

Human Trafficking: Issues of Investigation Techniques

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Abstract: The analysis of the investigative practice suggests that investigation of human trafficking in the Republic of Kazakhstan is connected to a number of challenges, which include the lack of criminalistics techniques of the trafficking investigation. For successful work in the cases of human trafficking the employees of the law enforcement services of the Republic of Kazakhstan require scientific advice on the organization of this type of crime investigation, which can only be provided by an appropriate new and efficient separate criminalistics technique. In this paper the authors, in the course of theoretical and practical study of problems that arise in the detection and investigation of human trafficking and considering available criminalistics advice and the features of the national legislation of the Republic of Kazakhstan, have developed a separate criminalistics investigation methodology in human trafficking.

Key words: Criminalistical characteristics • Investigation of crimes • Counteraction against crime
• Criminalistics science

INTRODUCTION

Human trafficking – is one of the global and acute problems the majority of countries face. The sexual exploitation, forced labor, bonded labor, child labor, the «domestic» slavery, begging, forced use of people in the armed groups, human trafficking for organ and tissue transplants – all these are forms of the same offense. As one of the most infamous crimes in the world, human trafficking misleads and turns women, men and children from all over the world into victims and forces them to be exploited every day.

But, due to the scale and impunity, this type of crime acquires extreme danger in almost all countries of the former Soviet Union. Using the difficult economic situation in the country, with high unemployment and inadequate legal protection for citizens of post-Soviet states, dishonest dealers have organized the criminal business – inviting citizens to work abroad, where they are exposed to severe exploitation, earning meager money

to themselves and thousands for the organizers of this business. As a consequence, the Republic of Kazakhstan as well as several other CIS countries became the exporters of «live goods» abroad.

According to the international experts, the Republic of Kazakhstan is in the second category of State and is a source, destination and, to a lesser extent, transit country for women and girls who are victims of trafficking, mainly for the purpose of forced prostitution and the men and women who appear in the conditions of labor exploitation. Kazakhstan women and children are trafficked within Kazakhstan as well as to the United Arab Emirates, Russia, China, Turkey, Azerbaijan, Greece and Israel for forced prostitution. Women and girls from Uzbekistan, Russia, Kyrgyzstan, Tajikistan and Ukraine are forced into prostitution in Kazakhstan. Kazakh men and women and boys and men from Uzbekistan, Kyrgyzstan and Mongolia find themselves in conditions of forced labor used in the household, as well as on tobacco, cotton fields and the meat processing industry in Kazakhstan.

Despite the taken measures, the state still does not fully comply with the minimum standards for anti-trafficking in human beings, has not taken appropriate measures to identify and assist foreign victims of trafficking or victims of labor exploitation, did not provide resolute prosecution and criminal responsibility for employees of state bodies [1].

Especially disturbing is the following data: since the criminalization of human trafficking in Kazakhstan there were registered only 150 crimes under Art. 128 of the Penal code (including in 2000 – 1, 2001 – 4, 2002 – 0, 2003 – 1, 2004 – 2, 2005 – 7, 2006 – 20, in 2007 – 14, in 2008 – 15, 2009 – 20, 2010 – 22, in 2011 – 25, in 2012 – 19), of which 47.9% criminal cases were terminated for various reasons [2].

Furthermore, the analysis of the investigative practices shows that the detection of human trafficking in the Republic of Kazakhstan is related to a number of challenges, which include: the undeveloped legal framework, insufficient inter-agency cooperation at the national and international levels, inadequate funding of law enforcement agencies for combating trafficking in human beings and the lack of proposals for improving activities to combat these crimes.

Also has an effect the practice of creating favorable statistics, when law enforcement officials tend to provide quantitative indicators, not the quality of work and are afraid to make mistakes.

This problem is so urgent that it draws attention of the main law enforcement agency of the country. Thus, according to the information of the Investigative Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan «Status of the investigation by Internal Affairs Agencies of criminal cases related to human trafficking in 2011», the quality of investigation of criminal cases in this category remains unsatisfactory, as it permits their unjustified termination and suspension [3].

In this regard, there is a need to develop a comprehensive technique of revealing and investigation of crimes related to human trafficking, because the successful disclosure of any crime, including human trafficking, largely depends on the prompt, full and accurate identification and record of the tracks, material objects and circumstances generated by the criminal deed and also the analysis of the obtained information about the perpetrators of the act in question or the persons potentially capable of committing it. The qualified clarification of the nature and details of the criminal deed, based on a thorough study of its circumstances

significantly simplifies the establishment and identification of the culprits.

The important role in the timely, fast and complete fixation of the circumstances of the detected trafficking and its traces should play the preliminary investigation bodies of the Ministry of Internal Affairs of the Republic of Kazakhstan, directly involved in the investigation of the crimes.

