

PROSTITUTION-RELATED CRIMES AND CHILD TRAFFICKING IN POLAND

Report from a case-file study



Nobody's Children Foundation

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1. Introduction

This report presents conclusions from research on prostitution-related crimes and the crime of trafficking in children for commercial sexual exploitation. English translation is the summary of the full version of the report available in Polish.

Child trafficking and exploiting children in prostitution are forms of enslavement and abuse that reduce children to the role of sexual objects having specific commercial value. Official statistics reflect only the cases that have been reported or detected. One of the causes of low detectability of such offences is the fact that commercial sexual exploitation of children is a domain of organized criminal groups that use various coercive measures against their victims. Children are intimidated and they fear ostracism and rejection, both by their family and friends and by the society, because they often have a feeling that they have somehow contributed to their exploitation. Variability of methods used to recruit potential victims makes it difficult to estimate the scale of the problem and to describe the characteristics of victims and perpetrators.

The case-file study presented in this report was meant to fill the gaps in our knowledge about exploiting children in prostitution, gaps that have to be filled if we are to develop effective preventive and rehabilitation programmes for victims. The future of a child or young person exploited in prostitution depends significantly on the response of the criminal justice authorities, including the correct legal classification of the acts committed by the perpetrators. The research was also meant to determine whether criminal acts that meet the statutory criteria of human trafficking – as defined in the Polish criminal law and international legislation – are classified as such in the judicial practice.

2. METHODOLOGY

2.1 Research objective and questions

The goal of the study was to reveal the course and characteristics of the phenomenon of exploiting children in prostitution. To achieve this goal, the researchers conducted a sociological analysis of events meeting the statutory criteria of prostitution-related crimes or the crime of human trafficking where the victims were underage, focusing both on the victim and on the perpetrator, as well as a legal analysis of the actions performed by law enforcement and criminal justice authorities.

The following research questions were formulated:

Sociological analysis:

1. What are the characteristics of child victims of commercial sexual exploitation?
2. What are the risk factors that may increase the likelihood of commercial sexual exploitation?
3. What are the characteristics of defendants in cases involving commercial sexual exploitation of children?
4. What is the course of the criminal practice of exploiting children in prostitution?

Legal analysis:

5. What is the response of the criminal justice authorities in terms of the legal classification of acts committed by individual perpetrators and in terms of the way of conducting legal proceedings?

2.2 Research method

In order to answer the above research questions, the researchers conducted an analysis of court files or a „case-file review”, which included the files of criminal cases that led to a final and binding sentence or were terminated during the court proceedings between years 2000 and 2011; all the proceedings were conducted under Article 253, § (section) 1 of the previous Penal Code, and Articles 203 and 204, section 3 of the new Penal Code; in all these cases the victims were underage. Case-file research makes it possible to analyze risk factors present in the situation of the child and of the perpetrators, and, most importantly, to track the process – from recruitment to exploitation to detection – and then follow through the preparatory and court proceedings.

2.2.1 Tools

The research tool used in the study was a questionnaire that was completed based on the court files review. It consisted of 101 questions divided into four thematic sections:

- information about the victim
- information about the defendant
- information about the relationship between the victim and the defendant
- information about the preparatory and court proceedings

2.2.2 Sample

The research was conducted between September 2011 and February 2012. A request for permission to review the case files was sent to district and county courts in three provinces (Mazowieckie, Wielkopolskie, and Śląskie), and to district and county courts in Krakow, Szczecin, Lublin, and Rzeszów (83 courts altogether). The selected courts were the ones that – according to the Ministry of Justice’s statistics – had the highest numbers of cases involving commercial sexual exploitation detected in their areas of jurisdiction.

The study included the files of 8 cases involving crimes defined in Article 253, section 1 of the old Penal Code, and Articles 203 and 204, section 3 of the current Penal Code, located in 7 courts: 6 county courts and 1 district court:

- in Mazowieckie Province (6 cases);
- in Wielkopolskie Province (1 case);
- in Śląskie Province (1 case).

The review included 15 child victims and 14 defendants who were convicted by a final and binding court decision. In the majority of the proceedings there were more child victims of commercial sexual exploitation. In some cases they were mentioned only at the beginning of the case but later did not participate in the criminal procedure (for unclear reasons). This was also true for the perpetrators. The files suggested clearly that usually more than one person was involved in the criminal practice of child exploitation, however the co-perpetrators were either not charged, or their cases were severed for separate proceedings or referred back to the court as a result of an appeal. Therefore, the file analysis was limited to those child victims who were involved in the case throughout the court procedure, and to those perpetrators who were charged under Article 253, section 1 of the old Penal Code and Articles 203 and 204, section 3 of the current Penal Code – when the victims were underage – and who were later convicted by a final court decision.

2.2.4 Results

Since criminal justice authorities do not keep a record of all cases involving underage victims, it was impossible to randomly select a representative sample of cases. At the same time,

temporal and financial constraints made it impossible to review the records of all the courts that granted their permission. Therefore, the presented study should be regarded as non-representative. Nevertheless, it may become an important step toward understanding the reality and specific features of prostitution-related crimes against children.

