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ACTIVITIES TO PREVENT AND COMBAT MODERN SLAVERY AND HUMAN TRAFFICKING ACROSS THE STATE BORDER[1]

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Abstract: *Modern Slavery and Human Trafficking (MSHT) has become a risk factor today, with major impact on public order and national security, because of the defining outcome of the danger to which the victims are susceptible. Control at the state border can represent a final moment of transition from which a passenger, through the mistaken belief induced by the trafficker, can become a victim of MSHT. At the same time, the potential victim, convinced by the dream created by the trafficker and sometimes by the fear imposed by the latter, does not realize the imminent danger to which she will be subjected and continues her way by crossing the state border. The personnel of the Border Police who carry out their activity of surveillance and control at the crossing of the state border, follow each passenger to identify certain behavioral indicators to extract more information from them and make them aware of the danger to which they may be susceptible. Many times, potential victims do not trust the authorities, blinded by the trafficker's beliefs, they cannot notice the indications and/or signals of the situation and continue their journey towards the destination proposed by the trafficker. Also, the migrant who turns to smugglers to help him cross the state border may become a victim of human trafficking.*

Keywords: *border control; migrant smuggling; human trafficking; prevent MSHT; fighting MSHT*

1. Conceptual Notions Related to MSHT

Modern slavery and human trafficking are concepts that take on several forms of manifestation and, at the same time, in the additional it can give rise to several comments, of a political, economic, administrative-territorial, cultural, etc.

In the situation of trafficked persons, the causes that determine the appearance of this phenomenon are mainly represented by the lack of education, the poor economic situation, invalid autosuggestion, etc. As far as traffickers are concerned, this phenomenon arises from

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the desire to get rich quickly and without major efforts, by imposing authority over trafficked persons, etc.

2. Crossing the State Border by Persons in the Context of MSHT

The state border of Romania represents the territorial delimitation border of the neighboring states and can only be crossed through specially arranged places, established by *Government Decision*[1], called Border Crossing Points.

The State Border Crossing Points are:

- ✓ Land (road, railway);
- ✓ Ports (maritime, fluvial);
- ✓ Airports.

The legal regime of the free movement of persons entering/exiting Romania is implemented differently, depending on their status and/or citizenship, as well as for stateless persons (persons without citizenship).

According to the law[2] the duties for the supervision and control of the state border belong to the Romanian Border Police, a structure subordinate to the Ministry of Internal Affairs.

Who are the victims of human trafficking?

Victims of human trafficking can be anyone, regardless of age, gender, race, nationality, or socio-economic status. However, certain groups are more vulnerable to trafficking, such as:

- ✓ **Women and girls:** they are disproportionately represented among the victims of human trafficking, especially for the purpose of sexual exploitation;
- ✓ **Children:** they are particularly vulnerable to trafficking due to their age and inexperience;
- ✓ **Poor people:** here we include people who live in poverty and may be prone to trafficking due to lack of opportunities and desperation or desire to get out of this situation;
- ✓ **Minorities:** people belonging to ethnic, racial or religious minorities may be more vulnerable to trafficking due to discrimination and marginalization;
- ✓ **Migrants:** migrants, especially those in an illegal situation, may be vulnerable to trafficking due to lack of documents and poor knowledge of the language and laws of the destination country.

[2] GEO no. 104 of June 27, 2001, regarding the organization and functioning of the Romanian Border Police (with subsequent amendments and additions)

Human trafficking has serious consequences for the victims. They may suffer physical and sexual violence, torture, humiliating and degrading treatment, slavery and poor working conditions.

They can also suffer severe psychological trauma, such as post-traumatic stress, anxiety and depression. In some cases, victims of human trafficking may die from medical negligence, violence or suicide.

Victims of human trafficking are therefore in a vulnerable situation and may be subject to coercion or threats.

Crossing the border and then traveling can be dangerous and often carries the risk of being exploited, abused or even killed.

Once across the border, victims may be held captive and subjected to modern slavery or other forms of exploitation.

Border crossing methods:

✓ **Legally**, by presenting valid and authentic travel documents at the border control, and *meeting the legal conditions*[1] to leave the country;

✓ **legally**, either by crossing the border through places other than those established by the normative acts, or by presenting for control at the Border Crossing Points fraudulent travel documents or with substitution of a person (false identity) or clandestinely (hiding in a transport means).

What can be done to help victims of human trafficking?

✓ **Identification of the victims:** Identifying victims of human trafficking can be difficult because they may be afraid to come forward or be forced to lie. It is important that victims of human trafficking are identified and rescued from their situation of exploitation. This can be done through awareness campaigns, training of professionals who come into contact with potential victims, and provision of emergency telephone lines and other support services.

