

# HUMAN TRAFFICKING TRADE – A PARADOX OF FAITH IN THE EFFECTIVENESS OF THE LAW

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*Abstract: Human trafficking is one of the most shameful form of crime against humanity. Objectification of human and bring him/her only to economic value, negates the basic principles of humanity. The rules against the kidnappers have been introduced into the system of law, since the ancient times. Together with the growth of this phenomenon, there were implemented the international laws with the aim to combat these practices. The European Union is substantially contributing in this fight. Many analysts of law recognize the need to further modifying the existing EU, international, and national legislation, so that to give potential victims the adequate legal and institutional protection.*

*Keywords: EU law, international law, kidnapping, human trafficking, European law, prostitution.*

## 1. Introductory issues

The creators of content and form of the domineering ideology, which is the foundation of contemporary civilization<sup>1</sup>, quite often give the argumentations about its superiority above the past, particularly the Ancient Times and Medieval Period. Such the message undoubtedly has its origin in the Enlightenment period, and particularly in the ideology of French revolution. Its creators, according to plans, assumed the destruction of *ancien regime*, in other words, the old order, enrooted in the Ancient and Medieval conceptions of moral and social order<sup>2</sup>.

The significant element of new ideology is phraseological layer, applied mainly in mass media and influencing on the education. Since the French revolution, applying the dichotomy of underdevelopment and progress, illiteracy and enlightenment, irrationality and rationality, we have been allowed to build the society based on the opinion about their superiority over the past generations and earlier forms of society organization, without deeper reflection about the truth of such the dialectic assumptions. The new system of values, based on the anarchistic conception of freedom, fully expressed in the slogan proclaimed by one of the “leaders” of new culture “let’s do what we want”. In the culture, in media, or in education, the border between welfare and evil, or justice and injustice, is

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<sup>1</sup> Contemporary civilization, the so called western one, is the mixture of many thinking currents, with superiority of hedonistic ones. Providing for the basic human needs, such as boarding, rest, entertainment and sex is undoubtedly a positive idea. However, if a person has only these needs, it can impoverish him/her, or even demoralize. In the meantime, the media and educational message, from primary school, is gradually deprived of the possibility to provide for the higher needs, including the access to classical literary, and musical works, or to religious experience. To achieve this purpose, there are different methods applied, e.g., the stultification of religious opinions or religious behaviour, or having the free time for shopping, or mass culture, e.g. on Sunday, or on the other free time.

<sup>2</sup> See: P. Krajewski, *Cultural Values in Times of Globalization*. In: *Human rights, Spiritual Values and Global Economy*, B.Sitek, J. Szczerbowski, A.Bauknecht, G.Dammaco, Ecko House Publishing, South Jordan USA, pp. 394-398.

gradually disappearing. As a consequence, it becomes possible to treat a person as an object to realize uncontrolled behaviours, not seldom typical to inhuman individual<sup>3</sup>.

Such the atmosphere creates the feeling of integrity and generosity of the individual, independently on the moral evaluation of the actions. In the name of progress, there are justified the new individual and social offences. Only recently, the example is quite commonly, socially accepted, manifesting fascism opinions in Germany, or communistic opinions in Russia. The common acceptance of negative behaviour has its reflection in legal regulations, and as a consequence in the economy of both these political systems.

The growing phenomenon of human trafficking is one of the glaring example, and at the same time the negative result of our contemporary civilization. Relativized attitude towards the moral rules, particularly towards the human being as the highest value, visible in legalization of abortion, euthanasia, prostitution, drug smuggling, allows us to ask the perverse question, namely: Can the system of law create the growth of offences? Does the legalization of these phenomena lead to the growth of phenomenon of human trafficking? The paradox of the question about the law, results of the fact that, on the one hand, the legal human protection is stronger, particularly women and children, but on the other hand, the legalization of the phenomena treated as negative so far, opens the path, where the human being becomes a consumer, and at the same time, the good. This paradoxical question is fully expressed within the area of human trafficking problem.

