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ON SOME ISSUES OF JUDICIAL PRACTICE IN HUMAN TRAFFICKING CASES

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О НЕКОТОРЫХ ВОПРОСАХ СУДЕБНОЙ ПРАКТИКИ ПО ДЕЛАМ О ТОРГОВЛЕ ЛЮДЬМИ

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Abstract. Human trafficking continues to be one of the serious problems of the modern world community. The authors made an attempt on the basis of a comprehensive study (legal analysis of the composition of human trafficking and the study of judicial practice) to identify problematic issues when considering cases of this category, in order to ensure uniform approaches and develop a legal position. Eighteen sentences posted in the public domain in the Judicial Cabinet service, reviewed by the country's courts from 2015 to 2022, were studied. The data of official statistics are analyzed, the latency of crimes related to human trafficking is noted. The “facets” of human trafficking as a legal phenomenon in the history of national criminal legislation are traced. As possible ways to increase the effectiveness of countering trafficking in persons, as well as bringing domestic legislation into line with international law, it is proposed to include in the dispositions of Articles 128, 135 of the Criminal Code of the Republic of Kazakhstan an indication of the methods of committing crimes, differentiate the composition of trafficking in persons and trafficking in minors depending on the nature and purpose of the actions committed, systematically summarize judicial practice in cases of about human trafficking.

Аннотация. Одной из серьезных проблем современного мирового сообщества продолжает оставаться торговля людьми. Авторы предприняли попытку на основе комплексного исследования (юридического анализа состава торговли людьми и изучения судебной практики) выявить проблемные вопросы при рассмотрении дел данной категории, в целях обеспечения единообразных подходов и выработки правовой позиции. Были изучены восемнадцать приговоров, размещенных в открытом доступе в сервисе «Судебный кабинет», рассмотренных судами страны с 2015 по 2022 годы. Проанализированы данные официальной статистики, отмечена латентность преступлений, связанных с торговлей людьми. Прослежены «границы» торговли людьми, как юридического феномена, в истории национального уголовного законодательства. В качестве возможных путей повышения эффективности противодействия торговле людьми, а также приведения отечественного законодательства в соответствие с нормами международного права, предлагается включить в диспозиции статей 128, 135 УК РК указание на способы совершения преступлений,

дифференцировать составы торговли людьми и торговли несовершеннолетними в зависимости от характера и цели совершаемых действий, систематически обобщать судебную практику по делам о торговле людьми.

Keywords: human trafficking, judicial practice, generalization.

Ключевые слова: торговля людьми, судебная практика, обобщение.

The Republic of Kazakhstan consistently adheres to the international legal policy of combating human trafficking, increasing the effectiveness of measures in the legislative, socio-economic, law enforcement spheres. According to the data of the Committee on Legal Statistics and Special Accounts of the Prosecutor General's Office of the Republic of Kazakhstan (<https://qamqor.gov.kz/crimestat/statistics>), the dynamics of Human trafficking and Trafficking in minors registered in Kazakhstan for 2015-2023 (Table 1) is characterized by leaps and bounds.

Table 1

DYNAMICS OF HUMAN TRAFFICKING AND TRAFFICKING
IN MINORS REGISTERED IN KAZAKHSTAN FOR 2015-2023

	2015	2016	2017	2018	2019	2020	2021	2022	2023
Human trafficking	42	24	32	15	7	43	5	14	5
Trafficking in minors	49	13	12	5	6	20	13	14	19

The change in the registration of human trafficking and Trafficking in minors in official statistics indicates the persistence of negative processes in society that lead to their commission. At the same time, we have taken into account that the crimes in question are considered latent types of crimes. In accordance with the Action Plan for the Prevention, Prevention and Combating of Crimes related to Human Trafficking for 2024-2026 (Resolution of the Government of the Republic of Kazakhstan dated November 28, 2023 No. 1048), it is envisaged to generalize judicial practice on crimes related to human trafficking. The purpose of the generalization is to study the quality of consideration of criminal cases related to human trafficking, analyze the practice of considering these cases and identify characteristic errors made by the courts in resolving these cases.

