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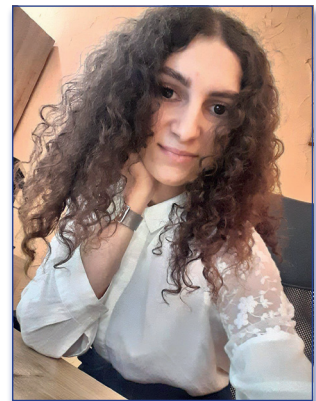


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Liability for Illegal Human Trafficking: a Comparative Characteristics

Abstract. *The research paper analyses the legislation of Anglo-Saxon and Romano-Germanic Legal Systems devoted to the issue of illegal human trafficking. A comparative characterization of Ukrainian legislation in the field of human trafficking with the criminal law norms of European countries has been carried out. The provisions of responsibility for illegal human trafficking in the countries of the Anglo-Saxon Legal System have been carried out. It has been found that the concept of “human trafficking” is not universal, each country uses its own version of this criminal activity. There is also no unified point of view regarding the understanding and definition of the concept of “human trafficking” because the studied criminal acts often do not indicate the execution of purchase and sale agreements, other agreements regarding a person, and even recruitment. Therefore, the conducted comparative characteristics make it possible to actualize issues that, according to the authors, can serve as a further basis for further scientific research and improvement of the legislation, and thus improve the activity of law enforcement agencies, which in general will lead to an improvement in the protection of human rights.*

Key words: human trafficking, sexual exploitation, Criminal Code of Ukraine, labor exploitation, legislation of foreign countries, slavery.



Yulia Rakova

Introduction. In the modern world, human rights are the highest value that is guaranteed and ensured by lots of international and national acts. The Constitution of Ukraine enshrines the right to freedom and personal integrity (Art. 29), the right to free movement, and choice of residence (Art. 33), everyone has the right to work, but the use of forced labor is prohibited (Art. 43).

The above-mentioned crime is a global problem, as it does not meet the standards of the law-governed state. Human trafficking is not a problem of one country, it involves all countries of the world, as it goes beyond the borders, becoming an international crime, thereby increasing the level of danger in general. Human trafficking often begins in less developed countries, due to economic situation conflicts and more vulnerable state, and as the present shows, perhaps countries involved in armed conflicts (war). Illegal human trafficking encroaches on the fundamental values of a democratic society, such as: freedom, honor and dignity, personal integrity, neglecting them and harming the moral and physical health of the victim of human trafficking.

Nowadays, there is a trend of increasing encroachment on human life and freedom. According to the statistics of the Judiciary of Ukraine, women are the most vulnerable to human trafficking. The income of transnational

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organized crime from the commission of crimes related to human trafficking is extremely profitable and can be compared to arms and drug trafficking, and sometimes even surpasses them. The practice of applying the rule on human trafficking is small, which seems to be related to the problems of qualification of this crime, the imperfection of criminal legislation in this field, as well as the lack of a clear state policy in the field of combating these phenomena.

All of the above determines the relevance of this topic. Moreover, the relevance of studying the topic of illegal human trafficking is related to the improvement of regulatory support for combating human trafficking.

The following scientists made a great contribution to researching the problems of illegal human trafficking and its countermeasures: N. O. Hutorova, Ya. H. Lyzohub, A. M. Orleana, V. M. Stratonov, N. M. Lukach, S. F. Denysova, T. A. Denysova, O. V. Naden, V. V. Turok, V. M. Pidhorodnyskyi, V. O. Ivashchenko, V. Ia. Tatsii and others.

The purpose of the research is a comprehensive analysis of human trafficking as a cross-border crime, in all its forms in accordance with Art. 149 of the Criminal Code of Ukraine, in comparison with the norms that provide for responsibility for human trafficking in foreign countries.

Results of the research. One of the most severe crimes that violate the freedom, honor, and dignity of a person is human trafficking. This crime brings it with great and grave consequences, regardless of the type and purpose of exploitation. Due to the desire of criminals to make a profit from human exploitation, this crime is constantly evolving, therefore, in our opinion, the criminal legislation, which provides for responsibility for illegal human trafficking, requires constant study and sometimes amendments to the legislation, in order to increase the level of criminal law countering these crimes.

