

## **CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION**

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### ***Legal regulation of combat against human trafficking in the Russian Federation***

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## 1. The notion of human trafficking in international and Russian law

Human trafficking is an independent manifestation of international crime. It is a criminal offense under the current Russian law. This explanatory note aims to explore human trafficking from the criminal law perspective.

Under article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime<sup>1</sup> (hereafter referred to as UN Protocol on prevention and suppression of trafficking in persons), ‘human trafficking’ means 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 includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Convention was signed by Russia on 12 December 2000 and ratified in 2004<sup>2</sup>.

Adoption of the convention and two supplementary protocols was a crucial step in formation of international and national legislation on combat against human trafficking. Russia’s signing of the Convention lead to the change in legislation envisaging criminalization of human trafficking.

Under the Federal Law No. 162-FZ<sup>3</sup> of 08.12.2003, two articles were introduced into the Criminal Code: 127.1 “Human trafficking” and 127.2 “Use of slave labor”. Therefore, Russian Criminal Code distinguishes two independent criminal acts associated with human exploitation: trafficking in persons and use of slave labor.

Under article 127.1 of the Russian Criminal Code, human trafficking is defined as selling or purchasing a human being, other transactions with regards to a human being, as well as recruitment, transportation, transfer, harbouring or receipt previously committed for the purpose of exploitation. The indicated act has two key aspects: 1) commitment of certain actions with regards to a person: purchase and sale, other transactions, recruitment, transportation, harbouring etc.; 2) the indicated actions are carried out for the purpose of human exploitation or use of his or her organs and tissues.

In accordance with note 2 to article 127.1 of the Russian Criminal Code, human exploitation is understood as use of other persons’ engagement in prostitution and other forms of sexual exploitation, slave labor (services), practice similar to slavery. The goal of exploitation can be reached both when the victim is used in the perpetrator’s interests and in the interests of the third persons<sup>4</sup>.

In accordance with an earlier version of the Criminal Code, exploitation was also understood as removal of human organs or tissues<sup>5</sup>. In the current version (article 127.1, part 2, par. g) removal of

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<sup>1</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing United Nations Convention against Transnational Organized Crime, adopted by resolution 55/25 of the General Assembly of 15 November 2000, URL: [http://www.un.org/ru/documents/decl\\_conv/conventions/protocol1.shtml](http://www.un.org/ru/documents/decl_conv/conventions/protocol1.shtml)

<sup>2</sup> Federal Law of the Russian Federation of 26 April 2004 No. 26-FZ “On Ratification of the United Nations Convention against Transnational Organized Crime and Supplementing Protocols: Protocol against the Smuggling of Migrants by Land, Sea, and Air and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children”, Russian Newspaper, 29 April 2004 No. 3467 [in Russian].

<sup>3</sup> Federal Law No. 162-FZ of 08.12.2003 “On introduction of amendments into the Criminal Code of the Russian Federation”, Collection of the Russian Legislation, 15.12.2003, No. 50, art. 4848 [in Russian].

<sup>4</sup> T.V. Dolgolenko. Criminal liability for the crime envisaged by article 127.1 of the Russian Criminal Code – human trafficking – and relationship between this crime and other crimes // Contemporary Law. 2010. No. 1. P. 95 – 99 [in Russian].

<sup>5</sup> In the version of the Federal Law No. 162-FZ of 08.12.2003 “On introduction of amendments into the Criminal Code of the Russian Federation”, Collection of the Russian Legislation, 15.12.2003, No. 50, art. 4848 [in Russian].

human tissues and organs is considered an independent purpose of human trafficking and an aggravating circumstance. Therefore, under the current Russian legislation the use of human organs and tissues is not part of the human trafficking definition.

### **1.1. Components of ‘human trafficking’ as a crime**

In accordance with the criminal law theory, crime attributes are linked to essential elements of the crime. There are four elements: object, objective side, subject and subjective side. The object of crime represents protected social relations that are violated by criminal infringement. Human trafficking is a crime against a person, so human freedom, honor and dignity represent the object of crime.

