

BABEȘ-BOLYAI UNIVERSITY
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**EXPLOITATION OF VULNERABLE PERSONS:
POTENTIAL CRIMINAL IMPLICATIONS**
- Doctoral thesis summary -

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KEYWORDS

Vulnerable person, state of obvious vulnerability, exploitation of vulnerable persons, dynamic concept, protected social value, minority, killing at the victim's request, offences concerning the obligation to assist persons in danger, family abandonment, smuggling of migrants, facilitating illegal stay in Romania, determining or facilitating suicide, domestic violence, offences against sexual freedom and integrity, transmission of acquired immunodeficiency syndrome, discrimination, trafficking in persons, trafficking in minors, Article 182 Criminal Code, forced labour, forcing into prostitution, procuring, begging, illegal harvesting of organs, tissues or cells, living donors, deceased donors, altruistic purpose, consent to harvesting of human organs, tissues or cells, purchase of human organs, tissues or cells, publishing or publicising announcements regarding the donation of human organs, tissues or cells, forensic autopsy, forcing to commit acts provided by criminal law, using or accepting the services of an exploited person, child prostitution, deception, Loverboy method, child pornography.

SUMMARY

At a global level, significant attention is given to human trafficking, with the exploitation of vulnerable persons being widely accepted as an element of this phenomenon, as the exploitation of victims is one of the aims pursued by those who commit such illicit conduct. In our opinion, for a better understanding of the phenomenon of human trafficking, as well as the situations of exploitation of persons, we must first look at the source of victims' vulnerability, as the factors that make the injured person vulnerable are those which traffickers or exploiters take advantage of in their activity. In this context, it is important to emphasise that, although not every person can be a victim of trafficking, the injured person can be identified in any country, environment, or social stratum, not being an issue specific only to extremely poor areas of the globe or those characterised by armed conflicts.

Therefore, in this doctoral thesis we have analysed the concept of vulnerable person, the forms of exploitation, the relationship between trafficking and exploitation offences, as well as two phenomena, namely the trafficking and exploitation of victims through the Loverboy method, and child pornography as a form of sexual exploitation of minor victims. The structure of the thesis reflects the methodical approach to the subject, being organised into three main parts.

The first part, entitled "The Meaning of the Concept of Vulnerable Person", establishes the conceptual framework of the research, examining the meaning of the phrase "obvious vulnerability", sources of vulnerability, and ways in which the potential victim can be placed in such a situation, being organised into three major sections, with the classification criterion given by the source of the victim's vulnerability. From this perspective, we discuss situations where the vulnerability of the injured person is implicit, situations where the perpetrator places the victim in a vulnerable position, and other sources of vulnerability, external to the parties of the criminal law relationship, but which facilitate or motivate criminal conduct. In this last category, we examined the concept also through the lens of the European Court of Human Rights jurisprudence. We considered that such a structuring of the first chapter and this analysis allow for a clearer understanding of how the initial vulnerability of a person can lead to their subsequent exploitation. This tripartite classification allows for a more nuanced understanding of the concept under analysis, essential for developing effective criminal policies.

Regarding obvious vulnerability, we analysed the norms in which the legislator considers this particular situation of the victim, noting a legislative inconsistency. For example, Article 218¹ para. 4 lit. b) Criminal Code contains an exhaustive enumeration of the sources of the victim's obvious vulnerability. In contrast, in Article 218¹ para. 5¹ lit. b) Criminal Code, the legislator regulated an aggravated form of the offence in the situation where the perpetrator abuses the obviously vulnerable situation of the injured person, due to a mental or physical disability, a situation of dependence, an illness, a state of physical or mental incapacity or other cause.

