

Trafficking in Human Beings for Forced Labour. Contemporary Trends and Threats

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Abstract. *The article is devoted to the issue of human trafficking in legal and criminological terms, with particular emphasis on the exploitation of victims of the crime for work or forced services. The author introduces the essence of forced labour by reaching for many of its legal definitions contained in legal acts in the rank of conventions, as well as ordinary laws. At the same time, it highlights the factors that characterize the type of work indicated and allow to distinguish it from other types of violations, including violation of employee rights. The phenomenon of human trafficking is shown through the prism of its current evaluation tendencies, both globally and regionally (European, and especially EU). To this end, the author presents statistical data collected in recent years by, inter alia, the United Nations Office on Drugs and Crime, the International Labour Organization, the International Organization for Migration and the European Commission. She emphasizes, however, that the actual scale of the aforementioned crime remains unknown. A significant part of the discussion focuses on the issue of human trafficking in modern Poland, showing the scale of the dealings in question, diagnosed in recent years by law enforcement agencies. A lot of attention is also paid to the spectrum of crime threats on the Polish labour market from the perspective of foreigners. Thus, with particular care, she considers the problem of violating the employment rights of Ukrainian citizens as the largest group of foreigners illegally employed in Poland. She also shows the legal situation in this area of the citizens of Belarus, Moldova, India and Russia. She discusses this issue in the context of activities of the National Labour Inspectorate included in the audit report for 2017. The author further scientific interest includes the issue of criminalization of human trafficking in selected countries around the world. In this respect, it refers primarily to legal regulations contained in the Latvian, Hungarian, Swiss, Finnish, Ukrainian and Liechtenstein penal codes. The author's ambition was to present the indicated issues in a concise manner, while also taking into account its most important aspects.*

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Introduction

Trafficking in human beings is both a social and political phenomenon that should be considered in the category of crime. Its genesis goes back to antiquity, here I refer to slave practices¹. The institution of slavery and the slave trade have therefore been with humanity since the dawn of time, although at different times they played a distinct role². The current human trafficking is still treated as a form of slavery and is a crime associated with many violations of state order and security, such as the existence of widespread organized crime, violation of migration law, as well as gender discrimination in general³. In the 21st century, unfortunately, this problem is still present, determined by many different factors, which include

¹ Ligęza E, Handel ludźmi — charakterystyka i skala zjawiska. *Forum Pedagogiczne*, 2015, Vol. 1. Warsaw, 2015.

² Biežuńska-Małowist I, Małowist M, Niewolnictwo. Warsaw, 1987, p. 6.

³ Berg J, Przystępstwo handlu ludźmi — charakterystyka zjawiska. *Przegląd Prawniczy Uniwersytetu Warszawskiego*, 2016, Rok XV, No. 1, p. 113.

undoubtedly the constantly evolving globalization and the related development of the global service market and the accompanying dynamic technological progress. Globalization today means above all the increase in international exchange of goods, services and capital as well as the pervasive spread of technology⁴. The process of creation and functioning of the global service market is the mega-trend of the modern global economy, co-shaped in principle by mutually conditioned three other mega-trends, i.e. the existence and functioning of the world economy, globalization processes and servicization processes. The triptych of these interdependent mega-trends constituted structural and development conditions of the global services market in the modern world⁵. It so happens that this market is based on human exploitation, including the key features of the crime of trafficking in human beings, and in particular people used for work purposes or forced services. The atavistic tendency to treat other human beings as an object in conjunction with the still observable growth of a consumer society focused on making money means that the crime of human trafficking is primarily determined by economic factors. The profitability of the crime in question, placing it in the triptych of the most financially lucrative crimes — apart from arms and drug trafficking — means that in recent years an increase in the number of its victims in the world, especially in Asia and Africa, has been observed⁶. In Europe, this phenomenon is currently being shaped by increasing migration trends.

Criminalization of human trafficking offences in the world

Currently, human trafficking is banned worldwide. This crime has been penalized in the penal codes of most countries, which to a large extent should be considered a result of the international obligations existing in many of these countries. Based on the provisions of international law, some codes also introduced a legal definition of trafficking in human beings, which was based primarily on the definitions contained in the Palermo Protocol⁷, the Council of Europe Convention of 2005⁸ and in the EU Council Framework Decision⁹. Criminalisation of the slave trade, abduction for the purpose of prostitution abroad or illegal adoption has also appeared in the codes of numerous countries¹⁰. According to a comparative

⁴ Łyżwa A, *Handel ludźmi. Studium prawnokryminologiczne*. Olsztyn 2019, p. 22 and next.

⁵ Kłosiński K.A, *Światowy rynek usług w początkach XXI wieku*. Warsaw, 2011, p. 30.

⁶ Łyżwa A, *Handel ludźmi. Studium ...*, p. 446.

