

**MERCHANTS OF LIVING SOULS: TRAFFICKERS OF HUMAN
BEINGS IN ROMANIA**

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BY

FLORIN VLAD ©

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ABSTRACT

This paper highlights the importance of empirical methods to delineate the profile of the traffickers in Romania, and the need to understand the factors that influence the behavior of traffickers. Studying and responding to trafficking in human beings has been flawed by the vagueness or inaccuracy of the research tools deployed, making it difficult to satisfy the normative component of the political objectives of legal regulation to criminalize trafficking activities. The trafficking of human being needs a research approach more focused on all the key actors, and more rigorous in methodology.

Due to the criminal “hidden” nature of the trafficking operations and the scarcity of empirical data, both qualitative and quantitative analyses have been deployed. I conclude that traffickers are increasingly mobile, adaptable in terms of trafficking schemes and routes, are well connected to the environment from which the victims are recruited. Recently Romanian legislation is combating trafficking against a backdrop of increasing demand for trafficked victims, as well as social norms that favor irregular migration. Budgetary restraints and a lack of institutional coordination hamper the efforts of the government to more efficiently prosecute traffickers, thereby allowing them to persevere with impunity.

The paper urges the need for a comprehensive anti-trafficking policy in Romania that addresses the following questions: Who are the traffickers of human beings in Romania? How do they organize their trafficking operations? What are the incentives that influence their activity? and What is the role that law and social norms play in regulating their behavior?

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My findings draw extensively from the work of The International Organization for Migration—the Bucharest office, and the Alternative Sociale Iasi non-governmental organization. Their genuine dedication to fighting trafficking of humans and assisting the victims of this crime are an inspiration to all of us.

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INTRODUCTION

Trafficking in human beings impacts on all the areas of society, whether it is the economy, family structure, education or the legal systems and at all levels ranging from national, through regional, to international. Trafficking occurs across international borders or within the confines of a single state, in the form of many criminal acts, including prostitution, forced labor, child pornography, unlawful transplantation of organs, and forced involvement in criminal activities, all of which produce different end results.

Above everything else, human trafficking is an infringement of human rights. Most of these rights are now enshrined in international legal documents, or customary law, but their full enforcement falls short.

This research analysis trafficking in Romania by undertaking a small empirical study of the organization of trafficking operations, incentives and barriers that influence the activity of traffickers. Romania is a country provides the opportunity to research both successful as well as failed initiatives in combating trafficking, in a unique socioeconomic and political environment. Traffickers are taking advantage of recent political and economic developments in Romania due to the fall of Communism and enlargement of the European Union. Travel has become more accessible: borders are more porous, especially inside the Schengen Area where borders are practically nonexistent. It is a country used by traffickers primarily as a base for the recruitment of victims, as well as for transit, thus encompassing two of the main stages of human trafficking.

The indications are of a category of perpetrators who are increasingly mobile and adaptable, constantly changing their operations to counter public policies that are meant to put a stop on their activity. They are well connected to the environment from where the victims are recruited, sometimes even former victims themselves. Their tendency to pool their resources in organized crime has lead to several organizations that integrate the whole trafficking process (recruitment, transportation, exploitation) as well as other criminal activities, thereby fitting the description of major criminal organizations.

Romania will soon become member of the European Union, and obligations to curb trafficking are increasingly resonating with decision makers and polity. A relatively new legal and institutional framework was put in place in 2001 and is undergoing constant improvement to address the pervasiveness of trafficking. Consequently, in addition to delineating the profile of traffickers the paper will attempt an assessment of the effect that the law and institutional response have had on the activity of traffickers as well as include in the equation the influence of social norms on this type of criminal behavior.

My analysis includes previous scientific research, reports and publications. I then analyze the statistical data, and include the perspective of members of law enforcement agencies, inter-governmental and nongovernmental organizations on the profile of the trafficker. My objective is to include other regulating factors that affect trafficking operations in Romania acknowledging the role and contribution of those who are engaged in the criminalization of trafficking.

PART 1 ANALYSIS AND METHODS OF THE STUDY

Trafficking in human beings is becoming one of the highest-profile and most controversial social manifestations of the 21st century. The high-profile of trafficking relates to its implications for all aspects of humanity, including the social structure, economy, and legal systems, nationally, regionally, and internationally. On the other hand, the controversies revolve around the scope of the phenomenon, the response of civilization to this form of modern slavery and, most importantly, the definition of what constitutes trafficking.

Victims of trafficking are usually vulnerable due to their gender, age, ethnicity, or social background. Economic discrepancies, unemployment, disruption of the social fabric in aspiring democracies or failed states favor the trend, although no single cause can be held accountable. Consequently, human trafficking benefits from increased attention and priority from policy makers¹ and academia, leading to a more generous allocation of economic resources to the area and to a developing core of research literature on the topic.²

Since 1994, considerable effort has been put into assessing the real scope of trafficking in human beings.³ The most frequently used estimation in numbers of victims is that of the U.S. State Department, acknowledging in its 2005 Report that *600,000 to 800,000 persons are trafficked across international borders*,⁴ exploited, sold, and tricked

¹ Gail Kligman and Stephanie Limoncelli, *Trafficking Women after Socialism: To, Through, and From Eastern Europe*, 12 Social politics 1 (2005) at 120.

² FRANK LACZKO AND ELZBIETA GOZDZIAK, DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY, 14 Offprint of the Special Issue of International Migration Vol. 43 (1/2) (2005), .

³ *Id.*, at 11.

⁴ U.S. DEPARTMENT OF STATE'S TRAFFICKING IN PERSONS REPORT 2005 AND TRAFFICKING VICTIMS PROTECTION ACT (hereinafter US TIP Report): available at <http://www.state.gov/g/tip/rls/tiprpt/2005/>, last

into situations from which there is often no escape. The statistics are debatable, as in 2004 the same source claimed that 800,000 to 900,000 persons were being enslaved each year.⁵ Frank Laczko from the Research and Publications Division of the International Organization for Migration (hereinafter “IOM”) explains:

The existing data are most often either general estimates created on the basis of unclear methodologies, or administrative data kept by the various involved authorities or organizations on the victims they assist. The latter, fragmentary datasets cannot be collated into national figures nor compared at international level.⁶

Regarding the counteracting policies, Kligman and Limoncelli emphasize the importance of comprehensive strategies: “International and country initiatives must address both ‘push’ factors (e.g., poverty and gender discrimination in sending countries) and ‘pull’ factors (e.g., the sex trade as a lucrative business for traffickers combined with ready underground sex markets in the West and across the globe).”⁷

Focusing on the classification of trafficking is essential for a research paper that analyzes the activity of human traffickers; instrumentally, classification is a valuable tool for determining who is actually a trafficker as opposed to an individual who only facilitates irregular migration and does so without employing any form of coercion or deception—as is the case of human smugglers. The need for a clear distinction between trafficking and some forms of illegal migration, such as the smuggling of migrants, is probably the most important clarification needed, as emphasised by the International

visited 05/01/2006. The Report mentions that out of the estimate figure 80% are women and up to 50% are children.

⁵ US TIP Report 2004 as cited in DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY, Offprint of the Special Issue of International Migration Vol. 43 (1/2) 2005, ed. Frank Laczko and Elzbieta Gozdziak, p. 15

⁶ LACZKO AND GODZIAK, *supra* note 2, at 15.

⁷ Kligman and Limoncelli, *supra*. note 1, at 130.

Organization for Migration (hereinafter IOM).⁸ While in some cases the difference between the two criminal behaviors is blatantly evident, it is generally difficult to objectively differentiate between cases of facilitated unlawful migration and human trafficking.

When seeking a legal definition of trafficking, we should bear in mind that trafficking of human beings carries all the material and psychological characteristics of slavery. Terminologically, though, for clear and largely accepted⁹ classification purposes, the paper will use the taxonomy conveyed by the U.N. Protocol¹⁰ to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime.¹¹ However, to evoke only one of the critical observations found in the literature, the UN Protocol definition remains silent on cases where trafficking reaches a higher degree of complexity, as in the case of trafficking under the guise of international adoptions of children. I believe we

⁸ IOM, MIGRANT TRAFFICKING AND HUMAN SMUGGLING IN EUROPE: A REVIEW OF THE EVIDENCE WITH CASES FROM HUNGARY, POLAND AND UKRAINE, 45 (2005).

⁹ That is not to say unanimous. For a detailed description of the debate on the definition of trafficking in human beings, see DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY, Offprint of the Special Issue of International Migration Vol. 43 (1/2) 2005, edited by Frank Laczko and Elzbieta Gozdzik at 10.

¹⁰ Full text available at: <http://www.ohchr.org/english/law/protocoltraffic.htm> (last visited 05/01/2006).

¹¹ Art 3 of the Protocol includes what is one of the most commonly used definitions of trafficking:

“a) *Trafficking in persons* shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs

b) The consent of a victim of trafficking in persons to the intended exploitation set forth in paragraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered .trafficking in persons. even if this does not involve any of the means set forth in subparagraph (a) of this article;” the protocol supplements the UN Convention on Transnational Organized Crime adopted by the UN General Assembly in November 2000. The Convention and its two protocols (herewith referred to as the Palermo Convention and Protocols) were signed by all the countries in the South Eastern Europe in December 2000 at a high-level conference in Palermo, Italy.”

should not discard study cases describing such practices, as their outcome is sometimes one of the most tragic and certainly worth combating.

Considering the causes and favorable conditions for trafficking in Romania, recent empirical research emphasizes the fact that, in addition to gender, age, ethnicity, economic, or social background, most of the victims are vulnerable due to their “strong desire to seek a job abroad and also from a propensity to break official and informal rules.”¹²

The literature is convergent when explaining that economic and social hardships, combined with the corruption of public authorities, a lack of enforcement (especially in the border areas), and a distorted perception of the opportunities provided by the Occident encouraged or induced numerous Romanians to follow the massive East-West migrating trend that Europe has witnessed after the fall of the Iron Curtain.¹³ The fairly large number of migrants produced enough success stories to strengthen the drive towards emigration, especially among the young generation, who perceive leaving Romania as a win-win situation: escaping a society that had nothing to offer in terms of jobs and personal accomplishment and, simultaneously, undergoing an adventurous, profitable journey that will confer social legitimacy on them, once they return, having prospered.

Certain obstacles to migration favor trafficking. Even after the exemption from the visa regime in 2000, Romanians traveling to countries that are members of the Schengen Area can only do so for tourist purposes. Working legally in these countries is still

¹² IOM, BUCHAREST OFFICE, WHO IS THE NEXT VICTIM? VULNERABILITY OF YOUNG ROMANIAN WOMEN TO TRAFFICKING IN HUMAN BEINGS 56 (2003).

¹³ GHEORGHITA MATEUT, NICOLETA STEFAROI, VIOLETA E. PETRESCU, AT AL, TRAFICUL DE FINITE UMANE. INFRACTOR. VICTIMA. INFRACTIUNE (THE TRAFFIC OF HUMAN BEINGS. PERPETRATOR.VICTIM. CRIME.) 12-34, (Asociatia Magistratilor Iasi and Asociatia Alternative Sociale Iasi) (2006).

subject to special permission granted by the respective state. Arranging or buying these documents, organizing transportation and securing a job and a place to stay abroad is therefore required. The presence of individuals or organized criminal groups offering to service illegal migrants provides the catalyst for the process. Thus, the prerequisites for trafficking are met.

It is important to understand how interaction occurs between those lacking resources and correct information about work opportunities abroad and the intermediaries who promise to arrange safe passage and a job,¹⁴ who later reveal a hidden agenda.¹⁵ Having had the occasion to meet (and assist) in my professional activity as a counsel to both abused and abuser, I think it is fundamental for a complete counteractive policy to assess not only the motivation and background of the victims, but also the underpinnings of an attitude completely lacking any trace of humanity that characterizes the modern slave trader.

1.1 RESEARCH OBJECTIVES

The objective of my research is to better understand the underlying and facilitating conditions for the trafficking of human beings in a transitional democracy and developing economy, such as Romania. In my research I will focus on analyzing the traffickers, the driving force behind this crime. My aim is to provide an insight, based on empirical

¹⁴ According to the authors of VULNERABILITY TO TRAFFICKING IN HUMAN BEINGS OF YOUNG FEMALE POPULATION IN ROMANIA –MAIN FINDINGS OF THE SOCIOLOGICAL RESEARCH, 5-6 (IOM Office in Romania) (2001); “Amazingly, forced migration is rare, and it occurs when a woman is kidnapped and taken over the border by force or when traffickers have a contract with the family and a girl or a woman is taken abroad to earn back the money lent to the family”

¹⁵ I do not exclude the existence of facilitators to illegal migration whose actions do not meet the criteria for activities that constitute trafficking.

research on the activity and incentives of traffickers, and argue in support of the importance that such an approach can play in designing effective public policies to deter and ultimately eliminate the activity. This paper is exploratory in nature, due to time and resource constraints. I seek to explain why in-depth profiling of the individuals involved in trafficking deserves attention and bring research closer to an understanding of the real dimensions of the phenomenon. I ultimately attempt to delineate trafficking operations in Romania and to assess the impact that legislation has had on these operations since its adoption in 2001.

The profiling of the traffickers employs interdisciplinary means and concepts defined in fields such as law, sociology, economics, and psychology. Of particular interest for the study are several key aspects:

- national, ethnic, and geographic profiles (e.g. do traffickers originate from the same regions as their victims ?);
- incentives¹⁶ received and
- the division of labor among traffickers (recruiters, transporters, and exploiters).

In addition to profiling, an important related issue is the *modus operandi* used by traffickers. The overwhelming majority of published research considers deceit to be traffickers' main recruitment tool. Using data collected through the interviews¹⁷ with officials of law enforcement institutions and the IOM office in Bucharest to I demonstrate

¹⁶ When targeting other crimes, such as drug trafficking, a similar approach was used. See MONEY FROM CRIME, A STUDY OF THE ECONOMICS OF DRUG DEALING IN WASHINGTON, D.C., (RAND –Drug Policy Research Centre).(1990),

¹⁷ The interviews were conducted between December 19, 2005 and January 10, 2006.

that recruiting, transportation, and exploitation techniques are increasingly changing, becoming more subtle and difficult to identify.

Regional reports of intergovernmental institutions, especially in reference to Southeast European countries and the Western Balkans, relate the opinion that perpetrators often act with impunity, due to the lack of appropriate regulations¹⁸ and institutions to combat them.¹⁹ Overall, I argue instead that the current national legislation in Romania is modern and conforms to international standards, as can be seen by comparing it to the U.S. Model Law against trafficking in human beings.²⁰

However, I emphasize the fact that although a strong legal and institutional framework addressing trafficking exists, continuing trafficking demonstrates the need to explore the legal and institutional loopholes perpetrators use to escape prosecution as well as effective alternative methods of prevention and punishment. I use concepts such as the “deterrence curve”²¹ and the “effectiveness of law,”²² to demonstrate that there is a certain threshold of efficiency in applying legally-enforceable measures.

¹⁸ The conclusion derived from the interviews conducted with Romanian policemen and judges who preside over human trafficking cases is that, although a legal framework against trafficking is in place, other deficiencies in the system, such as the ineffective protection of witnesses, account for the low rate of convictions compared to prosecutions.

