thus more liable to refuse any interaction or cooperation with the authorities and sometimes with assistance providers also. In practice police is more preoccupied in obtaining evidence than in ensuring victims the necessary emotional comfort they need.
- There are inconsistencies at the policy level, its implementation in practice and the tasks of the relevant institutions.
- There are few persons trained to act as victim-witness coordinators and to mediate between victims and lawyers. Such secondary mediation is required in practice due to the fact that state appointed lawyers do not communicate with the victim.

5.2 Right not to cooperate with law enforcement

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

Victims can refuse to cooperate with judicial authorities and continue to receive protection and assistance services from NGOs. This is laid down in article 2(3) Anti Trafficking Act, which holds that

“By victim of trafficking in persons it is understood the physical person, a passive subject of the facts mentioned in articles 12, 13, 15, 17 and 18, irrespective whether they participate or not in the penal trial as injured party”.

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

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

There are no specific provisions in regard to the cooperation of child-victims with the prosecution authorities therefore the same provisions apply as for adults. Children will be considered victims irrespective of their consent or willingness to cooperate with law enforcement and will be provided protection and assistance specific to their age and gender.

5.3 Right to protection of privacy and safety

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

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

- Hearing of the victim behind closed doors
- Hearing of the victim without the presence of the suspect(s)
- Hearing of the victim through video or audio link
- Exclusion of the public from the trial
- Exclusion of the media from the trial
- Keeping the address of the victim secret
- Keeping the identity of the victim secret.²

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

According to article 25 Anti Trafficking Act, the court may declare the trial closed for crimes relating to article 12 (trafficking in adults) and 17 (crimes related to trafficking in persons) at the request of the injured party.

Victims of trafficking who provide the prosecution or court with relevant information to identify the offenders may be included in the witness protection program³ (Art. 26(2) Anti Trafficking Act).

Art. 27(1) Anti Trafficking Act states that

"at the request of the judicial authorities, the Ministry of Interior provides physical protection for victims of trafficking, as well as for the members of groups, foundations, associations or non-governmental organizations who support their activities (...)".

However, in practice these legal provisions are hardly applied.

D., an adult woman was pleading as injured party. The offender was not taken in pre-detention, as he was not considered a threat, despite the fact that D. had called the police several times to request protection because of threats towards her and her mother. During court sessions, no special measures were taken and it happened quite often that D. received threats during breaks and when returning home from the trial.

² See for a detailed description of witness protection measures section 5.4.

³ The witness protection program is governed by Law no. 682/2002.

In some cases the police make a risk assessment of the safety of the victim, but this approach is not standardized at national level. According to the National Agency, a standardization process has started as part of the National Action Plan on trafficking.

Based on the risk assessment conducted by the police, G. could not return home as members of the trafficking network were free, so G. was relocated in a shelter and she and her family were advised to keep her whereabouts confidential. G. was also told to change her mobile phone number and only share it with her family, the assistance team and the case officer. Both she and her family were given the case officer's telephone number that they could call in case of emergency.

Children

There are a number of specific provisions in regard to the protection of child victims:

- Hearings in cases of trafficking in minors (Art. 13) and child pornography (Art. 18) are not public (Art. 24 Anti Trafficking Act). During the trial assistance is allowed of representatives of the parties, lawyers, representatives of the National Agency and other persons whose presence is deemed necessary by the court.
- In all trafficking cases involving minors, the hearing of minors under the age of 14 should take place in the presence of at least one of their parents or a legal representative, while the presence of a psychologist or a representative of the General Directorate of Social Assistance and Child Protection is mandatory (Art.24(3) Anti Trafficking Act).
- Minor victims of trafficking are granted special protection and assistance in relation to their age (Art. 26 (5) Anti Trafficking Act).
- Minors can also be included in the witness protection program upon signature of their legal representative. Should the legal representative oppose and the prosecutor or court consider that the measure is in the child's interest, the minor himself can sign for his or her admission to the program with prior approval of the prosecutor or court (Law no. 682/2002 on Witness Protection).
- Cases involving children should be resolved in emergency, with the participation of the child's legal representative, the General Directorate for Social Assistance and Child Protection and the prosecutor. Children can undergo hearings starting from the age of 10. The child's hearing will be recorded by audio-visual technical means. The child must consent to the recording of his or her declaration. The hearing takes place in the counsel room, in the presence of a psychologist and only after the prior preparation of the child (Law no. 272/2004 on the Protection and Promotion of the Rights of the Child). The judge will decide this taking in consideration the actual level of the child's mental and physical development.

In general these legal provisions are respected in practice and there are no major differences between courts.

T. is a victim of international trafficking for sexual exploitation and also the mother of A., a 10 year old girl. T. was promised a job in Italy and because she was a single mother, she left A. in the care of friends of her family. There A. was molested by the man while her mother was in Italy. Both the mother and daughter pleaded as injured parties. Taking in consideration that the injured parties have the right to be heard in court, both A. and T. were heard from a separate

room by audio recording means. A. was also accompanied by a psychologist who monitored all times that she was safeguarded. The hearing went well.

The Law on the Protection and Promotion of the Rights of the Child (Law 272/2004) stipulates that *“The principle of the child’s best interest will prevail in all demarches and decisions regarding children, that are taken by public authorities and authorized private structures as well as in cases concluded in court”*.

The child has the right to protection of his public image and his personal, private and family life (Art.22 (1)). Any action which may affect the public image, the child's right to private life and family is forbidden (Art.22 (2)).

Main problems concerning the protection of the privacy and safety of victims

Practical problems relating to the protection of the privacy of the victim include:

- Various judicial documents are made public on the web portal (e.g. court decisions). These documents are not anonymous and contain the names and data of the victims/ injured parties.
- There is no special procedure for handing over trial summons to victims/injured parties which ensure their confidentiality at community and family level. Subpoenas are often handed over at the victims’ homes, offices or at the community police departments. These documents are not inserted in envelopes, so even the mailmen can fully read their contents.
- There are few protection measures available for victims outside the court context and there is no 24/7 open emergency shelter that is able to directly receive victims who have been threatened or abused by traffickers.

S., a mother of two children, was sold by her ex-partner for prostitution. There was not enough evidence to arrest the man. She received non-residential assistance from an NGO. Every once in a while, especially at the beginning of the investigations, her ex-partner and his acquaintances would pass by her house, break the windows and threat the woman and her family. They would call the police but the police wouldn’t do much, She had the possibility to press charges against him and wait for a restriction order. The procedure, however, was quite complicated and lengthy as the restriction order could only be obtained by court order.

This has changed with the recent modification of Law 217/2003 (Law 25/2012) for the Prevention and Combating of Domestic Violence. In emergency cases, the restriction order can now be obtained within maximum 72 hours. In the case of trafficking victims exploited by their husbands or by family members, it is at the court’s discretion to decide whether the trafficked victim’s life or integrity have been put at risk or not.

Some of the factors that underlie the above problems are:

- There is a general lack of understanding of the need to protect the identity of persons who take part in judicial procedures and a lack of procedural harmonization regarding the need to protect victims of trafficking in persons in particular.
- To a certain extent respect for human rights is considered as a secondary issue, respected by some professionals but not by the system as a whole.
- Lack of a coherent and functional multi-layered assistance system.

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

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

If a victim acts as witness in the criminal trial, she or he can no longer be injured party and cannot access the rights injured parties are entitled to such as sessions behind closed doors; using different entrances/ exits from the offenders; the right to compensations for victims of crimes, from the State Fund; the right to open a civil action and request material and moral redress.

According to the Romanian criminal procedural code, the injured party will be subjected to a hearing and the witness (including witnesses with a secret or protected identity) will have to testify in court. The prosecutor is the one who decides the person's legal quality and a person cannot have two legal qualities in the same time. However, during the trial, according to existing evidence, the judge may change the legal quality of a person.

Contrary to injured parties, witnesses are not entitled to protection measures used in court, except for those situations in which the court decides that the disclosure of certain information may put their lives at risk. In this case their legal quality could be changed from witness to protected witnesses with secret identity during the trial or witnesses with protected identity (Law 682/2002).

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

After the criminal trial ends and if confiscations had been conducted, injured parties may open another case, in the civil court, to request for civil redress. Otherwise it's pointless since there are no assets/goods to be confiscated and financially valued.

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

The problem in general is not that victims who plead as injured parties cannot request compensation or civil damages, but the fact that the procedures are lengthy and complicated and they cannot receive them de facto.

Witness Protection Program & protection of identity

According to the Anti Trafficking Act

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

In general, according to Article 86 (1) CPC, if there is evidence or indications that by making the real identity of the witness or his/her home or residence known, his/her or another person's life or physical integrity would be in danger, the witness may be allowed not to declare these data, and to receive a new identity under which he/she is to appear before the judicial body. This measure can be ordered by the prosecutor during prosecution and trial, at his or her reasoned request, by the witness or by any other person entitled to do so.

In that case, the actual identity of the witness must be recorded in the minutes, which are kept at the office of the prosecutor who conducted or supervised the prosecution phase, or, when applicable, at the court's headquarters in a sealed envelope in conditions of maximum security. The minutes must be signed by the person who submitted the request, as well as by the person who ordered this measure. Documents concerning the true identity of the witness are to be presented to the prosecutor or, where appropriate, to the judge, in strict confidence. In all cases, the real identity of the witness is only introduced in the criminal records after an order of the prosecutor or a decision of the court, holding that the risk which determined the witness protection measures has disappeared.

However, statements of anonymous witnesses may only be used in the trial insofar they are corroborated with facts and circumstances arising from all the evidence in question.

The Criminal Procedural Code (Art. 86 (2)) provides for special ways of hearing witnesses with a protected identity. In this case, the prosecutor or, where appropriate, the court may allow a witness to be heard by technical means without being physically present at the place where the hearing takes place. At the request of the judicial body or the witness, a counsellor for victims protection and social reintegration of offenders' can be present during the statement, who is bound to secrecy regarding the data that become known during the hearing. The judicial body is obliged to inform the witness on his/her right to request a hearing in the presence of such a counsellor.

