Entrusted children

A study on the legal requirements and procedures concerning the exit and re-entry of Romanian minors in the context of human trafficking: the role of Public Notaries.
Research study

Project title: ICARUS: Improving Coordination and Accountability towards Romanian Unaccompanied minors’ Safety
Project acronym: ICARUS
Project number: HOME/2012/ISEC/AG/THB/4000003898
Document type: Deliverable
Nature of document: Study
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Publishing date: January 2015

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This document is intended for the use of the "ICARUS: Improving Coordination and Accountability towards Romanian Unaccompanied minors’ Safety" project partners. It may be distributed by that project partners as required.

Co-funded by the Prevention of and Fight against Crime Programme of the European Union.
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Human trafficking remains a serious issue in Romania. A significant percentage of trafficking victims are children, who are mostly trafficked into Western Europe for various purposes including: sexual exploitation, forced begging, petty crime and benefit fraud.

In order to fight and prevent trafficking in children, Romania introduced in 2005 a series of obligations with effect on the free movement of Romanian children. One of these obligations is the affidavit – which acts as proof of parental consent for the child to leave the country. Albeit this being one of the key safeguards put in place to prevent external child trafficking, to date there is little research evaluating the impact and effectiveness of this safeguard. The only such evaluation was carried out by Terre des hommes in a previous research report released in 2013, which highlights a series of limitations to the current system. The present research seeks to explore those findings further and provide additional evidence to highlight shortcomings of the affidavit system and provide concrete recommendations.

It has been 10 years since the affidavit system was introduced, and it is necessary to look back and see what worked and what needs to be done in order to improve the current system, or replace it altogether. This is particularly important in the context of Romania’s potential accession to the Schengen area.

This research shows that there are still many shortcomings to the current system, in all of its phases, from when the affidavit is issued to when it is used at the border control. The research also shows that there is no follow-up and monitoring system of the affidavit system and that there is no centralized monitoring of how this system works in practice, that the current paper-based approach limits the ways in which the affidavit can be used. All of these hamper the effectiveness of the current system. The system is further hampered by a series of more general issues including corruption.

In order to improve efforts in fighting and preventing child trafficking, all of these limitations need to be addressed and the current system needs to be either improved or replaced with mechanisms better tailored to current realities and necessities.
**Definitions**

**Accompanying adult** – person, other than the parent, with whom the child leaves the country and who is entrusted for this purpose by the parents of the child, through an *affidavit*.

**Affidavit** - A written statement of facts voluntarily made by an affiant under an oath or affirmation administered by a person authorized to do so by law. In the context of this research the *affidavit* is a *declarație notarială*, which is a document signed by the parent/s of the child before a public notary and which expresses the consent of one or both of the parents in respect to their child travelling abroad. In practice the term *procura* is also improperly used in reference to the same document.

**Human trafficking** – For the purpose of this study we are using the definition to human trafficking provided by the Council of Europe Convention on Action against Trafficking in Human Beings, in art. 4 which states that human trafficking shall mean:

(a) the recruitment, transportation, transfer, harboring or receipt of persons, by means of the 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 of 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 human beings” to the intended exploitation set forth in subparagraph (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 human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article

*The same article further defines child and victims as:*

Child - any person under eighteen years of age (para. d);

Victim - any natural person who is subject to human trafficking (para. e).

Internal trafficking – trafficking which occurs within the border of the country of origin of the victim

External trafficking – trafficking which occurs outside the border of the country of origin of the victim
Abbreviations

ANPDCA - National Authority for the Protection of Child Rights and Adoption (Autoritatea Națională pentru Protecția Drepturilor Copilului și Adopție)

ANITP – National Agency Against Trafficking in Persons (Agenția Națională Împotriva Traficului de Persoane)

DCCO – Direction for Fighting against Organised Crime (Direcția de Combatere a Criminalității Organizate)

DGASPC – General Direction for Social Assistance and Child Protection (Direcția Generală de Asistență Socială și Protecție a Copilului)

EU – European Union (Uniunea Europeană)

FOI – Freedom of Information request, formulated pursuant to Law 544/2001

HG – Governmental Decision (Hotărâre de Guvern)

IGPF – General Inspectorate of Border Police (Inspectoratul General al Poliției de Frontieră)

NGO – Non-Governmental Organisation (Organizație N eguvernamentală)

OUG – Governmental Emergency Order (Ordonanță de Urgență a Guvernului)

UK – United Kingdom
Introduction

The study is carried out by Terre des hommes Foundation and it is part of the ICARUS project (Improving Coordination and Accountability towards Romanian Unaccompanied minors’ Safety) co-financed by the European Commission under the Prevention and Fight against Crime Programme of the Home Affairs DG.

The project itself has three defined and time-bound objectives: (i) Improve knowledge base of trafficking of vulnerable groups involved in child begging and other forms of labour exploitation; (ii) Improve victim assistance and identification among practitioners who come into contact with victims or potential victims of THB; and (iii) Prevent child trafficking from Romania, particularly in the context of Procura issued by PN in trafficking prone counties.

The present study seeks to explore whether the affidavit plays a role in the fight against trafficking of Romanian children. In doing so it firstly describes the scope of the research and the methodology used.

The study then moves on to analyze the general legal and institutional framework around child trafficking and then it seeks to provide an analysis of the scale of child trafficking. This analysis also looks at who the victims is, which children are more vulnerable to child trafficking and who the traffickers are.

Further, the study takes a closer look at the requirements for Romanian children who leave the country with a focus on the affidavit. This section places the affidavit within national legislation, it establishes its legal basis and its content. It also looks at how the affidavit is used and by whom. For a better understanding of the system the study also explores the various perceptions on the affidavit from main actors involved.

The study also encompasses a quantitative analysis of affidavits used in a border crossing and it brings together comparatives elements of how the affidavit is used in other European jurisdictions. In doing so, the research is therefore almost exclusively exploring the external dimensions of child trafficking and does not, or to a much lesser extent, cover aspects relating to internal child trafficking.

The study then provides some conclusions highlighting some of its limitations and potential adverse consequences and recommendations on how to improve the affidavit system.
In 2010 a story about trafficking of Romanian children held the headlines across Europe.\(^1\) The victims came from a small town called Țăndărei. The children were taken mostly into the UK, where they were exploited for begging, benefit fraud and petty crime purposes. In that case it seems that the traffickers acted with the complicity of public officials and even public notaries who were accused of helping the traffickers falsify documents including the affidavits.\(^2\) This case highlights a number of gaps in the anti-trafficking mechanisms established in Romania and also in destination countries such as the UK.

The present study seeks to provide answers to some of the questions raised by the above-mentioned case and to provide recommendations for improving the anti-trafficking mechanisms in order to better protect the rights of the child victims.

The objective of this research is to inform the development of better policies and practices that ensure an adequate level of protection for Romanian children while respecting their right to freedom of movement.

The study takes as a starting point the hypothesis that the current system of exit and entry of Romanian children does not offer sufficient child protection safeguards and may have adverse consequences for children. This in turn creates the need for reform.

The research would focus on the **affidavit (declarație notarială)** as a means to prevent and help identify/sanction international trafficking of Romanian children. It seeks to explore how the affidavit is used in practice and what are its limitations. It also sets to identify the role the public notaries play or can play in fighting and preventing human trafficking.

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The research methodology was developed by the research team, comprising of experts from Terre des Hommes Foundation in Romania and Hungary, and experts from the Counter Human Trafficking Bureau in the UK as well as independent researchers.

In order to get a full picture of what role the affidavit plays in fighting and preventing human trafficking, this research looked at both qualitative and quantitative data and it employs a number of research methods, including desk research, case-law research, interviews, focus groups and FOI requests.

The research focuses on four Romanian counties with a high prevalence of human trafficking: Ialomița, Dolj and Bucharest (Ilfov), and Arad. The statistical data cover 2013, 2012 and 2011.

**Desk research**

The purpose of the desk research was to collate and analyze existing information on child trafficking and affidavits, including studies, literature and also laws and regulations. As expected, there is little literature on the matter and this activity focused on taking stock of the existing body of law, with an emphasis on Law 248/2005 on freedom of movement for Romanian citizens.

**Semi-structured Interviews**

The purpose of the interviews were to get practitioner’s insights and to identify new research leads, and test research hypothesis. Semi-structured interviews were carried out with the main stakeholders involved, including: ANITP, border police, child protection officials, NGO representatives and public notaries.

**FOI requests**

Using Freedom of Information (FOI) legislation, namely Law 544/2001, for the purpose of this study, 20 requests were sent to relevant bodies including: Border Police, Child Protection Authorities, Courts of Law, Public notaries, Prosecutors Offices, National Administration of Penitentiaries. These requests sought to obtain mostly statistical data which could help better understand the scale of child trafficking and to evaluate efforts made to prevent and fight child trafficking cases. Unfortunately most of the targeted agencies did not respond to our FOI request or responded that they did not have the solicited information.

