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THE ROLE OF LAW ENFORCEMENT INSTITUTIONS IN PREVENTING AND COMBATING THE CRIME OF HUMAN TRAFFICKING

Preliminary remarks

The existing law enforcement system in Poland, including the prosecutor's office, the Police, the Border Guard, and the Internal Security Agency, as well as other statutory services responsible for preventing and combating crime, in the era of the ongoing globalisation process, and at the same time, European integration, had to face an ever evolving type of crime in the form of human trafficking, considered to be a modern form of slavery. Although slavery is now banned in all countries of the world, in fact, it is practised everywhere. In the second half of the 20th century, Poland was initially almost exclusively a country of origin of victims used primarily in prostitution in Western Europe. However, over time and especially after incorporation into the European Communities, and then the Schengen Area, our country began to play the role of a transit state for victims from beyond the eastern border (mainly from Russia, Belarus and Ukraine) and also a final destination country. This definitely enlarged the list of tasks for public authorities, which apart from the effective prevention of exploitation of their own citizens abroad, also had to protect potential victims of exploitation on our own territory and monitor the flow of victims through our country².

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² Lasocik Z, *Badania nad środkami zmniejszenia popytu w celu zwalczania handlu ludźmi dla celów pracy przymusowej poprzez zaangażowanie sektora prywatnego* (Research on measures to reduce demand to combat trafficking in hu-

Undoubtedly, the evolution of the crime of trafficking in humans, both in relation to the forms and the role which Poland began to play in this area, was a factor determining the way law enforcement agencies operate. In addition, Poland was obliged to perform the tasks arising from international obligations, in particular the signing of the Protocol on the prevention, combating and punishment of trafficking in human beings, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime adopted by the General Assembly of the United Nations on November 15, 2000³ and resulting from the obligation to transpose the relevant provisions contained in Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims⁴.

Conducting preparatory proceedings in cases of human trafficking also required appropriate legal instruments contained in particular in the Penal Code, presenting both the legal definition of 'trafficking in human beings' (from 2010), as well as the entire system of penalties and penal measures, and the Code of Criminal Procedure, specifying the principles of conduct for investigations, including the rules of collecting and taking evidence.

The leading legal role of the prosecutor

The prosecutor's office plays a foremost role among law enforcement agencies in combating the phenomenon of human trafficking. In the scope of initiating and conducting preparatory proceedings for the crime of trafficking in human beings, the prosecutor is the only procedural body authorised to issue decisions on its commencement (Article 305 (3)

man beings for forced labor through the involvement of the private sector) [in:] a report commissioned under the project 'Improving Poland's capacity to prevent trafficking in human beings', implemented by the Polish Ministry of the Interior with The Council of Europe, as part of the 'PL15 - Cooperation in the Schengen area and the fight against cross-border and organized crime, including trafficking and migrant crime groups' program in the Norwegian Financial Mechanism 2009-2014, April 2016, pp. 7-8. See also: Lasocik Z, Handel ludźmi jako przestępstwo i naruszenie praw człowieka – wyzwania dla kryminologii, (Trafficking in human beings as a crime and violation of human rights - challenges for criminology). *Archiwum Kryminologii (Archives of Criminology)*, 2007, Vol. XXVIII, pp. 233 ff.; Łyżwa A, Handel ludźmi. Studium prawno-kryminologiczne (Human trafficking legal and criminological study). Olsztyn, 2019, pp. 351 ff.

³ Protocol on the prevention, combating and punishment of trafficking in persons, in particular women and children, supplementing the United Nations Convention against Transnational Organised Crime adopted by the United Nations General Assembly on November 15, 2000, OJ 2005 No. 18, item 160.

⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, pp. 1-11.

of the Code of Criminal Procedure). The crime of human trafficking belongs to the category of cases where an investigation is an obligatory form of preparatory proceeding (Article 25 (1) item 1 of the CCP in connection with Article 309 (1)). The prosecutor is also in principle entitled to carry out an investigation (Article 311(1) of the Code of Criminal Procedure), although in practice, given the need to carry out many activities, both procedural and operational, the prosecutor entrusts them in whole or in part to other authorised bodies, such as the Police or Border Guard. The prosecutor may, however, reserve certain procedural activities of significant evidentiary value for personal conduct.