¹⁹ BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE 2004 - FOCUS ON PREVENTION IN: ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, ROMANIA, SERBIA AND MONTENEGRO, AND THE UN ADMINISTERED PROVINCE OF KOSOVO. (United Nations Children’s Fund; United Nations Office of the High Commissioner for Human Rights; Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights) (2004).

²⁰ Available at http://www.humantrafficking.com/humantrafficking/toolkits_ht3/DOS_Model_Law, (last visited 01/25.2006).

²¹ See Lawrence Friedman, *The deterrence curve*, in Law and Society: Readings and Materials, (Macaulay, Friedman & Stokey), (2001) at 105.

²² Susan Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?* 2 LOYOLA UNIVERSITY CHICAGO INTL. L. REVIEW, , (2005), Thomas Jefferson School of Law.

I also argue that Romania is a “hot spot,”²³ where several diverse, underlying causes combine to favor human trafficking; therefore, an equally complex combating mechanism must be implemented.²⁴

Finally, it is worth mapping out the incentive mechanisms in place.²⁵ In my analysis I do not limit myself by conceding that growing markets for prostitution and cheap labor provide opportunities for profit to those who engage in trafficking and law remains the only factor to fight the criminal act. In broadening the research, it is my intention to use and analyze the relevance of the models explaining the process of regulating behavior.²⁶

1.2 RESEARCH METHODOLOGY

As both research and policies in the field of combating human trafficking focus on an illegal and multifaceted criminal behavior, their accuracy has not been accepted without disagreement. The disapproval is primarily directed at the methodology employed in collecting data and the effectiveness of the legislative enforcement of enacted policies.²⁷ Tyldum and Brunowskis explain that “Research in the field of human trafficking is

²³ Used by Liz Kelly in YOU CAN FIND ANYTHING YOU WANT: A CRITICAL REFLECTION ON RESEARCH ON TRAFFICKING IN PERSONS WITHIN AND INTO EUROPE IN DATA AND RESEARCH ON HUMAN TRAFFICKING: A GLOBAL SURVEY, Offprint of the Special Issue of International Migration 240, (Frank Laczko and Elzbieta Gozdzia) Vol. 43 (1/2) (2005).

²⁴ For instance, numerous studies advocate an economic approach and solution. See Susan Tiefenbrun, *Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution* T. JEFFERSON L. REV. 161 (2002), reprinted in WOMEN AND THE LAW 17 (Carol H. Lefcourt, ed., 2003) and B. Anderson and J. O. Connell Davidson, *Is trafficking in human beings demand driven? A multi-country pilot study.*, *Migration Research Series*, no. 15, available at: http://www.iom.int//DOCUMENTS/PUBLICATION/EN/2003 .mrs_15_2003.pdf, IOM, Geneva, (last visited 01/28/2006).

²⁵ RAND, *supra* note 18, at 45.

²⁶ Lawrence Lessig, *The New Chicago School*, 5 The Journal of Legal Studies, (1998)

²⁷ Susan Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?* *Loy. Int'l L. Rev.*, (2005) Available at http://ssrn.com/abstract_id=818224.

difficult for many reasons. Perhaps the most challenging factor is that most of the populations relevant to the study of human trafficking, such as prostitutes, traffickers, victims/survivors, or illegal immigrants constitute so-called *hidden populations*.²⁸

Overall, my paper uses a mixed-methodology approach. Both qualitative and quantitative methods are necessary because the use of only one method may provide partial conclusions that are not inclusive of all of the phenomena under analysis. Each method has limitations depending on the nature of the subject. The criminal activity under scrutiny is difficult to evaluate in its true dimensions by its very definition, although estimates are published every year by governmental and non-governmental bodies, which, as I have noted, are questionably accurate.

Quantitative methods

A complex question, such as the one presented, has to be addressed by using quantitative research methodology, employing the interpretation of statistics and surveys conducted by intergovernmental organizations active in the field, NGOs, and state institutions. The statistical data provides information regarding the estimated dimensions of the trafficking business with respect to the number of victims assisted, dismantled networks since the implementation of new legislation and institutions, and the number of individuals accused, prosecuted, and convicted for trafficking.

Documents released by intergovernmental institutions were used to compare statistical data in the field of trafficking, as I will appraise their reliability and usefulness

²⁸ GURI TYLDUM AND ANETTE BRUNOVSKIS DESCRIBING THE UNOBSERVED: METHODOLOGICAL CHALLENGES IN EMPIRICAL STUDIES ON HUMAN TRAFFICKING IN DATA AND RESEARCH ON HUMAN TRAFFICKING: A Global Survey, Offprint of the Special Issue of International Migration Vol. 43 (1/2) 18, (Frank Laczko and Elzbieta Gozdziaik) (2005). According to the authors, „a hidden population is: “a group of individuals for whom the size and boundaries are unknown, and for whom no sampling frame exists”.

in empirically-based research.²⁹ I hope that objective input will be achieved with the help of independent reports of national and international nongovernmental organizations³⁰ and published empirical research in the field.³¹

I did not personally design and collect surveys and statistical data due to time constraints, but the sets of data that were used underwent serious evaluation of their pertinence and usefulness to the study; I drew primarily on collections performed by IOM Bucharest, reputed poll analysis institutions as well as internal statistics of the Romanian Police. As the current project is a pilot, I hope that a more complex study will allow the use of more elaborate data collection methods.

Qualitative analysis

Concomitantly, the paper's exploratory purpose was addressed using qualitative means: interviews and case studies (supplemented by observations of the activity of institutions/programs aimed at preventing and combating trafficking and descriptions of the operating patters of several networks of traffickers); the interviews sought assessment of the situation as seen by:

- a) public officials and professionals involved in preventing and combating trafficking (such as policemen at the management level and operational/undercover agents in the General Directorate against Organized

³⁰ Such as those released by: La Strada Foundation, *Migration Dimension*, available at <http://free.ngo.pl/lastrada/page4.html>, or Alternative Sociale Report www.alternativesociale.ro

³¹ F. LACZKO ET AL., TRAFFICKING IN WOMEN FROM CENTRAL AND EASTERN EUROPE: A REVIEW OF STATISTICAL DATA., IN, NEW CHALLENGES FOR MIGRATION POLICY IN CENTRAL AND EASTERN EUROPE, (IOM and ICMPD) (2004).

Crime, The General Inspectorate of Border Police, The Institute for Crime
Preventions, The Southeast European Cooperation Initiative Centre³²);

- b) members of the judiciary that preside over trafficking cases;
- c) members of the Intergovernmental Group for Preventing and Combating
Trafficking;
- d) assisted victims of trafficking in human beings, using the personnel of
shelters where assistance is provided as intermediaries.
- e) activists and staff of NGOs and international intergovernmental
organizations (such as the International Organization for Migration, The
Alternative Sociale Association)

The interview protocol presented in the Annex of the paper employed open-ended questions, seeking to determine several general traits of trafficking networks, such as the geographic, economic, social, and educational backgrounds of traffickers, their incentives, their networks' structure, the difficulties they encounter and how they overcome the legislative, institutional, or even topographic barriers to their activity.

Furthermore, sensitive procedural and ethical issues may have influenced the process of collecting this qualitative information. The use of taping devices during interviews with public officials and state agents involved in combating trafficking was not

³² The The Southeast European Cooperation Initiative Centre (hereinafter SECI) is the regional centre for combating transborder crime-- established by 12 countries in Central and South East Europe: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece,,Hungary, Macedonia, Moldova, Romania, Serbia and Montenegro, Slovenia, Turkey

permitted. Some information provided was classified or confidential and therefore not allowed to be published since disclosure might prove to be harmful for undercover agents, existing operations, and victims.

In addition, information provided by victims may be inexact, if not totally biased, as a result of denial and or trauma. At times, the attitudes of officials seemed overly supportive of the current state policies and legislation, without taking into account the aspects that deserved criticism. On the other hand, NGO members and IOM staff seemed prone to exaggerating the dimensions and violent manifestations of the phenomena.

I obtained additional data through using case studies made public by state institutions and the media, including written and audiovisual data. As a supplementary source of data, I used public records and judicial decisions in the cases that were prosecuted and resulted in a conviction in Romania.³³

Before discussing my findings based on the data and decisions, I will explain that I am not judging the legal merit of the decisions, but rather I am extracting valuable information regarding the prosecuted offenders. One has to keep in mind though, when analyzing the results, that the ratio of convicted traffickers to the number of traffickers at large is unknown. It can also be argued that the criminals who were arrested and prosecuted only comprise the low ranks of the operations, who lacked the skills to be at the top (and safe) part of the business; therefore, they do not represent the most important actors to be observed.

³³ The Romanian Intergovernmental working group on the trafficking of human beings reported a total of trafficking convictions and sentences in 2004 of 103, up from 49 in 2003. No data are available for 2002. Recent statistics, analyzed in Part 4 indicate an increase in convictions in 2005 to almost 180 cases.

PART 2 EXPLORATORY DESCRIPTION OF THE PROFILE OF TRAFFICKERS AND PRESENT DAY TRAFFICKING OPERATIONS

Designing an effective public policy that will counteract trafficking of humans has to take into account all of the actors that play a role in the phenomenon. A preventative focus is needed not only with regard to the victims, but should also target the process through which someone becomes and acts as a trafficker. In order to prevent traffickers' behavior we must know more about their social and economic backgrounds, their psychological profiles, and the incentive mechanisms that contribute to their involvement in this form of contemporary slavery. So far, as Laczko admits:

There has ... been a tendency to focus on studying the victims, and less attention has been given to studying the traffickers (emphasis added), the clients, and law enforcement agencies who may be involved in different ways in creating the conditions under which trafficking can flourish.³⁴

My study's primary objective is to advocate for a better understanding of who the traffickers really are, how trafficking operations work;³⁵ this information is needed to design and implement legal and institutional measures that have a genuine deterring effect on traffickers.³⁶ The task is not easy, as the study attempts to describe a category of

³⁴ LACZKO, *supra* note 2 , at 14

³⁵ It would be too far fetched to assert that this is a comprehensive study for the limitations are numerous. Nonetheless, this pilot project may prove to be a worthy starting point that builds upon previous reports, most of them anecdotal or journalistic in character and aspires towards a more empirically based approach. It is not to say that I ignore the value of journalistic initiatives to tackle the phenomena; see for example Paul Radu, David Quin, *Raport al Centrului Român pentru Jurnalism de Investigații privind traficul de ființe umane în Europa de Sud Est*, IWPR, London, 2004.

³⁶Recent opinions show that existing legal and institutional initiatives, have not been comprehensive, allowing traffickers to continue their work by adapting constantly in terms of targeted victims, recruitment approaches, and transportation routes. See, among others, Helga Conrad, OSCE Special Representative on Combating Trafficking in Human Beings in TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE 2004 - FOCUS ON PREVENTION IN: ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, ROMANIA, SERBIA AND MONTENEGRO, AND THE UN ADMINISTERED PROVINCE OF KOSOVO. REPORT BY BARBARA LIMANOWSKA; (United Nations

perpetrators are resistant to talking about their hidden ways and their profile is greatly dependent on the end-result of trafficking.³⁷ Existing literature focuses more on the trafficking of women and children for sexual exploitation and less on trafficking for labor purposes, begging, or trafficking for organs. With the exception of the latter form of trafficking, the paper addresses all of the above mentioned forms of trafficking, as the boundaries between them are so easily trespassed in real life.

When a recent study attempted to understand how average girls in Romania perceive the profile of the trafficker, the answers approximated the description: “a young, rich, unmarried, good looking, male stranger.”³⁸ When the same set of questions was directed towards the sample of girls considered as being “vulnerable” to trafficking, differences were noticed: “They believe he or she is poor (26 %) and married (36 %). They also have a higher tendency to believe that the trafficker is a good looking male (60 % of the vulnerable group versus 53.3 % of the total sample).”³⁹

Table 1

	Think the trafficker is poor	Think the trafficker is married	Think trafficker is a good looking male
Average girls	20%	30%	53.3%
Vulnerable girls	26%	36%	60%

Children’s Fund; United Nations Office of the High Commissioner for Human Rights; Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights) at IX.

³⁷ The research will refer primarily to criminals involved in trafficking for sexual purposes, traffickers of minors and traffickers of victims used for labor and begging. Insufficient data exists for trafficking in organs, a modality that has perhaps received the least amount of attention from regulators and researchers.

³⁸ SEBASTIAN LAZAROIU, MONICA ALEXANDRU WHO IS THE NEXT VICTIM? VULNERABILITY OF YOUNG ROMANIAN WOMEN TO TRAFFICKING IN HUMAN BEINGS, 60 (IOM) (2003).. The authors of the study differentiate between average girls and girls who are at risk of being trafficked based on the following indicators: social status, intention to migrate, awareness of risks associated with migration, previous migration experience, perceived migration opportunities, values and attitudes, level of trust in strangers, family environment.

³⁹ *Id.* at 61

The authors of the study conclude: “Should a trafficker not match this typical profile, the risks for the vulnerable girl to accept a job offer will increase.”⁴⁰ Clearly there needs to be an in-depth analysis of the gap, actual rather the perceived relating to the characteristics of traffickers and the operations they run in Romania. This will hopefully diminish the confusion and put down misperceptions that are associated with the profile and activity of a trafficker.

In the Part that follows I will present the available data referring to the age, socioeconomic background and gender distribution among human traffickers, mostly published in reports of governmental or intergovernmental organizations that are fighting the phenomenon. In addition, information I acquired through personal experience or collected through interviews with Romanian police officials, members of IGOs, and NGOs will help shed light on their modus operandi and criminal incentives.

Comparatively studying trafficking operations in countries of South Eastern Europe and the Balkans confirms the similarity in causality and the transnational character and the homogenous traits of trafficking operations in the region; for this reason, I refer to other countries in the region.⁴¹.

2.1 CURRENT CHARACTERISTICS OF THE TRAFFICKING ACTIVITY IN ROMANIA

2.1.1 FORMS OF TRAFFICKING

When attempting to analyze the profile of the trafficker and the operations they run, a comprehensive approach should target both the organized crime component of their

⁴⁰ *Id.* at 61.

⁴¹ IOM, *Migrant Trafficking and Human Smuggling in Europe*, A review of the evidence with case studies from Hungary, Poland and Ukraine.

operations as well as individual cases of trafficking. Insufficient data does not currently allow us for the moment to assert whether organized or individual operations are responsible for trafficking the majority of victims. Numerous individuals working on their own could have the same criminal effect as one or two well established trafficking networks. To a large extent, governmental resources are dedicated to tracing the activities of organized crime groups, who are judged to be more dangerous and extreme in violent behaviors.⁴² The major destabilizing role played by trafficking is acknowledged by the researchers from the American Bar Association’s Central European and Eurasian Law Initiative (Hereinafter “ABA CEELI”):

Traffickers, who are often times part of international criminal organizations of varying size and sophistication, have capitalized on the economic as well as political instability of certain regions, such as Asia, Central and Eastern Europe, and Eurasia.⁴³

Because of operational necessities, trafficking of humans is often associated with money laundering, drug trafficking, document forgery, smuggling and as a matter of recent development with terrorist networking; succinctly, the ABA CEELI assessment tool⁴⁴ indicates that trafficking in persons has proven to be a “source of strength for organized crime.” The existing literature,⁴⁵ as well as reports of agencies involved in counter-trafficking,⁴⁶ converge towards a classification that contains three main actors: major criminal organizations, medium-size trafficking rings, and individual traffickers.

