

**ROMANIAN LEGISLATION REGARDING ILLEGAL MIGRATION,
TRAFFICKING IN HUMAN BEINGS**

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The attempt of promoting and strengthening the European Union's common identity was framed inside the context of the economic and socio-political dimensions of communitarian actions and policies through a strong relation with EU citizens and member states but as well through a close relationship with other states of the world.

The approach of the migration inside EU can be made only in connection with the insurance for applying the mechanisms of warranty for the right of the persons to free circulation in accord with the dispositions of 4th Protocol of the European Convention of Human Rights. We also can observe that this right to free circulation of citizens is guaranteed and promoted by communitarian Treaties that states the necessity of european cooperation for clarifying the conditions for an appropriate manifestation of free circulation of persons, to build and apply common politics regarding visas, asylum and legal migration.

Within this perspective there is a special significance given to the stipulations of the CE Treaty (Title IV) and the Maastricht Treaty (Title IV regarding the cooperation in the field of justice and home affairs – the third Pillar of European Community). But once with the Amsterdam Treaty it was accomplished the “communitarization” of dispositions for visas, asylum, migration and auxiliary policies leaving inside the framework of cooperation only the judicial and police cooperation in the penal field. These proposals are accompanied by additional measures to combat illegal migration, in particular the smuggling and trafficking in human beings and to develop a readmission policy and a return policy.

The Treaty establishing a Constitution for Europe through the Chapter IV titled “Space of freedom, security and justice” (Part III, Title III) is supposed to replace in the future the Title IV from the Treaty of the European Union. The Article 257 from the European Constitutional Treaty points out the general principles of the space of freedom, security and justice: respect of the fundamental rights of citizens; the absence of control at internal borders, a common policy regarding asylum, legal migration and control of external borders based on member states solidarity; the accomplishment of a security climate through prevention and discouraging illegal

migration and any forms of discrimination; cooperation and coordination between police and judicial authorities both at European level and at the level of relations between EU and member states; harmonizing legislation in penal field.

Concerning EU common policy regarding migration, the Article III – 267 from the European Constitutional Treaty stipulates the necessity for efficient control over migration flows, for ensuring an equitable treatment for the citizens of third part states with legal status and with the possibility of exercising the right to work inside member states, for fighting against illegal migration and trafficking in human beings.

An effective migration policy cannot be limited to instruments for the admission of migrants. Other equally important legislative and operational measures are necessary, as migration represents a complex phenomenon that needs to be addressed coherently across all its dimensions: measures concerning the prevention and fighting against the illegal migration, the trafficking in human beings. In this context the EU and the member states must intensify its efforts to apply these measures at european level and national level.

The process of EU enlargement towards Central and Eastern Europe imposed a reconsidering of common policies regarding migration related with the new conditions and new economic, social and political circumstances both at European and national level (for the new member states). Such a reconsidering involves two aspects: 1) legislative aspects: adopting standard and non-standard communitarian juridical documents that work as settlements for migration issues, especially on prevention and control of illegal migration; implementing the *acquis communautaire* to national legislations of new states members from Central and Eastern Europe – legislation regarding the illegal migration, the trafficking in human beings; 2) practical aspects: building European and national strategies regarding migration that considers political, economic social and cultural implications of legal migration and the requirement for reducing negative consequences of illegal migration.

In the case of Romania we can observe the authorities interests regarding a good negotiation for becoming EU member with a special focus on the second chapter of negotiation, chapter regarding the free circulation of persons, and also chapter 24 concerning the justice and home affairs.

During the period 2000-2006 Romania has made significant efforts for harmonizing the national legislation regarding migration, trafficking in human beings with the European one. There was given a special attention to accomplishing an

institutional reform for increasing efficiency of the specialized institutions in the field of migration.

