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The theory and practice of trafficking in human beings, with special regard to children

PhD thesis



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> Pécs 2024

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I. A brief summary of the set research task

I.1. Reason for choosing the topic

Humans and trade. If the former is the object and not the subject of the latter, then these concepts are distant and seemingly incompatible for today's mindset. Trade is the exchange of goods and services, the transfer of produced goods from producers or producers to consumers. It is customary to trade objects, things that can be possessed and owned. But not that of humans, whom we think of as a person, mostly an individual, an "intelligent" being who knows and shapes the world, is characterized by speech and thought, creates a community, lives in society and has rights there (VIRÁG).

According to György Virág, a person who is owned by someone else and is treated as an object deprived of his personal freedom is a slave. According to Roman law, he is not even a person, only a "homo servus", who has the same status as things – res –, can be taken to the market, can be sold at a human fair, and in the postmodern version can even be treated as a (commercial) product on sale ("people for sale"), a humanoid consumer item (VIRÁG).

Human trafficking is a profit-oriented, but nevertheless low-risk business. The huge amount of money that comes from it allows criminal groups to gain economic, social or even political power and influence how the world works (SZÁRAZ).

Human trafficking is one of the most serious social problems of our time, but no exact data can be established on its extent. Yet, according to numerous studies, an increasing number of people are becoming victims of work or sexual exploitation committed by organized criminal groups (BEZSENYI – KATONA – MÁTYÁS – NYITRAI – FRIGYER – TIRTS).

Human trafficking is a cross-border problem that significantly affects countries of origin, destination and transit. Its most important characteristic is that it is a highly organized, fast-spreading crime. Since trafficking in human beings is one of the most serious violations of human rights, all states have a duty to take decisive steps to prevent it and prosecute the perpetrators. (EMBERKERESKEDELEM.KORMANY.HU).

With its strict system of instruments, criminal law protects human freedoms in addition to the human rights to life, physical integrity, and health. These are governed by the Charter of Fundamental Rights in the European Union. It is the duty of all European Union member states to ensure and protect the fundamental rights listed there (NAGY).

Nowadays, one of the most profitable branches of organized crime is human trafficking, which is the basis for sexual exploitation, prostitution, slave labor, human organ trafficking and other serious crimes (NAGY).

Child trafficking – including commercial sexual exploitation – is one of the fastest growing and most profitable criminal activities in the world (RAFFERTY).

From the point of view of trafficking in human beings, Hungary is considered a country of origin, destination, and transit.

Human trafficking is widespread in our country, but its research continues to encounter difficulties, even though the number of crimes known to the authorities has increased significantly since 2019 (WINDT).

In Hungary, in addition to substantive and procedural criminal law provisions, trafficking in human beings is mentioned in nearly a hundred legal regulations and legal sources (DERES).

I.2. Research hypotheses

The aim of my dissertation is to distinguish between child trafficking and human trafficking by analyzing the image of child trafficking and exploring its domestic characteristics.

In my opinion, the separation of child trafficking from human trafficking is significant from the point of view of both crime prevention and law enforcement, as well as victim assistance. This is based on the examination of the image and characteristics of child trafficking.

I trust in the social utilization of my research, for which I would like to provide help and guidance, based on scientific results primarily for the legislation. The focus of my research is whether child trafficking is a separate category from human trafficking, or whether it is only a qualified case of it.

I defined my hypotheses as follows:

- 1. I assume that adult and child trafficking are different in their purpose.
- 2. I assume that in the case of trafficking in adults and children, the forms of exploitation are different, and that the concept of exploitation also covers different things.
- 3. I assume that, in the case of trafficking in adults and children, the perpetrators use different methods of committing it.
- 4. I assume that the process of victimization of adults and children is different. Other vulnerability factors come into play and consent is different.

In addition to my hypotheses, I am looking for answers to other questions, such as:

- In the case of child trafficking, for example, is recruitment included?
- Is the purpose of exploitation necessary at all to achieve child trafficking?

II. Brief description of the tests and analyses performed, methods of processing

To verify my hypotheses, I used the following methods:

In my research, I used both primary and secondary sources. In addition, I conducted primary research based on direct data analysis.

