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Human trafficking with the purpose of labour exploitation and illegal labour migration in the Eurasian Economic Union countries: problem statement

***Annotation.** The research topic is directly connected with the solution of the nationwide issues of the social and labor policy of the Republic of Kazakhstan, based on the globalization and regional processes in the world, the experience of its implementation in the regions and, first of all, in the Eurasian Economic Union member-states. Another important factor is the comparative consideration of social policy and labor potential of Kazakhstan, Russia, Belarus, Armenia, Kyrgyzstan taking into account national and common interests. At the present stage, the issues of illegal labor migration and human trafficking in our country *are* given special attention. The main aim of the research is developing recommendations and proposals, aimed at further progress of the legal framework for cooperation in the social and labor sphere and the social protection of labor rights as a promising area of legal science and as an important line of social and integration policy. The research also aims at the research and examination of human trafficking and labor migration as a social phenomenon in the EAEU countries, the study of methods and techniques of combating it, and the development of recommendations for improving legislation and strategies to counteract this social phenomenon.*

***Keywords:** human trafficking, human trafficking for the purpose of labor exploitation, illegal migration, The Eurasian economic Union, labor exploitation.*

Introduction. In the Republic of Kazakhstan at the present stage, the issues of illegal labor migration and human trafficking is given special attention, which is reflected in the Addresses of the President – the Leader of the Nation, N.A. Nazarbayev, including in his Address of December 14, 2012, “Strategy “Kazakhstan-2050”: new political course of the established state”, the program article of the Head of State “Social modernization of Kazakhstan: Twenty Steps to the Society of General Labor”, as well as in the strategic plan for the development of the Republic of Kazakhstan until 2020, and the Legal Policy Concept for 2010-2020.

The creation of integration associations between states in different regions of the world is connected with the problems of the world community, which entered a long period of globalization, when the capabilities of national states to ensure their sustainable socio-economic development and security objectively diminish and they cannot be independently resolved by one state.

A scientific justification is needed for new approaches to joint actions of countries, including in the format of Eurasian integration, proceeding with the use and development of competitive advantages of the states of the given space to ensure their sustainable development and security in the new conditions.

The significance of the research is that the protection of the rights and legitimate interests of the individual is one of the main activities of the state. The transition of the Republic of Kazakhstan in the 1990s to a market economy, accompanied by an economic crisis, negatively affected the traditional spheres of the social structure: work, family, education. As a result, at that time, Kazakhstan and a number of other EAEU countries turned into exporting countries of “living goods” abroad. According to experts, from 5 to 70 thousand people are exported from Kazakhstan annually [1].

Materials and Methods. The methodological basis of the research is the traditional general scientific and special legal methods used in comparative jurisprudence: system-structural, historic-legal and comparative-legal.

The system-structural approach has made it possible to form a holistic view of the subject of study, to reveal the multiplicity of connections of its components and to reduce them into a single theoretical system.

The use of the historic-legal analysis directly followed from the need to study the history of the formation and development of the illegal labor migration, human trafficking for labor exploitation and protection of social

and labor rights of workers in the Republic of Kazakhstan at various times, as well as in the international community.

The comparative-legal method allowed to analyze foreign experience in combating illegal labor migration, human trafficking for labor exploitation, as well as the execution and protection of social and labor rights of workers and compare it with the practice of their application in the Republic of Kazakhstan, to develop a mechanism for cooperation in the social and labor sphere of the Eurasian Economic Union member states.

The research will apply the doctrinal provisions of the general theory of law, constitutional law, administrative, international, labor, criminal and social law.