Analysing the two norms in the structure of the offence of rape committed against a minor, it is difficult to explain why the legislator opted for this difference in regulation, being equally possible that the omission was not intentional. Despite this fact, until the regulation is modified, in case of sexual intercourse, oral or anal sexual act, as well as any other acts of vaginal or anal penetration committed by an adult perpetrator with an injured person aged between 16 and 18 years, it will be punishable by imprisonment from 2 to 9 years if the perpetrator abused the obviously vulnerable situation of the injured person, due to a mental or physical disability, a situation of dependence, an illness, a state of physical or mental incapacity or other cause, such as, for example, somnambulism, hypnosis, voluntary or involuntary drunkenness, a possible inability to defend oneself or express one's will as a result of consuming psychoactive substances. On the other hand, the same other causes, which represent hypotheses with a high degree of vulnerability of the injured person, will not attract the

incidence of an aggravated form of the offence of rape committed on a minor if the victim is 15 years old and suffers from somnambulism or is hypnotised.

Further, at the beginning of this thesis we showed that the state of obvious vulnerability should be viewed from two perspectives. The first is the one mentioned above, namely the concrete situation of the victim, a situation that facilitates the commission of the offence by the perpetrator. The second perspective, which naturally follows from the first, is the reduced possibility for the victim to inform the judicial bodies or third parties about the abuse to which he or she is subjected. Thus, for example, the person to whom the aggressor provides the means of subsistence and whom, taking advantage of this fact, sexually abuses, might not notify the judicial bodies precisely because he or she would risk being left without food. In other words, the perpetrator chooses the victim precisely from among those who would not report him either out of fear or to avoid imagined public opprobrium, or because the perpetrator ensures the victim's survival or maintenance.

The state of obvious vulnerability is a matter of fact, which can be easily observed and which is generally accepted as a relative matter, a situation of inferiority, of inequality of the victim compared to another person involved. Therefore, the meaning of the notion of obvious vulnerability is a dynamic one, which depends on the observer's perspective and the term of comparison used, and as results from all the above, the vulnerable position must be analysed concretely because it differs from person to person, thus there being an obligation on the judicial bodies to analyse the situation of each victim individually, and not by reference to an average standard of education, standard of living or other such factors.

Regarding situations where the vulnerability of the injured person is implicit, we paid particular attention to minority as a vulnerability factor and analysed the position of the minor in criminal law, in criminal procedural law, also providing some criminological explanations regarding the source of criminal behaviour in minors, making mentions regarding the transmission of criminal conduct in the family, bullying in schools and the influence of social networks on the criminal conduct of minors. We also examined the offence of child maltreatment, both the constitutive content of the offence and the sanctioning regime, in which context we analysed the possibility of considering parental alienation a form of child maltreatment.

Regarding parental alienation, we showed that it is considered a form of psychological abuse that affects the harmonious, healthy moral development of a child. Therefore, the deceitful manoeuvres by which, for revenge, one of the parents alienates the minor from the other parent, thus influencing their thoughts about them in a determinant way, should represent

treatments through which the development of the minor is placed in serious danger. Moreover, in support of this conclusion, the magnitude of the effects that such behaviour produces on the minor must also be considered, it being extremely difficult for the child to resume the connection with the parent from whom they have been alienated, especially since one of the results of alienation is precisely the consideration of the other parent as a bad person, of whom the minor should be afraid or avoid. Therefore, in our opinion, the objective element of the offence of child maltreatment can include parental alienation as a form of measures or treatments that seriously endanger the intellectual and moral development of the minor.

Additionally, within the chapter dedicated to situations where the vulnerability of the injured person is implicit, we presented aspects regarding the offences of killing at the victim's request, smuggling of migrants and facilitating illegal stay in Romania, family abandonment, as well as those concerning the obligation to assist persons in danger. Also, in the case of the offence of migrant smuggling, we presented the similarities and differences between this criminalisation and that of human trafficking, emphasising that victims are in a vulnerable position, which can be exploited both by migrant smugglers and, subsequently, by potential exploiters.

Further, the second chapter of the first part of this thesis focuses on situations where the perpetrator is the one who places the victim in a vulnerable position through their actions, analysing offences such as determining or facilitating suicide, domestic violence, offences against sexual freedom and integrity, or the offence of abusive use of position for sexual purposes. In addition, a subchapter is dedicated to the transmission of acquired immunodeficiency syndrome, analysed as a way in which the perpetrator places the victim in a position of extreme vulnerability.