The subject of this paper is to show the opposite side of civilization progress, knowledge and rationalism, and first of all the legal positivism. Changing the clothes, vehicles, phraseology, or argumentation have not changed the person and his/her aspiration to dominate over the other people, or to abuse them. The purpose of this work is the attempt to answer the question about contemporary legal or institutional solutions, are they sufficient enough to fight with human trafficking?

## 2. Characteristic of the phenomenon of human trafficking

The notion of human trafficking was defined in art.3 of Protocol on Preventing, Fighting and Punishing for Human Trafficking, particularly pregnant women and children. The protocol completes the United Nations Convention against international organized crime (accepted on 15<sup>th</sup> November 2000)<sup>4</sup>: *“human trafficking” means recruitment, transport, transfer, keeping or taking persons using threats, or violence or the other forms of enforcement, abaction, fraud, mystification, abuse of authority or use of weakness, giving or accepting payments or benefits to obtain the agreement of a person, who has the domineering power over the other person, to exploit him/her. Exploitation includes, as a minimum, using prostitution of other people or the other forms of sexual abuse, work or compulsory services, slavery, or practices similar to slavery, enslaving or removal of the organs.*

Although human trafficking is illegal, it became a well prospering business nowadays. The profits obtained from this procedure reach hundreds of millions zlotys. According to Sikora the turnovers from this business reach 39 billion dollars<sup>5</sup>, whereas,

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<sup>3</sup> Zob. B. Sitek, *Depodmiotyzacja człowieka wobec stopniowej legalizacji usług uprzedmiotawiających osobę ludzką*, [in:] *Wykorzystywanie człowieka w XX i XXI wieku*, edited by: B. Sitek and others, Olsztyn 2012, pp.249-263.

<sup>4</sup>O.J. from 2005 no.18, pos.160.

<sup>5</sup> D. Sikora, *Milczenie jest złotem – prawda o handlu ludźmi*. In: [http://wiadomosci.wp.pl/kat,1342,title,Handel-ludźmi-w-niewoli-moze-przebywac-nawet-27-mln-osob,wid,15836984,wiadomosc.html?ticaid=111325&\\_tictsrn=3](http://wiadomosci.wp.pl/kat,1342,title,Handel-ludźmi-w-niewoli-moze-przebywac-nawet-27-mln-osob,wid,15836984,wiadomosc.html?ticaid=111325&_tictsrn=3) [read: 2013-08-26].

according to the UN data this amount is only 14 milliard dollars. Independently on the real amount of turnover, human trafficking is the third after drugs smuggling and arms trade<sup>6</sup>. Thanks to the relativism, the moral norms, more and more diffuse the legal systems. This is a consequence of human objectifying and enslaving. Slavery, one of the most dishonorable, legal institutions over the history of mankind, was repeatedly suppressed or restored<sup>7</sup>. However, in the end, it was thrown and condemned at the beginning of the 20<sup>th</sup> century. Ban of slavery, and as a consequence human trafficking, was clearly abandoned in art.4 in Universal Declaration of Human Rights from 1948. Consequently, it is being abandoned in other international legal acts and national codes. There are many international and national institutions, and social organizations involved in human trafficking control.

Despite the legislative efforts, creating numerous specialistic institutions to fight with human trafficking procedure, this phenomenon still functions and develops. According to Babiak *the globalization size, still growing correlation and mutual associations among particular countries and regions caused, at the end of the 20<sup>th</sup> century and at the beginning of the 21<sup>st</sup> century, unprecedented propagation of this dishonorable phenomenon, which is human trafficking, what is evaluated in our contemporary world, as the most brutal and mass violation of human rights*<sup>8</sup>. In Second Vatican Council the human trafficking was qualified as the deed against human life<sup>9</sup>.