⁴² Interview with Dan Hossu, chief of Office for combating trafficking in migrants within the General Inspectorate of Police (Jan. 4, 2006).

⁴³ ABA CEELI, AN INTRODUCTION TO THE HUMAN TRAFFICKING ASSESSMENT TOOL :BASED ON THE PALERMO PROTOCOL 45 (2005), available at <http://www.abanet.org/ceeli/>, last visited 04/30/2006.

⁴⁴ *Id.*, at 47.

⁴⁵ Among others A. SCHLOENHARDT, ORGANIZED CRIME AND THE BUSINESS OF MIGRANT TRAFFICKING, 13-14 (Australian Institute of Criminology, Canberra) (1999), Andrea Marie Bertone. *Sexual Trafficking in Women : International Political Economy and the Politics of Sex.* 18Gender Issues, 1 (2000) at. 4-22

⁴⁶ EUROPOL report, Romanian Intergovernmental Group against trafficking

Major criminal organizations

A major criminal organization is based on a single command structure (an individual, or, as study cases will show, a family or close-knit group) that controls an illegal transnational operation comprising several organized crime structures that act as “cells” of a single criminal body. In the case of human trafficking criminal organizational structure allows complete control and coordination of all the trafficking stages, beginning with recruitment and ending with the exploitation of the victim.

Integrated international trafficking networks are the most pervasive type of criminal organizations and are difficult to dismantle as they allow the real controllers to stay away as far as possible from the criminal act and are able to quickly replace any component that has been brought down by law enforcement agencies.⁴⁷ They benefit from the modern and sophisticated logistics: means of transportation, counterfeit documents, cash availability, and undetected illegal routes through national borders. Comparisons with mafia-type criminal networks engaged in cross-border crime that encompass⁴⁸ or use similar techniques with trafficking can prove useful⁴⁹ in a better understanding of the trafficking operation⁵⁰.

⁴⁷ Interview, *supra* note 42:” Components of the same trafficking operation do not know each other. If one is brought down it cannot lead to the dismantling of the others. The pyramidal structure allows the boss to stay away from the criminal operation thus he cannot be charged with anything, often asserting by force their influence to keep the operation together”

⁴⁸ D. Kyle and R. Koslowski, *Russian transnational organized crime and human trafficking*, in *Global Human Smuggling: Comparative Perspectives*, Finckenauer, (The Johns Hopkins University Press), (2001).

⁴⁹ A comparative study with other operations/other types of trafficking in the region or in connection with will be outlined with the help of: Estermann, J., and R. Zschokke, *The organizational structures of trafficking in women: the example of Switzerland.*, in J. Estermann and R. Zschokke, *Organisationsstrukturen des Frauenhandels am Beispiel der Schweiz*, Orlux, (2001), and

IOM *Changing Patterns and Trends of Trafficking in Persons in the Balkan Region* (2004), available at , <http://www.iom.int/iomwebsite/Publication/ServletSearchPublication?event=detail&id=3831> (last visited 05/01/2006).

⁵⁰ In the case of large criminal networks trafficking in human beings is not the only illegal activity as they are engaged in all the illegal activities that will bring profit: racketeering, narcotics, corruption and illegal gambling.

Although sometimes academic community doubts the existence of individuals or families powerful enough to coordinate such big scale operations in the region,⁵¹ recent evidence shows that in Romania the past 5 years have witnessed the establishment of at least three networks that can easily aspire to the status of major criminal organizations

A recurring name in the interviews and the Romanian media is Ioan Clamparu, nicknamed “Pighead” whose network spreads from the northern part of Romania to Germany, Holland and Spain where he is currently at large. 14 cronies of his were arrested in 2005 in Romania, Spain and the Czech Republic; his resources allowed him to offer rewards of several hundreds of thousands of dollars for the killing of policemen and prosecutors who are investigating the case.⁵²

A second example of trafficking boss is Vlad Costel, nicknamed “Taganu” a 51 year old originating from Slatina who was extradited from Spain on the 21 of March 2006. His network recruited 800 Romanian girls (mostly minors) who were exploited in 6 Spanish night clubs. His bank accounts were estimated at \$ 400,000.

A third international network coordinated by Cosmos Tanase was recently put under indictment. His operation trafficked hundreds of girls from seven departments of Romania to Spain (Madrid and Malaga) and Germany. In Germany his criminal organization was also indicted for car high jacking on the freeways and organizing of networks of minors that were used in robberies. His clan owned seven luxury real estate properties in Iasi, as well as other important assets in Braila and Constanta Romania, as well as Spain and Germany. In his main residence investigators found three luxury cars,

⁵¹ JOANNA APAP, PROTECTION SCHEMES FOR VICTIMS OF TRAFFICKING IN SELECTED EU MEMBER COUNTRIES, CANDIDATE, AND THIRD COUNTRIES , (IOM) (2003)

⁵² Paul Cristian Radu, *Jurnalul National* Newspaper, , issue 23rd of January 2006.

3.5 kg of jewelry and important sums in cash. Although six of his collaborators were arrested in recent interventions in Romania and Spain, Cosmos Tanase and his right hand Tanase Belgian have managed to escape arrest and an international warrant was issued for their arrest.

Medium-size independent trafficking rings

As part of a decentralized trafficking network several distinct criminal organizations establish complex criminal relationships that allow the completion of all the tasks from recruiting through transportation to exploitation. As opposed to the major criminal trafficking networks, the rings are independent one from another, usually limiting themselves to a particular component of trafficking (e.g. recruitment, transportation, exploitation) and therefore to a particular geographical area (e.g. border areas). The relationship is now one of collaboration as opposed to subordination in the case of mafia type trafficking when all the different stages of trafficking obey to a single command. This model maintains the same ability to recuperate seen in large networks, a fall of one or the components rarely influencing the rest of the network. These small groups of well-organized criminals usually specialize but are less professional and complex than the internationally operating trafficking networks and they are limited in the service they offer⁵³. Overall, the network comprised of several trafficking rings is more heterogeneous as the common interest and lack of resources pools together individuals of multiple

⁵³ Interview, *supra* note 42: “The small-scale network usually works in the following manner: A club owner in a destination country needs some new women for his club. Through contacts with people in the business he replaces or buys new women. The contacted person recruits the woman, accompanies her to the destination and delivers her.”

nationalities; for example, recruiters and transporters are more likely to have the nationality of the victim, whereas the exploiters are nationals of the country of destination.⁵⁴

Individuals

In addition to the interviews performed, I obtained qualitative data on individual traffickers with the help of thirty court files made public by the Bucharest Tribunal or published in case books. The files show that at least with regard to convictions individuals primarily acted as traffickers, without necessarily being members of a form of organized crime. The conclusions could be skewed to some extent by the inability of the prosecutor to demonstrate during the trial the involvement of a form of organized crime; nonetheless, we should at least take into account Skeldon's hypothesis that "individual perpetrators can also be important agents."⁵⁵ Individuals especially contribute to trafficking when acting as recruiters and actors in internal trafficking or occasional smugglers/traffickers in the border regions.

A specific group of individuals in close connection with the activity of traffickers deserves increased attention: holders of governance positions (politicians, policemen, members of the judiciary, diplomatic missions) are often accessories to the crime by ignoring their obligation to report on ongoing illegal activity, providing falsified travel documents, or warning traffickers of an imminent intervention of the law enforcement agencies. The 2005 U.S. State Department TIP report noted:

⁵⁴ One case of such network is the clan of Vasile and Nutu Balint, nicknamed Camataru, controlling almost exclusively internal trafficking in the Bucharest area. The main members of the clan were arrested in 2004 and were convicted for 15 years in prison. The accusations included human trafficking, pimping, assault.

⁵⁵ R Skeldon *Trafficking: A perspective from Asia* 2000 as cited by SEBASTIAN LAZAROIU AND MONICA ALEXANDRU IN WHO IS THE NEXT VICTIM? VULNERABILITY OF YOUNG ROMANIAN WOMEN TO TRAFFICKING IN HUMAN BEINGS (IOM), (2003), at 61.

In 2004, Romania's lead police anti-corruption agency investigated 81 police officials implicated in trafficking-related corruption; authorities imposed administrative sanctions on 31 officials, dismissed ten officials, and sent 40 cases forward for prosecution. Additionally, the Anti-Corruption National Prosecutor's Office reviewed a total of ten cases of suspected trafficking-related corruption in 2004.⁵⁶

While Transparency International's Corruption Perception Index⁵⁷ continues to rank Romania eighty-seventh the world with a score of 3.0,⁵⁸ cases of official involvement with trafficking networks continue to be reported by the media. For example the daily newspaper Gandul relayed:

Prosecutor A.F. chief of the Organized Crime and Anti-drug Service Giurgiu has been investigating since 2003 the case of a trafficker in human beings, involved with a network that transports victims to Spain. ... A.F. traveled with the accused Costel Popa, nicknamed Abureala to Switzerland where they spent the 2005 New Year's Eve. A.F. was accompanied by the military prosecutor N. C. and a business partner of Abureala...A.F. confirms having spent the New Year's Eve in Switzerland with the accused whose case he was assigned to...⁵⁹

An equally serious case of government corruption was revealed in January 2006 when I.T., the chief of the Caras Severin Direction of Information and Internal Protection,⁶⁰ was found during a police raid together with the members of a trafficking clan in a night club where young girls were sequestered and forced into prostitution.

... Mr. T was screaming with his face to the ground and waiving his badge....together with a bunch of lowlifes... Alexandra (a.n. the girl whose disappearance triggered the police raid) was found in a closed room together with

⁵⁶ Available at <http://www.state.gov/g/tip/rls/tiprpt/2005/46616.htm>

⁵⁷ According to Transparency International:

[T]he Corruption Perceptions Index (CPI) ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of business people and analysts from around the world, including experts who are resident in the countries evaluated.

⁵⁸ A slight improvement as in 2004 the score was 2.9. A score of 5.0 is the number Transparency International considers the borderline figure distinguishing countries that do and do not have a serious corruption problem. The rankings are available at: <http://www.infoplease.com/ipa/A0781359.html>

⁵⁹ Translation by the author. Article published in the national daily newspaper Gandul, 20th of October 2005 issue.

⁶⁰ Special Direction within the Ministry of Administration and Interior among whose objectives is also the surveillance of professional integrity of the members of the police.

other four girls, three from Hunedoara and one from Galati. Two of the girls told the investigators that they were sold just like Alexandra for \$100 by Radu, a young man from Hunedoara, to the owner of the club and chief of the Stanescu clan. In the club they were forced to dance and work as prostitutes. In the club the police found the identity documents of the victims, 1,020 Euro, a gun ...⁶¹.

2.1.2 TRAFFICKING PHASES AND METHODS EMPLOYED

Irrespective of the form of trafficking, whether it is organized or just an individual crime, trafficking is based on three fundamental phases: recruitment, transportation, and exploitation of the victim. Each of them requires special skills from the trafficker and with each phase, the trafficker-victim relationship differs. To cope with these operational changing relational dynamics, traffickers specialize and a natural “division of labor” occurs.⁶² Each phase of trafficking activities corresponds to characteristics of the individuals involved, specifically, gender and age, socio-economic status, and educational background.⁶³

Recruitment

Recruiters and procurers are the people who first come in contact with the victim, and are therefore most likely to have the same nationality as the victim as well as the same social background and circle of acquaintances (if not family). As to the gender distribution, the data collected by IOM office in Bucharest by surveying the assisted

⁶¹ Article published in the national daily newspaper Jurnalul National, 6th of March 2005. The case is the more eloquent as the city of Caras Severin is located near the border with Serbia and Montenegro a route intensively used by traffickers, especially during the conflict in Kosovo.

⁶² All ten interviews confirmed the traffickers’ tendency to specialize in accordance with the three trafficking phases: recruiters and procurers, transporters and providers of safe houses, exploiters- owners of brothels, sweat shops, begging rings.

⁶³ Depending on the availability of data. As their activity is the most exposed, recruiters and transporters are the ones who can be best analyzed for the purpose of the paper.

victims in 2003 and 2004 confirms the increasing trend in Romania of using women recruiters in trafficking operations.⁶⁴

Table 2

Year	Nationality of the recruiter		Total
	Romanian	Other	
2003	104	28	132
2004	126	6	132

Table 3

Recruiter gender distribution

Year	Male	Female	Male and female	Not available
2003	87	27	7	11
2004	79	42	7	4

Table 4

Relationship to the victim

Year	Relative	Friend/Acquaintance	Stranger	Not available
2003	7	89	27	9
2004	10	104	15	3

⁶⁴ IOM is the most prominent actor involved in the repatriation and assistance of Romanian victims of trafficking. They are equally involved in assisting foreign citizens that are found in Romania and identified as victims of trafficking. As part of a questionnaire that was distributed to the assisted victims in 2003 and 2004, several questions refer to the person who trafficked them. I compiled the answers to those questions to identify general traits of traffickers' such as nationality, gender distribution, relationship to the victim. The results are presented in Tables 2,3 and 4.

As one recent study by Lazaroiu and Alexandru shows:

[F]ocus groups supported the conclusion that vulnerable girls tend to resort more often to the help of a relative or acquaintance in order to go abroadlack of trust in labor exchange companies because of media reports and previous experiences of the family. The development of migration networks is usually seen as a positive factor; the ability of girls and their parents to judge the validity and security of networks remains unreliable⁶⁵

Informal migration, where the middlemen are trusted because of their family connections to the victim, particularly causes vulnerability. Many of the cases in which minors are trafficked begin when friends and family members urge children and their parents to approach transport agents and guides to find work abroad. As one study shows, this may happen with the honest belief that the journey will be profitable for the minor, which a weakness that is exploited by the recruiter. For example, June Kane writes:

Recruitment takes a number of different forms and can be both active and passive. That is to say that children may be recruited by someone who deliberately sets out to make a profit from their trafficking, or they may be persuaded to accept a job offer, for example, by someone who really believes that this is in the best interests of the child and the child's family. In this second group, family members and friends figure prominently and actions aimed at helping such people to see that their advice is misguided can make a difference to the likelihood that a child will be trafficked.⁶⁶

Kane's study is based on responses to a survey of children trafficked from countries of the South Eastern Europe.⁶⁷ The author concludes: "most of the children surveyed

⁶⁵ SEBASTIAN LAZAROIU, MONICA ALEXANDRU, WHO IS THE NEXT VICTIM? VULNERABILITY OF YOUNG ROMANIAN WOMEN TO TRAFFICKING IN HUMAN BEINGS, 42 (IOM Bucharest) (2003)

⁶⁶ JUNE KANE CHILD TRAFFICKING – THE PEOPLE INVOLVED A SYNTHESIS OF FINDINGS FROM ALBANIA, MOLDOVA, ROMANIA AND UKRAINE (International Programme on the Elimination of Child Labour (IPEC) of the International Labour Office-hereinafter ILO) (2005) In **Romania**, the survey was carried out in four counties: Iasi, Suceava, Arges and Bucharest. Seventy-six children were surveyed, comprising 55 children released from trafficking and 21 children from communities exposed to trafficking, and therefore at risk (total: 76 children). Ten parents of children released from trafficking were also interviewed, as were four parents of trafficked children and eight parents of children at risk, along with five key informants.

