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INVESTIGATION OF TRAFFICKING IN PERSONS IN ARMED CONFLICTS: STATUS AND DIRECTIONS FOR SOLVING THE PROBLEM

Віктор Плетенець. РОЗСЛІДУВАННЯ ТОРГІВЛІ ЛЮДЬМИ В УМОВАХ ЗБРОЙНИХ КОНФЛІКТІВ: СТАН ТА НАПРЯМИ РОЗВ'ЯЗАННЯ ПРОБЛЕМИ

Стаття присвячена вивченню умов, що сформувалися за фактами розслідування торгівлі людьми під час збройного конфлікту.

В роботі наголошується, що існуючі дослідження були проведені до повномасштабного вторгнення РФ в Україну й не враховували таку ключову обставину діяльності уповноважених осіб як воєнний стан. Відповідно стверджується, що у першу чергу закінчене, цілісне й повноцінне дослідження з формування належного рівня рекомендацій та їх практичне застосування може визначати перспективи розв'язання конкретної проблематики.

Визначається, що торгівля людьми, у відповідності до статті 149 КК України, за ступенем покарання може характеризуватися як протиправне діяння особливої тяжкості.

У статті, на підставі аналізу статистичних даних Офісу Генерального прокурора України за розглядуваною статтею КК України, демонструється спад обсягів реєстрації кримінальних правопорушень досліджуваної категорії з одного боку та недостатню (близько 60 %) кількість проваджень, за якими викриваються правопорушники – з іншого. Водночас наголошується, що не притягнуті до відповідальності правопорушники набувають протиправного досвіду, вчинюють більш тяжкі й зухвалі протиправні діяння, вживають заходів протидії досудовому розслідуванню, що з поодиноких проявів, які ускладнюють діяльність суб'єктів розслідування, перетворюється на проблему.

У статті наводиться перелік чинників, що можуть ускладнити/унеможливити виявлення розглядуваних фактів торгівлі людьми, як сукупності обставин, що потребують врахування в оцінці сформованої обстановки за розглядуваними фактами.

Стверджується, що врахування наведеного переліку причин може стати вагомою складовою в розумінні формування умов за кримінальними правопорушеннями досліджуваної категорії.

У висновках до статті наводиться сукупність завдань, що може стати основою в розробці методики розслідування торгівлі людьми з подальшою апробацією її практикою застосування. Крім того, зазначається, що реалізація вказаного дослідження може бути здійснена шляхом комплексного підходу до поставлених на його вирішення завдань.

Ключові слова: організація розслідування, торгівля людьми, умови збройного конфлікту, воєнний стан, кримінальне правопорушення, уповноважена особа, чинники викриття й встановлення обставин торгівлі людьми, реєстрація кримінальних правопорушень, заходи попередження й виявлення постраждалих, причини вчинення протиправного діяння.

Relevance of the study Problem statement. The current state of civilization outlines the fundamental rights and freedoms of man and citizen as inviolable. Thus, the Constitution of Ukraine defines personal rights and freedoms, which contain provisions regarding: the right to life; rights to freedom and personal integrity; the right to respect for dignity; the right to free development of one's personality; freedom of worldview and religion [3].

Despite the significant development of humanity in many areas, such a manifestation

of socio-legal phenomena as illegality has not achieved its eradication, which does not guarantee society and its individual representatives declared security. This can be demonstrated on the example of facts of illegal acts against humanity, in particular, such as human trafficking, which did not find a proper mechanism for their eradication not only in our country, but also in the world. Thus, a report by the US State Department (2024) emphasizes that, according to various estimates, about 27 million people around the world are exploited for work, services and commercial sex. Determining that traffickers prey on some of the most marginalized and vulnerable people in the world, profiting from their plight [13], which can fully demonstrate the situation in our State as well and condition the need to find ways to resolve it.

Resent publications review. It is worth noting that the attention of the following leading domestic scientists is devoted to the investigation of criminal offenses, in particular: V. Bakhin, V. Bernaz, V. Veselskyi, A. Volobuyev, V. Galagan, I. Hory, M. Danshina, M. Yefimov, V. Zhuravel, A. Ishchenko, N. Karpov, N. Klymenko, I. Kohutych, O. Kolesnichenko, V. Konovalova, M. Kostytskiy, I. Kotyuk, I. Krasnyuk, V. Kuzmichov, V. Lysenk, V. Lysychenko, L. Loboyko, V. Lukashevych, E. Lukyanchikov, V. Malyarova, O. Oderiy, I. Pyrih, M. Pohoretskyi, O. Sainchyn, O. Sachkj, M. Saltevskiy, M. Segay, D. Sergejev, O. Snigeryov, S. Stakhivskyi, R. Stepaniuk, V. M. Tertyshnyka V. IN. Tishchenko, L. D. Udalova, Zh. IN. Udovenko, V. G. Khakhanovsky, P. Tsymbal, K. Chaplynskiy, S. Chernyavskyi, V. Shepitkj, M. Shumylo, M. Shcherbakovskyi and many others.