**Focus group**

In the framework of this project one focus group was organized in London, UK. The focus group brought together Romanian officials involved in the fight against human trafficking as well as their British counterparts, together with child protection officials and civil society representatives. The purpose of this focus group was to identify research leads, test the research hypothesis, provide a platform to exchange information and jointly address some of the research questions.
Case-studies

For a better understanding of how human trafficking takes place in practice, this research also includes case studies deriving from child-trafficking court cases. This was done by looking at case files of external child trafficking cases, archived at the Bucharest Tribunal. The researchers paid particular attention at how the child left the country and whether or not the child had a valid affidavit. Also, some case-studies examples were identified by looking at jurisprudence available online.3

3 Online jurisprudence can be found on the Supreme Court of Justice website at: http://www.scj.ro/; and on a Ministry of Justice website: portal.just.ro
Legal and institutional framework

Romania has set up a complex legal and institutional framework with the purpose of fighting and preventing human trafficking. It is all described in the National Strategy against Human Trafficking for 2012-2016, together with an analysis of the main obstacles and goals.\(^4\)

Some of the key national legal documents are:

- Law 678/2001 on preventing and fighting human trafficking – this is the key legal document outlining the main activities in fighting and preventing human trafficking, including protection offered to the victim. This law used to sanction child trafficking in article 13, but since February 2014, this article is replaced by article 211 of the Criminal Code. The new provision on child trafficking listed in the Criminal Code reduces the sentences applicable to child traffickers. Before, a judge could apply a sentence from 5 to 15 years and now the judge can only apply a sentence from 3 to 10 years.
- Law 248/2005 on freedom of movement for Romanian citizens - this law establishes the conditions under which Romanians, including minors, can travel abroad. This law prescribes the *affidavit*, which a child needs when exiting the country if not accompanied by both parents (art. 30)
- Criminal Code – the criminal code is in force from February 2014 and it now largely replaces Law 678/2001 which used to be the main legal document sanctioning human trafficking. The criminal code sanctions: human trafficking (art.210), child trafficking (art. 211), forced labor (art.212), pandering (art. 213), exploitation of begging (art. 214), using children for begging (art. 215), using services provided by a person who is exploited (art. 216)
- Order no. 335 of 29 October 2007 establishing the national mechanism for identification and referral of victims of human trafficking. This gives a set of criteria to identify potential victims of human trafficking, indications on how to deal with possible victims and what to do once a victim has been identified.
- Law no. 272/2004 on protecting and promoting children’s rights is the general law on children’s rights, providing the general framework in this matter. It also describes the main authorities responsible with protecting children’s rights and their main areas of competence.

\(^4\) The National Strategy against Human Trafficking for 2012-2016, is available at: http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Anexa_1%20Strategie%20trafic%20persoane.pdf (last visited on the 4\(^{th}\) of May 2014)
Some of the key international legal norms with relevance to human trafficking are:

- EU directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.
- Council of Europe Convention on Action against Trafficking in Human Beings
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

Some of the key actors involved in the fight against human trafficking and taken into account in this study are:

- The National Agency Against Human Trafficking – it is entrusted with coordinating, evaluating and monitoring at national level the manner in which anti-trafficking policies are implemented.
- Border police – it plays an essential role in preventing illegal border crossing of children and identifying possible victims of human trafficking. They are responsible for checking that the children have valid identifications documents, the affidavit and other formal requirements (as for example custody papers in case one of the parents has sole custody of the child or death certificate in case one of the parents is deceased).
- The Directorate for Investigating Organized Crime and Terrorism (DIICOT) - It is a specialized body of prosecutors which is part of the Public Ministry
- The National Authority for the Protection of Children’s Rights and Adoption (ANPDCA)– through its specialized units, they are involved in repatriating victims of trafficking and providing support, they are also called upon when a child is found unaccompanied at the border.

Victims of human trafficking

Figures compiled by the anti-trafficking agency (ANITP) show that\(^5\) out of 896 of victims identified in 2013:

- 77% were women;

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- 48% were children;
- 66% were sexually exploited, 24% labor exploitation and 6% were subjected to other forms of exploitations including begging and criminal activity;
- 54% were recruited by a relative or a friend;
- 94% were recruited directly, without intermediaries;
- 62% were trafficked internationally;
- Some of the most common destinations of trafficking victims identified in 2013 were: Greece (120 victims), Germany (95), Italy (78), Spain (77), Turkey (39), UK (36), Austria (24), Portugal (22), France (17) and Netherlands (17).

These figures show that most victims of human trafficking are women who are sexually exploited. This data also shows that almost half of human trafficking victims were children when initially trafficked. The most vulnerable minors are girls, more vulnerable even than the adult population: 96% of the children trafficked in 2013 were girls.  

This data also shows that most traffickers know the victim, they are either relatives or friends of the family, which may make it easier for them to get the trust of the victim and of his/her family and convince them to provide an affidavit.

Also, interestingly enough these figures show Greece as being one of the countries where most trafficking victims were identified in 2013. This is counter to previous data, which indicate Spain and Italy as most common destinations for Romanian victims of human trafficking, as the table below shows.

![Most commons destinations of Romanian trafficking victims 2006 - 2010](image)

Figure 1. Most commons destinations of Romanian trafficking victims 2006 - 2010

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7 This does not necessarily mean that the number of trafficking victims rose in Greece; it could also mean that the law enforcement officials intensified their activity and identified more victims.

The ANITP study also shows the patterns in respect to human trafficking from 2008 to 2013\(^9\), as illustrated by the following chart:

![Human trafficking trends](image)

**Figure 2. Human trafficking trends from 2007 to 2014**

In this chart the identified victims are those victims identified in a given year (of which some may have been trafficked in previous years) while the trafficking victims figure shows the number of victims trafficked and identified in the same year.

The trend suggests a slight decrease in frequency of human trafficking cases, but numbers are still higher than figures registered before the economic crisis of 2008.

Also, if analyzing the annual report of ANITP from 2007 to 2012, a worrying trend emerges in terms of child trafficking, as illustrated in the charts below.

![Trafficked children](image)

**Figure 3. Trafficked children between 2007-2012**

![Percentage of child trafficking victims](image)

**Figure 4. Percentage of child trafficking victims between 2007-2012**

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These two charts above indicate that there has been a rise in child trafficking cases from 2007 to 2012, both in terms of number of identified children who are victims of human trafficking but also in terms of the percentage of child trafficking victims from the total number of human trafficking victims.

The data published by ANITP is not always comparable from one year to the next due to different reporting formats, so it is difficult to assert clear trends, though several reports point to the fact that a larger percentage of the minors are trafficked internally rather than externally.

Whilst it seems that the number of child trafficking victims is growing, at the same time, the percentage of child trafficking victims who are trafficked externally seems to be decreasing, as indicated in the chart below.

![Percentage of external trafficking](chart.png)

*Figure 5. Percentage of external trafficking between 2007-2012*

This data would indicate that external child trafficking is decreasing. Nonetheless, generally speaking it would be expected that external trafficking of children is lower than internal, because external trafficking presents additional complications and risks for the traffickers and also because in practice it seems that internal trafficking is followed by external trafficking – meaning that that before victims are trafficked externally they are first exploited internally so that the trafficker can consolidate his control over the victim, by the end of this process and by the time the victim is trafficked externally he/she may already have turned 18.

**Victims in the UK**

The National Society for the Prevention of Cruelty to Children (NSPCC) is an NGO which works closely with children at risk in the United Kingdom, it runs a hotline for children at risk and even
a Child Trafficking Advice Centre. They are contacted regularly to investigate suspicions of children who may be at risk. When they consider that a child may be a victim of human trafficking they refer the child into the National Referral Mechanism (NRM), the UK process for identifying and supporting victims of trafficking.

They keep records of all children which they refer through the NRM. Their records show that:

- In 2011: 22 Romanian children were referred through the NRM, of which 9 boys, 13 girls. All without either parent. 17 with concerns for trafficking for benefit fraud, 3 for criminal activity, 1 for domestic servitude, 1 for sexual exploitation;
- 2012: 20 Romanian children were referred through the NRM, of which 4 boys, 16 girls, 13 without either parent, 4 with at least 1 parent. 1 unknown. 5 with concerns for trafficking for benefit fraud, 4 for criminal activity, 3 for domestic servitude, 2 for labor and 5 for sexual exploitation;
- 2013: 19 Romanian children were referred to the NRM, of which 5 boys, 14 girls. 13 not with a parent, 3 with a parent, 3 not sure. 3 with concerns for sexual exploitation, 9 for criminal exploitation, 4 illegal adoption, 1 labor.

This would indicate that around 70% of referred children are girls, almost 80% are unaccompanied by any parent and 50% are believed to be used for benefit fraud. These are the children who are most vulnerable and at risk of being victims of trafficking.

Beth Hurley, children's services practitioner with the NSPCC Child Trafficking Advice Centre, also added that from her NGO’s experience, in terms of numbers of child trafficking victims,

Romanian children make a large percentage and are the third largest group after Vietnam and Nigeria. One of the main safeguarding issues is that the children are living in unregulated informal fostering arrangements, say with an ‘aunt’ or ‘uncle’ but they are not blood relations but this is not assessed and the children are left unchecked and vulnerable to abuse and neglect.

The trafficker

Official statistics provided by the Ministry of Justice with respect to convicted human traffickers for the years 2011-2013, help develop a clearer picture on how many people are brought to justice for human trafficking and also about the profile of these people.

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10 You can find more information about them on their website at: [http://www.nspcc.org.uk/](http://www.nspcc.org.uk/)
11 More information about the National Referral Mechanism from the UK is available at: [http://www.nspcc.org.uk/globalassets/documents/information-service/factsheet-national-referral-mechanism-nrm.pdf?_t_id=1B2M2Y8AsgTpgAmY7PhCfg%3d%3d&amp;_t_q=National+Referral+Mechanism+%26+_t_tags=language%3ean%2csiteid%3a7f1b9313-bf5e-4415-abf6-aaf87298c667%26_t_ip=193.225.200.92%26_t_hit.id=Nspcc_Web_Models_Media_GenericMedia/_35724f93-b619-49f9-bbe3-615848e348e3&amp;_t_hit.pos=1](http://www.nspcc.org.uk/globalassets/documents/information-service/factsheet-national-referral-mechanism-nrm.pdf?_t_id=1B2M2Y8AsgTpgAmY7PhCfg%3d%3d&amp;_t_q=National+Referral+Mechanism+%26+_t_tags=language%3ean%2csiteid%3a7f1b9313-bf5e-4415-abf6-aaf87298c667%26_t_ip=193.225.200.92%26_t_hit.id=Nspcc_Web_Models_Media_GenericMedia/_35724f93-b619-49f9-bbe3-615848e348e3&amp;_t_hit.pos=1) (last visited on the 24th of November 2014)
12 The data was provided on June 3rd, via e-mail by Beth Hurley, Children's Services Practitioner, NSPCC Child Trafficking, Advice Centre
The data shows that from 2011 to 2013 there were 1017 convicted traffickers. Of these, a total of 581 were convicted for child trafficking. Most convicted child traffickers were men (74%) and the large majority of them (95%) were adults. Also, in over 60% of convicted child trafficking cases, the court established that the traffickers did not act alone, but in pairs of two or more.