⁶⁷ IOM: TRAFFICKING IN UNACCOMPANIED MINORS FOR SEXUAL EXPLOITATION IN THE EUROPEAN UNION 9, (European Commission STOP Programme, Brussels) (2001) (suggests that Moldova, Romania and Ukraine are among the most frequent countries of origin of unaccompanied minors arriving in the states of the European Union).

said they had not been forced or lured into trafficking although, clearly, many of them had been misled.”⁶⁸ The children surveyed said that the middlemen often seemed kind and concerned about their welfare, and that the middlemen may have entered the family circle specifically to acquire the children, openly disclosing his intentions. The same quantitative data suggested that the establishment of a relationship between the recruiter/trafficker and the family means that often the child will be trafficked several times. In the case of minor girls trafficked into sexual exploitation the recruiter was often a lover or fiancé.

Perhaps the most surprising and worrying statistics speak of the age and criminal record of traffickers themselves, showing the high percentage of minors (13.6%) and persons without criminal record among the traffickers (77%), indicating the “attractiveness” of this occupation for those who are looking for a quick, profitable, and almost businesslike occupation.⁶⁹

Table 5

Persons arrested in 2005	Age	Criminal record (“CR”)	
Total 1335			
	Minors	Adults	
	Male 118 Female 64	Male 895 Female 258	No CR
			With CR
			1027
			308

⁶⁸ *Id.* at 10.

⁶⁹ Source: The Resource Center of the Direction for Combating Organized Crime, the General Inspectorate of Romanian Police

Possible explanations can be taken into account; for example, according to the Profile of recruiter published by the Romanian NGO Alternative Sociale: “...their life experiences and socio-cultural values have directed them to illegal activities, in the absence of alternative models and of the necessary support for a normal personal identity development.”⁷⁰ Another element of the recruiter’s profile that researchers of Alternative Sociale offer is a history of family abuse:

[A] theory according to which all abusers were victims of abuse in their childhood. Among the abuser’s traits can be counted the following: witnessing violence between parents, family physical and/or emotional abuse during childhood, personal low esteem, diminishing personal responsibility, the need to impose on to the persons around, the need to control the others activities and reactions.

The recruiters’ education level rarely surpasses average (high school) although life experiences teach them the skills that are necessary to successfully employ persuasive techniques.⁷² These techniques have been honed with the passage of time; one example of emerging trend is the replacement of exclusively violent behavior towards the victim with more subtle means of coercion; for example, Iris Alexe, victims counselor in the IOM Bucharest shelter related, “...coercion has stopped being exclusively of the nature of physical force and is being replace by emotional abuse ...we are witnessing a compliance bought with money and protection...”⁷³ Recruiters and traffickers generally, are using—probably out of instinct and not because of a formal training—what Robert B.

⁷⁰ ALTERNATIVE SOCIALE, PROFILE OF THE RECRUITER (2005) Available at www.antitrafic.ro

⁷¹ *Id*, at 1.

⁷² Out of the 30 cases surveyed with the help of court decisions in only one case had the traffickers attended education at a graduate level. The case in itself is an outlier as even the end result is new and unusual for the traffickers used the victims in a sophisticated exploitation over the Internet, through pornographic websites.

⁷³ Interview with Iris Alexe, Counsellor for victims, IOM Shelter Bucharest (Dec.27, 2005)

Cialdini calls “weapons of influence,”⁷⁴ such as the use of stereotypes, standards principle, the rule of reciprocity, consistency traps, principles of social proof, “liking” and scarcity techniques⁷⁵.

Stereotypes such as “going to a western country is good,” “traveling abroad will bring prosperity,” often precondition a victim to respond to an offer of employment in a foreign country. Seeking to exploit the *principle or reciprocity*, recruiters often offer to pay for the journey and the travel documents, thereby forcing the victim into what is often called in the literature “debt bondage”—a debt of both material and moral nature. *Consistency* is also a “weapon of influence” used by traffickers; once the victim has began the journey, it is very likely that he/she will be prone to accepting anything to avoid coming back after having failed the ideal to make a better living (money).

It is what Cialdini calls

[o]ur obsessive desire to be (and to appear) consistent with what we have already done . . . the drive to be (and look) consistent constitutes a highly potent weapon of social influence, often causing us to act in ways that are clearly contrary to our best interests.”⁷⁶

The principle of *social proof* is used against the victim when she finds herself in a foreign country where she cannot speak or understand the language, has no friends therefore cannot ask for help or support; in this situation, she is more prone to replicating

⁷⁴ ROBERT B. CIA LDINI INFLUENCE. THE PSYCHOLOGY OF PERSUASION 1 (2003).

⁷⁵ *Scarcity* of available chances to migrate (suggested by phrases like “it is now or never”) and *liking* are often employed by recruiters as they present themselves “wearing” symbols of success or similarity with the victim.

⁷⁶ *Id.* at 57-59 To show the power of consistency over the way we react and come to terms with degrading choices we make Cialdini describes the case of American prisoners during the Coreean war who were convinced to assume the ideals of communism. Chinese prison gurads implemented a process of “reeducation” not by means of force but by compelling their prisoners to incrementally depict a positive image of communism. First they were supposed to make oral statements such as: “Communism is not bad”. The next stage was writing this down and even elaborating short essays or poems praising communism. Later on the prisoners were expected to publicly read or present their writing of communism. Eventually the the prisoners themselves, out of a need to be consistent with what they were doing started to embrace communist ideology.

the behavior of persons surrounding her which here is a milieu of prostitution or crime and her likelihood to submit to the trafficker as the holder of power is more accentuated.

Cialdini asserts that “we like people who are similar to us,” demonstrating another trend in recruitment: the use of former trafficking victims as recruiters. IOM research⁷⁷ as well as media reports⁷⁸ corroborate information I obtained through interviews,⁷⁹ confirming the existence of such cases. Ring leaders rationally choose to use former victims in their criminal enterprises as they provide several comparative advantages: they can serve as “success stories” to a pool of friends—potential new victims who are more easily trapped.

The chief of the Office for Trafficking in Migrants explains in his interview:

Especially in the case of very poor girls they will dress them in very nice clothes, put them in a nice car and send them back to the impoverished community they originate from. The other girls, who used to know the victim—now acting as a recruiter—to be as poor as them, are deeply impressed by her newly found fortune. As she is now the role model to follow they are willing to follow her on a journey abroad, without putting too much thought into the real job they will have there... although in some cases they will have clear indications that prostitution is involved....⁸⁰

As the newspapers continue to publish advertisements for fake jobs abroad (for example, waitress, dancer, baby-sitter, house keeper, and hotel employee positions), media campaigns have targeted these deceitful ways of using work abroad as bait. Unfortunately, recruiters have successfully adapted to the media’s exposure of their deception by ironically using the jobs offered by the Office for the Migration of Labor

⁷⁷ IOM, *Supra* note 76, at 61

⁷⁸ In 2005 five members of the Cariga family trafficking ring were arrested in Amsterdam. Among its members the 27 year old Claudia Puspacher from Rovinari, is a former victim of trafficking saved at the age of 17 from a trafficking operation that was exploiting her in Turkey

⁷⁹ All of the ten interviews confirm the existence of former victims transformed into recruiters.

⁸⁰ Interview, *Supra* note 42.

Force—a Romanian governmental agency that offers work contracts abroad. Traffickers pretend to be official agents or simply replicate the job offers advertised in the central newspapers or television to lure victims; often, they pretend to have official contracts to be signed, which have no legal value but which confer to the victim a feeling of safety and trust.

Indeed, trafficking for labor purposes under both regular and irregular arrangements is a growing market that supplies particular branches of industry that have lost their comparative advantage.⁸¹

The International Labor Organization (hereinafter ILO) recently released a study⁸² based on the results of a survey that targeted both successful returning migrants from South Eastern Europe as well as victims of trafficking, finding that

Trafficking networks for the sex industry operate slightly differently from the agencies recruiting migrants for labour exploitation. Members of the latter networks tend to be less sophisticated than the criminal organizations dominating the sex trade. Labour trafficking often takes place under a legal cover, for example through private recruitment agencies,⁸³

A spin-off of the forced labor pattern since 2002—the year when Romanian citizens were allowed to travel without visas in the member countries of the Schengen Area Agreement—there has been an increase in Romanian nationals trafficking disabled people into begging. One court file provides us with a description of the modus operandi of traffickers in such cases:

⁸¹ The textile and garment industry, easily relocated, presents a different picture. In the industrialized countries it has been severely affected in recent times by global competition, and has responded with a fundamental shift in employment patterns. Since the mid-1990s Europe, for example, has persistently lost ground to Asia as a global exporter of textiles. Many enterprises have been relocated, and surviving enterprises have had to apply highly flexible production.

⁸² A GLOBAL ALLIANCE AGAINST FORCED LABOUR GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (INTERNATIONAL LABOUR CONFERENCE) (2005) Available at www.ilo.org/declaration (last visited 04/30/2006).

⁸³ Idem p. 53

On the 10th of May 2002 the accused G.J. traveled to the town of Navodari and as he was looking for children with physical handicap he was told to contact the family of the minor B.M. The minor, who had a foot disability, accepted the offer of the accused to travel abroad and beg for money, on condition that she is accompanied by her sister B.A. The accused convinced the mother of the two sisters to agree with the journey by giving her money and goods . . . G.J. took the minor, her sister and their mother to the competent official authorities and fulfilled the formalities to obtain the passports...on the 15th of July 2002, R.B. was arrested at the frontier while trying to leave the country accompanied by B.M. and B.A.⁸⁴

Transport

Depending on the final destination where the victim will be exploited, trafficking is international (across borders) or internal (within the borders of the same country). Internal trafficking is often a preliminary stage of international trafficking. In both instances but more prominently in the case of international trafficking the services of specialized traffickers are needed to facilitate the journey to destination: arranging for safe transport and required documents, acquiring information on the habits of border guards, or bribing the guards are on duty to turn a blind eye.⁸⁵ Intermediaries may be a regular part of the trafficking process—generally broken down into recruitment, transportation, reception, and exploitation—or they may provide occasional ‘services’ that help these stages to progress successfully.⁸⁶

The task of transporters was considerably made easier with the lifting of the visa regime for Romanians traveling in Schengen Area countries and the availability of safe

⁸⁴ Penal decision 595 of the 8th of October 2003, of the Constanta Tribunal, published in *GHEORGHITA MATEUT AND AL, TRAFICUL DE FINTE UMANE. INFRACTOR. VICTIMA.. INFRACTIUNE, LASI 2005*

⁸⁵ Interview, *supra* note 70:

[r]ecruiters and transporters will try to act independently. In some cases we have found that recruiters and transporters never actually meet. The victim is left by the recruiter in a safe house from where she is later retrieved by the transporter. It is a measure of protection; in case one is arrested the other cannot be found.

⁸⁶ ALTERNATIVE SOCIALE, TRAFFICKING PHASES, available at: www.antitrafic.ro (last visited 04/24/2006).

and fast means of transportation.. Crossing the border is often legal for girls who have passports⁸⁷ because they use the false pretext of a trip abroad.⁸⁸ Smuggling is necessary only in cases where the victim is not Romanian (e.g. from one of the countries of the Former Soviet Union⁸⁹), is a minor without the appropriate documentation,⁹⁰ or when the victim is signaled in the border police databases.⁹¹

In those circumstances, trafficking and smuggling of persons intersect, although as previously shown the two criminal behaviors are essentially different. Consequently, in most of the cases transporter-traffickers act as chaperones for the victim, making sure that she does not contact law enforcement agencies and that she is delivered at the destination point. As the Romanian NGO Alternative Sociale concludes from the stories of victims they have assisted: “during transportation, most of the victims are well treated, receiving food and accommodation, being able to contact their families.”⁹²

However, other sources mention, that transportation is the first stage when abuse is inflicted upon the victims. Trafficking fairs were recalled in one of the interviews⁹³ with a former undercover agent as well as reports of human rights organizations:

⁸⁷ The Romanian Border Police report that it is not uncommon for foreign nationals to send invitations to Romanian families that can be used as ‘proof’ that the travel is legitimate.

⁸⁸ Interview with Border police official (Jan. 5, 2006). As counteracting techniques Romanian border police has started using information campaigns at the border checkpoints. Leaflets with questions such as: “Do you know what is final destination of your journey? If not a tourist do you have a valid work contract?” have reportedly been successful in deterring possible victims from continuing their journey.

⁸⁹ Supra note 31: “It is also worth noting that many Moldovan girls (and women) being trafficked into sexual exploitation first cross the border into Romania, arriving in groups in Timisoara where they are sold on to new traffickers and moved to Macedonia, Kosovo, Turkey, Italy, Cyprus and Greece.”

⁹⁰ Frequently the children crossed the border legally, since parents themselves hand over their legal documents, but often the border guard would also be paid not to check too closely. The documents used to take the children across, if they did not come from the family, can be bought from other families, or acquired with the help of public notaries. A child can be taken across the border by anyone who is in possession of a parental agreement .

⁹¹ I have myself found in practice cases when the victim received an interdiction to travel into one of the respective countries as a result of being previously found as residing illegally.

⁹² See, *supra* note 102, at 1.

⁹³ Interview with undercover agent of the Romanian Police (Jan. 5, 2006).

Women are taken, usually in small groups, to "trading houses" in hotels and private apartments around Belgrade, Panèevo and Novi Sad, and also in Montenegro. There they are paraded in front of potential buyers, often being forced to strip before being sold to their new "owner""You will not know who bought you. They will just come and tell you that you must get ready because you [have to] leave.⁹⁴

When choosing their route, traffickers take advantage of what EUROPOL considers to be "lack of a legal framework or loopholes in legislation [that] provide traffickers and smugglers with the possibility to focus their activities on those countries where the penalties are low and the risk of being caught is minimal or non-existent."⁹⁵

According to statistics released by the European Police Enforcement Agency, seven member states of the European Union have not ratified the United Nations Convention against Transnational Organized Crime, ten Member States have not ratified the Palermo Protocol and eleven Member States have not ratified the "Protocol against the Smuggling of Migrants by Land, Sea and Air." The research of EUROPOL concludes,

The difference in penalties for trafficking for the purpose of sexual exploitation in the Member States is notable. The penalties for an offence vary between a fine and 20 years imprisonment.⁹⁶

Reception and exploitation

Most victims realize that something is going the wrong way only when they are informed they have become someone's property, are locked up, and exploitation begins in the hands of owners of bars and night clubs, brothels, sweatshops, and begging rings. The trafficking phase is generally characterized by a complete isolation of the victim,

⁹⁴ Amnesty International "So does it mean that we have the rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo (2004) at <http://web.amnesty.org/library/Index/ENGEUR700102004>

⁹⁵ EUROPOL REPORT ON TRAFFICKING OF HUMAN BEINGS IN EUROPE (2005), available at <http://www.europol.eu.int/publications/Other/Reports%202005/Legislation%20on%20THB%20and%20IIS%20Public.pdf>

⁹⁶ *Id.* at 4.

resulting in a lack of communication methods and any object that would allow appeal for rescue, such as identity papers, mobile phones, and money. Rape, physical abuse, threats, and sometimes murder are used to bend the will of victims who refuse to comply⁹⁷.