⁷ Protocol on the prevention, combating and punishment of trafficking in persons, in particular women and children, supplementing the United Nations Convention against international organized crime, adopted by the United Nations Assembly on November 15, 2000, the so-called Palermo Protocol, OJ from 2005 No. 18, item 160.

⁸ The Council of Europe Convention on measures against trafficking in human beings of May 16, 2005, *Journal Of Laws of 2009*, No. 20, item 107.

⁹ EU Council Framework Decision (2002/629 / JHA) of 19 July 2002 on combating trafficking in human beings, *Office J EC 2002 L 203/1*.

¹⁰ Mozgawa M, [in:] Warylewski J (Ed.) *Przestępstwa przeciwko dobrom indywidualnym. System Prawa Karnego*. Volume 10. Warsaw, 2016, p. 408, and literature cited there.

law analysis carried out by the eminent criminal law specialist — Marek Mozgawa, in individual criminal codes of many countries there are differentiated approaches to the statutory features of the crime of trafficking in human beings, as well as its place in the special part of these legal acts. It is quite common to place this offence in a chapter focusing crimes against freedom, as is currently the case in the Polish Code (e.g. Switzerland, Liechtenstein, Finland, Austria), or against (personal) freedom, honour and dignity (Latvia, Ukraine, Russia, Belarus, Armenia), or in a slightly narrower sense — against freedom and dignity (Hungary). As the author further notes, usually the facts are built in a rather complex way, providing for both basic and qualified types. Sometimes the law typifying a crime uses the term 'human trafficking' by defining in another provision the scope of the above term (e.g. the Latvian Code), in many cases the legislator in quite a casuistic way indicates many behaviours that constitute the type of crime (e.g. the Hungarian, Swiss, Finnish, Ukrainian, Liechtenstein Codes). In some cases, the provision typifying the crime of trafficking in human beings includes in its content definitions of this concept (e.g. the Russian Code stipulates that trafficking in human beings is a purchase — sale of a human being, other transactions in relation to a human being, as well as recruitment, transport committed for the purposes of human exploitation, transfer, storage or acceptance and provides for forced labour up to 5 years or imprisonment for up to 5 years). In individual codes, the verb traits of trafficking in human beings are also defined differently, although the terms 'recruitment, transport, transfer, hiding or receiving people' (Latvian, Finnish, Armenian Code) are often repeated. In addition, some criminal codes indicate (already in the basic type) the measures that must be applied for the existence of the crime (Armenian — including the use of violence or the threat of its use, abduction, fraud, other deception, abuse of power, or more narrowly — Finnish), and in many cases, already in basic types, there is a mark of the purpose for which persons being trafficked are to be used: e.g. sexual exploitation, for organ removal, as a labour force (Liechtenstein, Finnish, Swiss, Armenian Codes)¹¹. In Polish law, the definition of human trafficking is currently included in art. 115§22 of the Penal Code.

It clearly refers to the definitions contained in the Palermo Protocol, the Council of Europe Convention of 2005 and Council Framework Decision 2002/629¹²

¹¹ *Ibid.*

¹² According to it human trafficking is enlistment, transport, supply, transmission, keeping or receiving a person with the use of: 1) violence or unlawful threat, 2) kidnapping, 3) deceit, 4) misleading or exploiting an error or inability to properly comprehend the undertaken action, 5) abuse of dependence, use of a critical position or state of helplessness,

6) granting or accepting a financial or personal gain or its promise to a person taking care of or supervising another person — for the purpose of using an individual, including the consent of that person, in particular (and therefore the catalogue of purposes is left open by the legislator) in prostitution, in pornography or other forms of sexual exploitation, at work or forced services, in begging, slavery or other forms of use that degrade human dignity or to obtain cells, tissues or organs contrary to the provisions of the Act. If the perpetrator's behaviour concerns a minor, it constitutes human trafficking, even if the methods or measures listed in points 1–6 have not been utilized.

Trafficking in human beings in statistical terms. Contemporary Trends

The phenomenon of human trafficking remains an issue of interest to many countries, institutions, both international and EU organizations, not only in terms of combating and preventing it, but also examining its dynamics in statistical terms. The collection of statistical data allows to observe the trends and directions of evaluation of this crime as well as ongoing changes under the influence of many factors — especially of political, social and economic nature — its models and forms. Knowledge about the scale of the practice as a whole undoubtedly takes the form of estimates, which are only partly reflected in the collected statistical data gathered subsequently by the appropriate state and social institutions¹³. The actual scale of this crime remains unknown.

In order to illustrate the scale of the phenomenon of human trafficking in global and EU terms and trends in its development appearing over the years, one needs to refer to statistical data prepared periodically by the United Nations Office on Drugs and Crime (UNODC), the International Labour Organization (ILO), International Organization for Migration and the European Commission (EC).