If comparing the data of convicted traffickers with the data on general prison population\(^{14}\) one could see that the profile of the trafficker is somewhat different from the general profile of prisoners, particularly when looking at the large number of women involved in human trafficking. In general only 5% of convicted criminals are women but in human trafficking women make up for 26% of traffickers. Also if in general only 1% of convicted criminals are children, we have 5% of traffickers who are children. This may be explained in part by the fact that traffickers sometimes turn victims into traffickers or use women and children to gain the trust of the victim.

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\(^{13}\) As presented in an official response to an FOI request, form the Ministry of Justice, from 1\(^{st}\) of April 2014. The response was formulated by using specialized software of the Ministry of Justice: for the years 2011, 2012 the ABAC software was used and for 2013 the ECRIS software was used.

\(^{14}\) For the purpose of this study we considered the general prison population as of 31 May 2014, when there were 32279 persons deprived of liberty of which, 30572 men, 1584 women, and 357 children (342 boys and 15 girls) – according to official data of the prison administration available at: [http://www.anp.gov.ro/documents/10180/2957990/SITUA%C5%A2IA+LUNAR%C4%82%20+mai+2014.pdf/93a50bc2-7a1e-4d20-ba0f-102eb117093d](http://www.anp.gov.ro/documents/10180/2957990/SITUA%C5%A2IA+LUNAR%C4%82%20+mai+2014.pdf/93a50bc2-7a1e-4d20-ba0f-102eb117093d) (last visited on the 29th of June 2014)
Romanian legislation imposes a number of restrictions on the exit of Romanian children from the country. The rules outlining these restrictions are found in *Law no. 248/2005 on the free movement of Romanian citizens abroad*.

The general rule is that children need to be accompanied by an adult (18 or older) when exiting the country (art. 2.2) and that they require official identification documents, which for children younger than 14 means having a passport and for children aged 14 to 18 can mean a passport or ID.

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15 *Law no. 248/2005 on the status of the free movement of Romanian citizens abroad, art 2.2*
However, when children are not accompanied by both parents when exiting the country, there are a number of additional requirements, depending on the accompanying adult.

A. The child is accompanied by one of the parents

A first scenario is when the child is accompanied by one of the parents. In such a situation the child can exit the country only if the accompanying parent produces an affidavit executed by the other parent showing that he/she consents to the child travelling, to the state(s) of destination, and to the duration of the child's trip (art. 30 (1) b).

There are a number of exceptions to this requirements, which relate to situations when the other parents is dead (art. 30 (1) b), or the accompanying parent can prove with a final court ruling that he/she has sole custody of the child (art. 30 (1) c).

B. The child is accompanied by a third party

The law imposes additional restrictions when the child is accompanied by a third party, defined as someone other than the parents. Besides the affidavit the third party must bear with him at the border crossing point a copy of his or her criminal record.\(^{16}\)

In summary, as illustrated in the table below, exit requirements depend on who is accompanying the child:

<table>
<thead>
<tr>
<th>Required documents</th>
<th>Children accompanied by both parents</th>
<th>Children accompanied by one parent</th>
<th>Children accompanied by a third party</th>
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</thead>
<tbody>
<tr>
<td>Passport (if younger than 14) or ID</td>
<td>Passport (if younger than 14) or ID</td>
<td>Passport (if younger than 14) or ID</td>
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<tr>
<td>-</td>
<td>affidavit</td>
<td>affidavit with additional information</td>
<td></td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td>Criminal record</td>
<td></td>
</tr>
</tbody>
</table>

**Table 1. Required documents for children accompanied**

**Historical perspective**

In order to better understand the reasoning behind the affidavit and what it is intended for it is important to consider the arguments used to introduce it in Romanian legislation.

The affidavit was introduced in 2005. One of the key reasons behind this was to prevent child trafficking. This objective is stated in the recitals (expunere de motive) of Law no. 248/2005\(^{17}\), which specify that:

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\(^{16}\) Implementing regulation of 26\(^{th}\) of January 2006, regarding Law no. 248/2005 on the status of the free movement of Romanian citizens abroad, at art. 24 (1) e

[when drafting this law] special consideration was given to the conditions under which Romanian children can exercise their right to freedom of movement abroad, and to this end a series of obligations were imposed on the parents of the child and accompanying adult during the trip abroad, with the purpose of providing effective safeguards of the rights of the parents and of the child and to prevent and fight international child trafficking [emphasis added].

The anti-trafficking purpose of the affidavit was also confirmed by a border official whom the research team interviewed. In the interview he explained that he was part of the discussion held when the law was being drafted and one of the key arguments raised was the need to fight and prevent child trafficking, particularly in the context of loosening border controls.

However, to date there is little evidence to establish whether or not the affidavit was useful in preventing human trafficking and in identifying traffickers, or if in fact it hinders the free movement of children, whilst providing no real safeguard against child trafficking.

The affidavit is not a Romanian invention. Other countries have similar systems in place meant to protect children.

**Comparative perspective on the affidavit**

For a comparative analysis on the affidavit, this study looks at policies adopted by other EU countries. For this purpose information was gathered through desk research and inquiries sent to officials and partners of Terre des hommes in France, Hungary, Bulgaria and Spain. Semi-structured interviews by phone were also conducted with officials in some countries.

The analysis reveals that across the EU various countries have taken different approaches to the way they regulate the movement of children, and particularly with respect to parental consent regarding international travelling. In the absence of clear EU polices on the matter, the national policies take diverging approaches, with some taking a more similar approach to that of Romania while others impose no similar system to that of the affidavit. The various approaches consist in:

1. **France imposes no affidavit** - Virtually a French minor, without condition of age, can travel alone to any country provided that nobody opposed their exit from the French territory. 18 Before 1990, French children did require a specific authorization to travel abroad with a simple I.D. 19 The authorization was not required if the minor was in possession of a passport, but in order to obtain a passport the approval of both parents was required.

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18 Circulaire n° INTD1237286C defines the conditions of exit of French minors from the French territory and the measures that can be adopted to prevent an exit by different authorities (prefecture, judge for minors, judge for family affairs). Available in french at: [http://circulaires.legifrance.gouv.fr/pdf/2012/11/cir_36117.pdf](http://circulaires.legifrance.gouv.fr/pdf/2012/11/cir_36117.pdf)
19 Circulaire du 11 mai 1990 relative au franchissement des frontièresnationales par les mineurs de nationalitéfrançaise
2. **Spain only requires an affidavit for travel outside Schengen** -
Spanish children who wish to travel abroad, outside of Schengen, must have proof of parental consent for such travel. The consent is given on a special form, downloadable on the website of the Spanish police (Guardia Civil) and it must be filled in and legalized by the Guardia Civil. Both parents must be present with their Passport or I.D. as well as the “family record book”. If only one of the parents exercises parental responsibility (i.e. the other parent was deprived of parental responsibility or is deceased or missing) the latter must present him/herself at the local Guardia Civil Office or Police commissariat of their place of residence. The form must indicate the personal data of the parents and it must bear both their signatures.

3. **Hungary requires an affidavit only when the child is establishing residence abroad** -
The consent of both parents is required for the child’s residence abroad for any extended period of time for the purpose of studies or work. The consent form is not needed for travelling abroad, but the Hungarian Consular Services still recommended to have it. It is recommended that the declaration be in Hungarian as well as in the language of the destination country, and potentially transit countries. The declaration needs to contain the: personal data of the minor, the accompanying person and the parents (name, date and place of birth), identification number of the minor’s travel document, the purpose and place of staying abroad; name and contact details of the visited person or institute. The declaration doesn’t need a certification by a public notary.

4. **Bulgaria requires an affidavit** – Bulgaria has a system which is very similar to that of Romania. There are two types of affidavits, both available on the website of the Ministry of Foreign Affairs.

If the child is leaving with a third party the declaration should reflect the consent of both parents, and it should include personal identification number of the third party and the number and the expiry date of his passport. If the child leaves the country with just one parent that he needs a declaration of consent from the other parent, unless the child lives with one of his parents abroad and this is noted in their Bulgarian identity documents or have an official residence document issued by the respective country. Also, children who are Bulgarian citizens and possess another citizenship can leave the country with a valid Bulgarian passport or identity card and a valid passport or identity

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20https://www.guardiacivil.es/documentos/pdfs/autorizacion_menor_extranjero/formulario_autorizacion_salida_menores_extranjero_V2.pdf
21Libro de familia
22Which is not detailed but must be understood for the purpose of this study as going well beyond three months
23Phone Interview with the Consular Service in Budapest, 17th of April 2014
card of the other country. In that case a declaration of consent from the absent parent / parents will be not required.

All of the countries analyzed require that a child has valid ID documents when travelling abroad and none of them ask for an affidavit when the child travels abroad with both parents. The differences appear when a child leaves the country with only one parent (unless that parent can prove he has sole custody of the child) or with a third party.

Bulgaria and Romania have set up very similar systems in respect to the affidavit. This might be explained by the fact that they are both non-Schengen countries and have similar socio-economic standards. However, the two approaches do provide some differences, in particular in relation to minors who live abroad and/or have double citizenship. In interviews with Romanian border police it came out that in practice there are increasing numbers of Romanian children who live abroad, with one or both parents and who at times even have double citizenship and these situations would require special provisions. The current legislation is meant to make sure that parents are aware of when their children are leaving the country, but this sort of protection seems futile for children who habitually live outside the country and are just visitors in Romania. In this sense Romanian legislation could take the Bulgarian example and provide for exemptions from the general rule for these cases.

Finally, since Romania may enter the Schengen area it may eventually have to put the affidavit requirement to an end for intra-Schengen migration and only impose the affidavit for travel outside of the Schengen area, in line with the Spanish model, since there are practically no more border controls within the Schengen area.

