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### *Legal Aspects of Struggle against Human Trafficking in Azerbaijan*

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History of struggle against human trafficking of the Republic of Azerbaijan can be calculated from 1996. So, on that date Azerbaijan has signed UN Convention “For the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others”. However Azerbaijan did not take any step to bring national legislation into line with the Convention for a long time. Later it ratified number of Conventions of United Nations<sup>1</sup> and Council of Europe<sup>2</sup> as well. In addition to it, with a view to strengthen fight against human trafficking and to improve cooperation Azerbaijan has signed some agreements<sup>3</sup> and bilateral memorandums<sup>4</sup> with the member states of Commonwealth of Independent States (CIS). Azerbaijan has also approved number of protocols<sup>5</sup>, statements<sup>6</sup>, understanding memorandum<sup>7</sup>, and cooperation programs<sup>8</sup>.

To harmonize national legislation and international treaties Azerbaijan is party to and to ensure efficiency of the struggle against human trafficking, first “National Action Plan”<sup>9</sup> of Azerbaijan Republic was adopted in 2004.

Although Azerbaijan was party to several international treaties, until 30 September 2005 it did not make any amendments to the Criminal Code regarding human trafficking. On 30 September 2005, provisions prohibiting human trafficking and forced labor have been added to the Criminal Code of the Republic of Azerbaijan<sup>10</sup>. Beside of it, Azerbaijan adopted several legislative acts<sup>11</sup> to provide efficiency

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<sup>1</sup> Law of the Republic of Azerbaijan on Approval of the UN Convention “On against Transnational Organized Crimes” and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air” dated to 13 May, 2003;

<sup>2</sup> Law on Approval of the Convention of the Council of Europe “On Action against Trafficking in Human Beings” dated to 11 May, 2010;

<sup>3</sup> Law of the Republic of Azerbaijan on signing agreement “On cooperation of ministries of internal affairs (police) of the member states of Commonwealth of Independent Countries on struggle against human trafficking” dated to 21 December, 2012;

<sup>4</sup> Decree of the President of the Republic of Azerbaijan dated to 07 June, 2011 “On Memorandum of understanding for cooperation between Ministry of Internal Affairs of Azerbaijan Republic and National Committee on Struggle against Human Trafficking of the United Arab Emirates “ signed on 21 March, 2011 in Abu-Dabi;

<sup>5</sup> Law of the Republic of Azerbaijan on signing of the Optional Protocol “On the Sale of Children, Child Prostitution and Child Pornography” to the United Nations Convention “On the Rights of Child” dated to 02 April, 2002;

<sup>6</sup> Law of the Republic of Azerbaijan “On approval of Brussels Declaration on prevention of human trafficking and struggle against it” dated to 20 September, 2002;

<sup>7</sup> Law on approval of the Order “On Cooperation for struggle against human trafficking, illegal trade on human organs and tissues between Commonwealth of Independent Countries” dated to 23 May, 2006;

<sup>8</sup> Law on approval of the Order “On Cooperation Program for struggle against human trafficking between Commonwealth of Independent Countries for 2007-2010” dated to 30 December, 2008;

<sup>9</sup> Order of the President of Azerbaijan Republic on “Adoption of the National Action Plan on Struggle against Human Trafficking” dated to 06 May, 2004;

<sup>10</sup> By the Law of Azerbaijan Republic dated to 30 September 2005 “On amendments and addition to some legislative acts of AR”, provisions on human trafficking (Article 144-1), forced labour (Article 144-2), disclosure of confidential information about of a victim of human trafficking( Article 316-1) have been added to the Criminal Code;

<sup>11</sup> Law of Azerbaijan Republic “On transplantation of human organ and (or) tissues” dated to 28 October, 1999; Decision of the Cabinet of ministers of AR dated to 09 November 2005 “On establishment of special institutions for the victims of human trafficking, financing, operation and control of their activities”; Decision of the Cabinet of ministers of AR dated to 12 January 2006 “On approval of the Regulation of Fund for the Assistance to Human Trafficking Victims”; Decision of the Cabinet of ministers of AR dated to 06 March, 2006 “On approval Rules for social rehabilitation of Human Trafficking Victims”; Decision of the Cabinet of ministers of AR dated to 17 June 2006 “On amount of the compensation to be paid to Human Trafficking Victims during reintegration period”; Decision of the Cabinet of ministers of AR dated to 01 February, 2008 “On approval of Rules on delivering Human Trafficking Victims to special police units specialized in struggle against human trafficking”; Decision of the Cabinet of ministers of AR dated to 11 August 2009 “On approval Rules of National Referral Mechanism for the victims of human trafficking”; Decision of Cabinet of ministers of AR dated to 03 September 2009 “On approval of the Rules (indicators) for identification of the victims of

of the fight against human trafficking within the country. However definition of the human trafficking given in the Criminal Code did not coincide with the concepts defined in international treaties Azerbaijan has signed and it did create problems on qualification of the human trafficking crimes.

Articles 3 and 5 of the Criminal Code of Azerbaijan Republic defines that<sup>12</sup>, the ground of the criminal liability shall be committing of action (action or inaction), structure of which provided only by the present Code. Also principle of legality is defined in the Criminal Code which states that, criminal action (actions or inaction), and also punishments for this actions and other measures of criminal - legal nature shall be determined only by the present Code<sup>13</sup>. Despite of this principle is being in contradiction with the Article 151 of the Constitution of Azerbaijan - *Whenever there is disagreement between normative-legal acts in legislative system of the Azerbaijan Republic (except Constitution of the Azerbaijan Republic and acts accepted by way of referendum) and international agreements wherein the Azerbaijan Republic is one of the parties, provisions of international agreements shall dominate* - provisions of the Criminal Code applies unambiguously.

