

# **Romania**

## **Law No. 678 on the Prevention and Combat of Trafficking in Human Beings**

Law on the Prevention and Combat of Trafficking in Human Beings

(December 2001)

**The Parliament of Romania** adopts the present law

### **CHAPTER I**

#### **General Provisions**

**Art.1** – The present Law regulates the prevention and combat of trafficking in persons, as well as the protection and assistance granted to trafficking victims. Such activities constitute a violation of human rights and a violation of individual dignity and integrity.

**Art.2** - In the present law, the terms and expressions below have the following meaning:

1. The phrase "trafficking in persons" means the violations stipulated in articles 12 and 13;
2. The phrase "exploitation of a person" means:
  - a. performing forced labor or services, in violation of the legal requirements on labor conditions, pay, health and security;
  - b. keeping such persons in a state of slavery or using other ways to deprive a person of his/her freedom or to force the person into submission;
  - c. compelling a person to engage in prostitution, in pornographic performances for the production and distribution of pornographic material, or in other forms of sexual exploitation;
  - d. harvesting of human organs;
  - e. engaging in other such activities that violate fundamental human rights and liberties.

## Chapter II

### Prevention of Trafficking in Human Beings

**Art.3.** In order to combat trafficking in human beings efficiently, the public authorities and institutions listed in this Chapter, the non-governmental organizations (NGOs) and other representatives of the civil society shall engage, separately or in conjunction, as the case may be, in a sustained activity to prevent trafficking in human beings, especially women and children.

**Art.4.** The Ministry of Foreign Affairs, the Ministry of Labor and Social Solidarity, the Ministry of Public Administration, the Ministry of Education and Research, the Ministry of Health and Family, the National Authority for Child Protection and Adoption, the Ministry of Interior, the Ministry of Justice as well as other governmental agencies with jurisdiction in the combat of trafficking in human beings, shall take the necessary steps to elaborate and enforce, within their own jurisdiction, the National Action Plan for Combat of Trafficking in Human Beings.

**Art.5.** (1) The Ministry of Foreign Affairs shall draw up a list of countries with a high potential for trafficking in human beings, to be provided to involved institutions, upon request.

(2) Based on Law 123 / 2001 on the regime of foreign citizens in Romania, the Ministry of Foreign Affairs and the Ministry of Interior shall enforce the necessary steps to prevent access on the territory of Romania of foreign citizens in relation to whom there is strong evidence of involvement in trafficking of human beings, for the purpose of the this law.

**Art.6.** (1) The Ministry of Labor and Social Solidarity, through its dedicated structures at central and territorial levels, shall work out and enforce special measures for the integration into the labor market of persons highly at risk of becoming trafficking victims, especially women in very poor areas and social outcasts.

(2) For persons highly at risk of becoming trafficking victims, the National Employment Agency shall develop information programs on topics related to the labor market and employee rights, vocational training programs, as well as information programs for employers in order for the latter to grant such persons priority in the hiring process.

(3) The Ministry of Labor and Social Solidarity, jointly with the Ministry of Public Finance, shall study the timeliness of working out measures to stimulate companies that hire both persons highly at risk of becoming trafficking victims and trafficking victims who have graduated from a vocational training course and shall make proposals for this purpose.

**Art.7.** The Ministry of Public Administration shall create and disseminate documentary materials on the risks entailed by persons highly at risk of becoming trafficking victims.

**Art.8.** The Ministry of Education and Research, with support from the other Ministries involved and in cooperation with NGOS that are active in the domain, shall develop educational programs for parents and children, especially groups highly at risk of becoming trafficking victims, with a view to preventing trafficking in human beings.

**Art.9.** (1) The Ministry of the Interior, through its specialized structures and with support from other ministries, shall compile and update the database on the phenomenon of trafficking in human beings, shall monitor and make a periodical assessment of this phenomenon, that shall include both the trafficker and the trafficking victims, as well as the legal entities involved in trafficking in human beings.

(2) Publishing statistical information and assessment reports shall be the biannual task of the General Police Inspectorate, under the endorsement of the Minister of the Interior.

**Art. 10.** (1) The Ministry of Justice and the Public Ministry shall carry out periodical studies, based on their own information, with a view to identifying the causes that bring about and the conditions that facilitate trafficking in human beings.

**Art. 11.** In order to prevent trafficking in human beings, NGOs shall cooperate with the relevant ministries and shall organize awareness campaigns on trafficking in human beings and the risks entailed by its victims.

## **CHAPTER III**

### **Violations**

#### **Section I**

#### **Trafficking in human beings violations**

**Art.12** - (1) Whoever recruits, transports, transfers, harbors or receives a person, through the use of threats or violence or the use of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person with the intent of exploiting the latter, commits a criminal violation of this Law and shall be punished with 3 to 12 years imprisonment and denial of a number of rights.

