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Research Article

THE CAUSES, TRENDS AND COUNTERACTION TO ILLEGAL MIGRATION AT THE PRESENT STAGE

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Esemuratov Alisher Izbasarovich

Teacher Of The Law Enforcement Academy Of The Republic Of Uzbekistan

ABSTRACT

In this article, the author examines the concept of protecting victims of human trafficking, identifying victims of human trafficking, analyzes the emergence, development and classification of the international legal framework for the protection of victims of human trafficking, the national legislation of the Republic of Uzbekistan in the field of protecting victims of human trafficking, measures taken by the Republic of Uzbekistan in the field of combating trafficking people and their victims, as well as national mechanisms for the protection of victims of trafficking in persons. In conclusion, conclusions are drawn on improving the protection of victims of human trafficking.

KEYWORDS

Trafficking in humans, victim of trafficking in humans, identification of victims of trafficking in humans, international legal documents, national legislation, national mechanisms for the protection of victims of trafficking in humans.

INTRODUCTION

Speaking at the 78th session of the UN General Assembly, the President of the Republic of Uzbekistan Sh. Mirziyoyev noted that “we will resolutely continue the policy of building a New Uzbekistan as a legal, secular, democratic and social state. In our Basic Law, we reaffirmed our commitment to the principles of human rights, freedom of speech and conscience, and the equality of all citizens regardless of their

nationality, language or religion. On this legal basis, the Development Strategy “Uzbekistan – 2030” was adopted. This strategy is consistent with the United Nations Sustainable Development Goals, and we strictly implement all our commitments .

Today, one of the most serious problems for the whole world is human trafficking, including for the Republic

of Uzbekistan. Every year thousands of people, mostly women and children, become victims of human trafficking. Today, all indicators indicate an increase in the number of victims of human trafficking. In this regard, this problem attracts the attention of all countries of the world, since human trafficking poses a threat to fundamental human rights and the values of a democratic society.

Human trafficking with victims caught in its trap is a modern form of the global slave trade, in which a person becomes only an object of purchase and sale, he is forced to work, as a rule, in the sex industry, agricultural production, and other hard legal and illegal work, for meager payment or simply for nothing. The majority of identified victims of trafficking are women, but men can also become victims of trafficking. In addition, many victims are young people and often children.

The complexity of the problem of human trafficking, the variety of forms and methods of its commission, determines the possibility of considering it from the perspective of transnational organized crime, slavery, sexual exploitation, forced labor, illegal migration, etc. Two approaches to defining the essence of human trafficking can be distinguished. In the national legislation of most states, and until recently in international law, human trafficking was considered exclusively as a crime, which entailed a repressive approach to combating it. Only in recent years has a broader approach to human trafficking emerged—as a violation of human rights (during the commission of the crime itself and subsequently). Both of these approaches are not mutually exclusive, but the attraction to one or the other predetermines the content of counteraction strategies and the building of an institutional system. If earlier, due to the globalization trend of increasing migration flows,

especially their illegal component, punitive immigration policies prevailed in relation to victims of trafficking in persons, now a new trend is being established in international law - the use of a human rights approach to understanding the fight against trafficking in persons, taking into account gender and age aspects of the protection of victims.

As for the international legal framework for the protection of victims of trafficking in persons, it began to take shape at the beginning of the 20th century, when awareness began to arise of the need to protect victims, along with the criminalization and penalization of the act. Even when preparing the first international agreements to combat the trade in white slaves at the beginning of the 20th century. the issue of protecting victims of human trafficking was raised. Here we can recall the conclusion of V.F. Deryuzhinsky, made following the results of the Paris Conference of 1902, that in order to effectively combat human trafficking, taking repressive measures alone is not enough; it is also necessary to “ensure timely and effective protection of the victims of this trade”.

De jure in international law, a three-pronged approach, including the prevention of the crime in question, the punishment of perpetrators and the protection of victims, was finally formalized with the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Trafficking. crime, 2000 (hereinafter referred to as the Palermo Protocol).

Why, then, at present can we only talk about the formation of a human rights approach? The fact is that the Palermo Protocol, which established the obligation to criminalize trafficking in persons and provided for a number of measures to facilitate international cooperation between states in this area, pays much

less attention to the protection of the rights of victims of trafficking in persons. The provisions of the Victim Protection Protocol leave it to the discretion of states themselves to decide whether to take appropriate domestic measures. This is confirmed by the wording of Art. 6 “Assistance to and protection of victims of trafficking in persons” of the Palermo Protocol:

“Where appropriate and to the extent possible under its domestic law, each State Party shall ensure the protection of the privacy and identity of victims of trafficking in persons...”;

“Each State Party shall consider implementing measures to ensure the physical, psychological and social rehabilitation of victims of trafficking in persons...”;

“Each State Party shall endeavor to ensure the physical safety of victims of trafficking in persons while such victims are within its territory.”.

