


TRAFFICKING IN PERSONS WITHIN THE FRAMEWORK OF MERCOSUL

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ABSTRACT

The study of trafficking in persons is still relevant after so many years of combat at the international level because, despite international legislation, many countries have not yet ratified or met the legislative requirements regarding its criminal treatment. Added together, the conditions of inequality and imbalance favor more people to accept proposals for "better living conditions" in exchange for submission to situations of exploitation that can compromise their intellectual, professional and family development, usually also victims of violence. Within the scope of MERCOSUR, legislative structural differences hinder the process of cooperation between countries in the fight against trafficking in persons, facilitating the practice within the regional bloc. Thus, a regional legislative reform is needed in order to standardize the typification of the crime, as well as the joint action of the authorities in order to curb this terrible practice.

Keywords: Trafficking in Persons. Violence. Exploitation. MERCOSUR. Cooperation.

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INTRODUCTION

The study of human trafficking is part of one of the main points of contradiction of the capitalist system – the commodification of human life. Under the logic of the fetishization of profit, being an absolute purpose, some individuals organize themselves into networks of enticement and control of people who, when trafficked, can serve different purposes: exploitation for sexual purposes, slave labor, servitude, organ harvesting, among others.

The issue is a complex crime because it involves, in many situations, a transnational activity, and it is extremely difficult to combat it without cooperation between the countries involved. And it is exactly within this logic that the issue is dealt with within the scope of the Southern Common Market (MERCOSUR).

As one of the objectives of this regional bloc is to achieve regional integration and allow the free movement of people and capital, including, in the concept, qualified labor capital, it would be inconceivable to ignore the possibility that the ease of movement would favor the trafficking of persons within MERCOSUR itself, which is why the bloc has already met and is concerned with approximating the criminal treatment given to the crime.

However, the path is not easy. The differentiated ratification in the countries that are part of the bloc – Argentina, Uruguay, Paraguay, Brazil and Venezuela – and the divergence in the criminal treatment of trafficking in persons still distances a full and effective action within the South American bloc.

And it is precisely intending to analyze the legislative progressions achieved in recent years in the countries that make up MERCOSUR that this work was written. Initially focusing on the Palermo Protocol, the Additional Protocol to the United Nations Convention against Transnational Organized Crime on the Prevention, Suppression and Punishment of Trafficking in Persons, there will be a description of how nations have legislated the matter in the domestic sphere.

In the interval of analysis, we will go through authors such as Slovak Žižek, who deals with the scope of violence as a form of expression of human nature itself, in addition to associating it with the typical antagonisms of capitalism.

TRAFFICKING IN PERSONS

Human trafficking, although it has existed for a long time, deserves special attention because it still moves a large market associated with crime. Jesus (2003) states that approximately 02 (two) million people are trafficked per year, which generates a turnover of

US\$ 9 billion for criminal organizations. And this gravitates around, most of the time, the victim's situation of social and economic vulnerability.

Thus, it is important to define what human trafficking would be. The international legal provision that addresses the subject is the Palermo Convention or Additional Protocol to the United Nations Convention Against Transnational Organized Crime on the Prevention, Suppression and Punishment of Trafficking in Persons, ratified by Brazil (2004) through Decree No. 5,017, which provides:

Article 3

(...)

(a) The term "trafficking in persons" means the recruitment, transportation, transfer, harbouring or reception of persons, using the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of authority or a situation of vulnerability, or the delivery or acceptance of payments or benefits in order to obtain the consent of a person having authority over another for the purpose of exploitation. Exploitation shall include, as a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs;

(b) the consent given by the victim of trafficking in persons for any type of exploitation described in point (a) of this Article shall be considered irrelevant if any of the means referred to in point (a) have been used;

It can be seen, therefore, that the provision has overcome the association of trafficking in persons only with sexual exploitation, increasing the scope of the definition, which could be given for the purpose of performing other forms of exploitation. Thus, Assis (2014) divides trafficking into three modalities: for forced labor, for sexual exploitation and for the removal of organs.

Another important element of the provision is the irrelevance of the victim's consent if there is force, coercion, fraud or other means that influence him, since he could voluntarily surrender if he believed that his new life would provide gains. Even if the victim goes freely, the fact that she is being exploited is enough to characterize the crime, even if, in her eyes, there is no exploitation, since the purpose has been achieved.