In these cases the witness can be heard through a television network with distorted image and voice so as to not be recognized, and during the trial the parties and their lawyers can address questions directly to the witness. The presiding judge rejects those questions which are not useful or relevant for the trial or those that can lead to the identification of the witness.

The declaration of a witness with protected identity is recorded on video tape and transcribed in writing. During the prosecution phase, minutes must be prepared that accurately reflect the witness' statement and that are signed by the prosecutor who was present at the witness' hearing. The transcribed witness's statement must be signed and kept in the file submitted to the prosecutor, in a special place, in a sealed envelope in conditions of maximum safety. During the trial, the witness statement must be signed by the prosecutor who was present at the witness's hearing and by the presiding judge. The transcribed witness's statement must be signed by the witness as well, and is kept in the file submitted to the court.

To the extent that a trafficked person is a witness in the criminal proceedings, he/she may benefit from protection under these rules. This includes the protection provided by Article 86(5) CPC. Under this provision, the prosecutor conducting or supervising the criminal investigation or, where appropriate, the court may order the police to supervise the witness's residence or to ensure him/her a residence temporarily supervised, and to accompany him/her to the prosecutor or the court and

back home. These measures will be lifted by the prosecutor or, where appropriate, by the court, when the danger that required them has stopped.

C., a victim of cross-border trafficking for sexual exploitation pleaded as witness with a protected identity in the trial. As she remembers, this is how the prosecutor advised her to do from the very beginning. A while after the trial started, the judge decided to change her legal status into injured party taking in consideration the circumstances in which the offence had happened. As an injured party C. lost the enforced protection measures from before, her identity was revealed and she had to take the difficult decision whether to continue or not with the trial.

A., a minor victim of cross-border trafficking, pleaded as injured party in the trial. However the initial case was split up into two cases on different accounts. In one of the newly started trials A. was cited as witness.

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

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

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

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

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

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

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

In practice there aren't many witnesses whom are approved to plead with protected identity, neither in the criminal trial nor through the Witness Protection Program.

For more than 10 years I saw just once an attempt for one victim to be included in the Witness Protection Program initiated by a prosecutor, but this attempt failed and the victim remained under our protection (NGO representative)

Direct confrontation

According to Article 87 CPC a direct confrontation between the victim/witness/injured party and the defendant can be used when there are contradictions between the declarations given by the parties. According to Article 88 CPC the prosecutor or court may allow the parties to put questions to each other.

In practice a face-to-face confrontation between the victim and the defendant does not happen very often.

Protection from threats, insults and irrelevant questions

In general victims are interrogated several times during criminal proceedings. Normally they are called 3-4 times by the specialized police unit (Service for Combating Organized Crime) for declarations, photo identifications, recognitions or clarifications. They are heard by the prosecutor 1-2 times. During trial the victims are called to testify once more in front of the court.

Both the prosecutor and the judge play an active role in the proceedings in order to protect victims of trafficking from abusive conduct of the trafficker. The measures that can be taken are diverse. These may include the arrest of the offender if, according to Article 148 CPC:

"there are indications that the defendant is trying to thwart the truth directly or indirectly by influencing a party or a witness or by destruction, alteration or removal of the relevant evidence".

When such an act is aimed to influence the statements of the victim, it constitutes a crime against justice (Art. 261 CC):

"Trying to influence a person by coercion or by bribery to make false statements in a criminal, civil, or disciplinary case or in any other case where witnesses are heard, shall be punished with imprisonment from 3 months to 2 years or with a fine".

An act of this kind may also constitute other crimes, e.g. threats, extortion, or bodily injury.

The injured party and the offender have to comply with the rules established by the court. Each party must behave appropriately before the court. If the offenders misbehave or become verbally or physically violent, they can be taken out of the courtroom or receive fines for non-respecting the session rules. In general this also happens.

Whenever the victim's presence is requested before the court, measures to ensure victim's protection can be taken: e.g. hearing through audio-video means or a separate waiting room. The first happens regularly, separate waiting rooms are not always available.

The defendant is allowed to address questions to the victim. If they are not relevant for the case they can be rejected by the judge.

In a case of trafficking of minors the defendant addressed several questions to the injured party and to an NGO member (present as witness) about their personal history. The NGO member was asked if she knew that the victim was still practicing prostitution. The court allowed the witness to answer the question and noted the answer.

In practice there are cases in which victims of trafficking are accompanied during criminal proceedings, including court sessions, by a psychologist or social worker from the probation service or a non-governmental organization. Some NGOs have concluded (formal) protocols with law enforcement departments and provide support and accompaniment to victims during the prosecution stage. During the trial phase, a more usual procedure is that of providing a GDSACP psychologist in the case of minors and a NAATIP victim coordinator (psychologist or social assistant) for adults.

The victim/witness coordination in the penal trial programme

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

The objectives of the programme are:

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

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

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

During criminal investigation and prosecution:

- The judicial investigators request the presence of inspectors of the NAATIP Regional Centres during the hearing of the victim. The NAATIP inspectors are social assistants and psychologists experienced in providing victim accompaniment and support in the different stages of criminal

proceedings. Wherever possible, social assistants and psychologists from NGOs can also prepare the victim and accompany him or her during criminal proceedings. In this stage victims receive information on the roles of each professional in the team (prosecutor; police officer; psychologist), on the rights they are entitled to and the services they can benefit from. The NAATIP inspector (programme coordinators are psychologists or social assistants) conducts the initial needs' assessment and provides basic information. Victims are further on referred to specialized assistance providers.

- The programme coordinator (NAATIP) facilitates the updating of the victim on the progress of the criminal proceedings and the need for the victim to provide additional information to law enforcement by maintaining contact with the police officer investigating the case.
- They further inform the case officer on security issues and collaborate to take the necessary protection measures.
- Whenever the case, the NAATIP inspector/programme coordinator is in charge with the logistic assistance, i.e. organizing the victims' transportation or travel to the law enforcement authorities.

During trial:

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

After the trial:

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

Children

There are several specific provisions concerning child-witnesses, such as:

- In order to include minor-witnesses in the witness protection program, the protection protocol is signed by their legal representatives. If the legal representative cannot sign the protection protocol, acts against the interests of the minor, or refuses to sign - although the prosecutor or, where appropriate, the court believes that inclusion in the program is in the interest of the minor - the protection protocol shall be signed by the minor with the prior approval of the prosecutor or, where appropriate, of the court (Art. 9 of Law no. 682/2002)
- The hearing of a minor shall be conducted in the presence of at least one parent or legal representative; it is also mandatory to request the presence of a psychologist or legal representative of the General Directorate for Social Assistance and Child protection (Anti Trafficking Act).
- Children can be subjected to hearings from 10 years old. The hearing must take place in the counsel room, in the presence of a psychologist and only after the prior preparation of the child

(Law 272/2004 on the Protection and Promotion of the Rights of the Child). The counsel room is a separate room inside the courthouse, functioning as safe place for children's hearings to take place.

- In cases of violent criminal offences between family members the court can decide not to hear minors below the age of 16 years during the trial, but instead hear the minor before the trial with the use of audio-video means (Art. 86 index 2 para. 2, 4, 5 and 7/ Art. 86 index 4 CPC).

Main problems concerning the treatment of victims by the judicial system (police, prosecutors, court, defendant)

The main problems in practice in regard to the treatment of victims are:

- The police often do not respect the right of victims to a reflection and recovery period, thus not allowing them to take an informed decision on whether to participate in the criminal proceedings or not. Usually the investigations take place almost immediately after the victim escaped exploitation, hearings take long hours and are very demanding. They are to a certain extent re-traumatizing for the victim.
- In most cases, victims cannot consult a lawyer during criminal proceedings and thus are not adequately informed on the relevant judicial procedures before the trial starts.
- Some of the rights cannot be fully accessed or can be accessed only with much difficulty. For example the right to a recovery and reflection period; the right to receive assistance through lack of funds; the right not to cooperate with law enforcement; the right to receive compensation from the state. There is a poor collaboration between assistance providers and the judicial authorities.
- The failure to respect the set time for hearings in court increases the anxiety of victims and leads to poor time management by the authorities involved. The dynamics of the trial are little predictable: it happens quite often that sessions start with significant delays; there are constant postponements due to the offenders' tactics to gain time.

There are several reasons for these problems:

- The police are focused on the fast investigation of the case. There is no standardized protocol in regard to cooperation between the police and assistance providers. Collaboration is built on a case by case basis.
- The judicial authorities do not have a victim-oriented view. Often they do not take into regard the needs of the victim, their level of understanding and their need to have time to understand and cooperate.
- There is insufficient inter-disciplinary knowledge both at the level of the judicial authorities and assistance providers.

5.5. Right to protection of physical integrity

Victims have the right to protection of their physical integrity

Medical assistance provided to victims of trafficking must be in accordance with the general provisions on healthcare (Art. 27(1) Anti Trafficking Act). Any medical procedure can only be carried out after the informed consent of the person concerned (Law no. 95/2006). The legal age of

informed consent is 18. If there is a potential risk to the patient the patient's written consent is required (Art. 649).

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

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

In case of a violent death, or when the circumstances of the death are not known, unclear or when a physical examination of the defendant or of the injured party is necessary in order to conclude the existence of physical injuries as the result of the crime, the judicial authority may order a forensic evaluation and may ask the competent forensic authority to do the medical evaluation (Art. 114 CPC). Also in this case the victim's consent is required.

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

Usually it is the prosecutor who requests medical legal expertise. Victims are informed of the procedure, asked for their consent and accompanied to the examination by the competent case officers, i.e. police officers of the specialized organized crime units.