The methodological basis of the study was the dialectical method of cognition, which made it possible to reflect the relationship between theory and practice, the form and content of the object of research, the dynamics of the development of quantitative and qualitative changes in human trafficking as a socio-economic and criminal phenomenon. Historical-legal, statistical, and formal-logical methods were also used in the research process. When writing the article, international legal acts, the current legislation of the Republic of Kazakhstan, regulatory decisions of the Supreme Court of the Republic of Kazakhstan, program documents of the country, statistical data of the Committee on Legal Statistics and Special Accounts of the Prosecutor General's Office of the Republic of Kazakhstan, generalizations of judicial practice, judicial acts of the Taldau forum were analyzed.

The current state of human trafficking as a legal phenomenon is characterized by an increase in scale, negative development trends, changes in its forms and methods, in particular, the use of women for commercial reproductive exploitation associated with surrogacy, adoption of children in the context of possible trafficking, etc.

Taking into account the research of A. B. Bekmagambetov [1], in the history of national criminal legislation, the following manifestations can be considered as "facets" of human trafficking as a legal phenomenon (Table 2).

Table 2

MANIFESTATIONS OF HUMAN TRAFFICKING IN THE HISTORY
 OF CRIMINAL LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

<i>Name of the period</i>	<i>Time limits</i>	<i>Manifestations of human trafficking</i>
kazakh society / strict patriarchal relations		kalym Institute
russian legislation	in the Middle Ages	slave trade, kidnapping for selfish motives, with further sale
russian criminal legislation	since the 19th century	kidnapping, sale of women and children, for sexual exploitation
soviet period	1917-1990	kidnapping, forced marriage
first criminal legislation of sovereign Kazakhstan	1997-2014	recruitment of people for exploitation, human trafficking, trafficking in minors, crimes related to human trafficking
the current criminal legislation of Kazakhstan	2015 - present	human trafficking, trafficking in minors

As can be seen, the emphasis "from the narrow concept of slavery" was shifted to "more subtle forms of control and a broader understanding of the types of exploitation" (<https://kurl.ru/ftpog>).

The current Criminal Code of the country establishes responsibility for human trafficking (Article 128 of the Criminal Code, a crime against the person) and Trafficking in minors (Article 135 of the Criminal Code, a crime against the interests of minors). The criteria for differentiating criminal liability for these crimes are generic and direct objects, the age of the victim, and qualifying signs. Paragraph 1) of Article 3 of the Criminal Code contains a normative definition of "human exploitation".

Our task of studying the practice of applying criminal law norms on responsibility for human trafficking, and determining the problems of qualifying this act, was resolved based on the analysis of eighteen sentences. The final procedural acts are publicly available in the Judicial Cabinet service. The period of their adoption is from 2015 to 2022. The review bodies are the courts of Karaganda, Shymkent, Aktobe, East Kazakhstan, Kyzylorda regions, Almaty and Nur-Sultan.

When summarizing judicial practice, we followed the logic of the legal analysis of the corpus delicti accepted in criminal law. Crimes were often committed against not one, but several persons. The number of victims ranged from two to eighteen people. At the same time, the actions of the perpetrators were qualified according to the totality of Articles 128 and 135 of the Criminal Code of the Republic of Kazakhstan. Thus, in the case of A.A.A. and N.A.G., ten adult and two minor victims were identified (<https://kurl.ru/MSUCp>).

The objective side of the crime was the commission of one of the alternative actions:

- purchase and sale of victims. So, M.A.A. in the period from August 2017 to June 2019, by deception (promising them work in the field of hotel services) sold the victims B.M.A., M.M.E., M.Y.B. and B.I.S. to unidentified persons located in the territory of the Kingdom of Bahrain for further exploitation in the field of sexual services. For each girl, M.A.A. received five thousand US dollars (<https://kurl.ru/MSUCp>);

- donation of the victim. So, M.M.B. first raped A.A.A. himself, then, in order to have a positive attitude towards him from his boss, he decided to give her B.T. The victim A.A.A. was worried that relatives would find out about the rape, did not want to return home. Moreover, she was in another country (Georgia). When the victim told B.T. about M.M.B.'s criminal actions, he promised to "sort it out" with him and not let her offend. Believing B.T., A.A.A. moved into his

apartment. The case materials established that for the "gift" A.A.A., B.T. promised M.M.B. his further full patronage (<https://kurl.ru/MSUCp>);

- recruitment and sale of women with their export outside the Republic of Kazakhstan: to the United Arab Emirates (3 facts), the Kingdom of Bahrain (3 facts), the Republic of Korea (2 facts), the Republic of Turkey (1 fact), the Republic of Georgia (1 fact).

