**Contribution of Hungary to the report of the OHCHR on the role of organized criminal groups with regard to contemporary forms of slavery**

**1) Types of criminal groups involved in contemporary forms of slavery** *and* **2)** **The nature and extent of criminal groups’ involvement in contemporary forms of slavery**

Instead of highly organized crime groups or even mafia-like criminality, the presence of smaller criminal conspiracies is more characteristic of human traffickers in Hungary. Usually the perpetrators are loosely connected to each other, based on family ties or similar personal networks. They discuss the details of the crime directly among each other, making it more difficult for the authorities to detect.

Specifically, in case of **sexual exploitation** for prostitution the traffickers often recruit girls between the age of 16 and 25 from their own family and living environment, whose personal and financial background they are well aware of.

Concerning labour exploitation, there are different paths of victimization but ultimately these can be divided into two main forms. Those who can easily be persuaded of the benefits of **working abroad** (construction, catering, manufacturing) are definitely at risk. The deceptive job offers are typically advertised in newspapers and on the internet; subsequently, when the victim arrives in the destination countries in Western Europe, the conditions of the actual employment greatly differ from what have been promised during the recruitment. Employment contract is not concluded, or the real circumstances are much worse.

**Domestic slavery**, however, is a more common problem in Hungary. The offenders usually target and lure unemployed men with daily life struggles and vulnerabilities (e.g. homelessness, limb deficiency) through personal contacts. The exploitation usually includes work around the house and in the agriculture, without decent pay, if any, with poor housing conditions and little food.

Forced begging is a form of slavery having both domestic and international elements. In general, the background of the victims is the same as explained above (homeless and disabled people), but they are transported abroad on a regular basis in hope of higher income (though border restrictions of the past one year have decreased such movements).

Victims of modern slavery are less likely to come forward, seek assistance and testify for fear of retaliation by the perpetrators, making victim identification and criminal proceedings more challenging. In many cases the traffickers indeed attempt to intimidate or influence in any other way the victims/ witnesses of the criminal proceedings. Therefore, once a human trafficking case is detected, the investigative authorities are strongly in favour of placing the suspects under arrest in penitentiary institution rather than the more lenient coercive measures restricting personal freedom (e.g. restraining order, criminal supervision).

Since sexual and labour exploitation of Hungarian victims may both take place abroad, we attach great significance to international cooperation. In complex cases of trafficking in human beings the Hungarian authorities prefer **joint investigation teams** (JIT) as a faster, closer and more flexible cooperation to the traditional tools of Mutual Legal Assistance (MLA) or European Investigation Orders (EIO). While JITs allow common investigative goals to be established, if the cooperation is limited, for instance, to the issuing of EIOs, there is a risk that those criminal activities not known about in the issuing country escape prosecution and in general, it is difficult to keep pace with the traffickers this way. In the course of the past years, the Hungarian Police participated in several JITs with the foreign law enforcement agencies, the latest one of which was set up in October 2020 with the Germany and Romania.

Another direction of action is the establishment of **transnational referral mechanisms**. In the past few years, such cooperation frameworks were set up with the Netherlands, Belgium and Switzerland, creating a robust network of the Hungarian and foreign actors that can facilitate prevention activities, early warning as well as victim referral.

The soon-to-open **anti-trafficking research center** at University of Pécs is also worth mentioning in the context of international relations. It will be established in a joint effort by The Netherlands and Hungary raising the well-functioning police cooperation to a scientific level. In March 2021, the ambassadors of the two countries have signed a letter of intent for this purpose.

**3) Legislative frameworks**

**a)** Yes, most importantly, the provisions on the sentencing of Act C of 2012 on the Criminal Code (from now on: Criminal Code[[1]](#footnote-1)) have a special rule, thus, „***if a person committed an intentional criminal offence in a criminal* *organisation, the maximum of the penalty range applicable to the criminal offence shall be* *doubled, but it shall not exceed twenty-five years****”[section 91 (1)].* The Criminal Code defines an organised group as „***a criminal organisation*** *means a group that consists of at least three persons, is established for a longer period of time, is organised hierarchically and operates in a conspiratorial manner with the aim to commit intentional criminal offences punishable by at least five years of imprisonment”* (section 459 1.).

