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## **SEX TOURISM - AN INTERNATIONAL CRIMINAL LAW AND SOCIAL PROBLEM**

### **ZJAWISKO TURYSTYKI SEKSUALNEJ - MIĘDZYNARODOWY PROBLEM PRAWNOKARNY I SPOŁECZNY**

### **СЕКС ТУРИЗМ - МЕЖДУНАРОДНОЕ УГОЛОВНОЕ ПРАВО И СОЦИАЛЬНАЯ ПРОБЛЕМА**

#### **Abstract**

*The aim of the article is to present the phenomenon of sex tourism as an international criminal law and social problem - in the aspect of social and forensic issues, in reference to current measures of criminal law protection. The authors analyzed the theoretical aspects of sex tourism and described the phenomenon by detailing criminal and social problems. The aim of the study was to analyze legal literature, social and forensic problems related to sex tourism and to analyze the directions of scientific research.*

**Keywords:** *sex tourism, forensics, international law, Polish criminal law, EU law, crime of human trafficking*

#### **Streszczenie**

*Celem artykułu jest przedstawienie zjawiska turystyki seksualnej, jako międzynarodowego problemu prawnokarnego i społecznego - w aspekcie problematyki społecznej, kryminalistycznej w odniesieniu do aktualnych środków ochrony prawnokarnej. Autorzy analizując aspekty teoretyczne seksturystyki opisali zjawisko poprzez wyszczegółowienie problemów prawnokarnych oraz społecznych. Do realizacji postawionego celu posłużyła analiza przepisów prawokarnych, literatury przedmiotu, problemów społecznych i kryminalistycznych związanych z turystyką seksualną oraz analiza prowadzonych w tym kierunków badań naukowych.*

**Słowa kluczowe:** *turystyka seksualna, kryminalistyka, prawo międzynarodowe, polskie prawo karne, prawo UE, przestępstwo handlu ludźmi*

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**Аннотация**

Цель статьи - представить феномен секс-туризма в международном уголовном праве, а также как проблему в аспекте социальных и судебных вопросов применительно к текущим мерам защиты уголовного права. Авторы проанализировали теоретические аспекты секс-туризма и описали это явление, детализируя криминальные и социальные проблемы. Цель исследования состояла в том, чтобы рассмотреть правовую литературу, социальные и судебные проблемы, связанные с секс-туризмом и проанализировать направления научных исследований.

**Ключевые слова:** секс-туризм, судебная экспертиза, международное право, уголовное законодательство Польши, законодательство ЕС, преступление торговли людьми

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**The statement of the problem in general outlook and its connection with important scientific and practical tasks.**

This paper analyses the issue of sex tourism in the context of the legal policy and international jurisdiction of the human trafficking in the aspect of sexual exploitation of minors and prostitution. The aim of this study is to present the phenomenon of sex tourism in the aspect of social and forensic issues, in reference to current measures of criminal law protection. A protected interest in relation to human trafficking under Polish criminal law is the freedom and dignity of every person who cannot be the subject of any trade (transaction). In the Polish

legal and criminal order, it is a common and intentional offence and may be committed only with direct intent (*dolus directus coloratus*). An important criminal aspect of sex tourism with regard to minors will be the punishability for the transfer or receipt of persons for the purpose of their exploitation, even with their consent, in particular when it concerns acts of prostitution, pornography or other forms of sexual exploitation (cf. Article 115, para. 22 of the Penal Code).

**The analysis of the latest research when the solution of the problem was initiated.**

Detailed research on sex tourism is conducted in Poland by J. Poczta and I. Szebioto who rightly point out that many authors use the concept of sex tourism interchangeably with the concept of erotic tourism [inter alia Borzyszkowski 2011; Jarnecki 2012, p. 240; Duczyńska 2013]. The "prostitution" character of the phenomenon is most often emphasised in literature [Clancy 2002; Horner, Swarbrooke 2004,

pp. 303-304, 312; Kibicho 2007, pp. 16-17, following: Borzyszkowski 2011, p. 20 and 2012, p. 29; Godlewski, Wereszczuk 2012, pp. 10-12], although it should also be remembered that sex tourism cannot be unequivocally identified with prostitution [Borzyszkowski 2012, p. 29; Opperman 1999]. On the other hand, some researchers of this problem believe that sex tourism should also include the so-called "romantic

