

**“CRIMINOLOGICAL AND SOCIOLOGICAL ASPECTS OF HUMAN
TRAFFICKING DEVOTED ACTUAL ISSUES OF CONTEMPORARY WORLD”**

Background

Analysis of the current status, structure and dynamics of transnational organized crime confirms that this category of criminal activity is growing, transforming and progressing dramatically, penetrating into all spheres of social life.

Export and exploitation of illegal migrants has become a global business bringing enormous revenues to organized criminal syndicates. Annual global revenues in this criminal sector constitute 5 to 7 billion dollars, reaching as high as 9.5 billions in some years¹. A growing number of criminal communities are shifting from drug trade to the transportation and trade in persons, attracted by high profits at low costs and minimized risk of being punished². As a rule, human exploitation is long-term by nature, and unlike drug business, it does not require constant preparation, processing and selling of the initial product. In addition, many industrially developed states have rather liberal legislations and do not pursue harsh policy against criminal business in the fields of sex and porno industries, since such activity indirectly fosters development of many fields of economy, promotes growth of tourism and consequently increases tax revenues of the state. In their turn, poor states fail to provide appropriate living conditions to their citizens and to control demographic processes related to massive migration for different economic and social reasons, which leads to the saturation of the modern market with slaves, and fosters a balanced demand and supply of the ‘live commodity’.

In view of the above, human trafficking has become the most widespread, dynamic, high-profit and actually safe kind of transnational criminal activities worldwide.

Concept and definitions

At the international level, there are different definitions of trafficking as ‘human smuggling’ or ‘trade in persons’³. However, despite the difference in details, specialists agree that this phenomenon includes two essential elements: recruiting and movement of people and their criminal exploitation (either already existing or potentially possible). This link

¹ See: Widgeon J. Multilateral Co-operation to Combat Trafficking in Migrants and the Role of International Organization. Paper presented at the 11th IOM Seminar on International Response to Trafficking in Migrants and the Migration and Organized Crime // Trends in Organized Crime. 1996. Vol. 2, N.2, p. 58. Safeguarding of Migrant Rights. Geneva. 1994. Oct., p. 5-6; US migration: passport smugglers earn billions for their wares. Inter press Service English News Wire. New York. Dec. 16. 1996;

² See; Smith P. Chinese migrant trafficking; a global challenge // Human Smuggling: Chinese Migrant Trafficking and the Challenge to America’s Immigrant Tradition. Washington: Center for Strategic and International Studies. 1997. Stocker S. Organized Crime as A Growth Factor for Cases of Trade in Persons // Organized Crime and Corruption. #1. 2000. p. 58;

³ See: Trafficking in Human Beings: Implications for the OSCE, ODIHR Background Paper. 1999/3.

between the transportation of migrants and the purpose of this transportation is the key aspect differentiating between the concepts of 'human smuggling' and their 'illicit migration' across the borders of independent states, which permits to view smuggling as 'a form of modern-day slavery'⁴.

The transnational criminal exploitation of persons requires a number of preliminary steps to be made. These are the following steps:

1. Recruiting of selected victims;
2. Transportation, i.e. delivery to the destination site with the purpose of further exploitation;
3. Placing in relevant infrastructure enabling the exploitation.

These elements underlie different definitions the Hague Declaration⁵ International Organization for Migration (IOM)⁶, in the Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, the UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime⁷.

A definition of 'illegal transportation' was included in the text of the Protocol, including an exhaustive list of stages and methods required for the criminal exploitation of persons, namely: 'recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of abduction, of force, of fraud or coercion, or of the giving or receiving of illegal payments or benefits to achieve the consent of a person having control over another person, for the purpose of any form of exploitation'⁸.

Based on the above instruments, the UN Convention against Transnational Organized Crime was developed, giving a broad definition of 'trafficking in persons'. In compliance with the Convention, trafficking is:

- a) The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) The consent of a victim of trafficking in persons to the intended exploitation set

⁴ See: Trafficking in Human Beings: Implications for the OSCE, ODIHR Background Paper. 1999/3.

⁵ See: The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation. April 24-26 1997.

⁶ See e.g.: Trafficking of Migrants. IOM Policy and Responses. March. 1999. p. 4-5;

⁷ See: Revised Draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, supplementing the UN Convention against Transnational Organized Crime. 7th Session. Vienna. 17-28 Jan 2000.

⁸ Ibid. Article 2, paragraph 2.

forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) ‘Child’ shall mean any person under eighteen years of age⁹.

It should be noted that the developers of the Convention tried to create a universal definition and to embrace in its all possible kinds of transnational exploitation of persons. However even the most comprehensive definition of trafficking cannot fully reveal all major features and specifics of this complex phenomenon, and needs an in-depth analysis and systematization of its major components. Only a system block of ‘definition – structure – classification’ would provide tools to prevent and combat trafficking in persons.

