

The Institutional Perspective in the Fight against Human Trafficking in Romania - The National Anti-Trafficking Body

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The institutional construction is a proof of political will, a proof of authority and maturity of a society, of its responsibility and functionality. It offers the favorable framework of institutional capacity evidence, of working out and putting into practice some policies, strategies, programs and action plans in various sectors and fields in accordance with the aim, the objectives and standards aimed at, set by one's own bodies or derived from those defined by the transnational assumed regulations. An institutional construction becomes as much more articulate and efficient the more it is more stable and more dynamic, and at the same time flexible and adaptable to the challenges of an environment often marked by most acute crises and tensions. Motivated by the history lessons, it is but natural to yearn for stable institutions which should guarantee the democracy, the rule of law and human rights.

Handling the problem of human trafficking, phenomenon with profound social and economic implications, circumscribed to the globalization of organized crime requires an adequate institutional construction for the issues it deals with, compatible with the European structures in this area of interest. The **national strategy against human trafficking for 2006-2010**¹ issued by the Government of Romania, *structures the specific institutional framework*, particularizing it on relevant action pathways: **prevention, fight, assistance, monitoring and counseling**. The concern with configuring an **integrated system**, which should harmonize the efforts and to increase the efficiency of the reaction capacity to the manifestations of this scourge is visible.

¹ Adopted by Government Decision no. 1654/2006, published in the Official Gazette of Romania No. 967 of December 4, 2006

In approaching the 2006-2010 Strategy², the institutions responsible for the **prevention** of human trafficking are: the Ministry of Administration and Home Affairs (The National Agency against Human Trafficking, the General Romanian Police Inspectorate by the Institute of Research and Fight against Criminal Matters), the Ministry of Health (The Public Health Departments), The Ministry of Education, Research, Youth and Sport (District School Inspectorates, *Casa Corpului Didactic*,

Centers of Information and Documentation), the Ministry of Labor, Family and Social Protection (The General Department of Social Assistance, the General Department for Child Protection, the National Agency for Work Force Occupancy, the National Agency for the Equality of Chances between Men and Women), non-governmental organizations, international organizations (ILO, IOM, UNICEF, a.o.)

At another level, the system of institutions dealing with the fight against human trafficking reunites: the Ministry of Administration and Home Affairs the General Romanian Police Inspectorate, the General Inspectorate of Border Police), the Public Ministry (The Department of Investigation of Organized Crime and Terrorism Offences), the Ministry of Justice (The National Network of Specialized Judges in sorting out human trafficking cases)³.

With reference to assisting the victims of human trafficking, the institutional framework includes: The Ministry of Health (Departments of Public Health), Ministry of Education, Research, Youth and Sport (District School Inspectorates, *Casa Corpului Didactic*) the Ministry of Labor, Family and Social Protection (The General Department of Social Assistance, the General Department for Child Protection, the National Agency for Work Force Occupancy- the district councils/ sectorial ones in Bucharest), the Ministry of Justice (probation services), the Ministry of Foreign Affairs, NGOs and IOs (IOM, etc).

Monitoring the assistance of victims as a result of human trafficking incurs on the National Agency against Human Trafficking and to the General Department of Child Protection.

The general institutional framework can be easily completed with the

² The strategy for 2011-2015 was not made public yet at the end of 2011, being at the stage of obtaining the approval of the Public Policies Unit within the Ministry of Administration and Home Affairs; the final form of the document being further on submitted for being promoted for approval to institutional partners.

³ The network is formed by 56 judges from each Court of Appeal with a tribunal in Romania, being notified the international body Eurojust, European Commission, the Council of Europe, UN, etc.

Romanian Immigration Office, The Witnesses' Protection Office, the inter-ministerial work group, the parliamentary group for the fight against human trafficking, a.o.