2.3 Cases

Case 1

A 16-year-old girl came in close contact with her friend's 40-year-old boyfriend. During their dates he gave her drugs, offered alcohol, showed her child pornography, and had sex with her, unbeknown to her friend. She would often skip school and go to this man's place; finally, she dropped out of school. In the man's flat she met his 22-year-old acquaintance. After some time she met with him again; during the date he offered her drugs and they had sex. He proposed to drive her to parties, where she would provide sexual services. She was supposed to take money for that and give him half of the payment; he also told her to lie to her clients she was 20. The girl refused but the man blackmailed her. He threatened to tell her friend about her affair with the friend's boyfriend. The girl gave in and for the next six months the man drove her to parties (mainly to private homes and occasionally to clubs or hotels), where she provided sexual services. Additionally, he provided drugs for the people at the parties. These were usually only men ages 25-40. They told her she had to do whatever they wanted, because they had paid her "agent". The girl was often under the influence of drugs when providing services at such parties. The man drove her there, but he never stayed at the parties and he did not pick her up, either. The girl later testified that she did not receive any money for her services, but she knows the clients paid her pimp who threatened her to tell others, for example her mother, that she was a prostitute. She asked her friend's boyfriend (the 40-year-old man) for help, but he told her that if you were a prostitute, you were going to stay a prostitute for ever. He added that he had sold her to his acquaintance for 2 bags of cocaine. After a gang rape committed on her and another girl by several men at one of the parties, she confided to her mother, who took her to a psychologist. Her mother committed herself to helping her daughter. The girl broke contact with her procurer and stopped taking drugs. About two years later (after she came of age) she went to the police and reported on what had happened to her. The man was found guilty of profiting from child prostitution and was sentenced to 1,5 years of imprisonment (suspended for 4 years) and a fine of 1000 Polish zlotys (1000 PLN, i.e., about 250 €).

Case 2

A 7-year-old girl was diagnosed with intellectual disability, so she attended a special school. Her parents got divorced when she was 13; after the divorce she lived with her mother. They had little money, because her mother did not work, so they used social services. After her parents' divorce the girl started running away from home, skipping school, and prostituting herself. Her mother could not manage her, so she made a request to place her 14-year-old daughter in a Social-Therapeutic Youth Centre. However, the girl kept running away from the Centre and was later found at the train station, where she provided sexual services. Once she was even recruited to work at an escort agency (a brothel) in the outskirts of the city. At the beginning of summer holidays, when she was 15, she ran away again. She spent time at the railway station where she provided sexual services. She met two Bulgarian men who took her and her friend to Germany. The girls stayed there and the two men came back to Poland after a few days. Several days later the girl called her mother and told her she was being kept by force at a German brothel. Her mother notified the Polish police and asked the La Strada Foundation for help in organizing the girl's return home. A

few days later the girl was detained by the German police on a street in Frankfurt. She was placed in an institution and was to be sent back to Poland. The girl ran away, however, and 10 days later the Polish police detained her at the railway station in her home town, because it was 2 o'clock in the morning and she was not accompanied by an adult. She had a train ticket suggesting that she had just returned from Germany. When talking to the police, she noticed one of the Bulgarian men at the station and she told the officers it was the man who had brought her to Germany and sold her to an escort agency, where she was forced to prostitution. In the course of the investigation it was found that the man used fake identity documents.

The man was initially accused of human trafficking but was later acquitted of the charges of human trafficking and profiting from prostitution. The girl's testimony was incoherent: at one point she said she had been sold to a German brothel, and then she testified she had worked there voluntarily. The man's testimony and the evidence from the other girl who also went abroad suggested that having brought the girls to Germany, the man left them there. He was convicted of abducting the girl without her mother's or the youth institution's permission, taking her abroad, and using fake identity documents, for which he was sentenced to 8 months of imprisonment and a fine of 2000 PLN (500 €).

Case 3

A 16-year-old Bulgarian girl met a 40-year-old man at her friends' wedding party. When they met again, by accident, he told her he could take her to Poland where he would help her to find some work. He gave her 100 €, which she then handed over to her mother. She took her parents' written consent (granted by them much earlier for another international trip) for her travelling abroad without an adult caregiver. The next day she left for Poland by car with the man and his acquaintance. She did not tell her parents about the trip.

They got to allotment gardens in a large Polish city, where they were received by a 32-year-old Polish woman who lived there. She had a 11-year-old daughter (probably with one of the Bulgarian men). The Bulgarians told the girl that she would be working as a prostitute. They tried to persuade her to agree, but she refused to do so, so they started to undress her. They wanted to rape her and they beat her up. They threatened to set a bad dog loose on her, to knock out her tooth, to batter her parents, and to burn her house in Bulgaria. The girl went to the toilet, took someone's mobile phone, and ran away. Running down the street, she noticed a stranger, so she came up to him and asked him to call the police. Frightened, she was hiding behind a tree, trying to show the man that she had been beaten up (the man did not understand her, because she could not speak any Polish). He called the police and the girl was placed in an institution.

When the garden was searched through by the police, they found the girl's fake ID card suggesting she was 20 years old. It was regarded as a proof that the criminal group had prepared to exploit her repeatedly in prostitution (the photograph for the ID card had been taken already in Bulgaria).

An investigation was launched against the Bulgarian men who were suspected of human trafficking for prostitution with the aim of gaining material profit. Their identity was established, but the case files do not provide information on whether they were arrested. Their case was severed for separate proceedings.

The Polish woman was charged with inducing a minor to become a prostitute in order to gain material profit. In the course of the proceedings she refused to testify and did not admit to the charges. She was sentenced to 1 year of imprisonment suspended for 3 years, and to a fine of 1000 PLN (250 €). Additionally, the court appointed a probation officer to supervise her.

A week later the girl's mother came to Poland and took her daughter back to Bulgaria.

Case 4

For a year – about once a month – two 16-year-old girlfriends had paid sex with men they had met on the Internet. One day they entered a chatroom where they found contact data of someone offering work in a big city. They approached the person and found out that the work he offered was at an escort agency. The man did not want to "employ" them because of their age, but they persuaded him by saying that "younger girls are more desirable".

He collected them at the railway station in a big city and took them to a flat where he lived with his girlfriend, an Ukrainian woman who used to provide sexual services in Poland. The man took the girls' photos in underwear, and the woman put them on the Internet. They agreed that the procurers would take half of the girls' income in exchange for accommodation, food, and arrangement. The man wanted them to stay in touch with their parents and promised that after some time they would move together to a separate flat. The next day each of them had two clients. Alarmed by their disappearance, the girls' mothers tried to call them, but both girls' mobiles were switched off. The next day they answered the phone, told their mothers everything was OK, and hanged up. One of the mothers asked her daughter to take a photo of the view from the window and send it to her cell phone. The mobile network operator located the area from which the girls had answered the phone, and the police used the photo to identify the place. The girls' mothers went to the identified flat accompanied by the police. They found both girls and a client. After a while the Ukrainian woman came in, too. She managed to warn her partner that there was police in their flat. He was located and arrested two days later.

