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IMPLEMENTATION OF INTERNATIONAL STANDARDS FOR PREVENTION AND FIGHT AGAINST TRAFFICKING IN CHILDREN AND CHILD EXECUTION IN THE NATIONAL LEGAL SYSTEM

Annotation: The article deals with the problem of normative legal support of counteraction child trafficking and kidnapping in Ukraine, which is aimed the implementation of the international legal obligations of Ukraine and outlining prospective ways of its improvement.

Keywords: implementation, child trafficking, kidnapping, sexual exploitation.

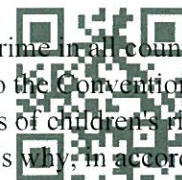
Child trafficking is any act or agreement whereby a child is transferred by any person or group of persons to another person or group of persons for remuneration or other compensation.

Child abduction is a subtype of human kidnapping, i.e. the unlawful prohibition of a person to choose their own place of residence or their secret or open capture.

Every year, millions of children suffer from one of the most profitable types of business - human trafficking and commercial sexual exploitation. This is typical for every continent and every country, including Ukraine. According to the International Organization for Migration (IOM), as of December 2018, the main country of destination for human trafficking from Ukraine remains Russia (63%), the second place is occupied by the member states of the European Union, from where 17% of victims returned, of which more than 86% were victims in Poland, the rest - in Italy, Germany, Greece, Finland, Lithuania, Austria, the Czech Republic and the United Kingdom. The number of victims of internal trafficking has increased and last year accounted for 10% of the total number of cases [10]. The main reasons for children being trafficked include poverty, weak social and economic structures, unemployment, organized crime, violence against women and children, discrimination against women, corruption in government, political instability, and armed conflicts. [8] At the moment, a joint forces operation is underway in our country, there are a number of territories not under the control of the state authorities, so the risks of our citizens being trafficked are rapidly increasing.

The following types and forms of child trafficking are distinguished: labor exploitation; sexual exploitation; organ removal; use in experiments; use in armed conflicts; use in criminal activities; use in the porn business; begging; illegal adoption for profit; etc.

Child trafficking is a social phenomenon that is recognized as a crime in all countries of the world. The main subject of combating this crime is the state. As a party to the Convention on the Rights of the Child, Ukraine has undertaken to implement international standards of children's rights on its territory using international and national means of implementation. That is why, in accordance with



Article 9 of the Constitution, Ukraine must harmonize its legislation with the norms of the said Convention by legislatively regulating the rights and obligations of individuals and legal entities, state bodies and their officials in the exercise of these rights.

Implementation is the actual fulfilment of international obligations at the domestic level, as well as the specific act of incorporating international legal norms into the national legal system.

It should be noted that there are quite a few classifications of forms of implementation of international treaties. From the point of view of the measures that a state must take to implement an international treaty, in my opinion, the most convenient is the classification of forms of implementation proposed in the study of the Committee of Legal Advisers on Public International Law [1], and later supported by B. I. Osminin, according to which there are the following forms of national implementation [2, 180]:

- Automatic integration: the norms of international treaties automatically become part of domestic law, that is, no administrative or legislative act is required for the norms of international treaties to enter into force. The states with automatic incorporation in Europe include Andorra, Cyprus, Liechtenstein, France, Luxembourg, Spain, Switzerland, the Netherlands, Ukraine, Poland [2, 183];
- Substantive incorporation: the provisions of an international treaty are introduced into domestic law through legislative or administrative acts that adapt them to the legal realities of a particular country. States with substantive incorporation include Great Britain, Ireland, Sweden, Denmark, Norway, and the Czech Republic [1, 93-95].
- Formal (procedural) incorporation: the provisions of an international treaty become part of domestic law through the adoption or publication of a law or administrative act. However, unlike substantive incorporation, such laws or administrative acts are procedural in nature and do not adapt the provisions of an international treaty to domestic law [1, 89-92].

The following stages of development of the state policy of Ukraine in the field of combating trafficking and abduction of children can be distinguished:

1991 – Ratification of the UN Convention on the Rights of the Child. According to Art. 34 of the Convention [4], the participating states are obliged to protect the child from all forms of sexual exploitation and sexual abuse.

1998 – Criminalization of trafficking in persons – recognition of this phenomenon as a crime in Ukraine (Art. 149 of the Criminal Code of Ukraine)

2003 – Ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

2004 – Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. The Protocol states that exploitation includes, 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 [11].