The common element in these cases is represented by the conduct of the perpetrator, the victim not being in a vulnerable position prior to the commission of the offence. Thus, although there may be certain factual circumstances that suggest a possible vulnerable position, such as, for example, pregnancy or a medical condition, in the case of this category, the vulnerability of the victim is caused by the perpetrator who, through their illicit conduct, causes the victim significant suffering and which transforms their life in a negative way.

This approach allows for the identification of mechanisms through which aggressors create states of vulnerability, which they can then exploit or even do exploit, offering an essential perspective for understanding the dynamics of these offences. In addition, in the subsection dedicated to domestic violence, we presented some aspects regarding the psychological and social mechanisms that contribute to the vulnerability of the victim, making

it difficult for them to exit the aggressor's sphere of authority. This vulnerability, created and perpetuated by the aggressor, can lead to the exploitation of the victim in various forms, including forcing them into forced labour, begging, or prostitution.

Regarding the offence of determining or facilitating suicide, we showed that the criminalisation is at the confluence between situations where the vulnerability of the victim is implicit and those where it is caused by the perpetrator. The legal text sanctions conduct through which another person is convinced or helped by the perpetrator to commit suicide, the alternative behaviours regulated by the legislator obliging us to distinguish between situations where the perpetrator places the victim in a vulnerable situation, through conduct by which they determine them to resort to suicide, and those where the perpetrator "only" helps the victim, thus taking advantage of a pre-existing state of vulnerability. In this latter case, in our opinion, the state of vulnerability is implicit. For this reason, we placed the offence of determining or facilitating suicide in the chapter dedicated to situations where the perpetrator places the victim in a vulnerable situation and analysed the hypothesis in which the perpetrator determines the victim to commit suicide, and not those in which they take advantage of their pre-existing vulnerability, facilitating the execution of the decision to commit suicide.

Finally, the last section of the first part of this thesis completes the analysis by examining other sources of vulnerability, with particular reference to the jurisprudence of the European Court of Human Rights. We identified and analysed reasons for vulnerability such as the sexual orientation of the victim and their membership in the LGBT community, medical conditions, as well as other relevant reasons for vulnerability, such as religion, political options, the advanced age of the future victim, etc.

An important aspect emphasised in this section is the relative character of the notion of vulnerability, which depends on the social, cultural, and legal context in which the person is located, as well as the observer's perspective and the term of comparison used. At the end of the first part, we concluded that any offence that produces harm or injury to a person can place the victim in a position of vulnerability, depending on the concrete circumstances of the case. Therefore, the state of vulnerability of a victim is a matter of fact, it not being possible to define it through a legal norm.

Further, in the second part of the thesis, entitled "Forms of Exploitation of a Vulnerable Person", we analysed in detail the forms of exploitation provided for in Article 182 Criminal Code, as well as the criminalisation found in Chapter VII of Title I of the Special Part of the Criminal Code, but also in special laws, regarding the exploitation of vulnerable persons. This

part is structured according to the forms of exploitation stated in the legislation, offering an exhaustive analysis of each.

Therefore, in the second part of the thesis, we analysed subjection to forced labour or services, keeping in slavery, forcing into prostitution, pornographic performances for the production and dissemination of pornographic materials or other forms of sexual exploitation, forcing into begging, illegal harvesting of organs, tissues or cells, and forcing to commit acts provided by criminal law. In addition, we mention that we paid particular attention to criminalisations in connection with the harvesting and transplantation of human organs, tissues, and cells, which are found in Article 154-158 of Law no. 95/2006 on healthcare reform.

Regarding subjection to forced labour or services, we presented the legal, national, and international framework of this form of exploitation, as well as the constitutive elements of the offence of subjection to forced or compulsory labour. In addition, we showed that the activity itself cannot be viewed as degrading or humiliating, but rather the manner in which the victim comes to perform it. Furthermore, regarding keeping in slavery or other similar procedures of deprivation of liberty or servitude, we examined the constitutive elements of this form of exploitation, as well as the relationship with other offences, such as illegal deprivation of liberty. We also emphasised the seriousness of this form of exploitation, which negates the very essence of human dignity, reducing the person to the status of an object or property.