During my research, I relied on literature sources and court decisions. I tried to process the extensive amount of domestic and international studies, monographs, study volumes, documents, reports, commentaries and textbooks of organizations dealing with child trafficking. I also reviewed the domestic and international sources of law in force (in many cases contemporary) related to the topic.

From the range of foreign-language literature, I mainly examined English-language sources, but I also processed Croatian and Turkish content.

With a brief historical analysis, I review the history of trafficking in human beings and its international, European Union and domestic legal development.

I will carry out a dogmatic analysis of the facts regarding trafficking in human beings and forced labour, and then, using the comparative legal investigation method, I will compare the current Hungarian regulations with those of Germany, the Netherlands and Turkey.

I perform a descriptive statistical data analysis with the help of unified investigative authority and prosecution criminal statistics managed by the Office of the Prosecutor General, as well as public data of some international and domestic organizations. I examine the distribution according to age groups, gender, and forms of exploitation.

In order to be able to explore the characteristics of child trafficking as widely as possible and to distinguish it from trafficking in human beings, in addition to material criminal law, I also carry out a criminological, regulatory and constitutional outlook.

In the case of certain forms of exploitation, I focus on the adequacy of domestic regulations.

III. A brief summary of the scientific results, their utilization, and the possibilities of utilization

III.1. Content of the thesis, its conclusions

During my research, I can give the following answers to my formulated hypotheses.

1. I assume that adult and child trafficking are different in their purpose.

In the case of human trafficking committed to the detriment of children for the purpose of classic exploitation, I did not see any deviation. In short, its purpose is exploitation. In more detail, realising regular gains (fixed as a purpose in Section 192 (2) of the Criminal Code) and the performance by another of the activity that forms the basis of the exploitation. In addition, in Hungarian regulations, Criminal Code the purpose of Section 192, paragraph (3) is to provide assistance to the above. By classic forms, I mean exploitation for work (related to illegal activities and begging), sexual exploitation, and removal of organs.

In my research, I found significant differences in child-specific trafficking.

Realising regular gains is not a necessary element of child trafficking for the purpose of illegal adoption (although it cannot be excluded) and exploitation in the classical sense does not take place. In the case of adoption, the prohibition of making a profit is found in the Civil Code recorded, which can also be realized with a one-time transaction.

Realising regular gains is not a necessary element of the commission of human trafficking through surrogacy to the detriment of the child. In the case of a child, we cannot talk about exploitation in the classical sense.

In view of the above, I partially accept and partly reject my hypothesis 1.

2. I assume that in the case of trafficking in adults and children, the forms of exploitation are different, and that the concept of exploitation also covers different things.

In my view, classical forms of exploitation should be understood as identical, or nearly identical concepts for children and adults.

Although labour exploitation does not differ conceptually, its manifestations differ with regard to age and gender. There is no specific form of child-specific labour exploitation.

In connection with sexual exploitation, I examined the possibility of providing consent or consideration in prostitution. I have come to the conclusion that if prostitution is viewed differently between adults and children, there is a reason to believe that sexual exploitation does not have the same content. Thus, the concept of sexual exploitation must be understood more broadly than a person under the age of eighteen.

By exploitation through illegal use of a human body, we mean, in my view, the same concept as children and adults. However, it is worth highlighting the fact that the removal of organs in children often costs the lives of the victims. Thus, although we cannot differentiate in exploitation, the result is different. The concept of exploitation related to an unlawful act is no different for a child and an adult. Its manifestations vary with regard to age and gender. Pickpocketing is common in children.

In my view, begging exploitation, despite being a form of labour exploitation, is understood to mean different concepts between children and adults. In addition to begging, begging is also understood to be begging with a child, if the child is the passive subject of the begging.

In the case of child trafficking through illegal adoption and surrogacy, the question arises as to whether we can talk about exploitation at all. In my opinion, depriving children of their family, ethnic roots and knowledge about their medical history is considered exploitation. In these cases, the child's right to know his origin, identity and family relationships is violated.

