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АНАЛІЗ НАЙВАЖЛИВІШИХ АСПЕКТІВ ОПИТУВАННЯ ДІТЕЙ, ЩО СТАЛИ ЖЕРТВАМИ ТОРГІВЛІ ЛЮДЬМИ, ВІДПОВІДНО ДО КРИМІНАЛЬНО-ПРОЦЕСУАЛЬНОГО ЗАКОНОДАВСТВА РЕСПУБЛІКИ ПОЛЬЩА

Анотація. Статистичні дані вказують, що діти становлять майже одну третину всіх жертв торгівлі людьми у світі. Однак статистика не здатна вказати на реальний стан, позаяк неповнолітні є специфічною категорією жертв, тому що дуже часто вони не вважають себе жертвами, не знаючи своїх прав. Неповнолітні зазвичай не звертаються до відповідних правоохоронних органів по захист своїх прав. Це підтверджує і факт негативної відповіді на пряме запитання, чи визнає себе дитина жертвою торгівлі людьми. Відповідно, дуже важливою є діяльність правоохоронних органів у частині проведення первинного впізнання зокрема та специфічний процес спілкування з неповнолітніми загалом. Останній чинник відіграє неабияку роль у разі виявлення дітей, які стали жертвами торгівлі людьми. Від цього залежить налагодження контакту між учасниками процесуальних дій, завдяки чому виникає можливість отримання достовірнішої інформації, що згодом допомагає формувати доказову базу.

Ключові поняття: торгівля людьми, жертва, дитина, опитування, кримінальне провадження.

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ANALYSIS OF THE MOST IMPORTANT ASPECTS OF INTERVIEWING A CHILD VICTIMS OF TRAFFICKING IN THE LIGHT OF POLISH CRIMINAL PROCEDURE

Abstract. Children make up almost one-third of all human trafficking victims worldwide. And they are indeed a very difficult category of victim, because very often they don't self-identify themselves as victims – they are not aware of their rights, they don't know that life can be different. That is why the child usually will not come and ask for help. And even, if it is asked directly if he or she is a victim of human trafficking, we can get the answer in the negative. That is why it is so important that the law enforcement officers be able to make the initial identification himself, and then know how to talk to the child. Detecting children of trafficking victims depends on the vigilance, perceptiveness of policemen and whether they have the ability to talk to children. It is also important that the child feels well from the very beginning and throughout the criminal procedure, and thanks to it we can get more information from him and collect more valuable evidence that will help lead to the detection and conviction of the perpetrators.

Key concepts: human trafficking, victim, child, interview, criminal proceedings.

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Introduction

Human trafficking is a very serious crime, which can happen to people of any age, of all ages and genders and any race or any religious background. When we think about trafficking in human beings, we immediately associate it with women, but men can also become victims of it.

In the Polish penal code (hereinafter abbreviated as the CC) [1], human trafficking is defined by the recruitment, transportation, delivery, transfer, harbouring or receipt of a person, involving: force or unlawful threat, abduction, deceit, misrepresentation or exploitation of an error, or incapability to duly understand the undertaken action, abuse of dependence, critical situation or helplessness, provision or acceptance of a material or personal benefit or its promise to a person taking care of or supervising another person – with the purpose of exploiting this person, even with this person's consent, including prostitution, pornography and other forms of sexual abuse, forced labour and services, begging, slavery and other forms of exploitation that are degrading to human dignity, or with the purpose of obtaining cells, tissues or organs against the statutory provisions. If the perpetrator's conduct involves a minor, it is deemed to constitute human trafficking even if none of the above-mentioned methods and measures were applied (Article 115 paragraph 22 CC). This crime is punishable by a jail even up to life imprisonment (no more than 25 years if the defendant is not sentenced to life) and the minimum sentence in criminal prosecutions is 3 years imprisonment (Article 189a CC «§ 1. Whoever traffics in humans, is subject to the penalty of deprivation of liberty for no less than 3 years. § 2. Whoever makes preparations to commit the crime provided for in § 1, is subject to the penalty of deprivation of liberty for between 3 months and 5 years»).