In 2018, new amendments were proposed and made to the Criminal Code of Ukraine, as the previous edition did not fully correspond to the concept of international acts. As a consequence in Art. 149 "Human trafficking" of the Criminal Code of Ukraine defines the following actions: "human trafficking, as well as recruiting, moving, hiding, transferring or receiving a person, committed for the purpose of exploitation, with the use of coercion, kidnapping, deception, blackmail, financial or other dependence of the victim, heir vulnerable state or bribery of a third person who controls the victim to obtain consent for his exploitation"¹. The disposition of the Article of the current legislation regarding possible acts of exploitation of people has increased significantly and provides for kidnapping, certain dependence of the victim, bribery of a third person, and directly controlling the victim. In our opinion, even with the latest changes, our legislation needs to be revised in accordance with modern requirements and challenges.

Foreign analysts are also studying the problems of this type of crime in Ukraine. Thus, in the 2019 Report of the US Department of Human Trafficking, it was noted that the Ukrainian government does not fully comply with the minimum standards for the elimination of human trafficking, but is making significant efforts to do so. In general, compared to the previous reporting period, the state intensified its efforts, but it still remains at the 2nd level. Courts are slow to process cases; due to the lack of personnel in the court, the situation worsened; did many sentencings to probation, possibly exacerbated by corruption, so most convicted human traffickers avoid prison terms². In our opinion, the cabinet of Ministers of Ukraine strengthened the work of police bodies in 2019. According to statistics from the US Department of State, the Human Trafficking Report stated, "in 2019 law enforcement

¹ Кримінальний кодекс України: Закон України від 05.04.2001 р. №2341-III. Відомості Верховної Ради України. 2001. №25-26. Ст. 149

² Гнатуша Ю. В. Міжнародний досвід протидії торгівлі людьми: автореф. дип. роб. / Чорноморський нац.ун-т ім. Петра Могили. Миколаїв, 2020. С. 21



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**LIABILITY FOR ILLEGAL
HUMAN TRAFFICKING:
A COMPARATIVE
CHARACTERISTICS**

The research paper describes Ukrainian legislation. The legislation of foreign countries in the field of human trafficking was considered. Common and distinctive features of the Ukrainian legislation with criminal law norms of Europe, Asia, and the Anglo-Saxon Legal System were distinguished. The statistics of victims of human trafficking in Ukraine for 2019-2020 were analyzed.

It has been studied that one of the reasons for decrease in the ability of law enforcement agencies to detect cases of human trafficking and limits their cross-border activities is the globally recognized pandemic. Since then, the number of registered proceedings has decreased by 30% from 2019 to 2020. Most of the victims are women, aged 18 and older.

It has been established that in most countries of the former Soviet Republic, the qualifying features are: illegal detention of a person without consent and deportation of a person abroad, actions related to the seizure of human organs and tissues for transplantations, the seizure or destruction of a person's documents.

It is emphasized that the concept of "human trafficking" is not universal, each country uses its own version. There is also no unified point of view regarding the understanding and definition of the concept of "human trafficking" because the studied criminal acts often do not indicate the execution of purchase and sale agreements, other agreements regarding a person, and even recruitment. The concept of "exploitation" is used in some acts more broadly, and in some countries, this concept is completely absent. The legislation of the USA and the United Kingdom is similar to Ukraine and this arose as a result of those changes that were introduced in 2018.

Based on the analysis, proposals are made to the Ukrainian legislation, namely: it is worth adopting a law that will provide for the procedure for increasing damages to victims of human trafficking, which will increase the guarantee of ensuring the protection of the victim's rights, providing assistance to the victims of this crime.

investigated 297 crimes related to human trafficking, compared to 275 crimes in 2018. Among these crimes were 135 cases of human trafficking for the purpose of labor exploitation, 112 cases of sexual exploitation, 47 cases of forced participation in criminal activity and three cases of forced begging. In 2019, law enforcement agencies submitted 233 reports of suspicions, which is a necessary precondition for initiating legal proceedings, involving 120 suspects, as opposed to 185 cases involving 133 suspects in 2018."³

In 2020, law enforcement agencies investigated 203 cases related to human trafficking, which is less than in 2019 (297 cases). Among these cases, 87 were related to human trafficking for the purpose of sexual exploitation, 116 – for the purpose of labor exploitation (of which 36 – were for forced participation in criminal activity), and 12 – were for the purpose of forced begging. According to one of the international organizations, the COVID-19 pandemic reduces the ability of law enforcement agencies to detect cases of human trafficking and limits their cross-border activities for this purpose. Therefore, from 2019 to 2020, the number of registered cases in the field of human trafficking decreased by more than 30%; the number of court proceedings of such cases also decreased in the reporting period. As for information on victims of illegal human trafficking, in 2020, 43 people were affected, of which 22 were women. All persons were aged 18 years or older⁴. Kominternivskyi District Court of Kharkiv City imposed a sentence dated on 08.07.2020, in which it found PERSON 1 guilty of committing the offense provided for in p. 2 of Art. 149 of the Criminal Code of Ukraine, and appointed punishment in the form of 5 (five) years of imprisonment without confiscation of property. On the basis of Art. 75 of the Criminal Code of Ukraine to release PERSON 1 from serving a sentence of probation with a probationary period of 2 (two)⁵. Observers noted that many judges underestimated the seriousness of crimes related to human trafficking and continued to be guided by entrenched stereotypes about the nature of such crimes.

