

Scientific Researches of Counteraction of Illegal Business in the Sphere of Human Trafficking in the Republic of Kazakhstan

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Abstract: The study is considered the theoretical and applied aspects of the scientific researches of counteraction of illegal business by economic entities in the sphere of human trafficking in the Republic of Kazakhstan. It is implemented the analysis of legal and special literature where there are considered indirectly the features of a private methods of investigation of activities of the criminal economic entities, using of the illegal work, making socially dangerous acts and doing considerable harm. Researchers offer designing of general-theoretical bases and empirical prerequisites for directed complex research of the mechanism of human trafficking with participation of legally acting subjects of business activity and its main criminalistic methods of suppression and investigation.

Key words: Human trafficking, slavery, exploitation of the person, illegal business, criminalistic characteristic of human trafficking, illegal activity of legal entities

INTRODUCTION

Law-enforcement practice of law enforcement agencies of the Republic of Kazakhstan and modern scientific researches in the field of administrative, criminal law, criminology, criminalistics and the theory of operational search activity indicate that criminal formations in a field of activity of illegal business, became one of the following levels of activity of crime in general and in particular, further cycle of development of organized crime which represents, a functioning of individuals and criminal groups with use of the legal economic entities in commission of offenses and crimes, including of the human trafficking, relating to offenses and crimes but making steady criminal profit and the super-income as a result of criminal activity at exploitation, both migrants and citizens of Kazakhstan. It is also possible to note that criminal formations are directed on receiving of financial profit and acquisition of material benefits due to creation and exploitation of the markets not only illegal goods and services but also use of a slave labor in legally operating economic entities and uses of people as goods in the criminal purposes.

Human trafficking is a serious call for all civilized states including for the Republic of Kazakhstan. Now in administrative and criminal codes of the Republic of Kazakhstan it is criminalized the acts not only directly bound to human trafficking but also acts of involved

character. That is, there are fallen within the criminal ban and also those acts, at which the value of the person is reduced to the level of its pecuniary valuation, human, like property is sold and bought for money. Thereby, it was framed the normative and legal basis of counteraction on this dangerous social phenomenon which was acquired, according to the expert estimates (Nurgaliyev, 2009), the scale menacing to national security in the last decade.

So, only for 7 month of 2016, there were initiated 211 criminal cases, from them 3 for kidnapping for the purpose of exploitation; 6 for illegal imprisonment for the purpose of exploitation; 8 for human trafficking; 10 for involvement of the minor in prostitution; 11 for trade in minors; 16 for involvement in prostitution; 157 for procurement and the maintenance of a brothel and also 4 for creation and the management of the organized group for commission of one or several crimes and is peer participation in it.

In the annual report on fight against human trafficking of US State Department, published in 2015, the Republic of Kazakhstan, according to a rating was carried to group of the countries which not fully conform to the minimum standards but make appreciable efforts on fight against human trafficking (IOM, 2015). So for development of offers on prevention and suppression of illegal export, import and human trafficking in the Republic of Kazakhstan, entailing human rights violation, the

government of the Republic of Kazakhstan was formed the Interdepartmental commission on the problems of fight against illegal export, import and human trafficking which now is developed the regular plan of measures of the government of the Republic of Kazakhstan on prophylaxis, prevention and fight against the crimes bound to human trafficking for 2015-2017.

It is necessary to recognize that for modern Kazakhstan human trafficking, forced labor and exploitation are rather new types of criminal activity. A latency of this type of criminal activity is still very high. In spite of the fact that the studied problem gained wide scope, its research is conducted only at the level of the criminal and criminological direction while the businessmen and investigative practice needs methodical recommendations on their suppression and investigation. Considerably for this reason in Kazakhstan there are no scientifically based views which could interfere with distribution of the studied exclusively dangerous phenomenon of human trafficking in the field of business activity. To the problems of criminalistic and criminal legal protection of a personal freedom, bound to any transactions concerning people, conversion to slavery, coercion to work and exploitation there are necessary the scientifically developed tactical and methodical aspects of identification, disclosure, investigation and prevention of human trafficking.

Theoretical and applied aspects of legal researches of human trafficking in Kazakhstan were considered in publications of domestic scientists (Khan, 2013; Badikova, 2009) and many others however, ingenuously the problems of suppression and investigation of illegal business in the sphere of human trafficking weren't considered. The specified scientific researches affect and open the common or some private problems of fight against human trafficking.

