



The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others done at New York on 21 March 1950 is 70 years old

**Dohovor o potláčaní obchodovania s ľuďmi a využívaníu
prostitúcie iných, podpísaný v New Yorku 21. marca 1950,
je starý 70 rokov**

István DR. KOVÁCS¹

¹ University of Public Service Faculty of Law Enforcement in Hungary

The manuscript was received on 23. 09. 2020 and was accepted after revision for publication on 15. 11. 2020

Abstract:

The New York Convention is 70 years old. On the occasion of the anniversary, I made a comparison in connection with the Hungarian regulations. Today, in Hungary, the practice of prostitution is not a solved activity. Prostitutes have limited access to justice and are unable to meet state obligations towards them. The primary reason for this is the disorganization of domestic and international regulation. The first problem is the domestic legal regulation of prostitution, the second problem is the official treatment of prostitution, and the third problem is the lack of social reintegration. To analyze all of this, I used basic research, a source-critical approach, and commentary on the regulator. At the very end of the study, I made a proposal to develop a new model. If we were to allow the development of a model based on the exercise and guarantee of fundamental human and constitutional rights; and its support pillars are the strengths and opportunities of the old models, we could make sure that the weaknesses and dangers of the old models can be eliminated.

Keywords: prostitution, law regulation, New York Convention, a source-critical analysis, police work



The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others done at New York on 21 March

1950 is 70 years old

István Dr. KOVÁCS

Abstrakt:

Newyorský dohovor má 70 rokov. Pri príležitosti výročia som urobil porovnanie v súvislosti s maďarskými predpismi. Dnes v Maďarsku nie je prostitúcia vyriešenou činnosťou. Prostitútky majú obmedzený prístup k spravodlivosti a nie sú schopné plniť záväzky štátu voči nim. Hlavným dôvodom je dezorganizácia domácej a medzinárodnej regulácie. Prvým problémom je domáca právna úprava prostitúcie, druhým problémom je úradné zaobchádzanie s prostitúciou a tretím problémom je nedostatok sociálnej reintegrácie. Na analýzu toho všetkého som použil základný výskum, zdrojovo kritický prístup a komentár regulátora. Na samom konci štúdie som podal návrh na vývoj nového modelu. Ak by sme umožnili vypracovanie modelu založeného na výkone a záruke základných ľudských a ústavných práv; a jeho podporné piliere sú silnými stránkami a príležitosťami starých modelov, mohli by sme sa uistiť, že budú odstránené slabé stránky a nebezpečenstvá starých modelov.

Kľúčové slová: *prostitúcia, zákonná regulácia, Newyorský dohovor, analýza kritických zdrojov, policajná práca*

Introduction

It is 70 years since the international regulation of prostitution recognized the fundamental human and constitutional rights of prostitutes. In 2020, the number of members reached 95. Hungary joined the Convention in 1955.

Today, in Hungary, the practice of prostitution is not a solved activity. Prostitutes have limited access to justice and are unable to meet state obligations towards them. The primary reason for this is the disorganization of domestic and international regulation. The focus of the dispute are the recognition of the prostitute's victim character, the management of records, the persecution of girls' traffickers and the creation of legitimacy. While the New York Convention [1] deals with prostitutes as victims, provides for the prosecution of girls' traffickers by States Parties, and prohibits the establishment of brothels, in the meantime – even though Hungary is a part of the Convention – the system considers prostitutes to be criminals in the event of a misdemeanor, and keeps a record of them.

Since 1955, since Hungary ratified the New York Convention the state sought to regulate prostitution, however, it has not been successful, and is still in violation of international law. The model of total prohibition –, which also punishes a prostitute, a trafficker and a client – is inapplicable due to the human and constitutional rights. [2] The model of regulation, which makes the practice of prostitution subject to certain rules, but uses tools such as record keeping, state and medical surveillance, coercive healing and stigmatization, is also incompatible with the exercise of fundamental human rights. It testifies to the primitiveness of the system. [3] The abolitionist model that recognizes the sacrificial nature of prostitutes, orders punishment of the traffickers, but does not treat the clients any differently, which is contrary to the practice of law, they are stigmatized too. [4] Today, in Hungary, the system governing the practice of prostitution is regarded as a system of semi-regulation model and semi-abolitionist model, which, for the reasons given above, is also not a solution to the prostitution phenomenon. [5]

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Scientific Problem

If the study were to deal with the phenomenon of prostitution in a common sense, it would certainly begin with a “well-established” statement, such as “prostitution is as old as humanity”, “prostitution is the oldest craft”, “prostitutes are the carriers of sexually transmitted diseases”, “prostitution is required bad...”, etc.. However, as the study presents this phenomenon through the lived reality of prostitutes, from legal, social, criminological, forensic, medical, sociological, psychological aspects, it attempts to break away from these “romantic approaches” and be a paradigm shift, to offer a real, theoretically and practically correlated solution to the debate that has been going on for thousands of years and is widening the gap between social groups.