Based on the principle of completeness, the research will take into account both political and socio-economic aspects of cooperation between the Eurasian Economic Union member states in combating illegal labor migration, human trafficking for labor exploitation, the establishment and development of a modern level of legal support for social and labor rights. The analysis of the problems of international legal regulation of the object of research will be conducted in a systemic connection with the study of the problems of the intra-national institutions organization and activities. The field of legal support for the Eurasian Economic Union member states cooperation in the social and labor sphere requires such a methodological approach in its conduct, in which all regulatory legal acts adopted in this sphere must undergo mandatory examination for compliance with the relevant international treaties and obligations of the country under development, to exclude the autonomous development of the social and labor legislation of the Republic of Kazakhstan without taking into account international obligations of the state. This direction of the research, aimed at improving the legislative process will have a positive impact on the process of fulfilling the international social obligations undertaken by the Republic of Kazakhstan and will allow for the more effective execution and direct application of international regulations that enshrine the guarantees of social and labor human rights.

Results. According to international experts, the Republic of Kazakhstan ranks the second category (second watch list) of States and is the source, destination and, to a lesser extent, transit country for women and girls who become victims of trafficking, mainly for the purpose of forced prostitution, and the men and women who are exposed to labor exploitation [2].

Kazakhstan women and children are trafficked for forced prostitution within Kazakhstan and to the United Arab Emirates, Russia, China, Turkey, Azerbaijan, Greece, and Israel. Women and girls from Uzbekistan, Russia, Kyrgyzstan, Tajikistan and Ukraine are forced into prostitution in Kazakhstan. Kazakh men and women and boys and men from Uzbekistan, Kyrgyzstan, and Mongolia get into forced labor used in the household, as well as tobacco and cotton fields, and in the meat processing industry in Kazakhstan. Despite these measures, the state still does not fully comply with the minimum standards for the elimination of trafficking, has not taken appropriate measures to identify foreign victims of trafficking or victims of labor exploitation and assist them, also the state did not provide strong prosecution and criminal responsibility for government bodies, including local authorities [3].

At the present stage of development in the context of global economic, political and cultural integration the increasing focus concentrates on human trafficking, which has a transnational character and poses a real threat to the functioning of the political, economic, cultural, and other processes.

According to international organizations, from 700,000 to 4 million people are purchased, sold or held in captivity worldwide each year. In 2005, the UN concluded that every year about 700 thousand people fall into slavery, a year later the U.S. State Department gave a similar figure – from 600 to 800 thousand people. Organization «Human Rights Watch» believes that the actual number of people sold in slavery truly reaches 800-900 thousand people annually. Human Security Centre estimates show that up to 4 million people are sold into slavery each year [4].

At the present time, the influence of international law is growing not only on the right of the international community, but also on the national law of the states that are part of this community. The role of international law is particularly great in the protection of human rights, including labor rights.

On the agenda there are issues of legalization of labor activity of migrants, protection of their legitimate rights, the formation of a regulatory and legal framework in the sphere of pension provision for the working population of the member states. The actual situation of the citizens of our countries, the ability to work in any state of the Eurasian Economic Union without hindrance, largely depends on the solution of these tasks.

In this regard, there is a need for a comprehensive study and review of human trafficking as a social phenomenon in the Republic of Kazakhstan, for the study of methods and ways to combat it, as well as to make recommendations for improving the criminal law of Kazakhstan, and the strategy to counter this social phenomenon.

Discussion. Currently, in the Republic of Kazakhstan there are only a few works [5; 6], partially devoted to this issue, namely, combating human trafficking in the Republic of Kazakhstan.

Among the scientists who contributed to the development of problems of combating trafficking in persons, investigated them in the international perspective, can be highlighted such scholars as D.M. Hughes [7], L.I. Shelley [8], E.B. Mizulina [9], S.W. Stoecker [10], etc.

There are no comprehensive studies of the theoretical and practical foundations of Eurasian (post-Soviet) integration in the social and labor sphere in the modern period. The scientific sources reflect the analysis results

of only selected issues of legal support for cooperation in the field of social and labor partnership and the provision of labor rights in the Eurasian Economic Union member states.

Existing studies of foreign scientists (C.A. Hartwell [11], D. Cadier [12], E. Cordova [13], J.M. Salazar-Xirinachs [14], R.L. Bindschedler [15], A.M. Swiatkowski [16]) are devoted to the study of integration processes general issues, the problems of legal support for the labor rights implementing mechanisms, and the state's performance of social functions.