(2) Whoever engages in trafficking in human beings under the following circumstances:

a) traffics two or more persons at the same time;

b) causes the victim to sustain serious bodily harm or serious health problems, shall be punished with 5 to 15 years imprisonment and denial of a number of rights.

(3) If the violation in this Article has resulted in the victim's death or suicide, the offender shall be punished by 15 to 25 years imprisonment and denial of a number of rights.

**Art. 13** - (1) Whoever recruits, transports, transfers, harbors or receives a person aged between 15 and 18, with the intent of exploiting that person, commits the crime of trafficking in underage persons and shall be punished by 3 to 12 years imprisonment and denial of a number of rights.

(2) If the violation within paragraph (1) was committed against a person aged less than 15, the punishment shall be 5 to 15 years imprisonment and denial of a number of rights.

(3) If the violations within paragraphs (1) and (2) are committed with the use of threats or violence or of other forms of coercion, through kidnapping, fraud or misrepresentation, abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will or by giving or receiving money or other benefits in order to obtain the agreement of a person who has control over another person, the offender shall be punished with 5 to 15 years imprisonment and denial of a number of rights in the case of paragraph (1) and 7 to 18 years imprisonment and denial of a number of rights in the case of paragraph (2).

(4) For the violations within paragraphs (1), (2) and (3) that have been committed in the conditions of Art. 12 paragraph (2) punishment shall be 5 to 15 years imprisonment and denial of a number of rights in the case of paragraph (1), 5 to 17 years imprisonment and denial of a number of rights in the case of paragraph (2) and 5 to 18 years imprisonment and denial of a number of rights in the case of paragraph (3), thesis 1 and 7 to 20 years imprisonment and denial of a number of rights in the case of paragraph (3), thesis 2.

(5) If the violations in this Article have resulted in the victim's death or suicide, the offender shall be punished with 15 to 25 years imprisonment and denial of a number of rights, or life imprisonment.

**Art. 14** – Whoever commits the violations within Articles 12 and 13 as a member of an organized group or has obtained or produced, for him/herself or for others, significant material proceeds out of the commission of those violations shall receive 3 additional years to the maximum specific term of imprisonment.

**Art.15** - (1) The attempt to commit the crimes within Articles 12-14 is also punishable.

(2) The act of organizing the commission of the crimes within this Chapter constitutes a crime and shall be punished like crimes committed in an organized manner.

**Art. 16**– Consent on the part of the trafficked person does not exonerate the offender from criminal liability.

## Section II

## **Violations related to trafficking in human beings**

**Art.17** - (1) Whoever causes or allows, knowingly, directly or through an intermediary, the entry or stay on the Romanian territory of a non-Romanian citizen who is being trafficked as defined by this law:

- a) by the use of fraudulent means, violence or threats or other forms of coercion, or
- b) by abusing the special state of the trafficked person, which results from that person's illegal or precarious situation of entry or stay in Romania or from pregnancy, a disease or disability or from a physical or mental challenge, commits a criminal offence and shall be punished for the crime of trafficking in human beings.

(2) Whoever commits the violations within paragraph 1 as a member of an organized group or repeatedly shall receive 2 additional years to the maximum specific term of imprisonment.

**Art.18** - (1) Whoever exhibits, sells or disseminates, rents, distributes, produces or possesses with intent to disseminate, objects, films, photographs, slides, logos or other visual material that display sexual conduct or postures with a pornographic character, and show or involve persons aged less than 18 or imports or delivers such objects to a carrier or distributor for the purpose of selling or simply distributing such objects commits the crime of child pornography and shall be punished by 2 to 7 years imprisonment.

(2) Whoever commits the violations within paragraph 1 as a member of an organized group shall be punished by 3 to 10 years imprisonment.

## **Section III**

### **Special provisions**

**Art.19.** (1) Money, valuables or any other assets obtained from the commission of the criminal offences stipulated in this Law or that have been used to commit these criminal offences as well as other assets as listed in Article 118 of the Criminal Code are subject to special forfeiture within the conditions established by this Article.

(2) Vehicles used to transport trafficked persons as well as lodgings that were used to accommodate those persons shall also be regarded as property used to commit the crime if they belong to the criminal offenders.

**Art.20.** The trafficked person who has committed the crime of prostitution, stipulated in Article 328 of the Criminal Code, shall have no liability for that crime if, before the start of the criminal investigation for the crime of trafficking in human beings, this person has come forward and reported the crime to the competent authorities or if, after the start of the criminal investigation or after the identification of the criminal offenders this person facilitates the arrest of those offenders.

