

#### 4 INTERNATIONAL AND COMPARATIVE LAW ХАЛЫҚАРАЛЫҚ ЖӘНЕ САЛЫСТЫРМАЛЫ ҚҰҚЫҚ МЕЖДУНАРОДНОЕ И СРАВНИТЕЛЬНОЕ ПРАВО

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IRSTI 10.87.89  
UDC 341.41/.46  
JEL K 33: K14

<https://doi.org/10.46914/2959-4197-2024-1-2-54-62>

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#### ON THE ISSUE OF COMBATING CHILDREN TRAFFICKING IN THE REPUBLIC OF KAZAKHSTAN AND FOREIGN COUNTRIES

##### Abstract

Child trafficking has now become a global problem affecting all countries and causing serious concern to the international community. This phenomenon has a significant impact on people's lives, stability in the world and requires comprehensive research. International organizations and governments of various countries are actively working to develop programs, policies, new laws and mechanisms to combat child trafficking, as it is one of the most vulnerable aspects of society. In this article, the authors conducted a comprehensive legal analysis of the regulatory framework and summarized the experience of combating child trafficking at the international level. There was also the context of general international legal issues is analyzed, related to combating child trafficking, the main approaches to solving problems associated with this problem, and proposed the author's vision for its solution.

**Key words:** child trafficking, combating child trafficking, "cooling-off period", transnational threat, criminal act.

##### Introduction

The phenomenon of trafficking in persons, including women and children, is a negative consequence of globalization and is actively spreading throughout the world. Hundreds of thousands of people are enslaved each year by being sold, transported, and held against their will for sexual exploitation or forced labor. According to the UN Center for International Crime Prevention, this

figure ranges from 700,000 to 4,000,000 men, women and children who fall into slavery and human trafficking against their will [1]. Human trafficking generates huge profits for organized crime. Thus, in 2019, income from the sale of people amounted to about \$12 billion in net profit [1]. According to the UN Center for International Crime Prevention, human trafficking in the 21st century is one of the most profitable forms of illegal activity, and it can also finance international terrorism.

The purpose of the scientific research is to analyze various aspects of the fight against child trafficking in modern Kazakhstan. The study includes theoretical, practical and instrumental analysis of this problem. The main focus is on studying the problem of child trafficking from the point of view of international and criminal law, as well as moral standards. An analysis of criminal liability for such crimes was also carried out and methods and means of combating them were studied.

The problem of child trafficking is global in nature, so the issue of developing mechanisms of a legal, organizational and social nature that are aimed at combating this social evil of a criminal nature is quite relevant.

In Kazakhstan and other countries, the problem of child trafficking requires a comprehensive analysis from the point of view of international law, criminal law and morality. In this connection, it is necessary to develop effective mechanisms to combat this phenomenon, taking into account its global nature. It is also important to pay attention to factors related to the family environment that may contribute to child trafficking.

Thus, the problem of child trafficking requires an integrated approach on the part of states, law enforcement agencies and international organizations to develop effective strategies for its prevention and suppression.

### **Materials and methods**

The study of child trafficking is a complex issue that affects various aspects of public life, such as health, criminal justice, migration, economics and social issues. Despite the efforts of the UN and other international organizations, effective legal mechanisms to combat this phenomenon have not yet been developed. Many countries do not implement UN standards and norms in their national legislation and practice [2, p. 682–699].

The scientific community and experts have developed a number of proposals to effectively combat child trafficking. In the scientific literature, there are systematic legal approaches to the study of mechanisms to combat human trafficking, but in the field of international law, a complete systematic analysis of the international legal aspects of combating child trafficking and the level of cooperation between states in this matter has not yet been carried out.

Although there are studies related to the fight against child trafficking at the bilateral and multilateral levels, as well as within the UN, further research is required on the prevention of child trafficking based on scientific concepts and foreign practices.

The methodological basis of the study was made up of general scientific methods of cognition, such as dialectical and systematic approaches to the study of social and legal phenomena. Private scientific methods of cognition were also used, including statistical, sociological, comparative jurisprudence, and logical-linguistic methods.

### **Literature review**

In the field of scientific research, there are systematic approaches to the study of legal mechanisms to combat trafficking in persons, however, in the science of international law, a systematic analysis of the international legal aspects of combating child trafficking and the level of cooperation between states in the fight against this criminal manifestation has not yet been fully carried out. The following authors made a significant contribution to the development of the scientific concept of international legal regulation of issues of interaction between states in the fight against trafficking in persons: Alimbekova M., Beisenalieva B.N., Bisyarina A.N., Borchashvili I.Sh., Weisbrodta D., Vlasysuka M.S., Getman I.B., Gromova S.V., Dottridge M., Kabanova V.L., Malysheva M.M., Nigmatullina R.V., Plakhotnyuk N.V., Rakhmetova S.M., Rogova I.I., Stukalova V.V., Sattar Z., Tyurekanova E.V., Harvey J.H., Hornsby R.A., Sherayzina L.O., Cheremnykh M.P. and etc.

