

Zoltán Hrabovszki – Andrea Kenéz¹

The Hungarian Judicial Practice Against the Offence of Trafficking in Human Being

1 Zoltán Hrabovszki, judge, Court of Appeal, Budapest (Fővárosi Ítéltábla)
1055 Budapest
Markó u. 16.
Hungary
Tel: +36 1 268-4835
Fax: + 36 1 268-4870
E-mail: hrabovszkiz@fovith.birosag.hu

Andrea Kenéz, judge, Metropolitan Court of Budapest (Fővárosi Bíróság)
1055 Budapest
Markó u. 27.
Hungary
Tel: +36 1 354-6205
Fax: + 36 1 354-6040
E-mail: andreakenez@freemail.hu

Zoltán Hrabovszki – Andrea Kenéz:

The Hungarian Judicial Practice Against the Offence of Trafficking in Human Being

I./ Introduction

In Hungary, the monitoring system applied particularly to criminal cases of human trafficking, has not yet been established in an institutional form, at least in the sense that would facilitate the tracking of the specificities of the process, from the revealing of the criminal offense, to the final conclusion of legal decision.

Both of us participated in the trainings of the International Organization for Migration where we acquired information about the phenomenon of human trafficking, its various aspects extending beyond criminal law and including international trends. As consultants and experts, we found it essential to get a comprehensive picture of the national judicial practice of human trafficking, therefore we summarized the results of our inquiry in the framework of a study, and sent it to every county courts' criminal division.² Since the completion of the study we have tracked the evolution of judicial practice, however, we have not yet prepared its written summary.

The selected discussion below is the abstract of our longer study – taking into consideration the relevance of sections to our present discussion.

From the perspective of human trafficking, Hungary is an area of transition; however, due to the relatively advantageous economic conditions and our joining of the European Union, our country's role as a target country receives increasing emphasis.

In 2003-2004 the United States listed Hungary among the so-called category II Countries, from the perspective of combating human trafficking, meaning that its efforts are insufficient. However, the US acknowledges that the government is taking steps in order to improve the situation. After the report of year 2005 the US still states that the country has not satisfied all requirements related to the decrease of human trafficking, however, it acknowledges that the Hungarian government made substantial political effort to increase the efficiency in resolving the problem. Such efforts include the establishment of a Hungarian-American work team for a more efficient response; better contact and cooperation between government bodies and civil organizations in order to develop the defense and assistance of victims of trafficking, which became more intensive than at their earlier stage. A greater emphasis is also laid on the training of specialists involved in this type of criminal action (based on our personal experience, we can safely say that on these occasions we had access to a complex set of information, from the staff of law enforcement bodies to the judges).

Part of this positive development is that in March 2005, the International Organization for Migration, civil organizations, and the Budapest Embassy of the United States of America opened a shelter that consists of two properties with already established functions. The two buildings, each with a capacity of 150 people, can accommodate Hungarian victims who faced problems abroad and returned to Hungary with the help of local police and the Hungarian consulate, and foreign citizens who are victims of trafficking and currently reside in Hungary; the buildings are maintained, operated and financed by a charity organization. The Hungarian state provided the two buildings whose address is confidential for security reasons; their protection is guaranteed by the police and authorities responsible for public

² According to the regulations of Hungarian criminal procedural law, human trafficking must be processed by responsible county courts (in Budapest this is the Metropolitan Court) (Be. 16.§ (1) d/)

safety.

Another effort at more efficient action against human trafficking is that in the summer of 2004, a separate group specializing in fighting against this crime was established within the National Police Headquarters (ORFK). The Center for Coordination Against Organized Crimes manages data related to human trafficking received from cooperating bodies. This includes data collected during the process of investigation, such as the data of the suspected criminal act, the method of and the gain from or from relation with the criminal act, or the enterprises that legalize the criminal action.³

II./ The Criminal Regulation of Trafficking in Human Beings

In terms of criminal actions committed against a person, the victim's violation of his or her civil rights was prohibited from 1978, the year when the provision of Section 175 of Criminal Act took effect, targeting the offense against specified civil rights. With the provision of Law XVII of 1993 kidnapping followed by the conditional release of passive victim according to the fulfillment of the kidnapper's demands, became punishable, and classified under the status of the violent offense and stripping of the victim's civil rights (Section 175/A). Before 1993, such cases, and in the case the kidnapper did not use qualified violence, were categorized by Section 323 under the criminal offense of blackmail.

In terms of criminal action against sexual ethics, assistance of profiteering from sexual services has been penalized since 1978 (Section 205), the regulation targeted persons offering a building or other accommodation used for profiteering from sexual services, the owner or operator of a brothel, or anyone providing material resources to operate a brothel; the terms of Section 206 targeted persons accepting earnings from the person profiteering from sexual services. The criminal conduct similar to trafficking in human beings, in terms of Section 207, is procuring, that is, the acquiring and profiteering from a human being's performing of sexual intercourse and other sexual services performed with another party.

