

Subjective Aspects of the Crime of Human Trafficking

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Annotation: This article analyzes in detail the subjective signs of the crime of human trafficking, that is, the subject and subjective side of this act. In particular, the signs of a general subject and a special subject of a crime in the field of human trafficking are considered, the legal norms of domestic and foreign countries, the opinions of scientists and an analysis of law enforcement practice in this regard are described. The article also highlights the necessary and optional features of the subjective side of this crime, reveals the motive and purpose of the crime.

It is also necessary to state the disposition of the first part of Article 131 of the Criminal Code in a new edition, supplement the Criminal Code with Article 1351 under the title "Exploitation of a person" and describe the content of the concept of "use of people" (exploitation of a person) in the section "Legal meaning of terms" in the new proposed edition.

Keywords: human trafficking, criminal subject, subjective aspect of crime, natural person, sane, trafficker, human exploitation, forced labor or services, slavery or slavery-like practices, involuntary condition, debt burden, human organs or tissues extract.

According to the theory of criminal law, the subject of the crime and the subjective side are subjective signs of the corpus delict of the crime. In criminal law, special attention is usually paid to the problem of the subject of the crime [1].

This problem remains relevant today.

The subject is an inevitable sign of any corpus delict. Criminal activity cannot be carried out without a subject. The characteristics of the subject are confirmed in articles 17-19 of the second section of the General Part of the Criminal Code of the Republic of Uzbekistan entitled "Persons to be held accountable" - this is a sane natural person who has reached the age of criminal responsibility.

The concept of a natural person is not defined in the criminal law, but there is no need for it, because the widely used meaning of this phrase means a person, regardless of the nationality of the country and other characteristics. This concept is defined in the Civil Code of the Republic of Uzbekistan: "natural persons mean citizens of the Republic of Uzbekistan, citizens of other countries, as well as stateless persons."

Unlike foreign countries (Great Britain, Germany, China, USA, France, etc.), including countries belonging to the Romano-Germanic legal system, the criminal law of the Republic of Uzbekistan does not include criminal liability of legal entities. In some legal literature, one can come across opinions on the possibility of determining such legal responsibility [2, pp. 7-25; 3, p. 14]. Currently, in our Republic, legal entities can only be held administratively or civilly liable.

Article 18 of the Criminal Code of the Republic of Uzbekistan defines the important features of the subject - the concepts of sanity and insanity. A person who, at the time of committing a crime, realized the socially dangerous nature of his act and was able to control his actions, is considered sane. A person who was mentally deranged at the time of committing a socially dangerous act, i.e. due to chronic mental illness, temporary mental disorder, mental retardation or other mental illness, who could not understand the importance of his actions or could not control his actions, shall not be held

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liable. Coercive medical measures may be applied to a person who commits a socially dangerous act and is found mentally deficient by the court.

As a general rule, sane persons who have reached the age of sixteen at the time of committing the crime should be held criminally liable. When determining the age of criminal responsibility, the legislator relies on information from medicine, psychology and other sciences.

It is self-evident that the person being prosecuted must understand the nature and importance of the actions he is committing, as well as be able to control them. This ability appears in a person when he reaches a certain age, after he has gathered enough knowledge and formed his basic views on how to behave in public. According to these regulations, a person who has reached the age of 16 can be the subject of the crime of human trafficking.

The second inevitable sign of a criminal subject is sanity, that is, a person's ability to understand the true nature and social significance of his behavior and control it. A person cannot be held criminally liable if there are circumstances provided for in Article 18 of the Criminal Code of the Republic of Uzbekistan.

These internationally recognized criminals are often referred to as "traffickers". But we oppose the use of this definition in relation to the subjects of the crime of attraction of people for the purpose of exploitation, because there is a difference in the goals of the criminals who commit the crime of human trafficking and the people who exploit people. In human trafficking, if the criminal directly attracts a person for future sale, when attracting people for the purpose of exploitation, it is not always intended to sell them, but they exploit them together with themselves or their criminal partners and receive profit, therefore, there may not be signs of human trafficking.

The Law of the Republic of Uzbekistan "On Combating Human Trafficking" defines the concept of "trafficking person" and according to it, person engaged in human trafficking - a natural or legal person who, independently or as part of a group of persons, commits any act related to human trafficking, as well as those who, by their actions, facilitate human trafficking, even if they are obliged to prevent and fight against it according to their official powers an official who does not prevent or combat human trafficking.

