

*Petronella Deres, Szandra Windt* ■

The characteristics of trafficking in human beings in Hungary and Romania

Charakterystyka zjawiska handlu ludźmi na Węgrzech i w Rumunii

Abstract: Hungary and Romania are both origin and transit countries for victims of human trafficking, considering the lack of work opportunities and the deep poverty in some parts of these countries. The TIP Report¹ for 2019 lists both Hungary and Romania on the Tier 2 Watch List² for different reasons. National and international organisations report an alarmingly high number of trafficking cases in both countries, while the number of trafficking investigations and the sentences for these crimes are low. Since 2010, the leadership of the two countries has tried to meet American and European expectations through various measures. New laws have been created in both Hungary and Romania, and there are numerous regulations that deal with victims of trafficking in human beings (hereinafter: THB). This desk research study, based on a comparison of Romania and Hungary, provides insights into the characteristics of THB in these countries.

Keywords: trafficking in human beings, Romania, Hungary, exploitation, crime groups

Abstrakt: Węgry i Rumunia są uznawane zarówno za kraje pochodzenia, jak i kraje tranzytu ofiar handlu ludźmi. Wynika to z braku możliwości podjęcia pracy i głębokiego ubóstwa panującego

Dr. Petronella Deres, National Institute of Criminology, Hungary, deres@okri.hu, ORCID: 0000-0001-9357-4350

Dr. Szandra Windt, National Institute of Criminology, Hungary, windt@okri.hu, ORCID: 0000-0003-2928-5591

¹ The Trafficking in Persons (TIP) Report is an annual report issued by the U.S. State Department to monitor and combat human trafficking. The report divides countries into tiers based on their compliance with the standards outlined in the Trafficking Victims Protection Act (TVPA) of 2000.

² The Tier 2 Watch List is a list of countries whose governments do not fully meet the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards (USA Department of State 2019: 36).

w niektórych częściach tych krajów. W raporcie “Trafficking in Persons” (the TIP Report) za 2019 r., wydawanym przez Biuro ds. Monitorowania i Zwalczania Handlu Ludźmi Departamentu Stanu USA, oba kraje zostały wymienione wśród państw, które – pomimo podejmowanych wysiłków – nie spełniają minimalnych standardów określonych w *Trafficking Victims Protection Act*. Różne kraje i międzynarodowe organizacje informują o dramatycznie zwiększającej się liczbie przypadków handlu ludźmi w każdym z tych krajów, ale jednocześnie o niewielkiej liczbie prowadzonych postępowań karnych i skazań za to przestępstwo. Od 2010 r. rządy Węgier i Rumunii, wykorzystując różne instrumenty, starają się doprowadzić do implementacji amerykańskich i europejskich zaleceń. W każdym z tych krajów zostały wprowadzone nowe przepisy dotyczące postępowania z ofiarami handlu ludźmi. Analiza danych zastanych pozwoliła na charakterystykę i porównanie nowo przyjętych rozwiązań w obu państwach.

Słowa kluczowe: handel ludźmi, Rumunia, Węgry, wykorzystywanie, grupy przestępcze

Introduction

In the last 30 years similar changes have taken place in Hungary and Romania: economic and social difficulties following the political transformation. The trafficking in human beings is currently quite common in both countries.

These three decades can be divided into two major periods from the aspect of human trafficking in Hungary and Romania.

With the fall of Berlin Wall and the opening of the borders between East and West, trafficking from South and Eastern Europe and the former Soviet Union increased markedly... Some countries, such as Hungary... developed prolific sex industries, which involve trafficking or sexual exploitation. (Surtees 2008: 40)

The first 15 to 20 years were focused on joining the EU and catching up with the Western economy, then joining the Schengen Area and the economic crisis of 2009. While Hungary has been a member of the European Union since 1 May 2004, Romania became a member state on 1 January 2007. The inclusion of Romania in the Schengen Area is still to come.

The last 10–15 years have been characterised by meeting international expectations, taking steps to curb the spread of corruption (a major problem in these countries), and promoting the rule of law. Since EU accession, a significant proportion of the population in both countries has had access to free movement and employment in other EU countries, and there has been considerable emigration for the past decade and a half.

The 2009 economic crisis has left a mark on the economies of both countries, caused major social problems, and deeply affected the living standards of their populations: the ‘empty villages’ left behind by a migrant workforce following the

unemployment, the deprivation of material resources, and the proliferation of criminal groups exploiting vulnerable people without marketable skills.

Nevertheless, TBH is happening in both countries, and their citizens are both the victims and the perpetrators. It is therefore useful to look at the characteristics, similarities, and differences between the victims and perpetrators in the two countries and how the states have tried to put an end to it by legal means.³

1. Statistical background

The economic and social problems that followed the financial crisis in 2009 remain unsolved, in both Romania and Hungary. It is a very serious concern that many young people are dropping out of school; illiteracy and other poor life skills make potential victims even more vulnerable to accepting what seems like easy money. The exploitation of the vulnerability of people living in poor financial situations lies behind these problems, and it is precisely the impoverished regions of northern Hungary and southern Transdanubia that are the most susceptible.