When the victim is included in an assistance program, the case officer should inform the case manager of the assistance provider, either an NGO or state institution. The latter has the task of explaining the procedure to the victim and preparing him or her. In court procedures the judge has the right to approve forensic expertise.

Post-traumatic stress symptoms are not considered during criminal investigations or in trial, e.g. chronic mistrust in others; the tendency to "cover" some elements; high anxiety/avoidance to disclose some aspects for fear of being judged; mood changes that can influence declarations; traumatic attachment towards the trafficker, often interpreted as love and naivety; and detachment and dissociation mechanisms, which are interpreted as signs of voluntary involvement in sexual activities. Medical legal evaluations do not include PTSD assessments.

The Bucharest Tribunal, Criminal Section no.1, decided in 2011, on the proposal of the Prosecutor's Office, to extend the preventive detention of the two defendants. The defendants had misled the victim, asking her to accompany them to see a friend in a city. They forced her to prostitution. Because the victim refused, they battered her with a baseball stick and with their fists, and threatened the victim that she would not see her child back. In a moment in which the defendants did not pay attention, the victim escaped and asked help from police. One of the proofs used in court was the forensic report which detailed the physical trauma, as well as the fact that the victim was mentally retarded, which the defendants used to mislead the victim.

E. was formally identified as victim of trafficking and referred to assistance during criminal proceedings. As during investigations she showed signs of extreme emotional vulnerability, the prosecutor requested a psychiatric and psychological examination to prove that she was able to deliver a valid declaration. E. was prepared for the examinations by the case manager.

5.6. Right to compensation

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

Victims of a crime can claim financial compensation for the material and moral damages suffered in three ways: by joining a civil claim to the criminal case, starting a separate civil action, or by applying for compensation of the state fund.

Joining a civil claim to the criminal case

Victims can join a civil claim for material and moral damages to the criminal case (Art. 14-15 CPC). The injured person can become a civil party against the accused or the defendant (Art. 14) during the prosecution and trial until the reading of the indictment (Art. 15). The status of civil party does not affect the right to participate as injured party in the same case.

Material damages are damages assessable in money, such as destruction or theft of property, injury to a person's health, or the loss of a right. In this case the court considers both the actual loss (*damnum emergens*) and the loss of future earnings (*lucrum cessans*). For example, when a person has suffered bodily injury and lost in whole or in part the ability to work and consequently their income from employment. Non-material (moral) damages include damage which cannot be assessed in money, such as death, severe physical pain or mental harm, or damage to the honour or dignity of a person. In both cases the extent of damages has to be proven by evidence.

In practice awards tend to be low and sometimes claims are only partially accepted by the court.

Criminal sentence no. 54/27.12.2012 Covasna Tribunal (Court of first instance)

The case concerned seven victims of trafficking, of whom 2 were minors, who were exploited during 2007 in the Czech Republic. The defendant had promised to help them to find a good job. On their arrival in the Czech Republic, they were exploited by another defendant who put them to work in the forest industry from 5 in the morning until 10 in the evening; without food and living in inappropriate conditions. They were threatened that their organs would be sold on the black market if they did not work. One day they managed to escape and asked help from the police in a village. The Romanian Embassy in Prague helped them to obtain travelling papers in order to return home and the victims had to ask financial help from their relatives to pay for their tickets. In accordance with Art. 14 and Art. 346 (1) CPC and Art. 998 Civil Code the defendants were sentenced to pay civil damages to the victims. Each of the victims received for

moral damages 1500 euro, but the other claims for damages were rejected, including the claim for travel costs.

Criminal Decision no. 159/2011, Bucharest Tribunal (Court of Appeal)

N.M was forced between January-February 2009 to prostitution. She was working as cook assistant in a hotel where she met the defendant who was working as bodyguard. They moved together in an apartment where the defendant forced her through threats and physical violence to prostitution. In court, evidence of the physical lesions was presented by a forensic report. The Court partially awarded the victim's claim of 5000 EUR for damages and obligated the defendant to pay 2000 EUR as moral damages according to Art. 14 and 346 CPC jo Art. 998-999 Civil Code.

The number of victims of trafficking who are granted compensation is low. It is not possible to indicate an exact number due to the fact that the authorities do not keep statistics of the number of victims that are awarded compensation resp. actually receive such compensation.

A civil action can be started *ex officio*, when the injured party has no or limited legal capacity, e.g. in the case of minors (Art. 17 CPC). In this case, the law enforcement or court will ask the person through his/her legal representative to present the damages and how the damage was caused. The court is obliged to take a decision concerning the extent of the damages, even if the injured person did not become civil party. There have been situations in which during the trial the minors became adults and due to the fact that they did not continue the action that initially was started by the prosecutor the claim for damages was eventually rejected by the court.

Separate civil action

An injured party who did not join a civil claim to the criminal case, can start a separate civil action before a civil court for material and moral damages suffered (Art. 19 CPC). The civil court judgment, however, shall be suspended until the final verdict in the criminal case. Also when the injured party already has joined a civil claim to the criminal proceedings he or she can bring an action to the civil court when the criminal case is suspended. In case of resumption of the criminal proceedings, the action brought before the civil court will be suspended.

The injured person who started the proceedings in the civil court can renounce to it and address to the law enforcement (such as prosecutor) or to the court, if the criminal proceedings started after or the criminal proceedings were resumed after its suspension. However, leaving the civil court cannot occur anymore if this court has given a decision even if it is not a final one due to the fact that can be made an appeal against it.

Decision no.38/2011 – Brasov Tribunal

In 2009 the Brasov Tribunal sentenced 6 suspects for trafficking of minors to imprisonment, according to Art. 12 and 13 Law no. 678/2001. The Tribunal rejected the civil action started ex officio by the Prosecutor for the six victims who were minors at that time. The prosecutor appealed against this decision to the Brasov Appeal Court arguing that the right of the victims to demand civil redress was born during a period in which they were minors and that trafficking of minors is an offence which is exclusively based on the minority of the victims. The appeal

court rejected this point of view, arguing that indeed the right to claim civil redress was born in a period in which the victims were minors, but that during the process the injured parties became adults and that as they did not request anymore for civil redress, they did not continue to “embrace” the position of the Public Ministry represented by the prosecutor. The Appeal Court confirmed the decision of the Tribunal.

It is not possible to indicate the number of victims that started a separate civil action and were awarded compensation due to the lack of statistics.

In general is very difficult to obtain the execution of a decision. Even if the claim is granted, the victim has to enforce the court order her/himself. If necessary a judicial executor has to be hired. Victims will generally not have the financial resources to do so.

J., a minor victim of domestic trafficking, pleaded as injured party. She was recognized by the court as victim of trafficking in minors and after the closure of the penal trial, she was given the right to apply for civil remedies whereas the offenders were imprisoned. In order to request civil redress, the injured party has to start a civil case to request material and immaterial damage from the defendants. However, victims can only do this upon court decision and if the defendants’ assets/goods have already been seized. The procedure requires that a judiciary expert be contracted to assess the financial value of seized goods, assets or properties. For this task he is entitled to require 10% of the amount to be received. The judiciary expert will be paid for his services even in the case in which the offenders had no goods or assets in their property. Since this is a civil action, opened by the victim and not the state, the costs of the judiciary expert’ services must be supported by the victim (claimant.)

Art. 163 CPC (“Precautionary Measures“) provides for the possibility of confiscation of mobile and real estate assets during the criminal trial by the prosecutor or court in order to guarantee the execution of a financial penalty. In practice this is very difficult. According to the ADPARE database, there is currently a beneficiary who claimed civil redress but the procedure is still ongoing.

In theory it is also possible to claim unpaid/due wages through labour law. This, however, requires the existence of a labour contract. According to art. 166 (4) from the Labour Code, the unjustified delay of the payment of wages or the non-payment may give the right to the employee to ask recovery of damages from the employer. To our knowledge this has never happened in practice.

Compensation through the State Fund

Thirdly, it is possible to claim financial compensation from the state under the provisions of Law 211/2004 concerning measures to ensure protection to victims of crime. According to this law financial compensation shall be granted, upon request, to the following categories of victims:

- a) Victims of the following crimes: attempted murder, aggravated murder and manslaughter, a serious crime that resulted in intentional bodily injury to the victim, rape, sexual intercourse with a minor and sexual perversion, trafficking, terrorist offences and other violent intentional crimes;

- b) The spouse, children and dependents of the persons deceased as a result of any of these offences;

Compensation is only possible if the crime was committed in Romania and the victim is

- a) a Romanian citizen;
- b) a foreign citizen or stateless person legally residing in Romania;
- c) a citizen of a Member State of the European Union legally present in Romania on the date of the crime; or
- d) a foreign citizen residing in a Member State of the European Union, who is legally staying in Romania at the date of the crime.

However, if the victim is given the legal quality of witness she or he cannot claim compensation from the State Fund.

Financial compensation is not granted if:

- a) it is established that the act does not exist or is not covered by the criminal law or that the act was committed in self-defence against an attack
- b) the victim is convicted for participation in an organized criminal group
- c) the victim is convicted for a crime for which compensation is granted
- d) the court finds in favour of the offender a mitigating circumstance of exceeding the limits of self-defence against the attack of the victim .

Financial compensation is granted to the victim for the following categories of injuries (Art. 27 Law no. 211/2004):

a) in regard to the victim:

- expenses for hospitalization and other medical expenses incurred by the victim
- material damage resulted from destruction, degradation or rendering to disuse of the victim's goods
- income the victim is deprived of because of the crime

b) the spouse, children and dependents of deceased persons as a result of the crimes:

- funeral expenses
- livelihood the victim is deprived of because of the crime.

To clarify the practical aspects, the Minister of Justice issued an order in 2008⁴, appointing the Ministry of Justice as the assisting authority for Romanian citizens, stateless persons or foreigners living legally in Romania, and victims of violent intentional crimes committed in another EU state.

