



HYDROGRAPHIE SOME FACTUAL AND LEGAL DIMENSIONS OF THE FENOMENON “TRAFFICKING IN HUMAN BEINGS”

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Abstract: *The report examines some factual and legal aspects of the phenomenon of human trafficking. The factual and normative manifestations are considered as interpenetrating indivisibility. The legal essence of the crime “human trafficking” is clarified, and its main composition is analyzed. Parallels have been drawn with nearby phenomena, sometimes leading to trafficking – migration and channeling. The social aspects of the phenomenon are analyzed and a multidisciplinary approach is proposed to deal with the problem threatening national security.*

Keywords: *national security, human trafficking, migration, channeling*

Introduction

It is dedicated to the two who died on 25.08.2022. in the city of Burgas, police officer - department commander Atanas Gradev and senior police officer Yordan Iliev from the first ru in Burgas, died during the fulfillment of their official duty in an attempt to stop a bus full of migrants.

The report examines some factual and legal aspects of the phenomenon of human trafficking. Factual and normative manifestation are considered as interpenetrating indivisibility. The legal nature of the crime of "human trafficking" has been clarified, and its main composition has been analyzed. Parallels have been drawn from restriction to nearby phenomena, sometimes leading to trafficking - migration and channeling. The social aspects of the phenomenon are analyzed and a multidisciplinary approach is proposed to deal with the problem threatening national security.

The phenomenon, as an object of scientific research, could have different interpretations according to the perspective of observation. The research perspective on human trafficking, set on the plane of national security, contains

two main dimensions - factual and legal. At the same time, the interdisciplinary approach in trying to get to the essence of the researched object gives a more complete picture of its characteristics.

The actual dimensions of human trafficking inevitably go beyond the legal definition of this phenomenon. Due to the interconnectedness of its factual and legal dimensions, for the purposes of this article they will not be systematically separated, but their consideration will proceed in parallel and linked.

The legal framework, in general terms, of human trafficking, established by the Bulgarian legislator, is contained in the provisions of the Criminal Code (PC), Law on Combating Trafficking in Human Beings (ZBTH). Another document in this area is the National Strategy for Combating Human Trafficking. Each of these acts will be touched upon in the present study.

The concept of "human trafficking" was introduced into the Bulgarian criminal law in 2002, with the new section IX of chapter two (Article 159 a-c of the Criminal Code) in fulfillment of obligations arising from the entry into force for Bulgaria of the UN Convention on transnational organized crime since 2000 y. The basic composition of the crime "trafficking in human beings", established in Art. 159a, paragraph 1 of the Criminal Code states: "Whoever recruits, transports, hides or accepts individuals or groups of people with the aim of being used for lewd acts, for forced labor or for begging, for the removal of a body organ, tissue, cell or body fluid or to keep them in forced submission regardless of their consent, shall be punished by imprisonment of two to eight years and a fine of three thousand to twelve thousand BGN".

According to the international legislator, trafficking against an adult is necessarily carried out by using coercion or other illegal methods, which are related to the impossibility of the trafficked person to form free will. However, the Bulgarian legislator deviates from this view, accepting that the consent of the trafficked never has legal significance, regardless of his age.

In addition, it expands the concept by bringing the signs regarding the manner of execution of the executive act outside the main composition. The victim's consent within the meaning of Art. 159a, paragraph 1 of the Criminal Code is expressly declared a circumstance without legal significance, the presence of which does not affect the conclusion of traffic. Of course, some exploitative purposes cannot be accomplished with the consent of the victim. Such are the purposes for use for forced labor and for holding in forced subjection. Two conclusions follow from the foregoing: first, the law does not completely cancel the legal significance of consent, but prohibits it from being considered as a circumstance excluding the proportionality of the traffic. Next, when trafficking is carried out for the purpose of labor exploitation or forced subjugation, the victim's consent is vitiated and often conditions the application of a qualifying composition. With regard to their influence on agreement, the methods are divided into two groups. The first includes coercion, kidnapping