Let us view major types and stage of the transnational criminal trade and exploitation of persons with the purpose of their classification by their qualitative and quantitative indicators.

Classification

There are three major stages of trafficking:

1. Recruitment of a victim;
2. Transit (transportation across international borders)
3. Exploitation (illegal use of person’s physical resources for receiving a gain).

The following categories of criminals are involved in this activity:

1. Recruiter – a person who recruits the victims;
2. Agent – a person transporting the victim across state borders;
3. Exploiter – a person illegally using victim’s physical resources;
4. Broker – a person providing links between the recruiters, agents and exploiters;
5. Accessory – a person offering necessary services at different stages of trafficking, e.g. guarding, document forgery, etc.
6. Promoter – a person providing ‘patronage’ from administrative and law enforcement agencies.

I. The first stage of trafficking is recruitment and transportation of a victim with the purpose of his/her further exploitation or resale for the same purposes.

Recruitment is one of the most important stages of the trade in persons. There are different ways of recruiting that can be grouped by specific differentiating criteria.

For instance, classification of the types of trafficking by means of trafficking testifies that criminal exploitation may or may not imply selling/buying of human beings. A usual scheme of trafficking suggests that people are bought for criminal exploitation from brokers through transactions involving sale, gift, debt bondage, etc. In other cases trafficking may be realized by other means not related to the actual trade in persons, i.e. through abduction, capture, and other acts of violence.

The most frequent way of trafficking not associated with human trade (i.e. recruiting) is

⁹ Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, supplementing the UN Convention against Transnational Organized Crime.

deception and other fraudulent practices.

Potential victims are approached through the use of mass media, different announcements about jobs available abroad, advertisements of marriage agencies, etc, as well as through victim's acquaintances who act as recruiters. The deception methods do not imply either compulsion or intimidation of the victims; instead, they suggest voluntarily engagement of the victim through misinformation or malpractice.

In the same time, forced engagement, i.e. victim abduction or capture for further exploitation, is mostly used in regions with a complex political and military situation and in areas of armed conflicts.

Types of trafficking can be also grouped by purpose:

- Trafficking with the purpose of further sale;
- Trafficking with the purpose of actual exploitation.

The most frequent recruiters and/or brokers are personnel of firms dealing with tourist business and employment as well as marriage and model agencies, etc. They specialize in recruiting or deceiving people into their networks, and then sell them abroad receiving a profit.

The recruiters usually promise to provide an unimpeded entry to the destination country: to give some advance payment to pay for air tickets, to arrange necessary travel documents, etc. Often bonding contracts for well-paying jobs abroad are signed with the victims. These contracts do not show what type of work it would be; instead, they usually indicate high fees that have to be paid to the firm for the provided services immediately after the victim starts to work.

As seen from the practice, verbal guarantees of such firms and contracts signed with them usually turn out to be highly bonding or even fictitious. But the victims discover this only after arrival in the destination country when they face the fact of having to work in absolutely different conditions, on different jobs and for lower wages. As seen from the practice, the victims are subjected to harsh exploitation, fines and punishment, and their fundamental human rights and existence conditions are violated. For this reason a lot of women seeking jobs as waitresses, dancers, photo-models, etc 'voluntarily-compulsory' agree to work in sex industry just to get a chance to pay back their debt and regain their freedom.

II. The second stage of trafficking, i.e. transit is carried out after the victim is recruited or captured and has to be delivered to the site of criminal exploitation. There are several types of transportation that can be grouped on the basis of criteria related to:

- the victim's attitude to his/her transportation to a different country;
- means of crossing the border and legality of this transportation.

Transportation of a victim for criminal exploitation may occur both with the victim's consent or against his/her will.

The phenomenon of trafficking lies in the fact that recruiting and transportation of persons usually occur on a volunteer basis and result from mutual agreement, and only in the destination country these people are made subject of violence and exploitation. Moreover, a lot of people, especially young women, are so keen so use any opportunity to get abroad and find a job there that they voluntarily go to other countries and get in the networks of slaveholders. It should be also noted that many victims of trafficking guessed about possible negative

consequences but either airily hoped to escape them or had no other choice.

In its turn, this type of exploitation can be subdivided as follows:

- requiring victim's transportation;
- not requiring victim's transportation.

Criminal exploitation within national borders may be accompanied with the victim's movement from the site of permanent or predominant residence across the administrative borders of this region. An example of such movement is the situation in Abkhazia. Abkhazian gunmen capture people in the Gali region or adjacent areas of Megrelia. These people are then used either as workforce for agricultural works or are resold to other 'owners'. There are known facts of coercion and exploitation of victims for engagement in fights on the side of Abkhazian armed groups. There is a registered fact of 10 people of Turkish nationality being recruited in Turkey to work in the coal mines of Tkvarcheli. These people were illegally transported to Abkhazia where they were exploited as slaves and paid nothing for about a month. A part of the slaves managed to escape and got in the hands of the Georgian border guards, and were later sentenced for illicit border crossing¹⁰.