The phenomenon of prostitution is examined from a different perspective by each person and by every field of science. It means something different to the police officer, something different to the doctor, and completely different to the social worker. The police presumably focus on public order, the doctor on public health and the social worker on social reintegration. Nonetheless, it is necessary to point out that each discipline is of paramount importance for a full understanding of the phenomenon – it has no priority over the other – there is no problem as long as there is the possibility of reaching a consensus. Unfortunately, however, in the course of my research, I had to realize that no common agreement has been reached among the disciplines on the treatment of the prostitution phenomenon to date. However, if we consider that the consensus on the management of prostitution would and could cover the totality of measures providing opportunities for public order, public health, resocialization and social reintegration, than the part related separately could be combined, integrated and a complete whole could solidify, organize and perhaps solve the problems.

In order to deal with certain phenomena, it is sufficient for a certain discipline to develop measures based on a certain theory that is well-applied in practice, but prostitution, given its complexity, cannot be tackled that way. Prostitution is a very diverse phenomenon, and a detailed understanding of each element is required for a complex understanding. That is why I consider it extremely important for each researcher to contribute his or her own understanding to the whole, as prostitution can also be interpreted as a puzzle the pieces of which are spaced apart and only give the whole picture if they are put together from existing parts. And the assembly requires an adhesive that holds it together and prevents the pieces from disintegrating again.

If we want to put this theoretical hypothesis into practice, we could formulate the solution in such a way that the proposals developed for each sub-field are provided by the various disciplines, and the unifying measures - in connection with codification and norm-setting activities - are provided by the state will. It is in vain to design a series of independent and otherwise appropriate applicable public order and/or public health measures to deal with the phenomenon, if there is no state-will to ensure that the measures are embodied in the norms governing human behavior in a constitutional and fundamental manner in addition to ensuring the exercise of human rights, that is harmonized with international law. Prostitution is therefore not only a national but also an international issue. Our primary task, however, is to “sweep around our own house” and steer it into the right channel, and not to be afraid of giving way to something completely new that could take its place in the treatment of prostitution not only domestically but even internationally. The line of reasoning seems to be strengthened when we examine the historical aspects of models for regulating prostitution:

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

- *When prostitution in Hungary was socially objected, the state introduced prohibition measures. It criminalized both prostitution and parasitic acts based on it, and occasionally those who used sexual services were punished. The period lasted until the signing of the New York Convention on March 21, 1950, until 1993, which was incorporated into Annex IV of 1978. ended with the amendment of the Criminal Code. [6] A sub-area (such as social compliance), a solution alternative (such as state prohibition regulation of social compliance). The state focused on a specific problem, and did not fit the parts together. Unfortunately, this approach is still present in Hungarian regulation and it is also one of the defining elements of police measures. While the regulation seeks to overcome and destroy the cause, unfortunately no alternative solution has been created for the cause, as it can be seen in the police measures.*
- *When public health (spread of sexually transmitted diseases) and public order (citizens' sense of security) were on the stage, the state introduced regulatory measures. In the regulation, the dualistic demand of the state – the official and medical supervision of prostitution – appeared, which wanted to limit the spread of the phenomenon. The system of regulation was first introduced after the War of Independence in 1867, which was applied until the promulgation of the New York Convention, until March 21, 1955. The second period of regulation (the period after the change of regime 1988-1990) could only be interpreted as a semi-regulation. Two sub-areas (such as public order and public health compliance), one solution alternative (such as state regulation of public order and public health compliance). The state focused on only two specific problems, not merging the other parts. However, we can say that the state will, which offers an alternative solution, tries to focus not only on one but more sub-areas than the introduction of the prohibition model, but in the context of turn-of-the-century pragmatism, power was not interested in doing more when dealing with prostitution. In Hungary, the social forces that were interested in the liberalization of sexual morals could not get a majority. All this was due to the fact that prohibitionist ideas that prostitution was morally bad and not a social coercive career were never really silenced.*
- *However, when the exercise of human and constitutional rights and the reintegration efforts of marginalized groups (based on race, gender, color, occupation, etc.) came to the fore, the state introduced abolitionist measures. The abolitionist approach proclaimed that law-makers should take action against the regulation and prohibition of prostitution — and abolish it. The abolitionist conception did not tolerate the official authorization of prostitution and the discriminatory exclusion of prostitutes. In Hungary, the application of the abolitionist approach is apostrophized after 1993, but it is not necessarily complete either, it is rather semi-nationalist and semi-regulated in nature. One sub-area (such as ensuring the exercise of human and constitutional rights), one alternative solution (such as state abolitionist regulation of compliance to ensure the exercise of human and constitutional rights). The state focused on a specific problem; it did not put the parts together. Man is the most sensitive being on Earth, who from birth is entitled to the exercise of human rights that*

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

even the state is not entitled to restrict. While the state tried to solve certain sub-areas with the previous regulations, the abolitionist conception tried to make the state realize that the state guarantee of the exercise of constitutional and human rights cannot be enforced with any of the regulatory alternatives. It is the duty of every state to guarantee the exercise of the fundamental human and constitutional rights of citizens living and/or staying in its territory.

