

ҚҰҚЫҚDOI: <https://doi.org/10.37788/2020-1/42-47>

UDC 343.98.067

A.M. Djorobekova, Doctor of Legal Sciences, Professor
Academy of the Ministry of Internal Affairs of the Kyrgyz Republic (Bishkek, Kyrgyz Republic)
E-mail: djorobekova.a@mail.ru

A.V. Boretsky, Candidate of Legal Sciences
Innovative University of Eurasia (Pavlodar, Kazakhstan Republic)
E-mail: alexey1977.77@mail.ru

V.V. Cherepko, Master student
“Synergy” University (Moscow, Russian Federation)
E-mail: vitally.cherepko@yandex.ru

**International cooperation of the Commonwealth of independent States
in countering human trafficking: General characteristics and main directions**

***Annotation.** The purpose of this article is to review the main possible areas of international cooperation of the law enforcement agencies of the Commonwealth of Independent States in combating human trafficking. The authors, based on an analysis of the existing international instruments to combat trafficking in persons, reveal details of the main directions of the international cooperation of the CIS countries' law enforcement bodies, implemented through: the partial transfer of competence, a joint investigation of criminal cases, as well as the extradition of a person for criminal prosecution.*

***Key words:** human trafficking, international cooperation in the fight against crime, the Commonwealth of Independent States, transnational crime, human trafficking investigation.*

Introduction. In the international law human trafficking is estimated as a criminal activity, controlled by transnational criminal organizations, entailing serious consequences to the safety of an individual, society and the state, serious human rights violations and bringing criminals substantial illegal profits.

Trafficking in human beings almost always is transnational in nature. In this case, its detection and investigation is practically impossible without the cooperation of the law enforcement agencies of a separate state with similar bodies in other countries. Law enforcement cooperation, including anti-trafficking, should always be considered as a stage of international cooperation between states, and as an institution that provides legal implementation of international agreements.

However, law enforcement cooperation always takes place in the context of the overall cultural and economic cooperation, for example, on a background of migration flows of various kinds.

This is directly related to the interstate cooperation of the Commonwealth of Independent States, as the CIS includes states with common historical and cultural roots, and that experience similar economic and political processes after the collapse of the USSR and gaining independence.

Historically, the international law enforcement cooperation corresponds to other forms of global cooperation, especially cooperation in the area of criminal law and human rights, being in fact a criterion of such cooperation.

The international law enforcement cooperation is a legal means to solve such tasks as prevention of crimes concealment and the results of their committing abroad, criminals fleeing abroad, the solution of crimes committed abroad, the detection of crimes that began in one country and were completed in another. It is used to implement the principle of inevitability of punishment for a crime.

The study of international law enforcement cooperation is extremely important, as it allows to consider a number of new forms and methods of criminal activity generated by the development of communication, increasing migration flows, the complexity and internationalization of business processes.

Selected issues of international cooperation to combat trafficking in human beings were considered by such authors as L.D., Erokhina [1], Donna M., Hughes [2], Louise I., Shelley [3], Sally W., Stoecker [4], A.V., Boretsky & S.K., Zhetpisov [5], Melissa, Farley [6], and other authors.

In addition, some of the problems of international cooperation of the CIS member states in the field of combating trafficking in persons were previously studied by E.V., Mizulina [7], B.M., Nurgaliyev and others [8], P.D., Bilenchuk and others [9], as well as T.A. Khanov & A.V., Boretsky [10].

Despite all the previous studies, there was not given a detailed analysis of the mechanism of international cooperation against trafficking in human beings in general, and particularly in the Commonwealth of Independent States, which indicates the need for further research in this area.

Materials and methods. Methodological bases of this study were the dialectical method of knowledge of socio-legal phenomena, as well as systematic-structural, comparative legal, logical-theoretical and special scientific study methods. In addition, in the work were used such sociological techniques as questionnaires and

interviewing of law enforcement personnel. To achieve objectivity of the research results, these methods have been applied comprehensively.