Despite the existing research related to issues of combating child trafficking within the framework of international legal cooperation at the bilateral and multilateral levels, as well as within the UN, there is a need for further research on measures to prevent child trafficking based on scientifically proven concepts and foreign practice.

### **Main provisions**

Currently, trafficking in minors creates many difficulties, affects almost all countries and is global in nature.

According to statistics, the number of victims of human trafficking is increasing from year to year. Thus, in 1997, the number of people involved in global illegal traffic amounted to 4 million people. In 2017, according to statistical data from experts, this figure increased to 27 million [3]. Sexual exploitation, especially of women and children, is the most common form of exploitation in the world [4]. However, in recent years, labor exploitation has also become widespread.

In Kazakhstan, many foreign workers, most of them from Central Asian countries, face poverty and unemployment, making them vulnerable to traffickers. They are often forced to accept unacceptable working conditions and low wages. As a result, they become victims of human trafficking.

Economic inequality and rural unemployment are the main internal causes of trafficking in persons and children in Kazakhstan. The situation of labor exploitation has become even worse due to the global economic crisis, as job opportunities have diminished and people are desperate to feed their families.

In addition, there is reason to believe that other types of exploitation also exist in Kazakhstan, such as the sale of children for the purpose of illegal adoption, forced begging, organ trafficking and illegal organ transplantation. However, there is too little information about such cases, perhaps because their number is small or because they are not detected.

Currently, women and children from Kazakhstan are most often subjected to sexual exploitation in the United Arab Emirates and Lebanon. To a lesser extent, such cases occur in Russia, China, Turkey and Azerbaijan. Women and girls from Uzbekistan, Russia, Kyrgyzstan, Tajikistan, Moldova and Ukraine are also subject to sexual exploitation in Kazakhstan.

When the problem of human trafficking became relevant in Kazakhstan, at first they did not want to acknowledge its existence. However, in recent years, the authorities have taken important measures to combat trafficking in persons, in particular children. Kazakhstan has acceded to the UN Convention against Transnational Organized Crime and its Protocol to Prevent and Suppress Trafficking in Persons, Especially Women and Children, which contains the most comprehensive definition of trafficking in persons in international law to date. New domestic legislation on combating human trafficking is also being systematically developed; the Action Plan of the Government of the Republic of Kazakhstan for the prevention, prevention and combating of crimes related to human trafficking for 2021–2023 has been adopted. This action plan sets out the measures that each government department needs to take [5]. This plan is developed and approved every two years.

According to statistics from the Criminal Police Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan, in 2017, as of December, 18 criminal cases were initiated under Article 128 (trafficking in persons), and 6 criminal cases were initiated under Article 135 (trafficking in minors). As a result of illegal actions, 112 people were injured, of which 27 were citizens of Kazakhstan and 85 citizens of Uzbekistan and Tajikistan. It should be noted that out of 112 people, 25 people were subjected to sexual and 87 labor exploitation [6].

In 2019, as a result of measures taken by the Department of Internal Affairs of Kazakhstan, 21 cases were opened for trafficking in minors. And 12 more for unlawful deprivation of liberty for the purpose of exploitation. Typically, children and adolescents are considered a more vulnerable group, as their recruitment process requires the least effort. Mostly minors from dysfunctional and single-parent families, from orphanages, as well as so-called “difficult” teenagers find themselves in this critical situation.

During the conference in Nur-Sultan, representatives of the Parliament of the Republic of Kazakhstan, the Supreme Court, the Prosecutor General's Office, and international experts noted that Kazakhstan does not yet have special legislation that would fully cover the entire range of issues related to the protection of minor victims of human trafficking. The Law “On Amendments

and Additions to Current Legislative Acts on Issues of Personal Security of Participants in Criminal Proceedings,” adopted in 2009, provides a legal basis for providing support to victims during the investigation of crimes in court proceedings. However, the law itself does not provide for a separate system of measures in relation to minor witnesses or victims [7].