Applications for financial compensation must be lodged with the tribunal that has jurisdiction over the victim's domicile and is decided upon by two judges from the Crime Victims Financial Compensation Board Art. 28(1)) and must meet various requirements.

Money paid by the perpetrator as civil damages and/or the indemnity received by the victim from an insurance company is to be deducted from the amount of financial compensation granted to the victim by the State. Financial compensation can not exceed the equivalent of 10 national minimum basic gross salaries established for the year in which the victim lodged the application for financial compensation.

⁴Order of the Minister of Justice no. 1319 / C of 13 May 2008 on the implementation of the provisions on the procedure for obtaining financial compensation to victims of violent crimes intentionally committed in trans-boundary situations under Law 211/2004 on certain measures for the protection of victims of crimes.

There are no statistics available on the number of persons that received financial compensation from the state.

B. was identified as a victim of trafficking upon court decision. Months after, she barely survived multiple stabbing. The offender was imprisoned for aggravated murder attempt. B. applied for state financial compensation as victim of attempted murder. She was granted financial compensation and received two monthly payments before losing the entitlement as a result of the offender's suicide.

Children

Minor victims do not have to join a civil action in the criminal proceedings themselves. In this case the prosecutor can do so *ex officio*.

If the victim is a minor and his/her legal representative made no request for compensation within the time prescribed by law, that period only starts to run after the victim has reached the age of 18 (Art. 26).

Main problems for victims to obtain compensation

In practice, there are several obstacles for victims to obtain compensation:

- Victims are not informed of their right to claim compensation.
- Victims who plead as witness, cannot join a civil claim to the criminal case or claim compensation from the State Fund.
- In cross-border trafficking cases, the procedure for getting compensation from the State Fund is extremely difficult, as the Crime Victims Financial Compensation Board in Romania has to contact and cooperate with its counterpart in the destination country. This rarely happens in practice.
- If victims undergo all procedures and apply for both compensation from the State and civil remedies as part of the criminal procedure and both procedures are accepted, the amount of money paid by the perpetrator as civil damages or the indemnity received by the victim from an insurance company must be deduced from the amount of financial compensation granted to the victim by the State.
- Defendants often pass properties, goods and assets on to their relatives to avoid confiscation.
- The state financial compensation is approved only on the basis of the final court sentence, which can take years after the trafficking happened. In this case the question arises how appropriate it is to estimate the value of damages at a cost dating back 3-5 years and to undergo an application process that is quite complicated and rarely leads to the *de facto* granting of compensation.
- Civil remedies can be requested by the victims and approved by the court but not granted as the seizing procedures are not very effective, allowing the offenders to pass on their assets/properties.
- Civil remedies can be granted through the confiscation of offenders' assets only if the lawyer requests the procedure. Otherwise the earnings obtained by selling these assets return to the state.

Data of Adpare on victims of cross-border trafficking who claimed compensation in the country of destination

- *One victim was awarded compensation in the state of destination from an insurance company for having been the victim of a car accident with severe consequences. The amount awarded was 20 500 E, after applying fees the amount awarded was of 16 400 E.*
- *Two other victims applied for financial compensation in the destination country, for which the procedure is still ongoing.*
- *Another two victims applied for financial compensation in the destination state for an amount of 10 000 E for each person. The procedure is still ongoing.*

Some of the causes for the problems identified include:

- Inconsistency of legal provisions. E.g. compensation can be approved but not granted; the granting of compensation by the State Fund and civil remedies as part of the criminal case are not cumulative. Should both be approved, the victim has to renounce one in the favour of the other and return the corresponding payment.
- Even if a claim is granted as part of the criminal sentence the victim is responsible for its enforcement.
- Lack of standardization and coherent and accessible practices.
- Lack of training of judges on topics related to financial compensation of trafficking victims.
- Lack of transposition into the national legislation of the provisions of EU Directive 36/2011 on preventing and combating trafficking in human beings and protecting its victims.

5.7. Non-prosecution and non-punishment of trafficked persons

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

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

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

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

Main problems concerning non-prosecution and non-punishment of trafficked persons

The main problems in the application of the non-punishment principle are related to the failure to adequately identify trafficked persons, in particular:

- The improper identification of victims of certain exploitation forms, in particular trafficking for forced begging, constraint to commit crime, illegal donation of human organs, tissues or cells, and mixed exploitation both in destination countries and in Romania
- Insufficient training of the responsible actors from both GO and NGO institutions/ organizations in assessing the victims' situation, and ensuring protection and assistance.

- The inadequate function of the identification system, especially in the case of foreign victims of trafficking.

Some of the causes are:

- Formal victim identification - done by law enforcement – prevails over informal identification. In Romania most victims are identified through law enforcement (police units, prosecutors' office, liaison officers) given the lack of legal provisions regulating informal identification (e.g. victim identification among women involved in prostitution through outreach services is not considered legal, given the fact that prostitution is criminalized).
- There are no specialized policies and practices with regard to the adequate identification and referral of victims exploited through constraint to commit petty crimes.
- Interventions largely depend on the individual quality and specialization of the law enforcement officer/team and are not embedded in the system.

5.8 Non-detention of trafficked persons

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

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

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

F. a 58 year old victim of forced begging, without family and suffering from paranoid schizophrenia was hospitalised in a closed facility for persons with mental health problems. The staff decided that it would be to his benefit to have his own room and according to their policies this room would remain closed when there were no activities. Soon after, his symptoms aggravated.

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

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

There are several factors reducing the quality of services provided here:

- Lack of specific specialization of state shelters (reuniting children with various problems which require very different assistance and protection approaches is a true challenge)
- Reduced financial resource (these run with local budgets),
- Restrictive conditions for selecting beneficiaries (the children need to have their residences in the department in which the shelter is functioning)
- Under-motivated and over-tasked personnel

The National Specific Standards on specialized assistance for victims of trafficking do not clearly state special provisions for child victims. However, they reinforce the need to ensure security measures in residential centres/shelters for victims of trafficking, adults or minors, such as: having video surveillance over the building/apartment and settling a protocol between the centre and the police or a security company to ensure fast intervention in emergency cases.

Main problems in relation to non-detention of trafficked persons

- There aren't many shelters specialized and equipped to respond to the complex needs of trafficking victims, in particular male victims, boy victims and victims with physical and/or mental difficulties
- State services treat trafficking victims, especially those with physical and/or mental difficulties and without support from the family, as any other social case
- There are no specialized residential centres for trafficking victims and their children.

Some of the causes are:

- The protection and assistance state system is not adjusted to the needs of its clients. NGOs promote a more flexible, client oriented and specialized approach to trafficking victims but work with very limited resources. The state still cannot adjust its policies and practices and cannot provide adequate assistance to trafficking victims either; they work with very limited local budgets and with underpaid, under-motivated and insufficiently specialized staff.
- There is no national authority to actually monitor and improve the effectiveness of the protection and assistance system.
- Working in a closed or semi-closed shelter could prove an easier option for the staff to ensure that their clients respect the internal rules and do not expose themselves to danger.

5.9. Reflection period, temporary, permanent and humanitarian residence permit

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

Reflection period

According to the Anti Trafficking Act (Art. 39, index 2⁵) Romanian nationals – when there are reasons to assume they are victims of trafficking – are entitled to a recovery and reflection period of up to 90 days. The reflection period serves for their recovery, to escape from the influence of the traffickers, and to make a conscious decision about cooperation with the authorities.

During the recovery and reflection period Romanian citizens are entitled to counselling, medical and social assistance, medicines, food and (upon their request) accommodation in the centres or protected homes, and should be informed about the applicable legal and administrative proceedings (Art. 39(2)).

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

The reflection period may be terminated when:

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

If the victim is identified by the judicial authorities (in particular by the special police tasked with combating trafficking, the judiciary police, the border police, and the special services from the General Directorate for combating organized crime and terrorism) the procedure for referral of the victim to the responsible assistance providers is as follows:

- The special police will contact the regional representative of the National Agency to assess the victims' assistance needs;
- The other agencies involved – the criminal investigation police, judiciary police, and/or gendarmerie - will inform the other specialized police agencies and the General Directorate for combating organized crime and terrorism;
- the regional representative of National Agency:
 - will make an initial assessment to identify the needs of the victim, and, with the person's consent, will immediately refer him/her for urgent assistance
 - will inform the assistance provider and will transfer information for preparing the intervention
 - will provide support for the victim for the hearing in front of the judiciary authorities.

In the latter case the reflection period is not applicable, given the fact that the victim identification is conducted by the police. This means the victims first collaborates with law enforcement and then the NAATIP is notified and finally the assistance provider.

Foreign victims

Foreigners about whom there is a reasonable cause to believe that they are victims of trafficking are equally entitled to a recovery and reflection period of up to 90 days to recover, to get out of the influence of the trafficker and to make an informed decision on cooperation with the competent

⁵Article 39 was introduced by section 31 of Article 1 from Law no. 230/2010, complementing the Anti Trafficking Act (Law 678/2001).

authorities (Art. 39(1), index 1, Anti Trafficking Act). They should be informed in a language they understand about the right to a recovery and reflection period and to access to specialized services, including accommodation in specially arranged centres, psychological, medical and social assistance. During this period the General Inspectorate for Immigration (GII), at the request of the prosecutor or the court, grants them a ‘tolerated status’ in Romania.

During the reflection period foreigners are entitled to accommodation facilities as arranged by Government Emergency Ordinance no. 194/2002 on the regime of foreigners in Romania, without need for their detention (Art. 38). The accommodation must be approved by the General Director of the Romanian Immigration Inspectorate, following the written request of the competent authorities. In practice these locations don’t meet proper accommodation conditions for even a limited period of time. These centres have a closed regime as they are mainly used to accommodate illegal foreigners. They do not have separate facilities for trafficking victims, who consequently are held under conditions no different from detention.

