

THE SUPREME PEOPLE'S COURT - THE SUPREME PEOPLE'S
PROCURACY - THE MINISTRY OF PUBLIC SECURITY - THE
MINISTRY OF NATIONAL DEFENSE - THE MINISTRY OF JUSTICE

**Joint Circular No. 01/2013/TTLT- TANDTC-
VKSNDTC-BCA-BQP- BTP of July 23,2013, guiding
the penal liability examination against persons who
commit acts of human trafficking; trading in,
fraudulently exchanging or appropriating children**

For the correct and consistent application of the provisions of Articles 119 and 120 of the 1999 Penal Code, which was revised by the 2009 Law Amending and Supplementing a Number of Articles of the Penal Code (below referred to as the Penal Code) in the examination of penal liability against persons who commit acts of human trafficking; trading in, fraudulently exchanging or appropriating children, the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense and the Ministry of Justice promulgate the joint circular guiding the penal liability examination against persons who commit acts of human trafficking; trading in, fraudulently exchanging or appropriating children.

Chapter I

**PENAL LIABILITY EXAMINATION AGAINST PERSONS WHO
COMMIT ACTS OF HUMAN TRAFFICKING UNDER ARTICLE 119
OF THE PENAL CODE**

Article 1. Definition of human trafficking acts

Human trafficking means the act of using money, property or other material benefits to exchange persons (aged full 16 or older) as a kind of commodity, specifically one of the following acts:

1. Selling persons to other persons, regardless of buyers' purposes.
2. Buying persons for resale to other persons, regardless of subsequent buyers and their purposes.
3. Using persons as property for exchange or payment.
4. Buying persons for exploitation of labor, forced labor or other illegal purposes.
5. Persons who organize, incite or assist persons who commit one of the human trafficking acts prescribed in Clauses 1,2,3 and 4 of this Article, shall all be examined for penal liability for the crime of human trafficking.

Article 2. On a number of circumstances determining the penalty frame

1. “For the purpose of prostitution”, defined at Point a, Clause 2, Article 119 of the Penal Code, means the case where human trafficking aims to serve prostitution activities (for instance: trafficking in persons then sending them to brothels or organizing them to sell sex, etc.).

2. “In a professional manner”, defined at Point c, Clause 2, Article 119 of the Penal Code, means the case where a human trafficker commits the crime for five times or more (regardless of whether or not he/she has been examined for penal liability if the penal liability examination statute of limitations has not yet expired or his/ her criminal record has not yet been remitted) and the offender takes human trafficking as his/ her means of livelihood and the fruits of human trafficking as a main source of livelihood.

For offenders who have committed the crime for five times or more, for which they have been once sentenced and have not yet enjoyed criminal record remission, the penalty frame-determining circumstances or aggregating circumstances of “committing the crime more than once”, “against more than one person”, “recidivism” (or “dangerous recidivism”) and “in a professional manner” can be applied to them.

3. “For the extraction of organs of victims”, defined at Point d, Clause 2, Article 119 of the Penal Code, means the case where human trafficking aims to take body parts formed from different tissues for the performance of certain physiological functions of such person.

4. “For the purpose of sending abroad”, defined at Point e, Clause 2, Article 119 of the Penal Code, means the case where human trafficking aims to send victims out of the Vietnamese territory, including the case where victims have not yet been sent abroad but there are grounds to determine that the offenders have the intention to send the victims abroad.

5. “Against more than one person”, defined at Point f, Clause 2, Article 119 of the Penal Code, means the case of trafficking in two persons or more at a time of committing the crime.

6. “Committing the crime more than once”, defined at Point g, Clause 2, Article 119 of the Penal Code, means the case where human trafficking is committed for two or more times, regardless of such trafficking acts are conducted against one or more than one persons and the offenders have not yet been examined for penal liability once and the penal liability examination statute of limitations has not yet expired.

Article 3. Penal liability examination in a number of specific cases

1. Using tricks for brokerage of illegal marriage with foreigners

Those who use tricks of brokerage of illegal marriage with foreigners shall be examined for penal liability for the crime of human trafficking under Article 119 of the Penal Code in one of the following cases:

- a/ The broker uses tricks of coercion, intimidation or deception to compel other persons to marry foreigners and have handed over such persons to foreigners for money, property or other material benefits;
- b/ They know the foreigners' purposes of taking abroad the persons selected through face- to-face meeting, selection of wives (or husbands) or marriage as a trick for labor or sex exploitation or sale to other persons but deliberately conduct the brokerage for money or other material benefits received from foreigners.

