

Angelina Tazuszel

Criminal liability for fake marriages in the context of human trafficking (ECPRD Request No. 4693)¹

Odpowiedzialność karna za zawieranie fałszywych małżeństw w kontekście handlu ludźmi (wniosek ECPRD nr 4693)

The author presents national legislation concerning criminal responsibility for fake marriages within the framework of human trafficking, including selected provisions on marriages that are in force in Poland and legislation on human trafficking (including international conventions on counteracting human trafficking to which Poland is a party). As the Author emphasizes, perpetrators of trafficking in human beings are punished in Poland on the basis of the Criminal Code.

Keywords: ECPRD, human trafficking

Autorka przedstawia krajowe ustawodawstwo dotyczące odpowiedzialności karnej za fałszywe małżeństwa w ramach handlu ludźmi, w tym wybrane przepisy dotyczące małżeństw, które obowiązują w Polsce, oraz ustawodawstwo dotyczące handlu ludźmi (w tym międzynarodowe konwencje dotyczące przeciwdziałania handlowi ludźmi, których Polska jest stroną). Jak podkreśla autorka, sprawcy handlu ludźmi są karani w Polsce na podstawie Kodeksu karnego.

Słowa kluczowe: ECPRD, handel ludźmi

Specjalista ds. międzynarodowych Biura Analiz Sejmowych ■
Kancelaria Sejmu, Biuro Analiz Sejmowych, Wydział Analiz Prawa Międzynarodowego i Zagranicznych Systemów Prawnych, WARSZAWA, POLSKA ■
angelina.tazuszel@sejm.gov.pl ■ <https://orcid.org/0000-0003-2436-256X>

In response to ECPRD Request No. 4693 regarding “Criminal liability for fake marriages in the context of human trafficking” the Bureau of Research provides the following information.

Legislation in the Member States of the European Union on penal/criminal liability for fake marriages within human trafficking.

¹ *Criminal liability for fake marriages in the context of human trafficking* (ECPRD Request No. 4693) prepared on April 1, 2021, as part of cooperation in the European Centre for Parliamentary Research and Documentation (Europejskie Centrum Badań Parlamentarnych i Dokumentacji); BAS-ZSP-769/21.

■ Selected provisions regarding marriages in Poland

According to Article 15¹ of the Family and Guardianship Code (*Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy*; Journal of Laws [*Dziennik Ustaw*] 1964, no. 9, item 59 with further amendments²):

§ 1. A marriage may be annulled if the marriage declaration or the declaration mentioned in Article 1 § 2 was submitted:

- 1) by a person who, for whatever reason, was unable to consciously express his/her intention,
- 2) under an error as to the identity of the other party,
- 3) under an unlawful threat from other party or a third party, if the circumstances indicate that the person submitting the declaration could fear serious personal danger to himself or another person.

§ 2. The annulment of a marriage because of the circumstances listed in § 1 may be demanded by the spouse making a defective declaration.

§ 3. It is not possible to demand that a marriage be annulled more than six months after the inability to consciously express intent ceases, after the error in identity is detected, or after the fear of a threat ceases – and in any case after three years from the marriage being entered into”.

According to Article 5 of the Family and Guardianship Code:

“If the head of a registry office learns of the existence of circumstances preventing the conclusion of the planned marriage, he/she will refuse to accept the declarations on entering into marital union, and will refuse to issue the certificate mentioned in Article 4¹, if there are any doubts, the head of the registry office will turn to the court to decide whether the marriage can be concluded”.

According to Article 22 of the Family and Guardianship Code:

“An action for an annulment and to determine the existence or non-existence of the marriage may also be brought by a public prosecutor.”

It is worth mentioning that in accordance with Article 197 of the Act on foreigners:

“1. A foreigner shall be refused a permanent stay permit if:

[...]

6) the grounds for applying for the permit is his/her having married a Polish citizen and the said marriage was entered into or exists in order to circumvent the provisions setting out the rules and conditions for the foreigners’ entry into, transit through, stay in and exit from the territory of the Republic of Poland;”

² Consolidated text available in Polish at: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19640090059/U/D19640059Lj.pdf>.

■ Legislation regarding trafficking in human beings in Poland

Poland is a party to many international conventions on counteracting trafficking in human beings. The most important include³:

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- United Nations Convention against international organised crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (also called the Palermo Protocol);
- Council of Europe Convention on Action against Trafficking in Human Beings.

Apart from international obligations, Poland has developed a number of regulations of national law related to counteracting trafficking in human beings. The most important provisions in this regard can be found in (i.a.)⁴:

- Criminal Code (*Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny*, Journal of Laws [*Dziennik Ustaw*] 1997, no. 88, item 553 with subsequent amendments)⁵;
- Act on foreigners (*Ustawa z dnia 12 grudnia 2013 roku o cudzoziemcach*, Journal of Laws [*Dziennik Ustaw*] 2013, item 1650 with subsequent amendments)⁶;
- Act on social assistance (*Ustawa z dnia 12 marca 2004 roku o pomocy społecznej*; Journal of Laws [*Dziennik Ustaw*] 2004, no. 64, item 593 with subsequent amendments)⁷;
- Act on the consequences of delegating work to foreigners illegally residing on Polish territory (*Ustawa z dnia 15 czerwca 2012 roku o skutkach powierzania wykonywania pracy cudzoziemcom przebywającym wbrew przepisom na terytorium Rzeczypospolitej Polskiej*; Journal of Laws [*Dziennik Ustaw*] 2012, item 769 with subsequent amendments)⁸;

³ *Trafficking in human beings in Poland. Report 2015*, p. 10; material prepared by the Unit Against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration; available online at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwin6-_DtdrvAhXIHxcKHcXiAm4QFjAAegQIAxAD&url=http%3A%2F%2Fww.handelludzmi.eu%2Fdownload%2F91%2F13120%2FRaport2015-finalen.pdf&usg=AOvVaw3gOPUdmQqacEejJqKdrgJn.

