

NORMATIVE RESOLUTION OF THE SUPREME COURT OF THE REPUBLIC OF KAZAKHSTAN

On practice of application of the legislation establishing responsibility for human trafficking of December 29, 2012 No. 7

For the purpose of the ensuring the correct and uniform application of the laws of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan, connected with human trafficking, the plenary session of the Supreme Court of the Republic of Kazakhstan decides:

1. Draw the attention of the bodies conducting criminal procedure that the correct application of the legislation establishing responsibility for human trafficking provides proper protection of human rights and freedoms.

The criminal offenses connected with human trafficking offenses, [stipulated in Article 116, Item 2 parts three of Article 125, Item 2 parts three of Article 126, Articles 128, of 134, of 135, of 308, 309](#) Criminal Codes of Kazakhstan are recognized (further - UK).

2. The objective party of the crimes provided [by articles 128 and 135 UK](#) consists in infringement of human rights and freedoms and is expressed in purchase and sale or making of other transactions concerning the person, its operation, recruitment, transportation, transfer, concealment, and also in making of other acts for the purpose of operation.

For qualification of act on part one of article 128 UK and on part one of article 135 UK there is enough making factual determination at least of one of these Articles of action specified in disposition.

For qualification under Articles 128, 135 UK purchase and sale and making of other transactions concerning the victim availability of the special purpose of operation is not required as the person is not subject of transactions and such transactions are recognized invalid from the moment of their conclusion.

The purpose of exploitation of the person is obligatory sign in case of recruitment, transportation, transfer, concealment of the victim, and also in other acts provided by Articles 128, 135 UK.

Object of the crime connected with human trafficking are the human freedom, his personal security, the rights and legitimate interests, honor and advantage, the right to the free choice of residence, sort of occupation and profession.

The subjective party of purchase and sale of the person or making concerning it other transactions is characterized by direct intention. Therefore the purpose of making of such transactions for qualification of act on part one of article 128 UK and on part one of article 135 UK does not matter.

When making recruitment, transportation, transfer, concealment of the person the subjective party of crime is characterized by direct intention, and target of a crime is exploitation of the person.

3. It is necessary to understand the illegal paid transaction in which one party (seller) transfers the person to other party (buyer) for certain remuneration as purchase and sale.

It is necessary to refer donation to other transactions attracting criminal liability under [article 128 UK](#) or under [article 133 UK](#) (transfer of the person to other person gratuitously), exchange (exchange of the person for something), exchange (replacement of one person by another), lease (transfer of the person for a fee to temporary ownership and use), leaving of the person as ensuring accomplishment of the obligation according to the bargain concluded between the parties, use of the person as payment subject, transfer of the person for the purpose of receipt of any benefits of non-property nature and others.

4. Purchase and sale or making of other transactions concerning the person should be read out completed crime from date of transmission of the person to other persons. At the same time time of receipt of remuneration for sale of the person or for making of other transactions does not matter.

Committing by person along with purchase and sale or the conclusion of other transactions concerning the victim also of involvement in occupation prostitution either procurement with a mercenary motive, or the organizations, contents of brothels for occupation prostitution without the purpose of exploitation of the same victim in other forms (for example, coercion to work, begging, etc.), each act recognized by the court proved is subject to independent qualification on set of the relevant articles: for transaction - under [Articles 128, 135 UK](#), for involvement in occupation prostitution - under [Articles 134, 308 UK](#), for procurement or the organization and content of brothel - under [article 309 UK](#).

5. Recruitment is understood as achievement of consent of the victim to accomplishment of any works or any activities, including illegal if it is connected with the purpose of its operation. Methods of recruitment can be different: promise of remuneration, job offer, deception, arrangements, blackmail, intimidation, threat and others.

Recruitment in case of human trafficking should be differentiated from involvement in occupation prostitution on the termination moment: recruitment is considered ended from the moment of receipt of consent of the hired person to implementation of its operation whereas involvement in occupation prostitution is considered ended from the moment of making of one of the described conducts directed to involvement in occupation by prostitution irrespective of whether it was succeeded to incline it to the called type of activity or not.

In case of orientation of intention of person in case of recruitment only on involvement in occupation prostitution the deeds are subject to criminal legal treatment under the relevant [article 308 or 134 UK](#) as the regulations of the penal statute providing responsibility for recruitment for the purpose of sexual exploitation and involvement in occupation prostitution are in competitive situation, the provided part three of article 12 UK. Involvement in occupation prostitution and procurement with a mercenary motive represent kind of one of operation forms which concerning [Articles 128, 135 UK](#) are special regulations.