In the court the woman protected her partner, taking all the blame upon herself. However, the man had already been convicted of profiting from prostitution and using unlawful threats (1 year of imprisonment, suspended for 3 years) and ultimately he pleaded guilty. He was sentenced to 15 months of imprisonment, and his partner to 18 months of imprisonment suspended for 3 years, and a fine of 1200 PLN (300 €). Both defendants were also charged with the court fees.

Case 5

A girl lived in a large city with her grandmother from the time she went to primary school; the grandmother was her actual caregiver. The reason for the move was an easier journey to school and better living standards in her grandmother's flat. The girl's mother lived in the country with a new partner – a man with the problem of alcohol abuse – taking care of two children from this relationship. Due to financial difficulties, she went to work abroad about one year before the described events. She only contacted her eldest daughter on the phone; the two saw each other about once a year. When the girl was 14, she found her birth father, with whom she had had no contact before. Initially, she was very happy because of meeting her father and because of the time and attention he was giving her. Later she testified that her father had taken her for trips, sometimes offered her alcohol and drugs, and started to abuse her sexually. As a result the girl experienced emotional difficulties, neglected school, had suicidal thoughts, and began self-mutilating. At the same time she was totally preoccupied with the relationship with her father. Before meeting him she never caused any educational or care difficulties and she had good contact with her grandmother and her aunt. She confided her concern about the relationship with her father to her grandmother, her aunt, and the school counsellor. The grandmother informed the girl's mother, who in turn told her father. The father started to threaten the girl and broke contact with her, telling her that she wanted to ruin his life. In response, the girl ran away from home, leaving a letter in

which she explained that she saw it as the best solution to her problems. When her grandmother read the letter, she reported her missing to the police. After running away the girl went to an escort agency in another large city; she went there with her 35-year-old boyfriend. The man drove the girl to the agency and left her there, although later he testified that he had only put her on the train. Earlier the girl had contacted the manager of the escort agency on the phone, responding to a newspaper ad. During the first interview at the agency she said she was 19. When asked about her motivation to work at the agency, she said she wanted to earn money for her studies and for paying off her boyfriend's debt. The girl stayed at the agency and served clients for a few days, until the police identified the place of her stay after talking to another woman employed at the agency. The manager of the agency and her partner were accused – both under Article 204, section 2; the woman was additionally charged under Article 204, section 3 of the Penal Code. The woman was sentenced to 15 months of imprisonment and a fine of 5000 PLN (100 daily rates of 50 PLN; 1250 €).

Case 6

Two girlfriends (ages 16 and 17) found a job ad in a newspaper, offering work and accommodation. When they phoned and asked about the kind of work being offered, the man who answered the phone told them he was looking for young girls to work as prostitutes. The girls said they were underage, so the man refused to employ them. On second thoughts, however, he called them back and proposed a meeting. During their meeting in a pub it was settled that the girls would move to another town, to a flat where they would serve clients. The girls accepted the proposal and moved to a mid-size town (the man drove them there with his accomplice). They told their mothers they had found seasonal work (picking strawberries) and that they wanted to earn some money during holidays.

On the day of their arrival they had sexual intercourses with both men – voluntarily, without any coercion. Later they only had sex with their clients. The perpetrators placed an ad with the girls' telephone numbers in a local newspaper. They wanted to earn some money and go back home. After a few days, however, they started to worry that the pimps would not let them go, because when they asked the men for permission to go home for the weekend, the pimps said that it was too early and that they had to do some more work. The girls decided to run away soon, because this kind of work did not suit them any longer.

Shortly afterwards, they had two clients. They started to talk and the girls admitted to being fed up with their work and to planning to escape. Both of them cried. The clients – both drunk – went out. One of them called the police and reported that two girls at an escort agency had told him they were being forced to work as prostitutes. After that the two clients returned to the agency, but the girls did not let them in, because they were afraid that the men took their complaints too seriously and that the nature of their work would come to light. They called their pimps, asking them for help. Indeed, they were planning to escape, but they thought it was not the right moment yet, and they did not want any third parties to be involved. The pimps came promptly and they met the two clients outside the apartment block. While they were trying to explain the situation, the police arrived (in response to the clients' report). The perpetrators were arrested. The court found that acting jointly and in concert they had profited from child prostitution, facilitated prostitution by providing two underage girls with a flat, and then charged a part of the girls' income in exchange for care and protection. Additionally, one of the perpetrators was convicted of drug possession and unlawful possession of firearms (a gas pistol). One of the defendants was sentenced to 20 months of imprisonment suspended for 3 years, and the other one to 18 months of imprisonment suspended for 3 years. The court also fined them with 100 daily rates of 30

PLN and imposed a punitive measure in the form of forfeiture of material gains (750 PLN from each defendant) to the State Treasury.

Case 7

A 16-year old Romanian girl found a job ad in a local newspaper, offering well-paid work as a baby-sitter in Poland. She responded to the ad and made an appointment with a woman who had answered the phone. The woman helped her to get all the documents necessary to cross the border, and then handed her over to another woman, with whom the girl left for Poland on a minibus. In Poland they stopped at a market place near a stadium in a large city. The woman told the girl to get in a car with three Romanian men who were supposed to take care of her. They went to a village where they stayed in a house belonging to a 56-year-old Polish man. There were 11 Romanian women (including two underage girls) and 6 men there. The Romanian men took the girls' passport and told her she was going to work as a prostitute. They told her to charge 50 PLN from each client (but not less than 600 PLN per day). She was beaten up several times – first at the very beginning, because she refused to work as a prostitute, and then 3 more times when she did not bring enough money.

