

The courts' case-law on the interpretation of trafficking in human beings

In 2020, the President of the Curia of Hungary chose the topic of the courts' case-law on the interpretation of trafficking in human beings as one of the fields to be investigated by way of jurisprudence-analysis.

The crime of human trafficking became an independent criminal offence within the Hungarian legal system as of 1 March 1999, however, the majority of the criminal conducts qualifying as human trafficking had already been punishable under a number of different headings prior to that date. Over the more than 20 years since then, the legal definition of human trafficking has been modified several times, which has not been followed by the courts' practice with sufficient speed, it can also be assumed that the courts failed to notice that the new Criminal Code, entered into force on 1 July 2013, had amended the offence of human trafficking to include a number of novel criminal conducts not requiring the existence of a "commercial transaction".

Realising the above, the prosecution services submitted two petitions for judicial review to the Curia as a result of which, in 2019, the latter delivered two particularly important decisions by quashing a final conviction for pandering and another one for forced labour and by ordering the high courts concerned to reopen their proceedings with regard to the fact that the charged offences should be correctly qualified as human trafficking.

Despite the foregoing, it cannot be expected that the jurisprudence-analysing working group will be able to examine a clarified judicial practice which is based on a stable legal background. The date of 1 July 2020 will mark the entry into force of Act number V of 2020 which will redefine the term of human trafficking almost entirely by i. including the relevant characteristics of human trafficking for exploitation purposes into the basic offence, ii. simplifying and clarifying the aggravating circumstances of human trafficking and iii. criminalising the labour and any similar exploitation purposes of trafficking in human beings.

The jurisprudence-analysis aims at exploring the reasons behind the earlier malfunctioning of the judicial practice relating to the crime of human trafficking, how the courts' case-law has developed in the past couple of years, whether the courts have wrongly convicted human traffickers for another type of criminal offence, and whether the courts have been sufficiently able to detect the existence of factual elements underlying the qualification of a criminal conduct as human trafficking. The exploration of the courts' practice on the transfer of cases and the "follow-up" of transferred cases are also of significance. Valuable conclusions may be drawn from the examination of the imposed sanctions and from the assessment of whether the expectation of the imposition of heavier sanctions in comparison with the establishment of other criminal offences has been met. The analysis of the courts' jurisprudence may also foreshadow the likely effects of the upcoming legislative change. In addition, the working group will involve an expert in criminology to gain an insight into the general characteristics of trafficking in human beings which will be of relevance in the course of legislation and which should be known to the judiciary as well. The working group will also carry out a short international research for the same reasons. The aforementioned elements aim at providing a wider basis for the conclusions of the jurisprudence-analysis.

Dr. Gábor Somogyi
Head of the jurisprudence-analysing working group
Judge at the Criminal Department of the Curia of Hungary