and unlawful imprisonment. Each of these methods constitutes an independent crime, making human trafficking a compound crime. These three ways of doing human trafficking lie with each other in terms of absorption. Kidnapping and unlawful imprisonment absorb coercion and exclude the possibility of concurrent qualification. The second group of ways of carrying out human trafficking is aimed at securing the cooperation of the victim and covers the introduction of deception, the use of dependence, the abuse of power and the promise, giving or receiving of a benefit. When comparing the methods from the two groups, it is necessary to conclude that the widest field of application is kidnapping. Representing a displacement of the victim in space against his will, it absorbs coercive methods. The mode of committing the crime, which is an alternative to all others, is the giving, promising and receiving of a benefit. It requires the informed voluntary cooperation of the victim, and all others exclude it.

Expanding the scope of the act by the Bulgarian legislator creates conditions for an artificial statistical increase in the relative share of human trafficking in the general criminological picture compared to other countries, without in our country neither the phenomenon nor the effectiveness of the penal system being exceptional. This makes it difficult to make a comparative assessment with the experience of other countries, which is relevant for the effectiveness of the state policy on preventing and countering the crime of human trafficking[1]. Clarifying the legal nature of the phenomenon of "human trafficking" requires a brief review of the exploitative purposes of the act. The purpose of use for lewd acts is most often manifested as the purpose of use of another's prostitution and use for pornography. The purpose of use for forced labor is related to active behavior through which the perpetrator motivates the trafficked persons to work against their will or under conditions to which they have not given consent. The purpose of holding in forced submission is the orientation of the act to motivate the victims to undertake behavior contrary to their will and according to the will of another person. The intended use by taking away body organs is related to the infliction of a type of bodily injury, expressed in the final separation of certain organs from the victim's body, not according to the established order and for unauthorized purposes. It should be noted that human trafficking can be driven by multiple objectives, which complicates accountability. According to the intention of the actor, the goals can be pursued simultaneously, sequentially, under prior uncertainty, alternatively or conditionally. In multi-person criminal activity, each person may be driven by a different goal. This difference does not exclude complicity between the persons, if the other conditions for complicity are met. The direct goals of each accomplice may be different, and the unifying factor may be one.

Thus, two points are characterized in the Bulgarian criminal law: the four goals are exhaustively established as signs of the main composition and, next, a

certain manifestation of the goals, which is distinguished by a high degree of public danger, is brought out as a qualifying sign of a special composition [2].

A discrepancy between the Criminal Code and the Law on Combating Trafficking in Human Beings is found when considering the concept of a victim. While, according to the Criminal Code, a "victim" of trafficking is a person who is the subject of the acts committed when his will is corrupted, according to the Criminal Code, the victim is a person who is the subject of the actions of the executive act, regardless of his will. In the latter case, the victim's consent is also presumed. There is no absorption between the concepts in the two laws, since with regard to the form of the executive act from which the victim may suffer, the concept under the Criminal Code is broader, and with regard to the method applicable to an adult victim, the concept of suffered under the NC. Thus, while the victim has legal grounds for protection under the Criminal Code as victims of trafficking, a possible criminal case against the perpetrator may end with a court finding that the same persons are not victims of trafficking. The phenomenon of human trafficking is unified and cannot be artificially divided between two different definitions. A unified concept is needed in the legal system [3].

In this order, the issue of the difference between the often mixed phenomena – human trafficking and channeling (the provisions of Article 279 and Article 280 of the Criminal Code) should be addressed. Channeling is always associated with the illegal crossing of a state border. When defining the concept of "human trafficking", the concept of border is missing, and this is not accidental, since the main feature that distinguishes human trafficking from channeling is the goal, namely - exploitation.

There is an exploiter missing in canalism. There is a transaction where one party pays the other to perform an illegal "service". Pimping, depending on the goals of the people doing it, can be realized as human trafficking, and human trafficking is not always intended as pimping. In channeling, both parties are responsible for violating the laws of the respective country. It can be summarized that the main distinguishing difference between human trafficking and channeling is the element of deception, the use of force and coercion in trafficking and the voluntary payment by the people themselves to leave the country in channeling, while in trafficking we do not have to leave the country. It is possible that voluntary migration turns into channeling, and those implementing it involve the victims in trafficking. Trafficking is a crime against the state that needs to be curbed through the introduction of effective legislative measures, while human trafficking requires an interdisciplinary, complex approach, as its roots are rooted in deep societal problems.