According to a 2010 UNODC report, 79% of identified victims of trafficking in the world were used for sexual services, 18% forced to work, and 3% were victims of other forms of abuse¹⁴. In later years, data on the number of victims remained at a similar level. In turn, according to the 2018 UNODC report, the number of victims of human trafficking in recent years, reported by individual countries, unfortunately showed an upward trend. Globally, the largest increase in the number of victims of this crime was recorded in Asia and Africa. However, it cannot be unequivocally determined to what extent this was related to the actual increase in the number of victims or was it due to the increasing possibilities on the part of reporting countries as to detection and recording the practice¹⁵.

In turn, according to ILO estimates from June 2012, covering the years 2002–2011, the number of victims of forced labour and sexual abuse reached 20.9 million people worldwide, of which 5.5 million were children¹⁶. However, these data were considered to be understated. It was also emphasized that human trafficking was a very lucrative crime and brought profits of tens of billions of Euro¹⁷ each year.

¹³ Łyżwa A, *Handel ludźmi. Studium...*, p. 9 et seq.

¹⁴ United Nations Office on Drugs and Crime (UNODC) 2010. *Globalization of crime: assessment of the threat of cross-border organized crime*, p. 3 et seq.

¹⁵ United Nations Office on Drugs and Crime, *Global Report of Trafficking in Persons*. Vienna, 2018, p. 7.

¹⁶ International Labour Organization, *Estimated data on World Labour Force 2012*, (ILO 2012 *Global estimates of forced labour*), June 2012. The report states that trafficking in human beings can be considered forced labour, hence the data covered the entire sphere of trafficking for sexual exploitation or forced work, p. 13.

¹⁷ Estimated total global annual profits from the use of forced labour in trafficking in human beings amounted to USD 31.6 billion. Within this amount, USD 15.5 billion, i.e. 49%, was generated in industrialized economies (based on P. Belser, *Forced Labour and Human Trafficking: Estimating the Profits*, working document, Geneva, International Labour Office, 2005).

According to data collected by the European Commission in September 2011 regarding victims of trafficking in human beings, the preliminary results of the analyses largely coincided with the statistical data contained in the said UNODC report. In three-quarters of reported cases, victims were sold for sexual exploitation (an increase from 70% in 2008 to 76% in 2010), while the others were forced labour (a decrease from 24% in 2008 to 14% in 2010 r.), forced begging (3%) and work in the household (1%). Most Member States reported that the largest number of victims came from EU countries, mainly from Romania, Bulgaria, Poland and Hungary. As for victims from non-EU countries, they were mainly citizens of Nigeria, Vietnam, Ukraine, Russia and China. Research conducted in 2010 by the International Organization for Migration (IOM) shows that in analysed 79 cases that were randomly selected, 84% of victims of re-trafficking were children or persons under the age of 25¹⁸.

In the European Union, although more cases of criminal proceedings and prosecutions of trafficking in human beings have been reported in recent years, the overall number of cases remains low. Comparable data show a real decrease in the number of convictions for trafficking in human beings, from 1534 sentences in 2008 to 1445 in 2009 and 1144 in 2010¹⁹.

Data for the years 2015–2016 reveal models similar to those found in previous reporting periods among registered victims and persons committing trafficking. However, as there are significant differences in the way Member States collect and record data, all comparisons between these data and data from different periods should be approached with due caution²⁰. In 2015–2016, 20,532 victims of human trafficking were registered in the European Union. The purpose of the perpetrators in more than half of the cases (56%) was the sexual exploitation of victims and this is still the most common form of this crime. In about a quarter (26%) of cases, the purpose of human trafficking was the exploitation of employees — which is also very worrying — while the remaining part were other forms of the crime in question (such as forced begging, procurement of organs — 18%)²¹.

The essence of forced labour

The concept of ‘forced labour’ has come to many legal definitions. The first of these was contained in ILO Convention No. 29 of 1930 on Forced or Compulsory Labour, and is still largely up to date. According to the content of art. 2 of the same

¹⁸ International Organization for Migration, Causes and Consequences of being a victim of human trafficking once again: based on the International Migration Affairs Organization’s database on trafficking in human beings, 2010.

¹⁹ Statement from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — EU Strategy to eliminate trafficking in human beings for 2012–2016 of 19 June 2012, COM (2012) 286 (final). Brussels, 2012, p. 10.

²⁰ Second Progress Report on Combating Trafficking in Human Beings (2018) as required by Art. 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting victims of 3 December 2018, COM (2018) 777 (final). Brussels, 2018, p. 2.

²¹ *Ibid.*, p. 3.

Convention, 'forced or compulsory work' means 'any work or service required of a person under threat of any punishment and for which the person did not voluntarily come forward'²²

This definition covers the subjective scope of every person regardless of age or nationality. The catalogue of threats used by the perpetrator is open, i.e. it covers various forms of forced labour (e.g. taking identity documents, resorting to violence, etc.). The definition also does not narrow down the types of work to which man can be forced; however, it is necessary for the work to be involuntary. The ILO Convention in question also formulates a number of exceptions narrowing the scope of application of the above mentioned definitions, namely: work under military duty, work performed in the field of ordinary civic duties, performance of work in connection with a court judgement given, work required during periods of state destabilization (e.g. during a state of natural disaster, state of war), symbolic activities performed for the good of all²³.