The penalty range means the minimum and maximum penalty prescribed for every criminal offence by the Special Part of the Criminal Code. This sentencing principle can be used regarding every criminal offence. The twenty-five years of imprisonment is an ultimate maximum; it can never be exceeded. This means that the perpetrators can anticipate a punishment up to ten years of imprisonment in the best-case scenario.

We also have to mention that there is a special rule regarding concurrent sentencing. Thus, when the same perpetrator committed several criminal offences that are adjudicated in one criminal proceeding, one judgment is delivered for all the offences. In this case, the application of section 91 shall precede the provisions on concurrent sentencing, which means that the concurrent sentence shall be imposed based on the increased penalty range determined under section 91. [section 81 (4)]

Besides, if a person committed a criminal offence in a criminal organisation, a ban on entering certain areas shall also be ordered. [section 91 (2)] This means that a ban on entering areas shall be imposed when the legal conditions, therefore (section 57) are met, and the perpetrator committed such a criminal offence, in case of which ban on entering areas can be imposed, in a criminal organisation.

There are **other detrimental legal consequences** for persons who had committed a criminal offence in a criminal organisation, including:

* active repentance cannot be applied [section 29 (3) b)],
* the general maximum of fixed-term imprisonment is 25 years (section 36),
* the imprisonment of two years or more shall be enforced in a high-security penal institution [section 37 (3) bb)],
* in the case of fixed-term imprisonment, parole cannot be granted [section 38 (4) c)],
* in case of life imprisonment, parole cannot be granted if the perpetrator committed any of the criminal offences listed under section 44 (1) in a criminal organisation [section 44 (2) b)],
* a person who committed the criminal offence in a criminal organisation cannot be exempted from permanent disqualification from a profession [section 53 (4)],
* the person cannot be released on probation [section 65 (2) b)],
* reparation work cannot be imposed on the person [section 67 (2) b)],
* confiscation cannot be omitted [section 73 b)],
* unless provided otherwise, assets obtained by the perpetrator during the period of participating in a criminal organisation shall be deemed assets to subject to forfeiture of assets [section 74/A (1) a)] and
* the enforcement of a sentence of imprisonment cannot be suspended [section 89 (1) b)].

Moreover, participation in a criminal organisation (section 321) is a criminal offence itself, and it renders punishable the following acts concerning organised activities:

* inviting to commit,
* offering to commit,
* undertaking to commit,
* agreeing to commit jointly a criminal offence in a criminal organisation;
* providing the conditions necessary for or facilitating the commission of a criminal offence in a criminal organisation.

**b)** Yes, but in a general way, as it is described above. Section 91 (1) can be applied regarding all contemporary forms of slavery.

**c)** Yes, Part Six (Section 214-260) of Act XC of 2017 on the criminal procedure (from now on: CCP) lays down the detailed rules of covert means.

According to Section 214(4) of CCP, the following covert means may be used in a criminal proceeding:

* **not subject to permission of a judge or a prosecutor** [Section 215 of CCP]
* utilising a person cooperating in secret
* collecting and verifying information relating to a criminal offence
* use a trap not causing injury or damaging health
* replacing an aggrieved party or another person to protect his life and physical integrity
* covertly surveil a person, home, other room, fenced area, public area, premises open to the public, or vehicle, or an object serving as means of physical evidence, and collecting information on events taking place, and use technical means to record such events
* disclosing false or misleading information to the person concerned (disinformation)
* **subject to permission of a prosecutor** [Section 2016-230 of CCP]
* surveillance of payment transactions
* offering avoidance of the establishment of criminal liability
* consented surveillance
* ghost purchases
* undercover investigators
* ghost purchases by members of organs authorised to use covert means and persons cooperating in secret
* cover deeds, cover institutes, and cover data
* **subject to permission of a judge** [Section 231-242 of CCP]
* secret surveillance of an information system
* secret search
* secret surveillance of a locality
* secret interception of a consignment
* interception of communications.