It can also be concluded from the above that it is useless to take a series of measures for each sub-sector, if the state always focuses mainly on one division and the ruling power has decided on its own how to regulate the phenomenon of prostitution. In my doctoral dissertation, I was fortunate enough to examine regulatory models using SWOT analysis, during which I explored their strengths, opportunities, threats, and weaknesses, and then offered a solution that integrated the strengths and opportunities of the new model for prostitution, the weaknesses, and exploited dangers. [7]

In my opinion, the issues related to the state treatment of prostitution in Hungary can be divided into three groups, which also pose a scientific problem.

The first problem is the domestic legal regulation of prostitution, the second problem is the official treatment of prostitution, and the third problem is the lack of social reintegration. In view of all this, I see the scientific problem as below:

- *In Hungary the legal regulation of prostitution does not harmonize with international law, it is based on the opposite method with regard to certain provisions. [8] The regulation of prostitution varies from society to society and from state to state, but states that are signatories to the international New York Convention are obliged to guarantee the enforcement of ratified rules and to resolve existing contradictions. If the contradictions are not resolved, neither the state's efforts to deal with the phenomenon nor the exercise of fundamental constitutional and human rights can be realized.*
- *In Hungary, official measures for the treatment of prostitution may extend beyond their competence, and there are many opportunities for abuse. Police measures related to prostitution are mostly professional and illegal, which can seriously endanger the exercise of the constitutional and human rights of prostitutes. [9] With regard to groups that are still marginalized on the social periphery, full control is exercised by the authority, which may become absolute due to inequalities in the absence of state intervention. Absolute exercise of power, in addition to abuses, creates a limit to the exercise of constitutional and human rights.*
- *In Hungary, due to the exclusion of prostitutes by society, the possibility of resocialization measures and social reintegration becomes unenforceable. [10] Due to the above, there is no state, official or civic interest in socializing and treating tolerant members of society with the intention of educating groups in need of social periphery. All of this can lead to marginalized groups falling victim to the policies of citizens, authority, and the ruling power.*

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Unfortunately, these are existing problems that not only prostitutes but the average person and the authority face on a day-to-day basis. We could say that the need for intervention is of primary importance, but it is also a welcome fact that this kind of cry for help finds ears of listening. In the light of the results I would like policymakers at least to consider the thought that if we do not change the critical situation arising from the current regulation, there may never be a chance that these groups will ever be able to exercise constitutional and human rights, creating additional space for the exploitation of by pimp networks, the abuse by authorities and the transmission of disapproving values by citizens and society. This is only a recommendation as to what benefits and opportunities a conscious organizational and codification-based change in legislation promises, from which the state, but most of all, the marginalized groups on the periphery of society, can benefit.

Scientific aim

Citizens are placing ever-increasing demands on the quality of the public service and the services it provides, these demands are becoming increasingly difficult to achieve with increasingly scarce budgetary resources, traditional, previously effective working methods, organizational culture, and attitudes. Obsolete systems, obsolete tools, and obsolete methods. The world is evolving, globalizing. The civil service must also be in constant change if it is to follow the positive effects of globalization and overcome the resulting challenges. (Sexual exploitation, prostitution crimes are one of the greatest threats to globalization. While the abolitionist and prohibitionist approaches promote the persecution of the pimps, the regulatory system promotes the private brothel-based legalization. There is thus the question: were earlier systems more successful? The answer is no, and in my doctoral dissertation I managed to show that the weaknesses, dangers, strengths and opportunities of existing models in the state treatment of prostitution in Hungary. The solution can only be the introduction of a new model, which I have described in several of my studies, articles and books. [11]

Economic, political conditions, and social needs force the state, public service, and law enforcement agencies to improve the quality of their activities. In order for the civil service to be able to meet these circumstances, it needs not only up-to-date but also applied knowledge, systematic and evaluated knowledge materials, methods and solutions. Bodies can absorb this knowledge on the one hand through the knowledge and experience available on the international stage, through its domestic adoption, and on the other hand through the establishment of a knowledge base that underpins and develops the activities of domestic and public service bodies.

The definition of the purpose has also taken a hypothetical form: If an information database (the analysis of the New York Convention and the harmonization of the Hungarian law) is available from which a coherent conclusion of appropriate quality and quantity can be drawn, then the functional goal can be indicated in the introduction of measures using logistics technology to maximize human and material resources based on the triple of research, development and innovation:

- *the necessary information can be obtained during the research, proposals can be developed based on the results; due to the relatively slow change in*

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

technological standards research results can lead to development, which provides an opportunity for the result-oriented implementation of measures that are of interest in the international arena, horizontal measures can overcome legal and natural barriers;

- *may lead to modern law enforcement, victim protection and state management of the phenomenon; and innovation ensures that the persons involved in it (the state, law enforcement agencies, and prostitutes) acquire theoretical knowledge, using state-of-the-art techniques, tools and methods, along the elaboration of educational topics, and in practice legally and professionally and exercise their rights accordingly.*

Scientific hypothesis

I also assume that although these experiences are able to map how the Hungarian regulation is implemented at the level of implementation, in practice, it correlates with international law and whether, in parallel, the authorities and the state do everything possible to the practical implementation of the standards governing human behavior in relation to prostitution should be legal and professional, should there be scope for abuse?

