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**Responsibility for involvement in prostitution in criminal
legislation of Azerbaijan and foreign states**

Abstract: The public danger of prostitution consists that it causes falling of morality in society, negatively affects education of younger generation, and has negative effect on the family relations. In many cases, prostitution is followed by other negative social phenomena, in particular, spread of AIDS and venereal diseases, crime, a drug addiction, alcoholism and alcoholism.

One of the reasons of continuous reproduction of prostitution is that around prostitutes the numerous faces seeking to parasitize at the expense of "women of easy virtue" crowd. Therefore, the survivability of this phenomenon is explained first of all by mercenary interest of the persons profiting due to exploitation of prostitutes.

Criminal liability for involvement in occupation by prostitution for the purpose of receiving income or other benefit is provided in the current version of Article 243 of Criminal Code of Azerbaijan. In former edition of this article, it was told about involvement by violence or threat of its application. Along with threat and violence of ways of commission of this crime there can be a deception, destruction or damage of property, blackmail and others. At the same time the specified ways can be applied not only when "involving" in pure form, but also "deduction" for continuation to be engaged in this craft. In this regard, Article 243 disposition of Criminal Code of AR has to be formulated more specifically and

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accurately, and involvement by use of violence should be considered as the aggravating circumstance.

Keywords: prostitution, involvement, deduction, morality, criminal liability, qualification.

The existing Criminal code of the Azerbaijan Republic, considering importance of protection of public morality, provides responsibility for infringement of these social values in independent Chapter 27 of the Special part named "Crimes Against Public Morality" including six articles: illegal distribution of pornographic materials or objects (Article 242), involvement in occupation of prostitution (Article 243), maintenance of brothels (Article 244), organization or maintenance of a gambling institution (Article 244-1), violation of a grave (Article 245), deliberate destruction or damage of historical and cultural monuments (Article 246).

Involvement in occupation of prostitution along with the organization or the maintenance of brothels for occupations prostitution (Article 244 of CC) and illegal distribution of pornographic materials or objects (Article 242 of CC) belongs to the crimes against public morality connected with violation of sexual foundations of society.

It is known that prostitution was very widespread during the pre-revolutionary period. It is possible to specify that in 1889 the number of brothels officially was 1216, and the number of the prostitutes who were in them - 17,603 people [10, p. 39]. It is also necessary to consider existence of such houses illegally and also presence of the loner prostitutes remaining unaccounted. With involvement in occupation prostitution very closely connected pimping. In the conditions of legal existence of prostitution all undertaken measures of criminal fight against this phenomenon remained unpromising.



During the Soviet period not only in Azerbaijan, but also other republics various measures directed to prostitution elimination as the shameful phenomenon characteristic of exploiter society were undertaken. In public consciousness the belief about complete and final elimination of this harmful and dangerous phenomenon was created. However, despite prostitution reduction, finally it was not succeeded to liquidate it, and after the collapse of the USSR in Azerbaijan revival of this disgusting social phenomenon was observed [20, p. 96-104].

In Article 170 of the Criminal code of the Azerbaijani SSR adopted in 1922 responsibility for the coercion made by means of physical or mental impact to occupation by prostitution from mercenary or other personal motives was established. In Part 1 of Article 171 punishment for recruitment of women for occupation by prostitution, procurement and the maintenance of brothels was prescribed. Imprisonment not lower than five years was prescribed for involvement in occupation by prostitution of the person of the not reached majority or which was under supervision or on care of the guilty person (Part 2 of Article 171). In all specified cases it was talked only of women's prostitution [11, p.104].

In Article 198-5 of Criminal Code of Azerbaijan of 1927, prescribed more strict imprisonment for a period of up to five years with confiscation of all or parts of property for coercion to occupation prostitution, procurement, the maintenance of brothels and also recruitment of women for prostitution. In a disposition of this article it was not mentioned commission of crime from mercenary or other motives and application of physical or mental personal violence any more [11, p.205].