✓ **Providing assistance to victims:** Providing assistance and protection to victims can be expensive and require specialized resources. Victims of human trafficking need medical,

[1] For ***foreign citizens***, the conditions are provided in Cap. II *General provisions regarding the entry, stay and exit of citizens* from the O.U.G. no. 194 of December 12, 2002, regarding the regime of foreigners in Romania (with subsequent amendments and additions) – additional information can be found on the official website of the General Inspectorate of the Romanian Border Police. For ***citizens of the member states of the EU, the EEA and citizens of the Swiss Confederation***, the conditions are provided in *Chap. II Entry, residence and exit to/from the territory of Romania of European Union citizens, as well as their family members* from O.U.G. no. 102 of July 14, 2005 regarding the free movement on the territory of Romania of the citizens of the member states of the European Union, the European Economic Area and the citizens of the Swiss Confederation (with subsequent amendments and additions) For ***Romanian citizens***, the conditions for traveling abroad are provided for in *Cap. III Exercising the right to free movement abroad* from Law no. 248 of July 20, 2005, regarding the regime of free movement of Romanian citizens abroad (with subsequent amendments and additions)

psychological and social assistance to recover from the trauma they suffered. They also need support to rebuild their lives and become independent.

✓ **Prosecution of traffickers:** Tracking traffickers and holding them accountable can be difficult due to the cross-border nature of the crime. Traffickers must be held accountable for committing these acts. This can be done through harmonized legislation and international cooperation.

✓ **Prevention of human trafficking:** Preventing human trafficking is essential to protect people from being exploited. This can be done by addressing the root causes of human trafficking, such as poverty, inequality and discrimination. It can also be done through awareness campaigns to educate people about the risks of human trafficking and how to protect themselves.

Among the main duties of the Romanian Border Police is the role of "(...) preventing and combating illegal migration and cross-border crime in the area of competence (...)"[1], but also the mission of "defending life, bodily integrity and freedom persons, public and private property, other rights and legitimate interests of citizens and the community"[2].

A final moment of transition, from traveler to victim of MSHT, can be represented by the immediately following stage of border control. Thus, after completing the exit formalities and leaving the territory of Romania, the victim is no longer under the jurisdiction and protection of the Romanian state. This makes it possible for traffickers to easily confiscate the victim's travel documents and valuables, thus making them dependent on them.

The importance of the collaboration of the Border Police with the other competent structures in preventing and combating MSHT, as well as with the other bodies involved in the field of reference, is urgent. This collaboration can help the border police to know the details and, at the same time, to apply the MSHT victim identification criteria. Also, the border policeman must resort to quickly informing the structurators qualified to offer psychological, medical, legislative support, inclusion in a witness protection program.

[1] Art. 21, lit. a) (text adapted) from G.E.O. no. 104 of June 27, 2001, regarding the organization and operation of the Romanian Border Police (with subsequent amendments and additions)
[2] Ibidem – lit. b)

3. Theoretical and Practical Aspects of Differentiating Between Human Trafficking (HT) and Migrant Trafficking (MT)

HT is provided for in the Criminal Code and defined as "recruiting, transporting, transferring, harboring or receiving a person for the purpose of exploiting him, committed:

a) by coercion, kidnapping, misleading or abuse of authority;

b) taking advantage of the impossibility of defending oneself or expressing one's will or of the state of obvious vulnerability of that person;

c) by offering, giving, accepting, or receiving money or other benefits in exchange for the consent of the person who has authority over that person (…)"[1].

Exploitation can take many forms, including forced labor, sexual slavery, forced begging and organ trafficking.

MT is provided by the Criminal Code and represents "recruiting, guiding, transporting, transferring or sheltering a person, for the purpose of fraudulently crossing the state border of Romania"[2].

HT and MT are two serious forms of transnational illicit activities that generate huge profits for traffickers. These two types of illegal activities can be confused, in the sense that they have many common features.

Similarities of HT and MT:

- both crimes involve the trafficking of persons and criminal groups;
- both crimes generate significant amounts of money for traffickers;
- both crimes involve the transportation, transfer or harboring of persons;
- the existence of the persons' consent, for HT is absolute, and for MT it is relative (e.g. in the situation of prostitution, the victim can consent to its practice, the same situation also occurs in the case of begging);

Differences between HT & MT:

- HT involves the exploitation of people, and MT facilitates the illegal crossing of the state border;
- MT has a transnational character, in contrast to HT which does not involve a specific territory (although less frequently it can also be committed on Romanian territory);

[1] Art. 210, para. (1) from Law no. 86 of July 17, 2009, on the Criminal Code (with subsequent amendments and additions)

[2] Ibidem - art. 263, alin. (1)

- MT involves facilitating the entry of migrants into the territory of a state through illegal methods, on the other hand, victims of HT can enter the territory of a state, both legally and illegally;

- the consent of the victim of HT is relative, in the sense that even if the victim consents to prostitution, for example, there can be no consent to exploitation;

- the illegal crossing of the state border can represent the subsidiary activity for HT, and for the main MT;

- HT victims are not free to end the relationship with the trafficker without serious consequences

- the criminal activity continues in the case of HT, in MT it ends at the destination.