Nowadays, the 1930 definition has been moved to the background because of the development of terminological solutions based on slightly different assumptions in international law after World War II. Their difference has three basic faces. First of all, there was a trend not to treat forced labour in the category of a separate entity — an independent subject of legal regulation, but rather perceive it as a form of human trafficking. As a result of this approach in international legal acts, definitions of human trafficking began to be formulated in a way which made the content refer to forced labour as a form of trafficking in humans. Secondly, the international arena sought to define the legal norm more precisely, through its more precise (more casuistic) approach, in particular by listing the possible actions of the perpetrator and the methods used. Thirdly, the concept of forced labour has expanded because the legal meaning of the victim's consent (features of voluntary use) has been deprived of legal significance. From the current perspective, the definition from 1930 appears to be narrow, as it excludes cases of voluntary work on the side of the victim²⁴.

The Palermo Protocol²⁵ also refers to the concept of forced labour enclosing in the definition of human trafficking, the catalogue of purposes for implementation of which a person may be used, 'forced labour or services, slavery or slavery-like practices'.

As part of the discussion on the definition of forced labour, it is also necessary to take into account the Council of Europe Convention on measures against trafficking in human beings, drawn up on May 16, 2005 in Warsaw, as its Article 4 contains a definition coinciding with the definition in the Palermo Protocol. The concept of 'forced labour' or its synonyms can also be found in other acts of international law, such as in art. 4 of the Universal Declaration of Human Rights, in art. 8 of the

²² Convention No. 29 concerning Forced or Compulsory Labour adopted in Geneva on June 28, 1930. Dz.U. 1959, No. 20 item 122.

²³ Łt. Karsznicki K, Ściganie przestępstwa handlu ludźmi w Polsce, Ośrodek Badań Handlu Ludźmi IPSiR UW. Warsaw, 2010, p. 99.

²⁴ Dąbrowski P (Ed.), Praca przymusowa imigrantów w Polsce: Analiza na przykładzie społeczności ukraińskiej i wietnamskiej. Ośrodek Badań nad Migracjami, 2012, pp. 6–7. *Electronic source:* <http://www.migracje.uw.edu.pl/publ/1870/>, accessed: 02.07.2019.

²⁵ Dz.U. 2005, No. 18, item 160.

International Covenant on Civil and Political Rights and in art. 5 of the Charter of Fundamental Rights of the European Union of December 7, 2000. However, the indicated legal acts do not formulate separate definitions²⁶.

It is also worth to exhibit the concept of forced or compulsory labour used in art. 4 of the Convention for the Protection of Human and Citizen Rights, signed on November 4, 1950 in Rome²⁷. Article 4 p. 1 of the European Convention stipulates that no one may be held in captivity or servitude. Article 4 p. 2 prohibits 'forced or compulsory labour', but does not formulate a separate definition of it²⁸.

Contemporary forms of forced labour penetrate into major sectors of the economy through complex structures of supply chains and a process of cross-border movement of people in search of work that is not in line with the regulations. Forced labour and human trafficking are gross violations of human and labour rights. Forced labour is also a denial of decent work, and freedom from it is one of the fundamental labour rights²⁹. Taking control over an employee resulting in a violation of human rights are factors that characterize forced labour and allow to distinguish this phenomenon from violation of employee rights³⁰. Plans to eliminate the phenomenon of forced labour are included in the programs of many institutions at the national and international level. The above-mentioned ILO has been a fundamental institution with a global scope of powers in this area for fifty years, with a primary task to improve living and working conditions by establishing a comprehensive code of law and practice³¹.

While initially the occurrence of forced labour was emphasized at the state level, currently the most cases are recorded in the private sector of the economy. In 2005 and 2007, the ILO published two important reports on forced labour, its contemporary manifestations and legal consequences in the light of international conventions regarding the practice. The two of these reports show that the phenomenon of forced labour occurs in both developed and developing countries. This is a global problem that affects each country to some extent and should be tackled by global efforts. In 2005, the ILO developed its first global data summary on victims of forced labour, including forced labour resulting from trafficking in human beings³².

²⁶ Dąbrowski P, p. 8.

²⁷ Dz.U. 1993, No. 61, item 284 as amended.

²⁸ Dąbrowski P, p. 9.

²⁹ Andrees B (Ed.), *Praca przymusowa i handel ludźmi. Podręcznik dla Inspektorów Pracy*, Międzynarodowa Organizacja Pracy, wyd. I. Wrocław, 2010, p. 1.

³⁰ *Ibid.*, p. 5.

