



TRAFFICKING IN CHILDREN – THE LEGAL FRAMEWORK FOR INTERNATIONAL COOPERATION BETWEEN JUDICIAL AND POLICE AUTHORITIES

BY

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Abstract

The paper focused on the framework definition of the term child trafficking in the international and national context. Special attention was paid to the legislative framework regulating the international cooperation of judicial and police authorities in preventing, detecting and clarifying child trafficking, with an emphasis on cooperation within the European Union. The issue in question is topical and represents a challenge for all affected states. It is impossible to achieve at least a partial elimination of it without effective international cooperation. In the preparation of the paper, scientific methods were used, in particular - legal comparison, historical analysis, content analysis of websites, functional analysis of legal acts. In the post, we briefly present the specific possibilities of judicial and police cooperation in criminal matters, primarily in the member states of the European Union.

Keywords: *Trafficking in human beings, trafficking in children, organised crime, judicial cooperation, police cooperation*

Introduction

Trafficking in children as one of the forms of trafficking in human beings is part of organised crime, especially with an international element. In the international context, increased attention has been paid to this crime since the beginning of the 20th century, particularly in relation to human trafficking to carry out prostitution. Trafficking in human beings began to intensify again in the judicial and police authorities at the end of the 20th century and at the beginning of the 21st century, in particular in connection with illegal migration. At this point, it should be noted that trafficking in human beings takes various forms, e.g. trafficking for sexual exploitation, forced labour, trafficking in children, etc.

Trafficking in human beings is one of the most widespread forms of international organised crime, while it can also be classified as one of the three most important sources of income from organised crime, after the smuggling of narcotics and weapons. It is characterised by planning, coordination, a clear division of tasks, and an international link between the perpetrators. Trafficking in human beings is most often preying from prostitution at the expense of other possible forms of exploitation such as (servitude, forced labour, slavery, removal of organs, etc.) (Madliak 2015, 202-209).

International and European legislation on trafficking in human beings

As we have already said, trafficking in children is an organic part of trafficking in human beings. The international community has responded and is responding to the phenomenon, with a number of international documents adopted to create adequate prerequisites for instruments to effectively eradicate the harmful phenomenon.

International and European legislation on trafficking in human beings:

- Universal Declaration of Human Rights (1948) Articles 4 and 5
- UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Articles 5 and 6
- The Convention on the Rights of the Child (1989)
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- The Optional Protocol to the Convention on the Rights of the Child in Armed Conflict
- The UN Convention against Transnational Organised Crime with the Palermo Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the so-called Palermo Protocol (2000))
- The Council of Europe Convention on Action against Trafficking in Human Beings (2005)

- The ILO Forced Labour Convention (1930) Article 29
- The ILO Forced Labour Convention (1957) Article 105
- The ILO Convention on the Elimination of the Worst Forms of Child Labour (1999), Article 182;
- The Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 3 – Prohibition of Torture, Article 4 – Prohibition of Slavery and Forced Labour
- The International Covenant on Civil and Political Rights (1966), Articles 7 and 8
- The Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting victims, and repealing Framework Decision 2002/629/JHA (2010)
- The Council Directive on the issue of temporary residence permits to victims of trafficking in human beings who cooperate with the competent authorities (2004)
- The Brussels Declaration on preventing and combating trafficking in human beings (2002)
- The EU Council Framework Decision on the standing of victims in criminal proceedings (2001)
- The 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 victims of trafficking, and replacing Council Framework Decision 2002/629/JHA on combating trafficking in human beings (2002)
- Recommendations of the Parliamentary Assembly of the Council of Europe
 - on trafficking in women and forced prostitution in the Member States of the Council of Europe (1997)
 - on violence against women in Europe (2000), - the campaign against trafficking in women (2002)
 - on migration linked to trafficking in women and prostitution (2003)
 - on organ trafficking in Europe (2003)
 - Domestic slavery: forced labour, au pair, and brides on order (2004)
- Recommendations of the Committee of Ministers and Member States of the Council of Europe
 - on sexual exploitation, pornography, prostitution, and trafficking in children and young people R(91)11
 - on witness intimidation and rights of defence R(97)13
 - on combating trafficking in human beings for sexual exploitation R(2000)11
 - on the protection of children against sexual exploitation R(2001)16
 - on the protection of women against violence R(2002)5
- Tampere Programme – Freedom, Security, and Justice in the European Union 1999-2004 (1999)
- The Hague Programme - evaluation of the European Union's policies in the field of freedom, security and justice 2004-2009 (2004)