M.H. Rustamboev, Q.R. Abdurasulova, S.S. Niyozova and N.B. Gurbanov expressed their opinion on this concept and stated that this concept is not correct and the phrase "a person engaged in human trafficking" is "a person who has carried out human trafficking" [4, p. 46] suggested replacing it with the phrase "person".

It should be noted that the anti-trafficking laws of many foreign countries treat this concept as in the version of the current law. In particular, Article 1 of the Law of the Kyrgyz Republic "On Prevention and Combating Human Trafficking" [5, p. 230], Article 1 of the Law of the Republic of Tajikistan "On Combating Human Trafficking" [6, p. 251.] and Article 1 of the Law of the Republic of Turkmenistan "On Combating Human Trafficking" [7, p. 264] the concept of "trafficking person" is used.

In the spelling dictionary of the Uzbek language, it is noted that the word "engagement" means "to be busy with some work, to carry out work" [p. 8, 10]. In other words, to engage is to engage in a certain type of activity regularly and legally. From this point of view, it is difficult to say that the definition given in the law is perfect.

At the same time, it follows from the wording of the law that perpetrators and assistants in committing human trafficking can be subjects of crime, while the actions of organizers and agents are not considered human trafficking. H.Sh.Khamraeva uses the term "witnesses" [9, p. 30] in relation to crime participants in her research. But we cannot agree with this term either, because in civil law, a person participating in sales contracts is a "broker". In criminal law, there are concepts of participation such as witness, assistant, executor. In our opinion, it is appropriate to change the name and definition of the concept of "person engaged in human trafficking" in the Law of the Republic of Uzbekistan "On Combating Human Trafficking", and to state this definition in the following version: the subject of the crime of human trafficking - 1) a sane natural person who has reached the age of 16, who directly



alone or together with other persons (as a group of persons) commits any act or omission related to human trafficking (including a natural person acting on behalf of a legal entity)); 2) participants in human trafficking - the organizer who led the preparation of human trafficking or the commission of a crime, an interested party to its commission, who assisted in its commission with their advice, instructions, by providing tools or removing obstacles, the criminal, the weapon of crime, traces and an accomplice who has made a prior promise to conceal means or things obtained through criminal means, to receive and transfer such things; 3) an official who does not prevent or fight against human trafficking, although he is obliged to prevent and fight against it according to his official authority.

There is also a special subject of crime in criminal law, it directly expresses the special nature of the crime. M. Usmonaliev and as noted by P. Bakunov, "the special subject of the crime is a person who expresses the special nature of the crime and has additional special characteristics in addition to the general characteristics of the criminal subject (sanity, legal age)" [10, p. 243]. According to V.M. Lebedev, "the presence of a special subject in a crime is a sign that distinguishes the crime committed by the criminal from other subjects" [11, p. 38].

Article 135 of the Criminal Code applies the special subject rule for cases of repeated, dangerous recidivist, extremely dangerous recidivist, organized group or use of official position. In particular, paragraph "j" of the second part of Article 135 of the Criminal Code of the Republic of Uzbekistan refers to a special subject - a person who commits the crime of human trafficking using his official position. In this case, "service position" is not related to the position of an official, but means any service status in a state or non-state institution, enterprise or organization, and if the rights and opportunities associated with this status are used to commit the actions specified in Article 135 of the Criminal Code, the appropriate criminal liability is provided. holds

The subjective side of the crime represents the inner mental activity of the person, which describes the fact of committing the crime. Guilt, motive, purpose, and state of mind are the hallmarks of the subjective side. The importance of the subjective side is that it allows to clearly qualify the crime, to distinguish similar criminal elements from each other, and to individualize responsibility.

The subjective side of human trafficking is characterized by the right intention and the legal purpose - "human exploitation". A guilty person realizes that he is managing his fate at his own discretion and wants to commit these actions.

The purpose of human trafficking is, in fact, to make a large profit by organized crime groups that are "well established". After all, it is not for nothing that E. Evstifeev researched this problem and came to the conclusion that "the goal of recruiters or joiners is to make a big profit" [12, p. 37].

Some jurists explain the main reason for the origin of human trafficking with the socio-economic conditions in that country. But we partially disagree with these opinions, because we know that when committing a crime, it is expressed by a person's subjective efforts to achieve the results of this crime. In other words, recruiters are making so much money from recruiting people that the recruiter uses various methods of deception, persuasion or coercion to achieve their goals.