### **3. The real state of human trafficking**

The statistical data released by national and foreign research institutions is loaded with substantial mistakes. This is related with the fact of a big number of kidnappers, which are not revealed. Nevertheless, the analysis of collected data has to arise alarm. The real number is unknown because of numerous unrevealed cases, and because of more and more sophisticated forms of human trafficking, unheard so far.

Statistical data of Polish police says about 50 documentary cases of human trafficking (art.189a p.c.) over the years 2002-2012. Exceptionally in 2011 there were about 420 of such the cases. However, that data is significantly different, than the one given by the other research centers. According to the data published by the Institute of Social Protective Therapy and Rehabilitation of Warsaw University, this number is about 15 thousand cases<sup>10</sup>. In turn, according to Foundation Against Women Trafficking “La Strada”, this is only the top of the iceberg, in other words, the real number of such the cases.

This is significantly more difficult to set the number of human trafficking cases in the international arena. There are a great amount of reasons of such the situation, there are; the lack of such the statistics, the difficulties of the qualifications of the deeds, such as trafficking women or girls in matrimonial purposes, in some regions of Asia, Africa, or

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<sup>6</sup> N.O. Antoniuk, *Problem zabezpieczenia skuteczności karno-prawnych przedsięwzięć w walce z handlem ludźmi*. In: J. Bryk, I. Malinowska (eds), *Walka z handlem ludźmi w aspekcie współpracy międzynarodowej*. Polsko-Ukraińska wymiana doświadczeń i umiejętności praktycznych, Szczytno 2007, p.40 and following.

<sup>7</sup> One of the sources of slavery in the Ancient Rome was the war slavery. During the period of contemporary colonization, the main source of slavery was the abaction of the dwellers from Africa and Asia.

<sup>8</sup> A.W. Babiak, *Handel ludźmi: przyczyny I sposoby ochrony przed tego rodzaju przestępstwem*. In: J. Bryk, I. Malinowska (eds), *Walka z handlem ludźmi w aspekcie współpracy międzynarodowej*. Polsko-Ukraińska wymiana doświadczeń i umiejętności praktycznych, Szczytno 2007, p.28.

<sup>9</sup> Konstytucja Gaudium et spes, 27, In: Sobór Watykański Drugi. Konstytucje, dekryty, deklaracje, Paris 1967, p.563,

<sup>10</sup> See: *Handel ludźmi – statystyka*, In: [http://www.ipsir.uw.edu.pl/UserFiles/File/Katedra\\_Socjologii\\_Norm/TEKSTY/Statystyka\[1\].pdf](http://www.ipsir.uw.edu.pl/UserFiles/File/Katedra_Socjologii_Norm/TEKSTY/Statystyka[1].pdf) [read: 2013-08-26].

Oceania, among others. Hence, the data, given in the world scale, is significantly divergent. According to the International Migration Organisation this number is about 2 million, according to the Exeter University data, this is 7mln of cases, and according to International Labour Organization, we can say about 12million people, who became the trade goods<sup>11</sup>. In the latest publication about human trafficking, Sikora says even about 27 million of victims<sup>12</sup>. The estimated data is surely only the small number of a real number of victims.

The basic difficulty in defining the real number of human trafficking cases, and at the same time their enslavement, is the classification. The victims of human trafficking are mostly women and children. The basic purpose is prostitution or delivery of fresh “goods” to dynamically developing pornographic industry. There are different ways of the victims recruitment and their gradual enslavement. Apart from the cases of glaring freedom annexation and enforcing the victim to give sexual services, there are numerous cases of exploiting his/her difficult material situation. The human trafficking victims are also the men, who are exploited to hard works in agriculture, workshops, construction industry or heavy industry factories. Such the cases are more and more often presented in media. Another form of slavery is organized begging. The beggars are often forced to beg, and the “daily income” is taken by the criminal group. In Africa and South America there are numerous cases of kidnaping children to train them as soldiers of partisan’s groups or private armies. They are deprived, narcotized, similarly as the Christian boys taken into Tatar captivity by Turkish.