It is for the purpose of further improvement of responsibility for human trafficking that we consider it necessary to study foreign legislation that regulates these problems.

Criminal responsibility for human trafficking in the Republic of Moldova is enshrined in Chapter III "Crimes against freedom, honor and dignity of the individual" of the Special Part of the Criminal Code of the Republic of Moldova. In accordance with Art. 165 § 1 of the Criminal Code of the Republic of Moldova it is prohibited to "recruitment, transportation, transmission, hiding or receiving an adult with or without their consent for the purpose their commercial or non-commercial sexual exploitation, exploitation of forced labor (services), begging, allocation of assistance, social benefits or assistance, illegal use in medical or scientific experiments, exploitation in slavery or in slavery-like conditions, use in armed conflicts or criminal activity, extraction of organs, tissues and (or) cells, as well as the use of women as a surrogate mother or for the purposes of reproduction by: a) usage of violence that is not dangerous to human life or health or the threat of violence; b) kidnapping; c) theft, concealment, damage or destruction of documents; d) keeping in slavery for the purpose of debt repayment"⁶.

Analyzing the above-mentioned norm, it is possible to say that the research paper specifies the list of alternative actions, namely recruitment,

³ Звіт Державного департаменту США про стан справ у сфері протидії торгівлі людьми: 2020 р. Україна. URL: https://ua.usembassy.gov/wp-content/uploads/sites/151/TIP_Report_20_Ukr.pdf

⁴ Звіт Державного департаменту США про стан справ у сфері протидії торгівлі людьми: 2021 р. Україна. URL: https://ua.usembassy.gov/wp-content/uploads/sites/151/TIP2021_UKR.pdf

⁵ Вирок Комінтернівського районного суду м. Харкова від 08.07.2020 р., судова справа № 641/3421/19. URL: <https://reyestr.court.gov.ua/Review/90275299>

⁶ Кримінальний кодекс Республіки Молдова від 18.04.2002. № 985-XV. URL: https://www.legislationline.org/download/id/9768/file/MOLD_CC_ru.pdf



Key words: human trafficking, sexual exploitation, Criminal Code of Ukraine, labor exploitation, legislation of foreign countries, slavery.

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RESPONSABILITÉ POUR TRAFFIC ILLICITE DES ÊTRES HUMAINS : UNE CARACTÉRISTIQUE COMPARATIVE

Résumé. Auteur de l'article analyse les législations des ordres juridiques anglo-saxon et romano-germanique consacrées à la question de la traite illégale des êtres humains. Une caractérisation comparative de la législation ukrainienne dans le domaine de la traite des êtres humains avec les normes de droit pénal des pays européens a été réalisée. Les dispositions de responsabilité en matière de traite illégale des êtres humains dans les pays du système juridique anglo-saxon ont été étudiées. Il a été prouvé que le concept de "trafic d'êtres humains" n'est pas universel, chaque pays utilise sa propre version de cette activité criminelle. Il n'y a pas non plus de point de vue unifié concernant la compréhension des actions liées à la traite des êtres humains, ceci est confirmé par les résultats des actes criminels étudiés, où il n'y a souvent aucune indication de l'exécution des accords d'achat et de vente, d'autres accords concernant une personne, et même le recrutement. Par conséquent, les caractéristiques comparatives menées permettent d'actualiser des questions qui, selon les auteurs, peuvent servir de base supplémentaire pour de nouvelles recherches scientifiques et l'amélioration de la législation et ainsi améliorer l'activité des forces de l'ordre, ce qui en général conduira à une amélioration de la protection des droits de l'homme.

