

Current Challenges Of International Cooperation In The Area Of Human Trafficking Countering

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Abstract

Paper presents research of the most topical issues of international cooperation in the area of transnational human trafficking countering with a set of proposals regarding possible solutions. First task is to establish the forms of criminal actions covered by the «human trafficking» definition in compliance with international agreements and domestic legislation of certain states. Authors created a list of these forms: exploitation of prostitution and forms of sexual exploitation; child trafficking; forced labour (slavery and slave traffic); involuntary disappearance; distribution of pornography; torturing; deprivation of freedom (captivity); sale of human fetuses and embryos; organ harvesting; illegal migration.

Second issue under study is the implementation of international cooperation in the area of transnational human trafficking. It is stressed that such aspects as interaction of states, its authorized competent bodies, international organizations in the area of information exchange, joint investigations, designing new methods of crime detection, investigation and prevention are of the utmost importance.

Keywords: *international cooperation, human trafficking, transnational crime, detection, investigation, prevention, international agreement.*

I. INTRODUCTION

Trafficking in human beings is a transnational crime and importance of its countering has been recognized at the global level. In 2009, according to UN statistics, 12 million people all around the world were enslaved; in 2017 this figure has already reached 27-30 million people, overreaching the horrifying 40 million in 2018. Still, experts from different states consider even all this data to be just the tip of the iceberg - over 200 million people are estimated to be victims of modern-day slavery. Women and children are more likely to become the victims of this crime, approximately 75-80% of the slave trade victims are exploited in the sex industry. UN Children's Fund – UNICEF – operates

with more catastrophic statistics – according to their data over 215 million children are enslaved globally; more than half of them are involved in different pestilent activities (sexual slavery, participation in hostilities etc) [1].

The fight against human trafficking is a priority for the whole global community, and with aim to effectively accomplish the related tasks states and its authorized competent bodies, international organizations apply systematic measures of international cooperation. However, certain problems emerge in this process – first one is related to the definition and characterisation of criminal activities covered by the concept of «human trafficking» under international treaties and national law. The next challenge is to ensure the effective implementation of international cooperation in human trafficking combating. Let us consider these problems in more detail.

II. LITERATURE REVIEW

Problems of international cooperation in the area of human trafficking countering have always been in focus of researchers and practitioners attention, including Ukrainian scholars.

It is worth mentioning the research carried out by O. Sviatun, outlining the European mechanisms of human trafficking countering (2005) [2].

V. Piaskovskyi presented the actual methodology of human trafficking investigation in his thesis (2004) [3]; V. Philashkin – issues related to forensic support provided in the course of human trafficking investigation and international cooperation in this area [4].

Instructional guide prepared by O. Horbunova, K. Levchenko, B. Lyzohub, A. Orleans etc contains practical recommendations on human trafficking prevention (2001) [5].

The abovementioned and other works of researchers are used a background for our study aimed at analysis of current challenges of international cooperation of human trafficking countering and formulation possible solutions.

III. METHODOLOGY

The aim is to study the current challenges of international cooperation in human trafficking combating and to formulate adequate solutions. Achievement of this goal requires performance of the following tasks: characterise trafficking in human beings as a transnational crime; characterise the current problems of international cooperation in human trafficking combating and offer solutions.

In this study researchers applied general scientific and special methods, which are the means of scientific search. In particular, special legal methods: comparative-legal - during the analysis of substantive and procedural law provisions in international and national legislation of Ukraine and other states, scientific categories, definitions and approaches; historical-legal - an opportunity to reveal the meaning of the concepts of «human trafficking», «international cooperation», to highlight the evolution of scientific views concerning specific issues; systemic analysis - comprehensive summary of proposals to improve international cooperation in the area of human trafficking combating.

IV. RESULTS

Trafficking in human beings is a transnational crime. The term «transnational crime» has become a part of the conceptual framework in the area of crime combating and is used widely in law enforcement sector. Transnational crime poses a particular danger to the public, places international and national justice system under considerable threat.

At a global scale countries involved in transnational human trafficking can be divided into three groups: countries that supply «human commodity» to world markets; countries used to organize the transit of «human commodity»; countries of destination where people are actually exported. For example, the post-Soviet countries are known as the «top-exporters» of women to the global sex business markets. The main suppliers of «human commodity» are Belarus, Moldova, Russia, and Ukraine. At the same time these countries are located within the transit routes used by residents of Asian countries attempting to reach Western Europe. The «top-importers» of women as «human

commodity» are Turkey, Greece, Cyprus, Italy, Spain, Hungary, Czech Republic, Croatia, Germany, United Arab Emirates, PRC et al. [5, p. 18].