According to Hołyst *human trafficking is carried on individually, within the narrower range, and in organized groups of smuggler’s nets*<sup>13</sup>. In the first case, these are local groups, undertaking the activities on a small scale, not rarely in the border zone. Whereas, in the following case, we should say about the international groups, which organize recruitment and transfer from one country to the other, and even among continents. They have their recruitment agencies, prepared documents, means of transport and potential customers of “goods”. Human trafficking involves series of other offences at every stage. The recruitment of potential victims is often deceitful, e.g. through encouraging the potential victims to work in a restaurant, or picking up the fruit<sup>14</sup>. From the moment of taking control over the victims, they are raped, hit, intimidated, humiliated, and first of all deprived of documents, to make impossible to escape<sup>15</sup>. The documents are prepared illegally, often made by public corrupt official. On the similar basis the victims are transported, and then sexually exploited, or enforced to do hard works.

#### **4. The legal status-the international and Union law**

The human trafficking phenomenon is combated in the international and regional arena, e.g. the European Union and national arena. On all the areas there are established numerous legal regulations, and created specialized institutions, to fight with human trafficking. On the international arena the organs which release legal acts within this area are; the United Nations (UN), and the Organisation for Security and Co-operation in Europe (OSCE). The most important legal acts released by the UN are:

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<sup>11</sup> Ibidem.

<sup>12</sup> D. Sikora, *op. cit.*

<sup>13</sup> B. Hołyst, *Wiktymologia*, Warszawa 2011, p.1019.

<sup>14</sup> More about the methods of recruitment applied by the criminal groups see: N.O. Antoniuk, *op. cit.*, p.40 and following.

<sup>15</sup> B. Hołyst, *op. cit.*, p.1020.

- Protocol on Preventing, Fighting and Punishing for Human Trafficking, particularly pregnant women and children, which completes the United Nations Convention against the international organized crime (accepted on 15<sup>th</sup> November 2000)<sup>16</sup>. According to art.2, the purpose of this legal regulation is preventing and fighting with human trafficking, protection and help towards the victims of such the trade, and the cooperation with the countries to achieve these purposes.
- The facultative protocol for the Convention on the Right of Child on human trafficking affair, child' prostitution and pornography (accepted in New York on 25<sup>th</sup> May 2000)<sup>17</sup>. In this document (art.2), all the trade activities are penalized, which involve a child, e.g. illegal adoption, or sexual and pornographic exploiting.

In turn, the Organisation for Security and Co-operation in Europe published the decision no.557(OSCE) on 23<sup>rd</sup> July 2003, in which they accepted the activity programme on fighting with human trafficking<sup>18</sup>. The purpose of the decision is including the best practice into the activities' strategy against human trafficking, and to improve the cooperation between the Member States. The important element of the decision is to oblige all the OSCE organs to active participation in international efforts towards human trafficking fighting.

The most serious and detailed legal regulations within human trafficking fighting are prepared within the European Union. the Union legislation can be divided into three groups, i.e. the general regulations on fighting with human trafficking, the regulations concerning protection of children, and in the end women. The most important documents of general regulations are:

- The European Parliament and Council Directive [2011/36/UE](#) from 5<sup>th</sup> April 2011 on human trafficking prevention and fighting with this procedure, and protecting the victims, replaced the Council Decision 2002/629/WSiSW<sup>19</sup>. The directive defines common, minimum rules concerning human trafficking offences, their descriptions and punishing for them.
- The Council Decision no.2006/618/EC and 2006/619/EC, on behalf of European Community, from 24<sup>th</sup> July 2006, on deciding the Protocol on preventing, fighting and punishing the human trafficking, and particularly women and children, completing the United Nations Convention against international organized crime. On behalf of the European Union (EU), The Council Decision ratified the protocol, which completes the United Nations Convention against international organized crime. It was accepted by the United Nations General Assembly on 15<sup>th</sup> November 2000, concerning human trafficking.
- The Council Decision 2006/616/EC and 2006/617/EC from 24<sup>th</sup> July 2006 on ratifying the protocol against migrants smuggling on land road, sail route, and sky way, completing the United Nations Convention against international organized crime. The purpose of that protocol is preventing the migrant smuggling, combating it and supporting the cooperation with the countries within this domain. The signatories countries have to give the deeds, listed beneath, the character of criminal offence, if they were committed to achieve material or financial benefits.