Mots-clés : trafic d'êtres humains, exploitation sexuelle, Code pénal ukrainien, exploitation par le travail, législation des pays étrangers, esclavage.

transportation, transmission, receiving and concealment of a person for which criminal liability is established. But in this article of the Criminal Code of Moldova, there is no indication of execution of illegal sales and other agreements against a person, which as we can see in practice, often consist of human trafficking by guilty persons. A legislator of the Republic of Moldova points out that responsibility is imposed on an adult, but does not mention the trafficking of children at all. The position of the legislator, who does not extend the rules on human trafficking to children is incomprehensible and unreasonable, therefore there is a huge gap in the legislation that allows to carry out acts of trafficking of minors and avoid criminal liability for it.

Moreover, drawing the difference between Art. 149 of the Criminal Code of Ukraine and Art. 165 of the Criminal Code of the Republic of Moldova, it should be noted in the Criminal Code of the Republic of Moldova, the method of committing human trafficking is a mandatory feature of the main component of human trafficking, while the method according to Ukrainian criminal legislation is a qualifying feature. Thus, according to the Criminal Code of the Republic of Moldova, human trafficking with the use of violence or the threat of its use is qualified under Art. 165 § 1 of the Criminal Code of the Republic of Moldova, while this feature is a qualifying one, and liability arises under Art. 149 § 2 of the Criminal Code of Ukraine.

Criminal liability for human trafficking of the Republic of Kazakhstan. Article 128 Chapter 1. of the Criminal Code of the Republic of Kazakhstan provides for liability for human trafficking⁷. Art. 128 § 2 of the Criminal Code of the Republic of Kazakhstan provides for liability for the same acts committed with seizure, concealment or destruction of documents certifying the identity of the victim. In our opinion, it would be appropriate for Ukrainian legislation to include this norm in Art. 149 § 2 of the Criminal Code of Ukraine, because the seizure of documents from a person is a very common phenomenon during exploitation.

The current legislation of Kazakhstan does not specify in the Article of the Criminal Code what the legislator means by the concept of "exploitation".

In most countries of the former Soviet Republic, the qualifying features are: illegal detention of a person without consent and deportation of a person abroad, actions related to the seizure of human organs and tissues for transplantation, and seizure or destruction of a person's documents. In our opinion, it is appropriate to borrow these features for the Criminal Code of Ukraine, to some extent they will help in the fight against illegal human trafficking.

We consider it necessary to analyze the criminal legislation of some European countries, which provides responsibility for human trafficking. In particular, we studied the criminal codes of Austria, Italy, Spain, France, and the Federal Republic of Germany. It should be noted that many European countries that criminalize human trafficking as a separate crime, only prosecute prostitution, ignoring other activities including forced labor (e.g., Austria, Germany, etc.). However, in most European countries, human trafficking for the purpose of sexual exploitation remains a limiting feature of the crime, and such actions are subject to strict sanctions.

In the Federal Republic of Germany, the criminal liability for human trafficking is established in Chapter 18. "Crimes against personal freedom" of the German Criminal Code (Strafgesetzbuch). Chapter 232 of the Federal Republic of Germany establishes that the person who transports another person, taking advantage of their economic hardship or helplessness due to their stay in a foreign country, or the person who employs another person under the age of twenty-one, is punished if 1) this person must be exploited: a) during the practice of prostitution or while committing of sexual acts by a criminal or a third person or for condoning sexual acts by a criminal or a

⁷ Кримінальний кодекс Республіки Казахстан від 3 липня 2014 року №226-V URL: https://online.zakon.kz/Document/?doc_id=31575252&pos=2116;-40;pos=2116;-40



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third person; b) through labor activity; c) when begging; d) when this person commits actions that threaten punishment; 2) this person must be kept in slavery, serfdom, debt slavery or in a position corresponding or similar to this, or 3) this person must have an organ illegally removed⁸.

As we see it, there are certain shortcomings in the legislation of the Federal Republic of Germany, namely: firstly, liability is provided for the transportation of a person, but there are no other actions committed for the purpose of human trafficking; secondly, the restriction by age category in this norm is inappropriate, because people of different ages suffer from human trafficking.

A special feature of German criminal legislation is the separate criminalization of child trafficking. Clause (1) of Art. 236 of the Criminal Code of the Federal Republic of Germany establishes that a person who leaves their child, ward or adopted child who has not reached the age of 18 to another person on a permanent basis with gross neglect of the duty of care or upbringing, acting with the purpose of enriching themselves or a third person, who is punished by imprisonment for a term of up to five years or a fine. Thus, Tak, the German legislator establishes criminal liability for child trafficking carried out by a special entity, namely a father, adoptive parent, guardian or custodian, as it indicates a gross disregard for the duties of care and upbringing that lie on these persons. Thus, German Law provides for two forms of illegal human trafficking: child trafficking and human trafficking.

