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Polish criminal law on 'Work of a forced nature'

1. INTERPRETATION OF THE EXPRESSION 'WORK OF A FORCED NATURE'

As is generally known, the Criminal Code[1] currently in force in Poland defines 'human trafficking' in its Art. 115(22). To remind, under this provision, 'Human trafficking shall consist in recruiting, transporting, delivering, handing over, keeping or receiving a person and resorting to:

(1) violence or an unlawful threat,
(2) abduction,
(3) deceit,
(4) deception or taking advantage of the person's error and/or inability to properly understand an undertaken action properly,
(5) abuse of the relationship of dependence, desperate situation or helplessness of a person,
(6) material or personal gain or promise thereof, offered or received by the person in whose care another person is or who supervises that person

– for the purpose of exploiting him/her, even with his/her consent, in particular in prostitution, pornography or other forms of sexual exploitation, in work or service of a forced nature, beggary, slavery or other forms of exploitation degrading human dignity or for the purpose of unlawfully obtaining cells, tissues or organs. If the behaviour concerns a minor, it shall constitute human trafficking even if the methods or means listed under items 1–6 have not been resorted to'.

As can be seen, the quoted definition contains the expression 'work of a forced nature' of interest to us here that – alas – is not defined in the Criminal Code itself, thus giving rise to undesirable disputes of interpretation over the scope of its legal meaning.

Perhaps, including a relevant definition in the Criminal Code was found to be unnecessary, because at the time when the Code was adopted, the Polish legal system already had a legally defined concept of forced labour. The definition had been introduced – to remind – by virtue of the *Convention Concerning Forced or*

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[1] See: Act of 6 June 1997 – Criminal Code (Journal of Laws of 1997, No. 88, Item 533 as amended; consolidated text: Journal of Laws 2018, Item 1600 as amended).

Compulsory Labour (*No. 29)* adopted in Geneva on 28 June 1930[2], under which – as laid down in its Art. 2(1) – the term *forced or compulsory labour* is to mean all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Nevertheless, the Convention, in Art. 2(2), excludes from the meaning of the term in question:

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character
(b) any work or service that forms part of the normal civic obligations of the citizens of a fully self-governing country
(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority, and the said person is not hired to or placed at the disposal of private individuals, companies or associations
(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population
(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

In a word, perhaps it was believed that introducing to the Criminal Code a definition of the expression 'work of a forced nature' would be redundant and thus praxeologically wrong since the Polish legal system, by virtue of the cited Convention, already featured a definition of forced labour[3].

This argument, however, would prove not be entirely valid.

Firstly, it must be noted that the Criminal Code, Art. 115(22), speaks not of forced labour but of work of a forced nature. Although these expressions differ only – as it seems – in their grammar and not in content, the difference must not be easily dismissed as the rules of interpretation of statutes insist – with much and justified emphasis – that a synonymous interpretation must be avoided whereby a single identical meaning is given to the statutory text components of a different form.

Secondly and obviously more important, the Convention, Art. 2(1), does not

[2] See: Journal of Laws 1959, No. 20, Item 122.

[3] The fact that the definition in question is an element of the Polish legal system has already been mentioned – see: Z. Lasocik, Ł. Wieczorek, *Handel ludźmi do pracy przymusowej – raport z badań*, Warszawa 2010, p. 12, which reads: 'We refer to this Convention and devote to it so much attention, because Polish legislation does not offer a definition of forced labour. However, by virtue of the Constitution, Art. 91, international agreements ratified by Poland become part of the Polish legal order. Hence, it can be assumed that the definition discussed above [of forced or compulsory labour – Ł.P.] is also a legal definition applicable in Poland'.

define forced labour as such but gives the definition of the expression 'forced or compulsory labour' without explaining the role of the conjunction 'or' used in it. After all, the conjunction may indicate, depending on the context, either an alternative or the synonymous, equivalent, or substitutive character of two words or phrases it joins[4]. This makes the definition less than fully practicable in the interpretation of the provision, one that at least verbally does not speak of forced labour but work of a forced nature. Its application in the interpretation would subject the interpreter to criticism that would be largely valid then for ignoring a very strong interpretation rule derived from the principle *nullum crimen sine lege* [no crime without law]. This would disallow an extensive interpretation, one very much to the perpetrator's disadvantage – that is to say, the rule known as *nullum crimen sine lege stricta* in the theory of criminal law.