Objective side of the crime is represented by purchase and sale of a person, other transactions with regards to a person, transportation, transfer, harbouring or receipt of persons as part of human trafficking operations. Objective side of human trafficking is always an action.

Subjective side of the crime is reflected by direct intent to commit a crime. Subject in human trafficking is a competent citizen who reached the age of 16 (article 20 of the Russian Criminal Code).

## **2. Relationship between the notions of ‘human trafficking’ and ‘use of slave labor’**

Under the Russian Criminal Code, the use of slave labor is an independent criminal offense. Under article 127.2 of the Russian Criminal Code, slave labor is understood as labor of a person with regards to whom powers inherent to ownership right are exercised, while this person cannot refuse to perform work (services) for reasons beyond his or her influence. This act is characterized by three aspects: 1) use of human labor; 2) exercise of ownership rights with regards to this person, i.e. the rights to possess, use and dispose; 3) lack of possibility for the person to refuse to perform work (service). Slavery and human trafficking have a lot in common, but it is important to differentiate them<sup>6</sup>.

The primary difference between human trafficking and slavery consists in the fact that slavery is a form of exploitation, and human trafficking is a manifestation of the ownership rights with regards to a person, i.e. making of transactions with regards to a person, as well as preparation or assistance in enslaving a person.

## **3. Types of human trafficking**

There are several types of human trafficking as criminal activity. Depending on nature and degree of public danger one should differentiate between the main crime of human trafficking and an aggravated crime.

The main crime is purchase and sale of a person, other transactions with regards to a person, as well as recruitment, transportation, transfer, harbouring or receipt carried out for the purpose of exploitation.

Aggravation comprises attributes characterizing the act as associated with higher public danger compared to the main crime, such as crime with regards to two or more persons; with regards to an underage person; by a person abusing his or her job position; with transfer of the victim over the Russian state border or with illegal detention abroad; using fake documents, as well as with removal, concealment or destruction of documents proving victim’s identity; with the use of violence or threat thereof; for the purpose of removal of the victim’s organs or tissues; with regards to a person who is in known helpless state or material or other dependence on perpetrator; with regards to a woman who is known state of pregnancy. Furthermore, the crime of human trafficking can be aggravated by deeds

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<sup>6</sup> O.I. Sakaeva. Human trafficking as an independent manifestation of international criminal activity // Russian Law Journal, 2013, No. 3 [in Russian].

resulting in manslaughter, inflicting grave personal injury or leading to other grave consequences; acts committed by means that are dangerous for life and health of many persons; committed by an organized group.

Depending on human trafficking objectives one can identify the following types: human trafficking for the purpose of removing human organs and tissues; human trafficking for the purpose of use in prostitution and other forms of sexual exploitation; human trafficking for the use of slave labor. This classification has significant practical value, as far as the type of human trafficking determines manifestations of the crime<sup>7</sup>.

Depending on geographical scope, one can distinguish international trafficking in persons and intrastate trafficking in persons. International trafficking in persons is associated with transfer of crime victims over the borders. Intrastate trafficking takes place within the borders of the same state.

#### **4. Trafficking in persons and smuggling**

In case of international trafficking in persons illegal import of the victim (human smuggling) into the territory of a certain state usually takes place. At the same time one should note that international trafficking in persons is not always associated with human smuggling, as far as crime victims often cross the state border on legal grounds.

Under article 3 of the Protocol against the Smuggling of Migrants by Land, Sea, and Air supplementing the United Nations Convention against Transnational Organized Crime<sup>8</sup>, smuggling of immigrants is understood as procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

A distinctive feature of illegal entry is that it is primarily carried out not by the victim, but by an organized criminal group specializing in the indicated type of criminal activity<sup>9</sup>. One should note that smuggling of an immigrant is not always an element of human trafficking. Smuggling carried out as part of human trafficking should be distinguished from smuggling carried out on the basis of immigrant's request or consent<sup>10</sup>. Human trafficking takes place in those cases when an immigrant does not possess the necessary autonomy of will. Human trafficking is carried out either against the person's will or based on the person's consent obtained through deceit.