Every day the Polish man (the owner of the house) drove the girl to a nearby trunk road, and he took her home in the evening. After a month she ran away and reported to the police. She told them about her experiences. She testified she had earned some 10,000 PLN but all the money had been taken from her. The perpetrators were arrested but they pleaded not guilty. They claimed they had no idea about what the girl did. The Romanian men said they worked as tradesmen, leaving home early in the morning and coming back late. They maintained they knew nothing about the girl, except that she rented a room from the same Polish landlord. The other women testified they had not been forced to prostitution – they worked as prostitutes on their own account.

The girl was deported from Poland.

The defendants did not admit to the charges. The Polish man was sentenced to 1 year of imprisonment and a fine of 100 daily rates, 15 PLN each; the sentence was suspended for 4 years. He was convicted of providing premises for organizing and practicing prostitution and of driving three underage girls – with his own means of transportation – to the location where they provided sexual services.

The Romanians were sentenced to 3 years of imprisonment. The court found that acting jointly and in concert they abused their position of power by taking the girl's passport, placing her in a guarded accommodation, and using violence (by beating her). They were also convicted of forcing the girl to prostitution for their own material gain, which brought them material profit of at least 10,000 PLN.

The defendants made an appeal against the first instance court's decision, but the court of appeal sustained the sentence.

Case 8

A 56-year-old man made sex contacts with adult and underage females (through other women) and then urged them to talk their friends into having sex with him in exchange for material benefits. On a previously set day, he waited in his car in front of a female intermediary's apartment blocks, where he collected her and the recruited women. They went together to a glade outside the city, where he had sex with the women, paying each of them 400 PLN. The intermediaries earned 200 PLN each time.

One of the intermediaries threatened some of the girls to take them away to Germany, to the forest, to beat them up, or to tell their mothers about what they did. Among other places, the woman approached the girls in front of their school. Most girls were in the lower range of developmental norms, they came from poor families, and they were 12 to 17 years old. The man had sexual intercourses with at least 11 underage girls. Two of them in return for material gains incited other underage girls to prostitution. Their cases were later handled by the Family and Juvenile Department of the County Court.

One of the girls' mothers informed the police that she suspected her daughter had been sexually abused.

The 21-year-old intermediary was convicted of inciting three underage girls to prostitution, at short intervals, acting intentionally with the purpose of gaining material benefits, and of using unlawful threats (such as threatening to hurt them and take them away to the forest or abroad) to make them work as prostitutes, from which she gained a material benefit of at least 1000 PLN. She was sentenced to 2 years and 6 months of imprisonment and forfeiture of the financial profit gained from the criminal act in the amount of 1000 PLN. Her defence counsel made an appeal; as a result of the appeal proceedings the sentence was revoked and the case was referred back to the court of the first instance (the court had doubt whether the defendant had actually incited the girls to prostitution).

The man was convicted of having sexual intercourses with two minors under 15 (Article 200, section 1) and of intentionally urging 3 adults and 3 minors to incite other persons to prostitution (Article 204, sections 1, 2, and 3). He was sentenced to 2 years and 6 months of imprisonment. His defence counsel made an appeal; the court of appeal sustained the sentence under Article 200, section 1, but acquitted him under Article 204, section 1, 2, and 3. The court found that the defendant had urged women to „contact him” and not to prostitute themselves, that he had sex with new women and not the same ones (it was an indeterminate circle of persons rather than specific ones), and the money he had paid to the intermediaries was for a service and not for prostitution.

The third defendant, who was just 18 at the time of committing the crime and was one of the women who had sex with the man in exchange for material benefits, was convicted of inciting other women to prostitution and sentenced to 14 months of imprisonment suspended for 1 year, a fine of 1000 PLN, forfeiture of the material gain in the amount of 1000 PLN, and supervision by a court probation officer.

There was one more female defendant accused under Article 204, sections 1, 2, and 3, but her case was severed for separate proceedings because the woman had gone abroad.

3. SOCIOLOGICAL ANALYSIS¹

3.1 Conclusions

Each case of exploiting children in prostitution is unique. The children's initial situations (such as their family or school situation) are different, and so are the reasons behind their involvement. Some children actively seek commercial sex contacts, while others are coerced by people who organize this crime with threats, blackmail, violence, or taking advantage of the child's difficult situation. It may be concluded, however, that it rarely happens by sheer chance, but is rather a result of various risky behaviours and risk factors that had occurred in the children's lives much earlier.

¹ Tables with detailed results of the sociological analysis are provided in the appendix.

Especially noteworthy is the fact that in all the cases analyzed within this case-file study the victims were female (underage girls). The fact that the researchers did not come across any male victims does not mean, however, that there are no such cases. The experience of organizations working with individuals offering sex services shows clearly that boys are also at risk of being exploited in prostitution, but for various reasons – such as the taboo against homosexual contacts (such boys' clients are usually men), a stronger tendency to consider men (and boys) responsible for what happens to them, and, consequently, a fear of social stigmatisation and rejection – boys seem to be more reluctant to disclose such experiences.

Notably, as many as 1/3 of the child victims were under 15 at the time of exploitation. Most of them came from Poland but there were also three Romanian girls and a Bulgarian. As for the victims' family situation, it is significant that their birth parents were usually separated and most of the girls lived with their mothers and siblings. Five of the victims had no contact with their fathers. In none of the cases the files provided information on whether the girls' caregivers were involved in the exploitation. Interestingly, in most cases the victims had good relationships with their primary caregivers (mothers), which is reflected not only by expert witnesses' opinions, but also by the mothers' reactions to the exploitation of their children. Many of them notified the police immediately after their daughters had gone missing or run away; later they cooperated closely with law enforcement agencies to help trace the girls. It is striking that at the time when they were exploited in prostitution, as many as 1/3 of the victims lived in their family homes.

Risk factors that increase the likelihood of being exploited in prostitution include previous experiences of commercial sexual exploitation and other forms of abuse: 4 victims had previous experiences of commercial sexual contacts with older men; 2 other girls had experienced various forms of abuse from their fathers. The victims often skipped school and had various emotional difficulties, but they did not use professional psychological support.