Thirdly, let us observe that invoking the definition from the Convention would provoke opposition from those who assert, not without reason, that a legal definition is binding only within the normative act in which it has been formulated[5]. On the other hand, however, let us note, refuting this argument to a degree – a significant degree in our opinion – that the Convention is undeniably a normative act of paramount importance for combating forced labour. In such situations, the rules of legal text interpretation direct that the reach of a legal definition formulated in such an act be extended to other normative acts less significant for the problem to be regulated[6]. As a matter of fact, it must be added right away that in the case of the problem under discussion, the rule is not so obvious, as there would certainly be many who would doubt the legitimacy of the opinion about the secondary role of the Criminal Code in combating forced labour. Yet, it ought to be made absolutely clear in this context that we believe such doubts to be unfounded; we take the position that criminal law has a supplementary role to play in combating and controlling all social ills, force labour included.

Fourthly and finally, the argument could – although we do not accept this view either – result in questioning the rationality of the legislator's linguistic endeavours. Indeed, let us observe that the Criminal Code, Art. 15(22), says that human trafficking mentioned therein is not eliminated by the consent of the person aggrieved to be exploited in a manner degrading human dignity. Meanwhile, the Convention definition has as a constitutive condition of forced or compulsory labour the fact that the person from whom such labour is exacted has not offered him- or herself voluntarily to perform it. This condition could be interpreted by some (let us, however, make it absolutely clear that we believe such an interpretation to be false) as the absence of consent, i.e. its absence manifested by involuntary offering oneself for any form of exploitation mentioned earlier[7]. This interpretation – in our opinion – is fallacious, because consent to exploitation degrading human dignity does not mean that the person who has given it, did so voluntarily. For it must

[4] However, it must be noted that in the relevant literature, a view can be found, maintaining that forced labour does not differ from compulsory labour. This view is propounded by Z. Lasocik, Ł. Wieczorek, *Handel ludźmi*..., p. 11.

[5] For this question see: M. Zieliński, *Wykładnia prawa*..., p. 212.

[6] On this issue see: M. Zieliński, *Wykładnia prawa*..., p. 212.

[7] Thus – with this interpretation – human trafficking would be questioned in the event consent would be given, which would significantly restrict the scope of its punishability in Polish criminal law.

be noted that consent to exploitation may result from both a fully independent decision and a decision that is actually dependent on the external forces exerted by another person, or the decision-maker's own situation, especially financial. In the case of a dependent decision – by reason of factors inducing it – it cannot be said to be a manifestation of the free, unrestrained will of the decision-maker.

In a word, in the case of volitionally dependent consent, the condition of voluntariness is not met as the consent in question is not a product of the decision-maker's free will, but the consequence of an external force, over-restraining his/her will. Hence, the force is quite rightly classified as coercion. Moreover, in the case of coercion applied by an individual, the coercion is actually compulsive (mental) or one that is described in the theory of criminal law by pointing out that under it, the person being coerced cannot be expected to undertake any behaviour other than that to which he/she is coerced[8]. Here, in the context of the interpretation of consent, mentioned in the Criminal Code, Art. 115(22), it would be necessary – understandably – to liberalize the impossibility of an expectation requirement and replace it with a less rigorous condition. The above should assume that the consent in question will be given also when the decision-maker can hardly be expected not to give it. Invoking mental coercion has yet another advantage – as it seems – namely, it makes one realize that under coercion it is often the case that the person being coerced wants to behave in the way expected by the coercer. This situation is aptly described by the Latin phrase *coactus tamen voluit* that can be rendered in English as 'forced, yet of volition'. Without risking a major mistake, it can be claimed that the phrase fully corresponds with the majority of cases of giving consent to perform forced labour as it perfectly illustrates the common situation whereby a person has to agree to do forced labour or perform one of its component acts.

