

ANALYSIS OF JUDICIAL PRACTICE ON THE APPLICATION OF UKRAINIAN LEGISLATION ON COMBATING EXPLOITATION IN THE CONTEXT OF ARMED CONFLICT

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Annotation. The article analyzes the case law on the application of the Criminal Code of Ukraine on combating exploitation in the context of armed conflict. It is noted that the law of Ukraine on criminal liability contains two *corpus delicti* of criminal offenses relating to exploitation: human trafficking (Article 149) and child exploitation (Article 150 of the Criminal Code), but crime is moving forward and finding other forms of it. Also, in the context of armed conflict, such acts may be qualified under Article 438. Violation of the Laws and Customs of War of the Criminal Code of Ukraine, and law enforcement agencies do not distinguish the category of “human exploitation” separately.

It is concluded that the number of registered criminal offenses under Article 149 of the Criminal Code of Ukraine and convicted persons for human trafficking correlates, in particular, in 2023 as 1:8, and in 2022 – 1:7. It should also be noted that only 56 per cent of the registered criminal offenses under Article 149 of the Criminal Code of Ukraine are sent to court with a guilty verdict. It is noted that child exploitation is characterized by a high level of latency due to unwillingness, and in some cases, unawareness of the unlawful acts committed against the victim (a person under 16 years of age).

It has been established that the typical criminological portrait of a person who has committed human trafficking is as follows: a man (89 per cent) aged 30 to 50 (67 per cent), with a complete secondary or basic secondary education (67 per cent), able-bodied, but who has not worked or studied anywhere (56 per cent), a citizen of Ukraine (72 per cent). This criminal offense is not committed: under the influence of alcohol or drugs; by organized or criminal organizations. Only 28 per cent of criminal offenses under Art. 149 of the Criminal Code of Ukraine are committed as part of a group.

It is noted that the main problems arising in the prosecution of persons who have committed criminal offenses under Art. 149 and Art. 150 of the Criminal Code of Ukraine are the imperfection of the rules, as well as the lack of uniform application in criminal cases of criminal offenses against the will, honor and dignity of a person.

Key words: human trafficking, child exploitation, law enforcement, portrait of a trafficker.

1. Introduction.

Effective protection of human and civil rights and freedoms is a hallmark of the rule of law. But is the mechanism that is established always effective? Probably not, because every day the media reports on certain violations of rights and freedoms guaranteed by the state. In addition, international organizations also record violations and they become the subject of conventions, directives and recommendations.

As early as 2015, the International Organization for Migration (hereinafter – IOM) estimated that about 20.9 million people worldwide were subjected to forced labor, with 880000 in the European Union.

Of these victims, 90 per cent are exploited in the private sector, by individuals or private companies. Within this group, 22 per cent are victims of forced sexual exploitation and 68 per cent are victims of forced labor exploitation in economic activities such as agriculture, construction, domestic work, or work in manufacturing [1]. It does not matter whether such criminal acts are committed against children, women or men, nor does the age of the victims of exploitation.

The full-scale invasion of Ukraine by the Russian Federation in February 2022 forces us to look at the problem of human trafficking and the subsequent exploitation of victims from a different angle. In particular, we note that every second Ukrainian (59 per cent) is at risk of being exploited, being ready to accept at least one risky job offer abroad or in Ukraine, according to a survey commissioned by IOM. Almost half of this risk group would accept a risky job offer abroad: to work without official employment and even in closed premises without the possibility of leaving the workplace freely; to violate border crossing rules; to give the employer passports, phone and personal belongings [2].

The current Criminal Code of Ukraine contains two criminal offenses related to exploitation: human trafficking (Article 149) and child exploitation (Article 150), but crime is moving forward and finding other forms. In addition, in the context of armed conflict, such acts may be qualified under Article 438. Violation of the Laws and Customs of War of the Criminal Code of Ukraine, and law enforcement agencies do not distinguish the category of “human exploitation” separately. Taken together, the facts we have presented indicate the relevance and importance of the study.

2. Analysis of scientific publications.

The issue of criminal liability for exploitation of human beings in armed conflict has not been comprehensively studied. At the same time, A. Orleans (2014) conducted a comprehensive study of the problems of criminal law support for the protection of human beings from exploitation in his dissertation for the degree of Doctor of Laws. The scientist analyzed the genesis of international and domestic legislation aimed at ensuring the protection of human beings from exploitation. The essential features of criminalized human exploitation are clarified, on the basis of which the author provides his own definition of this concept. The author develops a classification of forms of human exploitation according to various criteria and characterizes its main types. The author investigates the main forms of influence on a person to obtain the desired effect of his or her active or passive behavior for the purpose of exploitation, formed by the method(s) used and used by the situation of the crime [3].

