

# SUBJECTIVE SIGNS OF HUMAN TRAFFICKING ACCORDING TO THE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

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***Түйін.** Мақалада қарастырылған мәселе Қазақстан Республикасының заңнамасы бойынша адамдарды саудаға салудың субъективті белгілері. Адамдарды саудаға салудың субъективтік жағы көрсетіліп, адамдарды саудаға салумен байланысты қылмыстық құқықбұзушылық субъектісі талданған.*

***Кілттік сөздер:** Адам өмірі, адам құқықтары мен бостандықтары, адам саудасы, қылмыс, адам саудасы қылмыстары.*

***Резюме.** В данной статье рассмотрены субъективные признаки торговли людьми по законодательству Республики Казахстана. Показаны субъективная сторона торговли людьми, характеризующийся конкретной формой вины, мотивом, целью и эмоциями. Подвергнут разбору субъект уголовного правонарушения, связанного с торговлей людьми.*

***Ключевые слова:** Человек, его жизнь, права и свободы человека, торговля людьми, преступления, преступления торговли людьми.*

***Summary.** In this article subjective signs of human trafficking under the legislation of the Republic of Kazakhstan are considered. The subjective side of human trafficking, characterized by a specific form of guilt, motive, purpose and emotions is shown. The subject of a criminal offense related to trafficking in human beings was subjected to analysis.*

***Keywords:** Man, his life, rights and freedoms of the individual, human trafficking, crimes, crimes of trafficking.*

The ongoing reform of law enforcement bodies in the Republic of Kazakhstan is designed to ensure the democratization of the entire legal system, the effective respect for human rights. The message of the President of the Republic of Kazakhstan – leader of nation N. Nazarbayev to people of Kazakhstan "the Third modernization of Kazakhstan: global competitiveness," stated: – "We are implementing reforms aimed at the protection of private property, rule of law and equality of all before the law. This work must continue" [1].

Therefore, the choice of the research topic was to study the problems of suppression and investigation of illegal business in sphere of human trafficking. Human trafficking is one of the most serious problems of modern society. In the Republic of Kazakhstan for trafficking and related crimes, the dynamics of the General increase in crime from 2008 to the first 9 months of 2016 in the whole country increased by 25% (from 127478 in 2008. to 295039 for 9 months. 2016.), which is also reflected in the number of registered crimes related to trafficking +30%, or from 15 to 26 respectively. For example, in 2008. for trafficking, there were 15 crimes in 2009. 20, 2010. – 22, 2011. – 25, 2012. – 19, in 2013. – 33 in 2014. 17, 2015. – 42 and 9 months. 2016. – 26 crimes, respectively [2].

Trafficking under article 128 of the Criminal code of the Republic of Kazakhstan (hereinafter – the criminal code of the ROK) from July 3, 2014, encroaches on the personal freedom of citizens and freedom of choice of occupation guaranteed by the Constitution of the Republic of Kazakhstan of 30 August 1995 (Rev. and EXT.). Everyone has the right to free choice of occupation and profession. Freedom to work means the right to engage in any activity. Therefore, the Constitution specifies that forced labour is permitted only on a sentence of court or in conditions of emergency or martial law. Freedom of labour is proclaimed to p. 1 art. 24 of the Constitution[3] under the International Covenant on economic, social and cultural rights[4].

The problem of combating human trafficking and use of slave labor aggravated by such characteristics of the analyzed species of crime, as its connection with organized crime and its transnational nature.

The determining factor for the existence and development of human trafficking is, first and foremost, the economic situation in Kazakhstan. Among various factors affecting the trafficking, and is a problem in legal regulation.

And, here, it can be noted that the shortcomings in the development of the economy play a more important role than the shortcomings in the legal regulation.

It can also be noted that the determining factor for the existence and development of human trafficking must be linked to a lack of adequate socio-legal control of this phenomenon.