Results and discussion. The countries of the former Soviet Union are now actively declaring the need to combat human trafficking. The CIS countries take joint integrated legal, socio-economic, information and other measures to combat human trafficking, as well as the measures to protect victims of trafficking and rehabilitate them.

In particular, a number of international treaties and agreements have been adopted in the framework of the Commonwealth of Independent States, such as, Convention “On Legal Assistance and Legal Relations in Civil, Family and Criminal Matters” (Chisinau, 7 October 2002) [11], an Agreement on “Cooperation of states-members of the Commonwealth of Independent States in the fight against trafficking in human beings, human organs and tissues” (Moscow, 25 November 2005) [12].

The mentioned international instruments of the CIS in the aggregate provide the following types of mutual legal assistance:

- Obtaining testimony and statements from individuals (including the accused, suspects, witnesses, victims, experts, and others);
- Provision of detainees or other persons to give testimony or assist in the investigations;
- Delivery of the documents, relating to the criminal proceedings, including subpoenas;
- Execution of searches and seizures;
- Execution of inspections, including forensic;
- Providing information, evidence, originals or certified copies of relevant documents and records, including bank, financial, legal, and business;
- Identification and location of persons;
- Expert examination;
- Identification or detection of profits, property, assets or other things, their transfer for evidentiary purposes, as well as the implementation of measures related to the arrest, seizure and transfer of property, obtained by crime, restitution and recovery of fines;
- Provision of any assistance that is not contrary to the domestic law of the requested state;
- Use of the videoconferencing technology in the investigation and criminal proceedings;
- Carrying out cross-border search and seizure of information, transmitted over telecommunications networks;
- Taking measures to locate, identify, arrest, seize and confiscate the funds, intended for the purposes of terrorism and others.

The foregoing suggests that the interaction of states on legal assistance in criminal matters, including human trafficking, takes place by:

- Partial transfer of competence;
- Joint investigation in criminal cases (participation of a representative of a foreign state in the inquiry, or creation of the joint investigative teams);
- Extradition of a person for criminal prosecution.

Partial transfer of competence. The transfer of competence is typical for mutual legal assistance in criminal matters, which distinguishes it from the other types of international cooperation: the joint investigation of criminal cases and extradition of a person for criminal prosecution.

Transfer of authority implies the opportunity of the competent authorities of a foreign state to obtain evidence on its own criminal case. They also decide on the most rational plan of action to establish the necessary facts and to obtain the required evidence. The evidence obtained under the foreign criminal procedure law, are declared admissible and meeting the requirements of national law of the requesting state, unless otherwise provided by the relevant international treaties.

At the same time, as mentioned above, more crimes affecting the interests of several states are committed recently. Transnational trafficking in persons applies to these crimes. They require a new level of cooperation – not just the transfer of authority to the requested state, but its joint implementation.

Joint investigation in criminal cases. A representative of a foreign state may be present at executing the request of that state, if it is provided by an international treaty or a written commitment to cooperation based on the principle of reciprocity.

The requests for the attendance of such officials or interested persons should not be refused if such presence is likely to serve the needs of the requesting state in legal assistance and thereby avoiding additional requests for assistance.

Regulations for participation of the representatives of foreign states in the execution of the requests are explicitly enshrined in the criminal procedure legislation of the CIS member states.

In presence of the grounds for a joint investigation of the facts of human trafficking by the competent authorities of a state, a proposition to establish a joint investigation group is made to the competent authority of another state. Currently, the establishment of a joint intergovernmental investigative team is governed by Art. 63 of the Chisinau Convention [11], the United Nations Convention against Transnational Organized Crime [13]. An example of this form of international cooperation is the joint Russian-Kazakh investigation, which took place in Yekaterinburg city (Russian Federation), when in one of the Ekaterinburg bathhouses there were detained

Russian citizens, engaged in the export of Kazakhstan girls from Rudny city of Kostanai region intended to provide intimate services in Yekaterinburg. In consequence, these persons were prosecuted under Art. 127-1 of the Criminal Code of the Russian Federation [14, P. 57].

