

HUMAN TRAFFICKING: OFFENDER'S CRIMINOLOGICAL CHARACTERISTIC ELEMENTS

Hrankina Valentyna¹,

Barhan Serhii²

Annotation. The purpose of the article is to highlight one of the pressing issues of modern world and Ukraine, particularly at the time of Russian Federation's military aggression - human trafficking, and to identify criminological characteristic elements of individuals committing that criminal offense. Human trafficking in national legal acts is considered to be an illegal transaction involving a person, as well as recruitment, transportation, harboring, transferring or obtaining a person, committed with the intent to exploit, including sexual exploitation, by means of deception, fraud, blackmailing, or taking advantage of a person's vulnerable condition or by threatening or using violence, by taking advantage of official position or financial or other kind of dependence upon another person, which, according to the Criminal Code of Ukraine, are recognized as criminal offenses. We emphasize the importance of studying the state of this issue at the national and international levels.

Human trafficking in Ukraine remains a pressing issue, as 46,000 Ukrainians suffered from human trafficking in 2019–2021. In light of the migration processes triggered by Russian Federation's armed aggression, the number of victims of human trafficking is increasing significantly, as reported not only in a number of foreign media, but also in the reports of OSCE representatives [1]. Within the first five months of the full-scale invasion of Ukraine alone, 3 million Ukrainians were forced to emigrate abroad, and 1.9 million people were displaced within the country. Such conditions made it possible to examine the factors behind the victimization of a "human commodity."

In studying problematic aspects of human trafficking phenomena, in our opinion, one of the main objects of study should be the person who committed the criminal offense (the offender). Using statistical data and court practice analysis of prosecuting persons for human trafficking, we pay significant attention to classifying offender's personality. Following the study, author attempts to identify the main features inherent in trafficker's personality and provides

¹ **Hrankina Valentyna**, Lecturer, Department of Criminal Law Disciplines, Faculty 2, Kryvyi Rih Educational and Scientific Institute of Donetsk State University of Internal Affairs; granckina@ukr.net; ORCID: 0000 0002 9010 2777.

² **Barhan Serhii**, Lecturer, Department of Criminal Law Disciplines, Faculty 2, Kryvyi Rih Educational and Scientific Institute of Donetsk State University of Internal Affairs; sergiusbargan@gmail.com; ORCID: 0000-0002-1706-0355.

an interpretation of each acting accomplice's personality, involved in human trafficking. We conclude that the respective criminal offense is committed by offenders who are classified as "situational".

Key words: human trafficking, crime, exploitation, criminal and legal characteristics, personality of an offender, victim.

Articulation of an issue. Recently, the world has become increasingly concerned about the spread of transnational organized crime, which threatens not only the security of individual states but also the world community as a whole. Criminal groups of different nature, structure and scale of influence are being created and operate in Europe and Asia, engaged in illegal activities aimed at illegal profit. Human trafficking is one of the most dangerous types of international criminal business which violates human rights. Human trafficking is a crime that violates the rights of freedom, honour and dignity of a person, enshrined and guaranteed by the Constitution of Ukraine. According to United Nations experts, this type of crime ranks third in terms of profitability after drug and arms trafficking. The annual profit of criminals from human trafficking worldwide is estimated to be around 150 billion dollars [2, p. 20].

Furthermore, the problem of human trafficking in our country is becoming increasingly relevant in view of Russian Federation military aggression. According to the UN, as of March 18, 2022, more than 3 million people were forced to leave Ukraine for neighboring countries, including 162,000 third-country nationals. At least 1.9 million people have been displaced within the country [3]. While it is difficult to identify cases of human trafficking during large-scale displacement, preliminary reports from within and outside Ukraine suggest that traffickers will be able to take advantage of the vulnerabilities of those forced to leave Ukraine. The International Organization for Migration (hereinafter - IOM) draws attention to the rapid increase in the number of cases of family separation, including the displacement of unaccompanied children, as well as the increased risk of conflict-related sexual violence [4]. The concern of the international community confirms the existing threats in the field of protection and combating human trafficking, so the issues of defining the phenomena of tort and personal characteristics of the offender committing the relevant criminal offense requires a comprehensive study.

Analysis of recent research and publications. Analysis of recent research and publications. In their scientific publications, Y.M. Antonian, Y.V. Baulin, E.I. Golovin, O.V. Naden, V.I. Olefir, V.V. Pyaskovskiy, E.L. Streltsov, M.I. Khavroniuk, and others paid attention to the study of criminal, legal and forensic aspects of human trafficking. However, the challenging aspects in studying the phenomena of human trafficking, as part of the general criminological characteristics of the offender's personality, remain unaddressed, and therefore require comprehensive scientific substantiation.