Victims are often kept in “debt bondage” under the false pretense that their “owners” may recuperate the money they have paid for the victims’ journey; no matter how hard the victim works, her debt never diminishes. Re-selling occurs often, thus restarting the cycle of debt. A description of how and when selling and exploitation begin is distilled with the help of surveys of minors trafficked in the region:

Girls who are trafficked into prostitution are often ‘received’ by host families – either in Romania or after they arrive in the destination country – who sell them for the first time and ‘break them in’. The host family usually consists of a man and a woman with children, so that the girls do not become too suspicious. ...If the owner or pimp decides to purchase the girl, the host family tells the girl to go with him. ... The girls are sold for between \$300 and \$1,500. Their identity papers remain with those who buy them. At the same time, the girls are reminded they have debts to the transporter. Even if they manage to pay those debts, they may be sold over and over again, the cycle of abuse and exploitation continuing.⁹⁸

2.2 TRAFFICKING ROUTES

In an attempt to raise awareness to the increase in adaptability of the traffickers Ladan Rahmani comments

It is clear (...) that although there has been a decline in the number of IOM referrals in the region,⁹⁹ it is not necessarily because trafficking in human beings has decreased, but rather that it has become less visible and less easy to detect. It is also clear that several new trafficking patterns and trends have emerged.¹⁰⁰

⁹⁷ According to Alternative Sociale www.antitrafic.ro

⁹⁸ June Kaine *supra* note 74, at 56

⁹⁹ The author focuses on South Eastern Europe and the Western Balkans.

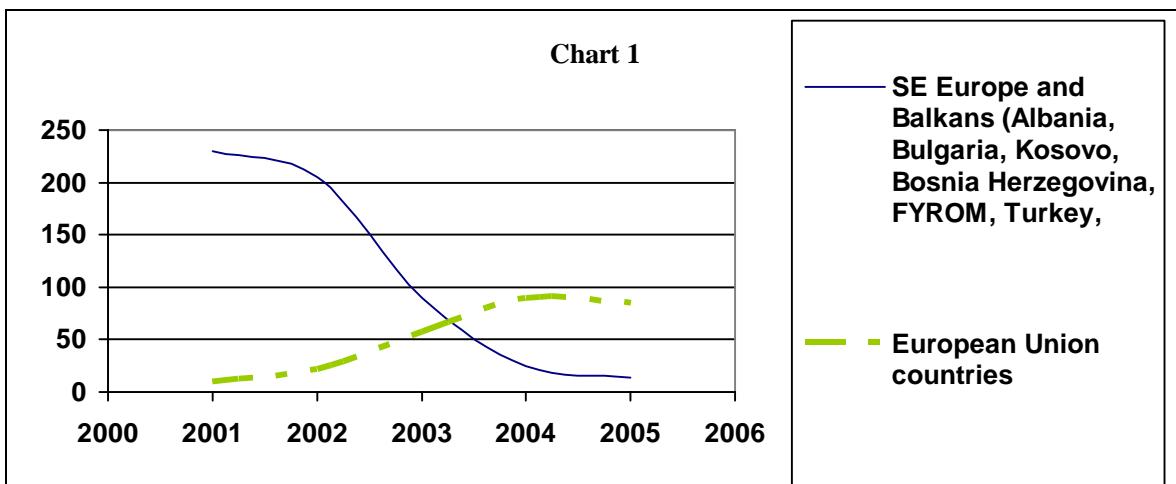
¹⁰⁰ Ladan Rahmani *Invisible Routes. Changing Patterns and Trends in Trafficking Routes in the Balkans*, OIM Migration, June 2005, at 24.

Some of the most important patterns Rahmani is referring to are trafficking routes used for the transportation of the victims on a regular basis. Out of the complete list of routes that the Stability Pact outlines, as many as three of them involve traffickers being active in Romania. The Central route runs from Romania through central European states using the well developed motorway network and long-distance coach services to enter into Austria and Northern Italy; the Central Balkan route runs from Caucasian States, Asia, and Eastern Europe through the central Balkan countries through Hungary into the EU States; and the Southern Balkan route runs from Caucasian States, Asia, and South Eastern Europe through Moldova, Romania, Bulgaria, and Albania initially entering the EU through Italy and Greece.¹⁰¹

The preference for European Union states as the trafficking destination point is a matter of recent development. Interviewees from the Romanian police and NGOs indicate that a shift has occurred in the past five years. In 2001 the overwhelming majority of victims were trafficked towards the war-torn region of the Western Balkans, due to the huge market for prostitution created by the military presence. By 2005 the route seems to have been almost abandoned and the majority of victims are now being sent to Western European Countries.

Chart 1 demonstrates the trend from statistical data provided by IOM Bucharest referring to the countries from where assisted victims are being readmitted.

¹⁰¹ Other more unusual routes were reported by the media to be used for trafficking Romanian victims to Israel (through Egypt via the desert) or Japan (through Cambodia).



Multiple factors have converged to produce the current situation. First and foremost, the profit gained from an “investment” in the prostitution business in a Western country yields a superior return compared to the same investment made in the Balkans. Second, a change in the visa regime for Romanian citizens allows unhindered travel in Schengen Area countries and while, starting in 2004, required possession of a valid visa to visit the countries of the former Yugoslavia. Last but not least, implementation of measures and programs sponsored by the EU, the OSCE, and the U.S. to strengthen the discipline of the troops stationed in the region have had an impact on the sex market in the region.¹⁰²

2.3 MAPPING OUT THE INCENTIVES

The main incentive for traffickers is the high profit obtained. According to estimates, trafficking is one of the most lucrative illegal enterprises, with profits generating billions of dollars¹⁰³ for criminal groups, undoubtedly a strong incentive that seems to outweigh

¹⁰² Interview with Cristian Duta, Liaison Officer, SECI center, Bucharest (Jan 6, 2006).

¹⁰³ The 2005 US State Department TIP report estimates the profits of trafficking at 9.5 billions of dollars annually. In a recently released report the ILO makes the published the following estimation:

all risks that come along with such an activity. The business is now growing more than ever and less effort is put into hiding it from the public eye.

Explanations are blunt: in conjunction with the high return rate, trafficking carries “business” benefits, which are primarily low risk, a huge market, and an even more considerable pool of recruitment. There is price differentiation between internal and international trafficking. Court records I collected indicate that the “price” of a trafficked person ranges in the ballpark of \$100-300 USD within Romania, whereas once the victim is trafficked across the border the sums paid go up as high as \$3,000 and the profit of the exploitation rises as well (one interview suggested that one exploited girl could bring as much as \$3000/night in a Spanish brothel). Re-selling of trafficked victims by their exploiters is not unusual, in order to profit more than once from the human being. Thus, both the trafficked person’s labor as well as the money paid in exchange for the victim generate profit. Forced involvement in the other criminal activities of the network is not uncommon: Once at the border the victim can be asked by a member of the network, “take this backpack with you over the border, will you,” and the backpack contains drugs

The total illicit profits produced in one year by trafficked forced labourers are estimated to be about US\$32 billion. Half of this profit is made in industrialized countries (US\$15.5 billion) and close to one-third in Asia (US\$9.7 billion). Globally, this represents an average of approximately US\$13,000 per year for each forced labourer, or US\$1,100 per month.

The estimate follows the methodology described by the OECD to calculate profits from prostitution in general: estimate average turnover (i.e. number of clients multiplied by the price paid by each client) and subtract intermediate consumption expenditures. For this calculation a variety of secondary sources were used and the results compared with other available estimates.

Another frequently quoted figure in the trafficking literature is the US\$5 to 7 billion annual profits for gangster syndicates that traffic women for commercial sexual exploitation. Figure of US\$5 to 7 billion calculated in 1993 by Jonas Widgren of the International Centre for Migration Policy Development (ICMPD), Vienna, for presentation at an IOM seminar; World Bank: *World Development Indicators 2004* (Washington, DC, 2004), p. 126;

or other illicit substances that are smuggled across the border by the victim without the trafficker incurring any risk.¹⁰⁴

Thus, trafficking manifests itself in different ways as a threat to the security of borders and internal order of a country by acting as resource for other forms of crime, such as dealing in narcotics, arms, and terrorism. To keep their operation going, traffickers often conceal and launder their profits by investing in legitimate economic enterprises:

[T]hey have diversified the illegal economy. If you are in business, the first thing you do is to diversify your sources of revenue. And if all your sources of revenue are originating in a highly-risky, illegal economy, you have strong incentives to diversify into the legal economy. So all of these trades have in fact diversified into legal companies, which create a gray zone between legal and illicit enterprises, and that confounds our traditional definitions of legal and illegal enterprises. . .¹⁰⁵

Their proceeds can also be reinvested in other criminal activities or used to keep the trafficking ring running by paying bribes to authorities, buying out the benevolence of relatives of the victims or managers of institutions who are supposed to protect the victims (schools, orphanages)..

A second powerful incentive confirmed by all the ten interviewees is the sexual exploitation of the victims. Often, traffickers (recruiters, transporters or exploiters) will be the first to sexually abuse the victim so as to bring her under submission and exert uncontested authority. Humiliation puts additional pressure on the victim and makes her reluctant to ask for help from her family—she might be perceived as a “whore” —or from the police—she might be perceived as a prostitute.

¹⁰⁴ Interview with DH Chief of Trafficking in Migrants Office Supra note 8 Annex

¹⁰⁵ Moisés Naím's, *Illicit: How Smugglers, Traffickers, and Copycats Are Hijacking the Global Economy*. Doubleday, October 2005

A third category of incentives—which does not necessarily exclude the first two ones—will influence former victims to become recruiters, as shown in the first section of this Part. Interviews suggest that a normally human desire to stop being abuse and to be taken out of the streets, will determine even the most reluctant human being to accept passing on the side of his former exploiter. Furthermore, psychological trappings such as developing a sentimental bond with the abuser (the Stockholm syndrome),¹⁰⁶ or more mundane reasons such as wanting to be a part of the profit or inflict pain on other human beings as revenge for his or her own suffering drive former victims in to the business.¹⁰⁷

¹⁰⁶ Innterview with Irina Alexe, counselor for the victims in OIM Bucharest shelter.

¹⁰⁷ Interview with Raluca.Bughea member of the Intergovernmental Antitrafficking Group, former counselor for assisted victims in IOM shelter (Jan. 7 2006).

PART 3 LEGAL AND INSTITUTIONAL FRAMEWORK TO COMBAT TRAFFICKING IN HUMAN BEINGS

3.1 INTERNATIONAL RESPONSE TO TRAFFICKING IN HUMAN BEINGS

An international legal framework that would combat the effects of trafficking was deemed necessary as early as the first decade of the 20th century, with the adoption of the “International Agreement for the Suppression of the White Slave Traffic of 18 May 1904,” followed six years later by the “International Convention for the Suppression of the White Slave Traffic of 4 May 1910.”

Although the Kingdom of Romania, that was at the time Moldova and Tara Românească, was not a signatory to the treaties, it is perhaps worth mentioning that Transylvania as part of the Austro-Hungarian Empire witnessed the implementation of the two international instruments as they were promulgated in the Austrian Imperial Code No 26/1913.¹⁰⁸ Early awareness on the population of the effects of this crime, may be one of the factors that account for the low rate of trafficked victims originating from this historically Romanian province.

In the aftermath of the World War I, the League of Nations championed the prosecution of those engaged in trafficking in women. A conference in Geneva saw the adoption of the recommendations that would constitute the “International Convention for the Suppression of the Traffic in Women and Children of September 1921,” later ratified by Romania on September 5, 1923 and completed by the additional Protocol signed at

¹⁰⁸ IVANA TRÁVNÍČOVÁ ET AL. IN TRAFFICKING IN WOMEN: THE CZECH REPUBLIC PERSPECTIVE, INSTITUTE FOR CRIMINOLOGY AND SOCIAL PREVENTION49, (UNODOC/UNICRI project – Criminal Justice Response to Trafficking in Human Beings in the Czech Republic and Poland) (2004).

Lake Success, New York, on November 12, 1947. In 1933, on the 11th of October, the *Convention for the Suppression of the Traffic in Women of Full Age* was adopted in Geneva¹⁰⁹ to be ratified by Romania on June 6, 1935.

The consolidation of all the provisions adopted at an international level between 1904 and 1935 was achieved through the adoption of *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* of December 2, 1949; Romania's accession to this later international instrument occurred on February 15, 1955. As a precursor of the current international legal framework the 1949 Convention defines a trafficker as the individual who “ . . . procures, entices, or leads away, for the purposes of prostitution, another person, even with the consent of that person.”¹¹⁰

According to the overwhelming majority of studies referring to trafficking the cornerstone in defining concepts and terminology,¹¹¹ was laid with the adoption of the United Nations *Convention against Transnational Organized Crime of 2000* and its subsequent Protocols with an emphasis on the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, also known as the *Palermo Protocol*. Following ratification in 2002,¹¹² Romania became a party to these legally

¹⁰⁹ A certified copy of the text available at http://untreaty.un.org/English/CTC/CTC_04.asp, last visited 02/26/2006.

¹¹⁰ Full text available at <http://www.unhchr.ch/html/menu3/b/33.htm>, last visited 02/26/2006.

¹¹¹ Of course, other international agreements, such as The Universal Declaration of Human Rights of 1948, the European Convention of Human Rights of 1951, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment of 1984, or the Children Rights Convention 1989 have provisions that are pertinent to the subject, but for reasons of efficiency in providing an overview of the subject, I decided to present only those conventions that constitute *lex specialia* for the phenomena of trafficking.

¹¹² See *Legea 565/2002 pentru ratificarea Convenției Națiunilor Unite împotriva criminalității transnaționale organizate, a Protocolului privind prevenirea, reprimarea și pedepsirea traficului de persoane, în special al femeilor și copiilor, adițional la Convenția Națiunilor Unite împotriva criminalității transnaționale organizate, precum și a Protocolului împotriva traficului ilegal de migranți pe calea terestră, a aerului și pe mare, adițional la Convenția Națiunilor Unite împotriva criminalității*

binding international documents, which detailed important standards and phases of the anti-trafficking strategy including: (1) a definition of what constitutes trafficking, (2) procedures aimed at the protection of victims of trafficking and the prevention of trafficking, and (3) the international collaboration and criminalization of the act. The regulatory effort of international law has since been doubled by institutional involvement originating from U.N. bodies and agencies, along with other intergovernmental organizations and NGOs committed to putting the prescribed norms into practice.

It seems clear that a co-ordinate approach to combating trafficking in human beings is sensitive as valuable initiatives to categorize trafficking operations, such as Bertone's,¹¹³ presents three types of networks responsible for trafficking in women: (1) *large-scale networks* with political and financial contacts that enable them to establish links between countries of origin and destination countries; (2) *medium-sized networks* that concentrate on trafficking in women from one country only; and (3) *small networks* that place one or two women at a time as required.

Sometimes, however, international projects and recommendations fail due over-ambitiously assuming that one research study could encompass all the specificities of trafficking operations as a global phenomenon. The regional differentiations and peculiarities are so strong and the nature of the phenomena is so heterogeneous that a sound scientific research, should also address national or regional traits.

transnaționale organize, adoptate la New York la 15 noiembrie 2000 (Law 565/2001 for the ratification of the UN Convention against organized Crimes as well as its two additional Protocols).