- The European Union Plan on Best Practices, Standards, and Ways of Working to Combat and Prevent Trafficking in Human Beings (2005)
- The Stockholm Programme - an open and secure Europe serving and protecting citizens, adopted by the European Council for 2010-2014 (2009)

National Programme for Combating Trafficking in Human Beings 2019 – 2023

In its national legal order, the Slovak Republic created adequate prerequisites for the fight against trafficking in human beings, in addition to generally binding legal regulations, the Government of the Slovak Republic adopted the fifth strategic document for the fight against trafficking in human beings, entitled: National Programme for Combating Trafficking in Human Beings 2019 – 2023, on 06/11/2018 by Resolution No.495/2018.

This is based primarily on international commitments as well as national needs for a coordinated approach in the fight against trafficking in human beings. The national programme aims at a comprehensive and effective fight against trafficking in human beings, which shall support the development of coordinated action by all actors in reducing risks and preventing the commission of trafficking in human beings, as well as creating the conditions for providing support and assistance to victims and ensuring the protection of their human rights, freedoms, and dignity, taking into account the individual needs of each person. As part of the implementation of individual activities, we consider it necessary to maintain the principle of active participation of the government, state administration, and self-government bodies, close cooperation with relevant civil society organisations active in the field of combating trafficking in human beings, as well as respect for human rights and freedoms – listed in Resolution of the Government of the Slovak Republic of 06/11/2018 No. 495/2018 National Programme for Combating Trafficking in Human Beings 2019 – 2023.

The main objective of the national programme is to **introduce place a coordinated system** to reduce the crime of trafficking in human beings, i.e. to narrow down the scope for committing the crime of trafficking in human beings, taking into account current trends and developments in the situation in the area, which includes orientation towards the perpetrator and potential victims. In order to cover both sides, it is also necessary to focus on **strengthening existing instruments**, which have proved their worth, as well as on **new instruments to combat trafficking in human beings, which reflect new trends in the field of crime.**

The document is aimed at suppressing the fight against trafficking in human beings, i.e. **reducing the risk of potential victims of trafficking in human beings**, as well as **ensuring the provision of direct assistance to victims of trafficking in human beings** in accordance with international and European standards and the Slovak Republic's commitments in this area.

In order to achieve the main objective of the 2019-2023 National Programme for Combating Trafficking in Human Beings, it is necessary to pay attention to the following sub-areas, the “4 P”:

- “Prevention”
- “Protection”
- “Prosecution”
- “Partnership”

Therefore, the tasks described in the section of the **2019-2023 National Action Plan against trafficking** in human beings are also divided into the above-mentioned areas.

These are a total of **21 tasks**, the need for which resulted from the application practice, as well as the European Union standards in the field in question. At the same time, they reflect the recommendations of the monitoring mechanisms of the [Council of Europe \(the Convention of the Council of Europe on Action against Trafficking in Human Beings\)](#) or the [United States of America \(TIP – Trafficking in Persons Report\)](#).

