

# Illegal removal of minors abroad in connection with child trafficking

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*ABSTRACT Human trafficking can be seen as a modern version of slavery; it is estimated to be the second most lucrative branch of international organized crime. According to the International Labour Organization (ILO), the profit from forced labour reaches \$ 32 billion a year.<sup>1</sup> One of the most vulnerable groups targeted by human traffickers are children.<sup>2</sup> In view of the fact that Hungary can also be regarded as a country of origin, destination and transit for trafficking in human beings, it is necessarily intertwined with the phenomenon of the illegal removal of minors abroad. Acts involving the illegal removal of minors abroad do not constitute an independent legal category, this is a special umbrella term for when a minor is attempted to cross the border of the state of origin or current residence by other means of other means in breach of its legislation.<sup>3</sup>*

**KEYWORDS** *child trafficking, illegal removal of minors abroad, human trafficking, minor*

## 1. Introduction

In view of the fact that Hungary can also be regarded as a country of origin, destination and transit for trafficking in human beings, it is necessarily intertwined with the phenomenon of the illegal removal of minors abroad.

The modern slave trade is one of the most serious violations of human rights. Trafficking in human beings, like migration, appears as a global problem that affects not only individual countries, but also the whole world through its organic connection to organised crime. At the same time, there is a clear link

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<sup>1</sup> Krisztina Száraz, “Kényszermunka a modern gazdaságban”, <http://retp.eu/index.php/retp/article/view/520>.

<sup>2</sup> Report from the Commission to the European Parliament and the Council on the 20th day of Directive 2011/36/EU on the prevention and combat of trafficking in human beings and the protection of victims. The report on the progress made in the fight against trafficking in human beings as provided for in Article 11(2) of regulation (EC) No 1200/2016 10.09.2018. quoted in Erzsébet Hatvani, Viktória Sebhely, and Gergely Vaskuti, *Gyermekprostitúció visszaszorítása, gyermekkereskedelem* (Budapest: Szociális és Gyermekvédelmi Főigazgatóság, 2018).

<sup>3</sup> Zoltán Székely, “Kiskorúak jogellenes külföldre vitelének jogi aspektusai,” *Határrendészeti Tanulmányok*, no. 3 (2017): 46–97.

with migration, as people appearing in migration processes often become victims of human trafficking due to their vulnerable situation.<sup>4</sup>

Acts involving the illegal removal of minors abroad do not constitute an independent legal category, nor does the law of Hungary or other states contain such a definition. This is a special umbrella term for when a minor is attempted to cross the border of the state of origin or current residence by other means of other means in breach of its legislation.<sup>5</sup>

The illegal removal of minors abroad is a global problem that, based on the examples of our daily lives, can rightly be regarded as an important, current problem of Hungarian society and the European Union. There are significant differences in the rules and practical implementation of past and today's procedures, depending on whether the illegal activity is related to cross-border family law cases, trafficking in human beings, illegal migration, the protection of refugees or other categories.<sup>6</sup>

The illegal removal of minors abroad is a special umbrella term that defined from the perspective of integrated border management, national and EU border security systems and the responsibilities of the authorities involved in the fight against cross-border trafficking in human beings, which involves the unlawful acts for or as a result of which a minor crosses the state border of a country, such as Hungary.<sup>7</sup>

## 2. Definition of trafficking in children

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines the concept of child trafficking. „Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”<sup>8</sup> A child, regardless of how it is recruited, removed, handed over, concealed or taken over, is considered a victim of trafficking if the purpose is exploitation.<sup>9</sup> According to the directive 2011/36/EU of the European Parliament and of the Council ”Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to

<sup>4</sup> János Varga and László Kui, “A határrendészeti szervek tevékenysége a kiskorúak jogellenes külföldre vitelének megakadályozása érdekében” *Határrendészeti Tanulmányok* no. 3 (2017): 135-155.

<sup>5</sup> Székely, “Kiskorúak jogellenes külföldre vitelének jogi aspektusai”.

<sup>6</sup> Varga and Kui, “A határrendészeti szervek tevékenysége a kiskorúak jogellenes külföldre vitelének megakadályozása érdekében”.