2010 – Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. Its scope includes all forms of trafficking in human beings, whether domestic or transnational, whether linked or not to organised crime. A special feature of the Convention [6] is the monitoring mechanism provided for in Chapter VII, which establishes a Group of Experts on Action against Trafficking in Human Beings (GRETA) to monitor the implementation of the Convention by the Parties. It shall consist of at least 10 and at most 15 members, taking into account gender and geographical balance, as well as multidisciplinary expertise.

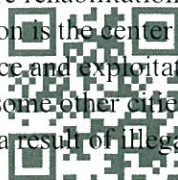


2011 – Adoption of the Law of Ukraine “On Action against Trafficking in Human Beings”

2012 – Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)[5]. Today it is a comprehensive international legal instrument on the protection of children against sexual exploitation and sexual abuse. Its authors took as a basis the relevant standards of the United Nations and the Council of Europe, expanding them to cover all possible types of sexual offences against children (including sexual abuse of a child, child prostitution, pornography, solicitation and incitement of children to commit sexual offences through the influence of content and activities of a sexual nature). The Convention covers sexual abuse of a child within the family or “circle of trust”, as well as acts committed for commercial purposes and for profit. It establishes that the member states of the Council of Europe must adopt specific legislation aimed at criminalizing such conduct and take measures with a focus on protecting the best interests of children as a primary consideration, in order to prevent sexual violence, as well as to protect child victims and bring perpetrators to justice. It also promotes international cooperation to achieve common goals.

It should be noted that in Ukraine, criminal liability for human trafficking was not provided for until 1998. Then, amendments were made to the Criminal Code of Ukraine in the form of Article 1241 “Human Trafficking”. Its content was criticized by scholars. These comments were taken into account when developing the draft of the new Criminal Code. However, Article 149 of the current Criminal Code of Ukraine “Human Trafficking or Other Illegal Agreement on the Transfer of a Person” is still not without certain flaws. First of all, a serious flaw is the requirement to prove the fact of receiving payment for the transfer of victims as a sign of the completion of the crime. The fact of such payment is practically impossible to prove - usually it occurs abroad and without witnesses. In addition, this article contains provisions that require interpretation, in particular: is coercion a mandatory element in cases provided for in Article 149 of the Criminal Code of Ukraine and with which elements the term “consent” is associated. The question arises whether movement across the state border should be considered as a mandatory sign of human trafficking. Also, an analysis of the articles of the Special Part of the Criminal Code (CC) of Ukraine [7] showed that it does not provide for a separate crime of sexual exploitation. At the same time, sexual exploitation can be observed during the commission of various criminally punishable acts. First of all, this concerns human trafficking (Article 149), import, manufacture, sale and distribution of pornographic objects (Article 301), creation or maintenance of places of prostitution and pimping (Article 302), pimping or involving a person in prostitution (Article 303).

Human trafficking, including child trafficking, is a complex, complex phenomenon. Therefore, the legislation of Ukraine on combating human trafficking is not limited to Article 149 of the Criminal Code, but includes a number of laws and regulatory legal acts. Thus, on September 20, 2011, the Law of Ukraine “On Combating Human Trafficking” was adopted, which defines the organizational and legal principles of combating human trafficking, guaranteeing gender equality, the main directions of state policy and the principles of international cooperation in this area, the powers of executive authorities, the procedure for establishing the status of persons who have suffered from human trafficking, as well as the procedure for providing assistance to such persons. Based on this law, today the problem of child trafficking in Ukraine is considered as a component of human trafficking in general or as a component of the system for protecting children from abuse. Children are a special category of victims of human trafficking or other illegal transactions with a person as the most unprotected and vulnerable social stratum of society. According to the Law of Ukraine “On Combating Trafficking in Human Beings” (Article 14), “a person who considers himself a victim of human trafficking has the right to apply to the local state administration with an application for establishing the status of a person who has been a victim of human trafficking.” In order to provide assistance to children who have been victims of child trafficking, they can be placed in centers for the socio-psychological rehabilitation of children and shelters for children in order to provide psychological assistance and ensure rehabilitation in accordance with the procedure established by law [9]. An example of such an institution is the center for the socio-psychological rehabilitation of girls who have suffered from sexual violence and exploitation “Sofia”, which is located in Odessa. There are also similar centers in Kharkiv and some other cities of Ukraine, but their number is insufficient to cover all children who have suffered as a result of illegal agreements



regarding them and sexual exploitation. The problem is not only the lack of centers for socio-psychological rehabilitation, but also in the staffing of specialists who are able to provide professional assistance to child victims. The lack of skills in working with children who have suffered from sexual exploitation and violence, investigating cases and conducting interrogations and interviews with child victims, the lack of "green rooms" and specialization of investigators and judges - all these and other problems remain beyond the attention of the state.