Further, regarding conduct through which the victim is sexually exploited, we examined the vulnerable position of persons who practise prostitution, as well as the offence of pandering. In addition, we brought arguments in favour of legalising prostitution, with the consequence of creating a legal framework for carrying out this activity.

In our opinion, regulating the activity of sex workers would lead to the establishment of social and health contributions, with the consequence of facilitating access to medical services, to taxing the income thus obtained, to instituting obligations for preventing the transmission of sexual diseases and, especially, it would remove from the sphere of incidence of criminal law the conduct of determining or facilitating prostitution committed without the physical or mental coercion of the victim. In addition, we consider that the legalisation of prostitution could generate a decrease in the number of cases in which the victim is obliged to remit part of the income thus obtained to a person who provides protection, in order not to be detected and sanctioned by the police. Moreover, if we refer to states where prostitution has been legalised, as is the case in Germany, we observe that the humiliation of the sex worker, a component of their exploitation, comes from the denial of their freedom to decide whether or not to practise prostitution, by forcing them to practise this activity. It can thus be observed that

it is not the activity itself that will be considered degrading, but the deprivation of autonomy and the exploitation of the vulnerable person.

Regarding Section D, we show that it focuses on forcing into begging as a form of victim exploitation, analysing the vulnerable position of beggars and the legal framework of the exploitation of begging. In addition, we dedicated a specific subchapter to the relationship between the offences of exploitation of begging, child maltreatment, and preventing access to compulsory general education, and we also analysed the relationships between the offence of exploitation of begging and other offences, such as robbery and fraud. Finally, we show that the last subchapter of the section concerns the criminalisation of the act of using a minor for begging purposes and the relationship between this offence and that of exploitation of begging.

Further, in Section E, one of the most extensive in the thesis, we analysed the illegal harvesting of human organs, tissues, or cells as a form of exploitation of a vulnerable victim. During the analysis, we identified legislative inconsistencies in this area, such as the criminalisation of selling, but not of buying organs for personal use, and questioned the equity of this approach, having shown that both the seller and the buyer can be in situations of vulnerability, which are exploited by the one who seeks to obtain a material benefit through trafficking an organ, tissue, or cells. We also made references to the problem of transplant tourism, an increasingly widespread phenomenon globally, highlighting various problematic practices, such as harvesting organs from death row inmates in China or cross-border organ trafficking, which exploits the economic vulnerability of donors from poor countries.

This section begins with an introduction that contextualises the phenomenon, followed by an analysis of the scope of application of Article 182 lit. e) Criminal Code. Further, a subchapter is dedicated to presenting the meaning of specific terms, the analysis continuing then with the detailed exposition of conduct regarding the harvesting of human cells, tissues, or organs from living persons, illegally. In this section, we analysed in detail the legislative framework, examining the relevant legal texts from Law no. 95/2006 and other applicable normative acts.

Thus, the thesis analyses the conditions under which consent to harvesting can be considered valid, showing that the consent (i) must belong to an adult person, with full legal capacity; (ii) must be informed; (iii) must be free – an aspect that involves the analysis of the offence of coercing a person to donate human organs, tissues, or cells; and (iv) must be prior to collection, express, and expressed in writing. Also, during the presentation, we exposed aspects regarding the harvesting of organs, tissues, or cells from minor donors, showing that, in principle, this conduct is prohibited. In addition, we exposed the possible offences incident

depending on each unfulfilled condition separately, referring also to the hypothesis in which the victim was previously trafficked.

Further, an important subchapter is dedicated to the criminalisation of the act of donating human organs, tissues, or cells, for the purpose of obtaining material benefits, for oneself or for another, being exposed in this context the arguments for and against legalising the sale of organs, tissues, or cells that have been expressed over time. Also, we showed that feelings of humanity or compassion towards the sick underlie the non-criminalisation of organ buying, but the same feelings could be manifested towards the one who, in a desperate situation, decides to sell their organs to survive. In addition, we analysed the criminalisation from Article 156 para. 1 of Law no. 95/2006 and made mentions regarding the incidence of the cause of non-punishment from Article 20 para. 1 of Law no. 678/2001, in the hypothesis in which the victim is trafficked beforehand. Moreover, we analysed the vulnerable position of the one who consents to the sale of their organs, tissues, and cells, referring also to any other incidental offences.