Keeping in mind the current legal regulations contained in the Code of Criminal Procedure and the Act of 28 January 2016 – Law on the Prosecutor’s Office⁵, it should be noted that the main legal responsibility associated with conducting and supervising preparatory proceedings in cases of trafficking in human beings lies with the prosecutor. It is the prosecutors authority to make the decision on the initiation of an investigation, even if other procedural bodies, having conducted appropriate screening or preparatory processes, decide accordingly to refuse initiation or to discontinue the investigation, because their decisions are in each case subject to final approval by the prosecutor (Article 305 (3) of the Code of Criminal Procedure). The prosecutor is also the only procedural body authorised to bring and support before the competent regional court an indictment against perpetrators of trafficking in humans, and also to prepare and bring forward all appeals.

It should be added that the National Prosecutor’s Office has a special Department for Organised Crime and Corruption, competent in cases of prosecuting trafficking in human beings. Additional support in these cases while conducting and supervising investigations regarding the crime in question, as well as performance of the function of public prosecutor in court, are attended to by the External Branches of the Department for Organised Crime and Corruption of the National Prosecutor’s Office, operating via regional prosecutors’ offices. On the other hand, coordinators for preparatory proceedings in cases of human trafficking were appointed in regional and district prosecutors’ offices, with a task to collect data on all cases related to this category of offence⁶.

The Department for Organised Crime and Corruption of the General Prosecutor’s Office, with a view to developing a uniform practice in the field of detection and prosecution of trafficking in human beings, put forward a document entitled ‘Guidelines on conducting preparatory proceedings in cases of trafficking in human beings’, which has subsequently been updated a number of times⁷. Additionally, the Act of 13 June 2013

⁵ Ustawa z dnia 28 stycznia 2016 Prawo o prokuraturze (Act of 28 January 2016 Law on the Prosecutor’s Office), Dz.U. 2019, poz. 740.

⁶ Lyżwa A, *Handel ludźmi. Studium ...*, *op cit.*, pp. 352 ff.

⁷ Wskazówki dotyczące prowadzenia postępowań przygotowawczych w sprawach o handel ludźmi, PG III PZ 404/12/14 z dnia 27 maja 2014 (Guidelines on conducting preparatory proceedings in cases of trafficking in human beings).

on 27 January 2014 on amending the Act – Criminal Code and the Regulations – Code of Criminal Procedure⁸, provisions of Article 185a of the Code of Criminal Procedure, and Article 185b of the Code of Criminal Procedure, and on May 1, 2014, the Act of December 12, 2013 on foreigners⁹ entered into force. The indicated provisions have the rank of guidelines of the General Prosecutor, regarding the methodology of conducting preparatory proceedings, and therefore they are binding on all bodies authorised to conduct those proceedings. Importantly, the document cited characterises not only the statutory features of the crime of trafficking in human beings, but also features of crimes directly related, such as: forced prostitution - Article 203 of the Penal Code, procurement of, and trading in a minor - Article 204(3) of the Criminal Code, production, recording, import, storage, or possession or distribution or presentation of pornographic content with the participation of a minor, or related pornographic content presenting violence, or the use of animals - Article 202(3) of the Criminal Code, recording pornographic content involving a minor under 15 years of age - Article 202(4b) of the Penal Code, production of pornographic content depicting a generated or processed image of a minor participating in a sexual activity - Article 202(4) of the Penal Code, and recording the image of a naked person - Article 191a(1) of the Criminal Code. It should be emphasised that the guidelines in question are not only a collection of methodological recommendations for prosecutors conducting cases against human trafficking, the use of which is obligatory, but are also a concise compendium of knowledge about the phenomenon itself, which is one of the most urgent challenges to be faced by contemporary law enforcement agencies.

The Department for Organised Crime and Corruption of the National Public Prosecutor's Office conducts activities in the following areas, as part of its duties related to tracking and coordination, concerning cases of trafficking in human beings:

- 1) carrying out activities under official supervision;
- 2) collecting information on any ongoing preparatory proceeding, related to trafficking in human beings and illegal adoption;
- 3) modelling law enforcement practice in the aforementioned area;
- 4) cooperation with governmental bodies and state institutions;
- 5) international cooperation.

It should also be emphasised that a representative of the Department of Organised Crime and Corruption of the National Prosecutor's Office is a member of the Inter-ministerial Team for Combating and Preventing Trafficking in Human Beings, the opinion-giving body of the Prime Minister. They also participate in the Working Group operating within this team and expert groups for: supporting victims of trafficking in human beings,

⁸ Ustawa z dnia 13 czerwca 2013 o zmianie ustawy - Kodeks karny oraz ustawy - Kodeks postępowania karnego (Act of 13 June 2013 amending the Act – Criminal Code and the Regulations – Code of Criminal Procedure), Dz.U. 2013, poz. 849.