In 2020 around 110 thousand people worldwide were identified as a victims of human trafficking, and it is much more than 10 years ago – in 2010 – it was around 33 thousand people [2]. Despite the high number of estimated victims and cases worldwide, prosecution rates appear low. It was estimated that in 2020 a total of 5,271 human traffickers were convicted worldwide and this is much less than in previous years (It was estimated that in 2020 the total number of convictions related to human trafficking worldwide was 5,271, 2019 – 9548, 2018 7481, 2017 – 7135) [3].

And what is another freezing fact is that children make up almost one-third of all human trafficking victims worldwide. In some regions such as sub-Saharan Africa, Central America or the Caribbean, children represent even around two-third of victims [4]. Children who are victims of human trafficking are usually exploited in

prostitution, forced labor, begging, illegal adoptions, and committing offenses such as shoplifting. Statistics show that girls are mostly exploited for prostitution and boys are mostly exploited for forced labor.

1. Child victims of people trafficking

Unfortunately it is believed that the actual number of children who fall victim to trafficking is higher than current data suggests [4]. This is because children are infrequently identified as victims of trafficking. They are indeed a very difficult category of victim, because very often they do not self-identify themselves as victims, they are not aware of their rights, and they do not know that life can be different and just be can better. That is why the child will not come and ask for help on its own.

And here are some other reasons why children do not seek help or may refuse to cooperate with, for example, law enforcement agencies:

- feelings of guilt or shared responsibility for what happened to them, they may feel guilty about what they are doing, e.g. engaging in prostitution,
- fear of legal consequences – e.g. crimes that could be committed by the victim are illegal crossing of the border, using false documents, illegal stay in the territory of a foreign country, illegal drug possession, shoplifting,
- shame and fear of stigma: they do not want their loved ones and friends to know what happened to them,
- fear of revenge of the traffickers,
- lack of faith in the possibility of punishing the perpetrators,
- lack of awareness that they are victims of crime and that they are in danger of being used,
- distrust of authorities, fear of law enforcement,
- language barriers [5].

These all reasons described above can cause that it is highly likely if we ask a child directly if he or she is a victim of human trafficking, we can get the answer in the negative. That is why it is so important that the law enforcement officers be able to make the initial identification himself, and then know how to talk to the child.

Circumstances that should alert officers during various inspections or interventions:

- clear incompatibility of the physical characteristics of the minor and his parents, e.g. skin color, complexion – this may indicate that the child travels with strangers against his will and without his parents' knowledge,
- inconsistency of the minor's image with his photo on the travel document – this may mean that the perpetrators are using stolen documents or false documents and that the data entered in the document is not the child's data,

- lacking personal identification documents,
- a minor does not speak the same language as his guardians,
- visible drowsiness in the minor's behavior – the perpetrators could give him sleeping pills so that it would be calm and not attract the attention of other people and that it could not tell about what happened,
- controlling the behavior of a minor by his guardians, eg he is not allowed to answer questions himself,
- a noticeable high level of fear for a minor to unformed services.

And some more key indicators that can help recognize potential endangerment:

- a minor does not attend school,
- a minor does not have contact with his peers or have no time for playing with them,
- a minor is convinced that he has a debt to work off,
- a minor has contacts with the prostitution community,
- a minor has body marks that indicate that he may have experienced physical violence in the past,
- a minor wears clothes that do not match the season, e.g. wear long trousers or a blouse with long sleeves when it is warm outside - it may mean that he wants to hide injuries,
- a minor wears a child-sized clothing typically worn for doing manual or sex work or is engaged in work that is not suitable for children [6].

The occurrence of any of the above-mentioned situations does not mean that we are definitely dealing a victim of human trafficking, but it should increase the vigilance of law enforcement agencies. However, if we are convinced that we are dealing with a victim, we should separate minor from persons in the company of which he has stayed until now, if there is a suspicion that they may be perpetrators or their presence will be uncomfortable for a minor. Then in the first place, it is very important to provide child with medical help, in particular when he is injured or under the influence of alcohol or drugs. After that, if it is possible, we should conduct an interview with the child, which should be limited to establishing the most important facts and evidence. If the minor is a foreigner we should provide the help of an language translator, but the translator should not be a person accompanying a minor. And in the case of sexual crimes, it is the best that the interview should be conducted by a person of the same gender.

