

FORENSIC PSYCHOLOGICAL AND MEDICAL EXAMINATION

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T. M. Yehorova, Head of the Poltava Branch
of Kharkiv RIFE
E-mail: tet-egorova@meta.ua
S. H. Moroz, Head of the Poltava Branch of
Kharkiv RIFE

ON THE POSSIBILITIES OF PSYCHOLOGICAL EXAMINATION OF VICTIMS OF CRIMES RELATED TO HUMAN TRAFFICKING

Legal grounds and theoretical and methodical questions concerning conducting of forensic-psychological examination of victims in the investigation of criminal offenses provided for in Art. 149 of the Criminal Code of Ukraine. The psychological grounds for the legal qualification of the vulnerable state of the victims, the subject, the object and the main tasks in the aspects of scientific psychology and forensic expert studies are determined.

Keywords: trafficking in human beings, expert practice, personality, activity, volitional act, psychological vulnerability, psychological dependence, expert method.

The Constitution of Ukraine recognizes and guarantees the basic rights, freedoms and duties of a person and a citizen in accordance with generally accepted norms of international law. Article 21 of the Constitution of Ukraine proclaims the right of all people to freedom and equality in their dignity and rights that are inalienable and immutable; Art. 23 the right of a person to the free development of his personality is enshrined, provided that the rights and freedoms of other people and duties towards society are not violated, in which the free and comprehensive development of his personality is ensured; Art. 33 guarantees the right of a person to freedom of movement, free choice of place of residence, the right to freely leave the territory of Ukraine; Art. 43 enshrined the right of every person to work, which she freely chooses or freely agrees, the use of forced labor is prohibited.

However, despite the guarantees of international legal requirements, the current state of criminal offenses has a worldwide tendency to increase the traffic in human beings, which is predominantly transnational organized crime. This type of crime over the past decade has become a scale that threatens the national security of any state.

Ukraine was the first among the post-Soviet states to recognize the problem of trafficking in human beings as one of the most dangerous for society, having introduced in 1998 the Criminal Code of Ukraine (Criminal Code of Ukraine) Art. 124¹ (*Human trafficking*). In 2001, the new Criminal Code of Ukraine was adopted, in which Art. 149 (*Human trafficking or other illegal human rights*) acts against freedom, raising the value of the individual to the level of its material valuation, sale and purchase of a person are recognized as a serious crime against the individual¹.

According to the OSCE, trafficking in human beings in Ukraine is growing rapidly, due to a number of socio-economic and, to some extent, political reasons, which include: the grave economic situation of citizens and unemployment; insufficient awareness of opportunities for employment abroad; the demand for cheap labor abroad and illegal labor migration; active activity of criminal gangs and lack of prosecution of traffickers; domestic violence; corruption; military conflicts².

In 2011, the Law of Ukraine *On counteraction to trafficking in human beings*, was adopted, which defines the organizational and legal principles of combating human trafficking, guarantees of gender equality, main directions of state policy and the principles of international cooperation in this area, the procedure for establishing the status of persons who have suffered from trafficking in human beings, and the procedure for assisting such persons³.

Based on the contents of Art. 149 of the Criminal Code of Ukraine, the main direct object of a crime is an attack on the will and dignity of a person subject to proof. According to note 2 to Art. 149 one of the qualifying attributes of this type of offense is the vulnerable state of the injured person, which is caused by physical or mental properties or external circumstances, which deprive or limit its ability to realize their actions (inaction), or to direct them, to make independent decisions, to resist violent or other unlawful acts, coincidence of serious personal, family or other circumstances.

¹ *Kryminalnyi kodeks Ukrainy : Zakon Ukrainy* [Criminal Code of Ukraine : The Law of Ukraine] dated on: 05.04.2001 № 2341–III (as amended dated on:10.06.2018). URL: <http://zakon3.rada.gov.ua> (Date accessed: 14.05.2018) [in Ukrainian].