**What the affidavit contains**

The affidavit should contain (art. 30 (1) c):

- the parent/s consent for the child taking that trip,
- the state(s) of destination
- the duration of the trip
- the identification data of the accompanying adult

This *affidavit* also needs to contain information on (art. 30 (4)):

- the purpose of the trip;
- the itinerary to the state of destination;
- an indication of whether the child is to remain in the state of destination, in which case mention shall be made of the person to whom the child will be entrusted, or whether he/she is to return with an escort. In this case, the escort's identification data shall be stated, if he/she is a different person from the one with whom the child leaves Romania.
The law indicates that when the child is travelling with one of his/her parents the affidavit only needs to contain the other parent’s written consent to the child travelling to the state(s) of destination and to the duration of the child's trip (art. 30 (1) b). However, in practice it seems that only one type of affidavit is used, for both when the child travels with a parent and with a third party.

The affidavit lacks a series of elements which may help make it a more useful instrument, such as:

- **Date of return** – the affidavit provides no information as to when the child should return. It requires the duration of the trip, but without recording the moment when the child exits the country no one can check the duration of the trip. The date of return may be useful to signal potentially risky situations.

- **Picture** – it may also be useful to attach a picture on the affidavit. This could further help to identify the child for whom it is issued. However, this would be of limited added value because the affidavit is supposed to accompany official IDs which bear the picture of the child.

- **Language** - The affidavit is only made in Romanian. For wider use it may be useful to make the forms bilingual.
Declaratie privind acordul parintilor pentru iesirea din tara a minorului
insotit de o alta persoana fizica majora

Noi (eu), si ________________________________ (numele intreg al parintilor / parintelui / reprezentantului legal), suntem (am) ______________________ (calitatea persoanei / persoanelor care da / da declarata ai / al

Numele intreg al minorului:
Data nasterii (ZZ/LL/AA): ________________________________
Locul nasterii:
Numar pasaport:
Data eliberarii pasaportului (ZZ/LL/AA):

suntem de acord ca ______________________ (numele complet al copilului), sa calatoreasca cu:

Numele complet al persoanei insotitoare: ________________________________
Numar pasaport:
Data eliberarii pasaportului (ZZ/LL/AA):
Locul eliberarii pasaportului:

Impreuna calatoresc in ________________________________ (numele tarii de destinatie), in perioada ____________________________________________ (perioada calatoriei: data plecarii si data sosirii), pentru ____________________________________________ (se precizeaza scopul deplasarii pe ruta)
(se precizeaza statele transizate para la statul de destinatie).

In aceasta perioada, ______________________ (numele complet al copilului) va locui cu ________________________________ (numele persoanei la care copilul va locui in tara de destinatie) la urnatoarea adresa: ________________________________ (se precizeaza, in detaliu, adresa din tara de destinatie, la care va locui minorul).

2 Totodata, mentionam faptul ca minorul umezea/ma umezea a ramane pe teritoriul _____________ (se precizeaza statul pe teritoriul caruia umezea a ramane minorul), fiind incadrat ________________ (numele complet al persoanei care l-a fost incadrat minorul), locuind la urnatoarea adresa: ________________________________ (se precizeaza, in detaliu, adresa la care umezea a locui minorul)

3 La inapoarea in tara, minorul va fi insotit de:

Numele complet al persoanei insotitoare: ________________________________
Numar pasaport:
Data eliberarii pasaportului (ZZ/LL/AA):
Locul eliberarii pasaportului:

Semnatura: ________________________________ Data: ________________
(Numele intreg si semnatura parintilor / parintelui / reprezentant legal)

1 Inotinteri insotire ca pacuita sau, dupa caz, de reprezentantul legal, va prezenta cu ocazia controlului la frontiera si certificat de caiat judiciar si, dupa caz, documente din care sa rezulte calitatea de persoana desemnata din cadrul unei societati comerciale autorizate, in conditiei legale va desfarsa activitati de transport internaional de persoana.

2 Se completeaza si situatia in care minorul umezea a ramane pe teritoriul statului de destinatie.

3 Se completeaza si situatia in care minorul va reveni in tara insotit de o alta persoana dacat cea cu care a irait din Romania.
At the notary office

The affidavit is made before the public notary who certifies that it is authentic. The number of affidavits issued yearly is around a quarter of a million. Between 01/01/2010-30/06/2011 a total number of 346951 affidavits, pursuant to Law no. 248/2005, were authenticated by public notaries in Romania, as shown in the table below:

<table>
<thead>
<tr>
<th>Chamber of Public Notaries</th>
<th>Number of Notary offices</th>
<th>Total number of affidavits</th>
<th>Breakdown of total number of affidavits, by age groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>16 to 18 years old</td>
</tr>
<tr>
<td>Alba Iulia</td>
<td>109</td>
<td>21238</td>
<td>6521</td>
</tr>
<tr>
<td>Bacău</td>
<td>83</td>
<td>20161</td>
<td>6033</td>
</tr>
<tr>
<td>Brașov</td>
<td>75</td>
<td>17174</td>
<td>4614</td>
</tr>
<tr>
<td>Bucharest</td>
<td>370</td>
<td>53805</td>
<td>11975</td>
</tr>
<tr>
<td>Constanța</td>
<td>99</td>
<td>13861</td>
<td>3642</td>
</tr>
<tr>
<td>Cluj</td>
<td>115</td>
<td>37932</td>
<td>10592</td>
</tr>
<tr>
<td>Craiova</td>
<td>104</td>
<td>22654</td>
<td>7256</td>
</tr>
<tr>
<td>Iași</td>
<td>64</td>
<td>13060</td>
<td>3893</td>
</tr>
<tr>
<td>Galați</td>
<td>81</td>
<td>20259</td>
<td>5855</td>
</tr>
<tr>
<td>Oradea</td>
<td>48</td>
<td>12899</td>
<td>3182</td>
</tr>
<tr>
<td>Pitești</td>
<td>78</td>
<td>14341</td>
<td>4092</td>
</tr>
<tr>
<td>Ploiești</td>
<td>93</td>
<td>20451</td>
<td>5790</td>
</tr>
<tr>
<td>Suceava</td>
<td>56</td>
<td>18447</td>
<td>5781</td>
</tr>
<tr>
<td>TârguMureș</td>
<td>76</td>
<td>23305</td>
<td>6878</td>
</tr>
<tr>
<td>Timișoara</td>
<td>137</td>
<td>37364</td>
<td>10241</td>
</tr>
<tr>
<td>Total</td>
<td>1588</td>
<td>346951</td>
<td>96345</td>
</tr>
</tbody>
</table>

Table 2. Number of affidavits issued between 01/01/2010-30/06/2011 in Romania

Unsurprisingly most affidavits are issued in Bucharest, which is by far the largest city in Romania. Also, the second most number of affidavits issued are from Timisoara which is one of the largest Romanian cities and at the same time one of the wealthiest, and which is located near an international border.

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26 Iris Alex, Entrusted Children, Terre des Hommes, 2013 - Centralized statistics at the level of the National Union of Public Notaries in Romania based on statistics communicated by the Chambers of Public Notaries. The statistic data was submitted to the Romanian Ministry of Justice.
Also, it seems that the number of affidavits issued for children under 14 is similar to the number of affidavits issued for children older than 14. The only difference seems to be between children who are between 14 and 16 and those who are between 16 and 18, almost twice more affidavits being issued for the latter.

As for the procedure of how this document is issued, the parents are those who ask for the affidavit to be issued. They are the ones going to the public notary office. The third party or even the child do not need to go to the public notary office and in practice, according to public notaries, they rarely do. Because of this the public notary does not get to see the third party and most of the time has no direct contact with him/her. Consequently there is little the public notary could do to provide information or identify possible victims of human trafficking when issuing the affidavit.

Also there is little opportunity for the public notary to inform the accompanying adult of his obligations towards the child. For example the third party accompanying adult is responsible (art. 32 (1)) during the trip to: a) guard over the juvenile; b) not abandon the juvenile; c) to not hand the juvenile over to another person except for the parents or a person designated by the parents, or a competent state authority; d) to observe the route and destination spelled out in the affidavit, except for the case when the parents provide their consent for changes in the route or destination; e) to alert the competent authorities in case the juveniles is gone missing during the trip; f) to alert the nearest Romanian embassy consular office in regard to any objective circumstance that can lead to him/her changing the route destination of the trip, as spelled out in the affidavit; g) in case he/she was supposed to hand the juvenile over to someone else in the country of destination and this is no longer possible, to alert the competent authorities or to return with the juvenile in Romania.

Another important aspect of the issuing process is its cost. To obtain an affidavit costs at least 20RON – for two copies. However, an online survey of prices to obtain an affidavit at various public notaries would show that most public notaries would charge somewhere between 30-50 RON for this service. If considering that in a given year there would be roughly 231 300 affidavits issued, one would estimate that each year between 4.6 and 11.5 million RON are being spend on affidavits – which is roughly somewhere between 1 to 2.5 million Euro.

Besides the public notary fees to obtain the affidavit, parents may also need to cover transport costs to the closest public notary, which could be significant especially for parents living in remote and/or rural areas with no public notary nearby.

Consequently, the issuing process of affidavits could be expensive and provides little child protection guarantees. At the same time it provides no exceptions. In an interview with border

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27 As one public notary stated in an interview held on the 7th of May 2014
28 According the rules on prices for the activity of public notaries, of 2011, at point 19 Annex 1
29 This figure was obtained by taking the total number of affidavit issued between 01/01/2010-30/06/2011 (in a year and a half) 346951 and dividing it by 3 and then multiplying it by 2.
police it came out that they cannot accept the exit of the child even if both parents come at the border and offer to make an affidavit proving that they agree for the child to travel with just one of them or with a third party. Even in this case the parents need to go at a public notary and obtain an affidavit.

The affidavit at the border

The border police will first of all check if the child and accompanying adult have all the required documents.

When the child is denied exit

The border guards will deny exist if the child and accompanying adult don’t have all the required documents. Also, border guards can deny exit if the accompanying adult or child have restrictions for exiting the country or for re-entering the country (art 31(1)) or if the accompanying adult has committed one of the following crimes, for which he was not yet legally rehabilitated: manslaughter, sex offences, trafficking and exploitation of vulnerable people, illegal deprivation of liberty, drug trafficking crimes, trafficking of human tissues or organs, acts of terrorism.