³¹ Starting from 1919, until 2015, the number of international work instruments — conventions and recommendations — adopted by the ILO reached 393 (189 conventions and 204 recommendations). By December 31, 2014, 7,967 cases of ratification of the Convention had been registered. Of the many ILO conventions, forced labour refers to Convention 29 concerning forced or compulsory labour, adopted in Geneva on 28 June 1930, Convention 105 on the abolition of forced labour, adopted in Geneva on 25 June 1957 by the General Conference ILO, Convention No. 138 concerning the lowest age of admission to employment, adopted in Geneva on June 26, 1973, Convention No. 182 adopted in Geneva on June 17, 1999, regarding the prohibition and immediate action to eliminate the worst forms of child labour, Convention No. 189 on decent work for people working in the household from 2011.

³² Andrees B (Ed.), *Praca przymusowa i handel ludźmi....*, p. 7.

In the 21st century, forced labour is the most widespread phenomenon in the countries of the Asia-Pacific region because of the forms of forced or slave labour conditioned by tradition. According to ILO research, the average annual profit generated by human trafficking is estimated at USD 32 billion³³. According to the ILO, 56% of the estimated global number of victims of forced labour comes from the Asia-Pacific region and these sufferers are by far the most numerous group of affected by forced labour and, in addition, by sexual exploitation, in the world³⁴.

Trafficking in human beings in Poland. Current trends

Trafficking in human beings in Poland, as it is all over the world, is a crime almost entirely dominated by organized criminal groups, often of an international nature. In recent years, there has been a growing number of people who are used for forced labour, but an equally high number is characterized by sexual exploitation³⁵.

The source of statistics on the crime of trafficking in human beings in Poland are: Police, Border Guard, National Prosecutor's Office and Ministry of Justice. In recent years, the average number of criminal preparatory proceedings registered by the Prosecutor's Office regarding trafficking in human beings, i.e. from art. 189a § 1 and 2 of the Criminal Code, remains at the level of approximately 60 cases per year. This probably indicates the incomplete scale of recognition of the phenomenon of trafficking in human beings by Polish law enforcement authorities, because one must be aware of the existence of the so-called 'dark number' of these crimes. In 2012, 65 proceedings were recorded, in 2013 — 57, and in 2014 — 65. A downward trend is observed in the context of identification of victims of this crime. In 2014, the status of injured party was granted to 103 people, which represents 76% of the number of victims in 2013 (135 people) and less than 45% of the number from 2012 (230 people). In total, in the years 2012–2014, 468 people were identified as victims of human trafficking, of whom as many as 263 were Polish citizens (56%). Among the foreigners, the most frequently injured were citizens of Ukraine (91 people), Romania (50), Bulgaria (25), Philippines (15), Sri Lanka (10) and Vietnam (9). A decrease was also recorded in the charge figures. In 2014, the number of accused persons decreased by almost half compared to 2013. Poles also dominated this category. In the years 2012–2014, out of 107 people accused of human trafficking, 85 were Polish citizens (79%). The other accused were Bulgarians (18 people), Romania (2 people) and 1 person from Belarus and Germany. Poland is primarily a country of origin for victims of human trafficking. The target country is in relation to a group of foreigners migrating primarily from other European countries (Ukraine, Bulgaria, Romania)³⁶.

³³ *Ibid.*; See: also Andrees B, *Praca przymusowa jako forma handlu ludźmi*, [in:] Lasocik Z (Ed.), *Handel ludźmi. Zapobieganie i ściganie*. Warsaw, 2006, pp. 194–195.

³⁴ Report of the European Parliament of 13 June 2016 on combating ... , p. 8.

³⁵ Trafficking in human beings in Poland. Report for 2017, pp. 29–30. *Electronic source*: <http://handelludzmi.eu/hl/baza-wiedzy/raporty-analzy-strateg/raporty-i-analzy-dotyc/6936,Handel-ludzmi-w-Polsce-Report-2017.html>, accessed: 07.07.2019.

³⁶ National Action Plan Against Trafficking in Human Beings for 2016–2018, p. 3. *Electronic source*: www.kcik.pl/doc/KPD_2016-2018.pdf, accessed: 07.07.2019.

In an attempt to determine the profile of a victim of trafficking in human beings for the purpose of forced labour, it should be stated that the victims of the practice around the world are most often emigrants striving to improve their economic situation. In case of Polish citizens, their destination are the countries of Western Europe (Germany, the Netherlands, Spain, Italy), which are attractive in terms of earnings. Poland, on the other hand, attracts people from the Far East, but also foreigners from Ukraine or Belarus³⁷.

Foreigners on the Polish labour market. The spectrum of threats identified by the National Labour Inspectorate

In recent years, in Poland the phenomenon of migration of people, in particular from Ukraine, for economic purposes is still increasing. This process is favoured by the more and more visible liberalization of the Polish visa and residence policy as well as wide access of foreigners to the labour market. This situation is monitored on an ongoing basis by the National Labour Inspectorate (PIP), as well as the Office for Foreigners, with a view to eliminate possible cases of exploitation of those people, including forced labour.