The legislation of Ukraine should also include subordinate legislation, which also regulates certain relations in the field of combating trafficking, kidnapping and sexual exploitation of people. Their list is quite extensive, since it is necessary to regulate various aspects of such work. Thus, the Resolution of the Cabinet of Ministers of Ukraine № 660 as of July 25, 2012 approved the Procedure for Payment of One-Time Material Assistance to Persons Victims of Human Trafficking. Subsequently, the Resolution of the Cabinet of Ministers of Ukraine № 111 of February 24, 2016 approved the State Social Program for Combating Human Trafficking for the Period Until 2020., the purpose of which is to prevent human trafficking, increase the effectiveness of identifying persons who commit such crimes or facilitate their commission, as well as protect the rights of persons victims of human trafficking, especially children, and provide them with assistance.

Regarding the commercial exploitation of minors, Art. 2 of the Optional Protocol on the sale of children, child prostitution and child pornography (hereinafter referred to as the Optional Protocol) defines its three main forms - sale of children, child prostitution and child pornography, which are directly related to sex tourism.[12]

Sexual exploitation is the use of a person to work in the sex industry against their will. It is important that the Optional Protocol obliges States Parties to establish the responsibility not only of those who facilitate the sexual exploitation of a child, but also directly receive sexual services from them, that is, it establishes an obligation to criminalize clients, who are very often sex tourists. The term "child sex tourism" is not enshrined in Ukrainian legislation. Responsibility for sexual abuse of children and their exploitation is established by the relevant articles of the Criminal Code of Ukraine, which contain responsibility for crimes against sexual freedom and sexual integrity of a person and crimes against public order and morality. The most severe responsibility for sexual violence against a child is provided for in Articles 152, 153 of the Criminal Code of Ukraine. The main reasons for the commercial exploitation of minors include: low living standards of Ukrainians, child neglect, corruption at all levels. On the other hand, the image of the country of beautiful and sexually accessible girls, the difference in economic development of the countries of origin of tourists and Ukraine, which affects the difference in prices, the location on the European continent, which determines the presence of white-skinned children, the low cost and availability of alcohol, the image of the country with a high degree of corruption and confidence in impunity - all this contributes to the development of offers on the market of child sexual services.

Based on the above material, the following conclusions can be drawn:

Implementation - the actual implementation of international obligations at the domestic level, as well as the specific act of incorporating international legal norms into the national legal system.

Ukraine has joined a wide list of international documents regulating certain aspects of combating trafficking, abduction and sexual exploitation of children, which have become part of national legislation. The regulatory and legal framework of Ukraine contains a sufficient number of regulatory acts on the protection of children's rights. Among them are laws, programs, to one degree or another aimed at preventing trafficking in children, child prostitution and pornography.

Child trafficking - any act or agreement as a result of which a child is transferred by any person or any group of persons to another person or group of persons for remuneration or other compensation. Human trafficking is one of the most severe forms of violation of fundamental human rights and freedoms. The crime of human trafficking is constantly evolving in line with the criminals' desire to maximize profits from exploiting victims;



Sexual exploitation is the use of a person to work in the sex industry against their will. There is no special law in Ukraine on the prevention of sexual exploitation, but legal relations in this area are regulated by other laws that regulate various aspects of combating this phenomenon. This is, in particular, the Law of Ukraine "On Combating Human Trafficking", which also regulates issues related to providing assistance to victims of such illegal activities; The main causes of human trafficking include: organized crime, lack of protection from it; violence against women and children; crisis situations in the country, armed conflicts; difficult economic situation, high unemployment, imperfect legislation and, above all, legal ignorance of the population. In order to solve this problem, it is necessary to implement the following measures: raising the level of awareness of the population; organizing companies to inform the public about dangerous situations that can lead to human trafficking; covering issues related to the prevention of human trafficking in educational programs; improving the professional level of employees of state authorities who exercise powers in the field of combating human trafficking; providing assistance to victims of human trafficking, as well as conducting relevant educational activities for children and students.

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Hanna V. Kotyk IMPLEMENTATION OF INTERNATIONAL STANDARDS FOR PREVENTION AND FIGHT AGAINST TRAFFICKING IN CHILDREN AND CHILD EXECUTION IN THE NATIONAL LEGAL SYSTEM - Article

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