The CCP provides a transparent and straightforward system for covert means, it also invented some new instruments and lawful means; see examples as follows:

* the CCP regulates the measure called “disinformation” that sets up the legal framework, within which the investigative authorities can transmit false information through a person aiming to interrupt a crime in progress, identify the perpetrator of a crime, or gather evidence,
* the surveillance of financial transactions is also a new measure; it allows the authorities to obtain the details of specified bank accounts and of banking operations, which have been carried out during a defined period through an account in a financial institution, including the details of any sending or recipient account. The authorities also have the authorisation to suspend or stop the transaction and thus to be able to make the necessary measures to order the confiscation of the financial instrument concerned. This new measure allows the authorities to obtain transaction information in real-time and enhances the investigative authorities' capability to react quickly, efficiently to criminal situations connected to financial transactions.
* the CCP regulates the rules concerning the operations of undercover officers in line with the ruling of the European Court of Human Rights; therefore the prohibition to provoke was laid down, more flexible rules were introduced to the legal limits of operations, the connection to other covert measures and the combined application of them are defined clearly, and, as an improvement, officers are now entitled to go undercover in terrorist groups as well,
* when carrying out ghost shopping, the CCP paves the way for civil informers or the regular members of police staff as well to go undercover beside official undercover agents,
* the CCP broadens the framework of using the information gathered through covert measures permitted by a judge as a piece of evidence, and it also allows the data to be used as evidence in the case of a crime committed by a person not included in the judicial permission,
* the time limit for applying covert measures permitted by a judge has been raised up to 360 days instead of the former regulation, which allowed the use of those only for 180 days during a formal investigation.

The CCP abolished the necessity of an ex-post verification by a judge regarding data gathered through a covert measure permitted by a judge if it concerned a crime or a person not included in the judicial permission. Simultaneously, the new code lays down clear and objective conditions the authority operating a covert measure has to meet when the data gathered is intended to be used as a piece of evidence.

Finally, the CCP improved the rules concerning the use of data collected by national security organisations. Therefore, the CCP ensures that the result of the intelligence gathering by a national security service can be used in the criminal procedure broadly and flexibly.

The CCP also regulates a new procedural phase, namely, the **preliminary proceeding**. This proceeding can be launched before the commencement of an investigation, with the aim to clarify if it can be determined whether there is an eventual suspicion that a crime was committed. The authorities have powers to collect data and to apply covert measures during this kind of proceeding. The new provisions enhance the effectiveness of guarantees in this field: since the prosecution service gains control powers over this kind of pre-investigative information gathering from the very beginning of the process, while the CPC also contains rules, which exclude the possibility of “fishing expedition”.

**d)** Yes, see above for the required permissions. Besides, the CCP expressis verbis provides for an obligation to meet the requirement of necessity and proportionality when it comes to applying covert means and the limitation of fundamental rights. Thus, a covert means may be used if it is reasonable to assume that a piece of information or evidence to be acquired is indispensable for achieving the purpose of a criminal proceeding, and it cannot be acquired by other means; its use does not restrict any fundamental right of the person concerned, or any other person, in a disproportionate manner considering the attainable law enforcement goal; and it is likely that information or evidence relating to a criminal offence may be obtained by its use. The CCP also provides for the deletion and protection of data acquired during the use of covert means (Chapter XL) and the restrictions on using the result of the covert means (Chapter XLI).

In addition, the right to privacy and fair trial are fundamental rights provided for by the Fundamental Law of Hungary. The CCP *expresis verbis* states that a fundamental right may be restricted only in a proceeding for a reason, in a manner, and to an extent determined by the CCP, provided that the purpose to be achieved may not be guaranteed by any other procedural act or measure involving any lesser restriction. Regarding victims and witnesses of contemporary types of slavery, who can qualify as persons requiring special treatment, additional rules protecting their privacy also apply.

Also, a separate chapter is dedicated to the protection of personal data handled during a criminal procedure (Chapter XV of the CCP). As a general rule, the court, the prosecution service and the investigating authority shall ensure that no protected data processed during the criminal proceeding is published or disclosed to an unauthorised person unnecessarily and that the protection of personal data is ensured.