6. Transportation of person means the intentional actions for its movement made for the purpose of exploitation of the person from one place in another, including within the same settlement. At the same time mode of transport, time and method of transportation of the person for qualification of act do not matter. Transportation can be expressed not only in delivery of the transported person accompanied by someone, but also in acquisition to the transported person of travel documents to the place of following where the victim reaches independently. Transportation is considered ended from the moment of the beginning of its implementation.

7. It is necessary to understand direct transfer of the victim to person for its operation as transfer.

Actions of the persons which transferred and who received the person for the purpose of its operation by them by or other persons are subject to qualification by the corresponding [part of article 128 UK](#), and concerning the minor - by the corresponding [part of article 133 UK](#), and also by sign group of persons by previous concert.

8. For the purpose of the subsequent operation it is necessary to understand concealment of the victim from law enforcement agencies, relatives and other persons as concealment of person (for example, concealment in special rooms, non-admission of exit for this or that territory, medicamentous suppression of physical or mental activity). Concealment can be expressed not only in physical concealment of the victim, but also in other actions complicating detection of the victim (change of documents, appearance and so on).

9. In case of determination of the concept "exploitation of the person" in relation to [Articles 128, 135 UK](#) it is necessary to be guided [by Item 1 of article 3 UK](#).

Operation, stipulated in Article 128 UK, has the different forms (sexual exploitation, forced labor, begging etc.). UK does not allocate such forms of exploitation of the person as labor operation or begging in separate special regulation. Therefore in cases of purchase and sale or making of other transactions concerning the victim who was injured with further operation not only by involvement in occupation prostitution and assignments of the gained income, but also in other forms of operation (forced labor etc.), such actions demonstrate making by the perpetrator of the acts combined by general intention on achievement of the single purpose - exploitation of the victim, and are qualified as one crime provided by articles 128 or 135 UK without additional qualification under Articles 308, 134 UK.

The consent of the victim to the planned operation is not taken into account if any of the levers specified in part two of article 128 UK was used.

10. Forced use of the sexual nature (dissolute actions, creation of pornographic pictures, video clips) which was injured for making of actions is covered by disposition [of Articles 128, 135 UK](#) and additional qualification under [Article 134](#) or under [article 308 UK](#) it is not required.

As in case of the competition of general and special regulations, according to part three of article 12 UK the cumulative offenses are absent and act is subject to qualification on the meeting special standards, involvement in occupation prostitution and procurement with a mercenary motive, being special regulations concerning actions for

sexual exploitation in case of the human trafficking provided by dispositions [of Articles 128, 135 UK](#) is subject to qualification under the relevant [article 134, 308 or 309 UK](#) without additional qualification under article 128 or 135 UK.

Courts should mean that the organization of brothel, content of brothel and procurement with a mercenary motive, stipulated in Article 309 UK, are independent actions and in itself separately form actus reus. The organization of brothel for occupation prostitution without its content, or only content of such brothel without occupation procurement or procurement with a mercenary motive without the organization and content of brothel is possible.

11. As the victims it is necessary to recognize persons concerning whom one of specified in [Articles 128, 135 UK](#) action is directly made at least. In need of clarification of damage suffered to person concerning whom the above-stated actions were made courts have the right to attract persons having special knowledge.

For the purpose of safety of the victims the bodies conducting criminal procedure shall take during pre-judicial production the measures provided [by Articles 96, 97](#) Codes of penal procedure of the Republic of Kazakhstan (further - the Code of Criminal Procedure), and in legal proceedings - [article 98 Code of Criminal Procedure](#).

According to article 47 Code of Criminal Procedure, they shall provide confidentiality of the data concerning intimate circumstances and private life of the victim.

The victims are not subject to responsibility for illegal migration, intentional illegal crossing of frontier of the Republic of Kazakhstan, failure to carry out of the decision on expulsion, abuse of regulations of stay in the country, use of forgery documents, illegal implementation of labor activity if these acts are made by the victims in connection with their trade.

12. Human trafficking concerning two and more persons can be made at the same time or in different time. In case of qualification of actions of the guilty person on signs of not momentariness of crimes or making of act concerning two and more persons it is necessary to proceed from orientation of its intention, nature of specific actions, period between crimes and other circumstances of the committed crime.