Also, within Section E of the second part of the thesis, we exposed the offences of publishing or publicising announcements regarding organ donation for the purpose of obtaining material benefits, organising or performing organ harvesting for the purpose of obtaining a material benefit, and purchasing organs for the purpose of resale. We also showed that the illegal harvesting of organs or tissues from deceased donors can represent a form of exploitation of a vulnerable person, namely the relatives of the deceased or even the deceased, in their case, obviously, during life. In the subsection dedicated to this form of exploitation, we analysed both the criminalisation of the act of harvesting organs from deceased donors without right, found in Article 384 Criminal Code, and that of performing a harvesting when it compromises a forensic autopsy, requested under the conditions of the law. At the end of Section E, the act of introducing or taking organs out of the country outside the legal framework is also presented.

Further, in Section F of Part Two, we analysed a new form of exploitation, introduced by the legislator through Law no. 269/2024 for amending and completing Law no. 286/2009 regarding the Criminal Code, published in the Official Monitor no. 1089 of 31.10.2024, namely forcing to commit acts provided by criminal law. In this context, we examined the component elements of this form of exploitation, as well as the relationship with forms of criminal participation, namely instigation and complicity. In addition, we exposed the particular situation of the victim who, although commits acts provided by criminal law, is themselves exploited, being forced to commit these acts.

Moreover, for a complete presentation of the exploitation of vulnerable persons, we presented the criminalisation of acts of using the services of an exploited person and child prostitution. We exposed the constitutive elements of the two criminalisations and made some clarifications regarding the notion of services in the context of Article 216 Criminal Code, more precisely we analysed whether the provision of services presupposes activities with a character of continuity or if a single paid provision is sufficient to be called a service. In our opinion, the notion used by the legislator imprints the conduct of the exploited person with a character of continuity, of habit, prostitution, begging, forced labour, or illegal cell harvesting falling into the category of services. Regarding the illegal harvesting of organs, we consider that this cannot represent a service in the sense of Article 216 Criminal Code because organs are found in a finite number in the human body and are necessary for the survival of the organism.

Also, within the analysis of Article 216 Criminal Code, we concluded in the sense that the norm in question requires that the beneficiary of the service knows, has the certainty that the provider is a victim of human trafficking or child trafficking, it not being necessary to know the context or the manner in which they were trafficked. On the other hand, situations in which the perpetrator only foresees that the victim has been trafficked from circumstances such as payment of a price below the market price in the case of forced labour, practising prostitution by persons who do not speak Romanian and who carry out the activity in spaces that claim to be erotic massage centres, for example, but does not have a certainty in this regard, will not fall under the incidence of the criminalisation norm, Article 216 Criminal Code not being a regulation similar to that of Article 270 para. 1 Criminal Code. At the end of the analysis, we showed that, *de lege ferenda*, it is necessary to reformulate Article 216 Criminal Code by introducing a phrase similar to that of Article 270 para. 1 Criminal Code, namely the criminalisation of the conduct of using the services of an exploited person in case the beneficiary has foreseen from the concrete circumstances that the provider is a victim of human trafficking.

At the end of Part Two of the thesis, we exposed the relationship between the offences of exploitation and those of human trafficking, minor trafficking, and migrant trafficking, dedicating a specific subchapter to the hypothesis of the concurrence of offences between the acts of trafficking and those of exploitation, a hypothesis also highlighted by the legislator, through the amendments to Article 210 Criminal Code and Article 211 Criminal Code. In addition, we analysed the importance of the victim's consent, showing that the conduct of human trafficking or minor trafficking is conditioned by the existence of a special purpose, that of the subsequent exploitation of the previously trafficked person, without it being relevant for

the typicality of the offence of human/minor trafficking which of the forms of exploitation defined in Article 182 Criminal Code is incidental in the case or whether the effective exploitation of the victim has been achieved or not.