The basis for creating an investigative team is a prompt and thorough investigation of crimes committed by one or more persons on the territory of two or more Contracting States or concerning them.

A joint investigative team is usually created for a limited period of time, which might be extended by mutual consent of the parties involved.

The creation of a joint investigative team is possible, if:

- a criminal case on trafficking, requiring difficult cross-proceedings in close cooperation with foreign states is in the execution of one country;
- several states conduct the investigation of criminal cases of human trafficking which circumstances inevitably entail coordinated actions of the states involved.

In the presence of several criminal cases in different states, (by mutual consent of the competent authorities of all participating states) the supervision of a JIG is exercised by a representative of the competent judicial authorities, engaged in the most serious crimes, or who are supposed to conclude the joint investigation of the case.

Let's consider the following component of the international cooperation in criminal cases of human trafficking – prosecution.

The value of this type of cooperation in criminal matters cannot be overestimated, because prosecution is an activity implying limitation of the constitutional rights of citizens, and its results tend to entail quite serious consequences for individuals.

The agreements on legal assistance contain a provision stating that each contracting state shall, at the request of a second contracting state, in accordance with its law, initiate criminal proceedings against its citizens suspected of committing crimes on the territory of the second contracting state. In this case, the prosecution in the requested state may be carried out, provided that the act is a criminal offense in this country.

The base for enquiry is the impossibility of carrying out a comprehensive investigation in a foreign country in the absence of the person, subject to prosecution in the territory of this foreign state. For example, the internal affairs department of the city of Almaty has had initiated proceedings under Art. 128 of the Criminal Code RK against K. Karimbaev, engaged in the export of kazakh girls to Switzerland through the territory of the Russian Federation. A criminal case was initiated at the request of the law enforcement authorities of the Russian Federation [15].

It should be noted that the transfer of criminal prosecution differs from the international legal assistance, as well as from the extradition of persons both in objectives and legal implications, and at the transfer procedure itself.

For example, in rendering international legal support a criminal case is initiated, investigated and analyzed substantively in the state, requiring assistance. The final decision is made on behalf of the same state. The results of international legal assistance have no independent meaning outside the context of a criminal case.

All relations concerning the criminal proceedings are carried out through the central authorities of the contracting states which are specified in the relevant international treaties and norms of the internal legislation of the CIS member states.

Thus, we can conclude that at the grounds of the request for prosecution lie the following conditions: the perpetrator of human trafficking must be a citizen of the CIS state; trafficking should be committed in the territory of a foreign country; the offender must return to the territory of the state of citizenship.

Extradition of a person for criminal prosecution. One of the most important components of international cooperation in criminal matters is extradition of persons. This form of international cooperation is one of the most common in the practice of criminal investigation on trafficking in persons, in connection with the fact, that often the perpetrators are in the territory of other states. For example, the question of extradition to the territory of the Republic of Kazakhstan has occurred in the criminal case of recruitment of people by an organized criminal group, led by a Davydova, engaged in export of minor female pupils of SI Lyceum №8 of Lobanovo village, Aiyrtau district of the North-Kazakhstan region to the Kokshetau city, where the victims were exposed to sexual exploitation in saunas and baths. Subsequently, Davydova was arrested on the territory of the Russian Federation, where a request for her extradition was sent. Moreover, the DIA of Zhambyl region, due to the decision of the perpetrator's extradition issue, had suspended the proceedings in criminal case against Musabekova, living in the UAE, who exported kazakh girls and women to the UAE, to provide sexual services [16].

The issue of extradition may be made under the following conditions only:

- the requesting state is authorized to exercise criminal jurisdiction in respect of a person whose extradition is sought, in accordance with its domestic law;
- the committed crime should be punished by imprisonment under the law of both the requesting and the requested states;

the committed crime should provide for imprisonment for not less than one year or a heavier penalty when the extradition is requested for institution of criminal proceedings, and not less than six months'

imprisonment or a heavier penalty, if extradition is requested for the execution of the court sentence, which has had entered into force.

