



NATIONAL COMMISSION FOR
COMBATING TRAFFICKING IN HUMAN BEINGS

INTERPRETATIVE DECISION # 2

16 July 2009, Sofia

The Supreme Court of Cassation of Republic of Bulgaria, GENERAL SESSION OF THE PENAL COLLEGE

The Prosecutor General of the Republic of Bulgaria made a request to the Supreme Court of Cassation for adoption of an Interpretative Decision concerning a contradictory and incorrect practice in the implementation of the orders of Section IX “Trafficking in People” as well as concerning a contradictory court practice.

The posed questions are:

1. Is the execution act “transportation” fulfilled when the individual has fulfilled the factual action of transporting the victim (to drive the motor vehicle) or is it enough to fulfill actions related to the victims’ transportation (purchase of airplane or bus tickets, escort to the airport/ bus station/ and travel/ or not/ with the victim to the region or the country of final destination)? Should it be consider as “transportation” when the vehicle driver drives the victim within the country or abroad, knowing the purpose of the travel and having been paid for this? Should it be consider as “transportation” when a taxi driver receives instructions from a third person to transport the victim within the town/village or to another location, knowing the purpose of the travel?

With what actions the individual fulfills execution act „recruitment” (Art. 159a, par. 1, Criminal Code)? What are the differences with the actions that fulfill the execution act under Art. 155, par. 1 of the Criminal Code - soliciting for prostitution, procurement for the performance of copulation – in cases when the purpose of human trafficking is sexual exploitation (with the purpose of “debauchery”)? Should it be consider as „recruitment” if the active party in that process is the victim, not the perpetrator?

2. What is the form of complicity in the cases when one of the accessories recruits, another one transports and a third one hides or admits the victim?

3. Where is the crime under Art 159b, par. 6 of the Criminal Code concluded – abroad or within the jurisdiction of the Local Court of the Border Check Point through which the victim was transported. Which is the competent court? Should the investigation be carried out by an investigator according to Art. 194, par. 1 (3) of the Criminal Procedure Code? Which is the competent court in case of a crime under Art. 159b of the Criminal Code, there is more than one perpetrator and their permanent address registrations are in different towns/ villages?

4. Is it a substantial procedure violation resulting in a restriction of the victim’s rights of protection when the perpetrator is accused of a crime according to Section IX “Trafficking in People” against individuals protected according to Art. 123 of the Criminal Procedure Code and the victim’s identity is not

indicated. Is it a substantial procedure violation in cases of human trafficking (Art. 159a, par.2 (1) of the Criminal Code - the victim is under 18 years of age) if the victim is protected by keeping the identity confidential?

DECISIONS:

1.1 The execution act **“transportation”** (under Art.159a, par.1 of the Criminal Code) is fulfilled not only when factual actions of transportation are present, but also when actions related to the transportation were fulfilled. A driver of a motor vehicle who transports the victim within the country or abroad, knowing the purpose of the travel according to Art.159a, par. 1 and par. 3, actually fulfills transportation as a form of an execution act according to Section IX “Trafficking in People” of the Criminal Code.

1.2 The execution act **„recruitment”** (under Art. 159a, par. 1) is fulfilled through active actions of the perpetrator to search, attract, recruit and solicit or to gather a number of people for putting them in a situation that premises future exploitation. The execution act **„recruitment”** is fulfilled also in the cases when the active part is the victim but not the perpetrator.

1.3 The execution act **„recruitment”** can be fulfilled also through soliciting to prostitution. The agreement of the victim is achieved by persuasion or coercion by some of the means under Art. 159a, par. 2 of the Criminal Code.

1.4 Forcing into concrete debauchery actions or copulation under Art. 155, par. 1, can be in conjunction with the acts under Art. 159a - Art. 159d of the Criminal Code.

1.5 The consent or the cooperation of the victim does not negate the liability of the perpetrator when undertaking any of the forms of the execution acts of the crime “human trafficking”.

1.6 When the execution acts under Art. 159a, Art. 159b and Art. 159d of the Criminal Code are fulfilled in short periods of time toward different persons or groups of people, a factual conjunction of crimes is established and an indictment is made for each act separately, against each separate person of group of people.

"Group of people" (under Art. 159a and Art. 159b) is considered when two or more persons are victims of a crime.

2.1 Complicity in the form of joint perpetration under Art. 159a, par.1 in connection to Art. 20, par. 2 of the Criminal Code is considered when the perpetrators with the common intent and with the knowledge of the purpose, are recruiting, transporting, hiding or admitting victims all together or separately on their own.

2.2 Joint perpetration is also considered if under the same circumstances, one of the forms of the execution act under art. 159b is performed within the country and other one abroad.

3.1 Corpus delicti under Art. 159a, par. 2 (3) merges the unlawful imprisonment under Art. 142a, par.1 and corpus delicti under Art. 159a, par.2 (2) merges the duress under Art. 143, par.1.

Kidnapping with the purpose of unlawful imprisonment is a separate crime and the corpus delicti under Art. 142, par.1 is not merged by the corpus delicti under Art.159a, par.2 (3).

The competent composition under Art. 155, par.3, par.1, is merged by the competent compositions of “human trafficking” in the cases when “the recruitment” has been done through solicitation of the victim to prostitution.

3.2 The kidnapping of a person with the purpose of debauchery (Art. 156) and the execution act under Art. 159a, par. 2 (3), when the person is kidnapped with the purpose of debauchery, are two separate crimes. The difference is in the content of the purposes and the merging of the two compositions is impossible.

3.3 When some of the crime purposes under Art. 159a, Art. 159b and Art. 159d were fulfilled by the perpetrator, he can also be accused of a crime under Art. 159c (SG 27 10.04.2009).

4. A substantial procedure violation has not being allowed in cases when in the decree for arraignment of a defendant as well as in the accusation for a crime under art. 159a-d, committed toward a person, who is a protected witness according to art. 123, p.2(2) of the Criminal Procedure Code, only the identification number of the person is stated, no matter if the person is under 18 years old or an adult.