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**CRIMINAL CHILD PROTECTION FROM HUMAN TRAFFICKING
DURING CONTEMPORARY MIGRATION**

**PROTECCIÓN DE LOS NIÑOS ANTE EL TRÁFICO HUMANO
DENTRO DEL CONTEXTO DE LAS MIGRACIONES CONTEMPORÁNEAS**

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Abstract

On the background of the complex contemporary migration situation, the authors seek the reasons for the growth of the human trafficking crime as well as the necessity of constant perfecting of the effective international legislation in the field. This theoretic research reviews several of the latest positions in criminal child protection from the human trafficking crime according to the Bulgarian Criminal Code. In the context of the complex contemporary situation a significant attention is paid to the introduction of two purposes of the crime - removing tissue, cell or body fluid from the victim, and the addition of begging as an alternative to the forced labor. Lastly in the paper attention is paid to the circumstances being a precondition for the growth of traffic and requirement undertaking emergency measures for protection of children.

Keywords

Human trafficking – Child – Criminal protection – Migration

Resumen

En el contexto de la compleja situación migratoria contemporánea, los autores buscan las razones para el crecimiento de la delincuencia de la trata de personas, así como la necesidad de perfeccionamiento constante de la legislación internacional efectiva en la materia. Esta investigación teórica revisa varias de las últimas posiciones en la protección penal de los niños contra el delito de trata de personas según el Código Penal Búlgaro. En el contexto de la compleja situación contemporánea, se presta una atención significativa a la introducción de dos propósitos de la delincuencia: eliminar la autoestima de la víctima y la adición de la mendicidad como una alternativa al trabajo forzado. Por último, en el documento se presta atención a que las circunstancias son una condición previa para el crecimiento del tráfico y la obligación de adoptar medidas de emergencia para la protección de los niños.

Palabras Claves

Tráfico de personas – Niños – Protección penal – Migración

He common good all civilizations is child's education
Jean Piaget

Introduction

The contemporary society is in an extremely difficult moment of its history. The situation of world economic and financial crisis, the refugee wave, the growing number of terroristic attacks enclosing the bigger part of the world undoubtedly reflect on the general human values and rules of behavior. Reasonably assumed is that namely the crises, uncertainty, chaos contribute to the increasing poverty among people. In this struggle for survival most vulnerable and affected, as always in human history, are the children. In the process of their maturing, growing up and forming personalities they encounter the harsh and hostile reality. Many of them are dragged into committing different crimes and/or become easy victims of various encroachments. The explanations of the growth in human trafficking are now sought mainly in the complex international environment of migration processes, religious opposition, terror, natural disasters.

Human trafficking is a negative social event which affects various aspects of the public life. Due to its nature it is a subject of profound examinations, social researches and discussions. This undoubtedly is an issue which interests scientists, politicians, sociologists, jurists, forensic detectives and the entire national and world community. In the scientific papers regarding human trafficking researched is its essence, the reasons for its growth, the necessary measures for dealing with this human burden. Unfortunately it is established that human trafficking is very sustainable social even described 'as a diverse form of trade that is 'as old as trade itself'¹.

Human trafficking as a crime as well as a social phenomenon is examined in the work of various Bulgarian and foreign authors. Among the Bulgaria authors reviewing the human traffic are: Iva Pushkarova "Human Trafficking. Problems in the Criminal Justice Regime", Boris Velchev "Slavery and Bulgarian Criminal Justice Law", Hristo Popov "Women Trafficking. Reasons, Consequences and Contradictions", Georgi Karolev, Kameliya Dimitrova etc. Among the foreign authors stated may be the names of David A. Feingold "Human trafficking", Magee Lee "Human Trafficking", Louise Shelley "Human Trafficking. A Global Perspective", Emily Delap "Begging for Change", David A. Smolin, Chris Beyer, Joel Quirk and many more.

In this research is used the scientific analysis and synthesis method, the comparative legal method, the method of research of scientific literature and sources, the social legal method and so on. *The scientific analysis and synthesis method* is mainly used to analyze the changes in the Bulgarian legal code, ensuring protection of the child of the crime being reviewed. Along with this it is necessary for synthesis of relatable to the topic national and international deeds. An important place in the development holds the *comparative legal method* which supports the profound examination of the issue and once again underlines its significance and topicality. The made comparison is with regards to the settlement of human trafficking according to Bulgarian penal code with the one of other randomly selected countries.

¹ M. Lee, Human trafficking (William publishing, 2007), 1.

The problem being reviewed in this examination gives an opportunity to use the *interdisciplinary approach* for human trafficking besides a crime according to the penal code of Republic of Bulgaria is also reviewed as social event by the sciences political studies, sociology, forensics etc.