Through the differences within the exploitation, it can also be established that, in addition to the same, different interests are also harmed in the trifficking of children and adults.

In view of the above, I partially accept and partly reject my hypothesis 2.

3. I assume that, in the case of trafficking in adults and children, the perpetrators use different methods of committing it.

Article 2(1) of Directive 2011/36/EU contains methods of committing related to trafficking in human beings. It also states in Article 2(5) that: "[w]hen the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used." Under EU law, therefore, there is a decisive difference between the methods of committing in which trafficking is directed at children and adults.

The Hungarian legislation – exceeding its obligations as a member state – does not record the methods of committing as a necessary element neither in the case of child or adult trafficking. In the case of forced labor (Section 192 (2) of the Criminal Code), the law prescribes certain ways of committing it, which are the conditions for the crime to be committed, regardless of age.

In the case of sexual exploitation, I examined separately the methods of perpetration, which are important from a criminological point of view. In the domestic context, we can talk primarily about the "voluntary involvement" of children in human trafficking.

In the beginning, seduction, the exploitation of emotional attachment, and the promise of profit are typical of the case of involvement in human trafficking for the purpose of prostitution. When the child no longer wants to provide sexual services and wants to get out of the situation of exploitation, coercion and threats are usually used, often accompanied by psychological abuse.

Based on the above, I conclude that, according to the EU rules, the methods of committing, or the lack of them, play an extraordinary role in the trafficking of children and adults, however, this has no significance in Hungarian legislation. If we examine human trafficking as a phenomenon and not as a fact, then the methods of committing it differ.

In view of the above, I partially accept and partly reject my hypothesis 3.

4. I assume that the process of victimization of adults and children is different. Other vulnerability factors come into play and consent is different. The vulnerability factors that lead to becoming a victim of human trafficking are extremely broad. There are factors that characterize the trafficking of both children and adults, and there are also child-specific factors.

The situation of a child raised in state care and the dysfunctional family background are considered child-specific, but traumatized childhood can also play a role in victimization - even if to a lesser extent - in adults. Most of the victims of child trafficking (especially those involved in prostitution) fall out of the care of the state.

"Dependence" on emotional relationships and a criminalized environment play a role in the trafficking of both children and adults.

The difference in status and migration make both children and adults equally vulnerable. Substance abuse is of particular importance for adults.

In summary: we can talk about vulnerability factors for children that are different from adults (e.g.: state care). There are factors that are important in the case of both child and adult trafficking, but their content does not completely coincide (e.g. substance abuse). And there are also those that essentially do not differentiate between children and adults (e.g. difference in status).

The Criminal Code Paragraph (2) of Section 203 and the Infraction Act Paragraphs (2) of Section 172 state that a person who has not attained the age of eighteen years cannot consent to the execution of a sexual act in exchange for compensation, so their right to sexual self-determination is far inferior to that of adults. Directive 2011/93/EU contains minimum requirements for the age of consent for crimes against sexual morality.

It can also be read from the facts of child labour (Section 209 of the Criminal Code) that the child's consent cannot be taken into account if the work does not comply with the legal requirements for the employment of humans under the age of eighteen

If consent is judged differently for adults and children in the case of prostitution and employment that does not comply with legal regulations, then we can reasonably assume that there is a difference in other forms of exploitation as well.

In view of the above, I partially accept and partly reject my hypothesis 4.

In summary: trafficking of children and adults can be distinguished based on the answers to the hypotheses. I do not agree with the legislator's position that the trafficking of children is only a qualified case of trafficking in human beings.

III.2. Usability of the results of the thesis

The objective of the doctoral thesis was to analyze the image of child trafficking and to present its own research results, in addition to defining child trafficking and trafficking in human beings by exploring its domestic characteristics. The doctoral thesis contains a number of proposals that affect the Criminal Code and legal practice.

For legal science (legal theory), the legislator, and the legal practitioner, I formulated the following results and useful suggestions.

III.2.1. Results that can be used for legal theory

1. I comprehensively analyzed the current fact of trafficking in human beings and forced labour.

2. I carried out a legal comparative study of the facts of trafficking in human beings (and forced labor) in connection with German, Dutch and Turkish regulations.