This understanding was necessary because victims, generally in a condition of vulnerability, have a limited margin of choice in view of the situations in which they find themselves. Thus, any offer of "extra earnings" or "life abroad" seems interesting, as it will allow them to face a universe that, in their view, is unlikely to be worse than the situation they have already been facing.

Assis (2014) brings among the characteristics of human trafficking the fact that it is a complex crime – a long process from recruitment to trafficking itself. The author also

explains that human trafficking is a crime against human rights, as it undermines freedom, being, in the Brazilian constitutional framework, a disrespect for the dignity of the human person. Note that, in the international provision, there is no reference to the obligation of the transnational nature of trafficking, which can be domestic or international.

In addition, Assis (2014) is concerned with listing the stages of trafficking in persons, which are recruitment, transportation and exploitation. The first stage is directly associated with the offer of better living conditions to the victim. Once convinced, it is much easier to manipulate and create a permanent bond with it.

In reference to the traic modality of people for sexual exploitation, Assis (2014) associates it with gender, homophobic and transphobic violence, and explains that factors such as gender inequality, patriarchal and adulcentric culture and heteronormativity contribute to its occurrence. The author also states that the victims of this modality are mostly women, children and adolescents, with a recent increase in the share of transsexual women.

In relation to trafficking for forced labor, Assis (2014) states that it is not all forced labor that supplies the criminal type, and that it is necessary to move people, that is, the departure of the worker from his place of origin and the consequent restriction of his freedom due to illegal debt and debt bondage.

In this modality, Assis (2014) states that the most common profile of the victim is male, reaching a percentage of 96% (ninety-six percent), Afro-descendants and socioeconomic vulnerable.

VIOLENCE AND MODERNITY

For a better understanding of human trafficking, we allude to stigmatized violence in our society. To better explain it, we opted for the work of Slovaj Žizek (2014), who works with violence from a subjective perspective, as an integral part of the human being.

Žižek (2014, p. 58) tries to point out that violence does not depend on the system in which the country lives, whether it is the so-called "savage capitalism of the United States", or the "Welfare State typical of European countries", since, in both cases, protests and looting have violently marked the history of these places.

In addition, Žižek (2014) explains that those who practice violence have it as a rule in order to implement a project of being recognized as a "problem" that cannot be ignored and that must be faced in order to achieve social plenitude.

This is the same way that organized crime is placed, in which human trafficking is inserted. Despite the concerted effort to fight it under the utopian pretext of extermination – closure of its activities – it always reorganizes itself and challenges police intelligence by bringing new practices that demand new police operations and so on. In other words, it presents itself as a permanent problem, which must always be taken into account when working on security.

Among the greatest dangers of capitalism is the fact that it is global, but at the same time maintains a strict ideology devoid of the global world, serving to benefit some parts. Thus, Žižek (2014) points to capitalism as the first economic order that detotalizes meaning, since there is no so-called capitalist civilization, but the idea that, through globalization, it is adaptable to all of them.

This absence of capitalist meaning also weakens ethical and moral precepts, causing inhumane practices to emerge, among which are sexual exploitation, forced labor and organ harvesting, all justified in the pursuit of profit typical of capitalism, also facilitated by the situation of vulnerability favored by the inequality intrinsic to the system.

Žižek (2014) goes further and states that the junction of capitalism and scientific thought leads to identities based on symbolic identifications, leading to the crisis of meaning brought about by modernity. Thus, the author shows that it is not enough to have a gain for one party, but the other has to lose, weakening the notion of social solidarity, so important in the fight against human trafficking.

And this is reflected, according to Žižek (2014), in the fact that capitalism, precisely because it is not fair, constitutes a trait that makes it acceptable to the majority. Thus, law and order confront the capitalist system itself and its pure attribution: individualistic competition and ruthless self-assertion.

If the ends justify the means, various atrocities can be committed, including human trafficking. In this sense, Žižek (2014) argues that the new racism in developed areas is more brutal than the previous ones, as it is not based on naturalism (superiority of the West) or culturalism (preservation of Western culture), but on economic selfishness, in which everything can be the object of economic exploitation, including the dignity of a person.

Even Žižek (2014) considers the fact that we live in a post-ideological society, where public causes are not used to justify violence, since we have a hegemonic ideology, leads

to the use of ethnic and religious belonging to play the argument that leads us to exercise violence against others.

The attempt at free choice, used to try to mitigate the responsibility of the perpetrator of human trafficking by placing the responsibility of accepting the victim, as if the connivance of the latter removed the guilt of the former, is also worked on by Žižek (2014). The author states that, in the West, oppression is masked with free choice. However, freedom of choice often functions as a formal gesture of consent to oppression and exploitation.