We believe that when recruiting people, evaluating the goal as a sign of the subjective side of this crime, it is also necessary to know what the perpetrator intended to achieve his goal. A recruiter's objective shows what he is striving for or what he wants to achieve. Intent is a factor that prompts a person to commit a crime and commits an illegal act.

Purpose and intention are interrelated. When a person sets this or that goal, he always relies on a certain intention, a certain reasoning. Any goal is not without reason. Something must direct a person's activity towards this goal. "Without knowing his intention, the question arises as to why a person strives for a certain goal and why he does not strive for another goal, so without knowing the intention, the meaning of his real action cannot be understood" [13, p. 178; 14, p. 44]. According to P. S. Dagele: "Motive and purpose are the necessary features of any conscious volitional misconduct. Therefore, while the majority of crimes committed both intentionally and recklessly are manifested in the



conscious voluntary actions of a person, motive and purpose are necessary corpus delict of these crimes" [15, p. 41].

M.H. Rustamboev "the purpose of the criminal in this crime is to use the recruited persons for sexual or other purposes"

[16, pp. 110-112], writes. M.A. Rajabova, "the main purpose of attracting a person to use people is to get money or other material wealth through the criminal himself or other persons"

[17, pp. 95-96], states that. MP Juravlev says that the main purpose of the crime is to exploit the victim [18, pp. 306-307]. According to V.S. Komissarova, the subjective side of this crime comes from the purpose of exploitation of this person [19, pp. 101-102]. In addition to the above points, we believe that the goals of recruiters in this type of crime are to sell people in the future, to attract them for sexual services in brothels, to exploit them in nightclubs, to perform forced labor, to force them to take pornographic pictures, or to obtain material benefits as a result of dismemberment.

The purpose of the crime of human trafficking is to be determined as an integral element of the criminal offense provided for in Article 135 of the Criminal Code and must be proven. The definition of the concept of "exploitation of people" is given in the eighth section of the Criminal Code entitled "Legal Meaning of Terms": "Exploitation of people - exploitation of the prostitution of other persons or other forms of sexual exploitation of them, forced labor or services, slavery or practices similar to slavery, involuntary condition or human organs or extracting tissues".

It should be mentioned that the legal term "use of people" in Uzbek language does not fully correspond to its Russian text. In particular, the word "exploitation" in the Russian version is used as "use" in the Uzbek language. According to dictionaries, "to use is to enjoy something or an opportunity, to use it for one's own needs and wants" [8, p. 27], "exploitation (fr. exploitation - to use, use; profit, Latin. *explicitare* - not to use, to use) - appropriation of the product of the labor of others by the owners of the means of production" [20, p. 353]. In other words, "exploitation" is the use of human power, the forced use of the owners of the means of production as a result of the appropriation of the products of others' labor. It can be seen that the word "exploitation" differs from the word "use" in terms of meaning and content. Therefore, in our opinion, it is appropriate to use the word "exploitation" when expressing this concept of crime in Uzbek.

Therefore, in the eighth section of the Criminal Code of the Republic of Uzbekistan known as "Legal Meaning of Terms", the Law of the Republic of Uzbekistan "On Combating Human Trafficking" and other legal documents, the concept of "exploitation" is defined, the expression "use of people" should be replaced with the expression "exploitation of people".

Exploiting the prostitution of other persons includes the criminal activities of persons called pimps. They induce other persons to engage in prostitution and profit from this exploitation. People who use the prostitution of other people include people who maintain brothels. The use of labor in this field is related to the satisfaction of a person's sexual desires. In this case, the use of prostitution of other persons can be carried out both in the legal sex industry and in the field of criminal business. There are certain types of this activity that are not prohibited by law, for example, working as a prostitute in countries where prostitution is legal (Germany, Holland, etc.).

Other forms of sexual exploitation include other forms of exploitation of a person, such as the production of pornographic products, striptease, as a participant in an erotic show, etc. In particular, women are often taken abroad and used to make pornographic films.

Forced labor or services means that the victim is put in such a situation that, as a result, he is forced to engage in some labor activity or provide one or another service (except sexual services) at the will of the perpetrator. It should be noted that in international law there are the concepts of "forced use or forced labor", which means to demand a certain person to perform work that the person does not agree to perform by threatening a certain punishment" [21].