HT not only a crime, but also a serious violation of human rights. Likewise, in the case of MT there is not only a crime, but also a serious violation of the sovereignty of the transit and/or destination state..

Being a crime that affects human rights, the crime of HT was considered by the Romanian legislator to be more serious than MT. Thus, the penalty provided by the criminal law for HT is imprisonment from 3 to 10 years and the prohibition of certain rights, and for the crimes of MT, in simple form, it is imprisoned from 2 to 7 years.

4. Conceptual Notions to Prevent Cross-border Modern Slavery and Human Trafficking

The main national authority vested with attributions in the prevention of MSHT is National Agency against Trafficking in Persons (ANITP)[1], which "develops campaigns to prevent human trafficking and programs to facilitate assistance to victims of human trafficking and collaborates with public, private institutions and non-governmental organizations for the implementation of joint campaigns and programs"[2].

At the cross-border level, the Border Police is an important actor in the prevention of MSHT, because it comes into direct contact with the potential victim of HT when crossing the state border.

ANITP and General Inspectorate of Border Police (IGPF)[3] carry out, based on collaboration protocols, thematic activities to raise awareness of the population in the border area regarding the identification methods and means of MSHT.

[1] Structure within the Ministry of Internal Affairs - "*Agenția Națională împotriva Traficului de Persoane*"
[2] Art. 3, para. (1), lit. k) from Government Decision no. 460 of May 11, 2011, regarding the organization and operation of the National Agency against Trafficking in Persons
[3] Structure within the Ministry of Internal Affairs - "*Inspectoratul General al Poliției de Frontieră*"

At the level of the European Union, the border police of each member state go through the "Training Curriculum", which "includes specialized training on how to detect and manage situations involving vulnerable people, such as unaccompanied minors and victims of human trafficking"[1].

At the same time, at the national level, the Ministry of Internal Affairs is concerned that at each State Border Crossing Point, there should be "specially trained personnel to identify and take over the victims, in order to guide them to the specialized institutions"[2]. So, border police are constantly trained to detect any indication or signal that could identify potential victims of MSHT.

Monitoring of passengers by border guards, even from a distance, before they approach the checkpoint where travel documents are checked, is essential for identifying potential victims.

Depending on the transnational movements of the victims, the prevention of the cross-border level of MSHT can manifest itself differently, Romania being "(...) country of origin, transit and, increasingly, destination for human trafficking"[3]. Therefore, different approaches are required because potential victims may behave differently, both physically and emotionally.

Depending on social status, education level, health status, culture, religion, gender and other determining factors, alleged traffickers can influence the beliefs of potential victims. Therefore, it is often difficult to notice indications and/or signals that a passenger may be a potential victim of MSHT (e.g. the potential victim is not aware that she is or is going to be a victim of MSHT, she is convinced that the purpose of the trip is something else).

Border police officers, in the exercise of border control duties, follow certain *behavioral indicators*[4]:

- the alleged trafficker who accompanies the potential victim speaks on her behalf / uses an interpreter;

- the alleged trafficker claims to be a relative or friend of the potential victim, without knowing any details about it;

- traces of acts of physical aggression observed on the victim (eg bruises);

- the clothing and/or personal hygiene of the potential victim is poor and/or they are in a state of malnutrition;

- fear or depression observed in the potential victim;

[1] Art. 16, para. (1) *Implementation of the control* from Regulation (EU) no. 399 of March 9, 2016, regarding the Union Code on the border crossing regime by persons (**Schengen Borders Code**)
[2] Art. 31 of Law no. 678 of November 21, 2001, on preventing and combating human trafficking.
[3] National Agency Against Trafficking in Persons, Legislation – Normative acts regulating the organization and operation of ANITP, General presentation.
[4] National Office for the Prevention and Combating of Money Laundering - *Report on guidelines and typologies regarding human trafficking and modern slavery in Moldova and Romania,* p. 16

- the potential victim uses terminology used in the pornographic industry (e.g. from the discussions held by the victim with the trafficker it emerges the practice of prostitution activities);

- the potential victim reads the script/form.