As a result, the implementation of the norms of the Palermo Protocol into the national legislation of states (came into force for the Republic of Uzbekistan on September 11, 2008) is carried out in most cases fragmentarily. Thus, by the time this international treaty came into force, trafficking in persons was considered a crime under the legislation of less than half of the countries in the world, and after 10 years after its adoption, such states became more than 90%. At the same time, such positive dynamics are not observed with regard to the rules on protecting the rights of victims. In many countries, there is still no special legislation to protect the rights of victims, or even legal recognition of the concept of “victim of trafficking in persons.”

It should be borne in mind that the concept of “victim” in international law is broader than the criminal procedural term “victim”. Persons who have suffered from trafficking in persons and related crimes may be recognized as their victims even before the initiation of a criminal case and before their criminal procedural status as victims is recognized if there are sufficient grounds to believe that they have been exploited. The lack of a legislative definition of this concept is not only a purely theoretical problem of normative certainty. In the case of transnational trafficking in persons, when victims often do not have the right to legally remain in the transit or destination state, a gap in legislation makes it impossible to regulate their legal status. As a result, in practice, non-citizens illegally staying on the territory of the state are prosecuted for violating migration laws and their subsequent forced return to their country of origin without determining whether they are at risk of re-victimization there.

Thus, there is a violation of the victims’ right to recognition as such, which entails a violation of other human rights. In addition, the expulsion of these persons from the state in which the crime was committed significantly complicates the process of investigating and bringing the perpetrators to justice.

Due to the lack of mandatory and substantive provisions regarding the protection of the rights of victims of trafficking in persons, the Palermo Protocol is rightly considered “strong” in terms of suppression of trafficking in persons and cooperation, but “weak” in terms of protecting victims. It should be noted that the bias towards punishing criminals, in contrast to the human rights aspect, is characteristic of conventions on combating international crimes and crimes of an international nature. This is explained by the fact that such international treaties are primarily aimed at fulfilling the task of international criminal law, which is

to establish the responsibility of subjects of international law and punish persons guilty of committing international crimes and crimes of an international nature, as well as ordinary crimes that violate the established international law and individual states' legal order, both on the basis of international agreements and through national legal systems. In addition to fulfilling the task of bringing to justice, following the generally recognized principle of respect for human rights and fundamental freedoms, a number of well-known international legal standards have also been developed aimed at humanizing the treatment of offenders.

At the same time, it is obvious that a system of international legal principles and guarantees is required in relation to combating violations of the rights of not only criminals, but also victims. The importance of existing international instruments adopted at the UN level and aimed at protecting victims of crime and compensation for material harm is significantly reduced due to their advisory nature: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, Basic Principles and Guidelines Concerning the Right to legal protection and redress for victims of gross violations of international human rights law and serious violations of international humanitarian law, 2005, Recommended Principles and Guidelines on Human Rights and Trafficking in Persons, 2002, etc. Assessing the interaction of two branches of public international law (international criminal law and international human rights law), Professor Bassioni comes to the conclusion that there is a significant gap between them. The system of international law, in his opinion, is still far from being considered oriented towards the rights of victims. The insufficient development of international legal standards in the field of protection

of victims of trafficking in persons confirms this general conclusion.

To combat the problem of economic migrants posing as victims of human trafficking and claiming the appropriate level of international protection, procedures developed in domestic law for identifying and identifying victims of human trafficking are designed to combat the problem. While not all CIS member states have adopted national laws and/or created specialized structures in the field of combating human trafficking, more than half of the European Union member states have national mechanisms for the referral of victims of human trafficking: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Greece, Hungary, Ireland, Latvia, Malta, Poland, Portugal, Romania, Slovakia. Spain, UK. Thus, in the UK, the National Referral Mechanism - the process of identifying potential victims of trafficking in persons and providing them with protection in accordance with the provisions of the 2005 Council of Europe Convention - has been in operation since 2009. The process begins with the identification and referral of a potential victim trafficking in persons by a first responder - a government agency authorized by a non-governmental organization - to one of the competent authorities: the UK Home Office Visas and Immigration Department or the National Crime Agency's Human Trafficking Centre. The process includes two stages: "reasonable grounds" (within five days a decision is made on the presence or absence of reasonable grounds to believe that a person has become a victim of trafficking in persons) and "final decision" (within 45 days a decision is made based on the information collected whether the person is a victim of human trafficking). There is an obligation to inform the primary respondent about the decision made regarding the referred person.