In December 2012, we conducted a survey of the law enforcement officers of the East Kazakhstan, West Kazakhstan, Karaganda and Pavlodar regions. In the questionnaire there were involved 150 respondents – investigators and operatives. Over 95% of them indicated the need for a separate method of detection and investigation of the foregoing offenses.

The findings suggest that the law enforcement agencies, due to objective and subjective factors, do not conduct a qualified work on revealing and investigation of crimes related to human trafficking, which significantly reduces the effectiveness of the investigation of the latter. In addition, for a more successful operation in cases of human trafficking the interrogators and investigators of the Kazakhstan IAA require scientifically based recommendations on organization of this type of crime investigation, which can only be provided by a new and effective separate criminalistics technique.

However, an independent separate investigation methodology in human trafficking has not yet been developed.

Existing guidelines for the investigation of human trafficking, developed by the General Prosecutor of the Republic of Kazakhstan [4] and the Ministry of Internal Affairs of the Republic of Kazakhstan [5], of course, help the practitioners in detection and investigation of these crimes, but are mainly dedicated to qualification and prevention of trafficking in humans and therefore are, in our opinion, not complete and effective.

Questions of methodology of investigation of crimes under Art.128 of the Penal code of the Republic of Kazakhstan were not explored in Kazakhstan, but they were considered by foreign scientists: Farka Ina [6], Klueber Sherilyn Ann [7], Louise I. Shelley [8], Sally W. Stoecker [9], S.G. Smirnov [10], R.R. Fakhrutdinov [11], V.V. Pyaskovsky [12], M.P. Shrub [13].

However, they considered features of investigation of these crimes, having regard to the national legislations of designated States. It should be said that the legal construction of Art.128 of the Penal code of the Republic of Kazakhstan «Human Trafficking», differs significantly

from the laws of most foreign countries, which in turn requires the methods of investigation of human trafficking in Kazakhstan.

MATERIALS AND METHODS

In the methodological basis of the study lies the system of common, separate and special methodological principles, approaches and methods of scientific cognition, applicable either separately or in combination with each other. In particular, there have been used such methods as dialectical, historical, comparative analysis, simulation, statistical and systematic-structural, action and situational approaches to the study of the processes and phenomena.

RESULTS AND DISCUSSION

The authors in the course of theoretical and practical study of the problems encountering in the detection and investigation of human trafficking, taking into account the available criminalistics advice and features of the national legislation of the Republic of Kazakhstan, have developed a separate criminalistics investigation methodology in human trafficking highlighting the following key elements:

The concept, structure and content of the criminalistic characteristics of human trafficking and the content of the criminalistic characteristics of trafficking includes:

- Characteristics of the source of information;
- Description of the environment of the crime;
- Information on methods of commitment and concealing the crime;
- Data on the mechanism of committing human trafficking;
- Information about the typical personal characteristics of victims;
- Information about the typical personality characteristics of offenders;
- General data on the most common motives of the crime;
- Circle of the essential facts to be ascertained.

Circumstances to be clarified should be specified in terms of the essential facts, to be proved in the criminal proceeding, by elements grouped under the criminal law on human trafficking:

- The basic facts related to the object of abuse (on what is directed the assault, to what is caused the damage, its size, etc.);
- The main facts related to the objective side of the assault (where, when, how, the actions of one person or several persons, the role of each, under what circumstances, what are the consequences, the damage, the causal connection between the act and the consequences, the circumstances that contributed to the crime, etc.);
- The basic facts relating to the subject of the abuse (who committed the assault: data describing his personality, if a group of people is involved, then who they are and what is the role of each of them and so on);
- The basic facts relating to the subjective side of the abuse (guilt, its form, motive and purpose – when intentional guilt).

Typical investigative situations, the nomination of versions and planning of investigations, while the general typical investigative situations developing on the initial stage of the investigation of trafficking are:

- At the time of initiation of the criminal proceeding there is evidence about the victim (victims) of human trafficking, as well as about its perpetrators. This situation, in turn, can be divided in the following two: the victim of the crime is known, the suspect of committing the crime is identified and taken into custody; the victim of human trafficking is known, but the person subject to criminal responsibility escaped from the investigating authorities or is located outside the Republic of Kazakhstan;
- At the moment of initiation of the criminal proceeding there is evidence about the victim of the crime, but there is no evidence on the person (s) who committed it. Given investigative situation also can be divided into: information about the victim of the crime under Art.128 of the Penal code is available, but information on the suspect (s) is completely absent; the victim of the crime is known, but he (she) deliberately hides information about the persons who committed it, due to one or another subjective reason (for example, because of fright, or fear that certain personal details of the crime will be known to the public);

- At the stage of institution of the criminal proceedings the investigator has information about the person (s), suspect (s) in the commission of human trafficking, but the data on the victims of the preliminary investigation is not available (This is usual in cases where the original information about the crime comes from the body of inquiry, obtained as a result of the search operations).

The typical general and specific versions nominated at the initial stage of the investigation of human trafficking, are based on data about the place, time, method, object and mechanism of the crime and the criminal's personality.