If the potential victim of MSHT, does not notice the existing situation and/or the existing signals, continues moving towards the destination proposed by the alleged trafficker, crossing the state border, becomes a victim of MSHT.

5. Conceptual Notions for Combating Modern Slavery and Human Trafficking Across Borders

ANITP produced a statistic called "dynamics of the number of victims of identified human trafficking (2014-2023)"[1], which numerically includes the victims of human trafficking from the last 10 years.

In 2023, there were "451 identified victims"[2], of which "one victim out of two is a child, 3 victims out of 4 are women and 3 victims out of 5 are sexually exploited."[3]

The authority designated with the duties of combating crimes related to MSHT is the Directorate for Combating Organized Crime (DCCO)[4]" implicitly with structures organized at the main county level, within the Ministry of Internal Affairs.

The Prosecution Unit, within the Public Ministry, which handles MSHT-related offenses is the Organized Crime and Terrorism Investigation Directorate (DIICOT)[5],under the coordination of prosecutors whose DCCO workers carry out activities specific to the field of reference.

[1] ANITP - *Brief analysis of human trafficking in 2023*, p. 1 (year **2014 – 757** victims, year **2015 – 880** victims, year **2016 – 756** victims, year **2017 – 662** victims, year **2018 – 497** victims, year **2019 – 698** victims, year **2020 – 596** victims, year **2021 – 505** victims, year **2022 – 500** victims, year **2023 – 451** victims)

[2] Ibidem, p. 7

[3] Ibidem

[4] Structure within the Ministry of Internal Affairs, The General Inspectorate of Romanian Police - "*Direcția de Combatere a Criminalității Organizate*"
Art. 3, para. (1), lit. b), point 2 of GEO no. 30 of April 25, 2007, regarding the organization and operation of the Ministry of Internal Affairs

[5] Structure within the Public Ministry - "*Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism*"
Art. 11, para. (1), point 2. of GEO no. 78 of November 16, 2016, regarding the organization and operation of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the modification and completion of some normative acts

"Collaboration starts at the national level"[1], so the Border Police, at the request of the DCCO, institutes *border checks*[2] against traffickers to prevent them from leaving the country and facilitate the investigation.

By establishing the border check, the state authorities ensure that persons suspected of committing crimes circumscribed by the MSHT do not leave the country and can be brought before justice.

Greater interest is given to minors, who are part of the category of vulnerable people and for whom special monitoring and control is required.

The minor, with whom it is necessary to be approached, the border policeman must adopt a balanced attitude, in order to create a relationship of trust. At the same time, it is preferable for the border policeman to wear civilian clothes and create a comfortable environment, offering the minor explanations and the possibility of communication adapted to his level.

"Border officers must pay special attention to minors, regardless of whether they are traveling accompanied or unaccompanied"[3]. So, the border policeman carries out additional verification activities, both on the companion and on the travel document in order not to leave the country against the will of the parents or the parent who holds parental authority or any person who holds his guardianship.

In the event of any suspicion, the border guard calls the National Contact Points for consultation regarding the minor.[4]

Border police officers can intervene in the following situations:

- to the notification by the competent structures, when a record is established at the border, to detect the trafficker at the level of crossing the state border.

- flagrant, in the situation where the victim is accompanied by the trafficker, and she notifies the border police.

At the level of the European Union, Frontex[5] has developed guidelines for the training of border police officers regarding accompanied and unaccompanied minors, both for land[6], and airport[7] border crossings.

[1] United Nations, Office on Drugs and Crime, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Vienna, 2008 p. 11

[2] Section 3 *Border consignment notes* (art. 24-26) from Decision no. 445 of May 9, 2002, for the approval of the Methodological Norms for the application of the Government Emergency Ordinance no. 105/2001 regarding the state border of Romania (with subsequent amendments and additions)

[3] Ibidem, p. 27

[4] Ibidem, p. 28

[5] European Border and Coast Guard Agency - *European Border Police and Coast Guard Agency*

[6] Frontex, Vega Handbook: Children at land borders (Risk situations to which children at land borders may be exposed. Guide for border guards), Warsaw, 2019

[7] Frontex, Vega Manual: Children at airports (Risk situations that children can be exposed to at airports. Guide for border guards), Warsaw, 2017

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Government Decision no. 460 of May 11, 2011, regarding the organization and operation of the National Agency against Trafficking in Persons

Regulation (EU) no. 399 of March 9, 2016, regarding the Union Code on the border crossing regime by persons (Schengen Borders Code)

Government Emergency Ordinance no. 78 of November 16, 2016, regarding the organization and operation of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the modification and completion of some normative acts

Government Decision no. 88 of January 31, 2023, for the approval of the National Mechanism for the identification and referral of victims of human trafficking.