¹¹³Andrea Marie Bertone,. *Sexual Trafficking in Women : International Political Economy and the Politics of Sex.* 18GENDER ISSUES, 1 (2000) at4-22.

3.2 DEVELOPMENT OF REGIONAL EUROPEAN INITIATIVES TO COMBAT TRAFFICKING

Building on the core of values enshrined in the *European Convention for the Protection of Human Rights and Fundamental Freedoms*,¹¹⁴ and the initiatives of the Stability Pact Task Force on Trafficking in Human Beings (hereinafter “SPTF”) and the *European Union*, the regional legal and institutional response¹¹⁵ to trafficking has accelerated over the last years.

National reports of European countries detail the mechanisms of prevention and protection¹¹⁶ that were subsequently adopted and seek to determine the impact that the newly adopted legislation has had on the trafficking operations.¹¹⁷ Although the initiatives are a clear step forward in attempting to raise awareness for the continuing trafficking and increase in adaptability of the traffickers, overall, a comparative study of trafficking operations in countries of South Eastern Europe and the Balkans confirms the pervasiveness of the crime.¹¹⁸ The similarity in causality, the transnational character and

¹¹⁴ The European Convention of Human Rights enshrines in its 4th and 5th Article the right of every individual to be free from slavery, servitude, or forced labor. Full text available at <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>, last visited 02/26/2006

¹¹⁵ I will refer to: The European Convention of Human Rights of 1951, The Multiyear Anti-Trafficking Action Plan for South Eastern Europe adopted by the Stability Pact Task Force on Trafficking in Human Beings 2000, The European Union Council Decision of July 19, 2002 (2002/629/JAI) on preventing and combating trafficking in human beings, Council of Europe Convention on action against trafficking in human beings of 2005.

¹¹⁶ See JOANNA APAP AND FELICIA MEDVED IN PROTECTION SCHEMES FOR VICTIMS OF TRAFFICKING IN SELECTED EU MEMBER COUNTRIES, CANDIDATE AND THIRD COUNTRIES,⁹ (IOM) (2002).

¹¹⁷ Institute for Criminology and Social Prevention TRAFFICKING IN WOMEN THE CZECH REPUBLIC PERSPECTIVE, (UNODC/UNICRI project- Criminal Justice Response to Trafficking in Human Beings in the Czech Republic and Poland) (2004).

¹¹⁸ Among others, Helga Conrad OSCE Special Representative on Combating Trafficking in Human Beings in Barbara Limanowska, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE 2004 - FOCUS ON PREVENTION IN: ALBANIA, BOSNIA AND HERZEGOVINA, BULGARIA, CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, MOLDOVA, ROMANIA, SERBIA AND MONTENEGRO, AND THE UN ADMINISTERED PROVINCE OF KOSOVO, (United Nations Children’s Fund; United Nations Office of the

the fairly homogenous nature/characteristics of trafficking operations in the region¹¹⁹ make it one of the most problematic forms of organized crime undermining the stability of countries already weakened by conflicts and/or economic and political transition.

Three levels of action are identified in Europe in relation to the most relevant regulatory political structures: the Organization for Security and Cooperation in Europe (hereinafter “OSCE”) and the STPF in Southeast Europe, The Council of Europe, and the European Union

The OSCE

Under the auspices of the OSCE, the SPTF was created in 2000 seeking to coordinate and strengthen co-operation among the countries of Southeastern Europe (hereinafter “SEE”) to “streamline and accelerate existing efforts to combat human trafficking in the region.”¹²⁰ The adoption of a Multiyear Anti-Trafficking Action Plan for SEE was based on the results of fact-finding missions throughout SEE to identify capacities, needs, and gaps. This programmatic document is of particular importance, as on its foundations countries in the region developed their own National Plans of Action; the Plans were adopted by the SEE Governments and currently stand at the foundation of each country’s response to human trafficking.

High Commissioner for Human Rights; Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, at IX.

¹¹⁹ IOM, MIGRANT TRAFFICKING AND HUMAN SMUGGLING IN EUROPE, A REVIEW OF THE EVIDENCE WITH CASE STUDIES FROM HUNGARY, POLAND AND UKRAINE. (2002)

¹²⁰ For a complete overview of the attributions of the Task Force, see <http://www.stabilitypact.org/trafficking/info.asp>, last visited 02/25/2006.

The SPTF acts as the permanent supporter and monitoring body of the development and implementation of regional anti-trafficking measures.¹²¹ Within its framework, several initiatives were implemented, such as the Palermo Anti-Trafficking Declaration of South Eastern Europe,¹²² and the Regional Information Exchange Mechanism.¹²³

The Council of Europe

The *Council of Europe Convention on Action against Trafficking in Human Beings* (hereinafter “Convention”) was adopted by the Committee of Ministers on May 3, 2005. This document emphasized the importance of protecting victims of trafficking and safeguarding their rights as well as the need to promptly prosecute traffickers. The approach of the Convention seeks to be comprehensive, since its provisions apply to all forms of trafficking (national or transnational) and irrespective of the gender, age of the victim, or the form of exploitation: sexual exploitation, forced labor, or services. The Convention contains a list of mandatory assistance measures to victims (including physical and psychological assistance, support for their reintegration into society, medical treatment, counseling and information, as well as the possibility to deliver residence permits to victims of trafficking). The Convention foresees the criminalization of users of the services of trafficked persons as well as the possibility to exempt victims of

¹²¹ Within the SPTF a Regional Clearing Point issued the First and Second Annual Report on Victims and Victim Assistance in September, 2003 and June, 2005, providing valuable empirical data on the characteristics of victims assisted in the region as well as data on the effectiveness of victim assistance and protection (shelters, national referral mechanisms, return and reintegration programs).

¹²² Commitment to implementing effective programs of prevention, victim assistance and protection, legislative reform, law enforcement, and prosecution of traffickers.

¹²³ According to the Stability Pact resource site, ‘Similar in methodology to that of Europol for the EU Member States, using the channels of the SECI Regional Centre in Bucharest and in co-ordination with Interpol.’

trafficking from prosecution for their involvement in unlawful activities, provided that their participation was against their will.

The European Union

Inherent in the Treaty on the European Union, the framers' explicit intention to combat trafficking in human beings and offences against children has been repeatedly promoted at a regulatory level by all its institutions; the European Parliament, the EU Commission, and the EU Council have been involved in efforts to harmonize national criminal laws and procedures in the Member States, covering jurisdiction, prosecution, and standing of trafficking victims in judicial proceedings. These efforts came to light prominently on July 19, 2002 when the EU Council adopted the Framework Decision on combating trafficking in human beings, followed soon by the adoption of the Framework Decision on combating the sexual exploitation of children and child pornography on December 22, 2003.

Closely related to this initiative, on April 29, 2004 the Justice and Home Affairs Council adopted the Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities. It is also worth mentioning that the *Charter of Fundamental Rights of the European Union*, a part of the Draft Treaty establishing a Constitution for Europe, stated in Article II- 5 (3): "Trafficking in human beings is prohibited."¹²⁴

¹²⁴ Full text of the Treaty available at: <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>, last visited 02/27/2006.

3.3 OVERVIEW OF THE ROMANIAN LEGISLATION AND INSTITUTIONAL FRAMEWORK

Since 2001, after critical evaluations were delivered in international reports about the dimension of trafficking in human beings¹²⁵, Romanian authorities have gradually increased their efforts to adopt and implement a legal and institutional framework that will address the ongoing upsurge in trafficking operations. Together with similarly critical reports issued by Non-Governmental Organizations and Inter-Governmental Organizations the US TIP report painted a bleak picture of the trafficking situation in Romania and undoubtedly must have contributed to the energetic legislative¹²⁶ and institutional responses that has been put in place.

First, an initiative group was established comprised of experts from key governmental areas: the Ministry of Administration and Interior, the Ministry of Justice, the Ministry of Labor and Social Solidarity, the Ministry of Education and Research, the Ministry of

¹²⁵ The first U.S. TIP report released in 2001 placed Romania on the third tier of countries—the worst possible—and concluded, “[d]ue to a lack of resources and low-level corruption, many local Government officials regard trafficking as a low priority and treat victims as social outcasts . . . Romania has no specific anti-trafficking law . . .”

¹²⁶ In addition to Law 678/2001 that is dedicated exclusively to the prevention and punishment of trafficking nine other laws contain provisions that are pertinent to the combating trafficking: Law 565/2002 for the approval and ratification of the UN Convention against transnational crime and its two additional protocols; Law 39/2003 for the prevention and combating of organized crime; Governmental Emergency Ordinance (hereinafter G.E.O.) 105/2001 regulating the passage of the Romanian state frontier; G.E.O. 112/2001 on the punishment of crimes committed abroad by Romanian citizens or persons with no citizenship that reside in Romania; Law 682/2002 on the regime of witness protection; Law 302/2004 on international judicial cooperation in penal matters; Law 211/2004 on measure regarding the protection of the victims of crimes; The Romanian Penal Code (effective since the 30th of June 2005- incorporating all the provisions of special laws referring to trafficking and organized crime; Governmental Decision (hereinafter G.D.) 1216/2001 for the approval of the National Plan for the Prevention and Combating of Trafficking in Human Beings (hereinafter the National Plan); G.D. 1295/2004 for the approval of the National Plan for the Prevention and Combating of Trafficking in Minors (hereinafter the National Plan for Minors).

Health and Family, the Ministry of Culture, the Ministry of Foreign Affairs, The Authority for the Protection of the Child, International Intergovernmental and Non-Governmental Organizations (NGOs), both national and international. The most important result from the meetings of the Initiative Group was the draft legislation that upon adoption by the Romanian Parliament is now known as “Law 678/2001,” addressing the prevention and combating of trafficking in human beings and incorporated in the newly adopted Romanian Criminal Code. The definition of trafficking found in the Romanian legislation is, in fact, a direct translation of the text as it is found in the Protocol;¹²⁷ Its adoption marked a turning point in the prosecution of trafficking cases. Prior to the adoption of Law 678/2001, the investigating and prosecuting authorities as well as the judiciary had as their only legal recourse the provisions of the Criminal Law Code and the Criminal Procedure Law Code. As the Code only made reference to crimes, such as “slavery” and the “unlawful limitation of freedom of an individual”, effective prosecution was far from being achieved.

The lack of clear definitions and case law often led to confusion in practice, especially between the legal definition of “trafficking” and “pimping,” notwithstanding the fact that the legal framework was silent when referring to acts of trafficking that did not involve sexual exploitation. In contrast, Law 678/2001 provided sufficient leverage for the prosecution and conviction of traffickers in Romanian Courts. Although it took

¹²⁷ “Constituie infracțiunea de trafic de persoane recrutarea, transportarea, transferarea, cazarea sau primirea unei persoane, prin amenințare, violență sau prin alte forme de constrângere, prin răpire, fraudă ori înșelăciune, abuz de autoritate sau profitând de imposibilitatea acelei persoane de a se apăra sau de a-și exprima voința, ori prin oferirea, darea, acceptarea sau primirea de bani ori de alte foloase pentru obținerea consimțământului persoanei care are autoritate asupra aliei persoane, în scopul exploatarii acestei persoane (...) Recrutarea, transportarea, transferarea, găzduirea sau primirea unei persoane cu vîrstă cuprinsă între 15 și 18 ani, în scopul exploatarii acesteia, constituie infracțiunea de trafic de minori” art. 12 and 13 of the Law 678/2001 on preventing and combating trafficking in human beings

two years¹²⁸ to have definitive rulings on what cases of trafficking, a clearer legal distinction now exists between crimes, such as trafficking in persons, trafficking in migrants, and pimping. The authorities thus met the “de jure” criteria as employed by ABA CEELI:

Trafficking should be addressed through legislative means, by incorporating the minimum required standards such as defining trafficking as a separate offense, providing for the protection of victims, and ensuring the existence of preventive mechanisms within domestic laws¹²⁹

A confirmation that the measures have been effective to a certain extent came the following year, when the 2002 US TIP report placed Romania in the second tier of countries and noted: “The Government of Romania does not yet fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.”¹³⁰

The actions of the perpetrators (recruiters, transporters, and hosts) are now considered to be crimes with corresponding punishments included in the law range from 3 years of prison to life sentences, depending on the gravity of the crime assessed primarily on the basis of the victim’s age and physical harm inflicted upon the victim. It is worth mentioning that criminal charges can be brought against the trafficker even if the victim has consented to being trafficked. Other associated crimes such as deception, illegal border-crossing, forgery and use of forgeries, sequestration, rape, physical abuse, threat and blackmail, constraint, giving and receiving bribery, and pimping are also punishable

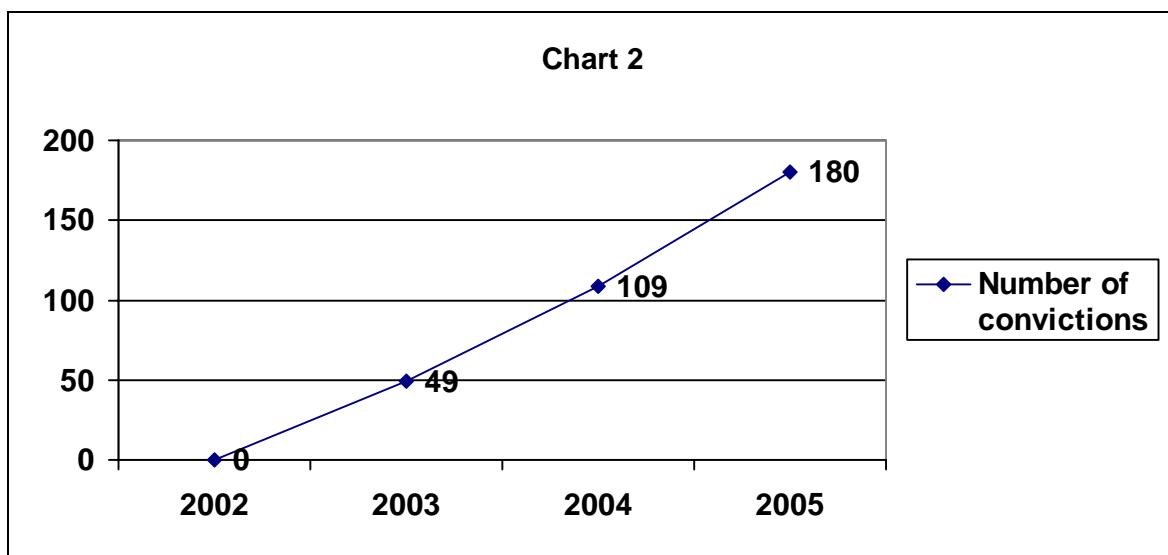
¹²⁸ The US TIP Report for 2004 and 2005 confirm that the first definitive convictions for trafficking were registered in 2003. The lack of convictions for 2002 is probably due to the late adoption of the Norms of application of the Law.

¹²⁹ CEELI's Human Trafficking Assessment Tool (hereinafter HTAT) measures a country's *de jure* and *de facto* compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol) that supplements the United Nations Convention against Transnational Organized Crime.

