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PhD dissertation entitled Cross-border nature of human trafficking. Penal law and criminological problems, written under the supervision of Professor Jacek Potulski, PhD, University of Gdańsk.

Abstract

Human trafficking, from the dogmatic, penal law and criminological point of view has been a subject of an active international, European and national rulemaking and poses a vivid interest for the science of law. This state of affairs results, first of all, from a social, real threat posed by the crime of human trafficking which is one of the most serious crimes against a human person. According to national and international reports on the analysis of the phenomenon of human trafficking, each year approximately 2 million of people fall victim to this crime and children are 1/3 of all the reported victims. The majority of the identified victims is mostly composed of migrants, while marginalized and poor people are particularly vulnerable. Criminals in the chain of connection recruit their victims from poor households, dysfunctional families and children who have been abandoned or devoid of parental care. One can also notice the circumstances favouring the occurrence of this phenomenon in such sectors as sexual exploitation of children and women by peace-keeping forces and soldiers, human trafficking of sportsmen, ex-territorial juvenile sex tourism and using children as soldiers. Abuse form that is dominating in Europe consists in sexual exploitation and use in prostitution. Recently, a dynamic increase of abusing the victims at work or in indentured services has been observed in Poland. Unfortunately, the number of documented victims has been growing, while the total number of victims remains unknown due to the fact that many cases of human trafficking are undetected. Secondly, from the penal law point of view, regulation of the definition of human trafficking in relation to contemporary forms of exploiting the victims, including cross-border perspective, is very important. With a certain delay, Polish law started to notice interpretation problems associated with human trafficking caused by the lack of legal definition of this crime in the law in Poland. Variety of comments and opinions of the doctrine reflecting in court rulings given before the penal code included the definition of human

trafficking in 2010 deserves and requires detailed discussion within the context of interpretation of this term and associated problems. The very definition and punitive rule seem to not entirely eliminate the problems of material penal law in this range. On the one hand, the rule narrows down the scope of criminalization, recognizing as criteria only such causative acts that are clearly indicated in its legal definition, while on the other hand it favours the postulate of legal certainty and definiteness of a given crime. Third, human trafficking is a kind of criminal activity that evolves and adjusts to given socio-economical conditions, which is indicated by numerous forms of exploiting the victims. Moreover, contemporary migration movement of non-assessed size, making an employee to look for an employer abroad, create the conditions for its use in the currently fastest developing area of this crime which is the indentured labour. It is therefore necessary to perform a continuous, efficient and research-oriented revision of the human trafficking phenomenon within the context of current legal, social, economical and migration changes. Forth: the relationship between the perpetrator and the victim (criminological aspect) within the context of contemporary exploitation, taking part on the cross-border plane. A universal perpetrator adjusting to the criterion of a criminal demand, operates rationally and strategically plans the crime with a highly-specialized division of roles in a group of people residing in particular countries. It is not a coincidence that a recruiter in the majority of human trafficking cases has the same citizenship as a victim, while the perpetrator who transports the victim, delivers, transfers or receives them is a completely different person, although with connections in the criminal chain. Economical cause that pushes victims to a naive trustfulness to the offeror becomes the beginning of a cross-border journey from which the victim is not able to return, unless they receive help from specialized institutions and legal measures.

The majority of the source material, especially national, treats the cross-border nature of human trafficking only in relation to a country: a country of origin, a country of temporary transit or a country of destined exploitation. Such a generalization in the light of the scale and complexity of the phenomenon is insufficient, especially for a crime that transgresses the borders of more than one country and exists above national borders. In the light of constant changes in the proportion of the forms of exploitation within the human trafficking crime, the author recognizes the need of constant verification of not only legal regulations guaranteeing the ability to punish all of the identified forms of exploitation, particularly work and indentured services, but also regulations ensuring the protection of victims. Visualization of the phenomenon is not only intended to show the nature of human trafficking, but also to define the actions that need to be taken in order to efficiently prevent this crime. Collected

data cannot remain detached from analytical concepts in the range of the assessment of tools used in combatting this kind of operation. One of the key objectives of this dissertation consists in an attempt to find the answer to the following substantive law questions: Are the legal regulations, procedures and legal institutions applied by the law-maker sufficient and do they fulfil their deterrent role in the elimination of human trafficking in a cross-border environment? If they are not, what must be changed in order to limit the growing scale of the crime of human trafficking? Also, are the tools used to fight the criminals adequate and do they meet the accepted assumptions? This dissertation, through the analysis of penal law-related causes and effects of cross-border nature of human trafficking crime attempts to answer the following questions: Why does the human trafficking have a cross-border range? Why is it not limited locally? Why does it thrive so well in democratic nations in 21st century even if it is sanctioned as a crime in a majority of these countries? Why is there a demand for a criminal exploitation of another human being?