In order to ensure effective countering of this dirty «business» United Nations Convention against Transnational Organized Crime was adopted by General Assembly in 2000 [6] with 128 states-signatories which proves the recognition of this problem by UN member states and their commitment to expand international cooperation in the area of human trafficking countering and create a legal background to support the joint efforts [7].

According to United Nations Convention against Transnational Organized Crime (2000) human trafficking is considered to be a «serious crime» of transnational character (Article 3 (1(b)) if: a) an offense which is committed in more than one State, b) committed only in one State but substantially prepared, planned, directed or controlled in another, c) committed in one State with the involvement of an organized criminal group that engages in criminal activities in multiple States, d) committed in one State but substantially affecting another [6].

«Human trafficking» term is expanded in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also referred to as the Trafficking Protocol or UN TIP Protocol) to the United Nations Convention against Transnational Organized Crime (2000) [8]. Definition «Trafficking in persons» covers a relatively wide scope of offences related to human trafficking, but this list cannot be deemed as exhaustive. Also ways of committing offence related to human trafficking are constantly changing – it requires legislation to be amended and practical activity to be improved.

It must be noted that human trafficking is a grave violation of human rights and freedoms, declared by international treaties and other documents – the Universal Declaration of Human Rights (1948), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), International Covenant on Civil and Political Rights (1966), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). Right to freedom and personal inviolability is violated along with prohibition to use violence and exploit people in any form.

Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [9] states that «no one shall be held in slavery or servitude» (Article 4 (1)).

The term «slavery», according to Convention to Suppress the Slave Trade and Slavery or Slavery Convention (the Slavery Convention) adopted in 1926, is understood as «slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised» [10].

Prohibition of slavery and slave trade is enshrined in International Covenant on Civil and Political Rights (1966): «no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited» (Article 8) [11].

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) defines that «no one will be subject to torture or other cruel, inhuman or degrading treatment or punishment» (Article 3) [12].

Therefore, taking into account the results of the study, we state that criminal activity related to human trafficking exists in various forms. It is practically impossible to form an exhaustive list but modern scholars distinguish the following – widespread – categories:

1. Human trafficking, especially women and children with intention to exploit them sexually, including:

- «public prostitution»;
- prostitution in locations with active hostilities and troop disposition site;
- sex tourism;
- pornographic materials manufacturing (especially if children are involved).

2. Human trafficking with aim of further exploitation:

- in «sweaty» industry (toys and apparel manufacturing, in hazardous and severe environment, in conveyor mode, in intense labour conditions);
- in clandestine workshops and facilities during the counterfeit product manufacturing;
- in households (home slavery);
- in service provision sector and loading operations, fishery (capture and processing);
- in construction industry, timber harvesting, in public utility area (e.g. exploitation at waste

landfills);

– in agricultural sector.

3. Marriages aimed at exploitation of wife for:

– involvement in household works;

– forced pregnancy and childbirth;

– support and care for disabled/sick/elderly relatives, minors [13, p. 4-5].

To some extent the mechanism of human trafficking can be used to force women to become surrogate mothers, forced transplantation of organs and tissues, to support the unlawful adoption. In addition, globally another mechanism is applied to trade humans for exploitation in military formations, use of soldiers and prisoners for forced labour, etc. That is, human trafficking has a variety of manifestations and purposes and can be functionally linked to other criminal activity mechanisms [13, p. 5].

According to international legislation, the following offences, covered by the «human trafficking» term, may be presented (comprising a legal foundation for international cooperation (states and its competent authorities):

1. Exploitation of prostitution and other forms of sexual exploitation

International illegality, basic framework of human trafficking countering and certain means/tools of international cooperation are regulated by: Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (1997), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), Council of Europe Convention on Action against Trafficking in Human Beings (2005).

2. Child trafficking

Countering framework is additionally regulated by: Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally (1986), Convention on the Rights of the Child (1989).

3. Forced labour (slavery and slave trade)

Convention to Suppress the Slave Trade and Slavery or Slavery Convention (1926), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Council of Europe Convention on Action against Trafficking in Human Beings (2005).