The National Programme was prepared in cooperation with the stakeholders by the **Information Centre for Combating Trafficking in Human Beings and Prevention of Crime of the MoI of the SR**.¹

Legislative prerequisites for the fight against human trafficking in the Slovak Republic:

- The Act of the National Council of the Slovak Republic no. 300/2005 Coll. Penal Code, as subsequently amended
- The Act no. 301/2005 Coll. - Criminal Procedure Act, as subsequently amended
- The Act No. 91/2016 Coll. on Criminal Liability of Legal Entities and on Amendments to Certain Acts, as amended by the Act No. 272/2016 Coll.
- The Act No. 256/1998 Coll. on Witness Protection and on Amendments and Supplements to Certain Acts, as subsequently amended
- The Act No. 583/2008 Coll. on the Prevention of Crime and Other Antisocial Activity and on Amendments to Certain Acts, as subsequently amended
- The Act No. 274/2017 Coll. on Victims of Crime and on Amendments to Certain Acts
- The Act No. 404/2011 Coll. on the Residence of Foreigners and on Amendments to Certain Acts, as subsequently amended
- The Act No. 171/1993 Coll. On Police Forces, as subsequently amended
- The Family Act No. 36/2005 Coll. and on Amendments to Certain Acts, as subsequently amended

- The Act No. 305/2005 Coll. on Social and Legal Protection of Children and on Social Guardianship and on Amendments to Certain Acts, as subsequently amended
- The Act No. 448/2008 Coll. on Social services and on changes and amendment to the Trade Licensing Act No. 455/1991 Coll., as subsequently amended

As can be seen, due attention is paid to the issue of trafficking in human beings.

In the international context, trafficking in children is seen as one of the most serious forms of trafficking in human beings. In the case of a child, it is a specific victim; in these cases, there is an interference with its integrity, its proper mental and physical development is threatened. From a criminological point of view, children are perceived as easily accessible objects of crime. The cases of trafficking in children analysed so far also show that relatives and friends of the victims are also involved in this crime and the child is treated as a commodity in these cases – a thing.

From the point of view of trends that can be generally assessed for 2018 from available statistical outputs and collected information on the identified victims, it appears that Slovakia is the country of origin, virtually the source country of the victims, but to an increased extent also the target country. Slovakia is the source country in particular for the Federal Republic of Germany (hereinafter referred to as "Germany") and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "Great Britain"), as well as other predominantly Western European countries: Switzerland, Austria, Sweden, Italy, and the Netherlands. The vast majority of the identified victims for 2018 are Slovak citizens who were recruited on the territory of the Slovak Republic by perpetrators who are also almost exclusively Slovak citizens. Females form a bigger part of the identified victims, while up to a third are children. Although Slovakia could be one of the transit countries for victims, there are no official statistical data on captured victims coming from third countries, which would confirm the transit of victims through Slovakia to other target countries.

In 2018, a total of 56 victims were identified in the Slovak Republic, including 22 men and 34 women. Compared to 2017, the number of identified victims decreased by a third, when 88 victims were identified in the Slovak Republic. Of the total number of victims identified, 46 were formally identified by the police, including 30 women and 16 men. Among the female victims, there are 12 children - girls aged from 11 to 16, all of whom are Slovak citizens. We did not record a single child among the male victims in 2018. Among the adult victims were two foreigners, one adult female from Hungary and one adult female from Serbia.

According to the statistics of the relevant police department for the purpose of reviewing and investigating the crime of human trafficking, in 2018, criminal prosecution was initiated for the crime of human trafficking in 27 cases and in 23 cases a total of 53 perpetrators were charged, 38 of them men and 15 women. In terms of nationality, 52 accused

¹ Resolution of the Government of the Slovak Republic of 06/11/2018 No. 495/2018 National Programme for Combating Trafficking in Human Beings 2019 – 2023.

persons were Slovak nationals and 1 accused was a national of the Republic of Serbia.