Criminal liability for human trafficking is established by the Criminal Code of Austria in chapter III "Crimes against freedom" §104-a "Human trafficking" [16]. Criminal penalties under § 104-a p. 1 are intentional actions associated with the use of dishonest means (force, threat, deception, intimidation, use of mental illness or helplessness, etc.) against this person. Exploitation under § 104-a p. 3 includes sexual exploitation, seizure of organs, labor exploitation, exploitation by begging and exploitation for punishable behavior⁹. As we can see, the term "exploitation" by Austrian legislators means a smaller number of actions compared to the national criminal code. Regarding the methods of committing crimes, the Criminal Code of Ukraine also provides for a wider list. The Austrian Criminal Code calls this "unfair means" and lists it in § 104-a, p. 2: use of violence, deception, hardship, mental illness or a condition that threatens life or health, makes a person vulnerable, to intimidate or bribe a person who controls the victim.

According to the current legislation of Italy, Chapter 3 "Crimes Against Freedom", Section 1 of Art. 600 provides for liability from 8 to 20 years for exercising authority over a person corresponding to the right of ownership, or someone, who reduces or maintains a person in a state of permanent subjugation by forcing them to work or sexual acts, or to begging, or in any case to the implementation of illegal actions related to their exploitation or organs removal. Compared with Ukrainian legislation, the Italian Criminal Code provides for much stricter liability. The same Article provides that reduction or maintenance in a state of subordination occurs when the conduct is carried out by means of violence, threats, deception, abuse of power or taking advantage of a situation of vulnerability, physical or mental inferiority or a situation of need, or by means of a promise or provision sums of money or other benefits to those who have power over a person. In our opinion, this qualification for the crime is similar to Ukrainian legislation¹⁰.

On the other hand, the punishment for human trafficking in Spain (Art. 177 of the Criminal Code of Spain) is less severe – imprisonment for a term of

Die Forschungsarbeit beschreibt die ukrainische Gesetzgebung. Dabei wurde die Gesetzgebung ausländischer Staaten im Bereich Menschenhandel berücksichtigt. Es wurden Gemeinsamkeiten und Besonderheiten der ukrainischen Gesetzgebung mit strafrechtlichen Normen Europas, Asiens und des angelsächsischen Rechtssystems unterschieden. Die Statistiken der Opfer von Menschenhandel in der Ukraine für 2019-2020 wurden analysiert.

Es wurde untersucht, dass einer der Gründe für die Abnahme der Fähigkeit der Strafverfolgungsbehörden, Fälle von Menschenhandel aufzudecken und ihre grenzüberschreitenden Aktivitäten einzuschränken, die weltweit anerkannte Pandemie ist. Seitdem ist die Zahl der registrierten Verfahren von 2019 auf 2020 um 30 % zurückgegangen. Die meisten Opfer sind Frauen ab 18 Jahren.

Es ist festgestellt worden, dass in den meisten Ländern der ehemaligen Sowjetrepublik folgende Voraussetzungen erfüllt sind: rechtswidrige Inhaftierung einer Person ohne Zustimmung und Abschiebung einer Person ins Ausland, Handlungen im Zusammenhang mit der Beschlagnahme menschlicher Organe und Gewebe für Transplantationen, die Beschlagnahme oder Vernichtung der Dokumente einer Person.

Es wird betont, dass das Konzept des „Menschenhandels“ nicht universell ist, jedes Land verwendet seine eigene Version. Auch hinsichtlich des Verständnisses und der Definition des Begriffs „Menschenhandel“ gibt es keine einheitliche Sichtweise, da die untersuchten Straftaten häufig nicht auf den Abschluss von Kauf- und Verkaufsverträgen, sonstigen Vereinbarungen über eine Person oder gar Anwerbung hinweisen. Das Konzept der „Ausbeutung“ wird in einigen Rechtsakten weiter gefasst, und in einigen Ländern fehlt dieses Konzept vollständig. Die Gesetzgebung der USA und des Vereinigten Königreichs ähnelt der der Ukraine, was sich aus den 2018 eingeführten Änderungen ergab.

Auf der Grundlage der Analyse werden Vorschläge für die ukrainische Gesetzgebung gemacht, und zwar: Es lohnt sich, ein Gesetz zu verabschieden, das das Verfahren zur Erhöhung des Schadensersatzes für Opfer des Menschenhandels vorsieht, wodurch die Gewährleistung des Schutzes der Rechte des Opfers erhöht wird, Hilfe für die Opfer dieses Verbrechens.