The U.S. Department of State’s annual Trafficking in Persons (TIP) Report groups countries into four lists (or categories) based on the country’s efforts and the effectiveness of those efforts in combating human trafficking. In 2019, Kazakhstan’s ranking in the Trafficking in Persons Report fell to Level 2 – inclusion on the watch list. Being on the Tier 2 watch list for two consecutive years automatically places a country at Tier 3. In addition to the moral reasons for protecting vulnerable individuals, a Tier 3 rating triggers automatic restrictions on various interactions by the United States, including number on forms of financial assistance [7]. Thus, Kazakhstan remains a destination, transit and origin country for human trafficking, and more work needs to continue to be done in this direction.

In order to combat child trafficking in Kazakhstan, a Memorandum of Understanding was signed in 2012 between the Ministry of Internal Affairs of the Republic of Kazakhstan and the International Organization for Migration (hereinafter referred to as IOM) on cooperation in the field of combating human trafficking.

The Ministry of Internal Affairs of Kazakhstan, cooperating with other government agencies and international non-governmental organizations, has developed a draft amendment to legislation to combat human trafficking. This project was sent for consideration and examination to various ministries and departments. The proposed changes and additions relate to issues such as the mandatory provision of qualified legal assistance from lawyers at the expense of public funds for victims of crimes related to human trafficking.

However, there are omissions in the presented innovations. For example, we believe that the criminal legislation of Kazakhstan should include “begging” in the category of exploitation and introduce the concept of “non-commercial sexual exploitation”.

One of the positive aspects of the innovations is the possibility of harsher punishment for violation of labor laws in relation to minors, involving them in prostitution, organizing and maintaining brothels, as well as providing premises for prostitution (hotels, saunas, baths and other places). It also provides for administrative liability for medical employees who do not inform law enforcement agencies about minors who have suffered injuries or violence and are admitted to medical institutions.

In order to identify and suppress these crimes, measures are being taken to implement the government Action Plan to combat, prevent and prevent crimes related to human trafficking [5]. The plan provides for 36 measures, many of which are directly within the competence of the Ministry of Internal Affairs. According to the Plan, the Ministry of Internal Affairs is the main executor. In particular, 97 employees of internal affairs bodies were trained in the professional training of law enforcement officers on the basis of the Training Center for training specialists in the fight against illegal migration and human trafficking over the past period, and 45 were trained in foreign countries (Hungary, Poland, the Russian Federation, Republic of Belarus). In order to implement this Plan, an Interdepartmental Commission on Combating Illegal Export, Import and Trafficking in Persons has been created and operates. In addition, this year the signing of two intergovernmental (Arab Republic of Egypt, Republic of Croatia) and one interdepartmental (Mongolia) Agreements, including cooperation in the field of combating human trafficking, was ensured. Work continues to agree on intergovernmental Agreements with the United Arab Emirates, the states of Israel, Norway, Spain, Jordan, Syria and Greece.

Currently, in the Republic of Kazakhstan, within the framework of the Program to Combat Trafficking in Persons in Central Asia, the International Organization for Migration (IOM), in cooperation with non-governmental organizations, provides assistance to persons affected by human trafficking. They are involved in areas such as the rehabilitation of children caught up in armed conflict; organizing campaigns to eliminate child crime; development of assistance programs for children at risk of sexual exploitation, etc. They operate on the basis of principles such as confidentiality, anonymity, respect for human rights, his views and actions, individual approach and professionalism.

Based on the data presented, it can be concluded that despite the significant progress achieved in this area, there are still serious gaps and shortcomings in the approach of the Kazakh authorities in addressing the problem of human trafficking, especially child trafficking. Moreover, although

trafficking in persons and children is a predominantly cross-border problem in Central Asia, and all countries in the region have expressed their intention to combat it (including signing and ratifying the UN Protocol to Prevent and Suppress Trafficking in Persons), in practice cooperation in this area is developing very slowly. We believe that this fact also has a negative impact on the fight against trafficking in persons and children in Kazakhstan. Increased concerted efforts and more effective collaboration among all concerned countries are needed to overcome this global challenge and protect children's rights and human dignity.

## Results and discussion

In connection with the entry into force on January 1, 1998 of the Criminal Code of the Republic of Kazakhstan dated July 16, 1997 (hereinafter referred to as the Criminal Code of the Republic of Kazakhstan), Art. 128 (as amended and additionally dated July 9, 2003 No. 480-II), establishing criminal liability for recruiting people for exploitation. Based on the adoption of the Law of the Republic of Kazakhstan "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Combating Trafficking in Persons" dated March 2, 2006 No. 131-III, Article 128 of the Criminal Code was renamed to the new name "Trafficking in Persons", as well as In Article 133 of the Criminal Code, on the basis of the above-mentioned law, criminal liability for trafficking in minors was established for the first time. A consistent continuation of this line was the adoption of the new Criminal Code of the Republic of Kazakhstan dated July 3, 2014, which entered into force on January 1, 2015, in which Article 128 of the Criminal Code is also called "Human Trafficking" [8].

