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TRANSNATIONAL TRAINING

"JUDICIAL COOPERATION IN CRIMINAL MATTERS IN CASES INVOLVING REFUGEES' AND OTHER THIRD-COUNTRY NATIONALS VICTIMS OF HUMAN TRAFFICKING SUBJECTED TO EXPLOITATION IN EU MEMBER STATES".

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Practical challenges facing international cooperation in THB cases, Romania context

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I. Overview of the applicable legal framework on international judicial cooperation in cases of trafficking in human beings

At national level, Law No. 302/2004 on international judicial cooperation in criminal matters, as subsequently amended and republished, represents the legal framework applicable in cases of trafficking in human beings involving the use of instruments of judicial cooperation in criminal matters.

To this should be added the International Conventions and Treaties to which Romania is party, both those adopted at international level (e.g. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organised Crime, adopted by the United Nations in 2000), and those adopted at regional level (e.g. The Council of Europe Convention on Measures against Trafficking in Human Beings of 2005 or the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, etc.).

Article 4 paragraph 1 of Law No. 302/2004 enshrines *the preeminence of international law* in the field of international judicial cooperation stipulating that national law shall be applied on the basis of and for the enforcement of rules concerning judicial cooperation in criminal

matters, provided by the international legal instruments to which Romania is party, and which *shall complete non-regulated situations*.

Therefore, according to this principle, the national authorities will apply, as a matter of priority, the instruments of international legal cooperation to which Romania is party, these being supplemented by the domestic law only to the extent that the international instrument does not regulate a certain situation.

Law No. 302/2004 on international judicial cooperation in criminal matters, as subsequently amended and republished, being the general legal framework applicable to international cooperation in criminal matters, applies to all types of criminal offenses which require for their investigation the application of a form of international judicial cooperation, since forms of cooperation distinctly applicable on types of crimes are not regulated at national level.

However, there are specific internal regulations referring to international judicial cooperation in certain special laws, such as, for example, the case of the crime of trafficking in human beings (see Articles 45-47 of Law No. 678/2001), but they do not represent special genuine regulations, because they do not concern the application of forms of international judicial cooperation, but they regulate other aspects related to judicial cooperation such as, for example, the existence of liaison officers or contact points, etc.

Of course, not every crime leads to the application of forms of international judicial cooperation, but only those serious crimes, thus regulated at European level by the cooperation instruments adopted, which are often listed as part of the cooperation instrument and for which the cooperation instrument is applicable.

According to Art.1 paragraph 1 of Law No. 302/2004, the forms of international judicial cooperation are: extradition, surrender on the basis of a European arrest warrant, transfer of proceedings in criminal matters, recognition and enforcement of judgments, transfer of convicted persons, legal assistance in criminal matters and other forms of international judicial cooperation in criminal matters.

Paragraph 2 of the same article expressly provides that the forms of international judicial cooperation shall not apply to specific forms of international police cooperation if, under the law, they are not under judicial control.

Whereas Law No. 302/2004 is a faithful transposition of all cooperation instruments adopted at European and international level, in order to avoid repetition we will no longer make a presentation of the European/international legal framework in the field of international judicial cooperation in criminal matters, but an analysis of the most often used forms of cooperation in solving cases of trafficking in human beings; we will also refer to the European legislation, and, as the case may be, to the related international legislation.

Therefore, in Romania, the most used forms of international judicial cooperation in solving cases of trafficking in human beings are the European Investigation Order, the

international rogatory commission, the joint investigation teams and the European arrest warrant.

According to the national law, *the European Investigation Order* represents a judicial decision issued or validated by a judicial authority of a Member State, for the purpose of carrying out one or more specific investigative measures in another Member State, in order to obtain evidence or to transmit evidence that is already in the possession of the competent authority of the executing state.

The European Investigation Order shall include any investigative measure, except for the establishment of a joint investigation team and the gathering of evidence in a joint investigation team; the 30-day execution period may be extended up to 90 days (Art. 336 paragraph 3.4 of Law No. 302/2004).

This cooperation instrument does not apply in relation to Denmark and Ireland, being regulated at European level by Directive 2014/41/EU on the European Investigation Order.