On the basis of the legal analysis of a condition of problems of fight from illegal business in the sphere of human trafficking, there will be developed scientifically based conclusions and offers and it will be established the reasons and conditions of its commission and also feature of suppression and investigation. There will be established the factors which are slowing down social and economic development of our society. The obtained data will serve as practical material for development of evidence-based offers and recommendations on improvement of the legislation, referred on fight and the prevention of human trafficking in the Republic of Kazakhstan and to rising of efficiency of law-enforcement practice. Implementation of the project will allow to create conceptual fundamentals of legal policy in the specified sphere, conforming to the international standards. It will allow to minimize human trafficking and will provide

successful carrying out preventive measures for its depression in all spheres of practical activities and to successfully disclose and investigate the considered crimes. According to the conducted research by Fakhrutdinov (2011), it is established that the familiarity of circumstances of commission of illegal acts defines a technique of investigation of human trafficking for their subsequent exploitation, allows modeling a line of behavior of criminals, to foresee their actions and to undertake measures for anticipation (Fakhrutdinov, 2011)

Taking into account the above-stated it is necessary the implementation of a complex of measures of counteraction to the specified phenomena which differs in the diversity and a various range of organizational actions in various areas of vital activity of the person. As our researches show, the most effective way of appreciable reduction of criminal activity of such formations is the complex of measures of a reasonable combination of legal, social and economic, financial, organizational and administrative and other measures. And the legal side of a question is represented as the most important, rod on which all other measures are based.

It is offered to conduct complex research of legal measures and mechanisms of counteraction of human trafficking, on the basis of the analysis of the developed criminogenic situation, the comparative analysis of norms of the legislation of Kazakhstan, the countries which are successfully fighting against such crimes and development of the practical recommendations, submitted on effective fight and the prevention of such crimes.

The analysis of the undertaken measures, bound to development of normative legal acts and their enforcement demonstrates that fight against human trafficking is conducted at not the sufficient level and it should be carried out not only by forces of law enforcement agencies but civil society and business has to be attracted more widely in this activity.

MATERIALS AND METHODS

In this study the following general scientific methods are used: dialectic, systemic approach, method of the qualitative and quantitative analysis, generalization and studying of references. At the same time, there were used: comparative and legal, psychological, sociological, historical, systemic and structural, formal and logical, systemic analysis. An additional methodological basis for development of scientific categories there were laws of formal logic and linguistics.

In the course of studying of the real problem it is carried out the analysis of the existing civil, criminal, administrative legislation, judicial and investigative practice and contents of departmental normative legal acts concerning illegal business activity in the sphere of human trafficking.

In this regard it is necessary to reveal steady patterns of implications of activity of criminal formations at human trafficking through methodology of its studying. Of course, the methods, developed in criminalistics, are various on the essence and logical classifications. In the criminalistics theory it is used the general scientific and special methods of cognition.

General scientific methods of research of activity of criminal persons are directed, of course first of all, on a sensual and rational method of knowledge, such as observation, the description, comparison, modeling, etc. Besides, methods of a mathematical and cybernetic method of knowledge can be used.

Special methods of cognition of group, actually criminalistic, it is possible to allocate structural and criminalistic methods generally. These are methods of accumulation of the initial information necessary for creation of structure, determination of ways of its expansion and use in practical activities (Averyanova *et al.*, 1999)

Basis as which can act the mechanism of activity of criminal corporations, can be on the basis of reconsideration of concept of the subject of a crime. That is possibilities of involvement to criminal responsibility of both physical and legal entities.

Systemic approach assumes the consideration of the studied phenomenon as system as aggregate of the elements, interconnected among themselves that assumes that it is expedient to investigate human trafficking on structure, in a certain subordination with allocation of cause-and-effect relation.

The method of the qualitative and quantitative analysis will allow to consider human trafficking and its implication in all spheres of vital activity of development of our society, on the basis of gradual quantitative changes which changing to a certain level, assume high-quality change.

Studying of scientific literature will allow to consider and analyze the existing situation in the field of theoretical developments of the real problem.

For realization of practical part it is planned to apply the following methods: Questioning is the type of sociological poll assuming rigidly fixed order, contents and a form of questions, the clear indicating of ways of the answer which are registered interrogated or independently (the correspondence poll) or in the

presence of an person (direct poll). Interviewing the discussion led according to a certain plan, assuming direct contact of the interviewer to the respondent and record of answers of the last is conducted or the interviewer (his assistant), or mechanically (on the digital carrier). Expert poll is poll, most often by method of the standardized interview, the competent persons, having deep knowledge of a subject or object of research. The economical and statistical analysis allows to consider illegal business activity in the sphere of human trafficking on the basis of set of statistical data, their comparison and influence on these or those social processes and forecasting of their development. The comparative and legal method, determining similarity or difference of the right systems and feature of a regulation of separate processes and the phenomena, it is widely used at systematization and classification of concepts as allows to correlate unknown to known, to express new through the available concepts and categories. At the same time, comparison prepares the prerequisites for carrying out analogy. The analogy is the method of cognition, based on transfer of one or a series of properties from the known phenomenon on unknown. Social experiment is an artificial theoretical modeling of the considered criminal offenses for the purpose of its studying.