We must note that from 15 May 1993 profiteering from sexual services, in colloquial language, „prostitution” cannot be penalized. The Law XVII of 1993 repealed Section 204, which penalized profiteering from intercourse or other sexual services with a maximum of two years imprisonment, penalty of fine and court order banning the offender from a certain locality or address. The ending of the criminal status of profiteering from sexual services has a particular importance, because by this the possibility to penalize potential victims involved in such activities was also ended, however, in the absence of such a law, in terms of the new provisions - that are rather unfortunate, since they convey different, opposing interests between the trial parties - the victim would be an accomplice of the accused who sold or purchased him or her, collaborating in the case of human trafficking. At the same time, in terms of the Section 143 of Law LXIX of 1999, illegal sexual profiteering is a less serious offense, and this threatens the victim of profiteering – even if not as the accused of the criminal process - but as another participant whose role is investigated in the criminal process, specifically making the prostituted victim an exposed subject of the accused.

In another chapter, that is, criminal action against public administration, justice, and the transparency of public life, the penalty for human smuggling, has been effective from 1978, (Section 218), that is – potentially - a stage of the process of transnational human trafficking. The offender – according to current regulations – is a person assisting illegal border crossing for profiteering or as a member of organization involved in such endeavors, or assisting such

an organization with a commission to do so, or a person offering or providing assistance.

A penal regulation specifically applying to human trafficking was not included in the Criminal Act until Law XLI of 1995 which modified the penal regulations. Then the criminal offense of the change of family status was entered (Section 193), that involves the change of another party's family situation, specifically, the exchange of a child for another, or the smuggling of a child to another family; and any person involved in the sale and purchase of a person younger than the age of 18, or in the framework of a criminal organization of human trafficking, commits a criminal offense, moreover, an aggravated offense; the aggravated criminal offense against a person younger than 18 involves an offense committed by an adult person, who forces the child victim, acquired by means of sale and purchase, to commit a criminal offense, to pursue debased activities, or attempts to force the child victim to do so, or pressures the sold or purchased child victim to perform forced work (Section 195 (3)).

The above described specifications for „sale and purchase” and „marketing” does not require further explanation, these actions are essentially identical to the most frequent form of human trafficking regulated more recently: at least two persons clearly not in terms of the provisions of civil law (that is, invalid in terms of such provisions), however, according to „contract”, are in control of the person of a third party – of under 18 years of age. The passive subject does not even have to be aware of the fulfillment of the “contract”, or if (s)he is aware of it, (s)he is not involved in its terms. Civil law assists in the analysis of the nature of the criminal offense, in that the interpretation of sale and purchase, – that is the specificity of human trafficking, as defined in more recent terminology – in terms of this branch of civil law can be carried out without any problem, even if the terms are straightforwardly not part of its legal regulations of the transfer of property rights.

However, what is missing is the definition of „human trafficking”, and further detail is needed for the term „in the framework of an organization”, that appears on several occasions in the legal regulations. The court responsible for a particular case must carry out the analyses of these concepts.

The regulation of the provision of Criminal Act that was issued in 1998 (Section 43 of Law LXXXVII of 1998), and was effective from 1 March 1999 to 31 March 2002 - and which first place ordered the penalty of offense specified in Section 175/B paragraph (1), defined „trafficking in human beings”, and the aggravated crimes listed in paragraphs (2)-(5), and the preparatory actions described in (6) – was based on the fact that in terms of the right to human dignity, it is inconceivable, that a human being become a subject of trafficking, and if such an incident happens, it has a sui generis criminal status.

The nature of the criminal act includes

- sale and purchase for money,
- sale and purchase for other services,
- exchange of a person for another person,
- acquiring a human being for the above purposes.

The legislative body based the system of aggravated crimes upon the following priorities:

- the victims – the aggravated cases include criminal action against persons under 18 years of age, or persons stripped of their personal rights,
- for the purpose of trafficking in human beings – the regulations define aggravated cases in case the purpose of trafficking is forced work or sexual exploitation

- the method of criminal action - if the action is carried out by a member of a criminal organization, or the victim of the criminal act is trafficked by the victim's educator, career, nurse, or person administering the victim's medical treatment.

We must note that the Section 42 of Law LXXXVII of 1998 modified the definition of the offense of violation of personal liberty rights when it established the definition of human trafficking. The modification was, on the one hand, carried out to specify and evaluate a case when someone forces a person, stripped of civil liberties, and „acquired” by means of human trafficking, to perform forced work in conditions amounting to slavery. On the other hand, the legislative body also included among the aggravated cases of the offense against civil liberties, the offense against persons younger than 18 years of age, due to the cumulative protection of these victims, and to facilitate the harmonizing of the criteria of regulations with the criteria listed in human trafficking.