The perpetrators of human trafficking are either individuals or, more often, groups of traders. Usually, victims are recruited in the Slovak Republic and exploited abroad or in the Slovak Republic itself. In many cases, the recruiter is known to the victim or their family member, but the victims are also often recruited by unknown persons. Recruitment takes place in most cases through personal contact. More often the perpetrators are men than women, groups of traders consist of either only men or mixed groups of men and women, groups composed exclusively of women do not occur. Women have been identified as individual offenders in human trafficking cases for the sexual exploitation of children. In cases of forced begging, men predominate as perpetrators. The perpetrators of human trafficking exploit poor social conditions of the family from which the victims come or are aware of the victim's poor family and social background. Usually, perpetrators use fraudulent action and deception to recruit the victim, exploiting the vulnerable position of the victim by promising well-paid work abroad and, in some cases, exploiting an intimate personal relationship with the victim. In the course of the exploitation itself, perpetrators use a variety of ways to compel victims to work, ranging from coercion and psychological coercion to abuse of a vulnerable position, to violent methods of coercion by locking up, fighting, starving, or denying basic hygiene needs.²

The need International cooperation between judicial and police authorities

International cooperation between judicial and police authorities is essential in the fight against international organised crime, in particular in the implementation of mutual proactive operations and in the provision of legal assistance, in particular in terms of tracing and securing evidence, tracing victims.

Increased mobility of organised criminal groups without respect for national borders and the exploitation of all the advantages of the globalisation of the economy, including the global liberal banking system, hampers the effective fight against and elimination of the activities of criminal groups. Country-specific action appears to be inefficient and the need to coordinate activities at political, police, and judicial levels is becoming increasingly urgent. The threat posed by international organised crime, including organised illegal migration, can be countered by the "ingenuity" of the authorities responsible, including national governments, inherent in organised crime itself. International coordination in the fight against organised crime must be as flexible, resourceful, adaptable, and "sophisticated" as the activities of criminal groups. Criminal groups are still thriving because the efforts that are being made to eliminate such groups only from the national level do not allow their activities to be effectively prevented. If the measures taken at national level succeed in

² Ministry of the Interior of the Slovak Republic, 2022. *Trafficking in human beings in the world*

dismantling the activities of an organised group, only in its territory, and not in several territories and in several countries in which it operates and commits crimes. International criminal groups are extremely adaptable and are managed in most cases from territories and countries where there is a government's discretion to act and where adequate effective measures are not taken. This is even more difficult when organised groups in these countries have also penetrated the executive through corruption. Then there is no interest on the part of the governments of other countries in mutual exchange of information, as there is a real danger of passing this information on to criminal groups as well. It is not a negligible fact, which to some extent limits and hinders wider international cooperation that the legal systems of individual countries are different, based on different principles, not only with regard to criminal codes but also with regard to other areas of law, such as commercial law, civil law, etc. (Vaško 2017).

Within the European Union, the following institutions address trafficking in human beings as a matter of priority:

- The European Union - Justice and Home Affairs
- The European Crime Prevention Network - EUCPN
- The European Criminal Police Organisation - EUROPOL
- The European Union Judicial Cooperation Unit - EUROJUST

Internationally (worldwide):

- Organisation for Security and Cooperation in Europe - OSCE
- The Council of Europe
- The United Nations Office on Drugs and Crime
- The International Criminal Police Organisation - INTERPOL
- International Organization for Migration (IOM);
- The International Labour Organisation³

From the point of view of application practice, we present several options for specific cooperation between judicial and police authorities in criminal matters within the European Union:

- Judicial cooperation in criminal matters
- Police cooperation in criminal matters
- Exchange of police information in the prevention or detection of criminal offences
- Providing information relevant to the fight against crime, the prevention of crime, or the elimination of threats to public policy or public security without prior request
- Cross-border surveillance operations
- Cross-border pursuit operations

³ Ministry of the Interior of the Slovak Republic, 2022. *Trafficking in human beings in the world*

- Sending liaison officers
- Other forms of police cooperation

Effective tools against the elimination of cross-border crime closely linked to the full implementation of the internal market and the elimination of border controls on goods and, in particular, on persons, on the basis of the Schengen acquis necessarily require the cooperation of police and judicial authorities in criminal matters of all Member States.