Summing up, all this makes one believe that it was a mistake not to define the concept of work of a forced nature in the Criminal Code. Furthermore, it follows that the expression 'work of a forced nature' is subject to interpretation rules developed by the theory of legal text interpretation[9].

The doubts outlined above – concerning the possibility of considering its meaning to constitute information being the definiens (defining part) from the Convention definition – prevent us from accepting that the expression under discussion has a legal definition binding on interpretation of the Criminal Code, Art. 115(22). Hence, further interpretative steps must be taken to decode its legal meaning.

The first step consists in exploring the position of the authoritative juristic literature to learn whether it confers on the expression in question one sense per se or – on the contrary – many inconsistent ones. This is necessary, because – according to the theory of legal text interpretation – an interpretation must not pick and choose a singular sense out of a number presented in the authoritative juristic literature. Instead, there is allowance for choosing a sense it universally approves[10].

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[8] On mental coercion see: Ł. Pohl, *Prawo karne. Wykład części ogólnej*, Warszawa 2015, p. 299 ff.

[9] The most comprehensive and detailed flowchart of legal text interpretation is offered by the derivative conception; for the flowchart description see: M. Zieliński, *Wykładnia prawa*..., p. 313 ff.

[10] This is stressed by M. Zieliński, who writes: 'As the established meaning in the language of the law, only this one should be adopted which beyond any doubt is universally adopted in the language of the law (i.e. there is complete agreement on what it means)' – M. Zieliński, *Wykładnia prawa*..., p. 334.

Unfortunately, the relevant literature lacks any analyses of the meaning of the expression in question. This hiatus as it were – it seems – is due for the most part to the failure to notice the subtle difference between the expressions 'forced labour' and 'work of a forced nature'. A consequence that follows is a tacitly implied treatment of both expressions as being synonymous. Thus, available discussions as a rule have concerned forced labour and not directly work of a forced nature.

Specifically, in the opinion of Lasocik and Wieczorek[11], who recognize the binding role of the Convention in this respect, forced labour is defined in the Convention. The definition, the cited authors believe, should be understood as follows:

> (…) *all work or service* means every type of work, employment or occupation, with an employment relationship or even legality of employment being of no significance. Hence, as forced labour must be considered also these acts which are illegal in a given country, as for instance prostitution, or which have not been regulated by labour law, for instance housework or the use of family members to do housework. The expression *any person* refers to both adults and children. It is of no significance whether the aggrieved person is the citizen of the country in which he/she has been identified as a victim of forced labour. In turn, the *menace of any penalty* refers not only to criminal law sanctions but also to various forms of coercion, including the threat of violence (punishable threat), withholding identification documents, deprivation of liberty and failure to pay for work done[12].

The definition mentions also – the quoted authors emphasize –

> (…) the fact that *the said person has not offered himself voluntarily* for a given work or service. This expression refers not only to the situation where a worker is forced to work but also where the employer misleads the employee as to the terms and conditions of work, employment or wages and at the same time, prevents the worker from repudiating the contract and quitting work[13].

In turn, Karsznicki[14] is of the opinion that forced labour covers all the actions that deprive performed work of the attribute of voluntariness[15]. According to him:

> For instance, it does not constitute forced labour to fail to pay an employee statutory minimum wages. However, any actions to prevent an employee from leaving the place of work would be covered by the concept of forced labour. For this reason, when assessing a specific type of behaviour, the following criteria should be applied:
> - Has physical or sexual violence been used?
> - Has the employee been restricted in his/her movements?
> - Has work been performed for alleged debts (the person becomes a security for debt)?

[11] Expressed – importantly – still when the Criminal Code did not contain a definition of human trafficking.
[12] Z. Lasocik, Ł. Wieczorek, *Handel ludźmi*..., p. 11.
[13] Z. Lasocik, Ł. Wieczorek, *Handel ludźmi*..., p. 12.
[14] Expressed when the Criminal Code did not contain a definition of human trafficking as well.
[15] See: K. Karsznicki, *Analiza polskiego prawa pod kątem efektywności ścigania handlu ludźmi*, Raport IWS, Warszawa 2008, p. 3.

