

ON THE PROBLEMS OF QUALIFICATION OF THE USE OF SLAVE LABOUR UNDER THE CRIMINAL LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

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The article deals with the legal problem of qualification of the use of slave labor in accordance with the Criminal Legislation of the Republic of Kazakhstan. Also, the authors indicated the features and difficulties of qualifying this type of crime and indicated the conclusion on the institutionalization of this norm as a separate article in the Criminal Code.

Key words: exploitation, labour slavery, freedom, labour, slaveholder.

There is no qualifying norm in our country as use as slave labour. Every citizen of the Republic of Kazakhstan is guaranteed their freedom by the Constitution. This is stated in Article 12 of the Constitution of the Republic of Kazakhstan: The Republic of Kazakhstan recognizes and guarantees human rights and freedoms in accordance with the Constitution. Human rights and freedoms belong to everyone from birth, are recognized as absolute and inalienable, and determine the content and application of laws and other regulatory legal acts. A citizen of the Republic, by virtue of his/her citizenship, has rights and obligations. Foreigners and stateless persons in the Republic shall enjoy rights and freedoms as well as bear responsibilities established for the citizens unless otherwise stipulated by the Constitution, laws and international treaties. The exercise of human and civil rights and freedoms must not violate the rights and freedoms of others or infringe on the constitutional order and public morals [1].

Unfortunately, we cannot deny that these norms are an exception in our country, where people live on the margins of society, in winter camps, in villages, and in livestock farms. There are criminals who use slave labour by the hundreds. The description of slave labour comes from the term 'exploitation of human beings' which is explained in Article 3 of the Criminal Code of the RK. This law defines exploitation of human beings not only as the use by a guilty person of forced labour, i.e. any work or service

which is exacted from a person through violence or the threat of violence, for which the person has not offered him/her services voluntarily, except for cases provided for in the laws of the Republic of Kazakhstan, but also includes concepts like use by a guilty person of prostitution by another person or And so, taking the above into account, to summarize the main characteristics of slavery [2].

1. Deprivation of personal liberty, freedom to choose one's place of residence, stay, or movement, regardless of how these acts were committed.

2. The special purpose of deprivation of liberty is exemplification of the victim.

3. Absence of remuneration commensurate with the victim's labor.

4. Creation of living and working conditions which do not correspond to the requirements of labor legislation or endanger the life and health of the victim.

5. The victim has no real opportunity to change his/her condition without fear for his/her life and health, property, honor and dignity, as well as the life and health, honor and dignity, and property of other persons, including relatives.

And how do they get there? They are either kidnapped or brought in under false pretenses, given false contracts and left there for the rest of their lives. Human rights activists say that mostly orphans, homeless people, alcoholics, the mentally ill, vagrants and those with low social status end up in slavery. In my opinion, such

people are inclined to trust anyone who is willing to help. As the person is already in a difficult situation he can be quickly deceived and he does not see any tricks. There are other people who fall into slavery for other reasons. Because of the fact that they owe some amount of money, the person who could not pay back his money goes to such a crime. That is, the person who could not get his money back steals and gives it away or to get his money back sells his debtor to the slave owners. The latter can be called debt bondage, i.e. debt bondage, i.e. the situation or condition arising from the debtor mortgaging his personal labor or the labor of a person dependent on him to secure a debt, if the duly determined value of the work performed is not credited to the debt or if the duration of this work is not limited and its nature is not defined.

This is a category of people who do not write a report. They don't go to the police to go straight to the people who kept them in slavery. They just tell people what happened to them, but they don't want to go to the police. They are afraid that the master and his relatives will find them and take revenge [3].

The labor inspection does not check remote winter camps and farms where bonded labor is used. The main reason is the distance; some farms do not have cell phone coverage and there are no landlines. And sometimes there is even no electricity. They have nowhere to call for help. People who have been in slavery for a long time begin to perceive such a life as a norm. They start snitching on other workers that someone was outraged or wanted to escape. And for this they receive encouragement from the boss, favors and certain privileges. This gives them an opportunity to control the workers.

No one in the village will mess with the farmer, sticking up for the worker as it can be dangerous for anyone. People see, whisper, discuss, but don't go to the police, lest tomorrow that owner comes to him with a showdown and beat him up. There are times when people run away and go to the police. If a person goes to the police right away, there is a very good chance of punishing the landlord. There are times when a person runs away, is afraid of being persecuted, and hides for a while in the city with acquaintances, until someone tells him to go to the police. Weeks, months go by; the man

writes a statement, and when the investigative team arrives at the place, the owner manages to remove all traces that compromise him. The workers who still remain with him are intimidated, and, as a rule, they refuse to act as witnesses in court against the owners. And if the injured person goes to the police at once, the perpetrators could be punished and others could be helped, and compensation could be obtained if there was evidence of everything.