However, there is a huge difference in the size of the populations of the two countries: while Hungary has fewer than 10 million inhabitants, Romania has nearly twice as many. Although the proportion of young people (between 0–14 years) is similar (Hungary: 14.3%; Romania: 15.2%), youth unemployment is very different: in Romania, it is almost double (17.3%) that of Hungary (9.4%). Another noticeable difference is the degree of urbanisation. The proportion of people living in urban areas is higher in Hungary (71.4%) than in Romania (54%). Romanian small towns and rural areas are much more likely to become a source of THB (Migration Data Portal 2019).

In 2017, more than one-third of the population was at risk of poverty or social exclusion in three EU member states: Bulgaria (38.9%), Romania (35.7%), and Greece (34.8%) (Eurostat 2019).

With an at-risk-of-poverty or social exclusion rate of 24.9% in the EU28, children were at a greater risk in 2017 than the general population (22.4%). This situation also existed in 19 of the EU member states. In the EU28, the largest gaps between the at-risk-of-poverty rates for children and the total population can be seen in Romania and Hungary (6.0% each) and Slovakia (6.2%) (Eurostat 2019). To outline the similarities and differences – without claiming completeness – we present some aspects below.

³ We would like to thank to Ágota Szekeres, who was an Erasmus+ Student at the National Institute of Criminology. Special thanks to the International Organisation of Migration Budapest (to the director, Balázs Lehel) and to Mircea Mocanu and Emma Smith (IOM Mission in Romania) for their kind help.

2. Criminological view

2.1. General overview

From a criminological point of view, human trafficking can be typified in several ways. It can be classified by type of exploitation, including sexual, labour, and other purposes. The point of departure may be where the crime takes place: within one country or internationally. Based on the age of the victims, the vulnerability of children should be particularly highlighted. Based on the gender breakdown, some forms of exploitation are gender-specific: a sexual purpose is typically used to harm women and girls, labour exploitation is more likely to harm men, and the other purposes (e.g. forced begging) are more likely to harm boys and men.

As with most crimes, statistics on THB do not necessarily reflect the reality. Data provision is not uniform across EU countries, and Hungary has not always provided the same data⁴ for the preparation of TIP Reports. Therefore, comparing the data requires some source criticism. What certain is that the Romanian raw numbers are orders of magnitude higher than those for Hungary.

Both cross-border and domestic exploitation are extremely common in both countries. Romanian and Hungarian woman are very famous as sex workers in large European cities. On the other hand, labour exploitation is also very common in these two countries. 'In 2019, the numbers show that 46% of the victims were trafficked inside the borders, while 54% of the victims were trafficked outside of Romania' (*Characteristicile victimelor* 2019).

Statistics on THB have only been collected by Eurostat statisticians at the EU level since 2010. According to Eurostat data, two-thirds of victims of THB were EU citizens (Romania, Bulgaria, the Netherlands, Hungary, and Austria) in 2013–2014, while less than half of them were in 2015–2016.

Unfortunately, 'the top five EU countries of citizenship of registered victims in 2015–2016 were Romania, Hungary, the Netherlands, Poland, and Bulgaria.' These are the same countries as in 2010–2012 in the first Commission Progress report (European Commission 2018: 13).

When the focus is on proportion (registered victims per million population), the top five member states for registered victims' country of origin in 2015–2016 are the Netherlands (72), the United Kingdom (54), Cyprus (53), *Hungary* (51), and Austria (44). When the focus is on absolute numbers of registered victims, the top five are the United Kingdom (7,071), the Netherlands (2,442), Italy (1,660), *Romania* (1,636), and France (1,516) (European Commission 2018: 14). Clearly, the citizens of Hungary and Romania are routinely victimised by THB at the European level.

On the other hand, Romanian criminal groups play a central role in THB at the EU level. The five member states with the highest number of reported persons

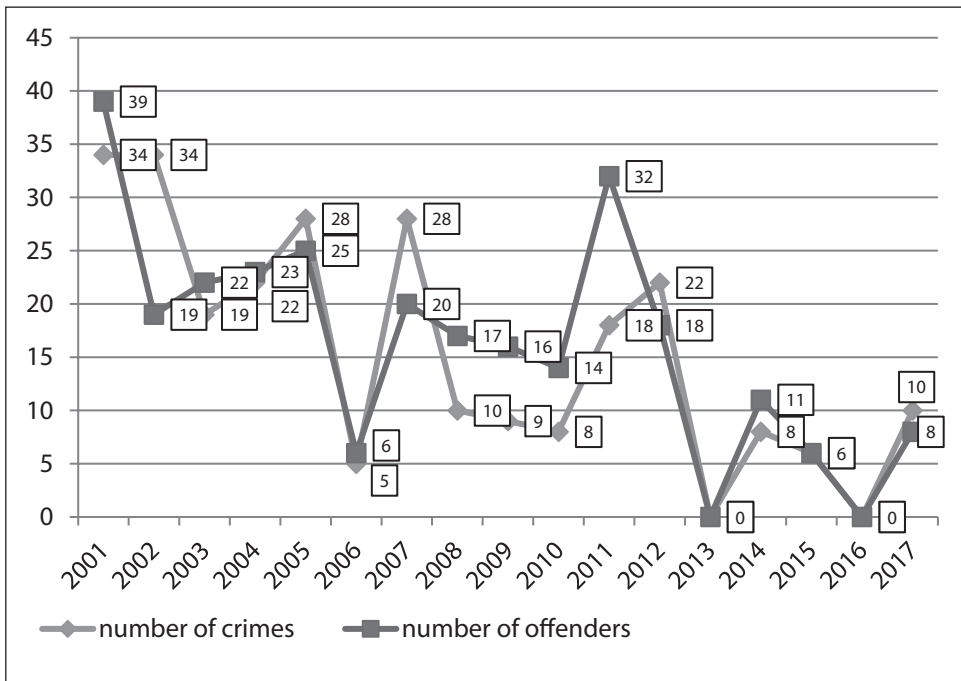
⁴ Numbers of total (closed) or newly registered cases.