- Has the payment of wages been delayed or withheld?
- Have passports or other identification documents been confiscated?
- Has the employee been threatened by the employer (including threats of reporting an illegal immigrant to the authorities)?[16].

Łabuz, Malinowska, Michalski and Safjański observe, in turn, already under the rule of the definition included in the Criminal Code, Art. 115(22), that to be able to speak of forced labour

> (…) neither work nor services may be performed voluntarily (employee must be forced to perform them) and for fear of being punished by the employer, the employee may not abandon same without negative consequences, nor negotiate the terms of performing them. Punishment is defined broadly. It covers also the employee's fear that if he/she abandons work, he/she will lose rights or privileges (e.g. he/she will not be paid for the work already performed or he/she will be forced to perform work with threats or even physical violence to his/her person or his/her family members)[17].

The quoted authors continue by saying that:

> Today, the International Labour Organization takes the view that in order to be able to speak of forced labour other elements are needed than those mentioned in Convention 29. For this purpose, it prepared (…) indicators to identify human trafficking for forced labour.
> - Has the employer resorted to violence (physical or sexual)?
> - Has the employee been restricted in his/her movements?
> - Has work been performed for alleged debts?
> - Has the employer withheld all or part of the money due to the employee but counted it instead towards the debt the employee incurred to cover the costs of travel to the country in which he/she works and/or the costs of his/her room and board (the person becomes a security for debt)?
> - Has the payment of wages been withheld or delayed or have wages been substantially reduced?
> - Have passports or other identification documents been confiscated by the employer?
> - Has the employee been threatened by the employer in respect to reporting the stay of undocumented foreigners or their illegal performing work to the authorities, entailing deportation or other consequences provided for in domestic law?[18].

They also stress the fact that forced labour is often opposed to dignified work. The latter – in their opinion – is characterized by four aspects:

[16] K. Karsznicki, *Analiza...*, p. 3.
[17] P. Łabuz, I. Malinowska, M. Michalski, T. Safjański, *Handel ludźmi. Przestrzeń prawnokarna i kryminalistyczno-kryminologiczna*, Warszawa 2017, p. 102.
[18] P. Łabuz, I. Malinowska, M. Michalski, T. Safjański, *Handel ludźmi...*, p. 102.

- guarantee of workers' rights (including the right to minimum wages and safe and healthy work conditions)
- right to employment (including assistance in seeking employment, welfare benefits in the case of unemployment, prevention of discrimination in employment)
- welfare benefits (in the event of sickness, old age, unemployment or other accidents)
- social dialogue (including the guarantee of the workers' right to organize and bargain with the employer)[19].

Since the current version of the Criminal Code came into force, the subject of forced labour has also been raised by Dąbrowski, who maintains that forced labour '[…] can be taken to be a form of human trafficking for the purpose of exploiting the victim, even with his/her consent, in work or services of a forced nature, including begging'[20].

In turn, in a monograph by Wieczorek – relying on the law as it stands now – it is said that forced labour

> […] was first defined in the ILO *Convention concerning Forced or Compulsory Labour* (*No. 29)*, Art. 2, adopted in Geneva on 28 June 1930. Under the definition, forced or compulsory labour is '[…] all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'[21].

Moreover, the expression 'all work or service' – in Wieczorek's opinion – covers

> every type of work, employment or occupation, with employment relationship or even legality of employment being of no significance. Hence, as forced labour must be considered also these acts that are illegal in a given country […] or which have not been regulated by labour law […]. It is of no significance, either, whether the aggrieved person is the citizen of the country in which he /she has been identified as a victim of forced labour[22].

Wieczorek goes on to say that an important distinction must be made between forced labour and exploitation, maintaining that the former is

> a much broader category and a far more serious and complex phenomenon. In the first place, the victim of forced labour is in a sense exploited, too, because his/her work benefits the person who exploits him/her. However, a person whose work is exploited cannot be said to be forced to work at the same time, because he/she may not meet all the conditions of performing forced labour as such[23].