#### **5. Grounds for release from liability for human trafficking**

In accordance with note 1 to article 127.1 of the Russian Criminal Code, a person, who for the first time committed the deeds envisaged by part 1 or paragraph a of part 2 of this article and voluntarily released the complainant and contributed to the solution of the committed crime, is released from criminal liability, if there is no other element of crime in this person's actions.

Based on the indicated norm, simultaneous presence of the following conditions serves as the grounds for release from criminal liability:

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<sup>7</sup> Elena Tyuryukanova. Situation with human trafficking in the Russian Federation: criminal legislation and results of law enforcement practice in 2004, Moscow, 2005:  
[http://www.sartraccc.ru/Traffic/i.php?oper=read\\_file&filename=scien\\_article/0003.htm#\\_Toc101643928](http://www.sartraccc.ru/Traffic/i.php?oper=read_file&filename=scien_article/0003.htm#_Toc101643928) [in Russian]

<sup>8</sup> Protocol against the Smuggling of Migrants by Land, Sea, and Air supplementing the United Nations Convention against Transnational Organized Crime, adopted by resolution 55/25 of the General Assembly of 15 November 2000, URL: [http://www.un.org/ru/documents/decl\\_conv/conventions/protocol2.shtml](http://www.un.org/ru/documents/decl_conv/conventions/protocol2.shtml)

<sup>9</sup> V.V. Voinikov. Legal regulation of the European space of freedom, security and justice, Kaliningrad, 2013 [in Russian].

<sup>10</sup> O.Yu. Potemkina. Immigration policy of the European Union: problems and prospects. Moscow, 2010. P. 38 [in Russian].

1. The crime was committed was the first time;
2. The deed is classified as related to part 1 or part 2a – human trafficking with regards to two or more persons;
3. The perpetrator voluntarily releases the complainant;
4. The perpetrator contributes to solution of the committed crime;
5. The deeds of the perpetrator contain no other elements of crime<sup>11</sup>.

Legislators consider two types of positive post-criminal acts as conditions of the perpetrator's release from criminal liability: voluntary release of the victim and contribution to the solution of the committed crime.

Voluntary release implies giving freedom to the crime victim, as a result of which the latter gains an opportunity to travel and gets out of the perpetrator's direct control. The perpetrator must realize the possibility of further confinement of the victim. Contribution to the crime resolution includes disclosure of information about the crime, disclosure of location of the property acquired by criminal means etc.<sup>12</sup>

## Conclusion

Human trafficking is a social phenomenon characterized by high public danger. Individual states and international community develop a set of legal and organizational measures to combat it. For instance, in accordance with the UN Protocol on prevention and suppression of human trafficking, measures aimed at combat against human trafficking include criminalization of this deed; protection of crime victims; assistance in repatriation; encouragement of international cooperation etc.

The legal system regulating the fight against human trafficking in the Russian Federation comprises various legal measures; however most of them are of general nature, i.e. focused not only on prevention of human trafficking, but also on combat against other illegal acts. The only special measure is criminalization of deeds associated with human trafficking and use of slave labor.

Therefore, analysis of the Russian national legislation indicates that the main emphasis in the fight against human trafficking is made on the use of criminal law mechanisms.

## Additional literature

Human Trafficking in the Russian Federation. Review and Analysis of the Current Situation. *Moscow, publishing house of UNICEF, ILO, 2006*,  
[http://www.un.org/ru/rights/trafficking/human\\_trafficking\\_russia.pdf](http://www.un.org/ru/rights/trafficking/human_trafficking_russia.pdf)

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<sup>11</sup> E.V. Serdyukova. Grounds for release from criminal liability for human trafficking // *Legality*, 2013, No. 2 [in Russian].

<sup>12</sup> A.G. Antonov. Special grounds for release from criminal liability in case of human trafficking // *Legality*. 2011. No. 3. P. 35 – 37 [in Russian]