The expected scientific and socio-economic effect is the implementation of research in the form of scientific publications containing specific proposals for improving forms and methods of cooperation in the social and labor sphere of the Eurasian Economic Union member states.

All of the above indicates the insufficient study of the problems of the illegal labor migration, human trafficking for labor exploitation within the EAEU, as well as the relevance and novelty of this study.

Conclusions. Thus, to solve the problems outlined in this article, it is necessary to conduct further research, including:

– to investigate the issues of the national interests of the EAEU member states, their form and content, as well as the specifics of multilateral and bilateral integration agreements in the field of combating human trafficking and illegal labor migration;

– to identify the organizational and legal issues of the effectiveness of managing the integration processes in the EAEU combating human trafficking and illegal labor migration, in this regard it is necessary to study the state, structure and dynamics of integration processes in the post-Soviet space;

– to study international legal problems of human trafficking and illegal labor migration, as well as to conduct a comparative analysis of the legal regulations of the EAEU states on liability in this area;

– to analyze and propose ways of resolving the problems of self-regulation and the international legal mechanism for regulating integration processes, illegal labor migration, human trafficking, execution of social and labor rights and freedoms of the citizens of the Republic of Kazakhstan;

– to study and analyze the institutional mechanisms of economic integration at the universal, interregional and regional levels, as well as to consider the trends in cooperation in EAEU combating illegal labor migration and human trafficking in the EAEU member states.

THE LIST OF SOURCES

- 1 Наумова Г. Древняя раса / Г. Наумова, А. Губенко // Новое поколение. 2004. 23 января.
- 2 Азимова Э. США внесли Казахстан в «контрольный список» по торговле людьми / Э. Азимова. – [Электронный ресурс]. – Режим доступа: <https://www.zakon.kz/5034021-ssha-vnesli-kazahstan-v-kontrolnyu.html>.
- 3 Отчёт по борьбе с торговлей людьми за 2009 год, подготовленный офисом по мониторингу и противодействию торговле людьми Правительства США. – [Электронный ресурс]. – Режим доступа: <http://russian.kazakhstan.usembassy.gov>.
- 4 Милославская А. Рабство не пережиток прошлого / А. Милославская. – [Электронный ресурс]. – Режим доступа: <https://proza.ru/2016/01/09/2625>.
- 5 Бекмагамбетов А.Б. Правовые основы криминализации торговли людьми в уголовном законодательстве Республики Казахстан / А.Б. Бекмагамбетов: дис. ... канд. юрид. наук. – Челябинск, 2005. – 178 с.
- 6 Борецкий А.В. Торговля людьми: историко-правовые и организационно-тактические аспекты / А.В. Борецкий: автореферат дис. ... канд. юрид. наук. – Ош, 2014. – 24 с.
- 7 Hughes D.M. The use of New communications and Information Technologies for Sexual Exploitation of Women and Children. *Hastings Women's / D.M. Hughes // Law Journal.* - 2002. - 13(1). - P. 129-148.
- 8 Shelley L.I. *Human Trafficking: A Global Perspective / L.I. Shelley.* – Cambridge: University Press, 2010.
- 9 Мизулина Е.Б. Торговля людьми и рабство в России: международно-правовой аспект / Е.Б. Мизулина. – М.: Юрист, 2006. - 591 с.
- 10 Stoecker S.W. *Human Traffic and Transnational Crime: Eurasian and American Perspectives / S.W. Stoecker.* – Oxford: Rowman & Littlefield, 2010.
- 11 Hartwell C.A. Improving competitiveness in the member states of the Eurasian Economic Union: a blueprint for the next decade / C.A. Hartwell // *Post-Communist Economies.* – 2016. – 28(1). – P. 49-71.
- 12 Cadier D. Eastern partnership vs Eurasian Union? The EU–Russia competition in the shared neighbourhood and the Ukraine crisis / D. Cadier // *Global Policy.* – 2014. – Vol. 5. – P. 76-85.
- 13 Cordova E. From full-time wage employment to atypical employment: A major shift in the evolution of labour relations / E. Cordova // *International Labour Review.* – 1986. – Vol. 125. – P. 641.
- 14 Salazar-Xirinachs J.M. The trade-labor nexus: developing countries' perspectives / J.M. Salazar-Xirinachs // *Journal of International Economic Law.* – 2000. – 3(2). – P. 377-385.
- 15 Bindschedler R.L. *International organizations, general aspects / R.L. Bindschedler // Encyclopedia of public international law.* – 1995. – Vol. 2. – S 1289.