[19] P. Łabuz, I. Malinowska, M. Michalski, T. Safjański, *Handel ludźmi*..., p. 103.
[20] P. Dąbrowski, *Praca przymusowa cudzoziemców w Polsce. Analiza zjawiska w wybranych grupach imigranckich*, Warszawa 2014, p. 32.
[21] Ł. Wieczorek, *Praca przymusowa. Zagadnienia prawne i kryminologiczne*, Warszawa 2017, p. 23.
[22] Ł. Wieczorek, *Praca przymusowa*..., p. 23.
[23] Ł. Wieczorek, *Praca przymusowa*..., p. 27.

Wieczorek continues by saying that forced labour, economic exploitation and slavery

> […] not only contradict the fundamental human rights and freedoms, but also the very idea of work as such, as the immanent characteristic of human work is its performance for the purpose of earning a living. Furthermore, forced labour, slavery and exploitation do not bring any socially notable advantages in contrast to work performed under normal conditions. Finally, forced labour does not share the basic functions of work, especially the most important one, namely the protective one, whereby workers' rights are privileged as the worker, in relation to the employer, is an economically weaker party and fully dependent on the employer, and harms its victims in a number of ways: physical, mental, economic, social, etc.[24]

According to Mozgawa: 'No doubts are raised by the phrase speaking of exploitation in "work or services of a compulsory character". Their obvious purpose is to provide cheap labour, while the work (services) is performed in contravention of employment rules (wages, work safety, working time, etc.)'[25].

In turn, according to Klaus:

> […] forced labour may not be simply reduced to low wages and bad working conditions. Nor can it refer solely to a pure economic constraint when an employee believes that he/she cannot quit work due to the absence of any real or imagined alternative employment. Forced labour is a serious infringement of human rights and a restriction of human freedom […]. Forced labour ought to be viewed as a process, as part of the continuum of employee exploitation, beginning with a minor infringement of an employee's rights and possibly ending in grave violations of fundamental rights […]. The defining of forced labour is complicated by the fact that […] various behaviour is subsumed under it. The most common is forcing to beggary or, unknown to our legislation, "exploitation of criminal activity", which should be understood as the use of a person to commit offences for somebody else's benefit (these are most often instances of theft, including pickpocketing or shop-lifting, drug trafficking or other similar activities that are punishable by law but gainful). Some documents consider sexual exploitation for gain as an element of forced labour. This may cause additional complications in practice, especially if one considers the Criminal Code, Art. 115(22), which lists these types of behaviour separately from forced labour. Thus, it is not known if it sees any relationships between them and, if it does, what they are[26].

The above quotations, fully representative of the position of the Polish authoritative juristic literature on the question under discussion, show that in spite of having

[24] Ł. Wieczorek, *Praca przymusowa*..., p. 27–28.
[25] M. Mozgawa, *Handel ludźmi (Art. 189a k.k.)* [in:] *System Prawa karnego,* v. 10, *Przestępstwa przeciwko dobrom indywidualnym*, J. Warylewski (ed.), Warszawa 2012, p. 403.
[26] W. Klaus, *Cudzoziemcy jako ofiary pracy przymusowej w Polsce* [in:] *Ofiary handlu ludźmi*, L. Mazowiecka (ed.), Warszawa 2014, p. 88 ff.

many elements in common, they can hardly be considered identical, apragmatically understood, explanations of the concept of forced labour. Therefore, and on account that the Criminal Code, Art. 115(22), speaks of work of a forced nature, let us try to delineate the meaning of this concept by referring to dictionary definitions, being – as we all know – the lexical foundation of a legal text[27].

In the first place, it should be noted that the phrase in question is a set one, consisting of five elements, i.e. three content words: *work, character, forced* and two function words: preposition *of* and article *a*. What makes it a set expression is the circumstance that the key word *work* is complemented by the other elements – after all what is meant is work of a forced nature[28].

Since general language dictionaries do not give a definition of the expression 'work of a forced nature', its dictionary meaning can be established only by decoding the meaning of its components[29].

One should start with the preposition 'of' about which there can be no doubt that it introduces a characteristic of the denotatum of the noun 'work'. The preposition is part of the expression 'of forced nature', which makes it necessary to examine the word 'character'. Nor in this case are there any doubts that it means 'main or essential nature especially as strongly marked and serving to distinguish'[30], as in the combination with the word 'forced', it will serve to distinguish work of a forced nature from that of a voluntary character.