In the present legal text, defined in Section 21 of Law CXXI of 2001, effective from 1 April 2002, considering the requirements defined in the Palermo Protocol, the following continue to be listed in the definition of the criminal offense:

- sale,
- purchase,
- sale and purchase for other services,
- exchange of a person for another person,

and additionally,

- recruitment for the above purposes,
- transportation,
- accommodation,
- hiding,
- and acquiring of others.

When defining the arrange of aggravated cases, the regulations of criminal law continues to define the greatest hazard against society in terms of the group of victims, the purpose of human trafficking, and the method of committing the offense, but new entries for further classification include:

- the prohibited use of human body
- purpose of making prohibited pornographic pictures or recordings
- offense carried out by a criminal association or group
- offense carried out for profit
- offense involving violence
- offense involving threats
- offense involving deliberate misleading
- offense involving the abuse of the victim.

Aggravated cases are regulated by the law in four steps and according to several regulatory criteria, in the following way:

1.) from the perspective of the victims:

- a) offense against person younger than 18 years of age (1-5 years imprisonment) if offense involves violence, threat, deliberate misleading, or the victim's abuse (5-10 years imprisonment)
- b) offense against person stripped of civil liberties (1-5 years imprisonment) if offense involves violence, threat, deliberate misleading, or the victim's abuse (5-10 years imprisonment)
- c) offense by the educator, supervisor, career, or nurse of the victim, or person responsible for administering medication to the victim (2-8 years imprisonment)
- d) offense against persons younger than 12 years of age if offense involves forced labor, sexual services, sexual intercourse, or other prohibited use of the human body
involves violence, threat, deliberate misleading, or the victim's abuse (5-10 years imprisonment)
prohibited recording or taking of pornographic pictures (5-15 years or life imprisonment)

2.) regarding the purpose of the offense:

- a) for forced work, sexual services, sexual intercourse, or other prohibited use of the human body (1-5 years imprisonment)
- b) for above reason, use of violence, threat, deliberate misleading or abuse of victim (2-8 years imprisonment)
- c) against persons younger than 18 years of age, offense by the educator, supervisor, career, or nurse of the victim, or person responsible for administering medication to the victim for the purpose of forced labor, sexual services, sexual intercourse, or prohibited use of human body, or violence, threat, deliberate misleading, or the victim's abuse, or recording of pornographic materials showing persons younger than 18 years of age (5-10 years punishment)
- d) against persons younger than 12 years of age, for the purpose of forced labor, sexual services, sexual intercourse, or prohibited use of human body, or violence, threat, deliberate misleading, or the victim's abuse, or recording of pornographic materials (5-15 years or life imprisonment)

3.) regarding the method of committing the offense:

- a) use of violence, threat, deliberate misleading or abuse of victim, for the purpose of forced labor, sexual services, sexual intercourse, of prohibited use of human body (2-8 years imprisonment)
- b) if above offenses are committed against persons younger than 18 years of age (5-10 years imprisonment)
- c) if above offenses are committed against persons younger than 12 years of age (5-15 years or life imprisonment)

4.) the danger of criminal act to society:

- a) in a criminal association
- b) in case of making a profit (case of 1-5 years penalty).

III./ The judicial practice

Regarding our research method: the following statements between 1999-2005 are based on the full-scale processing of documents of legally completed cases, from statistical data of the State Prosecution, indicated in the computer registration of the county/ capital courts according to case ID number (those cases most likely remain within the error range, where the case was listed not under „human trafficking” but another criminal offense, however, it still involved charges of human trafficking).

Summarizing the cases that we have investigated:

	Total	Acquitted	Other classification	Suspension of process*	Convictions
Cases completed	27	11**	2	3	21***
Accused	91****	18	6	3	64
Victims	40	5*****	2	*****	33

*in case of otherwise completed cases, the suspension of process against certain accused, with the separation of the case

** in 4 all were acquitted, and in 7 cases with multiple accused, not all of the accused were acquitted

*** 21 cases include those 7 cases, where some accused were convicted, others were acquitted, and 3 cases, in which the process was suspended or separated.

**** charges were laid against a total of 124 accused, including 91 charged with the criminal act of trafficking in human beings, 33 additional accused were charged with other criminal acts – related to trafficking in human beings

*****in cases ending with complete acquittal

***** we did not calculate the number of victims because they were not victims of THB but other crimes

We present the essence of these legal decisions based on the judicial methods applied during the analyses of facts:

Legal subject

The court already examined the legal subject of one of the first cases in great detail.