If foreign victims of trafficking require a form of protection in Romania, they can be accommodated in the special asylum centers⁶. Currently there are six such centers, namely in: Bucharest, Giurgiu, Galati, Radauti, Somcuta Mare, and Timisoara. During their stay at the center the immigration authorities should inform them, in a language they understand, about the applicable judicial and administrative procedures and they should have access to counselling, medical and social assistance, as well as medicines and food under the same conditions as Romanian victims (Art. 38(4) Anti Trafficking Act).

The General Inspectorate for Immigration (GII), together with NAATIP, is responsible to coordinate the activities of public institutions, local public administration authorities and NGOs dealing with the integration of foreign victims who are entitled to some form of protection in Romania or have a the right to stay in Romania.⁷

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

The Anti Trafficking Act (Art. 38, index 1) covers trafficking victims who are Romanian citizens or nationals of an EU Member State or of the European Economic Area. The Act does not explicitly mention victims of trafficking from other (third) countries. Although annually very few foreigners are officially identified as trafficking victims (although we believe that their number is increasing), those who were identified in recent years came from countries outside the EU, such as Bangladesh, Moldova, Cameroon, etc. Therefore a change of the Act is required to bring it in conformity with international standards and ensure that the provisions on Romanian victims of trafficking also apply to foreign victims, whether they come from EU member states, from the European Economic Area or from other third countries. However, also in regard to those covered by the Act, the reflection period is often not applied.

Moreover, the various laws are not aligned. The Anti Trafficking Act, e.g., stipulates that foreigners are granted a reflection period of 90 days, whereas according to the regulations on the right to stay (GEO 194/2004) all foreigners should collaborate immediately with the competent bodies,

⁶ As arranged according to Law no.122/2006 on asylum in Romania, as amended and supplemented.

⁷ In accordance with Government Decision 44/2004 regarding the social integration of foreign victims benefiting by some form of protection in Romania or the right to stay in Romania and citizens of EU and EEA Member States;

including law enforcement, to regulate their stay in Romania, otherwise they will be considered to be illegal foreigners.

Number of victims granted a reflection period

The National Agency does not record the number of victims that were granted a recovery and reflection period. The officially reported number of victims of trafficking (2011: 1048 persons; 2012: 1041) does not include the number of presumed victims of trafficking who were identified by NGOs and/or IOM in destination countries and referred directly to NGOs in Romania, or those victims who did not want to cooperate with law enforcement or whose mental and medical state forbade them to provide valid declarations.

P.M., a Romanian citizen was trafficked to Spain in 2011-2012. She accepted to testify in the criminal case started by the Spanish authorities against the traffickers who were also Romanian citizens. She got legal and psychological assistance by a Spanish NGO. After a few months she was returned to Romania to execute a penalty for an offence she committed in the past. The Spanish NGO referred the victim to Pro Refugiu for legal and psychological assistance. In the database of the Romanian Agency Against Traffic in Persons she doesn't appear as victim of human trafficking, even if in Spain the criminal case against the traffickers is ongoing.

Temporary residence permit for the duration of criminal or other proceedings

According to the Anti Trafficking Act the General Inspectorate for Immigration may grant - at the request of the prosecutor or of the court – the victim a “tolerated status” (Art. 39, index 1). During or after the reflection period, a foreign victim may be granted a temporary residence permit, as provided by Government Emergency Ordinance 194/2002 (GEO Art. 39(2), index 1).

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

The Ordinance (Art. 103) lists the situations in which a “tolerated stay” can be granted, including those situations in which there are serious reasons to believe that a foreigner is a victim of trafficking (para. 1(e)). In these cases the stay is granted at the request of the prosecutor or the court. The ‘tolerated stay’ is granted for a period up to 6 months which may be extended for a further period of up to 6 months until the cause disappears (art. 104(1) GEO no. 194/2002). A recent positive development is that during this period foreigners have access to the labour market on an equal footing with Romanian citizens⁸ (Art. 104).

The prosecutor or the court may decide to extend the period of toleration if the presence of the victim is necessary for the proper conduct of the criminal proceedings (Art. 104(5)). In this case, the period is extended until the termination of the trial (Art.104(1)). The period of stay is strictly limited to the duration of the criminal proceedings.

⁸Law no. 157/2011 amending and supplementing certain acts on foreigners’ regime in Romania.

There are no provisions in GEO 194/2002 in relation to civil or administrative proceedings for compensation. A change is needed here to provide foreign victims with the right to stay during all legal proceedings and not only during the criminal trial.

According to the Anti Trafficking Act (Art. 38) foreign victims have access to psychological, medical and social assistance, and also medicines and food on an equal footing with Romanian victims. In practice there are various difficulties in providing these services to foreign trafficking victims. This applies in particular if the foreign victim is accommodated in one of the above mentioned facilities under GEO 194/2002. These facilities are mainly public custody centres. They have a limited staff to provide at least basic health care and psychological services. Access for representatives of NGOs is limited and must always be preceded by approval from the institutions that manage these centres.

According to the records of the General Inspectorate of Immigration, there were no registered foreigners who were granted the right to stay in Romania as victims of human trafficking in the period 2011 – 2012.

Even if according to the Immigration authority no foreigners were registered officially in 2011-2012 as trafficking victims, the data of Pro Refugiu Association database and other non-governmental organizations show that there were cases of (presumed) victims of trafficking who obtained the right to stay or another form of protection in Romania but based on another ground, such as being part of a social group or other problems linked to the situation in their country of origin.

Permanent residence permit on humanitarian ground or application for asylum

An application for a permanent residence permit on humanitarian ground or for asylum can be taken in consideration when return would endanger the life and safety of the victim. Art. 38 Anti Trafficking Act provides that the Law on the asylum procedure (Law no. 122/2006) applies to foreigners who are victims of trafficking. The asylum law follows the Geneva Conventions on Refugees and does not stipulate among the justified reasons for fear of persecution the fact that a person was a victim of trafficking.

Art. 26(1) of the asylum law provides that subsidiary protection may be granted to

"a foreign citizen or stateless person who does not fall within the conditions for refugee status and in relation to whom there are reasonable grounds to believe that, if returned to his/her country of origin, resp. the country of his/her former habitual residence, he or she would be at a serious risk, as provided by par. (2), and who due to that risk do not want to receive the protection of that country ".

A serious risk means (para 2):

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

If a foreign victim applies for asylum on grounds that he/she was a victim of trafficking, he/she could be accommodated in one of the six Centres for asylum seekers with an open regime; but also

here there is a lack of specialized staff, both from the General Inspectorate of Immigration and from NGOs, able to offer appropriate healthcare and social, psychological and legal services.

Material and financial assistance of foreign citizens who applied for asylum is about 108 lei per month, which is insufficient to ensure decent living conditions⁹. They only have the right to work legally after one year from the date of the application (Art. 17(1)(a) Law 122/2006 on the asylum procedure), which is a very restrictive provision for all foreigners who seek a form of protection.

Although according to the statistics of the General Inspectorate for Immigration, no foreign victims received a form of protection based on the fact that they were victims of trafficking, the NGOs specialised in providing assistance to asylum seekers know of two cases of foreign citizens in relation to whom there were strong indications to believe that they were victims of trafficking. One of them obtained a form of protection on other grounds related to the conditions in his/her home land, the other person was rejected in the administrative stage of the asylum procedure.

The absence of express provisions in the asylum legislation on the possibility of granting refugee status or subsidiary protection based on the fact that the person is a victim of trafficking, makes it difficult to apply for such protection, because in general the authorities limit protection to the specific situations as defined in Art. 23 on "refugee status" and 26 on "subsidiary protection", which follow the Geneva Convention.

A 26 year old woman from Cameroon was trafficked for prostitution from Cameroon via Ukraine to Romania. She was intended to be transported to France but was caught at the Romanian border with a fake ID and requested asylum. The asylum procedure lasted only one month and she was granted protection on the grounds of belonging to a social group. She was 8 months pregnant at the date of request. There was no procedure for obtaining financial compensation for pecuniary and/or moral damage as a result of trafficking.

A 19 year old girl from Moldova claimed she was subjected to sexual exploitation and that the traffickers were from her country of origin. Her application for asylum was rejected in the regular procedure on the ground that she was an economic migrant.

According to the General Inspectorate of Immigration, during 2011 and 2012 there were no asylum applications and no forms of protection granted to foreigners based on the fact that they were victims of human trafficking.

Children

The specific provisions on the reflection period, temporary residence permit or permanent residence/asylum also apply to child-victims and children of foreign victims of trafficking (Art. 41 Anti Trafficking Act).

Although there are no cases recorded of foreign minor victims of trafficking who seek asylum in Romania, the asylum legislation includes a number of specific provisions on minor asylum seekers. These include that all decisions regarding minors should take into consideration the best interests of the child (Art. 8 Law no. 122/2006). In the case of unaccompanied minors a legal representative must be appointed (Art. 40 Law on asylum procedure) and the asylum procedure is suspended until the appointment of a legal representative. During this suspension the child enjoys the rights provided by law.

⁹Law no. 122/2006 and the Government Decision no. 1251/2006.

Main problems concerning the reflection period and the granting of temporary or permanent residence

The main problems are:

- Only few foreigners are officially identified as trafficking victims and their access to assistance and protection is very limited.
- The accommodation facilities and asylum centres are not adapted to receive foreign trafficking victims.
- The right to temporary/permanent residence in Romania is only granted if the victim cooperates as soon as possible with the competent authorities. Also foreign victims should be entitled to a recovery and reflection period as laid down in the law.