As for the children's "consent" to being exploited in prostitution, there were two categories of victims: those who actively sought to work at an escort agency and those who were impelled to provide sex services. The girls who came to escort agencies on their own initiative, knowing what they would be doing there, were very determined to get this "job", as reflected by the fact that they tried to persuade their potential pimps to employ them or even lied about their age.

Half of those who were recruited (or impelled into prostitution) were exploited with the use of coercive measures, while the others agreed to the conditions set by the perpetrators.

One of the main motivations to engage in commercial sexual contacts was the children's desire to improve their economic status, but in some cases the girls may also have wanted to get away from their environment. Another important motivation was a desire to get some money to make ends meet, since many of the girls came from families in a poor economic situation (their caregivers were often unemployed). Finally, there was the factor of group pressure; in one case the girls recruited their friends.

Children who were forced to prostitution by use of various means of coercion, such as violence, blackmail or threats, stayed in the abusive situation for fear of being punished by the perpetrators.

Our research shows that perpetrators of commercial sexual exploitation are not a uniform group. Most of them were secondary school graduates, a few had primary education, and none had a university degree (although one of them was a university student). Little is known about their substance abuse. At the time of committing the crime they were active economically (employed), which suggests that organising prostitution was often their additional source of income. Interestingly, most perpetrators lived in stable relationships with

their spouses or partners, and raised their own children. What may distinguish the perpetrators from the general population is their criminal record.

The perpetrators hardly ever acted on their own. The criminal practice of exploiting other people in prostitution requires a larger number of offenders who "share" tasks and responsibilities. This is especially true when victims are transported from one location to another, either across state borders or within one country. Such practices require several go-betweens, such as a recruiter, someone who contacts the child, a person responsible for transportation, and someone to receive the child at the destination.

Most perpetrators were Polish; five of them came from countries of Eastern Europe: Romania, Bulgaria, and Ukraine. All of the foreigners lived in Poland, but only one had legalised status in the country.

The majority of the perpetrators were men. What is important, women involved in the criminal practice of commercial sexual exploitation of children, acted in cooperation with men. This may suggest that women collaborate with male perpetrators but do not organize exploitation themselves; they rather help the men by harbouring the victims, recruiting them (e.g., by placing ads in newspapers), or trying to persuade them to work as prostitutes. An important common feature of the female perpetrators was their previous experience as prostitutes.

Our research shows that people who exploit children in prostitution are usually not familiar to their victims; they approach children with the purpose of exploitation. As a result, there is a very short time interval between the child's first contact with the perpetrator and the onset of sexual exploitation. On the other hand, it is likely that cases where the perpetrator is the victim's close acquaintance or family member, are rarely disclosed, because it is easier for children to accuse people who are not close to them.

Escort agencies usually recruit women through newspaper or Internet ads that not always make it clear what kind of "work" is being advertised. It turned out agencies were wary of employing underage girls, which was reflected by the fact that when teenage girls responded to such ads, the persons who answered the phone initially refused to employ them. They probably knew the legal consequences of sexual procurement of minors or they assumed that a teenage girl was more likely to give up (as there was higher chance that someone was looking for her). However, it was quite easy to convince them and they did not inquire too much into the girl's age. People at escort agencies did not use violence against the victims. It was rather a form of contract: the agency offered accommodation and organized their "work" (by providing clients and arranging meetings), for which it charged 50% of the girls' income. The girls staying at escort agencies were usually runaway kids who were reported missing, so it took little time (usually just a few days) before they were found by the police.

Children exploited in other settings (along trunk roads or in private flats/houses) were more often deceived about the nature of the work during the recruitment process (this was especially true for alien children). Moreover, the perpetrators used violence against them, blackmailed them, took their documents away, and threatened to hurt their families, which made the victims more dependent on the perpetrators. It was more difficult for them to escape and the exploitation lasted longer.

From the perspective of preventing commercial sexual exploitation of children, it is important to explore the victims' characteristics and the ways they are changing. Article 2, section 1, clause 2 of the Code of Criminal Procedure points to preventing crimes as one of the goals of criminal proceedings. Following this principle, criminal justice authorities may be expected to deeply analyze the situation of the victim. They are therefore recommended to work out ways of collecting detailed information about the victims and the perpetrators in the course

of criminal proceedings; such information may shed light on the risk factors for children's involvement in commercial sexual contacts.

4. LEGAL ANALYSIS

4.1 Legal framework

4.1.1 Human trafficking in the Polish law

Before September 2010 human trafficking was not defined in Polish law, although it was punishable. Since the amendment of Penal Code of May 2010, that entered into force in September 2010, human trafficking has been addressed by two articles of the Polish Penal Code. The crime of human trafficking is defined in Article 189a of the Penal Code, which stipulates:

189a

§1. Whoever commits the crime of human trafficking shall be liable to imprisonment for a minimum term of three years.

§2. Whoever makes any preparation to commit the crime specified in section 1, shall be liable to imprisonment for a term of 3 months to 5 years.

According to the above article, human trafficking is a felony, i.e. a crime punishable by imprisonment for a minimum term of 3 years. The maximum term is 15 years of imprisonment (according to Article 32, clause 3 and Article 37 of the Penal Code).

What is also a novelty in the Polish law is criminal liability for preparing for human trafficking².

Article 115, section 22 of the Penal Code defines human trafficking in a way similar to modern definitions provided in the Palermo Protocols, the Council of Europe Convention, and the EU Framework Decision.

This definition includes three categories of features:

- the act: actions performed by the perpetrator
- the means: methods used by the trafficker to involve the victim in trafficking
- the purpose of trafficking

This report is limited to the crime of child trafficking. In such cases – where the victim of trafficking is underage (under 18) – the legislator has explicitly annulled the requirement that the trafficker must have used the specified means to involve the victim in the crime. The acts listed in Article 115, section 22 of the Penal Code, committed by the perpetrator to exploit a child victim for any of the purposes specified therein, shall be regarded as the crime of human trafficking even if the trafficker did not use the specified methods.