When speaking about transportation not requiring a change of the place of origin, we mean that the transportation is made within the administrative region where the victim lives. In such cases criminal exploitation is made on the same territory where the victim lives. An example of such exploitation is the use of the victims' labor either in underground shops manufacturing different goods, or as unskilled workers.

As a rule, in such a case the person becomes a victim as a result of a capture. He/she is deprived of his/her freedom as a result of the exploiter's activities, even violence, or brought to the exploitation site by means of deception. This method is mostly used to exploit persons from so-called marginal environment, as they have no realistic opportunity to combat violence, neither a place of permanent residence or friends and relatives who would be concerned with their disappearance. Mass media reports cases when these people were made subject of severe exploitation in different illegal manufactures and for agricultural works.

Due to the unfavorable economic situation in the CIS countries including Georgia, a lot of citizens seek jobs abroad and have increased victimogenity, i.e. increased chances of becoming victims of trafficking and criminal exploitation. As studies show, within their legal frameworks many countries make the legal status of the victims of trafficking equal to that of illegal migrants, i.e. criminalize this social group dealing them as violators of the laws of the host country. However, this practice should be considered inappropriate, because, unlike illegal migrants who consciously and voluntarily move to other countries and violate its laws, victims of trafficking, as a rule, occur in other countries and are exploited there as a result of deception, threats or violence on behalf of organized criminal groups or individuals.

It should be however noted that 'illegal migrants' frequently get in the networks of human traffickers after their failed attempts to cross the border and find a job abroad. They are often unable to pay the sum necessary to cross the border illegally and consequently get under the debt bondage to the traffickers who immediately use their labor for their own interests. Such

¹⁰ The data are obtained from the Department of Border Protection.

migrants are frequently used in criminal activity, such as drug or sex trade¹¹.

III. Upon arrival in the country of destination the victim appears in the hands of the exploiter, i.e. the third stage of trafficking comes – actual criminal exploitation for receiving benefits. This kind of criminal activity can be classified by several qualitative criteria:

- By subject of exploitation
- By methods of coercion to exploitation
- By fields of use of criminal exploitation
- By type of victim's activity.

By subject, criminal exploitation can be subdivided into exploitation of men and exploitation of women.

As compared to women, men are rarer victims of exploitation. E.g. the share of male victims of criminal exploitation in the OSCE member-states constitutes about 2% of the total number of victims¹². Due to the physiological qualities of men they are mostly exploited for physical labor. Both adult men and boys may become victims of exploitation.

As a rule, adult men are used for hard labor. One more field of exploitation is use of men in armed conflicts. Undoubtedly, most of the contracted militaries are volunteers but there are known cases when men recruited in the Ukraine for construction works in the Caucasus region later turned out to be participating in the Karabakh conflict¹³.

Depending on the **method of engaging persons for further criminal exploitation**, the following types may be defined:

- Physical Coercion

In this case a person is subjected to physical violence such as bodily injuries of different severity, beatings, and torture.

Physical coercion may be exercised *with the use of violence and of strong medications and drugs*.

Violence implies use of different forms of negative force against a person and his organism. Here also belong cases when the exploiter either purposefully deprives the victim of bio-energy resources necessary for satisfying vital needs (food, water, medical assistance) or restricts victim's freedom of movement or communications (e.g. confinement indoors). Such restrictions compel the person to act as required from him/her, as he/she is deprived of the opportunity to satisfy basic human needs, and suffers physically.

- Psychological Coercion

Such violence may be used both against the victim itself and against his/her family members, and can take different forms.

Depending on the content of the methods of mental pressure, the following kinds of psychological coercion may be defined:

¹¹ See: Combating and Preventing Trade in Live Commodity and Protection of the Rights of Migrants // Trends in Organized Crime. 1996. Vol. 2. N2. p. 64-67.

¹² See: Trafficking in Human Beings: Implications for the OSCE. Warsaw. 1999. p 11.

¹³ See in more detail: Wild Geese Gathering in Skein // The Trud-7. March 2 2000.

a) Blackmail

Blackmail is a threat to disseminate detractive information about the victim or his/her family members.

It should be however admitted that purely psychological coercion is rather rarely used as there are other ways, more radical and effective.

b) *Threat to use violence*

Psychological influence over a person is defined in the threat to use physical violence. i.e. rendering certain physical damage or death. Such activities do not draw encroachments upon physical personal immunity but are really threatening to violate it. Threats of physical violence can be applied both against a direct victim and in relation to third parties – usually they are members of the families including minors, relatives and others, who are close to the victim.