<sup>7</sup> Székely, “Kiskorúak jogellenes külföldre vitelének jogi aspektusai”.

<sup>8</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Article 2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>

<sup>9</sup> “Az Európa Tanács Emberkereskedelem Elleni Fellépéséről szóló Egyezménye,” <https://rm.coe.int/16805d41ee> 09.01.2021.

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slavery, servitude, or the exploitation of criminal activities, or the removal of organs.”<sup>10</sup>

On 20 November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child, which defines the concept of a child as follows: a child is a person who has not reached the age of eighteen unless he has reached the age of majority under the legislation applicable to him or her.<sup>11</sup> Despite the fact that the UN Convention on the Rights of the Child defines the child, we cannot speak of a unified thinking about the duration of childhood today.<sup>12</sup> The exploitation of children may also be made more difficult by different, varying interpretations of the protection or protected age from country to country, but in most cases the aforementioned 18th year of age is indicated as the limit of the protected age.<sup>13</sup>

According to the Hungarian Civil Code, a minor is a person under the age of eighteen, and a minor under the age of fourteen is considered incapacitated.<sup>14</sup> It also uses the concept of a minor child, an adult child, an adult child of further education, a minor child with judgment, and a child over the age of fourteen. According to the concept system of the Civil Code, as a general rule, a minor is a person who has not reached the age of eighteen, but the minor comes of age by marriage.<sup>15</sup>

The Hungarian Criminal Code uses the separated concept of childhood and juvenile, according to which every person under the age of twelve of children is not 12 years of age, and as a general rule, persons under the age of fourteen cannot be punished. However, in the case of certain crimes, the age of criminality according to the Criminal Code is the twelfth year of age.<sup>16</sup> In view of the above, criminal law divides minors in the sense of civil law into children and young people, persons of childhood and juveniles.<sup>17</sup>

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<sup>10</sup> Ibid.

<sup>11</sup> “A Gyermek jogairól szóló, New Yorkban, 1989. november 20-án kelt Egyezmény kihirdetéséről szóló 1991. évi LXIV. törvény”.

<sup>12</sup> Eszter Végh, “Gyermekkatónák – a Sierra Leone-i polgárháború igazi áldozatai,” <https://btk.ppke.hu/uploads/articles/6414/file/vegheszter.pdf>.

<sup>13</sup> Krisztina Kállai, “Az emberkereskedelem kiskorú áldozatait érintő kizsákmányolás sajátosságai,” <http://www.kodolanyi.hu/kv/cikk/az-emberkereskedelem-kiskorualdozatait-erinto-kizsakmanyolas-sajatossagai>.

<sup>14</sup> See more: Act V of 2013 on the Civil Code.

<sup>15</sup> Hatvani, Sebhely, and Vaskuti, *Gyermekprostitúció visszaszorítása, gyermekkereskedelem*, 106.

<sup>16</sup> See more: Act C of 2012 on the Criminal Code.

<sup>17</sup> Hatvani, Sebhely, and Vaskuti, *Gyermekprostitúció visszaszorítása, gyermekkereskedelem*.

### 3. Child trafficking as a driving force for the illegal removal of minors abroad

Minors are among the most vulnerable victims of human trafficking, for whom accurate statistics are not available due to high latency, but it is estimated that around one million children worldwide are victims of sexual exploitation and 170 million are illegally engaged in physical work. All this leads to physical and psychological injuries to the victims. The victims are mainly from the underdeveloped regions of the world (Southeast Asia, Africa, Eastern Europe, Latin America), but more and more people are victims in Romania, Ukraine, Bulgaria, Albania and Russia. In many cases, the child's family - in the absence of the means of subsistence - makes the child available to traffickers.<sup>18</sup>

Children who are victims of trafficking typically come from difficult socio-economic backgrounds,<sup>19</sup> with trafficking networks targeting socially and economically disadvantaged families.<sup>20</sup> It happens that organised crime circles use money loans to push them into debt, extremely high interest rates prevent families from paying off their debts, and traffickers force them to hand over their children in return for their debts, so in some cases, as mentioned earlier, children are sold by their families to traffickers.<sup>21</sup>