suspected, arrested, or cautioned for THB in 2015–2016 were Romania (2,777), Germany (1,198), Czechia (1,148), Bulgaria (856), and France (465) (European Commission 2018: 15). The five EU citizenships with the most suspects in 2015–2016 were Romania (3,280), France (612), Bulgaria (337), Germany (314), and Latvia (161) (European Commission 2018: 15).

Among EU citizens prosecuted for human trafficking in the EU28 during the period 2015–2016, the countries with the greatest representation were Romania (44%), Hungary (28%), the Netherlands (5%), Italy (5%), and Lithuania (5%) (European Commission 2018: 16). Since 2010, three countries have consistently been in the top five: Romania, Bulgaria, and Hungary (European Commission 2018: 81).

Sexual exploitation was the most widespread form of exploitation identified in both countries in 2017, comprising 69% of the total. Romanian statistics show an increase in the number of victims being forced to steal.⁵

Figure 1. Hungarian data on Trafficking in Human beings between 2001 and 2017



⁵ Rising from 4 to 43 between 2016 and 2017 (Analiza 2017).

Although the international data paint a negative picture of the situation in Hungary, the Hungarian national criminal statistics from 2001 onwards show that the numbers are very low. Between 2001 and 2012 the *average* number of crimes and perpetrators of THB was about 20 per year; following the introduction of the new Criminal Code, it was about 5 between 2013 and 2017. The Hungarian law enforcement authorities are wary of applying the new fact on THB.

While in Hungary there were only about 10 registered cases in 2017 and 2018, in Romania

there were 1,598 criminal cases regarding human trafficking, child trafficking, and pimping. Of the 1,598 files in 2018, 498 were registered, concerning 884 perpetrators. According to the official data, in 2018 about 87 per cent of THB cases were registered for sexual exploitation, 8 per cent of cases for exploitation through work, and about 4 per cent for exploitation through begging. (Data from IOM Mission in Romania)

According to data on Eurojust's activity, only 5% of all cases dealt with related to THB in 2017. Of the 132 cases in 2017, most were initiated by Romania, the United Kingdom, and Bulgaria (so-called requesting member states). The most frequent requesting member states were Romania, Germany, and the United Kingdom. The Eurojust has nearly 400 THB cases and 62 joint investigation teams (26 new and 36 ongoing) (Eurojust 2018; 2020: 50).

2.2. Recruitment methods

The recruitment methods are very similar in these two countries, as mentioned above: the hope of a better life and the promise of quick income, especially coming from the mouth of an acquaintance, will always be enticing. Victims are mostly recruited by friends, acquaintances, or relations. 'Some recruiters were women who were encouraged by their recruiter/trafficker to invite their friends to also work abroad. Some recruiters/traffickers were male/female couples' (Surtees 2008: 44–45). It was very new in 2008, but by 2019 this had become an everyday recruitment method. 'Romania recruited victims who were known to them, although their relationship to the victim ranged from close (friend/family) to more distant (acquaintances)' (Surtees 2008: 52).

Romanian offenders prefer the following countries as destinations, including those parts of the country where Romanian communities are more concentrated: Italy, France, Germany, Spain, and the United Kingdom – in a different order to 2016.

In most of the cases, the recruiter approaches the victim directly, in face-to-face discussions. In 24% of cases, the recruiter presents some advantageous

work opportunities for the potential victim, both in Romania and abroad, while in 38% of the cases the recruiter offers the victim the possibility to practice prostitution, begging, or pornography.’ (*Caracteristicile victimelor* 2019)

According to ANITP (National Agency Against Trafficking In Persons) data from 2019, it is ‘noteworthy that 55% of the victims originate from rural areas.’

2.3. Victims

The situation of the Roma minority in both Romania and Hungary poses enormous challenges for the decision-makers of the two countries, and unfortunately they have been hit the hardest over the last 30 years. The Roma minority face huge problems: extreme poverty, social exclusion, and difficulties with education, employment, health, and housing conditions. The risk of marginalisation of Roma populations is very high in both countries. These findings show a correlation with the phenomenon of Roma being represented as both victims and offenders of THB. On the other hand, we must emphasise that the phenomenon is not only linked to the Roma. According to the TIP Report, minors represent nearly 50 percent of trafficking victims identified in Romania (USA Department of State 2019: 393).

The Hungarian Roma population was prominent in two counties in 2016: 19% of the Roma lived in Borsod-Abaúj-Zemplén, and 14% lived in Szabolcs-Szatmár-Bereg (60,000 and 45,000 people, respectively). These are also the main source countries for THB in Hungary (*Mikrocensus* 2016: 12).