According to S.A. Nurpeisov, in addition to the above-mentioned countries, channels for the export of citizens of Kazakhstan to Qatar and Indonesia have been identified and eliminated. A transnational channel organized by citizens of three countries — Russia, Bahrain and Kazakhstan - for the export of Kazakh citizens for prostitution has been suppressed. Together with the law enforcement agencies of Bahrain, thirty-eight women were freed from sexual slavery in Bahrain (<https://kurl.ru/MSUCp>).

The recruitment of victims was expressed in deception, the promise of impossible actions in advance (official employment, granting a residence permit, high earnings, free movement, as well as the opportunity to freely abandon activities). So, N.A.G., acting on the instructions of A.A.A., posing as the director of a modeling agency, offered girls jobs abroad, motivating them by the fact that they would participate in fashion shows, photo shoots. However, in reality, girls were recruited for further exploitation in the field of sexual services. I.Yu.Yu., in search of work, having received a phone number from her friend R.E., called H.V.B., to whom she informed that she needed a well-paid job abroad. The actions of H.V.B. were reclassified to Article 308 of the Criminal Code of the Republic of Kazakhstan, because "although he spoke to I.Y.Y. about the provision of intimate services, however, without specifying the country, without taking any actions to document it, issue visas, and purchase tickets, but, on the contrary, as an alternative, he offered work both within The Republic of Kazakhstan and beyond, speaking about the need to obtain I.Y.Y. work experience in this field in the Republic of Kazakhstan" (<https://kurl.ru/MSUCp>).

In almost all cases, criminal activity was carried out for a long period, ranging from four months to several years (maximum three years). The composition of human trafficking by design is defined by the legislator as formal, in order to bring the perpetrators to criminal responsibility, the fact of committing any of the alternative actions of the objective party is sufficient. In only one criminal case, the actions of the perpetrators were qualified as an attempt at human trafficking. So, N.A.G. offered B.E.S. to travel to the Kingdom of Bahrain, promised her a reward in the amount of 10 thousand US dollars for accompanying the Arab sheikh. However, B.E.S. refused N.A.G.'s offer. Thus, the criminal actions of N.A.G. they were not completed, due to circumstances beyond her control.

It should also be noted that the disposition of Part 1 of Article 128 of the Criminal Code of the Republic of Kazakhstan does not specify the methods of committing (means of influencing) trafficking in persons, which are one of the three mandatory elements in accordance with Article 3 of the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children to the UN Convention against Transnational Organized Crime (Table 3).

According to international observers, this circumstance, firstly, contradicts the international obligations of the Republic of Kazakhstan; secondly, it has a "deterrent effect" on law enforcement agencies, which do not see a sign of public danger in an act not accompanied by specified ways of influencing the victim; thirdly, it does not establish a relationship between the methods of committing a crime and consent victims of alleged exploitation (<https://kurl.ru/BeFRx>).

As a result of the consideration of criminal cases, 12 female and 8 male persons were convicted. 5 women (42%) had higher education, the remaining 7 convicted women (58%) had secondary and specialized secondary education. The proportion of convicted men with higher

education was 50%. Human trafficking is usually committed by a group of individuals. At the same time, the group of persons includes not only citizens of Kazakhstan, but also foreign citizens (a citizen of the Hashemite Kingdom of Jordan, a citizen of Russia, a citizen of the Republic of Korea). As S.A. Nurpeisov points out, in 2018, three members of a criminal group (1 — a citizen of South Korea, 2 — Kazakhstan) were detained and sentenced to long terms of imprisonment. In 2021, during joint activities with law enforcement agencies of Bahrain, twenty-five members of a transnational criminal group were detained (18 citizens of Kazakhstan, 4 citizens of Bahrain, 2 citizens of the Russian Federation, 1 citizen of India) [2].

