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### **Judicial practice in criminal cases, related to minors trafficking**

*Annotation. The author considers some aspects of humans trafficking, in particular, minors. This transnational crime is characterized by commitment of mainly in complicity: by conspiracy, by an organized group, criminal business is extremely latent. The article examines the main forms of minors trafficking, provides statistical databases on criminal prosecution for the considered category of crimes. International documents on human trafficking, consolidating fundamental principles and concepts, as well as general measures, call for increasing international cooperation in exchange of information, experience and knowledge of legislation.*

*Key words: humans trafficking, minors trafficking, transnational crime, victim of humans trafficking, judicial practice.*

Human trafficking is a transnational crime and only through the joint efforts of all actors involved in combating it, could be reduced the level of its spread and scale.

In recent years there has been increased number of cases of minors trafficking. This criminal business is extremely latent, and it is very difficult to bring out of the shadows of organized crime. According to different estimates of experts, the underground slave trade is the third most profitable criminal business in the world (after only to the arms and drugs trade, but analysts say that in the next five years the income from the slave trade will exceed the income from drug trafficking), its income reach 32 billion dollars in a year. Every year, as a result of trafficking, between 700,000 and 1 million people are forcibly displaced across international borders, up to 80 % of them are women, half of whom are minors. More than 50 % of victims of human trafficking are children [i]. Most of victims are girls aged 13-16 [ii]. Criminals rent them to brothels, sell them for housework, take care of children, and use them for body organ transplantation.

The Republic of Kazakhstan is the country of origin, transit and destination of victims of human trafficking, facilitated by the openness of borders with the CIS countries, the strengthening of migration flows between states and within the republic, a developing economic, and political stability. Our country conducts consistent work in solving the problem of human trafficking, studies and uses the experience of other states in this field, since it is concerning protecting the constitutional human rights to life, freedom and health.

International documents on human trafficking, consolidating fundamental principles and concepts, as well as general measures, call for increasing international cooperation in exchange of information, experience and knowledge of legislation [iii]. International treaties ratified by the Republic take precedence over its laws and are applied directly, except when it follows from an international treaty; that it requires the publication of a law.

With a view to strengthening and intensifying the fight against human trafficking, the Republic of Kazakhstan has joined a number of international acts. The main positions of these international law acts in terms of establishing criminal liability for international character crimes are implemented in the criminal legislation of the Republic of Kazakhstan.

In accordance with the Law of the Republic of Kazakhstan dated March 2, 2006, «On amendments and additions to certain legislative acts of the Republic of Kazakhstan concerning combating human trafficking» amendments and additions were made to all articles providing for criminal liability for crimes related to human trafficking. In particular, was introduced a new version of Article 128 of the Criminal Code «Human trafficking».

Prior to the introduction of amendments to the Criminal Code of the Republic of Kazakhstan, there was a norm "On the recruitment of people for exploitation". The adopted law significantly expanded the qualifying signs of elements of crimes of this category; were toughened the sanctions for their commitment.

During introduction of this norm to the Criminal Code of the Republic of Kazakhstan took into account the provisions of international instruments, especially the "Protocol to prevent, suppress and punish human trafficking, especially women and children" adopted in November 2000 by the United Nations General Assembly as a supplement to the UN Convention against Transnational organized crime [iv].

In accordance with the Law of the Republic of Kazakhstan «On Amendments and additions to certain legislative acts of the Republic of Kazakhstan on Combating human trafficking» adopted on July 4, 2013, the concept of human trafficking brought in line with the international convention.

The new Criminal Code of the Republic of Kazakhstan regards human trafficking as an offense against the person and establishes a list of ways of human trafficking, which are: purchase and sale, commitment of other transactions, exploitation, recruitment, transportation, transfer, harboring, receipt and other acts for the purpose of exploitation.

Minors trafficking includes: 1) exploitation of the prostitution or other forms of sexual exploitation; 2) forced labor or services; 3) slavery or practices similar to slavery; 4) servitude or removal of body organs (transplantation). The main forms of minors trafficking based on cases brought to the courts of the Republic of Kazakhstan are trafficking for the purpose of sexual exploitation and for the purpose of using slave labor, sale of children for adoption.

The criminal liability for minors trafficking is singled out as a separate norm provided in Article 135 of the Criminal Code, which is classified as crimes against the family and minors. The element of this crime refers to the grave offence, the same act committed with qualifying signs — to an especially grave crime. Thus, the criminal liability for offenses against minors is strengthened.

Such types of trafficking as involvement in prostitution and the organization and maintenance of dens for prostitution and procuration are referred to offenses against public health and morality. Human trafficking and involvement in prostitution are the exploitation of another person. During involving in prostitution the Criminal Code of the Republic of Kazakhstan (Article 308) considers fraud, the use of violence or the threat of violence, blackmail, damage or destruction of property are used as means of committing this crime, the list of methods is exhaustive. Human trafficking through recruitment for the purpose of exploitation also provides for the person's inclination to give consent to a property transaction through promises, persuasions, blackmail, and threats. In this regard, the involvement in prostitution and procuration are referred to forms of human trafficking.