According to the applicable definition, the victim moved in with accused No. I., who, in return for her 30.000,-HUF debt, and for a Lada 1200 type car made in 1973, offered her to accused No. II. Accused. No. II. accepted the offer, and accused No. I. told the victim to take her belongings and move to the apartment of accused No. II., with the condition that she must stay with him and do what he says. The victim did not object to this, and moved to accused No. II., who told her that he purchased her for the car and the debt unpaid by accused No. I. The Supreme Court found both defendant No. I. And II. Guilty of human trafficking, and imposed a penalty of imprisonment. From the ministerial orders, the essential elements of the right to human dignity and that „based on the right to dignity, it is inconceivable, that a human being become a subject of a trade.”

The decision of the Supreme Court rejected the reasoning of the defense that referred to the fact that since the sale and purchase of the victim happened with her agreement; the action of the accused does not belong to the specification of human trafficking. It concluded that according to Section 175/B paragraph 2 point a/ the action is an aggravated case of human trafficking, if the offense is committed against a person stripped of his or her civil liberties. Therefore, stripping the victim of her civil liberty is not a basic fact of the case, the criminal

offense can be committed against a person fully possessing his or her civil liberties. The civil liberty of the offended party includes obedience or the denial of obedience to the accused, thus, from the completion of the criminal offense, it is not significant, whether the offended party agreed to the offense carried out by the accused, or not. The court furthermore evaluated the reasoning of the defense, that in case of professional sportsmen, a person is held under the control of another party for a sum of money, yet the action is not penalized as a criminal offense, as a false parallel. The court explained that in case of professional sportsmen, the sale and purchase takes place in a legally regulated process, and it is legally accepted, so, as opposed to the case of the accused, the illegal status of the action does not apply.

In another examined case, the court of first instance concluded that the teenage accused offered the child and a teenage victim for sale to an unidentified man on the phone, for a sales price of 40.000,-HUF. In two days, the defendant took the victims to walk in the city park, where the unidentified customers appeared within a short period of time, purchased the victims for the above sum, and with a car, took them to a small town, where the customers used them in a bar as „dancers and call girls”, and the child victim also offered „sexual services”. When she was inquiring about the possibility of going home, she was physically harassed. In a couple of days, the victims were again sat in the car, taken to where they came from, and let out of the car.

The court found the defendant guilty of human trafficking, based on similar reasoning to the previous case. The decision, in this respect, was again accepted by the Supreme Court, with the explanation, that *„the agreement of the passive subject usually excludes the possibility of illegal action. In case of human trafficking, however, the rights to liberty, human dignity, and self-determination are offended. These are basic rights organically belonging to human existence that – just like the right to live – cannot be validly given up. For this reason, human trafficking, even in case of the agreement of passive subject, is an illegal action. It can be concluded from the regulations that from the aspect of culpability, the agreement of the offended parties does not have any significance. In present case due to their age, one of the victims was limited in her actions, and the other party was fully limited, for this reason, they could not make any valid declaration on their basic rights.”*

From the above information, it can be concluded that the court in any of the cases did not accept the reference to the agreement of the victim, as a circumstance excluding the illegal status of the action; instead, the court concluded the culpability of the accused in committing the criminal offense. The prosecution submitted a final proposal against this judicial practice in a case in which, as the prosecutor explained, it is clear from the ministerial reasoning, that this criminal action *„offends human rights to liberty, dignity, and self-determination”,* and by which a human being becomes an object and - disregarding or neglecting his or her will – becomes part of commercial trade. *„Human rights include the right to sell one’s own abilities and proper labor, from this, it follows that in the case of the agreement of the involved parties – if (s)he herself becomes the object for sale – the illegal status of the action is missing. However, here (in this case) the offended party agreed to sell herself and perform sexual services for money. She discussed with accused No. I., No. II. and No. III that they share the money she receives for sexual intercourse.”* The court of first instance, not on the grounds of this legal reasoning, but diverging from the specific facts listed in the charge against the accused, acquitted one of the accused, and regarding the other five accused, classified the offense as criminal action other than human trafficking. On appeal, it was not possible to come to a different decision due to the withdrawal of the submitted appeals.

The passive subject

In all cases examined by us, the passive subjects – essentially natural, living human beings –

were women, who pursued some form of prostitution, or according to the will of the accused, they were supposed to perform such activities.

The passive subject's investigation does not allow for the evading of the question of singularity-multiplicity, in which theory and practice usually coincide: the grade of the criminal offense agrees to the number of victims.

The age of the victim is significant for the classification of the criminal offense. In the 17 cases examined by us, 23 – that is more than half of 40 persons – were younger than 18 years of age, among them, two victims were younger than 14 years of age.

The defendant must be aware of, and must understand the fact that the victim is younger than 18 years of age, otherwise this aggravating circumstance cannot be taken into consideration. In one of the examined cases, this aggravated case could not be held against two of the accused, since one of them sold the victim, and the other purchased her, thinking and believing that she is already 20 years old. However, the third accused, which also participated in the sale, was aware of the victim's real age, thus the aggravating circumstances are applied against this accused.

