

Conclusions of the summary report on the jurisprudence related to the interpretation of trafficking in human beings

The offence of trafficking in human beings has been regulated in the Hungarian Criminal Code since 1999 but for about 20 years the courts have hardly ever passed a judgment for this crime. In 2019, the Curia adopted important judgments significantly broadening the scope of interpretation of trafficking in human beings. In 2020, almost simultaneously with the setting up of the jurisprudence-analysing working group, the legislator significantly changed the criminal regulation on human trafficking. This situation basically determined the work of the jurisprudence-analysing working group; not only the practice existing under the former law had to be analysed but also the possible links between the former practice and the application of the new law had to be identified. Therefore, the summary report gives an overview of the history of the regulation on trafficking in human beings from the enactment of the offence in 1999 to its 2020 re-regulation, explores the courts' jurisprudence under the former law, identifies the causes of problems found in the application of the law, provides a short international perspective, and presents the sociological background of the social phenomenon underlying the criminal offence.

The summary report, which covers a period of about 20 years, concludes that in some potential cases of trafficking in human beings the characterisation of the criminal acts was not in conformity with the statutory environment in force at the material time. In light of the established facts, the element of vulnerability was obviously present in several criminal cases instituted on account of felony pandering, pimping, forced labour, violation of personal liberty, exploitation of child prostitution. In such cases, the possible characterisation of the committed acts as felony trafficking in human beings should have been examined even under the Criminal Code in force at the time of the commission of those acts, but the courts did not do so in their proceedings and did not make any reference to that issue in the reasonings of their judgments. Under the Curia of Hungary's practice, which serves as a guidance for the courts, in such cases the correct characterisation of such acts may, also at present, be felony trafficking in human beings.

In the majority of the examined cases the committed criminal acts were characterised as constituting the felony offence of trafficking in human beings. The characterisation of typical criminal acts involving the treating of persons as objects of business transactions resulting in a permanent change of power over the victim was not disputed.

The jurisprudence-analysing working group has recommended in the summary report that the judgments given in such cases should always describe the facts in a manner excluding the possibility of any other legal characterisation of the committed acts. In applying the statutory provision governing the felony offence at issue, legalese should be avoided but the "legal transaction" should be specified precisely.

In the summary report the jurisprudence analysing working group has recommended that the legislator should refrain from regulating the commission of the offence at issue against more than one person as an aggravating circumstance, should allow for an unlimited reduction of the penalty imposed on a passive subject who has committed the acts constituting the offence at the trafficker's instigation. The analysing working group has also proposed that a person having

committed trafficking in human beings against a minor should be subject to a permanent disqualification from any occupation or activity involving the education, custody, care, medical treatment or other relationship of power or influence with a person under the age of eighteen.