² *Osveshhenie v sredstvakh massovoj informacii problemy trgovli ljud'mi. Posobie dlja zhurnalistov/OSCE* (2007) [Media coverage of the problem of trafficking of human beings. Guide for journalists/OSCE]. Kyiv : Yntertekhnolohiya. URL: https://www.osce.org_ru (Date accessed: 26.05.2018) [in Ukrainian].

³ *Pro protydyiu torhivli ljudmy: Zakon Ukrainy vid 20.09.2011 № 3739-VI. Vidom. Verkhov. Rady Ukrainy* [On counteraction to human trafficking : Law of Ukraine dated on: 20.09.2011 № 3739–VI. Bulletin of Verkhovna Rada of Ukraine] 2012. № 19–20, p. 173 [in Ukrainian].

In the studies of domestic specialists, it is noted that socio-psychological factors contributing to trafficking in human beings are essential. Researcher lawyers, sociologists, psychologists and others identified the categories of Ukrainian people who are most vulnerable to trafficking in human beings, namely: unmarried women aged 18–26 (as potential victims of sexual exploitation) who have low and very low levels of material support; men aged 31–60, first of all — married, who are vulnerable to labor exploitation; children (mostly girls) aged 13–18 from incomplete and restructured families¹.

According to O. V. Kovalova, the most important is the study of socio-psychological factors in the area of human trafficking. It highlights vulnerable groups that are highly likely to be the targets of this crime, and notes that such groups are not static because political and economic situations in Ukraine are changing. O. V. Kovalova highlights a new risk group for Ukraine — internally displaced persons from the conflict zone².

As A. Orlean notes, the notion of a vulnerable state, defined in note 2 to Art. 149 of the Criminal Code of Ukraine, is a legal category. The author highlights the vulnerable state of two types: physiological and social. Physiological vulnerability is conditioned by physical or mental properties or external circumstances, the state of a person who deprives or limits his ability to realize his actions (inaction) or to manage them, to take independent decisions on his own accord, to resist violent or other illegal actions; can be caused by mental properties (the presence of certain diseases, disorders or deviations in mental activity, etc.), physical properties (the impossibility to resist illicit actions due to physical illness, certain physical defects, etc.) and certain external factors (for example, bringing the person to the unconscious state by application sleeping pills or narcotic drugs). According to A. M. Orlean, the presence or absence of a physiological vulnerable state of the victim and its use by the accused during the commission of a crime may (but not necessarily) be confirmed by the results of medical, psychological, psychiatric or complex examination of the victim. To the social form of a vulnerable state, the author refers to a set of such circumstances that forces a person to agree to be exploited. At the same time, for a socially vulnerable state, the person's ability to understand, control, and resist unlawful influence

¹ *Sotsialnyi analiz osnovnykh chynnykiv torhivli liudmy: realna sytuatsiia ta shliakhy zapobihannia: monohrafiia / A. V. Aleksieieva, Yu. M. Halustian, K. B. Levchenko ta in.* [Social analysis of the main factors of trafficking in human beings: the real situation and prevention ways: Monograph / A. V. Aleksieieva, Yu. M. Halustian, K. B. Levchenko and others]. Kyev, 2003. 91 p.

² Kovalova O. V. (2016) *Poperedzhennia yak napriam protydiv torhivli liudmy. Protydivia nezakonnii mihratsii ta torhivli liudmy: materialy Mizhnar. nauk.-prakt. sympoziumu, m. Ivano-Frankivsk, 11–12 berez. 2016 r.* [Warning as a way of counteracting human trafficking. Countering Illegal Migration and Trafficking in Persons: Content of the International Academic Conference and symposium Ivano-Frankivsk, 11–12 March. 2016]. Ivano-Frankivsk : The King Danylo University, p. 67–70 [in Ukrainian].

is not a characteristic restriction. A. M. Orlean observes that the presence of a socially vulnerable state should, first of all, be confirmed not by the results of examinations, but by a combination of evidence of the existence of a number of serious personal family or other circumstances¹.