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tourism", which is attributed mainly to women [Pruitt, LaFont 1995, p. 423; Opperman 1999; Johnson 2009; Tepanon 2006, p. 31, citing Borzyszkowski 2012, pp. 29-35]. It should also include accidental, non-commercial gender contacts during holidays [Opperman 1999, pp. 251-266] (J. Poczta, I. Szebiotko, p. 17). For the purpose and verification of this paper hypothesis, the authors adopt those definitional solutions which consider sex tourism to be a pathological form of tourism, often of an illegal nature (citing J. Poczta, I. Szebiotko, p. 17; Horner, Swarbrooke 2004, p. 304; Montgomery 2008, p. 915; Travel Industry Dictionary 2010; Borzyszkowski 2012). The Republic of Poland is a party to numerous international conventions on human trafficking. These conventions are particularly important: the United Nations

Convention to Combat Human Trafficking and Exploitation of Prostitution (1950), the United Nations Convention against Transnational Organized Crime (2000) and Protocol to Prevent, Suppress and Punish Human Trafficking, Especially Women and Children (the Additional Protocol to the United Nations Convention against Transnational Organized Crime, also known as the Palermo Protocol). The documents were created within the framework of the UN. Poland is also a party to the Council of Europe Convention on Action against Human Trafficking (2004) and has implemented Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, the European Union's basic document (Human Trafficking in Poland, Report 2015, p. 11).

### **Aims of the paper. Methods.**

The study uses a legal and comparative method, analysis of source material and analysis of current reports and scientific research on the subject. The main hypothesis is that there are currently no legal provi-

sions concerning regulations directly related to sex tourism, and that the fundamental problems related to this phenomenon are solved by legal systems based on the provisions concerning the crime of trafficking in human beings.

### **Exposition of main research materials with complete substantiation of obtained scientific results. Discussion.**

From the social point of view, in the literature of the subject one can find many classifications of tourism types, among which there is also sex tourism. The notion of tourism itself is understood as all activities of persons travelling and staying for recreation, business or other purposes for no longer than a year, continuously away from their place of residence (J. Płock, 2009, p. 4). According to the World Tourism Organisation (UNWTO), 'sex tourism is a travel organised by the tourism industry, with or without the participation of the tourism in-

dustry, using its structures, the primary purpose of which is to bring about commercial sexual contact between tourists and those living in the territory'. (WTO, 1995). In addition, international sex tourism covers travelling from one country to another and the accompanying exchange of valuables for various types of sexual services provided by men, women and children in the host country (M. Clancy, 2002, p. 72). Due to the forms of satisfying needs, this phenomenon can be divided into classic sex tourism - as defined above - and quasi-sex tourism, defined as travelling for the

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purpose of satisfying sexual needs without direct physical contact between the parties (e.g. romance tourism, participation in festivals and parades) (WTO, 1995). The main determinants of the sex tourism phenomenon are poverty or unemployment, which force people to take up work in order to raise their standard of living, state interests encouraging people to earn income from sex tourism, the dominance of consumer culture, the growing feeling of loneliness among the society contributing to make accidental sexual contacts, stereotypes perpetuated in various sources of information, leading to beliefs of greater sexual temperament among individual nations, and the legalisation of prostitution in some countries (M. Danczyk, 2013, p. 33). From the point of view of sexual needs, the literature distinguishes 3 segments of tourists as the main motif of the journey, for whom: satisfying sexual needs is the main goal, satisfying sexual needs is only one of many goals and satisfying these needs is an additional asset of the journey, which is not expected, although assumed (D. Chylińska, G, Kosmala, 2012, p. 67).

