

Criminological and Penal-Law Measures of Fight Against Human Traffic in Accordance with Legislation of the Republic of Kazakhstan

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Abstract: The human traffic existing in the Republic of Kazakhstan undermines significantly the image of the country on the international arena. Trade in children looks very much cynically especially if we take into consideration the fact that children are the future of a society, state and all human civilization. Human traffic including children one, makes an attempt on future, signals about the forthcoming deadlock of the civilization development emerging from a subsoil of spiritual degradation of society.

Key words: Human traffic, the constitution of the Republic of Kazakhstan, anti-corruption legislation, Non-Governmental Organizations (NGO), transnational organizations of human traffic, anti-corruption activities

INTRODUCTION

The cardinal reforms which are carried out in Kazakhstan, dictate the necessity of a strong legal basis of the state and public life in terms of sovereignty formation. The contemporary transition period based on stage-by-stage development of the market relations and formation of the long-term base in all areas of activity of the Kazakhstani society is impossible without normal functioning of economic activity (Beremkulov, 2015).

From the moment of establishment of independence in the Republic of Kazakhstan like in many common wealth countries, the transition period is connected with both positive and negative processes in interaction of the states within the frame of a universal peace and safety including preventive activity. Objectivity and impartiality are necessary from the part of the researcher in order to analyze the whole process. Such analysis is necessary to expand the scope of legal regulation of fight against human traffic in the Republic of Kazakhstan.

Throughout the whole history people dreamed of the world. The best thinkers of the world devoted their works to this problem. Only now, the conditions have matured which open the real prospects of the universal peace. The violation of the norms of the international criminal law are made because of a particular person and the determination of his/her criminal liability for serious crimes is necessary for law, order and peace-making.

Human traffic is one of the types of the organized transnational crime which threatens the health and safety of the person. The representatives of the vulnerable segments of the population, women and young people become the victims of human traffic quite often.

Nowadays the analysis of the international experience in fight against human traffic represents a focal problem in terms of a widespread migration.

In recent years, the problem of human traffic arouses the anxiety of the international community, organizations, the political and public figures. A large number of researches is carried out and considerable worldwide material has been analyzed.

The foreground task of any state is to estimate adequately the threats caused by this problem to develop a coordinated policy and plan a concrete operations for solving it. Two decades ago, the Soviet man did not admit even the thought of the organized crime and unemployment, drug addiction and prostitution, national and demographic problems of the country. As soon as these troubles attacked the post-soviet society, it was not ready not only to prevail it but also to comprehend.

At the turn of the century, the Kazakhstani society inevitably experienced the process of globalization which affected practically all aspects of life activity and reflected the phenomena of criminal nature. In this connection, the human traffic, by estimation of experts, brings profit of billion dollars annually and represents a complex of

criminological significant problems not only for national system of criminal justice but for international public law.

In Eurasian territory, the observable problem affects not only the Republic of Kazakhstan but outlines the threat for Central Asian regions though in general it is necessary to speak about threat for all world community. The Republic of Kazakhstan acts mainly as the country of origin and transit of live goods to the United Arab Emirates, Greece, South Korea, Turkey, Cyprus, France, Italy, Portugal, Switzerland, Belgium, Israel and Albania. Kazakhstan is an attractive country of human traffic for neighboring states: Kyrgyzstan, Uzbekistan and Tajikistan.

The acts which accompany the human traffic such as kidnappings, illegal imprisonment, recruitment of people for labor and sexual exploitation, violation of the migratory legislation and adoption process, occur on the background of corrupt law infringement (Naumova and Gubenko, 2004).

DISCUSSION

The human traffic existing in the Republic of Kazakhstan significantly undermines the image of the country in the international arena. Trade in children looks very much cynically especially if we take into consideration the fact that children are the future of society, the future of the state and all human civilization. Human traffic including children one, makes an attempt on future, signals about the forthcoming deadlock of the civilization development emerging from a subsoil of spiritual degradation of society.

In the criminal code of the Republic of Kazakhstan and the Russian Federation, there is a separate chapter of “crimes against family and minors”. It means that the legislator allocated the separate object of penal-law protection which was not identified by former criminal legislation.