Some of the underlying causes are:

- The powers of the competent actors involved in the identification of trafficked victims among foreign citizens are not always clear (for example: labour inspectors who do not enter certain premises; in the case of live-in domestic workers the police cannot search the house unless they have a warrant and there are solid proofs of exploitation).
- There are very few specialized agencies to provide protection and assistance to foreign trafficked persons. The officers from the Romanian General Inspectorate for Immigration are not sufficiently trained to deal with trafficking cases and sometimes (possible) victims are catalogued as economic migrants.
- The legislation on foreigners and on victims of trafficking rights is not sufficiently harmonized.

5.10 Repatriation & guarantees of non-repetition

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

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

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

Repatriation of Romanian victims

Repatriation of victims can be carried out with the help of the International Organization for Migration and its missions, as well as within the voluntary return program with the assistance of

NGOs, diplomatic missions or consular offices or representatives of both recipient states and states of origin and the child protection authorities when the victim is a minor.

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

When the victim is identified by an NGO from the destination country, the NGO representative from Romania will meet the victim at the border or at the place agreed upon with the referring partner. If the victim agrees, he or she can be included in the assistance program of the NGO or another organization. Before the return the two organizations will communicate in order to provide support and information to the victim by telephone; obtain data on the victims' whereabouts and family in Romania; mediate between the victim and her/his family and update them on the steps undertaken in the destination country; mediate between the victim and the shelter; assess her or his medium term assistance needs; identify and assess reintegration options (either in the country of origin or in destination); evaluate the risks attached to voluntary assisted return; and to prepare the victim's cooperation with the relevant institutions for social assistance in Romania (ANITP-anti-trafficking coordinator, DGASPC-state social services, local authorities).

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

Repatriation of foreign victims

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

Children

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

and communicate the approval for issuing travel documents to the diplomatic mission or to the consular office within 3 working days from receipt of the request.

If the family or legal representative does not consent with the return of the child or is not found the General Directorate for Passports must inform the National Authority for Child Protection (which informs the General Directorate for Social Assistance and Child Protection) about the last known address of the parents or, if applicable, the legal representative of the child. The latter is obliged, within 7 days, to give his/her consent on the return of the child, ensuring, as appropriate, measures to protect it. The National Authority for Child Protection shall ask the General Directorate for Social Assistance and Child Protection for a social investigation and the preparation of an individual plan for the social reintegration of the child. The deadline for the preparation of the social investigation should not exceed 20 days from the time of its application.

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

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

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

Examples of repatriated minors during 2011-2012

A minor was repatriated from Greece and initially hospitalized in Suceava Hospital-Department of Infectious Diseases on the probable diagnosis of TB (which eventually appeared not to be the case) and finally reintegrated in her family. She was 17 years old, the mother was working abroad and the children were left in the father's care. She was recruited and brought to Greece by persons she knew and who had promised her a job in a bar. In Greece she was forced to prostitution, beaten, threatened and her papers were taken away.

A 17 years old girl was recruited by a neighbour and brought to Constanta under the pretext of spending there the summer vacation, but instead was forced to prostitution. From Constanta she was transported to England with false papers. She belonged to a poor family, without much affective support. She was finally reintegrated in her family and now goes to high-school.

A 16 year old girl was repatriated from Spain. The child was recruited by acquaintances with the promise of a job. She was given false papers and transported to Spain where she was forced to prostitution. She came from a poor family with an alcoholic father.

In all these cases their repatriation was organised with the help of the competent Romanian authorities. When they were returned to Romania they were housed for a certain period in special centres for minors in their home regions.

Main problems concerning the repatriation process

The state mechanism of repatriation is sometimes difficult due to the bureaucracy and the lack of funds to cover repatriation costs. In the official documents the funds exist and everything is well arranged, but in reality the system does not work as it should.

In practice, most voluntary returns/repatriations of Romanian victims are organized and paid for by NGO assistance providers from destination countries, IOM Missions or similar bodies, state return funds from destination countries etc., with minimal or no contribution from the Romanian diplomatic missions. There is currently in Romania no fund designated to cover return and transportation costs for victims of trafficking. Regarding the victim's assistance at the point of entry in Romania, the National Agency against Trafficking in Persons has a specialized unit, operational 24/7, which is responsible for meeting the victim and accompanying her to the shelter or point of departure to her or his hometown. Usually in this team, a member of the NGO assistance provider is also present.

5.11 General Problems

The responsibility to provide assistance lies with the public authorities in partnership with NGOs and other agencies, experts and/or individuals who can identify victims, refer them to support organizations etc. The primary responsibility for providing medical care, for example, rests with the Ministry of Health through the Public Health Departments, the provision of social assistance should be ensured by the General Directorate of Social Assistance and Child Protection (DGASPC). The NGOs, in cooperation with the state institutions mentioned above or using their own funds, provide assistance for victims of trafficking in Romania. Presently there are only few NGOs that effectively offer assistance to trafficked persons.

A major problem is the multitude of structures and provisions involved in and regulating the provision of protection and assistance services for victims of trafficking in persons. However, in practice most of these institutions are unaware of their anti-trafficking tasks and therefore do not carry out their attributions at all. Currently there are no state funds available for basic direct assistance services for victims of trafficking, let alone for long term assistance services.

Other problems are due to the lack of harmonization of the various laws. An example is the lack of unity in the Anti Trafficking Act which provides for access to free health services, also in cases where the victim is not insured, and the Health Insurance Law which does not permit this.

Also, effective mechanisms for the implementation of the various legal provisions are lacking. An example is the fact that the law accords various responsibilities to public institutions, without allocation of the corresponding resources needed for their implementation. There is still a lack of financial, material and human resources to provide specialized assistance to trafficked persons.

CHAPTER 6

ANALYSIS OF THE INTERVIEWS WITH VICTIMS

This chapter presents an overview of the interviews conducted with five victims of trafficking in persons, who are currently clients of ADPARE. The interviews record the experiences they had with the different actors (law enforcement, prosecutors, lawyers and judges) and cover all stages of the criminal investigation and prosecution, as well as other proceedings in which victims may be involved (divorce; child guardianship) and claims for compensation. Aim of the interviews was to capture the experiences of trafficked persons in dealing with the criminal justice system. We are very grateful to them that they were willing to support the research by sharing their perceptions, feelings and thoughts.

Criteria for the selection of respondents were: to be adults; to have cooperated with the law enforcement in Romania and/or in the destination country; to be involved in criminal proceedings or trial; to have participated in the assistance program for 12 months; and to show no (acute) post-traumatic stress symptoms.

Prior to the interview a written agreement was concluded between the respondent and ADPARE, in which the respondent gave permission to use the information from the interview and ADPARE guaranteed that the data would be processed in such a way that it could not lead to the identification of the respondents. The interviews were carried out by the social assistants and psychologists of ADPARE and took about an hour. The respondents could at any time stop the interview or refuse to answer certain questions. For a list of attention points for the interviews please see annex.

Characteristics of the respondents

In total five trafficked persons were interviewed. Four of them were between 20-25 year old, one respondent was between 30 and 35. Most respondents (4) were victims of international trafficking, one of domestic trafficking. Four were trafficked for sexual services, one for forced labour. Two were university students, three had completed gymnasium.

Identification and referral to assistance services

Experiences varied from not being identified as victim of trafficking in persons, implicitly not being granted the recovery and reflection period (2), escaping through their own force, declaring afterwards the situation to the police and later on being referred to assistance providers, to entering in contact with the police, denouncing the exploitation but not being referred to any assistance provider. In all five cases, the police was their first contact after exiting the exploitation; the police also acted as point of referral to assistance in two of the cases.

Their “escape” stories provide information on how the police – either in the destination or origin country - perceived them. ‘Police’ in this case include road police, street patrols, local police and in two cases specialized organized crime units. Only two of the respondents who were identified as victims of trafficking in persons received assistance immediately after declaring to the police.

According to them the assistance they received catered to their needs. In two cases the police initially refused to take their statement and help them.

A brief overview of their escape stories includes:

One person escaped from the car of her exploiters with the aid of the road police, who further accompanied her home. Later on, she went to the local police to denounce the exploitation but they advised her to go back to her husband. The second time she went to the municipal police, who advised her to call 112 in case she needed protection but this time took her statement. She received assistance from an organization helping mothers and children, who later on referred her to Adpare.

Another respondent also escaped with help from the police, who later on referred her to the NAATIP which on their turn referred her to Adpare.

The third respondent succeeded to escape and to return to the country with the aid of a neighbour. After her return, she went to denounce the exploitation to the police. The police referred her to assistance services.

Another respondent called the police, taking advantage of the traffickers' short absence. They came rapidly, accompanied by an NGO representative, took her declaration and accompanied her to an assistance provider, where she was assisted for three weeks before her repatriation. She was referred to Adpare by the NGO.

The last respondent succeeded to escape together with a small group of others held in similar exploitative conditions and went to the nearest police station. There, the police refused to take their declaration and asked them to leave. The same night they were found nearby by a street patrol unit and were brought to the station again. This second time, an NGO was contacted to support them to return to Romania. After their return, they denounced the exploitation to the specialized police and were referred to assistance services.

Police investigations

All five respondents affirm that the decision to cooperate with the police was theirs. However, in two cases the initial contact with the police was dissatisfactory. In one case the police refused to take the declaration of the victim and told her to go to another unit. The feeling of dissatisfaction remained also after denouncing the exploitation to another police unit: *"Only now I received a paper, in which I was notified to come to court. It's because I recognized them in photos."* The case of the other respondent was closed: *"Eventually they closed the case for lack of evidence"*.

Three of the respondents declared that the police treated their problem seriously and provided them with information on the investigation and updates on the progress of the case. In only one case, involving criminal proceedings in the destination state, the victim was provided with a lawyer to represent her interest in this stage.

In three cases there were cross-border police investigations. The respondents describe their experiences as follows:

"In that country they did not contact a lawyer as the case did not reach the court. And they didn't provide me with any information on the investigations. In Romania I received a lawyer (contracted by ADPARE) who was in charge of everything".