The consent of a victim of trafficking (both underage and adult) is irrelevant according to an established tendency in the international law. This means that even if the victims are aware of the purpose of their journey, i.e., even if they know that upon arrival at their destination they will provide sexual services or be exploited in other forms of forced labour, the perpetrator shall not be exempt from responsibility.

It should be emphasized that despite the use of the word „trafficking”, which is associated with purchase and sale transactions, the definition provided in the current law does not

²T. Bojarski, in: T. Bojarski, A. Michalska-Warias, J. Piórkowska-Flieger, M. Szwarczyk, Kodeks karny, Komentarz, LexisNexis, Warszawa 2010.

mention payment. Although it may be assumed that traffickers will act with the aim of profiting, it is not necessary to prove that the perpetrator has received payment for the transferred person to classify the act as the crime of trafficking under Article 189 of the Penal Code, which should make it significantly easier to bring charges of human trafficking. It is also linked with repeal of Article 204, section 4 of the Penal Code, which applied to the situation of luring another person abroad with the purpose of involving her in prostitution without a commercial transaction. The fact that this article was removed when a definition of human trafficking was introduced, implies that according to the current law this crime has been classified as human trafficking.

The definition included in Article 115, section 22 of the Penal Code is in full conformity with the Council of Europe Convention on Action Against Trafficking in Human Beings, which was ratified by Poland in 2008. Article 115, section 22 of the Penal Code is a nearly identical with Article 4 of the Convention. By introducing this law Poland has fulfilled an obligation stemming from the fact of ratifying the Convention. Article 2 of the Convention demands explicitly that its provisions should be applied to all forms of human trafficking, including crimes committed within Poland. Thus the legislators have rejected the previously dominant view that trafficking is necessarily an international crime.

4.1.2 Criminal liability for prostitution-related crimes in the Polish law

Currently exploiting children for prostitution is punishable under four articles. We shall begin with discussing the most common crimes against both child and adult victims.

Working as a prostitute and using prostitutes' services are not illegal in Poland. However, the Penal Code of 1997 penalizes forcing other persons to prostitution (Article 203 of the Penal Code), as well as procurement, pimping, and facilitating prostitution (Article 204).

Article 203 penalizes causing another person to become a prostitute when the perpetrator uses any of the means listed in the article: violence, unlawful threats, deceit, abusing the position of power or a vulnerable situation of the victim.

An important defining feature of this crime is causing another person to work as a prostitute, i.e., a change in the victim's behaviour caused by the perpetrator. Consequently, the doctrine stipulates that a crime under Article 203 may be committed by making someone begin working as a prostitute, or by causing a person who wants to withdraw from prostitution to continue the provision of sexual services³. Forcing or impelling another person to prostitution is punishable by imprisonment for a term of 1 to 10 years.

Article 204 penalizes the crimes of pimping, procurement and facilitating prostitution. All three involve profiting from another person's prostitution, at least in terms of the perpetrator's purpose or intention.

According to Article 204, section 1 or 3 penalty for facilitating prostitution will be imposed on a person who provides premises for another person's prostitution to gain material benefits. This means that such a person takes action to create conditions facilitating another person's prostitution⁴. In a ruling of 5 Feb 2009 the Supreme Court expressed a view that the crime of facilitating prostitution required systematic and permanent actions by the perpetrator, so a single incident of driving a prostitute to the location where she provides services is not punishable under Article 204, section 1⁵.

Procurement, also defined in Article 204, section 1 of the Penal Code, involves inducing another person to become a prostitute or to continue providing sexual services by a person

³ B. Błońska, Zagadnienie przedmiotu ochrony prawnokarnej w przypadku przestępstw eksploatacji prostytutki, „Studia Iuridica” XLVI, 2006.

⁴ P. Łabuz, Współczesna prostytutka, „Jurysta” 2, 2010.

⁵ Ruling of the Supreme Court of 5 Feb 2009, II KK 251/2008

wishing to stop practicing prostitution⁶. Similarly to the crime of facilitating prostitution, classifying an act as procurement requires that the perpetrator has expected to gain material profit as a result of inducing another person to work as a prostitute.

Neither of the two crimes requires the actual outcome or result of profiting from prostitution; it is sufficient that the perpetrator acted with the purpose to gain such profit⁷.

Article 204, section 2 penalizes pimping or gaining material profit from another person's prostitution. Contrary to the above two crimes, conviction for pimping requires that the perpetrator has gained actual material profit, so it is a crime with criminal consequences⁸. Moreover, as specified by the Supreme Court in the above mentioned ruling, a single act of gaining material profit is not sufficient to convict a person of pimping; it is required that the perpetrator has repeatedly collected money from a prostitute⁹. A question should be asked about criminal liability for attempted pimping in cases where the perpetrator gained profit just once before his or her detention. In the author's opinion, adopting such a position is necessary to provide protection ensured by Article 204, section 2; in terms of the perpetrator's intent and criminal liability for attempted offences, which is acceptable in the Polish law, this approach is also consistent with the above mentioned ruling of the Supreme Court.

All three offences are subject to imprisonment for a maximum term of 3 years. Article 204, section 3 of the Penal Code describes a qualified form of this crime, punishable with imprisonment for a term of 1 to 10 years – when the prostitute is under 18. Notably, criminal liability for this crime is defined in the same way as in the case of forcing another person to prostitution, i.e., failure to prove that the perpetrator used the means listed in Article 203 of the Penal Code does not reduce the sentence stipulated in Article 204, section 3.

