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INTERNATIONAL AND DOMESTIC LEGAL PROBLEMS OF THE FIGHT AGAINST TRAFFICKING IN WOMEN

Human liberty is one of the main values of modern civil society, but ensuring security of individual freedom is one of the fundamental functions of state. It was emphasized in 20th UN Congress held in April 2000, human trafficking (including trafficking in woman) is most developed market in the world. To fight against trafficking in woman effectively, it is necessary to adopt complex social–economical, political and information–psychological measures, aimed reduction of increasing scale of the same transnational crime. The issues such as protection of rights, freedoms and legal interest of women should be taken into consideration, also it is essential to take certain measures regarding improvement of international law norms and national legislative acts as well as the activity of law–enforcement agencies.

Keywords: *Human trafficking, traffic in women, the Criminal Code of the Republic of Azerbaijan, jurisdiction, International Court, the Council of Europe, the UN, the European Union.*

(стаття друкується мовою оригіналу)

To ensure human and civil rights and freedoms is one of the main values and supreme goal of the democratic state which tries to perform for all people. Any intent directed to these values is a attempt against humanity. That is why the «human trafficking», in particular, «traffic in women» which is considered its most dangerous forms is a real threat to the civilized values at a time when human rights and freedoms are superior and priority. At the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 10–17 April 2000, Vienna, it was noted that, Human trafficking – the world's fastest–growing lucrative market, and it reflects three main components: illegal importation of aliens; sexual slavery of women and children; and finally, the economic slavery manifested in all its forms [6, s. 1–2].

According to estimates, every year around the world 1,000,000 people with the majority are women and children, are subjected to cross–border human trafficking. Human trafficking almost covers all the countries of the world and every year human traffickers make profits about 7–10 billion dollars in this business. Thus, trafficking in human beings is the world's most profitable illicit field of activity after the illegal trafficking of weapons and drugs and psychotropic substances [2, s. 3; 3, p. 1–2]. German researcher Leo Keidel describes human trafficking as one of primary profitable kinds of organized criminal activity and stresses that this type of criminal activity is in 5th place at the hierarchy of criminal activity in Germany [4, p. 325].

According to calculations, 80% of persons who are victims of transnational human trafficking are women and children; 70% of them are sold to other countries for the purpose of sexual exploitation. The following factors have a significant impact on the growth of this event in the modern era: the rise globalization of the economy and labor mobility (the need for migrant labor), the increase in demand for private services (housemaid, nurse etc.) in developed countries, high level of unemployment among women, as well as the increase in the number of people who use the Internet and using this service for the purpose of criminal activity (through the use of different methods to create an incentive to prostitution, incitement, sex tours to invite us via email, etc.). Unfortunately, trafficking of women and children became the nature of the global economy as commodity, animals or bonalar (temporary paper money) at the end of the twentieth century. This, as a rule, is a direct consequence of the lack of an appropriate legal and social protection in society. Such a phenomenon is called «human commoditization» (the transformation of a human being into the property of another person) by scholars and scientific workers [7, s. 208].

According to the scale of human trafficking in Central and Eastern European region including the territory of the former Soviet Union ranks second in the world after South–East Asia: Each year, for this purpose, more than 200 women are excluded from the region. Illegally taking of people to foreign countries, of course, raises some concerns, so that the state is losing a significant portion of its genomes, HIV which pose a serious threat to human health and the risk of spreading of the other venereal diseases are increased by one to five.

The study shows that, even though the majority of women taken by force from the former Soviet Union, Central and Eastern Europe region and enslaved are well–educated and qualified, they mainly prefer to work in the services sector. However, education is considered as a progressive factor in reducing the slavery and discrimination of women, as well as confirmation of their status in society. For example, the portrait of the women taken from the countries of South Asia or Africa region to foreign countries includes the unchanged features like poverty, illiteracy, discrimination on grounds of ethnic or gender. Being a prostitute for women from ethnics such as Tamangs living in Nepal is socially acceptable, so that the conditions of life do not offer other opportunities for them to get the salary. Even the families delight in rewarding them for their work [5, p. 23].