“... There were two cops, in casual clothes, they asked for our papers. We answered that we worked in agriculture, that our papers had been seized. They took us to the police station, kept us there, we gave declarations. They arrested the mother of one of the guys who had taken us there. They released her after 48 hours. We slept there, in the station, on the floor. They gave us food from the prisoners. When we told them we were cold they took us where the prisoners were held. There was a woman with us, she felt sick when she saw the bars; she was heart sick. We started screaming. They came and separated us men from the women. They locked the doors....”

This respondent was not provided a lawyer. He only received information on trafficking in persons and the police investigations from the Romanian border police at the moment of his return. However, a trans-national police investigation was carried out several years later, in relation to another case that eventually reached the court and in which he and the other victims were called to testify as witnesses: *“They called me now, after 6-7 years, as witness... I couldn’t travel as I didn’t have the money”*. The subpoena was handed in to the Romanian prosecutor less than a week before the court hearing in the destination country was set. That did not allow for the preparation of any arrangements that could have safeguarded him during his trip and at the country of destination.

Another respondent remembers that

“ADPARE told me that I will go to G. in front of a judge to tell him what I had told to the police. But when they had the judgement, my child was ill and I couldn’t go so they cancelled it. ADPARE spoke with the lawyer and police there and explained this to them”.

Later, the respondent travelled to the destination country to testify in front of the court. Prior to that, the travel arrangements, her assistance there and her return were organized by the NGO in the destination country, Adpare with the help of another Romanian organization and NAATIP.

None of the respondents underwent a medical legal examination to be used as evidence in court, or any psychological evaluations focused on PTSD symptoms.

Prosecution

In all cases the case was prosecuted, yet one respondent decided she did not want to continue the case for fear of her safety (the case continued and eventually reached the court). Another person remembers that the case was closed for lack of evidence. Only two respondents declare they had a lawyer in this stage. In one case the lawyer was provided by the NGO in the destination country; in the second case the lawyer was provided by Adpare.

Only one respondent answered that a psychologist prepared her for the encounters with law enforcement and that a social assistant accompanied her during some of the interrogations. This was due to the good cooperation between the law enforcement unit, the judicial authorities and the assistance provider. None of the respondents were directly confronted with their traffickers.

Trial proceedings

Three of the respondents are pleading as injured parties in the trial (court of first instance), for one respondent the case is still in the stage of prosecution. The period from the start of the criminal proceedings to the beginning of the trial varies from 2-3 months to two years.

“It was only after 2 years from everything that’s happened that I received a paper, in which I was notified the case got to court. But they didn’t call me to testify. And it’s only after two years that they found out what those men had been dealing with and they had been arrested for this deed before. And, after two years they asked me if I maintained my declaration, if I wish to continue. And if after two years they barely took me into account... I was terrified, I have two children I was worried! And I say to myself, should I continue now, as it took them two years to realize I had been telling the truth... I was so afraid. Had I been alone, I would have continued, but like this, with two children, no more....”

For the two respondents who already testified in court protection measures are/were enforced, including hearing the victim behind closed doors; hearing the victim without the presence of the suspect(s); hearing the victim through video or audio link; exclusion of the media from the trial; keeping the address of the victim secret; police escort to hearings; a special telephone number of the police that victim can call in case of threats; avoidance of a face-to-face confrontation with the trafficker, his associates and/or family.

One of the respondents acting as injured party participated in the trial starting in the destination country; the second had access to a contracted lawyer who requested the implementation of in-court protection measures. Both respondents received legal counselling beforehand and had been prepared by the lawyer and social workers before the court session.

Compensation

Four of the respondents stated that they had received information on the possibility of civil redress and compensation for damages:

“Yes, I was told by the police, the social assistant and the lawyer.”

“Yes, the prosecutor told me about this possibility, but vaguely.”

“Yes, the prosecutor, and I told him I only wanted the money I had worked for...”

One respondent did not receive any information on such possibilities.

One person applied for both State compensation and civil redress. The approval procedure is still ongoing. In the case of another respondent the trial is still in its early stages, the victim has not yet applied for redress or compensations but plans to do so.

Security

The experiences of the respondents in regard to safety issues vary. Three of them stated that neither they nor their families had faced any security problem following their cooperation with the judicial authorities, one benefiting from enforced protection measures. However, two respondents experienced pressures and threats from the traffickers. They describe their experiences as follows:

“...I had to go away for a while and I kept calling 112 as they came and broke the house windows. My family had to leave too, especially as my child was an infant then. Even while hiding I kept calling the police, asking them to go check the house, the neighbours called the police too, but they said they couldn’t just go check on the house all the time. But they patrolled once and those men saw them and didn’t come back afterwards”.

“Some acquaintance of T. contacted my mother and offered her some money to withdraw my declaration and forget what’s happened. My mom went to the police and told them about this and they advised her to tell them in case this should happen again. I was taken to a safe shelter to protect me from T. and the rest.”

Overall assessment

Asked what they would do if they had to decide again whether or not to cooperate with law enforcement, they answered:

“If I knew that things could move faster, I would of course file a complaint at the police. I wish for justice to be done, with all my heart as I was not the only one to have been in their hands.”

“Yes, of course I would do it again, for my safety and for the safety of other persons who could be in my place.”

“Even if I still have to go a long way to the end of this story and I know it won’t be easy, I would take the same decision for a thousand times.”

“Yes, justice should be done.”

“I wish that they were punished.”

CHAPTER 7

RECOMMENDATIONS

I. Position of trafficked victims in criminal proceedings

1. Ensure that all forms of trafficking are covered by the law and that all victims of trafficking and exploitation are equally protected without discrimination, including sex workers and women trafficked for prostitution by their spouse.
2. Develop permanent training programs for prosecutors and judges to strengthen their knowledge on the legislation on trafficking in human beings and to develop a human rights based approach towards victims. Establish specialised judges at national level to deal with trafficking cases.
3. Increase collaboration between NGOs', legal assistance providers and law enforcement agencies.
4. Respect the principle of confidentiality, in particular by mandatory closed court sessions and the removal of personal data of victims from the courts online portal www.portal.just.ro.
5. Decrease the duration of criminal trials.

II. Access to legal aid and representation

1. Increase the number of specialized lawyers through permanent training programs developed by the local bars.
2. Improve the information provided by the authorities to victims on the procedures they need to follow in order to obtain legal aid and representation, both orally and through written information material.
3. Increase the fees for state lawyers who assist victims of human trafficking and reduce bureaucratic procedures in order to ensure that they are timely paid.
4. Establish collaboration procedures between victim coordinators and lawyers, allowing victim coordinators to provide periodical updates to victims on the progress of the trial.

III. Right to information

1. Law enforcement officers should treat victims as human beings instead of objects; information should be given both orally and in writing and adapted to the mental and emotional situation of the victim in order for victims to be able to understand and to process the information acquired.
2. Develop written information material for victims on their rights.

IV. Right to protection of privacy and safety

1. Ensure access to assistance and protection for victims of trafficking (with a special focus on child victims) regardless of whether or not they have agreed to participate in the criminal proceedings. For those who agree to cooperate, the competent authorities should ensure that full use is made of the special protection measures provided by the law, in order to provide victims with maximum protection.

2. Respect the principle of confidentiality (with a special focus on citation procedures); take measures to ensure that public official papers such as indictments and court decisions do not contain the names of the victims and/or other personal data.
3. Improve the system of state shelters for victims of trafficking where they can be housed for a certain period of time and benefit from assistance and protection.

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

1. Improve the existing Witness Protection Program and ensure effective access to protection for victims of human trafficking who act as witnesses or injured parties.
2. Modify the legislation on the protection of persons participating in criminal proceedings to ensure that both witnesses and injured parties have access to adequate protection and compensation.
3. Include non-governmental organizations as official partners next to the authorities in the witness protection program and formalize collaboration through protocols in order for NGO social workers and psychologists to be actively involved.
4. Ensure permanent training programs for all members involved in the multidisciplinary teams of the victim coordination program, including how to support victims and their families in regard to the procedures for demanding financial compensation for damages suffered.
5. Expand, develop and harmonise the victim coordination program to function at national level on the basis of commonly shared working procedures, including both victims pleading as injured parties and those pleading as (protected) witnesses.
6. Create a governmental fund to financially support the functioning of the Program in all its components, including logistic issues (e.g. transportation costs; accommodation wherever necessary; and food/necessary items for the victim and team).
7. Even though inappropriate treatment is often unintentional, its impact is strong, taking into account that it is inflicted upon an already traumatized person. To address this issue, organisations and institutions involved could establish evaluation and monitoring activities as well as complaint procedures.

VI. Financial compensation and legal redress

1. Ensure that victims are properly and timely informed by the authorities about their right to compensation and the procedure that has to be followed. Ensure that victims have effective access to legal aid and representation during these procedures. Develop written information material for victims with the relevant information about procedures to obtain compensation.
2. Ensure that all victims, whether pleading as injured party or as witnesses, have access to all forms compensation, including through joining a civil claim to the criminal case and the State Fund.
3. Increase efforts of the authorities to help victims to *de facto* obtain awarded compensations.
4. Improve trans-national cooperation at the level of Compensation Boards to increase victims' access to compensation in the destination countries as well.
5. Expand the powers of victim coordinators to also support victims in preparing the applications/paperwork for compensations and remedies and consider both victims and their families as beneficiaries.
6. Review the system of confiscation of criminal assets to ensure their effective implementation; use confiscated assets for compensation of victims.

7. Improve labour legislation to include express legal provisions on the right of victims to claim unpaid/due wages.

VII. Non detention

1. Ensure that victims are not held in detention centres or in closed facilities under conditions akin to detention.

VIII. Recovery and reflection period

1. Improve the information to (presumed) victims of trafficking about their right to a recovery and reflection period
2. Take measures to ensure that this period is effectively granted by the relevant officials.

