

THE OFFENCES OF EXPLOITATION OF PROSTITUTION IN POLISH PENAL LAW

Maria Curie-Skłodowska University
Pl. Marii Curie-Skłodowskiej, 5, 20-031, Lublin, Poland
E-mail: marta.mozgawa-saj@poczta.umcs.lublin.pl

Purpose: analysis of the regulations describing criminal offences relating to the exploitation of prostitution provided for in Article 204 of the Polish Penal Code (inciting another person to prostitution and facilitating another person's prostitution – Article 204 § 1, procuring – Article 204 § 2, aggravated type - Article 204 § 3). **Methods:** the main method used in the study is dogmatic analysis. A synthetic analysis of the available statistical data was also carried out. **Results:** the interest protected under Article 204 § 1-2 is primarily morality and in the case of child prostitution (art. 204 § 3) mainly psychophysical development of the minor. Pursuant to Article 204 § 1 of Polish Penal Code (PC) penalises the conduct of the perpetrator who, in order to derive a material benefit, induces another person to practice prostitution or facilitates it. These offences are generally-defined perpetrator offences and are not characterized by its result; they may be committed only intentionally (with direct intent). Procuring (Article 204 § 2) is understood as earning material gains from prostitution practised by another person. This is an offence committed by multiple acts, since the verb "earning" indicates repetition in the behaviour of the perpetrator. It is a generally-defined perpetrator and deliberate offence that can be committed in both forms of intent. In the aggravated type (Article 204 § 3) the aggravating circumstance is the minor age of the prostitute against whom the offender commits inciting, facilitation or procuring. Offences under Article 204 PC relatively rarely occur in Polish realities, and cases of convictions under this provision are even rarer (in 2018 in Poland, a total of 140 people were finally sentenced under Article 204 (§ 1-3) PC in Poland). **Discussion:** the current wording of Article 204 PC appears to be correct and does not raise any fundamental doubts as to its interpretation. A small number of convictions under Article 204 PC raises the question about the real picture of both the phenomenon of prostitution in Poland and the actual number of behaviours related to its unlawful exploitation.

Keywords: prostitution; inciting to prostitution; procuring; facilitating prostitution; material gain.

Problem statement and its topicality. The Polish Penal Code addresses the issue in question in the provisions of Article 204, which describe offences of inciting another person to prostitution and facilitating it (Article 204 § 1) and procuring (Article 204 § 2). Article 204 § 3 contains the aggravated type of all the above-mentioned offences of exploitation of prostitution because of their victim, who is a minor (i.e. a person under the age of 18). The provision of Article 203 PC (which penalises subjecting another person to practice prostitution by force, illegal threat or deceit, or by abusing a relationship of dependence or by taking advantage of a

critical situation).will not be covered by the discussion herein.

Four legal systems governing the issue of prostitution (prohibitive, regulative, neo-regulative, abolitionist) are known. In Poland, prostitution is not punishable, in accordance with the abolitionist Convention of 1950 for the suppression of the traffic in persons and of the exploitation of the prostitution of others (Journal of Laws of 1952, No. 41, item 278) [1, p. 141 et seq.; 2, p. 50 et seq.]. It should be noted, however, that the provision of Article 142 of the Code of Infractions - the so-called *racolage* ("Anyone who intrusively, stridently or

otherwise infringing public order, suggests another person to commit an immoral act with him/her with a view to obtaining a material gain shall be punished by custody, restriction of liberty or a fine"). There is a view shared by certain scholars in the field that this provision is not directly directed at prostitution, but merely penalises its manifestations that disturb or even violate the public order [3, p.410]. A different view has been taken by J. Warylewski, who argues that the above statement seeks to conceal the actual *ratio legis* of Article 142 of the Code of Infractions (i.e. combating prostitution) [4, p. 915]. A similar view was expressed by W. Radecki, who considered that this provision introduces the penalisation of prostitution "through the side door" [5], and M. Płatek, who holds that this provision is a manifestation of Poland's failure to comply with the requirements of the Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others [6, p. 404].

Analysis of recent research and publications.