Schlüsselwörter: Menschenhandel, sexuelle Ausbeutung, Strafgesetzbuch der Ukraine, Ausbeutung der Arbeitskraft, ausländische Gesetzgebung, Sklaverei.

⁸ Кримінальний Кодекс Федеративної Республіки Німеччини від 15.05.1971 р. URL: [§ 232 StGB - Одноместный стандарт \(gesetze-im-internet.de\)](https://www.gesetze-im-internet.de/stgb/104.html)

⁹ Кримінальний Кодекс Австрії від 23 січня 1974 р. URL: <https://www.jusline.at/gesetz/stgb/paragraf/104>

¹⁰ Кримінальний кодекс Італії від 19.10.1930 р. № 1398 р. URL: <https://www.altalex.com/documents/news/2014/10/28/dei-delitti-contro-la-persona>



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ODPOWIEDZIALNOŚĆ ZA NIELEGALNY HANDEL LUDŹMI: CHARAKTERYSTYKA PORÓWNAWCZA

Artykuł badawczy opisuje ustawodawstwo ukraińskie. Uwzględniono ustawodawstwo państw obcych w zakresie handlu ludźmi. Wyróżniono podobieństwa i specyfikę ustawodawstwa ukraińskiego z normami prawa karnego Europy, Azji i anglosaskiego systemu prawnego. Przeanalizowano statystyki ofiar handlu ludźmi na Ukrainie za lata 2019-2020.

Zbadano, że jedną z przyczyn spadku zdolności organów ścigania do wykrywania przypadków handlu ludźmi i ograniczania ich działalności transgranicznej jest uznana na całym świecie pandemia. Od tego czasu liczba zarejestrowanych procedur spadła o 30% w latach 2019-2020. Większość ofiar to kobiety w wieku powyżej 18 lat.

Ustalono, że w większości krajów byłej republiki radzieckiej spełnione są następujące przesłanki: bezprawne zatrzymanie osoby bez zgody i deportacja osoby za granicę, czyny związane z konfiskatą narządów i tkanek ludzkich do przeszczepu, konfiskata lub zniszczenie dokumentuje jedną osobę.

Podkreśla się, że pojęcie „handel ludźmi” nie jest uniwersalne, każdy kraj stosuje swoją własną wersję. Nie ma też jednolitego poglądu na rozumienie i definicję pojęcia „handel ludźmi”, gdyż często badane przestępstwa nie dotyczą zawierania umów kupna-sprzedaży, innych umów dotyczących osoby czy nawet rekrutacji. „jest używane szerzej w niektórych aktach prawnych, aw niektórych krajach pojęcie to jest całkowicie nieobecne. Prawodawstwo USA i Wielkiej Brytanii jest podobne do ustawodawstwa Ukrainy, co wynika ze zmian wprowadzonych w 2018 roku.

Na podstawie analizy wysuwane są propozycje ustawodawstwa ukraińskiego, a mianowicie: warto uchwalić ustawę przewidującą tryb podwyższenia zadośćuczynienia dla ofiar handlu ludźmi, zwiększając tym samym ochronę praw ofiar, pomoc ofiarom tego przestępstwa.

Słowa kluczowe: handel ludźmi, wykorzystywanie seksualne, Kodeks karny Ukrainy, wyzysk w pracy, ustawodawstwo zagraniczne, niewolnictwo.

5 to 8 years. § 1 defines the concept of human trafficking, the norm is similar to the domestic legislation of Ukraine. A certain feature of this legislation is that, according to Article 177 of the Criminal Code of Spain, a victim of human trafficking is exempted from punishment for the crime committed by them in the case of exploitation, if their participation is a direct result of violence, intimidation, deception and there is an appropriate proportionality between the specific situation and the criminal act¹¹. This norm should be introduced in Ukrainian legislation.

The United States of America (hereinafter referred to as the USA), as one of the most developed countries, makes active attempts to eliminate human trafficking. Currently, countering and fighting human trafficking is one of the priority tasks in this country. Every year the United States Department of State publishes a report on human trafficking. Based on data analysis, the US State Department of State ranks countries and divides them into 3 groups: states whose legislation meets the minimum requirements of the US law “On Trafficking Victims Protection Act” of 2000 (40 державstates – e. g., Estonia, Lithuania); states whose legislation does not fully meet the minimum requirements of this law, but they exert significant efforts in the fight against human trafficking (80 states – Ukraine, Kazakhstan, Uzbekistan); states whose legislation does not fully meet the minimum requirements of this law (23 states, Russia, Belarus, Turkmenistan, and others). The report also contains recommendations for each state.