When it is confirmed that the minor is a victim of trafficking or it can not be excluded, further intervention measures should be taken to provide

him with appropriate care, including informing the minor about his actual and legal situation, about the institutions that can help him. We have to provide him with a safe place to stay, e.g. by requesting a family court to place him in a nursing and educational shelter.

We should start criminal proceedings at the same time. In this situation, the child will have the status of both the injured party and the witness at the same time.

2. Child victims of people trafficking according of Polish criminal procedure

Under the Polish Code of Criminal Procedure (hereinafter abbreviated as the CPC) [7] the injured person is a natural or legal person whose legal interest has been directly violated or threatened by a criminal offence (Article 49 § 1 CPC).

If the injured party is a minor, his rights shall be exercised by their statutory representative e.g. parents or by the person who has custody of the injured (Article 51 § 2 CPC). But providing a child victim of human trafficking with appropriate procedural representation can be problematic. Firstly because there could be an abuse of dependence by parents or legal guardians. Secondly because the victim is an unaccompanied by anyone, e.g. a foreign child. In such a situation, – according to Polish procedures – the Police, other law enforcement agencies or other public authorities should apply to the family court to appoint a legal guardian for the minor. During criminal proceedings, the legal guardian will accompany the minor in contacts with law enforcement and justice authorities.

A witness is a natural person who has information about the circumstances and facts relevant to the criminal proceedings [8], as well as any person summoned as a witness is obliged to appear and testify (Article 177 § 1 CPC).

Generally, according to the Polish criminal procedure, any person can be a witness, regardless of age, mental state or physical condition. So any child, even very young, can be a witness, as long as he is already able to communicate his observations.

In an ordinary situation e.g. in the case of theft, a child may be interrogated by any policeman, if possible in the presence of e.g. parents (Article 171 § 3 CPC). If the person giving testimony is not yet fifteen years old, procedures in which he takes part should, if possible, be conducted with the attendance of a legal representative or a de facto guardian, unless it is contrary to the interest of the proceedings). However, different procedures apply for child victims of trafficking.

Pursuant to Article 185a CPC there are some special procedures in cases involving the following offenses:

– committed with the use of violence of illegal threat (e.g. crimes against property committed by using force towards a person),

– against freedom (e.g. illegal imprisonment, human trafficking, recording a naked image without consent, stalking),

– against sexual liberty and decency (e.g. rape, sexual intercourse with a minor, forcing into prostitution),

– against the family and guardianship (eg. domestic violence, bigamy, evading the duty of alimony).

In this situations an injured party who at the moment of questioning is under 15 years of age shall be questioned in the capacity of a witness only once and only if his testimony could be of particular importance for the resolution of the case (Article 185a § 1 CPC). This means that if there is other sufficient evidence in the case, the child shouldn't be questioned at all. And it should be considered whether the testimony of a minor is so important that it cannot be replaced by other evidence.

3. Interviewing a child victims of people trafficking

In very exceptional situations, the code allows for second child interview. It can occur when significant circumstances are disclosed and there is a need of a repeated questioning to clarify them, or the accused who remained without a defence counsel during the first questioning of the injured demands so (Article 185a § 1 CPC). Re-interviewing a child is very controversial solution. The question is which is more important: the suspect's right to defense or the protection of the child. And it is difficult to answer this question. It would be the best if the suspected person have a defender already during the first interview, but very often it is impossible. In the vast majority of cases, proceedings are initiated when law enforcement authorities have fragmentary knowledge and there is too little evidence to allow charges to be brought to suspects. Despite everything it seems appropriate, however, not to conduct a second interview if it is not possible due to the current mental health or it is possible that the interrogation will have a negative impact on his current mental state e.g. if worsen the child's mental state.