It is then suitable presenting the results of the PIP control contained in the recently published report, i.e. from 2017. Polish labour inspectors carried out 7.2 thousand check ups of the legality of employment and work performance by foreigners at that time. Nearly 86% of the foreigners (i.e. 39,399 people) were Ukrainian citizens (in 2016 — 25,405 people, 84%)³⁸.

Table 1. PIP inspections concerning the legality of employment and work performance by foreigners in 2015–2017

| Period of control | 2015 | 2016 | 2017 |
|---|--------|--------|--------|
| The number of controls overall | 2 956 | 4 257 | 7 190 |
| The number of all foreigners controlled | 24 745 | 30 184 | 45 989 |
| The number of citizens from Ukraine | 18 223 | 25 405 | 39 399 |

Source: Report on the activities of the National Labour Inspectorate in 2017, pp. 103–105. *Electronic source:* <https://www.pip.gov.pl/pl/o-urzedzie/sprawozdania-z-dzialalnosci/97255,sprawozdanie-glownego-inspektora-pracy-z-dzialalnosci-panstwowej-inspycji-pracy-2017.html>, accessed: 22.07.2019.

³⁷ Filipowicz J, Lasocik Z, Wieczorek Ł, Praca przymusowa — zagrożone sektory gospodarki i pomoc ofiarom. Ośrodek Badań Handlu Ludźmi UW. Warsaw, 2010, p. 32.

³⁸ Report on the activities of the National Labour Inspectorate in 2017, pp. 103–105. *Electronic source:* <https://www.pip.gov.pl/pl/o-urzedzie/sprawozdania-z-dzialalnosci/97255,sprawozdanie-glownego-inspektora-pracy-z-dzialalnosci-panstwowej-inspycji-pracy-2017.html>, accessed: 22.07.2019.

In 2017, the largest percentage of Ukrainian citizens among the inspected foreigners was recorded in the following voivodships: Kuyavian-Pomeranian — 94%, West Pomeranian and Wielkopolska — 93%. Most often they worked in the sectors of economy: manufacturing — 27%, administration services and supporting activities (employment agencies, property security agencies, service activities related to maintaining order in buildings and development of green areas) — 23%, construction — 17%, transport and warehouse management — 9% and trade and repairs — 7%³⁹. The illegal work of citizens of 36 countries was disclosed at that time. The largest group of illegally employed foreigners were Ukrainian citizens — 5,043 people, i.e. 12.8% of the citizens of that country under control (in 2016 — 19.6%) and 94% of all foreigners entrusted with illegal work. Subsequently, the inspections revealed the illegal performance of work by citizens of Belarus (180 people), Moldova (38), India (13), Russia (12) and Armenia (12). The largest concentration of illegal work performed by Ukrainian citizens was revealed in 2017 in economic sectors: industrial processing — 32% of all cases identified, administration services and supporting activities (including temporary work agencies) — 27% and construction — 19%⁴⁰. At the same time, PIP observed a deterioration in the state of compliance with the law in terms of maintaining the actual working conditions and pay of foreigners, as specified in the work permit or residence and work permit. The entrepreneurs entrusted those workers with a position other than the one indicated in the work permit without informing the voivode about the fact. There were also cases of reduced working hours, and thus also remuneration for that work. A lower percentage of irregularities was revealed in the area of legality of foreigners' stay on the territory of the Republic of Poland as one of the crucial premises of legal work. While examining the legality of work performed by foreigners, it was also found that foreigners did not report for social insurance, irregularities in the scope of declared data on the amount of remuneration paid (which impacts the amount of the contribution) and late payment of contributions to the Labour Fund. In addition to the above-mentioned issues related to the legality of work performed by foreigners, the issues of compliance with labour law were subject to control. As the inspections showed, the most of violations concerned the non-recording of: working time, payment of remuneration and other benefits resulting from the employment relationship, admission of foreigners to work without preliminary medical examinations and training in the field of health and safety⁴¹.

Considering the contemplation of threats to foreigners on the Polish labour market, it should be stated that the PIP inspections carried out in recent years have not revealed foreign citizens use in forced labour that contains the traits of human trafficking. However, a number of violations were found that carried the features of crimes affecting the employment rights of these citizens, catalogued primarily in Chapter XXVIII of the Penal Code. It should be noted, however, that this type of violation, as well as the employment of foreigners staying on the territory of Poland illegally, may also contribute to the commission of other prohibited acts to their detriment — without excluding trade in people. Therefore, this situation

³⁹ Report on the activity of the State ..., pp. 103–105.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, p. 108.

requires ongoing monitoring from both the PIP and other bodies and services — competent in the field of issues discussed — in particular: the Prosecutor's Office, the Police, the Border Guard, voivods, district labour offices, etc.⁴². In addition, it would seem necessary to still improve the Polish legal protection system on foreigners⁴³.