In order to explain his position, Žižek (2014) brings the example of plastic surgery – there is a demand from the so-called 'sexual market', and the woman, despite not being forced to undergo surgery, is indirectly forced by the pressure of the environment, thus attributing a character of 'freedom' to a situation of oppression.

In the case of human trafficking, the exploitation of these people is often facilitated by the social conditions in which the victims are inserted, who do not see other viable alternatives for professional fulfillment parallel to the proposal offered by the recruiter, who never demonstrates the vexatious and inhumane situation to which the victim will be subjected at the end of the process.

Surrounded by the theme, Žižek (2014) continues his analysis by stating that, in certain concrete social conditions of commodity exchange and the global market economy, abstraction becomes a direct feature of current social life, as several elements of 'free choice' fit into it. In fact, it is not possible to conceive of an emergence of universality in concrete aspects, and what is experienced in life is characterized as contingent, an abstract formal capacity, facilitating the acceptance of one's own fate and social circumstances, as it promotes a detachment of the individual from his situation.

While detaching himself from himself, the individual connects himself to society. Žižek (2014) states that belonging to a society implies a paradoxical moment in which we are ordered to freely accept and make our choice what, in any case, is imposed. It is, therefore, an empty symbolic gesture with an appearance of free choice.

This promotes a pact of solidarity that, although it does not change the factual situation, promotes a gain for both parties - for people, who can choose apparently freely, and for the collectivity, which maintains a social standard. Associated with this logic of mutual gain is the presentation of the offer that characterizes human trafficking by the

enticer: while he benefits from economic exploitation, the victim, apparently, will get out of a situation of unemployment or underemployment.

TRAFFICKING IN PERSONS IN MERCOSUR

Having made the previous considerations and explained the violence intrinsic to man and fostered by the capitalist system, let us move on to the analysis of the legislation of the MERCOSUR countries.

BRAZIL

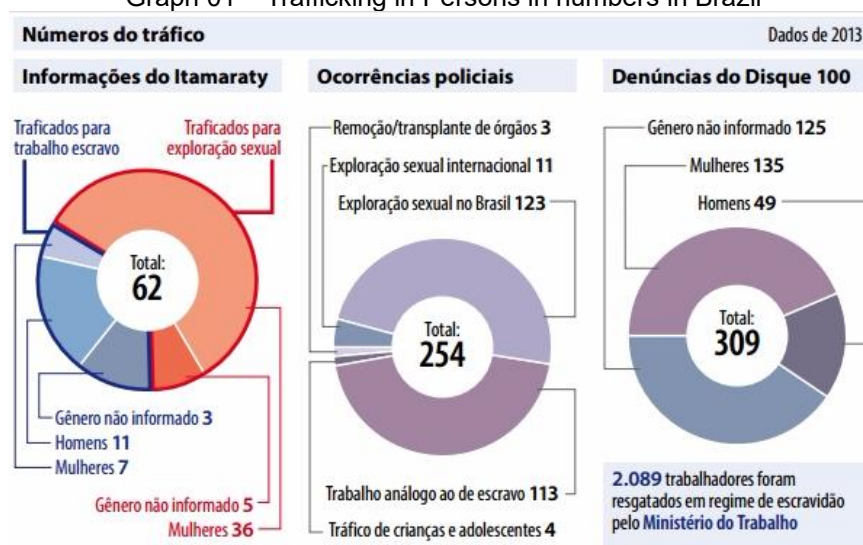
In 2006 and 2008, respectively, Brazil approved the Policy and the National Plan to Combat Trafficking in Persons, which led to Decree No. 6,347, which were operationalized by the National Secretariat of Justice.

Among the main guiding points of the National Policy, materialized by Brazil in Decree No. 5,948, of 2006, are respect for human dignity and non-discrimination on the basis of gender, sexual orientation, ethnic or social origin, origin, nationality, professional activity, race, religion, age group, migratory status or other status, being a more advanced legislation from the point of view of the treatment of prejudice, including for gender issues.

With this new treatment given to human trafficking, new cases that were not covered by the previous legislation began to be dealt with within the criminal type, such as labor exploitation and organ trafficking, among others. Previously, only exploitation for sexual purposes was considered human trafficking.

However, according to Brasil (2016), the number of cases arising from labor exploitation is equivalent to cases of sexual exploitation. In fact, the stigma that only women used to be victims was broken, since, while they represent the largest number of victims of sexual exploitation, they are the most affected in terms of labor exploitation.

