

UNIVERSITATEA „BABEȘ-BOLYAI” CLUJ-NAPOCA  
FACULTATEA DE STUDII EUROPENE  
ȘCOALA DOCTORALĂ „RELAȚII INTERNAȚIONALE ȘI STUDII  
EUROPENE”

# **PREVENTING AND COMBATING HUMAN TRAFFICKING IN THE EUROPEAN UNION.**

**Cooperation from a Legislative, Institutional and Law  
Enforcement Perspective. Case Study on Romania**

**- Summary -**

*Coordonator științific:*  
Prof. univ. dr. Mircea Brie

*Absolvent:*  
Anca Raluca Iuhas

Cluj-Napoca  
2023

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**Key words: human trafficking, sexual exploitation, proactive identification of victims, investigation of transnational cases of human trafficking, transnational cooperation, the European Transnational Referral Mechanism (EU-TRM)**

The thesis entitled “Preventing and Combating Human Trafficking in the European Union. Cooperation from a Legislative, Institutional and Law Enforcement Perspective. Case Study on Romania” aims to analyse the anti-trafficking legislative, policy and institutional frameworks, as well as law enforcement practices in the EU and Romania, and propose recommendations which may enhance EU transnational cooperation in the context of preventing and combating human trafficking (HT).

### **Motivation of the research**

The motivation behind this Ph.D. thesis stems from a significant gap in existing literature and resources pertaining to transnational cooperation in the context of HT, due to the fact that cooperation itself is minimal in this field, being reduced to the repatriation of victims. This lack of collaboration hinders proactive identification of HT cases, and creates a deficiency in coordinated investigative efforts, especially regarding cases of sexual exploitation.

The original contribution to the Romanian literature is the evaluation of both the Romanian anti-trafficking system in comparison with the European and international anti-trafficking systems and the evaluation of transnational cooperation in the field, based on which a series of public policy recommendations were formulated.

The researcher's professional experience in the prevention of HT, together with the results of the research, represent the context for the formulation of the recommendations in the Final Conclusions and Recommendations.

### **Objectives of the thesis**

The thesis starts from a series of hypotheses, based on the three main pillars of the research – the legislative, institutional and law enforcement framework – as well as a fourth pillar, which is cross-cutting, namely the level of transnational cooperation in these main areas, aiming to identify the problematic aspects both at national level and EU level, and offer solutions to these problems. The thesis has seven objectives, as follows: **O1.** Analyse the different concepts in the area of trafficking in human beings and the main IR theories which have led to the development of these main concepts; **O2.** Describe and analyse the EU anti-trafficking framework and its

implications on the Member States; **O3.** Describe and analyse the phenomenon of HT in Romania, with the aim of proving that Romania is still the top source country in Europe for victims of human trafficking; **O4.** Describe and analyse the Romanian anti-trafficking framework as compared to the EU anti-trafficking framework; **O5.** Identify the main issues and potential solutions concerning transnational cooperation between Romania and other EU member states as regards proactive identification of victims of human trafficking; **O6.** Identify the main issues and potential solutions concerning transnational cooperation between Romania and other EU member states as regards investigation of transnational cases of HT; **O7.** Elaborate policy recommendations to enhance EU transnational cooperation in the context of preventing and combating HT, especially targeting proactive identification of victims and investigation of cases.

The theoretical grounding was carried out using the literature review method, while the empirical analysis is based on quantitative research, such as comparative analysis of statistics found in international and national reports, as well as qualitative research, using tools such as case studies and semi-structured interviews.

### **Summary of chapters**

In **Chapter 2, *Theoretical Framework and Conceptualization of Cooperation in the Area of Human Trafficking***, we analysed the cooperation in the field of preventing and combating HT from the perspective of three main IR theories, namely *realism, liberalism and constructivism*, as well as the main types of HT and some of the concepts mostly used in this field. This exploration of IR theories further enabled a deeper analysis of the legislative, institutional, and law enforcement dimensions in the context of preventing and combatting HT within the EU, and helped contextualize the dynamics and motivations that shape cooperation in the field. From articles in official journals and magazines, and from other website articles published by various organisations and coalitions of the civil society, mainly from the USA and the EU, we have concluded that the main “bone of contention” in the anti-trafficking field is the issue of sexual exploitation. For all the other types of exploitation (labour exploitation, domestic servitude, debt bondage, forced begging etc.), the international community has reached a consensus, but regarding the issue of sexual exploitation, two main factions have been identified: on the one hand, the faction stating that all prostitution is HT (abolitionism), and on the other hand, the faction stating that “consented prostitution” should be treated as any other type of labour and legally regulated as such

(legalisation or decriminalisation). Up to present<sup>1</sup>, this contention is still driving the decision-making processes in the field at EU level, especially in the context of the revision of the *EU Anti-Trafficking Directive*<sup>2</sup>.