According to the current Criminal Code of the Republic of Kazakhstan, articles providing for criminal liability for actions related to human trafficking include coercion to remove or illegal removal of human organs and tissues (Article 116), kidnapping (clause "b" of part three of Article 125), illegal deprivation of liberty (clause "b" of part three of Article 126), involvement of a minor in prostitution (Article 134), trafficking in minors (Article 135), involvement in prostitution (Article 308) and organization or maintenance of dens for prostitution and pimping (Article 309). These articles cover various aspects of human trafficking.

Human trafficking is a complex, multifaceted socio-legal phenomenon with a transnational character. Criminal activities related to human trafficking are often carried out by organized crime groups. Thus, human trafficking can be considered a type of organized crime.

Due to the significant scale of this crime, there is a need to strengthen international legal cooperation in the control of trafficking in persons. Entities involved in the prevention of such crime must increase their effectiveness in this area [9, p. 17].

Despite the international community's opposition to human trafficking and the use of slave labor, these types of criminal enrichment are showing a steady tendency to expand.

These crimes have social consequences that pose and will pose a threat not only to security and law and order, but also generally have a negative impact on many vital issues in the development and prosperity of Kazakhstan [9, p. 18].

Based on the analysis of the legislative framework of the Republic of Kazakhstan in the field of combating child trafficking, we conclude that despite the presence in the Constitution of the Republic of Kazakhstan and the Foreign Policy Concept of Kazakhstan of norms indicating commitment to the values of a democratic society and respect for the rights and freedoms of man and citizen both on the basis of internal laws, and on the basis of international law and existing bilateral agreements in Kazakhstan today there is no clear legislative framework regarding combating child trafficking, which creates certain problems in eradicating this crime.

According to the analysis, we note three particularly significant recommendations: we believe that it is necessary to introduce amendments:

- ♦ to the Law on Special Social Services for Affected Foreign Citizens;
- ♦ introducing a "cooling-off period" to ensure that victims who are citizens of another country make an informed decision about whether or not to report a crime;
- ♦ and an amendment to the definition of "trafficking in persons" and "trafficking in minors" under Articles 128 and 135 to include the concepts of "coercion", "misleading" or "pressure" as an important element of the crime instead of using the general concept of "aggravating circumstances".



Currently, in terms of its scale and range of distribution, child trafficking represents a transnational threat both for a single state and for the international community. Its solution must be carried out within the framework of a comprehensive security system. And for this it is necessary to create a Unified Model of cooperation between government bodies, public and international organizations. This is what we believe is an important step in combating this crime. A comprehensive security system should, we believe, include measures to prevent child trafficking, protect victims and witnesses, prosecute and punish offenders, as well as partnerships and cooperation at all levels.

Taking into account modern trends in the development of society, we believe that the Strategy to combat child trafficking should be based on several important areas. In order to suppress child trafficking, the state must first solve problems of eliminating the reasons for people leaving abroad in search of a better life. Secondly, the work of the media should be aimed at raising public awareness about child trafficking and its consequences as an integral part of combating this crime. Thirdly, social services of the Republic of Kazakhstan must monitor changes in an individual's status and provide timely support to individuals belonging to potential risk groups. Fourthly, to more effectively prosecute and punish criminals, it is necessary to improve the legislative framework and the actions of law enforcement agencies. Fifthly, it is necessary to provide adequate assistance (legal, psychological, etc.) to victims at the expense of the state, which is one of the main aspects of caring for victims of child trafficking.

To effectively combat child trafficking, it is necessary to coordinate efforts at the global level. Seeing this problem as complex, encompassing economic, social, political, spiritual, cultural and other factors, is the right approach. Only by uniting all forces will we be able to achieve our goals and protect children from this terrible crime.

It is important that states, organizations and society as a whole take an active part in implementing strategies to counter and combat child trafficking. Our global challenge is to preserve the right of every child to live a free and safe life, and only through joint efforts can we achieve this goal.

## Conclusion

As a result of our research, we believe that child trafficking is a serious violation of human rights and poses a transnational threat. It is a brutal phenomenon that fuels corruption and money laundering and hampers the economic and democratic development of society.