In this type of crime, the offenders are mainly men (with some help from women, especially close relatives). The gender of victims depends on the type of exploitation: sexual exploitation is mainly committed against women, while the victims of forced labour and other exploitations are more often men than women.

As reported over the past five years, human traffickers exploit domestic and foreign victims in Romania, and they exploit victims from Romania abroad. Romania remains a primary source country for victims of sex trafficking and labour trafficking in Europe. Traffickers subject Romanian men, women, and children to labour trafficking in agriculture, construction, hotels, manufacturing, and domestic service, as well as forced begging and theft in Romania and other European countries. Traffickers subject Romanian women and children to sex trafficking in Romania and other European countries (*Analiză...* 2017).

Child abuse is widespread in both countries; their forced ‘release’ is one modus operandi, and, unfortunately, we have less information about the situation in Hungary than in Romania. Roma children in Romania, as young as 11 years old, are particularly vulnerable to forced begging and sex trafficking. Traffickers subject Romanians living in state institutions for the mentally disabled to undertake forced labour (USA Department of State 2019: 393).

According to migrationdataportal.org, child victims are much more frequent in Romania than in Hungary. The reason for this difference may stem from the dissimilar child protection systems. Although there is much room for improvement in Hungary, the country does have experience (Anghel, Herczog and Dima 2013).

Table 1. Proportion of child victims of trafficking identified by CTDC partners between 2002 and 2018

	Proportion of children among victims, by country of citizenship	Proportion of children among victims, by country of exploitation
Hungary	6.7%	4.3%
Romania	8.9%	8.8%

Source: migrationdataportal.org

The characteristics of child victims registered during the period 2015–2016 also vary according to their citizenship in the EU28. Nearly half of the registered child victims from the EU (647 out of 1,310) were from Hungary (647), with the Netherlands (255), France (191), Romania (86), and Croatia (27) being the most significant other countries. There were more child victims with EU citizenship (1,310) than with non-EU citizenship (643) or where citizenship was ‘unknown, stateless, or other’ (253). The gender of the child victims varied according to citizenship in the EU28 in 2015–2016 as well. Over four-fifths (84%) of the victims with EU citizenship were girls; girls made up just over half (54%) of the victims with non-EU citizenship and just under one-third (30%) of those whose citizenship status was unknown, stateless, or other (European Commission 2018: 92).

The five most common citizenships of EU suspects in child trafficking cases in 2015–2016 were Romanian (3,280), French (612), Bulgarian (337), German, (314) and Latvian (161). In the period 2010–2012, Eurostat found that the most frequent countries of citizenship of EU suspects were Bulgaria (1,230), Romania (1,209), Belgium (1,089), Germany (681), and Spain (396) (European Commission 2018: 122). Of those prosecuted for trafficking in 2015–2016 whose citizenship was known, 87% held EU citizenship; the countries that contributed most were *Romania* (44%), *Hungary* (28%), the Netherlands (5%), Italy (5%), and Lithuania (5%) (European Commission 2018: 127).

According to the TIP Report,

a large number of Hungarian child sex trafficking victims exploited within the country and abroad come from state-provided childcare institutions and correctional facilities, and traffickers recruit them when they leave these

institutions. Hungarian men are subjected to labour trafficking in agriculture, construction, and factories in Western Europe. Within the country, some Roma children are exploited in forced begging, child sex trafficking involving both girls and boys, and forced petty crime.' (USA Department of State 2019: 233)

Segregated and impoverished environments, where the risk of criminalisation is substantially higher, are identified as an additional risk factor in Hungary, Romania, and Slovakia (Dimitrova, Ivanova and Alexandrova 2015: 17; National Agency against Trafficking in Persons 2013).

Low levels of education, early school leaving, and high illiteracy rates – resulting from a history of social exclusion of the Roma and representing both the consequences and causes of poverty and unemployment – make parents and children less aware of the risks and potential facilitators of human trafficking and more susceptible to the traffickers' 'traps' (Dimitrova, Ivanova and Alexandrova 2015: 16). Roma constitute about 90% of the victims of trafficking for begging and pickpocketing, and the minority group is significantly overrepresented among victims of sexual exploitation. The significant share of Roma among trafficking victims calls for special attention to the factors that make members of this ethnic minority vulnerable to trafficking (Dimitrova, Ivanova and Alexandrova 2015: 14).

In Hungary, an important distinction is made between children used in begging by their mothers (who are usually between 0 and 5 years old), children begging alone but living in family environments (who are usually between 8 and 13), and children from institutions who practice begging from the age of 13 to 17 years (Dimitrova, Ivanova and Alexandrova 2015: 27).

3. Legal background

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000) and EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims defines the crime of trafficking in human beings (Europol 2016: 5).

In this study, we want to talk not only about the sociological/criminological characteristics of THB, but also to provide insight into the criminal (substantive) legal regulations of the two countries: unfortunately, we only have the opportunity to make a brief summary within the scope of this study.⁶

⁶ We note that, in terms of Romanian regulations, the study is based mainly on the available English-language academic literature.

Both the Hungarian and Romanian legislatures have built their respective criminal law(s) on THB on the model of the EU directive, although in different ways, as we will illustrate. Fundamental differences exist in the detailed regulations (it is worth exploring and analysing them in detail in further research in the future), but the essential identity exists.