The purpose of the article is to define the criminal law regulation of human trafficking and to study the criminologically significant characteristics of offender's personality committing the aforementioned criminal offense.

Statement of basic materials. National legal acts define human trafficking as the implementation of an illegal transaction, where the object is a person, recruitment, transportation, harboring, transferring or obtaining a person, committed with the intent to exploit, including sexual exploitation, by means of deception, fraud, blackmailing, or taking advantage of a person's vulnerable condition or by threatening or using violence, by taking advantage of official position or financial or other kind of dependence upon another person [5]. From this perspective, V.V. Pyaskovskyi's opinion is justified that the method of committing human trafficking is a certain determined system of traffickers' actions to prepare, execute and conceal the crime, and to use the results of criminal activity [6, p. 71].

Poverty and gender inequality are among the main reasons behind such crimes against women and children – those factors impede education, decent employment, etc. Loss of work and income as a result of the war, limited opportunities in meeting the priority needs of internally displaced persons, refugees, and all victims of military aggression, lead to a significant risk of becoming a victim of human trafficking.

According to open sources, Ukraine has become a supplier and transit country for young women and children, the most vulnerable population groups, targeting them for sex industry in developed countries of Central and Western Europe, and Asia Pacific states. The main destination countries for "human trafficking" are usually Western European countries (Germany, Italy, Spain, Belgium), but also Turkey, Greece, Israel, the United States, the United Arab Emirates, Portugal, Egypt, France, Slovakia, Libya, Romania, Austria, Japan, Switzerland, etc. (victims of trafficking have been identified in 57 countries, according to Ukrainian investigative authorities) [8, p. 82].

In 2021, IOM office has identified and assisted more than a thousand victims of human trafficking – men, women and children. However, due to the inability to identify victims of trafficking, this number may be higher. According to a survey conducted by IOM, 46,000 Ukrainians were trafficked in 2019–2021. Last year, 18% of respondents to the IOM survey claimed that they were ready to accept an informal and risky job offer abroad, and one third were ready to do the same in Ukraine [9].

It is known that the study of official statistics has a positive impact on planning anti-criminal activities, but, in our opinion, it does not fully reflect the real situation of human trafficking spread in Ukraine. Criminologists have concluded that human trafficking has a predominantly natural latency (official statistics do not reflect the spread of crimes, but only the effectiveness of operational and investigative counteraction). Using criminal statistics, it is impossible to determine clear quantitative and qualitative indicators of both crime in general and human trafficking. Today, there is a trend towards an increase in the level of crime latency related to human trafficking in Ukraine. According to experts, it is about 90%, which is due to such factors as fear of social condemnation, threats from human traffickers and lack of trust in law enforcement agencies [10, p. 22].

When studying problematic aspects of human trafficking phenomena, in our opinion, one of the main objects of study should be both the person who has

committed a criminal offense (offender) and the person who has suffered any physical, financial, or moral damages (victim) as a result of a criminal offense. All personal characteristics are inseparably connected to each other and their unity creates the concept of “personality”. Considering all mentioned above, criminology allows applying a comprehensive approach to the study of human personality: determining its physical and mental properties, natural and social factors underlying personal development.

Circumstances constantly arising during criminal activity and during criminal investigations indicate that identifying information about any personal characteristics of the offender and the victim are of criminological importance – ranging from anatomical and biological (blood type, smell, etc.) to psychological and social (features of previous mental disorders, professional skills, practical experience, view of the world). These characteristics are always considered when characterizing criminal offender’s personality.

The statistics cited by E. Golovin demonstrate that a significant proportion of traffickers are male (65.5%). The typical age of these persons varies, but is usually within two ranges: from 18 to 30 years old (44.8%) and from 30 to 50 years old (44.8%). In addition, human traffickers usually have matured character, beliefs, distorted moral principles and values [11, p. 240]. It is worth to mention that despite the diversity of people involved in human trafficking (depending on age, education, life experience, social roles), they are united by the mercenary motivation of criminal activity. As A.A. Nebytov fairly states, criminals engaged in human trafficking seek to obtain a considerable reward for each victim sold. At the same time, the author admits that the offender may be motivated by other motives, but mercenary motives are considered to be the most typical [12, p. 114].