The actions which are not covered by single intention concerning several victims at different times are subject to qualification on [Item 2 parts two of article 128 UK](#) and on [Item parts two of article 135 UK](#).

Actions guilty of the relation of two and more persons, made with single intention are subject to qualification on [Item 6 parts two of article 128 UK](#) and on [Item 5 parts two of article 135 UK](#).

Actions of the person who committed completed crime, connected with human trafficking preparation for it and attempt at it form cumulative offenses.

13. For qualification of action of the guilty person on [Item 7 parts two of article 128 UK](#) and [to Item 6 parts two of article 135 UK](#) need to be determined that human trafficking is made for the purpose of removal of organs or the victim's tissues for transplantation or other use.

The actions connected with coercion to withdrawal or unlawful taking of bodies and tissues of the person, making of illegal transactions concerning not person but only its bodies and fabrics are subject to independent qualification by the corresponding part [of article 116 UK](#).

14. On [Item 8 parts two of Article 128, to Item 7 parts two of article 135 UK](#) responsibility for making of human trafficking comes in cases of deception or confidence abuse of the victim. As a result of it the victim without assuming that the guilty person affects intentionally its sale, making of other transactions and actions directed to its operation it appears in servile status.

15. On [Item 9 parts two of article 128 UK](#) and [to Item 8 parts two of article 135 UK](#) it is necessary to qualify actions of the official who committed crimes working with use of the official position in state or in the non-state organizations. The human trafficking made by the official is the qualifying sign of this crime and additional qualification under article 361 UK it is not required.

16. On [Item 10 parts two of article 128 UK](#) and [to Item 10 parts two of article 135 UK](#) are qualified the acts made concerning the victim who is in material or other dependence on the guilty person.

Material dependence of the victim, for example, can be expressed by stay him in complete or partial dependence of the guilty person, accommodation in premises of the guilty person. It is necessary to understand any non-material dependence of the victim on the guilty person as other dependence (for example, the family relations, dependence of the subordinate on the head, the pupil on the teacher).

17. Parts third [of articles 128 and 133 UK](#) provide responsibility for the human trafficking made for the purpose of export (sending) out of limits of the Republic of Kazakhstan, import to the Republic of Kazakhstan or

transportations (transit) of person through the territory of the Republic of Kazakhstan from one foreign state in another, and equally in export out of limits of the Republic of Kazakhstan, import to the Republic of Kazakhstan or transportation of person through the territory of the Republic of Kazakhstan from one foreign state to other state for the purpose of making of such acts.

18. On Item of 1 part four of article 128 UK and on Item of 1 part four of article 135 UK the human trafficking made by criminal group which according to explanation of Item 24 of article 3 UK the organized group, the criminal organization, criminal society, transnational organized group, the transnational criminal organization, transnational criminal society, terrorist group, extremist group, gang, illegal paramilitary force treat is qualified.

19. It is necessary to consider that the human trafficking which entailed the death of the victim or other heavy effects on imprudence assumes crime execution with two forms of fault. The committed acts specified in articles 128 UK or 135 UK, which entailed the death of the victim or other heavy effects on imprudence do not require additional qualification.

Mental disturbance and other serious illness can be recognized as other heavy effects. If concerning the victim during its operation other intentional crimes are committed (for example: murder, rape, infection HIV/AIDS, venereal diseases, illegal production of abortion and so on), those deeds is subject to qualification on cumulative offenses.

20. Stealing or illegal imprisonment of the person for the purpose of its operation and the subsequent criminal actions connected with human trafficking are subject to qualification on cumulative offenses on Item 2 parts three of article 125 UK or on Item 2 parts three of article 126 UK and the corresponding parts of articles 128 or 135 UK.

Kidnapping of the victim for the purpose of operation by deception, further transportation without elements of capture and forced displacement in space form recruitment and transportation of person for the purpose of operation in case of human trafficking and the deeds in general should be qualified only by the corresponding part of article 128 UK without application of the criminal precept of law, stipulated in Item 2 parts three of article 125 UK.

21. According to [article 4](#) of the Constitution of the Republic of Kazakhstan this normative resolution is included the law in force, and also is obligatory and becomes effective from the date of official publication.

**Chairman of the Supreme Court of the Republic of B. Beknazarov
Kazakhstan**

**Judge of the Supreme Court of the Republic of D. Nuralin
Kazakhstan, secretary of plenary meeting**