In addition, studying the criminal law and criminological problems of preventing the sexual exploitation of children in Ukraine, H. Myskova in her dissertation for the degree of Candidate of Law “Criminal Law and Criminological Principles of Prevention of Sexual Exploitation of Children in Ukraine” (2020) for the first time set and solved the scientific task of developing a holistic practical approach to the formation of a strategy for the prevention of sexual exploitation of children, which made it possible to substantiate proposals aimed at improving. The scientist has found out the current state of scientific research and substantiated scientific approaches to defining the scope of sexual exploitation of children; characterized the structure and dynamics of such crimes; revealed the content of the determinants that contribute to the criminalization of this area of social relations. The author also proposes a conceptual vision of ways to implement legal and organizational prevention measures at the national, special criminological and victimization levels [4].

With regard to research on child exploitation, the first scientific work on this topic was I. Dolianovska’s dissertation (2008) for the degree of Candidate of Law “Criminal liability for child exploitation (analysis of the crime)”, where she notes that criminal law protection of children from exploitation does not adequately protect children from exploitation. While crimes under Article 150 of the Criminal Code were registered: in 2002 – ten, in 2003 – seventeen, in 2004 – nine, in 2005 – twenty-nine, in 2006 – fifteen, and in the first half of 2007 – nine, the number of convictions under Article 150 of the Criminal Code in the period from 2003 to the first half of 2007 was only eighteen. Thus, criminal law protection of children from exploitation is insufficient [5, p. 2].

In his dissertation, D. Kalmykov (2011) also noted certain difficulties of criminal liability for child exploitation. In particular, the researcher noted that according to a survey of children in the Luhansk

region aged 7 to 16 conducted in September 2010, it was found that at least one in seven of them was exploited by unauthorized persons in violation of labor laws, and one in fifteen was subjected to physical or mental coercion. And this is perhaps not surprising, since in the more than 9 years since Article 150 of the Criminal Code of Ukraine came into force, only 1 criminal case has been brought for child exploitation in the Luhansk region, and 146 in the whole of Ukraine. The above circumstances indicate the existence of certain legislative or law enforcement problems in this area, and therefore necessitate a comprehensive study of criminal liability for child exploitation in order to find ways to more effectively apply the provisions of Article 150 of the Criminal Code of Ukraine and develop proposals for improving the criminal legislation of Ukraine in the field of combating socially dangerous forms of child labor [6, p. 3].

It should be noted that the problem of human exploitation is studied by foreign scholars mostly within the framework of combating human trafficking. For example, Ella Cockbain, Kate Bowers, and Galina Dimitrova note that publications usually described the problematic profile of human trafficking and/or discussed measures to combat it; they rarely assessed the impact of trafficking or the effectiveness of measures. Even among key research studies, the quality of evidence was variable and often low. Particular weaknesses included failure to report methods, unclear or inaccurate results, and conclusions that were not adequately supported by data [7, pp. 319-360]. Also, Dena Nazer and Jordan Greenbaum point out that human trafficking is increasingly recognized worldwide as a serious public health problem. It is a crime based on the exploitation of the most vulnerable and excluded persons of any community and violates human rights. Children, especially immigrants and refugees, are at risk of becoming victims and can suffer significant physical and mental consequences. Adding these issues to existing vulnerabilities and disadvantages makes human trafficking a complex medical problem that needs to be addressed by a multidisciplinary team that includes healthcare professionals [8].

Thus, the literature review shows that criminal liability for human exploitation in the context of armed conflict remains unexplored in Ukraine. This determines the purpose and objectives of the study. In addition, the issues of improving criminal legislation on liability for human exploitation remain relevant.



3. The aim of the work.

The purpose of the article is to analyze the practice of criminalizing human trafficking and human exploitation in the context of armed conflict, and to develop ways to improve the effectiveness of combating these phenomena.