The vast majority of those who commit human trafficking may not have a previous criminal record. Among individuals convicted of human trafficking, only 20% had a previous criminal record, while the rest committed the crime for the first time [13, p. 106]. The above statistics indicate that the offender convicted of human trafficking in most cases belongs to the “situational” type. This is evidenced by the study of verdicts in criminal proceedings related to human trafficking. At the same time, according to 2020 data, 0% of persons prosecuted for human trafficking have a previous criminal record [14, p. 390; 15, p. 339]. For example, in the verdict of the Leninsky District Court of Kharkiv in case No. 642/7708/13-к of September 13, 2013, PERSON_2, convicted of a crime related to human trafficking, had no previous conviction. However, with the intention of human trafficking, he recruited PERSON_5 for the purpose of transferring the victim to unidentified persons for further sexual exploitation [16]. Also, the person who committed the crime of human trafficking in criminal proceedings No. 641/3421/19 was not previously convicted. The verdict of the Kominternivskyi District Court of Kharkiv recognized that PERSON_5, who had not been previously convicted, committed a crime in January 2019 with the intent to commit human trafficking and recruitment of women using their vulnerable state for the purpose of transportation for further sexual exploitation in the Republic of Cyprus [17]. According to the court verdict in case No. 369/4565/21,

PERSON_5, who recruited PERSON_6 for the purpose of the subsequent illegal transaction against her, had not been previously prosecuted [18].

The Criminal Liability Law stipulates that an offender liable for human trafficking is a private, legally sane individual, aged 16 or older. At the same time, Ukrainian citizenship is not compulsory, as human trafficking is not only national, but also transnational, depending on the modus operandi and criminal group structure. For instance, according to the data provided by Andrushko, the majority of persons convicted of human trafficking are of Ukrainian citizenship (88.6%), however, there are cases of foreigners being convicted (11.1%). The lowest number (0.3%) were individuals who had multiple citizenship [11, p. 240].

The vast majority of crimes are committed in complicity. The analyzed verdicts in recent years show that crimes related to human trafficking are committed in cooperation. For example, in 2021, in case No. 640/6588/19, PERSON_8 was found guilty of acting as a group with other individuals, implementing a criminal intent to recruit a person for the purpose of exploitation and transferring him or her to the Kingdom of Spain [19]. Another example indicates the crime of human trafficking committed by PERSON_6, PERSON_10 and PERSON_11, who committed the crime of recruiting girls for sexual exploitation, by deception and taking advantage of their vulnerable condition [20]. In general, the more branched the structure of organized groups and criminal organizations, the more individuals are involved in the criminal activity process, and therefore the more difficult it is to identify and solve criminal offenses related to human trafficking. For example, in 2020, 34.5% of convicted criminals were part of a group, 20.7% were part of an organized group, and none were part of a criminal organization [21, pp. 1010–1013]. The complexity of identifying crimes committed by organized group crime is related to the degree of its organization, cohesion and technical equipment. Meanwhile, the Criminal Code of Ukraine Article 27 [22] emphasizes that criminals may perform various roles. Along with the perpetrator, an organizer, instigator and aider and abettor are recognized as accomplices to the crime. Article provisions of aforementioned article substantially reveal the essence of the above concepts, such as:

1. Part 2 of the aforementioned Article defines the principal (co-principal) as a person who, in association with other criminal offenders, directly or through other persons who are not subject to criminal liability for their actions under the law, has committed a criminal offense under this Code;

2. Part 3 of Article defines an organizer as a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization;

3. Part 4 of the Article states that an abettor is a person who, has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise;

4. Part 5 states that an accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions,

or by supplying the means or tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.

In turn, M.I. Andrienko [23, p. 32-33] proposes a slightly different classification of criminal groups depending on their stability and orientation:

1. Situational groups - formed under the influence of situational factors (relatives, friends, acquaintances). Criminal offenses committed by such groups are characterized by the spontaneous nature of the participants' actions, episodic nature (often limited to one episode of the tort), lack of preparation and planning, and lack of clearly defined functions.

2. Stable groups focused on committing various offenses, including human trafficking. Compared to the preceding group, such groups are distinguished by a more organized manner of criminal activity and a clear function breakdown (according to criminal skills, occupational skills, etc.). The crimes are usually prepared and are managed by a control center (represented by an organizer or several leaders). Key motivations include profit and attempts to expand the area of criminal influence. In addition to human trafficking, the criminal activities of this group may include drug trafficking, arms trafficking, pimping and running brothels, forcing or engaging in prostitution, distributing pornography, fraud and other related crimes. For example, citizen PERSON_4, as a nightclub co-owner, recruited girls to appear in striptease shows and then provide commercial sexual services to the club's clients [24].