The 2005 Council of Europe Convention, like the Palermo Protocol, does not exclude the possibility of recognizing a victim of trafficking as a refugee “under international law, including international humanitarian law and international human rights law and in particular, where applicable, the 1951 Convention and Protocol 1967 relating to the status of refugees” (Article 14 of the Protocol and Article 40 of the Convention). For example, refugee status was granted to a victim of human trafficking from Nigeria who did not agree with the decision to remove her from the UK.

In 2008, in the Commonwealth of Independent States, model laws “On combating human trafficking” and “On providing assistance to victims of human trafficking” were developed and adopted.

Regarding the issues of preventing and protecting victims of human trafficking in the Republic of Uzbekistan, it should be noted that the problem of human trafficking threatens the national security of the state, its development, disables economic foundations, and causes serious harm to human rights and interests. The fight against human trafficking in the Republic of Uzbekistan remains one of the priority areas of state policy.

Analysis of the legal framework for the protection of victims of human trafficking in the Republic of Uzbekistan made it possible to divide the legal framework into the following two groups: international legal framework and national legal framework.

International legal frameworks, in turn, can be divided into the following types: universal, regional and bilateral international legal frameworks.

To date, the Republic of Uzbekistan, in order to coordinate its actions in the field of combating human

trafficking, has ratified the following 10 universal international documents: Convention against Transnational Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; ILO Convention No. 29 on Forced or Compulsory Labor; ILO Convention No. 105 on the Abolition of Forced Labor; Convention on the Civil Aspects of International Child Abduction; ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; Optional Protocol to the Convention on the Rights of the Child on Trafficking in Persons, Child Prostitution and Child Pornography (New York, 25 May 2000); ILO Convention No. 144 on Tripartite Consultation to Promote the Application of International Labor Standards (Geneva, 21 June 1976); Protocol to the ILO Convention No. 29 of the International Labor Organization of 1930 on Forced Labor (Geneva, 11 June 2014).

The second group of international legal frameworks in the field of combating trafficking in persons of the Republic of Uzbekistan consists of international documents adopted at the regional level, among which the following important international legal documents can be noted: Agreement on cooperation in the field of labor migration and social protection of migrant workers and the protocol thereto (Moscow, April 15, 1994); Agreement on cooperation of member states of the Commonwealth of Independent States in the fight against illegal migration (Moscow, March 6, 1998); Convention against Terrorism, Separatism and Extremism (Shanghai Convention, Shanghai, June 15, 2001); Agreement on cooperation of member states of the Commonwealth of Independent States in the fight against trafficking in persons, organs and human tissues (Moscow, November 25, 2005); Agreement on

cooperation of member states of the Commonwealth of Independent States in the fight against trafficking in persons, organs and human tissues (Moscow, November 25, 2005); Agreement on cooperation of member states of the Commonwealth of Independent States in the fight against illegal migration (Moscow, March 6, 1998); Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, January 22, 1993).

The third group of international legal frameworks in the field of combating trafficking in persons of the Republic of Uzbekistan consists of international legal documents and interdepartmental agreements adopted at the bilateral level with the following countries: Azerbaijan, Afghanistan, Georgia, UAE, Pakistan, Russian Federation, China, Kazakhstan, Kyrgyzstan, Republic of Korea, Latvia, Lithuania, Turkey and Turkmenistan.

As for the national legal framework for combating trafficking in persons, it should be noted that in Uzbekistan, in order to prevent crimes of trafficking in persons, protect victims, and eliminate the consequences of these crimes, a number of legislative and regulatory acts have been developed and adopted.

One of the important national legal frameworks for combating trafficking in persons is the Law of the Republic of Uzbekistan "On Combating Trafficking in Persons" dated August 17, 2020, as amended. The law introduces new concepts such as "victim of human trafficking", "person suspected of being a victim of human trafficking", "identification of victims of human trafficking", and defines their rights. In accordance with this, a victim of human trafficking or a person suspected of being one has the right to temporary asylum, medical, psychological, legal assistance and other necessary assistance, including practical

assistance in returning to the country of origin or state of permanent residence.

In addition, in accordance with this Law, identification of victims of human trafficking is carried out in two stages. During initial identification, information is obtained, studied and assessed to make a decision on recognizing a person as an alleged victim of human trafficking. In the final case, decisions are made to recognize or refuse to recognize a person as a victim of human trafficking.

A person is recognized as an alleged victim based on the results of initial identification within a period of no more than five days from the moment of contacting the competent government agencies.

The alleged victim has the right to temporary shelter, medical, psychological, legal and other necessary assistance, as well as the services of a free translator. The alleged victim is given at least 30 days to recover physically and psychologically and decide to cooperate with law enforcement in connection with the crime committed against him.