4. Review and discussion.

Modern society is often confronted with one of the activities of transnational organized crime – a form of slavery – as human trafficking. Numerous reports and equally important studies have shown that human trafficking negatively affects the stability, security, and well-being of individuals, communities, and even nations. However, not all studies are based on facts, but mostly rely on unofficial evidence or assumptions, which negatively affects the development of measures to combat this phenomenon, despite the fact that this topic is relevant.

It is worth noting that combating exploitation in general and human trafficking (especially of women and girls) attracts considerable attention from the international community. In particular, more than 160 member states of the International Labor Organization (hereinafter – the ILO) have ratified one (and often both) of the two ILO Conventions on forced labor; 150 member states have already ratified the Worst Forms of Child Labor Convention of 1999, which calls for action against the sale of children and forced child labor. Other international legal acts on combating human trafficking include: The Slavery Convention of 1926, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, the United Nations

Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000, and the Council of Europe Convention on Action against Trafficking in Human Beings of 2005.

For Ukraine, the problem of combating exploitation in general, and human trafficking in particular, arose not in the context of the armed conflict, but much earlier. Failure to recognize in Soviet times that a person can turn into a “commodity”, become a «thing» that is owned, used and disposed of, led to the fact that only after Ukraine’s independence, the Law of Ukraine of 24.03.1998 No. 210/98-VR “On Amendments to Certain Legislative Acts of Ukraine in connection with the adoption of the Law of Ukraine “On Amendments to the Code of Marriage and Family of Ukraine” supplemented the Criminal Code of 1960 with Article 124-1. Human trafficking. The law on criminal liability has been improved, and the current CC of Ukraine of 2001 has been amended twice, but certain problems in the practice of criminalizing human trafficking still exist today.

Our analysis of the recorded criminal offenses under Art. 149 and Art. 150 of the Criminal Code of Ukraine shows that since 2022 there has been a decrease in the number of such criminal offenses (see Figure 1). This trend already took place in 2014-2016, when the Russian Federation occupied the Autonomous Republic of Crimea and began military aggression in eastern Ukraine (creation of the so-called “dpr” and “lpr” and their military support).

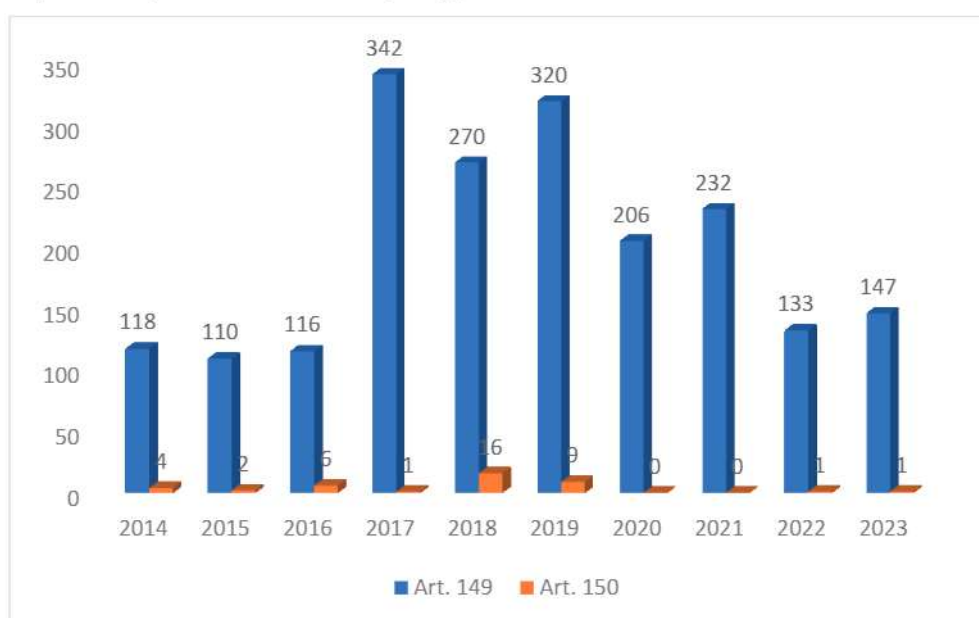


Figure 1. The number of registered criminal offenses under Art. 149 and Art. 150 of the Criminal Code of Ukraine from January 2014 to December 2023.