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<sup>16</sup> O.J.2005 no.18, pos.160.

<sup>17</sup> O.J.2007 no.76, pos.494.

<sup>18</sup> Content of the decision see: [http://www.kcik.pl/doc/OSCE\\_Action\\_Plan-Polish\\_version.pdf](http://www.kcik.pl/doc/OSCE_Action_Plan-Polish_version.pdf) read:2013-08-29].

<sup>19</sup> O.J. E.U.L101 from 15.4.2011.

- The European Union Council Directive 2004/81/EC from 29<sup>th</sup> April 2004 on permission to stay given to citizens of the third countries, who are the human trafficking victims, or being the subject of actions towards illegal migrations, who cooperate with proper organs. This Directive constitutes the completion of numerous means on the European level, addressed to human trafficking combat, including the Council frame decision 2002/629/WSiSW on human trafficking fighting, and the Council directive 2002/90/EC, defining illegal entry, transit and staying. This Directive defines the conditions of granting the contemporary residential papers to the third countries citizens, who became the victims of human trafficking, or they are the subject of actions towards illegal immigration, and who cooperate to fight with such the crimes.
- The Framework Council Decision 2002/629/WSiSW from 19<sup>th</sup> July 2002 on human trafficking combat. The framework decision has its purpose to unify the European Union (EU) legislation and the Member States regulations within the police and judicial cooperation on criminal affairs associated with human trafficking. The further purpose is implementing the European Union (EU) joint framework regulations, to solve the problems concerning: crimes, punishments and the other sanctions, incriminating circumstances, jurisdiction and extradition.
- Charter of Fundamental Rights from 2000, in art.5,item3, it is stated that, *Human trafficking is abandoned*;
- The European Union Council Framework Decision 2003/68/JHA from 22<sup>nd</sup> December 2003 on fighting with children sexual exploiting and children pornography.
- The European Union Plan accepted by the Council on 1<sup>st</sup> December 2005, based on the European Communities Commission. It is referred to the best practice, standards and procedures within human trafficking fighting and preventing it.

There can be also indicated the other European Union recommendations, constituting the policy of human trafficking fighting. The European Council also approved the decision on fighting with the human trafficking procedure. On May 2005 in Warsaw there was signed the Council of Europe Convention on activities against human trafficking<sup>20</sup>. According to the resolutions, the Member States are obliged to:

- Prevent and fight with human trafficking procedure,
- Create the general framework plan to protect and help the victims and witnesses,
- Assure the successful investigations and prosecutions on human trafficking procedures.

In subject convention there is emphasized making the appropriate decisions to reduce the possibilities to expose the children on becoming the trafficking victims. This assignment is particularly executed by creating the preventive surrounding for the children and providing the trafficking victims the special preventing measures, taking into consideration their best interest.

## **5. Institutions and Union programmes**

The Commission Decision 2011/502/EU from 10<sup>th</sup> August 2011 constituted the Group of Experts on Human Trafficking, and at the same time it was appealed from the Decision 2007/675/EC<sup>21</sup>. The assignment of the Group is advising the Commission in all

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<sup>20</sup> [http://www.kcik.pl/doc/Konwencja\\_Rady\\_Europy\\_w\\_sprawie\\_dzialan\\_przeciwno\\_handlowi\\_ludzmi.pdf](http://www.kcik.pl/doc/Konwencja_Rady_Europy_w_sprawie_dzialan_przeciwno_handlowi_ludzmi.pdf) [read:2013-08-29].

