

Normative aspects of smuggling of human beings and of reactions to it

Nina Peršak, LL.D., Research Associate, Institute of Criminology at the Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, Slovenia

Smuggling of human beings has been recently seen increasingly through the prism of organised crime, against which the EU, international organisations as well as national (member) states are fighting full force. In this process, unfortunately, the normative side of the smuggling story - the human suffering, social misery and poverty, the basic human freedom of movement, survival, self-preserving instinct and global social and economic inequality - is often lost from sight. These are all factors that go beyond the narrow criminal-law sphere, that are normative by nature and, therefore, influence or ought to influence (*sollen*) the very first stage of state's penal intervention, its production of criminal law statutes, i.e. criminalisation. Not all actors in this story namely, are equally blameworthy, not all of their actions equally morally reproachable and deserving criminal-law intervention, and nor is every national and supranational repressive reaction against smuggling morally impeccable. The issue of smuggling is always intertwined with the issue of the migration, which is a sore point and litmus test for many of today's societies. The media also plays an important role in demonising migrants which, by producing negative social representations of immigrants, shape or even construct public attitudes and, consequently, political action on this issue. Apart from being unjust and illiberal, the marginalisation of immigrants is also counterproductive or criminogenic in itself, since it generates social conflicts, incites intolerance among the predominant population and represents a social strain on immigrants, which can, in the end give rise itself to all sorts of violence.

Key words: smuggling of human beings, migrations, trafficking in human beings, criminal law, criminalization, normative factors, harm

UDC: 343.343.6