A number of studies [2; 12; 4, etc.] require no less attention, the authors of which focused on solving the relevant tasks of forming recommendations for the investigation of human trafficking. At the same time, the above and other studies were conducted before the full-scale invasion of the Russian Federation into Ukraine and did not take into account such a key circumstance of the activities of authorized persons as martial law. His announcement in 2022 by the President of Ukraine [8] is forced to continue in our country even now, which has crossed a three-year term.

The article's objective is to determine conditions formed by the facts of the investigation of human trafficking during the armed conflict and finding ways to solve them.

Discussion. The significant period of time of Ukraine's opposition to the military aggression of the Russian Federation is reflected in many social processes. At the same time, the state of illegality demonstrates, in particular, the difficulties of the activities of authorized persons in the fight against this phenomenon. In doing so, the implementation of an adequate level of investigation of offences should be ensured by appropriate forensic means and methods [1, p. 225].

This became a prerequisite for the development and provision of tools for authorized persons in the fight against the considered manifestations, taking into account the needs caused by today's conditions.

Yes, fixed O. I. Borodin's dissertation research topic «Investigation of human trafficking committed in armed conflicts» (Dnipro, 2023) [5, p. 276] is under active development.

Approbation of scientific research carried out by the author in the form of publication of a number of articles and abstracts of reports has a logical, consistent nature of knowledge of the problem. At the same time, only a completed, holistic and full-fledged study with the formation of the appropriate level of recommendations and their practical application can determine the prospects for solving the relevant problems.

Trafficking in human beings, in accordance with article 149 of the Criminal Code, carries a penalty of three to eight years' imprisonment (for the first part) and eight to fifteen years' imprisonment with or without confiscation of property (for the third part) [11], which characterizes the unlawful act in question as particularly serious.

The level of spread of the illegal act in question also needs no less attention. Thus, according to the data of the Office of the Prosecutor General of Ukraine, – 205 criminal offenses under Article 149 of the Criminal Code of Ukraine were recorded in 2020; in 2021 – 229; in 2022 – 131; in 2023 – 144; in 2024 – 104. Of them, in 2020, a notice of suspicion was served for 110 offenses; in 2021 – 163; in 2022 – 93; in 2023 – 107; in 2024 – 62 [9].

The given data demonstrate a decline in the volume of registration of criminal offenses of the studied category on the one hand and an insufficient (about 60%) number of proceedings for which offenders are exposed – on the other. At the same time, offenders who have not been prosecuted acquire unlawful experience, commit more serious and presumptuous unlawful acts,

and adopt measures to counter pre-trial investigation, which, from isolated manifestations that complicate the activities of the subjects of investigation, turns into a problem that makes it impossible to implement the functions assigned to the said subjects [7, p. 9],

This, in turn, makes it difficult/impossible to assess the real picture of the facts of human trafficking in the state and to develop tools for their eradication.

The Law of Ukraine «"On Combating Human Trafficking»", which contains a number of provisions defining:

- the status of the person who has become the target of trafficking;
- system of measures aimed at preventing and detecting victims;
- a set of measures aimed at returning to Ukraine, protecting and rehabilitating its affected citizens;
- list of institutions (centers) competent to provide the necessary assistance to victims;
- totality of measures implemented in the fight against trafficking in human beings [10].

The structure of the above provisions demonstrates the state's perception of this problem as complex on the one hand, and the search for ways to solve it – on the other. Accordingly, the integrity of the research carried out by scientists should be based on the above provisions, which demonstrate directions and lay the foundations for scientific research and practical application, which has acquired special importance in the conditions of the armed aggression of the Russian Federation against Ukraine.

Arguments for our statement can also be a list of factors caused by the fact that victims, witnesses of events:

- unable to report, as they are in the occupied territory, forcibly taken outside the state, injured (mentally, physically), destroyed;
- intimidated and afraid for the life and health of their own or loved ones;
- they do not believe in the judicial perspective, the effectiveness of law enforcement agencies, especially in conditions of martial law;
- do not want publicity, condemnation from loved ones, outsiders [6, p. 230].

The given list of factors is of great importance in the awareness of the circumstances that may determine their formation on the one hand and the need to take them into account in the activities of authorized persons – on the other. In addition, the above can be extrapolated to criminal offenses based on the facts of human trafficking.

Accordingly, factors that may make it difficult/impossible to identify the considered facts of human trafficking may be as follows:

- the departure of a significant number of the population outside our state;
- deportation of people from temporarily occupied territories to the Russian Federation;
- use of physical, mental, sexual and other types of violence against victims and persons informed about relevant facts;
- being in a state of fear for the life and health of one's own or close persons, injured or informed of the facts of human trafficking;
- the impossibility of notifying about events to law enforcement agencies from persons who remained in the temporarily occupied territories, are deprived of their liberty, are under control, in a particularly vulnerable situation, etc.