The CC of USSR project of 1939 contained Article 291 establishing imprisonment for up to ten years with confiscation of property or the reference to the same term with confiscation for this crime of property for procurement and the maintenance of brothels [13]. Earlier in the legislation for the considered crimes, such strict punishment was not prescribed.



In Article 229 of Criminal Code of Azerbaijan was defined 1960 maintenance responsibility of brothels, procurement and involvement of women in occupation by prostitution. The maintenance responsibility of brothels for consumption of alcoholic drinks was provided in a part of the second same article, and regarding the third the maintenance responsibility of brothels for the use of the medicinal substances which are not relating to drugs was established. Criminal Code was provided in Article 230 maintenance responsibility of gambling dens [11, p.793-794]. As the Criminal code of 1960 did not provide special chapter about crimes against health of the population and public morality, Article 229 was included in Chapter 10 "Crimes against Public Safety, Public Order and Health of the Population".

Article 243 establishes 1999 to Criminal Code of Azerbaijan responsibility only for involvement in occupation by prostitution for the purpose of receiving income or other benefit. For procurement, that is the activity facilitating search of partners for the voluntary introduction in sexual relations responsibility is not provided. The considered article included Part second providing responsibility for involvement in occupation prostitution carried out with use of a helpless state, physical or mental face defects or organized group [12, p.195].

In legal literature, the conception of "prostitution" is interpreted in different ways. First of all we will note that the word "prostitution" (By Latin the prostitutio is insulting) decides in the dictionary of foreign words as sale by the woman of the body on the purpose to earn means of livelihood. According to certain authors, everyone should recognize as prostitution sale by the woman of the body for money for satisfaction of his sexual requirement [9, p.10]. Other authors believe that expression application "sale of the body" should not be used in the right as represents literary reception. From their point of view would be to speak to more correct about "transfer of the body to rent". Besides, in the given definitions men's prostitution and also that fact that payment of the rendered sexual services can be



carried out and not in money is not taken into consideration. Therefore prostitution is defined as the illegitimate accidental and paid sexual relations [2, p.354].

As prostitution can be not only women's, but also men's, Criminal Code of the Azerbaijan Republic is not mentioned in Article 243 a sex of the persons involved in prostitution what follows from that this crime is committed concerning both women, and concerning men [4, p. 98].

In essence, the conception of "prostitution" is similar to the so-called sexual untidiness or sexual illegibility representing frequent change of sexual partners and often interfaced to receiving money and gifts of one of the parties. Prostitution unlike sexual promiscuity consists in systematic introductions in sexual communications (abnormal and normal) with various persons for the remuneration, which is the basic or an additional livelihood. Therefore, the main difference of sexual abuses in the sphere of the sexual relations from prostitution consists that at prostitution sexual communications are carried out for a payment and with various persons.

The public danger of prostitution consists that it causes falling of morality in society, negatively affects education of younger generation, has negative effect on the family relations. In many cases prostitution is followed by other negative social phenomena, in particular, spread of AIDS and venereal diseases, crime, a drug addiction, alcoholism and alcoholism [3, p.4].

Since ancient times it is known that prostitutes are the main distributors of venereal diseases. So, in particular, on the published data, in 1893 in the city of Minsk of 99.3% of prostitutes it was struck with various venereal diseases. In the city of Moscow in 1896 the number of the prostitutes having venereal diseases was 82.2% [10, p.40].

Feed forward between prostitution and spread of AIDS is established by numerous researches. In particular, it was revealed that in Rwanda and Greece the number affected with this infection made 83% of all examined prostitutes. In the



early nineties, the share of the American prostitutes infected with a fatal virus made 40% [10, p.180]. Became widely known the fact that in 1997-1998 the prostitute Yu. Barborelli from the Italian city of Ravenna without protection came into sexual contacts about more than 5000 men, obviously knowing about the disease of AIDS [8]. For June 30, 1999 according to the chief health officer of the city of Moscow HIV infection was found in 10% of the Moscow prostitutes. Rates of spread of this disease reached the menacing sizes [3, p.6].