Nature of criminal action

We must reconsider that the legal provision defined the possible natures of committing the crime rather widely and inclusively, at the same time – disregarding the below exceptions - the majority of examined cases involved exclusively the sale and purchase of a passive subject for money.

The court's decision classified the offense as sale and purchase, however, in our opinion, the sale of the offended party was carried out for other compensation, in the case earlier described, when the accused of the case „paid” for the offended party by offering a car and canceling the other accused's debt.

In another case the teenage accused sold the victim received a television as a compensation from the customer.

The analysis of the case took place in several examined decisions, but difference could be discerned only in the wording. In one of the cases, according to the court of first instance decision the victims *„became part of commercial traffic by the offense of their self-determination, and being sold by the accused to another accused...The actions of contracting, the fulfillment of sale, the fulfillment of purchase, invalid from the perspective of civil law, and the acquiring of a human being for commercial purpose, are criminal offenses to be punished according to the criminal regulations.* Reflecting on the reasoning of the defense, the court of first instance also explained that the definition of human trafficking does not exclusively include slave trade. The court cited the Art. 1 of Universal Statement of Civil Rights, Section 54 paragraph 1 of the Hungarian Constitution: *„in the Hungarian Republic, all people have innate right to human dignity”*; and the Section 58 of the Hungarian Constitution: *„personal liberty is a civil right”*. It furthermore cited a part of the ministerial reasoning that addressed the offense of human dignity, liberty, and self-determination, through the use of a human being as a subject of commercial traffic. Interpreting the nature of committing the crime of human trafficking, the court of appeal emphasized, that *“essentially a double-sided contract is made between the accused of the offense, that is, straightforwardly, invalid in terms of the regulations of civil law.”*

In one of its decisions, the Supreme Court found the decision of the court of first instance correct, stating *„from the aspect of the realization of the crime, the extent of 'purchase price' is neutral, since the offense itself offends human dignity, and this cannot be evaluated in*

terms of money. Regarding the classification, the fact that accused No. II paid only one month's „purchase price” and did it in advance, does not have any significance. Since the offense is completed with the agreement over the terms of the contract, and the submission and reception of the victim, even if the payment of the sale's price does not take place or takes place afterwards – perhaps depending on the profit sought by the victim, or only depending on it, or in case of installment payments. The essence of the accused' contract – even if the victim agreed to it – was the (ab)use of a teenage person for the purpose of prostitution. They were aware that this offense is both morally and legally prohibited – in terms of international treaties as well. For this reason, the illegal status of their offense and the correctness of the classification of the aggravated case cannot be questioned.”

Stages of trafficking in human beings

This criminal offense belongs to those rare legal provisions, where even preparation and planning of the actual criminal action are punishable as legal offenses. According to the legal literature⁴ „preliminary actions include primarily the verbal communication of the plan or arrangement to the other accused (i.e.: call for sale or purchase, agreement for exchange). The necessary conditions, or a simplified version can be carried out by the misleading or deceit of the victim (i.e. concealing the offense by a „work contract”) or committing another criminal offense for the purpose of human trafficking (i.e. stripping the offended party from his or her civil liberties)”.

In the researched cases – with the exception of two preparations – the complete structure of human trafficking was concluded by the courts, thus attempted human trafficking does not yet have a judicial experience.

The offenders

In cases examined by us, out of 91 persons specifically accused of human trafficking, 89 are adults (71 men, 18 women), 2 are less than 18 years of age (1 man and 1 woman).

These cases typically have several defendants, on average, one case has 4-5 accused.

In the investigated cases out of 64 convicted persons 34 were convicted for participation in the offense, 26 were convicted as independent offenders, three were convicted for being an accomplice to the offense, and one was convicted for inciting for the offense.

„It is without a doubt that both the seller, both the customer commit the crime of human trafficking, however, legal regulation defines separate penalties for different nature of criminal offense, even if the two types of offense are interrelated, like the sale and purchase of a person. The sellers and customers are held responsible only for their own, individual conduct, not the full-scale criminal case, thus only persons acting on the same side of the case can be specified as accomplices in the offense.” – this is how the court that brought the final decision summed up the single publicly available decision regarding the criminal offense of human trafficking (BH 2004/217.)

In another case, based on the same reasoning above mentioned, the court of appeal evaded the conclusion of collaboration in the offense against an accused who purchased two victims alone, for a sum of 50, 000 HUF.

4 Mihály Vajda: About criminal offense against liberty and human dignity (in: Hollán Miklós: Criminal law regulations against human trafficking , Acta Universitatis Szegediensis Acta Juridica et Politica, Publicationis doctorandorum juridicorum, Szeged, 2001.