The concept of prostitution (and prostitute) is not interpreted uniformly by legal scholars, and therefore sometimes doubts arise as to whether certain sexual behaviours which violate generally recognised moral norms can be described as prostitution [7, p. 72]. As noted by K. Imieliński, one of the important elements characterizing prostitution is making one's own body available to more people in order to satisfy them sexually or a financial consideration; the lack of an emotional connection between the prostitute and the person using the sexual services provided by the prostitute also needs to be emphasized. According to him, a person does not need to practice as a prostitute professionally to be referred to as a prostitute as so-called occasional prostitution is also possible. M. Jasińska defines prostitute as a person who meets the sexual needs of random partners for money or other material goods and without being emotionally involved, with a limited right to choose a client – sexual partner [9, p. 9]. According to M. Antoniszyn and A. Marek "a prostitute is a person who practises, on a regular or casual basis, providing sexual services in any form in exchange for material benefits, which constitute the main motive for their action" [10, p. 6]. There is no doubt among the scholars in

the field that prostitution can be practised by both a woman and a man [11, p. 681].

The purpose. It is quite broadly accepted by scholars in the field that the interest protected in the case of crimes related to the exploitation of prostitution is morality [12, p. 248; 13, p. 1089]. It is noted that the very practice of prostitution, i.e. becoming an object of a sexual service, opposes the elementary dignity of a human being and constitutes a dangerous phenomenon from the point of view of social life [14, p. 38 et seq.]. As emphasized by S. Hypś "The main aim of criminalisation (...) is (...) to protect society from the emergence and spread of prostitution, as a criminogenic pathological phenomenon associated with the exploitation of other people, violation of human dignity and creating conditions for the activities of organized criminal groups. The protection is also extended to morality in the sphere of sexual life and freedom of human decision in this respect" [13, p. 1089]. A slightly different scope of the protected interest is in crimes related to the exploitation of child prostitution (Article 204 § 3 PC), for which the basic protected good is the psychophysical development of a minor [15, p. 593].

Main material. Pursuant to Article 204 § 1 of Polish Penal Code (PC) penalises the conduct of the perpetrator who, in order to derive a material benefit, induces another person to practice prostitution or facilitates it. Inciting another person to engage in prostitution is an example of the construct of incitement to a non-punishable act, because while prostitution itself is not a punishable act, inducing another person to engage in such a procedure is the basis for criminal liability under Article 204 § 1 PC. As it is rightly pointed out by criminal law scholars, a recourse to the general construction of incitement (Article 18 § 2 of the Penal Code) would not be sufficient in this case, because there is no provision in the special part of the Penal Code criminalising prostitution [16, p. 818]. Inciting another person to prostitution is therefore a *sui generis* crime of incitement. Inciting another person to engage in prostitution involves the use of means of pressure on the psyche of another person, with the aim of inducing the intention to engage in such practice or abandoning the intention to quit prostitution [16, p. 818]. The inciting does not have to be

aggressive, it can take any form, including soft persuasion, and refer to various arguments of material or emotional nature, etc. It therefore includes, for example, insistence, requests, persuasion, the promise of benefits. However, it is necessary that the inducer acts with the aim of achieving a pecuniary benefit; he/she must direct his/her actions towards a specific person or persons (thus, all inducements to engage in prostitution addressed to an undefined circle of persons do not meet the criteria set out in Article 204 § 1 PC). [17, pp. 566-567]. For the existence of the offence, it is irrelevant whether the perpetrator actually induced in a person an intention to become a prostitute or not [11, p. 683].

Facilitating prostitution for another person is based on the construction of aiding/abetting in the commission of a criminal act. As in the case of inciting, it was necessary to define a separate type of criminal offence consisting in facilitation of the practice of prostitution, because the use of the construct of aiding and abetting (as referred to in Article 18 § 3 PC) is excluded because of the absence of a specific type of offence to which the aiding and abetting could be referred to; it was therefore necessary to create a *sui generis* type of aiding/abetting [16, p. 818-819]. Facilitation means any activity which objectively enables or simplifies another person to practice prostitution [18, p. 132]. Facilitating prostitution can take the form of physical aiding (e.g. by providing a room) or mental aiding (e.g. by providing advice or information). In practice, this concerns most often the operation of so-called escort agencies, the renting of premises to prostitutes for the purpose of performing sexual services, providing transport services or searching for customers [17, p. 567]. Nor can it be ruled out that activities such as making websites allowing prostitutes to post "escort advertisements" or the spreading of leaflets advertising escort agencies [16, p. 819]. Facilitation can be committed by both action and omission (e.g. parents accepting that their minor daughter practices prostitution) [16, p. 819]. There are some doubts in the scholarly opinion as to whether one-off behaviour meets the criteria of prostitution facilitation, or rather multiple acts of facilitating prostitution are required. It seems correct that multiplicity of behaviour is required [19, p. 1266; 12, p. 249] which was also endorsed by the