Systematic involvement in prostitution everything new faces represents one of the heaviest consequences of this disgusting phenomenon. One of the reasons of continuous reproduction of prostitution is that around prostitutes numerous organizers, intermediaries, souteneurs, owners of brothels, the persons providing settling of the conflicts with law enforcement agencies, security guards, venereologists, etc. crowd. At the same time each representative of this numerous world of debauchery seeks to parasitize at the expense of "woman of easy virtue", snatching the share from her income. On the published data the prostitute has to allocate to different figures from prostitution up to 75% of the income. Therefore, the survivability of this phenomenon is explained first of all by mercenary interest of the persons profiting due to exploitation of prostitutes [5, p.156].

Strengthening of the organizational bases of prostitution gaining steady character is explained by the same reasons. The corresponding persons are engaged in establishment of payment of sexual services, selection of clients, the organization of this profitable trade. For ensuring humility and involvement in occupation with prostitution in an arsenal souteneurs have a big set of various levers in the form of coercion, deception, threats and violence [1, p. 95-101].

By the legislation of Azerbaijan occupation does not attract with prostitution criminal liability. It is subject only administrative legal to influence. After prevention of the person who is engaged in prostitution repeated occupation this trade involves a penalty.



On object of involvement in occupation prostitution in legal literature there is no unity of opinions. Some authors recognize as direct object of this crime health of citizens, moral principles of society and public order [6, p.59]. Other scientists consider object of this crime public morality [14, p.457]. We believe that a direct object as a part of patrimonial and specific objects should not coincide with them therefore as direct object of this crime it is necessary to recognize besides health and moral foundations both societies, and involved in prostitution of the particular person (the woman or the man).

Criminal liability for involvement in occupation by prostitution for the purpose of receiving income or other benefit is provided in the current version of Article 243 of Criminal Code of Azerbaijan. Therefore, ways of commission of this crime for qualification do not matter. Let's note that in former edition of this article it was told about involvement by violence or threat of its application. Along with threat and violence of ways of commission of this crime there can be a deception, destruction or damage of property, blackmail and others. In fact the souteneurs and other persons parasitizing on this type of activity use the specified ways not only for involvement, but also for suppression of attempts to stop occupation prostitution from the persons who are engaged in it or to do it independently with the purpose to evade from requisitions, or to achieve their humility. Also cases of use of violence to the person who made the decision to stop this immoral occupation to force it to continue to be engaged in prostitution can take place. We believe, as in this case involvement in occupation prostitution as not only "involvement" in pure form falls under signs of this corpus delicti takes place, but also "deduction" or other influence for continuation to be engaged in this craft. Nevertheless we consider that Article 243 disposition of Criminal Code of AR has to be formulated more specifically and accurately, and involvement by use of violence should be considered as the aggravating circumstance. Let's specify also that cases of involvement in occupation prostitution of the minor are qualified



under the Article 171 by Criminal Code of Azerbaijan. At the same time use of violence or threat of its application are recognized as the aggravating circumstances and CC of AR are qualified under the Article 171.2.1.

In the sanction of Article 243.1 of CC of AR fine, public works or imprisonment from one to three years is prescribed. Imprisonment is provided in Article 243.2 from three to six years. Thus this crime belongs to the category less heavy. It is necessary to specify that in the legislation of some states for this crime more strict punishment is prescribed. So, for example, Criminal Code of France in Article 225-9 provides life imprisonment and a penalty of 30 million francs for the procurement interfaced to application of tortures or other acts of cruelty [16], and Criminal Code of Poland in Article 203 – imprisonment from one to ten years – for involvement in occupation prostitution with use dependent or an emergency of the person or by means of violence, threat of its application or deception [17].

As the maximum punishment for simple involvement in occupation prostitution under the Article 260 of Criminal Code of the Kyrgyz Republic is provided imprisonment for a period of up to three years whereas qualified it is punished by imprisonment from three to five years [18].