Graph 01 – Trafficking in Persons in numbers in Brazil



Source: Brazil (2016).

In this sense, Law No. 13,344, of 2016, brought some aspects that gave a greater possibility of combating trafficking in persons through the law. The first of them is the planning and division of state action into three axes: prevention, victim protection and repression.

Because it is a crime with a great facility for fraud in order to mask it, in addition to being easily changed in order to prevent the reach of the trafficker, with regard to prevention, it was extremely important to confer greater autonomy to the police. Now, according to the dictates of article 13-A of the aforementioned legislation, the delegate, if he has not complied with his request by the Judiciary to request telephony information within twelve (12), may request directly from the telephone service provider, according to the dictates of the general power of requisition contained in the Criminal Investigation Law.

With regard to the repression of trafficking in persons, Law No. 13,344, in line with the provisions of the Palermo Protocol, provided for cooperation between national and foreign bodies of the justice and security system, as well as the formation of joint investigation teams, thus enabling the creation of an international network to combat trafficking in persons. a crime that usually has a transnational character.

In the item of protection for victims, the legislation granted permanence to victims in national territory, as well as as family reunion, thus favoring free medical care offered in Brazil to national or foreign citizens.

Law No. 13,344 also amended the Penal Code, in its article 149-A, trying to list old qualifiers, such as the removal of organs or tissues, submission to labor analogous to

slavery, servitude, illegal adoption in the criminal type itself, in order to allow different conducts to now characterize the occurrence of the criminal type.

The action of the police is well defined, and the Civil Police must act in common cases, and the Federal Police in cases of interstate or international repercussion.

Finally, as a failure of this legislation, there is the issue of vulnerability, since the socioeconomic vulnerable, such as blacks, residents of the peripheries, people with low income, are the most enticed.

ARGENTINA

Subsequently, in Brazil, Argentina dealt with the subject matter through a National Program, known as the *National Program for the Prevention and Eradication of Trafficking in Persons and Assistance to its Victims*, instituted by Decree No. 1,281, in 2007.

The legislation that effectively materialized this program was Law No. 26,364, of 2008, which cut the criminal type according to the age of the victim: over 18 years of age and under 18 years of age. In both cases, the victim's consent is irrelevant to the exclusion of the typification, and the main point of differentiation between them is the issue of the use of means that promote deception, fraud, violence, threat or any means of intimidation or coercion, or abuse of authority or a situation of vulnerability.

For the configuration of trafficking in persons between persons over 18 years of age, it is necessary to use one of these means, whereas, for the configuration of trafficking of minors, it is not necessary to use any of them.

The forms of exploitation considered by Argentine legislation are set out in Article 4 of that legislation, which are slavery, servitude or similar practices, forced labor, sex trade and the extraction of organs from the human body.

A point that deserves to be highlighted in Law No. 26,364, of 2008, is in its article 5, which is the guarantee that, even if it has contributed to the consummation of the crime, the victim cannot be held criminally responsible for this fact.

There was also concern to ensure the protection of victims, with trafficked people being guaranteed accommodation in an appropriate place and the right to privacy and confidentiality of identity. Rescue and follow-up workshops were also instituted, composed of a multidisciplinary team with social workers, psychologists and lawyers.

Moving on to the visualization of the numbers involving trafficking in persons in Argentina, the following graph was found:

Graph 02 – Trafficking in Persons in numbers in Argentina



Source: Argentina (2017).

From the numbers presented by Argentina (2017) regarding trafficking in persons, it can be seen that most of this crime involves people over 18 years of age (91%). As for the nationality of the victim, both Argentines and foreigners are targeted by criminal organizations. Also equivalent are the levels of exploitation for sexual purposes, which occur in a percentage similar to that of work purposes.

PARAGUAY

It was only in 2012 that Paraguay drafted its own law that dealt with trafficking in persons, especially after strong international pressure to do so. Despite the delay, Law No. 4,788 brought important elements to combat trafficking in Latin America.

The first of them concerns exactly the scope of the law, which subjects acts not only practiced in Paraguayan territory, but also those practiced abroad. Thus, if the act involves a Paraguayan victim or, in any way, has links with the country, he can be prosecuted and judged in accordance with the dictates of this law.

There is also the imputation of international cooperation expressly in the normative text, guaranteeing the possibility of punishment for acts committed abroad; and the subsidiarity of Paraguayan jurisdiction if the act, committed in foreign territory, involves a Paraguayan victim and is not prosecuted in his place of consent, thus avoiding criminal evasion.