The so-called third pillar of the European Union, enshrined in the Maastricht Treaty of 1992, initially constituted a broad range of intergovernmental rather than transnational cooperation also in non-criminal matters, defined by the sixth title of the EU Treaty (ex-Articles K to K.9) as "Cooperation in the field of justice and home affairs". The European Union's competences include asylum policy, the rules governing the crossing of the external borders of the Member States and carrying out of checks at those borders, immigration policy (in particular the fight against illegal immigration, residence, and work of third-country nationals on the territory of the Member States), the fight against drug offences, the fight against fraud on an international scale, judicial cooperation in civil matters, judicial cooperation in criminal matters, customs cooperation, police cooperation to combat terrorism, illicit drug trafficking and other serious forms of international crime, and, where appropriate, certain aspects of customs cooperation in connection with the organisation of the Union's information exchange system within the European Police Office (Europol). The 1997 Treaty of Amsterdam partially "communitarised" the third pillar of the EU, moving the non-criminal area of cooperation to a new area already enshrined in the EC Treaty called "the area of freedom, security, and justice (in particular visa, asylum, immigration, and other policies, but also judicial cooperation in civil matters). As a result of these changes, the name of the Title 6 of the EU Treaty (third pillar) has also been modified to "provisions on police and judicial cooperation in criminal matters". The Treaty of Lisbon, in force on 1 December 2009, abolished the Union's three-pillar structure and brought judicial cooperation back together.

Judicial cooperation in criminal matters, however, according to the transitional provisions (Art. 10 of the Protocol No. 36 annexed to the founding treaties) will continue to have specific links, as a consequence of the specific acts adopted under the third pillar (in particular with regard to the Framework Decisions).

In the framework of judicial cooperation in criminal matters, the European Union has set up a number of specialised bodies to facilitate mutual assistance between judicial authorities through Eurojust and the European Judicial Network. The Treaty of Lisbon has opened the way for the European Public Prosecutor's Office. However, judicial cooperation in criminal matters implies in particular enhanced cooperation between national authorities and mutual recognition of national criminal decisions issued at different stages of criminal proceedings (e.g. European Arrest Warrant) in order to ensure the coherence and effectiveness of cooperation.

As one of the instruments for safeguarding security and public order, the institute of police cooperation reflects a societal need for criminal activity involving a transnational or cross-border element. Methods and forms of police cooperation have undergone several innovations since their inception as a result of the response of law enforcement authorities to current social events and societal demands. Perhaps the most well-known, the oldest and the most represented organization created in 1923 for the purpose of exchanging police information and requests of authorities and services whose mission is to protect and fight crime is INTERPOL, which is currently represented in 188 countries of the world.

Different methods of police cooperation have evolved from the simplest, such as the provision, reception, and mutual exchange of police information, to the provision of assistance in the event of natural disasters or major events and the joint execution of various operations, to elaborated and secured forms of electronic and direct access to different police databases of other States.

With regard to the creation of the Schengen area, which is an open area allowing the free movement of persons and, last but not least, the free movement of criminals, it is necessary to adopt appropriate and effective measures in order to eliminate the commission of illegal activities. One of the primary compensatory measures for the free movement of persons is the strengthening of police cooperation by various methods and methods of its implementation.

The Schengen Convention provides a basic framework for the regulation of police cooperation institutes while allowing Member States, through bilateral agreements, to adapt and extend the application of the provisions in question, either by additional adaptations or by specifying individual conditions in the light of the legislative, organisational or geographical characteristics of the Member States concerned.⁴

CONCLUSION

In line with the focus of our paper, we can conclude that the issue of trafficking in children as part of trafficking in human beings is still of great importance for building a fair civil society today. Despite the efforts of the international community, the elimination of trafficking in children is a constant challenge. In this context, international judicial and police cooperation in criminal matters is indispensable and important, creating the necessary prerequisites for achieving the desired results. The Slovak Republic has taken and is taking the necessary measures in this regard. In our contribution, we briefly mention the specific possibilities of judicial and police cooperation in criminal matters, especially in the Member States of the European Union. The importance of the investigated issue is obvious and the need for international cooperation will grow. This will also require

⁴ Eurojuris. Judicial and police cooperation in criminal matters

detailed scientific research, which is currently only in its infancy.

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