Scientific methodology

I conducted historical basic research, during which I used primary and secondary sources. The data collection covered archival, museum, and online materials published in sociological, legal, social science, law enforcement, and other areas related to prostitution, including studies, research papers, written reports, protocols. Due to the technical developments I had the opportunity to supplement the Hungarian literature, which proved to be scarce, with scientific works in German and English. The available research on prostitution spanned a time interval of about twenty to thirty years, during which I was able to study and analyze more articles. In the course of pre-emptive research, however, I apostrophized as a problem that while there were many studies available on the international stage, there were hardly any Hungarian authors who had recently conducted research on the topic. When I thought that I had managed to overcome the problem with this relatively high number of copies, I had to realize that only a fraction of the Hungarian and foreign language literature I found met the criteria I set for the historical research. Given that my own study corresponded to research based on a “source-critical analysis”, the studies analyzed had to fit into it as well.

The study presents the provisions of the New York Convention with a source-critical analysis: which articles are ignored and which articles are observed by Hungary in the Hungarian regulation. The “commentary” written to the New York Convention could serve as a basis for the state to allow room for the new regulation, which I propose. Details of the new regulation can be read in my latest study, I don't publish the details in this study. [12]

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

The New York Convention

In 1949 the Contracting parties, whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, whereas , with respect to the suppression of the traffic in women and children, the following international instruments are in force , whereas developments since 1937 make feasible the conclusion of a convention consolidating the above-mentioned instruments and embodying the substance of the 1937 draft Convention as well as desirable alterations therein agree as hereinafter provided:

Article 1

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

(1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;

(2) Exploits the prostitution of another person, even with the consent of that person.

Commentary: The first article is about punishing the pimps. The aim of the first article is to punish persons who exploit and force prostitutes into the prostitution. This is a parasitic activity that violates the basic human rights of prostitutes, such as human dignity, free movement, decent work, rest, etc. The Hungarian criminal law complied with the first article when it created the legal facts of the crime of fencing and perseverance in the Criminal Code. In this respect, Hungarian and international regulations harmonize with each other

Article 2

The Parties to the present Convention further agree to punish any person who:

(1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

(2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Commentary: The first article is about punishing the pimps too. The purpose of the second article is to prevent the establishment of brothel systems and to put an end to the practices that support it. With brothel systems, pimps try only to launder illegal income and hide it from the authorities. A fictitious behavior that masks real exploitation. This parasitic activity violates and endangers the basic human rights of prostitutes, such as decent work and working conditions, rest, human dignity, freedom, etc. The Hungarian criminal law complied with the second article when it established the legal facts of the crime of promoting prostitution in the Criminal Code. In this respect, Hungarian and international regulations harmonize with each other.

Article 3

To the extent permitted by domestic law, attempts to commit any of the offences referred to in articles 1 and 2, and acts preparatory to the commission thereof, shall also be punished

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Commentary: Article 3 also creates the criminalization – if the internal regulators allow it – of those who commit the preparations of the above acts. This is punishable if the perpetrator's intention is already realized in the outside world, endangers the legal object, but the danger is distant from the attempt. The Criminal Code thus provides for the criminalization of preparation. In this respect, Hungarian and international regulations harmonize with each other.

Article 4

To the extent permitted by domestic law, intentional participation in the acts referred to in articles 1 and 2 above shall also be punishable.

To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

Commentary: Article 4 also creates the criminalization – if the internal regulators allow it – of those who assist in the above acts. According to the Hungarian legislation, complicity is only related to the commission of an intentional crime, it is excluded in relation to negligent commission. The Criminal Code therefore provides for punishment for complicity in the offense of both perseverance, fencing and the promotion of prostitution. This is a typical example of someone who wants to set up a brothel and leases a property to the perpetrator for this purpose. In this respect, Hungarian and international regulations harmonize with each other.

Article 5

In cases where injured persons are entitled under domestic law to be parties to proceedings in respect of any of the offences referred to in the present Convention, aliens shall be so entitled upon the same terms as nationals.

Commentary: Article 5 extends private prosecution proceedings to prostitution offenses. Hungarian criminal proceedings know the institution of private prosecution for minor bodily assault, violation of private secrecy, violation of letter secrecy, defamation and piety insult. In the context of prostitution, minor bodily assault and defamation can be the most common. Think about it, if the client, the pimp, or anyone abuses the prostitute and the healing duration of the injury does not exceed 8 days, then a minor bodily injury will occur. If the prostitute wishes to punish the perpetrator, the law enforcement officer is obliged to conduct the proceedings. The same is true of society's disapproving value judgments, which lead to prejudice and marginalize prostitutes. When any member of society calls prostitutes as vectors of sexually transmitted diseases and forms a stigma, he or she can realize the defamation fact. So the prostitute can – if he or she so desires – seek punishment for the perpetrator. Thus, the Hungarian legal system provides for the possibility of private prosecution generally, also in the context of prostitution. In this respect, Hungarian and international regulations harmonize with each other.