In addition, as noted in the report “Ukraine – Excerpts from the 2017 Trafficking in Persons Report” prepared by the U.S. Embassy in Ukraine, “in 2016, law enforcement investigated 112 crimes related to human trafficking, compared to 111 cases in 2015. These cases included 72 cases of sexual exploitation, nine cases of trafficking for labor exploitation, 26 cases of «forced participation in criminal activity», three cases of child trafficking, and two cases of forced begging. The authorities initiated court proceedings in 45 cases in 2016, compared to 59 cases in 2015. The government convicted 28 traffickers in 2016 under Art. 149 (25 in 2015), ending a five-year downward trajectory. Of the 26 traffickers convicted in 2016, 21 (81 per cent) did not receive prison sentences, five were sentenced to prison terms (19 per cent) ranging from two to ten years, and the state confiscated the property of two defendants; 20 of the 32 (62 per cent) traffickers convicted in 2015 did not receive prison sentences, and six had their property confiscated. Repeated suspended or very short sentences for convicted traffickers indicate the weakness of the authorities’ efforts to bring perpetrators to justice. According to experts, law enforcement officers, prosecutors and judges demonstrated limited understanding and ability to identify and prosecute those involved in cases of trafficking for labor exploitation» [9].

At the same time, between 2019 and 2023, nearly 49,000 Ukrainians were exposed to the risk of human trafficking. According to a national survey conducted to determine the vulnerability of Ukrainians to human trafficking in the context of the war in Ukraine, 29 per cent of Ukrainians are ready to accept a risky job offer abroad or in another locality, while 27 per cent of respondents would agree to accept one of the risky job offers abroad, in particular

17 per cent would be willing to work without formalizing labor relations;

13 per cent abroad and 9 per cent in Ukraine are ready to work without being able to leave the workplace freely and in locked premises;

2 per cent abroad and 2 per cent in Ukraine are ready to voluntarily give the employer a cell phone and other personal belongings for the period of employment;

1 per cent abroad and 3 per cent in Ukraine would give their passport to the employer [10].

When analyzing publications on combating human trafficking, it is worth noting that some researchers note the following characteristics of perpetrators of human trafficking, including

Citizenship. Persons brought to criminal liability under Article 149 of the Criminal Code of Ukraine mostly have Ukrainian citizenship. Thus, in 2017, 51 Ukrainian citizens and 5 foreign nationals were prosecuted, and in 2018, 29 Ukrainian citizens and 8 foreigners were prosecuted.

Gender. Human trafficking is mostly committed by men: out of 56 persons prosecuted in 2017, 27 were men and 19 were women, and in 2018, out of 38 persons prosecuted, 23 were men and 15 were women.

Age. During the analyzed period, the most criminally active group of people was aged 20-40. Thus, the most criminally vulnerable group of persons who committed a crime under Art. 149 of the CC of Ukraine is young people – socially active people who form the basis of economic activity in society. The average age of such a person, as evidenced by a selective study of criminal proceedings, is up to 30 years. The proportion of persons who committed human trafficking between the ages of 18 and 28 is up to 50 per cent, and between the ages of 29 and 39 - 34 per cent .

Education. The largest share was made up of convicts with a complete secondary education, 1/5 of the convicts had higher education, and one in six of those prosecuted for human trafficking had vocational education. During the analyzed period, only a small number of people had no education. Thus, a criminal who commits a crime under Article 149 of the Criminal Code of Ukraine mostly has a secondary education [11, p. 109].

As for the exploitation of children, O. Panciuk identified the following main indicators of the criminological characteristics of the offender's personality

– most of the crimes related to child exploitation are committed by men (72 per cent), while the share of women in the total number of criminals of this type is only 28 per cent;

– most crimes of this type are committed by persons aged 36-40 (42.1 per cent). In addition, the criminal activity of persons aged over 41 is characterized by a rather high level of criminal activity (32.2 per cent). Persons aged 25-35 years also account for a significant number of crimes in this category, almost a quarter of the total number studied by the author (24 per cent);

– the vast majority of offenders prosecuted for child exploitation have an insufficiently high educational level – 59.6 per cent have secondary or incomplete secondary education, and 10 per cent have no education at all. People with higher education make up 30.4 per cent of the total;

– at the time of the crime, 65 per cent of people were neither working nor studying, while only 29 per cent and 6 per cent were working and studying;

– in 31.8 per cent of cases, strangers were involved in the criminal exploitation of children, in 26.4 per cent - parents; in 21.4 per cent – other relatives; in 20.4 per cent – neighbors, acquaintances;

– Among offenders of this type, unmarried persons prevail, including divorced persons (89.6 per cent), and only in 10.4 per cent of cases the crime was committed by a married person;

– only 44.8 per cent of offenders had minors in their care; most of the offenders abused alcohol (45.2 per cent), 21.3 per cent were previously convicted, a little more than a quarter (26.8 per cent) used narcotic drugs, psychotropic substances [12, p. 12-13].