In the Criminal legislation of the Republic of Tajikistan the issue of responsibility for involvement in occupation is resolved by prostitution quite originally. First of all responsibility for recruitment of people for sexual and other exploitation by deception is provided in Article 132. At the same time such ways of commission of this crime as violence and threat are not provided in article that certainly narrows a framework of this structure, leaving the most dangerous forms of its manifestation outside criminal liability. As the qualifying signs of this structure are provided in Part 2 of Article 132 crime commission by previous concert by a group of persons or concerning obviously minor or juvenile. Especially dangerous recurrence, commission of crime by the organized group for the purpose of evacuation of such persons out of borders of the republic are



recognized as especially qualifying signs [19]. We believe that the signs specified qualifying and especially qualifying deserve attention.

Germany treats one of the countries in which legally there are brothels. In the early nineties in it about 120 thousand prostitutes – on one on 250-500 people were registered [10]. At the same time, for assistance to occupation prostitution provided responsibility in § 180a of Criminal Code of Germany. Those who in the form of trade contain or direct brothels where the faces consisting in material or personal dependence on the owner are engaged in prostitution are subject to criminal liability; and also the persons providing to minors housing for occupation prostitution; and persons who by granting apartments and other residences for additional services, promote occupation prostitution. The specified acts are punished by a penalty or imprisonment for a period of up to three years [15].

The contents of part 1 of § 180b of Criminal Code of Germany prescribing fine or imprisonments for a period of up to five years for involvement in occupation prostitution or inducement to its continuation of the foreigners who are down and out (ignorance of language, lack of documents, appliances, etc.), the persons which are in the constrained situation are of interest. We believe that in view of a faultless design of this norm it can be quite apprehended by our legislation [15].

In § 181 of CC of Germany it is provided even more strict imprisonment for a period of one year up to ten years for recruitment in the form of trade of the foreigners who are down and out for occupation by prostitution; inducement to occupation prostitution with use of cunning, deception, physical force, threat of its application, creation of a helpless condition of the victim by export it from other country [15].

Imprisonment by term from six months to five years is punished in UK Germany pimping, that is use of the persons who are engaged in prostitution in the mercenary purposes (§ 181a); and a penalty or imprisonment up to six months



occupation prostitution in a certain time of day or in the forbidden places, made "persistently", that is repeatedly (§ 184a); imprisonment for a period of up to one year punishes occupation by prostitution in the apartment where minors or near schools or other place visited by persons to 18-year age (§ 184b) live. Besides, responsibility for rendering assistance to the persons inclined to it, is provided in the introduction on the way of prostitution (§ 1 of Article 204) and also for inducement or taking persons abroad for the purpose of occupation by prostitution (§ 4 of Article 204) [15].

Now the special relevance was acquired by fight against export for borders of the country of "live goods" for occupation there prostitution. The businessmen who are engaged in this profitable business mislead the victims, promising well paid and prestigious work as dancers, models, models, etc., enticing a promise of fabulous earnings for occupation prostitution. Proceeding from it would be desirable and to provide in Criminal Code of Azerbaijan responsibility for this type of act as especially qualifying circumstance.

Not only in mass media, but also in legal literature repeatedly there was a question of expediency of criminal prosecution for occupation prostitution as in particular it was made in Sweden. It is necessary to specify that the number of the states providing criminal liability for prostitution is small. As practice testifies, since the most ancient times establishment even of very strict punitive measures in fight against prostitution remain inefficient. Besides, it is very difficult to establish difference between sexual untidiness and prostitution. In this regard it is necessary to agree with a statement that criminal liability for occupation cannot be established by prostitution first of all on the ground that it is difficult to this phenomenon to give accurate legislative definition owing to what "prosecution for prostitution will generate a lot of subjectivity, mistakes and an arbitrariness" [7, p.145]. In particular, § 230.00 of Criminal Code of the State of New York where it is specified that the person offering, agreeing or who is carrying out the sexual



intercourse with other persons for remuneration is found guilty of prostitution can be an example. The provided formulation does not differ in concreteness as covers also the cases taking place at illegitimate sexual communications, for example, the invitation in restaurant, donation of gifts and many others.

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