⁹ Act of 12 December 2013 on foreigners, Journal of Laws of 2013, item 1650.

preventing trafficking in human beings, collecting statistical data on human trafficking, as well as developing a new algorithm of conduct for law enforcement officers in the event of uncovering a human trafficking crime. The Department for Organised Crime and Corruption of the National Public Prosecutor's Office also deals with training, education and cooperation with scientific institutions related to the issues of preventing and combating trafficking in humans¹⁰.

Extensive Police involvement

The Police is another important entity in the area of preventing and combating the phenomenon of trafficking in human beings. Pursuant to the Act of 6 April 1990 on the Police¹¹, their basic tasks include: the protection of life and health of people and property against unlawful attacks violating these goods (Article 1(2)(1) of the Act). Therefore, ensuring immediate safety to a person affected by human trafficking and their relatives is one of the basic tasks of the Police. Pursuant to Chief of Police ordinance in force No. pf-810 of July 15, 2005¹² on the methods and forms of protection granted by the Police to endangered individuals, it is the task of specialised Police units to provide this protection. The last of these documents is, however, classified and the scope and manner of providing this assistance cannot be the subject of analysis in this article.

A pioneering institution, created strictly for the purpose of combating trafficking in human beings, was established on the basis of the decision of the Chief of Police Commander of September 5, 2006, and was the Central Police Branch for Combating Human Trafficking at the Police Headquarters. From January 2011, the Central Team was in the structures of the Central Bureau of Investigation, and by the decision of the Chief of Police of January 22, 2014, the current Department for Combating Trafficking in Humans was created in its place, and is now located in the Criminal Bureau of the National Police Headquarters. The tasks of this department include, in particular:

- 1) Organising, supervising, coordinating, and supporting the implementation of cases conducted by Police units and organisational units in the field of combating human trafficking and related crimes;
- 2) Supervising, coordinating, and supporting the implementation of cases conducted by Police organisational units, and units related to combating paedophilia and child pornography;
- 3) Formation of methods of combating crime in the scope of the department's competences on the basis of internal analyses and findings, as well as information provided by Police organisational departments and units;

¹⁰ Wskazówki dotyczące prowadzenia postępowań przygotowawczych

¹¹ Act of 6 April 1990 on the Police, consolidated text, Dz.U. z 2019, poz. 161.

¹² Confidential legal act, unpublished.

- 4) Cooperation in the scope of the department's jurisdiction with legal protection bodies, public administration and state control, non-governmental and social organisations, and public utility institutions;
- 5) Maintaining international cooperation within the competence of the department;
- 6) Participation in national and international conferences, symposia and seminars, and training in the area of the department's competence;
- 7) Organisation and participation in the professional development of police officers in the field of the department's competence;
- 8) Conducting operational and reconnaissance activities in the scope of the department's competence.

Additionally, there are full-time human trafficking combat teams in every district in our country operating within the criminal divisions of the provincial police headquarters and the Warsaw Police Headquarters. The teams are responsible for identifying victims of trafficking in human beings, and supporting subordinate units in this respect, as well as conducting operational activities in terms of revealing the crimes of human trafficking. From March 2011, also in the regional structures of the Central Investigation Bureau, there are active part-time coordinators designated to fight human trafficking.

The Department for Combating Trafficking in Human Beings supervises and coordinates the work of human trafficking combat teams (established on the basis of Order No. 14 of the Police Commander-in-Chief of June 10, 2015 regarding certain tasks performed by the Police in the areas of recognising, preventing, and detecting trafficking in human beings and other prohibited connected acts¹³) in criminal departments at the provincial police headquarters, as well as relevant coordinators in uniformed police departments. Provincial Police teams designated to fight human trafficking have the task of applying the solutions adopted in the 'Procedures of conduct for law enforcement officers in the event of detection of a crime of trafficking in human beings', conducting reconnaissance, monitoring potential places of trafficking in humans and participating in international operations and trainings related to combating human trafficking¹⁴.

On September 22, 2016, the Police Commander-in-Chief issued Order No. 14 on the performance of certain tasks by the Police in the field of the detection of trafficking in human beings¹⁵, which defines the established

¹³ Zarządzenie nr 14 Komendanta Głównego Policji z dnia 10 czerwca 2015 r. w sprawie niektórych zadań wykonywanych przez Policję w zakresie rozpoznawania, zapobiegania i wykrywania przestępstwa handlu ludźmi oraz innych czynów zabronionych z nim związanych (Regulation No. 14 of the Police Commander-in-Chief of 10 June 2015 regarding certain tasks performed by the Police in the field of recognising, preventing and detecting the crime of trafficking in human beings and other prohibited acts related thereto), Dz. Urz. KGP, poz. 40.