A person is recognized as a victim of human trafficking based on the results of final identification by the territorial commission. A person recognized as a victim of human trafficking has the right to social rehabilitation and adaptation.

The country's new Constitution guarantees a ban on forced labor.

It should be noted that paragraph 5.1 Appendix No. 1 of the draft Decree of the President of the Republic of Uzbekistan On the strategy "Uzbekistan-2030" provides for the improvement of the system of external labor migration, provision of all possible assistance to citizens working abroad, as well as the further development of international cooperation in

the field of combating illegal labor migration and human trafficking .

In order to further strengthen the guarantees for the protection of the interests of minors, amendments and additions have been made to the Criminal Code, the Criminal Procedure Code and the Code of Administrative Responsibility of the Republic of Uzbekistan.

As a result, perpetrators of child labor were held accountable for their original actions, and criminal penalties for using children in prostitution, encouraging them to participate in illegal public associations, and engaging them in forced labor were increased.

Also, in order to increase the effectiveness of the fight against trafficking in persons, further implementation of the ILO conventions ratified by the Republic of Uzbekistan, improvement of legislation and adoption of additional measures to prevent forced and compulsory labor, as well as to prevent the use of the worst forms of child labor, based on the Decree of the President of the Republic of Uzbekistan dated July 30 2019 “On additional measures to further improve the system for combating trafficking in persons and forced labor”, the National Commission for Combating Trafficking in Persons and Forced Labor was created, which adopted a number of national plans and comprehensive measures.

The National Commission has taken the following measures in the field of combating human trafficking and forced labor:

1. A program of measures for the implementation of proposals developed based on the results of an international conference on the topic “Relevant work to support reforms”;

2. Action plan (Roadmap) for the implementation of the proposals specified in the report of the National Rapporteur on combating trafficking in persons and forced labor regarding the work done in the field of combating trafficking in persons and forced labor for 2019;

3. Action plan (Roadmap) for the implementation of the norms of the Law of the Republic of Uzbekistan “On Combating Trafficking in Persons” (No.3RU-633 dated 08/17/2020);

4. Action plan for the implementation of proposals specified in the report of the US Department of Labor, aimed at improving the position of the Republic of Uzbekistan in the field of eradicating forced labor of minors;

5. Action plan to combat child trafficking and strengthen work in this direction.

In Uzbekistan in 2020, on the basis of Article 135 of the Criminal Code of the Republic of Uzbekistan (Human Trafficking), 93 crimes related to human trafficking were initiated. Infant trafficking accounted for 40 percent of human trafficking crimes (37), with 15 boys and 22 girls being victims of child trafficking. In 2020, 81 cases against 100 people were considered in court, of which 93 people were convicted .

The Republican Rehabilitation Center for Victims of Human Trafficking, operating in Tashkent, provides comprehensive assistance and social rehabilitation to victims of human trafficking. In 2020, 92 people, including 38 men and 54 women (3 minor girls and 9 boys), used the services of the Republican Rehabilitation Center for Victims of Human Trafficking.

In 2020, the Public Fund under the Oliy Majlis of the Republic of Uzbekistan and other government funds provided government grants totaling 461 million

soums to 15 non-governmental non-profit organizations. In addition, 981.6 million soums were allocated for financial support of social adaptation centers for victims of violence in the regions. In addition, NGOs provided grants in the amount of 369.5 thousand US dollars for the implementation of projects to combat human trafficking and forced labor, as well as to prevent illegal migration.

In 2022, the Republican Social Information Center “Istikbolli Avlod” (NGO) provided legal assistance to 2,469 people, as well as practical assistance in the repatriation of 264 people.

The U.S. Department of State, in its 2023 Annual Trafficking in Persons Report, notes that the Government of Uzbekistan is making significant efforts to meet standards to eliminate trafficking in persons. The government demonstrated overall increased efforts compared to the previous reporting period. These efforts included investigating, prosecuting, and convicting more traffickers; strengthening support for migrant workers abroad; increasing funding for the only shelter in Uzbekistan for victims of human trafficking.

CONCLUSION

In conclusion, it should be noted that in recent years, Uzbekistan has achieved significant results in the field of human rights protection.

Firstly, a number of national legal frameworks have been developed and adopted in Uzbekistan in the field of combating human trafficking and protecting their victims;

Secondly, national mechanisms for the protection of victims of human trafficking have been created and are constantly being improved;

Thirdly, international cooperation of the Republic of Uzbekistan with international organizations and states to combat human trafficking and protect their victims is being carried out and improved.

We believe that all this will contribute to a further coordinated approach between law enforcement agencies and government authorities, close interaction between the competent authorities of the country with international organizations and neighboring countries, which will ensure positive results in the protection of victims of human trafficking.

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