The latency of this phenomenon is extremely high, since in most cases the victims do not have the opportunity to escape their forced fate, or despite their subjugation, they still consider that even their subsistence is in danger if they are released.<sup>22</sup>

János Varga and László Kui found in the framework of the research carried out in the framework of the project BBA-2.4.2-2015-0003 entitled "Preventing the illegal transfer of minors abroad", that since child trafficking has been flourishing in Romania, the victims of which are being sent to Western Europe for begging and sexual exploitation, border police pay special attention to the

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<sup>18</sup> Varga and Kui, "A határrendészeti szervek tevékenysége a kiskorúak jogellenes külföldre vitelének megakadályozása érdekében".

<sup>19</sup> Fighting child trafficking: a main priority for EU law enforcement <https://www.europol.europa.eu/newsroom/news/fighting-child-trafficking-main-priority-for-eu-law-enforcement> 31.03.2021.

<sup>20</sup> Report from the Commission to the European Parliament and the Council Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims {SWD (2016) 159 final}

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control of minors with inadequate parental consent, and this activity is carried out both by the Romanian border police and the Ukrainian one very strictly.<sup>23</sup>

#### 4. Unaccompanied minor

From a legal point of view, it is of paramount importance whether this is illegal or legal migration. The persons concerned migrate from one state to another in the course of legal migration with the necessary documents, and in the case of illegal migration they do the same in the absence of them. In the latter case, we can talk about escape or human smuggling, or even trafficking in human beings entwined with it.<sup>24</sup>

An unaccompanied child shall mean a child who has entered the territory of a Member State without the escort of an adult person responsible for him by law or the practice of the Member State concerned, until such person/adult person is effectively supervised; including a child who has been left unattended after entering the territory of a Member State.<sup>25</sup>

A significant number of unaccompanied children who are forced to leave their countries become victims of child prostitution and child trafficking.<sup>26</sup>

Unaccompanied minors reach Europe mainly through smugglers. Their families are, as it were, "blindly" trusting - and not least paying a significant amount of money - who promises to take their child to a family member or acquaintance living in Western Europe. Given that in most cases families have no other option, they trust the fate of their child to an unknown person and hope that this person will safely transport their child to the desired country, keeping the promise of this person. Unfortunately, however, most of these children are victims of child trafficking, child labour and child prostitution, and the greatest threat to the youngest is illegal adoption.<sup>27</sup>

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<sup>23</sup> János Varga and László Kui, "A kiskorúak jogellenes külföldre vitele megakadályozásának helyzete Magyarország schengeni külső határain," *Határrendészeti Tanulmányok*, no. 3 (2017): 26–46.

<sup>24</sup> Katalin Siska Szücs Lászlóné „Nemzetközi menekültjog, migráció és menedékjog a magyar és az uniós jogban” (Working Paper, 2008) quoted in Eszter Karoliny and Ágoston Mohay „A nemzetközi migráció jogi keretei” (Legal framework for international migration”) [http://www.solidalapok.hu/solid/sites/default/files/IDResearch\\_Itt%20vagyunk!\\_2.pdf](http://www.solidalapok.hu/solid/sites/default/files/IDResearch_Itt%20vagyunk!_2.pdf).

<sup>25</sup> Committee on the Rights of the Child: General Commentary No 6 (2005): Treatment of unaccompanied and adult family members outside their country of origin, 1 September 2005, CRC/GC/2005/6, Section III, point 8. Cited by EASO: Practical guide to the best interests of the child in asylum procedures 2019. [https://easo.europa.eu/sites/default/files/Practical\\_Guide\\_on\\_the\\_Best\\_Interests\\_of\\_the\\_Child\\_HU.pdf](https://easo.europa.eu/sites/default/files/Practical_Guide_on_the_Best_Interests_of_the_Child_HU.pdf).

<sup>26</sup> Renáta Kálmán: „Ki vigyáz rájuk? Avagy a kísérő nélküli kiskorúak helyzete napjainkban,” *Állam- és Jogtudomány* no. 4 (2019): 71–87.