Thus, based on our own conception, we review the criminal law part of the study according to the following key cornerstones⁷ in the regulations of both countries (first in Hungary, then in Romania): the legal context, the structure of criminal law cases concerning THB, a more detailed presentation of ‘basic cases’, and different interpretations of exploitation. Within the framework of this study, we sought a more descriptive comparison, but these comparisons may serve as a basis for an in-depth, international (possibly on the whole Carpathian region) comparative study in the future.

3.1. Hungarian perspective

Legal context

Hungary has made progress in the fight against human trafficking by following the recommendations of the Council of Europe (MTI-Hungary Today 2019). Vulnerable women trafficked for sexual exploitation by organised crime groups, identification of victims, and assistance and support are the key priorities of the Hungarian government and national NGOs, whilst combatting criminal groups or individual traffickers is passed on to the national law enforcement authority (Sharapov 2019: 41).

The domestic legal regulations against trafficking in human beings (and related phenomena) are rooted in the 19th century. The first Hungarian Criminal Code (Act V of 1878 – Codex Csemegi) did not contain specific provisions on trafficking in human beings, but it addressed issues that were later referred to in international conventions as trafficking in women and children.

In addition to the substantive and procedural provisions of criminal law, TBH is also covered by other legal acts in Hungary, and more than 90 legal acts and sources refer to it.⁸

⁷ These are the cornerstones on which additional regulation points and cases (which are only summarised in this study) are built.

⁸ Decision 1125/2019 (III.13) of the government on the measures necessary to increase the efficiency of combatting human trafficking (Action Plan), Act LXXXV of 2001 on the Protection Programme for those Participating in Criminal Proceedings and Supporting Jurisdiction (‘Witness Protection Act’), Act CXXXV of 2005 on Crime Victim Support and State Compensation, Government Decree No. 354/2012 (XII.13) on the identification order of victims of trafficking in human beings, Order No. 13/2014. (V. 16) of the National Police Headquarters on the police duties concerning the treatment of offences related to prostitution and human trafficking primarily serves uniformed police action against prostitution and victim protection tasks for police agencies, etc.

Furthermore, it should be noted that three recent innovative guidelines from the General Prosecutor's Office are outstanding in the field of THB and its criminal substantive and judicial issues in general (on the crime of THB in the light of international standards and the practical aspects of its application and on identifying victims of trafficking crimes, these victims are persons with special needs).

Under the Fundamental Law of Hungary, in the Chapter of Freedom and Responsibility:

'Article III (1) No-one shall be subject to torture, inhumane or degrading treatment or punishment, or held in servitude. Trafficking in human beings shall be prohibited' (see Gerencsér 2015: 319). This chapter of the Fundamental Law, along with the general provisions and other regulations, shows that the new regulation lays an emphasis on the role of the individual within the community, on the responsibility of individuals for themselves, and for the community (Vincze Ádány et al. 2015: 79). The Fundamental Law maintains and reaffirms such significance of dignity; its function – to protect individuals and equality – is upheld therein. Absolute prohibitions in connection with human dignity are also listed by the Fundamental Law, such as the prohibition of torture, inhumane and degrading treatment, human trafficking, medical experiments without consent, and of practices aimed at eugenics, any use of the human body or any of its parts for financial gain, and human cloning (Vincze Ádány et al. 2015: 83).

Changes in social and economic conditions require legislative answers and solutions, even if there is a need to find a legal solution to the problem of human trafficking: all forms of trafficking in human beings are prohibited in Hungary. The specific offence of trafficking in persons has existed since 1998, under crimes against personal freedom and human dignity. The background to the offence being established, according to the legislature, was primarily the obligations stemming from the Slavery Convention (signed in Geneva on 25 September 1926).

The law was amended as of 1 April 2002, as required by the requirements of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000). The basic case has been supplemented by a number of behaviours, the system of aggravated circumstances has changed, and the legislature has created new aggravated cases. Act C of 2012 (the new Criminal Code), which largely modifies the above regulation, mentions THB in Article 192. In order to comply with its obligations of legal harmonisation, the legislature also explicitly criminalises certain acts committed for the purpose of exploitation. It addresses THB and forced labour in the Special Part Chapter XVII (Offences against Personal Freedom).

In view of its obligations under international conventions, the Hungarian Criminal Code proscribes THB in great detail, as a violation of human dignity, personal freedom, and the right to self-determination (Belovics 2018: 187).

Table 2. Forms of Exploitation⁹ in the Hungarian Criminal Code

Form of exploitation	Criminal Code (Act C of 2012)
Sexual exploitation	§ 192 (2), §192 (5)d, § 192 (6)c, § 196, § 200–204*
Forced labour or forced service	§ 192 (2), § 193**, § 200–203, § 356***
Slavery or similar exploitation	§ 192 (2), § 193, § 356
Organ trafficking	§ 192 (3)f****, § 192 (4)b, § 192 (5)b, § 192 (6)a
Crimes committed by using a person (THB victim) (e.g. by the use of force)	§ 13 (2)***** (in CC General Part)

*§ 196 Sexual exploitation, § 200 Pandering, § 201 Procuring for Prostitution or Sexual Act, § 202 Living on Earnings of Prostitution, § 203 Exploitation of Child Prostitution, and § 204 Child Pornography. These offences are found in Chapter XIX (Sexual Freedom and Sexual Offences) of the Hungarian Criminal Code, which deals with offences against sexual morality and protects sexual freedom.