RESULTS AND DISCUSSION

Taking into account the above-stated it is necessary the implementation of a complex of measures of counteraction to the specified phenomena which differs in the diversity and a various range of organizational actions in various areas of vital activity of the person. As our researches show, the most effective way of appreciable reduction of criminal activity of such formations is the complex of measures of a reasonable combination of legal, social and economic, financial, organizational and administrative and other measures. And the legal side of a question is represented as the most important, rod on which all other measures are based.

Now in Kazakhstan in legal aspect, by sciences of a criminal and legal and criminalistic cycle there were saved sufficient materials, concerning activity of separate and criminal economic entities in human trafficking, become generally as a subject of criminal and legal and criminological studying. However, lack of criminalistic views about it prevents ensuring fundamental nature and conceptuality of studying of activity of individuals and criminal formations in the field of counteraction to human trafficking and researches of criminalistic features of modern activity of criminal corporations are in a

rudimentary look and considerably lagged behind criminologists. In this case G.K. Smirnov notices that: as the general in this case there can be acted the norms of the criminal legislation, providing a crime of the studied subject, where the abstract framework of which in the process of research will be filled with concrete contents that it does possible creation of the criminalistic characteristic and on its basis and a private technique of investigation of a crime.

The carried out analysis on such affairs shows that almost each crime is committed by a group of persons, specially organized for these purposes. Together with it, criminal work as a rule is used by the operating economic entities that are legal entities. At the same time it is necessary to notice that in modern conditions of existence of criminal and legal science and in the existing domestic criminal legislation there are no concrete norms, qualifying socially dangerous activity of legal entities as criminal. Whether is it possible to consider premature the studied objects studied by criminalistics?

It is necessary to answer on this question negatively. Theoretical and criminalistic comprehension and studying of activity of criminal corporations are perspective tasks of criminalists today and tomorrow they will be realities of investigative practice. In turn it is necessary to notice that now not only certain scientists-criminologists stand up for introduction of criminal liability of legal entities but whole schools of a criminal and legal cycle have already been defended such responsibility in the criminal law. And similar demands of scientists in the field of administrative law were already found the reflection in the Administrative Code of RK.

Therefore insufficient theoretical and criminalistic study of further development of corporate crime in human trafficking and lack of criminalistic concepts of fight against it, undoubtedly, will lead further to a certain problematic situation of the studied question not only from scientists and practitioners lawyers but also law-enforcement activity in general.

To the development of new concepts, consolidation and synthesis of the saved criminalistic experience of the scientific researches of activity of individuals and criminal corporations in the field of counteraction to human trafficking it is possible to carry the following.

Formation of criminalistic concepts, explaining contents of the criminal activity of individuals and criminal formations in the field of human trafficking; studying of objective patterns of activity of criminal formations and individuals, through making basis according to the general and private theory of modern criminalistics as bases of development of agents, receptions and references on exercise of identification,

disclosure and investigation of the studied criminal activity; studying of questions of integration in criminalistics of achievements of natural, technical and the humanitarian sciences, concerning to fight against human trafficking; improvement of technical and criminalistic ensuring activity of criminal prosecution researcherities at investigation of the considered crimes; designing of general-theoretical bases and empirical prerequisites for the referred criminalistic explanation of the mechanism of a crime and its characteristics; the analysis of steady patterns in studying of activity of criminals and economic entities, for the purpose of identification of the classified components of this activity and constructive recommendations in the criminal procedure legislation; development of criminalistic theories in counteraction of human trafficking and bases of a criminalistic technique of its investigation.

Studying of achievements of scientific thought in the studied area of foreign experts and use of these achievements in domestic acts and criminalistic views; studying at investigation of problems of identification of the reasons and conditions of the crimes, promoting to the commission and development of a complex of the preventive measures significantly complicating commission or stopping criminal activity of traffickers of people.

Value of the criminal and legal and criminological characteristic of human trafficking for a technique of disclosure and investigation of this type of crimes doesn't raise doubts. The correct interpretation of some criminal and legal concepts is necessary for exact definition of the circumstances which are subjected to proof at investigation of criminal case. However, they can't reflect all those steady patterns inherent in the considered type of illegal activity which have priority value for development of effective recommendations on identification, investigation and the prevention of the considered acts. That in our opinion is a subsystem of private techniques, a criminalistic technique of investigation of the crimes, bound to human trafficking made by legal entities.