Priority given to integrated approaches

Romania has adopted as late as **2001 the first national action plan on the fight against human trafficking**. Until 2008 there was no unitary system of identifying and supporting the victims of human trafficking. By the Order no. 335 of October 29, 2007⁴ here was to be approved the **National mechanism for identifying and referral of the human trafficking victims** which entered into force on December 17-th 2008, thus being made concrete one of the objectives of the National action plan 2006-2007 in view of implementing the national strategy against the human trafficking for 2006-2010. This document represents, according to the stipulations in the preamble, an ensemble of measures and actions destined to the identification of the victims of human trafficking and of handing them over to the providers of protection and assistance services. It is thus aimed at “adopting a unitary and coordinated response, which is meant to lead to improving the capacity of identifying the victims of human trafficking and ensuring their protection and assistance, irrespective of the institution or organization with which these come in touch with for the first time.”⁵

The main way of identifying the victims of human trafficking is represented by the actions of the specialized structures within the Police. The mechanism above-mentioned stipulates, at the same time, that the identification process, from the perspective of judiciary bodies – takes place within the activities of criminal pursuit which vises collecting the necessary evidence with regard to the existence of human trafficking offences, as well as in the context of specific actions of applying the law: informative actions”.⁶ In the case in which the Romanian citizens are expelled or returned home from the territory of other states – among these there can be identified – by the declarations taken by the border police officers at Romania's state border - the **potential victims** of human trafficking. The assistance granted by the diplomatic missions and the consular offices of Romania abroad in

⁴ Published in Romania's Official Gazette No. 849 of December 17-th 2008

⁵ The National Mechanism of Identifying and Referral of the Human Trafficking Victims, Preamble, p.3

⁶ Ibidem, section E, page 12

view of obtaining a travel document which would allow repatriation is another filter in identifying the human trafficking victims, being known that most of the times these are taken or destroyed the identity or travel the documents. The requests for assistance from some victims by means of the Tel Verde service (green line) (0800 800 678) available from 2007 allow for their identification. The same finality could be envisaged for the alerts at the emergency telephone line with regard to the possible committing of an offence of human trafficking.

The national mechanism of for identifying and referral of the human trafficking victims describes in detail not only the **indicators that must be taken into account for identifying a possible/potential victim, but also the procedures of handing them over to the institutions or organizations responsible for protection and assistance.** According to the exigencies mentioned in this document⁷, the specialized structures of the Police – the Department of Fights Against Organized Crime, with all its services and the General Inspectorate of the Border Police shall contact the regional representative of the National Agency against Human Trafficking for **evaluating the needs for assistance of the victims and maintaining the contact with it.** Other structures from the national defense system and public order systems – the Criminal Investigation Police, the Public Order Police, the Gendarmerie- have the obligation to notify the other specialized structures of the Romanian Police as well as, according to the case, the departments/offices/services of the Department for Investigating the Offences of Organized Crime and Terrorism. The specialized structures of the Police have the duty of making **the risk evaluation of the case** in the perspective of its audience by the judicial bodies. In its turn, the representative of the regional center of the National Agency against Human Trafficking shall ensure the immediate referral of the victim for assistance in an urgency regime, after which it shall appoint a person responsible for the case, the task of whom it is to monitor the assistance granted. The respective person in responsible for maintaining the link with the victim, ensuring it the necessary support for all stages of the development of the criminal process. The mechanism particularizes at the same time the procedures in the situation in which the victim was referred and repatriated by the International Organization for Migration, by its missions, and by an NGO from Romania, respectively, as well as in the circumstances of identifying the victims by means of diplomatic missions or of the consular office of Romania. If the victims of human

⁷ Ibidem, pp.14-15

trafficking are foreign citizens, they benefit on the territory of Romania, without discrimination, from the same measures of assistance and protection as the victims of the traffic of persons, Romanian citizens. The Romanian Office for Immigration is the institution regulating **the situation of the human trafficking victims, foreign citizens,** in accordance with the provisions of the legislation referring to the regime of foreigners in Romania.

The Law no. 678/2001 on the prevention and fight against human trafficking⁸ stipulates multiple attributions for the actors of the anti-traffic body.

