

## **Improvement of Measures to Combat Human Trafficking: Social and Legal Aspects**

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### **Abstract**

Slavery, eradicated over two centuries ago, has resurfaced as a transnational criminal activity fueled by global economic, political, and cultural integration. This transformation highlights the need for scientific research into human trafficking, which has undergone structural changes in planning, execution, and concealment in Kazakhstan. The country acts as a destination, transit, and origin for trafficking victims, with exploitation occurring both domestically and abroad. To combat this issue effectively, it is crucial to analyze the causes and conditions enabling human trafficking, assess the effectiveness of legal measures, and address gaps in Kazakhstan's legislation that facilitate crimes and allow offenders to evade justice. This study uses criminological, criminal law, forensic, and international law approaches to identify patterns, trends, and challenges in human trafficking. Key findings include identifying social factors leading to such crimes, legal shortcomings, and practical challenges in investigation and prevention. The research provides evidence-based recommendations for improving legislation, preventive measures, and enforcement tools to combat human trafficking. Employing philosophical, general scientific, and specialized methods, particularly the dialectical approach, the study explores the socio-legal dynamics of trafficking in Kazakhstan, offering interdisciplinary insights into this pressing issue.

**Keywords:** legal policy, legal responsibility, crime detection and prevention, combating transnational crime.

### **Introduction**

According to the Global Slavery Index 2018, slavery is most prevalent in countries such as North Korea, Eritrea, Burundi, the Central African Republic, Afghanistan, Mauritania, and South Sudan. Conversely, nations such as the Netherlands, the United States, the United Kingdom, Sweden, and Belgium are recognized for their decisive measures in combating slavery. Kazakhstan ranked 83rd in this index, highlighting the significant challenges the country faces in addressing human trafficking (The Global Slavery Index, 2018). The global scale of human trafficking necessitates effective international legal cooperation among law enforcement agencies in multiple countries.

Human trafficking has been the subject of research in criminal law and criminological sciences for a long time. Special contributions to the theoretical study of such a negative socio-legal phenomenon have been made by the following

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scientists: B.V. Borovikov (2000), M.J. Buriak (2006), G. Caldwell (1998), T.L. Denisova (2002), E.V. Evstifeeva (2002), and others.

Studying the specifics of regulatory and legal measures for prevention and international cooperation is critical for identifying practical challenges in law enforcement activities that contribute to the victimization of human trafficking victims and the high latency of this phenomenon. Implementing proven mechanisms of interaction between customs officials, migration authorities, and police in national legislation is essential for expediting investigative operations to detect human trafficking cases. However, international legal assistance in criminal proceedings often entails significant time and financial costs.

Identifying the social and legal factors that facilitate human trafficking is a prerequisite for developing scientifically grounded recommendations for combating this crime in Kazakhstan, making it a pressing issue for this research. A major problem with the effectiveness of current counter-trafficking tools is the lack of adequate legal mechanisms for safe labor migration and legal protection for victims of these crimes. Safe migration is a vital condition for preventing human trafficking, necessitating improved mechanisms for the legal protection of migrants and their families.

Studying crimes related to human trafficking aims to provide scientifically grounded recommendations for the detection, disclosure, and investigation of this category of transnational and organized crime, ensuring more effective counteraction against this negative socio-legal phenomenon.

### **Theoretical Overview**

In Kazakhstan, several scholars have contributed to addressing the challenges of combating human trafficking, including S.A. Alzhankulova (2010), A.B. Bekmagambetova (2005), I.V. Korzun (2011), M. B. Kudaibergenov (2001), and G.R. Rustemova (2003). However, some aspects and problems of the criminological and criminal law characteristics of human trafficking in Kazakhstan remain insufficiently explored and unresolved. This observation is particularly true for the conceptual framework and classification of crimes associated with human trafficking.