4. Involuntary disappearance

UN Declaration on the Protection of all Persons from Enforced Disappearance (1992).

5. Distribution of pornography

International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (1923), Council of Europe Committee of Ministers Recommendation No. R(91) 11 to Member States Concerning Sexual Exploitation, Pornography and Prostitution of, and Trafficking in, Children and Young Adults (1991).

6. Torturing

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

7. Deprivation of freedom (captivity)

The Rome Statute of the International Criminal Court (1998), Council of Europe Convention on Action against Trafficking in Human Beings (2005).

8. Sale of human fetuses and embryos

Council of Europe, Parliamentary Assembly Recommendation 1046 (1986) (1) on the use of human embryos and fetuses for diagnostic, therapeutic, scientific, industrial and commercial purposes.

9. Organ harvesting

Council of Europe Convention on Action against Trafficking in Human Beings (2005).

10. Illegal migration

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) et al.

Having analyzed international documents presented above, we claim that this list is, unfortunately, not exhaustive concerning the interpretation of «human trafficking» term and specificity of criminal actions covered by it, but only reflects the current state of transnational human trafficking, coordinates relevant efforts of states and its competent authorities.

V. CONCLUSIONS

Therefore, it is impossible to tackle transnational human trafficking without international cooperation between states, its competent authorities, international organizations.

Aspects of international cooperation have gained extra importance today in the process of investigating human trafficking and other transnational crimes as without it collection of evidence, kept abroad, would be impossible just like other actions – arrange the criminal proceeding, ensure full protection of human rights and fundamental freedoms in criminal justice, reimburse the damage inflicted by criminals etc [14, p.275].

According to scientific publications (Cherniavskiy, Holovkin, Chornous, Bodnar, Zhuk, 2019 [15]), international cooperation in the area of human trafficking is carried out in certain directions, levels and formats.

In particular, the following sectors of international cooperation in the area of human trafficking are to be outlined:

1) establishment of international unlawfulness of human trafficking in various forms and consolidation of states' commitments to establish relevant prosecution;

2) the formulation of international standards on observance of human rights and freedoms within the prosecution of persons involved in human trafficking; the formation and observance of the rights and freedoms of human trafficking victims;

3) concluding international treaties on implementation of international cooperation measures in the area of human trafficking combating;

4) detection, investigation and prevention of crimes in the area of human trafficking;

5) joint research activities (problems of human trafficking combating) [15].

The levels of trafficking are defined respectively:

1) cooperation at regional level. This is the level of bilateral cooperation – interaction between states, interaction between states and its competent authorities, diplomatic missions, consular offices and other entities. There is a number of NGOs working at this level to support the human trafficking combat. In Ukraine, for example, this task is successfully solved by Women's Information and Advisory Center, the All-Ukrainian Network Against Commercial Sexual Exploitation of Children, and others[16].

2) cooperation at regional level between states upon condition of its consolidation on geographical basis (the European Union, the Council of Europe) or within the framework of regional organizations' mandates (e.g. OSCE).

3) cooperation at the global level - stipulates involvement of the vast majority of countries in human trafficking combating, assisted by relevant international organizations [15], in particular the United Nations and its specialized agencies, including the United Nations Children's Fund - UNICEF, the International Organization for Migration (IOM), the International Labor Organization (ILO), the International Criminal Police Organization (Interpol) and others. International civic organizations perform important tasks to support the fight against human trafficking. In particular, we are talking about the International Women's Rights Center «La Strada».

In order to resolve the practical tasks of detection, investigation, prevention of transnational human trafficking it is important to focus on interaction of state authorities and law enforcement, civil organizations. The abovementioned activity will be much more effective if the following recommendations are considered:

1. Creation and storage of information in data banks and systems to accelerate the process of detection, investigation and prevention of crimes related to human trafficking considerably;

2. Ensuring operative information exchange in this area between competent subjects at

national (local), regional, international level;

3. Implementation of bi-/multilateral exchange practice between law enforcement agencies from different states;

4. Design, planning and organization of joint events with aim to detect and block the channels of women/children trafficking; legal assistance provision;

5. Detection, termination and investigation of any incidents/cases (both at national and international levels) related to human trafficking, other organized crime forms (drugs and narcotic substances trade, corruption-related crimes, smuggling etc). it must be noted that currently more and more offences are committed with active use of cyberspace and CT which has already been stressed in publications [17].