Conclusions

In the 21st century, human trafficking is still a global problem. In Europe, there is an increase in the number of victims of this crime for the purpose of exploitation at work or forced services, especially in view of the increasing migration flows in recent years. Preventing and combating this phenomenon requires constant strengthening of international and regional legal instruments. Important issues in this area are: constant monitoring of the migration process and undertaking legal actions for its legalization, establishing of relevant labour law provisions by the states, ensuring at least minimum standards for the protection of employees (including foreigners) and later enforcement of these provisions (including the strengthening of inspection process by work inspectorates), in addition, the fight against corruption, the fight against unemployment, as well as the usage of ongoing monitoring of the state of individual countries in the aspect of social security for the most needy.

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2. Dąbrowski P (Ed.), *Praca przymusowa imigrantów w Polsce: Analiza na przykładzie społeczności ukraińskiej i wietnamskiej*, Ośrodek Badań nad Migracjami 2012 r.

⁴² Currently, the Ministry of Family, Labour and Social Policy of the Republic of Poland, in cooperation with the Headquarters of the Border Guard, the State Labour Inspectorate, the Office for Foreigners, the Social Insurance Institution, is implementing a project called 'Monitoring of Work and Stay for the Profit of Foreigners on the territory of the Republic of Poland', No. POPC.02.01.00-00-0093/ 18, as part of the EU operational program 'Digital Poland for 2014–2020, Priority Axis No. 2, E-administration and open government, action No. 2.1 'High availability and quality of public e-services'. See wider: *Electronic source*: <https://www.pip.gov.pl/pl/informacje-dla-obcokrajowcow/99940,projekt-monitoring-pracy-i-pobytu-w-celach-zarobkowych-cudzoziemcow-na-terytorium-rzeczypospolitej-polskiej-mppc- html>, accessed: 11.03.2020.

⁴³ Rights of foreigners in Poland are protected, inter alia, by provisions of the Act of 12 December 2013 on foreigners, which legal act has implemented into the Polish legal order the norm of Directive 2014/66/ EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals under intra-corporate transfers. A number of legal norms granting rights to foreigners are also included in the Act of 12 March 2004 on social assistance, etc.

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Streszczenie. Artykuł został poświęcony problematyce handlu ludźmi w ujęciu prawnokryminologicznym, ze szczególnym uwzględnieniem wykorzystania pokrzywdzonych tą zbrodnią w pracy, bądź usługach o charakterze przymusowym. Autorka przybliży istotę pracy przymusowej, sięgając do wielu jej legalnych definicji zawartych w aktach prawnych rangi konwencji, jak również ustaw zwykłych. Jednocześnie wskazuje czynniki, które charakteryzują wskazany typ pracy i pozwalają odróżnić ten proceder od innego typu naruszeń, w tym łamania praw pracowniczych. Zjawisko handlu ludźmi jest ukazane przez pryzmat jego aktualnych tendencji ewaluacyjnych, w ujęciu zarówno globalnym, jak i regionalnym (europejskim, a zwłaszcza unijnym). W tym celu autorka prezentuje dane statystyczne zgromadzone w ostatnich latach przez między innymi: Biura Narodów Zjednoczonych ds. Narkotyków i Przestępczości, Międzynarodową Organizację Pracy, Międzynarodową Organizację ds. Migracji oraz Komisję Europejską. Podkreśla jednak, że rzeczywista skala przedmiotowej zbrodni pozostaje nieznana. Znaczną część rozważań koncentruje na zagadnieniu handlu ludźmi we współczesnej Polsce, ukazując zdiagnozowaną w ostatnich latach przez organy ścigania skalę przedmiotowego procederu. Dużo uwagi poświęca też spectrum zagrożeń przestępstwami na polskim rynku pracy z perspektywy cudzoziemców. Tym samym ze szczególną troską pochyliła się nad problemem łamania praw pracowniczych obywateli Ukrainy, jako największej grupy cudzoziemców nielegalnie zatrudnionych w Polsce. Ukazuje też sytuację prawną w tym obszarze obywateli Białorusi, Mołdawii, Indii i Rosji. Zagadnienie to omawia w kontekście działalności Państwowej Inspekcji Pracy ujętej w sprawozdaniu kontrolnym za rok 2017. Naukowym zainteresowaniem autorka obejmuje ponadto zagadnienie penalizacji zbrodni handlu ludźmi w wybranych krajach na świecie. W tym zakresie powołuje się przede wszystkim na regulacje prawne zawarte w kodeksach: łotewskim, węgierskim, szwajcarskim, fińskim, ukraińskim, a także Liechtensteinu. Ambicją autorki było zaprezentowanie wskazanej problematyki w sposób zwięzły, a zarazem z uwzględnieniem jej najistotniejszych aspektów.