Key Points in the Legislation of Human Trafficking

Human trafficking, in particular child trafficking, is gaining more and more serious dimensions throughout latest years. Reasons are many and various, but lately undoubtedly migration processes influence the growth of this negative phenomenon. World and European communities are constantly seeking ways to prevent this bad form of child labor². Completely in the spirit of the contemporary environment, in 1999 at Convention No 182³ stated is that “child labor to a great extend is a result of poverty and that the long-term solution is in the constant economic growth leading to social progress and in particular mitigating the poverty and education for all”.

Human trafficking, in particular child trafficking, is mainly determined as one of the most serious crimes against personality in XXI century. The crime affects public relations ensuing gender integrity, sexual morality, privacy of health, human dignity and the right of free movement. Among the main reasons for development of human trafficking worldwide is the poverty, mass unemployment, lack of education, lately refugee wave and so on. At the same time crime is difficult to reveal and it is exceptionally profitable, which is an additional precondition for its growth. In accordance with the tendencies and scale of crime necessary is every country in the world to constantly undertake adequate and timely measures for fight against the negative social event in question. In this relation pointed out shall be that at the same time in almost all countries in the world human trafficking is declared a crime⁴ and is pursued with the greatest extent of the law.

As stated above in the paper, human trafficking crime affects various public relations. With review of this, it is regulated in various chapters of the criminal codes of separate countries⁵. For example:

² According to the provisions of art. 3 of Convention No 182 regarding prohibition and immediate actions for liquidating the worst forms of child labor the expression ‘worst forms of child labor’ encloses:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

³ The Convention is ratified with law adopted by the 38th National Assembly on 21.06.2000 – Official Gazette, issue No 54 dated 04.07.2000. Issued by the Ministry of Labor and Social Policy, promulgated Official Gazette, issue No 68 dated 03.08.2001, effective as of 28.07.2001.

⁴ In its World Human Trafficking Report dated 2014 the United Nations Office on Drugs and Crime established that in the legislation of only 5% of the researched countries in the world (9 out of 173) missing is special criminalization of human trafficking or even several of its forms.

⁵ <http://www.legislationline.org/documents/section/criminal-codes>.

- in the Criminal Code of Canada the crime is contained in Part VIII Offences against the Person and Reputation;
- in the Criminal Code of Finland is regulated in Chapter 25 Offences against Personal Liberty;
- in the Criminal Code of France is settled in Chapter 5 Offences against the Dignity of Persons;
- in the Criminal Code of Georgia - Chapter XIII Crimes against Human Rights and Freedoms;
- in the Criminal Code of Republic of Bulgaria the crime being reviewed is regulated Chapter II Crimes against the Person.

In the criminal codes of some countries the crime is in an individual chapter – for example in the Romanian Criminal Code there is a separate chapter - Chapter VII Trafficking in, and Exploitation of Vulnerable Persons; in the Spanish Criminal Code - Title VII Bis On Trafficking in human beings.

In proving protection from human trafficking, an important role play the operating international legal deeds in the field, most significant of which are the United Nations Convention against Transnational Organized Crime and its three protocols⁶, as well as Council of Europe Convention on Action against Trafficking in Human Beings⁷.

Logically, the effective legislation of separate countries, including Republic of Bulgaria⁸ is in compliance with the requirements of the stated international legal deeds. Furthermore, as a member-state of the European Union, Republic of Bulgaria strictly follows the European human trafficking combat policy. In this relation with the Amendment and Completion of the Criminal Code Act dated 27.09.2013 introduced are the requirement of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA which built up the already existing standards in this area.

As result of the amendments and completions dated 27.09.2013 the provisions of art. 159a of Criminal Code of Republic of Bulgaria, regulating human trafficking states:

“(1) (amended Official Gazette issue No 84 dated 2013) Whoever recruits, transports, hides or accepts separate people or group of people with the purpose of being used for sexual activities, forced labor or begging, removal of organs, tissue, cell or body

⁶ The General Assembly adopted the United Nations Convention against Transnational Organized Crime and two of its supplementary Protocols namely: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea on 15 November 2000. In its resolution 55/255 of 31 May 2001, the General Assembly adopted the third protocol – Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

⁷ Council of Europe Convention on Action against Trafficking in Human Beings was opened for signature on 16 May 2005, and entered into force on 1 February 2008.

⁸ Republic of Bulgaria ratified the UN convention and the first two protocols on 05.12.2001 and the third protocol on 06.08.2002. Republic of Bulgaria ratified the Council of Europe's Convention with law – Official Gazette, issue No 24 dated 2007, effective for Republic of Bulgaria as of 1 February 2008 (Official Gazette, issue no 63 dated 2007).

fluid or be held in servitude regardless of their consent, shall be punished with imprisonment from two to eight years and a fine of three thousand to twelve thousand levs”.