Results of the conducted research by A.I. Kolesov allow to claim that crimes of this category are committed by criminal groups with rather high level of the organization. These groups are formed on the basis of a national identity, personal contacts and intimate communications, last criminal experience, a functional role of persons in the mechanism of criminal activity where can be included both the countries of recruitment and the country of alleged exploitation citizens. M.A. Polyakova notes: the latency of this type of criminal activity is remained as highly inadmissible. Its separate versions are

practically not taped. The analysis of materials of investigation of these crimes shows appreciable difficulties which practical workers met. This matter is explained by the fact that law enforcement agencies both theoretically and first of all, are insufficiently prepared methodically for identification and disclosure of this group of crimes.

There is an obvious deficiency of complex researches on a joint of criminalistics and other sciences for establishment of the hidden properties and interrelations of objects and the phenomena. O.A. Kustova specifies that the crimes, bound to a human removal of organs and (or) tissues for transplantation can be made only by organized criminal groups as such crimes represent long multi-stage actions for performance of which there are necessary the most different knowledge and skills from especially criminal to highly professional medical and good organizing. In an organized criminal group, there are accurately defined the role and tasks of each participant. At the same time, there are allocated the principal of community, the immediate organizer of the carried-out actions, the performers, knowing about criminal nature of activity and deliberately participating in it and technical collaborators, uninitiated in criminal details of the events.

Of course, it will be required certain time in order to be convinced that criminal formations on the basis of legal entities, carrying out criminal exploitation are socially dangerous, though they don't "fit" into classical theoretical and legal dogmas of punitive branches of the law and legal disciplines. Now in criminal and legal and criminological science, there are conducted the heated debates on a question: whether can act as the subject of a crime the legal entity? Many norms of the criminal law in scientific and practical judgment are still very far from permissions. In particular, it isn't developed the criminal policy and the corresponding concepts of setting forth of responsibility of legal entities in the criminal legislation, though the first steps are already taken in this direction.

For scientists-criminalists in order to highlight the private techniques it is necessary that the legislator criminalized those acts which at the international level are accepted as penal and established such responsibility in the legislation to the Republic of Kazakhstan. But for a long time practice of fight against organized crime was begun to analyze and tap alarming symptoms of implication of activity of a crime, using economic entities at human trafficking and criminal exploitation at the initial level as methods of counteraction to criminal prosecution researches and now as a form of existence of the crime.

It is necessary to agree with opinion of N.P. Yablokov who notices that developments and proposals of lawyers practitioners on a technique of investigation of organized criminal activity in some cases advance the corresponding developments of scientific criminalists that it is not always do the practical techniques successful. Because as it is fairly noticed, practice in this case is capable to help science much less, than if it was talked of any other kind of crime (Ovchinskiy *et al.*, 1996). It is explained by complexity of activity of criminal economic entities as entities of criminalistic comprehension of criminal corporations, it is not criminalized in the criminal law, there is lack of the relevant data in statistics, it is had a failure of the saved empirical material and denial of foreign practice by the leading domestic scientific criminalists concerning investigation of criminal activity of legal entities in general.

Completely supporting the point of view of Professor R.S. Belkin that the criminalistics arose and develops as the science, promoting to the provisions of activities of law-enforcement organs for establishment of truth in legal proceedings, to administration of justice and the prevention of crimes. Development of these provisions is a result of studying of two human activities: criminal activities for preparation, commission and concealment of crimes and its antipode activities for identification, disclosure, investigation of crimes (Averyanova *et al.*, 1999). On the basis of the aforesaid it is necessary a clear statement of the problem for criminalistic comprehension and formation of actually criminalistic representations of the studied type of criminal activity in general and its separate subspecies and further theoretical justification of criminalistic recommendations on identification, disclosure, investigation and prevention of the considered crimes.

Before starting research of this type of crimes, it is necessary to consider a question of the criminalistic characteristic in general.

Addressing the historical background, it is possible to notice that, as well as in the first and in the subsequent researches on the criminalistic characteristic of crimes, so far, there is no consensus concerning level, structure and essence of the criminalistic characteristic of a crime. The first mention about this concept it was made in works of Kolesnichenko (1967) who included it in number of the most essential provisions, the general for all private techniques.