16 Świątkowski A.M. Szanse, zagrożenia i niewiadome zatrudnienia w stadium «czwartej rewolucji przemysłowej» / A.M. Świątkowski // *Polityka Społeczna*. – 2018. – T. 45. – № 4(529). – S. 1-9.

REFERENCES

- 1 Naumova, G. (2004). Drevnyaya rasa [Ancient race] // *Novoe pokolenie*. January 23. [In Russian].
- 2 Azimova, E. (2020). SSHA vnesli Kazahstan v «kontrol'nyj spisok» po trgovle lyud'mi [The US has added Kazakhstan to the control list « on human trafficking». (n.b.). zakon.kz. Retrieved from <https://www.zakon.kz/5034021-ssha-vnesli-kazahstan-v-kontrolnyy.html> [in Russian].
- 3 US Embassy in Russia (2010). Otchyot po bor'be s trgovlej lyud'mi za 2009 god, podgotovlennyj ofisom po monitoringu i protivodejstviyu trgovle lyud'mi Pravitel'stva SSHA [Anti-trafficking report for 2009 prepared by the U.S. Government's office for monitoring and countering human trafficking]. (n.b.). usembassy.gov. Retrieved from <http://russian.kazakhstan.usembassy.gov>. [in Russian].
- 4 Miloslavskaya, A. (2016). Rabstvo ne perezhitok proshlogo [Slavery is not a relic of the past]. (n.b.). proza.ru. Retrieved from <https://proza.ru/2016/01/09/2625>. [in Russian].
- 5 Bekmagambetov, A.B. (2005). Pravovye osnovy kriminalizacii trgovli lyud'mi v ugovnom zakonodatel'stve Respubliki Kazahstan [Legal bases of criminalization of human trafficking in the criminal legislation of the Republic of Kazakhstan]. Candidate's thesis. – Chelyabinsk. [in Russian].
- 6 Boretskiy, A.V. (2014). Torgovlya lyud'mi: istoriko-pravovye i organizacionno-takticheskie aspekty [Human trafficking: historical, legal, organizational and tactical aspects]. Extended abstract of candidate's thesis. – Osh. [in Russian].
- 7 Hughes, D.M. (2002). The use of New communications and Information Technologies for Sexual Exploitation of Women and Children // *Hastings Women's. Law Journal*, Vol. 13, 1, 129-148.
- 8 Shelley, L.I. (2010). *Human Trafficking: A Global Perspective*. – Cambridge: University Press.
- 9 Mizulina, E.B. (2006). Torgovlya lyud'mi i rabstvo v Rossii: mezhdunarodno-pravovoj aspekt [Human trafficking and slavery in Russia: international legal aspect]. – Moscow. Yurist. [in Russian].
- 10 Stoecker, S.W. (2010). *Human Traffic and Transnational Crime: Eurasian and American Perspectives*. – Oxford. Rowman & Littlefield.
- 11 Hartwell, C.A. (2016). Improving competitiveness in the member states of the Eurasian Economic Union: a blueprint for the next decade // *Post-Communist Economies*. Vol. 28, 1, 49-71.
- 12 Cadier, D. (2014). Eastern partnership vs Eurasian Union? The EU–Russia competition in the shared neighbourhood and the Ukraine crisis. *Global Policy*, Vol. 5, 76-85.
- 13 Cordova, E. (1986). From full-time wage employment to atypical employment: A major shift in the evolution of labour relations. *International Labour Review*, Vol. 125, 641.
- 14 Salazar-Xirinachs, J.M. (2000). The trade-labor nexus: developing countries' perspectives // *Journal of International Economic Law*, Vol. 3, 2, 377-385.
- 15 Bindschedler, R.L. (1995). International organizations, general aspects // *Encyclopedia of public international law*, Vol. 2, S 1289.
- 16 Świątkowski, A.M. (2018). Opportunities, threats and uncertainties of employment during the «Fourth Industrial Revolution» // *Polityka Społeczna*, Vol. 45, 4(529), 1-9. [in Polish].