The channel networks in Bulgaria are closely connected with the established international channels, carrying out the transfer of illegal migrants from the countries of origin through Bulgaria to Western Europe. Bulgaria is a

transit country. Channeling can turn into human trafficking and exploitation, as financial means are not the only means of payment between migrants and channelers, as the latter also resort to labor exploitation, organ trading, etc. It is also possible that radicalized persons, incl. terrorist fighters to enter the EU with the migration flows[4].

In recent years, the increased amount of crimes related to canalization along the southern border of our country has caused acute social, economic and political problems. Its resolution could be facilitated by channeling financial resources to the National Border Police Service and the Border Police in the border areas, which financial resources would be reflected in the opening of new staff positions in the border areas, as well as their very good material equipment. Instead, a process of reduction of free states in these structures is observed.

The aforementioned definition of the concept of "human trafficking", which the Bulgarian legislator gives in the criminal law, provides a formal answer to the questions: "What is human trafficking?", how it is carried out and why it is carried out. The definition describes well the "modus operandi" of the crime of trafficking in persons, but not the phenomenon of "trafficking in persons" which is related to its factual dimensions. As the driving forces of the phenomenon and the crime of trafficking, the following can be pointed out: constantly growing markets and the constantly growing demand for cheap labor or other forms of exploitation in the countries of final destination; the control of illegal labor and services markets by organized criminal groups (often of a cross-border nature); the processes of population impoverishment.

The factors that are the main prerequisite for the implementation of "human trafficking" can generally be divided into two main groups: factors leading to involvement in human trafficking and factors contributing to involvement in human trafficking. To the first group of factors can be attributed those of a socio-economic nature - impoverishment, unemployment, difficult access to education, violence in the family. Factors contributing to the involvement in human trafficking are related to the abrupt change of values, the inculcation of foreign cultural and behavioral models. The myth of the "opportunities" for quick realization, excellent pay and unimpeded access to the achievements and benefits of Western civilization, guaranteeing an easy and secure life for the victim and her loved ones, is not insignificant in the years of transition[5].

When we consider aspects of the phenomenon of human trafficking, we must inevitably touch on migration as a determining factor. The current definition of migration is the cross-border movement of children and adults, and a migrant, according to the UN definition, is a person who has resided in a foreign country for more than one year. Seasonal workers traveling for shorter periods are also considered migrants. Migration is both external (from and to the state) and internal – within the state itself[6].

Migration processes are conditioned both by aspiration for development and by escape from poverty, wars, etc. In case of a normatively regulated issue with migration, officially permissible emigration of people, the authorities can control the process. Problems arise with illegal migration - illegal crossing of the country's border, as well as illegal residence.

When illegal immigrants become victims of trafficking, they are involved by traffickers in risky and deadly activities such as transporting drugs, selling their organs, forcing them to work in inhumane conditions without pay, exposure to violence, etc. The illegal immigrant becomes in the lowest operational unit of criminal organizations - he does the so-called dirty work. In conditions of migratory pressure, some transmitted diseases acquire acute social significance.

Migration flows are carriers of infectious diseases and can cause epidemics, which endangers the health security of the population and, accordingly, national security. This danger has intensified especially after the emergence of the Covid 19 disease. The traffickers and the families who give them shelter appear as particularly risky groups. In the context of migration processes, the existence of another phenomenon threatening national security should be noted.

The significant numbers of foreign nationals who seek to leave the borders of their country and settle in the countries of Western Europe represent a criminogenic factor, as some of them are part of criminal networks. In these conditions, a favorable environment is created for the commission of other crimes - human trafficking. As a good practice, the program established in Bulgaria by the Center for the support of people who have experienced torture should be noted. The program is aimed at children - refugees and emigrants who have felt the trauma of being forced to leave their home country and seeking asylum in a foreign country.