Prostitution is also addressed by Article 199, section 3 of the Penal Code, which defines a crime limited to underage victims (persons under 18). This provision establishes criminal liability for using sex services provided by minors in return for a promise or transfer of material or personal benefits. Unfortunately, the current wording of the provision and the use of the verb „induce” result in an interpretation that is disadvantageous from the victim's perspective. In its decision of 2 June 2010 the Supreme Court stated explicitly that the occurrence of the above mentioned crime required that offering benefits by the perpetrator should be the sole cause of the minor's consent to sexual contact with the perpetrator¹⁰. Moderating this view has been suggested by Piórkowska – Flieger, who thinks that the presence of other, secondary motivations on the part of the underage victim should not exclude the application of Article 199, section 3 of the Penal Code¹¹. From the perspective of protecting children from being exploited in prostitution, it is recommended that the wording of the above mentioned provision be altered so to stipulate criminal liability for any sexual contact with minors in exchange for material benefits, even if the minor has offered sexual services.

The above discussion shows that minors are protected from being exploited in prostitution to a larger extent than adults. This is reflected by higher punishment for the crimes of pimping, procurement, and facilitating prostitution.

⁶ J. Piórkowska-Flieger, in: T. Bojarski, A. Michalska-Warias, J. Piórkowska-Flieger, M. Szwarczyk, *Kodeks karny, Komentarz*, LexisNexis, Warszawa 2012.

⁷ *ibidem*

⁸ *ibidem*

⁹ Ruling of the Supreme Court of 5 Feb 2009, II KK 251/2008

¹⁰ Decision of the Supreme Court of 2 Jun 2010, V KK 369/2009

¹¹ Piórkowska – Flieger J., in: „Kodeks karny. Komentarz”, *op cit*

Moreover, it is punishable to make a minor engage in commercial sexual contacts, if the sole or main cause of this engagement was an offer made by the perpetrator.

4.2 Conclusions

The majority of perpetrators were convicted under article 204, section 3, as well as sections 1 and 2, of the Penal Code, i.e. on the charges of procurement, pimping, and facilitating prostitution of underage persons. Four perpetrators (in 2 cases) were convicted of forcing their victims to work as prostitutes. One perpetrator was convicted of having sexual intercourse with underage persons, and one – for abducting an underage girl and using fake ID documents. One of the perpetrators was convicted of unlawful possession of a gas pistol, one – of damaging another person's documents, and one – of drug possession.

Justice authorities were inclined to classify crimes under Article 204, sections 1–3. There were also classifications under Article 203. The authorities were reluctant to apply the provisions concerning the crime of human trafficking. This reluctance may be attributed to a lack of awareness about the current international interpretation of this phenomenon. Until recently court jurisprudence was very strict in such cases: human trafficking is a quasi civil-law cross-border transaction where the victim is treated as an object. Although the current Polish law adopts definitions provided in international legislation, the courts have rarely decided to apply these provisions. Thus, it can be easily noticed that crimes having obvious features of human trafficking were often classified – already at the initial stage of the proceedings – as prostitution-related crimes.

The results show that even with the current definition of human trafficking provided in Article 115, section 22 of the Penal Code, it may be difficult to distinguish between prostitution-related crimes and trafficking. The former often include some of the features listed in Article 115, section 22. Therefore, courts will continue to have some freedom in classifying such acts. One may expect that the court's assessment of whether the victim has been treated as an object will remain an important circumstance.

The length or duration of the legal proceeding in the analysed cases ranged from 279 days to 2019 days, i.e., from about 9 months to 5,5 years. Preparatory proceedings took from 3,5 months to over a year and were the shortest in cross-border cases (cases 2, 3, and 6). It is difficult to interpret this finding; our research shows, however, that the victims of non-Polish nationality quickly returned to their home countries and did not participate in further proceedings.

Only half of the victims were interviewed just once in the course of the reviewed proceedings. The underage Romanian girl who was exploited for prostitution in Poland in the year 2000, was interviewed as many as 8 times. Having said this, one can still notice some improvement in the treatment of child victims of prostitution-related crimes by the justice authorities. This is especially important for the conditions of interviewing victims – who are very sensitive and vulnerable – and the organization of their return to the home country.

The most disturbing aspect was the punishment. Even the perpetrators of severe forms of exploitation got suspended prison sentences. Thus, in terms of promptness and inevitability of punishment, these offenders went almost unpunished. The fines imposed on the perpetrators may have been quite a nuisance to them, but even those were not always severe.

The case-file study implies it is necessary to improve the justice authorities' understanding of the crime of human trafficking. If traffickers are to be punished effectively, it is crucial that the decision-making bodies interpret such acts in accordance with up-to-date international trends. As the legal status of human trafficking and prostitution-related crimes is changing continuously, courts cannot be praised when they stick to outdated jurisprudence that has

been developed for many years. Drawing on the work of international bodies is a recommended strategy in this respect.

5. Appendix

5.1 Tables with detailed results of the sociological and legal analyses

Table 1 The victims' age

Age	N= 15
11	2
12	0
13	1
14	2
15	3
16	2
17	5

Table 2 The victims' countries of birth

Country of birth	N=15
Poland	11
Romania	3
Bulgaria	1

Table 3 The victims' places of birth

Place of birth	N=15
Large city (more than 400,000 inhabitants)	3
City (100,000 to 400,000 inhabitants)	4
Town (30,000 – 100,000 inhabitants)	1
Small town (up to 30,000 inhabitants)	4
Village	0
No data	3

Table 4 The victims' level of education at the time of exploitation

Education at the time of exploitation	N=15
Primary, incomplete (in progress)	3
Primary, attending middle school	2
Middle school graduate, attending secondary school	7

No data	3
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Table 5 The victims' previous experience of abuse

History of abuse	N=15
No	6
Yes	2
No data	7

Table 6 The victims' family situation

Family situation	N=15	With whom the child lives
Two-parent family – birth parents live together	5	Both birth parents
Birth parents have separated	8	4 - mother 1 - mother and stepfather 1 - in turns: mother and grandparents 1 - grandmother 1 - institution
No data	2	

Table 7 The victims' primary caregivers

Primary caregiver	N=15
Mother	12
Grandmother	1
No data	2

Table 8 The victims' secondary caregivers

Secondary caregiver	N=15
Father	7
Stepfather	1
Grandparents	1
No secondary caregiver	3
No data	3