judgment of the Supreme Court of 5.02.2009 (II KK 251/08, Lex 486551), which states "A one-off act of facilitating prostitution by picking someone up cannot be assessed as facilitation under Article 204 § 1 PC *in fine*, which must be of a permanent nature, and therefore takes the form of an offence with criteria defined for multiple acts." It must be stated, however, that many scholars in the field consider that a single act of the offender is sufficient to assume the commission of the offence under Article 204 § 1 PC (e.g. M. Bielski [16, p. 820], S. Hypś [13, p. 1091], J. Piórkowska-Flieger and K. Wala [7, p. 83]).

Inciting or facilitating prostitution must be aimed at obtaining a material gain for the offender (unlike the analogous provision of the previous Polish PC of 1969, where Article 174 did not specify the motivation of the offender's conduct at all) [11, p. 683]. However, a personal gain is not a criterion of this offence. Where the offender incites prostitution or facilitates it for personal gain or without any desire to obtain any benefit at all, he/she does not meet the criteria of the offence under Article 204 § 1 PC [20, p. 805]. Obtaining a material gain in such manner does not have to be the sole source of income of the offender, or even the principal or permanent one [7, p. 85]. The financial advantage is defined in Article 115 § 4 PC as 'a benefit both for the offender himself and for someone else'. A material benefit is an increase in property assets or a reduction in liabilities, the assets being all rights that have a value that can be expressed in money (Resolution of the Supreme Court of 30.01.1980, VII KZP 41/78, OSNKW 1980/3, item 24). Some problems arise in determining the scope of the concept of another type of benefit – personal gain and, above all, its demarcation from material gain. Usually the established scholarly opinion emphasises that the characteristic feature of personal gain is the lack of economic value, but it must be assumed that the criterion of economic value is not sufficiently justified for the division into material gain and personal gain. It is rightly pointed out that this criterion must be seen as rooted in the ability to meet material or intangible needs [21, p. 386]. Whether a certain good is considered a material gain or personal gain should be determined by what need it satisfies to a greater extent; if it

primarily satisfies a material need, it is a material gain, if an immaterial one, it is a personal gain [22, p. 594].

The offences defined in Article 204 § 1 (inciting and facilitating prostitution) are generally-defined perpetrator offences and are of a formal character (they are not characterized by its result). A different view is presented by M. Bielski, who holds that both inciting and facilitating are offences characterized by result. According to this author, the offence under Article 204 § 1 PC is considered committed "from the moment of occurrence of one of the two alternatively described results, i.e. from the moment of causing in the induced person a decision to engage in prostitution or from the moment of creating for a person a situation which objectively facilitates prostitution for that person [16, p. 824]". The offences described in Article 204 § 1 PC require a direct intention, due to the use of a directional element – as has already been mentioned, the perpetrator must act towards obtaining a material gain [7, p. 83].

Article 204 § 2 PC provides for criminal liability for procuring, which should be understood as earning material gains from prostitution practised by another person. Procuring does not have to be accompanied by inciting or facilitation of prostitution, and material gains obtained from procuring are given to the procurer more or less voluntarily (e.g. in exchange for care) [11, p. 683]. Scholars in the field quite broadly assume that the offence of procuring is characterized by multiple commission, due to the fact that the criterion "earning" indicates a certain repetition in the perpetrator's behaviour [7, p. 84; 13, p. 1090]. This view is also confirmed in case law (see e.g. the judgment of the Court of Appeal in Katowice of 15 December 2001, II AKa 391/01, KZS 2002, vol. 4, item 41; judgment of the Supreme Court of 5 February 2009, II KK 251/08, Lex No. 486551). However, the case law indicates that in order to meet the statutory criteria of the offence of procuring, the earning of benefits by the procurer does not have to be the goal of his activity (judgment of the Court of Appeal in Kraków of 9 September 2015, II Aka 142/15, KZS 2015, No. 11, item 39). Procuring is a material crime that can be said to be committed when the perpetrator begins to earn material gains from prostitution prac-