Table 3

SIGNS OF THE COMPOSITION OF TRAFFICKING IN PERSONS IN ACCORDANCE WITH THE PROTOCOL ON THE PREVENTION, SUPPRESSION AND PUNISHMENT OF TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

<i>Socially dangerous actions</i>	<i>Methods of committing a crime</i>	<i>The purpose of the crime</i>
recruitment	threat or use of force	is the exploitation of the
transportation	other forms of coercion	prostitution of others
transfer	kidnapping	other forms of sexual exploitation
harboring people	fraud	forced labor or services
receiving people	deception	slavery or practices similar to
	abuse of power or vulnerability of	slavery
	position	servitude
	bribery	organ extraction
	in the form of payments or	
	benefits	
	to obtain the consent of a person	
	controlling another person	

Basically, the girls were recruited for further exploitation in the field of sexual services, escorting rich sheikhs. In one case, the objectives of labor exploitation and exploitation in the form of transportation of narcotic substances were established. So, M. came to the city of B. to buy disabled people for the purpose of their further labor exploitation, namely, to engage in begging (<https://kurl.ru/SYv1r>).

K.E.A., offered to transport diamonds from Brazil to Cambodia for a large monetary reward. M.S.O., agreeing, flew by plane from Almaty to Sao Paulo. While in Brazil, unidentified persons, without informing M.S.O., put the narcotic drug "cocaine", weighing 1911.8 grams, in her suitcase instead of diamonds. Then M.S.O., still believing that she was transporting diamonds, went to the airport, where she was detained (<https://kurl.ru/MSUCp>).

As can be seen, judicial practice as a set of judicial acts formed in the course of the activities of judicial bodies acts as an auxiliary source of law, contributes to the development and improvement of the practice of applying current legislation. We consider it necessary to periodically analyze and summarize judicial practice in cases of crimes related to human trafficking, and make appropriate changes to the normative resolution of the Supreme Court of the Republic of Kazakhstan "On the practice of applying legislation establishing responsibility for human trafficking".

It should also be noted that the issue of the priority of preventive measures at the national level, taking into account regional and international experience, has been raised to the level of law. The Ministry of Internal Affairs, as part of the instruction of the Head of state, has developed and is discussing a draft law "On combating human trafficking in the Republic of Kazakhstan". The draft law identifies three main areas of activity in the field of combating human trafficking: prevention and prevention; assistance to victims of human trafficking and their protection; prosecution and

punishment. The action plan for the prevention, prevention and combating of crimes related to human trafficking for 2024-2026 includes organizational, legal, organizational, practical and organizational preventive measures, cooperation with competent authorities of other countries, information and scientific and methodological support, training.

Thus, the current Kazakh legislation, taking into account the requirements of international treaties, classifies human trafficking as a criminal offense, and establishes harsh penalties for human trafficking, reflecting its public danger and seriousness. As measures to improve the effectiveness of the national mechanism for combating human trafficking in the Republic of Kazakhstan, we consider it necessary: to supplement Part 1 of Articles 128, 135 of the Criminal Code of the Republic of Kazakhstan with signs characterizing the ways of committing (means of influencing) human trafficking; to differentiate the composition of human trafficking and trafficking in minors depending on the nature and purpose of the actions performed; to generalize judicial practice in cases of human trafficking on a regular basis.

References:

1. Bekmagambetov, A. B. (2005). *Pravovye osnovy kriminalizatsii trgovli lyud'mi v ugovolnom zakonodatel'stve Respubliki Kazakhstan: avtoref. dis. ... kand. yurid. nauk. Chelyabinsk. (in Russian).*
2. Nurpeisov, S. A. (2022). *Torgovlya lyud'mi kak sovremennaya forma rabstva. International Law Journal, 5(2), 166-171. (in Russian).*

Список литературы:

1. Бекмагамбетов А. Б. *Правовые основы криминализации торговли людьми в уголовном законодательстве Республики Казахстан: автореф. дис. ... канд. юрид. наук. Челябинск, 2005. 26 с.*
2. Нурпейсов, С. (2022). *Торговля людьми как современная форма рабства. International Law Journal, 5(2), 166-171.*

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