In spite of world community’s counteraction to human traffic and use of a slave labor, these types of criminal enrichment find a steady tendency to its expansion. These crimes bear such social consequences which pose and will pose the threat for not only safety, law and order but also will negatively be reflected in many vital questions in development and prosperity of Kazakhstan, especially in implementation of the long-term program of Kazakhstan’s 2030 strategy.

According to the experts of the United Nations and International Organization for Migration, the number of the victims of human traffic is estimated at hundreds of

thousands and even millions all over the world. Women and girls are taken out to Europe, America, Canada and the countries of Africa, Asia and the Middle East. The transnational organizations of human traffic and panders gain profit. Not only women but also minors who represent the considerable part of criminal economy are involved into the criminal business of human traffic.

According to office of the United Nations High Commissioner for Human Rights, >500 thousand women are sold from the CIS countries. Human traffic, especially trade in women and children, became so serious phenomenon for Kazakhstan and some other countries that is directly connected with real threat of national security and institutions of democracy.

In relation to the institutions of democracy proclaimed in our Republic, the considered problem is connected with violation of fundamental human rights. Fight against human traffic must have rigid and irreconcilable character as it is about protection of constitutional rights for life, freedom and health care.

According to the constitution of the Republic of Kazakhstan, “each person has rights for life, personal liberty and inviolability of dignity” (Provisions, 1995).

It should be noted that there are many signs which specify that the problem has quite explainable and objective reasons:

- The openness of external borders of the Republic of Kazakhstan with the CIS countries
- The safe situation in economy and high earnings in comparison with other Post-Soviet countries
- The loss of the state control
- The low moral level
- The imbalance in development and distribution of material benefits in the certain countries of the world which compels thousands of people to leave the countries in search for better life and to become slaves in new places of stay. From the economic viewpoint, the traffic of people causes the outflow of able-bodied population and labor force that affect the national economy. There is a set of the factors inducing people to migrate: the desire of self-actualization, well-paid job, good foreign education and travelling around the world

The main reason of migratory activity of the population is a suspense of economic and social problems in the country of residence. The human traffic has to be considered as one of the forms of the organized crime which have global and transnational character (Zhuravlev and Pigayev, 2014).

The globalization of the organized crime, the expansion of its opportunities in the creation of steady channels of «live goods» delivery consider our country not only as a supplier but also as a buyer and a transit corridor. Globalization, certainly is one of the most important tendencies of the modern world. It has a great impact on all aspects of people's life including crime. Globalization process substantially promotes preservation and distribution of human traffic in the modern world.

The activity of organized criminal groups of this particular orientation is the most destructive in the states of so-called transition period where the society experiences the processes of democracy formation according to the principles of law dominance. The countries of the former Soviet Union enter into this group. The following conditions connected with human traffic can be distinguished:

- The weakness of the government in its total corruption mainly
- The prevalence of such phenomena as alcoholism, drug addiction and prostitution
- The intensification of migratory streams both between the states and in the republic

The scale of crimes connected with human traffic would not be possible if the high level of corruption in public authorities did not exist. Especially, it affects the supplying countries of live goods, i.e., the states with the developing and backward economy. The corrupted staff of law enforcement and government bodies not only shut their eyes to the arbitrariness created by dealers and exploiters but also take an active part in commissioning of these crimes.

It is important to admit that the human traffic problem is rather difficult and confused. Objects and purposes of human traffic are different.

It should be noted that in recent years the number of objects of human traffic develops rapidly. Groups of people which could be differentiated in accordance with social membership, occupation, qualification, interests and hobby, grow quickly. In addition, the human traffic purposes from additional opportunities of formation of a family to donors for an organ transplantation, kidnapping, surrogate motherhood are improved and extended.

Taking into consideration the scales of this threat and necessity of uncompromising fight against it, the special law norms providing criminal liability for the specified type of illegal activity are included into existing criminal legislation in our country.

Therefore, the changes and addendums into all articles of the Criminal Code of the Republic of

Kazakhstan of 2015th are included. It provides criminal liability for the crimes connected with human traffic (Articles 116, 125, 128, 13 of the criminal code of the Republic of Kazakhstan). With the help of the adopted law, the qualifying descriptors of the formal components of the crimes of this category have been expanded considerably and the sanctions for their commission are toughened.