Article 6

Each Party to the present Convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Commentary: Article six prohibits discrimination against prostitutes. The 41/1999. (IX. 8.) EüM decree – to the medical certificate to be issued to prostitutes – [13] contained a direct provision concerning the person and occupation of the prostitute. This was not in accordance with international law, therefore the Constitutional Court annihilated it with the 1/2011. (I.14.) AB decree on 14 January 2011. [14] By not including a provision to the person and occupation of the person concerned in the medicinal certificate and the prostitutes are not being registered in a registry, Hungary has fulfilled the partial terms of reference of the article. If the prostitute commits a misdemeanor, he or she will be registered in the misdemeanor registration system. This official register is a special register, so this article of the Convention is violated. A separate card means a card for a sole proprietorship, prostitutes do not have a label. Due to the number 9604 TEÁOR – other services that improve well-being – pejorative content does not exist, it does not violate the fundamental personality rights of prostitutes. With regard to the perpetrators of prostitution offenses, I must also mention the criminal record, which has the same methodology as the misdemeanor registration system, in their case this provision of the Convention is also violated. In this respect, Hungarian and international regulations do not harmonize with each other.

Article 7

Previous convictions pronounced in foreign States for offences referred to in the present Convention shall, to the extent permitted by domestic law, be taken into account for the purposes of:

(1) Establishing recidivism;

(2) Disqualifying the offender from the exercise of civil rights.

Commentary: The 7. article provides: if the crime of prostitution is also a crime under international law and the act has been finally judged – if it is permitted by the applicable law – it must be taken into account. The Hungarian Criminal Code also prohibits double punishment in respect of acts that have already been legally judged. This is also generally true of prostitution offenses. In this respect, Hungarian and international regulations harmonize with each other.

Article 8

The offences referred to in articles 1 and 2 of the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereafter be concluded between any of the Parties to this Convention.

The Parties to the present Convention which do not make extradition conditional on the existence of a treaty shall henceforward recognize the offences referred to in articles 1 and 2 of the present Convention as cases for extradition between themselves.

Extradition shall be granted in accordance with the law of the State to which the request is made.

Commentary: Article 8 of the Convention states that, in respect of offenses committed in prostitution, the perpetrators shall be extradited to the States Parties for the purpose of criminal proceedings, if necessary. Extradition shall be governed by the law of the requested State. As a general rule, it is always necessary to examine what

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

type of international treaty is in force with a given country and what action can be taken by the judiciary and law enforcement agencies, including with regard to extradition. In this respect, Hungarian and international regulations harmonize with each other.

Article 9

In States where the extradition of nationals is not permitted by law, nationals who have returned to their own State after the commission abroad of any of the offences referred to in articles 1 and 2 of the present Convention shall be prosecuted in and punished by the courts of their own State.

This provision shall not apply if, in a similar case between the Parties to the present Convention, the extradition of an alien cannot be granted.

Commentary: Article 9, which governs extradition, provides that if extradition is not possible between the Contracting States and the perpetrator commits the prostitution offenses specified in the treaty, - upon his return - he shall be prosecuted in the courts of his own State. The provision becomes obsolete if the extradition of the foreign national can not be authorized. It is also necessary to examine what kind of international agreement is in force with that country. In this respect, Hungarian and international regulations harmonize with each other

Article 10

The provisions of article 9 shall not apply when the person charged with the offence has been tried in a foreign State and, if convicted, has served his sentence or had it remitted or reduced in conformity with the laws of that foreign State

Commentary: Article 10 of the Convention also provides protection for the offender of prostitution, as it prohibits double punishment. If, after being found criminally liable in a foreign state, the offender has already received a final sentence or has been acquitted, he cannot be held liable for that act after his return. In this respect, Hungarian and international regulations harmonize with each other.

Article 11

Nothing in the present Convention shall be interpreted as determining the attitude of a Party towards the general question of the limits of criminal jurisdiction under international law.

Commentary: Article 11 refers to the fact that the Convention imposes obligations on States Parties in respect of offenses which may be associated with prostitution, but does not define the general position of the State's criminal jurisdiction in the international arena. In this respect, Hungarian and international regulations harmonize with each other.

Article 12

The present Convention does not affect the principle that the offences to which it refers shall in each State be defined, prosecuted and punished in conformity with its domestic law.

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Commentary: Article 12 gives the Contracting Parties the possibility to determine the penalty for prostitution offenses, which conduct constitutes the elements of the law, whether the attempt and/or preparation is punishable, etc. The current Criminal Code also threatens the promotion of prostitution, perseverance and fencing with high punishment. The legislator complied to the maximum with Article 12 of the Convention. In this respect, Hungarian and international regulations harmonize with each other.

Article 13

The Parties to the present Convention shall be bound to execute letters of request relating to offences referred to in the Convention in accordance with their domestic law and practice.

The transmission of letters of request shall be effected:

(1) By direct communication between the judicial authorities; or

(2) By direct communication between the Ministers of Justice of the two States, or by direct communication from another competent authority of the State making the request to the Minister of Justice of the State to which the request is made; or

(3) Through the diplomatic or consular representative of the State making the request in the State to which the request is made; this representative shall send the letters of request direct to the competent judicial authority or to the authority indicated by the Government of the State to which the request is made, and shall receive direct from such authority the papers constituting the execution of the letters of request.