**Chapter 3, *The Legislative, Policy and Institutional Framework of the EU in the area of preventing and combatting Human Trafficking***, targeted three main levels of analysis through qualitative research, using mainly content analysis and thematic analysis.

Firstly, we evaluated the EU legislative framework by analysing official documents, scientific articles, and guidelines of international organisations on the subject of HT. We explained the differences between the *Palermo Protocol* and *CoE Convention*, we determined the main implications on states of framing HT as an issue of human rights violation, and we analysed the *EU Anti-Trafficking Directive* as compared to the *Palermo Protocol* and the *CoE Convention* from a human-rights perspective.

Secondly, we analysed the EU policy framework by evaluating the anti-trafficking EU strategies, Progress reports, as well as related documents. The main policy instruments analysed under this section were the two EU anti-trafficking Strategies – for 2012-2016 and for 2021-2025 – as well as the three Progress Reports, issued in 2016, 2018, and 2020. Our analysis followed the same “4P” paradigm of the anti-trafficking policy used in analysing the section on the EU legislative framework, highlighting the main challenges and progresses made by the EU in each case.

Thirdly, we analysed the EU anti-trafficking monitoring mechanism [namely the informal network of National Rapporteurs and Equivalent Mechanisms (NREMs)] in comparison to the CoE monitoring mechanism (GRETA and the Committee of the Parties), so as to illustrate the effectiveness and impact that it has on EU Member States in comparison to its regional counterpart.

Chapter 3 was structured on these three pillars to serve as a conceptual basis and a reference point for subsequently analysing Romanian legislation, policy and institutions in the field, and how they comply with international and EU requirements. Furthermore, we aimed to identify the shortcomings of the international and EU anti-trafficking frameworks, to verify whether there is

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<sup>1</sup> October 2023, at the time of writing this section (A/N).

<sup>2</sup> At the time of writing this section, the plenary vote in the EU Parliament is scheduled for the end of October 2023, followed by the Trilogue Negotiations (A/N), [Online] available at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2023\)740213](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2023)740213) (accessed 13 October 2023).



need for any major reformation of the systems set in place in order to boost cooperation in the field.

**For Chapter 4. The Legislative, Policy and Institutional Framework of Romania in the area of preventing and combatting Human Trafficking**, we also conducted three levels of analysis, essentially following the model set out in Chapter 3.

Firstly, we analysed the scale of the phenomenon of HT in Romania through a comparative analysis of statistics during a period of 11 years (2011-2021) using EUROSTAT and ANITP Reports, the GRETA (Council of Europe) Evaluation Reports, and the US Department of State's TIP Reports, aiming to verify whether Romania has been the top source country in the EU for victims of HT, a hypothesis which proved to be true.

Secondly, we analysed the Romanian anti-trafficking legislation, and recent Romanian case law (2021-2023) through qualitative research, using content analysis and thematic analysis. For this section, we used various sublevels of analysis in order to discover the main gaps in the Romanian legislation in the area of HT, as follows: we described the main concepts of the definition of HT in Romanian legislation in comparison with the three main international legal instruments analysed in Chapter 3; we analysed Romanian legislation on HT according to the "4P" Paradigm, following the analysis structure used in Chapter 3; we analysed the definition of HT in the Romanian legislation according to its three constitutive elements: the "action", the "means" and the "purpose", using also three Case Studies based on Romanian case law on the crime of HT in order to evaluate at a glance how these three main components are proven in court and the main intricacies and obstacles that the judicial bodies encounter in practice. All cases were based on "the loverboy method" (i.e., based more on non-coercitive means), where the victims were taken from vulnerable backgrounds and taken to Germany to be sexually exploited in brothels. Particularities of the legal model on prostitution (i.e., legalisation) and its connection with HT were also explored in this analysis, as compared to the Equality Model (i.e., abolitionism). We specifically chose recent cases to evaluate the level of knowledge and practice of judicial authorities regarding the fundamental requirements of the legislation in the field (the human-rights, victim-centred, trauma-informed, child-sensitive approach), assuming that recent practice should have evolved since the adoption of the *EU Directive* (i.e., 2011). However, from these few cases we have discovered significant gaps in the prosecution of transnational trafficking cases in Romania even after 2020.