At the same time, the court classified the conduct of the accused not as accomplice, but inciter, in the case when the defendant pursued sale and purchase through a cell phone, mediating between the seller and the customer, and calling both parties during the process. According to the statement of the court of appeal *„his persuasion was a decisive factor in our decision about his status in the crime of human trafficking, without his role the offense would not have been committed, and his action did not merely confirm an intention, but indeed established the intention.”* At the same time, there was not any possibility to modify the classification of the seller’s action as independent offense, since the court of first instance decision already took legal effect.

In another case, according to the facts, the accused wished to sell the victims by all means, since they were not satisfied with the sexual services that they provided. One of them met with a cousin – accused No. IX. -, who stated that *„he knows people who purchase girls”*. Following this conversation, accused No. IX. established phone contact with accused No. VIII. and agreed to travel the same day to pick up one of the victims, and accused No. VIII. together with his partner (also an accused) got in contact with the „sellers” and picked up the victim, whom they purchased for 50, 000 HUF. In this case, the court of appeal evaluated the mediation by accused No. IX. not as collaboration (as the court of first instance previously concluded) but as close assistance to the initiators of the sales of the victim, therefore accused No. IX. was held accomplice in the criminal offense.

Finally, the court of appeal concluded participation in the crime in form of assistance – contrary to the decision of the court of first instance – in the case when, according to the facts the accused participated in the other accused’s criminal offense, that is, the sales of the victim, by interrogating the offended party and exploring her family status.

Aggravated cases

As discussed above in the issue of passive subject – among the investigated 17 cases, that were completed with acquittal on 3 occasions, and once with a different classification -, the majority of victims were younger than 18 years of age.

On even more occasions, the courts applied the aggravating circumstances described as the purpose of sexual services or intercourse.

All of the 21 criminal cases of THB - as defined by the ministerial reasoning - *were committed for the purpose of sexual services*. This, however, does not necessarily mean that all cases were classified as such.

In of the cases the charge did not include any specifications regarding the purpose of the purchase of the victim by the customer. In the legal explanation, the court of first instance noted that data were raised regarding this aggravating circumstance, however, since the charge did not include this fact, the court was not allowed to investigate this question.

Besides the sales of a person younger than 18 years of age, and sales for the purpose of sexual services and intercourse, the offense was classified as a sale for forced labor only in one case, when the accused sold the offended parties as dancers. The application of this aggravating circumstance was evaded by the Supreme Court that brought the final decision, since the specifications did not include confirmation of the fact that the accused who sold the two persons younger than 18 years of age, was aware of the fact that the two victims will be used for forced labor, and in the absence of factual evidence that could confirm this otherwise grounded assumption.

In the examined period, there was not any example for any judicial practice against human trafficking where an aggravated case of human trafficking had to be separated from the offense of the prohibited use of human body (Section 173/I) and the prohibited use or recording of pornographic materials (Section 195/A).

Relating to other crimes

As we have already noted earlier, according to the Section 175 paragraph 2 and 3, the legal provision of the offense of personal liberty has aggravated cases applying to human trafficking. This criminal offence had preceding cases when it was listed as or ignored as an aggravated subset of human trafficking. In cases when the defendant was charged with committing only an offense against personal liberty (but not human trafficking) this aggravated case was not concluded. The aggravated case was avoided in the review of the decision of first instance court by the the court of appeal, and it explained that the classification of offence against personal liberty in relation to human trafficking can be concluded only if the accused is aware of both specifications: because the accused acquired the offended party, stripped of personal liberties, by means of human trafficking. In the particular case, the accused, who was also pursuing activities of prostitution, – and who was not concluded to be a victim of human trafficking – was requested by her commissioners (the so-called procurers) that besides pursuing her own activities, she must also supervise how the victim carries out sexual services for profiteering. During the trial, no data were located regarding the fact that the accused was aware that the victim was a passive subject of human trafficking.

In another case, according to the court of appeal, further condition of this classification is that the offender(s) force the victim to work, which could not be concluded in present case since the victim did not work, but had to pursues activities in prostitution.

A conflicting decision was reached by another court of appeal, when, in the aforementioned case of human trafficking, the accused was found guilty for the offense of personal liberty in terms of Section 175.§ paragraph 2, for base purposes defined in 3 paragraph a/ point. In this decision, no question was raised about the prohibition of double evaluation, since the accused continued to strip the victim of her personal liberties even after the purchase. Regarding the fact that the victim, in this case as well, pursued sexual services for profiteering, the legal explanation stated, „*the present day, sexual services for profiteering can be legally pursued in legal framework, and from this aspect, is seen as a form of work*”. Judicial practice must decide about the validity of different interpretations of the legal specification of the term “forcing the victim to work”. Considering the provision of THB in which “for work purposes” was separately defined from „for the purpose of sexual services or intercourse”, in our understanding, forcing a person to perform sexual services does not coincide with forcing a person to work.