In cases 1 and 3 a copy of the letters of request shall always be sent to the superior authority of the State to which application is made.

Unless otherwise agreed, the letters of request shall be drawn up in the language of the authority making the request, provided always that the State to which the request is made may require a translation in its own language, certified correct by the authority making the request.

Each Party to the present Convention shall notify to each of the other Parties to the Convention the method or methods of transmission mentioned above which it will recognize for the letters of request of the latter State.

Until such notification is made by a State, its existing procedure in regard to letters of request shall remain in force.

Execution of letters of request shall not give rise to a claim for reimbursement of charges or expenses of any nature whatever other than expenses of experts.

Nothing in the present article shall be construed as an undertaking on the part of the Parties to the present Convention to adopt in criminal matters any form or methods of proof contrary to their own domestic laws.

Commentary: Article 13 deals with the procedure for judicial inquiries and the provision of information between States Parties. States Parties are obliged to respond to inquiries, thus ensuring the rapid and accurate flow of information, the conduct of criminal proceedings and the judgement proceedings. With regard to foreign inquiries,

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

the provision of data is complete, and the Hungarian legal system also provides an opportunity to fulfill such inquiries. In this respect, Hungarian and international regulations harmonize with each other

Article 14

Each Party to the present Convention shall establish or maintain a service charged with the co-ordination and centralization of the results of the investigation of offences referred to in the present Convention.

Such services should compile all information calculated to facilitate the prevention and punishment of the offences referred to in the present Convention and should be in close contact with the corresponding services in other States.

Commentary: Article 14 calls for the establishment of a law enforcement agency that deals only with the commission of prostitution offenses, liaises with the parties and, if necessary, participates in international investigations. There is currently no law enforcement agency in Hungary that specializes exclusively and exclusively in the commission of prostitution crimes. By default, the local body carries out the investigation, and in a qualified case, the central body works. He keeps in touch and participates in international collaborations. In this respect, Hungarian and international regulations only partially harmonize with each other.

Article 15

To the extent permitted by domestic law and to the extent to which the authorities responsible for the services referred to in article 14 may judge desirable, they shall furnish to the authorities responsible for the corresponding services in other States the following information:

(1) Particulars of any offence referred to in the present Convention or any attempt to commit such offence;

(2) Particulars of any search for any prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention, the movements of such persons and any other useful information with regard to them.

The information so furnished shall include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

Commentary: However, Article 15 sets out obligations for these agencies to provide and exchange information on prostitution offenses. International cooperation will be successful by sharing information. Even if there is no special law enforcement agency that only deals with the investigation of prostitution crimes, the data will be passed on. In this respect, Hungarian and international regulations harmonize with each other.

Article 16

The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

social adjustment of the victims of prostitution and of the offences referred to in the present Convention.

Commentary: Article 16 deals with assistance to victims of prostitution. In Hungary, victim protection measures have been laid down on a legal basis, but the case law shows different results. With regard to misdemeanor the legislator does not provide for the implementation of victim protection measures at all, it only applies to criminal proceedings. NGOs have independent management, which is not enough for resocialization. Reintegration efforts need to be much more emphasized. In this respect, Hungarian and international regulations only partially harmonize with each other.

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

(1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;

(2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;

(3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;

(4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

Commentary: Article 17 aims to reduce the conditions for becoming a victim and strengthens prevention. The above is partially realized in the context of victim protection measures, but the information does not get to the right place, they do not know enough about the methods of the perpetrators, thus they can become potential victims. Especially in a country that is a foreign state and its language is not known by the victims. The implementation of the victim protection measure needs to be much more emphasized. In this respect, Hungarian and international regulations only partially harmonize with each other.

Article 18

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Commentary: Article 18 also sets out tasks in relation to criminal cooperation, which are governed by the above. In this respect, Hungarian and international regulations partially harmonize with each other.

Article 19

The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations thereunder and so far as possible:

(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance;

(2) To repatriate persons referred to in article 18 who desire to be repatriated or who may be claimed by persons exercising authority over them or whose expulsion is ordered in conformity with the law. Repatriation shall take place only after agreement is reached with the State of destination as to identity and nationality as well as to the place and date of arrival at frontiers. Each Party to the present Convention shall facilitate the passage of such persons through its territory.

Where the persons referred to in the preceding paragraph cannot themselves repay the cost of repatriation and have neither spouse, relatives nor guardian to pay for them, the cost of repatriation as far as the nearest frontier or port of embarkation or airport in the direction of the State of origin shall be borne by the State where they are in residence, and the cost of the remainder of the journey shall be borne by the State of origin.

Commentary: Article 19 requires States Parties to provide for their nationals who have been the victims of a criminal offense of prostitution. This is true for repatriation, resocialization, and reintegration. Unfortunately, there are very few shelters available in Hungary today to take such measures, and it is necessary to make such tasks much more emphasized. In this respect, Hungarian and international regulations partially harmonize with each other

Article 20

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

Commentary: Article 20, like Article 17, provides for measures relating to the protection of victims, the findings of which apply to this Article. In this respect, Hungarian and international regulations partially harmonize with each other.