Thus, the USA annually carries out a great deal of work on evaluating the effectiveness of countering the state's international problem of human trafficking, encouraging states to take all possible efforts to combat these crimes, as well as to cooperate between states.

In the USA, criminal responsibility for human trafficking is provided for in Part 18 of the Code of Laws of the United States – “Crimes and Criminal Justice” in Section 1 “Crimes” in Chapter 77 – “Slavery and Human Trafficking”. Par. “a” of Art. 1590 states: any person, who intends to recruit, hide, transport, transfer or receive a person in any way for the purpose of exploiting their labor or coercing them to provide services in violation of the current chapter is subject to criminal liability¹².

In accordance with Article 1592 of the Code makes it illegal to destroy, conceal, confiscate or possess any document 9passport, immigration document or another government-issued document that certifies an individual) for the purpose of enforcing an act of trafficking, slavery or forced labor or restricting freedom of movement for the purpose of performing work or services by a person who is a victim of human trafficking. Comparing this provision with Art. 149 of the Criminal Code of Ukraine, it should be noted that human trafficking related to the removal, concealment or destruction of documents certifying the victim is not provided for by the legislation of Ukraine. In our opinion, the following qualifying feature in this crime should be highlighted: “Illegal behavior regarding documents that contribute to human trafficking, forced labor and slavery.”

In a special way, the US legislation regulates the issue of compensation for damages to victims of human trafficking. Thus, Art. 1593 of the US law establishes mandatory restitution to the victim, which is a form of compensation for damage caused to them. According to US law, restitution is considered a comprehensive payment covering: the full amount of the victim's losses (all expenses related to mental and physical rehabilitation, housing, attorney's fees, lost income); the maximum amount of income received by the perpetrator for providing services or performing work to the victim, or the amount at which the work or services received by the victim is

¹¹ Кримінальний кодекс Іспанії від 23.11.1995. URL: <https://wipolex.wipo.int/ru/legislation/details/18760>

¹² Звід Законів США. URL: <https://www.law.cornell.edu/uscode/text/18/part-1/chapter-77>



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ВІДПОВІДАЛЬНІСТЬ ЗА НЕЗАКОННУ ТОРГІВЛЮ ЛЮДЬМИ: ПОРІВНЯЛЬНА ХАРАКТЕРИСТИКА

Анотація. У статті проаналізовано законодавство англо-саксонської та романо-германської правової системи присвячене питанням незаконної торгівлі людьми. Проведена порівняльна характеристика українського законодавства у сфері торгівлі людьми з кримінально-правовими нормами країн Європи. Досліджено положення відповідальності за незаконну торгівлю людьми в країнах англо-саксонської правової системи. Доведено, що поняття «торгівлі людьми» не є універсальним, кожна країна використовує свою версію відносно даної злочинної діяльності. Також не має єдиної точки зору, з приводу розуміння щодо дій пов'язаних з торгівлею людьми, підтвердженням цього є результати вивчення кримінальних актів де нерідко відсутня вказівка на вчинення угод купівлі-продажу, інших угод щодо людини, і навіть вербування. Тому проведена порівняльна характеристика дозволяє актуалізувати питання які на думку авторів можуть слугувати подальшим підґрунтям для подальших наукових пошуків та вдосконалення законодавства, а відтак покращить діяльність правоохоронних органів, що в цілому приведе до покращення захисту прав людини.

Ключові слова: торгівля людьми, сексуальна експлуатація, Кримінальний кодекс України, трудова експлуатація, законодавство зарубіжних країн, рабство.

valued, in accordance with the amount of wages and allowances guaranteed under current legislation¹³.

In Ukraine, there is no such detailed regulation of issues on the procedure for compensation of damages to victims of human trafficking. In accordance with the current legislation of Ukraine, Articles 14, and 16 of the Law of Ukraine “On Combating Human Trafficking” defines the need to provide legal assistance to victims of human trafficking. The most effective way to recover property and moral damages caused by victims of human trafficking is to file a civil lawsuit in criminal proceedings and obtain the procedural status of a civil plaintiff. The judicial practice of Ukraine regarding compensation for damages in crimes related to human trafficking is somewhat controversial. As an example, we can cite the verdict of the Leninsky District Court of Mykolaiv dated May 24, 2016, in the case of accusing someone in a criminal offense provided for in Part 2 of Article 149 and Part 3 of Article 303 of the Criminal Code of Ukraine, according to which the court established the presence of consequences of sexual exploitation with the forensic psychological examination, justifies mental damage in favor of four victims. According to four surveys, each victim of sexual exploitation experienced emotional stress, accompanied by mood swings, mental and physical stress¹⁴.