Human trafficking – being one of the contemporary forms of slavery is manifested in different contexts: 1) human trafficking for the purpose of sexual exploitation, especially women and children trafficking, including: a) for the organization of civil prostitution; b) for the organization of sex tourism; c) for the production of pornography; 2) human trafficking for the purpose of exploitation of slave labor, including: a) the slave economy; b) illegal production and production of counterfeit products; c) households; d) child labor, etc.; 3) human trafficking for the purpose of begging, especially trafficking of children and persons with disabilities, including: a) the use of children; b) the use of disabled persons; c) rent of children for begging; 4) human trafficking for the purpose of marriage, including: a) the household use; b) forced to carry children in the womb and to give birth, etc.; 5) human trafficking in order to force into surrogate motherhood, reproductive functions; 6) human trafficking for the purpose of transplantation of human organs and tissue; 7) human trafficking for the purpose of illegal adoptions; 8) human trafficking for the purpose of using in the armed groups, etc.

Each of these forms of human trafficking are serious criminal offenses according to its public riskiness degree and character, the size of inflicted damage (in particular, non–pecuniary damage) and the moral side, and from criminological point of view, the causes of these crimes are stipulated by the existing problems in society. It should be noted that today, in legal literature human trafficking and its forms are considered as a crime against humanity. This kind of human trafficking characteristics of international law derived from the experience of the Yugoslav and Rwanda tribunals. Specifically, according to the Rome Statute of the International Criminal Court, which is related to the type of international crimes, human trafficking

can be classified as one of the following actions: 1) Article 7 Crimes against humanity (c) Enslavement; 2) Article 7 Crimes against humanity (d) Deportation or forcible transfer of population, etc. [2, s. 14–15].

We believe that among the main forms of human trafficking «trafficking in women» is a criminal offense that leads to more serious negative consequences. So that the evaluation of this act from a legal perspective as an illegal action is only one aspect of the problem, however, the caused damage to the moral values of the community and slide of society into degradation through it are more dangerous, in particular, approaching the issue in the context of national mentality. Becoming a global threat and severe consequences of human trafficking, especially trafficking in women have made the fight with it one of the priorities of international cooperation. In order to effectively fight with these actions, significant international legal instruments have been adopted in universal and regional level and international and national institutional mechanisms which comprises the mandate to fight against human trafficking have been established. Within the framework of the rule of international law, the first attempt to the prohibition of human trafficking and exploitation has been made with the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This Convention has left its marks with a number of important updates such as incriminations of human trafficking committed with the consent of the person as well as through the use of coercion along with adjusting the issues of human trafficking and exploitation in the international practice [8, s. 613–614]. Despite of the adoption of several international agreements (for example, the International Agreement for the Suppression of the «White Slave Traffic» (1904); International Convention for the Suppression of the Traffic in Women and Children (1921) and so on.) in the fight against human trafficking, the first global legally binding instrument with an agreed definition on trafficking in persons was given in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children adopted by General Assembly resolution 55/25 which is supplementing the UN Convention and entered into force on 25 December 2003. According to Article 3 of the Protocol, «trafficking in persons» shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services [8, s. 621]. «Trafficking in persons» consists of three core elements: 1) The action of trafficking which means the recruitment, transportation, transfer, harboring or receipt of persons; 2) The means of trafficking which includes threat of or use of force, deception, coercion, abuse of power or position of vulnerability; 3) The purpose of trafficking which is, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

On the basis of trafficking in women, standing hardening of the covering of certain interests in developed sex–industrial countries based on «the law of supply and demand». Thus, trafficking in woman are transnational in its nature (not excluding domestic woman trafficking) and origin, transit and destination countries are exist, in that case joint fight or international approach against that are unavoidable. According to the Article 2, the purposes of this Protocol are: to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives. In the Article 9, measures that participant countries have to implement are listed. It's noted that, participant countries have to prepare and apply policies, programs and measures under bilateral and multilateral cooperation, due to prevention human trafficking, specially protecting woman and children becoming victim again (revictimisation), poverty and lower level of development which causing weakness of woman and children. There was the same definition in the 2005 the Council of Europe Convention on the Action against Human Trafficking. But, in contrast to the 2000 Protocol, that Convention applies its influence both transnational and domestic human trafficking. This act also intend for criminal liability of legal persons for human trafficking.