Regarding to minors victims, the legislator provided for a special article, the responsibility for which is more stringent than Article 308 of the Criminal Code. Involving a minor in prostitution (Article 134 of the Criminal Code), the law does not provide for the indication of certain methods, based on the psychophysical characteristics of the victim due to his age. The use of violence or the threat of violence, blackmail, damage or destruction of property or deception is referred to the qualifying signs of involving a minor in prostitution.

In 2014, most of the criminal cases provided for in part 3 of Art. 125, part 3 of Art. 126, 128, 132-1, 133, 270 and 271 of the Criminal Code were brought to the courts of Astana (46), Almaty (22), East Kazakhstan and South Kazakhstan regions (21 each one). The largest number of cases was completed by the courts of Astana (45), Almaty (22), East Kazakhstan region (21) and South Kazakhstan region (20) and the least number of cases was completed by the courts of Mangistau and Pavlodar regions (2 each one). The largest number of cases was considered with sentencing by the courts of Astana (35), Almaty (22) and South Kazakhstan region (20).

The statistics show that during 2013-2014 years to criminal liability for this category of crimes were mainly involved in commitment of a crime under Article 271 of the Criminal Code.

This trend has been observed before. For the period from 2008 to 2012 of the 1,374 recorded crimes related to human trafficking (in 2008 – 270, in 2009 – 269, in 2010 – 279, in 2011 – 289, in 2012 – 267), most also were the organization and maintenance of brothels for prostitution (Article 271 of the Criminal Code) – 72 %. The share of other crimes of human

trafficking is as follows: 1) kidnapping of a person for the purpose of exploitation (part 3 of article 125 of the Criminal Code) - 4.5 %; 2) illegal deprivation of liberty for the purpose of exploitation (part 3 of article 126 of the Criminal Code) – 4.2 %; 3) human trafficking (article 128 of the Criminal Code) – 7.3 %; 4) involvement a minor in prostitution (article 132-1 of the Criminal Code) – 1 %; 5) trade of minors (article 133 of the Criminal Code) – 4.4 %; 6) involvement in prostitution (article 270 of the Criminal Code) – 5.3 %.

The analysis of judicial practice [v] for above periods of setting sentences for committing crimes related to human trafficking showed up that the guilty persons were generally punished in accordance with the requirements of Article 52 of the Criminal Code.

But the legislative database is one aspect of solving this problem. There are other issues that need to be considered. For example, people from poor countries usually get into slavery, where people are exaggerated, oppressed, raped, where women are traditionally suppressed, it is much easier for the recruiter to be lured with false promises of a better life [vi]. This is easier to do in Vietnam or India. If we consider the European Union, it is easy to do in Bulgaria and Romania.

Also such crimes present the greatest difficulties in terms of the methodology of investigation [vii]. This is due to a number of negative factors, which investigators and judges often adduce as a justification. For example, such crimes are difficult to investigate because of their international nature. Very often, the accusation is based on the testimony of the child regarding his seller, exploiter. Due to weakness of such children, their morale due to physical and mental impact, to conduct a qualitative interrogation and to obtain testimony is not easy [viii]. Therefore, it is necessary to develop systems for collecting evidence, in which detection and investigation of crimes and the trial will not depend directly on the testimony.

In this regard, we consider involving different segments of the people, to form public opinion. We must be aware of what is happening and for what we should be responsible.

Based on the foregoing, I note that the crimes related to the minors trafficking are characterized by commitment of mainly in complicity: by conspiracy, by an organized group, since the structure of criminal activities consists of separate links: actions of the recruiter, seller, exploiter, proper organization using technological methods of management: advertising, reception of orders, variety of services, that is well ordered constant system of criminal activity.

#### **ТҮЙІН**

Мақалада адам саудасы, атап айтқанда, кәмелетке толмағандар жөнінде кейбір аспектілері қарастырылған. Бұл көбінесе трансұлттық қылмыс қатысуымен сипатталады: алдын ала сөзбайласқан адамдар тобының, ұйымдасқан топтың, өте жасырын қылмыстық бизнесі. Мақалада кәмелетке толмағандар саудасының негізгі нысандары зерттеледі, қылмыстардың қарастырылатын санаттары бойынша қылмыстық жауапкершілікке тартудың статистикалық мәліметтері келтіріледі.

#### **РЕЗЮМЕ**

Автор рассматривает некоторые аспекты торговли людьми, в частности, несовершеннолетних. Это преступление характеризуется совершением, в основном, в соучастии, т.е. организованной группой. В статье рассматриваются основные формы незаконной торговли несовершеннолетними с учетом статистики привлечения к уголовной ответственности по рассматриваемой категории преступлений.

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