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ANTI – CORRUPTION MEASURES RELATED TO MIGRATION PRESSURE

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Abstract: *The report analyzes corruption practices and the manifestation of international organized crime in the sphere of illegal migration. Emphasis is placed on the criminal components "human trafficking" and "channeling" included in the Criminal Code of the Republic of Bulgaria. The current legislation of the Republic of Bulgaria regarding the prevention and counteraction of human trafficking is also examined.*

Keywords: corruption measures, migration pressure, human trafficking

1. Introduction

Of significant importance for the prevention of corruption and organized crimes, caused by the migration crisis, it is the improvement of the sanction mechanisms for prevention and counteraction of these especially socially dangerous phenomena. The analysis shows that corrupt practices and manifestations of organized crimes in the researched area are manifested mainly in several spheres, namely:

- the crossing of migrants across our state border, both upon their entry into the Bulgarian territory and upon their departure, most often in the direction of the Western European countries;
- obtaining refugee status or other subsidiary statutes under the Asylum and Refugees Act;
- solving the social and living problems of migrants during their stay on the Bulgarian territory and when finding housing and work.

It is generally understood that the most common criminal offenses related to manifestations of corruption and organized crimes in connection with migration pressure are several groups:

- crimes against the procedure for crossing the state border and residing on the Bulgarian territory;
- crimes related to the legal enforcement of the powers of officials engaged in dealing with migration pressure and the status of migrants who have crossed into the Bulgarian territory.
- crimes related to the violation of the fundamental rights and freedoms of migrants.

(Of course, we clarify that migrants are in principle possible subjects, as well as victims of all possible encroachments currently regulated in the Special Part of the Criminal Code, unless a certain special quality is required, which they do not meet).

These criminal encroachments can be divided into several subgroups, based on different classification criteria.

2. Anti-Corruption Measures Related to Migration Pressure

Depending on the initiative for the manifestation of the relevant socially dangerous practice, we distinguish those

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undertaken at the initiative of migrants (for example, offering a bribe to settle an issue related to their social and household services, such as moving to another room in the reception center or for faster issuance of a residence permit at an external address) and those taken at the initiative of third parties (for example, the request for sums of money in order to transport the person across the border). Currently, the Special Part of the Criminal Code [1] provides relatively comprehensive criminal protection against assaults of both types, and undoubtedly those that reveal a higher degree of public danger and moral reproach are the offenses of the second type. At the same time, the manifestations of "small" or "domestic" corruption are elevated to relatively serious crimes.

Depending on the quality of the people involved in their implementation, we distinguish corrupt practices and manifestations of organized crimes involving officials from various state bodies, and those related to the behaviour of entities outside the state apparatus (most often "smugglers" and human traffickers). Manifested forms of the first type have ensured stable and relatively comprehensive criminal protection from the provisions of Chapter Eight, Sections II and IV of the Criminal Code, incriminating the general official crimes under Art. 282–285 of the Criminal Code and bribery in the public sector under Art. 301 and the following ones of the Criminal Code. In this sense, in order to counteract this phenomenon, it is necessary to strengthen the control over the officials, who are most exposed to corruption pressure, as well as effective enforcement of the disciplinary and criminal measures provisioned by law in case of established offenses. The recommendations in the direction of prevention and counteraction of corrupt practices related to the participation of people outside the system of the state apparatus could be far more. They reduce to the following.

The analysis shows that a large part of the migrants arrive on the Bulgarian territory or cross it not in the manner prescribed by law, and in a very large percentage of cases this is done with the help of the so-called "Smugglers"; apart from that, the law enforcement bodies unequivocally state that the established in the last almost three decades channels for human trafficking, goods and drugs, have already been used to transport foreign citizens to and through the territory of our country. The phenomenon of "smuggling" occupies an increasing share of the general crimes and from a classic crime of a cross-border nature has become a crime that threatens our national security.

The transfer across the country border of individuals or groups of people without the permission of the competent authorities or at least with permission, but not through the designated places (or more - smuggling), is punishable by imprisonment from one to six years and a fine of five thousand to twenty thousand leva (Article 280, paragraph 1 of the Criminal Code). The punishment is imprisonment from one to ten years, a fine from ten thousand to thirty thousand leva and confiscation of part or all of the perpetrator's property, if: a person under the age of 16 has been transferred across the border; the transfer took place without the person's knowledge; the person transferred across the border is not a Bulgarian citizen; if a motor, aircraft or another type of transport has been used; the transfer is organized by a group or organization; the transfer was performed in a way dangerous for the life of the transferred people (Article 280, paragraph 2 of the Criminal Code).

The punishment is imprisonment from three to twelve years, a fine of ten thousand to thirty thousand leva and confiscation of part or all of the property of the perpetrator, when the act was committed with the participation of an official who took advantage of his official position (Art. 280, paragraph 3 of the Criminal Code). It is foreseen that when the transfer of the injured person has taken place without his/her knowledge, the vehicle will be confiscated in favour of the state, if it belonged to the perpetrator or was provided to him/her voluntarily (Article 280, paragraph 4 of the Criminal Code).

It should be immediately noted that the current system of qualified signs of the crime and the provisioned penalties are an achievement of the modern Bulgarian legislator (*The penalties were increased, and the system of qualified panels was updated with Act to amend and supplement the Criminal Code, promulgated, SG, issue 74 from 2015).*

However, there is still much to be desired in order to modernize, improve and further develop this protection.

First of all, for the experts it is arguable that the current legislative permission for the smuggling of one person and a group of people is equally punishable, where the number of people transferred across the border of the country is assessed only in the process of individualization of criminal responsibility of the criminal perpetrator. In case, if permission is perceived for a victim of a crime to be only a separate person, this will mean that the presence of multiple victims will determine liability for multiple crimes, which will inevitably lead to a heavier liability of the perpetrator.