Law on combating against human trafficking of Azerbaijan Republic adapted in 28th of June 2005, for its ties with legal entities on the basis of a court decision determined that the possibility of cancellation, but the criminal liability of legal persons is not associated with any provision.

The implementation of this provision about combating against human trafficking determined by international agreements achieved by adding Article 152 about the «Criminal legal actions implementing about the legal entities» to the Criminal Code in the 17th of May 2012. According to Article 99–4.6 of that Code, criminal law measures to legal entities are applying due to committing offenses under Articles 144–1, 144–2.

Combating against human trafficking are strongly supporting by Azerbaijan Republic which is mentioning as origin and transit country by international organisations, and aiming to combat effectively against such acts, legal and institutional reforms have been implemented.

Our Country joined to mostly international and regional agreements about the combating against human trafficking, including: 1926 Geneva Slavery Convention (1996); 1949 Convention about fighting against human trafficking and exploitation of prostitution by third parties (1996) adopted within the framework of the United Nations; 1956addition to the Geneva Convention about the Elimination of Slavery, the slave trade and institutions and traditions similar to slavery (1996); 2000 dated Optional Protocol of Child rights convention, about Child trafficking, child prostitution, child pornography (2002); 2000 dated Protocol Supplementing the UN Convention, about the prevention and punishment of transnational organized crime, human trafficking, and especially woman and children trafficking (2003); Agreement between the CIS member states in 2005, about the cooperation in combating against the human trafficking, illegal trade of human organs and tissues (2006); 2005 Council of Europe Convention about combating against the human trafficking and other agreements.

In addition to the mentioned actions, in order to prevention and elimination of this problem, a number of domestic laws and regulations were adapted, like: 2005 28th of June dated

law of the Republic Azerbaijan combating against the human trafficking; 6th of May 2004the order of the President of the Republic Azerbaijan about the approval of the National Action Plan combating against the human trafficking; May 19,2004 dated order of the Republic of Azerbaijan Ministry of Internal Affairs in order to implement National Action Plan of combating against the human trafficking appointed directly responsible person – National coordinator and in the structure of Ministry if Internal Affairs was created the Department of the Combating human trafficking; 6th March 2006 dated Rule of the Cabinet of Ministers of the Azerbaijan Republic about the implementation of social rehabilitation of the victims of Human trafficking; 1th February 2008 dated Resolution of the Cabinet of Ministers of the Azerbaijan Republic about the verification of the rules for transferring the victims of human trafficking to the special police unit; 20th May 2011 dated Resolution of the Cabinet of Ministers of the Azerbaijan Republic for verification of the Program in order to eliminate social problems causing human trafficking and other acts.

It should be noted that those involved in human trafficking crimes are brought to account in accordance with the legislation of the country. In this regard, the Criminal Code was supplemented with additional four articles: on 30 September 2005, «Human Trafficking» (article 144–1), «Forced Labor» (article 144–2), «Dissemination of confidential information about victims of trafficking» (article 316–1) and on 19 April 2013, «illegal actions with documents for the purpose of human trafficking» (article 144–3). It is noteworthy that taking into account dangerous trend of human trafficking, the legislative bodies in Azerbaijan have included this subject into the sphere of universal criminal jurisdiction (Article 12.3 of the Criminal Code).

In addition, it should be noted that the Criminal Code consists of other articles, which covers human trafficking. These are Article 106 (Slavery), Article 108 (Sexual Violence), although these crimes are the part of crimes against humanity; Article 137 (Buying and selling of human organs or tissues for transplantation, or forcing to do so), Article 151 (Forced to perform sexual acts), Article 171 (To engage underage teens in prostitution or immoral acts), Article 172 (the displacement of another child), Article 174 (Illegal adoptions), Article 243 (prostitution), Article 244 (managing brothels), and also in accordance with the relevant articles of the Criminal Code, attempts to commit such acts are also considered as crime and they will be held responsible for the crimes.