¹⁴ Łyżwa A, Handel ludźmi. Studium ..., *op cit.*, pp. 360-361.

¹⁵ Zarządzenie nr 14 Komendanta Głównego Policji z dnia 22 września 2016 r. w sprawie wykonywania przez Policję niektórych zadań w zakresie

structures in the Police designated to combat trafficking in humans, and the activities to be performed in relation to the identification of victims of human trafficking. In light of these provisions, the tasks of the unit in the criminal police service at the provincial police headquarters include specifically:

1. Detection of human trafficking;
2. Supervision and coordination of the tasks performed by the district police headquarters and the police organisational units subordinate in the field of detection of human trafficking;
3. Identification and support of the process of identifying victims of trafficking in human beings, carried out by a unit or a coordinator in a criminal service in subordinate organisational units of the Police;
4. Cooperation with a competent organisational unit for combatting trafficking in humans at the Police Headquarters;
5. Cooperation and exchange of information with other units or coordinators in organisational units of the Police;
6. Participation in international operations, in particular participation in joint investigation teams set up to detect trafficking in human beings;
7. Cooperation with non-police entities;
8. Organisation and conduct of local training activities for criminal service police officers in the field of detection of human trafficking (§ 5 of the ordinance).

The ordinance also indicates tasks in relation to the unit or coordinator in the criminal service in provincial police headquarters, the coordinator in uniformed service in province and district police headquarters, and a unit or coordinator in the investigation service (§ 6-9 of the ordinance). It also defines the tasks of the Police in the field of identification of victims of trafficking in human beings, providing that in the event of obtaining information concerning a person who is presumed to be a victim of trafficking in humans, the police officer procures a service note, and the information it contains is subject to appropriate verification, and depending on the results, relevant operational, reconnaissance or trial activities are conducted (§ 10 of the ordinance). The management of its scope also includes issues related to the conduct of further necessary actions, indicating that in the event of obtaining evidence of a crime of human trafficking, the Police shall forward it without any delay to the competent local organisational unit of the prosecutor's office in order to take a decision on:

1. Interviewing of the victim by the prosecutor;
2. Applying to the court with a request to hear a witness pursuant to Article 316 (3) of the Code of Criminal Procedure, if there is a danger that it might not be possible to question the individual at the trial;

wykrywania handlu ludźmi (Regulation No. 14 of the Police Commander-in-Chief of 22 September 2016 on the performance of certain tasks by the Police in the field of detection of trafficking in human beings), Dz. Urz. KGP, poz. 61.

3. Applying to the court with a request to question a minor victim who at the time of the interview is under 15 years of age, pursuant to Article 185a of the Code of Criminal Procedure;
4. Applying to the court with a request to question a person presumed to be a victim of human trafficking, pursuant to Article 185c of the Code of Criminal Procedure, if the person is simultaneously a victim of offences under Article 197–199 of the Penal Code;
5. Initiation of an investigation (§ 11 of the ordinance).

It should be highlighted that since 1999, the Police have been participating in the Working Group on Trafficking in Human Beings, in accordance with the resolution of the Interpol General Assembly¹⁶. Its composition consists of both representatives of the Police, as well as prosecutors and judges. The task of this group is to work on new legal regulations regarding trafficking in humans, as well as to develop new methods to combat this crime and to facilitate cooperation between states in conducting specific preparatory proceedings. In addition, it is worth noting that the Police take action against illegal migration and trafficking in human beings in cooperation with Europol, where a strategy of fighting against human trafficking has been developed for Member States. The Border Guard takes part in operations related to battling illegal migration on the Polish side, while activities related to trafficking in human beings are carried out by the Police. Police officers from the Police Headquarters take part in the Task Force on Organised Crime, operating in the Baltic Sea region 'Baltcom' and the Council of Baltic Sea States¹⁷. As part of the cooperation, a Group of Experts on combating trafficking in humans was created, with tasks that include the coordination of operations of services of the countries of the Baltic Sea region. A representative of the Bureau of Tactics for Combating Crime from the Police Headquarters also participates in the work of the said group¹⁸.

Attention should also be called to the participation of the Police in the work of the Team for Combating and the Prevention of Trafficking in Human Beings, which is chaired by the Undersecretary of State in the Ministry of the Interior and Administration, while the deputy chairman is the Deputy Chief of Police.