2. Using tricks for illegal sending laborers abroad

a/ If brokers or senders of laborers abroad know that the laborers (aged full 16 or older) sent abroad will be subject to forced labor, illegal labor exploitation (for instance: persons sent abroad are compelled to work in a hazardous environment without labor safety, thus seriously affecting their health; are forced to unpaid labor; or coerced to prostitution) but keep deceiving or compelling the laborers and hand them to the foreign parties for money or other material benefits, they shall be examined for penal liability for the crime of human trafficking under Article 119 of the Penal Code;

b/ If brokers use tricks to send laborers abroad and transfer them to foreign parties for sale to other persons, they shall be examined for penal liability for the crime of human trafficking under Article 119 of the Penal Code;

If brokers use tricks to send laborers abroad to appropriate property through swindling or abuse of trust (after receiving money from laborers they flee, without sending the laborers abroad), they shall be examined for penal liability for the appropriation of property through swindling under Article 139 of the Penal Code or for the abuse of trust to appropriate property under Article 140 of the Penal Code, as the case may be.

Chapter II

PENAL LIABILITY EXAMINATION AGAINST PERSONS WHO COMMIT ACTS OF TRADING IN, FRAUDULENTLY EXCHANGING OR APPROPRIATING CHILDREN UNDER ARTICLE 120 OF THE PENAL CODE

Article 4. Identification of acts of trading in, fraudulently exchanging or appropriating children""

1. “Trading in children” means the act of using money, property or other material benefits to exchange children (persons aged under 16) as a kind of commodity, specifically one of the following acts:

- a/ Selling children to other persons, regardless of buyers’ purposes;
- b/ Buying children for resale to other persons, regardless of subsequent buyers and their purposes;
- c/ Employing children as a means for exchange or payment;
- d/ Buying children for exploitation of labor, forced labor or other illegal purposes.

2. “Fraudulently exchanging children” means the act of substituting a child with another child against the will of the parents, fosterers or lawful guardians of one child or both.

3. “Appropriating children” means the act of using force, threatening to use force, stealthily seizing, deceiving or abusing the difficult situation or dependence of children’s parents or fosterers to seize children or hand them to other persons for seizure.

4. Those who organize, incite or assist other persons to commit one of the acts defined in Clauses 1, 2 and 3 of this Article shall be examined for penal liability for their role as accomplices.

Article 5. On a number of circumstances determining the penalty frame

1. “In a professional manner”, defined at Point b, Clause 2, Article 120 of the Penal Code, means the case where the person commits the crime of trading in, fraudulently exchanging or appropriating children for five or more times, regardless of whether or not he/she has been examined for penal liability (trading in children for five times or more, fraudulently exchanging children for five times or more, or appropriating children for five times or more), if the penal liability examination statute of limitations has not yet expired or his/her criminal record has not yet been remitted, and the offender takes trading in, fraudulently exchanging or appropriating children as a means of livelihood and the fruits of trading in, fraudulently exchanging or appropriating children as a main source of livelihood.

For offenders who have committed the crime for five times or more and for which they have been sentenced once and have not yet enjoyed criminal record remission, on a case- by- case basis, the penalty frame-determining circumstances or aggregating circumstances of “against more than one child”, “recidivism” (or “dangerous recidivism”) and “in a professional manner” may be applied to them.

2. “ For a despicable motive”, defined at Point c, Clause 2, Article 120 of the Penal Code, means the case of committing the crime with despicable, mean, selfish motives, showing the ungratefulness, treacherousness and despicability. The offenders aim to retaliate or to control victims and their families or relatives to serve their attempts.

3. “ Against more than one child”, defined at Point d, Clause 2, Article 120 of the Penal Code, means the case of trading in, fraudulently exchanging or appropriating two or more children (trading in two or more children; fraudulently exchanging two or more children; appropriating two or more children) at a time or different times of crime commission.

4. “ For the extraction of organs of victims”, defined at Point e, Clause 2, Article 120 of the Penal Code, means the case of trading in, fraudulently exchanging or appropriating children for the purpose of taking their body parts formed from different types of tissues to perform certain physiological functions of such children.

5. “ For the purpose of sending abroad”, defined at Point dd, Clause 2, Article 120 of the Penal Code, means the case of trading in, fraudulently exchanging or appropriating children to take them out of the Vietnamese territory, including the case where victims have not yet been sent abroad but there are grounds to determine that the offenders intend to send victims abroad.

6. “ For use for inhumane purposes”, defined at Point g, Clause 2, Article 120 of the Penal Code, means the case of trading in, fraudulently exchanging or appropriating children for use for cruel and barbarous purposes such as experimentation, pornographic and debauching painting or similar acts.

7. “ For use for prostitution purposes”, defined at Point h, Clause 2, Article 120 of the Penal Code, means the case of trading in, fraudulently exchanging or appropriating children to serve prostitution activities (for instance: trading in, fraudulently exchanging or appropriating children then compelling them to sell sex or sending them into brothels, etc.).

8. “ Causing serious consequences”, defined at Point k, Clause 2, Article 120 of the Penal Code, means one of the following cases:

a/ Trading in, fraudulently exchanging or appropriating children, which leads to the death of victims (who commit suicide because of writhing, who die of illness, diseases or undue care);

b/ Trading in, fraudulently exchanging or appropriating children, which leads to victims’ suffering from infectious or dangerous diseases such as AIDS and syphilis;

c/ Trading in, fraudulently exchanging or appropriating children, which leads to the unidentification of the victims' whereabouts by the time of first-instance trial; m

d/ Trading in, fraudulently exchanging or appropriating children, which leads to the death of victims' relatives due to despair, agony or suicide or to serious effects on their health.