Therefore, Article 182 Criminal Code represents the key in which Article 210 Criminal Code and Article 211 para. 1 and 2 Criminal Code must be read because the purpose that must be pursued by the perpetrator to be in the presence of this offence is the exploitation of the vulnerable victim. Therefore, we concluded that precisely the existence of this special purpose excludes, in fact, considering the consent of the injured person as a justifying cause in the case of human trafficking or minor trafficking offences. In other words, the consent of the injured person does not operate in the case of human trafficking because they cannot express an agreement to their transformation into merchandise.

Further, the third part of the thesis, entitled "Analysis of Particular Phenomena", completes the research by examining two specific phenomena found in the context of trafficking and exploitation of vulnerable persons: recruitment and exploitation of victims through the Loverboy method and the offence of child pornography, viewed as a form of sexual exploitation of minors. This part deepens specific aspects that contribute to a more nuanced understanding of the phenomenon of exploitation of vulnerable persons.

Regarding the Loverboy method, we analysed the particularities it presents, which involve the emotional manipulation of the victim, creating an emotional dependency that facilitates subsequent exploitation. We also analysed the typical stages of the Loverboy method, from initial seduction to effective exploitation, as well as the specific difficulties in identifying and proving this form of trafficking.

In addition, we made clarifications regarding the specific vulnerability of the victims of the examined method, highlighting potential risk factors that predispose to victimisation, respectively lack of affection in the family, emotional insecurity, desire for affirmation and recognition, lack of adequate sexual education, etc. Aspects such as age, precarious financial situation, lack of education, the existence of a natural calamity or an armed conflict in the area of origin of the victim, drug dependence, or marginalisation because they suffer from a certain disease or present a certain disability can represent as many factors of vulnerability of the person in question in the face of a potential human trafficker or person exploiter. Therefore, we showed that one must look at the environment from which the perpetrators recruit future injured persons, because precisely this social, economic, or family environment represents the premise for eventual trafficking and subsequent exploitation.

We also showed that deception through the Loverboy method can be encountered in the case of any of the forms of exploitation stated in Article 182 Criminal Code, but also in the context of committing other offences, such as fraud. On the other hand, deceiving a vulnerable person should not be confused with the Loverboy method, between the two being a relationship from genus to species, the latter being a component of the former. For example, in our opinion, the Loverboy method will be incident in all cases where the perpetrators begin a romantic relationship with victims who come from poor, disadvantaged environments or from broken families or are drug dependent, for example, whom they then convince to carry out activities specific to one of the forms of exploitation listed in the content of Article 182 Criminal Code, taking advantage of the feelings that these have towards them, the sums of money thus obtained belonging exclusively or almost exclusively to the latter.

Regarding child pornography, Section B of the third part of the thesis offers an analysis of child pornography as a form of exploitation of the vulnerable person, examining the history of criminalisation, the protected social values, the national regulations, and the international framework of criminalisation. In addition, a specific subchapter is dedicated to the comparative analysis of the criminalisation of child pornography in different legal systems, namely in Spanish law, American law, French law, and German law. Further, we proposed reconsidering the social values protected by the criminalisation of child pornography and argued in the sense of harming values related rather to the physical, psychological, and sexual integrity of minors than to public order and tranquillity.

Also, the thesis proposes a differentiation between two categories of child pornography: that resulting from acts of revenge, which could be treated as a violation of private life, and that obtained through sexual exploitation of minors (either through videochat, or through photographing and commercialising pornographic images). This distinction is relevant for criminal policy, suggesting the need for a differentiated treatment of these situations because the social danger presented by each of these is different. Finally, the last subchapter of this section is dedicated to the analysis of child pornography as a form of sexual exploitation of minors, highlighting the connection with minor trafficking and child prostitution. In this context, the particularities of exploitation through videochat are examined, which presents advantages for the trafficker from a financial, criminal procedural, and safety point of view (lack of direct physical contact between client and victim).