tised by another person [16, p. 824]. For the criminal liability under Article 204 § 2 PC, it is sufficient that the perpetrator earned material gains from an individually specified person engaged in prostitution, but not necessarily identified by name, (judgment of the Supreme Court of 11 March 1937, II IK 1927/36, OSN (K) 1937/11, item 300). It is a generally-defined perpetrator and deliberate offence that can be committed in both forms of intent (direct and legal intent).

In Article 204 § 3 PC provides for a aggravated type in relation to the basic types defined in Article 204 § 1 and § 2 PC. The aggravating circumstance is the minor age of the prostitute against whom the offender commits prostitution inciting, facilitation or procuring. A minor is a person who is under 18 years of age (Article 10 § 1 of the Civil Code). It should be noted that, according to the provisions of civil law, a woman of age is considered a woman who married after turning 16 (but before 18); she does not lose the age of majority, even in the event of the annulment of the marriage (Article 10 § 2 of the Civil Code). The established scholarly opinion holds that this special solution of the Civil Code is closely related to the provisions of civil law, namely the issue of obtaining a full capacity to perform acts in law, and the criminal and political considerations underlying the establishment of the aggravated type under Article 204 § 3 PC prevent lowering the age of majority in this case [7, p. 86]. For the criminal liability under Article 204 § 3 PC, it is necessary to prove that the perpetrator was aware of the aggravating circumstance, which is the minority of the person who is to engage in (or is engaged in) prostitution. As M. Bielski rightly notes, in the case of the aggravated type of inciting or facilitation of prostitution, the construct of direct intention with incomplete awareness is sufficient for the existence of criminal liability, while in the case of the aggravated type of procuring, the element of minority may also be covered by legal intent [16, p. 825]. If the the offender is unaware of committing inciting to prostitution, facilitation of prostitution or procuring in relation to a minor, then criminal liability for the aggravated type is excluded, while it is reasonable to assume liability for the basic type (i.e. Article 204 § 1 or 2 of the Penal Code).

The provision of Article 204 § 1 PC may be in actual concurrence with many provisions of Chapter XXV of the Penal Code ("Offences against sexual freedom and morality") – with Article 203 PC (e.g. the offender incites another person to practise prostitution using a relationship of dependency); article 197§ 1 to § 3 PC (rape), Article 198 PC (sexual exploitation of vulnerability or mental impairment); Article 199 PC (sexual exploitation by abuse of a relationship of dependence or taking advantage of a critical position) [20, p. 807]. Under the current Penal Code, an established case-law is clearly drawn which reduces the multiplicity of consecutive acts described in Article 204 § 1 and § 2, as part of the so-called negligible concurrence of offences [16, p. 826]. As noted by the Court of Appeal in Katowice of 25 September 2014, II AKa 236/14 (LEX No 1540807) "Where the offender first incites or facilitates prostitution for the victim (Art. 204 § 1 k.k.) and later earns material gains from victim's prostitution (Article 204 § 2 PC), the construct of a co-punished prior act applies, since incitement and facilitation are in this case only a defined form of preparation for the subsequent commission of another crime" (cf. also the judgment of the Court of Appeal in Katowice, of 15.12.2001, II AKa 391/01, LEX No 56932, judgment of the Court of Appeal in Lublin of 29.04.2002, II AKa 330/01, LEX No. 76030, judgment of the Court of Appeal in Warsaw of 15.09.1999, II AKa 125/99, OSA 2000/7-8/57). In cases where procuring is combined with the extortion of material gains from prostitutes, it is necessary to qualify them cumulatively with the provisions on offences against property, in particular Article 280 PC (assault and robbery) or Article 282 PC (extortion) [23, p. 940]. A different view in this matter seems to be presented by the Court of Appeal in Katowice in its judgment of 22.03.2007, II AKa 422/05, LEX No 314089, which in such a case rejected the possibility of cumulative classification of Article 204 § 2 PC and Article 282 PC in conjunction with Article 11 § 2 PC, arguing that "The introduction of (...) to the legal basis of Article 282 PC resulted not in the addition but re-identification of the acts constituting elements of the offence." This is a misunderstanding, since the element of "material gain" appears in the description of the act

of performance of the offence only for the offence of procuring, while in the case of extortion, "material gain" is part of the description of the elements of the subjective party [16, p. 827].