Article 21

The Parties to the present Convention shall communicate to the Secretary-General of the United Nations such laws and regulations as have already been promulgated in their States, and thereafter annually such laws and regulations as may be promulgated, relating to the subjects of the present Convention, as well as all measures taken by them concerning the application of the Convention. The information received shall be published periodically by the Secretary-General and

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others done at New York on 21 March

1950 is 70 years old

István Dr. KOVÁCS

sent to all Members of the United Nations and to non-member States to which the present Convention is officially communicated in accordance with article 23.

Commentary: Article 21 seeks to ascertain the extent to which internal regulations adopted by States harmonize with the Convention and should therefore be published by the Contracting States. This is true not only of the legislation but also of the measures taken: for example, international cooperation, data provision, investigations, victim protection, etc. Unfortunately, they do not comply with the international law as regards the Hungarian law on misdemeanor, the lack of protection for victims and the establishment of a law enforcement agency.

Article 22

If any dispute shall arise between the Parties to the present Convention relating to its interpretation or application and if such dispute cannot be settled by other means, the dispute shall, at the request of any one of the Parties to the dispute, be referred to the International Court of Justice.

Commentary: Article 22 leaves the settlement of disputes between the parties to the case law of the International Court of Justice. In this respect, Hungarian and international regulations harmonize with each other.

Article 23

The present Convention shall be open for signature on behalf of any Member of the United Nations and also on behalf of any other State to which an invitation has been addressed by the Economic and Social Council.

The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

The States mentioned in the first paragraph which have not signed the Convention may accede to it.

Accession shall be effected by deposit of an instrument of accession with the Secretary-General of the United Nations.

to the purposes of the present Convention the word „State” shall include all the colonies and Trust Territories of a State signatory or acceding to the Convention and all territories for which such State is internationally responsible.

Commentary: Article 23 provides that any country which considers that it wishes to be a party to the Convention may accede to it. Hungary joined the convention in 1955. In this respect, Hungarian and international regulations harmonize with each other.

Article 24

The present Convention shall come into force to the ninetieth day following the date of deposit of the second instrument of ratification or accession.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification or accession, the Convention shall enter into force ninety days after the deposit by such State of its instrument of ratification or accession.

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others done at New York on 21 March

1950 is 70 years old

István Dr. KOVÁCS

Commentary: Article 24 provides for its entry into force, and Hungary ratified the Convention by Legislative Decree No. 34 of 1955, which entered into force on 28 December 1955. In this respect, Hungarian and international regulations harmonize with each other.

Article 25

After the expiration of five years from the entry into force of the present Convention, any Party to the Convention may denounce it by a written notification addressed to the Secretary-General of the United Nations.

Such denunciation shall take effect for the Party making it one year from the date upon which it is received by the Secretary-General of the United Nations

Commentary: Article 25 provides for the denunciation of the Convention, which shall enter into force 1 year after the denunciation. It is worth considering whether, if not the whole convention, but some of its provisions will be denounced by Hungary, thus eliminating disharmonisation and conflicting legislation. In this respect, Hungarian and international regulations harmonize with each other.

Article 26

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 23:

(a) Of signatures, ratifications and accessions received in accordance with article 23;

(b) Of the date on which the present Convention will come into force in accordance with article 24;

(c) Of denunciations received in accordance with article 25.

Commentary: Article 26 sets out the notification obligations, which are governed by Article 25. In this respect, Hungarian and international regulations harmonize with each other.

Article 27

Each Party to the present Convention undertakes to adopt, in accordance with its Constitution, the legislative or other measures necessary to ensure the application of the Convention.

Commentary: Article 27 awaits the legislative process in accordance with the constitution of the given state, which operates in Hungary due to the hierarchy of sources of law. In this respect, Hungarian and international regulations harmonize with each other.

Article 28

The provisions of the present Convention shall supersede in the relations between the Parties thereto the provisions of the international instruments referred to in subparagraphs 1, 2, 3 and 4 of the second paragraph of the Preamble, each of which shall be deemed to be terminated when all the Parties thereto shall have become Parties to the present Convention.

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

Commentary: Article 28 contains the final provisions. In this respect, the Hungarian and international regulations harmonize with each other, as Hungary defined the clauses with which it acceded to the international convention at the time of signing.

Conclusion and recommendation

I summarized the results in a table, which shows us which article is harmonised or non-harmonised with the international convention.

Table 1. The law harmonisation

New York Convention Article	Harmonisation with the Hungarian Regulation	New York Convention Article	Harmonisation with the Hungarian Regulation
1.	√	15.	√
2.	√	16.	√ ⊗
3.	√	17.	√ ⊗
4.	√	18.	√
5.	√	19.	√ ⊗
6.	⊗	20.	√
7.	√	21.	√
8.	√	22.	√
9.	√	23.	√
10.	√	24.	√
11.	√	25.	√
12.	√	26.	√
13.	√	27.	√
14.	√ ⊗	28.	√

Source: Author

The results also show that Hungarian laws do not always harmonize with the international convention. Article 6 absolutely does not harmonize, which creates a problem with regard to the criminality of prostitutes. (The reasoning for this is included in the commentary.) Articles 14, 16, 17, 19 only partially harmonize with the International Convention. This affects the victim perceptions of prostitutes as well as the possibility of reintegration into society. In addition, resocialization measures and related organizations. (The reasoning for this is included in the commentary.) The remaining articles, on the other hand, have been fully incorporated into Hungarian law.