The issue related to the results of the considered criminal act, one of which is money laundering from human trafficking, also deserves attention. A key feature of money laundering from international human trafficking is that the funds are generated over a long period of time on the territory of a foreign country. This also implies the use of schemes to periodically transfer money to Bulgaria. Using such schemes is facilitated by the fact that many Bulgarian citizens live and work in Western European countries, periodically sending money to their relatives in our country[7].

The distinguishing characteristics of refugees, migration, channeling and human trafficking, in short, are the following: while with refugees there is an escape from a certain country, due to social or family reasons - military conflicts, famine, deprivation, persecution, etc., it is characteristic of migration voluntary departure from the country in search of personal or family well-being - mainly for material reasons.

In channeling, those wishing to leave their country pay for the service and arranging the procedures for their passage to another country, and in human trafficking, the use of force and coercion is realized to place the trafficked person in a position of dependence and often to use him for criminal activities. The four negative phenomena can also be considered as a whole, since in a procedural plan they can be interconnected and be implemented sequentially. For example, if a child is forced to flee a country due to repressive actions taken against him and his family, the phenomenon of a child refugee is realized.

In the process of escape it may fall upon persons who will assist its passage or entry into a country by a certain payment, viz. channeling takes place, and the channeling itself can end in trafficking if the child comes across people who abuse him and put him into sexual or labor exploitation, and the very process of leaving a country is emigration[8].

Human trafficking and channeling (the latter – to the extent that there is a high risk of turning into trafficking) constitute national security risks. Commenting on the risk of extinction after decades of the Bulgarian ethnic group from the Bulgarian territories in conditions of negative natural increase of Bulgarians - emigration from the homeland and immigration processes by the population from African and Asian countries, although in relation to the latter Bulgaria, cannot be avoided to be primarily a transit country.

It should be noted that according to known observations, the traffickers in Bulgaria have divided the territory of the old continent. The following trends are observed - women and children are trafficked from the Pazardzhik region to Germany, Austria and France. From North-Eastern Bulgaria (Varna, Dobrich, Silistra, Shumen) the traffic is towards Poland and the northern countries. From Sliven and the region - to the Netherlands and Belgium, and from North-West Bulgaria (Vratsa, Montana, Vidin) and Blagoevgrad and Kyustendil - to Italy[9].

Part of the toolkit for dealing with the negative phenomenon of human trafficking is laid down in the National Strategy for Combating Human Trafficking, which had a defined time period from 2017. until 2021 The strategy is a basic political document that formulates the priorities and objectives related to the effective and long-term counteraction - both to the crime itself and to its consequences. The objectives and priorities set out in the Strategy are in line with those outlined in the EU Strategy for the Elimination of Trafficking in Human Beings, as well as with the objectives of all European legislation.

In the long term, the National Strategy aims to create a comprehensive policy in the field of human trafficking, which will regulate the type and system of measures through which to achieve effective interaction and coordination on a horizontal and vertical level between all institutions and organizations engaged in the activity of this issue. The strategy emphasizes interagency and international coordination and cooperation.

In an interview for a national daily, held in 2004, when asked what measures they take against the illegal migration of Bulgarians who work in the Netherlands, Pieter van Krieken - a special adviser in the Dutch Ministry of the Interior, answered: "Our approach is three-tiered. On the one hand, we have become stricter with illegal immigrants, returning them to Sofia. On the other hand, we transferred the sanctions for employers from the Penal Code to the Administrative Code, which makes it much easier to impose fines. Thirdly, we are increasing labor inspectors"[10].

Conclusion

Human trafficking is not just a type of crime. It is a kind of worldview and attitude towards man. It creates and maintains an independent and complete value system, independent of the parallel legal order. Its laws and moral foundations are incompatible with the idea of law and justice, just as they are irrelevant to the understanding of humanity [11].

The factual and normative intertwining, constituting the basis of the phenomenon of trafficking, determine a complex of factors that must be taken into account in the interdisciplinary synthesis of efforts to deal with the problem. In order to be able to effectively combat human trafficking, one should not rely only on law enforcement and judicial authorities. The efforts of all state institutions related to its counteraction must be combined.

If these efforts are not brought to an end, human trafficking has the potential to become one of the main threats to national and European security, to the security of European civilization.

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