In our opinion, A. Orlean position on conducting forensic examinations (in particular, psychological) with a view to establishing the presence or absence of a vulnerable state of the victim is quite expedient. However, one cannot agree with the allocation of A. M. Orlean of two types of vulnerable state of victims (physiological and social), since any activity of the individual is realized under specific social conditions and is accompanied by a certain mental state. Therefore, socio-psychological factors that can cause a person's vulnerable state are a holistic, multidimensional phenomenon.

As it follows from the comment. 2 to Art. 149 of the *Criminal Code of Ukraine*, legal signs of the vulnerable state of the victim relate to the socio-psychological parameters characterizing the mental activity of the individual, limiting her ability to fully understand the nature of their actions, fully anticipate their consequences and manage them and make an independent decision. That is, in a psychological sense, a person's vulnerable condition implies that he or she depends on someone (other persons) or something (life circumstances), which, from a legal point of view, gives another person the opportunity to manipulate the victim, thus making him psychologically influential.

The object of forensic psychological examination (research) of victims in cases related to trafficking in human beings is a person as a person and sources of information containing information about the mental activity of the victim in legally significant circumstances.

The subject of forensic psychological research (expertise) of victims in cases related to trafficking in human beings is the specifics of voluntary regulation of activity, which is essential in making a vital decision.

Since the legal concept of “vulnerable state”, is evaluative, the tasks of this type of research are the establishment of individual psychological characteristics of the victim's personality, his motivational sphere, intellectual and emotional-volitional spheres, peculiarities of the activity in the situation of the said offense, and other psychological factors that may be premorbid for the formation of his dependence on another person or certain life

¹ Orlean A. M. (2016) *Oznaky skladu zlochyntu «Torhivlia liudmy abo insha nezakonna uhoda shchodo liudyny», yaki potrebuiut naibilshoi uvahy pid chas praktychnoho zastosuvannia tsiiei normy. Protydia nezakonnii mihratsii ta torhivli liudmy: materialy Mizhnar. nauk.-prakt. sympoziumu, m. Ivano-Frankivsk, 11–12 berez. 2016 r.* [Signs of the crime “Trafficking in persons or other unlawful human rights”, which require the greatest attention during the practical application of this norm. Countering Illegal Migration and Trafficking in Persons: Content of the International Academic Conference and symposium Ivano-Frankivsk, 11–12 March. 2016], Ivano-Frankivsk : The King Danylo University, p. 112–116 [in Ukrainian].

circumstances, manipulation of the volitional activity of the victim upon making him a vital decision, not in any way limiting the regulation of its activities. In the course of solving these problems, the leading individual psychological and motivational factors of the victim, which influenced her activity in a legally significant situation, are analyzed. The compliance of the sentence of the accused with the victim's basic needs, his individual psychological characteristics, the existing life situation and the degree of socialization are established; the specifics of the awareness of the victim of the said proposal as acceptable are identified, which are weak (vulnerable) links in the structure of the victim's personality when making a vital decision and facilitates (or may facilitate) a conscious choice in favor of the sentence of the accused person.

The psychological analysis of the choice of the victim in favor of the accused's sentence is to establish the subordination of its activities to the leading need for certain earnings, the degree of initiative, activity, multi-stage, a number of efforts inherent in complex volitional activity.

As a result of psychological research, the degree of conscious activity of the victim, which has (or does not have) all the necessary signs of complex volitional behavior, is established.

In favor of the relevance of forensic psychological expertise in investigating offenses involving trafficking in human beings or other illegal human rights deals, there is an increasing demand from law enforcement agencies and the court for research on this type. In particular, starting in 2010, judicial and prosecuting authorities actively appoint forensic psychological examinations in criminal cases related to sexual exploitation of a person or its use in porno business, with forced labor of man, slavery, debt bondage, adoption (adoption) for the purpose of profit, involvement in criminal activity, use in armed conflicts, etc. This tendency, taking into account the transnational nature of the investigation of crimes provided for in Art. 149 of the *Criminal Code of Ukraine*, has prospects for growth.