**e)** Sections 399-400 of the Criminal Code are the main sections defining the crime of **money laundering**. According to the current provisions, the predicate offence of money laundering can be any crime that is punishable by imprisonment, and the perpetrator uses the thing obtained from criminal activities in his business activities, uses financial or bank transaction in connection with proceeds obtained from the abovementioned offence. These offences are typically crimes against property, financial and economic crimes, for example, fraud, embezzlement, tax and social security fraud, fraudulent breach of trust, negligent administration, unauthorised financial service activities, etc.). Money laundering may be based on domestic or foreign predicate offence. The location of the commission and the nationality of the offender are indifferent. The only condition is that the predicative offence shall be punishable under the Criminal Code.

Offences relating to avoidance of direct income and corporate taxation are considered to be covered as the criminal offence of **budgetary fraud** (Section 396). The crime extends to the persons who “frustrate the criminal proceedings against the other person who committed a punishable act” [section 399 (1) ab) of the Criminal Code]. As an explanatory provision, section 402 (1) of the Criminal Code notes that for the purposes of sections 399-400, “object” shall also include documents and dematerialised securities embodying rights of pecuniary value which ensure disposal over the pecuniary value or right attested therein to the holder, or, in the case of dematerialised securities, to the beneficiary of the securities account. Regarding the concealment and disguise of the “true nature” of the criminal assets as prescribed by international obligations, the wording “origin of the object” covers both the “true nature” and the “source”, as one cannot interpret the “true nature” otherwise than in the framework of the criminal origin of the assets. Self-laundering is also criminalised in the Criminal Code under section 399 (3).

The Criminal Code provides rules for **confiscation** (section 72-73) and **forfeiture of assets** (section 74-76) as criminal measures to be imposed in the final judgment, while the CCP provides the procedural rules for **seizure** (section 308-323), **sequestration** (section 324-332) and **asset management** (section 333-334) ensuring confiscation and forfeiture of assets.

The confiscated things and forfeited asset or the sequestrated asset (from now on: criminal asset) shall be managed according to the rules of decent management during seizure and sequestration. During seizure and sequestration, it should be ensured that the criminal asset's value does not decrease more than it would occur naturally. During the management of the criminal asset, only such measures can be taken, the aim of which is the preservation of the value of the criminal asset. The asset transformed due to the measures taken as part of the criminal asset management shall replace the original criminal asset. (section 333) Otherwise, the court shall order the seized property's sale if it is not necessary to be kept for the interests of the evidentiary procedure, or no substantiated claim had been submitted for the property.

Additional conditions to sell the property include that it is liable to fast deterioration, or it is unsuitable for long-term storage, or if management, storage and safekeeping of the property – taking into consideration in particular, the value or the foreseeable long term of the storage thereof – involves unreasonable and high expenses, or the value of the property significantly diminished owing to the foreseeable long term of the storage thereof. The amount realised on the sale of the seized property shall replace the seized property. (section 319)

CCP goes further to minimise losses arising from asset management. The affected person, from whom the property had been seized, can motion the redemption of a seized property on the condition that the aim of seizure is exclusively to ensure confiscation of property and no lawful claim has been submitted for return. If authorities grant the motion, they specify the amount of redemption, and if it is accepted, the amount will replace the seized property.

Another invention of CPC is that it lays the foundations of a distinct authority responsible for the management of criminal property and criminal assets.

**f)** The CCP has a **separate proceeding for removing assets or things relating to a criminal offence (**section 818-826), when confiscation, forfeiture of assets, or taking a seized thing into State ownership is necessary, but

* no investigation was instituted,
* a criminal proceeding was terminated, or
* a criminal proceeding was suspended because the whereabouts of the perpetrator is unknown or he is staying abroad; the perpetrator cannot participate in the proceeding due to his permanent and severe illness, or a mental disorder that occurred after the commission of the crime, or the identity of the perpetrator could not be determined during the investigation.

Besides, this proceeding can also be conducted if, after the final and binding conclusive decision is passed by a court, but recovering assets originating from a criminal offence or ordering confiscation, forfeiture of assets retrospectively is necessary.