Features of the tactics of separate investigation actions, as such investigative actions as inspection of the scene, examination of the victim and the suspect, the execution of search and seizure, the appointment and carrying out various examinations cause the greatest difficulties with practitioners.

Resistance to the investigation and ways to overcome it when investigating the human trafficking. The subjects of resistance to the investigation of trafficking are subject to criminal proceedings; subjects to the crime investigation; persons, not directly related to the investigation.

The forms of counteraction to investigation of this category are classified as:

- The pressure on the sources and carriers of verbal information, which is divided into psychological (persuasion, bribery, threats, blackmail, compromise, provocation, destruction of property) and physical (murder, beatings, torture, illegal detention, kidnapping);
- The influence on the sources of information and data carriers (destruction, staging, fabrication, hiding (masking), distortion);
- The pressure on the investigation process as a whole (illegal instructions from bodies supervising the inquiry and investigation, falsified legal documents and their loss (destruction), the adoption of «pleasing» decisions, delaying the timing of decisions, non-execution of decisions).

The international cooperation of the preliminary investigation agencies of the Republic of Kazakhstan with the law enforcement agencies of foreign states in the detection and investigation of human trafficking;

Interaction between states in the provision of legal assistance in criminal matters, including human trafficking,

is done through: a partial transfer of competence; a joint investigation in criminal cases (participation of a representative of a foreign state in executing the request, joint investigative team).

Forms of such international cooperation in the investigation of human trafficking are:

- Supply and execution of a request for legal assistance in the interrogation, search, examination of witnesses, forensics and other procedures under the Criminal Procedure Code of the Republic of Kazakhstan;
- Request a law enforcement agency to another, concerning the availability of evidentiary facts or other related issues, prior to submitting a formal written request;
- Submission and compliance with the request of one law enforcement agency to another to provide such operational assistance as surveillance, interception, detention etc.;
- Creation of joint investigative teams among the States concerned;
- Criminal prosecution;
- Extradition, i.e. delivery of a person for criminal prosecution.

CONCLUSION

Thus, application of the results of research conducted by the authors in the theory and practice of the criminalistics science will solve such complex problems of the final section of criminology – the methods of investigation of crimes as determination of the structure of criminalistics characteristics of the crimes, the forms of cooperation between the law enforcement agencies, the establishment of the organizational phases of the crime investigation and situational criminalistics guidelines and also will increase the efficiency of the combat against human trafficking in the Republic of Kazakhstan and will allow the operational investigative units of the Kazakhstan IAA improve the effectiveness of prevention, detection and investigation of these criminal deeds.

REFERENCES

1. 2012 Trafficking in Persons Report, prepared by U.S. Government Office to Monitor and Combat Trafficking in Persons. [http:// russian.kazakhstan.usembassy.gov](http://russian.kazakhstan.usembassy.gov).

2. Information on registered crimes under Art. 128 of the Penal code in the Republic of Kazakhstan for the period from 2000 to 2012. <http://service.pravstat.kz/portal/page/portal/POPageGroup/Services/Pravstat>.
3. Archives of the Internal Affairs Department of the Pavlodar Region, 2011. Information on the investigations of criminal cases related to Human Trafficking by the Internal Affairs Agencies.
4. Guidelines «Methods for detection, suppression and investigation of crimes related to trafficking in persons». 2004. Astana: the General Prosecutor's Office, pp: 21.
5. Guidelines «On prevention, detection, preclusion and solution of crimes of trafficking in persons». 2009. Astana: MIA RK, pp: 85.
6. Farka, Ina, 2009. Enhancing the prosecution of trafficking in persons from a country of origin perspective the case of Albania S.J.D. The American University, pp: 206.
7. Klueber, Sherilyn Ann, 2003. Trafficking in human beings: Law enforcement response. M.S. University of Louisville, pp: 83.
8. Louise, I. Shelley, 2010. Human Trafficking: A Global Perspective. Cambridge: «University Press», pp: 342.
9. Sally, W. Stoecker, 2010. Human Traffic And Transnational Crime: Eurasian And American Perspectives. Oxford: «Rowman& Littlefield», pp: 161.
10. Smirnov, S.G., 2008. Methods of investigation of human trafficking: abstract of a thesis... Candidate of LawSciences. Moscow, pp: 29.
11. Fahrutdinov, R.R., 2011. Methods of investigation of human trafficking: abstract of a thesis ...Candidate of LawSciences. Chelyabinsk, pp: 26.
12. Pyaskovsky, V.V., 2004. Methods of investigation of human trafficking: abstract of a thesis ...Candidate of LawSciences. Kiev, pp: 20.
13. Shrub, M.P., 2006. Theoretical and applied aspects of the investigation of crimes in human trafficking for sexual exploitation: abstract of a thesis ...Candidate of LawSciences. Minsk, pp: 22.