<sup>27</sup> Kálmán, „Ki vigyáz rájuk? Avagy a kísérő nélküli kiskorúak helyzete napjainkban”.

## 5. Signs of child trafficking

Hungarian government has collected the characteristics of child victims of human trafficking, which are as follows:

- the child cannot have contact with parents or guardian
- appear to be intimidated or otherwise engaged in inappropriate behaviour
- there are no peers, no friends outside the workplace
- the child cannot go to school
- cannot play
- lives in poor conditions, isolated from other children
- eats separately from those who it lives with
- the child can only eat leftovers
- does age-inappropriate work
- travels unaccompanied by an adult
- travels with people who are not related to it<sup>28</sup>

János Varga and László Kui listed the specific suspicions about the illegal transfer of minors abroad at border crossing points, which are as follows:

- the vehicle under control contains objects indicating the presence of a minor (clothing, toys, etc.), however, the minor is not detected in the passenger compartment, and the adult/adults travelling in the vehicle make a contradictory statement about the objects. In this case, it is recommended to thoroughly inspect the vehicle in order to find a possible hiding place.
- the minor travels unaccompanied.
- the minor travels with an escort, but there is no identity or nationality is different from the attendant.
- there are no or few packages in the vehicle carrying the minor that can be related to the minor.
- the minor's passport or visa contains signs of forgery of documents.
- the attendant does not have parental consent or there are indications of forgery in the consent presented.
- due to the accompanying language barrier, he/she is unable to communicate with the minor traveling with him/her.
- the minor is dazed.
- the minor is visibly afraid of the attendant travelling with him or appears unreasonably nervous.
- the minor has visible injuries or is malnourished and the attendant cannot give an acceptable explanation.

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<sup>28</sup> Belügyminisztérium, “Emberkereskedelem elleni küzdelem. Gyermekekre vonatkozó jelek” [https://emberkereskedelem.kormany.hu/?\\_preview=63cc4f4f-1be1-5f08-5220-00002a504cac](https://emberkereskedelem.kormany.hu/?_preview=63cc4f4f-1be1-5f08-5220-00002a504cac).

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- the minor is extremely exhausted; his/her clothing is poor.
- the minor's attendant is conspicuously cooperative during the inspection or unreasonably nervous.<sup>29</sup>

## 6. Conclusion

Human trafficking can be seen as a modern version of slavery; it is estimated to be the second most lucrative branch of international organized crime. According to the International Labour Organization (ILO), the profit from forced labour reaches \$ 32 billion a year.<sup>30</sup>

One of the most vulnerable groups targeted by human traffickers are children.<sup>31</sup>

”Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”<sup>32</sup>

Minors are one of the most vulnerable victims of human trafficking, it is estimated that around one million children worldwide are victims of sexual exploitation and 170 million are illegally engaged in physical work. All this leads to physical and psychological injuries to the victims. The victims are mainly from the underdeveloped regions of the world, but more and more people are victims in Romania, Ukraine, Bulgaria, Albania and Russia.<sup>33</sup>

In view of the fact that Hungary can also be regarded as a country of origin, destination and transit for trafficking in human beings, it is necessarily intertwined with the phenomenon of the illegal removal of minors abroad.

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<sup>30</sup> Száraz, “Kényszermunka a modern gazdaságban”.

<sup>31</sup> Report from the Commission to the European Parliament and the Council on the 20th day of Directive 2011/36/EU on the prevention and combat of trafficking in human beings and the protection of victims. The report on the progress made in the fight against trafficking in human beings as provided for in Article 11(2) of regulation (EC) No 1200/2016 10.09.2018. quoted in Hatvani, Sebhely, and Vaskuti, *Gyermekprostitúció visszaszorítása, gyermekkereskedelem*.

<sup>32</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Article 2.

<sup>33</sup> Varga and Kui, “A határrendészeti szervek tevékenysége a kiskorúak jogellenes külföldre vitelének megakadályozása érdekében”.

<sup>34</sup> Székely, “Kiskorúak jogellenes külföldre vitelének jogi aspektusai”.