The interview in this situation is always conducted by the court with the participation of an expert psychologist. No police officer or any other representative of law enforcement agencies may ever conduct the questioning. The right to participate in the questioning conducted by the judge have also the public prosecutor, the defence counsel and the attorney of the injured party. Legal rep-

resentative or a person, under whose permanent care the aggrieved party remains or an adult person indicated by child, has the right to be present, unless this restricts the freedom of expression of the person subject to interviewing (Article 185a § 2 CPC).

The interview of a child witness shall be recorded by means of image and sound recording equipment (Article 147 § 2a CPC). Thanks to it, the child is interviewed only once during the entire criminal proceedings and is no longer involved in court proceedings. The recording of image and sound of the questioning shall be replayed, and the record of the questioning read, at the main trial (Article 185a § 3 CPC).

A questioning in line with the procedure defined above shall be carried out in the premises adequately adapted for this purpose in inside the headquarters of the court or out of it (Article 185d3 CPC). These are the so-called a child-friendly interview rooms, in Poland called also «blue rooms». The conditions the premises shall meet are defined in the regulation of the Minister of Justice (hereinafter abbreviated as the «Regulation») [9].

Pursuant to the regulation, the interview room may be located at the court headquarter or outside it, in particular at the seat of the prosecutor's office, the Police headquarters, the seat of a state or local government institution or the seat of the entity whose tasks include assistance to minors, or at the seat of another entity, if it has an interview room which complies with the conditions laid down in the Regulation (Paragraph 6 of the Regulation). If it is possible, the interrogation room located in the court, prosecutors office or police building should have a separate entrance or be located in such a way that access to it is not through parts of the building where the defendants are detained or where are injured by other acts (Paragraph 7 of the Regulation).

The interview room should consist of two connecting rooms: one – the interview room – for child with judge and psychologist (also for a translator or parents) and the second one – the technical room – for other participants (prosecutor, the defendant's lawyer, a recording clerk). The rooms should be arranged in such a way that the people in the second room can observe the interview, including hearing what the child says and seeing how he is behaving during this time. This can be solved by having a one-way mirror between the rooms and/or by a live broadcast of the interview and the use of an electronic communication system. In the second case, the technical room may be located in a building other than the interview room (Paragraph 5 of the Regulation).

The interview room shall be equipped with technical means enabling recording image and sound of the interview; including questions to the witness and statements made by participants staying in the technical room (Paragraph 9 (1) of the Regulation). If necessary, the technical room or the interview room may be equipped with devices enabling the recording of the sound from the interview process on an additional medium (Paragraph 9 (2) of the Regulation).

The room for child should be decorated in soft, pastel colours and furnished comfortably. There should be furniture of various sizes, comfortable for adults, older and younger children. It also should be equipped with materials and objects helpful in obtaining information from children, in particular crayons, paper, as well as materials that allow you to reduce the sense of fear and tension in the witness, in particular a pillow, a cuddly toy (Paragraph 8 of the Regulation). Crayons and pencils can help in such a way that if a child is embarrassed to talk about what happened, he can draw it. Similarly, he can show it with dolls or hand puppets.

The procedure described above concerned interviewing children under the age of 15 and it is then obligatory. The Code states, however, that it can also be applied to older children shall be questioned in accordance with the same conditions, if there is a justified concern that the questioning in other conditions could have a negative influence on their psychological condition (Article 185a § 4 CPC).

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Conclusions

In conclusion, I would like to emphasize that the detection of child victims of trafficking in human beings depends on the vigilance, perceptiveness of law enforcement officers and the ability to talk to children. It's also important that the child feels good right from the start, so we can get more information from him and collect more valuable evidence that will help to find and convict the perpetrators.

Correct interview of children, however, is only a small step on the way to combat human trafficking. Areas where improvements should be made include:

- rising the awareness of people who may be at risk of being trafficked,
- raising the awareness of citizens so that they react to the noticed cases of trafficking in human beings,
- improving national and international collaboration and knowledge exchange among border control, law enforcement and child protection authorities to prevent and to combat trafficking in human beings.

Finally, it is worth recalling the words of Henrietta Fore UNICEF Executive Director, who said «Trafficking is a very real threat to millions of children around the world, especially to those who have been driven from their homes and communities without adequate protection. These children urgently need governments to step up and put measures in place to keep them safe [4]».

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