As we understand it, this type of crime is difficult to prove. All the people who have suffered or seen such an act say it only in words. We need evidence, third parties, witnesses who saw with their own eyes that he was forced to work and beaten. But people who were or are in labor slavery after being beaten and having their lives threatened would not say anything against their so-called masters. The farm owner will say: «I didn't hold him, he could have walked away». There have been numerous stories where the victim escapes, reports to the police, then a pre-trial investigation begins, but the case does not go to trial. The question is «Why is this so?» Because the victim abruptly changes his/her testimony, they start denying everything they said earlier, they say they were there voluntarily, that no one held them there. This is all because the perpetrator starts to drop or goes for corrupt deeds. One of such cases happened recently in November 2021. A. Kotov's appeal for help was published in the media, where he said that he had been released from prison for 20 years, and that he lost his documents in 1998 and stayed in Kazakhstan and was forced to work as an assistant shepherd. Fortunately he was released from slavery, but the sad thing is that after his release he allegedly denied everything he said earlier, his lost documents were found and he decided not to report the unlawful actions of the farm where he had been staying for 20 years. We do not know why he did that, or any other information about the farm. This is just one such case, but as I said there are a lot of such stories. There was a case in the city of Taldykorgan in Almaty region where a man escaped from slavery and started reporting to the police, but after some time he withdrew his report and there was no news about this man. I think this is a big minus to our country and the law [4, p. 55].

The Criminal Code clarifies the concept of

exploitation of a person, in particular the use of forced labor by the perpetrator, i.e. any work or service required of a person by force or threat of force, for which the person has not offered his/her services voluntarily, with the exception of cases stipulated by the laws of the Republic of Kazakhstan. The Criminal Code provides penalties for exploitation in Articles 125(3), 126(3) and 128(1). The sanctions under these articles provide for deprivation of liberty and confiscation of property [5, p. 61].

We believe that the notion of 'exploitation' should be made a separate norm, where the disposition would define all types and means of exploitation of human beings, as well as institutions and practices similar to slavery, which include:

1) debt bondage;

2) serfdom, that is, the use of land where the user is obliged by law, custom or proclamation to live and work on land belonging to another person and to do some work for that person either for remuneration or without it and cannot change his condition;

3) any institution or custom whereby:

a) a woman is promised in marriage, without right of refusal on her part, by her parents, guardian, family or any other person or group of persons for a consideration in money or in kind;

b) a woman's husband, his family or his clan may give her to another person for remuneration or otherwise;

c) a woman, on the death of her husband, is to be inherited by another person;

4) any institution or practice whereby a child or young person under the age of 18 years is delivered by one or both of his parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the

child or young person or of his labor.

Not in all these cases the labor is inherently slave-like in nature, since it does not benefit the person in servitude but another person who exercises over the dependent person or some of the powers inherent in the right of ownership.

The sanction of such a norm should include imprisonment, confiscation of property as well as the recovery of moral and material damage. There should be a separate specific article on the exploitation of people. As I have already indicated above, we have a concept of exploitation in the penal code, that is using another person's labor for profit by threatening or using violence against a person who is an employee. But this is not enough. Since people were not held on chains and a person could go outside the fence and ask for help, it's not exploitation but fraud with non-payment of wages and it's a civil case. And also people have no documents, no contracts, and the owner says: «I didn't promise wages, I promised that he would live and eat at my place and work for it».

Since people do not dare to speak up and report such crimes to the police on their own behalf, they should agree to make anonymous reports, or they should take the person reporting undercover so that their lives are not threatened by their masters. If victims were assured of their protection, many would demand their constitutional rights no matter what. It should not be forgotten that desperate victims never seek punishment for criminals. This too is a big problem. I believe that it is not necessary to wait for the prosecutor's sanction to inspect farms, livestock bases, winter camps, because it is sometimes a very long process, and it may be that all the hot traces will disappear in the meantime.

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**ПРОБЛЕМЫ КВАЛИФИКАЦИИ ПРИМЕНЕНИЯ
РАБСКОГО ТРУДА ПО УГОЛОВНОМУ ЗАКОНОДАТЕЛЬСТВУ
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В статье рассматривается правовая проблема квалификации использования рабского труда в соответствии с Уголовным законодательством Республики Казахстан. Также авторами указаны особенности и трудности квалификации данного вида преступления и сделан вывод об институционализации данной нормы в виде отдельной статьи в Уголовном кодексе Республики Казахстан.

Ключевые слова: эксплуатация, трудовое рабство, свобода, труд, рабовладелец.