Border guards will also not allow the child to pass if he or she is 14 or older and refuses to exit the country (at 31 (2) f). This is an odd requirement and would suggest that if a child is younger than 14 and says he does not want to leave the country the border guards will still allow him or her to leave. In practice it seems though that if the child says he does not want to leave the country the border police will stop the child and accompanying adult/s and investigate whether there is anything illegal in that particular situation (possible trafficking situations).

When the border guards will deny exit to the child and if he/she is not accompanied by at least one of his/her parents, the border guards shall notify them immediately, requesting them to come and retrieve the minor as soon as possible. If it is not possible to notify the child’s parents, the border police shall inform at once the Child Rights Protection Authority, which shall start the procedure applicable to unaccompanied minors, under the law (art. 31 (1)).

To give an example of how many times this procedure is applied, between 2011-2013, the Arad Child Protection authority was asked by the border guards to intervene at the border to pick up a child in 372 cases (236 -2011, 73-2012, 63-2013). In most of these cases the child had no ID or a false one, or they didn’t have an affidavit.\(^{30}\)

As for the reasons for which a child is denied exit, there is no centralized data on this but according to an official response from the border police, it seems that the most common

\(^{30}\) According to an official response form the Arad child protection authority, from 1\(^{st}\) of April 2014
reasons are that they either did not have an *affidavit* or the accompanying adult does not have a copy of his/her criminal record.\(^{31}\)

Also, a series of public statements issued by the Border Police do provide useful information in developing a general idea on how many Romanian children travel abroad and how many of them are denied exit. For example in 2012 over **137,500** Romanian children travelled abroad and at the same time 4,884 (approximately 4%) were turned back at the border in the same year, mostly because of lack of the *affidavit* or because the accompanying adult had no copy of his/her criminal record.\(^{32}\) This figure seems to have been consistent the next year as well, as in the first 5 months of 2013, approximately 40,000 Romanian children travelled abroad and again, approximately 4% (1,578) were not allowed to leave the country for the same reasons.\(^{33}\)

Press-releases of the IGPR from 2007\(^{34}\) and 2008\(^{35}\) provide further insight into travel patterns of Romanian children. For example in 2007 of the **13,000** children who were denied exit in the first 9 months, almost 60% did not have an *affidavit*, and in almost 20% of the cases the accompanying adult did not have a copy of his/her criminal record. In 2008 the figures changed slightly: of the **2571** Romanian children who were turned back at the border in the first 4 month, a little over 50% did not have an *affidavit* and again almost 20% of the adults did not have a copy of their criminal record.

In both years, of the children who were denied exit, almost half of these cases happened at the border crossings with Hungary and approximately 12% happened at airport checkpoints.

These figures clearly indicate that some of the most common reason for which children are not allowed to leave the country is because they lack an *affidavit*. The next most common reason is that the accompanying adult has no copy of his/her criminal record. Also, they indicate that this situation may be the result of a general lack of awareness in respect to legal requirements for exiting the country with a Romanian child.

From interviews with the border police it seems that in practice a lot of times they have to deny exit to Romanian children who actually are living abroad and just came to Romania to visit their grandparents and are not aware of the affidavit requirements, as they were not asked for it when entering the country. Also, the border police indicated that many times they had to deny exit to children accompanied by their grandmothers because the grandmother does not have a criminal record on her, and they have to deny exit even though technically the border police

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\(^{31}\) According to an official response form the Central Border Police office, from Arad child protection authority, from 15\(^{th}\) of April 2014

\(^{32}\) According to an official press release issued by IGPR on 24.06.2013, available at: 

\(^{33}\) *Ibid*


\(^{35}\) *Ibid*
have the capacity to check the criminal record of people travelling abroad but they don’t have a legal mandate to do so for such purposes. Another odd practical situation is when both parents come at the border but just one is exiting the country and the other one is there just to inform the border police that he gives his consent for the child to travel abroad. Even in such situation the border police have to deny exit and ask for an affidavit issued by a public notary.

All of these practical anomalies reflect a number of problems created by the current system and a much too strict application of this system. In practice it seems there are a lot of absurd situations which the border police have to deal with because of a lack of coherent legislation.

When the child passes the check
If the child and accompanying adult have all of the required document the border police will allow them exit. They will also be allowed exit in exceptional cases when:

- The child needs to exit the country in order to receive medical treatment which is not available in Romania. He can be allowed to exit the country even without an affidavit, but the accompanying adult needs to produce evidence that the child is being taken abroad for such treatment (art. 30 (3) a)
- The child is attending courses or official competitions - in this case it is sufficient to have the consent of just one parent but proof must be given in regards to the child attending the given courses or competition (art. 30 (3) b)

Data management
When allowing exit the border guards will make and keep a copy of all the justifying documents including the affidavit and the criminal record. These documents are archived for 5 years.

They keep copies of the affidavit and of the relevant documents, but they do not interpret them, they only keep them as potential evidence for any disputes over the manner in which someone crossed the border. Also, the border police does not keep track of the children who leave the country. When Romania entered the EU, it applied Regulation (EC) No 562/2006 of the European Parliament and of the Council, and it stopped keeping data on the free movement of EU citizens, including of Romanian citizens. According to border officials, because of this regulation, there is currently no centralized data system regarding the movement of Romanian children abroad, and once the child leaves the country there is no state institutions able to track his/her whereabouts. Nonetheless, this regulation does not prevent other authorities, for

36 Implementing regulation of 26th of January 2006, regarding Law no. 248/2005 on the status of the free movement of Romanian citizens abroad, at art. 25
37 According to an official response form the Central Border Police office, from Arad child protection authority, from 15th of April 2014
example ANITP, to keep data of children who were denied exit as part of the fight against trafficking.

After the child leaves the country no one really tracks his whereabouts or checks his affidavit, not even when re-entering the country. Also, while abroad the affidavit bears little relevance for the child. He does not need to produce it, as it is only meant for the Romanian border police. Unless the child registers in the country of destination at the Romanian embassy or at the local public authorities, there is no institution overseeing his stay and checking that he is under the supervision of the adult indicated in the affidavit. In the UK, a child victim of trafficking would usually only be registered if he is trafficked for so called benefit fraud – when the traffickers want to obtain social benefits on behalf of the child.

No one even checks if the child returned in the country when stated on the affidavit. At the border control the child doesn’t even need to produce an affidavit. He can actually present him/herself even without an ID and the border police will have to let him in the country but will have to establish by other means whether or not the person is Romanian. 38

These are serious limitations to the affidavit system. There is no practical means to track that the child reaches the country of destination, with the accompanying adult or that he returns to Romania as intended and spelled out in the affidavit.

**Perception on the affidavit**

**Foreign officials**

During a focus group with UK child protection officials and NGO representatives, participants stated that they rarely came across an affidavit in their work with Romanian children who are victims of human trafficking. They could only recollect one case in which they came across an affidavit. In that particular case a Romanian girl was forced into prostitution. She left the country with her aunt who provided an affidavit written in Romanian which stated that the child could leave the country with the aunt. However, the UK authorities were confused as to the scope of application of the affidavit and took it as providing evidence of custody arrangements.

**Public notaries**

As deduced from interviews with public notaries, they approach the affidavit as a means to assist the minor and assure his/her freedom of movement; in these situations, they see themselves as providing a service, rather than enforcing the law or preventing a crime. The connection with child trafficking prevention is not one that first comes to their mind.

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38 Law no. 248/2005 on the status of the free movement of Romanian citizens abroad, at art. 29
Border officials

The border officials recognize the importance of the affidavit and see it as an important tool in preventing child trafficking. The affidavit also provides a guarantee that the child is travelling abroad with his/her parent’s consent. They also stated that keeping a copy of the affidavit is useful for them because, in cases of disputes over the circumstances the child left the country, they can prove that they did have the parent’s consent and that the border police followed procedure.

Affidavits in court cases

Within the scope of this study we looked at the convicted cases of human trafficking in the counties of Arad, Dolj, Ialomița and in Bucharest (Ilfov) from 2011 to 2013. This was done through FOI request sent to the tribunal that is competent to hear human trafficking cases in each county. All of the tribunals answered the request but not all of them provided full information.

The most complete response was received from the Dolj tribunal, which registered 7 convicted cases of child trafficking between 2011-2013, of which 3 were related to external trafficking. In these cases, two victims had a valid affidavit from their parents while the third one had fake documents, when leaving the country.39

These cases indicate that the affidavit system does not offer sufficient guarantees. One significant loophole identified is that the traffickers could either obtain a valid affidavit from the victim’s families or forge the documents, and manage to cross the border unhindered.

The Arad tribunal registered 8 convicted cases of child trafficking between 2011-2013, of which only 3 were relating to external trafficking, and in all 3 cases the children left the country with one of the traffickers and had no affidavit.40 This may suggest that the border checking were deficient in these cases.

The Ialomița tribunal registered 16 convicted cases of child trafficking between 2011-2013, of which 2 were relating to external trafficking. In one of these cases the child left the country with her mother, who was not the trafficker - from the case-file it was not clear whether she had an affidavit or not.41

The Bucharest tribunal registered 20 convicted cases of human trafficking (including human trafficking and child trafficking) between 2011-2013.42

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39 According to an official response form the Dolj tribunal from 10th of April 2014
40 According to an official response form the Arad tribunal from 24th of March 2014, and follow-up responses from 5th of May 2014.
41 According to an official response form the Ialomița tribunal from 25th of March 2014, and the follow-up response from 27th of March 2014
42 According to an official response form the Bucharest tribunal from 2nd of April 2014
In order to get further insight the research team carried out case-file research in the Bucharest tribunal archives and looked at 18 trafficking cases, of which only 4 were relating to international child trafficking.

In one of the cases the victims were a whole family from Țăndărei which was trafficked abroad for begging purposes and for which there was no need for an affidavit as the two parents were traveling with the children.

In another case, several adults and three children were trafficked to Spain for begging purposes. Two of the children were trafficked with their families and one minor was trafficked along with her boyfriend. All victims were transported to Spain by specially hired buses, all passing through the same border crossing point, Vârșad. From the information provided in the case file, the third minor, age 15, crossed the border with her passport. The initial border crossing took place in 2002, before the affidavit requirement was introduced.