This procedure, however, cannot be conducted if the report of the crime was dismissed because the act does not constitute a criminal offence; the proceeding was terminated because the act does not constitute a criminal offence; a simplified review procedure is in order; or more than five years had passed after the conclusive decision of the court became final and binding.

Thus, the CCP makes it possible to take measures regarding assets related to criminal offences even if the perpetrator cannot be held criminally liable while all the fundamental guarantees of a criminal procedure also apply.

**g)** Section 91 (1) can also be applied regarding criminal offences of corruption (Chapter XXVII-XXVIII of the Criminal Code), and obstruction of justice (Chapter XXVI of the Criminal Code).

**h)** The CPC has a separate chapter on **persons requiring special treatment** (Chapter XIV). According to this, not only victims but also witnesses can also be classified as such persons. The main conditions, which determine whether a person can be classified as a person requiring special treatment is based on:

* age,
* mental, physical and health condition,
* the grossly violent nature of the act subject to the criminal proceedings,
* relationship of the concerned person to other participants of the criminal proceedings.

From among the supportive and protective measures available for persons requiring special treatment, the followings have to be emphasised:

* the authorities shall ensure that persons requiring special treatment could exercise their rights despite the obstacles deriving from their circumstances;
* the authorities shall pay increased attention during communication with persons requiring special treatment;
* the authorities shall act with increased diligence during procedural actions to protect the private life of persons requiring special treatment;
* the authorities shall give enhanced protection to the personal data justifying the special treatment;
* the authorities shall assist a person requiring special treatment to benefit from the participation of a supporting person;
* the authorities shall, when conducting procedural actions, pay special attention to the special needs of the person requiring special treatment;
* the authorities shall prepare procedural action in a way to avoid its repetitions;
* the authorities shall ensure to avoid the unnecessary encounters between the victim and the perpetrator during the proceedings and at the place of the procedural action;
* the authorities shall conduct procedural action in a room specially equipped for this reason;
* the authorities may record procedural action involving the presence of a person requiring special treatment;
* the presence of persons requiring special treatment can also be ensured via telecommunication link;
* the authorities may order to distort the unique characteristics of the person concerned during telecommunication link;
* if a recording is taken of the procedural action, authorities may order making a copy, on which the person’s unique characteristics is technically distorted;
* the authorities may restrict the right of the defendant or the defence counsel to be present at the procedural action;
* the authorities may restrict the right to ask questions of persons present at the procedural action by only allowing them to propose a question;
* the authorities may refrain from confronting a witness requiring special treatment;
* the authorities may ex officio order the personal data of the person concerned to be treated confidentially.

Additionally, there are special rules of witness protection, which aim to protect the life, physical integrity and personal freedom of a person requiring special treatment (and his relatives) and to guarantee that such a person meets his obligation to give testimony, which needs to be given without any intimidation. Such measures of witness protection include classifying the person requiring special treatment as a **specially protected witness** (section 90-93), granting **personal protection** (section 94) to them and ensuring them to participate in a **Protection Program** (section 95). Besides, the CPC has specific rules pertaining to the **protection of personal data** during criminal proceedings (Chapter XV).

Moreover, the CPC makes it possible to issue a **restraining order** to prevent the hindering of or interfering with taking evidence, prevent reoffending against the victim, or order **criminal supervision** of the same reasons. The two measures can be ordered simultaneously. The compliance with both the restraining order and the criminal supervision can be ensured by the electronic device monitoring the defendant's movement. The duration of the restraining order (to be ordered during criminal proceedings) is lengthened significantly. If it is ordered before the indictment is filed, it can last up to 4 months, which can be reordered for another 4 months. If the restraining order is issued or upheld during the court proceedings, depending on the instance of the proceeding court ordering or upholding the restraining order, it can last until the final judgment is delivered or the procedure is concluded. (sections 276-295 of the CPC)

Pursuant to Section 15 of the Criminal Code, it is possible that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of the trafficking in human beings.

According to Section 15 of CC, the perpetrator may be totally or partially exempted from criminal responsibility, or an act may be fully or partly exempted from criminalisation on the following grounds:

1. being below the age of criminal responsibility;
2. insanity;
3. coercion and threat;
4. mistake;
5. justifiable defence;
6. means of last resort;
7. statutory authorisation;
8. other grounds defined by law.