In order to prevent, detect, determine the perpetrators, as well as obtain and record evidence of a crime of trafficking in humans, the Police may use various methods of operational work, indicated in the Act on the Police, including the operational control or secret purchase, sale or takeover of items originating from offences that are forfeited, or the production, possession, transportation, or trading of which is prohibited, as well as the acceptance or giving of financial support (Article 19 of the Act).

¹⁶ Resolution AGN/69/RES /3.

¹⁷ Lasocik L, *Handel ludźmi - zapobieganie i ściganie* (Trafficking in human beings, prevention and prosecution). Warsaw, 2006, p. 244.

¹⁸ Lasocik Z, *Handel ludźmi - zapobieganie ...*, *op. cit.*, p. 244.

Therefore, it should be noted that the Police currently have at its disposal appropriate legal and organisational tools to prevent and combat human trafficking as part of independent actions, as well as in cooperation with the Border Guard and other state and social institutions, and further, as part of international cooperation.

Crucial Activity of the Border Guard

The Border Guard is another important entity in the fight and counteraction of the phenomenon of human trafficking. In accordance with Article 1 (1) of the Act of 12 October 1990 on the Border Guard¹⁹ it is a formation intended for the protection of the state border, border traffic control, as well as the prevention and counteraction of illegal migration. The tasks of the Border Guard include, in particular, protection of the state border on land and sea, the organisation and carrying out of border traffic control, prevention and counteraction against illegal migration as well as the identification, prevention and detection of crimes and offences, and the prosecution of perpetrators within the scope of the competence of the Border Guard - including offences of trafficking in human beings (Article 1 (2) of the Act). It shall be highlighted here that this institution has the powers of the Police to the extent specified by law (primarily in the light of Article 312 of the Code of Criminal Procedure). The Border Guard can undertake action throughout the country. The range of its tasks and competences makes it both a state administration body and a law enforcement agency.

On May 1, 2014, the provisions of the Act of December 12, 2013 on foreigners came into force²⁰, which introduced a number of new regulations in the area of proceedings involving foreigners, including victims of human trafficking. The entry into force of this law was of fundamental significance. It was associated with the amendment to the Act on the Border Guard, which gave the force a legal card to recognise, prevent and detect crimes of trafficking in human beings and slavery, along with the ability to prosecute the perpetrators. Before the said date, the Border Guard, by carrying out operational and investigative activities relevant to crimes of trafficking in human beings, was obliged to demonstrate the concurrence of this practice with 'cross-border crimes' (e.g. illegal migration). Despite the statutory changes, due to the earlier execution of tasks in the area of fighting human trafficking practises, the organisational structure of the Border Guard remained unchanged²¹.

¹⁹ Ustawa z dnia 12 października 1990 o Straży Granicznej (Act of 12 October 1990 on the Border Guard), Dz.U. 1990 Nr 78, poz. 462 ze zm.

²⁰ Act of 12 December 2013 on foreigners, OJ of 2014, item 1650, as amended.

²¹ Niepublikowany dokument Komendy Głównej Straży Granicznej (Unpublished document of the Border Guard Chief Headquarters) (obtained by the author by way of access to public information), nr BOI, KG-OI-III.0180.11.2019.P.K., Warsaw 2019, p.1.

Within the structure of the Operational Investigation Board of the Border Guard Headquarters in the Department I dedicated to Combating Organised Crime, there is a Section for Illegal Migration and Trafficking in Human Beings, and a part-time head coordinator for human trafficking issues. In each of the nine branches of the Border Guard, there are part-time coordinators and deputy coordinators for combating trafficking in humans (currently about 30 officers in total). The manner of carrying out tasks involving prevention and combatting of human trafficking is specified in the 'Procedures of conduct in the event of disclosure of a victim of human trafficking'²² which makes it an auxiliary instrument that defines the actions to be taken by an officer of the aforementioned body in the event of uncovering a trafficking victim.

The key role in combating trafficking in human beings and identifying its victims is played by the following departments of the Border Guard: border, operational and investigative, and foreign affairs. Despite the formal separation of the competences of each of the above departments, all officers, in fact, cooperate with each other in order to carry out the imposed tasks. An example is the substantive support provided in practice by officers of the operational and investigative department to officers of the foreign affairs department in the process of preparation for the conduct of activities in the field of migration recognition²³.