Undoubtedly, the problem of human trafficking combating has already reached a new level, and international cooperation between law enforcement agencies of different jurisdictions plays an increasingly important role in developing new methods of combating this type of crime.

During the process of human trafficking detection, investigation, prevention the interaction of law enforcement agencies is mainly carried out in the procedural form, clearly regulated by the criminal procedure legislation. The peculiarity of procedural interaction is the ability to collect evidence. Establishing joint investigative teams itself is an effective form of procedural interaction applied within human trafficking investigation.

We can outline the following grounds justifying the establishment of joint investigative teams working with transnational human trafficking cases:

- investigation of crimes committed within the active human trafficking channel (simultaneous operative-search measures for due recording of continuous criminal activity performed within the mentioned channel);

- investigation of criminal activity performed within the framework of multilevel regional, transnational and structurally organized human trafficking channels;

- investigation of crimes with numerous victims and accused subjects [18, p.155];

- investigation of crimes if victims, suspects, accused subjects, witnesses hold multiple citizenship and other circumstances are identified, justifying the need to collect evidence within the territory of several states.

According to Article 19 of UN Convention against Transnational Organized Crime (2000), States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies [6].

According to Article 20 (1-2) of the Second Additional Protocol (2001) to the European Convention on Mutual Assistance in Criminal Matters (1959), a joint investigation team may, in particular, be set up where: a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties; b a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved. A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out [19].

Establishment and activities performed by international joint investigation teams is a progressive step by the international community towards international crime countering and implementation of international cooperation framework. Under such conditions, the interaction of representatives of foreign competent authorities is considerably facilitated (especially if states are distant). Work of international joint investigative teams is carried out in concerted manner - interaction between the states' competent authorities, separate divisions and employees: investigators, operatives, experts, prosecutors performing the tasks [20, p. 36-40].

Joint operative developments and investigations, widely implemented by law enforcement agencies to combat human trafficking, are also launched with a view to completely block the channel of international traffic and hold all members of a transnational organized crime group liable.

With the variety of non-procedural interaction formats, taking into account the specific nature of criminal proceedings on human trafficking, the most important areas should be identified as the following:

1) advisory support to employees, mutual exchange of bulletins and profiles, reference information;

2) using the assistance of NGO staff to establish psychological contacts with victims who are not inclined to cooperate with the law enforcement agencies in establishing the relevant circumstances of the crime, eliminating the effects of stress, psychological and social rehabilitation of victims;

3) use of non-governmental organizations to provide temporary accommodation, food, and legal protection for victims of human trafficking outside Ukraine;

4) advising the investigator on specific issues of migration, registration, visa obtaining procedure, removal, storage and transportation of transplants (persons with expertise in this area) [18, p.160].

Contribution of international law enforcement organizations, namely Interpol, is of utmost importance for the coordination of efforts in the process of (including human trafficking) combat. Interpol coordinates the interaction of domestic law enforcement agencies in the area of transnational crime countering with special focus human trafficking issues.

Interpol ensures the cooperation of state law enforcement agencies and provides opportunities for: preparation and forwarding of initiated requests abroad; preparation and forwarding of relevant responses to requests from foreign law enforcement agencies; exchange of operative-search, reference and forensic information on preparation and commission of crimes along with data on persons involved (in some cases – archives and procedural information); exchange of operative experience, legislative and other normative acts, educational and methodological publications on law enforcement activities; exchange of scientific, technical and other information related to crime countering [21].

In transnational human trafficking cases Interpol's assistance provides extraordinary results. Interpol's capacity can be used to identify and verify the identity profiles with police records in foreign countries. It is important that Interpol is a subject of international search – it facilitates the identification of persons and other objects in human trafficking proceedings.

We can facilitate the effectiveness of international cooperation in combating of human trafficking with development and subsequent implementation of specially designed international programs, aimed to cover the concerted efforts of states, its competent authorities including the law enforcement, international organizations for the purpose of joining efforts in crime detection, investigation and prevention.

These measures are intended to decrease the scope of human trafficking and related activities by directly affecting (reducing) the risk groups, improving the effectiveness of the perpetrators' detection, formulating solutions for problems connected with the reintegration of human trafficking victims. It is important to ensure cooperation with civil and international organizations involved in human trafficking countering activities. It is necessary to use international experience for human trafficking prevention and tackling, protection of victims' rights, search for missing people abroad and their successful return and rehabilitation.

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