

THE INFLUENCE OF VALUE JUDGEMENTS ABOUT THE EXISTENCE
OF FREE WILL IN PROSTITUTION ON SHAPING
CRIMINAL JUSTICE RESPONSE TO HUMAN TRAFFICKING

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Summary: Starting from the unbreakable bond that exists between human trafficking and prostitution, the author explores in the paper the issue of the influence of value judgments about the existence of free will in prostitution on shaping criminal justice responses to human trafficking. Two possible answers to this question also create two models of criminal-political responses to human trafficking. The author criticizes the first one, which does not recognize the freedom of will, because besides the incrimination of human trafficking as a way of preparing for the sexual exploitation of another person, it fails to incriminate the exploitation itself. This is criminally-politically unacceptable because it is against the logic of the institute of ideal fictitious joinder of offences that exists between several stages of criminal activity. The author blames the second model (in which the possibility of the existence of free will is admitted) that it would have to be consistent with the idea on which it is based up on and that is the freedom of will. If the person is found to be in the mechanism of human trafficking based on its freely expressed will, in this case there shall not be a criminal offense and human trafficking should be decriminalized in the same way that one should not penalize prostitution under persons own free will. In case when there is no free will, human trafficking should be treated as a preparation for or an attempted rape, as well as the sexual intercourse in which there is no freedom should be treated as rape. In both cases, the need for a criminal offense of human trafficking does not exist.

Keywords: human trafficking, criminal policy, prostitution, criminal law, joinder of crimes, free will, conspiracy.

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