For example, there are to be retained some of them: thus the Ministry of Foreign Affairs has the mission to draw up a list of states presenting a high potential from the point of view of human trafficking, which shall be communicated upon request to the institutions interested⁹. The same ministry together with the Ministry of Administration and Home Affairs has the obligation to adopt the necessary measures to hinder the access on the territory of Romania of foreign citizens in relation to whom there are solid grounds to suspect that they might be involved in human trafficking¹⁰.

In other respect, The Ministry of Labor, Family and Social Protection through its specialized structures at the central and territorial level, works out and applies special measures of integration on the labor market of the persons with a high risk of being trafficked, particularly for the women in the disfavored areas and for the socially marginalized persons¹¹. The National Agency for Work Force Occupancy assumes, by virtue of this law, the task of developing information programs regarding the labor market and the rights of employees, programs of professional formation, as well as of informing the economic agents for employing with priority the persons posing a high risk of being trafficked.¹² It is also The Ministry of Labor, Family and Social Protection the one studying the opportunity of adopting measures of stimulating the economic agents employing both persons posing a high risk of being trafficked, and victims of the traffic, who have graduated from courses of professional formation¹³. The Ministry of Education, Research, Youth and Sport draws up a complex of educational programs with the aim of

⁸ Published in Romania's Official Gazette No. 783 of December 11-th 2001

⁹ The Law No. 678/2001 on the prevention and fight against human trafficking, art.5, paragraph (1)

¹⁰ Ibidem, art. 5, paragraph (2)

¹¹ Ibidem, art. 6, paragraph (1)

¹² Ibidem, art. 6, paragraph (2)

¹³ Ibidem, art. 6, paragraph (3)

preventing the human trafficking and of raising awareness upon this phenomenon.

The pivotal institution – The National Agency against Human Trafficking

The setting up of this specialized structure was imposed by the magnitude of the human trafficking phenomenon and consequently, by the need for an entity which should gather together the endeavors and concerns in the field. The Agency was set up grounded on the Government Decision No. 1584 of December 8-th 2005¹⁴ by the reorganizing of the National Office for the Prevention of Human Trafficking and Monitoring the Victims Protection within the General Inspectorate of the Romanian Police.

Having become operational on January 1-st 2006, the Agency was to lose its juridical personality on March 11-th 2009¹⁵ when it was reorganized within the General Inspectorate of the Romanian Police. The negative impact upon the assistance offered to the victims of the traffic of persons, as well as the legitimate requirement of institutional capacity growth have determined the coming back to the initial situation. Thus, by the Government Decision no. 460 of May 11-th 2011¹⁶ the National Agency against Human Trafficking was withdrawn from the structure of the General Inspectorate of the Romanian Police and included within the Ministry of Administration and Home Affairs, as an institution having juridical personality.

The competences incurred onto it accredit the National Agency against Human Trafficking as a pivotal institution in the anti-traffic device in Romania, having attributions of coordination, evaluation and monitoring at national level, in applying the policies in the field of human trafficking by the public institutions with responsibilities in this sense, as well as of those from the sphere of protection and assistance granted to the victims¹⁷. This central role in the afore-mentioned institutional whole justifies the wide array of main attributions:¹⁸ working out, together with other institutions, the project of the national strategy against human trafficking, subsequently subjected to the Government of Romania; monitors and evaluates the activities carried out by the public institutions having attributions in

¹⁴ Published in the Official Gazette No.5 of January 4-th, 2006

¹⁵ by Government Urgency Ordinance No.20 of March 11, 2009

¹⁶ Published in the Official Gazette of Romania Part I, No.331 of May 12-th, 2011