In the other two cases the victims were girls who were trafficked abroad for sexual exploitation purposes. Interestingly enough in both cases they left the country through the same crossing point, Turnu. In one of the cases the girls were trafficked in 2003, when there was no need for an affidavit. In the other case the traffickers managed to cross the border without an affidavit, although it was necessary to have one. The case is described below.

Case study example:

A 17 year old girl who ran away from an orphanage was promised a job as a waitress in Germany by a stranger. The stranger was part of a trafficking network and he arranged for the victim to be transported to Germany by car while he said he would leave by plane. He managed to get ahold of her ID by stealing it from her mother’s house but did not obtain an affidavit. The traffickers initially tried to cross the border in Nădlac but were refused exit because they did not have an affidavit. From the case-file it was clear that the border guards at Nădlac advised the traffickers to try to cross the border at Turnu. This is what they did and they managed to leave the country with a child without an affidavit. From the case-file it also appears that they bribed the Hungarian border officials in order to cross the border. The victim was eventually forced into prostitution in Germany and only managed to escape after a year. It is unknown if any action was taken against the border police officials who facilitated the trafficking process.

What these cases prove is that there are a series of ways in which the affidavit system can be bypassed. One way is by forging documents, or even misleading the family into obtaining the required documents, including the affidavit. Also, it seems that at times traffickers manage to cross the borders without proper documentation. This raises the large issue of corruption and intersectionality of various forms of criminal activity which most of the times comes into play in human trafficking cases. These needs to be taken into account when considering any anti-trafficking policies.
As part of this study, the research team analyzed several hundred affidavits. The samples were from 2010, 2011 and 2012 and they were all collected from Otopeni International Airport. This was an exploratory endeavor with an aim to

- Get a picture of the diversity of formats in which the affidavits are issued. Although guidelines exist for the elements that need to be present in the affidavit the Notaries have some freedom in adding other elements, as well as modifying the actual form of the affidavit. We were interested if notaries (or the legal guardians) included elements that would be useful in protecting and tracking the minor while travelling, such as more details on who will be accompanying the minor, the relationship to the minor, the countries the minors are travelling to, the address in the country of destination, the person accompanying the minor on the way back.

- Get a picture of the diversity of the unaccompanied minors travelling abroad as well as their situations.

In order to do so, the research team collaborated with the Romanian Border Police, the Otopeni Airport Crossing Point (Henri Coanda Airport). Border Police employees photocopied and anonymized 596 affidavits, the first 100 affidavits in each archival volume, selected from three years (2010, 2011, 2012) to cover both vacation time and non-vacation time travel. The selection was not randomized, because of limitations to the archival system used by the Border Police.

The affidavits obtained were distributed as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Number of Affidavits</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>June</td>
<td>1</td>
</tr>
<tr>
<td>2010</td>
<td>July</td>
<td>88</td>
</tr>
<tr>
<td>2010</td>
<td>November</td>
<td>43</td>
</tr>
<tr>
<td>2011</td>
<td>July</td>
<td>78</td>
</tr>
<tr>
<td>2011</td>
<td>September</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>November</td>
<td>45</td>
</tr>
<tr>
<td>2011</td>
<td>December</td>
<td>92</td>
</tr>
<tr>
<td>2012</td>
<td>February</td>
<td>96</td>
</tr>
<tr>
<td>2012</td>
<td>July</td>
<td>69</td>
</tr>
<tr>
<td>2012</td>
<td>December</td>
<td>1</td>
</tr>
<tr>
<td>No date visible</td>
<td>82</td>
<td>82</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>596</td>
</tr>
</tbody>
</table>

*Table 3. The number of affidavits analyzed*
The information in the affidavits was introduced in two excel files by two operators and was analyzed by a third person involved in the research project.

Due to the haphazard, non-representative sampling, we cannot make statistical claims about the affidavits we consulted. We will present, however, for the sake of documenting the diversity of the minors and their situations, summaries of the information we gleaned from the affidavits. Also, the information we present here can be used in formulating some hypotheses for further studies.

- **Date when the affidavit was issued and the time when the trip took place**

Of the 596 affidavits in the sample, 244 (40.9%) had the issue date mentioned on the affidavit kept by the border police. Of these, 210 had both the issue and the crossing dates visible. The majority of the affidavits containing both dates issued less than one month before the departure date. These affidavits were issued as follows:

<table>
<thead>
<tr>
<th>Period of time between the issue date and crossing date</th>
<th>Number of affidavits</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than a month</td>
<td>153</td>
<td>72.9</td>
</tr>
<tr>
<td>Between 1 and 2 months</td>
<td>29</td>
<td>13.8</td>
</tr>
<tr>
<td>Between 3 and 4 months</td>
<td>8</td>
<td>3.8</td>
</tr>
<tr>
<td>Between 4 and 5 months</td>
<td>6</td>
<td>2.9</td>
</tr>
<tr>
<td>Between 5 and 6 months</td>
<td>3</td>
<td>1.4</td>
</tr>
<tr>
<td>Between 6 and 7 months</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td>Between 7 and 8 months</td>
<td>1</td>
<td>0.5</td>
</tr>
<tr>
<td>Over 9 months</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

**Table 4. Dates when the affidavit was issued and the time when the trip took place**

<table>
<thead>
<tr>
<th>Period of time between the issue date and crossing date</th>
<th>Number of affidavits</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than a month</td>
<td>153</td>
<td>72.9</td>
</tr>
<tr>
<td>Between 1 and 6 months</td>
<td>52</td>
<td>24.8</td>
</tr>
<tr>
<td>Over 6 months</td>
<td>5</td>
<td>2.4</td>
</tr>
</tbody>
</table>

**Table 5. Number of affidavits issued for a specific period of time**

This data suggests, at least for our sample, that the affidavits were issued generally as part of the preparations for a particular departure and are not made to be kept, in case there is a need for travel.
Also, affidavits in practice can be made for extended periods of time, for more than half a year, and can serve for multiple exists from the country.

- **Authority issuing the affidavit and country where it was issued**

551 (92.4%) of the affidavits were issued by a Public Notary in Romania, 37 (6.2%) by a Romanian Embassy or Consulate, and 4 (0.7%) by a Public Notary outside Romania. 4 affidavits didn’t mention where they were issued. In other words, 92.4% of the affidavits in the sample were issued in Romania, while the rest (7.6%) were issued outside its borders. These numbers are a clear reflection of the fact that this policy is one that is particular to this country. The research did not look at how many of the minors are actually residing in the countries of destination.

41 affidavits were issued outside Romania:
- 17 (45.9%) were issued in Spain
- 3 (8.1%) in each of: Great Britain, Jordan, and Moldova, respectively
- 2 (5.4%) in each of: Germany, Saudi Arabia, Ireland, United Arab Emirates, and Portugal
- 1 (2.7%) in each of: Italy, Japan, India, and Greece

As with the rest of the data we are presenting, no population wide inferences can be made. Still, we believe the larger proportion of minors leaving for Spain can be due to the large number of Romanians living there.

- **Number of children included in an affidavit**

Most affidavits were issued for one child only (533 affidavits, which represent 89.4% of all affidavits in the sample). 61 affidavits were issued for two children (10.2%) and 2 (0.3%) for three children. In total, the 596 affidavits were issued for a total of 661 children.

- **Gender of children**

Our sample contained gender information on 646 children. This information was gleaned from the terms used (our daughter/son) or the first name, where that was visible. Of these, 384 were girls and 262 were boys. These are not numbers that are statistically significant, and should be taken as speaking only of the sample.

- **Age of children**

Unfortunately, due to anonymization of the affidavits (the Border Police representatives erased a good part of the personal data), we were only able to glean the ages for 381 children in the sample. The age and gender distribution is as follows:
Table 6. Age of children

<table>
<thead>
<tr>
<th>Age</th>
<th>Girls</th>
<th>Boys</th>
<th>Gender not mentioned</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>4</td>
<td>5</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>1</td>
<td>6</td>
<td>9</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>8</td>
<td>7</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>4</td>
<td>9</td>
<td>3</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>5</td>
<td>10</td>
<td>5</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>7</td>
<td>5</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>7</td>
<td>7</td>
<td>8</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>8</td>
<td>9</td>
<td>8</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>9</td>
<td>6</td>
<td>7</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>10</td>
<td>8</td>
<td>8</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>11</td>
<td>9</td>
<td>7</td>
<td>0</td>
<td>16</td>
</tr>
<tr>
<td>12</td>
<td>11</td>
<td>7</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>13</td>
<td>18</td>
<td>10</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>14</td>
<td>17</td>
<td>10</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>15</td>
<td>25</td>
<td>16</td>
<td>0</td>
<td>41</td>
</tr>
<tr>
<td>16</td>
<td>33</td>
<td>18</td>
<td>0</td>
<td>51</td>
</tr>
<tr>
<td>17</td>
<td>25</td>
<td>19</td>
<td>0</td>
<td>44</td>
</tr>
<tr>
<td>18</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>216</td>
<td>160</td>
<td>5</td>
<td>381</td>
</tr>
</tbody>
</table>

In terms of age groups, the distribution was as follows.

Table 7. Gender and Age groups of children

<table>
<thead>
<tr>
<th>Age</th>
<th>Girls</th>
<th>Boys</th>
<th>Gender not mentioned</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-4</td>
<td>31</td>
<td>30</td>
<td>3</td>
<td>64</td>
<td>17%</td>
</tr>
<tr>
<td>5-9</td>
<td>39</td>
<td>33</td>
<td>0</td>
<td>72</td>
<td>19%</td>
</tr>
<tr>
<td>10-14</td>
<td>63</td>
<td>42</td>
<td>2</td>
<td>107</td>
<td>28%</td>
</tr>
<tr>
<td>15-18</td>
<td>83</td>
<td>55</td>
<td>0</td>
<td>138</td>
<td>36%</td>
</tr>
<tr>
<td>Total</td>
<td>216</td>
<td>160</td>
<td>5</td>
<td>381</td>
<td>100%</td>
</tr>
<tr>
<td>%</td>
<td>57%</td>
<td>42%</td>
<td>1%</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>
Thus, the children in our sample were mostly in their early childhood or pre-adolescence (64%).