One of the main issues subject to a thorough examination, when considering a request for extradition or sending the same inquiry, is to establish the nationality of the person requested to face extradition.

Thus, the legal basis for applying for international legal assistance are the rules of the national criminal procedure and other branch legislation, international treaties ratified and entered into force, multinational conventions and other international agreements.

Conclusions. In cases of human trafficking, rendering international legal assistance in the framework of the CIS is required in all cases where the offender is a citizen of one state and (or) commission of a crime is connected with the export of people outside of a state-member of the CIS.

Organized criminal groups involved in human trafficking, operate in the territory of two or more states. As a general rule, selection, recruitment and transportation are carried out on the territory of one state, and receiving, finding a buyer, sale, exploitation – on the territory of another state.

Therefore, the abovementioned forms of cooperation during the investigation of the crimes in question are, undoubtedly, the most appropriate and effective. This is confirmed by the practice of law enforcement cooperation in the investigation of human trafficking cases.

СПИСОК ИСПОЛЬЗОВАННОЙ ЛИТЕРАТУРЫ

1 Erokhina L.D. The globalization of international trafficking in women and organized prostitution in South-Eastern countries [Электронный ресурс] / Erokhina L.D. // Current studies of social problems (electronic scientific journal). - № 5(13). – Режим доступа: <http://sisp.nkras.ru/e-ru/issues/2012/5/erokhina.pdf>.

2 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.

3 Shelley L.I. Human Trafficking: A Global Perspective / L.I. Shelley. - Cambridge: University Press, 2010.

4 Stoecker S.W. 2010. Human Traffic And Transnational Crime: Eurasian And American Perspectives / S.W. Stoecker. – Oxford: Rowman & Littlefield, 2010.

5 Boretsky A.V., Zhetpisov S.K. Combating Human Trafficking: Cooperation of the Middle East Countries and the Republic of Kazakhstan / A.V. Boretsky, S.K. Zhetpisov // Middle-East Journal of Scientific Research. – 2013. № 14(11). – P. 1422-1427.

6 Farley M. Prostitution, Trafficking and Traumatic Stress / M. Farley. – New York: Routledge, 2003.

7 Мизулина Е.Б. Торговля людьми и рабство в России: международно-правовой аспект / Е.Б. Мизулина. – М.: Юрист, 2006. – 591 с.

8 Nurgaliyev B.M. Impact of Organized Crime on Shadow Economy: Social Impact Assessment / B.M. Nurgaliyev, K.S. Lakbayev, A.K. Kussainova, A.V. Boretsky // Asian Journal of Applied Sciences. – 2014. - Vol. 7. - № 7. – P. 644-651.

9 Биленчук П.Д., Еркенов С.Е., Кофанов А.В. Транснациональная преступность. Состояние и трансформация / П.Д. Биленчук, С.Е. Еркенов, А.В. Кофанов. – Киев: Атика, 1999. – 272 с.

10 Ханов Т.А., Борецкий А.В. Взаимодействие Российской Федерации и Республики Казахстан в противодействии преступности, связанной с торговлей людьми / Т.А. Ханов, А.В. Борецкий // Криминологический журнал Байкальского государственного университета экономики и права, 2012. - № 4(22). - С. 76-81.

11 Конвенция о правовой помощи и правовых отношениях по гражданским, семейным и уголовным делам (Кишинев, 7 октября 2002 г.). – [Электронный ресурс]. – Режим доступа: http://online.zakon.kz/Document/?doc_id=1034672.

12 Соглашение о сотрудничестве государств-участников Содружества Независимых Государств в борьбе с торговлей людьми, органами и тканями человека (Заключено в г. Москве 25.11.2005). – [Электронный ресурс]. – Режим доступа: http://lawrussia.ru/texts/legal_280/doc280a837x562.htm.