Of these, points a) to d) are of primary importance for the non-punishment principle. According to these, the exemption is ensured for a person under the age of fourteen years (section 6), and for a person who commits a punishable act under coercion or threat which prevents him from acting in line with his own will, and punishment may be reduced without limitation if the coercion or threat limits the ability of the perpetrator of a criminal offence to act in line with his own will. (section 19)

**4) Victims’/survivors’ access to justice and to remedies**

In Hungary, the state shall provide the following services to the crime victims after assessing their needs: facilitating the enforcement of interests (provision of information and legal advice, emotional help), instant monetary aid, state compensation, certificate of victim status, witness care, sheltered accommodation.

In our experience, **sheltered accommodation** is best suited to the needs of victims of modern slavery in order to escape the influence of the perpetrators, regain mental strength and embark on the path of a different life. Currently in Hungary, four non-governmental organizations operate a total of 6 shelters for victims of modern slavery. These institutions can be accessed regardless of police report / the initiation of criminal proceedings. The shelters provide housing in safe location, full care (meals, medical care, clothing, etc.) and the availability of a team of professionals (social worker, psychologist, lawyer).

So-called **half-way houses** connected to the shelters also form part of the complex assistance, designed to establish and strengthen independent living after the first few months of crisis intervention.

The special needs of those fallen victim to modern slavery are taken into account during the criminal proceedings as well. As a factor justifying special treatment, the *Criminal Procedure Code* explicitly refers to the risk arising from the victim’s relationship with another person involved in the criminal proceedings – a common feature of trafficking cases. Protective measures and safeguards applicable to such persons mean, for instance, that face to face meeting with the defendant can be avoided: confrontations during the investigation are skipped, any procedural act may be performed in separate rooms, and the presence in court can possibly be ensured through telecommunications devices (remote hearing). The restriction of the defendant’s right to ask questions and the use of voice and video recordings also play an important role in reducing the risk of secondary victimization and enhancing victims' willingness to testify.

In the criminal proceedings, the investigative authorities detect and seize the proceeds of the crime to secure a civil claim or the confiscation of property, and also a separate Asset Recovery Office operates within the organization of the National Bureau of Investigation.

Victims of intentional violent crimes against a person may claim **state compensation**, the maximum amount of which is currently HUF 2,372,520 (equal to approx. EUR 6,600). As of 1 January 2021 several new provisions entered into force to facilitate the recourse to state compensation which can be recommended as best practice to the Member States participating in the present review. The previous condition of need (social deprivation calculated on the basis of the monthly net income of the applicant) was abolished and the time frame for the application for compensation to be submitted was raised from 3 months to 1 year after the crime in question was committed/suffered.

**5) Other Questions**

**Implications of the COVID-19 pandemic**

In view of the epidemiological situation, many countries, including Hungary, had tightened the rules of entry: partial or full border closures have been ordered and lockdown measures have been put in place. As a result of these restrictions, most brothels, sauna clubs and buildings for window prostitution in the former destination countries of Western Europe have closed, and opportunities to offer sexual services in public space have been significantly shrunk. In addition to partial curfews, the fear of infection has also played an important role in the reduction of the demand side of prostitution services.

The combined effect of border closures, the introduction of travel restrictions, and the closure of the above-mentioned facilities have led to a near complete reduction in the THB-related movements to foreign countries. In this context, the Hungarian authorities have noticed that some of sexual services are being shifted to Hungary, where domestic restrictions have only periodically made pursuing it difficult.

Despite the recent hardship, it can now be stated that the Hungarian victim support system has withstood the emergency: all types of assistance for victims of human trafficking, including the Victim Support Centers and sheltered accommodations were available without interruptions in the past year. None of the shelters reported infections; the service providers have taken necessary precautionary measures, and they can ensure that the newly-arrived victims are isolated at all times.

1. Official translation of the Criminal Code: <http://njt.hu/translated/doc/J2012T0100P_20200716_FIN.PDF> [↑](#footnote-ref-1)