Criminal liability for human trafficking in the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the United Kingdom), unlike many countries, is established by a special law and not by the criminal code, since the United Kingdom belongs to the group of countries of the Anglo-American (Anglo-Saxon) legal system, together with the USA, which is characterized by the codifications of norms. Thus, criminal liability for human trafficking is established by Art. 2 of the Modern Slavery Act 2015, which states: “1. A person commits a crime if he/she organizes or facilitates the movement of another person for the purpose of exploiting he/she. 2. Consent (of an adult or a child) to the transfer is irrelevant. 3. A person may organize or facilitate the movement of another person, in particular by recruiting, transporting, transferring a person, harboring or receiving a person or transferring or exchanging control of a person. 4. A person organizes or facilitates the organization of the transfer of another person for the purpose of exploitation only if: a) a person intends the exploit another person (in any part of the world) during or after transfer; or b) a person knows or should know that the other person is likely to be subjected to exploitation (in any part of the world) during or after the transfer”¹⁵. Considering this norm of law, it can be noted that buying and selling and other agreements regarding a person are not identified as actions constituting human trafficking. In our opinion, this approach of the legislator is incorrect, since actions specified in the Article constitute acts that mediate human trafficking, and such illegal agreements as purchase, sale, gift, barter, free use, which constitute the essence of human trafficking, allow treating a person with impunity as to property. Art. 2 of the Act on Modern Slavery of the United Kingdom is special in that, in addition to such alternative actions as recruitment, transportation, transfer, receipt, concealment of a person, another action is distinguished: the transfer or exchange of control over the victim of trafficking, which distinguishes this norm from the norms of the criminal legislation of other countries. The transfer or exchange of control is possible if the victim of trafficking falls under the control of another person temporarily, for a short period of time. According to Art. 3 of the Act on Modern Slavery of the United Kingdom, the term exploitation means: 1) slavery, servitude, forced or compulsory labor;

¹³Звід Законів США. URL: <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-77>

¹⁴Никифоряк Л. П., Орлан А. М. Аналіз судової практики з питань застосування законодавства України щодо протидії торгівлі людьми. Київ : Видавництво «Фенікс», 2019. 120 с. URL: <https://iom.org.ua/sites/default/files/analysis2019.pdf>

¹⁵Закон Великобританії про сучасне рабство 2015 року. URL: <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

2) sexual exploitation; 3) removal of organs; 4) provision of services through the use of force, threats or deception (a person is a subject to the use of force, threats or deception, which are intended to induce them or to provide services of any kind; or to provide another person with the opportunity to receive any benefits); 5) providing access to services for children and vulnerable population groups¹⁶. Thus, the Act on Modern Slavery of the United Kingdom enshrines a fairly broad list of goals for the exploitation of a victim of human trafficking, which includes the goals established in international acts on combating human trafficking (§. 1-4), as well as another goal that is the result of the legislator's development, Art. 2 § 5 of the Act on Modern Slavery of the United Kingdom is aimed at protecting children and persons with illnesses or disabilities from human trafficking, because due to their mental and physical characteristics, they constitute the most vulnerable group of the population, for violation of rights, where they are guilty, individuals should be severely punished.

Conclusions. After having analyzed the legislation of foreign countries, we can make a conclusion that there is no single universal concept of "human trafficking". Each country uses its own alternative actions which include human trafficking. So, in some countries, there are no such actions as concluding an illegal agreement, a contract for the sale, recruitment a person. In the criminal codes and legislation of the Anglo-Saxon and Romano-German legal systems, there is no universal provision of "exploitation", in some countries, this concept is not specified at all in the norms of the Article on human trafficking. The liability for illegal human trafficking is, to some extent, similar to post-Soviet countries, and provides for milder penalties, unlike the legislation of European countries (Italy), which apply maximum penalties. It would be appropriate to adopt such alternative actions as the confiscation of documents, that persons certify, as provided by the legislation of Kazakhstan.

The US legislation has the most advanced form of combating human trafficking. In a special way, the US legislation regulates the issue of compensation for damages to victims of human trafficking. So, they are provided with all possible assistance, including financial and psychological ones. The Criminal Code of Ukraine in Art. 1-49 does not provide for such a detailed provision of damages that would be appropriate.

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¹⁶ Закон Великобританії про сучасне рабство 2015 року. URL: <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>



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