The offences of inciting to prostitution, facilitation of prostitution and procuring are misdemeanours punishable by imprisonment for a term of between 3 months and 5 years, while the aggravated type of offence under Article 204 § 3 PC is a misdemeanour punishable by imprisonment for a term of between 1 and 10 years. Pursuant to Article 33 § 2 PC, the court may impose on the perpetrator of the offence under Article 204 § 1, § 2 or § 3 PC a fine in addition to imprisonment if the perpetrator committed the act with the aim of earning a material gain or if he/she did earn a material gain. For each of the offences under Articles 204 § 1 to § 3 PC, a so-called mixed penalty may be imposed (Article 37b PC), while for perpetrators of offences under Articles 204 § 1 and § 2, the so-called alternative sanction may be applied (Article 37a PC). The institution of conditional discontinuance of criminal proceedings (Article 66 PC) may be applied in the case of Article 204 § 1 and § 2 PC, while it is not possible in the case of Article 204 § 3 PC). As for the penal measures that may be applied, these include the prohibition to hold a specific position, to practice a specific profession or to carry out a specific economic activity, the prohibition to carry out activities related to the upbringing, treatment, education or care of minors, sometimes deprivation of public rights (if sentenced to imprisonment for a term of at least 3 years for offences committed as a result of motives deserving particular condemnation), the prohibition to stay in certain environments or places, to have contact with certain persons, to approach certain persons or to leave a specified place without the court's consent, as well as an order to temporarily leave the premises occupied jointly with the aggrieved party; making the sentence public. Conviction for any of the offences under Article 204 PC does not provide grounds for imposing an obligation to compensate the person engaged in prostitution who was the victim of this type of offence [23, p. 941]. As stated by the Supreme Court in its decision of 20.01.2015. (IV KK 321/14, Lex no. 1628955) "1. It is not possible to conclude under the provisions currently in force

that the dignity of a person engaged in prostitution is directly violated by acts under Article 204 § 1 and § 2 PC, as required by the provision of Article 49 § 1 PC, and to assume that the person engaged in prostitution is a victim within the meaning of this provision and (thus) Article 45 § 1 PC *in fine*.

2. The provision of Article 45 § 1 PC *in fine* does not constitute an independent basis for the return of the material gain or its equivalent. The normative basis for the return is a judgement accepting a civil claim (Article 415 § 1 of the Code of Criminal Procedure, hereinafter CCP), awarding compensation *ex officio* in favour of the wronged party (Article 415 § 4 CCP), imposing an obligation to redress damage pursuant to Article 46 § 1 PC, ordering to compensate for damage based on Article 67 § 3 PC or on the basis of Article 72 § 2 PC, or ordering the return of property seized at the disposal of the court to the authorised person (Article 230 § 2 CPC).

3. Undue (nefarious) material gain, obtained by perpetrators of offences under Article 204 § 1 and § 2 PC, is not a damage in the meaning of civil law, suffered by persons engaged in prostitution.

As can be seen from the figures for 2018 published on the website of the Ministry of Justice, a final sentence under Article 204 (§ 1 to § 3) PC was imposed on 140 adults: 40 individuals under Article 204 § 1, 93 under Article 204 § 2 and 7 under Article 204 § 3. In total, the most commonly used sentences were imprisonment (117 cases - 67.6% of the total convictions), with 78 cases (out of these 117, so two-thirds) with suspended custodial sentence. In 13 cases a fine (9.3%) was imposed, while in 5 cases a restriction of liberty (3.6%) was imposed. In 5 cases (3.6%), the so-called mixed penalty was imposed. In 70 cases a fine was imposed in addition to the custodial sentence. Considering the convictions for individual offences separately, the result would be as follows: 40 individuals were sentenced for the offence under Article 204 § 1 (30 sentenced to a term of imprisonment, including ½ with conditional suspension; 6 to fines, 3 to a restriction of liberty, and 1 to a mixed punishment). A total of 93 individuals were sentenced for the offence under Article 204 § 2 (81 sentenced to a term of imprisonment, including 60 with conditional suspension; 7 to fines, 2 to a restriction of liberty, and 3 to a mixed punishment). As regards Article