**§ 193 Forced labour in Chapter XVIII of the Hungarian Criminal Code

***§ 356 Unlawful Employment of Third-Country Nationals in Chapter XXXIV of the Hungarian Criminal Code (Criminal Offence-Related Administrative Procedures)

****§ 192, § 192 (3)f: ‘The penalty shall be imprisonment between two to eight years if trafficking in human beings is committed: [...] f) for the unlawful use of the human body.’ More about unlawful use of the human body: see § 175 Illegal Use of Human Body in Chapter XVI of the Hungarian Criminal Code (Medical Procedures and Criminal Offences against the Order of Research)

*****‘A covert offender is a person who instigates the commission of an intentional offence by using a person who cannot be prosecuted for reason of minority or insanity, or for reason of acting under undue influence by coercion or duress, or under misconception.’

Source: Emberkereskedelem elleni: 6

Here, we will point out that Act V of 2020 on the amendment of certain laws to prevent the exploitation of victims of human trafficking, unanimously adopted by Parliament on 10 March will take effect on 1 July 2020. From a criminal law perspective, one of the most prominent parts of the Act is the comprehensive reform of the facts of trafficking in human beings and forced labour.¹⁰

⁹ A wider context of exploitation: § 192 is supplemented in the system of the Criminal Code by the so-called prostitution-related parasitic offenses, sexual offenses, offenses relating to labor exploitation and other provisions for the protection of children.

¹⁰ Hungary’s National Strategy against Trafficking in Human Beings (2020–2023) and the action plan on measures to be implemented in 2020–2021 were adopted in February 2020 by Government Decision No. 1046/2020 (II.18). The new strategy has foreseen the improvement of the legal environment for combatting human trafficking, which aims to exempt minors providing sexual services from criminal liability and to criminalise the users of any services provided by the victims of trafficking (reduction of the demand side). The Criminal Code, the Act on Minor Offences, the Act on Organised Crime, and the Child Protection Act were amended with a view toward protecting children from sexual exploitation (source: <https://thb.kormany.hu/new-anti-trafficking-legislation-to-protect-minors>).

Characteristics of the basic case in Section 192 (1)¹¹

The basic case of THB beings criminalises acts without any other objective (means) or subject matter (exploitation purpose). The conduct of the basic case referred to in Para. 1 of Section 192 falls into two categories¹²:

- a) a human as a subject of 'trade in goods': a sale, purchase, or exchange for another person, the transfer or receipt of another person as consideration
- b) sui generis preparatory or sui generis aiding offences committed for the purposes referred to in paragraph (a) – the transport, harbouring, or sheltering of another person, the transfer of control over such a person.

ad (a)

Under the terms of civil law, for the purposes of sale and purchase, a seller is required to transfer ownership of the item, and the buyer must pay the purchase price and take possession of it. A common feature of property transfer agreements is that the actual principal service, the thing owned (or subsequently taken over) by the party providing the material service, is transferred to the other party for consideration (Bíró 2003: 14–30). However, although the subject matter of a sale may be nothing, the sale of a natural person is null and void under civil law and it is a criminal offence for the purposes of criminal law if the seller offers the passive subject for consideration (money or other property) to the buyer (Belovics 2018: 187).

During the exchange, the subject of the service and consideration is also the subject of a passive subject. The notion of swapping in this sense reflects the position of two or more individuals exchanging something, as in a barter deal (Czine 2011: 202). In the case of transferring or receiving as consideration, the consideration is not money, but other services. The person who transmits the natural person receives or has received a service and the consideration for it is the transfer of the person under his/her power, while the person providing the service receives a receipt (Belovics 2018: 188).

ad (b)

The acts listed here for the purposes of point (a) are intended to provide the conditions necessary for the commission of an offence. Transport is intending to change the location of the victim. Harbouring is the provision of accommodation for the victim (in any property owned or lawfully used by anyone). Sheltering the victim not only from the authorities or the victim's relatives, but from anyone else

¹¹ Act C of 2012 on the Criminal Code Special Part Chapter XVIII (Offences against Personal Freedom), Section 192 (1) Any person who:

- a) sells, purchases, exchanges, or transfers or receives another person as consideration; or
- b) transports, harbours, shelters, or recruits another person for the purposes referred to in Paragraph a), including the transfer of control over such a person; is guilty of a felony punishable by imprisonment not exceeding three years.

¹² See § 192 (1) in footnote 11.

(other traffickers) is factual (Gellér 2013: 278). Transfer of control over such person is a unilateral act that provides the perpetrator with control over the person of the passive subject that the perpetrator ultimately wishes to exercise for another acquirer (Karsai et al. 2019). This may include persuading the passive subject to go somewhere that provides direct access to the third party (Gellér 2013: 278).

Definition of Exploitation: Characteristics of Article 192 (2)¹³ and an assessment of the vulnerable situation

Some have argued in the literature that an aggravated case is created (Belovics 2018: 189) – and others that a new, stand-alone case is created (Gellér 2013: 280, Karsai et al. 2019) – if the conduct (‘sells, purchases, exchanges, supplies, receives, recruits, transports, harbours, or shelters another person, including the transfer of control over such a person’) is committed for the purpose of exploitation.