Zusammenfassung. Der Artikel widmet sich dem Thema Menschenhandel in rechtlicher und kriminologischer Hinsicht, wobei der Schwerpunkt auf der Ausbeutung von Opfern der Zwangsarbeit oder des -dienstes liegt. Die Autorin führt das Wesen der Zwangsarbeit ein, indem sie nach vielen seiner rechtlichen Definitionen greift, die in Rechtsakten im Rang von Konventionen sowie in gewöhnlichen Gesetzen enthalten sind. Gleichzeitig werden die Faktoren hervorgehoben, die die Art der angegebenen Arbeit charakterisieren, und ermöglichen, sie von anderen Arten von Verstößen zu unterscheiden, einschließlich der Verletzung von Arbeitnehmerrechten. Das Phänomen des Menschenhandels wird durch das Prisma seiner aktuellen Bewertungstendenzen sowohl global als auch regional (europäisch und insbesondere EU) gezeigt. Zu diesem Zweck legt die Autorin statistische Daten vor, die in den letzten Jahren unter anderem vom Büro der Vereinten Nationen für Drogen und Kriminalität, der Internationalen Arbeitsorganisation, der Internationalen Organisation für Migration und der Europäischen Kommission erhoben wurden. Sie betont jedoch, dass das tatsächliche Ausmaß des oben genannten Verbrechens unbekannt bleibt. Ein wesentlicher Teil der Diskussion konzentriert sich auf das Thema Menschenhandel in modernem Polen und zeigt das Ausmaß der fraglichen Geschäfte, die in den letzten Jahren von Strafverfolgungsbehörden diagnostiziert wurden. Besonderes Augenmerk wird auch auf das Spektrum der Kriminalitätsbedrohungen auf dem polnischen Arbeitsmarkt aus Sicht von Ausländern gelegt. Mit besonderer Sorgfalt betrachtet

sie das Problem der Verletzung der Beschäftigungsrechte der ukrainischen Bürger als die größte Gruppe illegal in Polen beschäftigter Ausländer. Sie zeigt auch die rechtliche Situation der Bürger von Belarus, Moldawien, Indien und Russland in diesem Bereich. Sie erörtert dieses Thema im Rahmen der Aktivitäten der Nationalen Arbeitsaufsichtsbehörde, die im Prüfungsbericht für 2017 enthalten sind. Das weitere wissenschaftliche Interesse der Autorin umfasst das Thema der Kriminalisierung des Menschenhandels in ausgewählten Ländern auf der ganzen Welt. In dieser Hinsicht bezieht es sich hauptsächlich auf gesetzliche Bestimmungen, die im lettischen, ungarischen, schweizerischen, finnischen, ukrainischen und liechtensteinischen Strafgesetzbuch enthalten sind. Das Ziel der Autorin war es, die angegebenen Themen kurz und prägnant darzustellen und dabei auch die wichtigsten Aspekte zu berücksichtigen.

Резюме. Статья посвящена проблеме торговли людьми в криминологическом и уголовно-правовом плане, с особым учетом незаконного привлечения к трудовой деятельности пострадавших от этого преступления или для оказания ими принудительных услуг. Автор более подробно раскрывает понятие принудительного труда, опираясь на многие определения, предусмотренные законодательными актами, как конвенциями, так и в законах общего права. Одновременно, определяются факторы, которые характеризуют данный вид работы и позволяют отличать преступление этого вида от других правонарушений, в том числе и нарушений прав трудящихся. Феномен торговли людьми представлен в контексте текущих тенденций по его оценке, как на глобальном, так и на региональном уровнях (европейском и особенно — уровне ЕС). С этой целью Автор представляет статистические данные, полученные за последние годы, в частности: Управлением ООН по наркотикам и преступности, Международной организацией труда, Международной организацией по миграции и Европейской комиссией. Вместе с тем подчеркивается, что реальный уровень этого вида преступности остается неизвестным. В значительной части статьи внимание сосредоточено на проблеме торговли людьми в современной Польше, определяются масштабы явления, диагностированного правоохранительными органами за последние годы. Большое внимание уделяется также целому ряду проблем, связанных с различными видами преступлений на польском рынке труда, с точки зрения иностранцев. В связи с этим, особое внимание уделяется проблеме нарушения трудовых прав граждан Украины, как самой большой группы иностранцев, нелегально работающих в Польше. Кроме того, описывается правовое положение в этой сфере граждан Беларуси, Молдовы, Индии и России. Вопрос обсуждается в контексте деятельности Государственной инспекции труда, итоги работы которой включены в инспекционный отчет за 2017 г. Научный интерес Автора сосредоточен также на вопросах, связанных с наказанием за преступление торговли людьми в отдельных странах мира. В связи с этим, Автор ссылается на правовые положения, предусмотренные кодексами Латвии, Венгрии, Швейцарии, Финляндии, Украины и Лихтенштейна. Автор стремился представить вопросы, касающиеся торговли людьми в сжатой форме, учитывая их наиболее важные аспекты.