204 § 3 PC, a total of 7 people were sentenced to imprisonment, including 6 with suspended custodial sentence, and 1 were sentenced to a mixed punishment. Thus, looking at the above statistics (taken together), it is apparent that imprisonment penalty is predominant, in most cases imposed with conditional suspension of its execution. Nearly 60% of the custodial sentences were accompanied by fines.

The data made available by the General Police Headquarters of Poland (with the most recent of 2017, regrettably) show that around 100 criminal cases under Article 204 § 1 to § 3 are initiated in Poland annually, while the number of offences recorded annually varies around 300 (e.g. 127 initiated proceedings and 260 detected offences in 2014; 107 and 337 in 2015; 74 and 357 in 2016; 91 and 247 in 2017).

Conclusions. It should be noted that the current approach to the offences of exploitation of prostitution in Polish criminal law is correct and does not raise any fundamental questions concerning interpretation. These crimes are relatively rare in the Polish realities, although it should be presumed that the so-called dark figure is considerable. Naturally, the very phenomenon of prostitution is present in Poland and it does not seem that this will change in the foreseeable future. Data (included in newspaper articles and websites) show that the number of people providing sexual services in Poland is estimated at between 15 and 100 thousand [24, p. 295].

References

1. Budyn M. Kryminalizacja eutanazji, posiadania narkotyków oraz eksploatacji prostytutki – przejawy usprawiedliwionego paternalizmu państwa? *Annales UMCS, sectio G*, 2002, vol. XLIX.
2. Przyborowska-Klimczak A. Zwalczenie prostytutki w świetle prawa międzynarodowego, in: *Prostytucja*, ed. M. Mozgawa, Warszawa 2014.
3. Bafia J. in: J. Bafia, D. Egierska, I. Śmietanka, *Kodeks wykroczeń, Komentarz*, Warszawa 1974.
4. Warylewski J. *System Prawa Karnego*, vol. 10, *Przestępstwa przeciwko dobrom indywidualnym*, ed. J. Warylewski, Warszawa 2016.
5. Radecki W. Jeszcze raz o tzw. *racolage*, *Gazeta Sądowa i Penitencjarna*, 1970, no. 19.

6. Płatek M. Genderowo - prawne aspekty usług seksualnych w Polsce (in:) Nauki penalne wobec szybkich przemian socjokulturowych. Księga jubileuszowa Profesora Mariana Filara, ed. A. Adamski (et al.), vol. 2, Toruń 2012.
7. Piórkowska-Flieger J., Wala K. Tak zwane przestępstwa okołoprostytycyjne (art. 204 k.k.) in: Prostytucja, ed. M. Mozgawa, Warszawa 2014.
8. Imieliński K. Manowce seksu. Prostytucja, Łódź 1990.
9. Jasińska M. Proces społecznego wykołejania młodocianych dziewcząt, Warszawa 1967.
10. Antoniszyn M., Marek A. Prostytucja w świetle badań kryminologicznych, Warszawa 1985
11. Mozgawa M. in: Kodeks karny. Komentarz, ed. M. Mozgawa, Warszawa 2019.
12. Warylewski J. Przestępstwa przeciwko wolności seksualnej i obyczajności. Rozdział XXV kodeksu karnego. Komentarz, Warszawa 2001.
13. Hyps S. in: Kodeks karny. Komentarz, ed. A. Grześkowiak, K. Wiak, Warszawa 2019.
14. Błońska B. Zagadnienie przedmiotu ochrony prawnokarnej w przypadku przestępstw eksploatacji prostytucji”, *Studia Iuridica* 2006, no. 46.
15. Piórkowska-Flieger J. in: Kodeks karny. Komentarz, ed. T. Bojarski, Warszawa 2016.
16. Bielski M. in: Kodeks karny. Część szczególna, vol. II. Komentarz do art. 117-211a, ed. W. Wróbel, A. Zoll, Warszawa 2017.
17. Kłaczyńska N. in: Kodeks karny. Część szczególna. Komentarz, ed. J. Giezek, Warszawa 2014.
18. Filar M. Przestępstwa seksualne w polski prawie karnym, Toruń 1985.
19. Berent M., Filar M. in: Kodeks karny. Komentarz, ed. M. Filar, Warszawa 2016.
20. Budyn-Kulik M., Kulik M. in: Kodeks karny. Część szczególna, vol. I, Komentarz (art. 117-221), ed. M. Królikowski, R. Zawłocki, Warszawa 2017.
21. Kulik M. in: Kodeks karny, ed. M. Mozgawa, Warszawa 2019.
22. Spotowski A. in: System Prawa Karnego, vol. IV. O przestępstwach w szczególności. Część II, ed. I. Andrejew, L. Kubicki, J. Waszczyński, Ossolineum 1989.
23. Konarska-Wrzosek V. in: Kodeks karny. Komentarz, ed. V. Konarska-Wrzosek, Warszawa 2016.
24. Gruszczyńska B. Szacowanie rozmiarów prostytucji – wybrane aspekty metodologiczne, in: Prostytucja, ed. M. Mozgawa, Warszawa 2014.