- Economic coercion

These are the cases when between the victim and an exploiter there is a certain dependence, which has material character. Due to the fact that the victim cannot break or get away from such dependence she is forced to obey the demands and to fulfill them.

Economic coercion can be implemented in the form of *debt trap or other material dependence*.

Debt trap is one of the most common means of coercion. A person can be trapped in such a dependency due to a monetary debt, which is usually created as a result of borrowing money for visas, movements and household expenses in the country of destination and payments to traffickers or can be levied by the exploiter against the will of a person.

- Legal Dependency

Such dependency can be created in connection with concluding marriage, guardianship and relative relationships, which are governed by legal or moral norms existing in the given society.

Depending on a type of legal relations we can separate the following ones:

a) *Legal dependency created in connection with marriage*

b) *Legal dependency as a result of adapting (boy or girl), guardianship*

- Slavery

A separate means of criminal exploitation and its most dangerous type is slavery. In the definition of the Protocol of the UN Convention the slavery is separately dealt with as qualifying character of *trafficking*³⁴.

The cases of slavery are lot on the Caucasus, including in Georgia. Thus, the example of it can be recent liberation of a citizen of Russia who was for many years in slavery of Chechens in the Pankisi Gorge. Thus, slavery represents an extreme level of coercion implemented by the means of combined methods allowing for exploitation of a victim.

- Labor exploitation

In this form of exploitation a person is forced to commit actions directed to manufacturing of certain production or offering certain services. Labor exploitation is possible in different spheres of human activities. The services rendered and goods produced can be made both in the legal sphere and the sphere of the criminal business. Depending on regulation by the law of this sphere in which labor exploitation is taking place, we can define the following

sub-types:

a) Exploitation of legal labor

Depending on the content of the labor performed we can separate the following types:

- Exploitation of physical labor
- Exploitation of intellectual labor

Depending on the content of the application sphere of physical labor of a person we can single out the following:

- Exploitation in the sexual sphere;
- Exploitation of labor in the sphere of household (servants);
- Exploitation of labor in the sphere of industry

Exploitation of labor in the sexual sphere is connected with satisfaction of sexual needs of a person. There are specific types of such type of activity, which are not prohibited by the law, i.e. not subject to persecution. This could be, for example, the work of a dancer in a striptease bar and even work as a prostitute in those countries, where this is not prohibited, and also other types of satisfaction of sexual needs, which are not prohibited by the laws of the countries where such services are offered. A victim with the means of different methods of coercion is forced to do such kind of work and offer such type of services.

Besides, a labor of a person can be used in the sphere of household, which envisages servicing of the need of the exploiter or rendering specific services to other people.

Depending of the fact of whether labor is used in the household sphere for satisfaction of personal needs of an exploiter or for making a profit, we can specify the following types:

- Exploitation of labor in the sphere of household services
- Exploitation of labor in the sphere of communal services

b) Exploitation of labor in the sphere of criminal business

In this type of exploitation human labor is used in the sphere of criminal business, i.e. in such an activity, which violates the legislature and is persecuted by law under the threat of punishment. Sphere of activity for exploitation in the criminal business coincides by its types with the spheres of activities of legal labor. However, they have their specific traits.

Thus, in the sphere of exploitation of physical labor we can separate the following:

- Participation in criminal formations (as a rule, the victims of such kind of exploitation are men who are forced to participate in armed conflicts, in committing terrorist acts or other similar illegal activities. With this physical capacities of victims are used);

- Exploitation of labor in the sexual sphere can take place:

- *in the sphere of pornographic business* (victims are used during manufacturing of pornographic production, for example, often girls who are transported abroad are used during shooting pornographic movies, they are also forced to be photographed in nude)

- *in the sphere of offering sexual services* (exploitation of victims in the sphere of rendering real sexual services, for example, prostitution)

- Exploitation of labor in the sphere of manufacturing of illegal production and rendering illegal services (in this case compulsory human labor is used in manufacturing of different things, goods, which are prohibited in the legal market turnover: these can be different hidden workshops working in production of fake alcoholic drinks, arms, etc.)

- *In the sphere of gathering confidential information, discrediting and eliminating competitors or not favored people* – these are specific services, which are rendered by prostitutes who are used for getting classified information, production of hidden videos of sexual scenes with specific persons with the means of getting discrediting information about them and following blackmailing.

Recommendations:

The concept of the struggle against trafficking in Georgia

Author thinks that is necessary to create a unified Concept, which ideally would include overwhelming list of special measures on prevention and struggle against trafficking:

1. Preparation and adoption of changes and amendments to the Criminal Code of Georgia with comments and related theoretical base;
2. Creation of an adequate statistical basis on *trafficking*;
3. Creation of interagency units for struggle against prostitution and *trafficking*;
4. Organization and implementation of cooperation with the foreign law-enforcement agencies;
5. Organization of material and legislative assistance and rehabilitation of the victims;