Theoretically, sex tourism can be considered as voluntary or forced, commercial or non-commercial, as well as increasing or degrading one's own identity. It covers heterosexual and homosexual phenomena, as well as travel for sexual purposes by adults and minors. Sex tourism is considered to be part of a sex industry offering tourists products that can meet their sexual and other needs, such as increasing self-esteem, prestige and domination. It is divided into several main sectors, which include: women and men sex tourism, gays and lesbians sex tourism, child sex tourism, as well as other phenomena of sex tourism, including transvestites and transgenics sex tourism (J. Borzyszkowski, 2012, p. 29). Sex tourism can also be considered in three basic forms:

cultural, romantic and pathological. The first one relates to the journeys which are aimed at learning the history of the art of love and gathering new experiences connected with it. Romantic tourism refers mainly to women who leave to get to know the men who will adore them. On the other hand, prostitution and paedophilia tourism are considered to be pathological forms of sex tourism and pose a significant problem from a social and forensic point of view.

Sex tourism is associated with various manifestations of social pathology, the main one being prostitution, paedophilia, trade in and smuggling of people. From this point of view, the key problems of sex tourism are mainly related to sexual exploitation of children and young people, trafficking in human beings, prostitution of women and men, rape and accompanying violence, or violation of fundamental human rights. It also often leads to the development of pornography, which is disseminated through an ICT network. One of the main problems arising from sex tourism is the proliferation of prostitution, which means commercial sexual intercourse. People who earn their living by selling their bodies are exposed to numerous risks through infection with venereal diseases, unwanted pregnancy, exposure to aggression and pathological behaviour on the part of customers, social isolation or participation in crime (L. Albański, p. 93). Prostitution is a negative social phenomenon which disturbs public order, prevents the proper functioning of society and, what is more, poses a threat to health and upbringing. It is a multi-layered problem, it causes psychological degradation of persons involved in it, and it also destroys the system of mutual relations between people, in which the connection of sexual intercourse with emotional experiences, and not the subject of a commercial transaction, is considered the

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norm. The phenomenon of prostitution affects both adults and minors. In the latter case, we are dealing with child sex tourism. It is an increasingly popular practice that usually involves people travelling from richer countries to poorer ones or within their own countries to have sexual relations with children or adolescents. It is inextricably linked to the trafficking of children and pornography. All these phenomena are examples of human rights violations and therefore pose a significant problem and threat to social security. Sex tourism, from the point of view of social problems, can also contribute to addiction to sex and treat it as the only way of spending one's free time. This approach contributes to weaken people-to-people links. The consequence of this is a weakening of family ties or the disintegration of the traditional family. The spread of sexually transmitted diseases is another social problem resulting from the ever-increasing interest in sex tourism. This problem mainly affects third world countries, where the level of health care and HIV prevention is very low. Sex tourism can increase the number of unwanted pregnancies and thus abortions. The social consequences in this case include increased costs incurred for treatment, pensions or compensation for relatives in the event of the victim's death. A negative effect of sex tourism from the point of view of social problems may also be the spread of sexual deviations, such as zoophilia. From a forensic point of view, sex tourism is seen as a problem because it can be linked to sexual exploitation of children and prostitution and the phenomenon of trafficking in human beings. It should be emphasised, however, that sex tourism itself is not prohibited and therefore neither its use nor its organisation is punishable. However, this does not apply to all its forms, as such forms as child sex tourism, zoophilia sex tourism or violent sex tourism

are considered punishable. Child sex tourism, which is often linked to paedophile activities, is prohibited under national law as well as under international and Community law. The European Union has the most extensive legal system. The most important piece of legislation here is the Framework Decision of 2009 on combating all forms of sexual exploitation and child pornography. This document governs many issues relating to sexual exploitation of minors, e.g. criminal liability for grooming, participation in sexual activities of persons under 18, for forcing a child to marry, or for knowingly participating in pornographic acts involving children and deliberately exposing them to witness sexual exploitation or sexual activities. An important aspect is the legislative approach of states in determining the age of a minor. Already in almost all the countries there is the obligatory equal age of minority, which upper limit is the same and is 18 years old. In case of lower limit of the minor age there are no equal standards. The age of 10 years old, as the lower limit of responsibility of juveniles is predicted in legal regulations in England, Wales, Cyprus, Switzerland and in some countries from beyond Europe— among others Australia. The lower limit of age is predicted in Ireland (7 years) and Scotland (8 years), a little bit higher in Turkey (11 years), and in Holland (12 years), whereas significantly higher in Austria, Bulgaria, Estonia, Spain, Lichtenstein, Germany, Russia, Romania, Slovenia, Italy, Belarus, Lithuania, Latvia, Malta, Ukraine and Hungary (14 years), while in the Czech Republic, Denmark, Finland, Sweden and Iceland (15 years) (S. Gwoździewicz, 2015, s. 167). Other documents setting out sanctions and penal systems for paedophile sex tourism include: the Charter of Fundamental Rights of the European Union (in particular Article 24 providing for the right of children to protection and care); UN Convention on the