⁴ Anti-trafficking portal; <https://www.gov.pl/web/handel-ludzmi/przepisy-polskie>.

⁵ Text available in Polish at: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970880553/U/D19970553Lj.pdf>.

⁶ Text available in Polish at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf>.

⁷ Text available in Polish at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20040640593/U/D20040593Lj.pdf>.

⁸ Text available in Polish at: <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20120000769/U/D20120769Lj.pdf>.

- Act on the responsibility of collective entities for acts prohibited under penalty (*Ustawa z dnia 28 października 2002 roku o odpowiedzialności podmiotów zbiorowych za czyny zabronione pod groźbą kary*, Journal of Laws [*Dziennik Ustaw*] 2002, no. 197, item 1661 with subsequent amendments)⁹.

■ Criminal Code

Pursuant to Article 115 (22) of the Criminal Code:

“Trafficking in people

Trafficking in people is recruiting, transporting, delivering, transferring, storing or accepting people by using:

- 1) violence or the unlawful threat of violence,
 - 2) kidnap,
 - 3) deceit,
 - 4) misrepresentation or exploiting an error or inability to properly comprehend a decision,
 - 5) an abuse of a dependence, exploiting a critical position or a state of helplessness,
 - 6) the grant or acceptance of material or personal incentives, or the promise of such to a person with supervision or custody over another person
- in order to use them, even with their consent, in particular in prostitution, pornography or other forms of sexual exploitation, for forced work or services, for begging, for slavery or other forms of degrading human dignity, or for obtaining cells, tissues or organs contrary to the provisions of law. If the actions of the offender involves a minor, it constitutes trafficking even when not using the methods or measures referred to in sections 1–6”.

In Poland human trafficking perpetrators are punished pursuant to Article 189a of the Criminal Code. According to this article:

“§ 1. Anyone who carries out human trafficking is liable to imprisonment for not less than three years.

§ 2. Anyone who makes preparations to commit the offence referred to in § 1, is liable to imprisonment from three months to five years.”

Trafficking in human beings is subject to a penalty of at least 3 years, which means it is considered a crime, and the upper ceiling of the statutory penalty is deprivation of liberty for up to 15 years. It should be emphasised that due to a high level of harmfulness the legislator also introduced a penalty for preparations to commit the crime¹⁰.

⁹ Text available in Polish at: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20021971661/U/D20021661Lj.pdf>.

¹⁰ *Trafficking in human beings in Poland. Report 2015*, p. 16; material prepared by the Unit Against Trafficking in Human Beings in the Analyses and Migration Policy Department of the Ministry of the Interior and Administration; available online at:

Other offences related to trafficking in persons:

Article 189 of the Criminal Code:

“Illegal imprisonment.

§ 1. Anyone who deprives another person of their freedom is liable to imprisonment for between three months and five years.

§ 2. If the deprivation of freedom lasts longer than seven days, or involves particular suffering, the offender is liable to imprisonment for between one and 10 years.

§ 3. If the deprivation of freedom mentioned in §§ 1 or 2 involves particular torment, the offender is liable to imprisonment for not less than three years.”

Article 191 of the Criminal Code:

“Force.

§ 1. Anyone who uses violence or an illegal threat to force another person to conduct him or herself in a specified manner, or to refrain from or tolerate a certain conduct is liable to imprisonment for up to three years.

§ 2. If the offender acts in the manner specified in § 1 in order to enforce a claim, he or she is liable to imprisonment for between three months and five years.”

Article 203 of the Criminal Code:

“Forcing into prostitution.

Anyone who, by force, illegal threat or deceit, or by abusing a relationship of dependence or by taking advantage of a critical situation, subjects another person to practice prostitution is liable to imprisonment for up to 10 years”.

Article 204 of the Criminal Code:

“Pimping.

§ 1. Anyone who, in order to derive a material benefit, induces another person to practice prostitution, or facilitates the practice, is liable to imprisonment for up to three years.

§ 2. Anyone who derives material benefits from prostitution practiced by another person is liable to the penalty specified in § 1.

§ 3. If the person specified in §§ 1 or 2 is a minor, the offender is liable to imprisonment for up to 10 years.

§ 4. (repealed).”

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwin6-_DtdrvAhXIHxcKHcXiAm4QFjAAegQIAxAD&url=http%3A%2F%2Fww.handelludzmi.eu%2Fdownload%2F91%2F13120%2FRaport2015-finalen.pdf&usg=AOvVaw3gOPUdmQqacEejJqKdrgJn