## CHAPTER IV

### Special provisions regarding the criminal procedure

**Art.21** – The criminal investigation into the crimes stipulated in this Law shall be the mandatory task of the prosecutor and the case shall be tried by a tribunal as a court of first instance.

**Art.22** – Undercover officers can be used as provided by the law in order to gather the necessary information for the start of the criminal investigation.

**Art.23** - (1) When there is strong evidence or data that a person preparing to commit one of the crimes stipulated in this Law or who has committed such a crime is using telecommunications or computer systems, the criminal investigation body can, with a prosecutor's authorization, have access to those systems and carry out surveillance thereof for a specified period of time.

(2) The provisions in Articles 91<sup>1</sup> - 91<sup>5</sup> in the Criminal Procedure Code shall apply accordingly.

**Art.24** - (1) Court sessions in cases involving crimes of trafficking in human beings within Article 13 and child pornography within Article 18 shall not be open to the public.

(2) Court proceedings in the conditions of paragraph 1 can be attended by the parties, their representatives, legal counsels as well as other persons whose presence is deemed necessary by the court.

(3) In cases involving crimes stipulated in this Law, the hearing of a person aged less than 14 shall take place in the presence of one of the parents or the legal guardian or the foster parent the underage person has been entrusted for raising and education.

**Art. 25** – Upon the request of the victim, the Court can order a closed-doors session for cases based on Articles 12 and 17.

## CHAPTER V

### Protection and assistance for the victims of trafficking

**Art. 26** – (1) Victims of the crimes stipulated in this Law, as well as other victims of these crimes, shall be granted special physical, legal and social protection and assistance.

(2) Victims of trafficking in human beings shall have their privacy and identity protected by this Law.

(3) Victims of the crimes stipulated in this Law are entitled to physical, psychological and social recovery.

(4) Underage victims of the crimes stipulated in this Law shall be granted special protection and assistance, as appropriate for their age.

(5) Female victims of the crimes stipulated in this Law, as well as females at high risk of becoming victims of such crimes shall be granted special social protection and assistance.

**Art. 27.** Upon request, and on Romanian territory, the Ministry of the Interior shall provide physical protection for victims of trafficking in human beings during the criminal procedures.

**Art. 28.** Romanian citizens, victims of trafficking in human beings and staying on the territory of other countries, shall be granted assistance, upon request, by the diplomatic missions and consular bureaus of Romania to those countries.

**Art. 29.** The Ministry of Foreign Affairs shall issue, within a reasonable period of time and without unjustified delays, through the diplomatic missions and consular bureaus of Romania, if need may be and with a view to repatriation, identification documents to Romanian citizens victims of trafficking in human beings.

**Art. 30.** (1) The Ministry of Foreign Affairs shall, through the diplomatic missions and consular bureaus of Romania, ensure the dissemination to the relevant persons, of information materials on the rights of victims of trafficking in human beings, as resulting from the laws of Romania and of the respective foreign country.

(2) It is the responsibility of Romania's diplomatic missions and consular bureaus to provide foreign judicial bodies with information on Romanian regulations in the domain.

(3) The Romanian diplomatic missions and consular bureaus shall use own electronic media to publish information on Romanian and the respective country's legislation in the domain as well as addresses of centers for the assistance and protection of victims of trafficking in human beings or other persons assimilated to that status.

(4) The ambassadors of Romania's diplomatic missions and consular bureaus shall assign a special diplomat to be in charge of implementing the repatriation procedure for Romanian citizens victims of trafficking in human beings, as defined by this Law.

(5) The repatriation procedure for Romanian citizens victims of trafficking in human beings shall be developed by the Ministry of Foreign Affairs jointly with the Ministry of the Interior and the Ministry of Justice within 60 days of the enactment of this Law.

**Art. 31.** At all Romania's border checkpoints, the Ministry of the Interior shall use its specialized structures to provide specially trained staff to identify and process victims, in order to refer them to specialized institutions.

**Art. 32.** (1) Upon request, victims of trafficking in human beings can receive temporary accommodation in Centers for Assistance and Protection of Victims of Trafficking in

Human Beings, hereinafter called Centers, and which operate under the authority of county councils in counties Arad, Botoșani, Galați, Giurgiu, Iași, Ilfov, Mehedinți, Satu-Mare and Timiș.

(2) The duration of the victim's stay in such Centers shall be determined through a decision of the County Standing Delegation and shall not exceed 10 days.

(3) The duration of the victim's stay in such Centers can be extended, upon request from law enforcement bodies, by up to 3 months or, as the case may be, for the duration of the criminal trial.

(4) The Centers are designed and equipped to provide civilized conditions for accommodation and personal hygiene, food, psychological and medical assistance.