<sup>21</sup> O.J.E.U.L 207 from 12.8.2011.

the affairs related with human trafficking fighting. The particular assignments of the Group is first of all preparing the written opinions on the human trafficking affairs and providing the common attitude towards the problem, supporting the Commission in evaluating political development within this domain on national, European and international levels, and trying to identify all the possible measures to undertake, and taking part in discussions forum on the subjects associated with human trafficking.

The European Parliament and Council Decision no.779/2007/EC from 20<sup>th</sup> June2007 constituted the detailed programme for the years 2007-2013 to prevent and fight with violence against children, teenagers and women, and on protecting the victims and risk groups (Daphne Programme III) as a part of general programme “Fundamental Rights and Justice”. The purpose of Daphne III programme is preventing and fighting with all the violence symptoms (physical, sexual, and psychological), both in public and in private spheres, towards children, teenagers, and women, and also protection of victims and risk groups. It completes the programmes existing in Member States and is based on the policies and purposes defined in two earlier Daphne programmes (Daphne I and Daphne II)<sup>22</sup>.

The Commission 2003/209/EC, from 25<sup>th</sup> March 2003 decided to create the Group of Experts on humanitarian treatment. The assignment of the Group is the analysis of difficult cases of human rights violations. This group promoted; programme STOP I directed to people responsible for fighting with inhumane treatment of people and sexual children exploiting, programme Daphne related with the ways of fighting with violence against children, women and teenagers, and programme AGIS related with judicial and police cooperation in criminal cases.

#### **6. The legal status – Polish law**

Polish legislator defines human trafficking in art.115 of penal code (here p.c.)<sup>23</sup>. According to paragraph 22 of the article, human trafficking means recruitment, transport, delivery, transfer, keeping, or entertaining people using:

- 1)violence or illegal threats,
- 2)kidnapping,
- 3)deceit
- 4)misleading, or taking advantage of the mistake or inability to proper perception of undertaken activity,
- 5)abusing the dependence relationship, taking advantage of the critical position or helplessness ,
- 6)giving or accepting the material profit, or personal gain, from a person looking after, or supervising another person.

Further, in paragraph 22, the legislator defines the activities mentioned above, namely; abusing, even according to the agreement, particularly in prostitution, pornography, or the other forms of sexual exploiting, at work, or in compulsory service, in begging, and in slavery. Additionally, the purpose could be exploiting human dignity, or, the wish to gain cells, tissues, or organs, despite of the regulations of the legal act.

Human trafficking penalization is included in article 189a c.c., according to which, if somebody permits human trafficking, he/she is subject to imprisonment punishment for the period not shorter than 3 years. Preparing to commit such the deed is also punishable in the same way. Hence, if somebody prepares the crime commitment,

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<sup>22</sup> O.J.EU L 173from 3.7.2007.

<sup>23</sup> O.J. from1997 no.88, pos.553.

he/she can be imprisoned for the period from 3 months to 5 years. Polish criminal law in art.203 c.c. predicts also the sanctions for persuading the prostitution, which, in particular situations, meets the criteria of human trafficking definition<sup>24</sup>.

The obligations of Poland to protect the people, who are suspected to be human trafficking victims, constitutes Foreigners Law from 13<sup>th</sup> June 2003<sup>25</sup>, with later amendments, and the Law Protecting Foreigners on the Polish Republic Territory<sup>26</sup>, with later amendments. According to these legal acts, the person, who is the trafficking victim, or, who is suspected to be such the victim, has the right to obtain the staying visa for the necessary time to make the decision about the cooperation with proper organ to carry out proceedings to combat human trafficking, for the proceedings period, and the permit for temporary staying in Poland.

### **7. Dilemmas between law and reality**

Presented human trafficking facts and legal regulations referred to preventing and penalizing such the activities arise the question about the reasons of such significant increase in number of human trafficking. Strong, positive faith in law and public institutions effectiveness, in this case, does not mean the real effectiveness of legal and institutional instruments. The legislative and political intentions and plans do not bring effects. The question arises about the reasons of such the state of affairs. Hence, at the beginning of this paper, there was stated the problem of contemporary paradox of faith in law effectiveness, at least within the area of human trafficking combat<sup>27</sup>.