Thirdly, we analysed the Romanian institutional framework in the area of preventing and combatting HT by outlining the organizational structure of institutional entities tasked with preventing and combating HT in Romania, as compared to international and EU recommendations in this area. Our aim was to enhance our comprehension of the distinct functions of each body and the dynamics of their interrelationships. For this section, mainly qualitative research was used through content analysis.

Chapter 4 is essential in the overall structure of this paper, as it contains an evaluation of the extent of HT in Romania as compared to the EU, as well as Romania's compliance with international and EU standards, aiming to pinpoint deficiencies in the system, particularly those that impede effective transnational cooperation in cases involving victims sexually exploited abroad. The three Case Studies revealed two major subjects of concern: the lack of proactive identification of victims of trafficking, and the limited cooperation between Romania and countries of destination in assisting victims. This chapter also proposes strategies for improving the national legal and judicial system.

For *Chapter 5. European cooperation in transnational human trafficking cases*, we conducted a qualitative research based on semi-structured interviews with anti-trafficking experts and other practitioners in the field, such as policymakers, law enforcement officials, representatives of judicial bodies and NGO representatives, gathering insights from their experiences, challenges, and perceptions of cooperation.

Given that Romania has the highest number of victims exploited in the EU, this chapter becomes paramount. It enables exploration and the development of solutions with anti-trafficking experts to enhance cooperation and address the identified issues. The chapter examines the necessary reforms required to ensure that more victims of trafficking are identified effectively at EU level, rather than relying on self-identification, and that law enforcement is better equipped to properly investigate trafficking cases, so as to reduce dependence on victim testimony. Based on solutions proposed by the interviewees, we made a set of recommendations that are all the more relevant as the EU Anti-Trafficking Directive is currently<sup>3</sup> in process of being revised.

The interview questions were based on the literature review and on the conclusions retrieved from the data analysis in the previous chapters, including statistics, ANITP reports, EU reports and TIP reports, as well as from questionable aspects emerging from the three Case Studies analysed

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<sup>3</sup> As of October 2023 (A/N).

in Chapter 4. The two main topics targeted in the interviews concerned transnational cooperation in the area of proactive identification of victims and the investigation of HT cases, with a focus on cooperation between Romania and other EU countries, specifically for the issue of sexual exploitation, as these were the main issues which we identified from the analysis of sources. The respondents held similar views on the most significant aspects, especially concerning the recommendation for the establishment of a European Transnational Mechanism, with moderate variation on the actual implementation of such a mechanism.

In total, we consulted 18 respondents: 17 interviews conducted in person and one written (partial) response, as follows:

a) fifteen interviews with anti-trafficking experts and practitioners in Romania (representatives of IOM Romania, IJM Romania, ANITP, DIICOT, BCCO, General Inspectorate of the Romanian Police, and seven specialised anti-trafficking CSOs). We targeted only specialised anti-trafficking NGOs in Romania, specifically the ones with a well-established history in the field, which extensively partner or interact with Romanian state authorities, perform advocacy work at national and international level, and have been involved in the case management of victims exploited abroad. Their experience offered a grassroots view not only of the issues encountered firsthand in the field, but also of the solutions they envisage as needed tools to better perform their work;

b) two interviews with foreign anti-trafficking experts: the First Vice-President of GRETA of the Council of Europe (as GRETA is the only monitoring mechanism that performs an in-depth evaluation of the EU member states' compliance with international requirements in the field, and it is based on the most human-right based anti-trafficking legal instrument, namely the *Anti-Trafficking CoE Convention*, which we have used as a bench-mark in our paper), and a representative of a German NGO, in charge with conducting outreach among a migrant group specifically vulnerable to sexual exploitation – namely persons in the prostitution system (i.e., brothels) in Stuttgart. We considered it essential to have at least one anti-trafficking practitioner from a country where prostitution is legalised, as the three Case Studies selected all focus on cases of sexual exploitation where the victims were recruited through “the *loverboy* method”, transported to Germany, and registered as “sex workers” in brothels across Germany by their “lovers”, or “fiancés”. Our intention was to obtain more information on the situation of Romanian women engaged in prostitution in this country, and verify with a frontliner, who is weekly in touch with

Romanian women through outreach activities in brothels, the extent to which HT might be disguised as “consented prostitution” in these locations.