The list given by us is not exhaustive, but it demonstrates a set of circumstances that need to be taken into account in the assessment of the situation based on the facts under consideration.

In addition, the set of circumstances that make it difficult/impossible to detect the facts of human trafficking may demonstrate (explain) the reasons:

- their latencies;
- the prevalence of criminal offenses for which a sufficient and necessary amount of information is not collected to bring the perpetrators to justice;
- the need to increase the effectiveness of the implementation by law enforcement agencies of the tasks of prevention, exposure and investigation of the considered illegal acts.

Taking into account the given list of reasons can become an important component in understanding the conditions formed by criminal offenses of the studied category and a

comprehensive assessment of the circumstances that have developed at the relevant moment.

The totality of the factors and reasons given by us for committing human trafficking make it necessary to define tasks aimed at solving this problem by:

- development of forensic characteristics of the investigation of human trafficking in armed conflicts;
- determination of the main elements of the forensic characteristics of the studied type of criminal offense;
- highlighting the possibilities of using forensic analysis of initial information in determining the directions of the investigation;
- consideration of the importance of modern approaches to the organization of interaction between employees of investigative and operational units of the National Police of Ukraine during the investigation;
- formulation of prevention measures, in particular by identifying and eliminating the causes and conditions of human trafficking committed in armed conflicts;
- development of tactical operations to identify signs of human trafficking in armed conflicts and collect initial data on their circumstances;
- determination of the list of necessary measures and means aimed at the implementation of tactical operations;
- formation of a set of investigative (search) actions with determination of organizational and tactical features of their implementation.

The given set of tasks is not exhaustive, but it can become the basis for the development of a methodology for investigating human trafficking with further testing of its practice. At the same time, the implementation of the specified research can be carried out through a comprehensive approach to the tasks set for its solution.

Conclusions. The problems of investigating human trafficking require the fastest solution, which should be based on the list of tasks defined in the content of our research, in particular: – development of the forensic characteristics of the investigation of human trafficking in armed conflicts; – determination of the main elements of the forensic characteristics of the investigated type of criminal offense; – highlighting the possibilities of using forensic analysis of initial information in determining the directions of the investigation; – consideration of the importance of modern approaches to the organization of interaction between investigative and operational units of the National Police of Ukraine during the investigation; – formulation of prevention measures, in particular by identifying and eliminating the causes and conditions of human trafficking committed in armed conflicts; – development of tactical operations to identify signs of human trafficking in armed conflicts and collection of initial data on their circumstances; – determination of the list of necessary measures and means aimed at the implementation of tactical operations; – formation of a set of investigative (search) actions with the determination of organizational and tactical features of their implementation, etc.

This will make it possible to form a forensic methodology, which, on the one hand, will enrich science, and on the other hand, – will provide practice with effective tools for combating the facts in question in our country, which acquires special importance in the conditions of martial law.

Our further research will focus on the organizational and tactical features of conducting individual investigative (search) actions on the facts of human trafficking in armed conflicts.

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ABSTRACT

The article deals with study of the conditions that were formed based on the facts of the investigation of human trafficking during the armed conflict.. The work emphasizes that the existing studies were conducted before the full-scale invasion of the Russian Federation into Ukraine and did not take into account such a key circumstance of the activities of authorized persons as martial law. Accordingly, it is argued that, in the first place, a completed, holistic and full-fledged study with the formation of an appropriate level of recommendations and their practical application can determine the prospects for solving a specific problem.

It is determined that human trafficking, in accordance with Article 149 of the Criminal Code of Ukraine, can be characterized by the degree of punishment as an illegal act of special gravity.

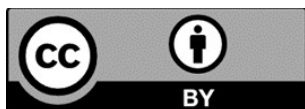
The article, based on the analysis of statistical data of the Office of the Prosecutor General of Ukraine under the considered article of the Criminal Code of Ukraine, demonstrates a decline in the volume of registration of criminal offenses of the studied category on the one hand and an insufficient (about 60%) number of proceedings for which offenders are exposed – on the other. At the same time, it is emphasized that offenders who have not been brought to justice acquire illegal experience, commit more serious and daring illegal acts, and take measures to counter pre-trial investigation, which turns into a problem from isolated manifestations that complicate the activities of the subjects of the investigation.

The article provides a list of factors that can make it difficult/impossible to identify the considered facts of human trafficking as a set of circumstances that need to be taken into account in the assessment of the situation based on the considered facts.

It is claimed that taking into account the given list of reasons can become an important component in the understanding of the formation of conditions for criminal offenses of the studied category.

The conclusions to the article provide a set of tasks that can become the basis for the development of a methodology for investigating human trafficking with further testing of its practice of application. In addition, it is noted that the implementation of the specified research can be carried out through a comprehensive approach to the tasks set for its solution.

Key words: *organization of investigation, human trafficking, conditions of armed conflict, martial law, criminal offense, authorized person, factors of exposure and establishment of the circumstances of human trafficking, registration of criminal offenses, measures to prevent and identify victims, reasons for committing an illegal act.*



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