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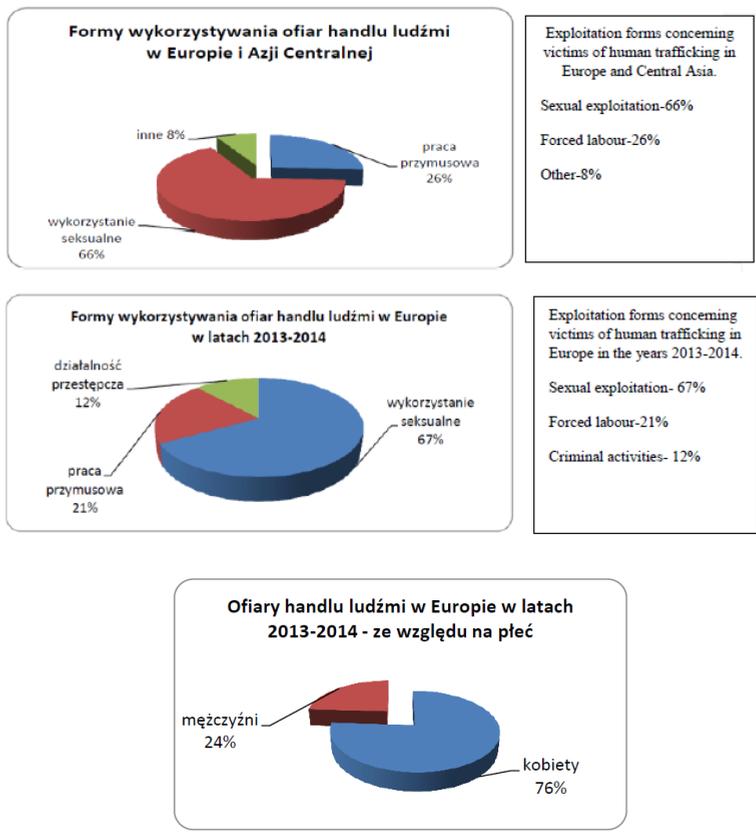
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Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography; the Council Framework Decision on combating the sexual exploitation of children and child pornography; the Council of Europe Convention on the protection of children against sexual exploitation and sexual violence; the Resolution towards a European Union Strategy on the Rights of the Child (European Parliament, 2009). In Poland, the protection of minors from sexual exploitation can be found in Article 200 of the Penal Code "whoever sexually interacts with a minor under the age of 15 or commits another sexual activity to such a person or leads such a person to undergo or perform such an activity shall be subject to the imprisonment for a term between 2 and 12 years" (Journal of Laws of 1997, No. 88, item 553). The second form of sex tourism subject to criminalisation is zoophilia, which consists in having sexual relations with animals, as well as observing such sexual behaviours of other people. Its punishability results mainly from the application of the provisions of the Act on the Protection of Animals. In accordance with Article 35, items (a) and (b), the following shall apply: anyone who kills an animal or harasses it shall be subject to the imprisonment for a term up to one year, the penalty of deprivation of liberty or to a fine (Journal of Laws 1997, No. 111, item 724). According to the Polish Penal Code (Article 202 of the Penal Code), anyone who disseminates, produces, preserves or imports, stores or distribute pornographic content involving a minor or pornographic content related to the presentation of violence or the use of an animal is punished (Journal of Laws 1997, No. 88, item 553).