As far as the word 'forced' is concerned, its dictionary definitions are alike too, but not as much as in the previous case. They define 'forced' as 'compelled by force: involuntary, compulsory'[31], while 'compelled' in this definition can be paraphrased as 'to obtain (a response) by force, violence, or coercion; to force or cause irresistibly: call upon, require, or command without possibility of withholding or denying'[32]. These definitions, as can be seen, correspond closely to the concept of compulsive coercion discussed earlier. Its essence – to remind – is the situation where the coercer significantly constraints the will of the 'coercee', making the latter undertake or perform work expected by the former. The work so undertaken or performed is not a result of the coerced person's free will but rather of his/her volitionally dependent decision, induced by the pressure from the person responsible for coercion.

In fact, the pressure is often reinforced by the decision-maker's dire situation. However, the compulsive behaviour approach is not fully adequate as it does not cover the so-called solely inner coercion[33], which does not come from another person, but is rather a psychological fact, stemming from necessity and imposed only by extra-personal, overwhelming external circumstances. They can be reduced

[27] On the question of the lexis (vocabulary) of legal texts see: M. Zieliński, *Wykładnia prawa*..., p. 139 ff.
[28] On set phrases see: M. Zieliński, *Wykładnia prawa*..., p. 330.
[29] This is stressed by Zieliński, who points out that when there is no dictionary meaning for the whole set phrase, the meaning must be established by skilfully joining the meanings of its components, see: M. Zieliński, *Wykładnia prawa*..., p. 330.
[30] Webster's Third New International Dictionary, Unabridged, s.v. "character", http://unabridged.merriam-webster.com
[31] Webster's Third New International Dictionary, Unabridged, s.v. "forced", http://unabridged.merriam-webster.com
[32] Webster's Third New International Dictionary, Unabridged, s.v. "compel", http://unabridged.merriam-webster.com
[33] The fact that it can be distinguished is attested by the fact of distinguishing the expression referring to it in the lexical base of a legal text.

to the objectively dire situation of the internally coerced person, manifested by his /her penury. There can be no doubt that inner coercion is covered by the dictionary meaning of the word 'forced' as it is included in the definitions quoted above: 'to obtain (a response) by force, violence, or coercion; call upon, require, or command without possibility of withholding or denying'.

What is left to be explored is the meaning of the word 'work'. In this case – on account of the context of its use in the Criminal Code, Art. 115(22) – such definitions as the following are thinkable: 'the labour, task, or duty that is one's accustomed means of livelihood' or possibly 'a specific task, duty, function, or assignment often being a part or phase of some larger activity'[34].

Keeping in mind the definition of the meaning of 'work of a forced nature', it has to be observed that in the language of the law, i.e. in the language of the Criminal Code, the meaning is considerably restricted by the phrase used in its Art. 115(22) that qualifies work of a forced nature as being an exploitation degrading human dignity. Thus, owing to this phrase not all work of a forced nature is work of this character within the meaning used in the Code, because a necessary condition for the latter to arise is the requirement that it degrade human dignity. By this is meant an extremely dehumanizing treatment of employees by employers – a treatment that utterly rejects the principles of work humanization by making work absolutely incompatible with psychophysical abilities and needs of man. Examples of such treatment include working hours and conditions not complying with established standards.

Thus, work of a forced nature within the meaning of the Criminal Code, Art. 115(22), will be all work performed in submission (subservience) and under coercion (compulsive and/or inner[35]) in a manner degrading human dignity.

With the matters being as they are, it is obvious that the concept of work of a forced nature adopted in the Criminal Code is dissimilar to that of forced or compulsory labour defined in ILO Convention No. 29. For the Code does not require the existence of a broadly understood sanction, while the Convention does not require the performed work to be a form of employee exploitation, degrading human dignity. Moreover, work of a forced nature is defined by reference (not entirely adequate as it turns out) to the Convention definition of forced or compulsory labour. Therefore, we believe it is necessary – and urgently too – to introduce to the Criminal Code (i.e. as Art. 115(22a) a definition of work of a forced nature. It might be worded thus: 'Work of a forced nature shall be human work performed under coercion and degrading human dignity'. Since the Criminal Code, Art. 115(22), contains also the concept of service of a forced nature, it is suggested that an analogous definition of such a service be introduced to the Criminal Code as its Art. 115(22b).