3. I explored the conceptual elements of child trafficking.

4. I collected and discussed the vulnerability factors that are the main reasons for children becoming victims in child trafficking.

5. I explored the modern forms of child trafficking recruitment.

- 6. I presented the role of illegal adoption in child trafficking.
- 7. I explored the human trafficking side of surrogacy.

III.2.2. Results that can be used for legislation

1. In the case of labor exploitation, sexual exploitation, illegal use of a human body, illegal activity, and human trafficking for the purpose of begging, I agree with the legislator's point of view that crimes against children constitute classified cases of trafficking in human beings and forced labour.

2. I do not consider the current fact of human trafficking and forced labor to be adequate for child trafficking for the purpose of illegal adoption or through surrogacy, nor any other situation. As a result of my research, I propose the creation of a new fact entitled child trafficking.

Criminal Code Section 193/A. (1) A person who unlawfully adopts a person under the age of eighteen for the purpose of obtaining any undue advantage, or who provides any undue advantage in order to unlawfully adopt a person under the age of eighteen shall be punished by imprisonment for up to three years.

(2) A public officer who, in connection with the administration of the adoption of a person under the age of eighteen, accepts any undue advantage in order to provide the necessary consent for the adoption shall be punished by imprisonment for one to five years.

(3) A person who commits the criminal offence specified in paragraphs (2) concerning international adoption shall be punished by imprisonment for two to eight years. (4) A person who is obliged to raise, supervise or care for a minor, including the cohabitant of a parent exercising parental custody or a guardian, as well as a parent who is deprived of parental custody rights if he lives in the same household or home as the minor, by gross violating his corresponding duties and leaves the minor with someone else for an indefinite period of time in exchange for any undue advantage shall be punished by imprisonment for one to five years.

(5) A person who unlawfully welcomes the minor specified in paragraphs (4) to their home for an indefinite period of time and therefore provides any undue advantage shall be punished under the respective paragraph.

(6) The punishment shall be imprisonment for one to five years if a criminal offence specified in paragraph (1), or for two to eight years if a criminal offence specified in paragraph (2) or (4) or (5), or for five to fifteen years if a criminal offence specified in paragraph (3) is committed

a) in a criminal conspiracy, or

b) with endangering the physical, mental, moral or emotional development of the minor

(7) A person who commits preparation for child trafficking shall be punished by imprisonment for up to one year for committing a misdemeanour in the case specified in paragraph (1)-(2) or (4)-(5), or by imprisonment for up to three years for committing a felony in the case specified in paragraph (3).

(8) The punishment of the perpetrator of the criminal offence specified in paragraph (1) or (4) or (5) may be reduced without limitation or, in cases deserving special consideration, may be dispensed with if he notifies the authorities of the criminal offence and reveals the circumstances of its commission before the authority becomes aware of them, if it is realized with the involvement of a surrogate mother.

3. I also recommend the addition of the facts of the altering family status regarding the close surrogacy:

Criminal Code Section 213. (4) The punishment of the perpetrator of the criminal offence specified in paragraph (1) or (2) may be reduced without limitation or, in cases deserving special consideration, may be dispensed with if he notifies the authorities of the criminal offence and reveals the circumstances of its commission before the authority becomes aware of them, if it is realized through close surrogacy.

(5) For the purposes of this section

a) close surrogacy means a procedure where an embryo created outside the body from the gametes of a mother and father unable to carry a child due to her physical characteristics is implanted into the uterus of another woman, the "dajka" mother,

b) close surrogate mother: a person who is a close relative of any of the persons who created an embryo with their gamete, and who carries out the embryo without compensation.

4. We should make a distinction between trafficking in human beings committed against children and child trafficking. (In this dissertation, I mean both cases by the term child trafficking.)

III.2.4. Results that can be used for law enforcement

1. I separated child trafficking from human trafficking.

2. I explored the vulnerability factors that are the main causes of child victimization in the context of child trafficking and that can help in prevention.