- **Relationship of person(s) giving the affidavit to the child**

The majority of the affidavits were given by one of the parents: 325, representing 54.5%. Of these, 88 were given by the mother (14.8% of all affidavits) and 237 were given by the father (39.8% of all affidavits). 258 affidavits were given, jointly, by both parents (43.3%) and a very small number (4) were given by persons who had another relationship to the child. 9 affidavits contained none of this information.

- **Citizenship of the person giving the affidavit**

This information was filled in using the country issuing the ID for the main persons giving the affidavits (which can also be taken to indicate the citizenship of these people). The overwhelming majority of the people giving the affidavits were Romanian citizens (438 people, representing 73.5%). The rest came from Turkey (1), USA (1) Hungary (1), United Arab Emirates (1), Germany (1), Jordan (2), Japan (1), and Moldova (1). For the rest of the affidavits (149), no information could be gleaned about the country of origin.

- **County of residence**

We tried to also see which county in Romania the children were coming from. Not surprisingly, the largest number was coming from Bucharest (207). Also, most of the minors were coming from the counties closer to Bucharest. This is not surprising: there are several airports in other parts of the country serving international (European in particular) destinations.
- **The accompanying person**

While all affidavits had to indicate who will be accompanying the child, only a part indicated the relationship of that person to the child. The largest number in the sample indicated the mother (204, which represents 34.2% of the affidavits in the sample).

<table>
<thead>
<tr>
<th>Relationship to the child</th>
<th>Total</th>
<th>% of affidavits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td>204</td>
<td>34.2%</td>
</tr>
<tr>
<td>Other kind of relationship</td>
<td>129</td>
<td>21.6%</td>
</tr>
<tr>
<td>Relationship not mentioned</td>
<td>82</td>
<td>13.8%</td>
</tr>
<tr>
<td>Representative of transport company</td>
<td>75</td>
<td>12.6%</td>
</tr>
<tr>
<td>Father</td>
<td>42</td>
<td>7%</td>
</tr>
<tr>
<td>Other relative</td>
<td>32</td>
<td>5.4%</td>
</tr>
<tr>
<td>Teacher</td>
<td>19</td>
<td>3.3%</td>
</tr>
<tr>
<td>Trainer</td>
<td>8</td>
<td>1.3%</td>
</tr>
<tr>
<td>Representative of educational institution or sport club (not named)</td>
<td>5</td>
<td>0.8%</td>
</tr>
</tbody>
</table>

Table 9. The accompanying person
More than half indicated the person accompanying the child upon return. In 332 affidavits, the person was named and it was the same as the person accompanying the child while leaving the country, in 13 affidavits it was indicated, but it was a different person, and in the rest (251) there was no mention of who will be accompanying the child upon return.

- **Country of destination**

Only a small part of the affidavits did not mention the destination for the child (3.5%). The majority mentioned, explicitly, the countries the child would travel to or through (89.4%), while a small number indicated that the child could travel to and through any country. This is significant, and it might suggest, at least for the affidavits in the sample, that the information might be mentioned in order to safeguard and control the movement of the minor after leaving the country (although, in reality, it doesn’t).

<table>
<thead>
<tr>
<th>Country/countries of destination is/are mentioned</th>
<th>Number of affidavits</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>The affidavit is issued explicitly for all countries</td>
<td>42</td>
<td>7%</td>
</tr>
<tr>
<td>No countries of destination are mentioned in the affidavit</td>
<td>21</td>
<td>3.5%</td>
</tr>
</tbody>
</table>

Table 10. Issued affidavit specifying the destination

In the affidavits indicating a destination, the most mentioned countries were Spain (76 times), Great Britain (74 times), USA (70 times), Italy (60 times), Germany (51 times), and Turkey (51 times). What is interesting that, due to the openness of the possible forms and elements to be included, several affidavits also included broader formulations (besides “any country“): EU (44 times), Europe (16 times), Asia (2 times), the Caribbean (1 time) and “other countries” (2 times).

The complete list of the countries is presented below:

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of mentions</th>
<th>USA</th>
<th>Italy</th>
<th>Germany</th>
<th>Turkey</th>
<th>Austria</th>
<th>France</th>
<th>Switzerland</th>
<th>Romania</th>
<th>Israel</th>
<th>Belgium</th>
<th>Jordan</th>
<th>Netherlands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>76</td>
<td>70</td>
<td>60</td>
<td>51</td>
<td>51</td>
<td>44</td>
<td>21</td>
<td>16</td>
<td>13</td>
<td>11</td>
<td>9</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Great Britain</td>
<td>74</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In 87 of the affidavits the border crossing point(s) was/were mentioned explicitly. In the rest, there was no mention of it. This is an element that is not included in the list of compulsory elements, yet it might be thought of as a means to assure some extra control over the movement of the child (bearing in mind that it is an element that actually restricts it).

- **Purpose of visit, period of travel, address of destination**

Less than half of the affidavits (252) mentioned the purpose of the visit. However, the majority of the affidavits (574, that is, 96.3%) mentioned the period of time the child would be travelling.

In a little over one quarter of the affidavits in our sample (166 of the affidavits, representing 27.9% of our sample) there was a mention of the address of destination. We do not know exactly how this information is used and what its practical role is, given that no institution will actually be verifying this information. It is interesting, however, that notaries and legal guardians saw it important enough to be included.

94 out of all affidavits (15.8%) include all four elective elements (purpose of visit, period, address of destination, accompanying person for the return trip). We did not notice any correlation between the number of these elective elements and who the initial accompanying

<table>
<thead>
<tr>
<th>Country</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Arab Emirates</td>
<td>9</td>
</tr>
<tr>
<td>Cyprus</td>
<td>7</td>
</tr>
<tr>
<td>Lebanon</td>
<td>7</td>
</tr>
<tr>
<td>Moldova</td>
<td>6</td>
</tr>
<tr>
<td>Norway</td>
<td>6</td>
</tr>
<tr>
<td>China</td>
<td>5</td>
</tr>
<tr>
<td>Hungary</td>
<td>5</td>
</tr>
<tr>
<td>Sweden</td>
<td>4</td>
</tr>
<tr>
<td>Ukraine</td>
<td>4</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>3</td>
</tr>
<tr>
<td>Canada</td>
<td>3</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>3</td>
</tr>
<tr>
<td>Egypt</td>
<td>3</td>
</tr>
<tr>
<td>India</td>
<td>3</td>
</tr>
<tr>
<td>Iraq</td>
<td>3</td>
</tr>
<tr>
<td>Quatar</td>
<td>3</td>
</tr>
<tr>
<td>Russia</td>
<td>3</td>
</tr>
<tr>
<td>Belarus</td>
<td>2</td>
</tr>
<tr>
<td>Finland</td>
<td>2</td>
</tr>
<tr>
<td>Greece</td>
<td>2</td>
</tr>
<tr>
<td>Japan</td>
<td>2</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2</td>
</tr>
<tr>
<td>Serbia</td>
<td>2</td>
</tr>
<tr>
<td>Brazil</td>
<td>1</td>
</tr>
<tr>
<td>Columbia</td>
<td>1</td>
</tr>
<tr>
<td>Denmark</td>
<td>1</td>
</tr>
<tr>
<td>Dominican</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 11. Country of destination

<table>
<thead>
<tr>
<th>Country</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>1</td>
</tr>
<tr>
<td>Indonesia</td>
<td>1</td>
</tr>
<tr>
<td>Letonia</td>
<td>1</td>
</tr>
<tr>
<td>Malaysia</td>
<td>1</td>
</tr>
<tr>
<td>Malta</td>
<td>1</td>
</tr>
<tr>
<td>Mexico</td>
<td>1</td>
</tr>
<tr>
<td>Portugal</td>
<td>1</td>
</tr>
<tr>
<td>Singapore</td>
<td>1</td>
</tr>
<tr>
<td>Syria</td>
<td>1</td>
</tr>
</tbody>
</table>
Case study example:

During the research phase for this study, on the 12th of September 2014, one of the researchers, Cristinel Buzatu, went to obtain an affidavit from a public notary in the city of Iasi. This experience shows a number of issues posed by the affidavit system in practice

1. While at the public notary a person in front of the line sought to get an affidavit for a trip with her child. The trip included visits to 4 different countries from within the EU, all in the same trip. The public notary told the woman that she needs to get 4 different affidavits for all of the trips and pay the price for all these affidavits. This requirement was based on a flawed interpretation of the law but it shows how public notaries can abuse the system in practice and in order to obtain more money.

2. When the researcher obtained the affidavit the public notary did not ask any questions that would help identify possible trafficking cases. The whole procedure seemed like a formality, the affidavit was written by a clerk and the public notary just signed it.

3. The affidavit obtained was issued for a whole year and could be used multiple times. It just stated that it is to be used to go to the county of destination either by plane or by car.

4. At the border crossing the agents asked for an unofficial copy if the affidavit for them to keep. This was not a clear requirement in the law, which only states they keep a copy but it is not clear if they will keep an official copy, if they will make a copy or if the person travelling should bring an additional unofficial copy.

5. Although the agents at the border crossing questioned the fact that the affidavit is issued for a whole year they accepted it as valid.

- Conclusion

Although the law seems very clear on how an affidavit should be phrased and what it contains in practice it seems that the format and content of an affidavit varies greatly.

The quantitative analysis shows that most of the affidavits did not contain all of the required information from the law but still they were accepted as valid at the border crossing. This was also confirmed in interviews with border police who said that even if some of the elements from an affidavit are missing they will still accept the border crossing if the affidavit clearly indicates parental consent for international travel of the child, which is the essential element of this document. However this differs from agent to agent and some may insist on all of the elements being present in the affidavit.
This practice raises the question of why all of the elements enlisted in the law are there if in practice it seems some of them could be missing from the affidavit and still the document would be accepted when crossing the border. This requires a critical analysis of all of the elements form the affidavit which would look at which of them is important in fighting and preventing human trafficking, which of them is useful and could actually be used, by whom and how. In this respect there is greater need for better communication between the lawmakers and those who actually use the affidavit in practice (i.e. border police).