In this case, recruitment as an offence is also punishable here, in the factual situation of the crime. Recruitment is an activity designed to influence the victim’s decision to work with the offender or other person (e.g. as a prostitute or ‘employee’).

According to the memorandum on the Criminal Code, a vulnerable situation may be the result of one factor, or it may be triggered by a combination of several factors. Vulnerable situations may be brought about by the offender or they may exist independently of the offender, in which case the offence may be accomplished by maintaining it or preventing the already vulnerable situation from prevailing. According to Article 192 (8), ‘in the application of this Section, “exploitation” shall mean the abuse of power or of a position of vulnerability for the purpose of taking advantage of the victim forced into or kept in such situation.’ Guideline KSB 3771/2018/5-I of the Prosecutor General’s Office (on the crime of trafficking in human beings in the light of international standards and the practical aspects of its application) draws attention to the fact that Article 2 of the relevant EU Directive defines a vulnerable situation as one in which, in the absence of an actual or acceptable choice, a person is obliged to submit to the abuse. The guideline specifically emphasises that, according to both international and domestic definitions, ‘the consent of a victim of trafficking in human beings through the abuse of a vulnerable situation to intentional exploitation shall not be taken into consideration.’¹⁴

In the case of Article 192 (2) and related aggravated cases, special consideration shall be given to proving that this situation applies to the vulnerable victim.

The sanctioning against THB is more stringent when the victim is a person under the age of eighteen years, or fourteen years and the offence exhausts other

¹³ Act C of 2012 on the Criminal Code Special Part Chapter XVIII (Offences against Personal Freedom) Section 192 (2) Any person who – for the purpose of exploitation – sells, purchases, exchanges, supplies, receives, recruits, transports, harbours, or shelters another person, including the transfer of control over such a person, is punishable by imprisonment between one to five years.

¹⁴ Guideline KSB. 3771/2018/5-I. of the Prosecutor General’s Office (on the crime of trafficking in human beings in the light of international standards and the practical aspects of application) 2.

aggravating circumstances too (these are aggravated circumstances that exist in previous aggravated cases [in 192. § (3)]: e.g.: by force or by threat of force; by deception; by tormenting the aggrieved party; by a public official, acting in an official capacity; in criminal association with accomplices; on a commercial scale, etc.)¹⁵ (Belovics 2018: 190).

3.2. Romanian perspective

3.2.1. Legal context

National legislation for the prevention and fight against human trafficking was developed in early 2000, integrating several provisions from international conventions which had previously been ratified by the Romanian state, as well as European regulations (later – in the current national regulations – the EU Directive 2011/36). The specific regulations are to be found in Law 678/2001 on preventing and countering trafficking in persons (Tomşa et al. 2019: 24) and other national legislation related to THB.

In Romania, the new Criminal Code (286/2009 Law regarding the Criminal Code, published in the Official Gazette no. 510 on 24 July 2009 with subsequent additions and modifications) for the first time enshrines a distinctive chapter, in the special part, dedicated to crimes in the field of THB, i.e. Chapter VII – The Trafficking and exploitation of vulnerable persons from the 1st Title, Crimes against the person (Buzatu 2018: 226). In this chapter, the following acts are criminalised:

- Slavery – Art. 209,
- Trafficking in human beings – Art. 210,
- Under-aged trafficking – Art. 211,
- Submitting to mandatory or forced labour – Art. 212,
- Pandering – Art. 213,
- Exploitation for begging – Art. 214,
- Using a minor for begging – Art. 215,
- Using the service of an exploited person – Art. 216¹⁶, and
- Using infantile prostitution – Art. 216.

¹⁵ The sanctioning against THB is the most stringent in § 192 (6): the penalty shall be imprisonment between five to twenty years or life imprisonment if:

a) the criminal offense provided for in § 192 (2) is committed against a person under the age of fourteen years, and either of the aggravating circumstances under 192. § (3) apply;

b) the criminal offense provided for in § 192 (2) is committed against a person under the age of fourteen years, and results in particularly great damage or danger to life; or

c) the criminal offense provided for in § 192 (2) is committed against a person under the age of fourteen years for the purpose of child pornography.

¹⁶ Although the offence of mendicancy was decriminalised, three related offences that can be committed in connection with it were criminalised *ex novo*, in Arts. 214–216 of the Criminal Code.

3.2.2. Trafficking in human beings – Art. 210

Article 210 of the Romanian Criminal Code is a new criminal category, without an equivalent in the previous Criminal Code. With some modifications, it did have a corresponding provision in Article 12 (1) of Law 678/2001 – Law on preventing and combating human trafficking (Buzatu 2018: 227).

Pre-existing conditions

a) Legal object

According to Romanian doctrine (Boroi 2014: 22), the generic legal object of a crime is founded upon social relationships, the training, deployment, and development of which are conditioned by the existence of a human being. Given the importance of this value, its actual defence can only be achieved through effective combating, by means of criminal law, the main facts that tarnish human beings (Rusu 2015: 42).