Therefore, by examining the subject from this structural perspective, the notion of vulnerable person becomes clearer, the analysis of sources of vulnerability being useful for the correct identification of such a victim. In addition, the thesis tries to clarify the dynamic and

contextual character of vulnerability, highlighting the fact that the vulnerable position of the injured person is implied by the legislator in certain situations or in the case of certain criminalisations, but there may be situations in which precisely the conduct of the aggressor is that which makes the victim vulnerable. Moreover, eventual traits, characteristics, beliefs, or inclinations of the victim can transform into as many reasons for discrimination and making them vulnerable, determining the perpetrator of the offence to undertake the illicit conduct, regardless of whether this takes the form of an act of theft, a physical aggression, or a rape, for example.

Further, another central aspect of the thesis is the analysis of the relationship between the forms of trafficking and those of exploitation of the victim, highlighting the fact that trafficking and exploitation of a person can exist independently of each other, trafficking being a conduct that mediates the exploitation of the injured person. From this perspective, we found that human trafficking or minor trafficking offences are incident only to the extent that the perpetrator has pursued the use of the victim in one of the variants regulated by Article 182 Criminal Code. On the other hand, this perspective also has important implications for criminal policy, suggesting the need for separate criminalisation of the conduct of exploitation of vulnerable persons.

We consider that it is necessary to criminalise all forms of exploitation from Article 182 Criminal Code as stand-alone offences so that the victim's freedom is protected both in the case of their exploitation after trafficking, and in the hypothesis in which trafficking does not take place. Also, the need for legislation also results from the need to avoid situations in which, although the conduct of exploitation exists, in the absence of the previous trafficking of the victim, the perpetrator is not sanctioned for the actions through which they exploited the victim, unlike the trafficker, who will be criminally liable in this hypothesis.

Therefore, not being conditioned by trafficking, the exploitation of the person must be analysed as a stand-alone conduct, with the consequence of modifying some of the examined criminalisation norms, in order to sanction both those who first traffic the victim, and then exploit them, as well as those who commit acts specific to the exploitation of a person who has not been previously trafficked. As we have shown at length in the second part of this thesis, there are situations in which the perpetrator will be criminally liable only in the first hypothesis although their conduct is the same, namely one of exploitation of the victim.

Further, this thesis emphasises the mercantile character of trafficking and exploitation of vulnerable persons, the purpose pursued by the perpetrators being to obtain material benefits. Although any form of exploitation of a person is humiliating for the victim and violates human

dignity, the mercantile character of the conduct should not be omitted or excluded from discussion, this being the main motivation of the trafficker. In other words, the trafficker acts for the ultimate purpose of obtaining profits, the humiliation and degradation of the victim being a collateral effect of the path they follow to achieve their goal. In contrast, the injured person is humiliated or degraded precisely by the forced character of the activity they perform, there being the possibility that, in the absence of coercion, they would have decided on their own to perform a certain activity, including begging or prostitution, for example.

Therefore, as results from all the above, the doctoral thesis offers an in-depth analysis of the concept of vulnerable person and forms of exploitation, clarifying important aspects for the theory and practice of criminal law. The research highlights the dynamic and contextual character of vulnerability, as well as the complex relationship between the conduct of trafficking and that of exploiting a victim. In addition, a careful study of the sources of vulnerability of victims can reveal the real causes of trafficking and exploitation, opening the way to combating illicit conduct through public policies focused on remedying the sources of vulnerability, with the consequence of a possible decrease in the number of trafficking and exploitation offences. Also, we proposed repositioning and reconfiguring the offence of child pornography, to better reflect the protected social values, but also to sanction the exploitation of the minor victim through such conduct.

In conclusion, we consider that this thesis contributes to the complex understanding of the phenomenon of exploitation of vulnerable persons, offering useful perspectives both for future theoretical developments, and for practitioners of law, the position of vulnerable victim being found in a very wide range of cases, from requesting the issuance of a protection order, to an attempted murder, for example. In addition, the proposed clarifications can serve to develop more effective and equitable criminal policies, which better protect the rights and freedoms of vulnerable persons.