The most common forms of child trafficking include:

a) trafficking of children for the purpose of sexual exploitation, including their use for the production of pornographic materials and prostitution, which is particularly disgusting and requires immediate suppression and punishment of the perpetrators;

b) attention should be paid to the trafficking of children for forced labor, where children are forced to work in slave conditions and live in debt bondage. This deprives them of the opportunity to receive an education and participate in normal social life;

c) forced labor, where children are forced to do dangerous and degrading work against their will. This phenomenon not only violates the rights of children, but also interferes with their normal physical and psychological development;

d) trafficking of children to participate in war as combatants. Children forced into armed conflict are subjected to unimaginable suffering and are deprived of their childhood. This phenomenon is not only destructive to the lives of children themselves, but also contributes to the spread of violence and instability;

e) trafficking in children for the purpose of illegal adoption, when children are taken from their countries for the purpose of illegal adoption. This phenomenon calls for strict measures to curb such illegal practices and protect the rights and welfare of children;

f) trafficking of children for organ and tissue transplantation is a barbaric and illegal practice that results in physical and psychological consequences for children. This phenomenon must be stopped and children must be protected from such inhumane treatment.

Combating child trafficking at different levels – national and international – is an important task of modern times. In Kazakhstan, it acquires particular relevance and promise in legal science, attracting the attention of domestic and foreign lawyers, political scientists, sociologists and historians.

At the international level, the main organizations involved in the fight against child trafficking include the UN, the International Labor Organization (ILO), the International Criminal Court, the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU). In addition, the relevant ministries and law enforcement agencies of states, as well as such structures as Interpol, Europol and the Regional Center of the South-East European Cooperation Initiative in the fight against transnational crime (SEC), are involved in the fight against this phenomenon.

However, despite the presence of international and state efforts, the issue of combating child trafficking in Kazakhstan remains a pressing topic that requires further research and the development of legal measures. Although the basic principles and beginnings of this path have already been laid, much work remains to achieve complete success.

Studying various aspects of this socio-legal phenomenon, including its causes and consequences, methods of recruitment and transportation of children, as well as countermeasures, is important for the formation of an effective strategy to combat child trafficking. Further development of scientific research and cooperation of relevant institutions and organizations will make it possible to develop and implement effective legal instruments to prevent and suppress this crime.

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## **БАЛА САТУҒА ҚАРСЫ КҮРЕС МӘСЕЛЕСІ ТУРАЛЫ ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА ЖӘНЕ ШЕТ ЕЛДЕРДЕ**

### **Аңдатпа**

Осы әлеуметтік-құқықтық құбылыстың әртүрлі аспектілерін, оның ішінде оның себептері мен салдарын, балаларды жұмысқа тарту және тасымалдау әдістерін, сондай-ақ қарсы шараларды зерделеу бала саудасына қарсы күрестің тиімді стратегиясын қалыптастыру үшін маңызды. Ғылыми зерттеулерді және тиісті мекемелер мен ұйымдардың ынтымақтастығын одан әрі дамыту осы қылмыстың алдын алу және жолын кесудің тиімді құқықтық құралдарын әзірлеуге және енгізуге мүмкіндік береді. Бұл мақалада авторлар нормативтік-құқықтық базаға жан-жақты құқықтық талдау жүргізіп, халықаралық деңгейде бала саудасына қарсы күрес тәжірибесін қорытындылады. Сондай-ақ бала саудасына қарсы күреске қатысты жалпы халықаралық-құқықтық мәселелердің контексті талданып, осы проблемаға қатысты мәселелерді шешудің негізгі тәсілдері зерделеніп, автордың оны шешуге деген көзқарасы ұсынылды.

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## **К ВОПРОСУ О БОРЬБЕ С ТОРГОВЛЕЙ ДЕТЬМИ В РЕСПУБЛИКЕ КАЗАХСТАН И ЗАРУБЕЖНЫХ СТРАНАХ**

### **Аннотация**

В настоящее время торговля детьми стала глобальной проблемой, затрагивающей все страны и вызывающей серьезную озабоченность международного сообщества. Это явление оказывает существенное влияние на жизнь людей, стабильность в мире и требует всестороннего исследования. Международные организации и правительства различных стран активно работают над разработкой программ, политики, новых законов и механизмов для борьбы с торговлей детьми, так как это один из самых уязвимых аспектов общества. В данной статье авторы провели комплексный правовой анализ нормативно-правовой базы и обобщили опыт борьбы с торговлей детьми на международном уровне. Также был проанализирован контекст общих международно-правовых вопросов, связанных с противодействием торговле детьми, изучены основные подходы к решению проблем, связанных с этой проблемой, и предложено авторское видение по ее решению.

**Ключевые слова:** торговля детьми, противодействие торговле детьми, «период на обдумывание», транснациональная угроза, уголовное преступление.