

Literature

1. Criminal Code of the Republic of Slovenia (CC-1), Official Gazette of the Republic of Slovenia No. 55/08; 66/08; 39/09 (CC-1A); 91/11 (CC-1B); 54/15 (CC-1C); 38/16 (CC-1D) and 27/17 (CC-1E).

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MANDATORY ELEMENTS OF THE CRIME OF HUMAN TRAFFICKING ACCORDING TO THE CRIMINAL CODE OF GEORGIA

The crime of human trafficking, often described as modern form of slavery is proscribed in various universal and regional instruments and national legislations of most democratic countries.

In Georgian criminal code, the crime of human trafficking is envisaged in in the chapter of crimes directed against human rights and freedoms (Chapter 23). Article 1431 (par. 1) [1].

From the legal definition of the crime of human trafficking stipulated in criminal code of Georgia, five basic elements can be identified:

- a) Sale and purchase (or other illegal transaction).
- b) Recruitment.
- c) Coercion (or deception).
- d) Limitation of freedom/control of the victim.
- e) Exploitation.

For the proper qualification of crime of human trafficking it is important to identify which of these elements are mandatory and which of them are optional. Thus, we can consider these elements from this angle.

- a. Sale and purchase, or any other unlawful transaction

From the text of art. 1431 of the criminal code of Georgia, it is clear that the sale or purchase (or any other unlawful transaction) is not a mandatory but optional element of human trafficking. Thus, the human trafficking can take place without sale/purchase or any other illegal transaction.

- b. Recruitment

According to Georgian criminal code, this element can be expressed in recruitment, concealing, hiring, transporting, transferring, harboring or receiving of a human beings (using methods listing in the law coercion, threat, blackmail, etc). These actions are exhaustively listed in the law.

While these actions constitute the conduct element of the crime of human trafficking (alternative to sale and purchase), they should be accompanied by

methods listed below. However, it has been argued that the receiving of human being for the purpose of exploitation does not require any of the listed means. This interpretation is disputable, because the law exhaustively lists the conduct element of the crime and the methods for the commission of the crime, thus, is clear that the conduct element of the crime cannot be committed without those methods (unless we are speaking about sale/purchase).

c. Coercion/deception

This element of the crime may unite the methods listed by the law in order to influence the will of the victim of the human trafficking. The list of means is exhaustive.

According to art. 1431 of the criminal code these means are: threat, use of force or other forms of coercion, of abduction, blackmail, fraud, deception, by abuse of a position of vulnerability or power or by means of giving or receiving of payment or benefits to achieve the consent of a person having control over another person.

It is clear from the wording of the law that these methods are not mandatory when it comes to sale/purchase or other illegal transaction. Also, the element of coercion/deception is not necessary when it comes to the trafficking of juveniles (art. 1432 of the criminal code).

Element of coercion is also included in the exploitation purpose defined by art. 1431 of the criminal code. Namely, the exploitation may be expressed in forced labor or coercion of sexual services.

d. Limitation of freedom/control of the victim

This element is included in the exploitation purpose defined by article 1431 of the criminal code of Georgia. (see above).

However, the element of the limitation of freedom is not mandatory, but optional. According to the wording of art. 1431 of the criminal code, the involvement of the victim into prostitution, pornography or other anti-social behavior does not require neither coercion or any form of limitation of freedom. In this respect, the given norm is problematic, because without the element of coercion or limitation of freedom, the crime of human trafficking fully coincides with other crimes such as incitement to prostitution or pimping (article 254 of the criminal code of Georgia).

e. Exploitation

This element is defined by the clarification note at the end of art. 1431 of the criminal code. Four different types of exploitation can be identified:

a. Labor exploitation (coercing a person to perform labor or other services).

b. Sexual exploitation (coercing a person to provide sexual services).

c. Criminal exploitation (engaging a person in criminal activities, prostitution, pornographic or other anti-social activities).

d. Medical (biological) exploitation (removing, transplanting or otherwise using an organ, part of an organ or tissue of the human body by force or deception).

According to some authors, the purpose of exploitation is not required when it comes to purchase/sale or any other illegal transaction [2, 3]. We believe that this view is erroneous due to the wording of art. 1431 of the criminal code of Georgia, as well as the explanatory memorandum of the COE Convention on Action against Trafficking of Human Beings [4], which defines the purpose of exploitation as one of the basic components of the human trafficking.

In this survey, we overviewed mandatory elements of human trafficking according to the Georgian law.

However, (based on dominant view in legal literature) it appears that none of these elements are mandatory, namely:

a. If the crime is committed via any form of recruitment, the sale and purchase element is not necessary.

b. If the crime is committed via sale/purchase, the recruitment element is not necessary. A disputable question is whether the exploitation can be committed directly without recruitment.

c. If the crime is committed via sale/purchase, the coercion/deceit element is not necessary. The coercion is also not necessary when it comes to involvement into prostitution or other anti-social behavior. Coercion and deceit are not necessary when it comes to juvenile victims.

d. Limitation of freedom or control of the victim are not mandatory elements of human trafficking when it comes to involvement into prostitution or other anti-social behavior, as well as sale/purchase of the victim.

e. Purpose of exploitation is not necessary when it comes to sale and purchase of the victim (majority view).

From this overview, it appears that the Georgian law on human trafficking is too wide and requires modification, because on the one hand it does not entirely fit with international legal definition of human trafficking and on the other hand may overlap with other crimes already covered by Georgian criminal code.

Literature

1. Exact wording of the article see at. URL: <https://matsne.gov.ge/en/document/view/16426>

2. Lekveishvili M., Todua N., Mamulashvili G. Special part of the criminal law. 2019, book 1, Meridiani. 296 p.

3. Meskhi M. Legal aspects of trafficking, methods of prevention, experience and perspectives. Tbilisi, 2014. 70 p.

4. Par. 74. URL: <https://rm.coe.int/16800d3812>