The current legislation of the Republic of Kazakhstan establishes connection of human traffic with a number of illegal acts such as murder for the purpose of organs or the victim's tissues use, kidnapping for the purpose of exploitation, the maintaining of a house of prostitution, the trade in minors, bringing to suicide. It would be wrong to deny that uncompromising struggle with such crimes takes place. It is based on the respect of the rights and freedom of a man, democratic principles in the state and law dominance led by the constitution of the Republic of Kazakhstan and the president of the Republic of Kazakhstan who acts as the guarantor of it.

Contrary to counteraction of the world community to human traffic and use of a slave labor, these types of criminal enrichment have a steady tendency to expansion.

These crimes have such social consequences which present or will present the threat for not only the safety of law order but would be negatively reflected in many vital questions of development and prosperity of Kazakhstan, especially in implementation of the long-term program of Kazakhstan's 2030 strategy.

It is actual in the light of the address of the president of the Republic of Kazakhstan Nursultan Nazarbayev to the people of Kazakhstan who called for the improvement of law-enforcement system in the Republic: "the serious work of law-enforcement system reforming is in a prospect... (Zhuravlev and Pigayev, 2014). In the law-enforcement system the emphases from interdepartmental interests to citizen's rights and government protection must be shifted..."

The necessity of the definitions' review is determined by the existing problems while using of the specified concepts based on the assumption that the definitions are not always connected with a situation when the person is exploited by someone and can be recognized as the victim of the crimes, committed against his/her personal liberty. Therefore, the difficulties in using of the "human traffic" definition arise when the "sold" person enters the country of destination illegally or does it voluntarily, hoping to be well paid. The potential victims or persons being the object of the sale receive guest and tourist visas, invitations, visa-free permissions or private invitations for job placement in show business or in low-paid branches of industry. The borders between prostitution and

woman's traffic are not always clear as not all foreign prostitutes were sold and not all sold women are prostitutes. Various forms of trade include material and labor exploitation of the person. For example, a marriage with a purpose of use the woman as a free labor in a household and the use someone as a donor of organs.

The complex analysis of the "human traffic" status provided by the Article 128 of the Criminal Code of the Republic of Kazakhstan showed the dynamics of the exposed offenders of various categories who become the victims of human traffic.

Taking into account the above-mentioned fact, we have assumed that the proportion of the crimes connected with human traffic or trade in minors has increased considerably in recent years. It testifies that our state has the serious and negative faults in the structure of crime registration. On first inspection, it might appear that the growth of the crime is not obviously noticed; however, the hidden character of the human traffic stipulates the internal changes deteriorating the criminological situation.

Based on the obtained statistical data, we concluded that human traffic has a high level of a latency, caused by the set of factors: lack of experience of such category of cases: the lasting character of the crime when it begins in one country and ends in the territory of other state. It also includes the unwillingness of the human traffic victims to cooperate with law enforcement agencies because of fear for their own safety and the safety of relatives. Also the absence of real protection of witnesses from the part of the state; low qualification of law enforcement agencies employees; the ignorance of law and rights while marrying a foreigner.

Besides, one of the reasons of low solvability of human traffic cases is a huge network of participants allowing the criminal organizations quickly and easily to change the routes or to come in contact with people in cases of failure of the action due to intervention of law enforcement agencies or other circumstances.

According to analysis, the considered crimes are subdivided into two groups: committed for the purpose of sexual and labor exploitation. The first group of crimes includes victims from women of 16-25 years. The second group consists of victims from men of 18-35 years who are mostly the citizens of the Central Asian CIS countries.

It is necessary to distinguish human traffic from illegal smuggling of migrants. The illegal smuggling of migrants is a subject of a separate protocol (the protocol against smuggling of migrants by land, sea and air which is supplementing the convention of the organization of the United Nations versus a transnational organized crime). The Article 3 of the protocol contains the following definition: "smuggling of migrants means direct

or indirect receiving of any financial or material benefit, illegal entrance to any member state of any person who is not the citizen or does not live constantly in its territory".