3. I explored the modern implementation forms of child trafficking recruitment, which are significant both in prevention and in detection.

4. I have explored the special features of child trafficking for the purpose of sexual exploitation. Drawing attention to the fact that consent is not allowed in the case of a child and therefore exploitation must be interpreted more broadly.

5. I explored the characteristics of child trafficking committed for the purpose of labor exploitation and exploitation related to illegal acts. Special emphasis is placed on the fact that their forms differ by age.

6. I explored the connections between forced begging and child trafficking, in which the role of law enforcement agencies should be highlighted. I drew attention to the fact that, in my opinion, it is not uncommon for a child to be merely a passive subject of begging, rather than the person doing the begging.

7. I revealed that child trafficking committed through illegal adoption and surrogacy has a different purpose than human trafficking, the way it is committed and, last but not least, exploitation.

Summary

In terms of human trafficking, Hungary is also a country of origin, transit and destination. The aim of my thesis is to distinguish between child trafficking and human trafficking by analyzing the character of child trafficking and exploring its domestic characteristics.

In my doctoral dissertation, I

- review the history of human trafficking, international conventions on human trafficking, and European Union legal acts;
- examine the conceptual elements of human trafficking;
- review the domestic history of the regulation of human trafficking and its constitutional prohibition;
- analyze the current state of "Trafficking in human beings and forced labour", as well as perform a legal comparative study in connection with German, Dutch and Turkish regulations;
- examine the conceptual elements of child trafficking and the vulnerability factors that are the main causes of child victimization;
- analyze the modern realization cases of the recruitment of child trafficking.
- review the various forms of child trafficking.

My research focuses on how the trafficking of children differs from that of adults. I place special emphasis on their purpose, the consistency of the forms of exploitation, the methods of perpetration, and the role of vulnerability factors

I explore the differences between child and human trafficking through the examination of individual forms of exploitation. Furthermore, I will examine whether the current domestic regulations on the given phenomenon can also be applied to children.

Finally I formulate conclusions and proposals for legal theory, legislation and law application.

IV. Author's publications

Author's publications on the topics of the thesis

- Ripszám Dóra: Kizsákmányolás az emberkereskedelem kapcsán. Büntetőjogi Szemle, VIII. Évfolyam, 2019/2. 79–86. o.
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- 11. Ripszám Dóra: Kiszolgáltatottsági tényezők, mint a gyermekek áldozattá válásának főbb okai a gyermekkereskedelem kapcsán. In: Mezőfi Nóra – Németh Kornél – Péter Erzsébet – Püspök Krisztián (szerk.): V. Turizmus és Biztonság Nemzetközi Tudományos Konferencia tanulmánykötet. Pannon Egyetem Nagykanizsai Kampusz Nagykanizsa, 2021. 83–93. o.
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- 14. Ripszám Dóra: A gyermekkereskedelem toborzásának modern megvalósulási formái, In: Jakab Bálint – Mezőfi Nóra – Németh Kornél – Péter Erzsébet (szerk.): VI. Turizmus és biztonság nemzetközi tudományos konferencia: Tanulmánykötet. Pannon Egyetem Körforgásos Gazdaság Egyetemi Központ, Nagykanizsa, 2022. 25–33. o.
- Ripszám Dóra: A koldultatás, mint a gyermekkereskedelem megvalósulási formája. JURA, 2022/2. 120–134. o.
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- 18. Ripszám Dóra: Gyermekkereskedelem és gyermekmunka In: Bendes Ákos László Gáspár Zsolt – Gáti, Balázs – Projics Nárcisz – Tóth Dávid (szerk.): IV. Konferenciakötet: A pécsi jogász doktoranduszoknak szervezett konferencia előadásai. Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Doktori Iskola, Pécs, 2022. 116–128. o.
- Ripszám Dóra: Határon átnyúló gyermekkereskedelem. In: Gaál Gyula Hautzinger Zoltán (szerk.): Pécsi Határőr Tudományos Közlemények XXIV. A rendkívüli helyzetek biztonsági tényezői. Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoportja, Pécs, 2022. 311–316. o.

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