The Criminal Code meaning of work of a forced nature expounded above bears out the pertinence of many observations on forced labour to be found in the authoritative juristic literature. Namely, for work of a forced nature to exist, it does not matter if the activity performed is legal or not; it can be – quite rightly in fact – a legal or prohibited activity. It follows, therefore, that the employee may be also a person who is not an employee as defined in labour law. Indubitably, one

[34] Webster's Third New International Dictionary, Unabridged, s.v. "work", http://unabridged.merriam-webster.com
[35] The use of this conjunction is fully justified as compulsive coercion and inner coercion often coincide.

may opine this is absolutely right and axiologically justified. Nor does it matter – quite rightly – if the employee is an adult or a child. A fully positive assessment is attracted by the fact that the employee's citizenship is of no significance either. He/she may be a Polish national, foreigner or a stateless person for that matter. Nor indeed does it matter if the employee is gainfully employed, for instance if he/she receives any remuneration – work of a forced nature may be performed without being paid. This consequence of the scope of meaning given to work of a forced nature in the Criminal Code must be considered desirable as well, because it is fully justified axiologically by referring to the concept of human dignity.

2. THE RELATIONSHIP BETWEEN HUMAN TRAFFICKING AND WORK OF A FORCED NATURE

A careful reading of the Criminal Code, Art. 115(22), shows the relationship to be one of precedence: human trafficking in principle precedes work of a forced nature. The provision in question says that recruiting, transporting, delivering, handing over, keeping or receiving a person – making use of violence or an unlawful threat, abduction, deceit, deception or taking advantage of the person's error and/or inability to understand properly undertaken action, dependence, desperate situation or helplessness of the person, material or personal gain or promise thereof, offered or received by the person in whose care another person is or who supervises that person – are undertaken to use him/her in work of a forced nature. These types of behaviour precede such work, because they only make it possible.

3. SUGGESTIONS TO AMEND THE POLISH CRIMINAL CODE

Failure to extend the concept of human trafficking to cover work of a forced nature poses – quite naturally – a question if it was the right thing to do.

This question entails another concerning the ability of current Polish criminal law to combat and restrict work of a forced nature. To this end, the current Criminal Code offers of course a number of means – depending on specific facts in a case. To name a few: there are norms in place, prohibiting the deprivation of liberty, punishable threats, stalking, violence or exploitation. A question arises in this context if these means are really an appropriate reaction to work of a forced nature, if they are specifically designed to combat it. What gives rise to serious doubts in this respect is a review of the detailed conditions that must be met for the norms to be considered broken. They prevent making the exploitation of man by having him/her perform work of a forced nature, as defined in the Criminal Code, an offence, covering all its aspects.

With matters being as they are, we believe a discussion should be commenced about amending the Criminal Code by introducing to it appropriate provisions, designed directly to make the abuse in question an offence. Perhaps, such provisions could be worded as follows:

Art. 189a.

§ 3. Any person who forces an individual with his/her consent to perform work degrading human dignity or render a service degrading such dignity

shall be liable to a fine, community work or imprisonment for a term not exceeding 2 years.

§ 4. If the act mentioned in § 3 has been committed to the detriment of a minor, the perpetrator shall be liable to imprisonment for a term of 3 months to 5 years.

§ 5. If the act mentioned in § 3 has been committed to the detriment of a person incapable of realizing the significance of the act due to mental handicap or illness, the perpetrator shall be liable to punishment specified in § 4.

§ 6. Any person who forces an individual without his/her consent to perform work degrading human dignity or render a service degrading such dignity shall be liable to imprisonment for a term of 3 months to 5 years.

§ 7. If the act mentioned in § 6 has been committed to the detriment of a minor, the perpetrator shall be liable to imprisonment for a term of 1 year to 10 years.