Now scientific criminalists developed various concepts of the studied object. So, according to Obraztov (1995), it "represents the systematized description and an explanation of investigative and criminalistic significant complex of signs of this object (several similar types, a

separate type or varieties of crimes), its communications and the relations, essential to a scientific and practical solution of the problem of identification and disclosure of crimes of the corresponding category". I.F. Panteleev considers that "the criminalistic characteristic of crimes represents set of such data about it which promote to disclosure of crimes have criminalistic value". N.P. Yablokov understands as the criminalistic characteristic of a crime "the system of the description of criminalistic significant signs of a type, group and a separate crime which are shown in features of a way, the mechanism and a situation of their commission which is giving an idea of a crime, the person of its subject and other circumstances, about certain criminal activity and having of its appointment a providing the successful solution of problems of disclosure, investigation and the prevention of a crime". In the "Criminalistic encyclopedia", published by the Almaty Higher School of the Ministry of Internal Affairs of RK and Kazakh Research Institute (KRI) of forensic enquiry of Ministry of Justice of RK under edition of R.S. Belkin, the studied concept is defined as "abstract scientific concept, result of the scientific analysis of a certain type of criminal activity (type or kind of a crime), generalization of its typical signs and features". The last definition, from our point of view, more specifically defines collective concept of the generalized object of research, precisely characterizes its place in system of scientific knowledge and allows to consider changes of this concept, both in scientific area and in the phenomena, happening in structure of crime in general and in its searate implications.

Investigating the criminalistic characteristic of crimes it is impossible to bypass a question about levels of its community, in view of the fact, that and concerning it there is no consensus. So, V.A. Obraztsov, N.P. Yablokov express opinion on existence of a general characteristic for all types of crimes, typical characteristic of type (group) and also about existence of the criminalistic characteristic of a concrete crime. R.S. Belkin claims that there are only two levels of the characteristic of a crime: it is a general characteristic and the typical characteristic of a type or group. At the same time they exclude the criminalistic characteristic of a concrete crime. Such position is proved by the fact that the studied concept represents abstract scientific concept and it has no a practical need, as it can't carry out those functions which are possessed by the criminalistic characteristic as an element of a criminalistic technique".

Besides, among scientists there is no consensus concerning structure of the criminalistic characteristic of a crime and quantity of its elements. For example,

according to Obraztov (1995) the structure of the criminalistic characteristic includes "the persons committing crimes; motives and purposes of deeds by them; object (subject) of criminal encroachment; achievement means of criminal result; the mechanism of deeds and its consequence". I.F. Gerasimov and L.Ya. Drapkin include in it "prevalence of criminal action, "a factor which causes so-called criminalistic readiness of prosecuting agency"; features of identification and detection of these crimes; typical lines of a criminal occasion and situation of commission of a crime; mechanism of formation of facts of a crime; way of commission of crime; characteristics of the person and behavior of defendants; the generalized data about person of the victims; other data, received as a result of the conducted researches on development of the criminalistic characteristic".

In relation to human trafficking, committed by organized criminal groups and economic entities, it is possible to speak about the following structure of the criminalistic characteristic:

- Character of basic data
- System of data about a way of commission and concealment of a crime and typical consequences of its use
- About person of the probable criminal and the victim and also other persons indirectly participating in a crime
- Characteristic of an organized criminal group and economic entities
- Crime situation (place, time and other circumstances)

Comparison of the given definitions shows that we adhere to definition of quantity of elements of the criminalistic characteristic of a crime, as stated by R.S. Belkin but nevertheless, we excluded from his list such element as the person of the probable victim of a crime and together with it, we added in his list such elements of the structure of the crime characteristic as: the persons, indirectly participating in a crime and the characteristic of an organized criminal group.

CONCLUSION

Conclusions from this research and prospect of the subsequent developments in this direction led us to the conclusion that the analysis of legal literature, where there are considered indirectly the features of a private technique of activity of the criminal economic entities, using illegal work, committing the socially dangerous acts

and doing considerable harm, there is possible to specify to the content of a private technique the following directions of criminalistic studying.

First of all, it concerns of the synthesis of criminalistic characteristic of activity of criminal formations in general and a concrete type of a crime, committed by the specified formations with obligatory reflection of the help to the victims of human trafficking. The following and important direction will be a studying of feature of the collecting of initial materials for the subsequent criminal investigation. The third direction of studying will be the circumstances which are subjected to ascertainment which were typical for this type of crime. The fourth typical initial investigative situations and the main directions of their permission. The fifth features of tactics of carrying out of the separate investigative actions and operational search actions of initial, subsequent and final stages of investigation. The sixth the organization of interaction with an inquiry organ at investigation of a concrete type of a crime. The seventh use of special knowledge. The eighth features of ascertainment of material damage. The ninth features of use of the public help in investigation and the prevention of this type of a crime. And, the tenth identification of the reasons and conditions, promoting to the commission of crime and taking measures to their elimination.

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