The foundations of this paper include a concordant opinion that the crime of human trafficking is, in principle, a cross-border crime. This is why one of the assumed goals of this dissertation consists in complex analysis of the human trafficking phenomenon based upon the concept of a cross-border crime, as one of the leading research hypotheses, requiring a scientific verification through an analysis of legal rules, report data and conducted empirical research. For his own systematization, the author indicates the conditionings of human trafficking on both historical and social background, reaching for aetiology, products of criminological and victimological thought, indicating the basic legal regulations and, particularly, analysis of the codex definition of human trafficking on a comparative background. It is also essential to indicate the basic forms of exploiting the victims of human trafficking and their analysis in relation to their definition-related features. The subject of the research also includes the crime of human trafficking in its criminological approach, including the analysis of a perpetrator's profile and statistical image in global and regional approach, with the size and increase of this phenomenon in Poland. Such an approach to the subject aims at answering the following questions: Who is a contemporary perpetrator of human trafficking crime? What are their recruitment methods based on? What is and what is the nature of the chain of cross-border connection of crime groups involved in this operation. For the clarity and complexity of the elaboration, the considerations have been deepened with the relation between the organized crime and selected forms of human trafficking. On purpose, the author deals with, in his opinion, too narrow approach of contemporary judiciary in the view of recognizing non-code forms of exploitation on the basis of the regulations of European law. In order to attempt

answering the questions about the reasons for cross-border nature of human trafficking asked in the thesis, the author penetrates the identification problems of the victims of human trafficking, analysing the criminological point of view of the structure of this crime in relation to the perpetrator, the act (stages of the causative acts) and the victim. In his divagations the author creates the perpetrator's *modus operandi* fitting in the schematics of cross-border crime. By showing the indicators he attempts to describe human trafficking as a cross-border crime, in order to provide a contemporary and proper understanding of the causes and penal law-associated effects of this crime. Following the research interpretation of the analysed data on continuous increase of indentured labour as a dominating form of exploitation of, mainly, foreigners in Poland, the author seeks and indicates the appropriate solutions in this scope, including both substantive law-related ones (novel definitions), (prosecution preclusion clause), (legalization of the stay) as well as assistive ones. Relying on the cross-border theme, the author deliberately confronts the crime of human trafficking with human smuggling, with legal and illegal migration. He indicates the areas where the crimes begin an independent functioning with the common, initial causative behaviour and when these crimes interpenetrate, becoming a contribution in the stage of subsequent exploitation of the victim. While exploring the causes of cross-border nature of the discussed crime, the author's deepened analysis moves on to the ground of the economy of law. Human trafficking as an instance of business activity in economical approach, with the participation of middlemen (human traffickers) offering a customer (entrepreneur) goods in form of human being with a set of qualifications, skills, age and general outlook, as a specific *human trafficking business*. The economy of human trafficking consists in a cross-border and international profit described in the dissertation, financing criminal groups, mutual correlation between human trafficking and other criminal acts, assuming the gained benefits as a constant source of income and money laundering as legalization of the profit generated by this crime. In his considerations about the economy of human trafficking on the basis of the presented arguments, the author poses a question: Is human trafficking an economic crime?

The subject of the dissertation determined its structure. The dissertation contains 9 chapters preceded by an introduction containing the outline of the assumptions and plan of the paper, and conclusion where summary and general conclusions of theoretical and practical nature were formulated.

Chapter I attempts to define the aetiology of human trafficking by indicating historical conditioning of the phenomenon and its causes from the perspective of social conditioning and contemporary determinants. In this chapter, the author analyses doctrinal criminological

and victimological theories, as well as contemporary criminological directions, thoughts and concepts in the scope of combatting and preventing human trafficking. Subsequently, the author effects a wider definition of the cross-border nature of the human trafficking crime as a starting point for further research in this area. Mapping out the basic criteria in the form of questions, the author undertakes a research attempt of defining the term of “cross-border human trafficking”.

Chapter II presents the phenomenon of human trafficking from the point of view of Polish, European and international legal solutions. The author analysed legal and historical aspect of the phenomenon, presenting the evolution of law concerning the combatting of human trafficking in various cultures and legal systems. An analysis of the definition of human trafficking in the context of Polish legal regulations, dividing them into the perpetrator, perpetrator features, subject of protection and objective features has been included. The chapter also contains a comparative analysis of legal rules being in force in Poland and in other countries and their mutual relationship. An analysis of mutual influence of the international legal orders and national legal order, including the implementation of international law solutions into national legal order. A widened analysis also covers considerations regarding the concurrent crimes and regulations of the act.