The International Rogatory Commission represents a formal request submitted by a judicial authority of a state (called the Requesting State) to the judicial authority of another State (called the Requested State), for the latter to carry out certain judicial activities in its territory, but on behalf of the Requesting State, and which are necessary in the settlement of a criminal case before the judicial authorities of the Requesting State.

At European level, this instrument of cooperation is regulated by two normative acts, namely the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted on 29.05.2000 and the European Convention on Mutual Assistance in Criminal Matters, signed in Strasbourg on 20.04.1959.

At international level, the international rogatory commission is regulated by the United Nations Convention against Transnational Organized Crime (Art. 18) and its First Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

As regards the *joint investigation teams*, according to the national law, they represent a commitment/contract concluded between two or more judicial competent authorities to establish a joint investigation team, with limited duration and targeted purpose, in order to perform certain acts of investigation/pursuit in one or more of the signatory states of the joint investigation team.

At European level, this form of cooperation is regulated by: the EU Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted on 29.05.2000 (Art. 13); the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, signed at Strasbourg on 20.04.1959 (Art. 20); the Council Framework Decision 2002/465/JHA on Joint Investigation Teams, and the Council Decision setting up Eurojust with a view to reinforcing the fight against serious crime (Art. 9f).

At international level, the United Nations Convention against Transnational Organized Crime and its First Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (it has three protocols) (Articles 19, 20) are the legal instruments used in cases of trafficking in human beings.

As regards *the European arrest warrant*, according to the national law, it represents a judicial decision through which a competent judicial authority of an EU Member State requests

the arrest and surrender of a person by another Member State, for the purpose of prosecution, trial or execution of a custodial sentence or a measure involving deprivation of liberty.

At European level, this form of cooperation is regulated by the Framework Decision 2002/584/JHA of the Council of the European Union.

II. Case Study No. 1:

An organised crime group consisting of Romanian and Moldovan citizens recruited several women from Suceava with the purpose of their exploitation for prostitution in Germany. At the time of their recruitment, the traffickers promised the women well-paid housekeeping jobs in Germany. For a short period of time they were hosted in Suceava at one of the suspects's place, and then they were transported by personal cars through Ukraine and Poland. Along their way to the final destination, respectively Dresden - Germany, the victims were sheltered in two locations, respectively in Lviv – Ukraine, and Krakow - Poland.

Once arrived at destination, the women were raped, and then forced into prostitution in various clubs in Dresden, Germany. The traffickers invested the significant amounts of money they obtained from the exploitation of the victims in the purchase of movable and immovable property in Romania and Germany.

The Romanian and German authorities have signed an agreement on the establishment of a joint investigation team to investigate the activity of the organised crime group on the exploitation of victims through prostitution in Dresden and established that the investigations be coordinated so as to simultaneously request the preventive arrest of traffickers, the collection of evidence, the ordering of precautionary measures, as well as the rescue of the victims.

As the victims had been housed during their transport at two different locations, namely Lviv - Ukraine and Krakow - Poland, the Romanian prosecutors issued a European Investigation Order to the Polish authorities, and a letters rogatory to the Ukrainian authorities requesting home searches of the two locations and taking of evidence, as well as the authorisation to track the vehicles used for the transport of the victims, the interception of telephone conversations within the respective locations, as well as the authorisation of interception of telephone conversations between the members of the organised crime group in these two countries; these investigation measures had been ordered by the Romanian authorities at national level, as well.

Following the collection of evidence required by the forms of international judicial cooperation, namely the International Letters Rogatory (Ukraine), the European Investigation Order (Poland) and the Joint Investigation Team (Germany) there has been set a date by common agreement with the German authorities for the simultaneous arrest of the defendants, 5 of them on the territory of Germany, and 2 on the territory of Romania, with the issuance of European arrest warrants.

At the time of the simultaneous arrest of the 7 defendants on the territories of the two states, there had been taken precautionary measures on the movable and immovable property acquired by the defendants and the victims were rescued.

In this case, the Romanian authorities used the following forms of international judicial cooperation: joint investigation teams, the European Investigation Order, the international rogatory commission, and the European arrest warrant.