As a result of the implementation of strategic undertakings in the area of human trafficking, the Border Guard participates (as one of many entities involved) in enterprises resulting from the National Action Plan against Trafficking in Human Beings²⁴. In relation to the above, since 2008, the Central Border Guard Headquarters has had a Team for Permanent Monitoring and Coordination of BG actions in the field of preventing and combating trafficking in human beings. The tasks of this team include: — Coordination of the implementation of projects resulting from the National Plan for combating and preventing trafficking in human beings by the Border Guard;

²² *Ibid.*, p. 2.

²³ Kłos A, *Zwalczanie procederu handlu ludźmi przez Straż Graniczną RP w odniesieniu do zorganizowanych grup przestępczych z udziałem osób narodowości romskiej* (Combating trafficking in human beings by the Polish Border Guard in relation to organised criminal groups involving Roma nationals), unpublished master's thesis, affiliated to the Police Academy in Szczytno in 2016, p. 33.

²⁴ The National Action Plan Against Trafficking in Human Beings is the basic government document regarding the functioning of the system of combating and preventing human trafficking in Poland, obliging its addressees to perform specific tasks in the field of combating the trafficking of humans. Its addressees are individual and central administration units as well as other institutions and non-governmental organisations voluntarily involved in activities against human trafficking in Poland. The tasks provided for in this document are financed from the state budget. *Electronic source*: <https://handelludzmi.eu/hl/baza-wiedzy/krajowy-plan-dzialan>, accessed: 10.01.2020.

- Ongoing monitoring and analysis of cases of human trafficking revealed by the Border Guard;
- Participation in the effort of the working group formed as part of the team set up by Order No. 23 of the Prime Minister of 5 March 2004 on the Creation of a Team for Combating and Preventing Trafficking in Human Beings with the Ministry of the Interior;
- Initiation and coordination of the Border Guard activities in combating human trafficking and offences other than those indicated in the National Plan for preventing and combating trafficking in humans, including training projects;
- cooperation with the Ministry of the Interior and Administration, the Police and other state administration bodies, as well as non-governmental organisations.

Until the end of 2018, the Plan implementation and its monitoring system was based on the activities of the Inter-ministerial Team for Combating and Preventing Trafficking in Human Beings, of which the Chief Commander of the Border Guard (or their authorised representative) was a member. Since this team has been disbanded, work is currently under way to create an intra-department team, which, in addition to representatives of the Ministry of Interior and Administration and representatives of the Border Guard and Police, will include representatives of the National Prosecutor's Office and relevant ministries. In addition, it should be known that a representative of the BG participates in meetings of the so-called expert and working groups operating under the aegis of the Ministry of Interior and Administration. The Border Guard is also involved in the activities of voivodeship teams for trafficking in human beings²⁵.

At the working level, the Border Guard interacts in particular with the Police, and the Ministry of Interior and Administration, and also with non-governmental organisations that carry out tasks commissioned by the Ministry of the Interior and Administration (currently the 'La Strada' Foundation Against Trafficking in Human Beings and Slavery, and the 'Po MOC' Association for Women and Children under the name of Saint Mary). It also cooperates with the International Organisation for Migration (IOM Poland) in the area of arrangement of the voluntary return of foreigners (including victims of trafficking in human beings) to their country of origin or a different safe country²⁶.

An important legal act regulating the cooperation between the Border Guard, and the Police is still the current Agreement No. 8 of the Chief of the Border Guard and the Police Commander-in-Chief of 17 June 2004 on cooperation between the Border Guard and the Police²⁷. Joint activities

²⁵ Niepublikowany dokument Komendy Głównej Straży Granicznej, p. 2.

²⁶ *Ibid.*, p. 3.

²⁷ Raport o stanie bezpieczeństwa w Polsce w 2016 roku (Report on the state of security in Poland in 2016). Warsaw, 2016, p. 109. *Electronic source:* https://archiwumbip.mswia.gov.pl/bip/18405_Security-report.html, accessed: 10.01.2020.

of both services are aimed not only at the prevention and counteraction of trafficking in human beings, but also combating border crime and criminal activities in the border area and on the territory of the Republic of Poland, in particular, illegal migration and smuggling of goods, without the required excise tax stamps²⁸.

An equally important aspect of the Border Guard's actions in connection with the performance of tasks related to the detection and prosecution of perpetrators of human trafficking, which should also be given special attention, is the training system for officers of this entity. The institution has been operating, since 29 December 2010, on a four-level 'System of training for Border Guard officers in the field of trafficking in human beings', under which specialised coaching is carried out from basic level I to expert level IV. Currently, tutoring in this area is conducted in the form of refining training workshops, whereas basic information on trafficking in humans is provided to officers in Border Guard training centres²⁹.