ЗЛОЧИНИ ЩОДО ЕКСПЛУАТАЦІЇ ПРОСТИТУЦІЇ У ПОЛЬСЬКОМУ КРИМІНАЛЬНОМУ ЗАКОНОДАВСТВІ

Університет Марії Кюрі-Склодовської
площа Марії Кюрі-Склодовської, 5, 20-031, Люблін, Польща
E-mail: marta.mozgawa-saj@poczta.umcs.lublin.pl

Мета: аналіз норм, що містять кримінальні злочини, пов'язані з експлуатацією проституції, передбачені ст. 204 КК Польщі (підбурювання іншої особи до проституції та сприяння проституції іншої особи – п. 20 ст. 204, сприяння – п. 2 ст. 204, кваліфікований склад злочину – ст. 204 § 3). **Методи:** основним методом, що використовується в дослідженні, є догматичний аналіз. Також був проведений синтетичний аналіз наявних статистичних даних. **Результати:** об'єктом злочину, передбаченого у статті 204 § 1-2 є моральність, а у випадку дитячої проституції (стаття 204 § 3) переважно – психофізіологічний розвиток неповнолітньої особи. Відповідно до п. 1 ст. 204 Кримінального кодексу Польщі (КК Польщі) карається поведінка винного, який з метою отримання матеріальної вигоди спонукає іншу особу до зайняття проституцією або сприяє цьому. Ці правопорушення містять формальні склади злочинів і не залежать від настання результату; вони можуть бути вчинені лише навмисно (з прямим умислом). Під сприянням (п. 2 ст. 204) розуміється отримання матеріальної вигоди від проституції, якою займається інша особа. Це правопорушення може бути вчинене кількома діями, оскільки дієслово «заробіток» вказує на повторність поведінки винної особи. Це правопорушення може бути вчинене як із прямим, так і з непрямым умислом. У кваліфікованому складі злочину (ст. 204, п. 3) обтяжуючою обставиною є неповнолітній вік особи, яка займається проституцією, щодо якої злочинець вчиняє підбурювання, сприяння. Злочини, передбачені ст. 204 КК Польщі, порівняно рідко трапляються в польських реаліях, а випадки засудження згідно з цим положенням зустрічаються ще рідше (у 2018 році в Польщі загалом було засуджено 140 осіб за ст. 204 (§ 1-3) КК Польщі). **Обговорення:** нинішня редакція ст. 204 КК Польщі видається правильною і не викликає жодних принципових сумнівів щодо її тлумачення. Невелика кількість судимостей за ст. 204 КК Польщі ставить питання про реальну картину як явища проституції в Польщі, так і про фактичну кількість поведінки, пов'язаної з її незаконною експлуатацією.

Ключові слова: проституція; спонукання до проституції; сприяння проституції; матеріальна вигода.