¹³⁰ Available at <http://www.state.gov/g/tip/rls/tiprpt/2002/10682.htm>

as a result of additional legal provisions that complete the legal mechanism used to combat trafficking.¹³¹

Empirical data seems to support the hypothesis that the special law on trafficking, which is now an integral part of the Criminal Code, has had a significant contribution on the prosecution of offenders, although the first convictions were only secured in 2003.¹³² All the interviewees, irrespective of their affiliation (Police, Border Guards, IOM Bucharest, and the Alternative Sociale NGO) acknowledged the impact the anti-trafficking law has had. Statistical data presented in Chart 2 shows an increase in convictions from zero in 2002 to over one hundred in 2004 and more than one hundred and eighty in 2005.¹³³



¹³¹ Available http://www.antitrafic.ro/sections/yjklryl/gjg/?t_id=0p19p1

¹³² According to the official statements of the Ministry of Administration and Interior : The year 2003 meant first of all an intense activity of the law enforcement agencies succeeding to dismantle more than 300 criminal groups and human trafficking networks, to prosecute 318 individuals and convict 49 individuals for human trafficking or associated crimes. A number of circa 500 victims were given assistance out of which 200 testified as witness in the court.

¹³³ Source: Resource center for combating trafficking in human beings of the General Inspectorate of the Romanian Police

Several bodies established by the Law are worth mentioning at this point for their role in the adoption and implementation of policies:

- a. The National Network of Judges, comprised of 52 judges who specialize in trafficking cases—established on July 2, 2004;
- b. The National Network of Prosecutors;
- c. The Resource Center within the General Directorate for the Combating of Drug and Organized Crime Operations, a structure that collects and processes data referring to trafficking; and
- d. The National Office for the Prevention of Trafficking in Persons and Monitoring of Victim Protection—established within the Institute for the Research and Prevention of Crime—researches trafficking, the application of the legal framework, and the institutional protection of victims, and provides the technical secretariat capabilities for the Inter-ministerial Group.

An effective implementation of a public policy against trafficking can only be achieved if legislation adopted is promptly and consistently applied in practice.¹³⁴ The institutional framework that is responsible for the enforcement of Romanian national anti-trafficking law is comprised of several main actors: The Police (Organized Crime Direction and The Border Guards), The Prosecutors Office, several ministries (Labor, Health, Foreign Affairs), regional law enforcement initiatives (SECI center), and intelligence agencies. Prevention and victim protection efforts require additional institutions in the anti-trafficking network: public social assistance offices, victim protection shelters and services, and organizations that reintegrate criminals.

¹³⁴ What ABA CEELI calls a “de facto” fight against this type of crime.

As one interview with a Program Assistant of IOM Bucharest shows: “the development and functioning of a network of institutions that would prevent, combat and alleviate the negative effects of trafficking has been on an upwards trend but is sometimes hectic and uncoordinated”¹³⁵. The case is perhaps best made by the history and results of the Inter-governmental Working Group against Trafficking (hereinafter “Group”) and the National Plan that establishes its objectives and strategic directions of actions: prevention, prosecution, and protection of trafficked victims in accordance with the Stability Pact for South East Europe’s recommendations. The Group was established as a forum in which significant issues of fighting human trafficking are discussed freely and a body for monitoring the Plan implementation.

The Inter-ministerial Group is competent:

- a) To analyze the causes of human trafficking and the conditions which favor both the human trafficking phenomena as well as its structure, state and dynamics, on the basis of information offered by the concerned institutions.
- b) to evaluate the consequences of the legislative and other measures taken in the field of prevention and countering human trafficking,
- c) to analyze the relevant data and information, on the basis of which it formulates proposals for modification and completion of legislation, and also for elaborating new legislative acts in the field;
- d) to elaborate prevention strategies, together with the involved institutions and the representatives of nongovernmental institutions in this field;
- e) to support local programs on prevention and countering human trafficking.
- f) to elaborate the report made available for the victims of trafficking by the Romania's diplomatic and consular missions abroad; - to elaborate training materials on the victim's rights in order to be disseminated by the relevant authorities;
- g)to elaborate, quarterly, activity reports on the rights of the trafficked

¹³⁵ Interview with Monica Joita, Program Assistant, IOM Mission Romania, (Dec. 27, 2005): IOM is in fact developing a project that has as main activity organizing conferences where representatives of the institutions that have competencies sit at the same table and discuss what needs to be done. Some of them, especially at grass-roots level (counties, cities) did not even know before that they have obligations under the law and what the other institutions involved are

victims, which are presented to interested institutions;

h) to make quarterly evaluations of activities in the field of prevention and countering human trafficking, on the basis of data made available by the concerned institutions and by the associations and foundations active in the field.¹³⁶

The Group was the first anti-trafficking framework that acknowledged the importance of cooperation between government agencies and the NGOs who have taken (and still are taking) much of the burden to act as early warning systems and providers of assistance for the victims. The elaboration of the National Plan and the National Plan for Minors¹³⁷ itself is a positive achievement and proves the governmental interest in the phenomenon. In addition the Group has become a valuable repository of expertise used in prevention campaigns, as well as international anti-trafficking cooperation; although it has no formal hierarchical authority, it set up tasks and coordinates the efforts of all the concerned governmental/nongovernmental institutions;

Substantial reform of the national system is envisaged as the first months of 2006 marked the beginning of a transformation process of The National Office for the Prevention of Trafficking in Persons and Monitoring of Victim Protection that would bring it to an Agency level¹³⁸ with responsibilities such as elaborating the National Strategy for the Prevention of Trafficking, collecting and processing data, and developing and assisting the prevention institutional programs.

¹³⁶ Governmental Decision no. 299/2003, art. 5, par. 2.

¹³⁷ The Inter-ministerial Working Group, after meeting in November 2003, proposed to the responsible ministries and central institutions the establishment of a sub-working group for monitoring the prevention and countering child trafficking, which include experts of these authorities to manage exclusively this issue. Thus, on November 25, 2003, it was established the Sub-working group for monitoring the prevention and countering child trafficking. This subgroup has as principal objective drafting a Unique National Plan for prevention and countering child trafficking, document that presently is under notification proceedings, at the concerned ministries.

¹³⁸ GOVERNMENTAL DECISION no.1.584 /8 December 2005 for the establishment of the National Agency for the Prevention of Trafficking in Persons and Monitoring the Assistance to the Victims [M.Of. no. 5/4 Jan. 2006](#)

The Group acts as an overarching coordinating structure. The field work belongs though to several important actors with competencies in combating and preventing trafficking.

The Organized Crime Directorate, the lead agency of the Group is the main Police unit that investigates trafficking, and illegal migration, with two offices at headquarters (Trafficking in Persons and Trafficking in Migrants), a Resource center that collects data from all the institutions involved and 15 decentralized structures throughout the country.¹³⁹ Over 100 officers are assigned to the unit, all of whom received specialize training in trafficking in persons; 42 of them are female officers. In addition the General Inspectorate of the Border Guards has its own anti-trafficking office. A special provision of the law requires police to conduct their investigation only under the supervision of a prosecutor.

Within the anti-organized crime unit of the Prosecutor's office, fifty prosecutors are assigned to instrument anti-trafficking cases, The recently established National Agency for Prevention and Countering Human Trafficking and Victim Protection is built on the framework of the National Office for Preventing Trafficking in Human Beings and Monitoring the Trafficked Victim's Protection. Following a complete overview of the prosecution component, the application of Law 678 raised awareness about the necessity of legal norms establishing the protection of victims and their reinsertion in the society. Such needs were to be addressed in 2005 with the adoption of Law 211 on the protection of crime victims.

¹³⁹ According to US 2004 TIP report available at <http://www.state.gov/g/tip/rls/tiprpt/2004/21262.htm>

As a form of regional cooperation, since 2001 the Romanian Government has hosted the headquarters for the Southeast European Cooperative Initiative (hereinafter “SECI”). The center acts as a focal point for the exchange of information between law enforcement agencies in the SEE region as well as EUROPOL and the FBI with regard to trans-border organized crime. During the past two years, operation MIRAGE has witnessed simultaneous sustained actions from the police structures in all of the twelve member states of the Stability Pact to identify trafficking victims and arrest members of trafficking rings. SECI also coordinates the transport and protection of victims who are willing to testify in a trial against their former abusers.¹⁴⁰

¹⁴⁰ Interview with Cristian Duta, Liaison officer of the Romanian Police at the SECI center (Jan. 5, 2006).

PART 4. CONCLUDING REMARKS AND RECOMMENDATIONS FOR AN EFFECTIVE ANTI-TRAFFICKING PUBLIC POLICY IN ROMANIA

4.1 DEFICIENCIES IN THE LEGAL, INSTITUTIONAL AND SOCIAL RESPONSE TO TRAFFICKING IN HUMAN BEINGS

Legal deficiencies

In spite of the remarkable progress in the legal framework combating trafficking in Romania several factors still act as a brake on the rate of convictions. Especially when referring to the *system that provides protection for the testifying victims* improvement is needed. A specialized judge in cases of trafficking and prostitution explains:

The biggest problem we are confronting ourselves is the administering of evidence in front of the court. Very often the victim will refuse to testify in front of the court. In some cases it is even difficult to find them as they declare fake residence addresses. The typical case is where a victim will change her initial declaration as the trial advances. Without protection no one resists the pressure and the threats. With the exception of those included in the witness protection program every other witness is exposed.¹⁴¹

Her statements are consistent with the results of the examination of the thirty court files; less than two percent of the victims agreed to be involved in the criminal trial. Victims lack incentives to participate in the trial as they do not benefit from any special rule awarding them immediate compensation.

¹⁴¹ Interview with A.S. Romanian judge that presides over cases of trafficking (Jan. 5, 2006).

In addition, *unclear provisions of the law*¹⁴² and the lack of budget allocations¹⁴³ to back the provisions that are meant to fight traffickers are hampering prosecution efforts. According to statistics of the Resource Center: “the number of old cases as compared to the new ones instrumented in the first ten months of 2005 is almost equal, respectively 570 and 585, indicating an overburdening of the prosecutor’s office docket.”¹⁴⁴ Under these circumstances we acknowledge an increase in awareness of traffickers of the legal framework and loopholes. Interviews with members of the law enforcement agencies, as well as journalistic reports indicate that traffickers use specialized attorneys, thorough legal research and comprehensive law “libraries” to avoid prosecution.

Institutional deficiencies

In spite of all the progress mentioned in Part 3, and as the framers of the Intergovernmental Working Group themselves recognize,¹⁴⁵ several limitations impact negatively on the activity of the Group and the institutional framework in general: lack of a specific budget, difficulties in establishing a permanent framework for cooperation and developing an adequate communication system between the different actors involved, activities that are too broadly defined, and, as a consequence, deficiencies in follow up

¹⁴² Several inconsistencies of the law were signaled by ABA CEELI in the HTAT the act of attempting to commit the crime of trafficking is punishable but does not delineate the sentence that is to accompany this particular offense.

.. trafficked victims “shall have their privacy and identity protected” but does not specify the context of this protection (i.e., in court, outside of court, before or after trial, or both etc.).

...While Romania’s anti-trafficking law delineates an obligation for international transportation companies to verify the identification documents of their passengers it does not provide for a sanction or penalty in cases where companies fail to uphold this obligation.

¹⁴³ The US 2005 TIP report notes: “While victims are entitled to shelter, legal, psychological, and social assistance by law, overall Romanian funding for NGOs that assist trafficking victims remained low”

¹⁴⁴ Data of the Resource Center of the Romanian Police for the first 10 moths of the year 2005.

¹⁴⁵ Report of the Inter-governmental Group available at
http://www.antitrafic.ro/sections/yjklryl/gjg/?t_id=0p19p1&lang=en

assessment. Furthermore, governmental agencies lack a control mechanism to make them accountable when they fail to accomplish the afferent tasks in due. External observers mention in addition that an indicator system used ministries is not uniform and a lack of balance between prevention and countering sides of human trafficking as well as balance between the attention given to internal versus international trafficking.¹⁴⁶

Dissipation of scarce resources is another deficiency that has to be addressed. The National Office for the Prevention and the Protection of victims started its activity in September of 2004 within the Institute for Crime Research and Prevention General Inspectorate of Romanian Police, with the task to design prevention and protection policies and acting as a Secretariat for the Group. At the same time a somewhat parallel and seemingly overlapping structure exists within the Ministry of Justice, called Direction for Probation. Not only is the entity's title confusing,¹⁴⁷ but its functions are too general, spanning including the protection of victims of crime in general as well as the reinsertion in society of criminals who have executed their punishment and fulfill certain criteria of good behavior.

Under the anti-trafficking Law, victims should receive free legal, psychological, and social assistance. The setting of special centers providing such assistance and shelter was placed under the jurisdiction of the county councils. Due to budgetary constraints out of nine county shelters initially, only five had been opened by 2005.¹⁴⁸ The bulk of the effort put into victim assistance is still lying on the shoulders of NGOs and IGOs, whose resources are increasingly overstretched. Among other initiatives that should contribute

¹⁴⁶ In 2003, OSCE highlighted the following problem: while an Anti-Trafficking Squad had been assigned to handle international trafficking, or trafficking activities that cross Romania's borders, there was no government agency or organization with a mandate to address the issue of internal trafficking.

¹⁴⁷ Which used to be Service for the Protection of Victims and Social Reinsertion of Criminals

¹⁴⁸ According to the US 2005 TIP report available at <http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm>

to better prevention and assistance, the Ministry of Administration and Interior created an emergency phone line, free of charge, for trafficked victims whose functioning is also far from being fully efficient.¹⁴⁹

Social deficiencies

In broadening the research beyond law and institutions I am exploring possible alternative factors that fail to deter a criminal behavior such as trafficking in human beings. In doing so I am using one of the several models explaining the process of regulating behavior; Lawrence Lessig argues that four main factors are supposed to regulate behavior: legal norms, markets, architecture, and social norms¹⁵⁰.

We have seen the strengths and weaknesses of legal norms and the activity of institutions in Part 3 and the first section of Part 4. I will not focus here on markets, and I limit myself to recalling that research demonstrates how demand for prostitution and cheap labor are well play an unfortunate role in favoring trafficking.¹⁵¹ I will instead argue that currently social norms¹⁵² do not make the job of traffickers harder and, in some

¹⁴⁹ The lack of the budgetary provisions in 2002, 2003 and 2004 made almost impossible the emergency phone line to become functional. However, presently, by the consolidated efforts of the Inter-ministerial Group, this emergency phone line is functional within the General Directorate for Combating Organized Crime and Antidrug/GDCOCA, within the General Inspectorate of The Romanian Police. Nevertheless, this emergency phone line needs specialized personnel and trained as well as a permanent funding source.

¹⁵⁰ Lawrence Lessig, in *The New Chicago School*, The Journal of Legal Studies, June 1998.

¹⁵¹ Adherent to the research topic I reviewed literature published in Western European Countries and the international legal instruments indicating a tendency to analyze the mechanisms of demand in the regional, transnational business of trading in humans See B. Anderson and J. O. Connell Davidson, *Is trafficking in human beings demand driven? A multi-country pilot study.*, Migration Research Series, no. 15.

¹⁵² When referring to the exploratory evaluation of the role played by social norms in regulating human traffic, several methodological and conceptual challenges become apparent:

1. How defined and quantifiable the social norms applicable to human trafficking are?
2. How do we position social norms with respect to the application of law prohibiting trafficking in human beings?

instances, they even favor traffickers' both in Romania (at the point of departure) as well as abroad (at the destination point).