Whether national or international legislation and mechanisms, we believe that the crimes committed in this context can be fought more effectively with the international cooperation, and there are number of problems that still continue to exist. The issues of cooperation can be classified as (i) international and (ii) domestic (Azerbaijan example). At the international level, human trafficking problems in the field of combating can be listed as following: First, in order to provide a timely response to new threats, such as international terrorism, organized crime, drug trafficking and human trafficking, the establishment of an international court is needed.

It should be noted that such a form of cooperation, which fosters the creation of tools, such as cross–border prosecution and supervision, organisation of joint investigative teams between Member States of the European Union on mutual legal assistance in criminal matters are included to the 2000 Convention, the 2001 Annexed Protocol to the 1959 Convention on mutual legal assistance in criminal matters, the 2000 Palermo Convention on transnational organized crime, 1993 Minsk Convention concerning civil, family and criminal cases on legal assistance and legal relations. However, cooperation of these forms is limited by the national legislation, which significantly restricts the scope and methods of joint action, and the priority granted to the state bodies in designing of cooperation.

The way out of it refusing the absolute sovereignty on jurisdiction and criminal policy, harmonization and modernization of substantive and procedural aspects of national and international regulatory acts, as well as the institutionalization of the activities of transnational justice. It is known the principle of state sovereignty, unquestionably grants state a monopoly for the use of force within its territory; personal criminal responsibility and punishing the guilty, carrying out criminal prosecution, investigation, initiation of proceedings, the exclusive right accusing and punishing on the basis of its own laws and the implementation of these rights are not shared with other countries. It is obvious that the state sovereignty is a barrier for transnational justice and at the same time, it must be taken into account that the transnational crime does not reckon with is the distance, nor time, nor state borders.

Third barrier is about contradiction while applying territorial, personnel, real or any other of the principles of universal jurisdiction of individual countries, which creates problems in the transfer of those who committed the crime. The only way out of this problem is partly limiting the individual sovereignty of each state by mutual agreement for each case.

Domestic context – there are still some problems remaining in the Criminal Code of the Azerbaijan Republic and the practice of human trafficking: first of all it is factors creating vulnerable environment for women: poverty, low levels of physical development and the absence of equal opportunities with men, creates specific environment for them to commit certain crimes. Taking this point into consideration, women trafficking should be specified out of the human trafficking as a specific item, and should be introduced as a separated and an independent crime to the criminal law. Secondly, all the crimes which was included to the above–mentioned 1949 UN Convention and the 2000 Protocol, the 2005 Convention of the Council of Europe, such as trafficking in human beings for purposes of exploitation, should be included to the Criminal Code.

Third, the relationship between Azerbaijan law enforcement agencies and Europol should be established. Human trafficking is one of the crimes included in the jurisdiction of the subject. Fourth, in terms of professionalism, the employees participating in training courses in order to acquire the experience of foreign countries, with special attention to the language problem, should be organised.

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Міжнародні та внутрішньодержавні правові проблеми боротьби з торгівлею жінок

Свобода людини є однією з головних цінностей сучасного цивілізованого суспільства, а забезпечення недоторканності свободи особистості – однією з головних функцій держави. На XX конгресі ООН який проходив в квітні 2000 р, зазначалося, що торгівля людьми (в тому числі торгівлі жінок) – самий швидко розвинутий ринок в світі. Для успішної протидії торгівлі жінками необхідне прийняття певного комплексу соціально–економічних, політичних та інформаційно–психологічних заходів, які спрямовані на зниження масштабів поширення даного транснаціонального злочину. Так само необхідно прийняти певні заходи, пов'язані з удосконаленням чинного міжнародного і національного законодавства та діяльності правоохоронних органів в питаннях захисту прав, свобод і законних інтересів жінок.

Ключові слова: *торгівля людьми, торгівля жінок, Кримінальний Кодекс АР, юрисдикція, міжнародний суд, Рада Європи, ООН, Європейський Союз.*

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Международные и внутригосударственные правовые проблемы борьбы с торговлей женщин

Свобода человека является одной из главных ценностей современного цивилизованного общества, а обеспечение неприкосновенности свободы личности – одной из главных функций государства. На XX конгрессе ООН проходившем в апреле 2000 г., отмечалось, что торговля людьми (в том числе торговли женщин) – самый быстроразвивающийся рынок в мире. Для успешного противодействия торговли женщинами необходимо принятие определенного комплекса социально–экономических, политических и информационно–психологических мер, которые направлены на снижение масштабов распространения данного транснационального преступления. Так же необходимо принять определённые меры, связанные с усовершенствованием действующего международного и национального законодательства и деятельности правоохранительных органов в вопросах защиты прав, свобод и законных интересов женщин.