The main object of this form of criminal offense legislation are the social relationships aimed at ensuring the freedom of the individual, her rights and legitimate interests. As additional object – honour and dignity as well as the lives and health of people.

The subjective side reflects the inner processes taking place in the conscious and volitional spheres of the subject of the criminal offense. Content of the subjective side is the mental activity of the person associated with the Commission of a criminal offense. Mental processes are usually divided into intellectual, volitional and emotional. The processes occurring in the psyche of the person in connection with the Commission of a criminal offense, manifested in the awareness of face of the actual nature and social values committed them to act or in the absence of such awareness, anticipation or unexpected harmful consequences of their actions, in a certain attitude; the motives that guided it; in order that he puts in front of him; the emotions, that it is experiencing.

The subjective side is an element of a criminal offense, give an idea of internal mental processes in the mind and will of the person committing a criminal offence characterized by a specific form of guilt, motive, intent, and emotion.

Criminal legal significance of the signs of the subjective side is uneven. Obligatory sign of any structure of a criminal offense, characterize the subjective side, is the wine. Facultative signs of the subjective side, the motive, purpose, emotions are specified in the elements of criminal offense only when they define the essence of a criminal offense or significantly influence the nature or degree of public danger of the offense.

The value of the subjective side is large and consists of the following:

1. the subjective aspect as a mandatory element of any of the criminal offences included in the basis of criminal responsibility.

2. the establishment of signs of the subjective side – is obligatory and a necessary condition for the correct and justified qualification of the offense.

3. the subjective side of the criminal offense allows you to distinguish between compounds with similar objective characteristics, such as murder (article 99 of the criminal code) is different from causing death by negligence (article 104 of the criminal code) is a form of guilt.

4. the subjective side allows to distinguish the criminal offence from the criminal acts. Thus, the infliction of harm to health is punishable only if intentional form of guilt, reckless infliction of such harm was a criminal offense is not.

5. the content of the subjective side largely determines the degree of social danger of criminal acts and those who committed it.

6. accurate determination of the subjective side of a criminal offense is a prerequisite for individualization of criminal responsibility and punishment.

Wine is a mandatory feature of any criminal offense relating to the subjective side of the criminal offense. In part 1 of article 19 of the criminal code justified the principle of a subjective imputation is the most important principle of criminal law that criminal liability for a criminal act arises only in the presence of guilt of the person committing the act: "a person shall be criminally liable only for those socially dangerous acts (actions or inaction) and socially dangerous consequences in respect of which his guilt has been established" [5].

Part 2, article 19 of the criminal code clearly establishes that "objective imputation, i.e. criminal responsibility for innocent infliction of harm, is not allowed" [6]. Therefore, infliction of damage, regardless of how heavy he was, precludes criminal liability.

The most important prerequisite for a proper understanding of guilt as the subjective Foundation of criminal responsibility is the determination of the mental content of guilt, of those mental phenomena which cause and direct the behavior of the offender, thus describing his attitude towards his actions and their socially dangerous consequences. All this gives grounds to judge the socio-psychological nature of

the particular person, his negative attitude to different social values. Mental process that forms the blame, in the end directs and corrects the behavior of the person.

This process is completed at the time of the actual completion of the crime, the extent in which it is described in the form of the disposition of the relevant article of the Criminal code of the Republic of Kazakhstan. After committing a criminal offense some of the guilty parties occur and a different mental attitude to the act and its consequences. It may be remorse, regret, or joy, satisfaction, etc., but this mental attitude the concept of shape of the fault already is not covered, it can be considered only if the individualization of responsibility as the circumstances mitigating or aggravating criminal liability.

Fault is a mental relation of the person to make socially dangerous act and its socially dangerous consequences, expressed in the form of intent or negligence.

Intent is the most common form of guilt, pose an increased risk. Higher risk of intentional guilt is determined by the fact that a premeditated act, deliberately intended to cause harm to society, creates a much greater probability the actual that damage than reckless action. Only when committing intentional criminal offences such criminal activities as the preparation to the criminal offense, attempted criminal offense and complicity in the criminal offense.