The term “human trafficking” is used in both narrow and broad senses. In the narrow sense, it refers to legal phenomena exclusively described in Articles 128 and 135 of the Criminal Code. In the broad sense, “human trafficking” encompasses a multidisciplinary phenomenon involving actions such as: (1) illegal removal of human organs and tissues or coercion to such actions (The Criminal Code Republic of Kazakhstan, art.116, 2024); (2) deprivation of liberty for subsequent exploitation (The Criminal Code Republic of Kazakhstan, Paragraph 2, Part 3, Article 126, 2024); (3) exploitation of a kidnapped person (The Criminal Code Republic of Kazakhstan, Paragraph 2, Part 3, Article 125, 2024); (4) human trafficking (The Criminal Code Republic of Kazakhstan, article 128, 2024); (5) involvement in prostitution (The Criminal Code Republic of Kazakhstan, article 308, 2024); (6) involving minors in prostitution (The Criminal Code Republic of Kazakhstan, article 134, 2024); (7) trafficking in minors (The Criminal Code Republic of

Kazakhstan, article 135, 2024); (8) maintaining brothels for prostitution (The Criminal Code Republic of Kazakhstan, article 309, 2024).

This approach reflects the criminological classification of crimes associated with human trafficking but does not account for the specific criminal law characteristics of these crimes. The Criminal Code of Kazakhstan includes these offenses in different chapters of its Special Part, which determines differences in their protected objects, as well as in their objective and subjective elements. Given this limitation, which fails to distinguish between human trafficking and related crimes, the author adopts a narrow interpretation of the term in this study.

A.B. Bekmagambetov aptly notes the lack of uniformity in defining the nature of crimes associated with human trafficking (Bekmagambetov, 2017). There are several conceptual frameworks for understanding human trafficking, including: (1) human trafficking as a concept; (2) criminal exploitation; (3) international crime, (4) criminal violence; (5) criminal enterprise; (6) organized criminal activity; (7) slavery (Bekmagambetov, 2018).

M.B. Kudaibergenov was among the first to draw attention to human trafficking as an international crime (Kudaibergenov, 2001), with subsequent research by S.A. Alzhankulova (2010). These scholars emphasize the transnational nature and universal international criminal illegality of human trafficking, which infringes upon fundamental human rights and freedoms guaranteed by international law (Bekmagambetov, 2018).

The interpretation of human trafficking as “human trafficking flows”, involving the criminal transportation of victims, is supported by A.U. Sydykova (2003) and O. K. Biktasov (2009). However, this perspective is not without controversy, as it introduces ambiguity in legal understanding and application (Bekmagambetov, 2018).

M.Kh. Shalgimbaev (2007) views human trafficking as criminal exploitation, including crimes such as: (1) coercion to sexual relations; (2) human trafficking, (3) trafficking in minors, (4) involvement in prostitution, (5) creation and distribution of pornographic materials, (6) establishment of brothels for prostitution.

V.V. Root (2007) classifies human trafficking as a form of criminal violence, while A. Aisina (2011) and D.U. Balgimbekov (2015) conceptualizes it as a criminal enterprise centered on illegal transactions involving individuals. T. Erdzhanov (2017) interprets human trafficking as a contemporary form of slavery, and A.S. Ospanov (2009) views it as transnational organized crime. Human trafficking is a complex, multifaceted phenomenon requiring interdisciplinary and intersectoral study through various research approaches (Sydykova, 2003).

The article aims to identify the patterns determining the causes and conditions of crimes associated with human trafficking and to develop scientifically grounded recommendations for improving the norms of the Criminal Code of the Republic of Kazakhstan through a comparative legal study of Kazakhstan's and foreign countries' criminal legislation.

### **Research Methods**

In the course of the research on counteracting human trafficking, six interrelated and mutually dependent stages of scientific knowledge were

successively implemented, namely: (1) defining the topic and relevance of the scientific research through a systematic analysis of negative social and legal phenomena and their socially dangerous consequences; (2) defining the goal and setting the tasks of the scientific research on counteracting human trafficking; (3) analytical research of local and international normative legal acts adopted to counter human trafficking, as well as systematization and generalization of existing results of scientific-theoretical and scientific-practical studies on this negative social and legal phenomenon; (4) empirical research and generalization of statistical data related to human trafficking; (5) testing the results of scientific-theoretical and scientific-practical recommendations of the research.