The special legal object for this article consists of specific social relationships that are born and developed in relation to the protected value of this crime (Rusu 2015: 43). Thus, the special legal object is represented by social relationships whose existence and normal progress are conditional to the protection of individual freedom against acts of human trafficking (Serban 2015: 836). The material object is the body of the person towards whom any of the crimes are committed (Buzatu 2018: 228).

b) Active and passive subjects

The active subject of Art. 210 may be any person, physical (or even legal) entity; for the aggravated version, the active subject is a public servant. The passive subject is any person who is subjected to trafficking. A common factor for victims, as mentioned above, is their vulnerability (Buzatu 2018: 230).

The objective aspect

The offence is carried out in terms of a material element, through the following actions: recruitment, transportation, transferring, harbouring, or receiving persons for exploitation (Serban 2015: 836).

Recruitment consists of the identification of a person suitable for being exploited and making him/her become a victim of exploitation. Transporting consists of moving the victim from where he/she was situated to the place of exploitation, by a person described as the transporter, with the help of some means of transport. Transferring means the act of a person to dispose of and accomplishing the victim's movement from where he/she had been accommodated, hidden, or exploited to another place, even in the same town, with the same purpose. Harbouring is the act of providing accommodation or hosting space to the victim with the purpose of exploitation or facilitating his/her exploitation. Reception is the action of taking over, taking into possession, or taking into ownership the person to be exploited or to facilitate his/her exploitation.

In any of the five alternative cases laid out in Art. 210 Para. 1, the act represents a crime only when committed:

- a) by means of coercion, abduction, deception, or the abuse of authority;
- b) by taking advantage of the inability of a person to defend themselves or to express their will, or of their blatant state of vulnerability; or
- c) by offering, giving, and receiving payments or other benefits in exchange for the consent of an individual with authority over such person (Buzatu 2018: 230–231).

In all modes of the material element existence, the law requires as a prerequisite the connection of the proscribed action with the exploitation of the victim for the purpose of benefiting from it (Serban 2015: 836).

The subjective aspect

The crime is committed with direct intention, because an essential requirement of the purpose has the meaning of destination and is characterised by the material element and not by the subjective side (Buzatu 2018: 231). As Article 16 (3) states, an action is committed with intent when the perpetrator can foresee the outcome of their actions, in the expectation of causing such an outcome by perpetrating the act. Another point of view is that this offence is committed with direct or indirect intent, so motive is irrelevant (Serban 2015: 836).

3.3. Definition of Exploitation

The Romanian legislature did not include in the provisions of the new Criminal Code any definition of the term ‘victim of trafficking in human beings’ when the offence was criminalised; however, according to Article 182 of the same code, the exploitation of a person is explained through five different points (it is a complex definition, more comprehensive and nuanced than the one contained in the special law):

- a) performing work under forced conditions,
- b) slavery keeping,
- c) forcing the practice of prostitution or pornographic representations and any other forms of sexual exploitation,
- d) forcing the practice of begging, and
- e) illegal organ harvesting (Iovu 2015: 9).

This definition must be taken into account in its close connection with the definition of trafficking in human beings and trafficking in minors under the same code (Sarkis 2018: 189).

A phrase which is used for the first time in the Criminal Code and which is defined in the interpretive law contained in the general part of the code is that of

'human exploitation'. It has been shown in the doctrine (Lascu 2013: 41) that it is not the first time that this phrase has been used in Romanian law, since it is also contained in Law no. 678/2001 regarding the prevention and control of human trafficking, a law adopted by the Romanian state on the basis of some international documents and as a consequence of Romania's ratification of the Children's Rights Convention on the sale and prostitution of children and child pornography (Panainte 2014: 694). In Romanian law, the exact translation of this Convention was a significant challenge (e.g. the term 'harbouring', which has been changed several times over the years to make it more comprehensible), while the Hungarian legislature has added further acts to these five terms of the Directive. Romanian criminal law only punishes THB in the situation of exploitation and when two other conditions are met, whereas Hungarian criminal law is broader: the first case of THB (Art. 192 [1]) without a means and/or purpose of exploitation defines an extremely wide range of crimes.

Furthermore, as regards minors, it should be noted that trafficking in minors is an aggravating circumstance under Hungarian criminal law, while Romanian criminal law provides for this case as a separate criminal offence; however, in Hungary, certain qualified cases of THB are punishable even by life imprisonment, unlike under Romanian legislation.

Final Remarks

THB is a very complex phenomenon; it has changed much over the last three decades and it cannot be separated from some important changes that have taken place, not only in Romania and Hungary, but also in Europe. Although the phenomenon is present in both countries to a similar extent (poverty, social exclusion, the state and problems of minors, etc.), there are significant differences in its treatment, historical traditions, and systemic responses. There is an obvious link between the socio-economic problems of the two countries over the last ten years (as well as since the transformation after 1989) and the EU connection, which have caused this crime to gain ground.

It was evident that both Hungary and Romania face serious challenges in dealing with THB. Directive 2011/36/EU provided the framework for lawmakers in both countries, and they have tried to comply with it in different ways, as we have shown, but there are some further steps to be taken in order to use these laws more effectively. The numbers are expected to increase as latency decreases; the issuing countries will remain in this state until solutions to the root of the problem are found.

This comparison of these two countries is unique; we could not describe in detail other aspects in a paper of this volume, but it can be forwarded for further research.

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