At the same time, the situation with the exploitation of people in the context of armed conflict has its own peculiarities, because in addition to committing general criminal offenses regarding possible forms of exploitation (sexual, labor, etc.), it is also possible to exploit the civilian population as a crime against humanity (Article 7 of the Rome Statute of the International Criminal Court).

At the same time, the situation with the exploitation of people in the context of armed conflict has its own peculiarities, because in addition to committing general criminal offenses regarding possible forms of exploitation (sexual, labor, etc.), it is also possible to exploit civilians as a crime against humanity (Article 7 of the Rome Statute of the International Criminal Court). Thus, in particular, this article defines the term “enslavement” as the exercise of any or all of the powers inherent in the right of ownership over a person, and includes the exercise of such powers in the course of human trafficking, in particular of women and children (ed. – A.S.P.) [13].

However, our analysis of court verdicts under Article 438 of the Criminal Code of Ukraine shows that there is no mention of any reference to exploitation (as of January 21, 2024, there are 77 verdicts under Article 438 of the Criminal Code of Ukraine in the Unified State Register of Court Decisions). Taking this into account, we analyzed information about those convicted of human trafficking from 2021 to 2023, which is presented in Table 1 and Table 2.

Table 1: Composition of those convicted of human trafficking in 2021-2023

	Number of convicted persons			of them									committed a crime in															
				citizens of Ukraine			citizens of another state			women			warehouse groups			organized group			criminal organization			in a state of alcoholic intoxication			in a state of drug intoxication			
	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	
p. 1 Art. 149	3	4	4	3	4	4							2															
p. 2 Art. 149	16	13	13	16	8	8		5	5		2	2	6	5	5													
p. 3 Art. 149	5	1	1	4	1	1	1				3			1														
Total	24	18	18	23	13	13	1	5	5	3	4	2	6	6	5	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 2. Composition of those convicted of human trafficking in 2021-2023

	Age of convicts at the time of committing the crime									Education at the time of the crime																							
	from 18 to 25 years old			from 25 to 30 years old			from 30 to 50 years old			from 50 to 65 years old			higher Education	basic higher education	vocational and technical education	complete secondary education	basic general secondary education	primary general education	without education														
	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023			
p. 1 Art. 149		1	1				3	3	3					1	1	1						1	1	1	1	1	1	1			1	1	
p. 2 Art. 149		2	2	6	3	3	6	6	6	5	2	2	3	3	3	2	1	1				2	3	3	7	6	6	1			1		
p. 3 Art. 149		1	1				4		3	1			1			1						3	1	1									
Total	0	4	4	6	3	3	13	9	12	6	2	2	4	4	4	4	1	1	0	0	0	5	5	5	8	7	7	2	0	0	1	1	1

5. Conclusions.

Our analysis allows us to draw the following conclusions:

1. The number of registered criminal offenses under Art. 149 of the Criminal Code of Ukraine and convicted persons for human trafficking correlates, in particular, in 2023 as 1:8, and in 2022 – 1:7. It should also be noted that only 56 per cent of registered criminal offenses under Article 149 of the Criminal Code of Ukraine are sent to court with a guilty verdict. In addition, child exploitation is characterized by a high level of latency due to unwillingness and, in some cases, lack of awareness of the unlawful acts committed against the victim (a person under the age of 16).
2. A typical criminological portrait of a perpetrator of human trafficking is as follows: male (89 per cent) aged 30 to 50 (67 per cent), with a complete secondary or basic secondary education (67 per cent), able-bodied but not employed or trained (56 per cent), a citizen of Ukraine (72 per cent). This criminal offense is not committed: under the influence of alcohol or drugs; by organized or criminal organizations. Only 28 per cent of criminal offenses under Art. 149 of the Criminal Code of Ukraine are committed as part of a group.
3. The main problems that arise in the prosecution of perpetrators of criminal offenses under Articles 149 and 150 of the Criminal Code of Ukraine are the imperfection of the norms, as well as the lack of uniform application in criminal cases of criminal offenses against the will, honor and dignity of a person.

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