Slavery is a relatively hard and dangerous form of forced labor. In it, the property rights or some of them will be implemented against the person. One of the signs of slavery is human trafficking and forced labor outside the economy.

Slavery or practices similar to slavery. Traditions similar to slavery should be understood as the use of a person in the household, in construction or agricultural work, in raising cattle, in childbirth, in caring for sick or elderly relatives, and children. Such traditions usually originate from family or kinship relationships.

Slavery means such a condition of a person in which the attributes of ownership or some of them are implemented over him [22, p. 18]. The victim is criminally exploited, he is kept in conditions isolated from society, he is completely deprived of the opportunity to change his situation. The complete restriction of a person's freedom is achieved, as a rule, by depriving him of personal documents, payment for work, the ability to get out of the influence of the owner, and to turn to law enforcement agencies for help. This refers to the use of human labor, that is, it is forced to perform actions aimed at the production of certain products or the provision of certain services. The use of labor can be carried out both in the legal sphere and in the sphere of criminal business.

Using legal labor, human labor is used in the field that is not prohibited by law. These different legal spheres of human activity cover the range of activities from the production of certain industrial goods to the repair, processing, or other services of these goods that are not contrary to the law.

Depending on the content of the work, it is appropriate to separate the use of physical and mental work. Physical labor can be used both in production and in the field of providing household services. When physical labor is used, the skills and experience of a person, his physical capabilities are used. Adult men are usually used in heavy physical work, for example, in housing construction, in the field of production of certain items, goods (hidden sexes). When mental work is used, human mental abilities, his knowledge, thinking skills and creative ability are used. This type of human labor is rarely used. For example, a person who has fallen into a state of dependence for one reason or another is forced to use his mental abilities in the interests of the user (the programmer creates new computer programs) [23, p. 81].

While labor is used in the field of criminal business, human labor is used in the criminal field, that is, in the field of activity that is against the law and is prosecuted in accordance with the law. Here we can talk about the sale of mercenaries for participation in armed conflicts, the use of labor in the field of illegal production, and the use of intellectual labor in criminal business. In this case, forced human labor is used in the production of certain items and goods that are prohibited in legal circulation. These can be various workshops for the preparation and processing of drugs, counterfeit products, and the production of weapons. When intellectual labor is used in the field of criminal business, a scientist can be forced to produce, for example, a new type of drug.

Involuntary status is similar to slavery. For example, we can understand children and disabled people who are used for begging. The concept of "involuntarily" is not defined in the current criminal law of the Republic of Uzbekistan, but it has been widely developed at the international level. For example, according to paragraph "b" of Article 7 of the Supplementary Convention on the Abolition of Slavery and the Slave Trade, Institutions and Customs Similar to Slavery, adopted on September 7, 1956, "a person in a state of involuntary means a situation resulting from indebtedness, servitude and domestic servitude" or a person in a situation", and Article 1 of the Convention defines these institutions and customs.

Indebtedness is a situation or condition that arises as a result of a pledge by the debtor to secure the labor debt of his personal work or a dependent person, if the properly determined value of the work performed is not calculated to cover the debt, or if the duration of this work is not limited and its nature is not determined.



The status of serfdom is the use of land in such a way that the user of the land lives and works on the land belonging to another person according to law, custom or agreement, and is obliged to perform certain work for this person for a fee or for free, and is not able to change this situation [24, 32- p. 34].

Domestic slavery is defined in the Supplementary Convention as any institution or practice which:

- a) her parents, guardian, family or any other person or group of persons promise or give her land in exchange for money or in kind, without her right to refuse;
- b) the woman's husband, her family or her relatives have the right to give her to another person for a fee or otherwise;
- c) after the death of a woman's husband, inheritance is transferred to another person;
- d) a child or an adolescent under the age of 18 is given by one or both of his parents or his guardian to another person for a fee or free of charge in order to use this child or an adolescent or his work [paragraphs 24, 32].

Extraction of human organs or tissues - extraction of human organs or tissues for the purpose of transplantation or preservation (conservation) for scientific or educational purposes, as well as for commercial purposes.

At the same time, it should be noted that the subject of human trafficking may not have this purpose in some cases. For example, criminal groups that recruit people for the purpose of selling them later do not intend to use the "object of the transaction". Their actions are aimed at gaining income from the sale of slaves. In this case, the people who bought the slaves may not use them later. In most cases, slaves are bought back for re-money. Also, middlemen who act on behalf of a seller or a buyer and directly carry out only the tasks assigned to them do not aim to use slaves. Although, on the surface, the middleman works together with traders, he does not intend to achieve a single criminal goal with the party whose interests he represents [25, p. 16].