13 United Nations Convention against Transnational Organized Crime of 15 November 2000. – [Электронный ресурс]. – Режим доступа: <http://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.

14 Журавлев С.Ю., Пигаев А.М. Торговля людьми: механизм преступной деятельности, методика расследования / С.Ю. Журавлев, А.М. Пигаев. – М.: Юрлитформ, 2006. – 216 с.

15 Умаров А. Невезучий сутенер / А. Умаров // Московские новости. – 2001. – 9 апреля.

16 Справка о состоянии расследования органами внутренних дел уголовных дел, связанных с торговлей людьми за 2009 год // Архив Департамента внутренних дел Павлодарской области.

REFERENCES

1 Erokhina, L.D. (2012). The globalization of international trafficking in women and organized prostitution in South-Eastern countries. *Current studies of social problems (electronic scientific journal)*, Vol. 5(13). (n.b.). *sisp.nkras.ru*. Retrieved from <http://sisp.nkras.ru/e-ru/issues/2012/5/erokhina.pdf>.

- 2 Hughes, D.M. (2002). The use of New communications and Information Technologies for Sexual Exploitation of Women and Children. *Hastings Women's Law Journal*, 13(1), 129-148.
- 3 Shelley, L.I. (2010). *Human Trafficking: A Global Perspective*. Cambridge. University Press.
- 4 Stoecker, S.W. (2010). *Human Traffic And Transnational Crime: Eurasian And American Perspectives*. Oxford. Rowman & Littlefield.
- 5 Boretsky, A.V. & Zhetpisov, S.K. (2013). Combating Human Trafficking: Cooperation of the Middle East Countries and the Republic of Kazakhstan. *Middle-East Journal of Scientific Research*, Vol. 14(11), 1422-1427.
- 6 Farley M. (2003). *Prostitution, Trafficking and Traumatic Stress*. New York. Routledge.
- 7 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].
- 8 Nurgaliyev, B.M., Lakbayev K.S., Kussainova A.K. & Boretsky A.V. (2014). Impact of Organized Crime on Shado Economy: Social Impact Assessment. *Asian Journal of Applied Sciences*, Vol. 7(7), 644-651.
- 9 Bilenchuk, P.D., Erkenov, S.E., Kofanov, A.V. (1999). *Transnacional'naya prestupnost'. Sostoyanie i transformaciya* [The Transnational Crime. State and transformation]. Kiev. Atika. [In Russian].
- 10 Khanov, T.A. & Boretsky, A.V. (2012). *Vzaimodejstvie Rossijskoj Federacii i Respubliki Kazahstan v protivodejstvii prestupnosti, svyazannoj s torgovlej lyud'mi* [Interaction of the Russian Federation and the Republic of Kazakhstan in combating crimes related to human trafficking]. *Criminology Journal*, 4, 76-81. [In Russian].
- 11 *Konvenciya o pravovoj pomoshchi i pravovyh otnosheniyah po grazhdanskim, semejnym i ugovolnym delam* (Kishinev, 7 oktyabrya 2002 g.) [Convention on legal assistance and legal relations in civil, family and criminal matters (Kishinev Convention on October 7, 2002)]. (n.b.). *online.zakon.kz*. Retrieved from http://online.zakon.kz/Document/?doc_id=1034672. [in Russian].
- 12 *Soglashenie o sotrudnichestve gosudarstv-uchastnikov Sodruzhestva Nezavisimyh Gosudarstv v bor'be s torgovlej lyud'mi, organami i tkanyami cheloveka* (Zaklyucheno v g. Moskve 25.11.2005) [Agreement on cooperation of the CIS member states in the fight against human trafficking, human organs and tissues of 25 November 2005]. (n.b.). *lawrussia.ru*. Retrieved from http://lawrussia.ru/texts/legal_280/doc280a837x562.htm. [in Russian].
- 13 *United Nations Convention against Transnational Organized Crime of 15 November 2000*. (n.b.). *unodc.org*. Retrieved from <http://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>.
- 14 Zhuravlev, S.Yu. & Pigaev, A.M. (2006). *Torgovlya lyud'mi: mekhanizm prestupnoj deyatel'nosti, metodika rassledovaniya* [Trafficking in humans: mechanism of criminal activity, the method of investigation]. Moscow. Jurlitform. [In Russian].
- 15 Umarov, A. (2001). *Nevezuchij sutener* [Unlucky pimp]. *Moscow News*, April 9th. [In Russian].
- 16 *Spravka o sostoyanii rassledovaniya organami vnutrennih del ugovolnyh del, svyazannyh s torgovlej lyud'mi za 2009 god* [Reference on the investigation status of the criminal cases related to human trafficking, by internal affairs agencies in 2009]. Pavlodar. Pavlodar region DIA archives. [In Russian].