3. Stable groups that have been purposefully organized for human trafficking. These groups are distinguished by a high level of organization, a detailed criminal business plan for human trafficking, and clear participants role distribution according to the stages of criminal intent implementation.

In our opinion, according to the forms of criminal offenses it is important to distinguish other accomplices who have certain functions within organized groups and criminal organizations structure, in particular:

1. Recruiters are individuals who commit intentional criminal acts targeting people and encouraging them to take certain actions (to be employed by a particular organization, to travel abroad, etc.). Recruiters are aware of further victim exploitation;
2. Kidnappers - individuals who abduct victims and then hide them, usually abusing them mentally and physically. These are men aged 25-40, characterized by a neglectful attitude towards community members (especially women), brutal behavior, good physical fitness, and a commitment to apply brute force both to overcome the victim's physical resistance and to stop the victim's disobedience, to "prevent" the victim's actions;
3. Accomplices who transport people – individuals who facilitate the victim's actions to transfer them to their destination. This definition should be applied in cases when a victim voluntarily travels to the destination, but the journey is against the person's will. That is, an offender, by deception or taking advantage of one's helpless state, commits activities that,

against the will of the person, are aimed at changing their abiding-place. In most cases, such displacement involves the use of coercive actions, which often accompany the abduction, hiding and subsequent delivery to a buyer;

4. Accomplices in human trafficking are individuals who impose control over the victim's behavior through recruitment (deception) or abduction, and who also transfer and hide such a person;
5. Accomplices who receive and exploit people are individuals who, at the final stage of human trafficking, fulfill the ultimate goal of obtaining the main benefit from exploiting the biological, physiological and mental victim capabilities. The bottom line is that criminals who receive a person enslave victim's will by using physical or mental violence, restricting freedom of movement and creating special detention conditions, or under the influence of deception or abuse of trust, force them to perform actions in their favor, control their behavior in order to obtain material or other benefits.

The mentioned classification of offender's personality is consistent with criminal law provisions and depends on offender's involvement in the crime, but criminological publications usually distinguish a broader offender's classification. In particular, I. M. Danshin claims that it is appropriate to classify a criminal depending on his or her attitude towards general social values. Scientist distinguishes between "accidental", "situational", "unstable", "malicious" and "particularly dangerous" criminals [25, p. 12]. An "accidental" type suggests that a person has committed a criminal offense for the first time, which contradicts the general socially positive orientation characterized by previous positive moral behavior. A "situational" type indicates that the person has committed a criminal offense under an unfavorable external circumstances for the offender, with a generally socially positive personality. An "unstable" type is defined as a criminal who has committed a criminal offense for the first time, but has previously committed minor offenses and immoral misconduct. "A "malicious" type of offender is characterized by repeated criminal offenses, including those with a criminal record. A "particularly dangerous" type of offender is characterized by repeated commission of serious criminal offenses, which defines him as a particularly dangerous repeat offender.

A comprehensive judicial court practice analysis of prosecuting human trafficking offenders demonstrates that most offenders are of the "situational" or "unstable" type. For instance, Crime Combating Department officers, during operative measures to detect human trafficking, detained a 25-year-old woman and her 44-year-old mother in a village in the Starosyniavskiy district of Khmelnytskyi region who were attempting to sell a child for UAH 50,000. His grandmother, who initiated the child's sale, justified the crime by the family's financial difficulties and lack of a permanent employment [26]. In our opinion, such actions of boy's mother and grandmother shall be classified as "situational" in accordance with the offender's type classification. Another example is human trafficking against Ukrainian refugees. According to The Washington Post, young women arriving to Europe are being recruited for further exploitation by

individual criminals, particularly targeting Ukrainian women [27]. This example clearly demonstrates the “situational” type of traffickers who seek to take advantage of Russian Federation’s armed aggression for their own enrichment.

Conclusions. Human trafficking is a socially dangerous transnational criminal area, involving significant monetary assets. A mercenary intent is notable for human trafficking. The main reasons for victimity of human trafficking are low living standards, gender inequality, a high unemployment rate, forced emigration due to Russian Federation armed aggression, etc. According to court practice and open-source statistics, a typical human trafficking offender is a male who has not been previously prosecuted. Meanwhile, a trafficker’s personality is characterized as a mercenary-minded man aged 18 to 50, with a matured character but deformed will, consciousness and values. In many cases, human trafficking is committed by prior conspiracy, but cases of human trafficking without complicity are no less common. The above demonstrates that a typical trafficker may belong to the group of “situational” and “unstable” criminals, as they usually do not have a criminal record, but under the influence of unfavorable living and development circumstances or a persistent immoral lifestyle, they commit a crime.

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