In our opinion, it is appropriate to expand the content of the concept of "use of people" (exploitation of a person) given in the eighth section of the Criminal Code of the Republic of Uzbekistan entitled "Legal Meaning of Terms", as it is related to other types of use of people, for example, their use in armed conflicts or criminal activities. a large number of cases fall outside the scope of this definition. In recent years, cases of human trafficking for use in armed conflicts have become more widespread. After completing the combat and ideological training course, mercenaries are brought to places of subversive, including terrorist activities.

Based on the above, it is appropriate to state the meaning of the concept of "using people" (exploitation of a person) as follows:

"Exploitation of a person is the use of another person's prostitution or other forms of sexual exploitation of another person, forced labor or services, slavery or practices similar to slavery, involving a person in forced labor or services, as well as reducing him to a state of involuntary, using him in armed conflicts or criminal activities, or human parts or tissue extraction".

When describing the subjective side of the crime of human trafficking, it is impossible not to touch on the motive for committing the crime. In psychology, a motive is, as a rule, a factor that determines a person's actions towards achieving the same goal [26, p. 214]. In the criminal law literature, one can come across different definitions given to the concept of the motive of a person's criminal behavior. For example, A.A. Piontkovskii characterized the motive as a factor that motivated a person to commit a crime [27, p. 290].

A. I. Rarog defines the motive as internal motivational factors determined by certain needs and interests, which awaken the desire to commit a crime in a person and lead him to commit a criminal act [28, p. 190]. However, despite the differences between the above definitions, motive always means an internal factor that encourages criminal behavior.



Although the motive for committing the crime of human trafficking is not mentioned in the provision of Article 135 of the Criminal Code, it is envisaged that the guilty person seeks to achieve financial gain or other personal interests. This is also confirmed by the use of the concept of "trade" by the legislator, which cannot be carried out without the material benefit of the parties. Although the motives of this crime do not affect its qualification, they must be determined during the preliminary investigation, because they can be taken into account when imposing a sentence.

It should be noted that the Criminal Code stipulates responsibility for hiring, transporting, transferring, concealing or receiving people for the purpose of using them (exploitation), but the responsibility for exploiting them is not fully reflected.

In particular, although the Criminal Code stipulates responsibility for the use of prostitution of other persons (Article 131), removal of human organs or tissues (Article 133), other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, involuntary status, there is no liability for use in armed conflict or criminal activity. Taking into account the existing gaps in the Criminal Code, we propose to make the following changes and additions to the Criminal Code of the Republic of Uzbekistan:

1) Adoption of the disposition of the first part of Article 131 of the Civil Code in a new version:

"Opening or maintaining a brothel, as well as conniving with malicious or other low intentions, **using the prostitution of other persons or involving a person in other forms of sexual exploitation**";

2) Supplementing the Civil Code with Article 135¹:

"Article 135¹. Human exploitation

Involvement of a person in forced labor or services, slavery or practices similar to slavery, making him involuntarily or using him in armed conflicts or criminal activities, as well as exploiting a person in another way, -

shall be punishable by correctional labor for up to three years or imprisonment from three to five years.

That move:

- a) by a repeated or dangerous recidivist;
- b) pre-arranged by a group of persons;
- c) against two or more persons;
- g) if committed against a minor, -

shall be punished by imprisonment for five to eight years.

That move:

- a) by taking such persons out of the territory of the Republic of Uzbekistan;
- b) if the service is performed using the position, -

shall be punished by deprivation of liberty from eight to ten years."

Therefore, if we approach the concept of exploitation of a person, the form of exploitation is the use of prostitution of other persons or the involvement of a person in other forms of sexual exploitation, Article 131 of the Criminal Code of the Republic of Uzbekistan, the form of extracting human organs or tissues is Article 133 of the Criminal Code, and other forms of exploitation are defined in Article 135¹ of the Criminal Code of the Republic of Uzbekistan. - article, hiring, transporting, transferring, concealing or accepting a person for the purpose of exploitation should be qualified by Article 135 of the Civil Code. Taking into account the above, it is appropriate to make changes and additions to the relevant decision of the Plenum of the Supreme Court of the Republic of Uzbekistan, to reflect the clarifications of this issue.



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