As the last punishable form of tourism, the authors distinguish the so-called violent sex tourism consisting in travelling to different countries, in order to participate actively or passively in inflicting pain on other people, in connection with various sexual activities. From a forensic point of view, it is the most complex form, as it involves the organisation of human trafficking, enslaving people, forcing them to undergo sexual activities, inflicting torture, intoxicating psychoactive substances and many other activities prohibited by law. Violent sex tourism is therefore punishable by individual acts. Among the existing criminal protection measures, one can mainly mention: provisions on trafficking in human beings; provisions on abduction for the purpose of prostitution abroad; provisions on liability for the financial gain derived from prostitution; provisions on the public display of pornographic content; provisions on the enslavement of another person. According to the report entitled "Human Trafficking in Poland", which was prepared by the Team for Counteracting Trafficking in Human Beings in the Department of Analysis and Migration Policy of the Ministry of Interior and Administration, every year about 2 million people are victims of trafficking, of which one third are children (based on data from the Global Report on Trafficking in Persons - UNODC, United Nations, New York, 2014). The UNODC report notes the main trends in trafficking in human beings. The majority of victims (53%) is exploited in the sex industry (prostitution, pornography). Graphs 1,2,3 show the forms of exploitation of victims of trafficking in human beings in Europe and Central Asia, which clearly show that sexual exploitation of women is the highest rate.

**Charts 1,2,3. Exploitation forms concerning victims of human trafficking in Europe and Central Asia.**



Victims of human trafficking in the years 2013-2014 by sex, men-24%, women-76%  
**Source of charts 1,2,3:** Human trafficking in Poland. Report 2015 based on UNODC

According to Article 115 para. 22 of the Penal Code, trafficking in human beings is recruitment; transport; provision; transfer; storage or reception of a person by means of application: violence or a punishable threat, abduction, deception, misrepresentation or exploitation of the mistake or inability to understand the business activity properly, abuse of dependence, use of the critical position or state of helplessness, granting or accepting a financial or personal benefit or a promise of it to a person with care or supervision over another person - in

order to use a person, even with the person's consent, in particular in prostitution, pornography or other forms of sexual exploitation, in forced labour or services, in begging, in slavery or in other forms of exploitation degrading human dignity, or for the purpose of obtaining cells, tissues or organs contrary to the provisions of the Act. When the offender's activities involve a minor, it shall constitute trafficking in human beings even if the methods or means set out above have not been used. (Trafficking in human beings in Poland, p. 11). There are

therefore measures in Polish criminal law to combat sex tourism through provisions on the problem of human trafficking. Analysing the criminological problems of sex tourism, it should be emphasised that this article presents only an outline of the issue. This is due to the fact that there are no typical regulations for this phenomenon in international legislation, as it is multidimensional and refers to the commission of many different criminal acts, from trafficking in human beings to presentation of pornographic content, and to abduction of women and

children abroad. At this point, it is also worth mentioning that organisations working to combat the negative effects of sex tourism include the International Non-Governmental Organisation for combating child prostitution, pornography and trafficking in human beings (ECPAT), the World Health Organisation (WHO), the International Non-Governmental Organisation for the Assistance of Victims of Sexual Abuse and Trafficking (AFESIP) and the United Nations bodies responsible for providing health assistance to children (UNICEF).

### **Conclusions.**

Economic development, changing social trends and emerging economic inequalities contribute to the spread of sex tourism in modern times. Sex tourism, as stated in this report, poses threats resulting from violations of human rights and fundamental freedoms. It may be a manifestation of human trafficking, prostitution, dissemination of pornographic content, forcing underage persons to prostitution. However, despite the existence of numerous documents and legal acts regulating sanctions and penalties for specific acts that may be present in sex tourism, so far there are no provisions in the legislation regulating general issues related to this phenomenon. In order to deal effectively with the problem of the growing scale of sex tourism, it is essential to adapt the existing legal systems, both external and internal, of each country. The Member States should take measures to prevent or prohibit sex tourism, especially when it concerns minors.

In order to protect victims of sex tourism more effectively, jurisdictional norms should be changed. This will allow perpetrators of sexual abuse or sexual exploitation from the EU to be prosecuted even if they commit a crime outside the European Union. When sex tourism takes place outside the European Union, the Member States should, using available national and international instruments (including bilateral or multilateral agreements on extradition, mutual assistance or the transfer of investigations), seek to strengthen cooperation with third countries and international organisations to combat sex tourism, especially with regard to minors. Promoting open dialogue and communication with countries outside the Union, under the relevant national legislation, will be the most effective means of prosecuting offenders going beyond the borders of the European Union for child sex tourism.

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