Ключевые слова: *торговля людьми, торговля женщин, Уголовный Кодекс АР, юрисдикция, международный суд, Совет Европы, ООН, Европейский Союз.*

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Комунікативна політика органів місцевого самоврядування України та Республіки Польща: методологія дослідження

Розглянуто, що методологічну основу дослідження склали сукупність конструктивістського підходу (за теорією Н. Лумана), теорії комунікативної дії Ю. Габермаса для означення сутнісних компонентів комунікативної політики органів місцевого самоврядування та порівняльної методики реформ в Україні та Республіці Польща. Тому, порівняння здійснювалося на основі обґрунтування об'єктів дослідження, визначення критерії аналізу та у формі вертикального зіставлення однотипних структур всередині країн.

Крім того, методику дослідження склали загальнонаукові методи (системний, інституційний, історико–генетичний, структурно–функціональний, категоріального аналізу). Окремо, варто виділити, було здійснено SWOT–аналіз сильних і слабких сторін комунікативної взаємодії територіального самоврядування та громадськості.

Ключові слова: *методологія, комунікативна політика, теорія, органи місцевого самоврядування, Україна, Республіка Польща.*

Методологія дослідження комунікативної сфери являє собою складну систему категорій, принципів, норм, цінностей, парадигм, теорій і самих методів, яка забезпечує пізнавальну та практичну цінність для дослідження.

На початковій стадії, слід врахувати, що на розвиток методології формування комунікативної політки впливають безліч чинників, найважливішими серед яких є:

– практичні потреби реформування політичних комунікацій влади та громадськості, вдосконалення управління державою, проведення різних реформ (конституційної, адміністративної та ін.). Ця група чинників актуалізує проблеми цілісної методології державного управління, вимагає підвищення її ефективності;

– розвиток загальнонаукової методології і методологій окремих наук і галузей знання. Ці чинники дають змогу користуватися накопиченим методологічним потенціалом;

– ускладнення управлінської перебудови, пов'язаної із новим рівнем реформування місцевого самоврядування, що дозволить у комунікативній взаємодії витворити нову якість, зорієнтовану на громадянина, створює умови для дослідження поточних фактів, здійснення прогнозування, оперативний аналіз та виробляти програми рішень. Все це в сукупності потребує спеціального методологічного забезпечення.

Під методологічною основою наукового дослідження необхідно розуміти основні, початкові положення, на яких воно базується. Методологічні основи науки завжди існують поза нею і не виводяться із самого дослідження. Проте слід враховувати, що методологія має чотирьохрівневу структуру, зокрема: фундаментальні, загальнонаукові, конкретно наукові принципи, конкретні методи, що використовуються для вирішення спеціальних завдань дослідження [2, с. 67].

Враховуючи основні рівні наукового пізнання, спробуємо вибудувати загальнометодологічні основи дослідження. Першим кроком є визначення загальної стратегії побудови процесу пізнання, що ґрунтується на фундаментально–філософському рівні методології. Таке розуміння дозволить орієнтуватися та вирішувати наукові питання в процесі здійснення наукового дослідження.

Для аналізу комунікативної політики органів самоврядування філософською основою обрано інструментарій соціального конструктивізму та концепцію комунікативної дії Ю. Габермаса.

У сучасних наукових дослідженнях поширення ідей конструктивістської методології як постнеокласичної теорії пізнання пояснюється необхідністю аналізу «соціальної реальності», яка відображається мережею взаємозв'язків та взаємодій, що передбачає необхідність включення людини як суб'єкта. Відповідно політична реальність конструюється нормативним порядком, який включає взаємодію та способи здійснення влади, а також уявлення суспільства про них [6, с. 435].

Для безпосередньо аналізу політичної комунікації будемо використовувати системний конструктивізм Н. Лумана. На його думку, особливістю соціальних систем є оперування на основі комунікації, наявність якої надає