**Art. 33.** Temporarily sheltered victims of trafficking in human beings shall be provided, by social workers from the local Council where the Center operates, with information and counseling towards the use of legal benefits for persons regarded as social outcasts.

**Art. 34 - (1)** The Centers' in-house regulations as well as their organizational structure shall be approved by the Minister of Public Administration and endorsed by the Minister of the Interior.

(2) The Centers' staff shall be paid according to the law on the pay for employees in state-owned institutions.

(3) The Centers' current and capital expenses shall be financed out of County Councils' funds, stipulated in article 33 paragraph (1).

**Art.35.** (1) County employment agencies, in those counties where the Centers are being set up and operate, shall organize, if possible, special short-term programs for the vocational initiation or training of sheltered victims.

(2) The agencies mentioned in paragraph 1 are also tasked to grant priority counseling and labor mediation services to victims of trafficking in human beings in order for the latter to find a job.

**Art. 36.** Victims of trafficking in human beings, Romanian citizens, can have priority access to social housing provided by Local Councils in their town of residence.

**Art. 37.** Romania assists foreign citizen victims of trafficking in human beings in returning to their country of origin without undue delay and provides them with full security transportation to the border of Romania, if not otherwise provided in bilateral agreements.

**Art. 38.** (1) For their physical security, foreign citizen victims of trafficking in human beings can be sheltered in the special Centers set up according to Law no. 123/2001 on

the regime of aliens in Romania, and those requesting a form of protection in Romania can be sheltered in the centers especially set up according to Law no. 323/2001 on approval of Government's Ordinance no. 102/2001 on the refugees' status and regime in Romania.

(2) In those shelters victims of trafficking in human beings shall be informed, in a language they can understand, of the legal and administrative procedures enforced.

(3) Sheltered persons are entitled, according to paragraph 1, to psychiatric and psychological counseling and to medical and social assistance, in a language they can understand.

**Art.39.** (1) In case the foreign citizen victims of trafficking in human beings have no identification documents or if they have lost them or have had them stolen or destroyed, they shall receive help from the Consular Relations Directorate within the Ministry of Foreign Affairs or from the competent bodies of the Ministry of Public Administration in acquiring a new passport or temporary identification document, as the case may be.

**Art. 40.** In case victims of trafficking are brought to Romania by a transportation company, in awareness of the illicit character of this activity, that company shall have the obligation to provide accommodation and meals for those victims for the duration established by the Ministry of the Interior and shall bear the costs of their transportation to the Romanian border, according to the law.

**Art. 41.** – Also, underage persons accompanying victims of trafficking in human beings or who are themselves such victims are subject to the provisions on underage persons in Law No. 123/2001.

**Art. 42.** – Associations and foundations that prove they have social service programs for the victims of trafficking in human beings such as: accommodation, food, psychiatric, psychological and legal counseling, medical assistance shall have priority in getting subsidies from the State budget or, as the case may be, from local budgets, as provided by law.

**Art. 43** – Victims of the crimes stipulated in this Law are entitled to receive information on the applicable legal and administrative procedures.

**Art. 44** – Persons stipulated in Article 44 are entitled to assistance for exercising their rights within the criminal proceedings provided by law, at all stages of the criminal trial and are also entitled to supply evidence for their demands and civil actions against persons who have committed the crimes stipulated in this law, where they are involved.

## **CHAPTER VI**

### **International Cooperation**

**Art. 45** – Through the present law, liaison officers shall be appointed within the Ministry of the Interior, as well as liaison magistrates at the level of prosecutors' offices attached to tribunals, who shall be tasked with intelligence exchanges with their counterpart liaison officers or magistrates operating in other countries, so as to coordinate action during the criminal investigation.

**Art. 46** – For an exchange of criminal intelligence as stipulated in this Law, a point of contact shall be established within the Ministry of the Interior and at the prosecutor's Office attached to the Supreme Court of Justice, with counterpart institutions from other countries.

**Art. 47** – (1) International transportation companies have the obligation to verify, on issuing the travel document, whether their passengers possess the required identification for entry in their transit or destination country.

(2) The obligation stipulated in paragraph 1 is also shared by the driver of the international road transportation vehicle on admitting passengers on board, as well as in the case of staff responsible for verifying travel documents.

## **CHAPTER VIII**

### **Final Provisions**

**Art. 48.** In order to identify the victims of trafficking in human beings, the officers of the Ministry of the Interior are allowed to organize controls in private or public institutions as well as on the premises of businesses, irrespective of their owner, under the law.

**Art. 49** – Within 60 days from the entering into force of this law, a Government Decision shall be adopted containing its Enforcement Regulations.