А.М. Джоробекова, заң ғылымдарының докторы, профессор
Қырғыз Республикасы ИМ Академиясы (Бишкек қ., Қырғыз Республикасы)
E-mail: djorobekova.a@mail.ru

А.В. Борецкий, заң ғылымдарының кандидаты
Инновациялық Еуразия университеті (Павлодар қ., Қазақстан Республикасы)
E-mail: alexey1977.77@mail.ru

В.В. Черепко, магистрант
«Синергия» Университеті (Мәскеу қ., Ресей)
E-mail: vitaly.cherepko@yandex.ru

Тәуелсіз Мемлекеттер Достастығы елдерінің адам саудасына қарсы іс-әрекеттеріндегі халықаралық ынтымақтастығы: жалпы сипаттама және негізгі бағыттар

Мақаланың мақсаты - Тәуелсіз Мемлекеттер Достастығына қатысушы елдердің құқық қорғау органдарының адам саудасына қарсы іс-әрекеттеріндегі халықаралық ынтымақтастығының негізгі ықтимал бағыттарын қарастыру. Авторлар адам саудасына қарсы күрес саласындағы қолданыстағы халықаралық-құқықтық актілерді талдау негізінде ТМД елдерінің құқық қорғау органдарының халықаралық ынтымақтастығының негізгі бағыттарын егжей-тегжейлі қарастырады, ол мынадай жолмен жүзеге асырылады: құзыреттермен ішінара алмасу, қылмыстық істер бойынша бірлесіп тергеу, сондай-ақ адамды қылмыстық құдалау (экстрадициялау) үшін беру.

Түйін сөздер: адам саудасы, қылмысқа қарсы күрестегі халықаралық ынтымақтастық, Тәуелсіз Мемлекеттер Достастығы, трансұлттық қылмыс, адам саудасын тергеу.

А.М. Джоробекова, доктор юридических наук, профессор
Академия МВД Кыргызской Республики (г. Бишкек, Кыргызская Республика)

E-mail: djorobekova.a@mail.ru

А.В. Борецкий, кандидат юридических наук

Инновационный Евразийский университет (г. Павлодар, Республика Казахстан)

E-mail: alexey1977.77@mail.ru

В.В. Черенко, магистрант

Университет «Синергия» (г. Москва, Россия)

E-mail: vitally.cherepko@yandex.ru

Международное сотрудничество стран Содружества независимых государств в противодействии торговле людьми: общая характеристика и основные направления

Целью настоящей статьи является рассмотрение основных возможных направлений международного сотрудничества правоохранительных органов стран-участниц Содружества Независимых государств в противодействии торговле людьми. Авторами на основе анализа действующих международно-правовых актов в области борьбы с торговлей людьми, детально рассматриваются основные направления международного сотрудничества правоохранительных органов стран СНГ, осуществляемые путем частичной передачи компетенции, совместного расследования по уголовным делам, выдачи лица для уголовного преследования, т.е. экстрадиции.

Ключевые слова: *торговля людьми, международное сотрудничество в борьбе с преступностью, Содружество Независимых государств, транснациональная преступность, расследование торговли людьми.*