The Border Guard involvement in international cooperation focused on preventing and combating the phenomenon of trafficking in human beings is also worth highlighting. As part of this cooperation – implemented at the strategic level – the Border Guard participates in projects organised by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (e.g. developing manuals on the profiles of risk of human trafficking). At the same time, the Border Guard got involved in expert workshops organised by Europol on the preparation of Operational Action Plans (OAPs) for the EMPACT Priority 'Trafficking in Human Beings', developed as part of the European Union Security Policy Cycle regarding serious and organised cross-border crime for the years 2014-2017.

At the working level, in the course of specific actions focused on human trafficking, the Border Guard cooperates with liaison officers from other countries. What is more, at the operational level, the Border Guard cooperates with Europol and Interpol.

It cannot be omitted that the Border Guard, carrying out statutory tasks as a law enforcement entity, in addition to evidentiary activities realised as part of preparatory proceedings, also conducts various forms of operational (classified) work, regulated, among others by the Act on the Border Guard. In particular, they are used to determine whether the trafficking in human beings takes place within an organised criminal group, and in the event of confirmation of such a fact, actions are taken to identify and disperse the criminal structure of the group that committed the aforementioned crime. In this case, officers strive to disclose the network of connections, identify members of the group (with particular emphasis on its management), determine the material benefits obtained via the

²⁸ *Ibid.*

²⁹ Niepublikowany dokument Komendy Głównej Straży Granicznej..., *op cit.*, p. 3

crime, as well as possible connections with officials or law enforcement officers³⁰.

The Border Guard also plays an extremely important role in the process of identifying victims of human trafficking from among the ranks of foreigners who have illegally entered Poland. In particular, attention should be focused on the practical application of the provisions of chapter 9 of the Act on foreigners, 'Stay on the territory of the Republic of Poland of foreigners who are victims of human trafficking', bearing in mind the context of the Border Guards' right to issue certificates of the presumption that a given person is a victim of trafficking in humans (Article 170 of the Act) or participation in the procedure of issuing a temporary residence permit, in the event of cooperation of a foreign trafficking victim (Article 176 of the Act) and withdrawal of this permit (Article 180 of the Act).

Satisfactory legal instruments contained in the Border Guard Act, the Foreigners Act, and the Code of Criminal Procedure, consequently make the Border Guard one of the key law enforcement agencies in the fight against the crime of human trafficking. This role is mainly associated with the ability to properly fulfil the tasks of identification of victims affected by human trafficking based on the complete legal standards in force in the area of focus. It should not be forgotten then, that in numerous cases of illegal border crossing by citizens of foreign countries (mainly from outside of the European Union) border guards will indeed be the first contact for potential victims of this crime.

Summary

Without a doubt, the Polish law enforcement system has the right instruments, at both the legal and institutional levels, to effectively prevent and combat the crime of trafficking in human beings. The legal regulations in force in Poland, incorporated into the system of EU law, provide the authorities with the opportunity to take a number of appropriate actions, both of a procedural and operational nature, to efficiently identify potential threats and to undertake accurate countermeasures. Not without significance is the fact that Polish institutions in the form of the prosecutor's office, the Police, and the Border Guard, carry the main burden of the struggle against the phenomenon, and currently they have real possibilities of cooperation not only in the national dimension, but also in the EU and international ones. It is not disputable that since crime related to human trafficking is, in principle, of a cross-border nature, it is necessary to intensify the cooperation of institutions on the international stage,

³⁰ Kowalczyk S.A, Działania realizowane przez Straż Graniczną RP w związku z ujawnianiem ofiar oraz ściganiem sprawców procederu handlu ludźmi (Action implemented by the Polish Border Guard in connection with the disclosure of victims and the prosecution of perpetrators of trafficking in human beings), unpublished master's thesis affiliated with the Police Academy in Szczytno in 2016, p. 44.

which is a *sine qua non* condition leading to achievement of measurable effects in this area.

References

Publications

Lasocik Z, Handel ludźmi. Zapobieganie i ściganie. Warsaw, 2006.

Lasocik Z, Handel ludźmi jako przestępstwo i naruszenie praw człowieka — wyzwania dla kryminologii, Archiwum Kryminologii, 2007, Vol. XXVIII.

Lasocik Z, Badania nad środkami zmniejszenia popytu w celu zwalczania handlu ludźmi dla celów pracy przymusowej poprzez zaangażowanie sektora prywatnego. Warsaw, 2016.