Once with Romania's accession to EU in January 2007 here is localized an east external border of European Union. This requires a strict applying of concrete measures stated both at European and national levels. *The National Strategy Regarding Migration for 2007-2010* establishes concrete measures for:

A) controlled migration:

- ensuring the administrative framework for the usage of the right to free circulation and residency of citizens of EU member states;
- promoting the admission of third part countries citizens with the purpose of working in accordance with the needs of the labour market;
- encouraging the admission of foreigners that intend to invest in commercial activities;
- promoting an efficient selection system for admitting foreign citizens to pursue studies on Romanian territory;
- development of IT technologies for controlling information towards migration on national territory;

B) prevention and combating illegal migration:

- efficient informing of potential migrants on legal possibilities for admission and on measures taken by Romanian state against illegal migration;
- intensifying the cooperation between authorities for fighting against the illegal migration and trafficking in human beings;
- intensifying the measures of returning the foreigners that are illegal on Romanian territory or that entered legally and their status expired;
- preparing Romania for accession to Schengen space;
- intensifying the cooperation between Romanian authorities and similar institutions from EU member states

C) social integration and voluntary return/repatriation of foreigners with illegal status:

- supporting resident foreigners on Romanian territory to actively participate in legal economic, social and cultural activities with ensured respect for their cultural identity

- ensuring that accepted foreigners categories make sufficient efforts to become integrated in Romanian society including specific programs organized with this purpose by Romanian state
- increasing awareness of the people involved in this field – public workers, society and the foreigners – towards the importance of the support of integration.

As stated in the project of *The National Strategy Regarding Migration for 2007-2010*, the accession of Romania to EU and the supposed increasing economic development in the post-accession period will influence the existing migrational flows and will make Romania a target country for various categories of migrants.

Inter-ministerial group working for coordination and evaluation of activities for prevention and combating trafficking in human beings emphasizes that 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 50 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.

In November 2000, the UN General Assembly took the initiative to coordinate the international community's response against human trafficking and approved The Convention against Transnational Organized Crime together with UN Additional Protocols. These international legal instruments are signed and ratified by Romania with the Law no 565/2002. In 2005 is adopted the Convention of Council of Europe for fighting against trafficking in human beings and in according with this Convention in Romania is adopted G.D. no. 79/2005 which modify and complete the Law no. 678/2001 regarding prevention and combating trafficking in human beings.

The adoption of the national legislation meant a whole package of legislation, which came into force in 2001-2003 enabling the law enforcement agencies to take action for diminishing this phenomenon of illegal migration, trafficking in human beings at the same time harmonize the Romanian legislation and strategies with the international and european standards and proceedings in the field:

- Law no. 678/2001 regarding prevention and combating trafficking in human beings;
- Governmental Decision (G. D.) no. 1216/2001 for the approval of National Action Plan for prevention and combating trafficking in human beings;

- Law no.682/2002 regarding witness protection;
- Law no. 565/2002 regarding ratifying UN Convention against Transnational Organized Crime and Additional Protocols;
- Law no. 39/2003 regarding prevention and combating organized crime;
- G.D. no. 299/2003 regarding approval of the Regulation for implementation of the Law678/2001.

In accordance with the G. D. no.1216/2001 is established the National Action Plan for Prevention and Combating Trafficking in Human Beings with pragmatic objectives on three strategic directions of actions: prevention, fighting against the traffic in human beings and protection of trafficked victims. The applying of this Plan has positive aspects (it enables the development of cooperation between governmental agencies and civil society; it allowed the improvement of cooperation between Romania and the international partners) and negative aspects (it wasn't possible to establish a permanent framework for cooperation; it wasn't possible to develop an adequate communication system between the different actors involved; some activities were defined too generally and, as a consequence, it was difficult to follow up their accomplishment).

Seen as a threat against humanity, human trafficking alongside drugs and weapons trafficking was carefully supervised, since 2001 when the Law no. 678/2001 on prevention and combating the trafficking in human beings was issued. Thus, prevention and combating human trafficking became one of the main objectives on the Romanian government Agenda.

The priorities for the next period concerns: to implement of *The National Strategy of Prevention and Combating Trafficking in Human Beings for 2007-2010*; to evaluate the consequences of the legislative and other measures taken in the field of prevention and combating human trafficking; 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; to elaborate prevention strategies, together with the involved governmental institutions and the representatives of nongovernmental institutions in this field; to support local programs on prevention and combating trafficking in human beings.