¹⁷ Government Decision No. 460/May 11-th, 2011, art.2, paragraph 1

¹⁸ Government Decision No. 460/May 11-th, 2011, art.3

the field of human trafficking , in relation to the objectives stipulated in the action plans for implementing the national strategy; it ensures the coordination of cooperation activities carried out by the public institutions with the non-governmental organizations; it works out the projects of the national standards in the field together with the public institutions and NGO-s involved, which it submits for approval to the Government; it establishes the indicators and criteria of appreciating the dimensions and characteristics of the phenomenon of human trafficking; it collects, stores, processes, analyses and discloses data and information referring to the situation of the persons trafficked, the assistance offered to the victims and their social reintegration; it carries out studies and research regarding the diagnosis and evolution of the traffic of persons; it facilitates the exchange of data and information with a statistical character among institutions with competences in the field in the country and abroad; it formulates proposals for the change and completion of the legislation in the field, it works out the answers to the questionnaires of international institutions and bodies, as well as country reports in the field of the traffic of persons; it formulates recommendations to the institutions with responsibilities in this area with regard to the development of anti-traffic policies; it monitors the functioning of centers for the assistance of victims according to the national specific standards for the specialty services of human trafficking victims assistance and protection; it offers guidance to the persons resorting to the cost-free Green line (Tel Verde) by the institutions having competence in the matter; it monitors the administration of the funds allotted; it works out and grounds programs of national interest regarding the prevention of human trafficking and assistance granted to the victims of it in view of social reintegration; it ensures the representation in specialized groups or EU structures, as well as in international organizations, under the coordination of the specialized structure of the Ministry of Administration and Home Affairs.

The director of the Agency is the national coordinator of the activity of implementing the public policies of human trafficking prevention and of monitoring the granting of protection and assistance of the human trafficking victims.¹⁹

The National Agency against Human Trafficking has in its suborder 15 regional centers, with a role of coordinating the activity in their areas of competence. Being set up in the areas corresponding to the Courts of Appeal, these centers have clearly defined attributions: the analysis of the phenomenon at the

¹⁹ Government Decision No. 460/May 11-th, 2011, art.4, paragraph 2

local level and informing upon the appearance of new ways of operating in the human trafficking; monitoring the application of the provisions of the National anti-traffic Plan at local level,; identifying the dis-functionalities and formulating proposals of improving the national system of identifying and referral; facilitating the local and regional communication among the structures involved in the anti-traffic fight; supporting the local anti-traffic initiatives; notifying the competent authorities for the sorting out of the problems the victims of the traffic confront themselves with in the process of assistance and of reintegration; correlating the activity of the NGO-s in order to avoid overlaps, so that the prevention activity should cover an as large number of population as possible.²⁰²⁰

The National *Rapporteur* institution in 'stand-by'

At the EU level the need for development of a strategy consolidated for the fight against human trafficking is strongly felt. The Directive 2011/36/EU²¹ is extremely explicit in this respect. A vulnerable and non-synchronized point, generating dis-functionalities consists in the national monitoring systems. The regulation mentioned stipulates unequivocally that the Union must further on develop its activities with regard to methodologies and the methods for data collection in order to be able to produce comparable statistics, there being expressly mentioned the need for establishing general common indicators of the Union for identifying the victims of human trafficking by the exchange of best practices among all relevant actors, particularly the public and private social services.”²²

Based on such priorities, article 19 of the Directive 2011/36/EU stipulates that the EU member states take the necessary measures in order to institute national rapporteurs or equivalent mechanisms. Their purpose is punctually defined: making evaluations of the tendencies in the matter of human trafficking; measuring the results of the actions of fighting the traffic; collecting statistical data in close cooperation with the relevant organizations of the civil society in this field and periodically, presenting reports.

²⁰ The National Agency against Human Trafficking, anip.mai.gov.ro, the anip page, Regional centers section

²¹ euro-lex.europa.eu, The Official EU Journal, 15.04.2011, pp.101-111

²² The Directive 2011/36/EU, Exposure of motives, point 4

The Directive 2011/36/EU mentions that, by the conclusions of the Council of Europe of June 4-th 2009, there has been created an informal network of the EU of national rapporteurs or equivalent mechanisms concerning the traffic of persons. The network of rapporteurs would not only absorb information from the EU member states, but also it shall furnish these objective strategic information, comparable and up-to-date in the field of human trafficking at EU level. Moreover, it is appreciated that the European Parliament itself should be entitled to take part in the common activities of the informal rapporteurs actions.²³²³

It clearly results a major aspect: the national rapporteur is an autonomous institution, with clearly defined missions, particularly in the field of improving coordination and coherence, of avoiding the overlapping of efforts among institutions and agencies and at another level among member states and international actors, trying to remove the existing information and communication deficit. It is obvious that the network of rapporteurs is meant to contribute to the development of existing or emergent EU policies and strategies, relevant for the fight against human trafficking.