I posit that on a backdrop of increased migration in Romania a new set of social norms that facilitates trafficking has developed. For an indication of the scale of migration I believe it is sufficient to recall that between January 7, 1992 and March 18, 2002, the population of Romania fell by more than 1.1 million people¹⁵³, that is 4.8 %. Together with other population trends,¹⁵⁴ the figures can be accounted for by a significant external migration. Combined push and pull factors spur the appetite for migration.

Push factors such as pressure from family and peers are increasingly documented. Conclusions of a survey published by IOM Bucharest¹⁵⁵ show how, for example, parents may be the first in suggesting leaving to work abroad:

The family might induce the girl to migrate by constantly telling her about how other girls have managed to make a living working abroad. Not only abusive family environments influence the girls' decisions to leave, but non-abusive parents thinking that migration is a viable strategy to succeed in life.

Friends, neighbors, and relatives encourage the idea of sending a person abroad to work. Surveyed children victims of trafficking from the South Eastern European region explained that:

they were often encouraged to leave by a friend, and peer pressure played a significant role in the decision of many children to seek out someone who could find them work abroad, or to accept an offer already made to them. Thus recruiters who belong to the community in which the child lives.¹⁵⁶

¹⁵³ From 22,810,035 to 21,680,974. Source Romanian census results in 1992 and 2002, available at <http://www.insse.ro/rpl2002rezgen/1.pdf>

¹⁵⁴ A falling birth rate and increased mortality rate have undoubtedly played a role but still the percentage is too big for a ten year period.

¹⁵⁵ SEBASTIAN LAZAROIU, WHO IS THE NEXT VICTIM? VULNERABILITY OF YOUNG ROMANIAN WOMEN, 50 (IOM) (2004).

¹⁵⁶ June Kane *Supra note 86*, p 67

The results of the surveys¹⁵⁷ and focus groups¹⁵⁸ suggest that the perception of the vulnerable girls on what is sociably desirable and accepted becomes skewed and traveling abroad to make money seen as the only solution:

Any job abroad is seen as satisfactory. Any migration option is considered better than staying in Romania. The vulnerable girl would be tempted to leave without any arrangements, and to take all risks involved. It is not what they go abroad that is important, but rather the money they can make.¹⁵⁹

Another survey released in March 2006 helps us to explain the full dimensions of the phenomenon. A national poll of the Institute of Marketing and Surveys performed in August 2005¹⁶⁰ on a representative sample concludes that “almost half of those who would prefer a job abroad are inclined to break some rules, which makes them much more vulnerable to being trafficked.”¹⁶¹

Table 6

Basis: those who prefer a job abroad are willing to:

declare at border points other purposes of your visit than the real one	36.6%
extend stay beyond the period allowed by visa	34.2%
break for a while any kind of ties with family or friends	15.6%
let someone else keep their passport	2.9%
use fraudulent documents	2.8%

¹⁵⁷ The survey performed by IMAS in 2003 shows that 73 % of the sample of vulnerable girls indicated a strong desire to seek work in a foreign country. Even if offered a similar job in Romania, 76% of them would prefer to go abroad.

¹⁵⁸ For samples of answers in the focus groups Supra note 26, p 48

¹⁵⁹ *Id.* p. 49

¹⁶⁰ EVALUATION OF ANTITRAFFICKING POLICIES IN ROMANIA, UNICEF AND THE INTERGOVERNMENTAL GROUP AGAINST TRAFFICKING, 92 (2006), at http://www.unicef.org/romania/Raport_traff_final.pdf The authors conducted a survey by questionnaire on a representative sample at national level of 1247 respondents, followed by an over-sample of 200 female respondents in the age group 15 to 24 years.

¹⁶¹ Source: IMAS, 2006

Thus, a strong preference for migration combined with a propensity to break the norms, in order to succeed in securing a job abroad is a strong indication of the tendency to ignore the risks and choose the path that is perceived as the way to a prosperous future. On the other hand, once someone falls into the trap of traffickers he or she is most likely to be considered the one to blame both by social actors¹⁶² as well as part of the members of the institutions,¹⁶³ suggesting that society still has to overcome the “she is just a prostitute” perception. Under the circumstances described above I believe we can conclude that current social norms both favor a vulnerability of certain categories to trafficking as well as make a social reinsertion of victims very difficult.

The arguments doubting the relevance of an analysis of social norms in the field of criminal law have to be taken into account¹⁶⁴. I believe, however, that it is worth at least launching a debate about the hypothesis that in a transitional society social norms favor and provide “legitimacy” for the activity of traffickers in human beings. When submitting the case of Romania we are in fact dealing with a society that has yet to choose between a social democratic model with a strong interventionist state and a liberal system allowing its citizens to pursue their social and economic aims in spite of the risks and moral challenges that might occur in the process.¹⁶⁵

¹⁶² Lazarescu, 2003 Supra note 3, at 53:

When referring to trafficking situations, parents mainly blame the victim. Failurees are deemed to be caused mainly by the girl’s irresponsible actions, by her refusal to listen to her parents, or by her inappropriate choice of models of success. It is her credulity and lack of experience that makes her fail in avoiding the recruiter.

¹⁶³ Telephone Interview with I.M. chief of the National Agency for the Prevention of Trafficking (Jan. 5, 2006): “we have come a long way since the times where even the representatives of authorities would shrug their shoulders and say What can you do? She is a whore.”

¹⁶⁴ As laid out in Robert Weisberg’s, *Norms and Criminal Law And the Norms of Criminal Law Scholarship*, The Journal of Criminal Law & Criminology, Vol 93, 2002-2003.

¹⁶⁵ For creating the setting of the confrontation between the social democratic model and liberal capitalism see Christopher Pierson, *Beyond the Welfare State?* Cambridge: Polity Press, 1991, and Claus Offe, *Contradictions of the Welfare State* London: Hutchinson, 1984.

4.2 CONCLUSIONS AND RECOMMENDATIONS

My paper attempted a preliminary profiling of traffickers that operate in Romania as well as an assessment of the effect and role played by the legal and institutional framework in place. My objective has been to assess whether this framework is sufficiently effective in reducing trafficking or has merely transformed, while traffickers use the loop-holes in the system. I conclude that a necessary step further in elaborating a policy to combat and prevent trafficking that is both efficient and realistic needs to take into account all the stakeholders in the phenomenon and therefore a more comprehensive causality of the trafficking process.

The research methods I used were a combination of qualitative and quantitative analysis in an effort to avoid the skewing of conclusions due to the criminal “hidden” nature of the act and the scarcity of empirical data; their nature and results are undoubtedly perfectible.

In the existing literature the profile of the trafficker receives little attention with the exception of an exploratory analysis of the activity of recruiters published in their reports by the International Organization for Migration, NGOs such as Alternative Sociale Iasi¹⁶⁶ or a recent initiative of the United Nations Development Program to elaborate a “Law Enforcement Best Practice Manual For Fighting Against Trafficking of Human Beings” including study cases. Under these circumstances media coverage of operations to dismantle networks or “hidden-camera” incursions in the world of human trafficking, in

¹⁶⁶ Available at http://www.antitrafic.ro/sections/sdfnsf/asfadn/?t_id=0p15p0, last visited 01/20/2006

spite of their often anecdotal or journalistic¹⁶⁷ character are the most available sources information especially with regard to the phases of transportation and exploitation of the victims.

More attention has to be given to the issue of how traffickers as individuals or within networks behave, how their resources are gathered and redistributed or invested in the legal economy. Tackling the finances, tracking the money couriers and those who help launder the profits may be a solution to stopping their operations. Trafficking routes are changing speculating on permissive or uncoordinated legislation and institutional framework.

It is often believed that perpetrators often act with impunity due to the lack of appropriate regulations¹⁶⁸ and institutions to combat them, addressing the demand of a market where the customers are as guilty as their suppliers.¹⁶⁹ In Romania considerable effort and progress has been achieved in the past five years in addressing trafficking.

However, more effort needs to be put into clarifying and making operational the laws that were adopted. This should be done with the help of professionals who are involved day to day in the enforcement of trafficking operations as well as non-governmental actors who dedicate their resources to combating this form of modern slavery. I believe that institutions can achieve a better level of cooperation and a more uniform system of procedures and standards.

¹⁶⁷ Paul Radu, David Quin, *Raport al Centrului Român pentru Jurnalism de Investigații privind traficul de fiinte umane în Europa de Sud Est*, IWPR, (2004).

¹⁶⁸ The conclusion of interviews conducted with Romanian policemen and judge that presided over cases of trafficking in human beings is that although a legal framework against trafficking is in place, other deficiencies in the system such as an improper protection of witnesses account for the low rate of convictions as compared to prosecutions.

¹⁶⁹ In Israel for example Attorney General Menachem Mazuz declared that he has not ruled out the possibility of amending the law to incriminate the clients of women illicitly sold into prostitution, in addition to the sex traders themselves. Source Haaretz on line.

Budgetary restraints still hamper the efforts to more efficiently protect the victims and therefore secure their testimonies or insure successful reinsertion in society. Additional support is needed to empower the victims in their fight against the traffickers by offering them the legal assistance as well as a clear, sustainable and un-conditioned roadmap for reinsertion in society.

On a different level, law makers and political theorist in Romania should decide on the model of assistance they want to provide Romanian citizens that decide they want to travel and work abroad. Public opinion seems split between the perception that “state has to provide for and protect the individual” and the “deregulation of migratory flows” as an expression of the freedom of movement. One respondent in the focus group organized by IMAS is representative of nostalgia for a heavily influential, socialist state; what the authors of the study call “blaming the state for the situation”:

It is unacceptable the youth should wish to leave and work abroad, in no matter what trade, and to have to disregard their professional training... The state should get involved, to regulate this situation and provide some jobs in the country for all girls, irrespective of what their level of education may be. 30, 25 or 27 years ago when we got married, one had the possibility of getting a job.¹⁷⁰

Opposing this view, there are those who believe that freedom to do anything is fundamental for an individual that is member of a liberal society who should be able to make its own decisions with regard to the place where he or she chooses to make a living.

Trafficking in human beings needs to be more closely researched by sociologists and criminologists as law seems to be acting alone against markets and social norms in fighting trafficking. Increasing the punishment limit for trafficking is one measure that can be taken to deter traffickers but the other factors should also be targeted when elaborating a comprehensive counteracting strategy.

¹⁷⁰ LAZARESCU, *Supra* note 56, at 52

Social norms are influential not only at the point of departure; The developed liberal western European countries are the terminus point of the majority of victims, and social norms turn a blind eye to the use of prostitutes, preferably young¹⁷¹ as well as the proliferation of pornography.¹⁷² A more responsible attitude is needed from the policy makers and public of those countries.

Institutional and legal attention has been directed principally towards international trafficking. The general trend of trafficking is indeed taking most of the Romanian victims across the border but a shift in trends may not be far away from happening. Economic development and other political changes such as the presence of international military bases¹⁷³ on Romanian soil may lead to an upsurge in internal trafficking and may transform the country profile from origin to destination¹⁷⁴.

All these considerations lead us to the general conclusion of this paper: an empirical-based, interdisciplinary, flexible and comprehensive approach needs to address all the components of trafficking: its causes, phases and especially its actors, traffickers included. Only in this manner we can come closer to policies that will end this form of human rights violation.

¹⁷¹ Bridget Anderson, Is Trafficking in Human Beings Demand Driven? A Multi-country Pilot Study, IOM 2003, p 44:

The research suggests that three related factors are key to explaining the exploitative conditions experienced by many migrant domestic and sex workers: a) The unregulated nature of the labor market segments in which they work; b) the abundant supply of exploitable labor and c) the power and malleability of social norms regulating the behavior of employers and clients

¹⁷² Catharine A. MacKinnon, *Pornography as Trafficking* 26 Mich. J. Int'l L. 993 2004-2005 “To make visual pornography, the bulk of the industry’s products, real women and children , and some men, are rented out for use in commercial sex acts”.

¹⁷³ The US and Romania have recently signed an agreement for the opening of two American military bases and two training camps.

¹⁷⁴ Within months of KFOR’s arrival in Kosovo , a small-scale local market for prostitution was transformed into a large-scale industry based on trafficking predominantly run by organized criminal networks.

5. ANNEX

Interview Protocol used for Public Officials, Members of the Police, Judiciary

Introductory remarks and questions:

1. My background – SPILS fellowship
2. The research question I am addressing:
 - a. Who are the traffickers in human beings in Romania?
 - b. What are the incentives and barriers to the activity of human traffickers after the implementation of a new legislative and institutional framework in 2001?
3. Procedure rules and agreements
 - a. Do you agree with your name being acknowledged in the paper?
 - b. Do you agree to be quoted in the paper?
 - c. Would you like to receive and confirm a transcription of the interview?
 - d. Is the use of a taping device acceptable during the interview?
 - e. May I contact you following our interview for clarifications, other information?

Background information on the interviewee:

- a. Date and Name
- b. What is your job title?
- c. What functions does your job involve?
- d. What are your attributions in the field of preventing and combating trafficking in human beings in Romania?
- e. For how long have you been working in the field?

I would like to asses the impact of the Legislation regarding trafficking in human beings adopted by the Romanian Parliament in 2001.

- a. Was your institution consulted when the legislation was drafted?
- b. If yes was your opinion taken into account when the final draft was submitted for approval?

- c. Do you consider the legislation as being a useful and comprehensive tool in preventing and combating trafficking in human beings?
- d. Has current legislation made it easier to investigate prosecute and convict traffickers in human beings?
- e. If you had the chance what would you change or add to the current legislation?

I would like to asses the efficiency of the counter trafficking institutional system in place.

- a. Do institutions involved in counter trafficking have clear attributions?
- b. How would you asses their collaboration?
- c. Do they have the appropriate human and financial resources to fulfill their tasks?
- d. If you had the chance what would you change or add to the current institutional framework?

What would be the elements of the profile of the traffickers in human beings in Romania as we speak?

- f. How do you / your institution/ your organization come in contact with the traffickers in human beings?
- g. Is there a national, ethnical and geographical repartition (do they come from the same regions as the victims? perhaps border areas?),
- h. What is their economic, social and educational background?
- i. Are you aware of the existence of exclusively Romanian networks or are they part of transnational groups?
- j. If integrated in international networks are Romanians situated towards the upper or lower level of the hierarchy?
- k. What their incentives (financial, sexual) are they obtaining? Can we speak of a quota received in proportion to the ranking within the “organizational” ladder
- l. Can we speak of a division of labor among traffickers (recruiters, transporters, brokers)?

How would you asses the response of the Romanian society to trafficking in human beings?

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Amnesty International, Amnesty International Campaign "Stop Violence Against Women" <http://web.amnesty.org/actforwomen/index-eng>

Anti-Slavery International, Anti-Slavery International Campaign "Stop Human Traffic"
<http://www.stophumantraffic.org/>

CAST, Coalition to Abolish Slavery & Trafficking www.castla.org

International Organisation for Migration

<http://www.iom.int/>

The Protection Project, <http://www.protectionproject.org/main1.htm>

Salvati Copiii Romania www.salvaticopiii.ro

United Nations Office on Drugs and Crime: Trafficking in Human Beings,
http://www.unodc.org/unodc/en/trafficking_human_beings.html

UNICEF, UNICEF Campaign to End Child Exploitation

United States Department of State, United States Department of State: Office to Monitor and Combat Trafficking in Persons <http://www.state.gov/g/tip/>