According to the aforementioned provision, the act of the crime in Bulgaria has several forms – recruitment, transportation, hiding or accepting persons – individually or in a group. It turns out that those are the most commonly used forms in the legislations of separate world countries. Of course there are others as well, for example:

- *harbors* (Criminal Code of Canada; Criminal Code of Hungary; Criminal Code of Finland);
- *accommodation* (Criminal Code of France);
- *exercising control* (Criminal Code of Canada; Criminal Code of Georgia);
- *transfer* (Criminal Code of Canada; Criminal Code of Finland; Criminal Code of France; Criminal Code of Romania);
- *induce* (Criminal Code of Spain) and others.

Another peculiarity of the crime in question “human trafficking” is the *specific* goals, one or several, for the achieving of which the act is performed. In certain legislations the goal is stated in different manners. Somewhere it is determined generally: in the provision of Section 279.01 of the Criminal Code of Canada settled is that human trafficking is made with the purpose of exploitation or facilitating the exploitation of the victims. In Section 279.04 stated is what the term “exploitation” covers. Similar is the approach in the Criminal Code of Hungary (Section 192), Criminal Code of Russia (Art. 127.1), Criminal Code of Georgia (Art. 143¹) and others.

Besides the general stating of the purpose also present is listing of separate purposes in the provision, regulating the crime. It is used in the Criminal Codes of Estonia (§133), Finland (Section 3, Chapter 25), France (art. 225-4-1), Norway (Section 224), Spain (Art. 177 bis), Bulgaria (art. 159a, par. 1) and others.

New Purposes of Human Trafficking according to the Criminal Code of Republic of Bulgarian

Removing tissue, cell or body fluid

With the amendments of 2013 (Official Gazette issue No 82) the Bulgarian legislator extended the field of application of human trafficking crime as added *new purposes*. For example introduction of ***removing tissue, cell or body fluid*** from the victim as alternatives of the goal to remove organs from the body. This supplement is not a requirement of Directive 2011/36/EU but is caused by the quickly growing human trafficking for the stated purpose. Human trafficking with the purpose of removing organs or cells is regulated in the criminal codes of various countries around the world - Switzerland (Art. 182); Iceland (Art. 227a); Canada (Section 279.04, par. (3)); Norway (Section 224, d); Russia (Article 127.1.2.g) and others. In the Criminal Code of Georgia states is that “exploitation” includes using a person for organ transportation, *part of organ* or tissue (Art. 143¹, Note 1). In Section 3, Chapter 25 of the Criminal Code of Finland, however, placed is an additional requirement, namely removing organs or tissues for *financial benefit*.

It is established that there are still not many legislations which to explicitly criminalize human trafficking with the purpose of removing cell or body fluid. Ensuring complete and

comprehensive defense in this direction is necessary because the criminal act affects the privacy of health, psychic, normal functioning of the human organism. It characterizes with lack of humanity and violation of basic human rights and freedoms. In a number of international instruments prohibited is torture, cruel, inhuman or degrading treatment or punishment, undergoing of medical or scientific experiments without voluntary consent of the person (Art. 5 of the Universal Declaration of Human Rights, Art. 37 of the Convention on the Rights of the Child; art. 7 of the International Covenant on Civil and Political Rights, etc.).

Begging as an alternative of the forced labor purpose

Besides the commented new introduction in the Criminal Code of Republic of Bulgaria, of significance is providing full and strong protection, especially of children, represents and addition in the provisions of art. 159a, par. 1 of Criminal Code (Official Gazette, issue No 84 dated 2013) – ***introducing begging as an alternative of the forced labor purpose***.

The results of researches and reports of the latest progress in relation to human trafficking logically impose Directive 2011/36/EU to include new forms of exploitation. This way, in the context of the Directive accepted is that the forced begging shall be understood as forced labor or services as determined in Convention No 29 of International Labor Organization regarding forced or mandatory labor dated 1930. In art. 2, point 3 of the Directive explicitly stated is the contents of the “exploitation” notion: “Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs”.

In compliance with the requirements of the Directive adopted may be that in this direction the human trafficking settlement in legislations of the member-states is unified.

Unfortunately foreseeing begging as a special purpose of the human trafficking crime in the legislations of the countries not member-states of EU is rarely observed. For example in Article 165 (1) of the Criminal code of the Republic of Moldova (amended 2009) it is explicitly stated that the crime may be performed with the purpose of begging.