On the basement of two definitions, it is possible to draw a conclusion that the main difference of these criminal acts consists in their purposes. The purpose of smuggling of migrants is illegal movement of people or the individual for a fee and the purpose of human traffic is their exploitation. Moreover, the human traffic is not obligatory connected with border crossing. The human traffic can take place within one state. The transaction between those who carry out the illegal movement of other persons through the border and people who are moved physically stops after reaching the aim. Human traffic is connected with loss of a personal liberty of the victim of trade, its submission. As a rule, such transaction is based on the deception or fraud of the victim and is not stopped after its arrival to the point of destination. Moreover, it is possible to say that the trade in person just begins here.

The situation is possible when smuggling of migrants is turning into human traffic. For example the person consciously and voluntarily arrives to the country illegally. After arrival to the point of destination, the victims are kept in isolation forcing to work. The person does not get payment for a work and the criminals threaten the victim with extradition to the authorities if the person refuses to work or informs somebody about the situation. In this example, the person has a status of illegal migrant and when the freedom of movement is limited the person is threatened with unfavorable consequences in case of refusal to work, he/she became the victim of the human traffic. This situation is quite typical. The illegal migrant becomes a convenient object of intimidation and blackmailing.

The similarity of human traffic with illegal migration creates big problems. Legal migrants need to be in the developing economic areas with a great demand of labor in order to find a work and the sources of livelihood.

In general, the development of technology in the field of telecommunications and Internet promote human traffic and sex tourism. The criminal organizations use modern technological achievements, connected with internet. The distribution of a pornography, the creation of "internet sites" with the offer of intimate service, the placement of doubtful announcements of employment, marriage offers is an uncompleted list of activities of suspicious and criminal organizations in a world of network. Besides, the operations done through "internet" is a guarantee of anonymity and additional complexity in proof of the criminal's fault. It is possible to say that means created for the improvement of the standard of living are used for the criminal purposes (Kadnikov, 2007).

If law enforcement agencies revealed a human traffic network, the proof would be one of the most difficult problems.

Those people, who could disclose the circumstances of the committed crime and help to investigate it are the victims of a crime. On first inspection, it might appear that law enforcement agencies do not have any problems of cooperation with victims because they are morally ready to revenge offenders. However, it does not occur.

First, it is connected with the identity of the victim. Children and women belongs to the group of human traffic risk. Uneducated people, who do not know their rights and have a low-paid, second-rate job in society, become the victims of a traffic very often. This category of people usually does not trust law enforcement agencies.

Besides their legal status is ambiguous: on the one hand, they are the victims of a crime, from another they are criminals, illegal migrants who violated the law of the country of residence (Tyuryukanova, 2001). In this regard, they do not cooperate with law enforcement agencies, being afraid of both revenge of criminals and the state repressions.

In order to change such situation, it is necessary to guarantee the victims of a crime, women and children, their proper legal rights. Particularly the confidentiality and protection against criminals.

In order to stimulate their cooperation with law enforcement agencies, it is necessary to provide them with accommodation, medical assistance, juridical and other consultations which is insufficiently realized in practice.

In legislative acts of the Republic of Kazakhstan there are no special provisions protecting the persons from slavery millstones. There is an institute of protection of witnesses but the financial resources allotted for it cannot ensure safety. The mechanism of financial resources allocation for protection of the victims of a traffic is not worked out.

CONCLUSION

International cooperation of law enforcement agencies has very important role of the prevention of human traffic and other similar crimes. Cooperation can be carried out in several directions:

- An exchange of operational information about channels of illegal migration and human traffic
 - The joint actions directed on suppression of activity of the transnational criminal organizations which are focused on human traffic
 - An exchange of practical and legislative experience, i.e., carrying out joint briefings, conferences, forums under the auspices of cooperation in fight against dealers
 - The joint actions for search and homecoming of the persons who became the victims of human traffic, forcible work and abroad sexual exploitation
 - Rendering legal aid
 - It is necessary to continue the expansion of cooperation of interstate integrated institutions (the CIS, SCO, etc.) and to provide continuous interaction of departments of fight against organized crime within the border of Russia, Kyrgyzstan, Uzbekistan, Tajikistan, Turkmenistan and foreign countries for suppression of attempts of illegal migration, manifestations of terrorism and extremism
- The society must be well informed about this problem and if they understand the gist of it, they would certainly support those who got into troubles.

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