However, now conducting forensic psychological examinations, designated for criminal proceedings, provided for in Art. 149 of the Criminal Code of Ukraine, is carried out in the absence of an appropriate expert methodology and not developed theoretical and methodological aspects that should be the basis of this type of psychological study. In the Poltava branch of the Hon. Prof. M. S. Bokarius Kharkiv Research Institute of Forensic Examinations created for the first time a method of forensic psychological examination of victims in investigating offenses involving human trafficking or other illegal human rights transactions aimed at developing unified algorithms for expert research.

ЩОДО МОЖЛИВОСТЕЙ СУДОВО-ПСИХОЛОГІЧНОЇ ЕКСПЕРТИЗИ ПОТЕРПІЛИХ ЗА ЗЛОЧИНАМИ, ПОВ'ЯЗАНИМИ ІЗ ТОРГІВЛЕЮ ЛЮДЬМИ

Т. М. Єгорова, С. Г. Мороз

Розглянуто правові підстави та теоретико-методичні питання щодо проведення судово-психологічної експертизи потерпілих при розслідуванні кримінальних правопорушень, передбачених ст. 149 КК України. Визначено психологічні підстави для правової кваліфікації уразливого стану потерпілих, предмет, об'єкт і основні завдання в аспектах наукової психології й судової експертології.

Ключові слова: торгівля людьми, експертна практика, особистість, діяльність, волевоий акт, психологічна уразливість, психологічна залежність, експертна методика.

О ВОЗМОЖНОСТЯХ СУДЕБНО ПСИХОЛОГИЧЕСКОЙ ЭКСПЕРТИЗЫ ПОТЕРПЕВШИХ ПО ПРЕСТУПЛЕНИЯМ, СВЯЗАННЫМ С ТОРГОВЛЕЙ ЛЮДЬМИ

Т. М. Егорова, С. Г. Мороз

Рассмотрена проблема торговли людьми, имеющая транснациональный, масштабный характер и угрожающая национальной безопасности государств. Приведены данные OSCE, в которых указано на ряд социально-экономических и политических факторов, обуславливающих рост торговли людьми в Украине. В обзор основных законодательных актов Украины указано на организационно-правовой регламент противодействия торговле людьми, на направления государственной политики и международного сотрудничества. Рассмотрены исследования украинских специалистов, изучающих социально-психологические факторы, которые могут иметь существенное значение для преступлений, связанных с торговлей людьми. Определены объект, предмет и задачи судебно-психологического исследования потерпевших по преступлениям, подпадающим под действие ст. 149 УК Украины. Проведен анализ примечания 2 к этой статье с позиций правовых (квалифицирующих) признаков уязвимого состояния потерпевшего лица, а также с позиций научной психологии и судебно-психологической экспертизы. В частности, поскольку правовое понятие «уязвимое состояние» относится к категории оценочных, заданиями психологического исследования являются установление индивидуально-психологических особенностей личности потерпевшего, специфики его мотивационной, интеллектуальной и эмоциональной сфер, особенностей деятельности в ситуации данного правонарушения, а также иных психологических факторов, которые могут быть преморбидом для формирования зависимости от иной osoby либо от определенных жизненных обстоятельств, которые могут создавать благоприятные условия для манипулирования сознанием и волевой деятельностью потерпевшего при принятии жизненно важного решения, ограничивая регуляцию его деятельности. Результатом психологического исследования является установление степени осознанной деятельности потерпевшего, имеющей (либо не имеющей) все необходимые признаки сложного волевого поведения. С учетом актуальности данной тематики и ростом запросов судебно-следственных органов на проведение соответствующих психологических экспертиз в Полтавском отделении Харьковского НИИСЭ разрабатывается соответствующая экспертная методика психологического исследования.

Ключевые слова: торговля людьми, экспертная практика, личность, деятельность, волевоий акт, психологическая уязвимость, психологическая зависимость, экспертная методика.