In addition to the loss of life or health as guided above, non-material consequences may entail, such as adverse effect on the implementation of the Party's line and the State's policies, on national security as well as social order and safety. For these cases, the consequences caused by offenders will be assessed as serious or not on a case-by-case basis.

Article 6. Penal liability examination in a number of specific cases

1. Employing brokerage tricks for illegal child adoption

a/ If the brokers know that the child adoption aims for labor exploitation and forced labor against children or for other illegal purposes but have employed brokerage tricks for child adoption in order to transfer the children to adopters -in order to get money, property or other material benefits, the brokers and the adopters shall all be examined for penal liability for the crime of trading in children under Article 120 of the Penal Code;

b / If the adoption brokers know the adopters' purpose of selling the children to other persons after receiving them, the brokers and the adopters shall all be examined for penal liability for the crime of trading in children under Article 120 of the Penal Code;

c/ If persons with positions or powers have abused their positions or powers to receive money, property or other material benefits for brokerage of unlawful child adoption (failure to comply with the law on child adoption) or create conditions for brokerage and unlawful child adoption and know that the adopters aim the child adoption for labor exploitation or forced labor or other unlawful purposes, they shall be examined for penal liability for the crime of trading in children under Article 120 of the Penal Code;

d/ If persons with positions or powers have abused their positions or powers to receive money, property or other material benefits for brokerage of unlawful child adoption (failure to comply with the law on child adoption) or create conditions for brokerage and unlawful child adoption, but do not know that the adopters aim the child adoption for labor exploitation and forced labor or other unlawful purposes, they shall not be examined for penal liability for the crime of trading in children. They can be examined for penal liability for the crime of abusing positions and

powers in performing their official duties (Article 281), the crime of abusing positions and powers to influence other persons for self-seeking interests (Article 283) or other crimes under the Penal Code, as the case may be;

e/ If a person knows that another person has the actual demand for child adoption (due to infertility or love of children) and recommend the latter to persons who wish to give their own children as adopted children due to their difficult situation, which renders them no conditions to nurture the children, and aspire that their children will be better nurtured and receive a sum of money and the brokers also receive a money amount for brokerage, the brokers, the child givers and the adopters shall not be examined for penal liability for the crime of trading in children under Article 120 of the Penal Code.

2. The kidnapping of children as hostages for property appropriation is not the act of appropriating children under Article 120 of the Penal Code, hence the kidnappers shall be examined for penal liability for kidnapping for property appropriation under Article 134 of the Penal Code.

Article 7. Penal liability examination in case of committing many criminal acts

1. A person who commits many criminal acts under Article 120 of the Penal Code and those acts are closely interrelated (one criminal act constitutes the condition for committing or is the inevitable result of another criminal act) shall be examined for full penal liability for all acts he/she has committed under Article 120 of the Penal Code and receive only one penalty.

For example: If a person fraudulently exchanges a child then appropriates such child and sells him/her to another person, he/she shall be examined for penal liability for the crime of trading in, fraudulently exchanging and appropriating children under Article 120 of the Penal Code and receive one penalty.

2. If a person commits many criminal acts under Article 120 of the Penal Code and those acts are not related to one another, he/she shall be examined for penal liability for the independent crimes they have committed. In adjudication, the court shall apply Article 50 of the Penal Code to decide on the aggregate penalty.

For example: A person buys a child for resale to another person and is arrested, who is later detected as having committed the act of appropriating another child. For this case, the offender shall be examined for penal liability for the crime of trading in children and the crime of appropriating children under Article 120 of the Penal Code. For this case, the court shall

decide the penalty corresponding to each crime, then decide on the aggregate penalty for both crimes as provided in Article 50 of the Penal Code.

Chapter III

IMPLEMENTATION PROVISIONS

Article 8. Effect

This Joint Circular takes effect on September 9, 2013.

Article 9. Organization of implementation

The Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense and the Ministry of Justice shall, within the ambit of their respective tasks and powers, organize the implementation of this Joint Circular.

In the course of implementation, any arising problems which require additional explanation and guidance should be reported to the Supreme People's Court, the Supreme People's Procuracy, the Ministry of Public Security, the Ministry of National Defense and the Ministry of Justice for timely guidance.-

For the President of the Supreme People's Court

Vice President

DANG QUANG PHUONG

For the Chairman of the Supreme People's Procuracy

Vice Chairman

TRAN CONG PHAN

For the Minister of Public Security

Deputy Minister Lieutenant General

LE QUY VUONG

For the Minister of National Defense

Deputy Minister Senior Lieutenant General

NGUYEN THANH CUNG

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