Case Study No. 2:

It was ordered the prosecution of 8 defendants for the charge of setting up an organised crime group in order to commit crimes of *trafficking in human beings* and *trafficking in minors* through sexual exploitation of victims which had been recruited by false promises of marriage (lover boy method) and by offering jobs abroad (housekeepers or caregivers of the elderly).

The victims were recruited in Bucharest by 3 of the defendants; after the exploitation of the victims for a period of time in Bucharest, they were sold to 2 other defendants in Craiova, the latter transporting the victims by plane to Italy (Milan) for sexual exploitation. The money obtained from their exploitation was invested by the 8 defendants in movable property (jewellery and luxury cars) and real estate (houses) in Romania.

The Romanian and Italian authorities have signed an agreement on the establishment of a joint investigation team to investigate the activity of the organised crime group on the exploitation of victims through prostitution in Milan; they have established that the investigations had to be coordinated so as to simultaneously request the preventive arrest of traffickers, the collection of evidence, the ordering of precautionary measures, as well as the rescue of victims.

During the criminal investigation, the Romanian authorities issued European arrest warrants for the two defendants known to be in Italy, but the Italian authorities could not execute the warrants because the defendants fled. Subsequently, when the case reached the judicial investigation phase, one of the two fugitive defendants voluntarily surrendered to the Romanian authorities upon entering the country; the second was located on the territory of the France, and the French authorities executed the European mandate.

During the judicial investigation, the court approved the hearing of a witness by videoconference, given that he/she established his/her domicile in Italy (Milan); being impossible to appear in person in Romania due to certain health problems, a European Investigation Order has been issued in this regard.

In this case, the Romanian authorities used the following forms of international judicial cooperation: **during the criminal investigation** - *the joint investigation team* with the Italian Republic (for the collection of evidence necessary to investigate the case, namely home searches, computer searches, interceptions of telephone calls; a Romanian prosecutor attended the hearing of the victims that took place in Italy), and *the European arrest warrant*; During the *judicial investigation*, a European Investigation Order was issued for the hearing of the witness, and *the European arrest warrant was confirmed* for the fugitive defendant.

Case Study No. 3:

An organised crime group consisting of Romanian and Spanish citizens recruited several women from Timisoara area in order to exploit them through prostitution in Spain. At the time of recruitment, the traffickers promised the women jobs in agriculture and housekeeping. For a short period of time they had been hosted in Timisoara, at one of the suspects's place, and then transported by plane to Spain (Madrid).

Once arrived at their destination, the women were told that they could no longer work in the indicated fields because there were no more jobs available; in order to pay their debts to the traffickers – namely the cost of air transport, food, rent in Madrid, and other expenses – they were forced into prostitution and the income was to be equally shared with the traffickers.

Initially the 5 victims did not agree, but because their debts doubled from day to day, the defendants threatened them and they did not have money to return home, so they agreed to

practice prostitution, but only to pay the debts to the traffickers and to return home; the earnings of the victims were almost entirely withheld by the traffickers, and the victims' debts continued to increase despite the substantial amounts of money obtained by the victims from prostitution and handed over to the traffickers.

Initially, there was an exchange of European Investigation Orders between the Romanian and the Spanish authorities, given that each country had their own open files on their own citizens. Due to the complexity of the investigations, the state authorities decided to sign an agreement on setting up a joint investigation team charged with the investigation of the organised crime group's activity related to sexual exploitation of victims in Madrid.

It was established that the investigations should be coordinated to simultaneously require the pre-trial detention of Romanian and Spanish traffickers, the collection of evidence, the ordering of precautionary measures, as well as the rescue of victims.

After collecting the evidence, initially by the European Investigation Order and then in the joint investigation team, in agreement with the Spanish authorities, there was set a date for the simultaneous arrest of the defendants, 2 of them being Spanish citizens on Spanish territory and 5 Romanians, out of which 3 were on Romania's territory.

At the time of the simultaneous arrest of the 7 defendants on the territories of the two states, there were taken precautionary measures on the movable and immovable property acquired by the defendants and the victims were rescued. In this case, the Romanian authorities used the following forms of international judicial cooperation: joint investigation teams, the European Investigation Order, and the European arrest warrant.