Among other things, the defendants were found guilty also of other criminal offense or offense – typically - of sexual nature, committed against the same victim. By investigating the classification of cases, we can conclude that it occurred infrequently that the subject of the criminal process was exclusively the human trafficking.

The question of the nature of penalty

As seen from the factors above, it is impossible to conclude a consistent judicial practice regarding to THB. In the decisive majority of cases the penalty is concluded not only because of human trafficking, but other, often even more severe criminal offenses. An example for

this is a case when besides human trafficking of a person younger than 18 years of age; the defendant were also convicted of rape of the sold person, and of another four criminal offenses, defining a penalty of 10 years imprisonment for the accused, and 8 years of imprisonment for the accomplice.

It can still be deduced that in case the court defined a penalty for aggravated crime, suspension of imprisonment for a period of probation was not possible. An exception for this case is a decision against an accused of minor age, which was found guilty; however, the court of appeal did not find this particular case of human trafficking of such gravity that would make imprisonment of the accused necessary.

Similarly: already the court of first instance did not find it necessary to conclude the case with a penalty of imprisonment against the accomplice who participated in the interrogation of the victim, and the court of appeal respectively, moderated the duration of imprisonment and the duration of probation.

The court also suspended the execution of imprisonment in the case of the accused, who was wife of the other defendant with whom she lived in a depended relationship, raising their child, and who persuaded her to commit the aggravated crime of human trafficking – against a person younger than 18 years of age, who was stripped of her personal liberties, for the purpose of sexual intercourse.

The statement, according to which human trafficking is one among criminal offenses committed for substantial profit, cannot be discerned from the cases brought before the courts, yet this does not mean that the statement is erroneous. The possibility of material-type legal consequence occurred only in two of the investigated cases. In one of the cases were sums - 100, 000 HUF, 210 DEM and 6 USD - on the identified accounts of the accused, seized. Finally the court found the defendant guilty not in the crime of human trafficking, but the criminal offense of procuring, for which the accused was sentenced for 2 year and 5 months' imprisonment, and 250, 000 HUF fine. The sums in question were withheld until the payment of the fine, and the payment of 19, 888 HUF criminal process fee, paid by the accused as well as his accomplices. In another case, the court of appeal revealed the fact that the television reserved among the accused's properties was the compensation paid for the sales of the offended party, therefore the television was seized.

Problems of evidence

In several cases, the fact that the defendants and the victims were residing in unknown places for the duration of the trial, raised problems.

Although according to Hungarian law the case can be tried in absence of the defendants, any sentence was delivered by the courts in THB-cases, in such a case the court suspended the procedure or separated it from other defendants.

The court of first instance read the statements of the victims residing at unknown location, on all occasions, and evaluated the statements as evidence, in terms of the force of such statements as evidence, the court provided different evaluations in each case; on certain occasion – in light of other evidence provided – the court did not straightforwardly reject the defense of the accused; the court acquitted the accused in certain cases and in other cases convicted the accused for other criminal offense of different classification.

At the same time, during the criminal procedure involving the presence and participation of the victims, their often-inconsistent statements and the external influence that was – perceivably - targeted at them in an effort to control their statement raised problems during the evaluation of statements,

In such circumstances, the court did not classified the offense as a case of human trafficking, but as a case of pimping, when as a result of the process the only fact to be concluded was that the accused received part of the profit that the victim earned through prostitution, but no evidence was found that following the termination of their relationship the defendant sold her abroad; the victim's statement during the investigation was not consistent regarding this issue, and she withdrew the charge at the court trial.

In another case, a teenage victim made conflicting statements during all of her interrogations. The court ordered a professional psychiatry examination that concluded that the victim suffered from disharmonic personality. The court did not evaluate conflicting statements by the victims as sufficient evidence against the defendant who consistently denied the charge.

A set of conflicting statements were made by a victim, who, after showing up from an unknown location, did not state that any offense was committed against her, however, made a similar statement about half a year later, at a police interrogation, however nearly a year after the events, made a statement of charge against the accused; however, after the precedents and wide range of evidence, the court did not find sufficient evidence that the accused were guilty of the offense.

From one case it became clear that the victims who modified their statements several times during the procedure – sometimes against the accused, sometimes on his behalf – followed by the acquittal of the defendant, were charged with perjury.