VIII. Right to a temporary and/or long term residence permit by foreign victims of trafficking

1. Bring the legislation on foreigners in compliance with the provisions of the Anti Trafficking Act, in particular the provisions on granting a “tolerated status” if the presence of the victim is necessary for the progress of the criminal proceedings. The legislation on foreigners should expressly include the right to residence during civil and other proceedings to claim compensation for damages suffered.
2. Modify Article 38 index 1 of the Anti Trafficking Act to expand the legal provisions on EU and EEA victims of trafficking to include third countries nationals, thus ensuring that they apply to all trafficking victims without regard of their country of origin.
3. Develop special training programs for immigration officers in order to enable them to adequately identify (possible) victims of trafficking among foreigners/ asylum seekers.
4. Take the necessary measures to ensure that (possible) victims of trafficking are granted a temporary residence permit for the duration of criminal proceedings and have access to protection and assistance. It should be considered to also grant a temporary residence permit to victims who for various reasons are not able or willing to cooperate with the authorities or in cases where the criminal proceedings did not started yet.
5. Develop special facilities in the existing centres for foreigners/asylum seekers for trafficking victims. Provide foreign victims access to the regular shelters for victims of human trafficking.
6. Create the possibility for victims of trafficking to apply for long term residence in case they cannot return to their home country because of safety reasons and/or the risk of re-trafficking.

IX. Referral, repatriation and return of victims

1. Improve the identification of foreign citizens as victims of trafficking in persons.
2. Improve the institutional and procedural framework for the repatriation, return and referral of trafficked persons with due regard to their safety, privacy, dignity and protection. Ensure that in regard to the repatriation of children the principle of the best interest of the child is applied and develop appropriate risk assessments prior to their return. Ensure that travel and other costs for victims to return to their home country are covered.
3. Strengthen collaboration between the authorities of the country of origin and destination to ensure that domestic victims who testify in the country of destination are recognised, assisted and protected upon their return to Romania.

ACRONYMS

Institutions

NAATIP	National Agency against Trafficking in Persons
GDSACP	General Directorate for Social Assistance and Child Protection
SCM	Superior Council of Magistracy
AC	Appeal Court
HCCJ	High Court of Cassation and Justice
DIOCT	Directorate for Investigating Organized Crime and Terrorism
DCOC	Directorate for Combating Organized Crime
SCOC	Service for Combating Organized Crime
BCOC	Bureau for Combating Organized Crime
GIRP	General Inspectorate of Romanian Police
GIRG	General Inspectorate of Romanian Gendarmerie
GII	General Inspectorate for Immigration
PM	Public Ministry
MoJ	Ministry of Justice - Probation Direction (central structure) - Probation Service – Ialomita Tribunal - Probation Service – Suceava Tribunal
MIA	Ministry of Internal Affairs
MEA	Ministry of External Affairs
MCIS	Ministry of Communications and Informational Society

Organizations

IOM	International Organization for Migration, Mission in Romania
GTA	Generatie Tanara Association (Unga Liv)
APR	Association Pro Refugiu
ADPARE	Association for Developing Alternative Practices for Reintegration and Education
RNCR	Romanian National Council for Refugees
ARCA	Romanian Forum for Refugees and Migrants

Other

CPC	Criminal Procedure Code
GEO	Government Emergency Ordinance
GO	Government Ordinance
GD	Government Decision
WPP	Witness Protection Programme
NOWP	National Office for Witness Protection

LEGISLATIVE TOOLS IN FORCE

- Law 230/2010 to modify and complete Law 678/2001 on Preventing and Combating Trafficking in Persons
- Law 678/2001 on Preventing and Combating Trafficking in Persons, together with all the modifications and completions;
- Joint Order 335/2008 for the approval of the National Identification and Referral Mechanism
- National Strategy for preventing and combating trafficking in persons and ensuring assistance for its victims 2012 – 2016
- National Action plan for the Implementation of the National Strategy against Trafficking in Persons for the Period 2012-2014;
- Government Decision 1238/2007 on the approval of the National Specific Standards for the Specialized Protection and Assistance Services provided to Victims of Trafficking in Persons
- Government Ordinance 105/2001 on the State Border of Romania
- Law 211/2004 on Ensuring Protection Measures for Victims of Crime
- Law 682/2002 on Witness Protection
- Law 252/2010 on the ratification of the Council of Europe Convention on Child protection against sexual exploitation and abuse
- Law 39/2003 on Preventing and Combating Organized Crime;
- Law 272/2004 on Ensuring Protection and Promoting the Rights of the Child
- Decision no. 1443/2004 on the repatriation methodology of Romanian children and the insurance of special protection measures in their favour
- Emergency Government Ordinance no.194/2002 concerning foreigners' regime in Romania
- Law 157/2011 amending and supplementing certain acts on foreigners' regime in Romania.
- Law 122/2006 on Asylum in Romania
- Government Decision no. 1251/2006.
- Romanian Criminal Procedural Code in force
- Romanian Criminal Code, in force
- Law 95/2006 on Healthcare Reform
- Law 161/2003, art.51 Child Pornography through Information systems

International

- United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations, the United Nations Convention against Transnational Organized Crime (New York, 2001)
- Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005)
- 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

List of attention points victim interviews

Reflection and Recovery period	<p>1. How did you get out from the situation of exploitation/trafficking?</p> <p>2. What was the first organization you got in touch with after your escape? How did you get in contact with them?</p> <p>3. Were you informed about your right to a recovery, reflection period and also about the possibilities to receive assistance (legal, social, psychological), protection? If so, by whom, when?</p> <p>4. Did you benefit (de facto) from a recovery and reflection period of time?</p> <p>5. Did you immediately receive assistance and/or protection? What kind of assistance did you get and by whom? (legal, social, psychological, etc.).</p> <p>6. How do you judge the assistance and protection you got? (if any)</p>
Police investigations	<p>7. Was it your own decision to report what happened to you to the police?</p> <p>If yes: Do you consider the complaint that you filed against the trafficker(s) was taken seriously by competent authorities during the investigations? Please explain your answer.</p> <p>If not: How did it happen?</p> <p>8. Did you have legal assistance/ a lawyer during the investigation of the police? If so: how did you get a lawyer; were you content about him/her? If not, did you get a lawyer later? When</p> <p>9. Were you informed about the progress of the case? If so, when and by whom?</p>
Cross-border police investigations (if applicable)	<p>10. Did you have contact with/ report to the police in both countries - the destination country and (Romania)?</p> <p>11. If yes: what kind of contact did you have with the police in the destination country? (making a statement with the police, testifying in court, etc)</p>

	<p>12. Did you have lawyer in the country of destination?</p> <p>13. Were you informed about the progress made in the case in each of the countries? If so, by whom?</p> <p>14. If you needed to travel to the destination country for police investigations, who was in charge with organizing your preparation for the hearing, your trip and accommodation?</p>
Medical examination	<p>15. Did you undergo a medical examination (where, when)?</p> <p>16. Did you give permission? Did they tell you that the results of the medical investigation can be used in the criminal case?</p>
Prosecution	<p>17. Were you heard by a prosecutor?</p> <p>18. Did/do you have a lawyer to represent you? If yes: how did you get a lawyer, are you content about him/her (please explain answer)?</p> <p>19. Can you tell us if at the hearing was a psychologist or a social worker to support you? If not, did you meet a psychologist/social worker before, and talked with them about what the hearing means?</p> <p>20. Were you confronted directly with the trafficker(s) during the hearing? If so, when. How did this go?</p>
Trial proceedings	<p>21. Is there a trial (first court, appeal, Supreme Court)?</p> <p>22. If so, when did the trial started? How much time has there been between the moment you reported to the police and the start of the trial?</p> <p>23. Do you get any special protection before/during/and after the criminal proceedings:</p> <ul style="list-style-type: none"> a)hearing of the victim behind closed doors b)hearing of the victim without the presence of the suspect(s) c)hearing of the victim through video or audio link d)using the testimony the victim made during the criminal investigation for the trial, so the victim does not have to testify again at the trial e)exclusion of the public from the trial

	<p>f) exclusion of the media from the trial</p> <p>g) keeping the address of the victim secret</p> <p>h) keeping the identity of the victim secret</p> <p>i) police escort to hearings</p> <p>j) separate waiting rooms for the victim and suspect</p> <p>k) specific telephone number of the police that victim can call in case of threats</p> <p>i) avoid face to face confrontation with the trafficker/his associates/his family</p> <p>i) other provisions (please indicate)</p> <p>24. Did you get any questions about your private life of history? (e.g. your sexual relations/history)</p> <p>25. Do you have a lawyer who defends your interests in the trial? If so, how did you get this lawyer? (lawyer of an organization/institution/ State-appointed lawyer).</p> <p>26. Did your lawyer prepare you for the trial? If so, how?</p> <p>27. How do you assess your relation with your lawyer?</p>
Compensation	<p>28. Were you informed about the possibilities to get financial compensation for the damages you suffered? (e.g. physical or psychological damage, money you had to pay to the trafficker for travel, housing or food, costs for legal aid, shelter and housing, costs for medical or psychological care, compensation for the money you earned and were forced to give to the trafficker or compensation for wages that were not paid). If so, by whom?</p> <p>29. Did you or your lawyer claim financial compensation in the criminal case?</p> <p>30. Did you or your lawyer claim financial compensation in a civil case?</p> <p>31. Did you or your lawyer claim financial compensation in another way (e.g. State fund if applicable) Did you receive de facto the awarded compensation? If not can you tell us why you did not receive it.</p>

Safety – assessment of the measures taken for the victims’ safeguarding	32. Did you or your family have any problems with your safety after you reported to the police/before, during or after the criminal proceedings? If so, which measures were taken to protect your/your family’s safety? Were these sufficient?
Assessment - overall	33. If you could decide again whether or not to file a criminal case/ to report to the police, would you do it again or not? Please explain your answer.