How did Romania react to the requirement of replacing the national rapporteur? “This recommendation was taken over by the Romanian state and transposed into the National Strategy against Human Trafficking 2006-2010 by means of the National Action Plans²⁴. In the context, it is relevant the working out of a National Mechanism of identifying and referral of the human trafficking victims, which has become operational on December 17-th 2008²⁵, mechanism equivalent to a national *rapporteur*. The procedure of appointing the national rapporteur is under way, making the object of a process of inter-institutional consultation, according to sources in the Ministry of Justice²⁶. The EU member states must conform themselves to the provisions of the EU Directive 2011/36 of the European Parliament and Council until April 6-th 2013²⁷.

²³ The Directive 2011/36/EU, Exposure of motives, point 27

²⁴ IGPR, ANITP, *Realizarea campaniilor de prevenire a traficului de persoane. Ghid practic*[*Practical guide – Campaigns for preventing the human trafficking*], Bucuresti, 2008, p.18, Editura Alpha MDN

²⁵ The Order No. 335 of October 2007, published in the official Gazette of Romania No. 849 of December 8-th, 2008

²⁶ The information was circulated by the State Secretary of the Ministry of Justice, Alina Bica, at the bi-lateral meeting held in February 2012 with Maria Grazia Giammarinaro, special representative of OSCE and Coordinator for the fight against human trafficking at the level of the respective institution

²⁷ The Directive 2011/36/EU, art.22, paragraph 1

The meetings of the national rapporteurs are biannual, held under the coordination of the European Commission. At the reunion of February 2-3 2012 from Brussels Romania was represented by the director of the National Agency against Human Trafficking, Romulus Nicolae Ungureanu. This forum has subjected to debate the implementing of the National mechanism for identifying and referral of the human trafficking victims at the level of participant states, aspects regarding the protection and assistance of victims of human trafficking. Within this framework, the representative of the Agency has presented the priorities concerning the improving of coordinating the actions against human trafficking as well as of data collection referring to this phenomenon at both national and European level.²⁸

At the level of the institutionalized dialogue European wide, in 2011, the National Agency against Human Trafficking has made its voice heard among others, by including its initiative of working out a European Report on the evolution of the phenomenon in the European Strategy for the Fight Against Human Trafficking, document which shall be drawn within two years, using a set of common indicators for reporting.²⁹

Conclusions

In the fight against human trafficking Romania avails itself from an articulate institutional framework, structured on the major directions of action: prevention, fight, assistance, monitoring. The key institution in this is the National Agency against Human Trafficking, strategic partner in the European institutionalized dialogue in the matter.

The institutional instability episodes (the reorganization of 2009 of the National Agency against Human Trafficking, as well as of other partner institutions), to which the sub-financing is added, the lack of personnel, of premises, restricting the activity of some NGOs involved in the assistance of victims, have triggered a particular institutional instability, meant to influence – even if temporarily – the reaction capacity and the degree of vulnerability in the traffic of human beings. On the background of such problematic “changes” and of dis-functionalities at the

²⁸ anitp.mai.gov.ro, anitp page, section “activities”

²⁹ MAI, ANITP, (Ministry of Administration and Home Affairs, the National Agency against human Trafficking, The annual evaluation of the activity of the NAAHT, 2011, p.28

level of the political decision-makers, not even at present was it approved the National Strategy against Human Trafficking for 2011-2015. Moreover, although since 2008 it has had a national mechanism for identifying and referral of the human trafficking victims since 2008, Romania has not designated yet a national rapporteur on this matter.