§ 8. If the act mentioned in § 6 has been committed to the detriment of a person incapable of realizing the significance of the act due to mental handicap or illness, the perpetrator shall be liable to punishment specified in § 7.

§ 9. Any person who receives an individual into their employ in order to perform work degrading human dignity or render a service degrading such dignity shall be liable to a fine, community work or imprisonment for a term not exceeding 1 year.

Formulating these suggestions, we of course have in mind a possible charge about the disproportionality between the severity of statutory punishability suggested there and that of the offence of human trafficking. The disproportionality follows from the fact that human trafficking – in spite of the fact that it comprises, in the scope discussed here, types of behaviour evidently preceding the performance of work or a service of a forced nature – carries a more severe sanction than sanctions suggested above. In an attempt to rebut this charge, let us point out in our defence that the range of behaviour to be made offences in the draft proposal is very broad indeed, and – more importantly – covers diverse types of behaviour characterized by various degrees of reprehensibility. Moreover, it is very important to preserve the cohesion of the entire Criminal Code, including the cohesion of the criminal policy as formulated by its provisions. Insisting on more severe statutory punishability than that provided for in Art. 189a(1) could – in our opinion – considerably destabilise it. After all, one must consider the gravity of other offence types, entailing a specific level of severity of punishments they carry, so that a socially undesirable impression of depreciating the gravity of those other, equally grave, offence types, is not created.

Summary

Łukasz Pohl, *Polish Criminal Law on 'Work of a forced nature'*

This article discusses Polish criminal law and its outlook on work of a forced nature. The discussion has three distinguishable aspects: (1) interpretation of the expression 'work of a forced nature', (2) relationship between human trafficking and work of a forced nature,

and (3) suggestions for adequate amendments to criminal law provisions. Under (1), it is observed that the concept of work of a forced nature calls for an autonomous interpretation and that references to the Convention concerning Forced or Compulsory Labour (No. 29) of 1930, Art. 2(1 & 2) of which defines such labour, are not fully justified in the interpretation of this concept. Under (2), it is shown that human trafficking – within the meaning given to it by the Polish Criminal Code – covers only behaviour preceding the performance of work of a forced nature. Finally, under (3), a suggestion is made to introduce suitable amendments to the Polish Criminal Code, thereby creating new offence types, involving coercion of people to perform work or a service of a forced nature.

Keywords: *forced labour, coercion, forms of exploitation degrading human dignity*

(przekład na język angielski: Tomasz Żebrowski)

Streszczenie

Łukasz Pohl, *Stosunek polskiego prawa karnego do zjawiska pracy o charakterze przymusowym*

Niniejszy artykuł dotyczy stosunku polskiego prawa karnego do zjawiska pracy o charakterze przymusowym. Zawarte w nim rozważania odnoszą się do trzech dających wyodrębnić się aspektów: 1) wykładni wyrażenia „praca o charakterze przymusowym", 2) relacji pomiędzy handlem ludźmi a pracą o przymusowym charakterze, oraz 3) postulatów adekwatnej zmiany przepisów prawa karnego. W ramach pierwszego z nich spostrzeżono, iż pojęcie pracy o charakterze przymusowym wymaga autonomicznie przeprowadzonej wykładni, że – tym samym – nie w pełni uzasadnione są przy interpretacji tego pojęcia odniesienia do Konwencji Nr 29 z 1930 r. o pracy przymusowej lub obowiązkowej, w której art. 2 ust. 1 i 2 zdefiniowano ową pracę. W ramach drugiego aspektu wskazano z kolei, że handel ludźmi – w znaczeniu tego pojęcia nadanym przez polski Kodeks karny – obejmuje jedynie zachowania leżące na przedpolu świadczenia pracy o charakterze przymusowym. Wreszcie, jeśli chodzi o trzeci z wyróżnionych aspektów, to zaproponowano wprowadzenie do polskiego Kodeksu karnego stosownych zmian, polegających na utworzeniu nowych typów przestępstw wiążących się z przymuszaniem człowieka do wykonywania pracy oraz usługi o charakterze przymusowym.

Słowa kluczowe: *praca przymusowa, przymus, formy wykorzystania poniżające godność ludzką*

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