As far as the system of qualified cases of smuggling is concerned, it would be appropriate, for the commitment of this crime in execution of the decision or on behalf of a group, organization or organized criminal group (these are the three forms of criminal association under the Bulgarian Criminal Code) to elevate into more severely punishable qualified panel (under Art. 280, paragraph 3 of the Criminal Code) in order to even the punishment provisioned for its execution with that for smuggling with the participation of an official.

At the same time, it is appropriate to raise in qualified signs the commitment of the act under the conditions of recurrence or dangerous recidivism, as well as for selfish purposes. As more severely punishable crime can be qualified, the one which is committed for selfish purposes.

In order to prevent this phenomenon, an effective preventive measure is the foreseeing of compulsory confiscation in favour of the state of the vehicle, regardless of whose property it is.

In this way, prevention will be practiced against a large group of people engaged in the illegally transferred citizens across the border. The measure also corresponds to the provisions of Art. 4 and 5 of Directive 2001/51/EC.

Illegal smuggling of migrants across the border and human trafficking are two different but interrelated activities carried out by criminal networks. The difference is that in the first case migrants voluntarily participate in the process of illegal migration, paying for the services of a smuggler to cross an international border, and in the second case they are victims of severe forced exploitation, which may be related to the crossing of a border, or not. In fact, the two phenomena are difficult to distinguish, as people who leave voluntarily are at risk of labour or sexual exploitation. This is emphasized in a message from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European Migration Program (Brussels, 13.05.2015 COM (2015) 240 final).

The Republic of Bulgaria has adequate and up-to-date legislation in connection with the prevention and counteraction of human trafficking – Combating Trafficking in Human Beings Act (last amended, SG No. 79 from 13.10.2015, in force since 01.08.2016) introducing the requirements of Directive 2011/36/EU of the European Parliament and of the Council from 5 April 2011 on preventing and combating human trafficking and protecting victims thereof and replacing the Framework Decision 2002/629/JHA of the Council).

Criminal measures against human trafficking are regulated in the eponymous section IX of Chapter Two "Crimes against the person" of the Special Part of the Criminal Code. These measures should be assessed as relatively comprehensive, and the practice of their implementation - as constant and consistent.

Smuggling and human trafficking are a major source of illicit income for the organized crimes. This calls for increased criminal repression against this phenomenon.

The Bulgarian criminal law theory rightly raises the issue of incrimination slavery, as a particularly socially dangerous and harmful phenomenon emerging in modern society [2]. The arguments "for" and "against" the creation of criminal law system on this type of encroachment are formulated. Specific proposals have been made in this direction. However, this debate is not yet in the attention of the institutions with legislative powers. Without engaging a position on the matter, whether the various manifested forms of slavery should be incriminated or not, we find it appropriate to initiate a public discussion on this matter with the broad participation of the institutions and structures of civil society.

The stated group of measures aims to improve the criminal law sphere. Of course, criminal law measures are not the only ones that need to be undertaken to tackle the migrant crisis. This is only a part of a set of measures that need to be implemented.

Currently, the LAR (Law on Asylum and Refugees of the Republic of Bulgaria) regulates a single administrative penal panel - that under Art. 93 of the same law, which states: "An alien who damages or destroys an item provided for him/her to use by the State Agency for Refugees shall be liable to a fine of BGN 50 to 200 and shall also pay back the value of the item". At the same time, there are grounds for raising a number of other manifestations - at least the violations of Art. 30 of the LAR [3], which do not constitute crimes, in administrative violations.

Such a legislative measure would have a strong preventive effect, especially if it is accompanied by adequate and appropriate administrative sanctions and good work of the law enforcement bodies. The same one would make a significant contribution to reducing the number of crimes committed by foreigners, as it would ensure a timely response against the first manifestations of socially dangerous behaviour by foreign citizens, before they relapse and influence them through the most severe form of state coercion - punishment.

According to the provisions of Art. 13 of LAVP (Law on Administrative Violations and Penalties), "The following administrative violation may be foreseen and imposed for administrative violations: a) public reprimand; b) a fine; c) temporary deprivation of the right to pursue a particular profession or activity. The law does not make a difference whether the administratively responsible person is a Bulgarian or a foreign citizen, as well as whether the person has a permanent address on the territory of the Republic of Bulgaria or not.

At the same time, with regard to the persons who do not have an address registration on the territory of the Republic of Bulgaria and do not own sequester able property, the enforcement of any of these penalties would not be sufficient counter motive against the commitment of further socially dangerous encroachments.

Therefore, it is necessary to initiate a broad public debate regarding the relevance of the foreseen administrative sanctions in general and in particular – the procedure for imposing and enforcing them in regard of people, who do not have an address registration in the territory of the Republic of Bulgaria.

Smuggling and human trafficking are increasingly crimes with a cross-border element. At the same time, the review of the cases leading to this type of crimes shows that the perpetrators of the crime are the accused and defendants in these cases, without reaching the organizers of the channels for illegal transfer of people across borders or human trafficking.

This situation calls for the strengthening of cross-border cooperation with neighbour countries with a view to establishing transnational schemes for smuggling and human trafficking and those involved in them.

3. Conclusion

In this context, the creation of a single point of contact is used to transmit information regarding convicted of human trafficking people, smuggling and document-related documents, linked migration documents between EU member states. The perception of such a soft measure, could significantly contribute to identify the same participants in human trafficking and smuggling provided. to identify the same participants in trafficking or smuggling, performing activities on the territory of different countries, respectively - for their adequate sanctioning in order to hide the real purpose of their actions.

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