According to the Article 144-1 of Criminal Code in force, human trafficking - involving, obtaining, storage, concealment, transportation, delivering or accepting of people (involving, obtaining, storage, concealment, transportation, delivering or accepting children for exploitation purposes shall be considered as human trafficking even if the means stipulated in this Article were not used) for exploitation purposes by using force or under the threat of force, by threat or other methods of compulsion, by means of theft, fraud, deception, abuse of possibility to influence or victim's weakness, or by providing or obtaining material and other boons, privileges or concession in order to get the consent of the person controlling another person shall be penalized with five to ten years of deprivation of liberty<sup>14</sup>.

If similar actions are made against two or more persons, against minors, against a pregnant woman whose pregnancy is apparent to the accused person, by taking victim of human trafficking out of borders of Azerbaijan Republic, by preliminary conjoint group of people, organized group or criminal union (criminal organization), by accused person by abusing his duty position, by applying force that endangers the life and health or when threatening to apply this force, by means of tortures to victims or cruel, inhumane, or degrading treatment, with the purpose to use the organs or tissues of the victim shall be penalized with ten to twelve years of deprivation of liberty.

According to Note to this Article, "exploitation of human being" in this Article means forced labor (service), sexual exploitation, slavery, traditions similar to slavery and dependence caused by them, illegal transplantation of human organs and tissues, conducting unlawful biomedical research on persons, involvement in illegal as well as criminal activity.

Despite of this Note, separate Articles criminalizing forced labor<sup>15</sup>, purchase and compulsion to withdrawal for transplantation of body organs or tissues of a person<sup>16</sup>, involving to prostitution<sup>17</sup>,

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human trafficking"; Decision of the Cabinet of ministers of AR dated to 19 November 2009 "On approval of Rules on placement children victims of human trafficking in shelter and maintenance of them"; Decision of the Cabinter of Ministry of AR dated to 20 May, 2011 "On approval Program on prevention of soical problems leading to human trafficking"; Decision of the Cabinet of ministers of AR dated to 11 August 2009 "On approval of Rules of National Referral Mechanism for victims of human trafficking"; Order of the Ministry of Internal Affairs dated to 12 October, 2007 "On approval of the Regulation on Hot-Line serving victims of human trafficking, potential victims";

<sup>12</sup> Articles 3 and 5 of the Criminal Code of Azerbaijan Republic;

<sup>13</sup> Article 5.1 of the Criminal Code of Azerbaijan Republic;

<sup>14</sup> Article 144-1.1 of the Criminal Code of Azerbaijan Republic;

<sup>15</sup> Article 137 of the Criminal Code of Azerbaijan Republic;

<sup>16</sup> Article 144-2 of the Criminal Code of Azerbaijan Republic: forced labour - forcing a person to perform certain work (service) by means of threats, use or threat of coercion, or by means of confinement other than in the situations prescribed by the law;

slavery<sup>18</sup>, illegal implementation of biomedical researches or application of the forbidden ways of diagnostics and treatment, and also medical products<sup>19</sup>, involving of minor to criminal activity<sup>20</sup>, involving of minor to prostitution, or commitment of immoral actions<sup>21</sup> still is in the Criminal Code which leads to confusion in qualification of committed crimes.

Also with the inclusion of Article on human trafficking to the Criminal Code in 2005, Article 173 criminalizing sale and purchase of minor or commitment of other bargains concerning minor or connected with his transfer to another, or owning him was removed from it. Therefore current text of Criminal Code does not include it. According to the Article 144-1 of current Criminal Code, involving, obtaining, storage, concealment, transportation, delivering or accepting of minors with the purpose of human trafficking shall be considered human trafficking even if methods described in the Article 144-1 have not been used. However if these actions are committed in respect of minors without human trafficking purpose it will not be penalized by any norms of the Criminal Code.

On 09 May, 2013 new amendments were made to the articles of the Criminal Code criminalizing human trafficking<sup>22</sup> and forced labour<sup>23</sup>, as well as article on falsification of documents with the purpose of human trafficking<sup>24</sup> was added to it. The article of human trafficking was totally brought in line with the international treaties Azerbaijan Republic is party to. Under the Article 144-3 of the Criminal Code, falsification of identity card, passport or any other identity document, as well as travel document of a person with the purpose of human trafficking is criminal act and is classified as less serious crime (is penalized with one year to four years of deprivation of liberty). In fact there was no need for this norm to be included to the Code, as falsification of the documents of any person with the purpose of human trafficking in it commitment of human trafficking crime. This norm will help traffickers to avoid punishment for the crime committed by them.

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<sup>17</sup> Article 243 of the Criminal Code of Azerbaijan Republic: involving to prostitution with a purpose of reception of the income or other benefit;

<sup>18</sup> Article 106 of the Criminal Code of Azerbaijan Republic: the slavery, that is full or partial realization above a person of the competencies inherent to the property rights;

<sup>19</sup> Article 138 of the Criminal Code of Azerbaijan Republic;

<sup>20</sup> Article 170 of the Criminal Code of Azerbaijan Republic;

<sup>21</sup> Article 171 of the Criminal Code of Azerbaijan Republic;

<sup>22</sup> Article 144-1 of the Criminal Code of Azerbaijan Republic;

<sup>23</sup> Article 144-2 of the Criminal Code of Azerbaijan Republic;

<sup>24</sup> Article 144-3 of the Criminal Code of Azerbaijan Republic;