Numerous legal, international regulations, regional (European), national, and created public and social institutions, give at least the psychological impression of security. This quite illusory calmness is disturbed by alarming article containing statistical data, or stories of the victims of human trafficking, and people who were lucky to survive in "hell". However, this information, in comparison with the avalanche of information and programmes supporting prostitution for example, do not have any respond, let's say, in a form of social discussions.

The paradox of faith in law, undoubtedly has many reasons. However, the most important one is the result of joining the conception of welfare state with the conception of liberal state, the state of law. In the state of law the legal norms are certainly respected, and it is treated as a social virtue, without any reflection about their value, and the effects of real legal solutions. Hence, there is necessary, the short characteristic of the system of law, in connection with the phenomenon of human trafficking.

First of all, the contemporary legal regulations do not create coherent and legal system. What is more, different legal systems interfere on each other, e.g. the continental with Anglo-Saxon, or Muslim<sup>28</sup>. More and more often the legal regulations are created by the people who are not the lawyers, but the specialists of any domains, and even the

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<sup>24</sup> See: I. Dawid-Olczyk, A. Dośpiał (pub.), *Handel Ludźmi. Informacje o zjawisku*, Warszawa 2004,p.68and following.

<sup>25</sup> O.J. from 2003 no.128, pos.1175.

<sup>26</sup> O.J. from 2003 no.128, pos.1176.

<sup>27</sup> The question about law effectiveness, and at least the faith in it, is asked by many thinkers in relations to the other problematic areas, e.g. S.L. Stadniczeńko, *Przerwać eskalację nienawiści, pogardy do innego człowieka. Czy rozwiązania prawne w zakresie ochrony wolności, myśli, sumienia, religii i przekonań są wystarczające?* In: S.L. Stadniczeńko, S. Rabiej, *Urzeczywistnianie wolności przekonań religijnych i praw z niej wynikających*, Opole 2012, pp.53-87.

<sup>28</sup>See:T. Stawecki, *Konwergencja i dywergencja porządków prawnych w sferze tworzenia prawa*, [in]: O. Nawrot, S. Sykuna, J. Zajdło, (red.), *Konwergencja czy dywergencja kultur i systemów prawnych?* Warszawa 2012, p.34and following; J. Wróblewski, *Zasady tworzenia prawa*, Warszawa 1989,p.9.



politicians without appropriate preparation. As a consequence, the legal systems are not encapsulated, particularly within the national level. As a result, there are many functioning, normative solutions, concerning; human trafficking among others, which are not coherent, and at the same time difficult to execute. This situation is becoming worse and worse, because of the lack of the uniformed, international system of prosecuting the human trafficking culprits.

This situation is getting worse and worse because the legal norms are subsidiary to the economic needs of the state. The welfare state, which limits the rule of subsidiarity, needs more and more financial means to execute the election promises, to satisfy the postulates of trade unions, or social minorities. In turns, the state of law needs the resources to develop the institutions and clerical system, necessary to control the law respect. But also this system, has to be controlled by the next clerical construction, resulting in following expenditures from public resources.

The growing budget deficit in most of the countries from western culture, makes the governments tolerate or legalize the actions, so far morally impossible to accept, such as prostitution, or drugs smuggling. Legalization of such the phenomena is relatively easy in the environment of moral relativism, or separation the legal norms from the moral system originated from religion, particularly Christianity<sup>29</sup>. There is accepted the thesis about human freedom, his/her choices, including the state of humiliation. Such the moral order does not consider the state of economic enforcement for the person, who does not have means for supporting his/her family and children. In the face of such existential lacks, the person agrees to enter the world without any moral rules, particularly without the respect towards the human being. Legalization of prostitution, or drugs smuggling has to arise surprise, also from the perspective of numerous legal regulations towards women and children protection. Inconsistence among the regulations concerning human rights protection, moral norms, particularly Christian ones, and the economic needs, is becoming more and more noticeable.