After one year of experience working in the anti-trafficking field and conducting advocacy work, our conviction is that the interviewees are among the most representative anti-trafficking experts from Romania, and their views and recommendations hold significant value.

The conclusion contains a reiteration and summarisation of conclusions found for each chapter, targeting the issues identified, as well as the policy proposals and recommendations made by us and the respondents to the interviews. The overall aim was to identify the main issues concerning cooperation between various actors in the field (within Romania and outside Romania) and propose solutions and strategies for a better cooperation, so that a victim of HT can be quickly identified as such, benefit from all her rights once she is identified as a victim and ensure that action in the field between actors involved is not doubled or missing due to lack of communication and collaboration.

## **Conclusions**

### *Regarding the legislative and policy frameworks:*

Regarding the EU policy framework, many objectives set out by the EU strategies have been achieved, but also important objectives have been delayed such as the creation of a European Transnational Referral Mechanism (EU-TRM), due to the lack of National Referral Mechanisms (NRMs) in some Member States, and also to the political diversity of NRMs where they do exist. Another reason for this is that HT trends evolve from year to year, making it highly challenging to implement a policy in constant need of adaptation. The answers of the participants to the interviews have highlighted as the main priority the creation of the EU-TRM as an all-encompassing solution and foundation from which other best practices and reforms could be implemented.

The Romanian legislation is in line with international and EU legislation, as a result of the binding nature of these instruments to which Romania is signatory. However, legislation is not properly implemented to bring about significant changes in the area of anti-trafficking.

### *Regarding the institutional framework:*

We concluded that EU Mechanisms are not properly defined and implemented due to the very diverse political spectrum of EU Member States and their National Rapporteurs and equivalent Mechanisms (NREMs), leading to the lack of coordination and proper collaboration between them and the impossibility to create the EU-TRM.

The institutional framework of Romania, as compared to the EU, is also in line with EU requirements, but it does not streamline cooperation between stakeholders at national and EU level. The same conclusion emerged regarding cooperation at EU level between different institutional structures of EU Member States and EU's capacity to coordinate, monitor and intensify such cooperation. Moreover, the major issue discovered from the research, specifically from the interview results, has been the lack of proper funding and the lack of specialized human resources, as well as the need for a better implementation of legislation, mechanisms and instruments set in place. Added to these is the lack of the EU-TRM, which negatively affects Romania in proactively identifying and assisting Romanian VOTs exploited abroad.

*Regarding law enforcement practices:* Law enforcement practices in Romania, as well as in the EU at large appear to have improved and become more collaborative than before 2011 when the EU Anti-Trafficking Directive was adopted, due to increased support received from EU agencies such as EUROPOL, EUROJUST, FRONTEX and others. However, cooperation between law enforcement agencies across Member States is still minimal, fluctuating and time-consuming.

*Regarding transnational cooperation in the area of proactive identification of victims* within the context of the EU and, more specifically, within Romania and other destination countries, there is significant need for increased bilateral and transnational cooperation, since transnational HT cases account for approximately half of the total number of victims in any year in Romanian reports. Based on the respondents' answers, we identified the absence of proactive identification among vulnerable individuals involved in legalized prostitution in certain countries, and the fact that the only opportunity for these persons to exit prostitution might be to self-identify, which in many cases can pose serious threats to victims. Therefore, we proposed collaborative policies and strategies that might relieve victims from the burden and danger of self-identifying, and in the same time minimise the burden of costs incurred by states and the EU by adopting such policies and strategies.

*Regarding transnational cooperation in the area of ex-officio investigation of cases,* we discovered multiple differences in the investigation methods employed by EU Member States, considering that criminal policy is not a common EU policy at the moment. Moreover, since the EU Directive adopts only soft language concerning cooperation in the investigation of transnational cases, certain countries choose not to establish it as a priority. Based on the respondents' answers, our findings indicate that even though the EU has a comprehensive range

of tools available for transnational cooperation, particularly in the context of criminal investigations, cooperation still remains limited, and this originates from the lack of implementation of such tools, and more precisely, from the willingness of certain EU countries to engage in collaborative efforts.