Table 9 Caregivers' employment status

Female caregivers' employment status	

Employed	2
Temporary/casual work	1
Unemployed	7
No data	5

Table 10 The perpetrators' gender

Perpetrator's gender	N=14
Male	10
Female	4

Table 11 The perpetrator's age at the time of committing the crime

Perpetrator's age	N=14
Under 20	2
20-30	5
31-40	3
41-50	2
51 or older	2

Table 12 The perpetrators' countries of origin

Country of origin	N=14
Poland	9
Romania	3
Bulgaria	1
Ukraine	1

Table 13 The perpetrators' places of birth

Place of birth	N=14
Large city	1
City	4
Town	1
Small town	4
Village	2
No data	2

Table 14 The perpetrators' education

Education	N=14
Primary	4
Secondary/vocational	10

Table 15 The perpetrators' employment status

Employment status	N=14
Employed	8
Unemployed	5
No data	1

Table 16 The perpetrators' family status

Family status	N=14
Married	6
Co-habiting	6
Single	2

Table 17 The perpetrators' criminal record

Criminal record	N=14
No	8
Yes	4
No data	2

Table 18 The ways of making contact with the victims

Way of making contact	N=14 perpetrators
With no intermediaries	7
Through other persons	7

Table 19 The time interval between the first contact and the onset of exploitation

Time interval between the first contact and the onset of sexual exploitation	N=13 underage victims ¹²
Immediately	6
1 week	4

¹² In case 2 it is unclear whether the girl was exploited and in case 3 there was no exploitation

2 weeks	1
No data	2

Table 20 Duration of exploitation

Duration of exploitation	N=13 underage victims
1 day	5
A few days	2
About 1 month	3
2 months	2
4 months	1

Table 21 Places of exploitation

The place of exploitation	N= 13 underage victims
Large city	4 – escort agencies, disco clubs, hotels, private premises
City	2 – escort agency
Outside the city	7 – trunk road / glade

Table 22 The number of victims by their age and the legal classification of the acts; the number of convicted perpetrators by the legal classification of the acts.

Number of victims by their age at the time of exploitation		Number of victims by the legal classification of the acts		Number of convicts by the legal classification of the acts; N = 14 perpetrators	
Under 15	5	art. 200 §1 of PC	2	art. 200 §1 of PC	1
15	3	art. 203 of PC	7	art. 203 of PC	4
16	2	art. 204 § 3 in relation to § 1 and/or 2 of PC	14	art. 204 § 3 in relation to § 1 and/or 2 of PC	13
17	5	art. 204 §4 of PC	0	art. 204 §4	0
TOTAL	15	art. 211 of PC	1	art. 211 of PC	1
		art. 253 of PC	0	art. 253 of PC	0
				art. 263 of PC	1
				art. 270 of PC	1
				art. 275 of PC	1

art. 276 of PC	1
art. 62 of Act	1

Table 23 Duration of proceedings by the legal classification of the acts

Case	Legal classification - charge	Legal classification - sentence	Duration of preparatory proceedings – from the 1st action in the case to bringing an indictment	Duration of the 1st instance court proceedings – from bringing the indictment to the 1st instance sentence	Total duration of proceedings until the court's decision becomes binding
1	204 § 3	204 § 3	248 days	75 days	337 days
2	253 § 1, 204 § 1 & 3, 275 § 1, 270 § 1 & 3	211, 270 § 3, 275 § 1	162 days	72 days	724 days
3	usiłowanie 204 §3	usiłowanie 204 §3	106 days	46 days	429 days
4	204 § 3, 276	204 § 3, 276	232 days	39 days	279 days
5	204 § 2 & 3	204 § 2 & 3	345 days	353 days	706 days
6	204 § 2 & 3, 263	204 § 2 & 3, 263	109 days	192 days	378 days
7	203, 204 § 2 & 3	203, 204 § 2 & 3	145 days	77 days	370 days
8 1st convict	200 § 1, 204 § 1 & 3	200 § 1, 204 § 1, 2 & 3	390 days	273 days	2109 days
8 2nd convict	204 § 1, 2 & 3	204 § 1, 3	390 days	273 days	1770 days

Table 24 Sentences imposed by the court and the legal classification of the acts

Case	Perpetrator	Legal classification – decision (article of PC)	Sentence
1	1	204 § 3	18 months of imprisonment suspended for 4 years, a fine of 1000 zlotys (PLN), court supervision in the trial period

2	2	211, 270 § 3, 275 § 1	8 months of imprisonment, a fine of 2000 PLN
3	3	attempted 204 §3	1 ryear of imprisonment suspended for 3 years, a fine of 1000 PLN, court supervision
4	4	204 § 3, 276	15 months of imprisonment, a fine of 340 PLN
4	5	204 § 3	18 months of imprisonment suspended for 3 years, a fine of 540 PLN
5	6	204 § 2 & 3	14 months of imprisonment, a fine of 5000 PLN
6	7	204 § 2 & 3, art. 263 § 2	20 months of imprisonment suspended for 3 years; a fine of 3000 PLN; forfeiture of financial gain in the amount of 750 PLN
6	8	204 § 2 & 3	18 months of imprisonment suspended for 3 years; a fine of 3000 PLN; forfeiture of financial gain in the amount of 750 PLN
7	9	204 § 2	! year of imprisonment suspended for 4 years, a fine of 1500 PLN
7	10	203 & 204 § 2 & 3	3 years of imprisonment
7	11	203 & 204 § 2 & 3	3 years of imprisonment, court fees (200 PLN)
7	12	203 & 204 § 2 & 3	3 years of imprisonment, court fees (200 PLN)
8	13	200 § 1, 204 § 1 & 3	2 years of imprisonment, expenses of appeal proceedings (10 PLN), court fees – both instances (300 PLN)
8	14	204 § 1, 3	14 months of imprisonment suspended for 1 year; a fine of 1000 PLN; forfeiture of financial gain inn the amount of 500 PLN; court supervision