The basis and methodological foundation of the research on the criminal-legal and criminological (social) aspects of crimes related to human trafficking is the theory of dialectical cognition, philosophy, the methodology of criminology and criminal law, as well as the provisions and methods of social and legal psychology, which allowed for a comprehensive scientific study of this negative social and legal phenomenon.

The main research method used in the study of the human trafficking phenomenon was dialectical. In criminology, philosophical categories such as quantity and quality, content and form, necessary and incidental, causes and consequences, general and individual, causes and consequences, and essence and phenomena are key to understanding the patterns of exploitative and violent crime.

A special place in the study of crimes related to human trafficking is occupied by general scientific methods of formal logic, generalization, abstraction, analysis and synthesis, induction and deduction, analogy, modeling, and others. The systemic method was used in studying the social-legal phenomenon of human trafficking. The systemic method assumes considering crime as a system with a certain structure, containing interconnected elements that are part of a broader system within society. In the process of studying individual elements that make up the system of criminal offenses related to human trafficking, methods of analysis and synthesis were applied.

During the research, both general and specialized scientific methods were used, namely: statistical analysis, comparative-legal, systemic-structural, logical, and formal-legal methods of cognition. The comparative-legal method allowed for examining the specific causes and conditions of human trafficking in different countries. The historical method was also applied in this context, which ensured the identification of patterns and possible trends in human trafficking during various periods of the Republic of Kazakhstan's development.

Statistical analysis of the criminologically significant data obtained during the research allowed for identifying trends and the dynamics of crimes related to human trafficking in Kazakhstan and worldwide.

The formal-legal method helped determine the key elements of crimes that fall under the category of human trafficking-related crimes. This method also enabled the interpretation of the concept of human trafficking, the classification of crimes related to human trafficking, and the responsibility for them as stipulated in

the Criminal Code of the Republic of Kazakhstan (hereinafter - the Criminal Code of the Republic of Kazakhstan).

### **Results and Discussion**

The public demand for combating human trafficking in the Republic of Kazakhstan is constantly growing. Active changes in the country's legislation make it possible to trace the alignment of the measures undertaken by the state to counter crimes related to human trafficking with the criminogenic situation present in Kazakhstan and worldwide.

In the domestic doctrine, the problem of human trafficking is viewed through the prism of the globalization of crime, the intensification of global migration processes, socio-economic factors (unemployment, low economic levels), gender issues, and the high degree of latency of the studied crime. A.B. Bekmagambetov (2005, p.26) notes that at least two main approaches to studying human trafficking issues should be highlighted: (1) the socio-criminological approach; (2) the normativism approach, which includes criminal-legal and international-legal components. It should be noted that A.B. Bekmagambetov (2005) unjustly omitted the criminological approach, as countering human trafficking cannot be effective without scientifically grounded methodologies for detecting and investigating such crimes.

The socio-criminological approach states that all the causes of the emergence and spread of crimes related to human trafficking are conditioned by various factors, including social-economic, political-legal, and moral-ethical causes. It should be noted that these causes are characterized by correlational relationships.

S.B. Kenjebaeva notes that there are more than 500 human trafficking flows in the world, which also pass through Central Asian countries. Kazakhstan is a transit route for human trafficking. Additionally, Kazakhstan is also a destination for human trafficking victims for sexual and labor exploitation. It is worth noting that, apart from Kazakhstan, people are illegally trafficked to other countries, such as the United Arab Emirates, Cyprus, Saudi Arabia, Turkey, Romania, the Czech Republic, and others. Undoubtedly, more than half of the victims are women who are sexually exploited. A quarter of the cases involve children. However, the situation in Eastern Europe is slightly different. In this region, most of the victims are men, and the primary need is for labor exploitation. It is also noteworthy that young people and middle-aged men are trafficked out of their countries for sexual exploitation. This specific feature is related to the high level of population migration from African and Asian countries, where people leave their native countries in search of work and end up in slavery (Kenzhebaeva, 2019). Therefore, depending on the type of exploitation (labor or sexual), men or women are more likely to be victimized.