Also, there is no unified form for an affidavit. Each notary phrases the affidavit as it sees fit by following the legal requirements and directives it receives but, besides the content, the format also varies widely. This could leave room of maneuver for forgery.

Another aspect is that there is no expiry date on the affidavit and the same one could be used multiple times to cross the border which deprives a bit the affidavit of its coercive character (all the more when it can be used multiple times and at multiple border crossing points).

These aspects reveal a series of weaknesses of the affidavit itself and show how there is no uniform understanding of how this document should look like and what it should contain, despite the fact that the law seems clear on this. These inconsistencies suggest that this instrument is not really perceived as being an essential tool in preventing human trafficking and it is mostly seen as a formality and as a tool to prevent international child abduction of children by one of the parents.

The requirements around the affidavits phrasing and content generate uncertainty and the practice on how they are issued, and used at the border crossing is inconsistent. This could be indicative of the need of an assessment of the affidavits content and phrasing and more training for and awareness raising activities for those using it.
Conclusions and recommendations

Limitations of the affidavit

There are a number of limitations of the affidavit, which came out in this study. It is these limitations that affect its ability to reach its full potential as a tool in fighting and preventing human trafficking.

One limitation is in respect to its content. The affidavit does not contain information on when the child is to return to the country. It also does not have a picture of the child, which could help identify him or her. Moreover, the affidavit is only in Romanian which makes it a less useful tool in destination countries. It may be more useful to have a bilingual form, in which questions are written in Romanian and English.

Another limitation refers to the way it is issued. The moment when an affidavit is issued could be a critical juncture in which prevention of child trafficking cases could occur. However, the public notaries who issue it do not have any training nor a mandate to intervene at this stage. They just discuss with the parents of the child and seek their consent for the child to leave the country. Legally they are not required to see the child, or the accompanying adult.

Also, one of the main limitations of the affidavit is in the way it is used. It is basically only checked at the border when leaving the country, but then it is not used when arriving in a foreign country or even when returning to Romania. The information from the affidavit, particularly information over where the child is going and with whom, could be useful for example when identifying unaccompanied children abroad or when trying to find a child. However, as it came out from correspondence with the involved actors, this information is not collected, not interpreted and there is no one checking if the child actually arrived at the stated place of destination or if he/she returned on time. Also this information is not centralized, it is not registered in any electronic database which could make it easily traceable, but it is merely kept in the archives of border police and public notaries.

It seems that the whole affidavit system relies too much on the public notaries, that being one of the main checks which could detect trafficking cases. The other check put in place is at the border crossing but border police are most given a formal role, them being bound by checking that all formalities are in place and having to deny exit to children even when the trip is shown by all means to be with a legitimate purpose. Also, child protection officials are not included in this system.
Moreover, from discussions with the border police it came out the affidavit could soon be obsolete, because when entering the Schengen space, there would be no more border controls and consequently there wouldn’t be anyone checking it.

Possible adverse consequences

One aspect that has come out is that the affidavit does impose some limitations on freedom of movement. This study has shown that, for example in 2012 of the 137500 Romanian children travelling abroad, approximately 4% were turned back at the border. For this 4% the affidavit acted as a limitation to the freedom of movement, and as it came out in interviews with the border police, many times they have to stop what seems as a legitimate vacation trip because of the lack of this administrative requirement. Also, from the interview with the border police it came out that it is particularly problematic in the situation of Romanian children who live abroad, because they can enter the country to visit family members, without needing an affidavit but when trying to return they are stopped at the border, because when exiting Romania they do need to present one.

However, from the interviews with practitioners it seems that this inconvenience is justified by the need to prevent human trafficking. If looking at the figures, in 2012 approximately 48 children were identified as being victims of external trafficking. Which means that in 2012 of the Romanian children travelling abroad 0.3% were identified as victims of human trafficking. It is impossible to estimate how many of these victims were among the 4% who were turned back at the border, how many of them had all the papers in order but still were trafficked or how many more could have been trafficked were it not for this affidavit requirement. What is certain is that a large number of genuine travelers (i.e. neither trafficked nor traffickers) were returned home as they did not have proper documents.

Another way the affidavit could place a burden on the freedom of movement is through its costs. To obtain an affidavit costs at least 20RON – for two copies. However, an online survey of prices to obtain an affidavit at various public notaries would show that most public notaries would charge somewhere between 30-50 RON for this service. If considering that in a given year there would be roughly 231 300 affidavits issued, one would estimate that each year between 4.6 and 11.5 million RON are being spend on affidavits – which is roughly somewhere between 1to 2.5 million Euro. These costs could imposes a significant impediment on the right to freedom of movement of Romanian children and their families.

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43 According to official data of ANITP in 2012, a total of 370 children were identified as victims of human trafficking and the ratio of international trafficking was 13%, which leads to a total of 48 external child trafficking victims – statistics available at http://anitp.mai.gov.ro/ro/docs/studii/Rap%20anual%202012%20final.pdf (last visited on the 11th of May 2014)
44 According the rules on prices for the activity of public notaries, of 2011, at point 19 Annex 1
45 This figure was obtained by taking the total number of affidavit issued between 01/01/2010-30/06/2011 (in a year and a half) 346951 and dividing it by 3 and then multiplying it by 2.
Another aspect to be considered, is that the affidavit may create some sense of false legitimacy. This study has collected cases in which traffickers had arranged for genuine affidavits to be issued by genuine notaries who did not require to see the “accompanying adult” nor the child. All that was required was to convince the parents that this was in their best interest to appear in front of the Notary and to pay 50 RON, the equivalent of 11 EUR. The affidavits were produced at the border and no-one asked any question. The process in this case is akin to child laundering in the sense that it results in child trafficking using formal paper procedures. The appearance of formality benefits the trafficker, other actors of the trafficking chain who benefit from the process. Also it reinforces the state officials’ assurance that the crossing is legal and deprives them of a clue they may have picked if the crossing was not legalized. Also the affidavit may be misconstrued as providing evidence of custody arrangements in the destination countries. This was seen in the focus group organized in the UK where British officials raised this issue and pointed that this document could be misleading.

The current system creates uncertainty. The quantitative analysis showed that in practice there is a lot of uncertainty on how the affidavit should look like and what it should contain, as seen in the lack of uniformity between the affidavits analyzed. This creates potential for fraud, as well as abuse. In practice it seems that most affidavits do not contain all of the required legal data but they are still considered valid, this discrepancy between the law and the practice could affect the laws credibility and relevance for real life situations.

**Recommendations**

This study shows that one of the stated objectives of this procedure (counter-trafficking) has not been met during the period under review. A better system needs to be put in place if we are to significantly reduce the number of minors who are trafficked each year.

First of all, the role of the public notaries needs to be reconsidered or expended – currently they have no clear child protection mandate or training and their willingness and capacity to prevent human trafficking is limited. Also, when issuing the affidavit they have no contact with either the child or the accompanying adult, which limits their capacity to detect possible trafficking cases, should they wish to do so. As an alternative to the role the public notaries are currently playing, it may be better to place the onus of prevention on trained child protection professionals at county level.

One option could be that restrictions to travel with an affidavit be lifted for all travelers, in exchange for registration online prior to travel (“on-line check in” type of procedure). An example in this regard could be the ESTA system put in place by the United States to enter its
The new system should ensure the possibility to register at DGASPC or local social services (SPAS) for travelers who do not have access to the internet.

Secondly, the paper based-approach to the affidavit provides further limitations that need to be carefully addressed. The affidavit is currently used only when exiting the country and the information from the affidavit is not easily accessible because: (a) it is only in Romanian, (b) it is not stored electronically- the paper is just stored in border police archives and if it is not on the child in countries of transit of destination it is hard to retrieve it (c) it has no picture of the child which would help identify him/her. It would be better if the parents registered their names and the child’s name on a central website and brought a paper copy with them when they travelled.

Furthermore, any anti-trafficking measure needs to take into account the enhanced freedom of movement within the EU and needs to have an EU component, because the possibility of Romanian officials to fight trafficking in children in other EU countries are limited. In this sense it is important that Romanian anti-trafficking agents and child protection officials work together and have a functional institutional framework to do so.

Terre des hommes urges the Government to establish a digital system in which:

(i) Personal data on “accompanying adults” (third person, neither the father or mother) is digitalized, safely stored for future reference and cross-checked against police files in trafficking-prone counties

(ii) Children who have not returned as per the set date are flagged to the National Authority for the Protection of Child Rights and Adoption (Autoritatea Națională pentru Protecția Drepturilor Copilului și Adopție)

(iii) The cases a child is denied exit are centralized (transmitted electronically from border crossings to ANITP)

46 More information on this system is available at: https://esta.cbp.dhs.gov/esta/ (last visited on the 24th of November 2014)
Acknowledgements

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Researcher/Quantitative data analyst: Claudia Câmpeanu

Contributing experts: Kirsten Theuns (Country Representative, Terre des Hommes, Romania), Joseph Aguettant (Country Representative Palestine, Terre des Hommes), Pierre Cazenave (Regional Child Rights Officer, Terre des Hommes, Hungary), Peter Dolby (Director and Co-Founder of the Counter Human Trafficking Bureau, UK).

Special thanks for their assistance to: Adrian George Petrescu (Romanian National Agency against Trafficking in Persons), Beth Hurley (National Society for the Prevention of Cruelty to Children, UK)

Supporting institutions: The National Agency against Trafficking in Persons (Agenția Națională Împotriva Traficului de Persoane), the Romanian Border Police (Poliția de Frotieră Română).

Editing: Raluca Icleanu (Terre des Hommes, Romania)
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• Romanian Ministry of Justice website: portal.just.ro
• Romanian Border Police Website: http://www.politiadefrontiera.ro
• Romanian Prison Administration website: http://www.anp.gov.ro
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