Chapter III describes the typology of human trafficking. It presents codex forms of exploitations, including child human trafficking as a greatest challenge both in the scope of identification and jurisdiction. Starting from the exploitation of the victims of human trafficking in labour or indentured services, through exploitation in prostitution, pornography and other forms of sexual abuse, the author also analyses such forms of exploitation as beggary or using the victims as a source of cells, tissues or organs against the rules of law, commonly known as organ trafficking. On the basis of the presented international definitions regarding child human trafficking, the author, following other researchers of the phenomenon postulates *de lege ferenda* that a qualified type of child human trafficking is created in the Polish penal law. Creating a criminological and victimological research area, the author reaches for identification indicators in general and individual relation for the main forms of exploitation, presenting them as an efficient criminological tool.

Chapter IV contains the author’s analysis of criminological aspects of human trafficking. Essential elements of a perpetrator’s behaviour as a *modus operandi* in the context of cross-border crime have been subjected to research. Also, a statistical assessment of the phenomenon of human trafficking in both global and regional (EU) approach has been conducted on the basis of the most current reports in this scope. The chapter includes a complex

analysis of the size and increase of the phenomenon of human trafficking in Poland on the basis of the trichotomy of the division as a country of the origin of the victims, transit country and target country for exploitation. This chapter also contains profound considerations regarding the relationship between the organized crime and selected forms of human trafficking.

Chapter V discusses the phenomenology of human trafficking. The author conducts a profound analysis of the contemporary criminological forms of human trafficking, among which, on the basis of doctrine, case law, acts of the international law, he finds that such criminal acts as fraudulent loan and social benefit applications, forcing to enter a fake marriage, domestic slavery and criminal exploitation are also considered forms of human trafficking, however, this list is not a closed or extensive one. A vast part of the chapter deals with differentiating the human trafficking crime from human smuggling, legal and illegal migration and with the correlation between the increase of economic immigration and using the victims of human trafficking in one of the forms of human trafficking – indentured labour. An essential, contemporarily omitted aspect of the analysis of the human trafficking phenomenon is a research look on the influence exerted on it by contemporary climatic migration.

Chapter VI contains the description, analysis and results of the author's empirical research conducted on the basis of the case file of the cases of criminal offences under article 189 § 1.1 of the penal code, being heard by the Regional Court in Gdańsk in the period between 2010 and 2021 and court judgements. The concept of “cross-border human trafficking” defined in Chapter I is confronted by the author with the factual state of the analysed cases and sentences in order to generate the research conclusions and answers to one of the principal questions of this dissertation, namely: What parameters does human trafficking crime need to have in order to facilitate recognizing it as a cross-border crime? Conducted research clearly shows that each of the analysed cases, on the basis of the assumed criteria, falls within the scope of the definition of a cross-border crime.

Chapter VII discusses the subject of the economical aspects of the human trafficking from a legal perspective in the context of cross-border nature. The chapter talks about the extent of profit, financing of the criminal groups in relation to typing the behaviours accompanying human trafficking in the form of obtaining a source of regular income from the crime and legalization of the profit, currently known as money laundering, including the location of the funds beyond the country where the victim was exploited. The author also draws the attention to the economical costs assigned for the support and reintegration of the victims, encouraging looking at human trafficking through the prism of a theory on economy.

Considerations included in chapter VIII oscillate around problems of the victimology

of the human trafficking crime. The author analyses the susceptibility of the victims of human trafficking and their victimogenic potential. Through a deepened analysis of legal regulations, the author proves the response of Polish legal regulations to a cross-border status of the exploited person. A foreigner being a victim of the human trafficking crime in Poland can find, in Polish legal regulations, essential solutions, i.e. good practices allowing help and support in many branches of the law.

Chapter IX concluding the considerations deals with the cross-border nature of combatting the crime of human trafficking on the plane of institutional cooperation on a national, European and international level. It is a cross-border synergy of sorts.

The conclusion presents the most important outcome of the conducted research. It contains the assessment of the current legal solutions versus contemporary, evolving forms of exploiting the victims of human trafficking. Concluding the conducted research, the author formulates specific *de lege lata and de lege ferenda* postulates referring to the reform of the law, its institutions and tools in the cross-border context being the subject of this dissertation.