Human trafficking has been steadily increasing in Kazakhstan, where the main victims are vulnerable social groups. Socio-demographic characteristics show that victims are aged between 21 and 29 years, making up 41%, and between 30 and 39 years, making up 31%. The difficult socio-economic situation and unemployment not only determine the victimization of individuals but also encourage some people

to commit such crimes (Kenzhebaeva, 2019, p.335). It is important to note that S.B. Kenjebaeva considers the age parameters of human trafficking victims but does not demonstrate the correlational relationships between the age of the victim and specific categories of crimes. To clarify, the specificity of certain categories of crimes, such as human trafficking for illegal organ transplantation, typically involves young people (aged 20 to 39) due to their better health, or newborns who become victims of human trafficking in countries where legal regulation and control over surrogacy are underdeveloped.

An equally significant issue that has determined the rise in human trafficking-related crimes is the devaluation of the role of women in society. Moreover, the problem of gender inequality in the Republic of Kazakhstan remains unresolved to this day. The competitiveness of women compared to men is low due to gender discrimination. A similar situation exists in career advancement and entrepreneurship. However, women occupy leading positions compared to men in the fields of healthcare, education, culture, and social protection, but with lower market wages. These circumstances directly affect the level of income, well-being, and social protection of women in society, determining their victimization in the future.

Due to poverty, discrimination, lack of transparency in accessing education, and labor competition, most women living in rural areas are employed in the informal sector. This situation leads to an increase in the risks of women becoming victims of sexual or labor exploitation. Therefore, the development and implementation of programs and measures aimed at establishing gender equality in rights and opportunities between women and men is of crucial importance in preventing and countering human trafficking.

Thus, gender inequality determines abuses against women, including immigrants. In this regard, it is essential to create state-level gender and migration programs, special mechanisms for the legal protection of migrant workers who, due to their social status, are more vulnerable to sexual and labor exploitation. Victimization occurs when searching for work, family happiness, or lucrative travel offers. A victim, facing economic difficulties, examining profitable offers related to quick earnings, employment abroad, or significant savings for travel, contacts suspicious marriage, labor, or travel agencies, thereby facilitating the implementation of the criminal scheme.

In this aspect, effective counteraction to human trafficking should include systemic preventive measures from both the Republic of Kazakhstan and other countries of the international community. For example, the commission of crimes will be significantly more complicated if there are multilateral agreements between countries on cooperation regarding employment, placement of labor migrants, and the provision of proper legal rights and effective protection mechanisms for them in the territory of another state. Informational, financial, and legal support for labor migrants should minimize the risks of their victimization. Proper interstate control over compliance with labor and licensing legislation by agencies, and the consistency in conducting inspection checks, contribute to the prevention of human trafficking.

It is necessary to strengthen restrictive and educational work in the field of information security. Another important step in preventing human trafficking is the tightening of legislative restrictions and ensuring compliance with legal requirements. In addition, increasing legal literacy among citizens will contribute to the prevention of human trafficking.

The formulation of the modern legal problem of counteracting human trafficking originates from the millennia-old slave trade, which, with the development of transport infrastructure on continents and at sea, became a global problem. The deep concern of the international community about slavery and the slave trade led to the adoption of several international legal acts, marking the beginning of the gradual formulation of a ban on all forms of human trafficking and, later, active counteraction to it.