A person who commits an intentional criminal offence is of great public danger, as it is in the intention and manifested a negative attitude of the subject to the values of society. That is why intentional criminal offences and their perpetrators, deserve the most negative evaluation.

Direct intent is intent, where the perpetrator of a criminal offense, aware of the social danger of his actions (inaction), foresaw the possibility or inevitability of the onset of socially dangerous consequences and wished their occurrence (part 2 of article 20 of the criminal code).

The motive and objective of a criminal offense is the psychological phenomena incentives, which, together with the fault form the subjective side of a criminal offense. The precise determination of the motive and purpose allows you to properly qualify their actions, to determine the form of guilt and the degree of public danger of a criminal offense and the person committing the act, to identify the causes of the particular criminal offense.

The motive of a criminal offense is driven by the needs and interests of the inner impulses that cause facial need or determination to commit a criminal offence.

The goal of a criminal offense is perfect, the mental representation of the desired result, to which is committed the person making socially dangerous act. Purpose as a conscious desire to satisfy the needs arises, appears based on the criminal motive. Essentially, the goal is actualized, decorated a certain kind of motive.

The subjective aspect of the sales person or the Commission in respect of his other transactions is characterized by direct intention. Therefore, the purpose of the Commission of the sales person or the Commission in respect of his other transactions to qualify acts under part 1 of article 128 of the criminal code does not matter.

When making the recruitment, transportation, transfer, harboring, receipt of person the subjective aspect of this crime is characterized by direct intent and purpose of the crime is the exploitation of man.

Crimes are always committed by specific people. Therefore, the subject of the crime is among the essential elements of the offense. In a broad sense the subject of the crime is guilty of violating the criminal law. In a legal sense the offender is a physical person who commits a crime and is able to bear criminal liability by virtue of the fact that it is sanity and have reached a certain age.

The signs of the perpetrator with exhaustively defined in article 14 of the criminal code: "criminal responsibility shall be only a sane physical person who has reached the age established in this Code."

Persons, who have committed crimes, are equal before the law, irrespective of origin, social, official and property status, sex, race, nationality, language, attitude to religion, convictions, belonging to public associations, place of residence or any other circumstances. (part 2 of article 14 of the criminal code).

No matter the legal status of the perpetrator of the crime: it may be citizens of the Republic of Kazakhstan, foreign citizens, and persons without citizenship.

Thus, the subject of the crime is the physical responsible, under the age specified in the law of the age of the person who committed the crime and is able to bear the criminal liability.

The offender can only be a natural person, only the person. Animals, forces of nature, things, harmful, cannot be the subject of the crime.

The offender can only be a sane person, ie, able to realize the actual part and the social significance of their actions and control them.

The specified capacity of the mind and will there is, as a rule, upon reaching a certain age. This age is fixed in the criminal law as permitting the imposition of criminal responsibility for the crime.

Establishing the age of criminal responsibility related to the level of human consciousness, with its ability to understand the actual nature and social significance of their actions, to relate their needs and desires with the established norms of behavior. This ability occurs in humans as biological and social development. Minors, because of their age are not able to fully realize social significance of the actions or control them, is not recognized as a crime and can't bear criminal liability for committing socially dangerous acts. The age of the subject of crime is regulated by article 15 of the criminal code. On the basis of part 1 of this article is subject to criminal liability a person who has attained by the time of the crime 16 years of age. In part 2 of article 15 contains a list of crimes for committing of which the criminal liability comes from 14 years. Setting a low age of criminal responsibility is due primarily to the fact that at that age a person is able to realize the social danger of the acts listed as obvious even for a teenager. In addition, an important role in lowering the age criterion for these crimes played increased degree of their public danger, or their prevalence in adolescence.

The subject of human trafficking is the physical responsible person who has attained the age of 16.

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