The court of appeal referred to the exertion of influence over the statement in a case when *„ according to straightforward data of the legal process, the victims and the witnesses were exposed to significant pressure and threat so that they change their statements of charge against the accused. The effect of this threat could be straightforwardly discerned at the trial before the court of first instance, and it was also clear in its decision. This circumstance cannot be ignored at the investigation of the reliability of the involved parties' statements. Without a doubt, (the victim) in the beginning, identified a different person as her „procurator“; but, as the trial advanced, it became clear that her statement was affected by the pressure and threat exerted by the circle of the accused, when she was prepared that during a possible police check, she must indicate a different person as her „pimp“, and not the one, who indeed forced her to pursue prostitution. ”*

In another case, the court concluded *„the relatives of accused No. 1. visited the victim in order to ask her to withdraw from her report to the police, which she was not willing to do. .. However, later under the pressure of threat, in her written statement in front of XY advocate, she withdrew her charge against the defendant, but she did not withdraw it in front of the police. ”*

On another occasion, the victim held her charges at the court trial, and subsequently appeared at the court's trial without any summon, accompanied by an advocate and her father, and withdrew her charges against the accused, providing a written statement of the withdrawal. During the process, she referred to an unidentified person, who supposedly purchased her. (We must note that the identify of the seller was never revealed.)

In these cases the courts did not accept the modification of the statements, and the defendants were found guilty in all cases.

However, in other similar cases, when the cases were concluded with acquittal, or a classification lenient than of human trafficking, the prosecutor did not issue an appeal against

the accused, or withdrew from a former appeal.

IV.) Summary

Based on the studying of the - so far - small number of human trafficking cases brought before the Hungarian courts and concluded with final decision, we can state that the typical form of this criminal offense is the trafficking of women for the purpose of prostitution, within the country borders. In case foreign connections or their possibility were raised during the investigation, such connections were left untracked, the otherwise effective forms of international cooperation in criminal matters did not apply to these cases.

The cases typically involve several defendants, and multiple offenses, where the accused usually with previous criminal record - not always consistently - denied the charge of criminal offense, and were held for preliminary arrest for various duration of time.

During the criminal procedure, great emphasis was laid on the person of the victim, who, in terms of Section 79 paragraph 2 of Act XIX of 1998, is *responsible for* making a statement (according to the Hungarian procedural law if this responsibility is not fulfilled, the victim must pay a fine), at the same time the victim's defense and the possibility for statement free of the pressure of threat are guaranteed by the law (ordering of confidential treatment and sealing of personal data is used most frequently).

The examination of the victim's reliability has become more and more significant, since the offense of human trafficking cannot be listed among criminal offenses of traditional structure, from the aspect that in a substantial number of cases the victim also commits an offense of criminal law (for instance: prohibited sexual services, forgery).

In the investigated cases, a specific characteristic of human trafficking became clear, whereas the cooperation of the victim is substantial, in several cases the accused contributed to the outcome of events through gullibility, ignorance or carelessness. From the cases that we studied we can conclude that the judicial process might become subject or exposed to the victims who, typically, are young adult women between 14-18 years of age, without any sort of support – including family, legal representation, of assistance offered by a civil organization – with an unsettled personal background, irregular life conditions, who are regularly harassed and closely supervised by the accused, and whose dependent relationship with the defendants often perseveres after the beginning of the trial, due to the lack of possibility to break out of the same social environment.

From the perspective of the representation of the victim's rights, it is important that the regulation assisting the victims of the criminal offenses and state reimbursement for damage, passed in 2005 (Law CXXXV of 2005, and the 1/2006. (I.6.) IM order) including the detailed description of application for the assistance of victims was established in accordance with the legal regulations of the European Union, however, the investigation of how these regulations are to be applied in practice, was not made possible in the period of our study.

It is a general view that human trafficking is a type of organized crimes, moreover, a part of international organized crimes. We have already discussed the absence of the delictum's international specificity (at least regarding the cases brought before the courts). Although organized crime and human trafficking, more specifically, the relationship of these conducts, was already raised when human trafficking did not even appear as an independent entry for the status of criminal offense in Hungarian criminal law, at that stage, for among other reasons, the organized cooperation could not be identified due to the missing legal

background. Since both the legal provisions of human trafficking and the organized crime were established (see Criminal Act Section 137 point 8 and Section 263/C), the fact that the offense of human trafficking was carried out in the framework of organized crime, could not be clearly concluded in any of the the cases investigated by us.

From the cases discussed and completed by the courts, it cannot be concluded, whether the human trafficking was pursued by a necessarily multiple-member group in the framework of legalized business enterprise, at least in terms of the possibilities defined in Law CIV of 2001 about criminal action against a legal person.

However, we must remember the high-degree latency that plays a significant role in the victims' harassing, the efficiency of the witnesses' protection, and that the victims are involved in other criminal actions, or even any other human trafficking committed against other parties, which occurred in cases investigated by us, and also the victims' illegal migrant status (although due to the lack of transnational criminal action, this cannot be raised in Hungarian judicial practice).

At the same time, experience so far suggests, that the Hungarian judicial practice – due to the absence of such cases – does not have to face and provide adequate response to new challenges, that result from the situation that rearranged the source-transit-target country division following the extension of the European Union, and that result from the more efficient handling and use of already existing and new devices of cooperation in criminal matters, and the priority handling of the phenomenon of human trafficking in its complex process, from the perspective of civil rights.