Kazakhstan has not remained aloof from the globalization processes of international counteraction to human trafficking in any form and therefore is a participant in many international documents regulating this issue. The implementation of the norms of the 1949 Convention on the Suppression of Trafficking in Persons and Exploitation of the Prostitution of Others, the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women, the 1989 Convention on the Rights of the Child, the 1966 International Covenant on Civil and Political Rights, and others directly influenced the formation of the national legislation of the Republic of Kazakhstan. However, the highest degree of condemnation of human trafficking expressed by the international community is reflected in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, ratified by the Law of the Republic of Kazakhstan on June 4, 2008, No. 37-IV (Law of the Republic of Kazakhstan, 2008).

It is indisputable that international law and its norms are general, and their specification and introduction into the national legal system occur through the fulfillment of specific obligations by the state party at the level of national legislative regulation. Thus, with the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Republic of Kazakhstan undertook to ensure the legislative regulation of public relations related to: (1) the complete criminalization of human trafficking to the extent provided by the Protocol; (2) guaranteeing victims of human trafficking the necessary protection from threats caused by their situation, especially protection of life and health, as well as ensuring confidentiality of criminal proceedings related to the crime committed against them; (3) allowing victims of human trafficking, if necessary, to remain in the country on a permanent or temporary basis; (4) developing legal culture and public awareness regarding human trafficking and counteraction to it, which should take place both at the national and international levels to most effectively combat the demand for such trafficking.

The formulation of the legal problem should involve a sequential analysis of, firstly, preventive mechanisms for combating human trafficking, secondly, mechanisms for counteracting committed or ongoing human trafficking crimes, and thirdly, the protection and restoration (where possible) of violated human rights.

Kazakhstan is a progressive country in terms of legislative innovations and reforms, but the systemic nature of the human trafficking problem on its territory is also due to some legislative gaps and shortcomings that are not often discussed.

It is worth noting that the identification of victims of human trafficking in Kazakhstan is largely intuitive for employees of relevant law enforcement and other state agencies. This situation is due to the lack of standard protocols and indicators in national legislation for providing police guidelines on identifying human trafficking victims (United Nations General Assembly, 2000), which means certain officials focus only on formal violations that professional human traffickers rarely make according to statistics.

It is known that the Criminal Procedure Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan “On Operational Investigative Activities” cannot fully ensure effective identification and detection of human trafficking victims, as the complexity of the human trafficking problem stems from the incredibly broad spectrum of areas of public life within which actions related to human trafficking occur, especially (but not only) in the areas of labor activity; business activity; public administration; the digital space, and so on.

Article 128 of the Criminal Code of the Republic of Kazakhstan of July 16, 1997 (amended on July 9, 2003, No. 480-II) initially provided criminal liability specifically for the recruitment of people for exploitation. Reform activity, which marked the beginning of Kazakhstan’s active fight against human trafficking, began with amendments made by the Law of the Republic of Kazakhstan dated March 2, 2006, No. 131-II, including changes to the then-current Criminal Code of Kazakhstan. Article 128 of the Criminal Code of Kazakhstan received the clear title “Human Trafficking”, which positively affected the interpretation of this concept. In addition, Article 133 of the Criminal Code of Kazakhstan criminalized any forms of trafficking involving minors. This reform did not end there but extended to the adoption of the new Criminal Code of Kazakhstan on July 3, 2014 (Bekmagambetov, 2016).

The current Criminal Code of Kazakhstan criminalizes actions such as: (1) buying and selling or making other agreements regarding a person (minor), as well as (2) their exploitation or (3) recruitment, (4) transportation, (5) transfer, (6) concealment, (7) receipt, and (8) other acts for exploitation. However, the imperfection of the legislative introduction of these norms lies in the lack of clear differentiation and understanding of certain categories and phrases used in the disposition, particularly the phrase “buying and selling or making other agreements regarding a person”, which in practice can lead to ambiguous interpretation and thus unfair judicial decisions [Human Rights Commission under the President of the Republic of Kazakhstan].

A clear definition of the disposition, in addition, will fully ensure compliance with the principle of legal certainty by legal entities, as the significant public advancement in entrepreneurship and labor provision requires a clear delineation of criminally punishable behavior from other violations of Kazakhstani legislation.