The increasing number of human trafficking cases, should be also related with the integration tendencies, particularly with cancellation of state borders. If something is undoubtedly good for an ordinary person, for example the possibility of free movement among the states, for the organized crime, it means the occasion to achieve more benefits from human trafficking.

Legalization or tolerance of prostitution phenomenon is legally supported also by the Human Rights Tribunal. On 16<sup>th</sup> December 2010 in case C-137/09 Marc Michel Josemans v. Burgemeester van Maastricht the Tribunal stated that human trafficking is forbidden. Prostitution, is however, the exception, which is legally accepted in some countries. The tribunal stated in justification to the sentence, that: (item 77) *prostitution, excluding human trafficking, is not forbidden by international law, or by the Union law. Prostitution is tolerated and regulated in numerous member states*<sup>30</sup>. However, the Tribunal statement is not precise, because prostitution has many forms. The simple division is voluntary prostitution, which means that the person, a woman or man, voluntary decides to do it, without any enforcement, and the involuntary prostitution, which means that the person is physically or psychologically enforced to do prostitution. Therefore, the involuntary prostitution is a kind of human enslavement and a form of “live goods trafficking”.

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<sup>29</sup> See: M. Chmieliński, *Moralność a prawo w doktrynie polityczno-prawnej Immanuela Kanta*. In: J. Justyński, A. Madej (red.), *Moralność i władza jako kategorie myśli politycznej*, Warszawa 2011, p.239 and following.

<sup>30</sup> See: Similar sentence from 20<sup>th</sup> November 2001, C-268/99 Jany and others, Rec. p. I-8615, item 57.

Consequently, is there the prostitution, or drugs smuggling legalization, the appropriate decision?

Despite the legislative and institutional efforts, the human trafficking phenomenon does not decrease, but increases. Such the situation undoubtedly results of moral relativism, general acceptance of the behaviours, morally negatively evaluated so far, and in the end, their legalization. The legal systems become incoherent. The offenders' world takes advantages of the legal gaps, and the integration processes, but also, of the legal regulations and economic crisis.

## 8. Conclusion

Contemporary civilization changes lead to broaden the consciousness about the growth of the phenomenon and the negative results of human trafficking. The noticeable signs are more and more numerous legal regulations, which penalize this phenomenon in the international, regional (Union), and national arena. Hence, in this paper, there are presented the most important solutions; international, European, and Polish ones. There should be mentioned about creating numerous institutions specializing in preventive actions, and offering help to human trafficking victims. Within the European Union there was implemented the system of information exchange and judicial cooperation.

Despite the numerous legislative and institutional actions, the number of human trafficking cases does not decline, but year after year it grows. According to numerous research centers, the revealed cases are only the top of the iceberg. The real number such the cases is not revealed, but we can say about hundreds of millions cases yearly. The number of cases and the tragic fortune of kidnapped people, resulted in the decision of Second Vatican Council, that human trafficking is the deed against human life, not only the symptom of human rights violence.

Presenting the revealed human trafficking cases, and unsuccessful intention of the legislator to limit this phenomenon, arises the question about the reasons of such the situation. First of all, there should be indicated too strong faith towards the legal regulations. Hence, we can say about the paradox of faith in law, which does not execute the expected intentions. The lack of successful law should be related with the postulate of the division between the legal and moral norms, particularly the Christian ones. The excessive material needs of public administration and the whole society create the need to search new budget incomes. They are searched in the areas, which according to traditional conception, were evaluated as disreputable. The legalization of prostitution and drug smuggling, undoubtedly contributes to new occasions of human trafficking. Favourable is also cancelling the borders and consequently the borders' controls. The freedom of movement should be the positive element of civilization development, but it is used by international organized criminal groups, for human trafficking. It seems to be necessary to implement better control, therefore, using the latest invigilation methods. The new international, regional and national legal regulations should be directed into human trafficking combat.

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