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

However, it is worrying that non-harmonized and partially harmonized articles could raise the possibility of infringement as follows:

The results reflect which articles are thirty and which are not with the international convention. On the basis of the results generated, it has been confirmed that the models meant for the control of prostitution alone are not suitable to deal with the phenomenon. However, considering the fact that the decade having elapsed since the adoption of the latest regulation has not resulted in any significant change, it would seem reasonable to reflect upon how and to what extent a new regulation could change the way this phenomenon is controlled.

If some space were provided for the development of a new model based on the provision and exercise of human and constitutional rights with pillars being the strengths and opportunities of the previous models, it would become possible to eliminate the weaknesses and threats of the previous models.

In my opinion, the basis for the new model would be the exercise of human and constitutional rights, and the pillars would be made of victim protection, legal regulations, law enforcement efforts and a series of resocialisation measures. Not only the protection of the citizens and prostitutes must be solved, but also the tasks imposed by international law must be met. We need to be careful when the idea of a new regulation arises in us. We must strive for new regulations that ensure the exercise of constitutional and human rights, do not disturb the peace of public order and public health, and implement the obligations set out in international law. I have described the details of the new regulation in my latest studies, which I recommend to the reader.

In my view, both the legislator and the law enforcer are in a difficult position, because not only citizens and prostitutes, but also the tasks imposed by international law must be met. That is why we need to be careful when we start developing a new regulation. We must strive for a new procedure that guarantees the exercise of constitutional and human rights, does not disturb the peace of public order and public health, and implements the obligations imposed by international law.

References

- [1] CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS, 96 UNTS 271, available from: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>
- [2] DOHY, J. Az üzletszerű kéjelgés bizonyításának tapasztalatai: hozzászólás a Prostitúcióhoz kapcsolódó bűnözői csoport felszámolásának egyes tapasztalatai című cikkhez. In: *Belügyi Szemle*, 1976, vol. 14, no. 12, p. 73-74.
- [3] DOROS, G. A nemi egészségügy problémái. In: *Budapesti Negyed*, 2010, volt. 18, no. 3, p. 183–185.
- [4] FEHÉR, L. A prostitúció valósága és szabályozási modellek. In: *Belügyi Szemle*, 1997, vol. 45, no. 4, p. 14-27

**The Convention for the Suppression of the Traffic in Persons and of the
Exploitation of the Prostitution of Others done at New York on 21 March**

1950 is 70 years old

István Dr. KOVÁCS

- [5] BORAI, Á. A prostitúció jogi szabályozásának anomáliái, a jelenség hazai kezelésének alternatívái. In: *Kriminológiai Közlemények*, vol 55, no. 1, p. 284-314
- [6] ANNEX IV. OF 1978 THE HUNGARIAN CRIMINAL CODE, available from: http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=3356.237644
- [7] KOVÁCS, I. *A prostitúció jelensége és társadalmi kontrolljának vizsgálata empirikus módszerekkel*. Budapest: Nemzeti Közszolgálati Egyetem, 2016. p. 278
- [8] BORAI Á. *Prostitúció*. Kecskemét: Print 2000 Nyomda, p. 172.
- [9] MOLNÁR, L. Az erkölcsök, a közegészség és a prostitúció. In: *Budapesti Negyed*, 2010, vol. 18, no. 3, 67–101.
- [10] JUHÁSZ, G. Hogyan hátráltatja a nőkereskedelem felszámolását a nők emberi jogai iránt érzéketlen magyar büntetőjogi szemlélet? *Budapest: Habeas Corpus Munkacsoport*, 2004, 35.
- [11] KOVÁCS, I. *Egy empirikus kutatás részletei: a prostitúció jelensége, és társadalmi kontrollja napjainkban*. Budapest: Dialóg Campus, 2019. p. 250.
- [12] KOVÁCS, I. IKARUSZ the new Model, which is able to handle the Hungarian Phenomenon of Prostitution. In: *Journal of Criminology and Criminal Law*. vol. 57, no. 3, p. 115-139.
- [13] 41/1999. (IX. 8.) EÜM DECREE ON THE MEDICAL CERTIFICATE TO BE ISSUED TO PROSTITUTES, available from: <https://net.jogtar.hu/jogszabaly?docid=99900041.EUM&txtreferer=99900075.TV>
- [14] 1/2011. (I.14.) AB DECREE, available: <http://public.mkab.hu/dev/dontesek.nsf/0/912C0127947A099BC1257ADA005259DB>
- [15] KOVÁCS, I. IKARUSZ the new Model, which is able to handle the Hungarian Phenomenon of Prostitution. In: *Journal of Criminology and Criminal Law*. vol. 57, no. 3, p. 115-139.

Autors:

¹István Dr. Kovács – Ph.D. pol. major, assistant professor and the scientific secretaire at the University of Public Service Faculty of Law Enforcement in Hungary. E-mail: kovacs.istvan@uni-nke.hu