The aforementioned legislation not only brought the points highlighted above, but also tried to define precisely some primordial concepts in the understanding of what human trafficking is, such as victim, direct victim, secondary victim, illicit extraction, band, criminal

association, sexual exploitation, servitude, forced labor or service, servile marriage, other slavery practices, economic exploitation of another person, servitude on a piece of land, debt slavery.

In fact, it was the only legislation among the MERCOSUR member countries that was concerned with defining the concepts worked so well, in order to assist the Judiciary and the Police in the criminal prosecution of the accused.

Care was also taken to ensure the punishment of those who have possession of the victim's travel documents, but who usually evade the direct commission of the crime to avoid a conviction. The victim, once configured, is entitled to compensation in order to recompose his personal balance. Informants of criminal organizations can also be punished and, if the criminal repents, there is the possibility of a reduction in the sentence.

URUGUAY

Uruguay does not have its own legislation that deals with trafficking in persons, an issue that was addressed in the Migration Law (Law No. 18,250, of 2007). Unfortunately, this situation demonstrates a lack of legislation in the fight against human trafficking in that country.

In this legislation, there was a differentiation of two crimes that, although they have similar names, involve different elements: *trafficking of personas* and *dealing with personas*.

The classification of the former reaches those persons who facilitate the illegal entry into Uruguayan territory of a person for the purpose of obtaining some benefit for themselves or for a third party, or who maintain illegal immigrants. The penalty for those who practice this crime is low, between 06 months and 03 years in prison.

The second refers to human trafficking from the perspective that was already being addressed in other countries: that which recruits, transports or receives people for forced labor, slavery, servitude, sexual exploitation, removal or extraction of organs or activity that affects human dignity. The penalty, in this case, ranges from 04 to 16 years in prison.

Among the legislative innovations, it is noted that, among the qualifiers, is the danger to the health of migrants, which is so outdated when it is under the power of a criminal organization.

However, as it is not a specific legislation, there is no provision for assistance and reparation for victims, which goes against the provisions of the Palermo Protocol.

For this reason and because it does not have its own legislation on the subject, according to Cien18chenta (2010), the United Nations (UN) criticized the country for the supposed tolerance it would have with human trafficking, favoring the practice of crime in its territory.

VENEZUELA

Finally, Venezuela, the last country to join MERCOSUR, also does not have its own legislation to combat trafficking in persons, including the topic in articles 41 and 42 of the *Organic Law Against Organized Crime and Financing of Terrorism*.

For this reason, it is required that, in order to constitute the criminal type, the criminal must be part of an organized delinquency group, ruling out the possibility of committing it when he acts alone.

Threat, force, coercion, kidnapping, deception, abuse of power and situations of vulnerability are considered as elements of the typification, that is, their occurrence is imperative for the occurrence of the type.

The legislation encompasses different purposes for the occurrence of trafficking in persons, including servitude, forced labor, irregular adoption, slavery, organ harvesting, sexual exploitation, pornography, sex tourism, and servile marriage. It is important to highlight that, according to the dictates of the Palermo Protocol, even with the consent of the victim, the crime is consummated.

There was also concern to guarantee compensation for the recovery and social reintegration of the victim, which, despite the apparent lack of assistance, makes it possible to overcome the problem in a safer way, at least from a financial point of view.

Among all the countries analyzed, Venezuela is the one with the harshest penalty, from 20 to 25 years in prison. And, if the victim is a boy, girl or teenager, it increases to 25 to 30 years in prison.

CONCLUSION

Although progress has been made in the fight against trafficking in persons at the international and regional levels, MERCOSUR still needs to implement mechanisms for legislative standardization in order to create a scenario of cooperation in the fight against trafficking in persons.

In this way, it is avoided that some countries are considered escape routes for criminal organizations, harming the fight against crime in a broad way in the countries that make up the regional bloc, given that the border regions are difficult to control.

Therefore, the transnational nature of most of the cases highlights the urgent need for rapprochement between the member countries of the regional bloc in order to discuss mutual strategies for action and combat.

It is also essential to have adequate treatment for each of the modalities of trafficking in persons, since the victims are quite different in each of them.

Finally, it is urgent to highlight that mechanisms for victim protection and social reintegration are extremely important to prevent new forms of violence from being perpetuated in Latin American societies, thus avoiding the marginalization of these people.

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