*Concerning the Case Studies analysis*, a number of conclusions were drawn concerning judicial practice for HT offenses in Romania. We aimed to identify the issues encountered in judicial practice for transnational HT cases where “the *loverboy* method” was employed by the trafficker. We discovered that:

- There is a need for a standard of evidence in HT cases (including child trafficking), both general and specific, which both the prosecution and the judiciary can use as guidelines;
- There is a need for a unitary and binding standardised methodology (i.e., minimum standards) regarding the judicial practice in cases of HT and procuring;
- There is a need for a new or existing judicial mechanism to evaluate and monitor the sentences and decisions given by courts in cases of HT, procuring/prostitution and other related offences, so as to investigate whether the validation or invalidation of evidence decided by the Court was in accordance with the legislation and the methodology in place, and whether the offence was correctly classified;
- There is a need to consider the influence which legal models on prostitution have on the phenomenon of HT in a certain country and in the EU at large.

### **Objectives of recommendations**

The results and recommendations emerging from this research might contribute to increased cooperation for the prevention and combat of HT within the EU by bringing about a stronger cohesion between EU Member States, stemming from certain future legislative changes, institutional reforms, and new law enforcement practices. The final aim of these recommendations is to increase the capacity of frontliners to identify a higher number of victims, as well as increase access to rights for victims, wherever they are identified in the EU, and finally, establish streamlined, time-effective, cost-effective cooperation methods between EU Member States to fulfil these purposes in a systemic way.

## **Policy recommendations**

A cross-cutting recommendation offered by the majority of respondents to many of the issues identified was to establish and implement Transnational Referral Mechanisms (TRMs), as well as the European Transnational Referral Mechanism (EU-TRM) to enhance cooperation between EU Member States for the identification, protection and assistance of victims. Recommendations at EU level and national level were structured according to the four pillars analysed in this paper: legislation, institutions/mechanisms, law enforcement practices and transnational cooperation (cross-cutting). Each pillar targets all or some of the main areas of concern identified by respondents, as follows: a) The creation of an EU-TRM; b) The proactive identification of victims; c) Cooperation for the investigation of transnational HT cases.

Some of the main recommendations:

### **Regarding the establishment of an EU-TRM**

- Standardise the HT definition, HT indicators, and institutional framework for institutions with comparable structures across EU countries, as well as case management and access to services;
- create EU referral pathways, procedures and a service-mapping database;
- create a victims' EU database compiling the most essential information regarding victims;
- centralise international outreach under the EU-TRM along with a designated authority to manage and fund such outreach activities.

### **Regarding the proactive identification of victims of HT**

- introduce a provision recognising that both prostitution and sex trafficking are manifestations of a power imbalance between men and women;
- increase prerogatives for law enforcement and other relevant state authorities, including with the cooperation of specialised NGOs, to screen (i.e., conduct outreach among) vulnerable populations;
- introduce a binding provision for the *ex-officio* investigation of cases as soon as there is any suspicion of a HT case;
- introduce a binding provision for states to participate in transnational cooperation for all transnational human trafficking cases, irrespective of whether the victim provides testimony in the destination country or the country of origin.

### **Regarding cooperation for the investigation of transnational HT cases**

Our recommendations might entail significant reforms of the EU's legislative and institutional framework, such as follows:

- EU legislation and procedural laws should be thoroughly revised for a minimum uniformity, which might be achieved through the adoption of a Regulation rather than a revised Directive;
- include a binding provision in the Directive obliging states to use at least one of the available cooperation tools in any transnational HT case;
- establish and improve bilateral cooperation and communication channels between destination countries and origin countries;
- impose minimum standards of investigation for transnational HT cases;
- create an EU monitoring mechanism with powers to harmonize Criminal Codes and ensure minimum standards are met;
- enhance cooperation between state authorities and the civil society, by a higher level of engagement of anti-trafficking experts from the civil society with policy-makers.

### **Limitations**

We consider that the main limitation of this study is the limited range of EU countries (i.e., namely Romania and Germany) from which anti-trafficking experts were interviewed. Our study would have been more comprehensive and would have yielded more insights if we had the opportunity to interview anti-trafficking experts from more destination countries, such as the Netherlands, Spain, Italy, France, the UK and others. A more diverse spectrum of opinions could have contributed to valuable recommendations for the creation of an EU-TRM, which has emerged as the most pressing priority for preventing and combating HT in the EU at large. We propose this topic as an area for future research.

In conclusion, we consider that the insights gleaned from this study may help policymakers and practitioners in their commitment to proactively identify victims and investigate cases, so that the EU becomes a place known for its resoluteness to track down criminals and protect the most vulnerable. With a shared vision and a steadfast dedication to radical reforms, we can pave the way for a future where trafficking knows no refuge within our borders and where justice prevails.



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