Human trafficking with the purpose of use for begging is an activity which most commonly uses children as victims. In the Human Trafficking report for the year 2014 of the Human Trafficking Monitoring and Fight against It at the State Department of the USA in the part regarding Bulgaria stated is that Bulgarian children are traffic victims **mostly with the purpose of sexual exploitation and forced labor**. There are some Bulgarian children who are **forced to beg** on the streets not only in the country but in Austria, Greece, Sweden and Great Britain.

With begging mostly the heartiness and compassion of other people is being used so it is considered that “more profitable” will be namely minors and underage children as well as people with disabilities. In her research Emily Delap notes that ‘there is no single profile for children who are forced to beg’⁹.

⁹ E. Delap, Begging for Change (2009), 9.

Since children are most vulnerable and “sought” by the traffickers for carrying out the crime in question, they shall really receive a better protection. In this context noted shall be that in the legislations of separate countries of the world foreseen is enhanced criminal protection of children from the human trafficking crime. Even in the Criminal Code of Hungary the criminal responsibility is differentiated depending on the specific age of the suffered child – whether under 18 or 14 (Section 192). Little age of the suffered child indicates that traffic will irrevocably affect its normal physical, mental and sexual development.

In the Convention on the Rights of the Child¹⁰ regulated is that the child shall be protected by all forms of exploitation affecting in whichever aspect its wellbeing (art. 36). Due to this reason foreseeing begging as possible purpose of the human trafficking crime shall be determined as a significant advance of the European legislation in direction of providing enhanced criminal protection of mostly children. At the same time this way increased is the public awareness and engagement in the long and hard process of overcoming the use of children in carrying out similar criminal activities.

Various protection aspects

More frequently human trafficking is related to migration. Among the main reasons for the increase of migration processes mentioned is the economic crisis, political conflicts, wars held in various parts of the world. As Magee Lee states in her research ‘for many trapped in dire poverty displaced by political turmoil..., migration through irregular channels of smuggling and trafficking has become their only means of escape’¹¹. This is way many families, especially women and children become vulnerable and easy potential traffic victims. As a negative consequence of this circumstances stated may be affected the right of name and nationality of children as well as the huge problem with missing children of migrants.

Every child since its birth is entitled to name and nationality (art. 7 of Child Rights Convention). As Chris Beyrer states “In a world with civil conflicts, refugees, large-scale migrations, and trafficking, increasing numbers of children are born without the most basic forms of documentation. Imagine a modern life with no formal registration, birth certificate, passport, or citizenship. This is the fate of (all too literally) countless children born in the limbo of refugee, migrant, persecuted minority, or illegal alien status. These children are by far the most vulnerable to trafficking and to exploitation”¹². Without any doubt the state rights of children need additional protection as well as special measures through which children migrants, mostly the unaccompanied ones can obtain special status and appropriate care.

The growing migration processes worldwide are precondition for deepening of the following worrisome problem – missing children of migrants on the territory of the EU. In January 2016 Europol announces about 10 000 migrant children who went missing in Europe¹³. According to Michael Moran, deputy-director of human and children trafficking department at Interpol the situation is more serious and probably the number of those

¹⁰ The Convention is adopted by the GA of UN on 20.11.1989. Ratified by decision of Grand National Assembly dated 11.04.1991 – Official Gazette issue No 32 dated 23.04.1991. Effective as of 03.07.1991.

¹¹ M. Lee, Human Trafficking... 7.

¹² C. Byrer, Global Child trafficking. The Lancet. Medicine, Crime, and Punishment Vol.364 (2004), 17.

¹³ Report: Migrant Smuggling in the EU (Europol: February 2016), 11-12.

children is bigger. The refugee agency of UN states that 35% of the immigrants having entered EU in 2016 are children as many of them travel without an adult companion. In the public area more frequently commented is the probability some of these children to be victims of various crime groups and to be used for begging, forced labor, sexual exploitation and any other forms of misuse. With review of this complex situation necessary is undertaking special measures for child protection of those exceptionally vulnerable children. This is valid for every country, including Bulgaria, on which territory there are constructed refugee centers accepting migrants among which children without companions. According to data by the State Refugee Agency for 2016 in Bulgaria over 2300 unaccompanied children have passed. For the security and safety, mostly of those children, necessary is to tighten the control measures on border checkpoints with the purpose of preventing their eventual trafficking.

Conclusion and suggestion

Undoubtedly the criminal protection from the human trafficking crime shall constantly improve. That is why, unfortunately, the analyzed crime activity may explosively take various unexpected forms, may quickly adjust to the social environment and event stressfully growing around the world.

In conclusion of the analysis made we may say that the necessity of adapting the effective criminal justice protection of the child from human trafficking is more urgent than ever. The exceeding migration towards the European Union during the last years requires paying more attention to its relation to human trafficking because it is established that namely this is the main precondition for the development of the crime so far. The successful criminal justice protection needs constant improvement and harmonization.

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