Łyżwa A, Handel ludźmi: studium prawnokryminologiczne. Olsztyn, 2019.

Legal acts

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011.

Act of 6 April 1990 on the Police (text jedn., DzU z 2019, poz. 161).

Ustawa z 12 października 1990 r. o Straży Granicznej (DzU nr 78, poz. 462 ze zm.).

Ustawa z 13 czerwca 2013 o zmianie ustawy — Kodeks karny oraz ustawy — Kodeks postępowania karnego (DzU z 2013 poz. 849).

Act of 12 December 2013 on foreigners, OJ of 2014, item 1650.

Ustawa z 28 stycznia 2016 — Prawo o prokuraturze (DzU z 2019, poz. 740).

Zarządzenie nr 14 komendanta głównego Policji z 10 czerwca 2015 w sprawie niektórych zadań wykonywanych przez Policję w zakresie rozpoznawania, zapobiegania i wykrywania przestępstwa handlu ludźmi oraz innych czynów zabronionych z nim związanych (DzU KGP, poz. 40).

Zarządzenie nr 14 komendanta głównego Policji z 22 września 2016 w sprawie wykonywania przez Policję niektórych zadań w zakresie wykrywania handlu ludźmi (DzU KGP, poz. 61).

Protocol on the prevention, combating and punishment of trafficking in persons, in particular women and children, supplementing the United Nations Convention against Transnational Organised Crime adopted by the United Nations General Assembly on November 15, 2000 (OJ 2005, No. 18, item 160).

Other sources

The National Action Plan Against Trafficking in Human Beings. Electronic source: <https://handelludzmi.eu/hl/baza-wiedzy/krajowy-plan-dzialan>, 10 January, 2020.

- Ministry of Internal Affairs and Administration, Raport o stanie bezpieczeństwa w Polsce w 2016 roku. Warsaw, 2016. Electronic source: <https://archiwumbip.mswia.gov.pl/bip/raport-o-stanie-bezpie/18405,Raport-o-stanie-bezpieczenstwa.html>, 10 January, 2020.
- Resolution AGN/69/RES/3. Electronic source: <http://oldltd.mithyalabs.com/en/doc/91d8a4/pdf/>, 10 January, 2020.
- Wskazówki dotyczące prowadzenia postępowań przygotowawczych w sprawach o handel ludźmi, PG III PZ 404/12/14, 27 May, 2014.
- Niepublikowany dokument Komendy Głównej Straży Granicznej, nr BOI, KG-OI-III.0180.11.2019.P.K. Warsaw, 2019.
- Kłos A, Zwalczenie procederu handlu ludźmi przez Straż Graniczną RP w odniesieniu do zorganizowanych grup przestępczych z udziałem osób narodowości romskiej. Master's thesis, Police Academy in Szczytno, 2016.
- Kowalczyk S.A, Działania realizowane przez Straż Graniczną RP w związku z ujawnianiem ofiar oraz ściganiem sprawców procederu handlu ludźmi. Master's thesis, Department of Internal Security, Police Academy in Szczytno, Szczytno 2016.

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Keywords: law enforcement, prosecutor's office, police, border guards, crime, human trafficking, legal instruments.

Summary: The subject of this study is the characteristics of Polish law enforcement authorities in the field of preventing and combating the crime of trafficking in human beings. The author points out that, based on existing legal regulations in Poland, the foremost burden related to prevention and prosecution activities of this type of crime lies within the scope of duties of the prosecutor's office, the Police, and the Border Guard. Thus, the article is devoted to a concise description of the indicated entities in terms of their legal instruments which make it possible to effectively implement the tasks and duties imposed by law and regulations upon the institutions. In the author's assessment, the key role in the system is played by the prosecutor, who is the only authority sanctioned to make decisions on initiating the investigation and entrusting its conduct in its entirety or the indicated scope to other authorities, primarily the Police or the Border Guard. The prosecutor's special role also results from the fact of being solely entitled to draw up and support an indictment in court in cases involving trafficking in human beings. Nevertheless, according to the author, in practice, the main responsibility to carry out procedural and operational activities in this category of cases lies with the Police and Border Guard. The author points out that, at present, the Polish law enforcement system has appropriate instruments, both at the legal and institutional levels, ready for the effective prevention of and combat against crimes of human trafficking. However, bearing in mind that the phenomenon of human trafficking has, in principle, a cross-border dimension, the article highlights the aspect of international cooperation between the relevant institutions established to detect and prosecute these crimes.