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Еуразиялық экономикалық одақ елдеріндегі еңбекті пайдалану және заңсыз еңбек көші-қоны мақсатындағы адам саудасы: проблема қою

Зерттеу тақырыбы Қазақстан Республикасының әлеуметтік-еңбек саясатының жалпы мемлекеттік мәселелерін шешумен тікелей байланысты, яғни әлемдегі жаһандану және аймақтық процестерге, сондай-ақ оны өңірлерде және ең алдымен, Еуразиялық экономикалық одаққа қатысушы мемлекеттерде іске асыру тәжірибесіне сүйену көзделген. Сондай-ақ, ұлттық және ортақ мүдделерді ескере отырып, Қазақстан, Ресей, Беларусь, Армения және Қырғызстан әлеуметтік саясаты мен еңбек әлеуетін салыстырмалы түрде қарау маңызды фактор болып табылады. Біздің елімізде қазіргі кезеңде

заңсыз еңбек көші-қоны мен адам саудасы проблемаларына ерекше назар аударылады. Негізгі мақсат - әлеуметтік-еңбек саласындағы ынтымақтастықтың құқықтық негіздерін одан әрі дамытуға және құқықтық ғылымның перспективалық және әлеуметтік, интеграциялық саясаттың маңызды бағыты ретінде еңбек құқықтарын әлеуметтік қорғауға бағытталған ұсынымдар, ұсыныстар әзірлеу. Сондай-ақ ЕАЭО елдеріндегі әлеуметтік құбылыс ретінде адам саудасы мен еңбек көші-қонын зерттеу және қарау өте маңызды. Онымен күресудің әдістері мен тәсілдерін зерделеу, сондай-ақ заңнаманы, осы әлеуметтік құбылысқа қарсы іс-қимыл стратегиясын жетілдіру.

Түйін сөздер: адам саудасы, еңбекті қанау, заңсыз көші-қон, Еуразиялық Экономикалық Одақ, мәжбүрлі еңбек.

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Торговля людьми с целью трудовой эксплуатации и незаконная трудовая миграция в странах Евразийского экономического союза: постановка проблемы

Тема статьи связана с общегосударственными вопросами социально-трудовой политики Республики Казахстан, исходя из глобальных и региональных процессов в мире, опыта его воплощения в регионах и, в первую очередь, в государствах-участниках Евразийского экономического союза. Кроме того, предлагается сравнительный анализ социальной политики и трудового потенциала Казахстана, России, Беларуси, Армении и Кыргызстана с учетом национальных и общих интересов. В нашей стране на современном этапе проблемам незаконной трудовой миграции и торговле людьми уделяется особое внимание. Основной целью исследования является разработка рекомендаций, предложений, направленных на дальнейшее развитие правовых основ сотрудничества в социально-трудовой сфере и социальной защиты трудовых прав как перспективного направления правовой науки, социальной и интеграционной политики. Важным является изучение и рассмотрение торговли людьми и трудовой миграции как социального феномена в странах ЕАЭС, изучение методов и способов борьбы с ней, выработка рекомендаций по совершенствованию законодательства, стратегии противодействия этому социальному явлению.

Ключевые слова: торговля людьми, трудовая эксплуатация, незаконная миграция, Евразийский экономический союз, принудительный труд.