In addition, due to the development of transplantology and medicine in general, the provisions of paragraph 7 of part 2 of Article 128 and paragraph 6 of



part 2 of Article 135 of the Criminal Code of Kazakhstan need modernization. Specifically, the list of “organs and tissues” should be expanded to include “cells”, as this biological material is the subject of many crimes, including those where human trafficking is carried out for organ extraction.

It is critically important, for effective counteraction to international human trafficking in Kazakhstan, to clearly distinguish between the following crimes: (1) human trafficking (trafficking minors); (2) organizing illegal migration. Most countries differentiate between “human smuggling” (where the individual consents and participates in the migration process) and “human trafficking” (where there is at least some form of deception or physical or psychological coercion). Unlike illegal migration, victims of human trafficking are subjected to certain influences from criminals to stimulate them to decide to leave for the destination country (Skorobogaty A. V.). It should be noted that the current wording of Article 128 of the Criminal Code of Kazakhstan criminalizes actions that, in their content, cannot be considered a public danger.

For example, if a deal involving a person is made with their full consent, such as buying, selling, renting, or leasing, then such a transaction is automatically invalid. Since, according to Article 115 of the Civil Code of Kazakhstan, a person is not considered any type of civil law object, no legal consequences or harm to the individual or society arise (Civil Code of the Republic of Kazakhstan, 1994).

It should be noted that the state authorities of the Republic of Kazakhstan have made significant efforts in the process of adopting regulatory legal acts, developing and implementing specific action plans, and raising public awareness about the methods and ways of committing human trafficking crimes. However, some issues still require further resolution, which should be facilitated by reports from international organizations and foreign governmental bodies.

Special attention should be given to measures ensuring the protection of victims of human trafficking and improving mechanisms for holding human traffickers accountable for all forms of exploitation. In this regard, a substantive review of the state’s policy concerning the protection of foreigners who are either permanent or temporary residents or have never resided in Kazakhstan before becoming victims of human trafficking is needed.

## **Conclusion**

Thus, human trafficking is a transnational issue that causes significant harm to the legitimate interests of society and individuals. The distinctive feature of human trafficking is that these crimes are committed in conjunction with other crimes, typically by organized criminal groups, which means that human trafficking can be regarded as one form of organized crime. The immense scale of human trafficking is a global problem for the international community, and effective counteraction requires the development of international legal assistance in the area of successful operational and investigative international cooperation among law enforcement and government agencies. These crimes must be suppressed by measures that reflect the nature of these phenomena, particularly their transnational

character and commission by organized crime, which requires respect for human rights and the rule of law in general.

For effective counteraction to human trafficking, states must not limit themselves to ensuring only national interests, particularly the safety of their citizens, but must also take into account the safety of foreign citizens and stateless persons. Therefore, it is necessary to search for new forms of intergovernmental cooperation at the level of law enforcement and judicial systems, as well as at the level of harmonization of legislation.

Safe migration is a priority goal on the path to international security and is a necessary step in preventing human trafficking crimes, which pursue different goals. This requires the establishment of international bilateral and multilateral legal relations in the form of the development of conventions and agreements between states that prohibit human trafficking and provide safeguards and countermeasures against trafficking.

### **Recommendations**

- Develop international cooperation between law enforcement agencies and the judicial system.
- Improve the unification of legislation to consider the safety of citizens of other states and stateless persons.
- Implement measures to increase legal awareness of the population and educational activities on human trafficking.
- Approve and develop international bilateral agreements for safe migration.
- Strengthen the protection of the rights of migrants and their families, which will help prevent human trafficking and other forms of human rights violations.
- Create a well-coordinated scheme of interaction between customs, migration authorities, and the police for effective operational and investigative cooperation.
- Strengthen and optimize the procedure for providing international legal assistance, including speeding up the process of obtaining evidence.
- Conduct further scientific research to develop transparent mechanisms for international legal cooperation in the criminal procedure legislation of Kazakhstan.

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